



**TRADE AGREEMENT**

**BETWEEN**

**THE GOVERNMENT OF THE REPUBLIC OF MALAWI**

**AND**

**THE GOVERNMENT OF THE REPUBLIC OF ZIMBABWE**

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THIS AGREEMENT is entered into between the GOVERNMENT OF THE  
REPUBLIC OF MALAWI AND THE GOVERNMENT OF THE REPUBLIC OF  
ZIMBABWE

### **PREAMBLE**

The Government of the Republic of Malawi and the Government of the Republic  
of Zimbabwe, hereinafter referred to as "the Contracting Parties"-

**DETERMINED** to facilitate economic activities between the two countries  
through formalization of trade;

**CONSIDERING** that the development of trade relations between the two  
countries shall contribute towards economic development;

**DESIROUS** of strengthening the trade relations between the two countries on  
the basis of fairness, equity and mutuality of benefits;

**RECOGNIZING** that both countries have a common interest in the further  
expansion and diversification of trade between their respective countries on the  
basis of fairness, equity and mutuality of benefits;

**CONSCIOUS** of the need to liberalise their bilateral trade through the

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simultaneous elimination of tariff and non-tariff barriers;

**RECOGNIZING** that the Trade Agreement between them that entered into force on the 5<sup>th</sup> day of May, 1995 is lacking in some respects,

**AGREE** on the following arrangements which are designed to ensure that legitimate trade between their respective countries shall be as free and uninterrupted as possible:

## **ARTICLE 1**

### **DEFINITIONS**

In this Agreement, unless inconsistent with the context-

"annexure" means an annexure to this Agreement which shall form an integral part of this Agreement;

"c.i.f" means cost, insurance and freight;

"Contracting Party" means a party to this Agreement, namely, the Government of the Republic of Malawi or the Government of the Republic of Zimbabwe, as the case may be;

"customs duty" means any tax levied on imported goods and any other charge of equivalent effect but does not include value added tax, sales tax, excise

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duty or similar tax as levied both on internal transactions and on imported goods in each country;

"dumping" means the introduction of products of a Contracting Party into the commerce of the other Contracting Party at lower than the normal domestic value of the products;

"Joint Trade Committee" means the committee established under Article XX;

"imported goods" means goods which are treated as originating in either country;

"Non-Tariff Barrier" means any barrier to trade other than import and export duties;

"quantitative restrictions" means prohibitions or restrictions on imports into, or exports from, a Contracting Party, as the case may be, whether made effective through quotas, import licences, foreign exchange allocating practices or other measures with equivalent effect, including administrative measures and requirements restricting imports or exports;

"sanitary and phytosanitary measures" mean border control measures necessary to protect human health, animal or plant life or health;

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"sensitive products" means products more likely than others to encounter import restrictions based on criteria agreed by the Joint Trade Committee;

"WTO" means the World Trade Organization;

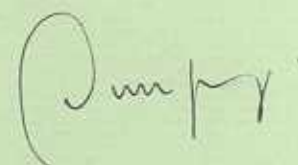
"value added" means the difference between the ex-factory cost of the finished product and the c.i.f. value of the material imported from outside the territories of the Contracting Parties and used in the production of the product.

## **ARTICLE II**

### **CUSTOMS DUTIES**

1. Subject to Article XII, goods grown, produced or manufactured in the territory of a Contracting Party shall be imported into the territory of the other Contracting Party free of customs duties.
2. Notwithstanding the provisions of this Article, a Contracting Party may impose an equivalent duty or tax where this is countervailing duty or tax.
3. To qualify for duty free treatment, goods shall be accompanied by a certificate of origin issued in accordance with Article III by a body authorised by the country of origin.

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4. Where a product is being exported by a person other than the original manufacturer, the Certificate of Origin in respect thereof shall be endorsed by the original manufacturer.

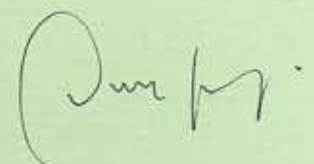
### **ARTICLE III**

#### **RULES OF ORIGIN**

1. Goods shall be accepted as originating in a Contracting Party and shall be accompanied by a Certificate of Origin issued in accordance with paragraph 3 of Article II if-

- (a) they have been wholly grown or produced in the territory of either Contracting Party;
- (b) they have been produced in the territory of a Contracting Party wholly or partially from materials imported from outside the territory of the Contracting Party or from materials of undetermined origin by a process of production which effects a substantial transformation of the materials such that-
  - (i) the c.i.f. value of the materials does not exceed 60 percent of the total cost of the materials used in the production of the goods; or

