

**Trade Policy Review Body**

**TRADE POLICY REVIEW**

**MALAWI**

**Report by the Secretariat**

This report, prepared for the first Trade Policy Review of Malawi, has been drawn up by the WTO Secretariat on its own responsibility. The Secretariat has, as required by the Agreement establishing the Trade Policy Review Mechanism (Annex 3 of the Marrakesh Agreement Establishing the World Trade Organization), sought clarification from the Government of Malawi on its trade policies and practices.

Any technical questions arising from this report may be addressed to Mr. J. Degbelo (tel. 739 5583) or Mr. C. Boonekamp (tel. 739 5226).

Document WT/TPR/G/96 contains the policy statement submitted by the Government of Malawi.

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Note: This report is subject to restricted circulation and press embargo until the end of the meeting of the Trade Policy Review Body on Malawi.



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**SUMMARY OBSERVATIONS****(I) ECONOMIC ENVIRONMENT**

1. Malawi is a landlocked southern African country, independent since 1964. Structural adjustment programmes since the mid 1980s substantially liberalized the Malawi economy, contributing to high economic growth (almost 9% in 1996) and to the reduction of inflation to single-digit rates (9% in 1997). However, in the late 1990s, policy slippages, especially expansionary fiscal policies, resulted in macroeconomic imbalances, which precipitated an economic and currency crisis. Growth slowed to under 2% in 2000.

2. Monetary policy, until recently, accommodated expansionary fiscal policies and fuelled inflation, which peaked at 45% in 1999. Real interest rates were maintained at a high level. The public sector "crowded out" private sector growth, which stagnated. Moreover, despite a more liberal regime and efforts to attract investment, including the formation of the Malawi Investment Promotion Agency and various tax and other financial incentives, foreign direct investment (FDI) inflows remain erratic and relatively low: inflows (concentrated in manufacturing, construction and distribution) have declined, from US\$70 million in 1998 to US\$51 million in 2000. Unfavourable climatic conditions, declining export prices for tobacco (the main cash crop), and institutional weaknesses have compounded the economic difficulties. Malawi's GDP per capita stood at US\$200 in 1999, and its external debt of US\$2.6 billion was equivalent to about 150% of GDP. Malawi is eligible for debt relief under the Enhanced Heavily-Indebted Poor Countries (HIPC) Initiative.

3. The authorities have recently moved to improve Malawi's stabilization policies. A Parastatal Enterprise Reform and Monitoring Unit is now in place to control financial operations of parastatals, and a Monetary Policy Committee monitors monetary issues. Monetary targets are set, and Government

borrowings from the Reserve Bank are now limited to 20% of annual budgeted domestic revenue. Exchange rate reforms have been strengthened and the export surrender requirements on traditional commodities (e.g. tobacco) reduced from 60% to 40% with a view to improving the international competitiveness of Malawi's exports.

4. Despite liberalization, Malawi's trade in goods fell from 97% of GDP in 1994 to 74% in 1999, i.e. from 30% to 27% for exports and from 67% to 47% for imports. Malawi's trade is relatively concentrated, especially in commodities. Primary products, overwhelmingly tobacco, account for most exports. Minimal export diversification has occurred; non-traditional exports accounted for only 13% of exports in 1999. Most manufactured products, including fuels, machinery, transport equipment, chemicals, and other intermediate inputs, are imported. The share of developing countries in Malawi's trade has decreased. Over two thirds of exports are sold to developed countries. South Africa has been surpassed by Germany and the United States as Malawi's main export market (its share fell to 12% in 1999). Imports are increasingly being sourced from industrialized countries, which accounted for 42% of Malawi's imports in 1999. South Africa remains the main source of Malawi's imports although its share fell from 44% in 1995 to 32% in 1999. Zimbabwe's share also declined, to 10% in 1999, ranking it third behind the United Kingdom, whose share rose to 16% (up from 4% in 1995). Malawi's regional trade, including with other COMESA and SADC members, is relatively minor. Malawi is a net importer of services, especially in transport and insurance.

**(2) INSTITUTIONAL FRAMEWORK**

5. Malawi, a unitary republic, introduced multi-party democracy in 1994 following adoption of a new Constitution, which vests executive power with the President and legislative authority with the National Assembly. Parliament comprises the Assembly and the President, who is both Head of State

and of the Government. He appoints cabinet ministers; executive functions are performed by the Office of the President and Cabinet.

6. The main ministries involved in setting and implementing trade-related policies are Commerce and Industry; Finance and Economic Planning; and Agriculture and Irrigation. Several other ministries and government bodies are responsible for policies in certain subsectors, such as tobacco, minerals, timber, fishing, and tourism. Private-sector input on trade-related policies is facilitated by the new National Working Group on Trade Policy and its National Task Force. This is intended to improve private-sector interaction and trade policy coordination, until now dispersed over several ministries, none with overriding authority.

7. The Government's Poverty Reduction Strategy Paper, completed in November 2001, has undergone substantial public discussion. The Government's long-term economic development plan for Malawi to become a middle-income country by 2020 – Vision 2020 – proposes doubling the size of the manufacturing sector to 25% of GDP, and encouraging mining, tourism, and agriculture. Industrial development is to be promoted through an integrated trade and industry policy aimed at removing bottlenecks to private-sector development. Industrial linkages are to be expanded, and small and medium-sized enterprises encouraged. Key infrastructure is to be improved. Export promotion and diversification are to be encouraged; and preferential access to developed markets is to be better utilized, by reducing supply-side constraints.

8. Malawi is an original Member of the WTO, and grants at least MFN treatment to other WTO Members, to non-WTO ACP states, and to independent Commonwealth countries or UN-administered protectorates. The authorities are of the opinion that implementing Malawi's multilateral commitments will assist Malawi's ongoing reforms and economic recovery. However, without technical assistance from the

international community, it will be virtually impossible for Malawi to implement WTO-consistent policies in areas such as intellectual property protection and contingency trade remedies. Therefore, Malawi looks to bilateral and multilateral donors for technical assistance and support in meeting its WTO commitments. It is one of the pilot countries under the Integrated Framework (IF) for Trade-Related Technical Assistance to Least-Developed Countries, jointly managed by six multilateral institutions, including the WTO.

9. Malawi is a member of the Common Market for Eastern and Southern Africa (COMESA), and the Southern African Development Community (SADC). It is a signatory to a bilateral trade agreement with Zimbabwe, and it is negotiating such agreements with Mozambique, Tanzania, and Zambia. Malawi receives non-reciprocal preferential treatment from the European Union under the Cotonou Agreement and the "Everything But Arms" scheme; from the United States under the African Growth and Opportunity Act; from other developed countries under the Generalized System of Preferences (GSP); and under a separate agreement with South Africa.

10. Malawi's cross membership of overlapping regional and bilateral arrangements with different trade liberalization agendas and trading rules makes its trade regime more complex. It may distort Malawi's trade and incentive patterns and entail undertaking inconsistent obligations.

### (3) TRADE POLICY INSTRUMENTS

11. The tariff is Malawi's main trade policy instrument. Its simple average MFN tariff was almost 14% in 2000/01, down from almost 16% in 1997/98 and 21% in 1996/97. Virtually all tariffs are ad valorem. The tariff structure is escalatory, with six bands; rates of zero or 5% apply to "necessities" and of 10% to intermediate goods. The maximum duty rate applied to consumer goods is currently 25%. With a coefficient of variation

of about 0.7, tariffs were moderately dispersed in 2000/01. Lower, more uniform duties would improve the tariff structure and economic efficiency.

12. Widespread use of exemptions and rebates, including under several local-content schemes, is non-transparent, and provides tailor-made protection to certain industries by increasing tariff escalation and effective protection. Their discretionary use is extensive and their rationale, other than as a distorting protective measure is unclear. A duty drawback system operates, with refunds no longer based on ratios, but on materials used in exports. Refunds are said to incur long delays.

13. Since 1992, Malawi has been applying mandatory preshipment inspection on most imports, which is due to stop in March 2003. Import documentation has been simplified. Transaction value has applied, in principle, for customs valuation since 1990, but minimum prices exist, for example on used cars. Discriminatory internal taxes have been eliminated, and broadening the surtax and excise coverage has reduced government reliance on tariff revenue, thereby facilitating duty reductions.

14. In the context of the Uruguay Round, Malawi bound tariffs on all agricultural products at a ceiling rate of 125% (except for a few products with ceiling rates of 50%, 55%, and 65%), and on less than 1% of tariff lines for non-agricultural products, at ceiling rates ranging from 30% to 65%. Other duties and charges on these products are bound at a ceiling rate of 20%.

15. Malawi has removed most formal non-tariff barriers, including import quotas. Such restrictions apply for environmental, health, safety, and security reasons, some under international conventions. Standards, including mandatory technical regulations, are set by the Malawi Standards Board on the basis of regional and international norms such as ISO and Codex Alimentarius; they do not discriminate against imports. Although no

formal mutual recognition agreements exist, overseas test results are usually unilaterally accepted by Malawi. Sanitary and phytosanitary requirements apply, but do not appear generally to impede imports, except for prohibitions on genetically modified food, and meats subject to growth hormones.

16. Malawi is preparing new anti-dumping legislation and introducing rules on countervailing and safeguard measures, with a view to meeting the provisions of the relevant WTO Agreements. Existing anti-dumping legislation has a "public interest" provision, but its application is unclear, since no anti-dumping action has been taken. Malawi intends to make greater use of trade remedy measures to encourage domestic production. However, there is a risk that the use of such measures may protect inefficient industries.

17. Government procurement is decentralized, but must be approved by the newly formed Contracting-Out Unit or, for large amounts, by the Office of the President and Cabinet. A Public Procurement Authority will administer new legislation, expected in 2002, to improve transparency and monitoring of public procurement. Open tender is to be the main method of procurement. Larger price preference margins are expected to apply to domestic suppliers: 20% for goods and 10% for works and construction, compared with currently 15% and 7.5%, respectively.

18. Malawi's export regime is relatively open. Since 1998, all export taxes have been removed and exports are not subject to quotas; export prohibitions reflect international conventions. Export surrender requirements were abolished in 1994, except on traditional products of tobacco, tea, and sugar. Export licences are maintained on a few products, to protect the environment and to ensure adequate domestic supplies, such as fuels and maize. Exports of unmanufactured tobacco and tea are also subject to licence.

19. Exports are assisted through various incentive schemes. Non-traditional exporters

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receive a deduction from income tax of 12% of gross receipts and of 25% of their international transport costs. From December 1995, those with EPZ status pay no income tax. This requires all production to be exported (although up to 20% may be allowed onto the domestic market in certain cases, provided all appropriate duties are paid on materials). While these policies reflect the Government's efforts to promote export-oriented firms, generous export incentives may discriminate against non-exporting firms and, even if successful in raising exports, entail large budgetary costs.

20. Certain, mainly agricultural, activities are assisted by tax concessions, and investment incentives apply. Several public enterprises have been privatized. However, problems of preparing highly indebted companies for divestment, and a lack of buyers, have slowed down the implementation of the privatization programme, suspended for review from July to October 2001. In consequence, state-owned companies still play an important role in the economy. The Government has introduced competition legislation to be administered by a Competition Commission, and it intends to amend Malawi's legislation on intellectual property to meet its multilateral obligations.

#### **(4) SECTORAL POLICIES**

21. Malawi is heavily dependent on agriculture, especially tobacco. Agriculture accounted for 38% of GDP in 1999, and about 85% of employment. Following the Government's deregulatory policies, the main trade instrument affecting agriculture is the tariff; the average MFN rate on such products was 12.2% in 2000/01 (ISIC definition). Controls on the production and marketing by smallholders of traditional crops, including tobacco, have been removed. Licensed private intermediate buyers can now market tobacco, and the Government intends to de-monopolize the auction house used for tobacco exports. The Tobacco Control Commission regulates the tobacco industry, including production controls on estate growers.

22. The marketing (including export) monopoly of the state-owned Agricultural Development and Marketing Corporation (ADMARC) was eliminated in 1987. Price bands on maize also ceased in 2000 and the grain purchase practices of the National Food Reserve Agency were curtailed to meet only disaster requirements. Farm inputs, such as seeds and fertilizers, are supplied mainly by the private sector, although the government-run Targeted Input Programme provides them to the poorest farmers. Due to communal ownership, there is no land market in Malawi; this may constrain agricultural development.

23. Manufacturing accounted for about 14% of GDP in 1999. Most prices have been de-controlled, and industrial licensing removed, except for health, safety, and environmental reasons. The Government plans to introduce incentives that will target production of up to 20 selected products, especially textiles, clothing, and agri-processing activities. Firms will be assisted based on their export orientation, import substitution capacity, product quality, and financial performance. MFN tariffs on manufactured products averaged 13.7% in 2000/01 (ISIC definition).

24. The share of services in Malawi's GDP fell from 57% in 1994 to 47% in 1999. The existence of many state-owned services enterprises reflects the delays in liberalizing this sector. However, efforts are under way to deregulate and privatize public utilities. The telecommunications market is being liberalized, and Malawi Telecom is slated for partial sale to foreign investors. The Communications Regulatory Authority is responsible for ensuring that new entrants gain competitive access to the public network.

25. More efficient infrastructure services should raise the competitiveness of downstream activities and encourage foreign direct investment (FDI). Greater transport liberalization, including allowing cabotage and third-country road carriers, would improve efficiency and lower the high transportation costs aggravated by Malawi's

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landlocked position. Private tourism development is a government priority.

26. Substantial progress has been made in liberalizing banking and insurance services, including improved regulatory supervision and divestment of the National Insurance Company in 2000 and the Commercial Bank in 2001. Under the GATS, Malawi made commitments in business services, construction, health and social services, tourism and travel-related services, and banking services. Measures affecting presence of natural persons are unbound.

**(5) TRADE POLICIES AND TRADING PARTNERS**

27. Malawi participates in the multilateral trading system and also in various preferential arrangements to increase trade flows. Regional integration is seen by Malawi as a first step towards further participation in the multilateral trading system. However, Malawi's membership of overlapping preferential agreements with different geographical coverage, trade liberalization agendas, and trading rules and goals makes its trade regime more complex, inconsistent, and difficult to manage.

28. Extending the coverage of tariff bindings beyond agriculture and narrowing the gap between bound and applied rates would benefit Malawi and its trading partners by increasing the predictability of the tariff. Continued structural reforms, including further trade and investment liberalization, and the pursuit of the privatization programme could improve the economy's dynamics and growth prospects. Moreover, further tariff rationalization might reduce widespread exemptions and rebates, and pave the way for better resource allocation.

29. The Malawi economy remains relatively weak and vulnerable to external commodity price movements and other shocks, such as weather conditions. Current economic difficulties, including fiscal uncertainties, if not improved, may weaken the Government's

resolve for further trade liberalization. Trading partners can contribute to the reforms by ensuring stable, increased access to their markets, especially in agricultural products, where Malawi's prospects appear strongest. Enhancing and complying with its WTO commitments may help sustain Malawi's unilateral reforms.

Malawi seeks technical assistance to improve its understanding of the WTO Agreements so as to better meet its obligations. This would also help it to identify the opportunities offered by the multilateral trading system.



## II. ECONOMIC ENVIRONMENT

### (1) MAJOR FEATURES OF THE ECONOMY

30. The Republic of Malawi is a landlocked country situated in Southern Africa, comprising an area of almost 118,500 square kilometres; it is bordered by Zambia, Tanzania and Mozambique. The population of Malawi was estimated at 11 million in 1999 (Table I.1). Over three quarters of inhabitants live in rural areas. The capital, Lilongwe, has about 400,000 people. Malawi is one of the world's poorest least-developed countries, with a GDP per capita of US\$180-200 in 1999. Around half of the population lives below the poverty line, and severe health problems, especially the HIV/AIDS pandemic, compounds immensely Malawi's development problems. Most social indicators are extremely poor relative to sub-Saharan Africa.

**Table I.1**  
**Main economic and social indicators**

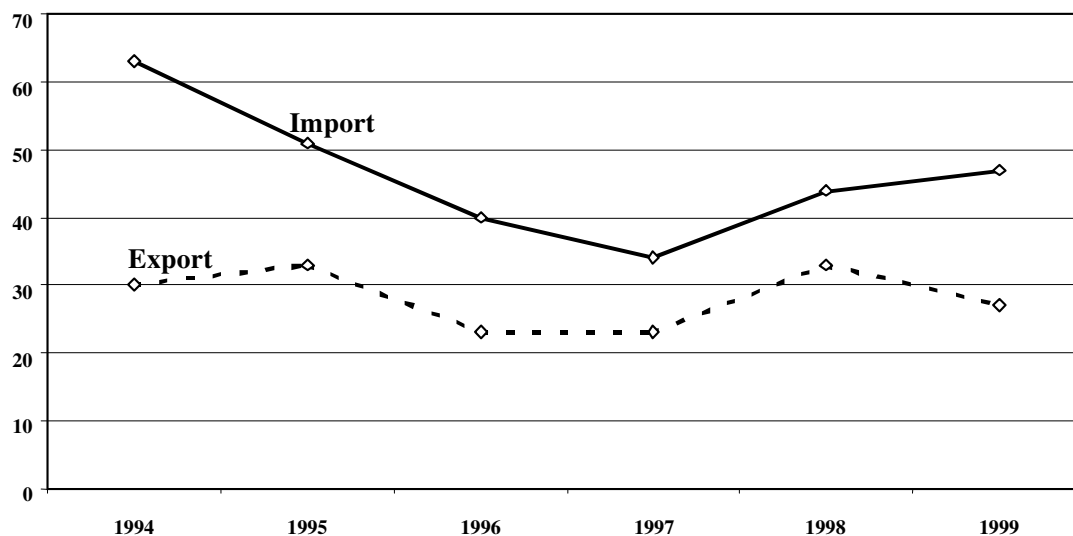
Area	118,485 sq. km.	Urban share of population (1999)	24%
Population (1999)	11.0 million	Nominal GDP at current market prices (1999)	US\$1,810 million
Annual population growth (1993-99)	2.6%	GDP per capita (1999)	US\$180
UN human development index (1999)		GNP per capita annual growth rate (1989-99)	1.0%
- Overall ranking	151	Nominal GDP at current prices (1999), of which:	MK 79,804 million
- Category	Low human development	- Mining and quarrying	1%
- Ranking within category	25th	- Agriculture, forestry and fishing	38%
UN human poverty index in developing countries (1999)		- Manufacturing	14%
- Overall ranking	74th	- Services	47%
- Within category	15th	Enrolment ratio in education (1999)	73%
Life expectancy at birth (1993-99)	39 years		
Infant mortality rate per '000 (1998)	132		
Adult literacy (1999)	59%		

Source: UNDP (2001), *Human Development Report 2001*; World Bank (2001), *World Development Indicators 2001*; IMF (2001), "Malawi: Selected Issues and Statistical Appendix", Country Report No. 01/32, January 2001 [Online]. Available at: <http://www.imf.org/external/pubs/ft/scr/2001/cr0132.pdf>.

31. Merchandise exports and imports averaged 27% and 47% of GDP, respectively, in 1999; these are down substantially from corresponding 1994 levels of 30% and 67% (Chart I.1), and remain relatively low by international levels, especially for exports. Despite efforts to diversify exports away from traditional commodities, such as tobacco, tea, sugar, and coffee, these still account for almost four fifths of merchandise exports, albeit well down from almost total dependence in the early 1990s. Tobacco remains the predominant export. Non-traditional exports have grown slowly. The agriculture sector supplies almost all of Malawi's exports, and accounts for 38% of GDP. Despite ambitious plans to substantially increase the relative size of the manufacturing sector, it has generally stagnated and contributes about 14% of GDP. Services are the main component of the economy, accounting for some 47% of GDP.

**Chart I.1**  
**Merchandise trade as a share of GDP, 1994-99**

Per cent



Source: IMF (2001), "Malawi: Selected issues and Statistical Appendix", Country Report No. 01/32, January.

32. Malawi is a highly indebted poor country (HIPC). External debt stood at US\$2.6 billion in 1999, up from US\$2.1 billion in 1994 (Table I.2). Most debt is medium to long term and of a concessional nature; it is overwhelmingly held with multilateral institutions, especially the World Bank, the African Development Bank, and the IMF.<sup>1</sup> External debt worsened to chronic levels during the 1990s, and currently substantially exceeds GDP, by about 50%. Because of the high reliance on concessional debt, Malawi's debt service as a ratio of exports is relatively low, representing about 18% of exports in 1999, still below 1994 and 1995 levels. However, it had accumulated substantial arrears, of approximately US\$12 million at end-October 2000.<sup>2</sup> About 80% of Malawi's bilateral debt is with Paris Club members and has been restructured. Following the presentation of an interim Poverty Reduction Strategy Programme (PRSP) by Malawi, its bilateral and multilateral donors have also agreed to extend debt relief amounting to US\$1 billion, commencing 2001, under the Enhanced Heavily Indebted Poor Countries (HIPC) Initiative.<sup>3</sup>

33. Malawi is finalizing its PRSP in collaboration with its multilateral donors (Chapter II). This is expected to be approved by Parliament later in 2001. The strategy focuses on improving fiscal discipline, governance, and public-sector efficiency.

<sup>1</sup> Malawi's main bilateral donor is Japan.

<sup>2</sup> Most, US\$8.2 million, was owed to the PTA Bank, US\$0.4 million to South Africa, and US\$3.3 million to commercial creditors (IMF, 2000).

<sup>3</sup> Malawi has also requested its non-Paris-Club bilateral creditors, Kuwait and China, to provide debt relief under this initiative.

**Table I.2**  
**Public external debt, 1994-00**  
(MK million, unless otherwise indicated)

	1994	1995	1996	1997	1998	1999	2000 <sup>a</sup>
<b>External debt (US\$ million)</b>	<b>2,083.0</b>	<b>2,081.0</b>	<b>2,156.0</b>	<b>2,259.0</b>	<b>2,479.0</b>	<b>2,608.0</b>	<b>2,615.0</b>
Multilateral	1,709.0	1,767.0	1,863.0	1,893.0	2,091.0	2,187.0	..
Bilateral	341.0	289.0	269.0	370.0	358.0	421.0	..
Other (commercial)	33.0	25.0	23.0	21.0	30.0	36.0	..
<b>External debt as a per cent of GDP</b>	<b>..</b>	<b>..</b>	<b>90.1</b>	<b>97.1</b>	<b>142.7</b>	<b>144.1</b>	<b>154.0</b>
<b>External debt service ratio (as a per cent of exports)</b>	<b>24.8</b>	<b>22.2</b>	<b>16.8</b>	<b>15.3</b>	<b>18.2</b>	<b>17.7</b>	<b>20.1</b>

.. Not available.

a Preliminary.

Source: IMF (2001), "Malawi: Selected Issues and Statistical Appendix", Country Report No. 01/32, January [Online]. Available at: <http://www.imf.org/external/pubs/ft/scr/2001/cr0132.pdf>.

## (2) RECENT ECONOMIC DEVELOPMENTS

34. Malawi faces immense developmental challenges. Its continued dependence on a few primary commodities poses particular policy challenges for the Government, and makes macroeconomic and structural policy reforms crucial in the face of the economy's vulnerability to international conditions. The economy remains rudimentary, and agricultural land resources, the core to future growth, suffer from over intensive use, soil degradation, and deforestation. Malawi has limited natural resources. Government trade-related policies have changed enormously since the mid 1980s from those of post-independence, which centred on import substitution and other interventionist measures, including state ownership, to promote industrialization. Reinforced by subsequent structural adjustment programmes, deepening reforms continued from the mid 1990s. These centred on reducing the restrictiveness and complexity of the trade regime and promoting greater integration through bilateral, regional, and multilateral agreements. Wide-reaching structural reforms included trade liberalization, exchange rate flexibility and, albeit currently suspended and subject to review, privatization. Nevertheless, persistent structural problems, compounded at times by inappropriate stabilization policies, especially expansionary fiscal policy, have fuelled a volatile appreciating real exchange rate, high inflation, and exorbitant interest rates.

35. The economy remains precariously poised, facing a weak trading environment and uncertain developments. Growth has slowed substantially since 1996, from 8.6% to an estimated 1.7% in 2000 (Table I.3). Inflation, reduced to 9% in 1997, subsequently accelerated to 45% in 1999, but fell to 30% in 2000. The national currency (the Malawi kwacha) has depreciated nominally since 1996 by around 300% against the U.S. dollar by end 1999, and by a further 100% during 2000. More recent data in 2001 indicated that renewed stabilization policies have begun to work, helping to stabilize the currency (appreciating slightly, nominally) and to rekindle growth, although still subdued by high real interest rates, to around 3% annually. While international reserves rose from 2.6 months of prospective imports in 1997 to well over four months in 2000, Malawi's external position remains fragile and heavily dependent on official transfers.

36. Sustained overall economic reforms are needed to reduce supply-side constraints and other bottlenecks in the economy, including poor infrastructure; otherwise Malawi will be unable to benefit from recent initiatives by major trading partners to enhance its preferential market access, such as the United States' African Growth and Opportunity Act, and the EU's "Everything But Arms" arrangements for least developed countries (Chapter II(5)). Although foreign aid, which has more than doubled in real terms from US\$64 million in 1975 to US\$470 million in 1998, can help it also

has serious drawbacks that may complicate economic management and undermine policy reforms, with possible adverse effects on economic growth.<sup>4</sup>

Table I.3  
Economic performance, 1996-00

	1996	1997	1998	1999	2000 <sup>a</sup>
<b>US\$ million</b>					
GDP at current market prices	2,392	2,327	1,752	1,810	1,698
<b>Malawi kwacha million</b>					
Nominal GDP	36,595	42,357	54,491	79,804	101,022
Real GDP (1994 prices)	12,826	13,641	13,908	14,390	14,634
<b>Annual percentage change (in domestic currency)</b>					
Real GDP growth	8.6	6.4	2.0	3.5	1.7
<b>Per cent</b>					
Inflation (CPI)	37.7	9.1	29.8	44.8	29.6
<b>Interest rates</b>					
- Commercial savings deposits	13.0	10.0	25.0	30.0	..
- Treasury bills (182 days)	15.1	20.0	48.0	39.6	..
- Term deposits (3 months)	12.0	10.0	28.5	33.0	..
Broad money growth (M2)	..	2.2	55.6	33.6	42.4
<b>Per cent of GDP</b>					
Government deficit	-5.6	-2.9	-8.2	-5.5	-5.0
- Revenue (including grants)	25.5	21.1	18.4	24.0	24.6
- Expenditure	31.2	23.9	26.6	29.5	30.1
<b>Balance of payments</b>					
- Trade	-5.9	-10.5	-2.3	-12.5	-9.6
- Current account (including grants)	-7.7	-10.5	-2.5	-8.3	-4.8
- Capital account	12.2	9.2	7.6	9.3	4.1
- Overall balance	4.8	-2.1	0.5	0.9	-0.7
<b>Memorandum items</b>					
<b>International reserves</b>					
- US\$ million	218	155	258	244	243
- Months of non-mineral imports (c.i.f.)	3.0	2.6	4.0	4.5	4.4

.. Not available.

a Preliminary.

Source: IMF (2001), "Malawi: Selected issues and Statistical Appendix", Country Report No. 01/32 [Online]. Available at: <http://www.imf.org/external/pubs/ft/scr/2001/cr0132.pdf>.

37. The Minister of Finance and Economic Planning announced in March 2000 a ten point economic plan aimed at macroeconomic stabilization. It recognized that expenditure controls were needed to reduce inflation and interest rates. The plan included measures to curtail budgetary spending, including more effective control of parastatals, and to make monetary policy more effective and transparent by further "entrenching" the independence of the Reserve Bank and achieving better

<sup>4</sup> Foreign aid to Malawi has contributed to increased consumption rather than investment, thus fuelling inflation and macroeconomic instability. It may also have delayed or undermined the implementation of economic reforms. Studies have shown that only countries that continue to implement substantial policy reforms benefit from foreign aid. Foreign aid to Malawi rose from 9% of GDP in 1975 to 26% in 1998, making it the second most aid-dependent in Africa after Mozambique.

coherence with fiscal policy. Refundable surtax revenue will be retained in a special account with the Malawi Revenue Authority.

38. Malawi's economic crisis has been due partly to inconsistent stabilization policies, especially expansionary fiscal measures, which have created unsustainable budget deficits. The Government's commitment to reign-in fiscal deficits wavered temporarily in 1998 when these increased from 2.9% of GDP to over 8% (Table I.3). Since then, budget deficits have been reduced, to around 5%. However, despite these improvements, the fiscal position remains weak, aggravated by expenditure overruns, debts incurred by parastatals, such as the National Food Reserve Agency (NFRA), and mounting government arrears.<sup>5</sup> Public expenditure increases since 1997 to currently over 30% of GDP have substantially outpaced revenue growth. Inept stabilization policies have contributed to Malawi's economic difficulties, accentuated by external shocks, including falling commodity prices, such as for tobacco. Further fiscal slippage would limit Malawi's capacity to absorb such shocks and further deterioration in its terms of trade.

39. Fiscal discipline has been impaired by a lack of budgetary checks and controls. Budgets are often premised on expenditure and revenue projections based on overly optimistic assumptions on macroeconomic indicators, such as inflation and GDP growth. Moreover, since 40% of the budget is financed by foreign aid, revenue projections are heavily affected by variations in assistance levels, which are subject to donors' decisions. Greater transparency and accountability in budgetary management would benefit the economy. Expenditure controls are being addressed, including by providing more effective monitoring and control of parastatal activities, essential for fiscal discipline. Borrowings by the NFRA and by the Agricultural Development and Marketing Corporation (ADMARC), for example, have been curtailed, and the financial operations of all parastatals put under the control of the Parastatal Enterprise Reform and Monitoring Unit established in the Ministry of Finance and Economic Planning. A parliamentary committee on parastatals is also scheduled to be established in 2001 to help improve their management and financial discipline, and the monitoring and supervisory role over parastatals by the National Audit Office is to be intensified. Expenditure cuts, equivalent to about 0.5% of GDP, were approved in April 2001. An Integrated Financial Management and Information System is being implemented in conjunction with public expenditure reviews and a medium-term expenditure framework; it provides for new procedures for monitoring spending allocations to ministries, including improvements to the system of allocating funds using credit ceiling authorities. Improved revenue collections are also expected following the formation of the Malawi Revenue Authority in February 2000, and the extension of the surtax to wholesale and retail levels as announced in the 2000 Budget.

40. Monetary policy, until very recently, has generally accommodated expansionary fiscal deficits. Broad money supply growth accelerated in 1998 from 2% to 56%, and although checked slightly to 34% in 1999, rose again in 2000 to an estimated 42%. This fed inflation, which peaked at 45% in 1999, and was 30% in 2000. Initial targets (set by the Reserve Bank) of 10% inflation rate and a reserve money growth of 12% during 2001 proved unachievable, and the targeted inflation rate has subsequently been revised upwards, first to 14% and now to 20%. The annual inflation rate at July 2001 was 26%. High real interest rates, inflationary expectations fuelled by past "stop-start" monetary policies, cost-push pressures induced by the substantial currency devaluations, and the Government's excessive borrowing requirements have also been recorded. Sustainable reductions in interest rates are unlikely while such government borrowings continue to strain the banking system and to "crowd out" the private sector. High interest rates also reflect wide bank margins, partly due to

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<sup>5</sup> The precise magnitude of government arrears is unclear. Although pre-June 2000 arrears, estimated by the Auditor-General at MK 554 million, have been cleared, new arrears have accrued.

the high non-remunerated reserve requirements imposed on commercial banks by the Reserve Bank. Non-performing loans held by the banking system also aggravate the problem.

41. The Reserve Bank has improved its liquidity management through greater reliance on market operations using a range of monetary instruments. To improve monetary management, the Monetary Policy Committee of the Reserve Bank was established in 2000 to monitor monetary conditions and to publish operational monetary targets. Efforts have also been made to limit the extent of public borrowings from the Reserve Bank. The Government's borrowings from the Reserve Bank are limited to 20% of the annual budgeted domestic revenues.<sup>6</sup> Such limits have not been exceeded so far.

42. Malawi established a fully flexible and market-determined exchange rate from May 2000 when the Reserve Bank reduced its interventionist policies substantially. The Reserve Bank no longer quotes an exchange rate and intervenes in currency markets only to smooth out large seasonal swings in demands for foreign currencies, such as those resulting from seasonal tobacco exports and large fluctuations in aid flows. The Bank's previous interventionist policy of maintaining a stable nominal effective exchange rate became largely unsustainable following the kwacha's sharp depreciation in 1998.<sup>7</sup> Although floated in February 1994, the currency was managed to maintain a stable nominal exchange rate. This led to volatile real appreciations of the kwacha as Malawi's inflation rates substantially exceeded those of its major trading partners. Malawi's international competitiveness (as measured by the real effective exchange rate) was weakened; this placed additional pressures on its external situation by discouraging exports and encouraging imports when it was substantially liberalizing trade. For example, in 2000, the real effective exchange rate of the kwacha depreciated by almost 16%, following a 20% appreciation in 1999 (Table I.4). There remains a substantial gap between the real and nominal exchange rates of the kwacha; the real rate remains at about 1995 levels. The Government is committed to following appropriate economic policies to stabilize the exchange rate and contain the kwacha's real appreciation. This was a major reason for reducing export surrender requirements from 60% to 40% in May 2001.

**Table I.4**  
**Balance of payments, 1996-00**  
(US\$ million and percentage change)

	1996	1997	1998	1999	2000 <sup>a</sup>
<b>Current account</b>	-176	-263	-43	-151	-82
Merchandise trade balance					
Exports (f.o.b.)	483	539	539	447	406
Imports (c.i.f.)	624	783	579	673	569
Services (net balance)	-108	-84	-134	-90	-75
Private unrequited transfers (net balance)	-24	-19	-25	9	9
Official unrequited transfers	97	83	157	157	148
<b>Capital account</b>	292	215	134	168	70
Foreign direct investment and other inflows	30	24	34	39	27
<b>Overall balance</b>	116	-48	91	17	-12

Table I.4 (cont'd)

<sup>6</sup> Advances are payable by the Government within four months of the end of the financial year. If not paid, the Bank cannot make further advances until the outstanding amounts are repaid. The Bank may also require the Government to issue Treasury bills or promissory notes on the open market. All advances attract the ruling bank interest rate.

<sup>7</sup> A previous sharp nominal depreciation occurred in 1994.

	1996	1997	1998	1999	2000 <sup>a</sup>
<b>Memorandum items</b>					
		<b>Percentage change</b>			
External reserves (changes)	106	-29	66	-5	0
Terms of trade	32.0	9.2	-4.1	-13.4	8.8
Nominal effective exchange rate <sup>b</sup>	..	..	-49.5	-0.5	-32.0
Real effective exchange rate <sup>b</sup>	..	..	-28.7	19.5	-15.6

.. Not available.

a Preliminary.

b Positive value denotes appreciation of the kwacha.

Source: IMF (2001), "Malawi: Selected Issues and Statistical Appendix", Country Report No. 01/32, January [Online]. Available at: <http://www.imf.org/external/pubs/ft/scr/2001/cr0132.pdf>.

43. Malawi accepted the obligations of Article VIII (Sections 2, 3 and 4) of the Agreement of the IMF in December 1995. However, all current account transactions must be approved and conducted by authorized banks; they are monitored by the Reserve Bank. Restrictions on capital account transactions have also been eased, and non-residents are freely allowed to repatriate investment proceeds through commercial banks. Offshore borrowings are allowed, but the Reserve Bank monitors their terms and conditions. There is no forward exchange market.

### (3) TRADE PERFORMANCE AND INVESTMENT

#### (i) Trade in goods and services

44. Malawi's commodity trade patterns are concentrated, especially for exports. Merchandise exports are mostly primary commodities, especially traditional exports of tobacco, which have remained relatively stable, accounting for 62% of total merchandise exports (in value) in 1999 (Chart I.2). Other minor traditional exports, tea, sugar, and coffee accounted for 16% of the total in 1999; and non-traditional exports for 13%. Exports of cotton fabrics and apparel have grown significantly.

45. Merchandise imports are mainly manufactured products and intermediate inputs. In 1999, transport equipment represented 14% of total merchandise imports; chemicals nearly 14%; and non-electrical machinery around 12%. Imports of petroleum fuels and electrical machinery were also significant, accounting for 12% and 9%, respectively (Chart I.2).

