SOUTHERN AFRICA GLOBAL COMPETITIVENESS HUB

Assessment of the Status of Trade Facilitation in Malawi

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EXECUTIVE SUMMARY

Introduction

Trade Facilitation in the WTO context refers to the simplification of procedures and documents related to the cross-border delivery of goods. It embraces both the infrastructure and the regulatory environments that affect the movement of goods from one customs territory to another—usually, but not exclusively, across national borders. Trade Facilitation was enshrined in three original articles of the 1947 GATT. Fifty years later, in the WTO's first (Singapore) ministerial, Member States recognized that Trade Facilitation now held perhaps the greatest potential for further mitigation of obstacles to free trade. The DOHA Agenda provided additional impetus for reforms, and in 2004 the Council for Trade in Goods issued determinations on the means for clarifying the three relevant GATT articles. In October of that year, the Council established the Negotiating Group on Trade Facilitation.

The Negotiating Group focused on clarifying GATT Articles X, VIII, and V, which will lead to the establishment of a formal set of rules governing Trade Facilitation. Since then, Members have submitted hundreds of proposals for consideration, and at the time of the present assessment, the Negotiating Group had issued its "third generation" proposals—those most likely to be accepted as binding rules for all WTO Members.

The WCO, the World Bank, and the WTO Secretariat—in collaboration with UNCTAD—also created self-assessment instruments for countries wishing to evaluate their status in respect of trade facilitation. The purpose of self-assessments is to allow Members to prepare for—and participate in negotiations on—the set of rules that will evolve from the submitted proposals. Developing countries have a special stake in ensuring that the rules allow them time for adjustment and work in their best long-term interests.

The Southern Africa Global Competitiveness Hub (the Hub), a USAID-funded project headquartered in Gaborone, has responded positively to requests from the countries of the region to assist in trade facilitation assessments. Responding to a request from the Government of Malawi, the Hub sent a mission to Blantyre and Lilongwe in March 2007. The present report represents the observations and conclusions of the consulting team that conducted the assessment.

For its primary assessment instrument, the Hub mission prepared a trade facilitation checklist based very closely on the self-assessment tool devised by the World Bank, WTO and WCO. The contents derive from the proposals of the Negotiating Group for clarification of the three GATT Articles under scrutiny as contained in document TN/TF/W/143: Article X on the Publication and Administration of Trade Regulations; Article VIII on Fees and Formalities connected with Importation and Exportation; and Article V on Freedom of Transit. In addition to their extensive documentary review, the consultants held interviews with representatives of the Customs Administration; customs brokers; shipping agents, freight forwarders and transport operators; the Ministries of Industry and Trade, Agriculture, Finance, and Transport; private traders; and the donor community.

Progress in trade facilitation translates into meaningful transactional economies in the global trading system. Numerous studies indicate that transaction costs of the type amenable to improvements in trade facilitation programs represent between 2 and 15 percent of total transaction value, worldwide.

The moment is favorable for Malawi to take stock of its progress and its shortcomings in trade facilitation. Formal implementation of several important conventions and agreements, including the SADC Trade Protocol, will signal to the region and the country's trading partners in general that Malawi is serious about being a full partner in the global trading system. A comprehensive understanding of the issues at stake will allow the country to participate in the deliberations of the Negotiating Group. Moreover concrete improvements in areas identified in this report will generate economic payoffs to Malawi in terms of lowered costs of consumer and intermediate goods—as well as to its exports, which should grow in the years to come.

ARTICLE X

The main objective of Article X is to attain transparency, predictability, and uniformity in the application of international trade laws, regulations, and procedures. It also seeks to ensure respect for due process in appeal procedures pertaining to customs valuation of products or other charges on imports and exports. The proposals submitted to the Negotiating Group for this article fall into five rubrics as discussed below.

First in order are proposals that call for the *publication of all trade-related regulations* and procedures of border agencies, rates of duty and taxes imposed, decisions and examples of customs classifications, import and export restrictions, fees and charges, penalty provisions, appeal procedures, and all trade agreements to which a country is party. Information must be accessible to all interested parties, domestic and foreign, in a nondiscriminatory fashion. The mission found that laws and regulations are published in the Official Gazette and are generally readily available at the government printing office. Availability of information on the Internet, however, is limited and inconsistent. In order to come into better compliance with the leading proposals for this aspect of Article X, Malawi would need to determine what constitutes all trade-related information for the country. It would also need to (i) assess the reliability of the telecommunication services for connecting all major cities in the country; (ii) procure computers and create reliable official websites that would provide all the relevant information on the lines proposed by the WTO Members; (iii) ensure a sufficient supply of printed laws, regulations, and procedures in stock at the government printers; and (iv) establish enquiry desks/points within border agencies or a central enquiry point. As far as this section is concerned Malawi does partially comply with the basic standards for publication and availability of information.

The second set of proposals in this Article emphasizes the need for an agreed, specified *interval between publication and entry into force* of official trade-related laws and regulations. In Malawi, the time period between publication and implementation varies from immediate to 21 days with several intermediate options relating to budgetary related issues. In order to be in compliance with the proposed new rules, Malawi might have to do away with the immediate enforcement provision. Further consideration should be given to replicating what is already provided for in the context of the TBT and SPS Agreements and which is also being recommended under the draft SPS Annex to the SADC Protocol on Trade. *Malawi does partially comply (80%) with this basic standard.*

The third set of proposals focuses on the *need for consultations* between interested parties, notably governments and the private sector, on proposed new rules and procedures to import and export,

giving the interested parties an opportunity to submit comments in writing on new rules or amendments and allow reasonable time for making comments. In Malawi, several government agencies contributes to trade policy and rules in consultation with the private sector, but the division of responsibilities can be duplicative and thus confusing at times. Although the Ministry of Industry, Trade and Private Sector Development is charged with overall responsibility for coordinating trade policy, the Ministry of finance is responsible for formulating tariff policy, trading and the official communities are generally in agreement that effective coordination is most times lacking among government agencies. Malawi Revenue Authority, the Ministry of Industry, Trade and Private Sector Development, the Ministry of Works & Transport and its various agencies afford stakeholder adequate opportunity to review proposed new bills and to some extent changes to existing laws and to submit comment on them. The Government will need to review the mandate of the existing National Working Group on Trade Policy to ensure that adequate attention is given to Trade Facilitation on-going negotiations and implementation of trade facilitation provisions is existing international treaties or instruments that Malawi is party to. Alternatively, consideration should be given to have a specific committee looking at trade facilitation issues—a recommendation proposed by some WTO members. The composition of such a committee would be very important. The assessment on consultative process indicates that *Malawi does comply with the basic standard.*

The fourth group of proposals centers on *disciplines governing advance rulings* on tariff classification, customs valuation, and applicable duties. Advance rulings are granted upon written request from an importer and are normally considered binding on customs authorities, provided the facts and circumstances on which the ruling is based remain unchanged. In Malawi, advance rulings are permitted but apparently seldom used. At the time of the assessment Malawi government announced that the services of the PSI company SGS would be terminated by July 2007. The termination and abolishment of PSI and the full implementation the WTO Customs Valuation Agreement will bring Malawi in line with the international community and in particular the Southern Africa Member States. Some technical and capacity building assistance will be necessary to train all the relevant stakeholders. In addition, Malawi will need to ensure uniform application of procedures, transparency, and legal redress in case of a dispute. Although most of the legislation is fairly old, *Malawi does comply with the basic proposals* relating to disciplines governing advance rulings on tariff classification and customs valuation and the mission was informed of the need to review the old laws to bring them in line with current practices.

The fifth subset of proposals for Article X envisions *Appeal Procedures* as an equitable and effective means for reviewing and correcting administrative action. The proposals seek to ensure that for imports, exports, and goods in transit, Members have an obligation to provide a nondiscriminatory, legal right of appeal against Customs and other agencies' rulings and decisions. According to Customs Officials, as well as the Customs Law, right of appeal for imports, exports, and transit goods is a nondiscriminatory legal right against Customs' and other border agencies' rulings and decisions. There are provisions for raising complaints over administrative decisions informally, and there is a formal appeal procedure. A few number of the private stakeholders interviewed were unaware of its existence. *Malawi does comply with the basic standard for appeal procedures.*

The last subset of proposals for Article X, are on the need to *maintain and reinforce integrity and ethical conduct among officials.* The proposals seek to ensure that corruption which can be a major inhibitor of trade through e.g. delaying cargo payment of bribes and improper classification and valuation of goods is dealt with through the establishment of a code of conduct, computerized systems

to reduce officer discretion, creation of capacities to prevent and control customs offenses. The Government of Malawi established an Anti Corruption Bureau with responsibility of enforcing the Anti Corruption Act addressing corruption by public officials as well by private individuals and entities. Malawi has in place laws to address customs offenses and corruption. According to the Malawi DTIS report on corruption, there is very little direct evidence of corruption in Customs. The matter did not come out as one that is a major problem in Malawi during the team's mission although perceptions of some stakeholders interviewed suggest that corruption is there in Customs at all levels and most government offices that issue licenses in connection with importation and exportation of goods. *Malawi complies partially with two-thirds of the proposals and complies fully with the remaining one-third.*

ARTICLE VIII

The scope of the GATT 1947 article was the nature and complexity of fees and charges that could be collected by a customs authority and other government control agencies. Member submissions of proposals to the Negotiating Group aim at mitigating abuses of Article VIII by narrowing the margins of interpretation and suppressing ambiguities. The proposals fall into six broad rubrics as discussed below:

The first set of proposals in this article call for *General Discipline on Fees and Charges imposed on* or *in connection with importation and exportation and the reduction/minimization of the number and diversity of fees/charges.* The proposal requires specific parameters for fees/charges, publication/notification of fees/charges, prohibition of collection of unpublished fees/charges, periodic review of fees/charges, automated payment of duties and fees. There should be a reduction of the number and diversity of fees. The mission found that although Malawi would be compliant with many of the proposed new rules; it would fail to satisfy others. It's most troubling area of potential noncompliance lies in the inability to provide for automated payment of duties, fees and charges, erratic review of fees and charges, and consolidation or reduction of the number and diversity of trade-related fees and charges. The standards development cess of 0.2 % of product value levied on certain categories of imports by the Malawi Bureau of Standards would clearly be non compliant with the proposals as it is an ad valorem charge not related to the costs of services rendered. In order to achieve better compliance with the new proposals, Malawi will have to work towards establishment of an automated payment and accounting system and towards a review of relevant legislative rules, and of all fees and charges with a view to consolidating them and reducing their number and diversity where practicable. Furthermore Malawi would have to eliminate any ad valorem charges related to standards development.

The second set of proposals of Article VIII discusses *Formalities connected with importation and exportation* of goods. The proposals require application of the principle of nondiscrimination, reduction in numbers of procedures and documents to the minimum necessary, periodic reviews, and adherence to international standards. There should be a uniform Customs Code, use of commercially available information and copies, automation of systems, a one-stop window, elimination of pre-shipment inspection, and a phasing out of mandatory use of customs brokers.

Again, Malawi has achieved considerable progress in its Customs Reform and Modernization Program and would be nearly compliant with many of the proposals. It will move further in this positive direction once the current review by the International Monetary Fund is concluded. Among the assessment mission's recommendations to the Government for addressing the remaining issues in this set of proposals, the most compelling are:

- Simplify the overall customs formalities by reducing duplicative requirements, such as the import permits, from other agencies.

- Work towards acceptance of certified faxes and copies as well as electronic documents.

- Automate procedures to an extent that approaches the best practices of advanced developing countries. For example, *fully* automate payment of duties and taxes.

- Work towards establishment of Single Window / One-time submission facility

- Negotiate acceptable terms for a phase-out period of pre-shipment inspection.

Malawi is partly in compliance with the proposal

The third set of proposals of Article VIII calls for *prohibition of consular transactions.* The proposal calls for Members to ensure that they do not have any legislative or administrative requirements for consularization. Malawi is fully compliant with this proposal as there is no legislation for this.

The fourth set of proposals is for *coordination of activities and requirements for all border agencies.* The proposal call for a *one- stop shop* process through the coordination of relevant agencies. Importers and exporters will then have a single point of lodgment, whether electronic or manual. The proposal also calls for coordination of juxtaposed Customs offices and establishment of common border facilities, including one-stop joint control border. The mission found out that Malawi is in partial compliance to the one-stop shop concept: activities at the border are not coordinated, except where MRA and some Government Agencies inspect cargo at the same time to avoid duplication and delays. The proposal for common border facilities with juxtaposed Customs posts is not being implemented, but there are regional plans to establish one-stop joint border control at several regional border posts.

The fifth set of proposals is on *release and clearance of goods*. These proposals require Members to maintain pre-arrival processing and special procedures for express shipments. Using modern risk assessment techniques, Members will be expected to apply simplified import and export formalities for traders who meet specific criteria. Post-Clearance Audit should be integral to the relevant procedures and should adhere to international standards. There should be provision for conditions under which goods may be released from Customs control prior to payment of duty; Members will be required to establish and publish average release and clearance times and progressively reduce the time taken to release and clear goods. Malawi does not permit pre-arrival clearance of merchandise – they must be cleared on arrival in Malawi. For express shipments, Malawi should enact and implement the principles contained in the *WCO Guidelines for the Immediate Release of Consignments by Customs.* Customs should also establish a formal system of creating authorized traders who automatically qualify for accelerated clearance. *Malawi does partially comply with the proposal.*

The last set of proposals for Article VIII is on *Tariff Classification.* The proposal seeks to provide an objective approach to tariff classification, to improve transparency and predictability for traders to ensure that classifications are not arbitrary or unjustifiable. *Malawi is fully compliant with the proposal*, as it has acceded to the WCO Harmonized System Convention and is implementing the HS tariff

ARTICLE V

Article V establishes the principles of freedom of transit: Members must grant Most-Favored Nation treatment to all other Members, and they must not hinder traffic in transit by imposing unnecessary delays or restrictions or by imposing unreasonable charges. As with the other GATT Articles that most directly affect trade facilitation, Article V laid down the ground rules but left open wide margins of interpretation. Although violations of its provisions have been asserted several times, Article V has never been applied under the dispute settlement system of the GATT or the WTO.

Similarly to the "third-generation" proposals related to the other GATT Articles under consideration, those for Article V include *nondiscrimination and legitimate policy objectives*. Malawi is generally compliant with the provisions of this proposal save for the road user charges where Malawi applies the principle of reciprocating charges levied by other countries in the region which are not related to the cost of accessing the road infrastructure. It is especially important that transit charges for accessing Malawi's transport infrastructure relate to the cost of such access and do not discriminate on the basis of registration of the transit vehicle. Malawi should implement the recommendations of the SADC review study aimed at assisting member countries implement a harmonized regime of road user charges. It is also necessary that management systems are strengthened in order for Malawi to effectively enforce public policy objectives relating to environment, health, safety and security.

A second set of proposals relates to disciplines on *fees and charges*. Fees and charges collected by the various control agencies are published in the Gazette along with the objectives of each fee or charge. The time period between publication and implementation varies from immediate to 21 days. All fees and charges applicable to transit should allow a reasonable interval before coming into force, except when justified by legitimate public policy objectives. There is need for more discipline in the review of fees and charges through establishment of administrative review mechanisms and independent verification processes of the appropriateness of the fees and charges. Most of the fees and charges were related to the cost of services rendered when they were established but are not regularly reviewed hence there is under recovery for the cost of services. Malawi would also have to ensure that fees and charges are periodically exchanged with neighbouring authorities through the Joint Commissions. Malawi therefore partially complies with this set of proposals.

A third set of proposals relates to disciplines on *transit formalities and documentation requirements*. Malawi is generally compliant with the requirement to publish information on formalities and documentation requirements for transit before these enter into force. The Malawi Revenue Authority conducted a WCO Time Release Study to release times at the various border posts and this information is published on the MRA website. The review of formalities and documentation requirements for transit has been erratic and there is need to introduce more discipline through transparent consultative processes and implemented after prior publication. The review process should also identify opportunities for

reduction and simplification of formalities and data/documentation requirements were practicable and take account of international standards and regional agreements. With respect to:

- Simplified and preferential clearance of certain goods using risk management and authorised trades systems; and
- Limitation of inspection and controls through one-stop shop lodgement of documents, coordinated inspections, cross border coordination, risk management and authorised traders systems

the status is as described under Article VIII above.

Currently Malawi is participating in the pilot implementation of the SADC Transit Customs Bond Guarantee Scheme. Malawi is also part of corridor arrangements on the Dar es Salaam and Nacala Corridors. There are no formalized corridor monitoring systems for these corridors and it is recommended that these be established at the corridor and national level through public private partnerships.

Malawi is partially compliant with this third set of proposals.

Cooperation and coordination is the subject of yet another set of proposals for Article V. The proposals refer to internal collaboration among authorities, cooperation between authorities and the private sector and cooperation between Member States. In Malawi there is reasonable cooperation between authorities and the private sector through prior consultation and the interval between publication of new laws and regulations before they enter into force, although this can be improved. Coordination among authorities requires significant improvement since there is no one-stop shop submission of documents even though inspections are coordinated. Furthermore the coordination across borders is not adequate.

Malawi is partially compliant with this third set of proposals.

Conclusions

Trade Facilitation offers significant benefits to business development, economic growth, and global integration. Malawi is a participant in the broad WTO effort to reduce transactional barriers to trade, and its efforts are most clearly visible in the WCO Customs Reform and Modernization Program.

While its progress is notable, Malawi nonetheless has much work ahead to bring its overall trade facilitation standards in line with those of the advanced developing countries, and it is only partially prepared to abide by the new set of rules under draft by the WTO Negotiating Group. Because those rules will be binding but will also incorporate special and differential treatment for least developed countries, the observations in this report have included both achievements and deficiencies and have noted where expert technical assistance may be advisable for bringing about the changes envisioned.

1. INTRODUCTION

1.1 Trade Facilitation Background

1.1 In the WTO context, trade facilitation has a specific rather than a general meaning. In the most basic sense, it is the simplification of procedures and documents related to the cross-border delivery of goods. It embraces both the infrastructure and the regulatory environments that affect the movement of goods from one customs territory to another—usually, but not exclusively, across national borders. Therefore, any measure that eases a trade transaction by reducing time and cost in the transaction cycle falls into the category of trade facilitation.

