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MALAWI AND THE MULTILATERAL TRADING SYSTEM: THE IMPACT OF WTO AGREEMENTS, NEGOTIATIONS AND IMPLEMENTATION

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NOTE

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Acronyms

ACP	African, Caribbean and Pacific
AGOA	African Growth and Opportunity Act (United States)
CET	Common External Tariff
COMESA	Common Market for Eastern and Southern Africa
CBI	Cross-Border Initiative
DFID	Department for International Development (United Kingdom)
DTIS	Diagnostic Trade Integration Study
EAC	East African Community
EBA	Everything but Arms Initiative (EU)
EGS	Economic Growth Strategy
EPA	Economic Partnership Agreement
EPZ	Export Processing Zone
ESA	Eastern and Southern Africa
EU	European Union
FTA	Free Trade Area
GATT	General Agreement on Tariffs and Trade
GATS	General Agreement on Trade in Services
GDP	Gross Domestic Product
IOC	Indian Ocean Community
IMF	International Monetary Fund
JITAP	ITC/UNCTAD/WTO Joint Integrated Technical Assistance Programme
LDC	Least Developed Country
MEGS	Malawi Economic Growth Strategy
MIPA	Malawi Investment Promotion Agency
MTPSD	Ministry of Trade and Private Sector Development
MIGA	Multilateral Investment Guarantee Agency
MFN	Most Favoured Nation
NWGTP	National Working Group on Trade Policy
ODA	Official Development Assistance
PRSP	Poverty Reduction Strategy Programme
PSI	Pre-shipment Inspection
SADC	Southern African Development Community
SACU	Southern African Customs Union
SGS	Société Générale de Surveillance
SPS	Sanitary and Phytosanitary Measures
TRIPS	Trade-Related Intellectual Property Rights
TRIMs	Trade-Related Investment Measures
WTO	World Trade Organization

CONTENTS

Page

I. INTRODUCTION

Malawi is a least-developed, landlocked and highly-indebted country situated in southern-central Africa. It is flanked by Mozambique in the south-east, the United Republic of Tanzania in the north-east and Zambia in the west. Malawi covers an area of about 118,500 km^2 of which Lake Malawi, Africa's third largest lake, occupies an area of 24,240 km^2. About 80 per cent of Malawi's estimated 11 million people live in the rural areas, and over 60 per cent live below the poverty line. The HIV/AIDS pandemic is estimated to have infected 16 per cent of the adult population, and, apart from the scale of human suffering, it poses a considerable challenge to Malawi's development plans.

Since independence in 1964, Malawi has emphasized the need to maintain macroeconomic stability and promote infrastructure and estate agriculture as the main elements of its development strategy. It was believed that poverty could be tackled by means of the "trickle-down effect". However, this strategy failed to improve the socio-economic welfare of the population. Despite some growth in the 1970s, structural weaknesses persisted, the economic base remained narrow and the country continued to be vulnerable to external shocks. The shocks of the 1980s – rising oil prices, the influx of Mozambique refugees and declining tobacco prices – put pay to any growth prospects.

The structure of the Malawian economy is characterized by weak infrastructure and human resource development, a declining share in world trade, unstable export commodity prices and an external debt burden; servicing its debt ties up scarce resources. Malawi recognizes the urgent need to restructure the economy so as to respond to the challenges of globalization and reap the benefits from trade liberalization under the evolving multilateral trading system. This can be achieved by formulating and implementing a comprehensive policy framework that provides an enabling environment for both domestic and foreign investment, accelerating public sector reforms, maintaining macroeconomic stability, strengthening transport and communications networks, promoting domestic savings and fostering entrepreneurship and private sector development, among others.

Malawi has implemented a series of broad macroeconomic and structural reforms since the mid-1980s; in these efforts it was supported by substantial financial and technical assistance from the International Monetary Fund (IMF), the World Bank and other donors. Poverty reduction, growth and export-oriented production are central to the Government's economic reform. The reforms seek to liberalize trade and agriculture and promote development through growth of the private sector. However, despite implementation of structural adjustment programmes, the economy has remained fragile, with a narrow base and a lack of the necessary infrastructure for delivery of basic social services. After more than a decade of stabilization and adjustment, the structure of the economy continues to be dominated by the production, processing and distribution of a limited number of agricultural crops, notably tobacco, tea, sugar, coffee, cotton and – the main staple, maize.

II. OVERVIEW OF THE MALAWIAN ECONOMY

II.1. Macroeconomic performance

Malawi has experienced marked unevenness in its year-to-year sectoral performance. Adverse weather conditions have been responsible for poor agricultural performance, which is largely responsible for swings in economic growth. Manufacturing has remained stagnant, and high interest rates and inflation as well as a fluctuating exchange rate have created a climate of uncertainty concerning returns on private sector investment. Economic liberalization has resulted in an influx of cheap, imported goods, thereby eroding domestic manufacturers' market share of consumer goods.

The national budget depends heavily on donor support. Since about 40 per cent of the budget is financed by foreign aid, revenue projections are affected by variations in assistance levels, which are subject to donor decisions. The country is burdened by a high foreign debt, which amounted to two-and-a-half times its total output over the period 1995-2002.

Malawi's economic problems have been partly due to inappropriate stabilization policies, especially expansionary fiscal measures and heavy government borrowing, which have led to unsustainable budget deficits. Despite efforts to reduce the fiscal deficit, public expenditures have substantially outpaced revenue growth. Fiscal discipline has been impaired by a lack of budgetary discipline.

II.2. Agricultural sector

Agriculture remains the dominant sector in Malawi. It is characterized by a dual structure, consisting of commercial estates on the one hand, and a large number of smallholders engaged in mixed, subsistence and cash-crop agriculture on the other. The share of agriculture in GDP has levelled off in recent years, at 35-39 per cent of GDP. The sector employs about 85 per cent of the labour force and accounts for over 80 per cent of earnings. As Malawi is one of the most densely populated countries in the world with an average of about 180 persons per km^2 of arable land, the pressure on such land is significant. The sector is thus experiencing difficulty in generating sufficient income and employment opportunities for a rapidly growing labour force, while the formal sector can absorb only about 25 per cent of the growth in the number of job-seekers. Forestry and fisheries are classified under agriculture, but these subsectors represent less than 0.02 per cent of GDP.

The Government's current Economic Growth Strategy envisages rapid growth in the priority areas of tobacco, tea, sugar and cotton to provide agro-processing industries with raw material inputs. Through increased private initiatives, the goals of the strategy are to:

(a) Forge stronger economic linkages in commodity value-chains, promote better quality imports following liberalization of the economy, upgrade labour skills and address high taxes and low domestic demand.
(b) Diversify agricultural production over time through production of key crops and related agro-processing.
(c) Increase smallholder productivity to boost incomes.

Commercialization, export orientation and enhancement of supporting infrastructure (e.g. rural access roads, power supply, irrigation and warehouses) form an integral part of the agricultural strategy, with irrigation receiving special attention. The strategy recognizes that to realize benefits from economic and trade liberalization, Malawi will need to step up production of those commodities in which it has a competitive edge and which have strong potential for export growth (e.g. cotton, cassava, pigeon peas, groundnuts, beans, rice, dairy products and soya).

II.3. Manufacturing sector

Compared to its major trading partners in the region, Malawi's industrial performance has been dismal, due largely to an inadequate infrastructure, unreliable utilities, the high cost of imported inputs caused by successive devaluations, an unstable economic environment, lack of marketing or technical capacity, weak market links and difficulties accessing financing.

Malawi's manufacturing sector remains relatively small and underdeveloped. The sector's share of GDP has been declining steadily and has fallen from 17 per cent in 1994 to 11.6 per cent in 2001 and to 10.9 per cent in 2004. This is cause for concern in terms of the long-term prospects for the economy. Manufacturing is dominated by beverages (29 per cent) and foodstuffs/agro-processing (23 per cent) and pharmaceuticals/detergents (11 per cent), which further emphasizes the importance of agriculture for the economy. Other activities are in chemicals, fabricated metal products, non-metal mineral products, paper and paper products and textiles, which together account for only about 10 per cent of export earnings. Manufacturing is highly concentrated in a few monopolies, and is generally highly import-dependent.

The decline in the share of manufacturing in GDP reflects macroeconomic imbalances/instability and policies that are not conducive to investment in the sector, as well as the influx of cheaper and better quality imports following liberalization of the economy. Other inhibiting factors include low labour skills, high taxes and low domestic demand. The input/output orientation of manufacturing implies that domestic integration is weak, and inter-industry linkages within manufacturing and between manufacturing and the other sectors are poor. The linkages between manufacturing and the primary sector are limited by the narrow product range and underdevelopment of agriculture and mining. The entire manufacturing sector is therefore very vulnerable, given that processing and export of agro-based food products depend heavily on the performance of domestic agriculture for inputs, a sector that is affected by uncertain weather conditions. Over 90 per cent of firms rely on domestic demand.

The textiles and garments industry, which has the potential to exploit the benefits offered by the African Growth and Opportunity Act (AGOA), is declining and has low capacity utilization. Even though garment manufacturing firms have been the main beneficiaries of the export processing zones (EPZs), they have failed to attract new investments. Garment manufacturers in the country face high production costs (largely due to high interest rates and freight costs), which adversely affects their export competitiveness. Further, the garments industry was adversely affected by the revocation of arrangements under the Malawi-South Africa trade agreement, which put a stop to Malawi garment exports and led to the closure of some factories.

II.4. Services sector

Malawi exports various services; the most important services are transportation and tourism, but there are also others with high growth potential: legal, accounting, audit and bookkeeping, architectural, engineering, medical and dental, veterinary, nursing, computer and related services, medical research, management consulting, peacekeeping, telecommunications, construction and related engineering services. However, their export is impeded by regulatory controls in different markets. Comprehensive data on them has not yet been published, except for tourism. The services sector constitutes about half of Malawi's GDP. Its share of GDP fell from 57 per cent in 1994 to 51 per cent in 1996 and to 50 per cent in 2004. Most of the growth in this sector has occurred in financial and professional services, distribution and transport and communications. Malawi has consistently experienced a deficit in its services trade, mainly due to high freight costs.

Malawi's financial sector is relatively unsophisticated. The range of financial products is limited by the country's low savings base. There are few financial instruments with maturities in excess of one year owing to the absence of secondary markets and intermediaries to ensure liquidity. Yields of shorter-term financial instruments are largely determined by the Government of Malawi's borrowing requirements, with the commercial banking sector holding a large proportion of the financial sector's assets. More risky corporate long- and short-term paper or investment instruments have yet to be introduced, although there has been limited use of debentures and income notes by the private sector.

The establishment of the Malawi Stock Exchange (MSE) in 1996 was an important development in the Malawi capital market and eight companies are currently listed. These are mostly the result of privatization of State-run companies. National regulations limit foreign investment in any listed company to 40 per cent, and 10 per cent if it is an individual foreign investor.

Transportation

As a landlocked country, Malawi is dependent on the overland transport of its imports and exports. The internal transport network and its connections with those of neighbouring countries are thus critical to its economic performance and to Malawi's ability to compete successfully in regional and international markets. Over the years, the sector has been characterized by high transport costs due to institutional weaknesses, restrictive policies and regulations, and a poorly maintained and inadequate road network. This latter factor is particularly critical in rural areas, where, on aggregate, the largest proportion of economic production takes place.

In view of this, the Government has recently formulated a National Transport Policy along with regulatory measures for improving the operational efficiency and quality of transport services. Private sector participation and investments are to be encouraged. However, while new Malawian registered operators find entry into the domestic market relatively easy, foreign-registered vehicles are only permitted to deliver goods in specified warehouses along the Blantyre-Lilongwe-Mzuzu route. Certain types of trade-related road haulage services (i.e. farm to market/processor transport of tobacco and other commodities, domestic sugar distribution and domestic fertilizer distribution) are reserved for Malawian registered vehicles.

Domestic transport costs are considerably higher than those of Malawi's regional neighbours for a number of reasons, including the lack of competition from international hauliers; transport-related taxes, with imported trucks, tyres and spare parts being subject to import duties; as well as to a 20 per cent surtax. Transport services themselves are also subject to a surtax of 20 per cent. Imported trucks that have not undergone a Société Générale de Surveillance (SGS) inspection are required to pay a pre-shipment inspection (PSI) tax. Diesel fuel costs in Malawi are substantially higher than in South Africa (in part due to transportation costs), but in line with those of other countries in the region. The costs of local finance for capital and working capital requirements are high.

Malawi's rail network is not very extensive; only the southern half of the country is effectively served by two railway lines. Privatization of the railways in 1999 through the sale of the rolling stock to an international consortium – the Mozambique railway and port company, CFM, is a shareholder – has led to an increase in freight tonnage. The consortium operates the Nacala rail link, and it is hoped that this will result in lower transport costs than for other forms of international transport. However, this has not yet materialized due to inefficiencies and poor safety standards at the port. Much of the tobacco for export is transported by road to South Africa due to the unreliability of rail services through Nacala and to unavailability of rail containers at certain times of the year.

Import and export traffic through the various border posts increased by 24 per cent in 2002 over the previous year. Traffic at the Nacala port increased by 93 per cent and since 2001 it has been the second busiest port in Mozambique. The Mwanza border post recorded the greatest activity following a change in Malawi's direction of trade towards the southern members of the SADC/COMESA region.

Civil aviation may be a comparatively small industry in Malawi, but it is strategically important for this landlocked country. It is also economically sensitive due to globalization and the adoption of an open skies policies in COMESA. The number of passengers and freight moved by air has been declining for several years, adversely affecting the finances of the State-owned national carrier, Air Malawi. However, there has been a welcome improvement in freight movements through Chileka International Airport which saw an eightfold increase.

Malawi Lake Services operates passenger and freight services on Lake Malawi. The company continues to be burdened by debt, inherited when the service was split from Malawi Railways. Passenger numbers increased in 2002 by 14 per cent, bringing them back to roughly what they were in 2000. There was a negligible improvement in freight movement despite an increase in capacity in 2002. A private operator has been granted a concession to operate the services and, together with plans to privatize the ports on Lake Malawi, this should result in greater efficiency.

Tourism

The Malawi Tourism Association (MTA), a non-profit-making entity, was established in 1998 to represent the Airline Association, Hotel and Catering Trades Association, Car Hire Association, Travel Agents Association and Tour Operators Association. The MTA is a platform for tour operators in Malawi and hence provides input in the development of the Government's tourism policy.

Efficient implementation of the Tourism Strategic Plan would enhance tourism and tourism-related service exports, as Malawi has many attractions such as lakes, natural parks and game reserves. Lake Malawi, a fresh water lake almost 600 km long and varying in width from 16 to 80 km, is Africa's third largest lake. Malawi's proximity and easy access to tourism attractions such as Victoria Falls (Zambia/Zimbabwe), Mount Kilimanjaro (Kenya), Mauritius and Mozambique should help boost tourism.

II.5. Trade performance

Malawi's external trade performance, as measured by its trade balance, has remained unsatisfactory. The trade balance has been in constant deficit and has progressively widened In 2003, total exports amounted to 44.8 billion kwacha (free on board) against imports of 70.4 billion kwacha. In nominal terms, exports showed an upward trend, largely due to the depreciation of the kwacha, whereas in real terms exports declined, both in volume and value (in US dollars), due to low tobacco sales that were affected by cross-border trade, low prices, post-harvest losses, high farm inputs and high interest rates.