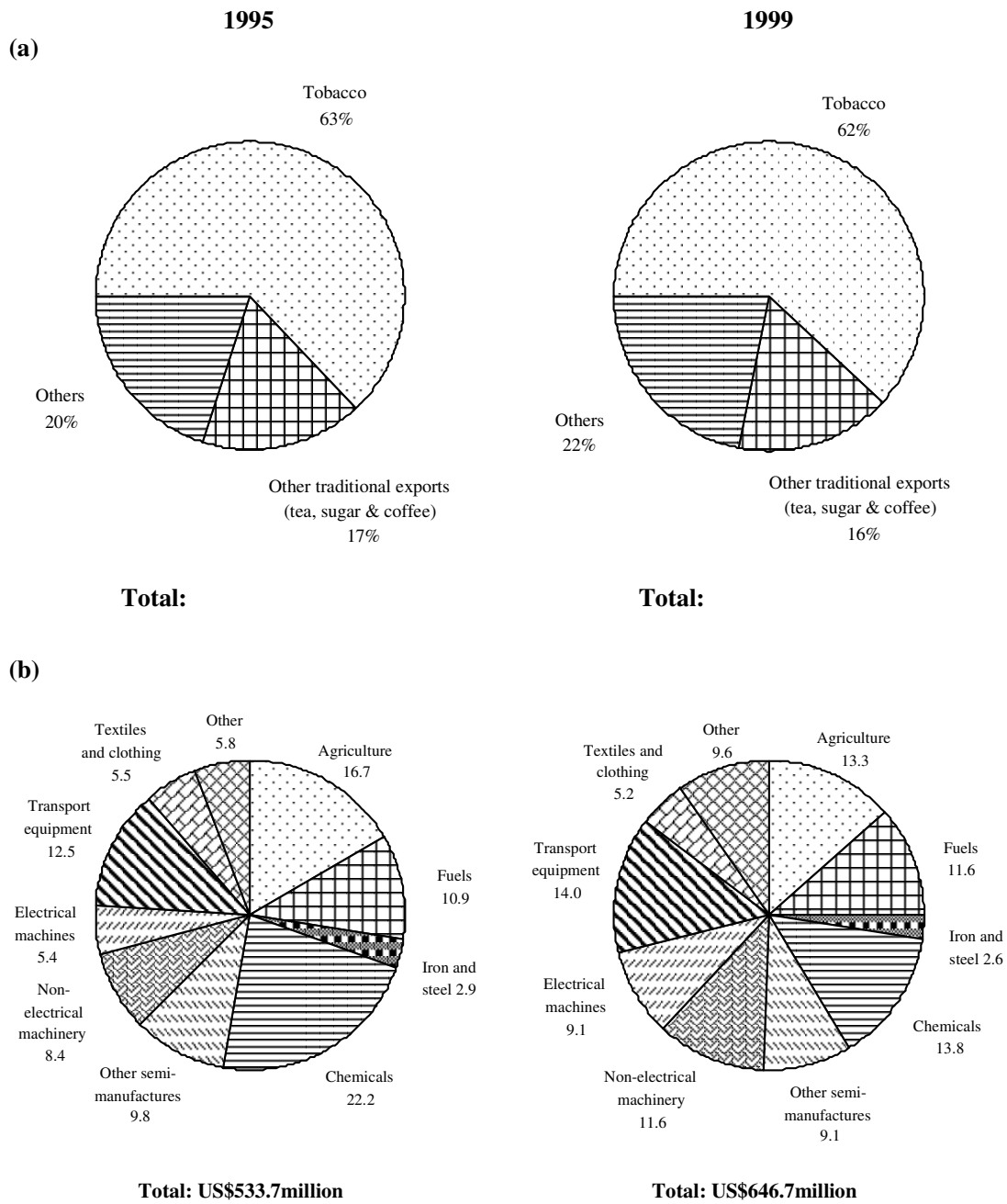
46. Malawi's share of merchandise trade with developing countries has decreased since 1995, especially for imports (Chart I.3). Since then, the share of developed countries in exports from Malawi has increased from about 65% to 69% in 1999. South Africa has been displaced as Malawi's single largest export market by Germany and the United States; their shares rose over this period from around 15% to 17% and from about 11% to 14%, respectively. South Africa's share fell substantially from some 16% to 12%. Japan's share of exports also declined from 11% in 1995 to 7% in 1999.

47. Malawi's imports are increasingly being sourced from industrialized countries. In 1999, their share was around 42% compared with 29% in 1995. This largely reflected a substantial decline in South Africa's share, Malawi's main import market, from about 44% in 1995 to 32% in 1999, and an increase in the U.K. share from 4% to 16%. Zimbabwe slipped from being Malawi's second largest source of imports in 1995 (13% share) to third in 1999 (10%). The shares of Germany and Japan increased, while the U.S. share declined.

48. Malawi is a net importer of services, mainly of transportation and insurance. In 1999, Malawi's services balance was US\$90 million in deficit, down from US\$134 million in 1998.

**Chart I.2**  
**Commodity composition of exports and imports, 1995 and 1999**

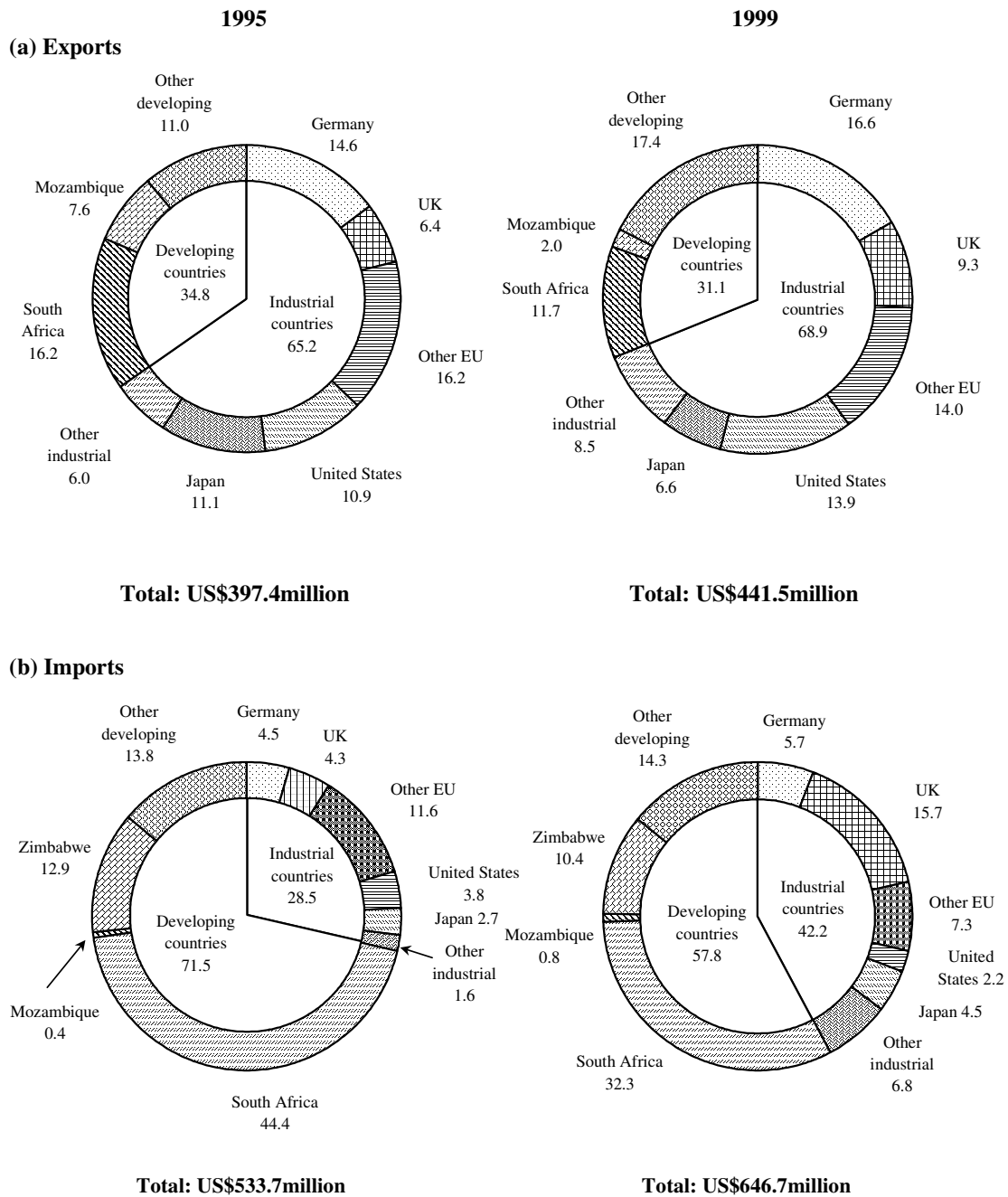
Per cent



Source : IMF (2001), "Malawi: Selected issues and Statistical Appendix", Country Report No. 01/32, January; and WTO Secretariat estimations, based on data provided by the Malawi authorities.

**Chart I.3**  
**Malawi's major trading partners, 1995 and 1999**

Per cent



Source: IMF (2001), "Malawi: Selected issues and Statistical Appendix", Country Report No. 01/32, January.

**(ii) Investment**

49. High production costs, resulting from poor infrastructure and high prices of utilities, high real interest rates and competition from neighbouring countries (e.g. Zambia, Mozambique and Tanzania), have negatively affected investment, including foreign direct investment (FDI), in Malawi. Despite Malawi's efforts to attract FDI, inflows remain relatively small. The stock of inward FDI increased from US\$250 million in 1995 to US\$496 million in 2000.<sup>8</sup> Although inward FDI recorded an upward trend during the 1990s, it was erratic, falling from US\$44 million to US\$22 million in 1997, and rising to US\$70 million in 1998. Since then, it has declined, to US\$60 million in 1999 and US\$51 million in 2000, albeit still well above the annual average inflow of US\$12 million between 1989 and 1994. Since 1986, FDI inflows into Malawi have grown at an annual average rate of over 30%, much faster than many other least developed countries. However, most of this occurred during the late 1980s and early 1990s.

50. Data recorded by the Malawi Investment Promotion Agency (MIPA) cover only a small and variable share (possibly less than half) of total inward FDI. This is because not all FDI applications are processed by the Agency. Nevertheless, the data suggest that most FDI in 2000 was in manufacturing, construction, and distribution, with substantial investment in communications during 1999. Another limitation, however, is that MIPA figures cover mainly intended investments, which may differ from actual FDI inflows.

**(4) OUTLOOK**

51. The Government's key macroeconomic objectives for 2001-04 are to achieve real annual GDP growth of 4% in 2002 and subsequently of at least 5%. The fiscal deficit (including grants) is expected to be replaced with a small surplus of 1% of GDP in 2002. The primary objective of monetary policy is price stability using monetary targets. The annual inflation rate is expected to fall to 10% in 2003 and to 5% in 2006. International reserves are expected to rise to 5.7 months of import cover by 2004.

52. The October 2001 draft Poverty Reduction Strategy Paper assumes that annual economic growth rates of 3%, 5%, and 8% are attainable in the short to medium term, but that 5% over the next three years would be most realistic. It also states that achieving Malawi's Vision 2020 aim of reaching middle-income status by 2020 would require sustained annual real GDP growth of at least 10%.

53. The publicly financed National Economic Council also believes that the economy's current prospects are "somewhat encouraging", with 4-5% real GDP growth possible until 2004.<sup>9</sup> However, while Malawi has the potential to restore respectable medium-term growth, the Council sees this as being dependent on a strong agriculture sector complemented by prudent fiscal and other stabilization policies. The U.S. African Growth and Opportunity Act (AGOA) is also expected to provide a boost to Malawian industries, especially of textiles and clothing, through its favourable impact on exports, investment, and savings.

54. While Malawi has made substantial progress in many areas to reform its economy, development continues to be heavily constrained by a number of key factors, such as inadequate infrastructure, misallocation of human resources, fiscal mismanagement, lack of accountability, weak institutions, and poor governance. Comprehensive reforms in these areas, including continued trade liberalization and parastatal reform, coupled with privatization and success in attracting foreign investment, will be vital to Malawi's developmental prospects.

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<sup>8</sup> UNCTAD (2001), p. 302.

<sup>9</sup> National Economic Council (2000).

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## II. TRADE AND INVESTMENT REGIMES

### (1) THE INSTITUTIONAL FRAMEWORK

1. Malawi is a unitary republic with elements of both parliamentary and presidential political systems. It gained independence in 1964. A new Constitution guaranteeing a multi-party democracy as well as freedom of speech, religion, and assembly was adopted in May 1994. It separated the executive powers of the President from the legislative role of the unicameral Parliament and from the independent judiciary.<sup>10</sup>

2. Parliament comprises the National Assembly, which consists of 193 members, and the President. Members of Parliament, including the President, are elected by universal suffrage to serve five-year terms. The President is Head of State and of Government. The Constitution limits the President to serving two consecutive terms of office; this limitation does not apply to National Assembly members. The President appoints the Cabinet (currently comprising 36 members). The Office of the President and Cabinet performs the executive role.

3. The judicial system is based on English common law and traditional customary law. The Supreme Court of Appeal is the highest court, followed by the High Court, which is responsible *inter alia*, for interpreting the Constitution. The Chief Justice is head of the Supreme Court and of the High Court. The President appoints judges based on the recommendations of the Judicial Service Commission.<sup>11</sup> Subordinate courts consist mainly of magistrate courts.

4. Malawi comprises 27 administrative divisions, or districts. The 1998 Local Government Act transferred certain public-service functions to semi-autonomous District Assemblies, first elected in November 2000, as part of the Government's move towards a more decentralized structure. Trade-related and other economic policies remain the Government's responsibility.

### (2) TRADE POLICY FORMULATION AND IMPLEMENTATION

5. Policies, including on trade and investment, are set up by means of legislation; at the top is the Constitution, followed by Acts of Parliament and "subsidiary registrations" (e.g. government regulations, orders, and guidelines). Relevant ministers issue administrative regulations in accordance with powers conferred to them under specific parliamentary Acts. In general, the need for a new Act can be expressed by any Malawian citizen. The need is discussed by the Cabinet, and then the Attorney-General's Office drafts the related bill on the basis of instructions given by the minister competent in the area under consideration. Once adopted by the Cabinet, the bill is published in the *Government Gazette*, generally for at least 21 days. It is then introduced to Parliament and if passed after three readings, it becomes law following Presidential assent and publication in the *Gazette*.

6. The Ministry of Commerce and Industry has overall responsibility for trade and industry policy formulation. It negotiates and implements Malawi's multilateral, regional, and bilateral trade arrangements, although formal responsibility for international negotiations rests with the Ministry of Foreign Affairs and International Cooperation. Inter-Ministerial Committees have been established to examine trade agreements and WTO matters. The SADC National Working Group on Negotiations for the Trade Protocol was established in 1997 to advise the Government and to provide a consultative public/private-sector forum for addressing a range of commercial factors arising from the

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<sup>10</sup> After one-party rule, Malawi held democratic parliamentary and presidential elections in 1994 and again in 1999. The next parliamentary and presidential elections are to be held in 2004.

<sup>11</sup> This consists of the Chief Justice, the chairman of the Civil Service Commission, and one judge appointed by the President as well as various legal practitioners and magistrates.

negotiations. In 2000, its mandate was broadened to cover the full range of trade issues, policies, and agreements, and it was renamed the National Working Group on Trade Policy. It is chaired by a private-sector representative and is attended mainly by private-sector interests; ministries and agencies are, in principle, members. It recently merged with another group established in 2000, the National Working Group for SADC Trade Protocol Implementation, which was dominated by public-sector representatives, and chaired by the Principal Secretary of the Ministry of Commerce and Industry. The existence of two groups, one comprising mainly private-sector representatives and the other public-sector members, was seen to be creating confusion and undermining public/private sector interaction.

7. The National Working Group on Trade Policy (which resulted from the merger of the two groups) advises the Government, through the Principal Secretary of Commerce and Industry, on all legislative and policy issues relating to trade, including regulatory provisions and policy reforms. In addition, it provides a framework for monitoring and evaluating the implementation of Malawi's trade arrangements and for ensuring conformity with agreed rules. It is also to facilitate consultation and cooperation among private and public sector parties to promote trade. The Group is to regularly commission and review technical reports prepared by the National Task Force on Trade Policy. Membership comprises high level representatives from the public and private sectors as well as academia and the donor community.<sup>12</sup> The Group is privately funded, including from donors. The Government is attempting to improve the coordination of trade policy, which, until now, has been dispersed over several ministries, with no overriding authority.<sup>13</sup>

8. Other ministries having an important input in trade-related policies include Finance and Economic Planning, which is responsible for the overall budget as well as the Government's expenditure and revenue measures, including tariff policies, and planning; and Agriculture and Irrigation, which formulates agricultural policies, including production plans aimed at diversification, food security, and ensuring supply of farm inputs. The Malawi Revenue Authority, established in February 2000 under the Ministry of Finance and Economic Planning, is responsible for tax and tariff administration, including implementing customs procedures, such as applying rules of origin, and collecting import duties. Moreover, policy decisions of the ministries/departments responsible for communications, transport and public works, forestry, mines, and tourism directly affect trade.

9. The Copyright Society, under the Ministry of Sport and Culture, administers copyright legislation to protect intellectual property rights over creative works. Patents are the responsibility of the Patents Office in the Ministry of Justice. The Malawi Bureau of Standards sets and enforces standards. Investment promotion is handled by the Malawi Investment Promotion Agency, and export promotion by the Malawi Export Promotion Council. The Privatisation Commission divests state-owned enterprises selected by the Government, and the Malawi Development Corporation is in charge of equity participation in manufacturing and service industries where private-sector resources are insufficient. The Agricultural Development and Marketing Corporation continues to market certain products in isolated areas and to have major shareholdings in a number of enterprises. The Malawi Industrial Research and Technical Development Centre is responsible for research and technology development. The National Statistical Office produces a range of statistics.

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<sup>12</sup> Ministries represented are Commerce and Industry, Finance and Economic Planning, Justice, and Foreign Affairs and International Cooperation. Other public-sector members are the National Economic Council, the Reserve Bank, the Malawi Revenue Authority, the Malawi Investment Promotion Agency, and the Malawi Export Promotion Council. Private-sector representatives include the Malawi Confederation of Chambers of Commerce and Industry, which is the Group's Secretariat, the Exporters' Association of Malawi, and the Textiles and Garments Manufacturers of Malawi. The University of Malawi, including the Polytechnic, is also represented.

<sup>13</sup> Page (2001) p. 12.

10. The Reserve Bank of Malawi, as the central bank, is responsible for monetary and exchange rate policies as well as prudential regulation and supervision of the financial sector. The Reserve Bank Act of 1989 provides it with independence in conducting monetary and exchange rate management. Final authority for these policies, however, rests with the Ministry of Finance and Economic Planning.<sup>14</sup> The Reserve Bank also advises the Government on monetary and banking matters, and on economic policy in general. It is also a major source of finance and economic statistics, and produces reports and commentaries on the state of the economy.

11. Malawi has no independent statutory body to review or advise the Government on economic and trade policies, including the provision of government assistance to industry. Most economic policy advice to the Government comes from the Reserve Bank, the Ministries of Finance and Economic Planning, and Commerce and Industry, and the publicly funded National Economic Council. Reporting to the President, and operationally linked with the Ministry of Finance and Economic Planning, the Council advises the Government and the public on economic and development policies. It also helps establish national development goals and plans, such as Vision 2020, and monitors their implementation. The Council operates using a participatory approval process whereby Technical Working Groups, comprising Council staff and technical officers from line ministries, provide an interface between stakeholders to formulate and review policies.<sup>15</sup>

12. The private sector (e.g. the Malawi Confederation of Commerce and Industry, and the Garments and Textile Manufacturers Association of Malawi) is involved in trade-policy formulation through consultations held by the Government as well as participation in the National Working Group on Trade Policy. Although consumers' interests are represented by the Consumer Association of Malawi, it has no representation on the National Working Group. The National Association of Small and Medium Enterprises represents the interests of small-scale entrepreneurs, and the Small Enterprise Development Organization of Malawi provides micro-finance, training, and other assistance to small enterprises, such as through the Malawi Entrepreneurs Development Institute. Improving consultation and coordination between the public and private sectors is seen by the Government to be important. Academics from the University of Malawi, including the Malawi Polytechnic, are also members of the Group, and are periodically commissioned by the Government to advise on aspects of trade and other economic policies. Two institutions affiliated with the University – the Centre for Social Research and the Agricultural Policy Research Unit – conduct economic research.

### (3) TRADE LAWS AND REGULATIONS

13. In Malawi, domestic legislation takes precedence over international treaties. Since 1994, international agreements become part of domestic law only when ratified by an Act of Parliament (Section 211 of the Constitution). Malawi's trade laws and regulations (e.g. on intellectual property, anti-dumping and countervailing remedies) are being reviewed and updated to reflect trends in the

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<sup>14</sup> The Reserve Bank's degree of independence has been questioned at times. The President of Malawi appoints both the Governor and Deputy Governor of the Reserve Bank for five-year terms; reappointment is possible. Bank governors have changed more than five times in the last 15 years. The Chairman of the Chamber of Commerce and Industry has urged that the Reserve Bank be de-linked from the Government to avoid political interference in its operations, and that its governors and board members be appointed by, and accountable to, Parliament instead of the President. See *The Chronicle Newspaper* (Lilongwe), "Reserve Bank Must Have Greater Autonomy", Christopher Jimu, 9 July 2001.

<sup>15</sup> The Technical Working Groups have been formed according to the coverage of the Vision 2020 Plan, namely good governance; population, sustainable growth, and development; vibrant culture; economic infrastructure; social-sector development; science and technology; fair and equitable distribution of income; food security; and natural resources and environmental management.

multilateral trading system. The main trade-related laws in Malawi are provided in Table II.1. The Competition and Fair Trading Act of 1998 became operational in April 2000.

**Table II.1**  
**Main trade-related laws**

Legislation	Area
The Sale of Goods Act, Cap 48:01 1967	Formation of contract and transfer of property
The Control of Goods Act, Cap 18:08 1967	Control of the distribution, disposal, purchase and sale, and price controls
The Control of Goods (Import and Export) Act	Control of exports and imports of goods
The Malawi Bureau of Standards Act, Cap 51:02 1972	Promote standardization, specifications, and provide scientific testing and marks
The Weights and Measures Act, Cap 48:04 1960	Provide unification in weights and measures
The Metrication Act, Cap 48:08 1981	Introduce metrification commerce
The Finance and Audit Act, Cap 37:01 1976	Regulate public finances
The Business Licensing Act, Cap 46:01	Sale of goods in business
The Companies Act, Cap 46:03 1978	Formation/incorporation of firms
The Trustees Incorporation Act, Cap 51	Formation of trusts
The Industrial Licensing Act No. 28 1989	Licensing of certain manufactured products
The Business Names Reg. Act, Cap 46:2 1922	Registration of all entities in business
The Capital Markets Development Act, Cap 46:06 1989	Registration of operations on capital transactions
The Investment Promotion Act No. 287 1991	Enabling investment processes
The Public Enterprises (Privatization) Act No. 7 1996	Privatization of public services
The Banking Act No. 19 1989	Regulation of financial services
The Export Promotion Council Act, Cap 39:03 1971	Facilitation of export activities
The Export Processing Zones Act No.11, 1995	Manufacturing in export zones
The Export Incentives Act, Cap 39:04 1989	Provision of export incentives
The Exchange Control Act, Cap 45:01 1984	Allocation of foreign exchange
The Taxation Act, Cap 41:01 1964	Taxation of earnings
The Customs and Excise Act, Cap 41:02 1964	Collection of import duties
The Merchandise Act, Cap 49:04 1958	Marking goods for sale
The Registered Designs Act, Cap 49:05 1958	Registering new designs of articles
The Trade Marks Act, Cap 49:01 1958	Registration of trade marks
The Patents Act, Cap 49:02 1958	Registration of inventions
The Trade Dispute Act, Cap 54:02	Arbitration and dispute settlements
The Copyright Act	Regulation of original works
The Tourism and Hotels Act	Regulation/promotion of tourism
Competition and Fair Traders Act 1998	Regulate competition
Cooperative Societies Act 1998	Regulate activities of cooperatives

*Source:* WTO document WT/COMTD/IF/37, 18 September 1998; and the Malawian authorities.

14. Considerable additional work is needed to align Malawi's national legislation with multilateral requirements, including improving its implementation and enforcement capabilities. Rationalizing Malawi's trade legislation will enhance the predictability of its foreign trade regime and increase confidence of traders and investors. The Government sees the reform of legislation as an essential means of establishing an enabling environment in which the private sector can expand and prosper.

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**(4) POLICY OBJECTIVES**

15. Despite some setbacks, the Government remains committed to trade and investment liberalization as part of the long-standing recovery programme that began in the mid 1980s and deepened in the mid 1990s. It recognizes the increasing importance of market-opening measures in improving competitiveness and achieving export diversification. The need for private-sector-led development, by redirecting resources away from the public sector, is also accepted, and privatization efforts had accelerated until the programme's temporary suspension in June 2001. Malawi's trade policy is aimed at further outward orientation and improved trade and economic performance.

16. The Government regards private, including foreign, direct investment as an important catalyst for growth. It is creating an atmosphere designed to promote business confidence and attract more private investment. It also plans to implement sustainable management practices for its key natural resources, such as forests, fisheries, minerals, and agricultural resources. Sustainable development and domestic processing are seen as important means of increasing economic self-reliance.

17. Malawi's development was guided by ten-year plans or "statements of development policies" up to 1987, supplemented by five-year rolling Public Sector Investment Programmes and Sectoral Policy Framework Papers. In the 1980s, the Government implemented Structural Adjustment Programmes in which the rolling three-year Policy Framework Papers set medium-term economic policies.<sup>16</sup> In 1998, the Government launched a long-term development plan, Vision 2020, to provide a foundation on which to formulate, implement, and evaluate short- and medium-term policies. It was developed by a national core team comprising representatives from the public, private, and tertiary sectors, as well as a working group made up of many, diverse stakeholders. According to the Vision, Malawi will "by 2020 be a secure, democratically mature, environmentally sustainable and self-reliant nation, with equal opportunities for and active participation by all, having social services, vibrant cultural and religious values and a technologically driven middle-income economy."

18. Vision 2020 calls for, *inter alia*, the achievement of sustainable economic growth and development mainly by doubling the relative size of the manufacturing sector to 25% of GDP, as well as development of the mining, tourism, and agriculture sectors. Good governance, including transparent and accountable government, with the three branches – the executive, legislature, and the judiciary – clearly separated, is also of high priority. This includes the elimination of "rampant corruption in both private and public offices and leaders". The Government has increased its fight against corruption by passing the Anti-Corruption Practices Act, by further strengthening the capacity of the Anti-Corruption Bureau, formed in 1999, and using other available avenues, such as the Auditor-General, the Office of the Ombudsman, and the Public Accounts Committee of Parliament, to press ahead on several high-profile public corruption cases.<sup>17</sup> The Government also intends to expedite such fraud and corruption cases by strengthening the capacity of courts, and to eliminate institutional and legal bottlenecks.

19. The Government's medium-term growth strategy for achieving Vision 2020 objectives is contained in its Poverty Reduction Strategy Programme, which is aimed at alleviating poverty by identifying policies that will promote rapid economic growth and ensure that the benefits are equitably distributed. The Poverty Reduction Strategy Programme, formulated by the Ministry of Finance and Economic Planning, has entered its final phase, and is being consolidated to reflect sectoral priorities. The latest draft, of October 2001, is to be publicly discussed at a National

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<sup>16</sup> Between 1981 and 1994, Malawi undertook six such adjustment programmes.

<sup>17</sup> Official investigators have, for example, pursued cases of fraud, corruption, and misappropriation of public funds identified in Auditor-General reports, such as by the Petroleum Control Commission. Customs evasion identified by the Malawi Revenue Authority is also being legally recovered and prosecuted.

Symposium, and the final Programme is expected to be approved by Parliament in November 2001. The Programme has four pillars. The first pillar is to achieve sustainable pro-poor economic growth through agricultural and rural development by improving access to farm inputs, micro-credit, research, and extension services; by encouraging agri-processing; infrastructural, including irrigation, facilities; marketing programmes; reducing land shortage and degradation; as well as restoring macroeconomic stability to generate sustainable growth by reducing inflation and lowering interest rates. Manufacturing is also to be strengthened and broadened. The other pillars cover human capital development, by ensuring that the poor receive sufficient health and education services, including a National Health Plan (1999-2004) to address the appalling incidence of HIV/AIDS and other diseases, such as malaria<sup>18</sup>; improving the quality of life for the most vulnerable, through provision of safety nets for the poor; and providing good governance, political will and mindset to ensure that public-sector institutions protect the poor, including greater efficiency in providing government services and budget management. Private-sector development is seen as the key engine of growth, generated by sectoral developments, especially in agriculture, tourism, mining, and manufacturing.

20. Malawi's industrial development policies are embodied within an integrated trade and industry policy released in 1998.<sup>19</sup> Its primary objective is to support and encourage private-sector development by creating a conducive environment for business that will improve the competitiveness of industry. Trade and industry policies are designed to be complementary. To help stimulate the private sector, the Government is deregulating and liberalizing the economy, including price decontrol, elimination of foreign exchange rationing and industrial licensing, reduction of corporate taxes, introduction of market-based instruments for managing monetary policy, trade liberalization, enactment of the Investment Promotion Act, and development of export-processing zones. As a landlocked country, Malawi has taken initiatives to lower its high transportation costs, such as opening of the Beira road route, greater utilization of the Northern Transport Corridor, and improving the rail link to Nacala through the privatization of Malawi Railways.

21. The Government accords priority to industrial development, including greater investment promotional efforts. Industrial linkages within the manufacturing sector and with the rest of the economy are to be strengthened by optimizing the exploitation of natural resources and promoting domestic processing and export-oriented industrialization. Strategic industrial activities are to be identified and promoted on the basis of their capacity to maximize economic and social benefits, including increased involvement of Malawians. Strengthening the capacity of small and medium enterprises is also a high priority of the Government. More specifically, the policy objectives guiding industrial development include broadening the industrial base; development of small and medium-scale industries; development of agri-processing, textiles, and other key sectors, such as pottery; enhanced science and technology development to improve industrial competitiveness; and expansion of export-oriented industries.

22. Export promotion and diversification are to be encouraged by offering a competitive package of export incentives and ensuring that the export-processing-zone programme is administered efficiently. The policy also aims to help counter the erosion of GSP and Lomé tariff preferences (due to liberalization of trade by other countries) by promoting diversification of trading partners, including through participation in regional trade agreements. The Government intends to link trade liberalization to viable industrial and export development by fully utilizing available preferential treatment, including preferential market access. However, long-term over-reliance on such

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<sup>18</sup> The Government has designed a National Strategic Framework to combat HIV/AIDS, supported by donor partners.

<sup>19</sup> Ministry of Commerce and Industry (1998).

preferences is becoming a challenging issue.<sup>20</sup> The Government also intends to consider remedial trade measures such as anti-dumping, countervailing, and safeguard actions.<sup>21</sup>

23. Other policy actions deemed necessary to overcome bottlenecks in Malawi's industrial development include adequate finance and credit; sufficient adjustment support; promoting enlarged markets; and improved infrastructure (physical and human). Many of these bottlenecks are being addressed by a number of training and other support programmes financed by the Ministry of Commerce and Industry in 2002. These are aimed at diversifying the country's export base and promoting the growth of value-added manufacturing.

## (5) TRADE AGREEMENTS AND ARRANGEMENTS

### (i) Multilateral agreements

24. Malawi officially became an original member of the WTO on 31 May 1995; it had been a contracting party to the GATT since 28 August 1964. Malawi is neither a signatory nor an observer to any of the WTO plurilateral agreements. Malawi's WTO notifications are summarized in Table II.2. Malawi has never been involved directly in a dispute under the WTO Dispute Settlement Mechanism.

**Table II.2**  
Selected notifications to the WTO, 31 July 2001

WTO Agreement	Description of requirement	Periodicity	Document number of latest notification
Anti-Dumping (Art. 18.5)	Laws and regulations	Once by March 1995, then changes	G/ADP/N/1/MWI/1/Corr.11, 19 February 1996
Import Licensing Procedures (Art 7.3)	Questionnaire; rules and information concerning procedures for the submission of applications	Annual for questionnaire; rules and information once, then changes	G/LIC/N/3/MWI/1, 6 September 1999
Import Licensing Procedures (Art. 1.4(a) and 8.2(b))	Laws and regulations	Once, then changes	G/LIC/N/1/MWI/1, 13 October 1999
Subsidies (Art. 32)	Laws and regulations	Once by March 1995, then changes	G/SCM/N/1/MWI/1, 14 December 1995
Technical Barriers to Trade (Art. 10.1 and 10.3)	Enquiry points	Once, and then changes	G/TBT/ENQ/18, 19 March 2001
Technical barriers to Trade (Annex 3C)	Acceptance of the WTO TBT Code of Good Practice	Once	G/TBT/CS/N/63, 8 January 1997
Customs Valuation (Arts. 20.1 and 22.1)	Delay in commencement of provisions and changes in laws	Once on delay, then changes only	G/VAL/N/MWI/1, 7 April 1998 G/VAL/2/Rev.12, 30 March 2001
TRIPS (Art. 69)	Details of enquiry points	Once, then changes	IP/N/3/Rev.5, 6 July 2001

Table II.2 (cont'd)

<sup>20</sup> Duncan (2001).

<sup>21</sup> Although such measures are allowed for in the multilateral trading system, over-reliance on such actions to protect inefficient industries is likely to hurt Malawi's consumers and undermine its economic efficiency.

WTO Agreement	Description of requirement	Periodicity	Document number of latest notification
TRIMs (Art. 6.2)	Details of enquiry points	Once, then changes	G/TRIMS/N/2/Rev.8, 19 July 2000
Sanitary and Phytosanitary Measures (Art. 7, Annex B)	Measures taken	Ad hoc	G/SPS/N/MWI/1, 8 January 2001
Sanitary and Phytosanitary Measures (Paras 3 and 10 Annex B)	Details of national notification authorities and enquiry point	Once	G/SPS/GEN/150, 6 December 1999
Sub-Committee on Least-Developed Countries	Details of focal points under the Integrated Framework	Once	WT/COMTD/LDC/W/14, 24 February 1999

Source: WTO documents.

25. As a UN-designated least-developed country, Malawi is eligible for "special and differential treatment" provided under the WTO Agreements. Malawi has experienced difficulties in implementing commitments under the Agreements. Implementation has heavily strained its limited institutional and human resource capacities. It therefore seeks technical assistance from other WTO Members and international organizations to help it to meet its multilateral commitments. It believes that an imbalance exists in some of the WTO Agreements, including inadequate transitional periods, and that developed countries need to implement fully the "special and differential" provisions for developing countries, especially for least developed countries. Malawi is also concerned about the possible inclusion on the WTO agenda of labour standards, which it sees as the mandate of the International Labour Organization. It objects to the possible use of environmental measures as trade barriers, especially against products of least developed countries, and believes that further analytical work is needed before 'mainstreaming' environment issues into the WTO. On investment, Malawi believes that any multilateral outcome should contribute to facilitating such flows to least developed countries.

26. Malawi believes that any new round would need to have a developmental agenda with five priorities (currently covered under the WTO framework): assistance to develop trade infrastructure, especially for landlocked least developed countries; further debt relief; examination of commodity markets and resulting low prices; establishment of permanent institutions to facilitate technology transfer; and creation of a trust fund to ensure that developing countries have sufficient finance to implement their multilateral obligations.<sup>22</sup> In addition, developed WTO Members must meet their market-access commitments for developing countries in sectors of export interest to developing countries, including for agricultural products, and adopt special arrangements for least developed countries to provide bound duty-free and quota-free market access for all such products. Malawi is concerned about erosion of preferential treatment granted to least developed nations by developed countries. In agriculture, Malawi believes that developed countries must substantially and progressively reduce trade-distorting domestic-support measures as well as export subsidies, with a view to their elimination, while the multilateral trading system should provide more flexibility for developing nations to apply domestic-support measures necessary to develop agriculture and food security. Shortcomings in the TRIPS Agreement, unfavourable to least developed countries, should also be addressed, and developing country provisions on services should be implemented effectively along with the introduction of a safeguard mechanism.