1.2 Within the multilateral trading arena, efforts to create rules directly related to trade facilitation go back to the original GATT articles drafted in 1946. The Customs Cooperation Council, now the World Customs Organization (WCO), was established in Brussels in 1952. During the following decades, the WCO promoted numerous international agreements and declarations, among the most notable of which are the Revised Kyoto Convention on Simplification and Harmonization of Customs Procedures (1999); the Convention on the Harmonized Commodity Description and Coding System (1988); the Istanbul Convention on Temporary Admission of Goods (1993); and the Arusha Declaration of Integrity in Customs (1993). But trade facilitation issues were partially eclipsed during the post-war decades when GATT signatories focused their attention on addressing, with considerable success, a wide range of other barriers to trade, and in forming the WTO as a member organization for promoting an international, rules-based system.

1.3 By 1996, however, it became clear that trade facilitation represented the next challenge for the international trading community. At the WTO's first (Singapore) Ministerial Conference that year, trade facilitation was added to the agenda, and the Council for Trade in Goods was mandated to undertake exploratory work on the simplification of trade procedures and to assess the scope for WTO rules. In 2001, as part of the DOHA Agenda, the Council was given more explicit instructions to pursue trade facilitation; in 2004, in what has come to be known as the "July Package," it set the modalities for negotiations on the relevant GATT articles. In October of that year, the Council established the Negotiating Group on Trade Facilitation.

1.4 The Negotiating Group had several concerns before it, but its focus was on further clarification of three GATT articles: Article X on the Publication and Administration of Trade Regulations; Article VIII on Fees and Formalities connected with Importation and Exportation; and Article V on Freedom of Transit. Its main methodology was to invite WTO Members to submit proposals for clarification or modification of these three articles. Over the next two years, the Negotiating Group received and codified hundreds of submissions. It has now created a "third generation" summary of those proposals most likely to be accepted as rules binding on all WTO Members.[1]

1.5 In collaboration with UNCTAD, the WCO, and the World Bank, the Negotiating Group also created a checklist, or questionnaire, for countries wishing to conduct self-assessments of their preparedness to live by a new set of binding rules. Several WTO Members have by now conducted such self-assessments in the area of trade facilitation, most of them contracting out the exercise and using either the Negotiating Group's checklist or one of the other assessment instruments drafted by

[1] WTO document TN/TF/W/43/Rev. 10 dated August 11, 2006.

the WCO or the World Bank. As the work of the Negotiating Group moves towards conclusion, it has become increasingly urgent for countries to contribute to the negotiations and to prepare themselves for the new set of rules. It is in this context that the Southern Africa Global Competitiveness Hub (the Hub) has responded positively to requests from the countries of the region to assist in trade facilitation assessments. The Government of Malawi requested the Hub's assistance in June of 2006.

1.2 The Malawi Context

Malawi, with a population of approximately 12 million, is a landlocked country located in southeast Africa. Malawi has borders with Mozambique (1,569 km), Tanzania (475 km), and Zambia (837 km). The economy is mostly agrarian with 85% of the population residing in the rural areas, despite some urban migration in search of employment. The country is served by four main border crossings through which international freight is routed and these are:

- Mchinji on the Zambian border, which handles traffic to and from Zambia and DRC;
- Mwanza, on the southwest border with Mozambique, which handles traffic to/from Beira and South African ports as well as from the southern African region in general;
- Nayuchi, on the southeast border with Mozambique, which is the border post for rail traffic going to Nacala; and
- Songwe, on the Tanzanian border at Songwe River, which serves the Northern Corridor traffic to/from the Port of Dar es Salaam.

Mwanza handles the highest traffic volumes among the border posts, accounting for approximately 62.4% of the total export/import traffic.

Worldwide, the OECD calculates transaction costs to range from 2 percent to 15 percent of total transaction value.[2] Malawi certainly remains towards the high end of these estimates. But even if Malawi could reduce transaction costs on imported goods by only 2.5 percentage points through improvements in trade facilitation, it could realize an annual savings of $225 million, a part of which might be allocated to expansion and further modernization of border posts and customs facilities.[3]

Real savings and economic growth through deeper integration with the global trading community are the primary benefits that Malawi stands to gain through progress in trade facilitation. In the short-term, however, the Government will not want to find itself unprepared when new rules based on the three GATT articles become binding on all WTO Members. Malawi has some remaining time to prepare for these rules and, above all, to affect their outcome by actively participating in the negotiations. There may be special exemptions for developing countries and extended periods for implementation of certain proposals. Malawi can have a hand in influencing these conditions, ensuring that they work in the nation's best interests.

The purpose of the present mission from the Hub is to provide the Government of Malawi with an informational document that will assist it in negotiating effectively and in preparing for a new set of binding rules.

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[2] *Trade Facilitation and Business Development* (Paris: OECD, 2002), p.12.
[3] Based on 2005 value of imports of $9 billion.

1.3 The Assessment Methodology

For its primary assessment instrument, the Hub mission prepared a trade facilitation checklist based closely on the self-assessment questionnaires devised by the WCO and the WTO. The contents derive from the proposals of the Negotiating Group for clarification of the three GATT articles under scrutiny. Included in an annex to this report, the checklist has a column for yes/no answers and an additional column for qualitative responses.

Several weeks before arrival of the mission, the Hub requested the Ministry of Industry, Trade and Private Sector Development to distribute copies of the checklist to approximately sixty previously identified respondents. The anticipated methodology was to complement the information provided in the returned questionnaires with direct interviews using the same instrument. The Hub had also planned for a workshop to take place during the first few days of the mission in order to explain fully the purpose of the assessment and to galvanize interest in participation.

Delays in both the workshop date and in distribution of the checklist affected the methodology. The direct interviews came to be the primary avenue for data gathering instead of being, as planned, verification and clarification of information collected from completed questionnaires. Despite certain unanticipated impediments, however, the mission was able to collect abundant information, largely through direct interviews, from representatives of the following groups:

- Customs Administration
- Clearing Agents and Freight Forwarders
- Transport Operators
- The Ministries of Industry, Trade and Private Sector Development, Agriculture, Finance, and Public Works and Transport
- Road Truck Operators' Association
- Private Traders – Importers and Exporters
- Donors

The research also included extensive documentary review and review of relevant legislation in the government printing. The information gathered from all these sources allowed for a rich and comprehensive analysis of the progress, gaps, and needs of Malawi in trade facilitation.

1.4 The Report

The report that follows comprises five chapters and the annexes. Each of the next three chapters covers one of the three GATT articles. Beginning with Article X and finishing with Article V, the chapters follow the sequence as presented in the WTO Negotiations on Trade facilitation Self Assessment Guide for and on behalf of the World Bank prepared by Professor David Widdowson. The fifth chapter draws broad conclusions and recommendations from the previous analyses and finishes with a matrix of recommendations.

The report attempts to address an audience that includes trade policy experts and customs practitioners along with stakeholders who are less familiar with the procedural intricacies of cross-border commerce or with the legal texts of the WTO. Thus, each chapter begins with a brief introduction to the history and meaning of the article covered. The assessments for each proposal then contain four sections. The first section is a general description of the objective of the proposal followed by a section entitled *Basic Standard* which is a distillation of the essence of Members' proposals through the identification of practical *basic standards* for the proposed measures. (Readers seeking the exact, full wording of the proposals are referred to the original document, accessible from the WTO website.) The report cites *Basic Standard*s verbatim from the WTO Negotiations on Trade Facilitation Self Assessment Guide.

The next section is entitled *Status* and opens with a brief statement assessing the degree to which Malawi would be compliant with the proposal if it were actually an accepted and binding rule. In some cases, Malawi already meets all requirement or conditions to comply with the *basic standard*, while in others it would not be in conformity with them under prevalent conditions.

The third section is *Recommendations*. Here the report suggests actions that the Government of Malawi might consider taking either to ensure future compliance or to participate actively in the negotiations on the particular point. The fourth and final section is called *Technical Assistance/Capacity Building* and attempts to identify those areas in which Malawi could benefit from external assistance. The needs are presented in a matrix in chapter 5 for easy reference.

It is important to note that the analyses and recommendations are based on information provided by respondents, much but not all of which was subject to verification. The opinions expressed are those of the consultants alone and do not necessarily represent the thinking of the Hub or its primary donor, USAID.

1.5 The Global Competitiveness Hub Mission

The field work took place in Lilongwe and Blantyre from 19–23 March 2007. Bridget Chilala served as trade policy expert and as Team Leader, Ranga Munyaradzi, customs expert, and Evans Marowa, transportation expert.

2. ARTICLE X

2.1 Article X basically deals with the publication and administration of trade- regulations. The main objective of this Article is to attain transparency, predictability and uniformity in the application of international trade laws, regulations and procedures. It also seeks to ensure respect for due process in appeal procedures pertaining to the classification or the valuation of products for customs purposes or other charges on imports and exports.

2.2 The Article calls for WTO members, to implement the following:

- Publish its trade-related laws, regulations, rulings and agreements in a prompt and accessible manner,
- Abstain from enforcing measures of general application giving effect to the Customs Valuation Agreement or other charges on imports prior to their publication,
- Administer the laws and regulations in a uniform, impartial and reasonable manner, and
- Institute or maintain tribunals or procedures for, *inter alia*, prompt review and correction of administrative action relating to customs matters.

2.3 As with the other GATT 1947 Articles that most directly affect trade facilitation, Article X laid down the ground rules on publication of information but left open wide margins of interpretation. During the subsequent decades, there arose many allegations of abuse of the Article among the GATT members. As a result, in 2004, Members agreed that there was need to renegotiate the Article to clarify the scope of the obligation to publish trade regulations and the requirement to publish them promptly. Members also agreed to establish disciplines requiring the establishment of prior consultations mechanisms before the enactment of trade rules and procedures, and provide for how review, appeal procedures and due process should operate. The, Members have to date made several proposals which have been compiled by the WTO Secretariat, focusing on:

- What information to publish and how such information would be made readily available ,
- Specific time period between publication and implementation,
- Need to hold consultations and commenting on New and Amended rules,
- Provision of Advance Rulings and Appeal procedures, and
- Other Measures to enhance Impartiality, Non-discrimination and Transparency.

2.4 The coverage below of the current proposals by WTO members follows the format as contained in the WTO document TN/TF/W/143 and the actual text is presented *verbatim* from the same WTO Negotiations on Trade Facilitation Self Assessment Guide prepared by the World Bank in cooperation with the WTO Secretariat and other Annex D Organizations to assist developing and least developed country Members to conducting self assessments to identify their technical assistance and capacity building support needs as well as to enhance their understanding of the proposals.

A. PUBLICATION AND AVAILABILITY OF INFORMATION

A.1 Publication and Notification of Trade Regulations and of Penalty Provisions

2.5. *"Transparency and accessibility of information is important for traders to be able to efficiently undertake their business. The proposals seek to provide transparency of trade regulations by publishing promptly and making available to interested parties, all laws, administrative rulings and other relevant information relating to or affecting the international trade in goods."*

Basic Standard

2.6 *"A Member shall ensure that all relevant information relating to trade laws and procedures is readily available to any interested person."*

Status

2.7 According to Malawi's Trade Policy Review of 2002, there are 31 main trade-related laws. The current proposal requires members to provide transparency and accessibility to all relevant laws, regulations, administrative guidelines, judicial decisions and administrative rulings relating to process and procedures under implementation by all border agencies at points of entry and exit. Not all the information that is proposed is currently published and made accessible easily. Laws and regulations are published by the Government Printer while procedures and administrative decisions are mainly printed by the individual border agencies.

2.8 The Ministry of Industry, Trade and Private Sector Development issues general information on Import and Export rules and procedures but this information is not publicized. This publication also provides contact details for other offices that would supply general information on trade.

2.9 There is an officially designated source of information, the Government Printer, based in Zomba with outlet offices in most major cities in the country. The Government Printer prints all official gazettes in English but is not necessarily responsible for the dissemination and ensuring availability of such printed information. Some information is available from the Ministries concerned. The information is made available in a non discriminatory manner to both Government and the public from the Government Printer and the concerned Ministries where such Ministry takes responsibility of dissemination of such information.

2.10 The Ministry of Agriculture is the competent authority for Sanitary and Phytosanitary Measures as well as Animal Health related issues for exportation and importation. The Department of Animal Health and Livestock Development (DAHLD) is the veterinary authority responsible for the regulations of trade in animal and animal products. The Department issues Export Veterinary Certificates, Import permits for live food animals and animal products and Trade licensing which involve premises inspections. These Acts and certification information concerning livestock and it's by products for trade is currently only available at the DAHLD Headquarters and veterinary border office in hard copies. The importation and exportation of animal and animal products is governed by seven (7) pieces of legislation[4] which is quite old and would need to be reviewed to bring it up to date.

[4] Control and diseases of Animals Act (1966)
Hides and Skins Act Cap 50:02

2.11 The SPS Department on the other hand is the authority on quarantine and phytosanitary requirements and like wise the relevant information on trade in products that require Phytosanitary certification is not readily available and easily accessible by interested parties.

2.12 The Ministry of Public Works and Transport through its agencies, namely; Department of Civil Aviation, National Road Authority and the Road Traffic Directorate regulates the surface and air transport sub sectors and publish all laws, regulations and procedures relating to movement of traffic. The DCA has a regularly updated comprehensive Aeronautical Information Publication (AIP) which provides information regarding entry, transit and departure of passenger and cargo among other issues relating to aircraft, which are not part of the WTO Trade Facilitation negotiations scope.

2.13 Amendments to some relevant information such as laws and regulations are made public in the same manner as the original publications. There is generally speaking little appreciation of the need and importance of publication of information.

2.14 The manner in which and the scope of information made available would not be in compliance with the spirit of the proposal. *Malawi currently partially meets this proposal.*

Recommendations

2.15 Malawi would need to review and determine what would constitute ***all trade-related*** information for Malawi. There would be need to review the operations of the Government Printer with a view to make the institution more efficient in the provision of information. Modernization of the operation of the Government Printer outlets would entail procurement of computers to maintain a computerized data base on publication availability to ensure that there is sufficient supply of printed laws, regulations and procedures in stock at the government printers.

Technical Assistance and Capacity Building Requirements

2.16 Malawi would require both local remedy/action and external technical assistance to comply with this proposal fully. Awareness creation of the importance of transparency and accessibility to information for businesses to operate efficiently and generally contribute to economic development will be required. Malawi can produce a compendium of trade related information which would require to be updated on a regular basis and made available in hard copy or on CD or electronically. This could require technical assistance and financial support to compile the compendium.

A.2 Internet Publication

A.2 (a) Internet Publication of the Elements set out in Article X of GATT 1994

2.17. *"The publication of relevant information on an official website provides particularly high levels of both transparency and accessibility. It also allows timely publication of new and amended information."*

Meat and meat products Act
Milk and Milk products Act
Protection of Animals Act
Slaughter of Cattle Act
Veterinary and Para veterinary professional Act (2000)

2.18 "*These proposals seek to provide greater transparency of and accessibility to trade regulations by making available to interested parties, via the internet, all laws, administrative rulings and other relevant information relating to or affecting the international trade in goods.*"

Basic Standard

2.19 *"A Member shall ensure the provision of information through the use of the internet"*

Status

2.19 *Malawi Revenue Authority* has a website on which some information is posted with regard to the single administrative document and guidelines on how to fill in the form but the actual form cannot be filled in electronically as it is not provided for on the site. The Malawi Revenue authority does not meet the proposal fully.

2.20 The Ministry of Industry, Trade and Private sector Development has a website which provides some useful information but the content does not meet the requirement to provide all the information that would need to be provided in accordance with the basic proposal. The Ministry therefore complies partially to the basic standard.

2.21 The Ministry of Public Works and Transport has a website but it does not contain information that would fit within the current proposals scope that information should set forth the procedural sequence and other requirements for transportation of imported goods into the country. The Ministry therefore does not meet the basic standard. The Department of Civil Aviation, National Roads Authority, and the Road Traffic Department do not have there own websites and do not comply with the basic standard.

2.22 The Ministry of Agriculture and Food Security, Department of Animal Health and Livestock Development has an email address but has no connectivity on dialup internet which all traders in animal and animal products can access. Ministry of Home Affairs and Internal Security and Ministry of Health all have websites but the information provided does not meet the scope of the proposal-basic standard.

2.23 It can be concluded that *Malawi only partially complies with the basic standard.*

Recommendations

2.24 Some of the key government institutions in trade facilitation already have websites and as a result the country would only need to review the contents of the sites and update or amend them to incorporate information that would be relevant to trade facilitation.

2.25 It is recommended that those institutions without websites develop some and that these websites be linked to the Ministry of Industry, Trade and Private Sector Development.

Technical Assistance and Capacity Building Requirements

2.26 In our assessment the country would not need external assistance to review the information. The Ministry of Trade and Private Sector in collaboration with the Malawi Revenue authority would

provide guidance on what kind of information should be posted onto these websites to comply with the proposals.

A.2 (b) Internet Publication of specified information setting forth the procedural sequence and other requirements for importing goods into a Member's territory

2.27. *"The publication of relevant information on an official website provides particularly high levels of both transparency and accessibility. It also allows timely publication of new and amended information.*

2.28 *These proposals seek to provide greater transparency of and accessibility to trade regulations by including on the Member's official website the procedural sequence and other requirements for importing goods into the Member's territory."*

Basic Standard

2.29. *"A Member shall include on its official website the procedural sequence and other requirements for importing goods into the Member's territory."*

Status

2.30 Similarly as mentioned in A.2 (a), Malawi makes certain information covered by the scope available to governments and traders on its official website. Almost all the government institutions relevant to trade facilitation that were interviewed during the assessment do not have organizational and other mechanisms in place to ensure that the information which it makes available is complete, accurate, relevant and timely**.** *Malawi partially complies with the basic standard.*

Recommendation

2.31 ICT can be an effective means for disseminating information to a wider audience and therefore Malawi should give some consideration to ensure that all border agencies have an electronic facility together with an alternative facility for those interested parties that may not have electronic facilities for accessing information.

2.32 The Ministry of Industry, Trade and Private Sector Development should also consider linking their website to regional organizations that they are party to supplementary information e.g. COMESA and SADC website or any other websites identified to have relevant information as opposed to limiting links to local/domestic institutions only.