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- (ii) the value added resulting from the process of production accounts for at least 25 percent of the ex-factory cost of the goods; or
  - (c) there is a change, in terms of the criteria contained in Annexure I, in the tariff heading of a product arising from a processing carried out on the non-originating materials.
- 2. The criteria, contained in Annexure 1, to be used in determining change in tariff heading of a product arising from a processing carried out on the non-originating materials may be amended, from time to time, by the Joint Trade Committee.
- 3. Without prejudice to paragraph 1(a), goods listed in Annexure II shall be considered as wholly grown or produced in the territory of a Contracting Party.
- 4. Subject to such exemption as may be determined by the Joint Trade Committee, raw materials or semi-finished goods originating in accordance with the provisions of this Agreement in the territory of either

determining the origin of a finished product, be deemed to have originated in the territory of the Contracting Party where the final processing or manufacturing takes place and in return the semi-finished or finished product shall be deemed to have originated in the territory of the Contracting Party provided they attain at least 25% value added or the imported material content does not exceed 60% of the total cost of the materials used.

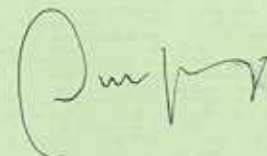
5. The provisions of Annexure III shall be taken into account in determining whether goods manufactured in a Contracting Party qualify under the Rules of Origin herein.

#### **ARTICLE IV**

#### **COMPLIANCE WITH STANDARDS**

1. If so required, goods grown, produced or manufactured in the territory of a Contracting Party shall, when exported to the territory of the other Contracting Party, comply with the national standards of the importing country.
2. The Contracting Parties shall ensure that their respective national standards are in harmony with international standards and WTO norms.

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3. Whenever a relevant international standard does not exist or the technical content of a proposed technical regulation is not in accordance with the technical content of relevant international standards, and if the technical regulation may have a significant effect on the trade of the other Contracting Party, a Contracting Party shall-

(a) publish a notice in a publication at an early appropriate stage, in such a manner as to enable interested parties in the territory of the other Contracting Party to become acquainted with it, that they propose to introduce a particular technical regulation;

(b) notify the other Contracting Party of the products to be covered by the proposed technical regulation, together with a brief indication of its objective and rationale and such notification shall take place at an early appropriate stage, when amendments can still be introduced and comments taken into account;

(c) upon request, provide the other Contracting Party with particulars or copies of the proposed technical regulation and, whenever possible, identify the parts which in substance, deviate from relevant international standards;

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(d) without discrimination, allow reasonable time for the other Contracting Party to make comments in writing, discuss the comments upon request, and take the written comments and the results of the discussions into account.

4. Subject to the provisions in the lead-in to paragraph 3 where urgent problems of safety, health, environmental protection or national security arise or threaten to arise for a Contracting Party, that Contracting Party may omit such of the steps enumerated in paragraph 3 as it finds necessary, provided that the Contracting Party, upon adoption of a technical regulation, shall-

(a) notify immediately the other Contracting Party of the particular technical regulation and the products covered, with a brief indication of the objective and the rationale of the technical regulation, including the nature of the urgent problems;

(b) upon request, provide the other Contracting Party with copies of the technical regulation; and

(c) without discrimination, allow the other Contracting Party to present its comments in writing, discuss the comments upon

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request, and take the written comments and the results of the discussions into account.

5. Contracting Parties shall ensure that all technical regulations which have been adopted are published promptly or otherwise made available in such a manner as to enable interested parties in the territory of the other Contracting Party to become acquainted with them.
6. Except in those urgent circumstances referred to in paragraph 4, Contracting Parties shall allow a reasonable interval between the publication of technical regulations and their entry into force in order to allow time for producers in the territory of the other Contracting Party to adapt their products or methods of production to the requirements of the importing Contracting Party.
7. In compliance with paragraph 1, exporters in each Contracting Party shall ensure that each particular consignment of goods meets the standards of the other Contracting Party before undertaking the exportation.
8. For purposes of paragraphs 1 and 2, goods shall be accompanied by a certificate of the national quality certification body of a Contracting Party.

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9. The national certification bodies of the Contracting Parties shall cooperate and exchange information.

#### **ARTICLE V**

#### **SANITARY AND PHYTOSANITARY MEASURES**

1. Contracting Parties shall base their sanitary and phytosanitary measures on international standards, guidelines and recommendations so as to harmonise sanitary and phytosanitary measures for agricultural and livestock production.
2. Contracting Parties shall, upon request, enter into consultation with the aim of achieving agreements on recognition of the equivalence of specific sanitary and phytosanitary measures, in accordance with the WTO Agreement on the Application of Sanitary and Phytosanitary Measures.

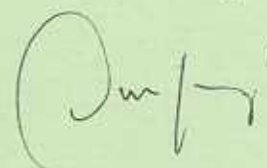
#### **ARTICLE VI**

#### **NON - TARIFF BARRIERS**

Except as provided for in this Agreement, Contracting Parties shall-

- (a) adopt policies and implement measures to eliminate all existing forms of Non-Tariff Barriers; and

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- (b) refrain from imposing any new Non-Tariff Barriers.