27. Within the multilateral system, Malawi follows closely the work of the WTO Committee on Trade and Development and the Sub-Committee on Least-Developed Countries. A WTO study

<sup>22</sup> WTO document WT/GC/W/451, 11 October 2001, and "Report of the Trade Ministers of COMESA/SADC", Preparatory Meeting to the Fourth WTO Ministerial Conference to be held in Doha, Qatar, 30 July 2001.

concluded that MFN tariff rates on products of export interest to least developed countries, including Malawi, were substantially higher in developing and transition economies than in developed countries.<sup>23</sup> In Malawi's case, the study found that applied MFN tariffs on exports of agricultural and non-agricultural products to developed countries averaged 14.2% and 17.2% respectively (2.5% and 9.7% if preferential tariff rates were taken into account) compared with 20.1% and 29.1% in developing markets.

28. Malawi is a member of the United Nations and its agencies, and other multilateral institutions, such as the International Monetary Fund, the World Bank, and the African Development Bank.

**(ii) Trade-related technical assistance**

29. Malawi does not have diplomatic representation in Geneva; technical assistance is one of the important activities that link Malawi and the WTO. Like other LDCs, Malawi's needs in the area of trade are numerous, and often compounded by issues ranging from the implementation of WTO Agreements, through human and institutional capacities, to the supply-side constraints. While past assistance from various sources has been valuable, further assistance is required to fully meet the needs. At the same time, it is essential that such assistance be better coordinated among the providers, given the limited absorptive capacity of the Government institutions dealing with trade matters.

**(a) Trade-related technical-assistance needs<sup>24</sup>**

*Implementation of WTO Agreements*

30. Malawi faces difficulties in implementing various provisions of the WTO Agreements. Its implementation-related difficulties are primarily attributed to weak institutional capacity of the implementing agencies. Specific areas of the needs are: (i) alignment of national laws, rules, and regulations to WTO requirements; (ii) notification requirements; (iii) training of Government officials on WTO matters, including capacity building for negotiations. While assistance has been provided by the WTO Secretariat, other inter-governmental organizations, and bilateral donors to meet the general needs, Malawi would require further assistance, not only in terms of volume but also more customized to meet its specific concerns, in order to enjoy the benefits of participation in the multilateral trading system. Moreover, meaningful implementation of the WTO Agreements would require, in some cases, the establishment of new institutions, or strengthening of existing ones, which may have large financial implications and would also require interventions by multiple assistance providers with different competencies.

31. Malawi's specific implementation-related concerns are in the areas of customs valuation, anti-dumping, safeguards, countervailing, SPS and TRIPS. In customs valuation, the lack of human and institutional capacity at Customs had led to the introduction of preshipment inspection in 1995, which has been contracted to the Société Générale de Surveillance (SGS), as a temporary measure (Chapter III(2)(iv)). As part of its contract with the Government, the SGS is currently providing training on valuation to customs officials, to prepare for the scheduled transfer of the services to the MRA in March 2003. Training in classification is currently provided by the World Customs

<sup>23</sup> WTO document WT/COMTD/LDC/W/17, 25 January 2000. The study excluded preferential treatment extended under regional or bilateral arrangements, such as the Lomé Convention (now Cotonou Agreement).

<sup>24</sup> Information contained in this section is drawn from (i) the Needs Assessment, which was undertaken under the Integrated Framework in 1998; (ii) the report of a technical mission, which was jointly organized in May 2000 with the Commonwealth Secretariat to assess the technical-assistance needs of Malawi; and (iii) "Issues and Proposals for the Fourth WTO Ministerial Conference", contained in document WT/GC/W/451.

Organization (WCO) and the Common Market for Eastern and Southern Africa (COMESA). The benefits arising from the implementation of the Agreement on Customs Valuation, however, cannot be fully realized without capacity building in the area of enforcement, and installation and enhancement of customs-related infrastructure. According to the authorities, the computerization at customs stations is the single most important step required for the MRA to resume the function of customs valuation, based on the use of transaction value, and risk management. Currently, about 85% of the border stations are computerized. In addition, the installation of other customs-related infrastructure, including a customs laboratory for classification purposes, and a large scanner for cargo containers, would help expedite customs clearance.

32. Regarding laws on contingency trade remedies, Malawi has received technical assistance from the U.K. Department for International Development (DFID) to revise its old, unused anti-dumping legislation, and to prepare legislation on countervailing and safeguard measures, in line with WTO rules (Chapter III(2)(vi)). According to the authorities, even if such legislation is put in place, Malawi would need further assistance: (i) to establish an independent body to administer the legislation; (ii) to train staff on how to conduct investigations, based on the rules and procedures established by the Agreements on Anti-Dumping Practices, and on Subsidies and Countervailing Measures. This would also imply financial allocation at the domestic level, for full implementation of the legislation.

33. With respect to intellectual property rights (IPR), while Malawi intends to comply with the TRIPS Agreement by the end of 2005, the absence of domestic expertise on IPR matters has prevented the Government from initiating the review of its existing obsolete legislation (Chapter III(4)(vi)). The Registrar-General Department, which is responsible for the administration of industrial property legislation, has no legal experts in IPR matters. According to the authorities, no assistance has been provided by the WTO, WIPO or other institutions in this area. There is therefore an urgent need to develop the knowledge and skills in the department, as well as in other public institutions and the private sector, through training courses and workshops. Legal advice would also be necessary for the department to prepare new legislation in line with the provisions of the TRIPS Agreement. Furthermore, if WTO-consistent legislation is put in place, a further major hurdle will be to provide effective enforcement, through *inter alia*, training of customs and police officials.

34. With a view to helping Malawi to keep up with its obligations in the WTO, the Commonwealth Secretariat has financed a legal expert to be housed in the Ministry of Commerce and Industry. This has helped lessen the Ministry's reliance on the Ministry of Justice for legal advice, in areas such as trade remedies. Nonetheless, Malawi's needs for legal expertise remain, in particular, in TRIPS. Moreover, Malawi's ability to comply to the WTO Agreements requires, in most cases, establishment and enhancement of institutions and human resources, to administer such WTO-compatible legislations.

35. Malawi has so far made relatively few notifications to the WTO (Table II.2). According to the authorities, the difficulties in meeting the notification requirements are due mainly to the lack of understanding of these requirements, and of how they are to be made and submitted to the WTO Secretariat. While assistance has been provided by the WTO and Commonwealth Secretariats, a national seminar focusing on notifications, together with a technical mission, might be considered for future assistance.<sup>25</sup>

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<sup>25</sup> A session on notification requirements was allocated in the national workshop in October 1998, and a one-day workshop on WTO notification requirements was organized by the World Bank and the WTO, via videoconferencing in February 1999. Malawi believes that the questionnaires and formats should be simplified,

36. The limited training of government officials on WTO matters, including negotiating skills in the multilateral context, is another constraint on Malawi's participation in the multilateral trading system, which has been further hampered by the absence of diplomatic representation in Geneva (i.e. the absence of "lobbies"). WTO affairs have been covered by its embassy located in Brussels, which recently took over from the Embassy in Bonn, in order to concentrate trade matters, including ACP and EU relations, into a single location. Nonetheless, Malawi can rarely attend WTO meetings due to financial limitations. It has relied heavily on the Reference Centre and the WTO Non-Resident initiatives for information on day-to-day activities of the WTO.<sup>26</sup> Consideration is currently being given to opening a mission in Geneva, and a feasibility visit was undertaken in January 2001, under DFID funding.<sup>27</sup>

37. WTO technical assistance has so far focused on increasing the general understanding of Government officials on WTO matters. Since 1998, while there has been only one national seminar on the multilateral trading system organized in the country, Malawian officials participated in some 16 regional seminars on various WTO-related issues.<sup>28</sup> In addition, since 1995, four officials have been trained in the 12-Week Trade Policy Courses and four in the 3-Week Short Trade Policy Courses designed for LDCs. According to the authorities, these seminars and training courses have been critical in raising the level of familiarity with WTO Agreements. However, more is required. In particular, national seminars and training of trainers are of crucial importance in expanding Malawi's group of WTO experts.

#### *Supply-side constraints*

38. Supply-side constraints have been identified as among Malawi's major obstacles to trade expansion. These include: land-lockedness, heavy dependence on agricultural production for export, smallness of the domestic market, inappropriate technology, limited trade and industry financing, inadequate skilled manpower, lack of adequate network of trade representation abroad, limited knowledge of export opportunities, weak infrastructure, weak human and institutional capacity of support institutions, and investment inadequacy.<sup>29</sup> Each of the bottlenecks adds to the costs of trading in Malawi; one trader estimated that taxes, transport, and additional costs added 80% to the original cost of imports.<sup>30</sup> Moreover, the problems are often inter-linked and compounded, impairing the overall trading environment. For instance, weak infrastructure, particularly the inadequate transport systems in railways and roads, and limited air transport services, has compounded the problems of Malawi's landlocked situation and small market, thereby hindering its participation in international trade (Chapter IV(5)(iii)). Other infrastructural bottlenecks, including frequent breakdowns in

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and that all LDCs should be exempted from notifying certain types of ad-hoc measures (WTO document WT/GC/W/451).

<sup>26</sup> The Reference Centre, installed at the Ministry of Trade and Industry in 1998, provides an electronic link to the WTO, thereby enabling Government officials, business and the academic communities, and others, to obtain trade-related information and documents from the WTO Internet web site and databases. As part of the Non-Resident initiatives, Malawi receives regular WTO Briefing Notes prepared by the Secretariat, which provide a summary of meetings of the various WTO Committees and Bodies, as well as daily trade news summaries based on despatches by wire agencies. Furthermore, since 1999, Malawi has participated in the annual "Geneva Week", during which non-resident representatives are invited to the WTO for briefing on the state of play of work, and participation in the work of WTO bodies.

<sup>27</sup> The Commonwealth Secretariat is also considering opening a mission in Geneva for non-resident members of the Commonwealth.

<sup>28</sup> Malawi participated in regional seminars on regional integration; dispute settlement procedures and practices; market access and IDB; PSI; trade and the environment; Reference Centre and Notification Requirements; SPS; TRIPS; TBT; and WTO Rules.

<sup>29</sup> WTO document WT/COMTD/IF/37, 18 September 1998.

<sup>30</sup> Page (2001).

communication and utility services, such as electricity, telephone, water, sewerage facilities, may be linked to the problems of inappropriate technology and inadequate investment. Lack of knowledge of export opportunities and export financing facilities has constrained the country's ability to diversify its narrow export base, not only of export products, but also export markets (Chapter IV(2)). Therefore, it is essential that the problems are addressed together in a comprehensive framework.

39. The Government has taken some action to address the supply-side constraints. In the area of infrastructure, the Government has been trying to improve efficiency through privatization and greater participation of the private sector in the obsolete, state-controlled services subsectors, such as railways, telecommunications, and power (Chapter III(4)(iii), and Chapter IV(3)(ii) and (5)(ii)). There are also a number of on-going trade-related projects by bilateral and multilateral donors to address the problems (Table AII.1). However, numerous needs remain, including, *inter alia*, strengthening the institutional capacity of trade-supporting institutions; improving export financing facilities; and information technology equipment to allow access to updated market information. If these needs are to be addressed, they would require actions not only by a large number of assistance providers, but would also better coordination among them. In this regard, the Integrated Framework, a mechanism in which the six multilateral agencies (IMF, ITC, UNCTAD, UNDP, World Bank, and WTO) coordinate the delivery of trade-related technical assistance to LDCs, may help Malawi to bring greater cohesion in policy-making in the area of trade by mainstreaming trade priorities into the country's poverty-reduction strategy.

(b) Mainstreaming trade into Malawi's development framework

40. The Integrated Framework (IF) emphasizes the importance of mainstreaming a country's trade priorities into its national development plan or poverty-reduction strategy. In order for trade to foster pro-poor economic growth, the IF advocates that mainstreaming be achieved at three levels – policy, institutional, and Government-donor partnership. The Integrated Framework is currently implemented on a pilot basis. Malawi was selected as one of the pilot countries as part of the extension of the IF Pilot Scheme in October 2001. As the first step in undertaking mainstreaming work, the six IF agencies will start the preparation in early 2002 for a diagnostic trade integration study to assess the competitiveness of the economy, and identify the impediments to effective integration into the multilateral trading system and the global economy.

*Mainstreaming at the policy level*

41. The Malawi Poverty Reduction Strategy (MPRS) provides a medium-term framework for Malawi's policy planning and programming, including the prioritization of public expenditure to address the target outlined in the strategy. Malawi is currently preparing a full Poverty Reduction Strategy Paper (PRSP), which builds on its Interim MPRS adopted in December 2000. The full MPRS was completed in November 2001. The MPRS translates the country's overall vision, as expressed in the long-term policy framework Vision 2020, into more practically defined and prioritized strategies. The strategy also encompasses a number of sector-specific plans, such as in health, education, agriculture, security, and justice, to provide integrated and coherent planning, and a mechanism for coordination. There is currently no sector-specific plan for trade. Priorities defined in the MPRS are then consolidated into three-year sectoral medium-term expenditure frameworks and annual budgets for implementation.<sup>31</sup>

42. Sustainable pro-poor economic growth is one of the four pillars outlined in the MPRS, which focuses on economically empowering the poor by ensuring access to credit and markets, skills

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<sup>31</sup> The implementation of MPRS priorities are monitored through two annual review vehicles: the MPRS review and the Public Expenditure Review.

development, and employment generation. This objective is supplemented by three pillars – human capital development, improvement of the quality of life for the most vulnerable, and good governance – and cross-cutting issues, such as HIV/AIDS, gender and empowerment, environment and natural resources, and science and technology. Strategic interventions to promote pro-poor economic growth are targeted in three areas: (i) agricultural and rural development; (ii) strengthening and broadening the industrial basis; and (iii) investment in other enabling economic infrastructure. Trade is not prominently reflected in the current MPRS, while it is recognized that the achievement of growth depends on "the performance of the international economy and Malawi's ability to reposition itself to take advantage of the created expansion of opportunities in world trade".<sup>32</sup> Under the IF, assistance would be provided to assist Malawi in mainstreaming trade into the MPRS, which would be reviewed and updated periodically.<sup>33</sup>

*Mainstreaming at the institutional level*

43. The PRSP process is managed at three levels: the National Steering Committee<sup>34</sup>; the Technical Committee<sup>35</sup>; and the Thematic Working Groups (TWGs) focusing on specific issues. The Minister of Finance and Economic Planning has the overall responsibility over coordination and implementation of the MPRS. There are some 14 TWGs, each of which comprises diverse stakeholders, including government officials, donors, non-governmental organizations, civil society, and religious bodies, to make targeted contributions to the PRSP process. Trade is said to be covered by the Growth and Diversification Working Group, chaired by the National Economic Council, but in particular, by one of its five subgroups on industry, chaired by the Ministry of Commerce and Industry (MCI).<sup>36</sup> It appears, however, that the subgroup's work has been focused on industry aspects, including manufacturing, tourism, and small-scale mining, as reflected in the current version of the MPRS. According to the authorities, the Department of Trade of the Ministry of Commerce and Industry did not participate in the consultative process for the preparations of the MPRS. As a result, there is little emphasis on trade in the current version.

44. A study on institutional needs describes Malawi's challenges in the area of trade development as a "mismatch" between its political aspirations for future improved trade performance and the institutional capacities to design and implement the policies needed to achieve this improved performance.<sup>37</sup> While Malawi has entered into a series of multilateral, regional, and bilateral agreements, which require the adoption of new policies, the requirements have often been well beyond the institutional capacities to implement them effectively. The capacities of the MCI and other trade-supporting institutions, such as MIPA, MEPC, MBS and the Malawi Confederation of

<sup>32</sup> Government of Malawi (2001).

<sup>33</sup> The preparation of a diagnostic trade integration study will be led by the World Bank. Once the diagnostic study is completed, based on the findings of the study, an Action Plan will be developed in consultation with all stakeholders. The Action Plan will include a set of policy recommendations and priority technical-assistance needs to overcome the constraints identified. Lastly, trade policy priorities will be incorporated into the country's updated PRSP, and priority technical assistance would be considered for financing at donors' financing fora, such as the World Bank Consultative Groups (CG) or UNDP Round Tables.

<sup>34</sup> A National Steering Committee comprises the Minister of Finance and Economic Planning; the Governor of the Reserve Bank of Malawi; the Director General of the National Economic Council; the Minister of Education, Science and Technology; the Minister of Health and Population; the Minister of Agriculture and Irrigation; and the Minister of Transport and Public Works. This Steering Committee is chaired by the Minister of Finance and Economic Planning.

<sup>35</sup> The Technical Committee is responsible, *inter alia*, for carrying out nation-wide consultations, analytical work, and drawing up strategies with the guidance of the Committee of Principal Secretaries. The Technical Committee will be led by the National Economic Council.

<sup>36</sup> The other four subgroups are on infrastructure, credit, taxation, and science and technology.

<sup>37</sup> Ministry of Commerce and Industry (2001).

Chambers of Commerce and Industry (MCCCI), are constrained by limited funding for their activities. Moreover, responsibility for trade-policy formulation and implementation is often spread among the institutions or overlaps, without an overall authority.<sup>38</sup> Such fragmentation of the available efforts has led to competition for resources and duplication of effort among them.

*Mainstreaming at the Government-donor partnership level*

45. While an array of assistance is being provided to Malawi, partly due to the general absence of coordination at the policy and institutional levels, little coordination exists among development partners. The DFID, the EU, UNDP, USAID, the World Bank are active in the trade-related area (Table AII.1). The absence of coordination not only limits the benefits of such assistance, but also imposes a burden on the Government, whose capacity is over-stretched. This is one of the areas in which the IF intends to provide an integrated approach within a coherent policy framework.

**(iii) Regional agreements**

46. Malawi is actively involved in two main regional trading arrangements: the Common Market For Eastern and Southern Africa (COMESA), and the Southern African Development Community (SADC). It has also concluded several bilateral agreements on trade, and is a member of the Cotonou Agreement, which is expected to lead to Regional Economic Partnership Agreements with the EU. The Government believes that such agreements provide a first step towards greater integration and wider liberalization, and is keen to negotiate additional bilateral agreements.

47. Malawi's membership of overlapping regional and bilateral arrangements with different geographical coverage, trade liberalization agenda, trading rules (such as on non-tariff measures, phase-in periods and rules of origin), and goals, makes its trade regime more complex.<sup>39</sup> Its trading partners receive different access conditions to the Malawi market depending upon which agreement they are in, and the stage of implementation of the agreement by the partners; members of more than one agreement can trade with Malawi under either agreement. The same applies to Malawi's exports to these markets. This may distort trade and incentive patterns in an unpredictable manner and could entail inconsistent obligations being undertaken by Malawi.

*Common Market for Eastern and Southern Africa (COMESA)*

48. Malawi was a founding member of the Preferential Trade Area for Eastern and Southern African States (PTA), which became to COMESA in late 1994.<sup>40</sup> The COMESA agenda is to deepen and broaden the integration process among member states through: the adoption of more comprehensive trade liberalization measures, such as the complete elimination of tariffs and non-tariff barriers to trade, and the adoption of a common external tariff (CET); the free movement of capital, labour, goods, and the right of establishment within COMESA; the adoption of a common set of standards and technical regulations, quality control procedures, certification schemes, and sanitary and phytosanitary regulations; the standardization of taxation rates (including value-added tax and

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<sup>38</sup> Page (2001).

<sup>39</sup> In total, there are nine common members of SADC and COMESA. These are Angola, the Democratic Republic of the Congo, Malawi, Mauritius, Namibia, Seychelles, Swaziland, Zambia, and Zimbabwe. Other regional groupings having cross-membership with SADC/COMESA are the Southern African Customs Union (SACU), Indian Ocean Commission (IOC), East African Cooperation Commission, and the Inter-governmental Authority on Development (IGAD).

<sup>40</sup> Other members are Angola, Burundi, Comoros, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Madagascar, Mauritius, Namibia, Rwanda, Seychelles, Sudan, Swaziland, Uganda, the Democratic Republic of the Congo, Zambia, and Zimbabwe. Tanzania, Lesotho, and Mozambique have withdrawn.

excise duties), and conditions regarding industrial cooperation, particularly on company laws, intellectual property rights, and investment laws; application of harmonized competition policies; and the establishment of a Monetary Union.<sup>41</sup> COMESA was notified to the WTO under the "Enabling Clause".

49. COMESA is thus to be a customs and monetary union. Its Free Trade Area (FTA) was launched on 1 November 2000; Malawi and eight other members met this deadline.<sup>42</sup> Several other members are intending to join the FTA in 2001.<sup>43</sup> The customs union is to be implemented by 1 November 2004 with a Common External Tariff (CET) comprising four tariff bands: zero, 5%, 15%, and 30% (on capital goods, raw materials, intermediate goods, and final goods, respectively). However, since most COMESA members, including Malawi, have maximum tariff bands below 30%, discussions are under way on the possibility of reducing the agreed CET rate on final goods.

50. Tariff preferences are subject to rules of origin requirements. COMESA provides for four alternative criteria for determining origin on which an exporter may claim eligibility for preferential treatment: that goods are wholly produced in the region using no outside materials; that imported content of goods is not more than 60% of the c.i.f. value of the total cost of materials used in production; that goods contain not less than 35% ex-factory value added<sup>44</sup>, reduced to 25% if the final product is considered to be of "particular importance" to the economic development of a member state<sup>45</sup>; or that there is a change of tariff classification heading following transformation.

51. The Monetary Harmonisation Programme is to be implemented in four phases, from 1992 to 2025. The final phase should culminate in full monetary union, with the use of irrevocable fixed exchange rates, a single currency, or parallel currencies; full harmonization of economic, fiscal, and monetary policies of member states; full integration of the financial structure; pooling of foreign reserves; and the establishment of a common monetary authority. In May 1999, the programme was re-launched with the introduction of limited currency convertibility between member states with substantial cross-border trade. A coordinating body comprising regional experts from central banks and Finance Ministries was formed to oversee implementation of policy measures and to advance the process of monetary harmonization towards monetary union.

52. Several institutions have been established to assist COMESA members in their development. The Eastern and Southern African Trade and Development Bank (PTA Bank) provides trade and project financing to public and private investors domiciled in a bank member state, which includes

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<sup>41</sup> Further information is available online at: <http://www.comesa.org/obj.htm>.

<sup>42</sup> The other members are Djibouti, Egypt, Kenya, Madagascar, Mauritius, Sudan, Zambia, and Zimbabwe. Merchandise trade between the FTA COMESA members is at zero tariffs, without exception.

<sup>43</sup> The status of implementation of the tariff reduction programme varies substantially among the members yet to join the FTA. Burundi, Democratic Republic of the Congo, Rwanda, Seychelles, and Uganda have indicated their intention to accede to the FTA during 2001, but had not acceded as at September. Comoros has reaffirmed its commitment to join the FTA, while Eritrea and Ethiopia are investigating the implications of membership. Namibia and Swaziland are non-reciprocal members of the FTA and hence receive but do not have to provide duty-free access. The COMESA Treaty therefore provides for a multi-speed integration programme. See Imani-Capricorn Economic Consultants (2001).

<sup>44</sup> "Value added" is defined as the difference between the ex-factory cost of the finished products and the c.i.f. value of material inputs imported from outside the COMESA sub-region. The minimum level of value added was reduced from 45% to 35% in 2000. Egypt and Uganda maintain (through a waiver) the 45% ex-factory value-added level.

<sup>45</sup> A wide list of approved products is specified in the COMESA Treaty as being of particular importance to the economic development of the members.

Malawi.<sup>46</sup> The COMESA Clearing House has diminished in importance following liberalization of most members' foreign exchange regimes. Its roles are being re-directed towards improving the efficiency of clearing operations to complement the services offered by commercial banks; providing traders with some form of political insurance on intra-regional trade; and facilitating monetary and fiscal policy harmonization within the region.<sup>47</sup> The PTA Re-Insurance Company (ZEP-RE) assists the development of the insurance and re-insurance industry in the COMESA region. Although Malawi is a signatory to the agreement establishing the Company, no Malawian insurance company is a shareholder.<sup>48</sup> The Africa Trade Insurance Agency (ATI), launched in August 2001, is aimed at creating investor confidence by providing cover against political risk. Although promoted by COMESA, membership of ATI is open to all the member States of the Organization of African Unity OAU.<sup>49</sup> The COMESA Court of Justice became operational in 1998. Its general jurisdiction is to adjudicate upon all matters that may be referred to it under the Treaty. Malawi has not been involved in any formal disputes within this framework.

53. The protocol on the free movement of persons is to be implemented in several stages; the first stage of removing visa requirements was to be adopted in 2000. Most countries, including Malawi, have removed the visa requirements.

*Southern African Development Community (SADC)*

54. The SADC Treaty was signed in 1992 with the objective of creating a development community that would achieve economic integration, including trade. Through regional cooperation and integration, the Community aims to provide balanced economic growth and development, political stability, and security for all member states. Membership covers the countries of the Southern African Customs Union (SACU), i.e. Botswana, Lesotho, Namibia, South Africa, and Swaziland, as well as nine other countries.<sup>50</sup> The Treaty provides a framework to coordinate, harmonize, and rationalize policies, and to develop strategies for sustainable development. It is based on the fundamental principles of sovereign equality of member states; solidarity, peace and security; human rights, democracy, and the rule of law; and equity, balance, and mutual benefit. Decisions and agreements are legally binding on members, and the Treaty provides for several protocols in specific areas, such as trade, finance, and investment.

55. The Trade Protocol, signed in 1996, is aimed at progressively establishing a SADC free-trade area, initially over eight years. However, progress has been slow. The Protocol was not launched until September 2000, following ratification by 11 members, and came into force on

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<sup>46</sup> Not all COMESA members are members of the PTA Bank: Angola, Namibia, Seychelles, Swaziland, Uganda, and the Democratic Republic of the Congo are not members. Egypt joined the Bank in 2000. Since 1994, non-COMESA members may become Bank members; Somalia, Tanzania, and, since 2001, China are such members.

<sup>47</sup> Due to its restructuring, the COMESA Clearing House was unable to assist Malawians who have recently experienced difficulties exporting to Zimbabwe. The Malawian authorities therefore believe that the House still has an important role to play and should be restored.

<sup>48</sup> Not all COMESA countries are signatories, and some members are non-COMESA countries. Members of the agreement establishing the company are Angola, Burundi, Comoros, Djibouti, Eritrea, Kenya, Lesotho, Malawi, Madagascar, Mozambique, Rwanda, Somalia, Sudan, Tanzania, Uganda, Zambia, and Zimbabwe. Currently, the shareholders are companies from Burundi, Democratic Republic of the Congo, Eritrea, Kenya, Madagascar, Mozambique, Rwanda, Sudan, Tanzania, Uganda, Zambia, and Zimbabwe.

<sup>49</sup> Other founding members of ATI, with Malawi, are Burundi, Kenya, Rwanda, Tanzania, Uganda, and Zambia. Only Tanzania is a non-COMESA country. As from 2002, the African Union will replace the OAU.

<sup>50</sup> These are Angola, the Democratic Republic of the Congo, Malawi, Mauritius, Mozambique, Seychelles, Tanzania, Zambia, and Zimbabwe.

26 January 2001.<sup>51</sup> To establish the FTA, products have been grouped under three main categories (A, B, and C). Category A products (mostly capital goods and equipment already subject to low tariff rates in each member state) are to be liberalized in the first year. Category B products (e.g. goods that constitute important sources of customs revenue) are to be liberalized gradually by 2008.<sup>52</sup> Category C consists of products deemed sensitive by member states (e.g. imports sensitive to domestic industries); these goods, limited to a maximum of 15% of each member's total merchandise trade, are to be liberalized from 2005 to 2012. Sensitive products for Malawi are sugar, confectionery, beer, textiles, matches, and motor vehicles. In addition, a fourth category of products, Category E, covers products ineligible for preferential treatment under general and security exceptions permissible under Articles 9 and 10 of the Protocol. These are expected to make up a small list of products, so that by 2012 about 98% of SADC merchandise trade will be subject to zero tariffs. The phase-down offers are country specific. Implementation of the Protocol is based on the principle of reciprocity, i.e. tariff preferences will be extended only to those member states that have submitted their instruments of implementation.

56. SADC members made "differentiated offers" to non-SACU SADC countries, and "general offers" to SACU members. Moreover, SACU members made offers to the other SADC members for immediate reductions to achieve zero tariffs after five years, except for sensitive products. Differentiated offers heavily front-loaded tariff reductions, while general offers mid- to back-loaded tariff reductions.<sup>53</sup> Offers by the other SADC members to SACU members thereby delay tariff reductions on category A and B products while they are heavily front-loaded for non-SACU members. Moreover, tariff reductions on the sensitive products (Category C) are further delayed from the eighth to the twelfth year. This asymmetrical implementation is seen as a means of enhancing equity in the region since South Africa, the principal SACU member, is far more developed than other SADC members. Zimbabwe and Mauritius also agreed to start their tariff reductions earlier than other non-SACU members.

57. As at March 2001, Malawi and seven other member states (Botswana, Lesotho, Mauritius, South Africa, Swaziland, Zambia, and Zimbabwe) had submitted their implementation instruments.<sup>54</sup> At the August 2000 SADC Summit, in Windhoek, member countries were given six months to make the necessary national constitutional amendments and to deposit their respective instruments of implementation.<sup>55</sup>

58. Substantial progress has already been made on harmonizing customs and trade documentation. SADC rules of origin are being negotiated in many cases on a product-by-product basis. The rules of origin are therefore complex and apply various origin criteria across products. Protracted negotiations on specific rules of origin are continuing for certain products, including wheat flour; cereals and flour; textiles and clothing; plastics; electrical products and machinery;

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<sup>51</sup> The three members that have not yet ratified the Protocol are Angola, Democratic Republic of the Congo, and the Seychelles. Angola and the Democratic Republic of the Congo have indicated their readiness to accede.

<sup>52</sup> This group was further sub-divided into three categories. Category B1 products are to have their tariff rates reduced gradually commencing in the third year; category B2 products commencing in the fifth year; and category B3 products commencing in the seventh or eighth year. Category A and B products cover an estimated 85% of goods traded among SADC members.

<sup>53</sup> Imani Development (Malawi) (2001).

<sup>54</sup> *L'Express*, 15 March 2001.

<sup>55</sup> There is no deadline, as such, for the implementation of the Trade Protocol.

automobiles; and optical, photographic, measuring, and surgical instruments. These are expected to be finalized by end 2001.<sup>56</sup>

59. Sugar is covered by a special agreement annexed to the Trade Protocol and administered by a Technical Committee on Sugar. This agreement includes the provisions of access to the SACU market for non-SACU SADC members, which include Malawi.<sup>57</sup> It is based on non-reciprocal and duty-free-quota access for a period of five years (2001-05) after which it will be reviewed. The SACU has offered a total quota of 20,000 tonnes as from 2001, supplemented by market growth allowances. The quota is to be allocated between non-SACU sugar-producing SADC countries, based on a formula reflecting their world market sales to non-preferential markets; the higher the latter the higher the annual quota allocation to the country. Malawi's total quota entitlement for 2001 was approximately 6,000 tonnes. Allocations are not transferable between countries, and unused quota will be reallocated only in situations of force majeure. The long-term objective of the agreement is to establish full liberalization of trade in sugar within the SADC region from 2013.

60. A sensitive area involving Malawi has been negotiations on textiles and clothing, which had become a major problem under the bilateral South Africa/Malawi Trade Agreement (Section (iv)). Though negotiations in the SADC Textile and Clothing Committee are incomplete, a derogation has been granted to least developed members of SADC (Malawi, Mozambique, Tanzania, and Zambia) allowing them to export (duty-free but subject to quota) to SACU countries single-stage produced textiles and clothing, for five years (until 2005).<sup>58</sup> Malawi's total quota in 2001 was 1,908 tonnes and 8,565 units.<sup>59</sup>

61. While the Trade Protocol has identified several non-tariff measures for elimination, such as import quotas, surcharges, customs procedures, and export subsidies, it excludes other important non-tariff barriers, such as domestic-content requirements, levies and other border charges, and import (and export) licensing.<sup>60</sup> Malawi had introduced new non-tariff measures against certain SADC trading partners since signing the Protocol, such as quantitative restrictions on imported tobacco leaf from some SADC members, especially Mozambique.<sup>61</sup> These measures no longer exist according to Malawian authorities.

62. The SADC Treaty also provides for a tribunal to be established (the Protocol on Tribunal) to adjudicate members' disputes arising from the Treaty, and from subsidiary instruments, that cannot be settled by consultation.<sup>62</sup> Its composition, powers, functions, procedures, and other related matters are prescribed in the Protocol, and the Rules of Procedure were agreed by SADC members in August 2000. Decisions of the Tribunal, when established, will be final and binding.<sup>63</sup>

63. A number of studies have concluded that the static gains from trade creation of SADC will be small, and that they will be mainly trade diverting. However, other studies have suggested that the

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<sup>56</sup> For example, the problem on electrical machinery is that some members want to prevent single assembly of white goods, while on plastics they want to prevent the use of imported plastic waste. See Imani Development (Malawi) Ltd (20001b), p. 24.

<sup>57</sup> Other non-SACU SADC members are Angola, the Democratic Republic of the Congo, Mozambique, Seychelles, Zambia and Zimbabwe.

<sup>58</sup> Coughlin and Undenge (2001).

<sup>59</sup> The quota comprised 1,100 tonnes for products classified in HS Chapter 52; 43 tonnes for Chapter 55; 200 tonnes for Chapter 60; 8,565 units for Chapters 61 and 62; and 565 tonnes for Chapter 63. SACU's quotas do not contain any automatic annual growth factors.

<sup>60</sup> Imani Development (Malawi) Ltd (2001a).

<sup>61</sup> Filmer (2000).

<sup>62</sup> Article 32 of the Treaty.

<sup>63</sup> SADC online information. Available at: <http://www.sadc.int/overview/works.htm>.

dynamic gains from scale economies in production and marketing, and from cross-border competition affecting technological transfers may be substantial.<sup>64</sup>

64. Because a large component of Malawi's trade from SADC countries, excluding South Africa, already receives COMESA preferences, the Malawi reductions do not involve major tariff cuts overall.<sup>65</sup> After eight years, the trade-weighted average tariff on imports from SADC countries, excluding South Africa, would fall from 2.5% to 1%. However, because South Africa previously received no preferences from Malawi, the average tariff on imports from South Africa would drop from 10.4% to 2.9%. As indicated, these falls are very much back-loaded, and will not commence until the fifth year. The main direct impact of SADC on Malawi will be the extension of duty-free access to imports from South Africa, by far its main single trading partner (Chapter I(3)(i)); Malawi already receives non-reciprocal duty-free access to the South African market through a bilateral agreement. The SADC Free Trade Area has not yet been notified to the WTO.

65. SADC intends to extend trade liberalization to services, but such negotiations are yet to commence.

#### *Regional Integration Facilitation Forum (RIFF)*

66. The Regional Integration Facilitation Forum (RIFF), formerly known as the Cross-Border Initiative (CBI), aims to move member countries (including Malawi) towards increased economic integration by facilitating private investment, trade, and payments between them, as well as cross-border mobility of labour and capital. Member states are the countries in eastern and southern Africa, and the Indian Ocean.<sup>66</sup> The RIFF was developed in close collaboration with the economic integration organizations in the region. As a forum, the RIFF is to reinforce and complement efforts undertaken by these organizations. Launched in 1992, the RIFF is co-sponsored by the European Commission, the International Monetary Fund, the World Bank, and the African Development Bank. It has no Secretariat and works on a voluntary basis.

#### *The Organization of African Unity (OAU) and African Economic Community (AEC)*

67. The Charter establishing the OAU was signed by 30 African nations on 25 May 1963.<sup>67</sup> Malawi, like the other members of the OAU, signed the Abuja (Nigeria) Treaty Establishing the AEC in June 1991, as provided for by the 1980 Lagos Plan of Action. Its main aim is to promote integration and harmonization within Africa. The Treaty provides for the creation of a pan-African economic and monetary union (with a parliament) in six stages, over a period of 34 years. The organs and headquarters of the AEC are those of the OAU. The AEC has not as yet effectively commenced its activities.

68. The African Union was launched in July 2001 to replace the OAU as from 2002.

#### **(iv) Bilateral agreements**

69. Malawi has bilateral trade agreements, mainly with South Africa and Zimbabwe, and is negotiating similar agreements with Zambia, Tanzania, and Mozambique.

<sup>64</sup> See Imani Development (Malawi) Ltd (2001a).

<sup>65</sup> Filmer (2000).

<sup>66</sup> Other participants are Burundi, Comoros, Kenya, Madagascar, Mauritius, Namibia, Rwanda, Seychelles, Swaziland, Tanzania, Uganda, Zambia, and Zimbabwe. Mozambique has indicated its intention to join.