Technical Assistance and Capacity Building Requirements

2.33 In our assessment the country would not need external assistance to review the information. The Ministry of Trade and Private Sector in collaboration with the Malawi Revenue authority would provide guidance on what kind of information would require to be posted onto these websites to comply with the proposals. The country would need to ensure that there is reliable connectivity in the country for an efficient system to operate. This is probably one area where Malawi would require outside technical assistance to review the reliability of the telecommunications system and suggest how best to improve the system.

A.3 Notification of Trade Regulations

2.34 *"These proposals seek to provide Members with information on proposed new or amended trade regulations that are being considered by other Members, which may have a significant impact on them."*

Basic Standard

2.35 ***"****when introducing or amending trade regulations that may have a significant effect on the trade of other Members, A Member shall notify interested parties and the WTO Secretariat of the proposed introduction or amendment at the earliest possible stage prior to finalizing the proposed measures."*

Status

2.36 There is a National Working Group on Trade Policy chaired by a private-sector representative with membership drawn from mainly private-sector, key ministries and other relevant agencies. The National Working Group on Trade Policy advises the Government, on all legislative and policy issues relating to trade, including regulatory provisions and policy reforms. In addition, it provides a framework for consultations on trade policy and trade related issues. The Group facilitates consultation and cooperation among private and public sector parties to promote trade.

2.37 The government of Malawi uses one of the official languages of the WTO –English and therefore would have no problem meeting the proposal to notify WTO in one of the WTO official Languages. One possible hurdle for Malawi is that the country has no representation in Geneva but WTO issues are covered by the Malawi mission in Brussels.

2.38 According to the authorities complying with WTO notification requirement is one of the major challenges for Malawi in particular the notification obligations under the Technical Barriers to Trade (TBT) and Sanitary and Phytosanitary (SPS) Agreements. Malawi has notified its national notification authorities for TBT and SPS, but much remains to be done in order for Malawi to meet the rest of the notification requirements under the TBT and SPS agreement. Notification obligations on the lines of the SPS Agreement and the TBT agreements as has been proposed would create additional pressure even though this would be beneficial in bringing about transparency to the trading system.

2.39 *Malawi therefore would comply partially with the basic standard* requiring that when introducing or amending trade regulations interested parties and the WTO Secretariat are notified of the proposed introduction or amendment at the earliest possible stage prior to finalizing the proposed measures for the reasons stated above if the notification requirement will mirror that in the TBT and SPS Agreements.

Recommendations

2.40 Although Malawi does not have presence in Geneva, the Government could use the existing mechanism – National Working Group on Trade Policy for notifying the general public when amending and introducing new measures, and transform it to operate in a manner similar to what is

provided for under Technical Barriers to Trade (TBT)[5] and Sanitary and Photo-Sanitary (SPS)[6] Agreements.

Technical Assistance and Capacity Building Requirements

2.41 Malawi would require some technical assistance to transform the existing structures to operate in a manner that would facilitate efficient and timely notifications. In addition, external assistance will be required to establish an office in Geneva in the initial stages as an office in Geneva would facilitate faster flow of information. Malawi would require financial support in the form of subsidized rentals in the initial stages of opening an office in Geneva.

A.4. Establishment of Enquiry Points / Single National Focal Points (SNFP) / Information Centers

2.42. ***"****Transparency and accessibility of information is important for traders to be able to efficiently undertake their business. These proposals seek to provide greater accessibility to trade-related information and documents by providing access through enquiry points for interested parties on a non-discriminatory basis."*

Basic Standard

2.43. *"A Member shall establish enquiry points and/or SNFP which are responsible for providing or for facilitating access to trade-related information or documents on a non-discriminatory basis."*

Status

2.44 The Malawi Revenue Authority has a technical department that attends to enquiries from interested parties in a non discriminatory and convenient and timely manner according to most clearing and freight forwarding companies interviewed. The Department of Civil Aviation has a well run enquiry point that maintains the Aeronautical Information Publication up to date and sells the AIP and other information leaflets.

2.45 The other border agencies interviewed did not seem to have established and maintain enquiry points with a specific responsibility for answering relevant enquiries from interested parties. Most of these agencies have desk officers that deal with specific issues. Although the Ministry responsible for trade has a website email communication with officials in the Ministry is not efficient and this would need to be addressed.

2.46 Under the JITAP Program however, an enquiry point has been established but this is not very functional due to lack of adequate funding and therefore does not meet the scope of the proposal.

2.47 The Malawi Bureau of Standards is the focal point for the TBT Agreement and this has been notified to the WTO. Similarly the Department of Animal Health and Industry has been notified as the national enquiry point for animal health issues.

[5] Refer to Articles 2.9 and 2.10 of the TBT Agreement.
[6] Refer to Article 7 of the WTO SPS Agreement

2.48 Malawi however does not have a single focal point responsible for providing of facilitating access to trade-related information. There is no formal mechanism in place to notify and regularly update the WTO of the contact information for the enquiry points. *Malawi would partially comply with the basic standard.*

Recommendations

2.49 Malawi should consider establishing a single focal enquiry point if the country decides to produce a compendium of trade related information with a sustainable mechanism for updating it. Such an action would contribute towards reducing transaction costs by providing a one-stop shop for trade related information. Such an office could be housed within the Malawi Revenue Authority or the Ministry of Industry, Trade and Private Sector Development.

Technical Assistance and Capacity Building Requirements

2.50 If there was need to establish a single focal enquiry point, Malawi would need technical assistance to set up such a point. The Technical assistance and capacity building support requirements would include:

- Development of a website
- Procurement of equipment such as computers and telecommunication equipment.
- Sustainable communication system
- Training personnel to run and manage the operations of such an office

A.5 Other Measures to Enhance the Availability of Information

2.51 *According to document TN/TF/W/143, it has been proposed by the Trade Facilitation Negotiating Group for the official WTO website to provide links to Members' official websites.*

2.52 This proposal would require that Malawi establishes an official website. This would not be a problem for Malawi as the Ministry has an official website and so do the other major institutions linked to importation and exportation as long as these websites are updated and beefed up with the relevant information in the scope of the proposals for publishing all trade related information. The status, recommendations, technical assistance and capacity building requirements for this proposal are covered in A.2 (a) and A.2 (b).

B. TIME PERIOD BETWEEN PUBLICATION AND IMPLEMENTATION

B.1 Interval between Publication and Entry into Force

2.53 *"Article X paragraph 2 states: "No measure of general application taken by any Contracting Party effecting an advance in a rate of duty or other charge on imports under an established and uniform practice, or imposing a new or more burdensome requirement, restriction or prohibition on imports, or on the transfer of payments therefore, shall be enforced before such measure has been officially published."*

2.54 *These proposals seek to ensure the publication of proposed laws, regulations, rulings etc. ("rules") prior to their adoption and entry into force in order to contribute to informed compliance, by providing an opportunity for those stakeholders who may be affected by the rules to understand the changes and therefore improve their ability and readiness to comply."*

Basic Standard

2.55 ***"****A Member shall ensure that, in principle, information relating to proposed new and amended rules of general application is made available to interested persons in advance of their implementation."*

Status

2.56 Malawi has in place an institutional framework for consultations – The National Working Group on Trade Policy. The Government procedure for amending laws or introducing new laws provided for at least 21 days in which concerned parties are expected to comment before enforcement. The biggest problem has been that the 21 days are not usually utilized to provide comments to draft bills submitted. Furthermore, most of the private sector representatives interviewed, felt that the consultative process could be improved upon to allow for better feed back on comments provided before any proposed change to either existing laws or regulations or introduction of new laws before such are enforced. *Malawi does partially comply with the basic standard.*

Recommendations

2.57 There is need for creation of awareness on the importance of consulting on amendments or introduction of new requirements before enforcement especially on the part of enforcing agents (the government institutions) for an efficient consultative mechanism to flourish.

Technical Assistance and Capacity Building Requirements

2.58 Malawi can easily improve on existing consultative mechanism without seeking external technical assistance but using existing donor support to the National Working Group on Trade Policy which can also be used for consultation on the Trade Facilitation negotiations and monitoring implementation of the future agreement on trade facilitation.

C. CONSULTATIONS AND COMMENTING ON NEW AND AMENDED RULES

C.1 Prior Consultation and Commenting on New and Amended Rules

2.59 *"Public consultation and feedback improves the predictability of the regulatory environment, improves public confidence and support and helps to improve the level of compliance. Such consultation and feedback may be organized by the relevant ministry or regulatory agency.*

2.60 *These proposals seek to ensure effective consultation on proposed trade-related laws, regulations, administrative rulings etc. in order to provide interested persons with an opportunity to comment on the proposals, and for Members to take such comments into account, as appropriate, prior to their implementation."*

Basic Standard

2.61 *"A Member shall introduce and maintain consultative mechanisms to seek and take into account of comments from interested persons on proposals to introduce new, or amend existing trade-related rules prior to their implementation."*

Status

2.62 The Ministry of Industry, Trade and Private Sector Development has overall responsibility for trade policy formulation. There is a National Working Group on Trade Policy chaired by a private-sector representative and membership is drawn from mainly private-sector, ministries and relevant agencies. The National Working Group on Trade Policy advises the Government, through the Principal Secretary of Industry, Trade and Private Sector Development on all legislative and policy issues relating to trade, including regulatory provisions and policy reforms. In addition, it provides a framework for monitoring and evaluating the implementation of Malawi's trade arrangements and for ensuring conformity with agreed rules. It also functions as a consultative mechanism for trade policy and trade related issues. The Group facilitates consultation and cooperation among private and public sector parties to promote trade. The Group is privately funded, with some donor support.

2.63 With regard to Tariff policy, which is also an element of trade policy, this is primarily the responsibility of the Ministry of Finance and Economic Planning. The Ministry proposes changes to tariff rates in consultation with the Malawi Revenue Authority, and other relevant ministries, including Industry, Trade and Private Sector Development and Agriculture.

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

2.65 Malawi therefore has in place an institutional framework for consultations. The problem with this consultative process is that the 21 days provided for are not necessarily or usually utilized to provide comments to draft bills. From most of the people interviewed, they felt that the consultative process could be improved upon to allow for feedback on comments before any proposed change to either law or regulations or introduction of new laws can be enforced. Other than that *Malawi does comply with the scope of the basic standard*.

Technical Assistance and Capacity Building Requirements

2.66 Malawi would easily comply with this proposal with the creation of awareness to all stakeholders on why the law provides for 21 days before any bill becomes law. Malawi would not need technical assistance to create awareness. There is also need to create awareness among all stakeholders on the WTO provisions and implications to ensure effective consultative mechanisms on implementation of obligations that would arise from a future agreement on Trade Facilitation.

C.2 Information on Policy Objectives Sought

2.67 *"These proposals seek to ensure that interested persons are notified of the relevant policy objectives that are being pursued when a Member proposes to introduce new or amended trade-related laws, regulations and administrative rulings. By disclosing the rationale for proposed regulations, authorities help stakeholders to better understand their requirements, anticipate how they will be enforced and ensure that they are well prepared to comply."*

Basic Standard

2.68 *When seeking to introduce new or amend existing trade-related rules, a Member shall advise interested persons of the relevant policy objectives that are being pursued."*

Status

2.69 When seeking to introduce new, or amend existing trade-related rules, the Ministry of Industry, Trade and Private Sector Development advises the National Working Group on Trade policy and interested persons through the media and notices of the relevant policy objectives that are being pursued. The Ministry of Works and Transport and its agencies do likewise to all relevant stakeholders. *Malawi therefore does comply with the proposal*.

Technical Assistance and Capacity Building Requirements

2.70 No technical assistance would be required by Malawi in this area.

D. ADVANCE RULINGS

D.1 Provision of Advance Rulings

2.71. *"In order to provide the international trading community with greater commercial predictability and certainty, and to facilitate their compliance with regulatory requirements, many administrations have implemented a system of advance rulings. These rulings generally apply to tariff classification, valuation and origin. Such rulings are supplied by Customs on request, and in many cases are legally binding, provided they are based on complete and accurate information. These proposals seek to establish such a system of binding rulings."*

Basic Standard

2.72. *"A Member shall issue legally binding rulings in a timely manner, and in advance of the relevant trade transaction, at the request of an interested person who has provided the Member with all necessary information."*

Status

2.73 The World Customs Organization guidelines on advance rulings define the term as

"designating the option for customs to issue a decision, at the request of the economic operator planning a foreign trade operation, relating to the regulation in force. The main benefit for the holder is the legal guarantee the decision will be applied."

2.74 Malawi has in place national legislation from the 1960s, and administrative arrangements which set out predictable procedures for applying for, issuing, modifying and revoking an advance ruling. The rulings are issued in writing and appropriate treatment is accorded for confidential information. Such rulings however, are not made publicly available and are not time bound. The rulings are binding on Customs authorities and notice in writing is given of any modification or revocation of an advance ruling and the effective date of the modification or revocation to the Party concerned. However most of the private sector stakeholders did not share the same view. It was not easy therefore to establish whether Malawi is properly observing the arrangements relating to advance rulings. The contrary views expressed by some of the private sector interviewees can be attributed to lack of information on the existence of such arrangements relating to advance rulings or a misunderstanding of what advance rulings is all about.

2.75 Malawi does partially comply with the basic standard.

Recommendations

2.76 There is need for the Ministry of Industry, Trade and Private Sector Development and the Malawi Revenue Authority to create awareness on what advance rulings are and how the procedures operate. This could be achieved once the Malawian authorities comply with the requirements to publish and make available all trade related information.

Technical Assistance and Capacity Building Requirements

2.77 The technical assistance to create awareness through local support would be required. Malawi could utilize existing technical assistance from bilateral donors to achieve this or from governmental resources.

E. APPEAL PROCEDURESE.1

E.1 Right of Appeal

2.78. *"Government agency decisions can have an immediate and detrimental effect on traders affected by the decisions. These proposals seek to introduce effective appeal procedures that will enable affected traders to seek review of decisions made and to receive a prompt and considered response to their appeals.*

2.79 *Procedures need to be as simple, straightforward and timely as possible. All requirements on both the appellant and Customs must be clearly laid out in legislation and easily accessible to all parties. Customs must inform appellants in writing of decisions and must implement final decisions promptly.*[7]*"*

Basic Standard

2.80. *"A Member shall provide a legal right of appeal in customs and other trade-related matters."*

[7] WCO Revised Kyoto Convention, General Annex, Chapter 10, 5. Conclusion.

Status

2.81 According to the Laws of Malawi cap 42.01, "*Any civil proceedings under the customs laws relating to any claim to any goods which have been seized under the customs laws and any claim to any duty, rent, charge, expense or other sum, payable under the customs laws, may be heard and determined without limit of amount before a court of a Resident Magistrate*." The law also provides for the Senior Resident Magistrate to act as a special referee for the purpose of hearing and determining appeals under section 121 (Disputes as to amount of duty payable) of the customs and Excise Act.

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

2.83 Malawi Revenue Authority therefore has in place national legislation that provides a right to affected persons to be given, upon written request, an explanation of the reasons for a trade-related decision; and for the person to have a right of appeal to a competent authority which may be the agency concerned, another administrative authority, arbitration, a special tribunal or, in the final instance, a judicial authority.

2.84 The national legislation provides for the Special Referee to outline the appeal procedures however the procedures for filing an appeal are not necessarily readily accessible to the trade community and the general public. The procedures do provide for an appeal to be lodged in writing stating the grounds on which the appeal is being made, time limits within which an appeal must be lodged and decisions are communicated to the appellant in writing. The legislation reviewed (Customs and Excise Act) outlines the specific types of decisions that may be subject to appeal and a right of appeal is provided for.

2.85 The other transport control agencies have appeal procedures stipulated in their relevant Acts up to Ministerial level after which aggrieved parties can take litigation measures through the legal system. *Malawi does comply with the basic standard*

E.2 Release of Goods in event of Appeal

2.86. *"Where a disputed decision is the subject of an appeal, goods should normally be released, with the possibility in given circumstances of duty payment being held in abeyance. These proposals seek to establish such a regime, which should be subject, where required by national legislation, to the provision of a guarantee, such as a surety or deposit."*

Basic standard

2.87. *"Where a disputed decision is the subject of appeal, a member shall generally allow goods the subject of the decision to be released and, where applicable, hold payment of duties and other taxes in abeyance pending resolution of the appeal."*

Status

2.88 Malawi's administrative arrangements provide for goods that are the subject of an appeal to be released, upon the provision of a guarantee, such as a surety or deposit. The clearing and forwarding agents interviewed confirmed the existence of such arrangements in Malawi. *Malawi does comply with the basic standard of the proposal.*

E.3 Appeal Mechanism in a Customs Union

2.89 *"These proposals are designed to establish mechanisms to streamline appeals against decisions relating to the importation of goods into a customs union, by having such appeals heard and decided at the customs union level."*

Basic standard

2.90 *"Where a disputed decision relating to the importation of goods into a Customs Union is the subject of an appeal, a Member shall agree to have a matter heard and decided at the customs union level."*

Status

2.91 Malawi is not yet a member of a Customs Union but Malawi's national legislation provides for an appeal mechanism. Both COMESA and SADC Model Laws provide for such a provision. *Malawi would comply with such a proposal if it implements the COMESA or SADC models.*

F. OTHER MEASURES TO ENHANCE IMPARTIALITY, NON DISCRIMINATION AND TRANSPARENCY

F.1 Uniform Administration of Trade Regulations

2.92 *"The proposals seek to provide traders and other stakeholders with certainty and clarity in relation to classification, valuation and other trade-related decisions by ensuring the uniform administration of trade regulations."*

Basic Standard

2.93. *"A Member shall administer trade regulations in a uniform and impartial manner."*

Status

2.94 Malawi has in place national legislation and administrative arrangements that support the uniform and impartial administration of trade regulations. However,

- Not all relevant information of general application relating to customs laws and procedures is publicly available (see A.1);

- Not all border agencies have established expert areas or specific units within their premises, which have primary responsibility for interpreting trade regulations for which the agency has administrative responsibility. The Malawi Revenue Authority has such a unit which has such a responsibility relating to tariff classification, customs valuation, import/export restrictions. The Road Traffic Department and Malawi Bureau of Standards have technical units with responsibility for maintenance of standards and auditing of field officers. The RTD conducts joint enforcement exercises by head office and a representative from each region every quarter as part of the training and performance review process. Regular technical meetings are held to review queries from the field. The Malawi Bureau of Standards enforces limited tests at Mwanza and Songwe with most tests being done at headquarters. Auditing of field offices and refresher course are used to facilitate uniform administration of regulations.