#### **ARTICLE VII**

#### **QUANTITATIVE IMPORT RESTRICTIONS**

Contracting Parties shall not apply any new quantitative restrictions, and shall phase out the existing restrictions on the import of goods originating in the territory of the other Contracting Party except where otherwise provided for in this Agreement.

#### **ARTICLE VIII**

#### **QUANTITATIVE EXPORT RESTRICTIONS**

Contracting Parties shall not apply any new quantitative restrictions, and shall phase out the existing restrictions on the export of goods to the territory of the other Contracting Party except where otherwise provided for in this Agreement.

#### **ARTICLE IX**

#### **GENERAL EXCEPTIONS**

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination

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between the Contracting Parties, nothing in Articles VII and VIII of this Agreement shall be construed as to prevent the adoption or enforcement of any measures by a Contracting Party-

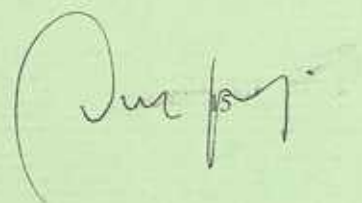
- (a) necessary to protect public morals or maintain public order;
- (b) necessary to protect human, animal or plant life or health;
- (c) necessary to secure compliance with laws and regulations which are consistent with the provisions of the WTO;
- (d) necessary to protect intellectual property rights or to prevent deceptive trade practices;
- (e) relating to transfer of gold, silver, precious and semi-precious stones, including precious and strategic metals;
- (f) imposed for the protection of national treasures of artistic, historic or archaeological value;
- (g) necessary to prevent or relieve critical shortages of food stuffs or other products essential to the exporting Contracting Party;

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- (h) relating to the conservation of exhaustible natural resources and the environment;
- (i) necessary to ensure compliance with existing obligations under international agreements;
- (j) relating to import restrictions, that do not discriminate among exporting countries, on agricultural products necessary to the enforcement of Government measures, which import restrictions operate-
  - (i) to restrict the quantities of the like domestic products permitted to be marketed or produced; or
  - (ii) to remove a temporary surplus of the like domestic products;
- (k) relating to import and export restrictions taken in time of war or any other emergency; or
- (l) necessary to safeguard the Balance of Payments.

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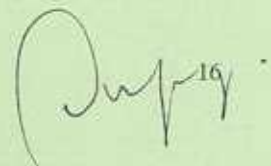
**ARTICLE X**  
**ANTI-DUMPING MEASURES**

Nothing in this Agreement shall prevent a Contracting Party from applying anti-dumping measures which are in conformity with WTO provisions.

**ARTICLE XI**  
**SUBSIDIES AND COUNTERVAILING MEASURES**

1. The Contracting Parties shall not grant subsidies which distort or threaten to distort competition between them.
2. A Contracting Party may, for the purpose of off-setting the effects of subsidies and subject to WTO provisions, levy countervailing duties on a product of another Contracting Party.
3. Notwithstanding paragraph 1, a Contracting Party may introduce a new subsidy only in accordance with WTO provisions.

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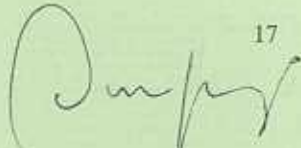


## ARTICLE XII

### SENSITIVE AND STRATEGIC PRODUCTS

1. The provisions of this Article shall apply to sensitive and strategic products.
2. Upon an application by a Contracting Party, the Joint Trade Committee may, as a temporary measure, in order to promote sensitive and strategic products, and subject to WTO provisions, authorize the Contracting Party to suspend certain obligations of this Agreement in respect of like goods imported from the territory of the other Contracting Party.
3. The Joint Trade Committee may, in taking a decision under paragraph 2, impose terms and conditions, to which such authorization shall be subject, for the purposes of preventing or minimising excessive disadvantages as those which may result in trade imbalances.
4. The Joint Trade Committee shall regularly review sensitive and strategic products of Contracting Parties.

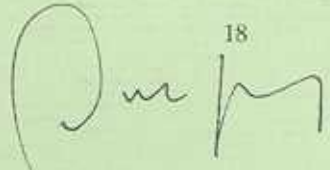
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**ARTICLE XIII**  
**SAFEGUARD MEASURES**

1. A Contracting Party may apply a safeguard measure to a product only if that Contracting Party has determined that such product is being imported into its territory in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products.
2. A serious injury shall be determined in accordance with Article 4 of the WTO Agreement on Safeguards.
3. A Contracting Party shall apply safeguard measures only to the extent and for such period of time necessary to prevent or remedy serious injury and to facilitate adjustment.
4. In accordance with Article 7 of the WTO Agreement on Safeguards, the period referred to in paragraph 3 shall not exceed four years, unless the competent authorities of the other Contracting Party have determined that the safeguard measure continues to be necessary to prevent or

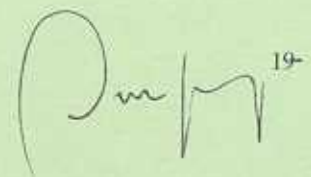
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remedy serious injury and that there is evidence that the industry is adjusting.