<sup>67</sup> Almost all African countries are members of the OAU.

70. Malawi's trade agreement with South Africa was formed in 1990. It is a non-reciprocal agreement whereby South Africa allows duty-free imports of all goods grown, produced or manufactured in Malawi, subject to a minimum domestic value-added content of 25%.<sup>68</sup> Quotas apply to some products, such as tea, which is limited to 10,000 tonnes annually. The agreement may be terminated by either party with 12 month's written notice. It contains anti-dumping and countervailing provisions.

71. Malawian exporters, especially of garments, heavily used this agreement to gain preferential access to the South African market. However, the agreement became strained in recent years, when Malawian garment and bed linen exporters faced difficulties on the South African market based on allegations that manufacturers were not meeting the 25% rule of origin; this rule had become onerous for them to prove.<sup>69</sup> Most exporters benefited from having export-processing-zone status in Malawi.

72. Adopted in 1986 and modified in 1995, the bilateral trade agreement with Zimbabwe allows duty-free imports on a reciprocal basis between the two countries, provided the goods meet 25% minimum domestic content provisions and conform to each other's national standards. Trade restrictions that are WTO compliant are allowed. The agreement faces implementation problems, including weak certification rules, and contains no dispute settlement provisions. Either party may terminate the Agreement with six month's written notice. It is currently being re-negotiated, largely at the Malawian Government's insistence. The revised draft includes sensitive product lists, manufacturing certification, dispute settlement procedures, and origin rules based on, *inter alia*, change in tariff headings.<sup>70</sup> Zimbabwe is therefore covered by the COMESA and SADC Free Trade Areas as well as the bilateral agreement. Although both the COMESA Free Trade Area and the bilateral agreement provide for zero tariffs, the latter has the least stringent rules of origin (25% instead of 35%), among others.

73. Malawi has an old reciprocal customs agreement with Botswana dating back to the late 1960s, which works on a "de facto" basis, whereby all goods, except spirits, reared, grown or produced can be imported duty free. Although Malawi has exported sugar to Botswana under this agreement, it is rarely used. A similar agreement exists with Mozambique whereby live animals (except poultry), uncanned fish, and unmanufactured products, including foodstuffs, can be imported duty free. This agreement is also rarely used.

74. Malawi is negotiating a bilateral agreement with Zambia, which is already a member of both COMESA (free-trade area) and SADC. These negotiations, which began in 1997, were suspended, they recommenced in April 2001. Although free trade is already provided for under COMESA, it is proposed to make the rules of origin lower under the bilateral agreement, at 25% instead of 35%.

75. Malawi is also negotiating bilateral agreements with Tanzania and Mozambique, both countries having withdrawn from COMESA, but are still members of SADC. The Malawian authorities see these as largely interim agreements until the SADC Free Trade Area is established. Different, probably lower, rules of origin from those for SADC are also being considered in the bilateral agreements.

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<sup>68</sup> More specifically, at least 25% of the production cost of goods must be Malawian materials and labour, and the last production or manufacturing process must have been in Malawi (Articles 2 and 6 of the Malawi/South Africa Trade Agreement).

<sup>69</sup> The value added used excluded profit, as well as administrative, general, and other expenses. See Coughlin and Undenge (2001), p. 3. However, because Malawi's clothing and bed linen rely substantially on imported inputs from Asia, rules of origin can be an important constraint on its exports under the bilateral agreement.

<sup>70</sup> Imani Development (Malawi) Ltd (2001a).

(v) **Generalized System of Preferences (GSP) and Global System of Trade Preferences (GSTP)**

76. Malawi benefits from GSP treatment from industrialized countries. The EU's "Everything But Arms" (EBA) initiative, implemented from March 2001, has extended duty-and quota-free access to EU imports of all products from least developed countries, except for arms. Extension of this preferential treatment to sugar, rice, and fresh bananas will follow specified schedules.<sup>71</sup> Malawi also exports 10,000 tonnes of sugar annually to the United States under duty-free GSP quota access.

77. Malawi is not a signatory of the GSTP among developing countries.

(vi) **Other agreements and arrangements**

*The Cotonou Agreement*

78. Malawi is a signatory to the Cotonou Agreement (successor to the Lomé Convention) between the EU and 77 countries in Africa, the Caribbean, and the Pacific (ACP).<sup>72</sup> The Agreement maintains most non-reciprocal trade preferences granted by the EU to ACP States<sup>73</sup>, and has been ratified by Malawi. A decision to grant the waiver requested by the parties to the Agreement from the obligations under Article I:1 of GATT 1994 (MFN treatment) was taken by WTO Members at the Doha Ministerial Conference, for the period up to 31 December 2007.<sup>74</sup> By then, new WTO-compatible trading arrangements are to be concluded, removing barriers progressively between the parties and enhancing cooperation in all areas relevant to trade, including the formation of free-trade areas within 12 years, i.e. by 2020.<sup>75</sup> During this period the EU is to enter negotiations with ACP countries, scheduled to start in September 2002, aimed at establishing partnership agreements on a bilateral basis or between the EU and regional groupings (regional economic partnership agreements) to commence by January 2008 at the latest. These would be based on reciprocal liberalization, thereby requiring in principle Malawi and other ACP states to extend preferential access progressively to EU exports.

79. Under the Cotonou Agreement, the EU grants non-reciprocal trade preferences to most imports originating from ACP states, subject to a safeguard clause and rules of origin.<sup>76</sup> For certain products (bananas, beef and veal, and sugar), the EU provides special market access under "commodity protocols". The Cotonou Agreement abolished STABEX, SYSMIN, and the rum protocol of the Lomé Conventions.

80. The EU is an important market for Malawi's main exports of tobacco, tea, coffee, and sugar, which enter the EU at zero tariffs (Chapter I(3)(i)). Its sugar exports, however, are covered by the

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<sup>71</sup> WTO (2002); and Europa online information. Available at: <http://europa.eu.int/comm/trade/miti/devel/eba4.htm>.

<sup>72</sup> The Cotonou Agreement was signed on 23 June 2000. The fourth Lomé Convention had expired at the end of February 2000. Malawi joined the Group of ACP states in 1974.

<sup>73</sup> South Africa was excluded from most of the provisions of the Lomé Conventions and now the Cotonou Agreement, but has a separate Trade Development and Cooperation Agreement with the EU, signed in October 1999, which provides for asymmetrical trade liberalization between the two countries to form a free-trade area by 2012.

<sup>74</sup> WTO document WT/MIN(01)/15, 14 November 2001.

<sup>75</sup> WTO document G/C/W/187. The full text of the Cotonou Agreement was communicated to WTO Members (WTO document G/C/W/187/Add.3 of 14 April 2000).

<sup>76</sup> The rules of origin require that qualifying products be either "wholly obtained or significantly worked or processed" in one or more ACP states. The latter definition is based on the product being sufficiently modified in the ACP state for it to be classified under a different four-digit HS tariff line.

Sugar Protocol under which Malawi is allocated and fully uses special quota access to the EU of 20,000 tonnes annually, at prices higher than the world levels. According to the Malawian authorities, complex procedures, including rules of origin, undermine the preferences. Moreover, the recent extension (by the EU) of Lomé preferences to all least developed countries under the "Everything But Arms" (EBA) initiative, from March 2001<sup>77</sup>, and the EU's own multilateral tariff reductions have reduced their importance.

81. Malawi had received financial assistance from the EU under, *inter alia*, the European Development Fund (EDF); the European Investment Bank for commercial loans; the STABEX; and the National Indicative Programme (NIP). For example, the Tea Association of Malawi used STABEX funds to assist smallholder growers, especially under the "tea replanting bonus programme".<sup>78</sup>

*The African Growth and Opportunity Act (AGOA), and other arrangements*

82. The African Growth and Opportunity Act (AGOA), contained in the U.S. Trade and Development Act of 2000, offers free access to some manufacturing products originating in African countries. A high-level dialogue on trade and investment under the U.S.-Sub-Saharan Africa Trade and Economic Forum has also been established. African countries eligible for preferential treatment under the AGOA will receive GSP treatment (exempt from the competitive needs limitations) in the U.S. market until the end of September 2008, and will qualify for an expanded list of GSP products (beyond that available to other countries).<sup>79</sup> All eligible African countries are entitled to unlimited duty-free and quota-free access to the U.S. market for apparel made from U.S. fabric, yarn or thread.<sup>80</sup> Lesser developed countries, including Malawi and 27 other eligible African countries with a per capita GNP below US\$1,500 in 1998, may use non-U.S. fabric until end-September 2004.<sup>81</sup>

83. To be eligible, African countries must make progress in establishing a market-based economy; developing political pluralism and the rule of law; eliminating discriminatory barriers to U.S. trade and investment; protecting intellectual property; combating corruption; protecting human and worker rights; and removing certain practices of child labour.<sup>82</sup> Although the apparel benefits in principle took effect from 17 October 2000, countries must have in place an effective visa system to prevent illegal transshipment and use of counterfeit documentation, as well as effective enforcement and verification procedures. Malawi has completed the changes necessary to meet these requirements to the satisfaction of the U.S. authorities, and began exporting garments under these arrangements from August 2001. Although many other products, including certain processed agricultural goods, are covered by the AGOA, Malawi's major agricultural exports of unprocessed sugar, tobacco, and tea are ineligible.

84. Malawi has concluded several Joint Permanent Commissions of Cooperation to hold bilateral consultations, including on trade, with neighbouring countries not covered by a trade agreement. These are handled by the Ministry of Foreign Affairs and International Cooperation. Malawi is a member of the International Coffee Organization.

<sup>77</sup> See WTO (2001, TPR – Uganda) for details.

<sup>78</sup> Magande and Ndela (2001), p. 24.

<sup>79</sup> The list of manufactured goods (some 1,800 tariff lines) covered by AGOA includes products such as footwear, luggage, handbags, and watches.

<sup>80</sup> The legislation provides for an upper volume limit on such imports, rising from 1.5% of "aggregate square metre equivalent" of all U.S. apparel imports to 3.5%, over an eight-year period.

<sup>81</sup> Countries must also be beneficiary developing countries under the U.S. GSP scheme.

<sup>82</sup> African Growth Opportunity Act [Online]. Available at: [www.agoa.gov/index.html](http://www.agoa.gov/index.html).

**(6) INVESTMENT POLICIES AND PROCEDURES****(i) Regulatory framework**

85. The Malawian Government promotes investment, including foreign direct investment, under the Investment Promotion Act of 1991, which established the Malawi Investment Promotion Agency (MIPA) to administer the legislation and the country's investment policies. The Agency is operating as a "one-stop shop" to assist mainly foreign investors, by identifying possible joint-venture partners and facilitating all aspects of the investment process, including liaising with government authorities. The Government's investment policy is contained in the Statement of Investment Policies and the Investor's Guide, which are both incorporated in the investment legislation. The legislation covers all direct investment, but currently directs the Agency to give priority to investment in manufacturing, agriculture, mining, fisheries, tourism, and forestry.

86. No activities are reserved for Malawians. Investors, both domestic and foreign, may invest in any sector of the economy, with no restrictions on ownership, the size of investment, source of funds, and irrespective of whether the products are exported or not.<sup>83</sup> Joint ventures are not required, although domestic investors are encouraged to join with foreign investors. Malawi also does not impose performance requirements on foreign investors establishing commercial presence, except those with EPZ status, and they do not have to meet local-content requirements. The legislation also stipulates that the Government will not interfere in employers choice of workforce, and that it will make available temporary employment residence permits for expatriate personnel needed in key positions of investment projects. These permits are for a maximum of three years, renewable.

87. Malawi's laws recognize the right of foreign and domestic private entities to own and operate business enterprises. Foreign entrepreneurs can establish a business in Malawi provided they have a business residence permit, which is valid for five years, renewable. Businesses can be operated as sole proprietorships, limited partnerships or as companies incorporated under the Companies Act of 1984. Local residents must comprise the majority of a company's board of directors, and number at least three. Foreign investors must register capital inflows for monitoring purposes, but no formal application is required.

**(ii) Investment incentives and promotion**

88. Incentives are available to investors under the Investment Promotion Act (e.g. investment allowances and duty-free importation of raw materials used in manufacturing). New investments, both foreign and domestic, between US\$5-10 million have the option of either a five-year tax holiday or an indefinite company tax rate of 15% (instead of the standard rate of 30%); for investments above US\$10 million, a ten-year holiday may be chosen. The foreign investment share must be at least 30%. No investor has as yet exceeded the minimum investment threshold to receive tax holidays. Although the Government may also declare certain "strategic" industries to be eligible for a tax holiday of five years and thereafter a company tax rate of 15%, no such activities have yet been declared by the Ministry of Finance and Economic Planning.

89. The Minister of Finance and Economic Planning also has discretion to rebate tariffs and surtaxes on imported inputs where to do so is considered within the "public interest" (section 52 of the Finance and Audit Act). Investment projects are considered eligible, and such rebates have been granted frequently to investors in, for example, hotel projects. The Government is currently introducing specific criteria and a point-scale rating system on which to apply these rebates as a means of limiting the discretionary element of the scheme. The criteria for granting rebates to

<sup>83</sup> Paragraph 5 of the Statement of Investment Policies, Article 27, Investment Promotion Act of 1991.

investors are employment creation; capital injection; export potential; domestic value added; generation of net foreign exchange earnings; promotion of high technology transfer; creation of inter-industry linkages; and increasing the geographical spread of industries. The rebate share is determined according to a point system, with the maximum rebate set at 75%.<sup>84</sup> The rebate extends for the first ten years of operation, and the point system slightly favours investment in manufacturing, agriculture, tourism, transport, and mining. Applications are made to the Malawi Revenue Authority, which makes recommendations to the Minister of Finance and Economic Planning based on the decisions of a Committee formed to review the application.<sup>85</sup>

90. Malawi's investment legislation and the Constitution provide for protection of investors' assets against expropriation and nationalization. The State may only acquire an enterprise if it is in the national interest for a public purpose, and then only on payment of fair and adequate compensation. To provide further protection, the Government is a member of the Multilateral Investment Guarantee Agency (MIGA) of the World Bank. Malawi is a member of the Convention for the Settlement of Investment Disputes. It has initiated investment promotion and protection agreements with a number of countries, including China, Germany, Italy, Malaysia, Mauritius, Uganda, the United Kingdom, Zambia, and OPEC countries. Malawi also has double taxation agreements with Denmark, France, Kenya, the Netherlands, Norway, South Africa, Sweden, Switzerland, and the United Kingdom.

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<sup>84</sup> For example, the points awarded for export potential increase from "one" if 5% to 20% of production is exported to "five" if at least 85% is exported.

<sup>85</sup> The Committee comprises the Malawi Revenue Authority, the Malawi Investment Promotion Agency, the Ministry of Finance and Economic Planning, and the Ministry of Commerce and Industry.

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### III. TRADE POLICIES AND PRACTICES BY MEASURE

#### (1) INTRODUCTION

1. The reforms introduced by Malawi since the late 1980s have substantially liberalized trade and investment. Tariffs are Malawi's main trade measure. Duty rates have been progressively reduced, and averaged (unweighted) almost 14% in 2000/01. Maximum tariffs of 25% apply to consumer and other "non-essential" goods. Discriminatory internal taxes on imports have been eliminated. A broad consumption surtax currently applies both to imports and domestic goods, and non-discriminatory excise duties apply to a wide range of products, including luxury products. Such broadening of the tax base has reduced the Government's reliance on tariff revenue, and facilitated duty reductions. Export taxes no longer operate.

2. While tariffs are virtually all *ad valorem*, the transparency of the tariff structure is greatly undermined by the extensive use of end-use exemptions and other, often discretionary, rebates. The rationale for many of these rebates is unclear, and substantial overlap of product coverage exists between schemes. Widespread preferential treatment under regional and bilateral trade agreements with substantial cross membership and various rules of origin also makes Malawi's tariff regime more complex. Mandatory preshipment inspection applies to import consignments of US\$2,000 and above. Customs valuation is, in principle, based on transaction value.

3. The Government is preparing a new anti-dumping law to replace its existing long-standing legislation, which has never been used, and intends to implement rules on countervailing and safeguard measures. Trade reforms have also included the removal of most import licensing requirements. There are no import quotas, and only a small number of items are prohibited or subject to licensing, mainly for health, safety, security or environment reasons, including quarantine measures. Export controls and regulations are also minimal. However, exports are assisted by relatively generous incentives, including income and other tax concessions provided to exporters with EPZ status.

4. Most state-owned enterprises have performed poorly. The Government has divested a substantial number of these operations. The main focus is now on the privatization and deregulation of important public utilities, such as telecommunications, electricity, and water. The short suspension of the privatization programme ended in October 2001. The Government has also introduced competition legislation to be administered by the Competition Commission, when formed, as a means to protect consumers and promote economic efficiency.

5. Intellectual property legislation exists on mainly patents, copyright, and trade marks. The Government intends to revise this legislation comprehensively in order to meet its multilateral obligations but little progress has been made, due mainly to resource and capacity constraints. A "banderole" system has operated since 1998 to help control illegal sound- and audio-recordings. Government procurement contracts currently provide price margins of up to 15% for domestic suppliers. Revised legislation is due to operate from mid 2002, which will improve transparency and establish a Public Procurement Authority to monitor public procurement. Preferential price margins are to be retained.

#### (2) MEASURES DIRECTLY AFFECTING IMPORTS

##### (i) Registration and documentation

6. The main legislation governing importation is the Customs and Excise Act 1972, as amended, and the Control of Goods Act 1968, as amended. Any entity may import goods commercially

provided it is legally registered. Imports are financed mainly by standard bank letters, usually secured in advance by cash to hedge against foreign exchange losses. Most imports are handled by customs clearing agents who must be registered by the Malawi Revenue Authority. Such agents may be de-registered if found to be engaging in inappropriate activities.

7. Malawi requires preshipment inspection (PSI) of all imports, including second-hand goods, with a free-on-board (f.o.b.) price of US\$2,000 and above.<sup>86</sup> Goods exempt from PSI include mainly fireworks; certain agricultural products, such as live animals, fish, meat, fruit, vegetables and eggs; scrap metal; precious and semi-precious stones; petroleum products; and goods destined for export-processing zones and bonded warehouses. PSI services are currently contracted to Société Générale de Surveillance (SGS). The contract has been renewed until March 2003 when it is expected that such services will cease. Inspection covers mainly quality, quantity and value using government guidelines, procedures, and standards with which importers, suppliers, and SGS must comply.<sup>87</sup> SGS also provides a suggested customs classification. The goods must be inspected at the port of export, and the importer must submit to Malawian Customs a Clean Report of Findings (CRF) from the SGS affiliate in the exporting country to clear the goods through customs. Other documents required to clear imports depend upon the transport mode of entry into Malawi, but include the invoice, waybills, and consignment notes. A preshipment inspection fee of 0.85% is levied by SGS on the c.i.f. value of inspected imports. There are currently no penalties for destination inspection.

8. Smuggling of goods is a major problem for Malawi, and substantial informal trade occurs across borders. In 1998-99, Flexible and Smuggling Teams (FAST) were established to extend enforcement operations throughout the country. Goods commonly smuggled include excisable products, especially alcoholic beverages and tobacco products, cosmetics, and vehicles, mostly from South Africa, Zimbabwe, and Mozambique. Textiles are also smuggled in from the Far East.

9. Malawi is committed to implementing certain trade facilitation measures under the Regional Integration Facilitation Forum (RIFF) (Chapter II(5)(iii)). Malawi is yet to introduce a bond-guarantee scheme for customs or a single-goods customs declaration form.

**(ii) Customs inspection and clearance**

10. The Malawi Revenue Authority (MRA), established in 2000, is responsible for Customs. It has started to computerize customs operations for its main stations for both road and air shipments. According to authorities, imports are cleared on average within two to three days, provided all documentation is in order.

11. The Commissioner-General of the MRA may license private bonded warehouses for dutiable goods that are the property of the licensee only. Manufacturing under bond is encouraged in Malawi. General bonded warehouses also exist. The licensee must provide sufficient security, as required by Customs. Licences are renewable annually for a fee of MK 2,000, and can be revoked or refused by the Commissioner-General, without giving the reason. The maximum period of warehousing is six months, but may be extended at the Commissioner-General's discretion for a further six months. Operations in bonded warehouses can cover bottling or diluting of bulk spirits and wines as well as the assembly, simple conversion or minor transformation of finished goods, provided they are not subject to excise duties. Released warehoused goods must be entered for consumption, exportation or re-warehousing. The licensee must provide acceptable secure facilities and report-keeping functions,

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<sup>86</sup> In order to prevent avoidance of inspection through the splitting of consignments, partial shipments are subject to inspection if the total value of the goods under the contract exceeds US\$2,000. Preshipment inspection was introduced in 1992, and a threshold of US\$3,000 was applied until June 1996.

<sup>87</sup> The WTO provisions on PSI are annexed to the contract.

and is liable for payment of all appropriate duties on goods removed from warehouses. According to authorities, these arrangements work well and there is minimal leakage of goods onto the domestic market. Temporary importation may be allowed at the Commissioner-General's discretion, subject to any specified conditions, such as mandatory re-export and maximum time periods. Temporary entry, of up to six months, is normally reserved for goods in transit. Goods exported for repair are dutiable on re-importation based on the cost of such repairs.

12. Disputes concerning the amount of duty are initially subject to an internal review by the Malawi Revenue Authority. Its decisions can be appealed to a Special Referee appointed by the Minister of Finance and Economic Planning. The assessed duty must first be paid, or an acceptable security lodged, once the goods have been imported, and appeals lodged within three months from importation. Any party with a legitimate interest in the case, if it involves the classification of the imported goods, may present evidence. The Special Referee may either confirm or set aside for reassessment the Commissioner-General's decision. An Appeals Committee was also established to handle valuation disputes with SGS. It has heard 11 appeals to date; all were unsuccessful and decided in SGS's favour. Appeals may also be made to the magistrate court.

### (iii) Tariffs, other duties, and taxes

13. Imports to Malawi may be subject to four types of duties: the customs tariff and, where applicable, excise duties, surtaxes, and anti-dumping duties. Excise duties and surtaxes apply to both imported and domestically produced goods. Malawi adopted the Harmonized System (HS) in 1989. It currently uses the 1996 HS nomenclature at the eight-digit level. There are 5,469 tariff lines in the current customs tariff schedule. The schedule lists the non-favoured ("general") tariff (column 5), the MFN tariff (column 6) as well as preferential duties provided to imports from COMESA countries that are outside the Free Trade Area (column 7), and SADC (column 8) trading partners. The MFN duty applies to WTO members and to ACP states that are members of the Lomé Convention (now the Cotonou Agreement) as well as any independent Commonwealth country or protectorate administered by the United Nations. All lines have *ad valorem* tariffs except for sets consisting of woven fabrics and yarn for making, *inter alia*, tapestries and rugs (HS 6308.0000).

14. Tariff policy is primarily the responsibility of the Ministry of Finance and Economic Planning. Tariffs are changed on a financial-year basis (1 July to 30 June) as part of budgetary deliberations. The Ministry proposes changes to tariff rates in consultation with the Malawi Revenue Authority, and other relevant ministries, including Commerce and Industry, and Agriculture. If agreed by Cabinet, the proposals are submitted to the National Assembly for approval. The Customs Tariff Schedule is contained in the Customs and Excise (Tariffs) Order, published in the *Government Gazette*. The Order of December 1999 replaced the previous Order of 1996, and has operated since 1 January 2000. Several tariff rates have been changed since then, mainly as part of the 2000/01 and 2001/02 Budgets. Domestic producers may seek relief against competing imports by applying for duty rebates on imported inputs.

15. Since embarking on trade liberalization in the late 1980s, Malawi has substantially rationalized its tariff structure by lowering and amalgamating duty rates, thus reducing dispersion. Maximum MFN tariffs of 70% were cut to 45% in 1988, and to 40% in April 1996 when the number of bands was also reduced. From April 1997, the maximum tariff rate was further lowered to 35%, and tariffs were eliminated on raw materials used in manufacturing. Consequently, unweighted average tariffs declined substantially during the late 1990s, from 21% at end 1997 to 15.8% at end 1998.<sup>88</sup> The maximum tariff rate is currently 25%.

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<sup>88</sup> IMF (1999), Table 5.

(a) MFN tariff levels and structure<sup>89</sup>

16. Malawi's applied MFN 2000/01 tariff comprised six bands. Duty-free items include: specified animal products; certain cereals; starches and inulin for industrial use; certain oilseeds, oleaginous fruits, miscellaneous grains, seeds and fruits, whether or not broken; certain vegetable saps and extracts, pectic substances, pectinates and pectates, mucilages and thickeners; specified vegetable products and plaiting materials; certain residues and waste from the food industry, and preparations for animal fodder; salt, pure sodium chloride, and sea water; calcareous stone of a kind used for the manufacture of lime or cement; certain mineral fuels, oils, and products of their distillation; specified chemical products, including pharmaceutical goods; fertilizers; certain printed books, newspapers, pictures, and other products of the printing industry; specified machinery and mechanical appliance; and certain tractors, ambulances, hearses, and prison vans; and motor vehicles for specified purposes. A tariff rate of 5% is imposed on "necessities", consisting mainly of foodstuffs, capital goods, and raw materials; 7.5% on white spirit and turpentine substitutes; 10%, mostly on intermediary goods; 20% on coal tar distillates, residual fuel oils, greases, lubricating oil, and master alloys of copper; and 25% on final "non-essential", including many consumer, goods.

17. The simple average applied MFN tariff rate in 2000/01 was 13.6%, with a standard deviation of 9.3% (Tables III.1 and AIII.1).<sup>90</sup> The modal (most common) rate was 25%, applying to some 38% of all tariff lines. The coefficient of variation of 0.69 indicated moderate dispersion of tariff rates from one category of products to another. Some 36% of tariff lines carried a rate of 5%, 21% a rate of 10%, and some 4% a zero rate (Chart III.1).

**Table III.1**  
**Tariff indicators, end-2000/01**  
(Per cent)

Indicator	All goods	Agriculture <sup>a</sup>	Non-agriculture <sup>a</sup>
Bound tariff lines	17	100	0.3
Duty-free tariff lines	4	11	2.8
Simple average applied MFN rate	13.6	15.2	13.3
Range of MFN applied rates	0-25	0-25	0-25
Applied MFN tariff standard deviation	9.3	9.4	9.3
<i>Ad valorem</i> duties (% of tariff lines)	100	100	100

a The WTO classification, based on the definition of agriculture adopted in the Agreement on Agriculture, is used. The WTO Agreement on Agriculture excludes fish and fish products (HS chapter 3 and parts of chapter 16) and includes items regarded as "agricultural" from HS chapters 29, 33, 35, 38, 41, 43, 50, 51, 52 and 53 (Annex 1 of the Agreement). Petroleum products (HS 2709 and 2710) are included in non-agricultural products, although excluded from both WTO agricultural and non-agricultural products.

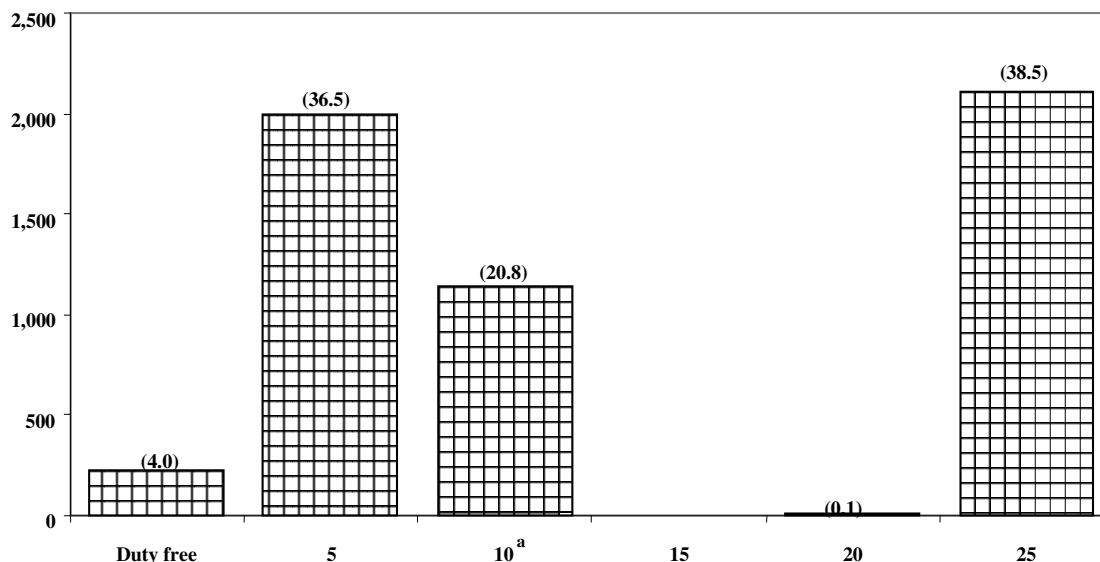
Source: WTO Secretariat, based on data provided by the Malawi authorities.

<sup>89</sup> Several tariff changes were introduced in the 2001/02 budget, effective 23 July 2001. MFN tariffs on certain machinery and capital goods and agricultural hand tools were lowered from 5% to zero; they were increased on crude cooking oil from 5% to 10%. These changes are not reflected in the tariff analysis contained in this report based on the 2000/01 tariff.

<sup>90</sup> Non-favoured or general tariff rates are commonly about 5 percentage points higher than the MFN rate, although on many items they are identical. Non-favoured tariffs ranged from zero to 30%, and averaged 17.9%.

**Chart III.1**  
**Applied MFN tariff distribution, 2000/01**

Number of tariff lines



**a** Includes one tariff line with rate equal to 7.5 %.

**Note:** Figures in parentheses denote the share of total lines.

**Source:** WTO Secretariat estimates, based on data provided by the Malawi authorities.

18. Manufacturing was the most tariff-protected sector (ISIC Revision 2 definition), followed by agriculture (including hunting, forestry, and fishing), with applied average MFN tariff rates of 13.7% and 12.2%, respectively. The average applied MFN tariff was 9.4% in mining and quarrying. When the WTO definition is used, agriculture became the most tariff-protected sector, with an average applied MFN tariff rate of 15.2%. Applied MFN tariffs averaged 13.3% on non-agricultural products, including petroleum.

19. Malawi's tariff structure was characterized by built-in escalation whereby duty rates increased with the degree of processing. Consequently, the average duty of about 16% on fully processed products substantially exceeded that on semi-processed and unprocessed products both at around 10%. Similarly, the average tariff rate was highest on consumer products at about 21%, compared with around 11% on intermediate goods, and some 9% on capital goods. The breakdown of the tariff lines to the ISIC two-digit level depicts positive escalation mainly on: textile, wearing apparel, and leather industries, with average applied MFN tariff rates ranging from 8.8% on first-stage processed products, 18.8% on semi-finished products, to 23.5% on fully processed products; wood and wood products, including furniture, with tariffs averaging 10% on first-stage processed goods, 18.6% on semi-finished goods, and 21.6% on fully processed products; and on fabricated metal products, machinery and equipment, with tariffs averaging 5% on semi-processed goods to 12.6% on fully processed products (Table III.2).

**Table III.2**  
MFN tariff escalation by ISIC 2-digit heading, 2000/01  
(Per cent)

ISIC code	Description	Number of lines	Simple average	Range	Standard deviation
	<b>Total</b>	<b>5,469</b>	<b>13.6</b>	<b>0-25</b>	<b>9.3</b>
11	Agriculture and hunting	247	13.4	0-25	9.5
12	Forestry and logging	27	5.2	0-10	4.5
13	Fishing	49	10.4	0-25	3.4
21	Coal mining	4	0.0	0	0.0
22	Crude petroleum and natural gas production	3	3.3	0-5	2.9
23	Metal ore mining	23	10.0	10	0.0
29	Other mining	75	10.0	0-25	3.2
31	Manufacture of food, beverages and tobacco				
	- First stage of processing	93	13.0	0-25	7.1
	- Semi processed	64	18.8	0-25	7.7
	- Fully processed	322	18.4	0-25	8.6
32	Textile, wearing apparel and leather industries				
	- First stage of processing	38	8.8	0-25	4.7
	- Semi processed	414	18.8	5-25	9.2
	- Fully processed	445	23.5	5-25	4.8
33	Wood and wood products, including furniture				
	- First stage of processing	5	10.0	10	0.0
	- Semi processed	33	18.6	10-25	7.5
	- Fully processed	52	21.6	0-25	7.1
34	Paper, paper products, printing and publishing				
	- First stage of processing	19	8.9	5-10	2.1
	- Semi processed	67	7.4	5-25	6.5
	- Fully processed	70	15.0	0-25	9.6
35	Chemicals, petroleum, coal, rubber, plastics				
	- First stage of processing	57	6.9	0-20	4.7
	- Semi processed	706	5.4	0-25	3.1
	- Fully processed	315	13.3	0-25	10.0
36	Non-metallic mineral products except of petrol. & coal				
	- First stage of processing	2	10.0	10	0.0
	- Semi processed	32	14.7	5-25	8.3
	- Fully processed	139	14.2	5-25	8.6
37	Basic metal industries				
	- First stage of processing	16	10.0	10	0.0
	- Semi processed	358	9.0	5-25	4.2
	- Fully processed	2	15.0	5-25	14.1
38	Fabricated metal products, machinery and equipment				
	- Semi processed	6	5.0	5	0.0
	- Fully processed	1,556	12.6	0-25	9.4
39	Other manufacturing industries				
	- First stage of processing	15	12.7	0-25	8.4
	- Semi processed	4	8.8	5-10	2.5
	- Fully processed	210	22.7	0-25	5.9

Source: WTO Secretariat estimations, based on data provided by the Malawi authorities.

20. An escalatory tariff structure provides cascading protection levels that distort producer incentives in favour of processed goods, and is therefore unlikely to maximize economic efficiency (Box III.1). Similarly, wide disparities in tariff rates, especially between substitutable products, can undermine resource-use efficiency, even if average tariffs are relatively low.

**Box III.1: The advantages of lower, and relatively uniform tariffs**

Tariffs reduce a country's economic efficiency by misallocating resources from their most productive use. By how much resource-use efficiency is impaired depends upon the level of, and the degree of non-uniformity between, duty rates. For a given average rate, the wider the disparities in tariff levels, especially between goods that are close substitutes in both consumption or production, the more distorting will be the tariff structure. Thus, a movement towards a lower and more uniform tariff would be expected in general to improve resource allocation and raise national welfare; a uniform tariff structure will have less influence on the private decisions of producers and consumers, and allow resources to be directed more by market outcomes.

A non-uniform tariff generally provides higher effective protection through tariff escalation, i.e. much lower duty rates on raw materials with progressively higher tariffs being applied through to final processed products. However, by providing greater incentives to produce downstream goods, an escalating tariff risks generating inefficient activities that become dependent on government assistance. High and disparate tariffs foster inefficiency and penalize efficient activities, including export industries, by promoting a high-cost economy. Import taxes may end up taxing exports.

As well as promoting efficiency gains, a low uniform tariff is simpler, more transparent and easier to administer. It removes many of the incentives for making false customs declarations (mainly false descriptions and classifications of imports). Moreover, by treating all producers and importers equally, it is likely to reduce lobbying or "rent-seeking" pressures on the Government for assistance, and make it easier to reject pleas for special treatment. Tariffs also tax consumers, often regressively where, as in Malawi, the highest import duty of 25% applies to essential products, such as clothing and basic foodstuffs, to which a greater share of income of poor households is devoted. Lowering such tariffs can therefore help alleviate poverty, especially where other indirect taxes apply. For example, clothing is taxed in Malawi at 55% (tariffs of 25% plus an excise rate of 10% and a surtax of 20%). Also, the equity benefits of having many foodstuffs exempt from surtax are reduced by applying the highest tariff rate of 25%.

It is often argued that adopting a low uniform tariff would substantially reduce government revenue compared to a system of high tariffs, especially on consumer and so-called luxury goods. However, this may not be the case, especially during the transitional stages of tariff reforms. At lower tariffs, import volumes may increase, as domestic consumers purchase more and local suppliers produce less. This shortage in domestic production will be met by imports; as higher tariffs are lowered, it is possible that import quantities could rise sufficiently to raise tariff revenue, depending upon the nature of the goods and market conditions. Lower tariffs would remove (at least partially) the need for special duty exemptions and concessions, which are usually a common feature of high and disparate tariff structures. Such concessions are liable to make the tariff structure more disparate and undermine transparency and economic efficiency.