Table 1. Malawi's exports by main commodities, 1994–2004
(percentage share of total export value)

	1994	1995	1996	1997	1998	1999	2000	2001
Tobacco	62.1	65.3	64.1	59.8	57.7	61.4	61.4	60.4
Tea	9.6	6.9	5.5	12.5	11.8	8.8	9.2	9.1
Sugar	8.2	6.8	7.3	5.3	6.6	5.2	9.8	9.0
Coffee	4.7	4.0	2.3	2.2	2.3	2.0	1.3	1.0
Pulses	0.9	1.9	2.6	1.3	1.7	1.4	0.6	0.2
Cotton	0.6	1.0	3.2	5.3	6.6	1.2	1.8	1.2
Rice	0.7	0.4	0.3	0.3	0.4	0.6	0.4	0.3
Textiles/ Apparel				3.0	2.5	4.1	1.8	2.2
Other				10.3	10.4	15.3	13.7	15.1
Total	**100**	**100**	**100**	**100**	**100**	**100**	**100**	**100**

Source: Ministry of Economic Planning and Development, *Economic Reports*, 1998, 2002, 2005.

Malawi's major imports are petroleum products (fuel), capital goods and industrial machinery. As table 2 indicates, Malawi has had a persistent current-account trade deficit, not only with the rest of the world but also vis-à-vis its major trading partners – the Southern African Development Community (SADC) and the Common Market for Eastern and Southern Africa (COMESA) – a deficit which is financed by overseas development assistance.

Table 2. Malawi's trade with SADC, COMESA and the rest of the world, 2001-2003 (million kwacha) [1 kwacha = USD 0.007233; 1 USD = 138.26 kwacha]

	2001	2002	2003
SADC			
Imports	22 363.5	30 334.4	40 753.6
Exports	5 741.0	5,656.7	8 505.0
Re-exports	602.5	1,660.1	1 579.3
COMESA			
Imports	3 327.0	3 902.6	8 426.1
Exports	9 044.1	4 350.2	7 329.2
Re-exports	107.8	33.8	301.4
Rest of the world			
Imports	39 480.0	53 657.0	70 418.0
Exports	30 931.6	29 110.4	44 780.0
Re-exports	884.7	2,306.4	2 021.4

Source: Ministry of Economic Planning and Development and National Statistical Office.

Malawi has made great progress towards its formal integration into the global economy as evidenced by its membership of the World Trade Organization (WTO), which is expected to improve and reinforce regulations on international trade. WTO membership demands the alignment of national legislation to the requirements of WTO Agreements, undertaking notification obligations of the WTO and observance of other trade rules. The challenge for Malawi is to ensure that Malawi's economy draws dividends from its status as a WTO Member.

III. ECONOMIC AND TRADE REFORMS

III.1. Economic reforms

An over reliance on agriculture has made Malawi vulnerable to internal and external economic shocks, including a deterioration in its terms of trade, oil price hikes, macroeconomic instability and adverse weather conditions. The result has been slow economic growth (development) and a downward trend in savings and investment (table 3).

Table 3. Selected economic and financial indicators, 1998-2003

	1998	1999	2000	2001	2002	2003
	(Annual percentage changes, unless otherwise indicated)					
GDP and prices						
Real GDP	2.2	3.6	2.0	4.1	1.8	3.4
Per capita GDP (in US dollars)	193.8	195.2	187.3	183.8	207.5	195.3
Consumer prices (period coverage)	29.7	44.8	29.6	27.2	14.8	10.0
GDP deflator	25.4	41.2	27.8	19.0	17.0	8.1
Money and quasi-money[1]						
Net foreign assets	55.5	33.6	42.4	32.1	25.2	-6.0
Net domestic assets	105.1	14.1	46.8	-8.4	-37.5	-11.1
Credit to the government	-49.6	19.5	-4.4	40.5	62.7	5.1
Credit to the rest of the economy	18.5	20.6	12.4	1.5	3.7	0.3
	(As a percentage share of GDP, unless otherwise indicated)					
Central government						
Revenue (excluding grants)	16.1	15.9	18.7	14.9	16.0	--
Expenditure	24.3	25.2	32.8	28.5	32.4	--
Current	16.4	15.2	22.6	21.3	26.4	--
Development	7.9	10.1	10.3	7.2	6.0	--
Overall deficit, excluding grants	-8.2	-9.3	-14.1	-13.5	-16.3	--
Overall deficit, including grants	2.2	-1.8	-2.0	-7.4	-12.8	--
Net domestic financing	-4.8	-1.5	-1.3	6.8	9.8	--
Net foreign financing	6.4	3.3	3.3	0.9	0.2	--
Savings and investment						
Domestic savings	7.9	-0.6	3.4	4.8	-3.5	-0.4
National savings	11.1	4.7	9.7	10.9	2.8	7.5
Foreign savings	2.2	9.6	3.9	3.0	7.7	2.4
Gross investment	13.4	14.4	13.6	13.9	10.5	9.9
External sector						
Exports, f.o.b	30.5	24.7	23.1	25.0	21.9	23.7
Imports, c.i.f.	37.8	42.5	35.4	36.8	38.5	36.6
Current account deficit excl. official transfers	-8.5	-16.0	-10.9	-10.4	-15.0	-10.9
External debt	129.4	129.4	197.6	191.4	92.3	135.4
Debt-service ratio to exports	18.2	17.7	20.8	20.1	16.7	24.0
Terms of trade index (1994=100)	136.7	123.2	128.3	117.1	111.8	110.2
Kwacha per US dollar	31.1	44.1	59.5	72.2	76.7	91.0
Real effective exchange rate index (1995=100)[2]	93.3	87.5	88.4	84.1	--	--
Gross official reserves						
End-period stock (in US dollars)	259.8	246.0	278.3	203.1	162.0	115.4
Months of imports of goods and non-factor services	5.4	5.0	4.7	3.5	2.6	1.8

Notes:
[1] Change as a percentage share of money and quasi-money at the beginning of the period.
[2] Increase means depreciation and development.
Source: Ministry of Economic Planning and Development, National Statistical Office, Treasury and Reserve Bank of Malawi.

To address these problems, the Malawi Government has undertaken a series of economic reforms since 1985 aimed at creating an enabling environment for accelerated and sustainable development of the real sector. The reforms have sought to promote the competitiveness of Malawian products in domestic and international markets and enhance public sector efficiency. They have included import liberalization, privatization, enactment of investment promotion legislation and the introduction of an Export Processing Zone (EPZ) Programme. Tax reform measures have sought to increase the competitiveness of local industry by lowering the tariff level on investment goods, intermediate inputs and raw materials. Trade, foreign exchange and interest rates have been liberalized and quantitative restrictions on both exports and imports removed, as also taxes on exports. Agricultural input/output pricing and marketing have also been liberalized. Import licences on almost all goods have been abolished and a duty drawback system introduced.

In 1998, Malawi launched a long-term development plan, Vision 2020, to provide a foundation on which to formulate, implement and evaluate short- and medium-term policies. Among its objectives were the achievement of sustainable economic growth and development by doubling the relative size of the manufacturing sector to 25 per cent of GDP, and development of the mining, tourism and agricultural sectors. The Government's medium-term strategy for achieving the Vision 2020 objectives was published in its Poverty Reduction Strategy Paper (PRSP) of 2002, which envisaged implementation over a period of three years. However, implementation has been slow owing to poor adherence to implementation activities, lack of guidelines to assist sectors to translate the Strategy's goals into action, and lack of information about implemented activities. A major weakness is its limited focus on trade and private sector development as key drivers of growth, and therefore, indirectly, of poverty reduction. The Ministry of Trade and Private Sector Development (MTPSD) sought to tackle this omission under the Integrated Framework by attempting to link trade and competitiveness issues with poverty reduction. A Diagnostic Trade Integration Study was launched in September 2003, which examined among other areas, the impact of increased integration into the world economy and the technical assistance needed for benefiting from such integration.

Recognizing the inadequacy of the PRSP to address economic growth, including export diversification, the Government launched the Malawi Economic Growth Strategy (MEGS) in 2004. It aims at generating high and sustainable, broad-based economic growth of at least 6 per cent in order to reduce poverty by half by the year 2015. Apart from a strategy for trade policy (see below under trade reforms), MEGS proposed strategies for macroeconomic policies and an Investment Policy and Public Sector Investment Programme (PSIP); three core sectors (sugar, tea and tobacco) and five development sectors (cotton, textiles, tourism, ministry and agro-processing) were identified as priority areas for support.

However, these economic reforms have not led to significant economic growth. The per capita income, which was $167 in 2004, has barely increased, and fiscal and external imbalances have not been eliminated.

Manufacturing sector

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

Government has recognized the need for sound fiscal management and better infrastructure for industrial development, as well as an enabling environment, including a legal and regulatory body, for the development of medium-sized manufacturing enterprises. Previous incentives to stimulate manufacturing have proved to be inappropriately conceived.

Vision 2020 envisages that industrialization will provide the necessary dynamism for increased growth and production for all other sectors. However, its growth target of at least 25 per cent of GDP by 2020 appears to be somewhat unrealistic, as the performance of the manufacturing sector so far has been dismal, ranging between 11 and 17 per cent of GDP since the 1990s. Malawi's exports of tobacco and a few other primary products already account for a large proportion of its exports, and the domestic market is the only avenue for realizing the vision that would tie in with manufactured exports.

The Government's main policy objective through MEGS is to promote higher value-added manufactured exports. The strategy has identified agro-processing and textiles/garments as the two main subsectors with potential for growth. In addition, the Government has been developing a private sector strategy and action plan for the manufacturing sector that aims to focus on competitiveness, productivity and appropriate infrastructure development. A new industrial policy is also being formulated with a view to transforming the country from a predominantly importing and consuming country to a largely producing and exporting country. It is believed that an improved and competitive industrial sector would provide a reliable basis for negotiating market access facilities and integration into the regional and global trade systems. The Government is also participating in the COMESA Common Industrial Policy and SADC initiatives.

Investment policies

Malawi seeks to promote investment, including FDI, through the Investment Promotion Act of 1991, which established the Malawi Investment Promotion Agency (MIPA). This agency assists investors in identifying suitable joint-venture partners and facilitates all aspects of the investment process. MIPA's priorities for investment are in manufacturing, agriculture, mining, fisheries and forestry. There are no reserved areas or restrictions on investment. Malawi does not impose performance requirements on foreign investors establishing a commercial presence, except those with EPZ status, and no local content requirements are in force. It recognizes the right of foreign and domestic private entities to establish a business in the country, subject to holding a business residence permit. The Investment Promotion Act provides incentives for investors, including rebates, which are administered by the Ministry of Finance. Investment protection is enshrined in the country's Constitution. In addition, Malawi is a member of the Multilateral Investment Guarantee Agency (of the World Bank) and of the International Convention for the Settlement of Investment Disputes. Malawi has double taxation agreements with Denmark, France, Kenya, the Netherlands, Norway, South Africa, Sweden, Switzerland and the United Kingdom.

Through its private sector investment strategy, MEGS is focusing on addressing the general weaknesses in the investment climate, especially the poor macroeconomic environment in the prioritized sectors, including incentives and taxation. Despite the efforts that have been delayed to date, FDI inflows remain relatively small. Exporting processing zones have failed to make any significant impact on the economy and most of them have ceased operating despite some incentives. In any case, such zones are not viewed favourably by the WTO and various trade agreements.

III.2. Trade reforms

In the trade sector, an Integrated Framework for trade-related technical assistance was launched under the Diagnostic Trade Integration Study (DTIS) to assess the competitiveness of Malawi's economy, the impact on poverty of the country's increased integration into the world economy, and the technical assistance needs arising from these findings.

Recognizing the vital role of trade and investment for economic growth, MEGS, along with the PRSP, identified the following trade-related constraints in Malawi:

- As a landlocked country, lead times and transport costs are high. The country also has a small domestic market;
- The country lacks appropriate technology;
- Access to trade and investment finances is limited, and there is inadequate trade representation abroad;
- The economic infrastructure, including roads, rail, airports, ports, utilities and telecommunications, is poor, which undermines both domestic and international trade;
- A clear trade strategy and supporting policies are lacking;
- Customs tariffs on finished manufactured goods are high and the tariff system is too complex; and
- There are high levels of informal, cross-border trade.

To stimulate growth in trade, MEGS proposed the following measures:

(i) Review and improve trade policy;
(ii) Provide a supportive infrastructure for trade;
(iii) Expand the export market and diversify the product base;
(iv) Maintain and strengthen preferential and non-reciprocal trade agreements;
(v) Negotiate new preferential arrangements; and
(vi) Create a competitive domestic market by developing and implementing policies relating to competition, consumer protection and trade, and remedies with supporting legislation/regulations for each of these areas.

Malawi's tariff regime

Tariffs have become Malawi's main trade policy instrument since it embarked on trade liberalization in the late 1980s. The country has rationalized its tariff structure by lowering and amalgamating duty rates and thus reducing their dispersion.

Following the Uruguay Round of multilateral trade negotiations, Malawi's bound customs duties were 17 per cent of all tariff lines. In agriculture, all tariffs were bound, almost all at a ceiling of 125 per cent, except for lower ceiling bindings of 50 per cent on rye, barley and oats, and 55 per cent for cocoa paste, butter and chocolate, and other foods containing cocoa. The tariff rates were bound on less than 1 per cent of tariff lines for non-agricultural products, at ceiling rates of either 65, 50, 45, 35 or 30 per cent; these bindings mainly cover fertilizer, insecticides, printed materials, agricultural hand tools and machinery. Malawi bound other duties and charges on all these products at 20 per cent. Although tariff bindings are desirable, their practical significance in constraining future tariff increases is undermined in Malawi as bound rates substantially exceed applied tariff rates, especially on agricultural products. Malawi has made no commitments to reduce these ceiling bindings.

Malawi's simple average most favoured nation (MFN) applied tariff was 13.2 per cent in 2003, down from 14 per cent in 2000, and from 16 per cent in 1997/1998 and 21 per cent in 1996/1997, with virtually all tariffs on an *ad valorem* basis (WTO, *World Trade Report 2005*). Manufacturing is the sector that is protected the most by tariffs, followed by agriculture. Tariff rates increase with the degree of processing and there are a few non-tariff import restrictions. The escalating tariff structure consists of six bands: rates of 0 or 5 per cent apply to "necessities" and 10 per cent to intermediate goods. The maximum duty is currently 25 per cent, and this applies to 38 per cent of the 5,469 tariff lines. The customs' tariff schedule lists the general tariff, the MFN tariff and preferential duties on imports from COMESA countries that are outside the free trade area (FTA) and from SADC. The MFN duty applies to all WTO member countries, including the European Union (EU). Thus the tariff system remains complex, and for some goods a combination of tariffs, surtaxes and excise duties makes for a high degree of protection. Excise duties and surtaxes apply to both imported and domestically produced goods.

According to the *WTO Trade Policy Review (Malawi) 2002*, Malawi's escalating tariff structure provides a high level of protection that distorts producer incentives in favour of processed goods. It tends to generate inefficient activities that become dependent on government assistance and it therefore undermines economic efficiency. The Review advocates lower and relatively uniform tariffs with a view to improving resource allocation and raising national welfare. Malawi applies widespread exemptions and remissions on import duties and offers preferential tariffs; instead, a uniform lower tariff could be set without significantly reducing government revenues. However, among other things, lower tariffs could adversely affect Malawi's export industries. Malawi's export regime is open, except during periods of drought, when vital staples, especially maize exports, are controlled. There are no export taxes or quotas in application. Surrender requirements for exporters were removed in 1994, except on traditional products: tobacco, tea and sugar.