5. Subject to the provisions of paragraph 6, before a Contracting Party may take action, pursuant to the provisions of paragraph 1, it shall give notice in writing to the other Contracting Party as far in advance as may be practicable and shall afford such other Contracting Party an opportunity to consult with it in respect of the proposed action.
6. In critical circumstances, where delay emanating pursuant to paragraph (1) would cause damage which would be difficult to repair, proof of which shall be furnished by the Contracting Party taking such action, action pursuant to paragraph 1 may be taken provisionally without prior consultation, provided that consultations shall be conducted immediately after such action.
7. Notwithstanding the provisions of paragraph 3, the total period of application of a safeguard measure shall not exceed eight (8) years.

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#### **ARTICLE XIV**

##### **FACILITATION OF TRANSIT TRADE**

1. The Contracting Parties agree to facilitate, in accordance with their respective laws and regulations, freedom of transit through their respective territories of goods originating from -
  - (a) the territory of either Contracting Party destined for a third country; or
  - (b) a third country and destined for the territory of either Contracting Party.
2. Paragraph 1 is subject to the transit or movement of goods complying with the applicable laws and regulations in force.

#### **ARTICLE XV**

##### **COOPERATION IN CUSTOMS ADMINISTRATION**

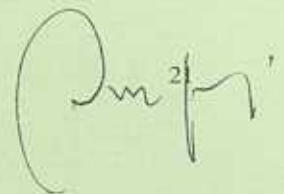
1. The customs authorities of the Contracting Parties shall regularly consult on matters concerning the documentation and procedures relating to the Certificates of Origin issued under this Agreement.

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2. Each Contracting Party's customs authority shall be the competent authority to verify the origin of goods that are exported to the territory of the other Contracting Party to ensure that they meet the local content requirement of the Rules of Origin according to Article III.
3. The importing country reserves the right to verify the origin of the goods imported into it under this Agreement and, where a Contracting Party reserves the right to verify, information and documentation necessary for verification purposes shall be forwarded to the customs authority of the importing country.
4. Origin verification shall be carried out for all products being traded for the first time and the origin verification may be reviewed on a case-by-case basis at the request of either Contracting Party.
5. Failure to furnish the information stated in this Article may lead to the suspension of the goods in question from benefiting from the provisions of this Agreement.
6. Where necessary, the customs authorities of the Contracting Parties shall jointly visit the manufacturing establishments in the territory of either Contracting Party for purpose of origin verification.

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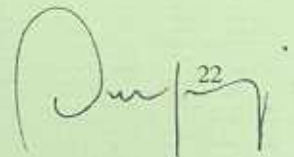


## ARTICLE XVI

### GOODS IN TRANSIT AND FOR EXHIBITION AND SAMPLES

1. The Contracting Parties shall, subject to the laws and regulations in force in their respective territories and on conditions agreed upon by the competent authorities of both Contracting Parties, permit the import and export, free of customs duties, taxes and other similar levies or charges, not related to the payment for services, of the following goods-
  - (a) samples of goods and publicity materials, required only for obtaining orders and for advertising purposes, which are neither for sale nor of any commercial value;
  - (b) goods imported temporarily for experiments and research activities;
  - (c) goods imported temporarily for the purpose of trade fairs and exhibitions;
  - (d) goods imported temporarily for effecting repairs and which are re-exported;

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- (e) goods originating in or from a third country and transported through the territory of a Contracting Party destined for the territory of the other Contracting Party; and
- (f) goods originating in or from the territory of a Contracting Party and transported through the territory of the other Contracting Parties destined for a third country.

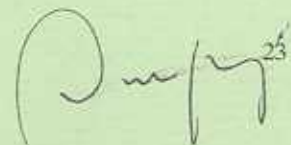
## **ARTICLE XVII**

### **TRADE PROMOTION AND FACILITATION**

To facilitate and promote the development of trade and commercial transactions under this Agreement, the Contracting Parties agree-

- (a) to allow the organization of trade fairs and exhibitions and such other trade promotion activities in their respective territories in accordance with their laws and regulations;
- (b) to furnish each other, on request, with all necessary information concerning the possibilities of supplying goods originating from their respective countries;
- (c) that their trade promotion organisations shall cooperate and

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exchange information with a view to promoting and facilitating trade between the Contracting Parties; and

- (d) that the standards bodies of the Contracting Parties shall cooperate and exchange information with a view to promoting and facilitating the quality of goods traded between the territories of the Contracting Parties.