In Malawi, the widespread use of exemptions and remissions on import duties (including preferential tariffs), is evidenced by the 1999 duty-collection ratio, of about 5%, being well below the unweighted average of 14%. This suggests that a uniform lower tariff could be set without significantly reducing government revenue, provided that the many tariff concessions were abolished. Revenue considerations of tariffs are now less relevant given the broadening of the tax base. Tariffs accounted for only 15% of tax revenue in 1999/2000, down substantially from 22% in 1994/95. In moving to a uniform tariff rate, it is also economically desirable to make it as low as possible so as to remove the distortions created by raising lower rates to the uniform level and to reduce the burden of tariffs on exports. This suggests that uniform tariffs, especially at a low rate, is a sensible "rule of thumb" policy goal on efficiency grounds. A low (preferably zero) uniform tariff rate would eliminate the anti-export bias created by tariffs.

**Box III.1 (cont'd)**

A low, relative uniform, tariff structure without substantial escalation is therefore most likely to promote economic efficiency and national welfare. Positive escalation increases effective protection. Therefore, recent tariff reductions (contained in the 2001/02 Budget Speech) on raw materials and intermediate goods without corresponding cuts in the highest rate of 25% may have actually widened overall disparities. This may undermine improvements in economic efficiency if it raised already relatively high levels of effective protection afforded final goods. Reducing low tariffs while leaving higher duties intact may add to distortions in Malawi's tariff structure, and further discriminate against production of machinery and intermediate inputs in favour of consumer goods.

21. During the Uruguay Round Malawi bound customs duties on 17% of all tariff lines. In agriculture (WTO definition) all tariffs were bound, almost entirely at a ceiling rate of 125%, except for lower ceiling bindings of 50% on rye, barley, and oats; of 55% for cocoa paste, butter, and chocolate, and other foods with cocoa; and of 65% on cocoa powder. Tariffs were bound on less than 1% of tariff lines for non-agricultural products, at ceiling rates of either 65%, 50%, 45%, 40%, 35% or 30%; these bindings cover mainly fertilizers, insecticides, printed material, agricultural hand tools and machinery. Malawi bound other duties and charges on all these products at 20%.

22. Although tariff bindings are always desirable, their practical significance in constraining future tariff increases is undermined in Malawi as bound rates substantially exceed applied tariff levels, especially on agricultural products. Malawi has made no commitments to reduce these ceiling bindings.

(b) Other duties and taxes

23. An important component of Malawi's trade reforms has been the elimination of discriminatory taxes and the broadening of the tax base. In 1989, the Government introduced a consumption tax, called a surtax. Although initially applied selectively to goods and services, it has been extended progressively, and currently applies at a rate of 20% to most goods. Many services, including expenditure on legal services, telecommunications, motor vehicle repairs, and satellite as well as cable television, are taxed at 20%, while certain other services are taxed at 10%, such as hotel accommodation, restaurants, and photographic services.<sup>91</sup> Distortions between surtaxable goods were reduced somewhat by replacing the initial range of rates with the uniform rate of 20% as from 26 March 1993. However, maintaining a different rate of 10% on some services still weakens taxation neutrality.

24. The surtax applies (at the same rate) to both domestic and imported products, and no longer discriminates against imports. On imports the tax base is the duty-inclusive c.i.f. price, while on domestically produced goods it is the normal ex-factory price (including packaging). The discriminatory differential in the surtax rate against imports was abolished in 1992/93, and compensated for by tariff increases. Previously, imports of luxury goods were subject to a surtax of from 55% to 100% while domestic goods were taxed at 35%. The surtax then effectively provided additional protection, equivalent to a higher rate than the difference in tax rates of from 20% to 65%, because the surtax is levied on the tariff-inclusive import price.<sup>92</sup> Removal of the discriminatory surtax substantially rationalized Malawi's tax structure on imports.

<sup>91</sup> Electricity is taxed at either 10% or 20%, depending upon whether consumed by residential or commercial users, respectively. See Customs Schedule, Third Schedule, Part III, 1999.

<sup>92</sup> A tariff rate of 20%, for example, combined with a 65% surtax levied on imports but not domestic goods would have been equivalent to an additional tariff in total of 98%. A discriminatory rate of surtax would be the same as the tariff rate equivalent only if the imported goods had a zero tariff.

25. A number of products, especially certain basic foodstuffs, are exempt from the surtax, making it distorting and complex to administer. Close substitutes of taxable products are often exempt, thereby creating distortion. In 2000/01, for example, live poultry, except for small fowl, was surtaxable, while other live animals were exempt from the surtax. Seafood and meat were exempt, except for poultry. Similarly, vegetables were exempt, while fresh tomatoes, onions and frozen vegetables, as well as most preserved or dried vegetables were taxed. Fruits were exempt, apart from grapes, apples, and pears. Roasted coffee was taxed but not unroasted, black tea, but not green tea.<sup>93</sup> Exports, and a number of products sold domestically, were zero-rated. These covered animal feed preparations, including dog or cat food, acorns and chestnuts, salt, pharmaceuticals, fertilizers, insecticides, printed materials, specialized pumps for irrigation and certain other uses, tractors, certain special purpose motor vehicles, such as fire trucks, motor vehicle chassis for assembly, tractor parts, tanker and certain other trailers, medical and scientific instruments as well as appliances.<sup>94</sup> Such products have a zero rate of surtax, and manufacturers, like exporters, can claim tax credits for surtax paid on inputs used for their production. Producers of exempt goods cannot claim such tax credits.

26. The surtax has formed an essential component of the Government's policies to broaden the tax base, including indirect and direct taxes, and to reduce its revenue reliance on trade taxes, especially tariffs.<sup>95</sup> The share of tax revenue collected from tariffs fell from 22% in 1994-95 to 15% in 1999-00. Over the same period, the share collected from the surtax rose from 34% to 36%, and from income tax, from 34% to 42%. An increasing proportion of the surtax is collected from imports, rising from 57% in 1994/95 to 61% in 1999/00. The average implicit surtax rate on imports also increased over this period, from approximately 9% to 13%. Extending the coverage of the surtax to the retail and wholesale levels has been deferred until July 2002, and is being discussed in Parliament.

27. *Ad valorem* excise duties also apply to both imported and domestic products, and account for around 5% of total tax revenue. Malawi's legislation specifically applies excise duties to "goods manufactured or produced in Malawi" (Section 82(d)). Such duties used to be included as part of the tariff. However, excise duties are now levied separately on imports and are listed in a separate column of the tariff schedule. As well as the traditional excisable goods, such as tobacco products and alcoholic beverages, coverage has been extended progressively, and the rates changed substantially, generally upwards.<sup>96</sup> While initially targeting designated luxury goods, such as perfume and jewellery, which are predominantly imported, and along with alcoholic beverages and tobacco attract the highest rates, excise duties currently apply to many more standard items. The list of products subject to excise duties is already considerable, and appears to be increasing. It includes consumer goods, such as shelled seafood, fruit juices, clothing (new and used), footwear, most consumer electronics and domestic appliances, and certain intermediate inputs; it also includes petroleum products, and plastic pipes and tubes of PVC, packaging bags and bottles, certain paper, woven natural (silk, wool, cotton, flax and jute) and synthetic fabrics, electronic calculators, accounting machines and cash registers, and certain tractors, trailers, motor cycles and vehicles. Unlike the surtax, which taxes value added and consumption by automatically providing producers, including exporters, tax credits for surtax paid on inputs, no such general mechanism exists for excise duties – although exporters of a wide range of specified products, as well as those with EPZ status,

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<sup>93</sup> Other products exempt from the surtax include eggs, honey, cereals and cereal products (except wheat or meslin flour, and starches/inulin), oilseeds and related products (except flours, seeds used for sowing and hop cones), vegetable planting materials, bread and certain waters, and, following the 2000/01 Budget, petroleum products (but not coal). The surtax on these products was replaced by an excise duty and the rates increased from 5% to 10% for paraffin and from 10% to 20% for diesel and petrol.

<sup>94</sup> The 2001/02 Budget removed the 20% surtax, and zero-rated fresh and processed milk.

<sup>95</sup> Temporary export taxes applied from 1995/96 to 1997/98, primarily to raise government revenue.

<sup>96</sup> The 2001/02 Budget, for example, increased excise duties on a number of products.

and a few other manufacturers are exempt from excise duties on direct inputs, excluding petroleum products (see also section (e)).

28. Excises at variable rates, ranging from 5% to 80%, may also distort consumption and production decisions between excisable and non-excisable products, as well as across excisable products.<sup>97</sup> Excise duties are best used sparingly, confined to only a few consumer products where substitution possibilities are limited.<sup>98</sup> As a general economic principle, indirect taxes should tax consumption and not production to the extent possible.

29. While Malawi's excise duties on intermediate goods, generally at 10%, are well below the rates applied to consumer goods, they can still be a substantial impost on producers. Much higher excise duties apply to common inputs of petroleum products (up to 50%) and on motor vehicles (65%, depending upon engine capacity and type of vehicle). The costs from excise duties can also occur well back down the production chain and therefore be hidden from manufacturers, including exporters. For example, excise taxes on petroleum products are embodied in higher prices for non-fuel inputs used by firms, including machinery. Such tax imposts can place additional competitive pressure on producers, especially as their tariff protection against imports is actually reduced.

(c) Tariff preferences

30. Exceptions to MFN treatment include preferential access provided to WTO Members that belong to regional trading arrangements in which Malawi participates (Chapter II(5)(iii)). As a founding member of the Common Market for Eastern and Southern Africa (COMESA), Malawi met the timetable established for the progressive removal of tariffs on regional trade by end-October 2000. Therefore, all goods are freely traded between Malawi and the other COMESA members that have met the free-trade area (FTA) commitments.

31. A potentially more significant regional arrangement for Malawi is the Southern African Development Community (SADC), because it includes South Africa, a major trading partner. Under the SADC Trade Protocol, which commenced operation from January 2001, Malawi has begun to implement its commitments, and grants duty-free access, on a reciprocal basis, to imports of category A products (mostly capital goods and equipment) from other members that have also adopted the Protocol.

32. A bilateral trade agreement with Zimbabwe also provides for reciprocal tariff-free access (Chapter II(5)(iv)). Malawi also has several old reciprocal customs agreements that are infrequently used. Duty-free access is granted to imports of all goods, except spirits, from Botswana (Botswana Agreement).<sup>99</sup> Imports from Mozambique of: live animals (except poultry); fish, but not canned; and unmanufactured products of "the soil of a vegetable nature (wild or cultivated, including unmanufactured foodstuffs)" are also duty-free (Portuguese Agreement).

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<sup>97</sup> Multiple excise duty rates apply: 5%, 10%, 15%, 30%, 35%, 50%, 55%, 60%, 65% and 80%. Some excise duties also apply at different rates to products that are essentially the same or highly substitutable. For example, tobacco products are taxed at 80%, except for cigarettes selling at a retail price of below the equivalent of MK 3 per ten cigarettes, which are taxed at 50%. Similarly, "opaque" beer is taxed at a rate of 30% instead of (from the 2001/02 Budget) 55% on other beer and alcoholic beverages.

<sup>98</sup> Excise duties on petroleum products are also levied as a user charge to fund road construction and maintenance. Such duties on cigarettes and alcoholic beverages are also frequently seen as desirable "social taxes" to help fund health services.

<sup>99</sup> Malawi Customs Schedule, 1999, Part D, Exemptions of Duty Under Other Enactments.

33. To be eligible for preferential access, imports must comply with the rules of origin specified in the relevant regional or bilateral agreement.

(d) Rules of origin

34. Malawi has both non-preferential and preferential rules of origin for determining the country of origin for levying import duties. In general, goods are considered to be of the origin of the country where they are grown or wholly produced. Under the non-preferential rules of origin, the country of origin of manufactured goods is their last place of processing, provided they contain not less than a certain level of material or labour as local content, or have been subjected to certain processes, specified in the Malawi customs schedule (Customs and Excise Act, Section 118). Specified content levels may be fixed at varying scales for different classes of goods, and relate to the factory or works cost of the finished articles.

35. The general level of minimum content specified on manufacturing goods to determine origin is 25% (Customs and Excise Tariffs Order). Higher minimum content levels, of 30% and 50%, apply to certain printed and other textile fabrics, respectively. A content level of 5% applies to certain aluminium wire and bars; wire, cable, bars and strip; and copper products. For certain other textile fabrics all the processes of manufacture must be performed in the country, from natural or man-made fibres or filaments to the final product.

36. Preferential rules of origin also apply under regional and bilateral trade arrangements to which Malawi is a signatory. Imports from eligible countries must satisfy these special rules of origin to be dutiable at preferential tariffs (Chapter II(5)(iii) and (iv)). Imports must be accompanied by appropriate certificates of origin issued by the exporting country to be eligible for the preferential tariffs. If not, they are subject to Malawi's MFN rates. For countries that are covered by more than one agreement like Zimbabwe, the importer can choose under which arrangement the goods are to be imported.

(e) Duty and tax concessions and exemptions

37. Malawi's customs legislation allows widespread duty and tax concessions in the form of suspensions, rebates, remissions and refunds. Tariff suspensions were contained in the Sixth Schedule of the 2000/01 Customs tariff. These allowed MFN and general tariffs on certain imported inputs, such as raw materials for the manufacture of plastic pipes, to be fully or partially suspended.<sup>100</sup> Customs duty was refunded on imported vessels and parts used in commercial fishing or for the commercial transportation of passengers and cargo (Seventh Schedule).<sup>101</sup> The Malawi Revenue Authority is responsible for granting or withdrawing suspensions, rebates, remissions or refunds of customs duties, by notice published in the *Government Gazette*. Rebates of tariffs are provided to registered manufacturers importing specified materials used in the production of a wide range of goods (Eighth Schedule, Part I, Appendix A). These specified end-use industries would appear to cover most of Malawi's manufacturing activities (Table AIII.2). Eligible manufacturers must be registered with the Malawi Revenue Authority and are responsible for ensuring and keeping the necessary documentation, including the submission of monthly returns, to show that the materials

<sup>100</sup> Other imports with full tariff suspensions were tea-picking baskets made of bamboo; plastic-coated paperboard used in manufacturing containers; and fishing nets made from polyethylene fibre. Partial suspensions reduced the MFN tariff to 10% and the general tariff to 15% on motor vehicle tyres and tubes (for incorporation on imported vehicles, subject to such post-importation conditions set by the Commissioner-General).

<sup>101</sup> The schedule also covers duty refunds required under government agreements "with any other government, organization, institution, body or person."

have been used to manufacture the specified products for which they registered. According to the authorities such arrangements work effectively. Rebates are not provided where the inputs are produced locally.

38. Selective rebates of excise taxes applied in 2000/01 on the use of solid cane sugar, otherwise subject to an excise rate of 20%, to manufacture food, bottled mineral waters, including soft drinks, and alcoholic spirits (excluding beer). Ethanol used in making pharmaceuticals and medicaments was also eligible for excise tax rebates. Such rebates applied to total production, including that sold on the domestic market. Farmers may also be granted rebates of excise duties paid on certain inputs; but no activity receives a rebate on petroleum products.

39. Additional concessional tariffs (and excise duties) also applied in 2000/01 to a few other goods by virtue of "end-use" provisions specified at tariff line levels. Starches and wheat gluten used for industrial purposes, for example, were dutiable an MFN tariff of zero instead of 25% and a "non-favoured" rate of 5% rather than 30%. Breweries could also import hop cones at MFN and "non-favoured" tariffs of zero and 5%, instead of 25% and 30%, respectively. Strong undenatured ethyl alcohol used for industrial, pharmaceutical, research, and scientific purposes was importable at a concessional tariff of 5% (instead of MFN and "non-favoured" rates of 30% and 25%) and a concessional excise rate of 30%. The importer must prove to the Commissioner-General that the use of such materials meets the specified conditions (Customs Schedule).

40. Full drawback of tariffs and excise duties also apply on specified materials used to manufacture or process certain goods in Malawi, provided they are exported within two years from the date of payment of the duty (Eighth Schedule, Part II, Appendix C). For some products, drawback is available on all materials and components while for others it extends only to specified materials (Table III.3). For example, watch manufacturers are entitled to drawback on all materials while cigarette manufacturers receive it only on packaging materials. The Export Incentives Act (Section 15) provides for duty drawback to exporters; these are computed according to ratios prescribed by the Minister of Commerce and Industry on the recommendation of the Export Promotion Council, in consultation with the Minister of Finance and Economic Planning. This legislation also specifies that duty drawbacks must be paid within 60 days from submission of the claim, subject to proof that the goods concerned were exported and the duty being claimed was paid. Exporters who make false claims are subject to penalties, including imprisonment.

41. According to the authorities, duty drawback determination is no longer based on ratios, but rather on the actual material used in export production. Manufacturers registered for drawback must maintain sufficient records accounting for their use of materials. They must apply to the Commissioner-General of the Malawi Revenue Authority for drawback, and submit the necessary documentary evidence before exportation. Exported goods are in principle to be inspected.<sup>102</sup> The Commissioner-General determines the quantity, value, and origin of materials used in the exported goods in consultation with the manufacturer. Such determinations and authorization "shall be presumed correct, in the absence of evidence to the contrary" (Section 6 of the Customs and Excise Act). Although exporters heavily use the drawback scheme, there are conflicting views on the timeliness of such payments. While the authorities indicated that these were generally completed within four to six weeks, others stated that receiving the balance of the drawback of up to 75% could take several months or more. Exporters must lodge claims for drawback within six months from the date of export.

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<sup>102</sup> The Commissioner-General may approve other procedures.

**Table III.3**  
**Industrial drawback of customs duties, 2000/01**

<b>Goods manufactured in Malawi</b>	<b>Materials subject to drawback<sup>a</sup></b>
Agricultural hand tools and animal-drawn implements	All materials and components
Articles made from netting	Netting made from twine, yarn, cordage, rope or cables; containing more than 50% by weight of man-made fibres produced by polymerization or condensation of organic monomers e.g. nylon
Biscuits	Baking fat, glucose, paper, packaging cartons and foil wrappings
Blankets	Blanketing and blanket cloth
Cafenol premix	Aspirin, caffeine, and starch
Child cafenol	Aspirin, dextrose monohydrate, orange flavour, saccharine, sodium, and starch.
Cigarettes	Packaging materials
Cleartone skin toning cream and Envi skin toner	All materials, including packaging
Clothing	Textile fabrics and lace
Curtains	Curtaining polyester thread and ruffette type
Cycles	Cycle parts and accessories
Dhall	All materials and components
Dry cell batteries	All materials and components
Enamelled hollow ware of iron and steel	Rough worked, uncoated iron or steel shapes, parts and blanks
Electric fires	All materials and components
Fishing nets, sports nets and twine	All materials and components
Footballs	All materials components
Footwear	All materials
Fluorescent light fittings	All materials and components
Furniture	Textile fabrics and component parts
Motor vehicle trucks and buses	Chassis with or without cabs
Norolon premix	Chloroquine, phosphate, calcium phosphate, magnesium stearate, starch, and talc
Panadol premix	Paracetamol, potassium sorbate, provoidone, starch, stearic acid
Petroleum jelly, perfume, skin and toilet preparations	All materials, including packaging
Plastic products	Polypropylene granules, polypropylene, polyethylene, polyvinyl chloride compound, colouring, pigments and high/low density polyethylene
Foodstuffs and beverages	Tomato paste
Printed textile fabrics	Woven textile fabrics, knitted and crocheted fabrics
PVC tarpaulins	Oven nylon textile fabrics and plasticisers
Refrigerators, deep freezers and coolers	All materials and components
Radios, tape recorders and combinations	All materials and components
Stationery – lever and flat files	All materials and components
Tents and tarpaulins	Canvas cloth and PVC sheeting
Timber products	Plywood, hardboard, chipboard and similar boards, veneers, glues, resin, woodflour, impregnation salt, labels, polyester yarn
Umbrellas	Textile fabrics and component parts
Watches	All materials and components

a Drawback of both tariff and excise duties.

Source: Customs and Excise tariffs Order, 1999, Eighth Schedule, Part II.

42. The rationale for the widespread use of concessions, other than drawback for exporters, is unclear. Many of the eligible materials are not of dual use and are consumed as inputs not final goods; therefore the tariff rate could be reduced to zero.<sup>103</sup> Without clear criteria and procedures for administering these essentially end-use tariff concessions, including the selection of eligible uses, they can become a source of administrative discretion and of distortions by discriminating between manufacturers. Such arrangements can lead to manufacturers of different products paying different input prices; they may therefore undermine the transparency of the tariff structure by making it complex, and can provide "tailor-made" protection that adversely affects resource-use efficiency.<sup>104</sup> A number of the rebates appear to be designed to encourage limited domestic processing operations, such as tariff concessions on imported crude Sunlight dishwashing detergent.

43. There is a substantial overlap between the industries covered by end-use rebates and by drawbacks. Drawbacks include also excise duties on materials used in exports; this duplication creates confusion, providing what appears to be considerable scope for rationalizing and simplifying these arrangements. The concessions also make the tariff structure more escalatory in practice. In addition, they encourage rent-seeking activities by firms to obtain special rebates, and impose substantial administrative and financial burdens on the Government. This also may create significant scope for administrative discretion and public corruption.

44. Tariff exemptions also apply on goods under the investment code and on enterprises with EPZ status (see below). In addition, the Minister of Finance and Economic Planning can approve tariff rebates to investors in the public interest (Chapter II(6)(ii)). Government and parastatals are no longer eligible for duty-free importation and pay the same duties as private importers. Imports by the Kamuzu National Foundation Trust were provisionally duty free in 2000/01. Imports by state enterprises and materials used in government contracts are duty free.

45. An indication of the widespread use of tariff concessions is the relatively low share of tariff revenue in total government tax receipts, at around 15%. A further indication is that the implicit trade-weighted average tariff rate (total tariff revenue as a proportion of total merchandise imports) in 2000/01 for Malawi was 5%, well below the simple MFN average of almost 14%. These figures also reflect the impact of preferential tariffs applied under Malawi's various regional and bilateral agreements, as well as of the general tariffs.

**(iv) Customs valuation**

46. Tariffs are levied on the c.i.f. price of imported products. Malawi notified to the GATT in 1990, under the Tokyo Round Customs Valuation Code, that its Customs and Excise Act had been amended to replace the Brussels Definition of value with the transaction value of imports for levying tariffs.<sup>105</sup> According to this legislation, this is the price actually paid by the importer for the goods, adjusted for several factors, including freight and insurance costs to bring it to a c.i.f. price. Where this cannot be ascertained, the first alternative valuation method is the transaction value of identical products, followed by the transaction value of similar goods; the deductive value; the computed value; and the fall-back method. Malawi also informed the WTO that this legislation had not

<sup>103</sup> This would ensure that all importers using the product would receive the same zero tariff rate and eliminate the need for special customs processing, which may delay clearance.

<sup>104</sup> Tariff concessions on inputs raise the effective protection afforded activities using these inputs. Since many of the eligible manufactured products are protected by relatively high tariffs of 25%, giving them duty-free access to major inputs is likely to increase already high effective rates of protection, thus making the tariff structure more distorting and undermining efficient resource allocation.

<sup>105</sup> GATT document VAL/1/Add.27, 18 April 1990.

changed and remained valid under the WTO Customs Valuation Agreement.<sup>106</sup> The only special provision for developing countries invoked by Malawi under the WTO was to reserve indefinitely the right not to reverse the deductive and computed valuation methods at the importer's request (paragraph 3 of Annex III of the Customs Valuation Agreement).<sup>107</sup>

47. Customs value is determined for most imports by SGS through pre-shipment inspection. According to the authorities, this valuation is used if it is above the value given on the commercial invoice, but not if it is below. The authorities also indicated that minimum or reference prices are not applied, except for certain second-hand goods, such as motor vehicles, where used-car values are used and an absolute minimum value set at US\$3,000. The extent to which non-transaction values, such as "guide" prices, are used for customs valuation in Malawi is not clear. It has been suggested that tariffs are not necessarily applied directly to import costs in Malawi because of the use of domestic values for customs valuation.<sup>108</sup>

48. Malawi is a member of the World Customs Organization.

**(v) Import prohibitions, quantitative restrictions, and licensing**

49. Malawi maintains few non-tariff import restrictions; most were eliminated under previous trade reforms. A negative list of imports requiring prior foreign exchange approval, introduced in 1991, was abolished in 1994.<sup>109</sup> From June 1997, all licensing requirements on imports were removed, except those maintained, according to authorities, for health, safety, security, and environmental reasons. The import licensing system is regulated by the Control of Goods (Import and Export) Act. About 5% of Malawi's imports are currently covered by licences.

50. Import licences apply to military, naval, air force, and police uniforms, for security reasons.<sup>110</sup> These will be issued only if the importer has an order from the army or police authorities. Licences also apply to radioactive substances; mist nets for capturing wild birds; wild animals, trophies, and products of such animals; live fish; dieldrin; aldrin; compound products containing flour, meal residues and other preparations used in animal feed; live poultry; eggs, whether in shell, pulped or dried; meat, including dressed poultry, but excluding especially all tinned and potted meats<sup>111</sup>; and salt, which must have a maximum iodine level of 90%. In addition, restrictions, including prohibitions, apply to imports of firearms, ammunition, and explosives as well as certain drugs and poisons.

51. Licences cover imports from all sources, and are not subject to import quotas. They are generally granted on the spot, and are issued throughout the year, mainly by the Ministry of Commerce and Industry. Any importer may apply for a licence, and no administrative fee is charged nor is any advanced payment or deposit required. Import licences are valid for six months, and can be extended if needed, provided an adequate explanation is given. Licences are not transferable, and no penalty is imposed for under-utilization of the licence by the importer. An importer may appeal against a decision to refuse a licence.

<sup>106</sup> WTO document G/VAL/N/1/NW1/1, 7 April 1998.

<sup>107</sup> WTO document G/VAL/2/Rev. 12, 30 March 2001.

<sup>108</sup> Page, (2001), p. 9.

<sup>109</sup> The list included certain luxury items, mainly alcoholic beverages, precious metals, motor vehicles and electrical goods.

<sup>110</sup> WTO document G/LIC/N/3/MWI/1, 6 September 1999.

<sup>111</sup> Also excluded from import licensing are meat soups; meat pastes; edible meat fats; tallow; and all cooked or cured meats except for pork, ham, and bacon.

(vi) **Anti-dumping, countervailing, and safeguard measures**

52. Malawi's anti-dumping legislation is relatively old and is contained in the Customs and Excise Act and the Fourth Schedule of the Customs Schedule. The Minister of Finance and Economic Planning may impose anti-dumping levies when an investigation launched by him shows that "dumped" imports are to the "detriment" of domestic industries, and that to do so would be in the "public interest", although this term is not defined. The board or person conducting the investigation has powers equivalent to a Commissioner under the Commissions of Inquiry Act, and the same provisions apply to the investigation in collecting evidence. Interested parties can initiate such an investigation by making a formal complaint to the Commissioner-General of the Malawi Revenue Authority. However, according to authorities, this legislation has not been used.

53. The legislation allows for measures to be taken against six kinds of dumping, referred to as ordinary, sales, bounty, freight, exchange, and surcharge. The importer pays all anti-dumping duties, except "sales" dumping, where the seller of the goods in Malawi pays them. "Ordinary" dumping is where goods are exported to Malawi at an export price below their domestic market value.<sup>112</sup> Where domestic market values cannot be calculated or similar goods are either not sold in the exporting country or are considered to be unusual or peculiar in the marketing of such goods, the Commissioner-General determines such a value. The anti-dumping levy imposed is to be the amount by which the domestic market value exceeds the export price.<sup>113</sup>

54. "Sales" dumping covers imports on behalf of non-residents of Malawi or based on non-independent transactions sold in Malawi in the normal course of trade at an amount below the domestic market value plus certain specified charges.<sup>114</sup> The amount of any anti-dumping levy set would be the difference between the domestic market value plus the specified charges and the selling price in Malawi.

55. "Freight" dumping is where the freight charges paid on imports are below the normal rate, as certified by the dumping investigation. The anti-dumping levy in this case would be the amount by which the normal freight charges exceeds the actual freight paid. "Exchange" dumping occurs where goods are imported from a country whose currency has depreciated against the Malawi kwacha. The anti-dumping levy in this case is calculated as the amount by which the actual cost of the imported goods is less than the cost expressed in the exchange rate determined by the Minister of Finance and Economic Planning. "Surcharge" dumping is where goods are exported to Malawi and the price paid by the exporter for raw or manufactured materials is below the price at which these materials are exported to Malawi. In this case, anti-dumping levies are to be authorized at a rate in money terms per unit of quantity equal to the difference in the prices of these materials contained in the "dumped" product.

56. "Bounty" dumping is said to occur when goods exported to Malawi receive a bounty in the exporting country. A levy may be imposed equal to the amount of that bounty, whether by way of a

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<sup>112</sup> Export price is defined as the f.o.b. value. The domestic market value is the "market price, when purchased by the importer, of such or similar goods freely offered for sale or for consumption in the exporting country, in usual wholesale quantities in the ordinary course of trade in its principal market. It includes additional costs to bring it to an f.o.b. equivalent, but not drawbacks or remissions of duties granted by the Government of the exporting country."

<sup>113</sup> Where there is no export price, the amount of duty shall equal the domestic market value of the goods.

<sup>114</sup> These are freight, insurance, and all charges to the market including landing, transportation, and delivery costs, and any custom duties paid, apart from dumping duties.

bonus, rebate, subsidy or otherwise, or provided by the Government or a person. This measure is therefore designed as a countervailing measure against subsidized exports.

57. Some of the dumping defined in the legislation would appear to overlap, such as "ordinary" and "sales" dumping. The application of remedies against so-called "exchange" dumping could work against the benefits of Malawi's currency realignments with major trading partners, and may effectively discriminate against Malawi exporters.

58. Malawi notified its anti-dumping legislation to the WTO in 1995.<sup>115</sup> It has not yet provided responses to questions raised by several WTO Members in the Committee on Anti-Dumping Practices.<sup>116</sup> These questions centred around the inconsistency of Malawi's provisions with WTO requirements.<sup>117</sup> The Government is currently drafting replacement anti-dumping and countervailing legislation with the aid of international technical assistance; according to the authorities this will conform with WTO requirements.

59. Malawi has no safeguard legislation. This is currently being drafted with overseas technical assistance, and according to authorities will be consistent with Malawi's WTO commitments.

**(vii) Standards and other technical requirements**

**(a) Standards, testing, and certification**

60. The Malawi Standards Board is the governing body responsible for standardization matters. It was established in 1972 under the Malawi Bureau of Standards Act.<sup>118</sup> The Board, through the Malawi Bureau of Standards (MBS), sets and implements standards, and conducts conformity tests, including on imports and exports, and quality assurance. In line with increased pressure for it to become self-financed through revenue generated from its quality assurance and testing activities, its reliance on government funding has fallen. In 1998/99, the Board's total revenue was MK 24.5 million, of which MK 6.6 million, equivalent to 27%, was from the Government.<sup>119</sup> It is a member of the International Organization for Standardization (ISO), and the Director-General is the ISO African Regional Liaison Officer for 2000-03. It also participates actively in the SADC and COMESA regional activities on standardization, and is a member of the African Regional Organization of Standardization and has the presidency for 2000-03. The Board is responsible to the Minister of Commerce and Industry.

61. Technical Committees examine the need for Malawian standards, and the suitability of international norms. There are over 40 such committees, grouped under three technical divisions – chemicals and textiles; engineering and materials; and food and agriculture. Where no international norm exists, or is considered inadequate, standards from other countries are usually used, increasingly from the region, especially South Africa. International standards have been found to be inadequate in

<sup>115</sup> WTO document G/ADP/N/1/MWI/1/Corr. 11, 19 February 1996.

<sup>116</sup> WTO document G/ADP/W/415, 17 October 2000.

<sup>117</sup> Questions were raised by Australia; Hong Kong, China; Korea; and the United States. See WTO documents G/ADP/W/335, 12 April 1996, G/ADP/W/349, 15 April 1996, G/ADP/W/362, 17 April 1996, and G/ADP/W/391, 24 April 1996.

<sup>118</sup> The Bureau has been notified to the WTO as the national enquiry point required by the Agreement on Technical Barriers to Trade (WTO document G/TBT/ENQ/18, 19 March 2001). Malawi also notified the WTO that the Bureau had accepted the Code of Good Practice for the Preparation, Adoption and Application of Standards from 25 November 1996 (WTO documents G/TBT/CS/N/63, 8 January 1997, and G/TBT/CS/2/Rev.7, 8 February 2001).

<sup>119</sup> In 1994/95, revenue was MK 4.9 million, of which the Government provided over 40%.

only a few cases to date, so that Malawi has developed only a small number of its own standards, (approximately 50). Most of these have been demanded by domestic industries for goods not subject to any existing international standards. Examples include certain foodstuffs, such as Thombwa powder, and oxen-drawn carts. Malawi attaches a high priority to harmonizing standards, especially within the SADC region.

62. Malawi had 256 MBS standards at end-2000. Most, over 70%, related to technical specifications. Approximately 39% of its standards covered food and agriculture; 32% engineering and materials; and the rest chemicals and textiles. Over half are international standards, such as those recommended by the ISO and Codex Alimentarius. In 1999, 13 new standards were approved, and four were revised. A further 68 standards were being devised. A National Quality Management Certification System was launched in 1999, aimed at compliance with the ISO 9000 series of standards. This scheme is to be accredited by either the SADC Accreditation Programme (SADCA) or the African Regional Accreditation Scheme (ARAC).

63. Malawi also imposes mandatory standards as technical regulations.<sup>120</sup> These are allowable in the legislation for safety, health, consumer or environmental reasons, or where they are of economic importance at the national level.<sup>121</sup> The Minister of Commerce and Industry, on declaring a standard as mandatory in the *Government Gazette*, sets an effective starting date after which the good cannot be manufactured, sold or used without compliance.<sup>122</sup> An additional 172 technical standards (regulations) were made mandatory, effective 1 January 1999.<sup>123</sup> There can be a substantial delay between the date standards are introduced and when they become mandatory. For instance, many of the mandatory standards with declared starting dates from 1999 were developed before 1995, and as early as 1990. Products complying with Malawi standards receive the MBS Quality Mark.

64. The same standards apply to imports and domestic goods. Malawi recognizes conformity tests from accredited foreign testing agencies on imported products. While it has no formal mutual recognition agreements, the MBS has several such "informal" arrangements with overseas bureaux responsible for standards. It also has cooperation memorandums on standards with several countries, such as Botswana, Kenya, Zambia, and Zimbabwe, and is currently developing one with South Africa. SADC countries also cooperate to recognize each other's standards as far as possible. Imports subject to mandatory standards are inspected on a consignment or batch basis where there are "reasonable grounds" for suspecting they may not be compliant. An import quality monitoring scheme was introduced in 1995 requiring designated imports to be certified by Bureau inspections.<sup>124</sup> This is equivalent to the product certification scheme applied to locally manufactured products.

65. Imported items covered by the Monitoring Scheme are a subset of 16 products subject to mandatory standards, such as hand pumps, beer (clear), compound fertilizers, paints, and wheat flour. Each consignment of these goods (shipment of same brand-name goods from the same manufacture

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<sup>120</sup> Malawi Bureau of Standards Act, Section 21. The Minister may exempt persons or entities from complying with mandatory standards where it is in the "public interest". Such provisions have been used twice for food industries. Exemptions are time bound, renewable once, and are used in such cases to provide additional time to industries in the process of complying.

<sup>121</sup> The "economic importance" criterion is rarely used; it covers such industries that are considered to have significant export potential, or employ substantial labour or have a high local content in their production.

<sup>122</sup> The need for a mandatory technical regulation is assessed by a Policy Advisory Committee. This can take up to nine months or longer if no international technical regulation is available. Nine mandatory standards operated from 1 November 1987; 14 more from 1 January 1988; and a further 74 from 1 January 1992.

<sup>123</sup> All standards are published in a general document while the Malawi Standards (Effective Dates) Order, 1999 determines those that are mandatory.

<sup>124</sup> Imports Quality Monitoring Regulations, 2000.

and country of origin) must be inspected. Inspection is not required, however, if they are certified as complying with Malawian standards by a reputable recognized testing organization in the country of origin, and tests of the first four consignments show that the goods conform with the foreign test certificates. Importers satisfying these requirements are issued with an annual import quality certificate for each product consignment. The other import commodity clearance issued for compliant products is the batch certificate of conformance.<sup>125</sup> It becomes invalid upon expiration of the product's purported shelf life, and will be re-issued only on re-evaluation, and applies only to the individual consignment or batch. Products with less than half of their purported shelf life remaining will not be granted a certificate.