2.95 Although the Malawi Revenue Authority has established an expert area to provide interpretation to customs related issues, and uses case studies. they are not necessarily used to support customs classification and customs valuation training, the authority does not yet have in place appropriate audit procedures to ensure uniformity of administration and impartiality of decision making. *Malawi does partially comply with the basic standard.*

Recommendations

2.96 With the abolishment of pre-shipment inspection from July 2007, the Malawi Revenue Authority will need to ensure that they have in place appropriate audit procedures to ensure uniformity of administration of trade laws and impartiality of decision making.

2.97 There will be need to create awareness among all Malawi Revenue Authority employees and the general public on the national laws, regulations and procedures that deal with uniform administration of trade regulations.

2.98 It is recommended that all control agencies strengthen their management systems along the total quality management principles in order to improve capability of achieving uniform administration of regulations. Maintenance of integrity and ethical conduct among officials as well as automation of procedures will also support uniform administration of procedures and these are dealt with under F.2 (a) and F.2 (b).

Technical Assistance and Capacity Building Requirements

2.99 Some technical assistance will be required to establish total quality management systems or elements thereof in order to achieve uniform administration of regulations and procedures.

F.2 (a) Maintenance and Reinforcement of Integrity and Ethical Conduct among Officials

2.100 *"Corruption can be a major inhibitor of trade through e.g., delaying cargo, payment of bribes and improper classification and valuation of goods. Corruption within Customs may also impact negatively on investment and adversely affect the reputation of the country and Government which those officials represent."*

Basic Standard

2.101 *"A Member shall establish, maintain and enforce a code of conduct which addresses the rights and obligations of government officials."*

Status

2.102 Malawi has in place national legislation[8] and administrative arrangements for dealing with corruption for all public officials as well as a Code of Conduct consistent with the principles set out in the revised Arusha Declaration[9] in different pieces of Malawi's legislation for Customs officers.

2.103 MRA is a signatory to WCO Declaration on Customs Integrity and a "*Code of Conduct for Customs Officers"* is enforced so as to stamp out corrupt practices. The COMESA Summit, on May 24, 2002, adopted a declaration on integrity in Customs Administration. The Member states declared among others that integrity in Customs Administration is a priority and that the COMESA Code of Ethics for Customs Officers will be complied with by all Customs Administrations (Malawi included).

2.104 Members of the public can report any corrupt tendencies they may encounter to the Anti Corruption Bureau as well as at the government agencies offices. What seems to be a challenge for Malawi is enforcement of such requirements to enhance integrity. Some of the private sector people interviewed felt that there was also need to train government officials on how to handle clients. *Malawi does partially meet the basic standard*

Recommendations

2.105 Government agencies should ensure that all employees are provided with basic training on principles of ethics and integrity, and on dealing with clients. Government control agencies should develop and publish codes of conduct and "Clients' Charters" which inform members of the public of how public officials should conduct themselves and the type of services they can expect from the agencies' officials. These should be coordinated between the Anti Corruption Bureau and border control agencies.

Technical Assistance and Capacity Building Requirements

2.106 No external assistance would be required. Malawi can learn from best practices in other neighbouring countries that have developed similar standards.

F.2 (b) Computerized System to Reduce /Eliminate Discretion

2.107 *"The automation of certain customs processes, such as the clearance process, has the effect of reducing officer discretion and, as such is one way in which corrupt practices may be addressed."*

Basic Standard

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[8] Corruption Practices Act , Cap.7:04

9 Issues of integrity and corruption are of particular significance. The WCO has recognized this through the development of the Arusha declaration (Declaration of the Customs Co-operation Council Concerning Good Governance and Integrity in Customs), and the principles of the Declaration remain the cornerstone of best practice in this area.

2.108. *"A Member shall use information technology to reduce officer discretion, where practicable."*

Status

2.109 Malawi revenue authority's core operations are computerized, and this dramatically reduces officers' discretionary powers. The RTD implemented a computerized system called Malawi Traffic Information system (MATIS) for driver and vehicle licensing operations, registration, permits and certificates of fitness. Licenses and permits are bar-coded and enforcement officials use mobile bar code readers. There are plans to automate border crossing movements and interface these to Customs and traffic police. MATIS provides audit trail features which allow management and supervisors to monitor all regional field operations centrally. ***Malawi does comply with the basic standard***

Recommendations

2.110 It is recommended that operations of other government control agencies involved in trade facilitation be computerized.

Technical Assistance and Capacity Building Requirements

2.111 Technical assistance will be required to procure and commission computerized systems that will eliminate opportunities for discretion.

F.2(c) System of Penalties

2.112 *"The inclusion of appropriate penalty regimes in official codes of conduct and national legislation provides the necessary means of punishing corrupt behavior, and can also act as an effective deterrent.*

Basic Standard

2.113. *"A Member shall incorporate penalty provisions in its customs legislation."*

Status

2.114. Malawi has incorporated a system of penalties in its anti corruption and customs legislation. ***Malawi does comply with the basic standard.***

F. 2. (d) Technical Assistance to Create/Build up Capacities to Prevent and Control Customs Offenses

2.115. *"This proposal relates to the provision of technical assistance to create and build up a Member's capacity to prevent and control customs offences. As such, it is covered by other F.2 proposals."*

2.116. This matter is dealt with under proposal F.2 (a).

F.2. (e) Appointment of staff for Education and Training

2.117. This matter is dealt with under proposal F.2 (a).

F.2. (f) Coordination and Control Mechanisms

2.118. This matter is dealt with under proposal F.2 (a).

F.3. Import Alerts/Rapid Alerts

2.119. *"Import alert/rapid alert is a border control mechanism adopted by some countries and customs unions to monitor and ensure the quality of imported food products. It is imposed in the event of detection of contaminated imports or import of products not meeting the required standards. As a result of such alert, a predetermined number of subsequent export consignments from the relevant exporter are subjected to 100% inspection at points of entry into the country/customs union. These proposals seek to ensure that the alert itself does not create a barrier to trade."*

Basic Standard

2.120. *"A Member shall not operate an import alert/rapid alert system in a way that creates a barrier to trade."*

Status

2.121 Malawi does not operate an import alert or rapid alert system. *Malawi does comply with the basic standard*

F.4. Detention

2.122. *"This proposal seeks to ensure that importers or their authorized agent are informed promptly when their goods have been detained for inspection."*

Basic Standard

2.123. *"When goods are detained for inspection by a competent authority, a Member shall provide the importer or their authorized agent with information about the detention in a timely manner."*

Status

2.124. Malawi has in place national legislation and administrative arrangements which clearly set out the procedures for notifying importers and/or their agents promptly in situations where goods are detained for the purpose of inspection. *Malawi does comply with the basic standard.*

F.5 Test Procedures

2.125. *"Customs and other competent authorities may draw and test samples where deemed necessary, to establish the tariff description of goods declared or to ensure the application of other provisions of national legislation. This proposal seeks to provide traders with the right to a second confirmatory test in situations where the initial test returns adverse findings."*

Basic Standard

2.126. *"When samples of goods are tested by competent authorities for the purpose of ensuring the appropriate application of national legislation, A Member shall provide importers, exporters or their authorized agents with the right to a second confirmatory test"*

Status

2.127. Malawi has in place national legislation and administrative arrangements which clearly set out the procedures for confirmatory testing. The Malawi Bureau of Standards (MBS) which was established in 1972 sets and implements standards and conducts conformity tests on selected imports and exports.

2.128. However, the MBS has limited capacity with regard to equipment and personnel. Testing equipment is very limited allowing for only one testing line. It cannot therefore be concluded that Malawi has accredited laboratories and publishes information about such laboratories to enable acceptance of the results of a confirmatory test by all members of SADC or COMESA even though in the area of seed testing, SADC countries have agreed to harmonize the requirements and avoid testing seeds that would have already been tested by another Member. *Malawi does partially comply.*

Recommendations

2.129 There is need for Malawi to address the problem of lack of equipment and trained personnel at the Malawi Bureau of standards.

Technical Assistance and Capacity Building Requirements

2.130. Malawi would require technical assistance and capacity building support in this from external sources to address the lack of equipment for testing and trained personnel. The MBS would require funding to implement ISO 9000 and strengthen standard development and information service.

3. ARTICLE VIII

3.1 The scope of the GATT 1947 article was the nature and complexity of fees and taxes that could be charged by a customs authority. The overriding purpose of the article was to ensure that charges imposed by a customs administration and the procedural formalities of operations did not constitute *de facto* protectionism. While the same rules apply to exportation, the concern of the GATT signatory states at the time focused largely on importation. Since signatory states had committed to bound tariff levels, one means of raising the level of import protection was to levy a series of fees and to make customs formalities more complex than necessary. As with the other GATT articles that most directly affect trade facilitation, Article VIII laid down the ground rules but left open wide margins of interpretation. During the subsequent decades, there arose many allegations of abuse of the Article VIII basic concepts among the GATT signatories and eventual WTO members. As the Negotiating Group has received and codified proposals to narrow the margins of interpretation and suppress ambiguities, the current discussions fall into one of six subcategories:

1. *Fees and Charges Connected with Importation and Exportation*

2. *Formalities Connected with Importation and Exportation*

3. *Consularization*

4. *Border Agency Coordination*

5. *Release and Clearance of Goods*

6. *Tariff Classification*

3.2 The coverage below of the current proposals by WTO Members follow the format as contained in the WTO document TN/TF/W/143 and the actual text is presented *verbatim* the same WTO Negotiations on Trade Facilitation Self Assessment Guide prepared by the World Bank in cooperation with the WTO and other Annex D organisations to assist developing and least developed country Members to conducting self-assessments to identify their technical assistance and capacity building support needs as well as to enhance their understanding of the proposals.

G. Fees and Charges Connected with Importation and Exportation

G.1 General Disciplines on Fees and Charges Imposed on or in Connection with Importation and Exportation

G.1 (a) Specific Parameters for Fees/Charges

3.3. *"Article VIII paragraph 1(a) establishes certain obligations regarding fees and charges. It authorizes only those fees and charges that are limited to the approximate cost of services rendered, and prohibit fees and charges aimed at protecting domestic goods or having the effect of an import/export tax. These proposals seek to ensure that the principles of Article VIII are observed".*

Basic Standard

3.4 *"A Member shall ensure that fees and charges do not exceed the approximate costs of services rendered and are in direct and/or indirect connection with a specific importation, exportation or transit formality".*

Status

3.5 Imports and export permits / licenses in terms of the Control of goods Act are not legally liable to any fees or charges, and nothing is therefore collected for the service of issuing these licenses.

3.6 Malawi Revenue Authority (MRA) imposes a fixed charge / fee, the Processing Fee, for each Customs Declaration Form 12 submitted to Customs. This fixed fee is regardless of the value of the import / export or the number of items on the Bill of Entry. MRA also charges a fixed Escort Fee, for those importers who opt to clear their goods at an Inland Port, instead of at the border post. MRA has introduced a Destination Inspection Fee of K15, 000.00 that is collected on consignments of the F.O.B. value above K300, 000.00 MRA has stated that these fees cover the costs of the service rendered

3.7 The Department of Animal Health and Livestock Development, Department of Forestry and the Malawi Bureau of Standards charge fees for the import / export permits which they issue. These fees are based on minimum costs incurred, but the officials in these Departments pointed out that they are not commensurate with the service rendered, as they do not cover all the costs such as stationery, printing, overheads, labour and transport etc. The MBS fees and charges were last reviewed on 01 September 2005. The MBS imposes a quality development cess order of 0.2 % of the cost of imported products in the following categories: food, feed, electrical products, building materials, chemicals and other. This is an ad valorem charge not related to any service rendered.

3.8 Some exporters however complained about high fees / charges for transiting Mozambique (for example export of sugar through the Port of Beira) and about the non-issuance of receipts for such fees. As such fees are charged in Mozambique, and not in Malawi, the current study does not cover this area.

3.9 *Malawi is compliant with some parts of the proposal, but not with others*

Recommendations

3.10 Ensure that the fees are commensurate with the actual cost of the service provided.

3.11 Work towards consolidation of all fees charged for services rendered where practical.

Technical Assistance and Capacity Building Requirements

3.12 In our assessment, Malawi would not need external assistance to review and implement the proposals.

G.1 (b) Publication/Notification of Fees/Charges

3.13 *"These proposals seek to increase the transparency and predictability of trade by requiring the publication of all trade-related fees and charges"*

Basic Standard

3.14. *"A Member shall publish information on fees and charges in a timely manner prior to their implementation or amendment"*.

Status

3.15 The Malawi Government publishes in the Government Gazette all fees and charges connected with importation and exportation before they are implemented. The Government Gazette can be obtained from Government Printers Shops in the main centers. In addition, the responsible Minister usually issues a Press Release so that the new / proposed fees are published in the Media, while the Department concerned issues hardcopies of the gazetted fees.

3.16 Malawi Revenue Authority has a Website where the fees which they implement are published for public information. Other Government Departments do not have similar arrangements for a Website

3.17 Malawi is therefore partially in compliance with the proposal.

Recommendations

3.18 Establish a central authority with a Website where the public can access the fees and charges related to trade procedures.

Technical Assistance and Capacity Building Requirements

3.19 Malawi would need technical assistance to fully implement the recommended actions - procurement of equipment and training of officials.

G.1(c) Prohibition of Collection of Unpublished Fees and Charges

3.20. *"These proposals seek to increase the transparency and predictability of trade and minimize corrupt practices by prohibiting the collection of any fees or charges that have not been publicly notified"*.

Basic Standard

3.21. *"A Member shall not collect any fees or charges that have not been publicly notified"*.

Status

3.22 Malawi legislation does not allow collection of unpublished fees and charges and there is no provision for any discretionary powers. All fees are specified, published in the Government Gazette and are public knowledge.

3.23 Malawi is a signatory to the World Customs Organization Arusha Declaration and applies the principles therein.

3.24 Malawi complies with the proposal

G.1 (d) Periodic Review of Fees/Charges

3.25. *"These proposals seek to ensure the ongoing appropriateness of trade-related fees and charges through period review".*

Basic Standard

3.26. *"A Member shall review its trade-related fees and charges periodically to ensure compliance with WTO commitments".*

Status

3.27 Most of the fees in Malawi are not periodically reviewed. It could however not be established to what extent consultations take place with stakeholders. There are no mechanisms to independently verify the appropriateness of fees and charges.

Recommendations

3.28 Conduct periodic review of fees and charges including the legislative and administrative rules for such reviews.

3.29 Establish administrative review mechanisms to ensure appropriateness of fees and charges, including the review criteria that include all elements of WTO obligations

3.30 Establish mechanisms to independently verify the appropriateness of fees and charges.

Technical Assistance and Capacity Building Requirements

3.31 Malawi will need both local remedy and external technical assistance to comply with the proposal. Short-term consultancy may be required to review applicable fees and charges and develop a mechanism for reviewing these fees and charges periodically.

G.1 (e) Automated Payment

3.32. *"This proposal seeks to encourage the use of automated payment systems, to reduce paperwork and give traders quicker and more efficient service. This helps them to stay competitive while maintaining a Member's ability to collect the revenue".*

Basic Standard

3.33. *"A Member shall permit automated payment of duties and other trade-related fees and charges (where agencies have the necessary facilities)".*

Status

3.34 Payment of duties, fees and other charges is not automated in Malawi. Malawi Revenue Authority however will soon commence drafting the legal framework for electronic payment of duties, fees and other charges. Plans are also underway to establish a working committee which will be composed of IT personnel from MRA, the Reserve Bank of Malawi and Commercial Banks.

3.35 Other agencies, who charge fees for permits issued, such as the Malawi Bureau of Standards, the Department of Animal Health and Livestock Development and the RTD have no facilities for automated payment of fees and charges.

3.36 *Malawi is not compliant with the proposal*

Recommendations

3.37 Establish automated payment and accounting systems for duties, fees and charges.

Technical Assistance and Capacity Building Requirements

3.38 In our assessment, Malawi will need external assistance to procure equipment to support an automated system for duty and fees and charges collection. Technical assistance will be required for training of staff to manage a system on a day today basis.

G.2 Reduction/Minimization of the Number and Diversity of Fees/Charges

3.39. *"These proposals seek to require Members to review, and if necessary, consolidate or reduce the number and diversity of their trade-related fees and charges"*.

Basic Standard

3.40. *"A Member's trade-related fees and charges shall be the minimum necessary in number and diversity"*.

Status

3.41 Although import and export permits issued by the Ministry of Trade and Private Sector Development are issued free of charge, Malawi Revenue Authority charges a Processing Fee and Escort Fee for the services rendered, while the Department of Animal Health charges fees for veterinary certification and testing of samples and quarantine. The Malawi Bureau of Standards and the Department of Forestry also impose fees on the service which they provide. The assessment showed that there are no plans to review these fees and charges with a view to consolidating them and reducing their number and diversity, where practicable.

3.42 *Malawi is not compliant with the proposal*

Recommendations

3.43 Work towards a review of relevant legislative and administrative rules, and of all fees and charges with a view to consolidating them and reducing their number and diversity where practicable.

Technical Assistance and Capacity Building Requirements

3.44 It is our assessment that with improvement on existing consultative mechanism, Malawi can comply with the proposal without seeking external assistance

H FORMALITIES CONNECTED WITH IMPORTATION AND EXPORTATION

H.1 Disciplines on Formalities/Procedures and Data/Documentation Requirements Connected with Importation and Exportation

H.1 (a) Non-discrimination

3.45. *"The GATT is designed to ensure that goods are not discriminated against on the basis of their country of origin. These proposals seek to ensure that all goods are treated the same way in terms of regulatory formalities and procedures, although goods may be treated differently according to objective risk assessment criteria".*

Basic Standard

3.46. *"A Member shall ensure that the design, application and effect of import and export practices and procedures do not discriminate against goods on the basis of their origin and/or mode of transportation"*

Status

3.47 Malawi's legislation is non-discriminatory and all goods are treated the same, regardless of their origin or mode of transport, in the application and effect of import and export procedures and formalities. The Malawi Revenue Authority uses ASYCUDA based risk management to identify goods for specific intervention, but they are still to establish a Risk Management Unit as prescribed in the WCO Revised Kyoto Convention. There is need to manage operational performance on imports and exports controls by all entry/exit points to ensure uniform administration of regulations and procedures and implementation of integrity measures

3.48 Malawi is almost fully compliant with the basic standard.

Recommendations

3.49 Work towards establishment of a Risk Management Unit based on the Revised Kyoto Convention and its associated Guidelines.