#### **ARTICLE XVIII**

#### **MODES OF PAYMENT**

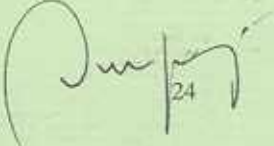
All payments between the Contracting Parties in pursuance of this Agreement shall be effected through normal banking channels, including regional payment arrangements in accordance with the foreign exchange laws and regulations in force in their respective countries.

#### **ARTICLE XIX**

#### **CONSULTATIONS**

The Contracting Parties, having regard to the objectives of this Agreement and recognizing that difficulties or problems may arise as a result of the operation of this Agreement, agree that-

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- (a) a Contracting Party which proposes to take or authorise action which it considers may affect any benefit accruing to the other Contracting Party under this Agreement shall, whenever possible, consult in advance with, and give sympathetic consideration to any representations by, or proposals received from, the other Contracting Party;
- (b) a Contracting Party shall be free at all times to approach the other Contracting Party for consultations with a view to finding ways and means of solving any difficulty or problem in the operation of this Agreement; and
- (c) apart from any discussions which may take place under paragraphs (a) and (b), the Contracting Parties shall meet at intervals not exceeding twelve months for formal discussion of the operation of this Agreement.

## ARTICLE XX

### JOINT TRADE COMMITTEE

1. A Joint Trade Committee is hereby established, comprising representatives of each Contracting Party, which shall oversee the implementation and application of this Agreement.

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2. The Joint Trade Committee shall meet at least once a year or at the earliest possible opportunity but not later than 8 weeks after a written request has been made by either Contracting Party.
  
3. The Joint Trade Committee shall deliberate on any issues arising from the implementation and application of this Agreement and in particular the issues referred to in Articles XII, XVIII and XXII.

#### **ARTICLE XXI**

#### **INTERNATIONAL OBLIGATIONS**

Nothing in this Agreement shall be construed as affecting any rights and obligations arising from any international agreement or treaty already entered into by either Contracting Party.

#### **ARTICLE XXII**

#### **DISPUTE SETTLEMENT**

1. If a Contracting Party should consider that any benefit accruing to it directly or indirectly under this Agreement is being nullified or impaired or that the attainment of any objective of this Agreement is being impeded as a result of-

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- (a) the failure of the other Contracting Party to carry obligations under this Agreement;
- (b) the application by the other Contracting Party of measures, whether or not it conflicts with the provisions of this Agreement;  
or
- (c) the existence of any other situation.

The aggrieved Contracting Party may initiate discussion and consultation directly with the other Contracting Party with a view to settle any disputes or differences amicably.

2. If no satisfactory solution of the matter is effected between the Contracting Parties within a reasonable time, the matter shall be referred to the Joint Trade Committee for investigation and appropriate recommendation or ruling.
3. In the event that the Joint Trade Committee fails to agree on an appropriate ruling in terms of paragraph (2) above, the matter shall be referred, by the Joint Committee, for arbitration.

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**ARTICLE XXIII**

**IMPLEMENTATION MECHANISM**

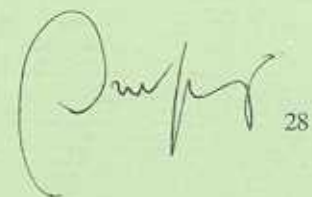
1. The Government of the Republic of Malawi hereby designates its Ministry of Industry, Trade and Private Sector Development and the Government of the Republic of Zimbabwe designates its Ministry of Industry and International Trade as their respective organs for the purpose of implementing this Agreement and other matters related thereto.
2. Each Contracting Party shall have the right to designate in writing, at any time, any other appropriate body, organisation or Ministry in place of the one already designated.

**ARTICLE XXIV**

**ANNEXURES**

Annexures to this Agreement shall form an integral part of this Agreement.

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## ARTICLE XXV

### ENTRY INTO FORCE, AMENDMENT AND TERMINATION OF THIS AGREEMENT

1. This Agreement shall come into force on a date to be determined by the Contracting Parties and confirmed by an exchange of diplomatic notes indicating that each Party complied with its constitutional requirements and shall remain in force for a period of five (5) years thereafter. It shall be automatically extended for additional periods of two (2) years each.
2. This Agreement or any extension thereof, may be terminated by either Contracting Party by giving six months notice in writing to the other Contracting Party, provided that the obligations assumed by the Contracting Parties under this Agreement prior to the notice of termination shall, to the extent necessary, survive the termination.
3. Annexure to this Agreement may be amended by mutual agreement of the Joint Trade Committee and such amendments shall enter into force on a date to be agreed by the Joint Trade Committee.
4. Should either Contracting Party consider it desirable to amend the text of this Agreement, including the Annexures, it may request consultations between the Contracting Parties and the consultations shall begin within six weeks of the request.