The Ministry of Finance is responsible for tariff policy, and tariff changes are made at the start of the fiscal year as part of budgetary deliberations. Proposed tariff changes are subject to consultations with the Malawi Revenue Authority and relevant Ministries, including Trade and Private Sector Development, and Agriculture. Domestic producers may seek relief against competing imports by applying for duty rebates on imported inputs.

IV. REGIONAL AND INTERNATIONAL TRADE AGREEMENTS AND THEIR IMPLICATIONS FOR MALAWI

While attempting to foster economic growth and achieve its development goals, Malawi also has to comply with its international obligations. This presents challenges which need to be urgently addressed. A major challenge is Malawi's complex trade regime. In addition to its membership of COMESA and SADC, it has bilateral trade agreements with Botswana, South Africa and Zimbabwe, each with its own trade liberalization agenda, trade rules and development goals. It also has to undertake negotiations to conclude an EPA with the EU. Such agreements are expected to lead to greater integration and wider liberalization. This section analyses these various arrangements and the implication of their trade liberalization initiatives for Malawi. Market access conditions for its imports and exports vary according to the nature of its different agreements with its trading partners. This may distort trade incentives and patterns and may lead to inconsistencies in its obligations. Future priorities for Malawi in relation to these various trade agreements must be linked with the country's economic and development objectives.

Malawi's trade and development policy makers face numerous challenges. The economy has to adapt to a rapid globalization process in trade, investment, technology, competitiveness, productivity and other socio-economic spheres. The regional economic frameworks of COMESA and SADC will form a platform to analyse the coherence and compatibility of Malawi's trade policy orientations.

Conclusion of an EPA with the EU may entail forgoing non-reciprocal trade preferences in terms of market access. Moreover, Malawi needs to develop an appropriate negotiation strategy, taking into consideration its membership of both COMESA and SADC, which have different trade liberalization agendas and trade rules.

IV.1. The Common Market for Eastern and Southern Africa (COMESA)

Malawi was a founding member of the Preferential Trade Area (PTA) for Eastern and Southern African States created in 1981, which was replaced by COMESA in 1994. The agenda of COMESA is to deepen and broaden the integration process as follows: adoption of more comprehensive trade liberalization measures, such as complete elimination of tariffs and NTBs and adoption of a CET; free movement of capital, labour and goods, and the right of establishment within COMESA; adoption of a common set of standards and technical regulations; standardization of taxation rates; and conditions regarding industrial cooperation, particularly on company laws, intellectual property rights and investment laws; harmonization of competition policies; and the establishment of a monetary union. COMESA was notified to the WTO under the "Enabling Clause".

COMESA thus aims to become a customs and monetary union. Its free trade area (FTA), requiring zero tariffs on merchandise trade between members, was launched on 1 November 2000. Djibouti, Egypt, Kenya, Madagascar, Malawi, Mauritius, Sudan, Zambia and Zimbabwe met the deadline. The customs union was to be implemented in December 2004 with a CET comprising four tariff bands: 0, 5, 15 and 30 per cent, on capital goods, raw materials, intermediate goods and final goods, respectively.

The COMESA tariff preferences are subject to rules of origin requirements. There are four criteria for determining origin for preferential treatment, namely that goods are wholly produced in the region, using no outside materials; that the imported content of goods is not more than 60 per cent of the cost, insurance and freight (c.i.f.) value of the total cost of materials used in production; and that goods contain no less than 35 per cent of ex-factory value added (reduced to 25 per cent if the final product is considered of "particular importance" to the economic development of a member State).

The Monetary Harmonization Programme is to be implemented in four phases beginning in 1992 until 2025. The final phase should culminate in a full monetary union, using fixed exchange rates, a single currency, or parallel currencies; full harmonization of economic, fiscal and monetary policies of the member States; full integration of the financial structure; pooling of foreign reserves; and the establishment of a common monetary authority.

Institutionally, COMESA has established the Eastern and Southern African Trade and Development Bank (PTA Bank) that provides financing for trade and various project(s) to investors, domiciled in a member State, which includes Malawi. In addition, there is a COMESA Payments and Clearing House. The PTA Re-Insurance Company (ZEP-RE) assists the development of the insurance and reinsurance industry in the COMESA region. No Malawian company holds shares in that company. The Africa Trade Insurance Agency (ATI) is aimed at providing insurance cover against political risk and is open to all African Union members. There is a COMESA Court of Justice (1998) for adjudication on matters related to treaties under COMESA.

There is also a Protocol on the free movement of persons, which is to be implemented in stages, initially by removing visa requirements – a move that Malawi has already carried out.

There are, however, impediments to establishing a low and uniform CET, and adjustment of tariff structures to the CET has not been uniform. Protectionism was evident in the resistance to lowering the number of tariff bands and the maximum tariff rate but also in accord over the classification of goods into the four categories. With its large membership, COMESA requires political commitment to avoid the creation of an extensive list of exceptions to the CET.

Another impediment to achieving agreement on a low and uniform CET is the dependence of many member States on trade taxes as a source of revenue. This dependence has led to an agreement that revenue would accrue to the country of final consumption. However, it is a difficult task for the customs administration to determine the country of final consumption. The intention of avoiding a revenue-sharing arrangement arises from the need to maintain fiscal sustainability in the face of difficulties in raising revenue from domestic sources. The overlapping COMESA/SADC membership is also bound to further burden the customs administration.

Several of the proposed features of the COMESA Customs Union will necessitate the maintenance of border controls on intraregional trade. Consequently, member countries will not be able to realize efficiency gains from it. This problem will need to be addressed to make the customs union viable. With the setting up of the EAC customs union in 2003, two COMESA members, Kenya and Uganda, have agreed on a CET structure of 0, 10 and 25 per cent, and this could confuse the COMESA customs administration.

IV.2. The Southern African Development Community

The SADC Treaty was signed in 1992 with the objective of creating a development community that would achieve economic and trade integration. Its membership comprises the South African Customs Union (SACU) – Botswana, Lesotho, Namibia, South Africa and Swaziland – along with Angola, the Democratic Republic of the Congo, Malawi, Mauritius, Mozambique, Seychelles, the United Republic of Tanzania, Zambia and Zimbabwe. 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 the 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 on specific areas such as trade, finance and investment.

The SADC Trade Protocol was signed in 1996 but only came into force in January 2001 after ratification by 11 members. It aims at progressively establishing an FTA over a period of eight years. This is based on negotiations and offers by contracting parties. Members have agreed to liberalize 85 per cent of intra-SADC trade by 2008 and liberalize sensitive products by 2012. Products have been grouped into three main categories. Category A products are mostly capital goods and equipment that already benefit from low tariff rates in member States; these are to be liberalized in the first year. Category B products (goods that constitute important sources of customs revenue) are to be gradually liberalized by 2008. Category C products, deemed sensitive by member States (vis-à-vis domestic industries), are to be liberalized from 2005 to 2012. Sensitive products for Malawi are sugar, confectionery, beer, textiles, matches and motor vehicles. Category D covers goods ineligible for preferential treatment under security exceptions (Articles 9 and 10 of the Trade Protocol). SADC expects to attain zero tariffs for 98 per cent of its merchandize trade by 2012. The phase-down offers are country-specific and implementation of the Protocol is based on the principle of reciprocity. Malawi submitted its implementation plan in 2001. Progress has been made on harmonizing customs and trade documentation. SADC rules of origin (sometimes negotiated on a product-by-product basis) are complex and apply various criteria across products. These rules are therefore likely to increase administrative costs and will make it difficult for exporters to take advantage of SADC preferences – a serious obstacle to the liberalization of intraregional trade.

Sugar is covered by a special agreement annexed to the Trade Protocol that includes the provision of access to the SACU market for non-SACU SADC members, including Malawi (through a non-reciprocal and duty-free quota during the period 2001-2005). Malawi's quota entitlement for 2001 was 6,000 tonnes. The intention is to establish full liberalization of trade in sugar within the SADC region by 2013.

A sensitive area for Malawi has been negotiations on textiles and clothing. The rules of origin in textiles and garments require double transformation to qualify for preferences; for example, garments must be made from regionally-produced yarn. In some sectors, negotiations on rules of origin are still under way. Although negotiations in the SADC Committee on Textiles and

Garments are incomplete, a derogation has been granted to the LDC members (Malawi, Mozambique, the United Republic of Tanzania and Zambia) allowing them to export duty-free, but subject to quotas for exports to SACU countries' single-stage products, textiles and clothing for five years until 2005. Malawi's total quota in 2001 was set at 1,908 tonnes and 565 units. The SADC Agreement also includes provisions for protection of infant industries and anti-dumping and safeguard measures.

The Trade Protocol identified several non-tariff measures for elimination (e.g. import quotas, surcharges, customs procedures and export subsidies), but excluded other important NTBs, such as domestic content requirements, levies and other border charges, and import and export licensing. Malawi introduced new non-tariff measures against certain SADC trading partners after signing the Protocol, such as quantitative restrictions on imported tobacco leaf from Mozambique, but subsequently annulled this measure. In addition to the elimination of NTBs, the Protocol also calls for liberalization of trade in services. However, not much progress has been made in either of these areas. There is no institutional mechanism for the reporting of NTBs or for the resolution of disputes and the liberalization of services, except the 2005 protocol on the free movement of persons, which is a futuristic provision. Some work has been completed on the harmonization of customs procedures.

While trade liberalization in SADC appears to be limited its approach to addressing structural impediments and supply constraints through sectoral cooperation initiatives is an important one. Some progress has been made in monetary and financial areas, for example training and capacity building has taken place in central banks, and payments, clearing and settlement systems have been developed and harmonized. Despite the ambitious goals of the SADC sectoral initiatives, progress thus far has been limited, and mechanisms for evaluating and monitoring projects are lacking.

SADC intends to establish a customs union and implement a CET by 2010, a common market pact by 2017 and a SADC central bank by 2016, along with preparations for a single currency. However, there is concern that the structure of the proposed SADC customs union will mirror that of SACU. SACU, formed in 1910, applies a CET that has a revenue-sharing arrangement, which diverts most of the customs revenue to Botswana, Lesotho, Namibia and Swaziland to compensate them for possible polarization effects from the customs union. Although SACU's tariff structure has been simplified in recent years, it remains complex as it consists of *ad valorem*, specific, mixed, compound-formula duties based on reference prices and other duties and charges. The *ad valorem* duties cover around 80 per cent of tariff lines and comprise 39 bands, ranging between 0 and 55 per cent. The various duties and charges cover an important set of agricultural, agro-industrial products and apparel. SACU also has a high degree of trade restrictiveness.

IV.3. Issues relating to COMESA and SADC

(a) Overlapping membership of regional arrangements

There are a number of regional trade arrangements in the Eastern and Southern African region, notably COMESA, EAC, SADC and SACU. Most countries are members of more than one arrangement, as follows:

(i) Seven countries (Angola, the Democratic Republic of the Congo, Malawi, Mauritius, Swaziland, Zambia and Zimbabwe) are members of both COMESA and SADC;

(ii) Kenya, the United Republic of Tanzania and Uganda are members of the East African Community (EAC) Customs Union, while Kenya and Uganda are members of COMESA and the United Republic of Tanzania is a member of SADC;

(iii) Egypt is not an ACP country but is a member of COMESA; and

(iv) SACU is already a customs union; it includes South Africa, which has an FTA with the EU and does not participate in EPA negotiations.

There are costs to such overlapping membership: it stretches scarce negotiating resources, entails high administrative costs related to often-complex rules of origin, multiple membership subscriptions are expensive to pay and maintain, and conflicting objectives among the different arrangements have impeded progress in many areas. Moreover, due to varying progress in attaining customs union status (COMESA, SADC and EAC), conflicts of membership lead to difficulties and often uneconomic decisions.

(b) Product complementarities

The product complementarities of RTA members are an important indicator of the potential for expansion of their intraregional trade. The bilateral product complementarity index is a measure of similarities between the export basket of one country and the import basket of another. The value of the complementarity index can range from zero, which represents no complementarity between exports and imports of two countries to 100, which implies a perfect match; the higher the index between two countries, the greater the product complementarity.

Khandelwal calculated the bilateral product complementarity indices for COMESA and SADC member countries using UN-COMTRADE data.[1] He found that the complementarity index between Egypt's exports and Burundi's imports was 42.1, which was higher than that between Malawi's exports and Burundi's imports, at 7.1. The results indicate that within COMESA, product complementarities between Egypt's exports and imports to and from the other member countries averaged 43.0. For all other countries, the average product complementarity for exports was far lower (Malawi averaging 8.6). An average product complementary index of less than 25 is considered a drawback in regional trade.

These statistics imply that there is scope for Kenya and Egypt to export to the region, but not much for the other countries, since there are few complementarities between their exports. Kenya and Egypt, which are more developed member countries, appear to import few of the products exported by the other countries of the region. Similarly in SADC, there is complementarity between South Africa's exports and the imports of the rest of the SADC region, but not vice versa. This asymmetric complementarity essentially implies that the more developed economies

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[1] The bilateral product complementarity index between two countries j and k (Cjk) N defined as:

Cjk – 100 -∑I (IMjk - Xjr I ÷ 2)

Where Xij represents the state of goods, I is the total exports of country j, and Mjk represents the total imports of country k.

of Kenya, Egypt and South Africa are in a much better position to market their exports in COMESA/SADC, but the other developing countries are unable to find significant markets there. This situation may polarize investments, which would be attracted to the larger and more industrially diversified economies in the region.

As the exports of most of the countries in the region, including Malawi, are concentrated in a few commodities, there is less possibility for increasing intraregional trade. In respect of the SADC region, South Africa appears to be the only source of manufactured goods. The potential to expand trade within SADC is therefore small.

(c) Trade diversion versus trade creation

Growth rates in intraregional and total trade in the COMESA and SADC are given in the following tables:

Table 4a. Share of intraregional trade in total imports (in per cent)

	1991-1995	1996-2000	2000-2003
COMESA	3.6	3.6	4.1
SADC	7.6	9.7	10.4

Source: Calculations based on *IMF Directory of Statistics.*

Table No: 4b. Average annual change (in per cent)

	1991-1995	1996-2000	2000-2003
COMESA	19.8	5.9	18.8

Source: Calculation based on *IMF Directory of Statistics.*

Table No: 4c. Total trade

	1992-1995	1996-2000	2001-2003
(average annual percentage change)			
Exports			
COMESA	3.6	9.9	9.4
SADC	0.8	-0.6	14.4
Imports			
COMESA	8.5	8.0	7.6
SADC	9.7	0.1	11.2

Source: Calculations based on *IMF Direction of Statistics.*

Intraregional trade in COMESA expanded at an average rate of 18.8 per cent during the period 2000–2003 (table 4b), following the entry into force of the FTA in 2000. Moreover, it would appear that growth of intraregional trade slowed down in the second half of the 1990s, but recovered after the creation of the FTA. However, any increase in trade within the region does not appear to have been accompanied by a decline in trade with the rest of the world in recent years. Total imports have grown at around 8 per cent since the mid-1990s, and, given the very small share of intraregional imports, it would appear that most of the growth of imports has been from the rest of the world. The share of intraregional imports in total imports has increased, but not dramatically. There is, therefore, little evidence of trade diversion. Recently, exports from the COMESA region have been growing at almost 10 per cent annually.