3.50 Strengthen operational performance through implementation of total quality management principles or elements thereof.

Technical Assistance and Capacity Building Requirements

3.51 Technical assistance will be required to establish Risk Management Unit as described K.1 (c) and to strengthen management systems based on total quality management principles.

H.1 (b) Periodic Review of Formalities/Procedures and Requirements[10]

3.52. *"These proposals seek to ensure the ongoing appropriateness of trade-related formalities and requirements through periodic review"*.

Basic Standard

3.53 *"A Member shall review its import and export formalities and requirements periodically in consultation with the private sector; and shall not maintain such formalities and requirements if the circumstances or objectives giving rise to their adoption no longer exist"*.

Status

3.54 Currently there is some erratic review of formalities, procedures and requirements. Private sector organizations pointed out that in most cases they are not consulted during the review, but only when the legislative changes are already finalized.

3.55 During the assessment major constraints to achieving to the periodic reviews, which are financial and trained human capacity, were highlighted.

3.56 The Customs Department of Malawi Revenue Authority is implementing the WCO Customs Reform and Modernization Program, and in the process reviews the formalities/procedures/requirements so that they fall in line with international standards and best practice.

3.57 The MBS is currently reviewing its acts and regulations.

3.58 *Malawi is not compliant with the proposal*

Recommendation

3.59 Work towards regular, periodic reviews of formalities and documentation requirements relating to imports, exports and transit that take account of new techniques and technology, international best practices and private sector views with proper stakeholder involvement at all stages.

Technical Assistance and Capacity Building Requirements

3.60 External technical assistance may be required to assist in establishment of administrative review mechanisms within the relevant agencies to ensure appropriateness of formalities and documentation requirements.

[10] Note that similar issues relating to fees and charges are addressed in G.1 (d) proposals.

H.1(c) Reduction/Limitation of Formalities/Procedures and Data/Documentation Requirements[11]

3.61. *"Trade documentation and procedural requirements, if excessive, can delay the clearance of cargoes. These proposals seek to ensure that trade-related formalities and documentation are the minimum required to ensure compliance with legitimate policy objectives".*

Basic Standard

3.62 *"A Member shall ensure that its trade-related formalities and documentation requirements are no more administratively burdensome or trade restrictive than is necessary to achieve its legitimate policy objectives"*

Status

3.63 Trade related formalities and documents are the preserve of each Government Ministry / Department but there is limited communication between relevant Government agencies designed to identify and agree on the minimal procedures and information necessary to acquit their respective responsibilities. Agencies at the airports hold airport facilitation meetings every quarter aimed at identifying and remedying any bottlenecks on air cargo and passengers. The general feeling from both Government and private sector is towards consultative periodic review of the appropriateness of import / export formalities and requirements. There are coordinated inspection arrangements between MRA and other Government departments for high risk goods, which eliminates duplication of work. There is however no mechanisms that provides importers and exporters a once-only requirement to submit information and there are no arrangements in place yet that permit the lodging of Form 12 electronically from the importer's premises

3.64 *Malawi is not fully compliant with this proposal*

Recommendations

3.65 Improve the legislative and / or administrative arrangements to ensure that trade related formalities and documentation requirements are limited to that necessary for the assessment and collection of duties and taxes, the compilation of trade statistics and the achievement of other policy objectives

3.66 Establish mechanisms for one time submission of information to process imports, exports and transit.

3.67 Establish a system of electronic exchange among different stakeholders to shorten the time spent in the processing of requests for permits and certificates required for import and export operations.

3.68 Introduce Remote Direct Trader Input, whereby traders can electronically submit their declarations to Customs computers from their offices

2 Note that similar issues relating to fees and charges are addressed in G.2 proposals

Technical Assistance and Capacity Building Requirements

3.69 External technical assistance will be required in the upgrade / procurement of computers and capacity building in the form of trained manpower to implement the recommendations.

H.1 (d) Use of International Standards

3.70. *"These proposals seek to simplify trade procedures and enhance trade facilitation by requiring documents to conform to international standards".*

Basic Standard

3.71. *"A Member shall use relevant international standards as the basis for their import, export and transit procedures".*

Status

3.72 While it is increasingly using the principles of the WCO Revised Kyoto and Istanbul Conventions, Malawi has not acceded to these Conventions.

3.73 At regional level, the SADC Protocol on Trade and the COMESA Treaty provide for simplified and harmonized trade documents and procedures and Malawi has developed its national Single Administrative Document Form 12 which is in an internationally accepted format and based on the guidelines given by SADC and COMESA.

3.74 *Malawi Revenue Authority is partially compliant to the use of International Standards, implementing fully the Harmonized System Convention (Customs Tariff) and the WTO Agreement on Customs Valuation*

Recommendations

3.75 Accede to and fully implement the WCO Revised Kyoto and the Istanbul Conventions.

Technical Assistance and Capacity Building Requirements

3.76 Malawi will need both local action and external technical assistance in order to be fully in compliance with the proposal. External assistance will be required in the analysis of the Revised Kyoto and Istanbul Conventions provisions and comparison with current Malawi Customs legislation.

H.1 (e) Uniform Customs Code

3.77 *"This proposal seeks to simplify trade procedures and enhance trade facilitation by requiring that each country or customs union have a coherent body of national legislation and a single import and export declaration, administrative message or data set".*

Basic Standard

3.78 *"Each Member or customs union shall ensure that national customs legislation is uniform or aligned and shall introduce a single import and export declaration, administrative message or data set".*

Status.

3.79 As a Member of SADC, Malawi is implementing the SADC Protocol on Trade, and is using one single administrative document for import and export (Form 12). The Customs code and the Customs legislation is not yet aligned as the proposed SADC Customs Management Act in terms of the SADC Protocol on Trade is still to be approved by Member Countries

3.80 *MRA is partially compliant with the proposal.*

Recommendations

3.81 Implement the SADC Customs Management Act once it has been approved by Member States

Technical Assistance and Capacity Building Requirements

3.82 MRA should have sufficient technical capacity to implement the proposal, and no technical assistance may be required.

H.1 (f) Acceptance of Commercially Available Information and of Copies

3.83. *"These proposals recognize that the international trading community generates its own commercial trade-related documentation, and seeks to ensure that authorities use such information to the greatest extent possible for the purposes of fulfilling their regulatory responsibilities. In the same context, the proposals also seek to achieve acceptance of copies of relevant documents by authorities".*

Basic Standard

3.84. *"For the purposes of facilitating trade, a Member shall use relevant information already available in the context of commercial transactions, and copies of relevant documents, wherever practicable".*

Status

3.85 Neither MRA nor the concerned Ministries / Departments use relevant information already available in the context of commercial transactions nor do they accept faxes or even authenticated copies of documents related to importation and exportation

3.86 The Customs declaration on Form 12, whether manually or electronically, must be supported by original documents, and not copies or faxes. The Mission was informed that one of the reasons why Malawi was not implementing this proposal was the possibility of Customs fraud, which would negatively impact on revenue collections.

3.87 Malawi is not compliant to the proposal

Recommendations

3.88 Work towards the use of commercially available information and copies of invoices, bills of lading etc.

Technical Assistance and Capacity Building Requirements

3.89 It is our assessment that external assistance may be required to assist in the development of guidelines to detect fraudulent transactions.

H.1 (g) Automation

3.90 *"These proposals support the use of information and communication technologies as important tools for promoting trade facilitation and reducing costs for traders".*

Basic Standard

3.91. *"A Member shall use information technology and electronic commerce to automate its import and export procedures [to the greatest extent possible]".*

Status

3.92 MRA has automated Customs processes and procedures through ASYCUDA ++, and although they have rolled this out to major entry points, there is no EDI between Customs and Traders and the traders cannot therefore key in their import / export declarations (Form 12) electronically from their premises through Remote Direct Trader Input (DTI). Malawi Revenue Authority has however introduced Direct Trader Input Bureaus situated within the computerized Customs Offices, and operated by NCR. With this arrangement, NCR personnel keys in the Traders' Customs declarations directly to Customs computers on their behalf.

3.93 MRA has already finalized plans to implement Remote DTI, which will enable Traders to key in their data directly to ASYCUDA ++ from the comfort of their offices / premises.

3.94 *Malawi is in partial compliance with the proposal.*

Recommendations

3.95 Upgrade Customs computers and make automation approach the best practices of advanced developing countries. For example, introduce Remote DTI and automate payment of duties and taxes.

Technical Assistance and Capacity Building Requirements

3.96 It is our assessment that Malawi will require external technical assistance for upgrading or procurement of computer equipment (or replacement of obsolete equipment) and capacity building to support development of automated payment of duty, fees / charges, Wide Area Net Work and Electronic Data Interchange.

H.1 (h) Single Window/One-time Submission

3.97 *"These proposals seek to facilitate trade by introducing the use of a "single window" for submitting, once only and to a single authority, all documentation and data relating to import/export procedures".*

Basic Standard

3.98 *"A Member shall implement [progressively, taking account of the members' capacity] a requirement to submit import and export documentation and data (including electronic versions of them) once only, to a single agency".*

Status

3.99 Malawi is not compliant to this proposal as there is no Single Window / One – time Submission facility

Recommendations

3.100 Work towards establishment of Single Window / One-time submission

Technical Assistance and Capacity Building Requirements

3.101 The Mission's assessment is that Malawi will need external assistance, in addition to local inputs, for procurement of equipment, legal adaptation, institutional set-up, development of administrative structures and training in management of the Single Window / One-time Submission system.

H.1 (i) Elimination of Pre-Shipment Inspection

3.102. *"These proposals seek to eliminate the mandatory use of pre-shipment inspection (PSI) practices, which are considered to be redundant if customs and other relevant authorities are performing their roles effectively".*

Basic Standard

3.103. *"A Member shall not have any legislative or administrative requirement for the use of pre-shipment inspections or their equivalent".*

Status

3.104 Malawi currently has legislative requirements for pre-shipment inspection and this is being implemented fully.

3.105 Malawi Government has however given notice to abolish pre-shipment inspection on June 30, 2007 and the current Pre-Shipment Company has been notified accordingly.

3.106 *Malawi will be in compliance once the Pre-Shipment Inspection is abolished.*

Recommendations

3.107 Prepare to negotiate acceptable terms for a phase-out period of pre-shipment inspection

Technical Assistance and Capacity Building Requirements

3.108 External technical assistance will be required to localize some aspects of pre-shipment inspection, set-up Risk Management and Post Clearance Audit Units and the training of staff for these new units.

H.1 (j) Phasing out Mandatory Use of Customs Brokers

3.109 *"These proposals seek to eliminate the mandatory use of customs brokers, on the basis that traders should not be obliged to use customs brokers if they wish to deal directly with Customs".*

Basic Standard

3.110. *"A Member shall not mandate the use of Customs brokers. If Customs brokers are subject to licensing, such licensing rules shall be transparent, non-discriminatory and proportionate".*

Status

3.111 Malawi has an administrative requirement for the mandatory use of Customs brokers. Licensing of Customs brokers is open to anybody and is non-discriminatory, as long as a good track record is maintained once registered and licensed.

3.112 The implementation of the proposal to phase-out mandatory use of Customs brokers would require legislative changes.

Recommendations

3.113 Work towards phasing out Mandatory use of Customs Brokers.

Technical Assistance and Capacity Building Requirements

3.114 MRA has the technical capacity to make the recommended changes, and no technical assistance will therefore be required.

H.1 (k) Same Border Procedures within a Customs Union

3.115 *"This proposal seeks to require member states of a customs union to adopt the same border procedures for the clearance of goods, particularly the clearance of food and agricultural products".*

Basic Standard

3.116 *"Members of a Customs Union shall adopt the same border procedures and associated standards for the clearance of goods".*

Status

3.117 Malawi is a Member of both SADC and COMESA and is implementing the provisions of the recommended standardized and harmonized Customs processes and procedures. Currently, Malawi is one of the countries participating in a pilot regional SADC transit regime being tried on the Durban – Beitbridge – Blantyre route. This involves simplified and harmonized Customs transit processes, procedures, one common single administrative document and common bond guarantee

3.118 Malawi and other regional countries are not fully in compliance with the proposal

Recommendations

3.119 Together with other regional countries work towards adoption of same border procedures for the clearance of goods, particularly the clearance of food and agricultural products.

Technical Assistance and Capacity Building Requirements

3.120 Malawi has the technical capacity to make legislative changes which will accommodate regional initiatives on clearance processes procedures. Financial assistance may however be required to send technical experts to all regional meetings.

H.1 (l) Testing Methods Based on Specific Product Features

3.121. *"This proposal seeks to ensure that testing methods used by regulatory authorities are based on specific product features"*.

Basic Standard

3.122. *"A Member shall use testing methods that are based on specific product features and the physical state of the product at the point of consumption"*.

Status

3.123 Malawi complies with the proposal

3.124 Malawi Bureau of Standards indicated that they are using national and international standards, harmonized through SADC / COMESA initiatives; however, the Department is inadequately funded, and is using obsolete equipment and has inadequate capacity of qualified personnel.

Recommendations

3.125 Conduct institutional review of operations, funding, equipment, and human resources capacity in the Malawi Bureau of Standards.

Technical Assistance and Capacity Building Requirements

3.126 In our assessment, Malawi would not need external assistance in the institutional review of operations and the training of staff, but may need external assistance in the replacement of obsolete laboratory equipment.

H.1 (m) Uniform Forms and Documentation Requirements Relating to Import Clearance within a Customs Union

3.127. *"This proposal seeks to require member states of a customs union to adopt uniform forms and documentation requirements for the clearance of goods".*

Basic Standard

3.128. *"Members of a customs union shall adopt uniform forms and documentation requirements for the clearance of goods".*

Status

3.129 *Malawi is compliant with this proposal* and is already implementing the provisions of the SADC Protocol on Trade in respect of the harmonized and uniform Customs declaration form (Single Administrative Document SAD Form 12) and Customs procedures.

Recommendations

3.130 Together with other regional countries work towards making the Single Administrative Document transmitted electronically across international / regional frontiers.

Technical Assistance and Capacity Building Requirements

3.131 External technical assistance would be required on establishment of connectivity of Customs computers across regional frontiers and on acquiring the relevant equipment.

H.1 (n) Option to Return rejected Goods to the Exporter

3.132 *"This proposal seeks to provide traders with an option to return food consignments to the exporter in cases where they are rejected by the importer due to their failure to meet certain standards".*

Basic Standard

3.133. *"A Member shall provide for food consignments to be returned to the exporter in cases where they are rejected by the importer or government agencies due to their failure to meet commerce standards".*

Status

3.134 The goods can be returned to the exporter with the cooperation of the importer, but this is subject to authorization by the Reserve Bank of Malawi where initial payment for the goods had been made. *Malawi is compliant with this proposal.*

Recommendations

3.135 No further work is required in this area.

Technical Assistance and Capacity Building Requirements

3.136 No technical assistance is required.

I. CONSULARIZATION

I.1 Prohibition of Consular Transaction Requirement

3.137 *"Some administrations require importers to obtain a consular invoice or a consular visa for a commercial invoice or other trade document, as evidence that particular goods are of a particular origin, or have arrived in a particular importing country, or have been applied to a particular end use. This practice can be time consuming and expensive and often represents a hindrance to trade. These proposals seek to prohibit the practice".*

Basic Standard

3.138. *"A Member shall not impose any requirement for consularization".*

Status

3.139 Malawi is fully compliant with the proposal and has no legislative or administrative requirement for consularization.

J. BORDER AGENCY COORDINATION

J.1 Coordination of Activities and Requirements of all Border Agencies

J.1. (a) One-Stop-Shop

3.140. *"Where several regulatory agencies are directly involved in the clearance of goods, the resulting imposition of multiple steps to obtain clearance represents an impediment to trade. These proposals seek to achieve a one-stop process through the coordination of relevant agencies".*

Basic Standard

3.141. *"A Member shall standardize national data and documentation requirements and provide importers and exporters with a single point of lodgment. If a consignment must be inspected by more than one agency, such inspections shall be coordinated and, if possible, carried out at the same time".*

Status

3.142 Regulatory controls at Malawi Customs entry points are performed by many Government Ministries / Agencies with different mandates and priorities and carrying out legitimate mandates. Although there is exchange of information between Agencies, different activities at the border are not coordinated and there is no one-stop shop for the activities.

3.143 For the physical inspection of goods, however, MRA and other Government Agencies have coordinated inspection arrangements for the cargo to be inspected at the same time, which eliminates duplication. The laboratory at Malawi Bureau of Standards is used to meet multi-agency requirements and complies with the one-stop shop concept.

3.144 *Malawi is partially compliant with this proposal*.

Recommendations

3.145 Work towards establishment of a One-Stop-Shop in all areas of operation and Border Post Management Committee, or Advisory Body, spelling out its functions and mandate.

Technical Assistance and Capacity Building Requirements

3.146 It is our assessment that a qualified expert could advise on the establishment of a Border Post Management Committee or Advisory Body.

J.1. (b) Coordination of Juxtaposed Customs Offices

3.147. *"On land borders, traders are often faced with different clearance processes and customs facilities on each side of the border. These proposals seek to improved coordination between the border authorities of neighbouring countries in order to reduce the procedures required and time taken to clear goods across the frontier"*.

Basic Standard

3.148. *"Members with juxtaposed customs posts shall coordinate procedures and develop common border facilities, wherever possible"*.

Status

3.149 There is no national legislation or an administrative arrangement which establishes measures to regulate the functioning of coordinated border controls or one-stop joint border control with a neighbouring country. The recent regional development is however the signing of Bilateral Memorandum of Understanding (MOU), spelling out areas of bilateral mutual cooperation and exchange of information. Malawi has signed MoUs with Mozambique, Tanzania, Zambia and Zimbabwe.