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5. Any amendment to this Agreement shall enter into force on a date to be determined by the Contracting Parties and confirmed through an exchange of diplomatic notes.

#### ARTICLE XXVI

#### REPEAL OF THE 1995 AGREEMENT

The Trade Agreement between the Contracting Parties which came into force on the 5<sup>th</sup> day of May, 1995 is hereby repealed.

DONE at *Harare* on this *17<sup>th</sup>* day of *July* 2006 in two originals in English both texts being equally authentic.

HON. DR Ken Lipenga M.P.

FOR THE GOVERNMENT  
OF THE REPUBLIC OF  
MALAWI

HON. O.M. MPOFU, MP

FOR THE GOVERNMENT  
OF THE REPUBLIC OF  
ZIMBABWE

## ANNEXURE I

### ORIGIN CRITERIA FOR DETERMINING CHANGE IN TARIFF HEADING

PRODUCTS	ORIGIN CRITERIA	PROCESSES
Plastics and Plastic products	Change in Tariff Heading. Manufacture in which all the materials used are classified within a heading other than that of the product), - All waste used must be wholly produced	Manufacture should start from polypropylene granules, Mixing, compounding and extrusion
Leather	Change in Tariff Heading	For further research
Leather Products	Change in Tariff Heading	Designing, Cutting, Sewing Finishing (Except for footwear)
Footwear	Change in Tariff Heading	The manufacturing of uppers should include: Designing, Cutting, Sewing and Finishing
Textiles	Change in tariff heading	Manufacture to start from ginning cotton or from yarn up to the final process
Clothing	Change in Tariff Heading	Designing, Laying, Cutting, Sewing and Finishing
Electronics (a) Transmission and reception apparatus for radio and television, sound recorders and producing apparatus, video monitors and projectors	Change in tariff Heading	Manufacture from unpopulated circuit boards
(b) Refrigerators	Change in Tariff Heading	Cutting, bending of steel sheeting, fitting of motor box, production of condenser and evaporator shelves followed by the manufacture of doors.

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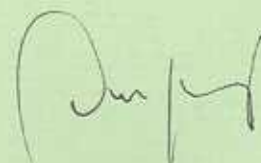
## ANNEXURE II

### WHOLLY ORIGINATING GOODS

The following categories of goods shall be considered as wholly grown or produced in the territory of a Contracting Party-

- (a) mineral products extracted from its soil;
- (b) agricultural produce harvested or gathered therein;
- (c) live animals born and raised therein;
- (d) products obtained therein from live animals;
- (e) forest products harvested therein;
- (f) fish and other fish products gathered therein or from its marine economic zone;
- (g) scrap and waste resulting from manufacturing operations within the Contracting Parties; and
- (h) products obtained therein exclusively from products specified in (a) and (g) above.

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## ANNEXURE III

### RULES FOR DETERMINATION OF ORIGIN

1. For the purposes of Article III of the Agreement, goods shall be regarded as having been manufactured in the territory of a Contracting Party when at least 25% of the manufacturing cost of those goods, as determined herein, which shall constitute "local content", is represented by materials produced and direct labour performed in that territory and the last process in the manufacture of those goods has taken place in that territory, provided that –
  - (a) the last process of manufacture is substantial and sufficient to change the nature of the product and give it new, essential and distinct characteristics and it was performed in an enterprise equipped for the purpose; and
  - (b) the final product represents a completely new product or at least an important state in the manufacturing process; and
  - (c) each type of Article or set shall qualify separately in its own right.

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2. For the purpose of this Annexure, the following operations shall not be regarded as manufacturing –

(a) packing, bottling, placing in flasks, bags, cases, boxes, fixing on cards or boards and all other simple packing operations;

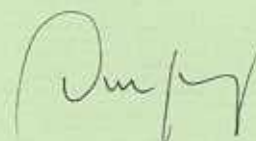
(b) –

(i) assembly, where this involves the construction of an article by putting together finished components which may require slight modifications such as painting or trimming before assembly. Such assembly can involve gluing, screwing, nailing, sawing and minor welding and riveting operations with or without the addition of local parts or components of minor importance such as screws, nuts and bolts; and

(ii) simple mixing or blending of imported ingredients which does not result in the formation of a different product;

(d) operations to ensure the preservation of merchandise in good condition during transportation and storage such as ventilation, spreading out, drying, freezing, placing in brine, sulphur dioxide or

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(a) packing, bottling, placing in flasks, bags, cases, boxes, fixing on cards or boards and all other simple packing operations;