Examining the growth rates of intraregional and total trade for the SADC region, during the period 1991–1995 there was a notable average annual increase of intraregional trade, of around 35 per cent (tables 4a and 4c). This is higher than the growth of total intraregional imports, of around 10 per cent. South Africa accounted for most of the expansion of intraregional exports. Between 2000 and 2003, intraregional and total trade in the SADC region appears to have recovered from the stagnation of the mid-1990s. Intraregional imports appear to have grown at a slower pace than total imports. There is no evidence of trade diversion from COMESA and SADC.

Recently, there has been growth in total exports from the region, perhaps due to diversification from traditional exports. It is not possible to suggest with certainty that this increase was due to economies of scale, the competitive effect or liberalization. Malawi's exports to the region have not experienced any notable growth, as the country has achieved little diversification.

(d) Challenges to trade expansion in COMESA and SADC

Despite the growth of intraregional and total trade in the region, opportunities for expansion of trade through greater integration in COMESA and SADC appear limited, since product complementarities and levels of intraregional trade are low, and there is a risk of polarization. Factors that hinder African trade include: distorted trade regimes, high transaction costs due to high transportation costs, as in the case of Malawi, inadequate information and communication infrastructure, lack of political will, policy reversals, difficulties in implementing harmonization provisions, multiple and conflicting objectives of overlapping regional arrangements and limited human capacity.

Regional trade arrangements can help address some of these problems. They can contribute to overcoming concerns about policy credibility by securing trade liberalization among their members and by functioning as an agency of restraint. They can tackle issues relating to weak infrastructure, harmonization of standards and customs procedures, strengthen Africa's bargaining power in multilateral trade negotiations, act as vehicles for deeper integration and encourage FDI. Both COMESA and SADC are attempting to address these challenges in developing African trade. While SADC's approach to regional integration attempts to address infrastructural constraints, COMESA emphasizes harmonization of standards and customs procedures and trade facilitation. In addition, both organizations need to promote non-discriminatory tariff liberalization.

IV.4. Obstacles to tariff liberalization and harmonization

An appropriate and uniform CET in a customs union and the locking-in of tariff liberalization and harmonization would maximize the benefits to COMESA and SADC. However, there are some impediments to the attainment of this goal, as discussed below.

(a) Dependence on trade taxes

As mentioned earlier, dependence on trade taxes is a major issue for consideration in undertaking tariff liberalization in the region. Table 5 gives an idea of the extent of such dependence of the countries of eastern and southern Africa (ESA). In all of these countries, except South Africa, trade taxes account for over 10 per cent of total fiscal revenue, and in 8 out of 24 countries, they account for over 20 per cent. In only 4 of the 24 countries, namely Rwanda, South Africa, the United Republic of Tanzania and Uganda, are trade taxes less than 2 per cent of GDP. Lesotho, Namibia and Swaziland are the most dependent on these taxes.

Table 5. Trade tariffs and revenues in eastern and southern Africa

	Maximum tariff	Simple average tariff	Trade tax revenue/GDP (in per cent)	Total trade tax revenue	Effective collected tariff rate
Angora	35	19.0	….	….	….
Burundi	40	23.5	3.4	18.6	22.6
Comoros	200	37.9	2.8	31.0	15.1
Dem Rep. of the Congo	20	13.0	….	….	….
Djibouti	0	0.0	0.0	0.0	0.0
Eritrea	25	9.0	….	….	….
Ethiopia	35	17.5	2.6	18.4	13.7
Kenya	35	17.2	3.6	17.6	12.4
Malawi	25	13.6	2.5	12.4	7.2
Mauritius	80	19.9	5.4	31.5	13.5
Madagascar	25	16.2	2.8	25.6	11.3
Mozambique	25	11.1	2.2	18.9	8.1
Rwanda	30	9.3	1.4	14.2	10.6
SACU	60	11.4	….	….	….
Botswana	….	….	7.7	18.1	24.2
Lesotho	….	….	18.0	58.0	22.4
Namibia	….	….	12.1	38.0	26.7
South Africa	….	….	0.8	3.0	….
Swaziland	….	….	15.3	55.2	19.6
Seychelles	200	25.0	….	26.9	18.2
Sudan	45	22.6	….	….	….
United Rep. of Tanzania	25	12.5	1.3	11.6	8.9
Uganda	15	9.0	1.7	11.3	8.5
Zambia	20	11.5	5.9	30.9	19.9
Zimbabwe	100	19.7	2.6	10.4	13.0

Source: Tariffs data are from *Trade Policy Information Database.*

It is therefore difficult to maintain fiscal sustainability in the face of trade liberalization. In SADC, for instance, the lowering of import duties in some countries as part of trade liberalization is likely to create a significant fiscal gap. Regional integration may lead to changes in the structure of individual economies, including the contraction of import-substituting industries that are important sources of revenue and employment. Since many low-income countries are unable to replace lost trade tax revenue from other sources, reforms need to be accompanied by measures to broaden the effective tax base and seek alternative sources of revenue. Better controls on expenditure are also necessary.

Tsekata (1991) reported that reviewing the eligibility criteria for tax exemptions in SADC would go a long way towards strengthening the revenue effort, since exemptions can account for a large proportion of lost revenue in African countries. For instance, exemptions covered over 42 per cent of imports in the United Republic of Tanzania in 1999 (WTO, 2000). To the extent that exemptions are intended to offset the high tariffs, it should be possible to reduce tariff rates and streamline exemptions. These efforts could be taken in conjunction with measures to improve the tax administration or broaden the tax base, with the goal of increasing governments' reliance on domestic sources of taxation.

(b) Disparities in restrictiveness of trade regimes

There are large disparities in the restrictiveness of trade regimes across the region (table 6). Countries such as Djibouti, Malawi, Rwanda, Uganda and Zambia rank among the most open in the world while others, such as Burundi, the Comoros and Seychelles, are more restrictive. Only about nine of the countries have open trade regimes (rated below 3), and these do not include the relatively developed ones in the region (Egypt, Kenya and South Africa). In these circumstances, harmonization, in the sense of a low and uniform CET, will involve significant adjustment on the part of a majority of the countries, and any agreement will be complicated by the very different tariff regimes.

Table 6. Restrictiveness ratings in eastern and southern Africa, 2003

	Tariff rating (1-5)	NTB rating (1-3)	Overall TRI rating (1-10)
COMESA			
Angola	3	1	3
Burundi	5	2	8
Comoros	5	2	8
Dem. Rep. of the Congo	2	1	2
Djibouti	1	1	1
Egypt	4	2	7
Eritrea	1	2	4
Ethiopia	3	2	6
Kenya	3	2	6
Malawi	2	1	2
Mauritius	3	2	6
Madagascar	3	1	3
Rwanda	2	1	2
Seychelles	5	3	10
Sudan	4	1	4
Swaziland	2	2	5
Uganda	2	1	2
Zambia	2	1	2
Zimbabwe	3	2	6
SADC			
Angola	3	1	3
Dem. Rep. of the Congo	2	1	2
Malawi	2	1	2
Mauritius	3	2	6
Mozambique	2	1	2
SACU	2	2	5
United Rep. of Tanzania	2	2	5
Zambia	2	1	2
Zimbabwe	3	2	6

Source: Trade Policy Information Database.

An appropriate CET is desirable, taking into account the potential for trade diversion with respect to the SADC or COMESA FTAs. The more restrictive the trade regime in a country (as can be seen in Burundi, the Comoros and Seychelles), the larger the preferential margin granted to partner countries in the FTA, and the greater is the potential for welfare losses due to trade diversion for these economies. MFN liberalization could help reduce these losses. RTAs should therefore be considered as an opportunity to lower tariffs on an MFN basis to gain from the policy credibility provided by regional commitments. Careful sequencing and appropriate monetary and exchange rate policies can help to address any sharp balance-of-payment swings.

(c) Impact of a common external tariff on tariff structures

There are difficulties in agreeing on an appropriate and uniform CET. An analysis of CETs based on three- and four-band tariff structures similar to proposed CETs in the EAC, COMESA and SADC has demonstrated that there are different tariff lines for raw materials, capital goods, intermediate and finished goods. An escalating tariff is used, with the highest rates imposed on finished goods and the lowest on capital goods and raw materials. This kind of structure provides protection for manufacturing but also builds an anti-export bias. Finished goods are not only subject to higher tariffs, but also appropriate tariffs on inputs for those goods provide an additional layer of escalation. Agreeing on a low and uniform external tariff can minimize the degree of protection and help counter the anti-export bias.

(d) Tariff structure

The implementation of a CET based on the classification of raw materials, intermediate goods, capital and finished goods will imply substantial changes in the tariff structure in all countries. Tariffs will be reduced on a number of lines and increased on a number of others. This has the potential to adversely affect some sectors and benefit others in each member country. Both COMESA and EAC are facing difficulty in agreeing on the classification of goods, since an input for one country may be a finished good for another. Moreover, agreeing on a CET may be in conflict with tariff bindings in the WTO. When countries bind their tariffs at the WTO, they place a ceiling on their applied tariff rates. Tariff bindings may be violated if the bound rates are lower than the corresponding rates under the CET. Table 7 provides some estimates on the number of bound tariff lines to be renegotiated at the WTO that may be in conflict with the CET for COMESA and SADC member countries, depending on the agreed CET.

Table 7. Number of tariff bindings to be renegotiated at the WTO

	0, 5, 15 and 30 per cent	0, 10 and 25 per cent	0, 10 and 20 per cent
Burundi	197	189	110
Mozambique	0	0	0
Rwanda	160	125	72
SACU	1 897	1 314	1 070
Tanzania	0	0	0
Uganda	0	0	0
Zambia	0	0	0
Zimbabwe	221	141	121
Mauritius	27	27	27
Malawi	1	0	0
Madagascar	28	28	27
Kenya	6	6	6

Source: IMF staff calculations.

The table shows that over half of the countries, except Mozambique, the United Republic of Tanzania, Uganda and Zambia, will exceed their tariff bindings in order to implement the suggested CET. SACU members will have the largest number of tariff lines in excess of bindings, reflecting the fact that they have bound a larger number of lines in the WTO. Burundi, Rwanda, Zimbabwe, Mauritius, Malawi, Madagascar and Kenya do not have a large number of lines. It should be noted that enforcement of tariff bindings in the WTO depends on whether a country's trading partners raise a complaint at the WTO.

IV.5. Regional Integration Facilitation Forum (RIFF)

Malawi is a member of the Regional Integration Facilitation Forum (RIFF), which was launched in 1992. Other countries in eastern and southern Africa and the Indian Ocean are also members. The RIFF, formerly known as the Cross-Border Initiative (CBI), aims at increased economic integration among members by facilitating private investment, trade and payments between them, as well as the cross-border movement of labour and capital. The RIFF, which is a voluntary arrangement, was developed in collaboration with the RTAs in the region. As a forum, it seeks to reinforce and complement efforts undertaken by these RTAs. It is cosponsored by the EU, the IMF, the World Bank and the African Development Bank.

IV.6. Malawi and the ACP-EU negotiations

This subsection examines Malawi's trade with the EU and assesses the challenges and policy options in EPA negotiations with the EU. The Malawi-EU relationship has a considerable impact on the country's trade regime, as the EU is the single largest market for Malawi's exports as well as an important source for some of its vital imports. The pact has other strategic economic development provisions beneficial for Malawi.

Negotiating EPAs with the European Union

Historically, Malawi belongs to the G77 African, Caribbean and Pacific (ACP) countries that have been receiving unilateral trade preferences for their exports to the EU market under the Lomé Convention and its successor, the Cotonou Agreement, which was signed in June 2000. These agreements have provided them with important market access for their agricultural and other exports. At the Doha Ministerial Conference in November 2001, WTO members agreed to grant a waiver to parties to the Cotonou Agreement from the obligations under Article 1.1 of the General Agreement on Tariffs and Trade (GATT) 1994 (MFN treatment) for a period up to 31 December 2007. Thereafter, new trade compatible trading arrangements will need to be concluded to progressively remove barriers between the parties and enhance cooperation in all areas relevant to trade, including the formation of FTAs, within a transitional period. Accordingly, it was decided that from September 2002, the EU would enter into negotiations with ACP countries to establish EPAs on a bilateral basis or with regional groupings, to commence by January 2008. The EPAs will involve reciprocal market access into the ACP countries for the EU, with a possible transition period of 10–12 years for phasing out barriers between the parties (in accordance with Article XXIV of the GATT 1994). Other trade-related elements will also be included in the EPAs. Table 8 shows the trade share of EU in the total imports and exports of selected African countries.

Table 8. Share of the EU in selected African countries total imports and exports

	Exports to EU	Imports from EU
Angola	13.7	52.2
Burundi	50.0	30.6
Comoros	69.4	42.2
Dem. Rep. of the Congo	66.8	41.6
Djibouti	3.5	21.8
Eritrea	…..	….
Ethiopia	31.0	19.8
Kenya	30.1	23.6
Malawi	31.3	9.8
Mauritius	71.3	41.5
Madagascar	51.5	52.3
Mozambique	63.7	14.6
Rwanda	10.5	26.4
SACU	….	….
Botswana	59.6	45.2
Lesotho	….	….
Namibia	….	….
South Africa	38.9	44.9
Swaziland	….	….
Seychelles	68.4	45.5
Sudan	15.0	29.1
United Rep. of Tanzania	32.0	23.6
Uganda	60.7	20.6
Zambia	16.6	10.0
Zimbabwe	18.0	10.1

Source: IMF staff calculations.

The EPAs will have a development focus aimed at assisting ACP countries in expanding their markets by improving the predictability and transparency of the regulatory framework for trade and creating conditions for increased investment. To this end, the EU is emphasizing greater South-South cooperation through the strengthening of existing regional integration initiatives, tariff harmonization and the creation of customs unions. The EU is conducting EPA negotiations with regional economic groupings of ACP States, rather than with individual countries.

In ESA, the two regional economic groupings that are negotiating with the EU are COMESA and SADC. The negotiating group comprises 16 of COMESA's 19 member countries (Angola, Egypt and Swaziland are not participating) and only 7 of SADC's 13 members (Angola, Mozambique, the United Republic of Tanzania and the SACU countries); South Africa is an observer.

Key features of the proposed EPA

As stated, the EPA is expected to take the form of an FTA, but with additional trade-related elements. It is expected that the EU will provide market access similar to that of the EBA initiative. The provision of such market access under EPAs, to be meaningful for LDCs, needs to be accompanied by measures to address non-tariff barriers (NTBs) and market entry restrictions, including less restrictive rules of origin than those of the EBA. Therefore, LDCs like Malawi should seek an improvement in the rules of origin and full cumulation across all ACP countries, the EU and other EBA beneficiary countries. Non-LDC members of the ESA and SADC negotiating groups, on the other hand, have greater incentives to participate in market access negotiations in order to preserve their market access to the EU.

An important issue in the negotiations is the level of reciprocal market access offered to the EU. Since the EU has committed to an asymmetric approach in terms of product coverage and transition periods, it is likely that African countries will not be required to liberalize all sectors and that there will be a reasonable transition period.

In order to be compatible with WTO rules (GATT Article XXIV), the EPAs will require reciprocal liberalization of substantially all trade by African countries. This raises uncertainty, and countries in the region are likely to push for the exclusion of a large number of products from the agreement. This could be done under the Doha round. The ACP group of States has proposed in the WTO that its members be accorded special and differential treatment in GATT Article XXIV.