66. Certificates will be withdrawn if random sampling in the open market indicates non-conformity. If this occurs, all imports must be withdrawn from the market. There is an implicit warranty from sellers and importers that any designated product will meet relevant specifications. The importer must meet all expenses associated with the monitoring scheme, including inspection costs, testing fees, and fees charged for the issuance of conformance certificates. These requirements apply to all mandatory standards imposed on designated products, as well as to any foreign standards developed by the ISO, IEC, Codex or other international bodies accepted by the Bureau for certification purposes.

67. Importers are required to make application for inspection by completing an import inspection request form. Inspections cover technical assessments, such as dimensions, defects, and completeness of parts. Performance testing is also required, where appropriate. In 1999, 18 requests were made for inspection, and 30 samples were tested for analysis. According to authorities, domestically produced goods are subject to the same requirements and inspections under the product certification scheme. The Bureau's certification fees are the same for imported and domestically produced goods.

68. The Bureau also certifies that exports meet overseas or international standards under the export quality certification scheme. In 1990, 80 requests for export certification were received, and 97 export certificates issued. The Bureau occasionally tests tea for export, as well as chillies, peas, and macadamia nuts. Tobacco exports are tested for pesticide and insecticide residues.

69. The MBS authorized the establishment of the Consumers Association of Malawi (CAMA) in 1994. The Bureau is also responsible for metrology inspection, verification, and calibration to validate measuring and weighing instruments for trade and industry. Certain product-specific (domestic) legislation, such as the Standardization of Soap Act of 1985, require goods produced or imported into Malawi to meet the Bureau's standards. However, such legislation is now used less frequently. Another example is the legislation restricting the iodine level of salt for health reasons.

(b) Sanitary and phytosanitary (SPS) requirements

70. SPS measures in Malawi on plants and plant products are the responsibility of the Plant Quarantine Services of the Ministry of Agriculture and Irrigation. The relevant legislation is the Plant Protection Act of 1969. Accompanying regulations include the Plant Protection (Import) Regulations, the Plant Protection (Export) Regulations of 1969, and various government notices, such as Notices 107/1969 and 32/1982. Malawi is a member of the International Plant Protection Convention and the Phytosanitary Council of the OAU. Malawi is also participating in efforts to harmonize phytosanitary arrangements among SADC members.

71. Imports of all plants and parts (whether living or dead) are subject to quarantine and must be inspected. A permit issued by the Plant Quarantine Service is required to import seeds and plants for

<sup>125</sup> Goods may be conditionally released if compliance testing exceeds 20 days, but they cannot be sold.

sowing, planting, and processing, as well as plant products for consumption.<sup>126</sup> Imports of seeds as a means of propagation are preferred, and a plant import permit will not be granted for importation of vegetative propagating materials that can be grown equally well from seed. Imports of all plants and plant products must be accompanied by phytosanitary and inspection certificates.

72. Soil is a prohibited import. Cereals, like maize and rice, and honey must be accompanied by a fumigation certificate. Imports of plants and seeds, such as tomatoes, potatoes, sugar cane, groundnuts, ginger, cassava, taro, soybeans, and chrysanthemums must be grown in post-entry quarantine facilities approved by the Plant Quarantine Service. Imports may be prohibited or subject to additional conditions when originating from countries with dangerous pests and diseases. Imports of certain fruit, such as grapes, apples, peaches, plums, pears, citrus, bananas, pumpkins, gourds, and strawberries from countries other than Africa, the EU, and North America, are prohibited. Tobacco-leaf imports are prohibited, except from sub-Saharan African countries. Sweet potato and Irish potato from all countries are prohibited imports.

73. Imports of flower bulbs, for propagation, from outside Southern Africa, the Netherlands, Germany, the United Kingdom, Israel, North America, Australia, and New Zealand are prohibited. Seeds for sowing tea are also prohibited, except from sub-Saharan African countries; as are rubber seeds from tropical America; and passion fruit from Australia and New Zealand.

74. Animal quarantine is handled by the Department of Animal Health of the Ministry of Agriculture and Irrigation. The main legislation is the Control and Diseases of Animals Act of 1967, as amended. This provides authority for the Minister responsible for agriculture to issue orders to prohibit or regulate imports of animals, including use of quarantine stations. Subsidiary legislation, the Animal (Import) Rules of 1968, specifies that imports of animals and animal products require a permit issued by the Chief Veterinary Officer, subject to any conditions considered necessary to prevent the disease spreading to Malawi. Animals and animal products must be certified as free from disease before importation. Quarantine periods for live animals must be at least 28 days; quarantine is applied selectively and is not required if the animal was imported from a disease-free country.

75. Malawi applies temporary restrictions, including bans, on imports of animals and animal products from certain countries known to have certain diseases. It currently maintains a temporary ban on such imports, including livestock feed, from the EU because of BSE. Although the legal basis is currently uncertain, Malawi does not allow imports of GM foods, or poultry and other meats subject to growth hormones. Animal imports from certain disease-infected regions in Zimbabwe and South Africa are also banned. As from 1 March 2001 poultry and eggs imported as re-exports from third countries are prohibited.<sup>127</sup> Imports may resume with countries that have disease-free status for six months.

76. No distinctions are made between imported and domestic products in the application of Malawi's quarantine measures. The Ministry, specifically the Department of Animal Health and Industry (for animal protection) and the Bvunbme Agricultural Research Station (for plant protection), has been notified to the WTO as Malawi's national enquiry points under the SPS Agreement.<sup>128</sup> The

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<sup>126</sup> Special permission is needed to import weeds, micro-organisms potentially capable of causing plant disorders, insects, and certain other materials and organisms.

<sup>127</sup> WTO document G/SPS/N/MWI/1, 8 January 2001.

<sup>128</sup> WTO documents G/SPS/GEN/27/Rev.8, 8 March 2001, G/SPS/ENQ/12, 4 July 2001, and G/SPS/NNA/2, 5 July 2001. Malawi presented a case study on the roles of the Department and the Station to the WTO Committee on SPS Measures under the transparency provisions of the Agreement in 1999 (WTO document G/SPS/GEN/150, 6 December 1999).

Ministry of Commerce and Industry has been notified as the national notification authority. Malawi is a member of Codex Alimentarius, OIE, and IPPC.<sup>129</sup>

(c) Marking, labelling and packaging

77. A national standard stipulates labelling requirements for pre-packed foods sold domestically. These mainly reflect Codex Alimentarius labelling requirements. From 1 March 2001, imports of eggs and poultry meat require "best before" labelling. This was introduced by amendments to the import permit requirements so as to prevent the introduction of sub-standard, unwholesome poultry products into Malawi.<sup>130</sup> It was handled by the Ministry responsible for agriculture.

**(viii) Government procurement**

78. Existing Interim Procurement Guidelines were issued in 2000, and are contained in Cabinet Circular No. 1/2000. All ministries and departments must source their supplies from government stores, irrespective of limits and price. If the goods are not available, approval can be sought from the Stores Controller to procure directly from approved suppliers within specified limits. A list of approved suppliers is maintained and circulated to ministries. While foreign firms are not excluded, only domestic suppliers are currently approved. At least three written quotations are required. All tenders by ministries and departments, except mainly the Army, Police, and the National Intelligence Bureau, must be cleared by the newly established Contracting-Out Unit, located within the Office of the President and Cabinet. Ministries and departments are to establish internal procurement committees to deal with procurement. Disputes – there have been none so far – would be referred to an arbitrator acceptable to the procurement agency and the suppliers.

79. The general limits on approval of procurement contracts for the Contracting-Out Unit are MK 3 million per contract on goods, works, and services, and MK 5 million on plant and motor vehicles. The Office of the President and Cabinet must approve larger amounts. Procurement of plant and vehicle hire must be from the Government Plant and Vehicle Hiring Organization. Procurement of all medical drugs and supplies, including equipment, above MK 500,000 is by tender issued by the Medical Buying Committee, and must be approved by the Contracting-Out Unit if above MK 2.5 million. Contracts below MK 500,000 can be processed by the Central Medical Stores.

80. Procurement is to be by written invitation to tender, with a minimum period allowed of 28 days.<sup>131</sup> Bidders must indicate whether the goods to be supplied are imported or locally produced. A 15% margin of price preference applies to domestic suppliers of goods and services, and a 7.5% margin for civil works. Bids for goods and services are to be evaluated based on price (30%), delivery period (20%), financial capability (20%), previous performance (15%), and adherence to technical specifications (15%). To be eligible for civil works, suppliers must be registered with the National Construction Industry Council. Civil works contracts are evaluated based on specific experience (20%), adequacy of proposed work plan (20%), qualifications and competency of key staff (20%), local participation (15%), previous performance (15%), and financial capability (10%). Evaluations are submitted by the procuring agency to the Contracting-Out Unit for approval, which is to be given within 14 days. The Unit is also responsible for monitoring procurement by agencies to ensure that the guidelines are implemented.

<sup>129</sup> WTO document G/SPS/GEN/49/Rev.2, 23 October 2000.

<sup>130</sup> WTO document G/SPS/MWI/1, 8 January 2001.

<sup>131</sup> Restrictive tenders (minimum of three suppliers) and single tenders require prior approval from the Contracting-Out Unit, which will be provided only in special circumstances.

81. The size of the Government procurement market in Malawi is unknown. Approvals by the Contracting-Out Unit are believed by the authorities to cover well under half of total public procurement. In 2000/01, procurement approved by the Unit amounted to MK 5.5 billion

82. The Government intends to reform public procurement by introducing codified rules that will be administered by a central body. A Public Procurement Act has been drafted, but is not expected to be implemented until mid 2002. This will establish a Malawi Public Procurement Authority responsible for monitoring and oversight of public procurement, and for the development of an appropriate regulatory and legal framework.<sup>132</sup> To bid or be eligible for award of a public contract, bidders must be suitably qualified and entities must be registered with the Registrar of Companies, and contractors with the National Construction Industry Council of Malawi. Corrupt and fraudulent practices are specifically illegal.<sup>133</sup> All public procurement is to be covered by the legislation. Procurement agencies are expected to implement the Government's small and medium-sized enterprise promotion programme and to increase their participation in procurement activities.

83. The draft legislation specifies open tender as the main procurement method. Restricted tender, using a minimum of three bidders, where possible, may be used only when there are a limited number of bidders that are well-known to the procuring entity, or when the cost of processing a large number of bids is "disproportionate to the value of the procurement."<sup>134</sup> International tenders are to be invited, via appropriate advertisements overseas, when the amount exceeds a set level, still to be determined, or when there is no national supplier or only one supplier, and when the goods or services are not available at competitive prices. Two-stage tendering is required, whereby initial tenders contain proposals without prices.<sup>135</sup> Quotations must be requested from at least three bidders for procurement of consultants' services.

84. Margins of price preference in favour of domestic bidders are proposed in the draft legislation: 20% for goods and 10% for works and construction. Any bidder may request the procuring agency to review its decision, provided it is submitted within ten working days. The agency must complete the review within ten working days. These decisions may in turn be appealed to the Authority within ten working days, and are to be processed within ten working days. The Authority's decision may be appealed to the High Court. The Authority is required to audit procurement regularly. Compliance with the procurement regulations is obligatory for procuring entities and other participants in public procurement (Section 49 of the draft legislation).

85. Malawi is neither a member of, nor observer to, the Plurilateral Agreement on Government Procurement.

**(ix) Local-content requirements**

86. A number of end-use industrial tariff rebates on imported inputs included in the customs schedule are subject to manufacturers producing domestically certain components or other production

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<sup>132</sup> The Authority is to be governed by a Board comprising seven members appointed by the Minister, including representatives from key ministries, such as Treasury, and the private sector.

<sup>133</sup> Corrupt practices, in accordance with the Corrupt Practices Act, cover the offering, giving, receiving or soliciting of a pecuniary value to influence a public official in the procurement process or contract execution. Fraudulent activities mean a misrepresentation of facts to influence procurement decisions, including collusive practices to establish artificially high prices. It is also illegal to "artificially" divide procurement contracts to avoid monetary thresholds set in the legislation.

<sup>134</sup> Section 18 of the Third draft of Public Procurement Act, 2001, 5 February 2001.

<sup>135</sup> Single-stage tendering is permitted only in specified circumstances, such as where the contract value does not exceed the set threshold (yet to be determined).

approved by the Minister of Finance and Economic Planning. These apply to televisions, radios and sound recorders, refrigerators and other cooling equipment, and motor vehicles. These impose local-content provisions on domestic manufacturers. For example, to obtain the tariff rebate on eligible materials imported for use in making televisions, radios, and sound recorders, "at least the basic chassis or such alternative parts and components as approved by the Minister in Malawi" must be made in Malawi. Utilization of local raw materials is also among the factors considered in granting export-processing zone status (section (3)(v) below).

**(x) Other measures**

87. According to the authorities, Malawi has not taken any trade sanctions, except those endorsed by the United Nations Security Council or other regional organizations of which it is a member.

88. No official countertrade or offset arrangements, or agreements designed to influence the quantity or value of goods and services exported to Malawi are currently in force.

89. Strategic reserve stocks are required for products such as maize (Chapter IV(2)(ii)(b)).

**(3) MEASURES DIRECTLY AFFECTING EXPORTS**

**(i) Registration and documentation**

90. There are no specific requirements for exporters. Export documentation includes an exchange control (CDI) form for all exports exceeding US\$1,000 as well as any certificates of origin required for preferential treatment purposes. Export receipts must be collected within two months from the date of export.

91. Export surrender requirements were abolished in February 1994, except for traditional products such as tobacco, tea, and sugar. The share of export receipts surrendered to the Reserve Bank on these products was reduced from 60% to 40% in May 2001. Foreign currency deposit accounts are allowed for exporters and full repatriation of profits is permitted.

**(ii) Export taxes**

92. Dutiable products are tobacco, tea, and sugar (Fifth Schedule of the Customs tariff). However, since April 1998 the rate of export tax has been zero. Temporary export duties were previously applied for revenue reasons to tobacco and sugar from April 1995, initially at a rate of 10%, but reduced to 8% from April 1996 and to 4% from April 1997, when coffee was also included. Such duties would be levied on the "normal selling price", i.e. the "price fetched at the time the goods are free on board, including packaging and any other duty payable." The rate and coverage of export duties are prescribed by the Minister responsible for finance.

**(iii) Export prohibitions, controls, and licensing**

93. There are no general export licensing requirements. Export licences apply only to war implements other than arms and ammunition; certain atomic energy materials of strategic importance; petroleum products; wild animals, trophies, and products of such animals; maize and maize meal; and unmanufactured tobacco and tea. These are maintained on various grounds, including for environmental reasons as well as to ensure essential or sufficient supply of certain products, such as maize. Export licences are generally issued by the Ministry of Commerce and Industry, and are regulated by the Control of Goods (Import and Export) Act. Export licences for tobacco and tea are administered by the Tobacco Exporters Association of Malawi and the Tea Association of Malawi.

94. Malawi maintains export prohibitions only under international agreements and conventions. No export quotas apply.

**(iv) Export assistance**

95. Malawi assists exporters by providing various tax incentives (Export Incentives Act, 1989). Such incentives apply only to exporters registered with the Malawi Export Promotion Council (MEPC). Registration is approved if the Council is satisfied that the business will contribute towards the economic development of Malawi and will generally be in the interest of the national economy (Section 18).<sup>136</sup> Registered exporters receive a tax allowance for income tax purposes equal to 12% of the gross receipts from non-traditional exports, that is, goods other than tobacco, tea, coffee, and sugar (Export Incentives (Exclusion) Order). The allowance was introduced in 1989 at a rate of 4%. Based on export performance, the incentives may be seen as export subsidies. Moreover, although the incentives are aimed at export diversification, by excluding traditional exports, they place the latter at a disadvantage. Some 80% of Malawi's exports are from registered exporters.

96. The Export Promotion Council also provides technical assistance to registered exporters aimed at diversifying products and markets; quality improvements; effective export marketing; reducing production costs; and promoting investment in export-oriented enterprises.

97. Several other incentives apply generally to all exporters, whether or not registered with the MEPC, including firms manufacturing under bond and those eligible for drawback (section (2)(ii)(e) above). Exporters receive an allowance equivalent to 25% of the international transport costs incurred on non-traditional exports to offset these costs. Since Malawi is landlocked, most exports are either transported directly by air or hauled by road and rail through neighbouring countries to seaports. No excise taxes apply to purchases of raw materials and packaging materials made in Malawi for those firms manufacturing under bond.

98. The incentive schemes are a clear recognition by the authorities that the taxation system and the tariff structure impose a substantial bias against exports. However, export incentive schemes create new distortions by effectively discriminating against companies producing for the domestic market. Lower overall tariffs and ensuring indirect taxes fall on final consumption only (instead of production) could be a more efficient approach.<sup>137</sup>

99. Malawi does not currently apply any export performance requirements on investors. However, the proposed introduction of a points scheme as the basis for approval of tariff and surtax rebates on materials for investors includes export potential as one of the criteria (Chapter II(6)(ii)): the higher the total points awarded, the greater the rebate levels. The points range from one for export shares of up to 20% to five if exports exceed 85% of production.

**(v) Export-processing zones**

100. Legislation to establish export processing zones (EPZ) was passed in December 1995 (Export Processing Zones Act), based on the Mauritian model. Applications for EPZ status are appraised by the Export Processing Zones Appraisal Committee, and the scheme is administered by the Ministry of Commerce and Industry. Factors considered in granting EPZ status include the labour intensive

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<sup>136</sup> Refusals by the Council are referred to the National Export Policy Committee for review. Such decisions, including cancellation of registration, may be appealed to the Minister of Commerce and Industry.

<sup>137</sup> The Malawian surtax, by providing tax credits on inputs used in production whether exported or not, has such appeal, but further rearrangement of taxes to shift the burden from manufacturing to consumption is needed. National Bank of Malawi (2001).

nature of the activities and their contribution to employment; use of advanced technology; utilization of local raw materials; export-oriented activities other than traditional exports; availability of sufficient storage facilities; and evidence of export markets. Any factory or area of land may be declared an export-processing zone. Thus, single enterprises can be designated as having such status (free points) without physically locating in a nominated export-processing zone. Eligible exports include non-traditional exports and services. EPZ status is given for five years, then subject to two-yearly renewals. As well as receiving duty-free materials and equipment, such enterprises also benefit from corporate income tax exemption; until 1998, they were taxed at 15%. This assists exporters substantially since the standard tax rate for companies headquartered in Malawi is 30%.<sup>138</sup>

101. The major condition for granting EPZ status is that total production is exported. However, a small share of production can be sold on the domestic market with the approval of the Minister of Commerce and Industry, subject to the payment of the appropriate duty on all materials used to produce those goods (Section 17 of the Act). Although not specified in the legislation, the authorities indicated that such permission would mainly cover product rejects that companies could not export, and domestic sales would normally be limited to 20% of the enterprise's annual production.<sup>139</sup> While other criteria apply, export-processing zones effectively operate as a general export incentive scheme. In sum, Malawi provides more generous incentives to export-oriented companies than to firms producing for the domestic market.

102. As at July 2000, 21 firms had been approved for EPZ status, of which 19 were operational. Most produce textiles and garments. Foreign and domestic investors are entitled to EPZ status.

**(vi) Export promotion and finance**

103. The Government funds export promotion activities undertaken by the Malawi Export Promotion Council, which was established in 1971 by the Export Promotion Council Act, 1971. Its objective is to facilitate the development of sustained and competitive exports of agricultural and manufactured products, in particular, focusing on high-value non-traditional exports, aimed at promoting diversification. The Council identifies potential overseas markets and advises exporters on product development, costing, and pricing. It organizes trade fairs, and works with the Government in rationalizing export procedures and formulating export policies. The Council's total funds in 1998-99 amounted to MK 17.8 million, of which the Government provided MK 12.5 million. It is responsible to the Minister for Commerce and Industry.

104. The Council's Medium Term Strategic Plan 1997-2001 is aimed at achieving annual export growth of 2.5% for non-traditional exports, and increasing regional exports by 20% by 2001. Regional markets are the main outlet for non-traditional exports, which include textiles, garments, macadamia nuts, cotton, flowers, pulses, and dhals. The Plan proposed commercialization of the Council's activities and the phasing-out of government funding by 2005, the introduction of 1.5% levy on luxury imports to finance the Council. However, the feasibility of this plan is uncertain, and the Council is still fully government funded.

105. An export financing scheme established by the Reserve Bank was abolished. It was unsuccessful as the conditions imposed, such as having to provide 30% of the finance commercially, could not be met by the small and medium-scale exporters targeted by the scheme. An export guarantee fund providing 100% loan finance is now being considered.

<sup>138</sup> Companies that have their head offices located overseas are taxed at a rate of 40%.

<sup>139</sup> According to authorities, there is minimal leakage of unapproved production and duty-free materials onto the domestic market.

**(4) MEASURES AFFECTING PRODUCTION AND TRADE**

**(i) Incentives**

106. The Investment Promotion Act of 1991 established the Malawi Investment Promotion Agency in 1992. Its objective is to promote and facilitate investment, both domestic and foreign. The Agency is directly responsible to the Ministry of Commerce and Industry. It is legislatively required to give priority to investment in manufacturing, agriculture, mining, fisheries, tourism, and forestry, as well as to any other subsector determined periodically by the Ministry. The Agency is fully funded by the Government. Malawi's investment policy is contained in the Statement of Investment Policy and the Investors' Guide, both of which are incorporated in the legislation and revised periodically by the Government.

107. Various incentives, such as income tax holidays, are provided to encourage investment (Chapter II(6)). Income tax concessions also apply, including an accelerated depreciation allowance (in the first year) of 40% of eligible expenditure on new buildings and machinery (20% on used items). Manufacturing companies may deduct all operating expenses incurred up to two years prior to commencing production. Manufacturers may also import duty-free raw materials and heavy goods vehicles with capacity of at least ten tonnes. Life insurance businesses are allowed to a concessional company income tax rate of 21%.

**(ii) Credit arrangements**

108. The Government intends to establish a credit guarantee scheme for small- and medium-scale enterprises. Concessional loans ranging from MK 50,000 to MK 500,000 are granted. The Malawi Rural Finance Company also provides loans to small-scale farmers, generally on commercial terms.

**(iii) State-owned enterprises and privatization**

109. The parastatal Petroleum Control Commission (PCC) no longer has a monopoly on the importation of petroleum products; this ceased in 1999, and petroleum products are now imported by a private sector consortium. The marketing and export of sugar are controlled by the parastatal Sugar Corporation of Malawi. The exportation of tobacco has been liberalized substantially, but all exports are still required to take place through a single auction house.

110. The Government embarked on a privatization programme in 1996 with the enactment of the Public Enterprise (Privatization) Act and the creation of the Privatization Commission. The Commission is solely responsible for implementing the divestment programme approved by Cabinet. It also formulates privatization policy guidelines for cabinet approval. Foreign investors have participated in about 50% of all privatization transactions to date.<sup>140</sup> The Government's intention is to divest all ownership, except in exceptional cases where the regulatory framework is considered inadequate. In these cases, the Government would consider retaining a special shareholding to enable it to intervene in the national interest, but it does not apply "golden share" status to state ownership. The Government has refrained from divesting unregulated monopolies or giving special privileges to privatized enterprises, with a view to avoiding the creation of private monopolies. Divestment is mainly by competitive tender or negotiated sales of shares to the private sector.

111. Privatization proceeds are deposited in a specially created fund, called the Privatization Revenue Account, controlled by the Ministry of Finance and Economic Planning and held at the Reserve Bank. The proceeds are used for funding the direct costs of the Commission and the

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<sup>140</sup> Kaluwa (2001).

privatization programme; restructuring public enterprises to be privatized; and as part of the Government's development budget. Government ownership currently includes directly owned enterprises (e.g. public utilities), and substantial indirect equity holdings in private enterprises through the state-owned Malawi Development Corporation (MDC). This state-owned development finance institution was created to develop agricultural, commercial, industrial, and mineral activities by investing in such projects, often with private sector partners. A number of its shareholdings have been privatized.

112. The objectives of the privatization programme are to improve efficiency, to reduce monopolies so as to increase competition, to increase local participation in privatized enterprises and to raise government revenue. Many parastatals had accumulated large losses, thereby becoming a heavy burden on the government budget. Privatizations are based on a Divestiture Sequence Plan that covers 100 public enterprises (Table AIII.3).<sup>141</sup> At end-June 2000, almost 40 enterprises had been privatized, mostly in manufacturing and hotels, with total proceeds of approximately MK 1.1 billion (Table AIII.4).<sup>142</sup> However, many of these were relatively small enterprises. The major public enterprises, such as the utilities and banks, remain state-owned. The main privatizations to date were of Malawi Railways (Chapter IV(5)(iii)(a)); the Mchenga Coal Mine; and the Commercial Bank of Malawi, The National Insurance Company Ltd, SUCOMA as well as the National Bank of Malawi have also been partially privatized (Chapter IV(5)(i)).

113. Recent emphasis has shifted to the privatization of public utilities, especially telecommunications and power. During 2000, the Privatization and Utility Reform Act was passed. This legislation approved the Government's decision to borrow US\$30 million to finance advisory services to privatize large enterprises, especially of utilities, such as Malawi Telecom (MTL), power and the two main urban water utilities, as well as in financial services and agriculture (Chapter IV(5)). The funds will also be used to enhance the regulatory functions of the Malawi Communications Regulatory Authority and the National Electricity Council.

114. The privatization programme has had mixed success, and has been slow at times, hampered in part by a lack of buyers for many enterprises. Major delays have also been experienced in preparing some of the enterprises for privatization, due to management deficiencies, large accumulated debt, and internal resistance. State-owned enterprises still employ over 500,000 people and account for some 20% of GDP. Commercial parastatals continue to perform poorly, with total overall losses of MK 945 million in 1999/00, up from MK 56.8 million in 1998/99. Major losses of MK 853.8 million were incurred by the Agricultural Development and Marketing Corporation (ADMARC), and of MK 142 million by the Malawi Development Corporation in 1999/00.<sup>143</sup>

115. The Government suspended the privatization programme on 10 July 2001 – to enable a review of the policy, amid general employment and other concerns, especially over the divestment of Malawi Telecommunications – at a time when an international partner was about to be selected to purchase a 30% stake.<sup>144</sup> However, the review found that privatization had, on balance, generated positive effects on the economy, including improved efficiency and export performance of divested

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<sup>141</sup> Since the Plan was established, the Government has decided to retain several relatively small enterprises originally listed for privatization.

<sup>142</sup> In 1999-00, six privatizations, including Malawi Railways and the Mchenga Coal Mine, were completed, raising MK 165.0 million. The Commercial Bank of Malawi was privatized in 2001.

<sup>143</sup> Four commercial parastatals recorded profits in 1999/00: ESCOM, Malawi Housing Corporation, Blantyre Water Board, and the Lilongwe Water Board (National Economic Council, 2001, pp. 66-67).

<sup>144</sup> UN Integrated Regional Information Networks (2001).

firms, and the Government resumed the privatization programme in October 2001.<sup>145</sup> This decision should help restore confidence in the privatization programme.

**(iv) Competition policy**

116. The Government believes that the development of an effective competition policy will help protect consumer interests and promote economic efficiency. It therefore endorsed the need for competition policies in August 1999, and the Competition and Fair Trading Act, passed in December 1998, became operational in April 2000. The legislation is to be administered by an independent Competition Commission. However, due to financial constraints, the Commission has not yet been established. It will outlaw the use of restrictive business practices, such as price fixing and collusion, and maintain competitive markets by ensuring that companies do not abuse their dominant positions, such as engaging in predatory pricing, or create conditions for doing so through anti-competitive cartels or mergers.<sup>146</sup> Consumers' interests are also to be protected through a proposed Consumer Protection Bill, which is intended to provide a coordinated, effective, and efficient legal and institutional framework for addressing consumer protection issues. This legislation is expected to become operational in 2002.

**(v) Assistance to research and development**

117. Several bodies provide public research and development. The Malawi Industrial Research and Technology Development Centre is responsible for developing technologies for industrial application. Agricultural research activities are conducted by the Ministry of Agriculture and Irrigation, including the provision of limited extension services to farmers. Research and extension services for tobacco are provided privately by the Agriculture Research and Extension Trust. Forest research is provided by the Forest Research Institute, under the Ministry of Forestry, Wildlife and Natural Resources.

**(vi) Protection of intellectual property rights**

118. Malawi's legislation on intellectual property provides not only protection for Malawians, but also deals with international applications originating from other members of the Paris Convention. Malawi became a member of the World Intellectual Property Organization on 1 January 1989, and the Berne Convention for the Protection of Literary and Artistic Works in 1991. It joined the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks in October 1995. It has been a member of the Patent Cooperation Treaty since January 1978 and the Strasbourg Agreement Concerning the International Patent Classification since July 1996. It is a signatory to the Patent Law Treaty. In addition, Malawi is a member of the African Regional Industrial Property Organization.

119. Malawi intends to revise its intellectual property legislation to meet commitments under the TRIPS Agreement. However, little progress has occurred to date. This will require substantial foreign technical assistance, including from international institutions like the World Intellectual Property Organization (WIPO), if it is to have WTO-compliant legislation fully implemented by 2006, as required under the TRIPS Agreement. A major hurdle in achieving full compliance with TRIPS will be to provide effective enforcement, both judicially through the courts and at customs.

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<sup>145</sup> Kaluwa, (2001).

<sup>146</sup> Cartel agreements that are "likely to affect competition to an appreciable extent" are prohibited, as are mergers that "are likely to substantially lessen competition", unless there are sufficient offsetting economic benefits. These may include improvements in efficiency, exports, employment, economic or technological development or in reduced prices to consumers.

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(a) Copyright

120. Copyright is protected under the Copyright Act of 1989. Malawian legislation also provides for protection of neighbouring rights of performers, producers of sound or video recordings and broadcasters. It is administered by the statutory Copyright Society of Malawi (COSOMA), under the Ministry of Sport and Culture. COSOMA is responsible for registering copyright material, and currently has about 600 registered composers/authors with about 7,000 declared works. Copyright protection covers both economic rights and moral rights. The rightholder has exclusive economic rights to reproduce or use the work. He also has the exclusive moral right to ensure that the work is not misrepresented. The duration of copyright protection extends for 50 years after the author's death, or for audiovisual work, 50 years after it was created or first made available to the public. For computer programs, the duration is ten years from the first date of use, while for photographic work it is 25 years from the date of first publication.

121. Compulsory, non-exclusive, licences may be granted to allow written work to be translated and sold in Malawi by a citizen or resident. Such licences can be granted only after three years for material to be translated into a foreign language, and after one year for translation of material into a Malawian language. Such translated works must be sold only in Malawi, and the right owner must be compensated adequately. Compulsory licenses to reproduce musical or artistic works may also be granted after five years, or seven years for certain materials, under specific conditions

122. Copyright infringements are punishable by a fine of MK 15,000 and imprisonment of up to one year. Rightholders may also be granted compensation by the court by way of damages, injunctions, and confiscation of profits.

123. Special regulations apply to sound recordings under the Copyright (Production and Distribution of Sound Recordings) Regulations, 1998. COSOMA operates a "banderole" system to control pirated goods that are infringing copyright. Persons producing, distributing or importing for distribution sound recordings must have a licence issued by the COSOMA. Such licensed materials must have affixed an adhesive label (the "banderole") to verify their authenticity. Other recordings are illegal and can be seized. They are to be held for 60 days, after which they will be destroyed unless their authenticity is proved. Customs officers are empowered to seize imports of more than three copies of recordings until such imports have been authenticated by the COSOMA. Applications to clear imported recordings must be lodged with the COSOMA, and proof shown of authorization from the rightholder. Infringements are regarded as criminal offences liable to a fine of MK 10,000 and imprisonment for five years. According to authorities, this system has worked effectively.

(b) Patents

124. Patent protection is provided under the Patent Law of 1958. This law provides for a patent protection term of sixteen years from the date of lodgement of the complete application. The patent may be extended for up to a further period of five years, or ten years in exceptional circumstances, under certain conditions, such as showing that adequate remuneration has not been derived from the patent. An invention is patentable if it is "a new and useful article (whether producing a physical effect or not) process, machine manufacture or composition of matter, or improvement thereof, which is not obvious, capable of being used in trade or industry". A national application must provide the complete specifications of the invention. A provisional specification is allowed, provided the complete specification is submitted within eighteen months from the application date. The Government or any interested party may oppose a patent being granted within three months from the date of advertisement, on the grounds that: the applicant is not entitled; the invention does not fall within the legislative definition; it is obvious or not useful; the complete specification is imprecise or

inadequate; or the application contains misrepresenting material. Successful applications are registered by the Registrar-General (Ministry of Justice), which administers patents. The patentee has full power and authority to use the invention.

125. The Patents Tribunal hears appeals against the Registrar-General's decisions. Tribunal decisions can be appealed to the High Court. An interested party may apply for a compulsory licence in the case of abuse or insufficient use of a patent right, after three years from the date the patent was sealed, or four years from the date of lodgement of the patent application, whichever is the longer. The grounds for compulsory licences are "the reasonable requirements of the public". This includes insufficient use, as determined by the tribunal; that demand for the patented article in Malawi is not being met adequately and reasonably; or that the refusal to grant a licence by the patentee is prejudicing Malawi's trade and industry interests and it would be in the public interest to grant such a licence. The patent holder may seek relief against infringements in the High Court. Relief by way of injunctions and damages are available. Offences under the legislation, such as the unauthorized claim of a patent right, are liable to a fine of MK 500 and to imprisonment for three years. Since 1995, 516 patents have been granted, with 107 in 2000 and 131 in 2001 (to end-July).

126. The Government is to modify the term of patent protection to 20 years. It also envisages changing the legislation concerning the rights conferred to the patent owner, to comply with TRIPS. In addition, the provisions governing compulsory licences are to be changed, especially those dealing with non-working patents. Other changes envisaged include deleting the provisions on issuance of non-voluntary licences for inventions relating to food, medicine or curative devices, and revision of legislation covering patent use for government services. Provisions that currently allow revocation of non-working patents impaired by importation are also to be amended. The amendment will ensure that the onus for burden of proof is reversed in infringing cases where the patent is in the application process. The grace period allowed for late payment of fees is also to be changed from "not exceeding" to "a period of " six months.

(c) Trade marks

127. The Trade Marks Act of 1958 provides for registration of trade marks. It does not apply to service marks. The Trade Marks Office, headed by the Registrar, is responsible for processing applications and maintaining the trade mark registrar. The Registrar's decisions may be appealed to the Patents Tribunal. Owners of trade marks are entitled to their exclusive use. Registered holders of trade marks in member states of the International Convention for the Protection of Industrial Property are entitled to registration in Malawi. The period of trade mark protection is seven years, extendable for a further period of 14 years. The Trade Mark Registrar comprises four parts and every application must specify the class of registration sought. "Defensive" trade marks may be registered. Any person may oppose the registration of a trade mark within two months from the date of advertisement in the *Government Gazette*. Since 1995, 3,270 trade marks have been registered, with 620 in 2000 and 215 in 2001 (to end-July).

128. Legislation is to be amended to protect service marks, which are not currently covered, and to allow trade marks to be renewable indefinitely. The provisions on rights conferred by registration will also be amended to provide protection against use of identical or similar signs for goods or services that are likely to cause confusion, and of well-known trade marks. In addition, non-use provisions will be amended to provide that a mark be de-registered only after a minimum uninterrupted non-use period of three years. New provisions are to be added covering collective marks and protection of national emblems, as well as layout designs (topographies of integrated circuits) and of "undisclosed information".

129. Although legislation does not provide for criminal procedures and penalties for wilful counterfeiting of marks, the Trade Descriptions Act of 1987 makes it an offence to forge a trade mark or to falsely apply to goods a mark likely to deceive. The Merchandise Marks Act of 1958 also prohibits the forgery of trade marks or the false application to goods of any trade mark. Importation of goods with forged trade marks or false or deceptive trade descriptions is also prohibited. Offences are punishable by fine and imprisonment for one year (two years for subsequent offences).