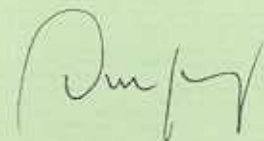
(b) –

(i) assembly, where this involves the construction of an article by putting together finished components which may require slight modifications such as painting or trimming before assembly. Such assembly can involve gluing, screwing, nailing, sawing and minor welding and riveting operations with or without the addition of local parts or components of minor importance such as crews, nuts and bolts; and

(ii) simple mixing or blending of imported ingredients which does not result in the formation of a different product;

(d) operations to ensure the preservation of merchandise in good condition during transportation and storage such as ventilation, spreading out, drying, freezing, placing in brine, sulphur dioxide or

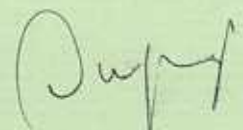
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other aqueous solutions, removal of damaged parts, cleaning and similar operations;

- (e) changes of packing and breaking up of or disassembly of consignments;
- (f) printing, marking, labelling or affixing other like distinguishing signs on products or their packages;
- (f) simple operations consisting of removal of dust, sifting, or screening, sorting, grading, classifying and marching and including the making up of sets of goods;
- (g) washing, painting, dyeing, bleaching, texturising of textile goods and impregnating or mercerising operations;
- (h) etching, decorating, calibration, painting, polishing, cutting up, reinforcing of an otherwise finished article;
- (i) diluting, drying, steaming, heating, salting which does not result in the permanent change in the shape, form or nature of the article;
- (j) repairing, remodelling or alteration;

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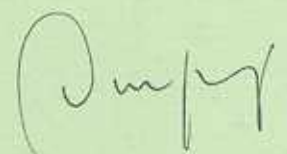


- (k) the addition of parts or components of minor importance for example crews, nuts and bolts, minor additives or colourants to foodstuffs;
- (l) a combination of two or more operations specified in subparagraphs (a) to (k) of this paragraph;
- (m) slaughter of animals; and
- (n) tanning of hides.

3. "local content" in relation to goods manufactured in the territory of either Contracting Party means such percentage of the manufacturing costs of such goods in their finished condition as is represented by the cost of-

- (a) any materials which were grown, produced or manufactured in the country concerned and which were used in the manufacture of the goods;
- (b) the direct labour involved in the manufacture of the goods; and
- (c) raw materials or semi-finished goods originating in accordance with this Agreement in the territory of a Contracting Party and undergoing working or processing in the other Member State shall, for the purposes of determining the origin of a finished

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product, be deemed to have originated in the Member State where the final processing or manufacturing takes place.

4. In the calculation of the cost of the materials produced and direct labour performed in respect of the manufacture of any goods in any territory, for the purpose of this Annexure, only the following items may be included-

(a) the cost of local materials, including the cost of waste materials and materials lost in the process of manufacture and represented by their delivered price at the factory and used directly in the manufacture of such good -

(i) where material which are not wholly produced in the territory concerned are used directly in the manufacture, such goods will count to the extend of their prorated local content as determined in accordance with this Annexure; and

(ii) locally manufactured materials or components which have been temporarily exported for further manufacture shall on return to the country of final manufacture be taken as 100 per cent imported content for the purposes of calculating

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local content; the following, *inter alia*, shall not be regarded as direct materials: water (provided it is not part of the finished product), electricity, consumable items, items for staff benefits such as tea, protective garments and uniforms; and

(b) the cost of labour directly employed in the manufacture of such goods, were in addition to the wages and salaries paid to direct labour, the following will be included in the calculation of direct labour costs –

- (i) leave except cash in lieu of leave;
- (ii) salaries for foremen and supervisors related to the manufacturing processes;
- (iii) overtime payment at normal rates; and
- (iv) incentives and bonus if predetermined.

5. The term "direct labour" shall be taken to refer to those procedures applied to input materials from which the product is manufactured from the time they first come into the hands of the workforce which actually manufactured the product to the time the finished article is put in retail package but it does not include such functions as design, pattern marking and dye making.

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6. The following shall, *inter alia*, be excluded from "direct labour cost"-
- (a) pensions contributions;
  - (b) overtime payment at above normal rates;
  - (c) cash in lieu of leave;
  - (d) maintenance costs;
  - (e) incentive bonus not predetermined;
  - (f) the portion of salaries of foremen and supervisors not related to manufacturing process
  - (g) fringe benefits;
  - (h) business overheads;
  - (i) administration expenses;
  - (j) salaries; and
  - (k) profits.
7. (a) The manufacturing cost of goods shall be calculated in accordance with the provisions of this Annexure and shall be representative of the cost arising from normal business practices, operating procedures and levels of production in the industry concerned as incurred over a period of not less than three months, such cost of the goods in their finished condition based on factual costs, charges and expenses incurred in their manufacture, including the