Non-tariff barriers in EPAs, such as sanitary and phytosanitary standards, would be considered along with appropriate technical assistance and capacity-building support measures. Safeguard measures for both industrial and agricultural products are to be included.

ACP countries and the EU have agreed to liberalize trade in services. To address concerns over weak regulatory and supervisory systems in African countries, the EU is to provide support in the development of the services sector and in the appropriate sequencing of liberalization commitments. There is also provision for a special safeguard in the area of services. African countries could liberalize inefficient services in order to reduce transaction costs but may wish to reserve their position in sectors where they could develop a comparative advantage in the future.

The negotiations will also include the issue of improved market access for Mode 4 supply of services (movement of natural persons). However, it is difficult to estimate whether this will result in any significant improvement in market access for natural persons, given the existing concerns of European countries about absorbing labour flows from the EU accession countries.

Issues to be addressed in the EPA negotiations

The following are some of the major issues Malawi needs to address in the EPA negotiations:

- Should Malawi conclude an EPA or rely on the EU's Everything-but-Arms (EBA) initiative?
- How should the country choose to negotiate an EPA, in view of its dual membership of COMESA and SADC and the parallel EPA negotiations between SADC and the EU and between the ESA region and the EU?
- Although Malawi has chosen to negotiate an EPA as part of ESA, and not SADC, the outcome of the SADC-EU EPA negotiations may have implications for Malawi as it is also a member of SADC.
- How would Malawi lobby, together with other small LDCs, for simplified, uniform and low threshold rules of origin in all preferences; and should it align with

COMESA and with countries that have low tariffs to reduce the external tariff over time? As South Africa is not a member of COMESA but of SADC, Malawi may also decide to participate in SADC-EU EPA negotiations in order to protect its access to the South African market, which is its largest market in the region.

Overlapping membership of the various regional trade arrangements (as discussed earlier) further complicates the EPA negotiations. Based on the membership of the EPA negotiating groups, Angola and Swaziland may opt out of COMESA, while the Democratic Republic of the Congo, Malawi, Mauritius, Zambia and Zimbabwe could drop out of SADC. Upon adoption of an EAC Customs Union protocol, the members (Kenya, the United Republic of Tanzania and Uganda) could decide to harmonize their tariff structure with either COMESA or SADC. The United Republic of Tanzania might choose to leave SADC, or Kenya and Uganda might leave COMESA or decide to harmonize their tariff structure with either COMESA or SADC. Egypt currently benefits from preferences for its exports to the EU market under the Euromed Agreement, and its total trade with COMESA is negligible. In the case of South Africa, it would be difficult to distinguish between goods originating from that country versus the rest of SACU. Since South Africa already has an FTA with the EU, it might be simpler for that country to participate in an EPA.

If COMESA and SADC were to harmonize their tariff structures and form one customs union, they would meet the goals of the African Union. The alternative is for countries in the region to choose membership of only one RTA.

Malawi should adopt a strategy which would lead it to the maximum possible benefits. The EPA should also address the main problems inhibiting Malawi from exploiting the preferential market access provided to it under the Cotonou Agreement. These problems relate to infrastructure, energy, health, capacity development, technology, debt relief, services, supply constraints and sanitation.

Most of the ESA countries rely on import duties as a major source of government revenue. The EU is Malawi's biggest trading partner, and the elimination of duties on goods imported from the EU is an important factor in assessing Malawi's strategic approach to a proposed ACP-EU partnership agreement. Table 9 highlights the likely revenue losses of selected ESA countries as a result of reciprocal arrangements in future EPAs.

Table 9. Estimated loss of trade revenue from a proposed EPA

	Estimated loss of trade revenue as a percentage of GDP	**as a percentage of total revenue[1]**
Burundi	1.6	6.9
Comoros	1.6	6.3
Kenya	0.6	7.7
Madagascar	0.2	1.9
Malawi	0.6	3.3
Mauritius	1.8	11.8
Rwanda	0.8	10.2
SACU	0.5	….
United Rep. of Tanzania	0.3	1.1
Uganda	0.2	0.7
Zambia	0.5	4.0

Challenges to EPA implementation

Economic partnership agreements could act as mechanisms to lock in trade reforms and gain credibility for liberalization policies and trade-related governance and institutions. In this respect, an important feature of the proposed EPAs is their provision for technical assistance and capacity-building support in the areas of standards and liberalization of services.

Malawi's decision to negotiate an EPA within the framework of ESA is fraught with challenges. The ESA region has no proper legal and institutional framework that binds the 16 countries. The EPA configuration brings together four regional trade initiatives – COMESA, EAC, Indian Ocean Community (IOC) and IGAD – that are at different levels/stages in the creation of common markets. The EAC intends to have its customs union fully operational in 2009, whereas COMESA planned to start implementation of its customs union by the end of 2004. The other two groupings have not yet made commitments towards a customs union. Thus, the main challenge is to harmonize the COMESA and EAC customs unions before the EPAs are implemented, because, ideally, there would be one common external tariff (CET).

In the absence of a single customs union and CET for ESA countries, each country would need to sign in its own right a bilateral EPA with the EU and apply its own tariffs on EU imports or the tariffs of the customs union of which it is a member at the time of implementation. There would, of course, be problems of application of rules of origin and transshipment. The question is how realistically can ESA adopt a CET in the allotted timeframe? A possible option would be to first transform the ESA configuration into a COMESA configuration, which would give it the legal and institutional cover of COMESA. COMESA already has in place the appropriate measures for a CET, and these would need to be accelerated with regard to those countries that are not yet part of the COMESA arrangements. To achieve this, it would be necessary first to harmonize the CETs between COMESA and the EAC.

Another concern about the EPAs is that they might impede or slow down the process of liberalization in many African countries and deter multilateral reform. Further, given the high tariff barriers and dependence on trade taxes in a number of ESA countries, and the EU's promotion of customs unions, there is a distinct possibility that the agreed CET will be high and will increase the average level of protection of the more liberal countries (like Malawi) in the region. Thus, not only would some previous liberalization (processes) efforts be reversed but also – once the CET is established – it would no longer be possible for individual countries to pursue unilateral tariff reductions. This could have significant implications at the multilateral level, as the ACP countries and the EU combined account for around half of the WTO membership.

COMESA comprises three different sets of countries: (a) LDCs, including Malawi, that have guaranteed preferential access to the EU without necessarily having to negotiate EPAs; (b) non-LDCs, which have to negotiate an EPA or risk losing their current preferential market access conditions by 2008; and (c) Egypt and South Africa, which have concluded their own trade arrangement with the EU.

Countries grouped by tariff regimes fall into three categories:

(i) Three EAC countries that are moving towards creating their own customs union;
(ii) Four members of SADC that are implementing an FTA (SACU); and
(iii) The others in COMESA and ESA, including Malawi, which lack a legal and institutional framework and have to negotiate and sign EPAs in their individual capacities rather than as a group.

ESA cannot sign an EPA as an entity unless it becomes a customs union. Furthermore, ESA has a weak negotiating capacity and lacks political solidarity. Technical assistance programmes offered in preparation for EPA negotiations have been limited. There is need for long-term capacity-building to undertake analytical studies, training on trade policy and negotiating skills and support to the stakeholder consultative process. The Joint Integrated Technical Assistance Programme (JITAP) of ITC, UNCTAD and WTO could make an important contribution in this regard.

Implications of Malawi's participation in the EPA

At present it is unclear if an EPA will enhance the economic welfare of Malawians or not. This will be determined by the actual scope of the liberalization commitments undertaken and their implementation. Therefore, in order to maximize benefits and minimize concerns, it is critical for the EPA to result in the adoption of a low and uniform CET. The agreement should also aim for comprehensive product coverage in both goods and services and appropriate sequencing, including in trade and tax policies. In both goods and services, Malawi needs to ensure that multilateral liberalization is pursued concomitantly with preferential liberalization.

Participation in various regional and bilateral arrangements and the Cotonou Agreement negotiations and in the WTO, are presenting Malawi with important challenges. It needs to prioritize its interests, taking into account the fact that regional integration is an *a priori* condition for the success of an EPA.

There are problems relating to Malawi's limited capacity for trade policy design and implementation and for negotiating various complex trade agreements (including the WTO) and participating in the intricate EPA negotiation process. So far, it has been assisted only with "impact assessment". Trade policy should not only be reactive to external developments but also proactive.

As regards development assistance for Malawi, the EC and the EU countries are the most important donors, and therefore its relationship with them should be maintained, including through an EPA.

Malawi also needs to strengthen the capacity of its customs and other trade-related institutions to enable effective implementation of its complex, intertwining agreements. The customs authorities have the responsibility for managing all imports and interpreting the tariff rates and rules of origin. The impact of their decisions has a bearing on private sector growth and on instilling confidence in trade policy.

IV.7. Bilateral trade agreements

The Malawi-South Africa Trade Agreement

The Malawi-South Africa Trade Agreement signed in 1990 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 value-added content of 25 per cent. Quotas apply to some products such as tea, which is limited to 10,000 tonnes annually. South Africa has erected many non-tariff measures to limit imports under this agreement. Malawi applies the MFN rate of duty on imports of South African goods. Some Malawian products require import permits to benefit from preferential treatment (e.g. 300 tonnes of manufactured tobacco, 750 tonnes of raw groundnuts and 100 tonnes of processed groundnuts).

South Africa is the dominant economy in SACU, to which Malawi does not belong. However, all SACU members are also members of SADC, and thus any outcome of the negotiations on EPAs may have a bearing on the Malawi-South Africa Trade Agreement. This requires further analysis.

The Malawi-Zimbabwe Free Trade Agreement

The bilateral trade agreement between Malawi and Zimbabwe signed in 1995 allows duty-free imports on a reciprocal basis between the two countries, provided the goods meet 25 per cent minimum domestic content provisions and conform to each other's standards. Trade restrictions that are WTO-compliant are allowed. Malawi and Zimbabwe are both members of COMESA and SADC.

The Malawi-Botswana Trade Agreement

Malawi has maintained a customs union agreement with Botswana since 1956, which works on a *de facto* basis. All goods wholly obtained and manufactured in either country, with the exception of spirits, are traded on a reciprocally duty-free basis. Both countries are members of SADC.

V. ADJUSTMENT OF NATIONAL LEGISLATION TO WTO AGREEMENTS

V.1. Implementation of multilateral trade rules and other trade arrangements

Article XVI.4 of the Agreement establishing the WTO requires member States to ensure conformity of their laws, regulations and administrative procedures with their obligations as provided in the WTO Agreement. This often entails modification of national legislative and institutional structures. The Uruguay Round Agreements required, in some cases, immediate compliance following their entry into force in 1995, and in other cases, different transition periods were set. The transitional periods conferred additional time to developing countries and LDCs under special and differential treatment to enable them to fulfil some of the substantive obligations. Generally, compliance has been poor due to the complexity of the obligations.

The 12 Uruguay Round Agreements introduced comprehensive commitments listed in Annex (14) 1A of the WTO Agreement, the GATT 1994, as well as the six Undertakings, using the single undertaking means to enforce the provisions of the multiple agreements. The Singapore Declaration underlined the importance of the adoption of the treaty provisions through domestic laws to ensure “full compatibility with WTO obligations”.

Malawi’s implementation of some of the WTO Agreements would entail:

- Drafting and enactment of new legislation and procedures, or amendment of existing legislation;
- Meeting notification requirements;
- Repealing non-compatible norms and determining the necessary policy adjustments; and
- Appropriate institutional capacity-building.

V.2. Malawi’s trade laws and regulations

In Malawi, domestic legislation takes precedence over international treaties. Since 1994, international agreements have become part of domestic law only after ratification by an Act of Parliament. Malawi’s trade laws and regulations (e.g. on intellectual property rights, anti-dumping safeguards and countervailing remedies) are being reviewed and updated to reflect trends in the multilateral trading system. This subsection discusses how Malawi has been coping with implementation issues relating to various regional and Uruguay Round agreements.

(a) Customs valuation

In Customs valuation, WTO members are obliged to put into effect, through national legislation, the provisions of the Agreement on the Implementation of Article VII of the GATT 1994. Developing-country members that were not signatories to the Tokyo Round Agreement on Customs valuation were accorded a grace period of five years following the entry into force of the WTO Agreement (i.e. until 2000) to put the agreement into effect. An additional delay period of three years was allowed to apply the computed-value method. Many developing countries have faced difficulties in the implementation of the provisions of this aspect of the Agreement due to their lack of institutional capabilities and the potential loss of revenue it would entail. Consequently, they have requested an extension of the implementation period.

In Malawi, the lack of human and institutional capacity at the Department of Customs led to the use of foreign firms for pre-shipment inspection in 1995. The benefits accruing from the implementation of the Agreement on Customs Valuation cannot be fully realized without capacity building in the area of enforcement, and the installation and enhancement of the necessary Customs-related infrastructure. It is reported that computerization in Customs stations is the single most important step required by the authorities to undertake Customs valuation, based on the use of transaction value, and risk management. Currently 85 per cent of border stations are computerized. The installation of Customs-related infrastructure, including a Customs laboratory for classification purposes and large scanners for cargo containers, would help expedite Customs clearance.

(b) Trade remedy legislation

Regarding laws contingent on trade remedies, Malawi has received technical assistance from the United Kingdom's Department for International Development (DFID) to revise its old, unused anti-dumping legislation, and to prepare legislation on countervailing and safeguard measures in conformity with WTO rules.

Current anti-dumping legislation empowers the Minister of Finance to impose anti-dumping levies when investigation(s) launched by him show(s) that "dumped" imports are detrimental to domestic industries and that to do so would be "in the public interest", although this term is not defined. Interested parties can initiate such an investigation by lodging a complaint with the Malawi Revenue Authority (MRA). Malawi notified its anti-dumping legislation to the WTO in 1995. It has not yet responded to questions raised by several WTO members in the Committee on Anti-Dumping Practices regarding the inconsistency of Malawi's legal provisions with WTO requirements.

Even if conformity with WTO rules were achieved, Malawi would need further assistance to:

(i) Establish an independent body to administer the legislation;
(ii) Train personnel on how to conduct investigations, based on rules and procedures established by the Agreements on Anti-Dumping Practices and on Subsidies and Countervailing Measures. This would entail financial allocation for full implementation of the legislation. COMESA also has regional trade remedy disciplines that are being revised to adapt them to the requirements of various WTO agreements.

In respect of Article 12 of the WTO Agreement on Anti-dumping, which requires member States to publish laws, regulations, judicial decisions and rulings, Malawi takes appropriate action by publishing all relevant information in the Government Gazette.

Disputes concerning the amount of duty charged on imports are initially subject to an internal review by the Malawi Revenue Authority. Any appeal is referred to a Special Referee, who may either confirm or request a reassessment of the determination. There is also an Appeals Committee to handle valuation disputes and an appeal may be lodged to the Magistrate Court.

Since Malawi had no safeguard legislation, one is being drafted which would be compliant with WTO commitments. Care needs to be taken to observe the provisions of Article X of the GATT 1994 relating to the publication of procedures prior to the initiation of a safeguard action. Moreover, such action may only be taken pursuant to an investigation undertaken by the importing member, the results of which are to be published in accordance with that Article.

(c) Notifications

Notification requirements of the Uruguay Round agreements demand both the establishment of enquiry/focal points and the submission of information to the competent bodies of the WTO provided by the respective agreements. The Ministry of Trade and Private Sector Development is the focal point on WTO matters. Malawi's notifications are presented in table 10.