3.150 *Malawi does not comply with this proposal, and in fact no other country in the SADC /COMESA Regions complies with this*

Recommendations

3.151 Commence discussions with the juxtaposed Customs Authority on the need for development of common border facilities.

3.152 Draft legal framework and work towards establishment of a one-stop joint border control, where officers from the two countries work in same premises at international borders.

Technical Assistance and Capacity Building Requirements

3.153 External technical assistance would be required in the drafting of legal framework for a one-stop joint control border management, and in the initial stages of establishment of the concept.

K. RELEASE AND CLEARANCE OF GOODS

K.1 Expedited/Simplified Release and Clearance of Goods

3.154 *"The various concepts associated with expedited and simplified release and clearances of goods are implicit in Article VIII. In particular, paragraph 1(c) recognizes "the need for minimizing the incidence and complexity of import and export formalities and for decreasing and simplifying import and export documentation requirements." By expediting and simplifying release and clearance procedures, the efficiency of the entire import and export process may be increased, costs reduced and compliance improved".*

K.1 (a) Pre-arrival Clearance

3.155 *"These proposals seek to introduce pre-arrival clearance, which allows traders to submit import documentation and other required information to customs and other relevant border agencies prior to the arrival of goods. In cases where no further examination is required and other conditions are met (e.g., the duty payment is secured), goods may be cleared immediately upon arrival".*

Basic Standard

3.156. *"A Member shall make provision for the lodging and processing of clearance data and documentation prior to the arrival of the goods".*

Status

3.157 The Malawi Customs legislation has no provision for Pre-Clearance and traders are not allowed to submit Customs declarations prior to the arrival of goods in Malawi. Goods have to be cleared on arrival at the entry point.

3.158 *Malawi does not comply with this proposal*

Recommendations

3.159 Create and implement the regulatory framework for pre-arrival clearance. This facility is found in all fully modern Customs Administrations and is integral to clearance efficiencies. With its ASYCUDA ++ system, its risk management abilities, and its trained officials, MRA has the means at its disposal to make pre-arrival clearance more easily available to the trading community.

Technical Assistance and Capacity Building Requirements

3.160 External technical assistance would be required in the form of a short-term consultant to develop a pre-clearance strategy and system

K.1 (b) Expedited Procedures for Express Shipments

3.161 *"These proposals recognize the time-sensitive nature of express consignments and seek to ensure expedited clearance arrangements for such consignments. The underlying principle is that express consignments will generally be granted immediate release/clearance, provided that the*

conditions laid down by customs and other relevant authorities are met and that the necessary information is communicated prior to arrival of the goods".

Basic Standard

3.162. *"A Member shall provide expedited clearance procedures for express consignments".*

Status

3.163 MRA is partially compliant to the proposal.

3.164 Currently, there is specific expedited clearance procedures for goods of no commercial value and certain express consignments e.g. DHL, Federal Express etc. MRA does not fully implement the provisions of the *WCO Guidelines for the Immediate Release of Consignments by Customs (*formerly the *WCO Guidelines for Express Consignments Clearance* and it emerged during the assessment that one of MRA's concerns is how to ensure that there is an effective mechanism to control fraud.

3.165 *MRA is partially compliant to the proposal*

Recommendations

3.166 Enact and fully implement the principles contained in the *WCO Guidelines for the Immediate Release of Consignments by Customs.* An Express Division could initially be established within the Regional Office in Blantyre, to deal with all express shipment matters. This will result in savings in time and related costs for traders engaged in international trade and will help Customs to focus their attention on higher value consignments

Technical Assistance and Capacity Building Requirements

3.167 It is our assessment that Malawi would not need external technical assistance to fully implement the provisions of the *WCO Guidelines.*

K.1(c) Risk Management/Analysis, Authorized Traders

3.168 *"These proposals seek to ensure the application of risk management principles to trade-related examinations and inspections, including the introduction of simplified import and export formalities for traders with an appropriate record of compliance with import and export requirements, known as "authorized traders"".*

K.1. (c) (i) Risk Management / Analysis

Basic Standard

3.169 *"A Member shall conduct examinations and inspections based on the application of risk managements."*

Status

3.170 Although the national legislation provide for risk analysis and management, very minimum is done due to lack of qualified staff to undertake detailed risk analysis as stipulated in the national guidelines, and this is particularly prevalent in the Department of Animal Health and Livestock Development and the Malawi Bureau of Standards.

3.171 In MRA, however, Customs is using the ASYCUDA ++ Risk Assessment Module for Customs control and targeting risky imports. This is limited in scope and usage and there is no established Risk Management Unit as envisaged in the WCO Revised Kyoto Convention and its associated Guidelines, but MRA is in the process of establishing a proper Risk Management Unit in the Customs Department. Furthermore, all containers cleared by Customs have to be opened in the presence of Customs officers at the importers premises.

3.172 *Malawi does not fully comply with this proposal*

Recommendations

3.173 Recruit qualified personnel and provide specialized training, which will include attachment in those countries that have experience in the area.

3.174 Establish a fully fledged Risk Management Unit within MRA, as envisaged in the WCO Revised Kyoto Convention, after the regulatory framework for Risk Management has been approved or legalized.

Technical Assistance and Capacity Building Requirements

3.175 Technical assistance would be required to establish the Risk Management Unit in line with the provisions of the WCO Revised Kyoto Convention. Technical assistance would also be required in the training and attachments to countries with similar facility.

K.1. (c) (ii) Authorized Traders

3.176 *"These proposals seek to ensure the introduction of simplified import and export formalities for traders with appropriate record of compliance with import and export requirements, known as 'authorized traders".*

Basic Standard

3.177. *"A Member shall provide for simplified import, export and transit formalities for traders who demonstrate a high level of compliance with trade-related laws and regulations".*

Status

3.178 There is no legislation and / or administrative arrangements which allow the application of simplified import and export formalities for traders who meet specific criteria, providing in particular for more rapid release and clearance of consignments and a lower incidence of physical inspections. Malawi does not comply with the proposal.

Recommendations

3.179 Establish a formal system of creating certified or authorized traders who automatically qualify for accelerated clearance. Their accreditation notwithstanding, these traders remain subject to pre- and post – clearance audits.

Technical Assistance and Capacity Building Requirements

3.180 External Technical assistance will be required to develop procedures and criteria for authorized traders.

K.1 (d) Post-Clearance Audit

3.181. *"These proposals seek to facilitate trade through an increased use of post-clearance audit. Post-clearance audit is a method of compliance management, whereby a customs administration may release the majority of consignments at the time of their arrival and conduct an audit of selected traders at a later time".*

Basic Standard

3.182. *"A Member shall provide for post clearance audit, whereby goods may be released on arrival, with compliance verification undertaken at a later time".*

Status

3.183 There is no legislation or administrative arrangements which provide for and utilize post-clearance audit as an accepted element of compliance management.

3.184 *Malawi does not comply with the proposal.*

Recommendations

3.185 Establish a separate post-clearance audit unit as an acceptable element of compliance management, which will include.

- The use of company-focused audits as well as transaction-based verifications
- Competent staff
- Legislation that clearly states the powers that can be exercised by those staff
- Creation of compliance data base
- Record keeping requirements for traders

Technical Assistance and Capacity Building Requirements

3.186 Malawi will require external technical assistance to establish Post Clearance Audit Unit and in training personnel on applicable concepts and techniques which would include work attachment in a Member State that has effective post-clearance audit in place

K.1 (e) Separating Release from Clearance Procedures

3.187 *These proposals support a system whereby goods may be released from the custody of customs before final payment of duties and taxes is made, or resolution of customs matters (such as classification or customs valuation) is reached, utilizing guarantees such as a sureties, bonds, or deposits, where necessary".*

Basic Standard

3.188. *"A Member shall provide for conditions under which goods may be released from Customs prior to payment of the relevant duties and taxes".*

Status

3.189 Customs legislation provides for the release of goods prior to meeting all requirements by providing sufficient guarantee in the form of a bond guarantee or a cash deposit. In practice, however, this is not automatic, as this is subject to risk assessment. Malawi is compliant with this proposal.

Recommendations

3.190 Clearly state circumstances under which goods may be released prior to payment of relevant duties and taxes

Technical Assistance and Capacity Building Requirements

3.191 It is our assessment that in addition to local inputs, technical assistance may be required to fully implement this proposal, and this could include elements focusing on ways to improve revenue collection and enforcement of Customs laws.

K.1 (f) Other Measures to Simplify Customs Release and Clearance

3.192. *"These proposals identify further methods of simplifying customs release and clearance requirements".*

Basic Standard

"A Member shall adopt other measures to simplify customs release and clearance, wherever possible".

Status

3.193 Malawi does not have other measures to simplify Customs release and clearance.

3.194 Malawi does not comply with this proposal.

Recommendation

3.195 Adopt rapid release procedures such as release on submission of a simplified document, and post-release reconciliation of documentation and duties payable.

Technical Assistance and Capacity Building Requirements

3.196 Technical assistance in the areas of post-clearance audits and risk management systems will be required

K.2 Establishment and Publication of Average Release and Clearance Times

3.197. *"These proposals seek to reduce release and clearance times by requiring members to calculate, publish, and endeavour to continuously reduce the average times for release and clearance of goods"*

Basic Standard

3.198. *"A Member shall establish and publish average release and clearance times, and shall seek to progressively reduce the time taken to release and clear goods"*.

Status

3.199 A WCO Time Release Study (TRS) was conducted last year and the results posted to the MRA Website. TRS identifies inefficiencies in the Customs Clearance process by measuring the time required to clear goods for home use from the time of arrival in the country to their time of release by Customs. It will determine the problems and the reasons for these problems and will assist a Customs Administration to remove the bottlenecks and take other corrective measures to increase efficiency. Malawi Revenue Authority is compliant with this proposal.

3.1200 MRA is currently conducting a follow-up TRS and the average release and clearance times will be posted to their Website.

Recommendation

3.201 Conduct TRS annually or biannually

Technical Assistance and Capacity Building Requirements

3.202 No technical assistance is required as MRA has trained personnel for the job

L. TARIFF CLASSIFICATION

L.1 Objective Criteria for Tariff Classification

3.203. *"Articles VIII and X are unclear in terms of how goods are to be classified for duty purposes at the border. These proposals seek to provide an objective approach to tariff classification, to improve transparency and predictability for traders to ensure that classifications are not arbitrary or unjustifiable and do not constitute a disguised restriction on international trade"*.

Basic Standard

3.204. *"A Member shall apply objective criteria for tariff classification"*.

Status

3.205 Malawi has acceded to the WCO Convention on Harmonized Commodity Description and Coding System (the HS) and has fully implemented the Customs tariff criteria therein. At regional level, both COMESA and SADC Member States, including Malawi, have adopted the HS 2002 version as the classification standard.

3.206 Malawi is therefore compliant with this proposal.

4. ARTICLE V

4.1 The scope of GATT 1947 Article V was the freedom of transit. The overriding purpose of the article was to allow for freedom of transit through the territory of each Member for transport to or from the territory of other Members. The main obligations under GATT Article V are:

- To not hinder traffic in transit by imposing unnecessary delays or restrictions or by imposing unreasonable charges; and
- To grant Most-Favored- Nation (MFN) treatment to transit goods of all Members.

4.2 As with the other GATT articles that most directly affect trade facilitation, Article V laid down the ground rules but left open wide margins of interpretation. Article V has never been applied under the dispute settlement system of the GATT or the WTO. Violations of its provisions have been asserted several times, but without any of these cases ever leading to the issuing of a panel report. As the Negotiating Group has received and codified proposals to narrow the margins of interpretation and suppress ambiguities, the current discussions fall into one of five subcategories:

1. *Non-Discrimination and Policy Objectives*
2. *Disciplines on Fees and Charges*
3. *Disciplines on Transit Formalities and Documentation Requirements*
4. *Improved Coordination and Cooperation*
5. *Operationalization and Clarification of Terms*

4.3 The coverage below of the current proposals by WTO members follows the format as contained in the WTO document TN/TF/W/143, WTO Negotiations on Trade Facilitation Self Assessment Guide prepared by the World Bank in cooperation with the WTO Secretariat and other Annex D Organizations to assist developing and least developed country Members to conducting self assessments to identify their technical assistance and capacity building support needs as well as to enhance their understanding of the proposals, and the actual text is presented *verbatim* from the same document.

M. MATTERS RELATING TO GOODS IN TRANSIT

M.1 Non-Discrimination and Policy Objectives

M.1 (a) Strengthened Non-discrimination

4.4 *"GATT Article V sets out rules on freedom of transit on the basis of most-favoured-nation treatment and national treatment. The objective of these proposals is to strengthen the principle of non-discrimination, in order to prevent the application of trade laws that limit the free transit of goods and means of transport among Members for non-commercial reasons."*

Basic Standard

4.5. *"A Member shall accord non-discriminatory, most-favoured-nation treatment to traffic in transit to or from the territory of any other Member with respect to all charges, regulations and formalities."*

Status

4.6 Generally the Customs controls do not discriminate between modes of transport used for transit of goods, the origin or destination of goods in transit, carriers of goods in transit, the route chosen and the particulars of the goods themselves. However there is need to manage operational performance on transit controls by all entry/exit points to ensure uniform administration of regulations and procedures and implementation of integrity measures

4.7 The transit transport controls (namely for road transit charges, vehicle overloading control, cross-border permits, third party cross-border motor vehicle insurance and vehicle roadworthiness inspections) are generally compliant with the proposals for strengthening non-discrimination but improvements are required in maintaining integrity of controls and ensuring the uniform application of these controls countrywide. However the cross border road transit charges are not fully compliant as Malawi imposes reciprocal charges on vehicles from countries that impose higher road transit charges than those applicable in Malawi. This is without regard to the underlying principle that the charges are supposed to recover imposed cost of maintaining the road infrastructure.

4.8 Enforcement of interventions to achieve specific public policy objectives such as health, safety and security can easily be misconstrued as discriminatory. In order to avoid discriminations it is important that control agencies enforcing the public policy interventions have good risk management systems. The MRA uses the ASYCUDA++ risk assessment to target goods for specific public policy objectives interventions but does not have a fully established risk management unit. The other government control agencies do not have risk management systems in place.

Recommendations

4.9 The transit charges for accessing Malawi's transport infrastructure should relate to the cost of such access and not discriminate on the basis of registration of the transit vehicle.

4.10 It is recommended that the control agencies use risk management to target goods for enforcement of specific public policy objectives in manner which is not seen to be discriminatory.

Technical Assistance and Capacity Building Requirements

4.11 SADC is currently conducting a transit road user charges review study to assist member countries implement a harmonised regime. Malawi should fully particpate in this scheme.

4.12 The control agencies would require technical assistance in establishing to target effective risk management systems.

M.1 (b) Legitimate Policy Objectives

4.13 *These proposals recognize that the legitimate public policy goals set out in GATT Articles XX and XXI should not be compromised in any way. These Articles relate to such issues as national security, health, safety and the environment.*

Status

4.14 The various government control agencies have responsibility for enforcing legitimate public policy objectives at the ports of entry into Malawi. However these agencies are not equipped with the latest technologies for non-intrusive inspections through scanners. In addition there are no sophisticated systems to gather intelligence which forms a key element of risk management systems which are critical in ensuring optimal utilisation of resources in enforcing legitimate public policy objectives.

Recommendations

4.15 It is important that systems for management of legitimate policy objectives such as health, safety, security and environmental management are effectively implemented in a manner that reflects clear and consistent procedures for transit traffic and cargo. Such systems should include non-intrusive inspection technologies and risk management systems.

Technical Assistance and Capacity Building Requirements

4.16 Technical assistance may be required by the various control agencies operating along the transit routes from ports of entry to ports of exit to implement sound environmental, health, safety and security management systems. This would also inlcude procuring non intruusive inspection technologies as well as establishing effectiive risk management systems.

M.2 Disciplines on Fees and Charges

M.2 (a) Publication of Fees and Charges and Prohibition of Unpublished ones

M.2 (a) (i) Publication/Notification of Fees/Charges

4.17. *"These proposals seek to increase the transparency and predictability of trade by requiring the publication of all trade-related fees and charges."*

Basic Standard

4.18. *"A Member shall publish information on fees and charges in a timely manner prior to their implementation or amendment."*

Status

4.19 Customs, transit transport control and other government control agencies' fees and charges are published through the government gazette and these indicate the objectives of such fees and charges. The government gazettes can be obtained from the Government Printers Shops in the major commercial cities. The Malawi Revenue Authority has a website which provides information of fees and charges. Invariably these fees and charges become effective on date of publication. There does appear to be some

consultation prior to introduction or amendment of fees and charges although the consultation mechanisms are not formalised.

Recommendations

4.20 It is recommended that all fees and charges that would be applicable to transit be published in good time before coming into force except when justified by public legitimate policy objectives.

Technical Assistance and Capacity Building Requirements

4.21 No technical assistance would be required to publish fees and charges.

M.2 (a) (ii) Prohibition of Collection of Unpublished Fees and Charges

4.22. *"These proposals seek to increase the transparency and predictability of trade and minimize corrupt practices by prohibiting the collection of any fees or charges that have not been publicly notified."*

Basic Standard

4.23. *"A Member shall not collect any fees or charges that have not been publicly notified."*

Status

4.24 The fees and charges that can be legitimately collected by transit transport control agencies, the MRA and other government control agencies are stipulated by legislation and published through the government gazette. There are no apparent formal procedures for complaints against imposition of fees and charges not sanctioned by law although some departments have hot lines. Formal procedures would assist potential victims of demands for unauthorized payments to provide all the information required in the case of such an incident occurring. Furthermore there is no evidence of appropriate formal management review processes for ensuring compliance with the basic standard.

Recommendations

4.25 It is recommended that the various government control agencies develop:

- Formal procedures for complaints relating to incidents where officials demand payment of unpublished fees and charges;
- Appropriate management review processes to ensure compliance.