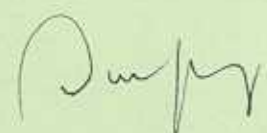
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cost of putting the goods up in their retail packages and the cost of such retail packages, provided that, if in the opinion of the verifying authority, any cost, charge or expenses has not been incurred by the manufacturer at the normal open market price, the verifying authority may assess the amount or that cost, charge or expense on the basis of the normal open market price, and the manufacturing cost shall be calculated in accordance with that assessment;

- (b) for the purpose of determining the local content of any goods manufactured either wholly or partly from locally produced or manufactured materials or components, the local content of such locally produced or manufactured materials or components shall be determined and apportioned as herein provided;
- (c) for the purposes of determining the local content of any goods manufactured either wholly or partly from imported materials, the origin of any charges incidentals shall be deemed to be that of the imported materials;
- (g) any information which the verifying authority of a Contracting Party may require for the purpose of ascertaining the local content of the manufacturing cost of any goods shall be provided in such

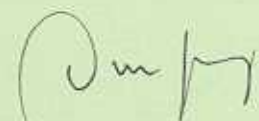
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form and certified in such manner as may be agreed by the Contracting Parties to ensure accuracy and clarity.

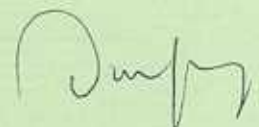
8. For the purpose of this Annexure, the following costs, charges and expenses shall be included in the manufacturing cost of the goods-
- (a) the cost of imported materials , including the cost of waste materials and materials lost in the process of manufacture, as represented by the landed cost of those materials at the factory, including any charge incidental to the delivery of such materials to the factory but excluding any duty thereon paid by the manufacturer provided that the cost of imported materials not imported by the manufacturer shall be the delivered price at the factory;
  - (b) the cost of local materials, including the cost of wastes materials and materials lost in the process of manufacture, as represented by their delivered price at the factory;
  - (c) the cost of direct labour as represented by the wages paid to the operative responsible for the manufacture of the goods as qualified herein;

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- (d) the cost of direct manufacturing expenses as represented by-
- (i) the operating costs of the machine used to manufacture the goods;
  - (ii) the expenses incurred in the cleaning, drying, polishing, pressing or any other process , as may be necessary for the finishing of the goods;
  - (iii) the cost of putting the goods up in their retail packages and the cost of such retail packages but excluding any extra cost of packing the goods for transportation or export and the cost of ant extra packages; and
- (e) manufacturing overhead costs, as represented by –
- (i) rent, rates and insurance charges directly attributable to the factory;
  - (ii) indirect labour charges including salaries paid to factory managers, wages paid to foremen, examiners and tasters of the goods and fees paid to efficiency advisers;

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- (iii) power, light, water and other service charges directly attributed to the cost of the manufacture of the goods;
- (iv) consumable stores including minor tools, grease, oil and other incidental items and materials used in manufacture of the goods;
- (v) depreciation and maintenance of factory buildings, plant, machinery, tools and other items used in the manufacture of the goods; and
- (vi) the cost of food supplied to factory workers, Workers Compensation, insurance and contributions to Manufacturers Association.

9. The following costs, charges and expenses shall be excluded from the manufacturing cost of the goods –

- (a) administration expenses as represented by-
  - (i) office expenses, office rent and salaries paid to accountants, clerks, managers and other executive personnel;

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- (ii) directors' fees, other than salaries paid to directors who act in the capacity of factory managers;
  - (iii) statistical and costing expenses in respect of the manufactured goods; and
  - (iv) investigation and experimental expenses;
- (b) selling expenses as represented by –
- (i) the cost of soliciting and securing of orders, including such expenses as advertising charges and agents or salesmen's commission or salaries; and
  - (ii) expenses incurred in the making of designs, estimates and tenders;
- (c) distribution expenses, other than those provided for in paragraph (a) or (b), as represented by all expenditure incurred after the goods have left the factory, including –

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- (i) the cost of any materials and payment of wages incurred in the packing of goods for export;
  - (ii) warehousing expenses incurred in the storage of the finished goods; and
  - (iii) the cost of transporting the goods to their destination; and
- (d) charges not directly attributable to the manufacture of the goods, including—
- (i) any import duty paid on the imported raw materials;
  - (ii) any excise duty paid on raw materials produced in the country where the finished goods are manufactured; and
  - (iii) any royalties paid in respect of patents, special machinery or designs.

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## **ANNEXURE IV**

### **SENSITIVE PRODUCTS FOR MALAWI**

The following products have been designated as sensitive in accordance with

Article XII-

1. Granulated sugar
2. Table eggs
3. Dressed chickens
4. Cooking oil
5. Fresh milk

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