(d) Designs

130. Registered designs are protected by the Registered Designs Act of 1958, which is administered by the Designs Office headed by the Registrar of Designs. The Registrar is responsible for maintaining a register of designs and for examining applications for registration. Disputes arising under this legislation can be appealed to the Patents Tribunal. To be registered, the design must be original and not similar to a design already registered. The period of protection is five years, extendable for two five-year periods. Compulsory licences may be granted where the Registrar determines that a design is not applied in Malawi to a "reasonable extent". Excluded from registration are sculptures or similar works; wall plaques and medals; and printed matter. The Government may make use of or authorize the use of a design by persons other than the registered owner in certain circumstances. Since 1995, 43 designs have been registered; 15 in 2000 and 3 in 2001 (to end-July).

131. Infringing cases are heard by the High Court. Relief by way of injunctions and damages may be awarded to the registered design holder. Damages are not possible where the defendant was not aware and had no reasonable grounds at the time for supposing the design was registered. False representation of a design is subject to a fine of MK 500 and imprisonment for six months. Malawi is a member of the International Convention for the Protection of Industrial Property (the Paris Convention). As such, Malawi accepts registration of designs registered in member countries. It has also acceded to the Protocol on Patents and Designs Within the Framework of the Industrial Property Organization for English Speaking Africa.

(e) Geographical indications

132. Malawi intends to introduce legislation protecting geographical indications, either as a separate act or incorporated in the Trade Mark Act. Only partial protection currently exists. Certification marks can be registered under the Trade Marks Act. These are marks that distinguish any goods by "origin, material mode of manufacture or performance, quality, accuracy, or any other characteristic". The Trade Description Act also makes it an offence to apply false trade descriptions, including "place or country where the goods were assembled, manufactured, produced or mixed".

#### **IV. TRADE POLICIES BY SECTOR**

##### **(1) OVERVIEW**

1. Malawi is principally an agrarian economy, heavily dependent on a few crops. Agriculture is by far the main source of employment and foreign exchange. Tobacco is the predominant cash and export commodity, while maize is the country's main staple. About four fifths of agricultural production comes from smallholder family-operated farms, which have benefited most from the Government's production and marketing reforms. Farm outputs and inputs have largely been deregulated and government intervention substantially reduced. Insecure land tenure associated with communal land ownership and the lack of a well functioning agricultural land market disadvantages farming and reduces productivity and investment. Government policy is to promote food security through, *inter alia*, accumulation of grain reserves, especially maize, by the National Food Reserve Agency. Access to credit also constrains farming. The main trade policy instrument affecting agriculture is the tariff; the average MFN rate on such products in 2000-01 was 12.2%.

2. Government measures have, with little success, aimed to encourage manufacturing, including certain food processing activities. Government policy is aimed at substantially expanding the relative contribution of the manufacturing sector to the economy. The tariff has been the main policy tool; MFN rates averaged 13.7% in 2000-01. The escalatory tariff structure, with tariffs of up to 25% on consumer goods and certain foodstuffs, encourages local processing by providing relatively high effective protection. Such products include clothing, footwear, and tobacco. Widespread tariff concessions on imported inputs may also make the tariff structure more escalatory in practice, thereby providing additional production incentives. Because of the relatively small domestic market, the Government is attempting to increase the export orientation of the sector. It has introduced export-processing zones to provide generous tax and other incentives to encourage exports. However, such assistance, even if successful in raising exports, may undermine Malawi's resource-use efficiency and entail large budgetary costs. The performance of the manufacturing sector has been disappointing.

3. Services have an important bearing on the economy's performance. The Government is taking steps to improve efficiency by liberalizing key services and encouraging greater private-sector participation. Reform of financial services has been a government priority. A major bank and an insurance company have been privatized and prudential regulation of the financial subsector is being strengthened. Telecommunications is being deregulated, and Malawi Telecom is to be partially sold to a foreign investor. Other utilities are also to be deregulated, such as electricity and water. Further liberalization of the transport subsector, including allowing cabotage, would improve efficiency and help overcome the added costs of Malawi's landlocked position. Malawi made minimal commitments under the GATS, and did not participate in the extended WTO negotiations on financial services or basic telecommunications.

##### **(2) AGRICULTURAL AND RELATED ACTIVITIES**

###### **(i) Main features**

4. Malawi's agriculture sector employs more than 85% of the labour force, contributes some 38% to GDP and provides most exports, accounting for 81% of the total in 1999 (Table IV.1). Tobacco remains the predominant export crop, accounting for 61% of total exports in 1999, down slightly from 67% in 1994. Other major exports include tea, sugar, coffee, cotton, and pulses. Non-traditional exports have also grown, albeit intermittently, and government policy is aimed at diversifying Malawi's export base. Malawi also produces, mainly for domestic consumption, cereals,

especially maize (the staple food), sorghum and rice, groundnuts, cassava and sweet potatoes. Malawi's livestock comprises mainly subsistence grazing of sheep, cattle, goats, poultry, and pigs.

**Table IV.1**  
**Contribution of agriculture to Malawi's exports, 1993-99**  
(US\$ million and per cent)

Exports	1993	1994	1995	1996	1997	1998	1999
Agriculture	275.5	273.8	342.9	399.6	450.6	444.4	360.3
Other (including re-exports)	41.7	53.0	61.3	83.8	88.8	94.2	86.8
Total	317.2	326.8	404.2	483.4	539.4	538.6	447.1
Share of total exports	87	84	85	83	84	83	81

Source: IMF (2001), "Selected Issues and Statistical Appendix", p. 69. Available at: <http://www.imf.org/external/pubs/ft/scr/2001/cr0132.pdf>.

5. About 80% of agricultural production in 1999 came from smallholder family-operated farms, producing both subsistence and cash crops mainly on customary land holdings of less than 1 hectare.<sup>147</sup> This segment grew substantially during the 1990s, especially burley tobacco growing, and has been the major beneficiary of the Government's marketing and other structural reforms. Smallholder production comprises mainly food crops for local consumption, such as maize, groundnuts, and cassava, and cash crops for export, especially cotton and tobacco. Traditional large leasehold estates, producing mainly tobacco, tea, coffee, and sugarcane, have performed poorly, but still occupy a substantial share of Malawi's fertile farmland. Only about one third of estate land is under cultivation. Agricultural output is heavily dependant on climatic conditions; droughts and floods occur commonly. Production is also negatively affected by pests, disease, and fluctuations in world prices. Livestock production is relatively minor, accounting for about 12% of agricultural production.

6. Insecure land tenure associated with communal land ownership is likely to disadvantage farming and reduce its productivity. Most (75%) of land in Malawi is customary land, which is owned communally and belongs to the people of Malawi. It is vested in the President, and individuals have only user rights, which are administered by uncodified customary laws that vary across regions. Such land is perceived as having no commercial value and cannot be sold; all transactions are informal. The resulting absence of a well functioning land market with secure title may be a major cause of inefficient land fragmentation and of inadequate investment to improve farm land. It may also be a major factor behind the shortage of rural credit, as farmers are unable to provide their land as loan collateral.<sup>148</sup> Malawi also has public land acquired by the Government (about 20% of total land area), and private land, consisting of freehold and leasehold title, which constitutes about 5% of the total and can be sold freely, subject to government notice.<sup>149</sup> Land disputes are handed in the normal court system.

7. The Government is committed to ensuring equitable access to, and security of, land ownership, and is formulating a National Land Policy aimed at land reform. It has been attempting to reform land ownership policies, including land registration. Malawi has two systems of land

<sup>147</sup> About three quarters of Malawians are subsistence farmers.

<sup>148</sup> The lack of a land market also introduces other rigidities into the economy, which are likely to impair economic performance, such as labour immobility, since people are reluctant to leave their customary land.

<sup>149</sup> For instance, sale of freehold land must be first notified to the Government to enable it to exercise its option to purchase the land. The principle of "eminent domain" also enables the Government to compulsorily acquire private land in the public interest.

registration; deeds registration, where deeds provide evidence of title, and title registration, whereby the ownership of land is registered and is guaranteed by the Government. The latter system applies mainly in urban centres but is being used increasingly throughout the country. The Minister Responsible for Land Matters controls public land, but may also grant dispositions over customary land for development purposes. Such dispositions are normally on a leasehold arrangement. The proposed developer initiates this process by applying to the Minister.

**(ii) Policy developments**

8. Agricultural development, including crop diversification, food self-sufficiency and increased exports, is an important component of the Government's Vision 2020 and Poverty Reduction and Growth Strategy (Chapter II(4)). The Government places a high priority on agriculture as a means of alleviating poverty and providing economic growth, and aims to accelerate broad-based agricultural and rural development to raise farm incomes. The Government's Agricultural and Livestock Development Strategy and Action Plan of 1995 was reviewed by the Ministry of Agriculture and Irrigation through the Agriculture Sector Investment Programme in 1999, a ten-year rolling investment plan. The review, which largely expanded on the earlier objectives and policies of the Action Plan, also identified a number of key new priority areas. It also examined the respective roles of both the private and public sectors, and made a number of important recommendations, including to:

- develop an agricultural finance policy to guide investment and mobilize resources in farming, especially to establish an agricultural bank;
- formulate an agricultural marketing policy covering crops, livestock, irrigation, farm power, and machinery, including government incentives for private-sector involvement;
- promote an efficient and equitable land-tenure and husbandry policy, including implementing long-term national soil-fertility improvement and efficient land utilization programmes based on market incentives;
- strengthen inter-sectoral links, including restructuring of the agricultural ministry; and
- tackle land-resource and conservation problems (Table IV.2) as well as implementing policies on irrigation and in other sector-wide areas (Table AIV.1).

9. The review also identified a number of specific problems in the livestock sector. These were low stock numbers and productivity of livestock species and shortage of improved breeds; widespread disease and parasites; stock theft; closed, non-functional or non-existent livestock markets; expensive and poor availability of manufactured feeds; and poor livestock husbandry and feeding practices. High costs of livestock feeds, inflated by tariffs on imports, have disadvantaged the livestock industry and threatened the collapse of the poultry, pig, and dairy industries. The review recommended that these import regulations be changed, and also identified a number of other key government policies (Table IV.3). The recommendations have been fully endorsed by the Government and are being implemented by the Ministry of Agriculture and Irrigation with donor assistance.

**Table IV.2**  
**Priority land resource problems, 2001**

Problem/issue	Policy/objective	Legislation	Strategy
Declining land productivity	Improve and sustain land productivity through promotion of better land husbandry practices by all farmers	Enact Agricultural Land Use and Management Act:	Formulate long-term national soil fertility initiative programme based on better land husbandry concept; integrate conservation in all agricultural programmes and projects; promote community-based conservation activities of planting materials for conservation; control subdivision of landholdings; support policies in land resource management
Lack of comprehensive policy and legislation on land use		Promulgate regulations under the existing Environmental Management Act 1996	Monitor land use in estates and ensure compliance with lease covenants; rehabilitate degraded areas; annual appraisal of land use and management report to Parliament; provide appropriate guidelines on use and management of different kinds of environmentally fragile areas; control loss of prime agriculture land to infrastructure developments like buildings; control use of fragile areas like steep slopes, river banks and wetlands
Inadequate resources information for planning and developing specific conservation technologies	Improve the acquisition and utilization of land resources information for proper planning and management of agricultural programme	No need for legislation	Establish and maintain land resources information centre using geological information system; acquire and provide high quality data that is compatible with national and international standards; contract out aerial surveys and resource surveys for big areas to the private sector; disseminate land resource information to land users

*Source:* Ministry of Agriculture and Irrigation (undated), "Review of Malawi Agricultural Policies and Strategies (Draft)", p. 57.

10. The Government's agricultural policies are based on greater private-sector development. Restrictions in the growing and marketing of crops, such as tobacco, have been substantially relaxed under its market liberalization policy. The monopoly of the Agricultural Development and Marketing Corporation (ADMARC), which previously intervened by purchasing mainly from smallholders, and distributing maize and other crops, including for export, was eliminated in 1987. It is being further commercialized, although the Government's commitment to achieving its full privatization by the end of 2002 is being hampered by difficulties in finding private traders to take over its non-profitable marketing operations in remote regions. Future policy on the privatization of the ADMARC will depend on the results of a current impact study of its effects.<sup>150</sup> Moreover, the National Food Reserve Agency (NFRA), established in 1999, which effectively operated as a state marketing board by purchasing maize within set price bands well in excess of disaster requirements, has ceased such purchases. The price bands on maize were also terminated in 2000 and replaced by indicative prices. Another important reform was the repeal of the Special Crops Act in 1995, which removed restrictions preventing smallholder farmers from producing and marketing high-value crops, such as tobacco, coffee, tea, and sugar cane, which were reserved for the estate sector. Exchange rate reforms, which allowed the currency to depreciate, also reduced the implicit tax imposed on agricultural exports.

11. Supply of all inputs has been de-controlled and subsidies mostly removed, aimed at encouraging private-sector involvement. However, removal of fertilizer subsidies has reduced its use by farmers, and access to quality seeds is also constraining production. The Starter Pack Initiative

<sup>150</sup> As well as performing its traditional marketing functions, now as a non-monopolist, ADMARC has a range of equity interests in various commercial ventures. For example, it has a stake in the country's only textile weaving factory, David Whitehead and Sons, and owns the cereal milling company, Grain and Company Milling Limited.

was launched in 1998 to provide farm extension support and free fertilizer and seeds to the rural poor, primarily to help alleviate poverty. Initially supplied to all farmers, this contributed to the bumper maize harvests in 1998 and 1999, which generated large surpluses bought and stored by the NFRA. The Starter Pack Programme has been transformed into a Targeted Input Programme aimed at assisting only the poorest households, estimated at 1 to 1.5 million. Farm inputs were also distributed to 140,000 farm households.

**Table IV.3**  
**Livestock policies, 2001**

Problem/issue	Policy/objective	Legislation	Strategy
Low livestock populations and productivity, farmers' lack of access to improved breeds	Increase numbers and productivity (quality) of the national herds and flocks by utilizing adapted breeds, including imported ones, depending upon farmer management level, production system or agro-ecological zone, while avoiding indiscriminate breeding with exotic herds	Meat and Meat Products Act; Milk and Milk Products Act; Control of Diseases of Animals Act to deal with imported breeding stock; and legislation to prevent indiscriminate breeding with exotic breeds	Rehabilitate the bull centre and the nitrogen plant at Mikolongwe to guarantee adequate supplies of semen beyond current milkshed boundaries on cost-recovery basis Establish private breeders, ranches and feedlots, AI services and 'send-an-animal' schemes and hatcheries, supported by favourable credit to encourage investment in selection and cross breeding Promote imports of semen and suitable breeds by private stud breeders for sale Enforce rules and regulations controlling indiscriminate breeding and livestock theft
Diseases and parasites	Control major animal diseases and meet international obligations; improve animal health by involving private sector and farmers in delivering animal health	Control of Diseases of Animals Act 1967; The Pharmacy, Medicines and Poisons Act; Veterinary Practice Regulations; and Fertilizers, Farm Feeds and Remedies Act 1973	Establish comprehensive disease surveillance Strengthen livestock products inspection, tuberculosis testing, animal movement and rabies controls Support cost-effective basic or primary animal health care with private sector Provide effective and comprehensive management and nutrition packages
Stock theft	Provide secure environment for livestock investment and development	Legislation needed	Form farmers' groups, community security Enforce rules and regulations over livestock slaughter, movements, and marketing
Closed or no markets	Promote and develop markets and regulate markets on slaughter of breeding stock, diseases, theft, and monopolistic cartel of buyers	Legislation needed	Assist farmers' organizations to own and rehabilitate cattle markets and rural abattoirs, mini-dairies, storage areas, and egg grading Regulate and monitor marketing activities on stock slaughter, theft, diseases, and inspections
High costs of manufactured feed	Promote development of local feed-manufacturing industry by providing tax incentives on essential inputs	Should be separate Livestock Feeds Act in place of the Fertilizer, Farm Feeds and Remedies Act	Provide support, such as favourable credit, to increase production of cereals and oilseeds of estates and commercialized smallholders Review tax rules and regulations on importation of raw feed materials such as vitamin and feed mineral premixes to encourage investment in feed formulation, processing and marketing Establish independent body to monitor and enforce regulations on feed standards Promote research on non-traditional feeds

Source: Review of Malawi Agricultural Policies and Strategies (Draft), Ministry of Agriculture and Irrigation, pp. 38-39.

12. Crop diversification is to be promoted by the private sector based on commercial decisions. Food security is to be handled nationally by the NFRA ensuring adequate reserves of grain and other supplies to meet disasters. These interventions are to be targeted to the poor so as not to stifle private-sector participation. The Government is to promote policies to ensure that farmers have sufficient supplies of essential inputs, such as fertilizer, seeds, pesticides, and adequate technology (Table IV.4). It is reviewing its input policies to ensure that seeds, fertilizers, and pesticides are available at

affordable prices. The Government is implementing the seed multiplication programme through the National Smallholder Seed Producers Association, with donor assistance, aimed at ensuring farmers have access to improved seed varieties.

**Table IV.4**  
**Agricultural policies and strategies, 2001**

Problem	Policy	Legislation	Strategy
Lack of fertilizer	Develop a comprehensive fertilizer policy to improve accessibility and utilization	Review Fertilizer, Farm Feeds and Remedies Act	Provide fertilizer coupons for public works; develop crop and area specific recommendations for fertilizer use; improve management practices; promote affordable low-cost soil fertility enhancing technologies (agri-forestry, manure)
Lack of seed	Review existing policy and incorporate sustainability mechanisms in order to enhance seed availability of all crops	Review Seed Act	Develop and promote sustainable small-scale and large-scale private seed enterprises; facilitate provision of start-up capital and technical skills to prospective seed entrepreneurs; provide efficient certification and regulatory services on a cost recovery basis; establish breeder and foundation seed production programmes
Lack of pesticides	Develop a comprehensive plant protection policy to control diseases and pests	Plant Protection Act; Pesticide legislation (draft to be enacted)	Develop integrated pest management control programme; train farmers in pest management control; institute disease surveillance programme; provide pesticide coupons for public works
Endemic poverty	Formulate a sustainable intervention policy to resource poor and disadvantaged communities		Target interventions; design participatory approaches in problem identification and solutions; conduct ex-ante market analysis
Low technology	Develop a policy that will promote technology development and utilization	Seed Act; Fertilizer, Farm Feeds and Remedies Act	Promote use of participatory methodologies in technology development and transfer

*Source:* Ministry of Agriculture and Irrigation, "Review of Malawi Agricultural Policies and Strategies (Draft)", p. 25.

13. The main trade policy instrument for the agriculture sector is the tariff. The average rate for agriculture, hunting, forestry and fishing (Major Division 1 of ISIC Rev.2 classification) was 12.2% at end 2000/01, and ranged from zero to 25% (Table AIV.2). Malawi does not maintain any export subsidy programmes for the agriculture sector.

### (iii) Policy by key product category

#### (a) Tobacco

14. Tobacco remains the dominant traditional cash crop. About three quarters of output is burley leaf. Tobacco output has remained fairly consistent in recent years at about 140,000 tonnes annually. Traditionally, most tobacco was grown on estates. However, following the marketing and production liberalization policies started in 1995, smallholder (farmers with up to two hectares) output has grown substantially, from 69,000 tonnes in 1996 to around 90,000 tonnes in recent years. However, this has been offset largely by declining output from the estates. In 2000, the value of tobacco exported from Malawi was US\$246.8 million, down from US\$260.5 million in 1999.

15. The tobacco industry is regulated by the Tobacco Control Commission (TCC), which registers and licences all tobacco growers, sellers, commercial graders, and buyers, and issues import and export licences. Imports of raw tobacco are banned except for tobacco intended for processing from SADC members.

16. Bans on smallholder farmers growing burley tobacco were lifted in 1995. Export marketing of tobacco has also been substantially liberalized and ADMARC is no longer the sole marketing agent of smallholder tobacco. Licensed intermediate buyers can now purchase tobacco from growers and sell at auction. Buyers are allocated a marketing quota, and purchase tobacco from growers to grade, bale and deliver to the auction. This has provided greater competition and flexibility to growers, enabled them to sell throughout the growing season, and helped compensate for the scarcity of credit. Growers, through smallholder clubs of up to ten members, may also be licensed to sell directly to the auction up to 300 kg. of tobacco leaf annually. Production by estate growers is restricted by the requirement that only 25% of their land can be used to grow tobacco. Licensed annual production limits of from 1,500 to 2,500 kg. are estimated by the TCC based on annual tobacco yields. According to authorities, these restrictions are aimed at encouraging crop diversification and preventing deforestation.

17. All exported tobacco (except oriental), must be sold through the single auction house. The auction floor, which was previously owned by ADMARC, has been privatized. There are five major brokers. They pay storage costs on any tobacco stock carried over at the auction. The Government's position is to remove the single auction house monopoly, but this has not yet been implemented, due partly to opposition from the brokers. Improving tobacco quality and reducing the monopolistic tendencies of the auction floor would offer farmers better competitive prices.<sup>151</sup>

18. The industry has suffered in recent years from declines in international prices. For example, in 2000 average prices received at auction fell by 25% for burley tobacco. Consequently, tobacco export receipts have fallen substantially, after peaking at US\$352 million in 1997. However, factors other than weak world demand have contributed to reduced prices. The average quality of Malawian tobacco leaf has declined, and theft of leaf has increased. The Government is concerned that this is the result of weak regulation of intermediate buyers, and intends to revise the current licensing arrangements for buyers without adversely affecting the marketing opportunities for smallholders. Buyers must now be trained in tobacco selling and can only operate within one region, but no limits apply on the number of buyers per region. The Intermediate Buying Scheme (IBS) was also recently replaced by the Designated Tobacco Buying Scheme, whereby licensed buyers must be recognized by the tobacco growers. The Government does not want such changes to undermine the benefits to smallholders of liberalization and greater competition among buyers.

19. Customs tariffs on imports of tobacco and tobacco products average 22.5%; imports of tobacco products are dutiable at a tariff of 25%.

(b) Cereals

20. Smallholders grow most maize, although estate maize is also significant. About three quarters of smallholdings are planted to maize. As the main staple, maize has become the chief subsistence crop of smallholders. In 1999, surplus maize was purchased by the NFRA at government-set price bands, aimed at supporting prices to growers. Large debts were incurred to finance these operations, and most maize remained in storage. The Government has agreed to again meet the debt servicing costs of the Agency in 2000-01, amounting to MK 356 million.<sup>152</sup> However, the Government removed these price bands in 2000 and abandoned such intervention purchases by the

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<sup>151</sup>National Economic Council (2001), p. 2. It has been alleged that the tobacco buyers, who are mainly subsidiaries of major international companies, practice collusive bidding (Ministry of Commerce and Industry, 2000, p. 8).

<sup>152</sup>The total debt amounted to MK 992 million.

Agency, which can no longer borrow funds for maize purchases.<sup>153</sup> The NFRA reduced its strategic grain reserve of maize to a maximum of 60,000 tonnes during 2000/01, down from 167,000 tonnes, and has had to import maize from South Africa and elsewhere in 2001 due to the poor 2000/01 growing season. Public borrowings by the NFRA, as well as ADMARC, have placed a heavy burden on the budget and contributed to fiscal non-discipline. The Government has decided to reform its national food-security policies, and will revamp their roles during 2001.

21. The Agricultural Productivity Investment Programme, with donor assistance, provides hybrid maize seeds and fertilizer through credit guarantees, to enable private traders to buy fertilizers and seeds for sale to farmers.

22. Other cereals grown in Malawi include mainly rice, sorghum, and millet. Paddy rice production, however, declined from 92,000 tonnes in 1999 to 72,000 tonnes in 2000, mainly due to inadequate rain. Most rice is exported to South Africa and Zimbabwe. The Government is attempting to encourage farmers to replace maize with sorghum and millet in marginal areas.

23. Marketing of cereals is reserved for Malawian nationals. Imports of cereals are subject to customs tariffs averaging 5% and ranging from zero to 10%.

(c) Sugar and cotton

24. Sugar cane production comprises the Dwangwa Sugar Estate under the Dwangwa Sugar Corporation, the Smallholder Sugar Authority (SSA), and the Sugar Corporation of Malawi (SUCOMA). The Authority was privatized, along with the operations of the Dwangwa Cane Growers Company from October 1999. Its special marketing and licensing powers were revoked in February 2000. Illovo Sugar (MW) Ltd, which is owned by ADMARC and several foreign interests, is a vertically integrated monopoly, which grows, refines and distributes sugar.<sup>154</sup> Malawi exports mostly raw sugar, mainly under quota to preferential markets, such as the EU, United States and South Africa (Chapter II(5)(iii)). Only about one-quarter of Malawi's sugar exports are sold on the open market, at much lower prices.<sup>155</sup> Total production in 2000 was 209,000 tonnes, compared with 200,000 tonnes in 1999 and 224,000 tonnes in 1995. Almost three quarters of production is consumed domestically.

25. Cotton production has declined substantially, from 83,000 tonnes in 1996, to 37,000 tonnes in 2000. The decline in production is due to low prices for smallholder growers and poor access to inputs, especially pesticides.<sup>156</sup> It has been alleged that the two cotton merchants purchasing raw cotton collude in determining the prices paid.<sup>157</sup>

26. The simple average tariff rate on imports of sugar is 23%; the rates range from 10% to 25%. Tariffs on imports of cotton average around 17%, with rates ranging from 5% to 25%.

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<sup>153</sup> Most stocks were disposed of on the domestic market on credit, including to parastatals, such as ADMARC, which reportedly owes the Agency some MK 300 million.

<sup>154</sup> Illovo Sugar also operates a restrictive private licensing system for the wholesale distribution of sugar. See Ministry of Commerce and Industry (2000), p. 11.

<sup>155</sup> The average price of sugar exported under special arrangements in 2000 was approximately US\$567 per tonne compared with US\$307 per tonne for regional sales on the open market. National Economic Council 2001, p. 11.

<sup>156</sup> National Economic Council, (2001), p. 11.

<sup>157</sup> Ministry of Commerce and Industry (2000), p. 8.

(d) Tea, coffee, and other products

27. Tea is grown primarily on estates, although smallholders under the Smallholder Tea Authority grow some 15% of output. The Authority was provided marketing and production controls over smallholder tea under the Special Crops Act. These powers were revoked in 1995. A tax (paid by growers) is levied on all tea produced and sold in Malawi. Tea is increasingly sold through auction at Blantyre/Limbe. The Malawi Tea Authority has been privatized as a farmers' cooperative, partly to offset concerns that the small number of traders and processors in the Malawian tea market may have been setting their purchase prices by colluding.<sup>158</sup> In 2000, Malawi exported 43,000 tonnes of tea, mainly to the United Kingdom, South Africa, and Kenya.

28. Coffee production amounts to about 4,000 tonnes, mainly arabica, grown by smallholders organized by the Smallholder Coffee Authority. Groundnuts have been traditionally an important crop; production was 126,000 tonnes in 2000 compared with 40,000 tonnes in 1996. The ban on exports of groundnuts was repealed in the early 1990s. Deregulating the prices of groundnuts has improved prices and encouraged farmers to increase production. Cashews and macadamia nuts are also grown on estates.

29. Malawi also produces spices, especially chillies, cardamom, turmeric, vanilla, and ginger. A wide range of fruits, such as mangoes, citrus, and avocado, are also suited to Malawi's climate. Guavas and papaya are grown widely throughout the country. Following the closure of the ADMARC Canning Factory in Mulanje Malawi has no fruit canning plant, which has discouraged the production of some fruits, especially pineapples.

30. Imports of coffee, tea, maté, and spices are subject to average customs tariffs of almost 23%; the rates on these products range from 10% to 25%. Customs tariffs average 22% on edible fruit and nuts, and on peel of citrus fruit or melons, with rates ranging from 10% to 25%.

31. Chillies and paprika show substantial potential, aided by relatively high prices in the main export markets of Europe and South Africa. Cut flowers are also produced for export, mainly to the Netherlands, Germany, and South Africa.

(e) Livestock farming

32. Livestock grazing contributes about one fifth of Malawi's total value of agricultural production. It produces about 45,000 tonnes of red meat annually, 12,000 tonnes of chicken meat, and 20,000 tonnes of milk. Malawi produces about 20,000 tonnes of beef, about half of its requirements. Most marketed production is from a small number of large-scale commercial enterprises located near major urban centres producing mainly poultry meat, eggs, and pork. The Government's National Livestock Development Master Plan runs until 2010, but includes a five-year planning horizon until 2005. A key objective of the Plan is to integrate livestock production more closely with rain-fed and irrigated crop production both on smallholder farms and on estates. A livestock monitoring programme has also been introduced. Meat inspection services are being strengthened, and the number of small private abattoirs has increased.

33. The poultry industry has suffered severe contraction due, according to the authorities, to cheaper imports from South Africa and Zimbabwe, aggravated by the Malawi/Zimbabwe Trade Agreement. Malawi also recently imposed restrictions on imported livestock commodities, especially table eggs and chicken meat, under the SADC Trade Protocol provisions on "infant industries" to protect its livestock industry. The development of an efficient feed industry that will reduce feed

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<sup>158</sup> Ministry of Commerce and Industry (2000), p. 8.

costs is important for the development of the livestock sector, including pigs and poultry. Imports of essential raw materials for poultry feed manufacture attract relatively high tariffs.

34. The dairy industry is relatively small; about half of production comes from smallholder farms, which are organized into Milk Buying Groups. Malawi imports about 90% of its dairy products.

35. Malawi exports raw hides and skins to neighbouring countries, such as Tanzania. Malawi's only leather tanning facility, Liwonde Tannery, is to be revamped in an effort to promote leather processing.

36. An average customs tariff of some 9% applies on imports of live animals (rates range from zero to 10%); some 11% on meat and edible meat offal (rates range from 10% to 25%, with the latter also applying to preparations of these products); and 17% (with rates ranging from zero to 25%) on imports of animal products such as dairy products, eggs, and natural honey.

(f) Fisheries

37. Fisheries are managed under the Fisheries Conservation and Management Act of 1997, administered by the Department of Fisheries and the Fisheries Advisory Board. Malawi's fishing resources include mainly its territorial waters of Lake Malawi. A Fisheries Fund exists to supplement government funding of conservation and management of fishery resources. Fisheries management is based on participatory management involving joint institutions of the local community and the Government. Malawi has also established several fish-farming trials, such as at Domasi in the Zomba district.

38. Commercial fishing operators must be licensed. The Department of Fisheries may authorize fishing generally or with limited rights, such as the area to be fished; the time periods or frequency of voyages; or fishing method. Any licence may contain conditions on how the catch can be used; the landing of caught fish; and where transshipment of fish is allowed, including times, frequency, and quantities, as well as any conditions on the export of fish considered in the "economic benefit" of Malawi. Any such decision can be appealed to the Minister within 30 days, and subsequently to the High Court. These measures are designed to ensure sustainable management of fish resources.

39. The Government controls imports and exports of live fish. Imports of fish and aquatic invertebrates are subject to a standard customs tariff of 10%, while the tariff on imports of preparations of these products is 25%.

(g) Forestry

40. About 28% of the country's land area is covered by forests, which supply by far the major source of energy (95%) through fuel wood. State softwood plantations are being managed for pine timber and poles. Current annual production is about 53,000 cubic metres, but illegal felling is a major problem. Malawi introduced new forestry legislation in 1997 (Forestry Act). It is administered by the Department of Forestry in the Ministry of Natural Resources and Environmental Affairs, assisted by the Forest Management Board. The Board advises the Minister on all matters relating to forest management, including the import, export, and re-export of tree species. Licences are required to commercial timber processing, including tobacco curing, brick and tile making, wood carving, lime making, bamboo and chair making, as well as wood-processing industries, such as sawmilling, veneer and plywood manufacture.

41. The Department of Forestry issues import and export licences to commercial traders. Export licences are valid for one year. The exporter must also obtain a permit from the Department for each consignment. These are imposed to prevent excessive deforestation. Transfer certificates are also needed to transfer forestry products from one area in Malawi to another.

42. A Forest Development and Management Fund has been established to fund forest conservation and management. The Department of Forestry received revenues totalling MK 10 million in 1998, up from MK 6 million in 1997. These comprised royalties, stumpage fees, and log sales to wood industries. The Department revises log prices annually according to a cost recovery basis, subject to approval by the Minister of Natural Resources and Environmental Affairs. They were revised in May 1999 and November 2000. The Department is also promoting commercialization of forests through the provision of concessions and co-management agreements with licensed operators. Concessions are granted to private operators to use an area, subject to: payment of a flat-rate royalty of US\$2 per cubic metre; the issue of export permits; and certain reforestation commitments. For example, Raiply, a Kenyan company that started operations (making sawn timber and panel boards) in Malawi by purchasing assets from the privatization of Viply, has negotiated a 30-year renewable logging concession for 20,000 hectares of the Chikangawa Forest Plantation.

43. Phytosanitary measures imposed by Malawi are administered by the Forestry Research Institute of Malawi, under the Department of Forestry. The measures include quarantine regulations, import and export restrictions, treatment of materials, and phytosanitary certificates. These measures, such as requirements on the importation of small seedlings, are implemented solely to prevent entry of pests and disease into Malawi or from spreading overseas. Imports of forestry materials, including honey, require a permit from the Forestry Research Institute. A phytosanitary certificate is also needed from the exporting country. The Institute issues phytosanitary certificates confirming disease-free status of exported timber materials from Malawi.

44. Imports of logging products are subject to a standard customs tariff of 10%; tariffs on imports of articles of wood range up to 25%.

### **(3) MINING AND ENERGY**

#### **(i) Mining**

45. Malawi does not have a well-developed mining sector, but has substantial deposits of mineral sands, bauxite, phosphate, uranium and rare earth elements (Table IV.5). Three mineral sand deposits have been explored: the Tengani, Mpyupyu/Kachulu, and Chipoka deposits. An overseas company is also examining the feasibility of mining the Kayelekera uranium deposit. The country's sole coal supplier, the Mchenga mine, produced 55,000 tonnes in 2000, up from 44,000 tonnes in 1999; it was fully privatized in 1995. About half of production is exported to Tanzania, while Malawi imports coal from Mozambique, mainly in the southern border regions where transportation costs are lower for imported coal.<sup>159</sup> Exports of minerals in 2000, mainly consisting of coal, gemstones, and cement, amounted to MK 22 million. However, official export values for mineral products, especially gemstones, are likely to be understated due largely to smuggling aimed at avoiding royalty payments. The Government's target is to increase the mining sector's contribution to GDP from 1% to 3% within three years.

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<sup>159</sup> Through the Agricultural Research and Extension Trust Fund, the Government promotes the use of coal instead of firewood for curing tobacco.

**Table IV.5**  
**Mineral reserves, 2000**  
(Million tonnes)

Mineral	Location	Reserves
Bauxite	Mulanje Mountain	28.8
Vermiculite	Feremu, Mwanza District	2.2
Rare earths	Kangankude, Balaka, Nthache, Phalombe, Songwe, Chitipa	13.0
Strontianite	Kangankude, Balaka	11.0
Phosphates	Tundulu, Phalombe, Chingale, balaka	10.8
Graphite	Katengeza, Dowa	2.7
Limestone	Bwanje, Ntcheu	14.9
	Chenkumbi, Balaka	10.0
	Chamama/Livwezi, Kasungu	30.0
Kaolinitic clays	Linthipe, Dedza	15.0
	Senzani, Ntcheu	0.5
Glass or silica sand	Mchinji	1.6
	Lakes Chiuta/Chirwa	25.0
Titanium minerals	Tengani, Nsanje	100.0
Uranium	Ilomba & Kayerekera, Chitipa	0.06
Coal	Lengwe, Mwabvi, Ngana, Livingstonia	20.0

Source: National Economic Council, *Economic Report 2000*, p. 45.

46. Mining is governed by the Mines and Minerals Act of 1981, and is administered by the Commissioner of Mines and Minerals (Ministry of Natural Resources and Environmental Affairs). Government policy is to encourage exploration and development aimed at maximizing the economic benefit to Malawi. Mineral right ownership and control are vested in the State (Table IV.6). Exploration is covered by reconnaissance licences issued for one year for an agreed programme covering a maximum area of 100,000 square kilometres. No sub-surface activities are permitted unless specifically authorized. Exclusive prospecting licences provide exclusive rights to conduct a prospecting programme for specified minerals over a certain area. The applicant must submit a detailed exploration programme, including expected expenditures, and must include a proposal for training and employment of Malawians. The licence is valid for up to three years, and can be renewed twice for a maximum of two years each. The area of exploration is limited initially to 2,500 square kilometres, and this is reduced by 50% at each renewal. Holders of these licences are automatically entitled to a mining licence should they be successful.