Table 10. Malawi's notifications to the WTO

WTO Agreement	Description of requirement	Periodicity
Anti-Dumping (Art. 18.5)	Laws and regulations	Once, in March 1995
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.
Import Licensing Procedures (Arts 1.4(a) and 8.2(b)	Laws and regulations	Once, then only when there are changes
Subsidies (Art. 32)	Laws and regulations	Once, in March 1995, thereafter only if there are changes.
Technical Barriers to Trade (TBT) (Annex 3C)	Acceptance of the WTO TBT Code of Good Practice	Once
Customs Valuation (Articles 20.1 and 22.1)	Delay in commencement of provisions and changes in laws	Once on delay, then only if there are changes
TRIPS (Art 69)	Details of enquiry points	Once, then if there are changes
TRIMS (Art. 6.2)	Details of enquiry points	Once, then only if there are changes
Sanitary and Phytosanitary Measures (Art. 7 and Annex B)	Measures taken	Ad hoc
Sanitary and Phytosanitary Measures (Paras 3 and 10, annex B)	Details of national notification authorities and enquiry point	Once
Sub-Committee on Least Developed Countries	Details of focal point under the Integrated Framework	Once

Source: Ministry of Trade and Private Sector Development, Malawi

Malawi has never been involved directly in a dispute under the WTO Dispute Settlement Mechanism.

There are limitations to compliance with the notifications under the different WTO agreements and to maintaining the periodicity of notifications when required. The process of notification is complex, long and cumbersome and some notifications are difficult to understand and comply with. The responsible agencies of government often lack the necessary knowledge, financial and human capabilities. Some developing countries have called for a relaxation of notification requirements as part of special and differential treatment. As notification requirements provide important information, appropriate technical assistance is needed to support developing countries and LDCs in discharging their obligations at the institutional level.

(d) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)

Malawi's legislation on intellectual property rights not only provides 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 (WIPO) on 1 January 1989 and signatory to the Berne Convention for the Protection of Literary and Artistic Works in 1991. It also joined the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks in October 1993. It signed up to the Patent Cooperation Treaty and to the Patent Law Treaty in July 1996. Malawi is also a member of the African Regional Intellectual Property Organization (ARIPO).

Table 11. Malawi's TRIPS-related laws

Name	**Administration**
Copyright Act of 1989	Copyright Society of Malawi COSOMA under Ministry of Culture Registrar General under Ministry of Justice
Patent law of 1958	"
Trade Marks Act of 1958	"
Trade Description Act of 1987	"
Merchandise Marks Act of 1958	"
Registered Designs Act of 1950	"

Source: Ministry of Trade and Private Sector Development, Malawi

Malawi intends to revise its intellectual property legislation to meet its commitments under the TRIPS Agreement; however, it has so far made little progress in this direction. In order to have WTO-compliant legislation fully implemented by 2006, as required by the TRIPS Agreement, Malawi will need substantial technical assistance from international institutions such as WIPO. The main problem in achieving full compliance with TRIPS will be the provision of effective enforcement, both through the courts and by customs (Part III of the TRIPS Agreement). Legislation relating to geographical indications, layout designs (topographies) of designated circuits and protection against unfair competition (trade secrecy) needs to be reviewed, as these areas lack appropriate legislative cover.

Implementation of the TRIPS Agreement does not provide an adequate transition period for LDCs like Malawi where the appropriate enforcement mechanisms are virtually non-existent, notwithstanding the extension of the transitional period for LDCs by 7.5 years in December 2005. Developed countries need to respect the provisions of Article 66.2 of the TRIPS Agreement which relate to incentives for the transfer of technology to developing countries and LDCs. Malawi had intended to comply with the TRIPS Agreement by the end of 2005, but the absence of expertise on matters relating to intellectual property rights has prevented the Government from revising its existing obsolete legislation. The Registrar General's Department, which is responsible for the administration of intellectual property legislation lacks legal expertise on the subject. So far no organization, such as WTO or WIPO, has offered the needed legal technical assistance and training.

(e) Multilateral and regional agreements on rules of origin

The principal legislation in Malawi relating to rules of origin is the amended Customs and Excise Act (Cap. 41.02) of 1972. Goods are considered to originate from 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 no less than a certain level of material or labour as local content, or have been subjected to certain processes specified in the Malawi customs schedules. Specified content levels may be fixed at varying scales for different classes of goods and relate to the factory or ex-works cost of finished articles. The general minimum content level for determining the origin of manufactured goods is 25 per cent. Higher minimum content levels of 30 and 50 per cent apply to certain printed and other fabrics.

Preferential rules of origin apply under regional and bilateral trade arrangements to which Malawi is a signatory. Imports from eligible countries must satisfy these special rules of origin and they must be accompanied by a certificate of origin issued by the exporting country to be eligible for preferential tariffs. If not, they are subject to Malawi's MFN rates. Malawi does not have laws, regulations or administrative ruling or general applications related to non-preferential rules of origin, and the provision under Article 3 of the Uruguay Round Agreement on Rules of Origin does not constitute an obligation other than notification. Malawi applies preferential rules of origin under the different economic integration arrangements in which it participates.

(f) Agreement on Import Licensing Procedures

Malawi complies with Article 8.2 of this Uruguay Round Agreement, which requires members to ensure conformity of their laws, regulations and administrative procedures with its provisions, and that the country has fulfilled its notification requirements.

In 1997, Malawi abolished all import licensing requirements, except for health, safety, security and environmental reasons, which cover about 5 per cent of total annual imports. Under the operative Control of Goods (Import and Export) Act, licences are required for the import of military uniforms, radioactive substances, mist nets for capturing wild birds, wild animal trophies and products of such animals, live fish, dieldrin, aldrin, compounds containing flour, meal residues and other preparations used as animal feed, live poultry, eggs and meat including dressed poultry, but excluding all tinned and potted meats and salt. Firearms and ammunitions, explosives, drugs and poisons are restricted. Quota-free and non-discriminatory (of source) import licences are issued without administrative hindrances.

(g) Agreement on the Application of Sanitary and Phytosanitary Measures (SPS)

The major problem facing Malawi in fully complying with the SPS Agreement is its weak institutional infrastructure; the relevant enquiry points for the agreement lack the necessary resources (financial, technical and human) for upgrading services to the standards set by the SPS Agreement and for effective participation in the relevant international organizations.

SPS measures in Malawi on plants and plant products are the responsibility of the Plant Quarantine Services in the Ministry of Agriculture. The relevant legislation is the Plant Protection Act of 1969, accompanied by the Plant Protection (Import) Regulations of 1969 and various notices. Malawi is a member of the International Plant Protection Convention and the Phytosanitary Council of the African Union. It is also participating in efforts to harmonize phytosanitary arrangements among SADC countries.

Imports of plants (dead or living) require inspection and a permit issued by the Plant Quarantine Service. Such imports and related products must be accompanied by phytosanitary and inspection certificates.

(h) Agreement on Trade-Related Investment Measures (TRIMs)

The Malawi Investment Promotion Agency (MIPA) accords priority to investment in manufacturing, agriculture, mining, fisheries, tourism and forestry. Malawi is also a member of the Multilateral Investment Guarantee Agreement (MIGA). Malawi fully complies with the national treatment obligation of the Agreement on TRIMs and does not maintain any TRIMs as indicated in the list of TRIMS in the Annex to that Agreement.

(i) Agreement on Pre-shipment Inspection (PSI)

Malawi complies with the PSI Agreement, which elaborates a code of conduct for the "pre-shipment inspection entity" and for the importing-country government. The code of conduct lists a number of obligations relating to non-discrimination, transparency, site of inspection, the use of standards, delays and methods for price verification. It also imposes institutional requirements relating to appeals, procedures and independent review.

Malawi introduced preshipment inspection in 1992, and requires such inspection of all imports with an f.o.b. price of $3,000 or more. Certain goods are exempt from PSI. The service is currently contracted to Intertek Testing Services (ITS). Inspection concerns mainly quality, quantity and value using government guidelines, procedures and standards with which importers, suppliers and ITS must comply. The Agreement's provisions on PSI are an integral part of the inspection contract.

(j) Agreement on Agriculture (AOA)

Malawi abolished most of the border measures affecting trade in agricultural products, including export taxes, as part of the reform process in the late 1980s. Tariffs, virtually all *ad valorem*, are Malawi's main trade measure. Under the AoA, Malawi bound all tariffs, almost entirely at a working rate of 125 per cent. Import restrictions are those falling under the general exceptions listed in Articles XX and XXI of the GATT 1994. At times, restrictions to the export of the basic agricultural staple (maize) are introduced for food security reasons.

Under Article 15.2 of the AoA, as an LDC, Malawi is not required to make reduction commitments with respect to domestic support or export subsidies, and it does not subsidize export of agricultural products. There are no legislative hindrances to the application of the AoA.

(k) Agreement on Textiles and Clothing (ATC)

Malawi did not impose any restrictions on the import of textiles and clothing prior to the entry into force of the Agreement on Textiles and Clothing. There are thus no implementation requirements in respect of this agreement and WTO members have unhindered market access. This agreement expired at the end of 2005.

(l) General Agreement on Trade in Services (GATS)

Generally, all arguments in favour of liberalizing trade in goods also apply to liberalizing trade in services, with the added attraction for developing countries that their predominantly labour-intensive industries can gain a clear advantage. Moreover, since services do not generally depend on particular natural resources, it is worthwhile to seek export diversification in this sector.

The WTO's General Agreement on Trade in Services (GATS) defines 11 service sectors: business, financial, communications, health, construction, tourism, distribution, recreational, educational, transport and environmental, along with 156 subsectors and 4 modes of supply (cross-border, consumption abroad, commercial presence and movement of natural persons respectively). The classification of services is less refined than the classification for tariffs on goods. Both classification and clustering may pose problems of flexibility for developing countries like Malawi.

In its GATS Schedules of Specific Commitments dated 30 August 1995, Malawi committed to full liberalization of market access and national treatment under Modes 1, 2 and 3 for 10 service sectors or subsectors. In business services, Malawi bound, without limitations on market access and national treatment, measures affecting all modes of supply in accountancy, medical and dental, and midwifery services, except for temporary movement of people. Identical commitments were made for certain other business services (technical testing and analysis, and those relating to mining and exploration); construction and related engineering services; health and social services of hospitals and other human health services; tourism and travel-related services; and banking. However, it made these commitments without detailed, disaggregated information about its services trade capacity. Significantly, Malawi reserved the right to approve Mode 4 entry (i.e. the presence of natural persons) as this would create direct competition with Malawian service providers in the domestic market.

The country did not participate in the WTO negotiations on telecommunications services (Fourth Protocol) and the extended negotiations on financial services (Fifth Protocol). Neither did it participate in the negotiations on the technical revision of the GATS where, among the issues discussed was that of accommodating regional integration schemes of developing countries under Article V of the GATS. Preferential arrangements liberalizing trade in services must be compatible with the provisions of Article V. This needs careful analysis by COMESA and SADC.

There are several provisions of the GATS that are of importance to Malawi's national strategy on trade in services:

- The provisions regarding the relationship between trade liberalization in services and economic development as set out in the Preamble to the Agreement.
- Recognition, in the Preamble, of the challenges Malawi faces as one of the least developed countries (LDCs), and reiterated in GATS Article IV in respect of special treatment for LDCs to enable them to strengthen domestic services capacity and "the liberalization of market access in sectors and modes of supply of export interest to them".
- The "right of Members to regulate, and to introduce new regulations on the supply of services within their territories in order to meet national policy objectives". The focus for Malawi is on pro-poor services interventions.
- Malawi has the right to appropriate flexibility in the negotiations for opening up fewer sectors and liberalizing fewer transactions, as well as for progressively extending market access as appropriate to its development situation. Moreover, when according foreign service suppliers access to its markets, it has the right to attach conditions to such access aimed at achieving the objectives referred to in Article IV.
- Modalities for special treatment for LDCs.

While there appears to be no legal impediments to complying with the requirements of the GATS, there are obligations with respect to transparency and notification. Malawi has not yet notified its Enquiry Point under the terms of GATS Article III:4. For an Enquiry Point to be effective, there needs to be an inventory of relevant laws, regulations and administrative guidelines for reference; at present, the publication of the relevant laws is fragmented. Another important Article III obligation under the GATS is to "promptly", and at least annually, "inform the Council for Trade in Services of any changes in existing laws, regulations or administrative guidelines affecting trade in services". Under JITAP, and in accordance with Article III.4 of the GATS, Malawi is establishing a services Enquiry Point, initially proposed to be located at MIPA, but the publication of relevant laws, regulations and administrative guidelines is not centralized so that the Enquiry Point be effective under Article III of the GATS. Malawi has not yet submitted a notification to the Council for Trade in Services.

Approach to negotiations on trade in services

Horizontal commitments could be liberalized in a staged manner, beginning regionally before extending more liberal conditions to other trading partners. *Sectoral commitments* need to be based on supporting the country's economic development objectives and on promoting foreign direct investment (FDI). *Subsectoral commitments* should support domestic service exporters by according them a transition period during which they can learn to enhance their competitiveness. Attracting FDI with attendant transfer of technology requirements is a useful development consideration, and there should be no commitments in areas in which it is necessary to protect small service suppliers.

Malawi needs technical assistance to strengthen the regulatory framework in selected areas before they are liberalized, examples of such areas include professional services and telecommunications. Such assistance should also provide help to develop negotiating strategies for: horizontal commitments, sectoral commitments to support economic development objectives and FDI, support for domestic service exporters, deepening existing commitments, and protecting employment generation, especially for small- and medium-sized service suppliers (micro-enterprises and the self-employed).

VI. TRADE POLICY DESIGN AND IMPLEMENTATION

VI.1. Institutional framework

The Ministry of Trade and Private Sector Development (MTPSD) negotiates and implements Malawi's multilateral, regional and bilateral trade arrangements, although formal responsibility for all international negotiations rests with the Ministry of Foreign Affairs and International Cooperation, as custodian of such treaties. A number of ministries and organizations offer support in the areas of trade development and research, policy advocacy, finance and non-finance-related activities in the country. Some of these institutions are fully or partly funded by the Government and others are NGOS or privately owned. To implement specific trade-related policies and legislation, the Ministry has established technical institutions that operate directly under it, as discussed below.

Malawi Investment Promotion Agency (MIPA) is a statutory corporation that was created through an Act of Parliament in 1991 to attract, promote, encourage, support and facilitate both local and foreign investment in the country. Its operations are crucial for private sector development.

Malawi Export Promotion Council (MEPC) is engaged primarily in export product development, market development, export facilitation and trade information. In product development, the Council conducts supply market surveys to identify potential products for the export market. Market development initiatives are aimed at developing and identifying new export markets while maintaining existing ones. The Council endeavours to achieve this by conducting market demand surveys and participating in international trade fairs. The Council also carries out policy analysis of the trade environment in order to identify constraints to export development, and advises the Government on the changes needed to create a more conducive climate for export development. Finally, in the areas of export extension and trade information services, the Council trains exporters in export marketing and provides up-to-date trade information to the business community. However, inadequate funding and staffing levels are major constraints to its efficient operation. A major weakness is its poor linkages with the local private sector – the primary beneficiary of MEPC's activities. Consequently, it is unable to generate revenue from that sector.