Technical Assistance and Capacity Building Requirements

4.26 Some technical assistance may be required to develop formal complaints procedures and management review processes.

M.2 (b) Periodic Review of Fees and Charges

4.27. *"These proposals seek to ensure the ongoing appropriateness of trade-related fees and charges through periodic review."*

Basic Standard

4.28. *"A Member shall review its trade-related fees and charges periodically to ensure compliance with WTO commitments."*

Status

4.29 The MRA processing fees and escort charges were last reviewed in 2004.Transit transport fees and charges were last reviewed in 2003 for road transport and civil aviation. The Malawi Bureau of Standards (MBS) fees and charges were last reviewed in September 2005. Based on these dates it is reasonable to assess that review of fees and charges is not periodic. In general the fees are determined on the principle of cost recovery but given the dates of the last reviews, the current levels would below the cost of services rendered. There is no evidence of established administrative review mechanisms within the various control agencies and neither are there mechanisms to independently verify the appropriateness of fees and charges. There is an ongoing SADC study to review the road user charges and implement a harmonised system in SADC.

Recommendations

4.30 It will be important to get clarity on the frequency of periodic reviews that would be incorporated in the emerging trade facilitation agreement at the WTO and then establish disciplined mechanisms for conducting such review.

4.31 It is recommended that administrative review mechanisms be established with independent mechanisms for verifying appropriateness of the fees and charges.

4.32 Malawi should continue to actively participate in the SADC Road User Charges Study to ensure that the recommended charges will relate to the cost of services rendered and benefit from a fully developed charges review mechanism that will be developed by the study.

Technical Assistance and Capacity Building Requirements

4.33 Technical assistance may be required in establishing administartive review mechanisms and independent verification mechanisms.

M.2(c) More Effective Disciplines on Charges for Transit – Reduction/Simplification

M.2 (c) (i) Specific Parameters for Fees/Charges

4.34. *"Article VIII paragraph 1(a) establishes certain obligations regarding fees and charges. It authorizes only those fees and charges that are limited to the approximate cost of services rendered, and prohibits fees and charges aimed at protecting domestic goods or having the effect of an import/export tax. These proposals seek to ensure that the principles of Article VIII are observed."*

Basic Standard

4.35. *"A Member shall ensure that fees and charges do not exceed the approximate costs of services rendered and are in direct and/or indirect connection with a specific importation, exportation or transit formality."*

Status

4.36 See status in G.1 (a).

Recommendations

4.37 See recommendations in G.1 (a).

Technical Assistance and Capacity Building Requirements

4.38 See technical assistance and capacity building requirements in G.1 (a).

M.2 (c) (ii) Reduction/Minimization of the Number and Diversity of Fees/Charges

4.39. *"These proposals seek to require Members to review, and if necessary, consolidate or reduce the number and diversity of their trade-related fees and charges."*

Basic Standard

4.40. *"A Member's trade-related fees and charges shall be the minimum necessary in number and diversity."*

Status

4.41 The various fees and charges applied to transit are for specific services provided by the control agencies.

Recommendations

4.42 It is recommended that all these fees and charges be reviewed jointly by the control agencies in order to identify the potential for consolidation where this makes sense.

Technical Assistance and Capacity Building Requirements

4.43 No technical assistance would be required to conduct such a review.

M.2 (d) Periodic Exchange between Neighbouring Authorities

4.44. *"These proposals seek to establish regular communication between neighbouring authorities in relation to new and modified transit fees and charges prior to their entering into force."*

Basic Standard

4.45. *"A Member shall consult with neighbouring authorities on any new or modified fees and charges imposed in connection with transit, prior to their entering into force."*

Status

4.46 Malawi holds Joint Committee meetings with neighbouring authorities under the Route Management Groups. However these are not held frequently enough and are not used to consult on new or modified fees and charges.

Recommendations

4.47 It is recommended that the Joint Committees be used for consultation on new or modified fees and charges.

Technical Assistance and Capacity Building Requirements

4.48 No teachnical assistance is required to implement this proposal.

M.3 Disciplines on Transit Formalities and Documentation Requirements

M.3 (a) Publication

M.3 (a) (i) Publication and Notification of Trade Regulations and of Penalty Provisions

4.49. *"Transparency and accessibility of information is important for traders to be able to efficiently undertake their business. Transparency "relates to the ability of market participants and stakeholders to: fully understand the conditions and constraints for entering and operating in a market; gain an accurate picture of costs and returns of their involvement; have the time and flexibility needed to meet requirements and adjust to potential changes; and be equipped to deal with any discriminatory or arbitrary treatment".*[12]

4.50. *"These proposals seek to provide transparency of trade regulations by publishing promptly and making available to interested parties, all laws, administrative rulings and other relevant information relating to or affecting the international trade in goods."*

Basic Standard

4.51 *"A Member shall ensure that all relevant information relating to trade laws and procedures is readily available to any interested person."*

Status

4.52 See the status in A.1.

[12] www.oecd.org/ech/tradepolicy/tradefacilitation. Document TD/TC/WP (2003)12/FINAL, page 5.

Recommendations

4.53 See the recommendations in A.1.

Technical Assistance and Capacity Building Requirements

4.54 See the technical assistance prposed in A.1.

M.3 (a) (ii) Notification of Trade Regulations

4.55. *"These proposals seek to provide Members with information on proposed new or amended trade regulations that are being considered by other Members, which may have a significant impact on them."*

Basic Standard

4.56. *"When introducing or amending trade regulations that may have a significant effect on the trade of other Members, a Member shall notify interested parties and the WTO Secretariat of the proposed introduction or amendment at the earliest possible stage prior to finalizing the proposed measures."*

Status

4.57 See status on A.3.

Recommendations

4.58 See recommendations on A.3.

Technical Assistance and Capacity Building Requirements

4.59 See technical assistance on A.3.

M.3 (a) (iii) Interval between Publication and Entry into Force

4.60. *"No measure of general application taken by any Contracting Party effecting an advance in a rate of duty or other charge on imports under an established and uniform practice, or imposing a new or more burdensome requirement, restriction or prohibition on imports, or on the transfer of payments therefore, shall be enforced before such measure has been officially published."*

4.61. *"These proposals seek to ensure the publication of proposed laws, regulations, rulings etc. ("rules") prior to their adoption and entry into force in order to contribute to informed compliance, by providing an opportunity for those stakeholders who may be affected by the rules to understand the changes and therefore improve their ability and readiness to comply."*

Basic Standard

4.62. *"A Member shall ensure that, in principle, information relating to proposed new and amended rules of general application is made available to interested persons in advance of their implementation."*

Status

4.63 See status on B.3.

Recommendations

4.64 See recommendations on B.3.

Technical Assistance and Capacity Building Requirements

4.65 See technical assistance on B.3.

M.3 (a) (iv) Establishment and Publication of Average Release and Clearance Times

4.66. *"These proposals seek to reduce release and clearance times by requiring members to calculate, publish, and endeavour to continuously reduce the average times for release and clearance of goods."*

Basic Standard

4.67. *"A Member shall establish and publish average release and clearance times, and shall seek to progressively reduce the time taken to release and clear goods."*

Status

4.68 See status on K.2.

Recommendations

4.69 See recommendations on K.2.

Technical Assistance and Capacity Building Requirements

4.70 See technical assistance on K.2.

M.3 (b) Periodic Review of Formalities/Procedures and Requirements

4.71. *"These proposals seek to ensure the ongoing appropriateness of trade-related formalities and requirements through periodic review."*

Basic Standard

4.72. *"A Member shall review its import and export formalities and requirements periodically in consultation with the private sector; and shall not maintain such formalities and requirements if the circumstances or objectives giving rise to their adoption no longer exist."*

Status

4.73 See status on H.1. (b).

Recommendations

4.74 See recommendations on H.1. (b).

Technical Assistance and Capacity Building Requirements

4.75 See technical assistance on H.1. (b).

M.3(c) Reduction/Simplification of Formalities/Procedures and Data/Documentation Requirements

4.76. *"Trade documentation and procedural requirements, if excessive, can delay the clearance of cargoes. These proposals seek to ensure that trade-related formalities and documentation are the minimum required to ensure compliance with legitimate policy objectives."*

Basic Standard

4.77. *"A Member shall ensure that its trade-related formalities and documentation requirements are no more administratively burdensome or trade restrictive than is necessary to achieve its legitimate policy objectives."*

Status

4.78 See status in H.1 (c).

Recommendations

4.79 See recommendations in H.1 (c).

Technical Assistance and Capacity Building Requirements

4.80 See technical assistance and capacity building requirements in H.1 (c).

M.3 (d) Harmonization/Standardization

M.3 (d) (i) Use of international standards

4.81. *"These proposals seek to simplify trade procedures and enhance trade facilitation by requiring documents to conform to international standards".*

Basic Standard

4.82. *"A Member shall use relevant international standards as the basis for their import, export and transit procedures".*

Status

4.83 See status in H.1 (d).

Recommendations

4.84 See recommendations in H.1 (d).

Technical Assistance and Capacity Building Requirements

4.85 See technical assistance and capacity building requirements in H.1 (d).

M.3 (d) (ii) Acceptance of Commercially Available Information and of Copies

4.86. *"These proposals recognize that the international trading community generates its own commercial trade-related documentation, and seeks to ensure that authorities use such information the greatest extent possible for the purposes of fulfilling their regulatory responsibilities. In the same context, the proposals also seek to achieve acceptance of copies of relevant documents by authorities."*

Basic Standard

4.87. *"For the purposes of facilitating trade, a Member shall use relevant information already available in the context of commercial transactions, and copies of relevant documents, wherever practicable."*

Status

4.88 See status in H.1 (f).

Recommendations

4.89 See recommendations in H.1 (f).

Technical Assistance and Capacity Building Requirements

4.90 See technical assistance and capacity building requirements in H.1 (f).

M.3 (e) Promotion of Regional Transit Agreements or Arrangements

4.91. *"These proposals seek to encourage Members to cooperate on a regional basis to promote bilateral and regional transit agreements. In addition, they seek assistance from the Negotiating Group in drawing up a non-exhaustive list of elements that Members should endeavour to incorporate when negotiating such agreements."*

Basic Standard

4.92. *"A Member shall promote bilateral and regional transit agreements or arrangements which are consistent with all other commitments on Trade Facilitation, with a view to reducing trade barriers."*

Status

4.93 Malawi is a member of COMESA and SADC and has not implemented the COMESA Yellow

Card Scheme and also participating in the pilot for the SADC regional bond guarantee scheme on the North South Corridor. Malawi is also part of the Beira, Dar es Salaam and Nacala Corridors which are geared to implement corridor transit arrangements.

4.94 Malawi has bilateral road transport agreements with Mozambique, South Africa, Tanzania, Zambia and Zimbabwe and Customs cooperation MoUs with Mozambique, Tanzania, Zambia and Zimbabwe.

Recommendations

4.95 It is recommended that Malawi continues to fully participate in the bilateral and regional corridor arrangements and contribute to the full implementation of the transit arrangements.

Technical Assistance and Capacity Building Requirements

4.96 Technical assistance to implement common transit regimes with neighbouring contries may be required with possibilities for electronic acquittal of transit.

M.3 (f) Simplified and Preferential Clearance for Certain Goods

4.97 *These proposals promote the use of risk management techniques to enable agencies to concentrate inspection and monitoring activities on high-risk goods in transit, and to facilitate the movement of low-risk goods. As such, they are dealt with under K.1(c) proposals – Risk management/analysis, authorized traders.*

M.3. (f) (i) Risk Management / Analysis

Basic Standard

4.98. *"A Member shall conduct examinations and inspections based on the application of risk managements".*

Status

4.99 See status in K.1 (c) (i).

Recommendations

4.100 See recommendations in K.1 (c) (i).

Technical Assistance and Capacity Building Requirements

4.101 See technical assistance and capacity building requirements in K.1 (c) (i).

M.3. (f) (ii) Authorized Traders

4.102. *"These proposals seek to ensure the introduction of simplified import and export formalities for traders with appropriate record of compliance with import and export requirements, known as 'authorized traders"".*

Basic Standard

4.103. *"A Member shall provide for simplified import, export and transit formalities for traders who demonstrate a high level of compliance with trade-related laws and regulations"*.

Status

4.104 See status in K.1 (c) (ii).

Recommendations

4.105 See recommendations in K.1 (c) (ii).

Technical Assistance and Capacity Building Requirements

4.106 See technical assistance and capacity building requirements in K.1 (c) (ii).

M.3 (g) Limitation of Inspections and Controls

M.3 (g) (i) Coordination of Activities and Requirements of all Border Agencies

<u>One-Stop-Shop</u>

4.107. *"Where several regulatory agencies are directly involved in the clearance of goods, the resulting imposition of multiple steps to obtain clearance represents an impediment to trade. These proposals seek to achieve a one-stop process through the coordination of relevant agencies."*

Basic Standard

4.108. *"A Member shall standardize national data and documentation requirements and provide importers and exporters with a single point of lodgement. If a consignment must be inspected by more than one agency, such inspections shall be co-coordinated and, if possible, carried out at the same time."*

Status

4.109 See status in J.1 (a).

Recommendations

4.110 See recommendations in J.1 (a).

Technical Assistance and Capacity Building Requirements

4.111 See technical assistance and capacity building requirements in J.1 (a).

<u>Coordination of Juxtaposed Customs Offices</u>

4.112. *"On land borders, traders are often faced with different clearance processes and customs facilities on each side of the border. These proposals seek to improved coordination between the*

border authorities of neighbouring countries in order to reduce the procedures required and time taken to clear goods across the frontier".

Basic Standard

4.113. *"Members with juxtaposed customs posts shall coordinate procedures and develop common border facilities, wherever possible".*

Status

4.114 See status in J.1 (b).

Recommendations

4.115 See recommendations in J.1 (b).

Technical Assistance and Capacity Building Requirements

4.116 See technical assistance and capacity building requirements in J.1 (b).

M.3 (g) (ii) Risk Management/Analysis, Authorized Traders

4.117. *"These proposals seek to ensure the application of risk management principles to trade-related examinations and inspections, including the introduction of simplified import and export formalities for traders with an appropriate record of compliance with import and export requirements, known as "authorized traders".*

Basic Standard

4.118. *"A Member shall conduct examinations and inspections based on the application of risk management, including simplified import, export and transit formalities for traders who demonstrate a high level of compliance with trade-related laws and regulations."*

Status

4.119 See status in K.1 (c).

Recommendations

4.120 See recommendations in K.1 (c).

Technical Assistance and Capacity Building Requirements

4.121 See technical assistance and capacity building requirements in K.1 (c).

M.3 (h) Sealing

4.122. *"These proposals seek to ensure the application of risk management principles to trade-related examinations and inspections, including the introduction of simplified import and export*

formalities for traders with an appropriate record of compliance with import and export requirements, known as "authorized traders".

Basic Standard

4.123. *"A Member shall conduct examinations and inspections based on the application of risk management, including simplified import, export and transit formalities for traders who demonstrate a high level of compliance with trade-related laws and regulations."*

Status

4.124 See status in K.1 (c).

4.125 MRA requires that transit movements be carried out in transport units meeting the Customs sealing requirements.

Recommendations

4.126 See recommendations in K.1 (c).

4.127 The national regulatory requirements for sealed consignments should be based on Annex E, Standard 3 of the Revised Kyoto Convention.

Technical Assistance and Capacity Building Requirements

4.128 See technical assistance and capacity building requirements in K.1 (c).

M.3 (i) Cooperation and Coordination on Document Requirements

M.3 (i) (i) One-Stop-Shop

4.129. *"Where several regulatory agencies are directly involved in the clearance of goods, the resulting imposition of multiple steps to obtain clearance represents an impediment to trade. These proposals seek to achieve a one-stop process through the coordination of relevant agencies."*

Basic Standard

4.130 *"A Member shall standardize national data and documentation requirements and provide importers and exporters with a single point of lodgement. If a consignment must be inspected by more than one agency, such inspections shall be co-coordinated and, if possible, carried out at the same time."*

Status

4.131 See status in J.1 (a).

Recommendations

4.132 See recommendations in J.1 (a).

Technical Assistance and Capacity Building Requirements

4.133 See technical assistance and capacity building requirements in J.1 (a).

M.3 (i) (ii) Coordination of Juxtaposed Customs Offices

4.134. *"On land borders, traders are often faced with different clearance processes and customs facilities on each side of the border. These proposals seek to improved coordination between the border authorities of neighbouring countries in order to reduce the procedures required and time taken to clear goods across the frontier".*

Basic Standard

4.134. *"Members with juxtaposed customs posts shall coordinate procedures and develop common border facilities, wherever possible".*

Status

4.135 See status in J.1 (b).

Recommendations

4.136 See recommendations in J.1 (b).

Technical Assistance and Capacity Building Requirements

4.137 See technical assistance and capacity building requirements in J.1 (b).

M.3 (j) Monitoring

4.138. *"Recognizing the importance of efficient implementation of transit agreements or arrangements, these proposals seek to ensure the actual implementation of these transit commitments."*

Basic Standard

4.139. *"A Member shall ensure that any regional transit agreement or arrangement incorporates measures relating to the monitoring of transit."*

Status

4.140 At present Malawi is participating in corridor arrangements for the Dar es Salaam Corridor, North South Corridor and Nacala Corridor. However there is no formalized transit monitoring systems in place as yet.

Recommendations

4.141 It is recommended that Malawi establishes public private partnerships institutional arrangements to facilitate transit agreements and arrangements, with suitable performance monitoring mechanisms.

M.3 (k) Bonded Transport Regime and Guarantees/International, Regional or National Customs Guarantee System

4.142. *"These proposals seek to establish an internationally, regionally or nationally valid guarantee system for goods transit. The objective of such a system is to avoid the need to impose provisional taxation while at the same time safeguarding revenue in case of inland diversion of the goods."*

Basic Standard

4.143. *"A Member shall allow the transit of goods through its territory without payment of customs duties or other charges, subject to the provision of an appropriate guarantee."*

Status

4.144 Malawi is implementing the pilot SADC Customs Transit Bond Guarantee Scheme along the North South Corridor from Durban to Malawi.

Recommendations

4.145 Malawi should continue to actively participate in the pilot implementation of the SADC Customs Transit Bond Guarantee Scheme.