47. Applications for a mining licence require a detailed feasibility study, a programme of mining operations, and an environmental impact study. The operations must include proposals to employ and train Malawians. Non-holders of an exclusive prospecting licence may apply for a mining licence for a maximum area of 250 square kilometres. Others are limited to the area covered by their exploration licence. Mining licences provide the exclusive right to prospect, mine, produce, and sell specified minerals from the designated area. They are for an initial maximum of 25 years or if shorter, the estimated life of the mine. Renewal for 15 years is permitted. Reserve mineral licences apply to dealers of gemstones. Although the total number of mining and prospecting licences issued or renewed fell in 2000, from 95 to 89, the number of mining licences increased substantially, from 15 to 27 (Table IV.7). Mining projects are eligible for the general investment incentives administered by the MIPA.

**Table IV.6**  
**Summary of main features of minerals policy**

Issue	Position
Ownership and participation	Mineral right ownership and control over minerals vested in the State. Government regulates, promotes and facilitates the mining sector. Private sector invests in the mineral industry.
Marketing	State monitors marketing of minerals and it receives its share of profit based on royalties and taxation.
Infrastructure	Mining companies to provide infrastructure of major long term project. Government to support the improvement of infrastructure with the involvement of private investors where necessary.
Benefits and economic linkages	Encouraging production of minerals that can be processed locally to develop industries to increase export earnings and employment.
Human resources	The major objective is the creation of productive employment opportunities for Malawian citizens.
Environmental conservation	Mining and quarry inspection and supervision target the effective control and preservation of the environment. Fostering the use of best practice in environmental management systems in mining.
Small-scale mining	State encourages development of small-scale mining to ensure the exploitation of small-scale deposits and to enable the sector to make a positive contribution to the economy.
Institution support	Department of Mines administers mining legislation including monitoring mining and prospecting activities. Department of Geological Survey evaluates mineral resources and makes available geological data. Both departments provide services to the private sector.

Source: Mines and Minerals Act of 1981; and Malawian authorities.

**Table IV.7**  
**Mining and prospecting licences issued, 1998-00**

Type of licence	Main minerals	Licences issued		
		1998	1999	2000
Non-exclusive prospecting licence	Semi-precious stones in Mzimba, Ntcheu and Rumphi	79	40	39
Exclusive prospecting licence	Base metals and corundum	2	22	19
Reconnaissance licence	Base metals and corundum	0	3	4
Mining licence	Aggregate, limestone, vermiculite, coal and precious/semi-precious stones	0	15	27
Reserve minerals licence	Precious and semi-precious stones	1	15	0
<b>TOTAL</b>		<b>82</b>	<b>95</b>	<b>89</b>

Source: Malawian authorities.

48. The Government does not set any joint-venture or domestic ownership requirements, and has no direct involvement in mining operations. Royalties on mining projects are set at 5% to 10% of the gross value of the minerals extracted. The Government intends to lower the rates on processed minerals as a means of encouraging investment in processing activities. It is also encouraging the use of domestic minerals to replace imports, such as silica imported from South Africa and Zimbabwe, which is also found in Malawi, by providing information on the availability of reserve deposits. Mineral exports are controlled and monitored by the Department of Mines, which issues mineral certificates of inspection and export permits.

49. Small-scale mining activities are effectively reserved for Malawians or foreigners that have resided in Malawi for a minimum of four years. Such persons may apply for an annually renewable non-exclusive prospecting licence in several districts to explore for specified minerals. The licence

holder must have permission from landowners before commencing operations. Holders of these licences may apply for a mining claim (maximum of two hectares).

50. Imports of articles of stone, plaster, cement, asbestos, mica and similar materials are subject to an average customs tariff of about 11%; the rates range from 5% to 25%. An average customs tariff of around 17% (with rates ranging up to 25%) applies on imports of natural or cultural pearls, precious or semi-precious stones, precious metals, and articles thereof, and to jewellery.

**(ii) Energy**

**(a) Electricity**

51. Most of Malawi's energy (about 95%) comes from wood fuel. This has eroded Malawi's natural forests and the Government is attempting to expand electrification into rural areas and expand electricity generation through its Rural Electrification Programme. Malawi's generation capacity in 2000 was 285 MW, and peak demand was 197 MW. Capacity increased significantly with the commissioning of hydropower generation; the Tedzani plant has been operating with 1996 and further plants have been commissioned more recently, such as Phase I of the Kapichira Hydro Scheme in June 2000. However, further capacity increases will be needed to meet projected demand of 294 MW in 2005, rising to 767MW in 2020. Hydro-generation accounts for about 98% of electricity, and water shortages in the three dams frequently constrain supply. About two thirds of electricity is consumed for business purposes, and only about 4% of the population has access to electricity. Small quantities of electricity are exported to Zambia and Mozambique.

52. Electricity is generated and distributed by the state-owned Electricity Supply Commission (ESCOM), which was commercialized in 1998. The Electricity Act of 1998 provided for commercialization and privatization of ESCOM as well as the establishment of an independent regulator, the National Electricity Council. A task force established in 1999 prepared a draft Power Sector Policy Statement on reforming the power sector. The strategy involves the vertical separation of electricity generation from distribution and transmission, to inject competition and private participation. As a result of these reforms, it is proposed to make ESCOM a holding company comprising three separate firms. Distribution is envisaged as the first activity for introducing private-sector participation. The Policy Statement has been incorporated into an overall Energy Policy for Malawi, which the Government is expected to approve in 2001. Electricity charges have been de-controlled, and were increased nominally by 44% in 2000. However, they are still some 50% below long-run marginal. Electricity prices vary between industries and households. To date, there has been no private-sector participation. A South African company is commissioned to manage ESCOM.

53. Malawi signed a Memorandum of Understanding and an Agreement with Mozambique in 1998 for the interconnection of power supply. This may lead to Malawi's full membership of the Southern Africa Power Pool.

**(b) Petroleum**

54. Oil exploration is governed by the Petroleum (Exploration and Production) Act, which is currently being reviewed. No oil reserves have so far been discovered in Malawi, and all of its requirements for refined petroleum products are imported. Oil-derived products meet about three-quarters of its commercial energy needs. The state-owned Petroleum Control Commission (PCC) had an import monopoly on these products until May 2000 when a private consortium, Petroleum Importers Ltd, began importing the country's entire petroleum requirements as a private-sector

monopoly.<sup>160</sup> The PCC is now only a regulatory authority.<sup>161</sup> In 2001 the Government dissolved the parastatal, ORTEX, which was initially split off from the PCC to develop a private oil retailer (including storage). Maximum retail prices, formerly set by the Government for petrol, paraffin, and diesel under the Automatic Pricing Mechanism introduced in 1998, are now determined by the private sector (a committee chaired by the Chamber of Commerce) according to import parity, and all cost increases are passed onto the consumer.<sup>162</sup> Any change to the In-Bond Landed Cost beyond 5% triggers price revisions.<sup>163</sup> The Ministry of Natural Resources and Environmental Affairs may only challenge the calculations within a two-week grace period.

55. Four private companies traditionally market petroleum products; 60% of the market is held by the Oil Company of Malawi Ltd (OILCOM). A new company, Petroda, entered the market in 1999.

56. The energy levy on the sale of petroleum products was recently re-introduced to finance the Energy Fund. It helps cover the costs of the Government's Rural Electrification Programme, which was delayed by funding shortages due to the earlier removal of the levy (in June 2000).

57. A small amount of liquid fuel is produced by blending home-made ethanol with imported petrol. The aim is to achieve an ethanol to petrol blend ratio of 20:80, but due to constraints on the production of ethanol, the ratio is currently 13:87.

58. Customs tariffs on imports of mineral fuels, mineral oils, and products of their distillation, bituminous substances, and mineral waxes range from zero to 20% and average around 3%.

#### (4) MANUFACTURING

59. Malawi's manufacturing sector remains relatively small and underdeveloped. It contributed about 14% of GDP in 1999 down from 17% in 1994. Malawi's main manufacturing activities are foodstuffs, including beverages, which accounted for 42% of manufacturing value added in 1998, up from 35% in 1994. Production of beverages grew substantially over this period. Other important activities include chemicals (16% of manufacturing value added in 1998); fabricated metal products (9%); non-metallic mineral products (8%); paper and paper products (7%); textiles (6%); and non-electrical machinery (5%). Manufactured products account for about 10% of export earnings. In 2000, production for the domestic market declined by almost 6% while production for export rose by 10%. Textile production expanded substantially during the late 1990s. However, clothing and textiles production contracted sharply in 2000, due primarily to difficulties faced by Malawi exports on the South Africa market (Chapter II(5)(iii)).

60. The manufacturing sector had to restructure during the 1990s in the face of increased import competition following Malawi's trade liberalization and tariff rationalization. The average MFN

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<sup>160</sup> It has been alleged that this arrangement has enabled the private consortium to set petroleum product prices in collusion. A potential independent importer that emerged following liberalization ended up joining the consortium. Allegations also exist that pump prices are fixed by a cartel of major retailers. See Ministry of Commerce and Industry (2000), p. 8.

<sup>161</sup> The PCC made large losses in 1997-98, amounting to 3.5% of GDP, reflecting also, according to the Auditor-General's 1998 report, fraudulent activities and misappropriation of funds. Investigations by the authorities are continuing.

<sup>162</sup> Under the previous pricing and marketing arrangements, domestic prices set by the PCC failed to keep up with rising import parity levels generated by the depreciating Malawi kwacha. Consequently, fuel prices were subsidized by the large government-funded losses incurred by the PCC.

<sup>163</sup> The In-Bond Landed Cost is the f.o.b. price plus freight (rail and road), insurance, handling and in-transit losses (allowable losses of 0.5%).

applied tariff on manufactured products (Major Division 3 of ISIC Rev.2 classification) was 13.7%, and rates ranged from zero to 25% (Table AIV.2). The Government continues to hold major interests in a number of industries through the Malawi Development Corporation and ADMARC, although some of these holdings have been relinquished through privatization.<sup>164</sup> A substantial, albeit declining share of commercial activities – comprising an estimated 15% of GDP (down from 40% previously) – is also held by the Press Corporation Ltd, a quasi-public trust listed on the stock exchange. The Press Corporation is 49% state owned and has diverse interests in manufacturing and distribution (Table IV.8). The Government recognizes strongly the need to create an enabling environment and a legal as well as a regulatory framework for the development of micro, small and medium-scale enterprises, mainly in the manufacturing sector.

**Table IV.8**  
**Commercial holdings by the Press Corporation Ltd, 2001**

Company	Principal activity
Carlsberg Malawi Brewery Ltd	Brewery
Enterprise Containers Ltd	Plastic containers manufacturers
Hardware and General Dealers Ltd	Hardware and manufacturers of furniture
Malawi Distilleries Ltd	Import and manufacture of spirits, wines, and fruit cordials
Malawi Pharmacies Ltd	Pharmacy chain
Maldeco Fisheries Ltd	Fishing
National Insurance Company Ltd	Insurers
Oil Company of Malawi (1978) Ltd	Fuel and oil distribution
People's Trading Centre Ltd	Supermarket chain
Press (Bakeries) Ltd	Property holding company
Press Foods Ltd	Food distributor and manufacturer
Press (Produce) Ltd	Property holding company
Press (Properties) Ltd	Property investment and development
Press and Shire Clothing Ltd	Garment manufacturers
Sales Services Ltd	Property holding company

Source: KPMG (1996), *Investment in Malawi*, pp. 82-83; and Malawian authorities.

61. The Government's key policy objective is to promote manufactured exports by diversifying the country's export base into more value-added manufacturing. It has finalized a draft Fiscal Incentives Bill to provide a more efficient and transparent means of granting fiscal incentives.<sup>165</sup> Eligible manufacturing industries are being identified to receive seed money from the Government.<sup>166</sup> The programme will involve a Committee assessing applications to select financially well managed manufacturers (already established firms) of some selected 20 products, based on certain criteria, such as import substitution; quality; export orientation, subject to registration with the Malawi Export Promotion Council; and financial performance. Targeted activities include agri-processing and textiles. The Government expects to provide funds of MK 200 million for concessional loans under this scheme in 2001/02. The Government will also assist firms in obtaining access to leased land.

<sup>164</sup> For example, the MDC has full equity in Plastic Product Ltd, and in Opticem Ltd, which produces fertilizers; 30% ownership of Leopard Matches; and a 49% equity in Bata Shoes Company.

<sup>165</sup> National Economic Council (2000), p. 58.

<sup>166</sup> Government of Malawi, Budget Statement 2001/2002, June 2001, p. 26.

62. The Government is also developing a Private Sector Strategy and Action Plan for the manufacturing sector, which will focus on activities in which Malawi is competitive. Increasing the sector's productivity and provision of the necessary infrastructure are key components.

63. Industrial licensing has been eliminated, but remains for health, safety, and environmental reasons on a few products, such as firearms, ammunition, chemical and biological weapons, explosives and hazardous waste, and radio active elements. Prices of manufactured goods have been de-controlled and are market determined.

64. Clothing, footwear, and tobacco industries are among the most tariff-protected activities in Malawi (Chart IV.1).

#### (5) SERVICES

65. Services constitute around half of Malawi's GDP. Their share fell from 57% in 1994 to 47% in 1999. The main growth in services has occurred in "financial and professional" services, which accounted for 8% of GDP in 1999. Other significant components included distribution (21% of GDP) and transport and telecommunications (4%).

66. Malawi consistently records a substantial deficit on services trade. In 1999, this deficit was US\$90 million, equivalent to almost 40% of that year's trade deficit. Most of the services deficit is attributable to freight and insurance.

67. Under the GATS, Malawi scheduled sectoral commitments covering a few subsectors. In business services, it bound, without limitations on market access and national treatment, measures affecting all modes of supplying accountancy, medical and dental, and midwifery services, except for temporary movement of people.<sup>167</sup> Identical commitments were made for certain other business services (technical testing and analysis, and incidental to mining and exploration); construction; health and social services of hospitals and other human health services; tourism and travel-related services; and banking. Measures affecting presence of natural persons were unbound. Malawi requested and received a five-year waiver from providing MFN treatment to computer reservation system services in air transport.<sup>168</sup> This was requested because Malawi was unable to submit an Article II exemption before the cut off date of 15 April 1995.

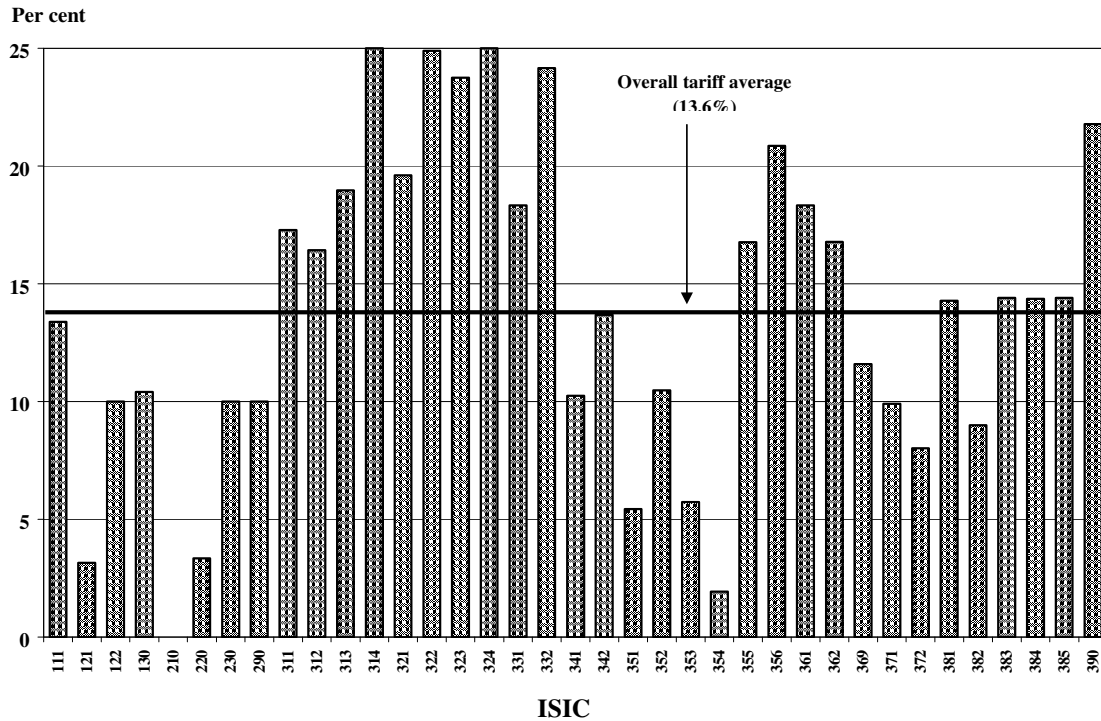
68. Malawi did not participate in the latest WTO negotiations on telecommunications services (Fourth Protocol) and the extended WTO negotiations on financial services (Fifth Protocol).

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<sup>167</sup> Unbound, except for measures concerning the entry and temporary stay of people employed in management and expert jobs for implementing foreign investment. The employment of such persons shall be agreed and approved by the Ministry of Home Affairs. Its horizontal commitments also placed an upper limit on loans and overdrafts obtained with the Reserve Bank's permission by a foreign-controlled company of one-third of its paid up capital.

<sup>168</sup> WTO document S/L/37, 21 May 1997. The request was made jointly with Burkina Faso, Central African Republic, and Uganda.

**Chart IV.1**  
**Average Malawi tariffs by ISIC classification, 2000**



ISIC	Major groups	ISIC	Major groups
111	Agriculture and livestock production	341	Paper products
121	Forestry	342	Printing
122	Logging	351	Industrial chemicals
130	Fishing	352	Other chemicals, incl. pharm.
210	Coal mining	353	Petroleum refineries
220	Crude petroleum and natural gas production	354	Petroleum and coal products
230	Metal ore mining	355	Rubber products
290	Other mining	356	Plastic products
311	Food products	361	Pottery and china
312	Other food products and animal feeds	362	Glass and products
313	Beverages	369	Other non-metallic mineral products
314	Tobacco	371	Iron and steel
321	Textiles	372	Non-ferrous metals
322	Clothing	381	Fabricated metal products
323	Leather products	382	Non-electrical machinery incl. computers
324	Footwear	383	Electrical machinery
331	Wood products	384	Transport equipment
332	Furniture except metal	385	Professional and scientific equipment
		390	Other manufactured products

Source: WTO Secretariat estimates, based on data provided by the Malawi authorities.

(i) **Banking and insurance services**

69. There are five commercial banks in Malawi. The main two are the National Bank of Malawi and the Commercial Bank of Malawi, which together hold about 90% of deposits, but lend to a restricted number of companies. The Press Corporation Ltd (PCL) and the public sector have dominated ownership of both of these banks, but the Government has taken some divestment steps as part of its deregulation of the financial sector. In August 2000, the National Bank was listed on the Stock Exchange and, as a first stage in its privatization, ten percentage points of the 39% shareholding of ADMARC was privatized: seven percentage points was subscribed publicly by Malawians, while the PCL, which already owned 48%, was granted a one-year option over the remaining three percentage points. If exercised, PCL would have majority ownership of the Bank. Efforts to privatize the Commercial Bank, which was owned by PCL (23%), Malawi Development Corporation (17%), Government (22%), National Insurance Company of Malawi (26%), and the general public (12%), were delayed, mainly due to difficulties in finding a strategic partner. Substantial interlocking ownership remained between the two large commercial banks, which would normally raise prudential concerns. The Commercial Bank, however, was privatized in 2001.

70. Supervision of banks and financial institutions is the responsibility of the Reserve Bank (Reserve Bank Act of 1989). The Government intends to strengthen the regulatory and supervisory powers of the Bank, and issued an action plan for introducing a new comprehensive financial sector regulatory framework during 2001. Progress has been slow, however, due to capacity constraints at the Bank, but is expected to advance following the privatization of the Commercial Bank. All banks and financial institutions must be licensed by the Reserve Bank. The criteria applied cover minimum capital requirements; shareholder capacities to support the bank to maintain an adequate capital base; and fit and proper managers and shareholders. In considering whether to issue a banking licence, the Bank is also required to consider "the interest of the national economy and the public interest". The minimum paid-up capital requirements are US\$1.5 million for banks and US\$0.75 million for leasing companies. Such limits may be waived by the Reserve Bank if considered to be in the public interest or that of the national economy. The Commercial and National Banks, Leasing and Finance Company of Malawi and the Mercantile Credit Ltd are subject to prudential supervision. The Commonwealth Development Corporation is exempt from these provisions. Licences are issued by the Minister of Finance and Economic Planning on the Reserve Bank's recommendation.

71. According to authorities, the Reserve Bank generally adopts Basle International Standards in setting prudential requirements. Banks must maintain a Tier 1 core capital ratio of 6% and a Tier 2 ratio of 10%. Loans to any single customer are limited to 25% of the bank's core capital, and a bank's foreign currency exposure cannot exceed 35% of its capital.

72. The Reserve Bank is also responsible for regulating and supervising the capital market as provided for in the Capital Market Development Act of 1992. Trading in securities is permitted only by registered entities. Stockbrokers Malawi Ltd (SML) is the only registered stockbroker. Investment companies, mutual funds, and investment trusts must be licensed by the Reserve Bank. The Malawi Stock Exchange was formed in 1996. Its activities are now overseen by the Stock Exchange Committee following the split of regulatory functions and privatization of the broker operations of SML in April 2000. There are currently eight companies listed on the stock exchange. Regulations limit foreign investment in any company listed on the stock exchange to 49%, and by any individual foreign investor to 10%.

73. Insurance activities fall under the Insurance Act. All insurance companies must be licensed by the Reserve Bank. Certain prudential regulations are prescribed, such as minimum share capital; minimum insolvency margins of 20%; and net asset levels. External insurers must provide evidence

that their accounts are audited, and maintain detailed records of local policies, obligations, and premiums within Malawi.

74. The National Insurance Company was fully privatized in 2000. It is 76.8% foreign owned. It is the largest local insurance company and provides both life and general insurance services. Old Mutual Life Assurance, which has a 13% interest in the National Bank of Malawi, is a branch of the South African Mutual Life Assurance Society, and provides life and general insurance as well as financial services

**(ii) Telecommunications**

75. In 2000, Malawi had 58,000 fixed telephone lines, corresponding to a teledensity (number of main fixed telephone lines per 100 inhabitants) of 0.5, ranging from 1 in urban areas to 0.1 in rural areas. Average recorded waiting times for a telephone line to be installed can be up to ten years, especially in the more isolated rural areas. Recent improvements in the subsector include increases in the public fixed network's equipped capacity to 90,000 lines, and digitalization of the Public Switching Telephone Network. The private sector has cited the lack of reliable telecommunications as the single most significant impediment to doing business in Malawi.<sup>169</sup>

76. The Government released a Communications Sector Policy Statement in 1998, and implemented changes in the Communications Act of December 1998. The deregulatory policy is aimed at raising the number of working telephone lines in Malawi to at least 150,000 by 2004/5, with 22% of the lines serving rural subscribers; providing internationally acceptable standards of service; and reducing real prices. This is based on allowing private-sector participation. The Ministry of Information is responsible for telecommunications policy. An important aspect of the reforms was the separation of the Malawi Posts and Telecommunications Authority into two autonomous state-owned commercial entities, Malawi Telecom and Malawi Posts, from May 2000. Malawi Telecom has large long-term foreign debts and has had difficulties in servicing its foreign debt payments of MK 385 million in 2000/01.

77. The Malawi Communications Regulatory Authority (MACRA) was established to regulate and monitor broadcasting, telecommunications, and postal services. This separated the regulatory from the policy functions of the Ministry. The Authority, funded mainly by licence fees, ensures "as far as practicable" that open entry exists in providing public telecommunication services. It licenses all providers. Access to the local public network, which is owned by the incumbent state-owned Malawi Telecom, the only supplier of fixed telephone services, is assured for any licensed entrant. Any such telecommunications provider may agree access terms and conditions with Malawi Telecom, subject to approval from the Authority, which can declare void any part of the agreement within 28 days from being notified. Where the parties cannot agree on access terms, the Authority shall, at the request of the parties, determine the conditions. The Authority may, as a condition of obtaining the licence, include an obligation for the provider to extend such services to rural or other specified areas, as well as payment for the licence as a proportion of the annual turnover of the licensed network.

78. International telecommunications services were liberalized in 2001. The Government recently invited another operator of fixed telephone services. The Government was also well advanced in selecting a foreign strategic partner to partially privatize 30% of Malawi Telecom, until the recent suspension of the privatization programme.

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<sup>169</sup> Privatisation Commission (2000).

79. The Authority intends to set public guidelines for determining interconnection charges, which may include issuing a price range to guide operators' negotiations. To date, the only interconnection arrangement has been with the second mobile phone operator. In this case, no fees were set, but instead the parties agreed to a revenue-sharing arrangement. This is to be reviewed within two years, by which time the Authority intends to apply a system of interconnection fees. The existing arrangement is claimed to have been the main factor causing mobile phone charges to increase following issuance of the second licence. The Authority is also developing a plan for provision of national universal services. These obligations are to be met by Malawi Telecom, and funded through the creation of a Rural Telecom Development Fund. It will be financed by a levy on all telecommunications operators.

80. Telephone charges are being re-balanced to reduce the degree of cross-subsidy between various users. Prices of fixed line services are subject to Authority approval based on a price-capping formula. The operators freely set mobile prices subject to no objections from the Authority.

81. The Government also liberalized non-basic telecommunication services, including Internet, e-mail, data transmission, and paging. As of July 2000, three new Internet service providers competed with the incumbent, Malawinet Inc., and there are currently about eight licensed Internet service providers. Further suppliers are planned. A second mobile phone operator, Celtel, which is 40% owned by Malawi Telecom and 60% by Malaysian interests, commenced operations in July 1999 in competition with the state-owned Telecom Networks Ltd, and has expanded its coverage substantially. There are currently about 25,000 cellular customers. Both operators are required under their licences to attain full coverage within five years as part of their universal service obligations. A third mobile phone licence is planned.

82. Telecommunications equipment must meet Malawi's standards, which conform with international norms. Subscribers can supply their own equipment and do not have to source it from Malawi Telecom. Shops selling such equipment do not need to be licensed. Type approval is required.

### **(iii) Transport**

83. Being landlocked, Malawi is dependent on its neighbours for access to seaports. Transportation costs therefore have an important bearing on Malawi's international competitiveness. Exports must be hauled by rail to the Mozambique port of Nacala or by road through Mozambique to the South African port of Durban, the main international route. High transportation costs penalize exports directly, but also indirectly by raising the costs of essential imported inputs. On the other hand, such transport costs provide considerable natural protection to domestic import-competing industries.<sup>170</sup> Wars in neighbouring countries have also contributed in the past to Malawi's high international transportation costs brought about by insecure and unreliable routes.

84. The Government recently embarked on a number of policy reforms designed to promote a competitive and efficient transportation system. Private-sector participation and investments will be encouraged by further deregulating transport modes. The goal of the National Transport Policy is to provide a coordinated transport network comprising commercially viable and environmentally

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<sup>170</sup> Nominal protection provided by tariffs is also higher when rates are levied on landed-duty-free (ldf) values, as in Malawi, instead of on free-on-board (f.o.b.) values. For example, a 25% tariff levied on the import's landed-duty-free price will provide nominal tariff protection of 25%, since this is the wedge provided by the tariff between the assisted and unassisted price. However, tariffs levied on an f.o.b. basis provide lower nominal protection; the difference depends upon the level of natural protection provided by transportation costs on imports.

friendly service providers. Competition within and between transportation modes is to be promoted. The Government's guidelines require each mode to bear the full cost, and restrictions on the ability of any mode to respond to market forces or compete freely with other modes be removed. A Rural Transportation Programme is also to be formulated.

85. The Ministry of Transport and Public Works was formed by merging the Ministry of Works and Supplies with the Ministry of Transport and Civil Aviation. The most popular freight transport modes are rail and road; little is carried by water and air. Total volume of international freight traffic increased by 30% in 2000. The growth in export cargo, at 47%, exceeded that for imports, at 26%.

(a) Road

86. Road transport is the most heavily used mode in Malawi. The road network covers approximately 15,000 kilometres, of which about 10% are paved. Significant capital investment is needed to improve the road network. The Government's current policy is to upgrade and maintain the existing network rather than to develop new roads. A Road Fund, financed by a fuel levy, was recently introduced to help meet the costs of a comprehensive road maintenance programme. The levy was increased by MK 1 in the 2001 Budget to MK 4.75 per litre for diesel and MK 6.75 per litre for petrol. A commercially oriented National Roads Authority was established in 1998 to maintain and construct national roads through engagement of contractors and consultants. The Authority monitors activities related to its functions. Various roads were constructed and rehabilitated in 2000, such as the Blantyre-Chikwawa road.

87. Road freight and passenger transport are not subsidized and there are no restrictions on Malawians entering the trucking and bus industries. Passenger and freight charges are market determined and there are no entry restrictions. Bilateral arrangements with neighbouring countries allow foreign haulers to operate in Malawi on a reciprocal basis. However, cabotage, together with third-country operators carrying goods in Malawi is prohibited, thereby raising haulage rates. A public bus company owned by ADMARC, Shire Bus Lines, operates nationwide, but has recently pulled out of loss-making rural areas.

88. Passenger car registrations continued to decline, by 8% in 2000, after peaking in 1998. This was due mainly to the depreciation of the Malawi kwacha and the resultant increase in car prices. Another factor, however, is the requirement that importers pay customs duties on cars before the vehicles enter the country to ensure that duties are paid, and the application of minimum prices by customs to calculate tariffs.

89. The Government is considering build-operate-transfer (BOT) schemes in order to involve the private sector in road construction and maintenance. These would grant concessions to private operators to build and operate roads by charging tolls. At the end of the concession period, the road would transfer to public ownership.

(b) Railways

90. Malawi Railways (1994) Ltd was formed in 1994 when railway and lake transport services were split to commercialize both operations for privatization. It was privatized in late 1999, under a concession agreement, initially for 20 years. The operator, an international consortium called the Central East African Railways Company Ltd, comprises CFM, a Mozambique railway and port company; Rail Development Corporation of the U.S.A.; and Edlow Resources Ltd. The Government retained ownership of the rail network and buildings, while the operator acquired the rolling stock. The Central East African Railway Company operates the Nacala rail link. Since Malawi Railways was privatized, freight tonnage has risen by 30%.

91. The operator is required, as part of the concession agreement, to continue providing passenger services under a personal service obligation (PSO). Government subsidies will be granted for a minimum of five years.

92. The "northern rail/road corridor" through Tanzania to the Dar es Salaam port has also grown in importance, especially for transporting containers and fuel. Dedicated Malawi cargo centres also operate in Tanzania at Mbeya.

(c) Water

93. Malawi Lake Services operates passenger and freight services on Lake Malawi. However, the company's performance continues to be affected by high debt (much inherited from Malawi Railways at the time of the split) and declining business. Passenger traffic declined by 14% in 2000, and cargo traffic mostly disappeared because of mismanagement of the company and increased competition from road transport. This has led to financial problems that have limited purchases of spare parts and made most vessels inoperative. Water transport prices are still based on tariffs set in 1994 by Malawi Railways, at the time both rail and water transport services were operated by the Malawi Railways. The four commercial ports are state owned and managed by Lake Malawi Ports, a state-owned company.

94. In March 2000, the Government selected a private operator with which a concession agreement will be concluded for the management of Malawi Lake Services. As at October 2001, the operator has not yet commenced its activities. It is envisaged that both passenger and freight services will be provided.

(d) Air

95. The national carrier is the state-owned Air Malawi. It has been performing poorly, financially, due largely to declining traffic demand. Losses increased in 1999/00 from MK 89 million to MK 118 million. Air Malawi currently operates four aircraft. It was commercialized in 1997, and the privatization process commenced in 1999. A privatization advisor has been appointed. The Government is seeking a joint-venture operation involving a foreign partner and would consider divesting more than 50% equity. Malawi has two international airports, Lilongwe International Airport and Chileka International Airport at Blantyre, and regional airports at Mzuzu and Karonga.

96. Traffic rights are allocated according to bilateral air service agreements, which cover such factors as frequency of service and passenger volumes. Malawi has signed such agreements with 21 countries, although most have never operated. Only five foreign airlines currently operate international services to Malawi: Air Zimbabwe, British Airways, Ethiopian Airlines, Kenya Airways and South African Airways.<sup>171</sup> No agreement provides foreign carriers with fifth freedom rights to pick up passengers in Malawi for onward international destinations. About half of these agreements, including those with countries of airlines currently operating services to Malawi, allow for multiple carriers. However, only single carriers operate. All international flights of foreign airlines operate from Lilongwe, except for flights also provided between Blantyre and Johannesburg by South African Airways. Foreign airlines can operate services between Malawi destinations as part of their international service, but cabotage is prohibited. Air Malawi is strongly interested in forming code

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<sup>171</sup> Other countries with which Malawi has signed bilateral agreements are Botswana, Cameroon, Comoros Island, Cyprus, Ghana, France, Lesotho, Madagascar, Mauritius, Mozambique, the Netherlands, China, Seychelles, Swaziland, Tanzania, and Zambia. The most recent bilateral agreement was signed with South Africa in 1992.

share arrangements with national airlines from Tanzania, Zimbabwe, and Kenya for strategic and financial reasons.

97. Airlines can set their own fares, subject to government approval. The Government's responsibility is to ensure that such increases are fair. There are no regulatory restrictions on entry of air carriers on domestic routes, provided the operator is licensed by the Department of Civil Aviation. A licence was issued to a second domestic carrier (in addition to Air Malawi), but was recently cancelled due to non-use. The Department also manages all airports, except Lilongwe International Airport, which is managed by Airport Development Limited, a state-owned company. The Lilongwe Handling Company, an Air Malawi subsidiary, is responsible for ground handling at Lilongwe.

98. Airport taxes of US\$20 for foreigners and MK 950 for Malawi passport holders are collected by the Government.

**(iv) Tourism**

99. The Ministry of Tourism, Parks and Wildlife formulates tourism policy. A National Tourism Industry policy was released in December 1998, based on a Tourism Master Plan developed with assistance from the World Tourism Organization. The Plan aims to maximize the contribution of tourism to national income, employment, and foreign exchange earnings. The industry is expanding, with international visitors mainly from Africa, but also from the United Kingdom, United States and Canada. The target is to increase tourist numbers to over 500,000 and receipts to more than MK 1 billion by 2005. Following significant increases during the 1990s, to 254,000 visitors in 1999, the number of international visitors dropped by some 10% in 2000, to 228,000. As of October 2001, Malawi had 89 hotels. The main constraints identified on tourism growth are: inadequate infrastructure, including poor telecommunication, electricity, and water services, and financing; lack of clear investment incentives; and limited direct air access from major markets, like Europe and America.<sup>172</sup> Moreover, existing facilities (hotels) are mostly for mass tourism. About half of international visitors to Malawi are for business purposes.

100. The Government is committed to the privatization of commercial public tourism facilities, and several such divestments have occurred in order to increase private-sector development. Public ownership of tourist hotels is high, about 80%, mainly held through parastatals, such as the Malawi Development Corporation, which owns Sunbird Hotels. In some cases, state-owned hotels are managed by foreign contractors, such as the two "Le Meridien" hotels. Foreign investment is encouraged to expand and raise facilities to international standards, and up to 50-year leases are available on land used for tourist resorts. From March 2001, the current Master Plan is being reviewed to formulate a Strategic Development Framework for implementing policy reforms.

101. The Ministry's Department of Tourism Services is responsible for developing, regulating, and promoting tourism. The Tourism and Hotel Act, which established the Hotels and Tourism Board, is being revised to provide better regulation of tourist facilities and services. The Minister licenses hotels, based on the Board's recommendations. However, by far the majority of accommodation available is unlicensed. It is planned to replace the Board with a statutory Malawi Tourism Authority. A hotel star grading system is also to be introduced by March 2002. This will be run by the Board until the Authority is created. The Board may dictate hotel prices, but according to authorities does not do so in practice. Tour operators, guides, and restaurants will be subject to licences; the Act is being amended accordingly. There are no nationality or training requirements for guides; the introduction of registration requirements for guides is planned. Environmental impact studies are required on new resorts.

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<sup>172</sup> Department of Tourism Services (1999).

102. The Government recently introduced special tourism incentives, such as tax concessions. Investors of minimum specified amounts in designated tourism areas are to receive duty-free status on selected goods following the 2001/02 Budget. Hotel services are subject to a 10% service charge (of which 5% is retained by the Government, 4% by the hotels and 1% for training), and to the 10% surtax.

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