Malawi Bureau of Standards (MBS) is a government entity responsible for writing standards for locally manufactured goods and administering the set standards in commerce and industry. It has some capacity to service its customers efficiently; it charges a fee for its services, which partly funds its operations. It also benefits from a specific levy on fuel products. It performs quality control on the products of almost all medium-sized and large manufacturers. The Bureau is also an enquiry point for metrology, standardization and technical specifications. It has received assistance from ITC and WTO in these areas, but its national coverage is poor.

Malawi Industrial Research and Technology Development Centre (MIRTDC) is primarily intended to provide leadership in research and technology development.

Development of Malawian Enterprises Traders Trust (DEMAT) was created mainly to offer business and technical advisory and marketing services to small and medium enterprises in

Malawi. In 1995, it also began offering financial assistance to small-scale businesses in the country.

National Association of Small and Medium Enterprises (NASME) is an advocacy association for micro, small and medium-scale enterprises, both trading and general.

Small Enterprise Development Organisation of Malawi (SEDOM) provides financial and technical services to MSMEs.

Copyright Society of Malawi (COSOMA) administers copyright legislation to protect intellectual property rights of creative works.

Malawi Confederation of Chambers of Commerce and Industry (MCCCI) aims mainly to defend and promote the interests of the business community in the country, including MSMEs. Some of its other functions are to assist in gathering information on markets and technologies, and the organization of annual international trade fairs. Its activities are complemented by the National Working Group on Trade Policy (described below).

Malawi National Development and Trade Policy Forum (MNDTPF) aims to effectively organize and coordinate the EPA negotiations; each country within the ESA regional grouping has established such a forum. Inter-ministerial committees have been established to examine trade agreements and WTO-related matters. There is also a National Steering Committee to oversee the Inter-Institutional Committee (IIC) on capacity-building relating to the multilateral trading system under the Joint Integrated Technical Assistance Programme (JITAP) of ITC, UNCTAD and WTO.

A privately funded ***National Working Group on Trade Policy*** **(NWGTP)**, chaired by a representative from the private sector, was formed in 2000 to provide a consultative public-private sector forum for a range of commercial matters on trade negotiations, formulating trade policies and implementation of trade agreements. It also facilitates consultation and cooperation among private and public sector stakeholders to promote trade. It includes representatives from the Ministries of Trade and Private Sector Development, Justice, Foreign Affairs and Agriculture, the Reserve Bank of Malawi, the Malawi Revenue Authority, the Malawi Investment Promotion Agency, the Malawi Export Promotion Council and the Malawi Bureau of Standards. Private sector representatives include those from the Malawi Confederation of Chambers of Commerce and Industry, the Exporters Association of Malawi, and Textiles and Garments Manufacturers Association of Malawi and the University of Malawi (including the Polytechnic). Various ministries provide trade-related inputs pertaining to their sectors.

Malawi has no independent statutory body to review or advise the Government on trade and related economic policies, including the planning and provision of assistance to industry. Most advice on such matters comes from the Reserve Bank, the Ministries of Finance and Trade and Private Sector Development. Unfortunately, there appears to be a mismatch between Malawi’s aspirations for improved export performance and the institutional capabilities to design and implement appropriate trade policies for achieving this. Vision 2020, the PRSP and MEGS do not define the institutional arrangements needed to achieve their ambitious targets.

VII. MAIN ISSUES AND RECOMMENDATIONS

VII.1. Integrating trade policy into overall development policy

While trade is a fundamental tool for economic growth, it needs to be complemented with other policies and practices to effectively fight poverty. It should therefore be integrated into Malawi's overall macroeconomic planning. The physical and institutional trade-related infrastructure should be strengthened as part of an overall sustainable development strategy, including improving the investment climate and addressing the plight of the poor, increasing agricultural exports and providing food security for the population.

Malawi's Vision 2020 provides political direction; it is up to each Ministry to interpret that direction as it applies to their sector and functions and to develop policies, strategies and actions that can turn that vision into reality. Thus, to foster pro-poor economic growth, the MTPSD and other related ministries and supporting institutions (MEPC, MIPA, MBS, MIRTDC) should align their activities with the Government's overall trade and development objectives. For trade, Vision 2020 cites some challenges, including: pursuit of comparative advantage, ensuring conformity to international standards, improving marketing, promoting small and medium-sized enterprises (SMEs), conforming with WTO provisions and maintaining an appropriate macroeconomic environment. The Vision does not provide quantitative targets, except for "manufacturing to contribute 25 per cent of GDP by 2020". The MTPSD has to decide on how to attain this and other targets, and, accordingly, formulate appropriate plans and strategies.

Historically, the MTPSD has been underfunded, and this has affected its level of performance. This may well indicate that trade may not have been a Government priority, as evidenced also by the scant reference to trade in the PSRP. (It is now being addressed in the Growth Strategy.) The Ministry has thus not been able to provide the leadership needed for the sector. It is nevertheless necessary to recognize that the Government faces resource constraints, which in turn adversely affect the operations of government institutions. There is also competition for resources among the supporting institutions and some duplication of efforts. This makes it all the more important to prioritize allocation of the available resources.

In order for Malawi to draw benefits from international trade liberalization, it needs to further develop its productive capacity in line with Vision 2020, the PRSP and MEGS. The country's export trade can be promoted by increasing manufactured exports (presently stagnant). For this, Malawi needs to focus on a small number of well-designed and efficiently implemented initiatives and avoid spreading resources too thin. The manufacturing sector could take advantage of AGOA, the GSP, the EBA and other new trade opportunities. Priority should be given to diversification of production and exports and export markets.

Supply-side constraints are among the major obstacles to Malawi's trade expansion. These are due to the country being landlocked, its dependence on a limited number of agricultural commodities for export, its small domestic market, inappropriate technology, limited and difficult access to financing for trade and industry, scarcity of skilled manpower, inadequate and inappropriate commercial representation abroad, limited knowledge of the international market, poor infrastructure, weak human and institutional capacity of support institutions, inadequate investment and poor quality products.

The Malawi Government has taken some steps to address its structural problems. It has tried to improve the efficiency of its infrastructure through privatization and greater participation of the private sector in obsolete, State-controlled railway, telecommunications and electricity services, among others. But numerous additional steps need to be taken, including strengthening the institutional capacity of trade-supporting institutions; improving export financing facilities; and installing information technology facilities to enable access to up-to-date market information.

The Integrated Framework (IF) emphasizes the importance of mainstreaming Malawi's trade priorities into its national development plan or poverty reduction strategy and MEGS. It advocates such mainstreaming at the policy, institutional and Government-donor partnership level. Among the areas finalized in the action programme (Integrated Framework Action Matrix) in 2005 is "trade policy capacity-building", with the goal of strengthening analytical capabilities for trade policy analysis and implementation. This includes: (i) strengthening the institutional structure for formulating and implementing trade policy through training; and (ii) improving understanding of the WTO within the Government and private sector, as well as improving negotiating skills.

VII.2 Formulating trade policy

Malawi's trade policies underwent many changes over the period 1995–2005, which has created new challenges and workloads for the Ministry of Trade and Private Sector Development (MTPSD) and other agencies responsible for the conduct of trade policy. Work related to the obligations under the WTO, RTAs and EPAs has imposed additional burdens on the already strained capacity of those responsible for trade policy. All the more so since the country has no commercial representation at the WTO in Geneva and limited staff in Brussels to cover matters relating to the EU.

The main objectives of Malawi's trade policy are: ensuring the supply of essential goods and services throughout the country through efficient distribution and import procurement; consolidation of existing export markets as well as market diversification to generate foreign exchange; diversification of export products; development of a conducive trading environment; and increasing the participation of Malawians in trading activities. This implies maximizing the opportunities to be gained from the current trade agreements and the new multilateral and regional trading environments.

The importance of trade policy to Malawi's development is not widely understood by the Government, NGOs or the private sector. It is often considered mainly from the point of view of its impact on revenue, with little attention to how it can be made pro-poor and supportive of sustainable development. Trade liberalization has not been accompanied by the complementary policies needed for reaping the benefits of trade policy and for minimizing the costs.

The other problems that need addressing are:

- A weak analytical basis for policymaking at the lead ministry and others;
- Inadequate consultation and dialogue between the Government and various economic and social partners;

- Limited capacity inside and outside the Government for assessing the implications for trade, poverty reduction and the environment, of trade policy reforms and the liberalization agenda;
- Inadequate participation in multilateral, bilateral and (to a lesser degree) regional trade forums;
- Lack of representation at the WTO in Geneva;
- Limited attention to complementary policies in trade liberalization strategies; and
- Lack of adequate integration of trade policy issues in the broader governmental planning and budgetary processes.

Need for analysis

In terms of establishing a system to manage policy in a liberalized trade environment, a 2001 study by Oxford Policy Management and Management Solutions (Malawi Limited) for the MTPSD suggests the need for detailed analysis to assess the benefits and negative effects of any new trade policy or agreement, assuming that the policy or agreement is implemented effectively. It notes that the reduction or elimination of tariffs and increased access to export markets through any new agreement can have easily identifiable effects on a country's economy. The study draws on the OECD's *2001 Guidelines on Capacity Development for Trade in the new Global Context* for guidance on best practices.

In Malawi, substantial developments in trade policy have been the result of some analytical work to isolate any possible benefits to the country's productive sector; much of this analytical work was carried out by external agencies such as the World Bank, the IMF and the WTO, or by consultants contracted by the Government. And most, if not all, of the trade liberalization reforms have been prompted by the World Bank and the IMF, rather than stemming from local in-depth analyses. Studies and analyses by local institutions of the possible economic consequences of the trade agreements have been limited in scope. It appears that analyses undertaken prior to decisions on policy changes, including the signing of trade agreements, have been insufficient. Furthermore, some of the trade agreements to which Malawi is a party have been driven by political rather than economic imperatives, and insufficient attention has been paid to developing the institutional capacity necessary for the country to be able to take full advantage of the arrangements.

MTPSD staff need to develop skills to synthesize the results of analyses relating to trade and economic conditions for the purpose of developing appropriate policies and strategies. Data on the economy's strengths and weaknesses and the particular challenges facing productive sectors in response to policy changes are of critical importance for carrying out such analyses.

Need for consultation and coordination in the formulation of strategies

A government's trade policy and related strategies must be based not only on prior analysis, but also on input from private and other interests that are likely to be affected by, and which can influence potential outcomes. Such an approach gains support for, and a sense of ownership of, new policies by the various stakeholders.

As mentioned earlier, Government policies to achieve its trade objectives should be set in the context of the country's overall social and economic goals as outlined in Vision 2020, the PRSP and MEGS and in international obligations. The policy formulation process should be inclusive, involving substantial contributions from the private sector. That sector should also be encouraged to have an understanding of its own competitiveness and the market opportunities available to it. For this, it requires information from government institutions. In addition, MTPSD staff needs to be able to conduct regular consultations, necessary for ensuring that policies meet national and private sector requirements. Agents involved in the production of commodities, goods and services should be well briefed about issues and options, and their ideas should contribute to the policymaking process. The private sector knows the issues affecting its operations and should be able to draw the Government's attention to its concerns through forums created for this purpose.

Moreover, in order to ensure that government policies align with national visions and priorities, a mechanism for systematic policy appraisal is required. Malawi does not have such a facility, with high calibre experts to examine new or modified policies and determine whether they are consistent with overall national objectives.

In its first Strategic Plan produced for the financial year 2000/2001, the MTPSD allocated a relatively small share of its budget for "consultations" and the development of policies and legislation. This suggests that the consultative process – so crucial to sound policy formulation – is still underemphasized. Equally, there is no indication in the Plan as to how the results of consultations could be applied and the types of outcomes expected. Ideally, the Ministry should provide technical advice on the risks, benefits and impact of policy changes, but it appears to lack this capacity. Of course, consultations between the MTPSD and its supporting institutions and other trade-related ministries and agencies, the private sector and civil society do occur, but they need to be institutionalized, and not be conducted on an ad hoc basis, in order to improve the quality and effectiveness of policies that the Ministry needs to implement.

Need for Malawi's full participation in negotiations

Malawi needs to participate fully in the negotiating sessions of the international institutions in matters relating to trade arrangements. Malawian trade negotiators should have appropriate skills, comprehensive data, a clear understanding of what Malawi hopes to achieve and specialist technical knowledge (including knowledge of the multilateral trading system and its rules, and information on positions likely to be taken by other countries). In addition, systematic arrangements or procedures should be established in the preparation of negotiations that enable thorough consultation with stakeholders to understand their concerns, interests and expectations and the areas where they are willing to make concessions, as well as understand what implementation might entail. At present, some affected sectors of Government are consulted too late for them to make any meaningful contribution.

Employing specialist services or expertise to participate in negotiations is dependent on financial resources being available to meet travel expenses. Furthermore, it is important to build capacity in negotiating skills through training and internships/attachments. This requires technical and financial assistance from international donor agencies.

Establishing a presence in Geneva would be a cost-effective way of participating in WTO negotiations. Representation through an RTA (COMESA/SADC) is less effective. Other locations (e.g. Brussels and Washington, D.C.) also need effective trade representation to bolster Malawi's considerable trade and economic interests there.

Need for implementation and evaluation

Malawi's organizational arrangements seem to be the least developed in the area of implementation. There is no systematic publishing and dissemination of information to concerned stakeholders on results of negotiations and on trade policies developed. The MTPSD does not have legal expertise relating to WTO rules and depends on the Ministry of Justice for drafting the appropriate legislation. However, the latter Ministry is understaffed. Contracted lawyers have been used to draft the Remedies Bill, but this requires additional finances. As the MTPSD has to play a vital role in overseeing the implementation of the rules and regulations arising from various trade agreements, it should seek the support of the business community to ensure compliance. In addition, the Ministry should ensure that other government departments (such as customs) receive up-to-date information about various agreements. Also, and importantly, the MTPSD should advise enterprises about any new developments, to enable them to benefit from various agreements.

Forecasts used in decision-making are based on assumptions about external factors often beyond the Government's control, and implementation may not always achieve the intended results. There is therefore need for systematic collection of critical data and their analysis to determine whether objectives, targets and anticipated outcomes are being achieved. Regular evaluation of analyses will enable the Government to decide whether corrective measures are necessary. This process would feed into future policy formulation.

Collection and evaluation of performance information requires measuring tools and communication systems. Monitoring and evaluation need to be based on an agreed set of performance indicators of measures, which themselves must be linked to objectives and targets set during policy formulation and planning. The choice of performance indicators is crucial. The cost of additional performance measurement activity needs to be assessed and budgeted, and a judgment made as to whether it is cost-effective.

The Government should support an independent and legally established and funded "transparency institution" to assess and analyse the impact of its policies on the economy, as a complementary and valuable instrument to help maximize the benefits of WTO membership (and other trade agreements). Such an organization would enhance the domestic transparency of government decision-making on trade policy matters, and identify the costs and benefits for the economy as a whole on sectoral interventions and regulatory regimes. It could also advise the Government on the effects of specific trade policies in a range of areas, including competition and national welfare, and it should be required to publish regular reports on the effects of trade and investment policy. This organization could work in close cooperation with an inter-institutional trade committee.

VII.3. Issues relating to regional and multilateral trade negotiations/agreements

Negotiating an EPA with the EU: implications

The preferential arrangement for Malawi and other ACP countries under the Cotonou Agreement with the EU is due to be modified in 2008. Malawi as an LDC will then have to opt for preferential treatment under the EU's Everything but Arms initiative for LDCs, or it could participate in an EPA – a reciprocal but asymmetric preferential arrangement with the EU. Malawi has already chosen to negotiate an EPA through the ESA. There is, however, scope for other options to be considered before negotiations are concluded in December 2007.