M.4 Improved Coordination and Cooperation

M.4 (a) Amongst Authorities

M.4 (a) (i) One-Stop-Shop

4.146. *"Where several regulatory agencies are directly involved in the clearance of goods, the resulting imposition of multiple steps to obtain clearance represents an impediment to trade. These proposals seek to achieve a one-stop process through the coordination of relevant agencies."*

Basic Standard

4.147. *"A Member shall standardize national data and documentation requirements and provide importers and exporters with a single point of lodgement. If a consignment must be inspected by more than one agency, such inspections shall be co-coordinated and, if possible, carried out at the same time."*

Status

4.148 See status in J.1 (a).

Recommendations

4.149 See recommendations in J.1 (a).

Technical Assistance and Capacity Building Requirements

4.150 See technical assistance and capacity building requirements in J.1 (a).

M.4 (a) (ii) Coordination of Juxtaposed Customs Offices

4.151. *"On land borders, traders are often faced with different clearance processes and customs facilities on each side of the border. These proposals seek to improved coordination between the border authorities of neighbouring countries in order to reduce the procedures required and time taken to clear goods across the frontier".*

Basic Standard

4.152. *"Members with juxtaposed customs posts shall coordinate procedures and develop common border facilities, wherever possible".*

Status

4.153 See status in J.1 (b).

Recommendations

4.154 See recommendations in J.1 (b).

Technical Assistance and Capacity Building Requirements

4.155 See technical assistance and capacity building requirements in J.1 (b).

M.4 (b) Between Authorities and the Private Sector

M.4 (b) (i) Interval between Publication and Entry into Force

4.156. *"Article X paragraph 2 states: "No measure of general application taken by any Contracting Party effecting an advance in a rate of duty or other charge on imports under an established and uniform practice, or imposing a new or more burdensome requirement, restriction or prohibition on imports, or on the transfer of payments therefore, shall be enforced before such measure has been officially published."*

4.157. *"These proposals seek to ensure the publication of proposed laws, regulations, rulings etc. ("rules") prior to their adoption and entry into force in order to contribute to informed compliance, by providing an opportunity for those stakeholders who may be affected by the rules to understand the changes and therefore improve their ability and readiness to comply."*

Basic Standard

4.158. *"A Member shall ensure that, in principle, information relating to proposed new and amended rules of general application is made available to interested persons in advance of their implementation.*"

Status

4.159 See status in B.1.

Recommendations

4.160 See recommendations in B.1.

Technical Assistance and Capacity Building Requirements

4.170 See technical assistance and capacity building requirements in B.1.

M.4 (b) (ii) Prior Consultation and Commenting on New and Amended Rules

4.171. *"Public consultation and feedback improves the predictability of the regulatory environment, improves public confidence and support and helps to improve the level of compliance. Such consultation and feedback may be organized by the relevant ministry or regulatory agency."*

4.172. *"These proposals seek to ensure effective consultation on proposed trade-related laws, regulations, administrative rulings etc. in order to provide interested persons with an opportunity to comment on the proposals, and for Members to take such comments into account, as appropriate, prior to their implementation."*

Basic Standard

4.173. *"A Member shall introduce and maintain consultative mechanisms to seek and take account of comments from interested persons on proposals to introduce new, or amend existing trade-related rules prior to their implementation."*

Status

4.174 See status in C.1.

Recommendations

4.175 See recommendations in C.1.

Technical Assistance and Capacity Building Requirements

4.176 See technical assistance and capacity building requirements in C.1.

M.5 Operationalization and Clarification of Terms

4.177 These proposals seek WTO clarification of a number of terms and operational aspects of goods transit.

"Scope:

4.178. Definition of traffic in transit: Goods (including those moved via fixed infrastructure, inter alia pipelines, baggage and the personal belongings of the person operating the means of transport), and

means of transport, shall be deemed to be in transit across the territory of a Member when the passage across such territory is only a portion of a complete journey beginning and terminating beyond the frontier of the Member whose territory the traffic passes. Traffic of this nature is termed 'traffic in transit' irrespective of (i) trans-shipment, short-term storage, breaking bulk, or change in the mode of transport, and (ii) whether the goods or means of transport, after passing across a territory of a Member, return to the territory of a Member in which they originate or through which they have previously transited.

4.179 Exception: The provisions of this [Article] shall not apply to the operation of aircraft in transit, but shall apply to air transit of goods (including baggage).

Freedom of transit:

4.180. Freedom of transit and routes most convenient for international transit: There shall be freedom of transit through the territory of each Member via the routes most convenient for international transit. Traders have the freedom to choose the route subject to any reasonable restrictions imposed by Members consistent with paragraph 4. No distinction shall be made which is based on the choice of means of transport, the flag of vessels, the place of origin, departure, entry, exit or destination, or any circumstances relating to the ownership of goods or means of transport.

Transit formalities and documentation requirements:

4.181. Transit formalities and documentation requirements are all laws, regulations, requirements and procedures on or in connection with transit"

4.182 Clarity on the above terms will make implementation of transit arrangements by WTO members more coherent once members have committed themselves to the proposed measures.

5. CONCLUSIONS

5.1 Trade Facilitation—the simplifying and harmonizing of documents and procedures for moving goods across national borders—offers significant benefits to business development, economic growth, and global integration. Malawi is actively participating in this modern evolutionary process. While the progress achieved is promising, Malawi has much work ahead to bring its overall exportation and importation standards in line with those of the advanced developing countries. Because those rules will be binding but will also incorporate special and differential treatment for least developed countries, the observations in this report include both achievements and deficiencies and note where expert technical assistance may be advisable for bringing about the changes envisioned.

5.2 In accordance with the mandate of the Negotiating Group, this assessment has focused on Articles X, VIII, and V of the GATT and on the "third generation" proposals of the August 2006 Revision 10 of the Negotiating Group's collection of Member proposals. The most salient observations and conclusions of the present mission's assessment can be summarized as follows.

5.3 **Article X.** The emphasis of Article X is on transparency, availability, and uniformity of trade-related information. It promotes the establishment of national enquiry points, electronic as well as paper publication, the even-handed administration of trade law, and the right of traders to judicial process for appeal.

5.4 The present assessment has disclosed strengths and weaknesses—but also notable improvements—in Malawi's status with respect to the rules being proposed. On a positive side, all laws and regulations are published in the Gazette and are available to the public at the government printing office. The time period between publication and implementation is also clearly stipulated. There is an appeals process and the Customs Law stipulates the issues of offenses and rights of appeal.

5.5 There remain, nonetheless, gaps between actual practice and the Member proposals as they are being codified in near-final form by the Trade Facilitation Negotiating Group. Among the widest gaps is the paucity of information available through the Internet. Many ministries have no websites at all. Both Customs and the Ministry of Industry Trade and Private Sector Development provide considerable information on their sites, but they are not necessarily updated consistently; further, the information provided, while welcome and useful, is incomplete. At the government printing office—which offers no Internet access or internal computerized searches—copies of the relevant Gazette are occasionally out of stock. Technical assistance will be required to develop fully responsive websites; however, an even more important phase must precede such development—a review and a determination of what constitutes trade-relevant information in Malawi, since it is spread among numerous ministries and internal departments.

5.6 **Article VIII.** Article VIII focuses on fees & charges and formalities connected with importation and exportation, consularization, border agency coordination, release and clearance of goods and tariff classification.

5.7 Fees and charges are clearly published—and the calculations behind them are known and available—, they are not reviewed regularly thus leading to under recovery of costs of services rendered. Malawi needs to establish effective review mechanisms for fees and charges as well as formalities connected with importation and exportation. With respected to computerization,

automated payment systems, establishment of a single window facility, risk management systems, and border coordination, Malawi will need support to implement these.

5.8 **Article V.** Freedom of transit, along with the transparency and administration of trade rules and the workings of customs, is a core agenda of trade facilitation. The most important issues are those of nondiscrimination and the transparency and reasonableness of transit formalities, including charges.

5.9 The status with respect to fees and charges as well as transit formalities is identical to the conclusions under Article VIII above. As Malawi participates in regional corridor arrangements it is important the effective national and corridor monitoring mechanisms be established on a public private partnership basis to monitor performance of transit movements.

5.10 **Technical Assistance & Capacity Building:** The following matrix of recommendations is organized by article and, to a large extent, by the discussions of each article in the main body of this report. The matrix includes most, but not all, recommendations, condensing them in a summary phrase. The final column suggests the degree of priority attention that should be accorded the corresponding recommendation. It presents three alternatives: "I" signifies highly important and "Immediate," suggesting that the recommendation must be addressed and in the very short term. "E" signifies "Essential," meaning that the recommendation must be considered, but normally only after those marked "I." "R" denotes "Recommended" and is the lowest priority given.

5.11 The matrix is in no way intended as a substitute for a close reading of the text in the preceding chapters.

Recommendations Matrix

Proposal Rubric	Recommendations	Implementing Agency	Tech Assist	Priority
ARTICLE X				
Publication and Availability of Information	Review and determine what would constitute ***all trade-related*** information for Malawi and produce a compendium as hard copy, CD and electronic versions.	MITPSD[13] and other border agencies	Yes	I
	Review and update contents of existent websites		Yes	I
	Create official websites to provide all the relevant information on the lines proposed by the WTO Members and link them to the Ministry of Industry, Trade and Private Sector Development.	MITPSD, and all border agencies	Yes	I
	Use National Working Group on Trade. Policy for notification and establish presence in Geneva.	MITPSD	Yes	I
	Establish enquiry points within border agencies or a central enquiry point linked to all relevant border agencies.	MITPSD & Other border agencies	Yes	I
Time Period between Publication and Implementation	Improve on existing consultative mechanisms by creating awareness to the importance of consulattion using existing donor support to National Working Group on Trade. Policy	MITPSD & All border agencies	None	I
Advance Rulings	Create awareness on advance rulings and how the procedures operate.	MITPSD & MRA[14]	Yes	E
Uniform Administration of Trade Regulations	Create awareness among employees and the public on all laws, regulations & procedures related to trade processes. Implement total quality management systems or elements thereof.	MITPSD & All border agencies	Yes	I
Maintenance of Integrity & Ethical Conduct	Develop and publish codes of conduct and clients charters in coordination with the Anti Corruption Bureau	ACB[15], MITPSD & All border agencies	None	E
Computerized Systems to Reduce Discretion	Develop computerized systems for border agencies that are not computerized.	Other border agencies	Yes	I
Test Procedures	Establish a full complement of trained personnel and re-equip MBS	MBS[16]	Yes	I

[13] Ministry of Industry Trade and Private Sector Development
[14] Malawi Revenue Authority
[15] Anti Corruption Bureau
[16] Malawi Bureau of standards

ARTICLE VIII				
Fees and Charges Connected with Importation and Exportation	Review the *ad valorem* Quality Developmeny cess with a view to eliminate it.	MBS	None	I
	Review all fees and charges with a view to consolidation where practical	MITPSD & All border agencies	None	I
	Establish a central website where all trade related fees and charges are accessible to the public.	MITPSD & All border agencies	Yes	I
	Conduct periodic review of fees and charges.	MITPSD & All border agencies	None	E
	Establish administrative review mechanisms to ensure appropriateness of fees and charges.	MITPSD & All border agencies	Yes	E
	Establish independent verification mechanisms for appropriateness of fees and charges.	MITPSD & All border agencies	Yes	E
	Establish automated payment and accounting systems for duties, fees and charges.	MITPSD & All border agencies	Yes	I
Formalities Connected with Importation and Exportation	Strengthen Risk Management Unit along the Revised Kyoto Convention and its guidelines	MRA	Yes	I
	Strengthen operational performance through implementation of total quality management of elements thereof.	MITPSD & All border agencies	Yes	I
	Establish administrative review mechanisms to ensure appropriateness of formalities and documentation taking into account relevant new information & business practices, availability & adoption of new techniques & technology, international best practices and private sector & other stakeholder views.	MITPSD & All border agencies	Yes	E
	Establish legal and administrative arrangements to limit formalities and documentation to that necessary for assessment & collection of duties & taxes, compilation of trade related statistics and achievement of other policy objectives.	MITPSD & All border agencies	Yes	I
	Establish mechanisms for one time submission of information to process imports, exports and transit.	MITPSD & All border agencies	Yes	I
	Establish an electronic single window based on domestic and international experience.	MITPSD & All border agencies	None	E
	Introduce remote direct trader input for submission of customs declarations.	MRA	None	I
	Accede and fully implement the WCO Revised Kyoto Convention and Istanbul Convention.	MRA	Yes	I
	Implement the SADC Customs Management Act once it has been approved by Member States.	MRA	Yes	I
	Implement acceptance of commercially available information with appropriate guidelines to detect fraudulent transactions	MRA	Yes	I
	Upgrade automated systems to meet international best practices	MRA	Yes	I
	Phase out mandatory use of Customs brokers	MRA	Yes	E
	Harmonize border procedures with neighbouring authorities.	All border agencies	Yes	I
	Conduct institutional review of operations, funding, equipment, and human resources capacity of MBS.	MBS	Yes	I
	Implement electronic transfer of single administrative document across borders	MRA	Yes	I
Border Agency Coordination	Establish a One Stop Shop in all areas of operations and establish a Border Post Management Committee, or Advisory Body, spelling out its functions and mandate.	All border agencies	Yes	I
	Harmonize border procedures with neighbouring authorities.	All border agencies	Yes	I
	Implement One Stop Border Posts Operations with neighbouring authorities.	All border agencies	Yes	I

Release and Clearance of Goods	Create and implement the regulatory framework for pre-arrival clearance.	MRA	Some	I
	Enact and implement the principles contained in the *WCO Guidelines for the Immediate Release of Consignments by Customs*. An Express Division could initially be established within the Blantyre Regional Office to deal with all express shipment matters.	MRA	None	I
	Strengthen Risk Management Unit. based on Revised Kyoto Convention and its guidelines	MRA	Yes	I
	Establish a formal system for certifying or authorizing traders who automatically qualify for accelerated clearance.	MRA	Yes	I
	Establish Post Clearance Audit Unit	MRA	Yes	I
	Establish a system to facilitate separating release of goods from clearance of goods.	MRA	Yes	I
	Conduct Time Release Study annually or biannually.	MRA	None	E
ARTICLE V				
Non Discrimination and Policy Objectives	Eliminate reciprocal cross border road user charges.	All border agencies	None	I
	Establish effective risk management systems to target goods for enforcement of specific public policy objectives.	All border agencies	Yes	I I
Disciplines on Fees and Charges:	Develop formal procedures for complaints relating to incidents where officials demand payment of unpublished fees and charges and appropriate management review processes to ensure compliance.	MITPSD &All border agencies	Yes	I
	Get clarity on frequency of reviews and conduct periodic review of fees and charges.	MITPSD & All border agencies	None	E
	Establish administrative review mechanisms to ensure appropriateness of fees and charges.	MITPSD & All border agencies	Yes	E
	Establish independent verification mechanisms for appropriateness of fees and charges.	MITPSD & All border agencies	Yes	E
Disciplines on Transit Formalities and Documentation Requirements	Review and determine what would constitute ***all trade-related*** information for Malawi and produce a compendium as hard copy, CD and electronic versions.	MITPSD and other border agencies	Yes	I
	Review and update contents of existent websites		Yes	I
	Create official websites to provide all the relevant information on the lines proposed by the WTO Members and link them to the Ministry of Industry, Trade and Private Sector Development.	MITPSD, MRA, MOPWT[17] Other border agencies	Yes	I
	Use National Working Group on Trade. Policy for notification and establish presence in Geneva.		Yes	I
	Establish enquiry points within border agencies or a central enquiry point linked to all relevant border agencies.	MITPSD MITPSD & Other border agencies	Yes	XX
Interval between Publication and Entry into Force	Improve on existing consultative mechanisms by creating awareness to the importance of consultation using existing donor support to National Working Group on Trade. Policy	MITPSD & All border agencies	None	I
Establishment and Publication of Average Release and Clearance Times	Conduct Time Release Study annually or biannually.	MRA	None	XX
Periodic Review of Formalities/Procedures and Requirements	Establish administrative review mechanisms to ensure appropriateness of formalities and documentation taking into account relevant new information & business practices, availability & adoption of new techniques & technology, international best practices and private sector & other stakeholder views.	MITPSD & All border agencies	Yes	E

[17] Ministry of Public Works and Transport

Reduction/Simplification of Formalities/Procedures and Data/Documentation Requirements	Establish legal and administrative arrangements to limit formalities and documentation to that necessary for assessment & collection of duties & taxes, compilation of trade related statistics and achievement of other policy objectives.	MITPSD & All border agencies	Yes	I
	Establish mechanisms for one time submission of information to process imports, exports and transit.	MITPSD & All border agencies	Yes	I
	Establish an electronic single window based on domestic and international experience.	MITPSD & All border agencies	Yes	E
	Introduce remote direct trader input for submission of customs declarations.	MRA	Yes	I
Harmonization/ Standardization	Accede and fully implement the WCO Revised Kyoto Convention and Istanbul Convention.	MRA	Yes	I
	Implement acceptance of commercially available information with appropriate guidelines to detect fraudulent transactions	MRA	Yes	I
Promotion of Regional Transit Agreements or Arrangements	Implement the relevant transit agreements of SADC.	All border agencies	Yes	I
Simplified and Preferential Clearance for Certain Goods	Strengthen Risk Management Unit. based on Revised Kyoto Convention and its guidelines	MRA	Yes	I
	Establish a formal system for certifying or authorizing traders who automatically qualify for accelerated clearance.	MRA	Yes	I
Limitation of Inspections and Controls	Establish a One Stop Shop in all areas of operations and establish a Border Post Management Committee, or Advisory Body, spelling out its functions and mandate.	All border agencies	Yes	I
	Harmonize border procedures with neighbouring authorities.	All border agencies	Yes	I
	Implement One Stop Border Posts Operations with neighbouring authorities.	All border agencies	Yes	I
Sealing and Bonded Transport	Base national regulatory requirements for sealed consignments on Annex E, Standard 3 of the Revised Kyoto Convention.	MRA	None	I
	Implement the SADC transit regimes, especially in respect of bonded transit arrangements.	MRA	Yes	I
Monitoring	Establish public private partnership institutional arrangements to facilitate transit agreements and arrangements, with suitable monitoring mechanisms.	All border agencies	None	I

Key: I – Immediate; E – Essential; R - Recommended