Malawi has not been able to take full advantage of the preferential access to the EU market afforded to it by the Lomé Convention and its successor, the Cotonou Agreement, due to poor infrastructure, underdeveloped utilities, health issues, lack of appropriate human resources and a heavy debt burden. In negotiating an EPA, Malawi needs to ensure that these problems are addressed. As the rules of origin under the EBA initiative are more restrictive than under the Cotonou Agreement, Malawi is seeking to modify these through simpler and more realistic rules of origin. In addition, Malawi needs to take advantage of EU technical assistance for capacity-building to enable it to respond to such issues as NTBs and standards.

Loss of revenue due to the EPA

One of the concerns about the EPA is the possible loss of revenue (about 2 per cent of total revenue for Malawi), given that the EU is a major trading partner. Malawi therefore needs to identify alternative sources of revenue.

Overlapping membership of COMESA and SADC

Malawi's dual membership of COMESA and SADC also presents a problem for the country's integration into the multilateral trading system. It has been noted that it is technically impossible for a country to be a member of more than one customs union. For Malawi to conclude an EPA under an RTA, it would have to choose membership of only one RTA, depending on which one is able to negotiate the more favourable terms. Another option would be for COMESA and SADC to harmonize their tariff structures and form one customs union.

The economic and trade implications for Malawi of its membership of the two regional arrangements under COMESA and SADC have not been fully analysed. Both the customs authorities and the business community have experienced difficulties in implementation and operational aspects. For instance, it is not easy to determine which rules of origin apply in trade with a country that has dual membership.

Bilateral agreements

Malawi's bilateral trade agreements with South Africa and Zimbabwe further complicate trade-related issues. Under the Malawi-South Africa Trade Agreement, Malawi's exports enter South Africa duty-free, provided they have 25 per cent local content, while South African exports to Malawi are entitled to MFN treatment. Malawi's agricultural and agro-industrial exports to

South Africa, notably coffee, tea and sugar require permits, and tobacco and groundnuts are subject to quotas. On the other hand, the Malawi-Zimbabwe Trade Agreement is a reciprocal preferential free trade arrangement subject to rules of origin that stipulate 25 per cent local content and conformity with national standards in the importing country. These rules of origin are more lenient than those of COMESA.

Malawi's bilateral trade agreements with South Africa and Zimbabwe are WTO-compliant (non-restrictive), and in the context of the multilateral trading system they should be viewed as interim measures.

Export promotion

Export diversification has not been successful due to poor macroeconomic conditions and lack of an enabling environment. Malawi's exports are predominantly agricultural products, and market access is key to its negotiating strategy. Its only significant manufacturing sector is textiles and garments where stringent rules of origin are critical to ongoing market access. If Malawi cannot meet those rules of origin criteria/conditions, the level of Customs duties applied to its exports or to its inputs will not be an issue. Where Malawi has preferential access that allows some flexibility on rules of origin, every effort should be made to retain such access.

Malawi should also endeavour to diversify its markets in addition to its traditional markets. It could seek to expand exports to Asia, for example, where there is increasing demand for products such as tobacco.

Trade facilitation

Under Customs valuation, WTO members are obliged to put into effect, through national legislation, the provisions of the Agreement on the Implementation of Article VII of the GATT 1994. The Agreement sets international rules for Customs valuations aimed at ensuring that they are fair, uniform and neutral, and not arbitrary and fictitious. These assist the trading community and customs authorities to determine with more certainty the Customs values and the amount of duty payable, and therefore contributes to facilitating trade.

In Malawi, tariffs are levied on the c.i.f. price of imported products. The DTIS study of 2004 indicates that even though Malawi has adopted the Agreement to value the goods in the stipulated manner, in practice the provisions are not always applied. It notes that the current legislation related to valuation is not in compliance with WTO requirements. The Customs authorities cite difficulties with widespread non-compliance and a high volume of informal trade as reasons for applying arbitrary values. The legislation is to be reviewed in the near future to address issues arising from the Agreement on Customs Valuation.

Technical training on the Agreement has been provided since March 2001; however, the lack of accompanying organizational and procedural changes leaves the Customs administration with little capacity to apply valuation methods compatible with the Agreement. The World Customs Organization should provide appropriate technical assistance (training) to enable full implementation of the provisions of the Agreement. Given the current low level of acceptance and experience in the areas of post-clearance audit and risk management, the Malawi Customs authorities would also benefit from professional advisory services in these areas.

Specific trade facilitation needs and priorities of Malawi are being examined under the Integrated Framework, specifically: (i) high transport and communication costs and (ii) improving the capacity of Malawi's customs administration. The cost implications of proposals for new commitments on trade facilitation need to be examined in line with regional endeavours and financial and technical assistance sought for this purpose. Special and differential treatment should allow policy space for implementation of new commitments and provide support to national sector-specific trade facilitation programmes. In WTO negotiations, enhanced special and differential treatment, support for capacity building and implementation are critical for Malawi, as for other developing countries.

Pre-shipment inspection (PSI)

Governments use pre-shipment inspection to assist in establishing the nature and value of goods in the country of export and also to combat revenue leakage caused by inefficient customs administration, valuation fraud and corruption. Pre-shipment inspection was first introduced in Malawi in 1992 and is contracted to Intertek Trade Services (ITS). The contract involves valuation verification, tariff classification and origin data for imports valued at over $3,000 (c.i.f.); it also includes technical training and management development.

WTO policy traditionally recommended against PSI, citing the dilution of customs capacity to carry out its proper functions. Also is the cost of PSI in relation to the investment that would have to be made for the customs administration to become fully effective. In Malawi, the trading community, in particular, questions the efficiency and cost-effectiveness of PSI.

Malawi is operating UNCTAD's Automated System for Customs Data (ASYCUDA), with technical support from DFID. However, the DTIS 2004 study reports problems in transit control, revenue loss/leakage due to porous borders, and apparent corruption and lack of coordination between MTPSD, the Ministry of Finance and the Malawi Revenue Authority (MRA).

VII.4. Improving collaboration with other ACP countries in trade negotiations

At the heart of collaboration in the participation of a country in any negotiations is the element of political will. Malawi has to position itself in EPA and other negotiations in a way that its trade policy remains consistent with its growth strategy and the PRSP. Negotiations on the EPA are putting pressure on the already stretched negotiating capacity of LDCs such as Malawi to adequately prepare for, and come up with, positions that would truly represent their best interests. Malawi has been forced to follow the other ACP countries that have a stronger capacity and larger economies, especially in the early stages of the EPA negotiations.

Technicians need to identify common interests and seek a political mandate to join or form appropriate alliances that could be strengthened through lobbying. Malawi needs to exploit its status of being "one of the poorest countries" in the world to advance its cause. For instance, in the ACP setting, it should build an alliance with all those countries that have similar interests in forming an EPA with the EU. The Doha Ministerial meeting showed the strength of the ACP lobby. If this lobby could be more focused and broadened to include all countries with similar interests to Malawi's, it would stand a better chance of protecting those interests and deriving the greatest benefits in negotiations with the EU.

In respect of the WTO, the Doha negotiations have been taking place against the backdrop of increased recognition of the contribution of trade to economic growth and development. These negotiations have entered a crucial stage, given that they are expected to be concluded by the end of 2006, and taking into account their need to support the United Nations Millennium Development Goals. The timely conclusion of the negotiations, however, may be affected by the suppression of the negotiations in late July 2006. The unique and serious problems facing Africa in terms of its production, trade capacity and competitiveness, and market access, among other issues, have been top of the Agenda. Malawi supports the position of the African Union as embodied in the Livingstone Declaration (Annex I), since it reflects Malawi's concerns, particularly in respect of LDCs.

The African Group's preparatory efforts and position in the WTO negotiations require careful analysis of the immediate issues and emerging processes. The aim should be to identify the most important and immediate issues and options for Africa so as to formulate the most strategic positions. Assistance and information is needed to make this a joint and proactive effort. It is important for Africa to prepare for the many ongoing negotiations, some of which are overlapping or being conducted simultaneously. This poses a political and organizational challenge to every African government in terms of the need for regular monitoring and for providing informed advice/directives to their Geneva-based negotiators. African governments, separately and together, need to allot greater resources and energy to a rigorous, objective analysis of the effects and implications of every WTO agreement. This exercise should start with deciding on what is optimally desirable and minimally necessary, before making the subsequent assessment as to what is potentially achievable or remotely feasible. This requires a hierarchy of negotiating proposals/demands, including initial/ostensible positions, fall-back positions, as well as non-negotiable bottom lines.

For effectiveness, the preparatory processes must not only be at the individual country level as part of a national strategy. Given that the national financial and human resources of most African countries, including Malawi, are not adequate to cope with the demands of international negotiations, cooperation, coordination and sharing of resources have to be a prime strategy for these countries, especially within the framework of regional cooperation (e.g. in COMESA and SADC).

VII.5. Institutional strengthening

Malawi's trade policies have undergone significant liberalization in the past decade, in line with increased efforts to integrate the country into both regional and international markets. This has placed pressures not only on domestic institutions (e.g. Customs administration, export promotion, standardization), but also on the Government's entire policymaking machinery. Trade-related institutional capability is weak. In particular, there is lack of adequate and well-trained human resources, poor management of relevant institutions, lack of financial and material resources, and inadequate communication/information flow between both domestic and foreign stakeholders.

The Malawi Growth Strategy recognizes that to stimulate growth in the trade sector a supportive trade infrastructure is also necessary. Despite emphasis on trade as a useful mechanism for poverty reduction and economic growth, the institutions with responsibility for analysing, designing and implementing trade policies are underfunded. However, funding alone may not be a solution to the problems of the supporting institutions. A new structure is needed to respond to the imperatives of the multilateral trading system, including strengthening the MTPSD, as discussed earlier, the Ministry of Commerce and Industry and other relevant Ministries and bodies, as well as the business community through:

- Targeted managerial skills development as it applies to the multilateral trading system;
- A national training plan on the multilateral trading system;
- A review of the institutional set-up relating to the multilateral trading system with a view to its restructuring to enable it to better respond to challenges, backed by appropriate financial and technical support;
- The establishment of an effective and institutionalized coordination mechanism between the relevant stakeholders and government officials;
- A review of legislation to respond to the exigencies of the WTO;
- The creation of a network of trained staff, and ensuring their regular liaison with regional counterparts;
- The establishment of an information flow mechanism relating to the multilateral trading system;
- Identification of export opportunities, which must be linked to a committed programme of product diversification, and the formulation and implementation of a supporting and consolidated marketing strategy;
- Conducting a survey of the Government, institutional support organizations, private companies and academia so as to develop a programme to change attitudes and enhance support for export development;
- Review of investment incentives, redesigning them as necessary, to attract capital and FDI;
- Review of the tariff structure as it relates to development of export industries; and
- Development of negotiating skills and capacity for trade policy development in the public and private sector.

The National Working Group on Trade Policy (NWGTP) serves as a strategic think tank on trade policy for Malawi. However, it has limited capacity to analyse issues, disseminate information and assist in policy formulation. It lacks adequate knowledge of, and experience with, trade policy issues, including those relating to the WTO, EU-ACP, COMESA and the bilateral agreements (having originally handled only the SADC Trade Protocol). There is serious paucity of knowledge and appreciation of the content and practice of the multilateral trading system, even at the level of senior officials. To address this problem, an enhanced programme of action and a strategy to inform the stakeholders about the multilateral trading system and its implications for Malawi would be the appropriate starting point.

The role of the NWGTP could be improved by making it a legal, autonomous entity with a mandate to address issues of both trade and industrial policy. The Ministry of Trade and Industry could chair its Board. It should have a small, autonomous secretariat with three or four appropriately qualified and competitively remunerated economists in the relevant disciplines. Funding the activities of the secretariat should be assured, as is the case with institutions such as the Malawi Export Promotion Council or the Secretariat of the Inter-Institutional Committee under JITAP. The NWGTP should be equipped to be able to routinely channel information to decision-makers and stakeholders. It should serve as a "one-stop shop" for the implementation of trade and industrial policies, and it should act as a "transparency institution" to assess and analyse the impact of policies on the economy and advise the Government accordingly. In sum, the MTPSD, in recognition of the valuable importance of trade policy, should prepare a short-term technical assistance proposal which would spell out the modalities for retaining and upgrading the NWGTP to enable it to fulfil its role of strengthening trade policy.

VII.6. Trade-related technical assistance

Malawi receives considerable trade-related technical assistance (TRTA) from a host of donors and from the WTO, but this is not sufficient to meet all its needs. At the same time, the absorptive capacity of Malawian beneficiary institutions, including the various ministries, is limited; this means that such assistance needs to be better coordinated to derive maximum benefits, especially assistance to help overcome difficulties in implementing the WTO Agreements. This is why the Integrated Framework is seeking to bring about greater coherence in development policy. Malawi should, as a matter of urgency, address the issue of coordination of trade-related donor assistance at a senior level in government along with the participation of the private sector and other stakeholders. The country benefits from training provided by the WTO, research and policy advice from UNCTAD, marketing aspects from the ITC, and assistance in other areas from various agencies as it seeks to cope with integration into the multilateral trading system. In addition to resources and skills upgrading, Malawi needs legal support.

Malawi acceded to the intergovernmental agreement to establish the South Centre (based in Geneva) whose role is to strengthen the capacity of countries of the South in trade-related negotiations. However, it has not made adequate use of the Centre for assistance in policy advice and for technical support for research and analysis.

The country is also participating in JITAP, whose overall objectives are to:

- Strengthen the legal and institutional infrastructure for implementation of WTO Agreements, trade negotiations and trade policy formulation and implementation;
- Deepen the knowledge base relating to the multilateral trading system; and
- Enhance export preparedness.

Unfortunately, progress in implementing the various capacity-building programmes under JITAP has been slow due to organizational issues. Despite some success, the country continues to lack adequate capacity for trade policy analysis, negotiation and implementation, and for designing trade reforms to serve the poverty reduction, economic growth and environmental sustainability objectives as outlined in the broader national agenda of the PRSP and MEGs.

Malawi has experienced difficulties in implementing various WTO Agreements, and has not been able to meet the transitional periods. Under the special and differential treatment for LDCs, Malawi seeks technical and financial assistance from WTO members and other international organizations to assist it in meeting its commitments. The MTPSD's committee on WTO needs strengthening to enable it to effectively prepare for and participate in the Sixth WTO Ministerial Conference. JITAP could serve as a vehicle for addressing the institutional and human resource constraints that prevent Malawi's full and effective participation in the multilateral trading system.

Within the framework of the WTO, and based on its development agenda, the following are Malawi's priority needs:

i) Assistance for development of its trade infrastructure;
ii) Enhanced debt relief;
iii) Examination of commodity markets and international commodity prices;
iv) Technology transfer; and
v) Market access and erosion of preferences.

The United Kingdom's Department for International Development through its Malawi Trade Policy Project (MTPP), is also providing assistance, particularly to the MTPSD, for the development of trade policy, the implementation of trade initiatives such as the WTO agreements. Effective linkages need to be established between JITAP and the DFID Regional Programme on Trade and Poverty Alleviation in Africa and national, regional and global networks engaged in trade-related research and analysis.

WTO technical assistance has so far concentrated on increasing the knowledge of government officials on WTO issues through courses, seminars and workshops. However, the level of capacity-building remains low. Creating a core of WTO-related expertise in relevant institutions, academia and the private sector is now urgently needed.