

**HARMONIZING TRADE REGULATION AND ENVIRONMENT  
MANAGEMENT**

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## **1.0 EXECUTIVE SUMMARY.**

The promotion of economic growth and the eradication of poverty is an important policy goal for many countries today. One way of achieving economic growth is through trade liberalization and promoting open markets for products. However, trade liberalization may have adverse effects on the environment and biological diversity. It is therefore important that trade and environmental policies be reconciled in order to achieve sustainable development.

The international and regional agreements regulating trade aim at liberalizing trade. The agreements to which Malawi is committed include the GATT/WTO, SADC and COMESA. Trade measures that discriminate between products from member states and between domestic and products from other members are prohibited. So too are any quantitative restrictions like the use of quotas, packaging requirements, labeling and import bans. However, members may go against these prohibitions if it is necessary to protect human, animal or plant life or health or to conserve exhaustible natural resources.<sup>1</sup> If that happens, members are required to ensure that there is no arbitrary or unjustifiable discrimination or a disguised restriction on trade. Despite the fact that members have this leeway in the trade agreements to implement measures protecting the environment, it has not been easy for most of them as the provisions have been interpreted very strictly.

There are also a number of multilateral environmental agreements that expressly allow the use of trade measures against non-parties. These include the *Montreal Protocol on Substances that Deplete the Ozone Substances*, *Basel Convention on Hazardous Substances*, and the *Convention on International Trade in Endangered Species (CITES)*.<sup>2</sup> Their relationship to the trade agreements is not clear but it appears that they can be upheld because of the multilateral nature of the agreements.<sup>3</sup>

At the national level, the Malawi Investment Promotion Act) and the Integrated Trade and Industry Policy make no reference to the need for environmental protection. This is strange considering that the Constitution refers to the same in the principles of national policy. Malawi has an environmental framework law that aims at ensuring that there is sustainable management and utilization of natural resources.<sup>4</sup> There is also other sectoral legislation on the environment and natural resource management. However, most of the legislation requires regulations to be effective but very little has been done in this area. This is greatly affecting the sustainable management and protection of the environment. The sectoral legislation also requires licenses for the commercial utilization of natural resources. It will be very important to incorporate concepts for environmental protection as conditions in the licenses.

Only the *National Parks and Wildlife Act* and the *Environment Management (Ozone Depleting Substances) Regulations*, 1998 makes reference to the need of imposing trade bans in accordance with the international environmental agreements.

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<sup>1</sup> There are other exceptions. See Article XX of GATT.

<sup>2</sup> This appears to be contrary to the Most Favored Principle. See Discussion on the GATT/WTO.

<sup>3</sup> Other agreements with trade implications include, the *Cartagena Protocol on Biosafety*, the *Rotterdam Convention on Prior Informed Consent*, among others.

<sup>4</sup> See the *Environment Management Act*, Cap 60:02.

Malawi is also fully committed to the conservation of biological diversity and to the protection of risks to the environment arising from biotechnology products. Malawi ratified the *Convention on Biological Diversity* and is in the process of ratifying the *Cartagena Protocol on Biosafety*. She has a *Biosafety Act*. However, it has been noted that key provisions are lacking and there is therefore need to review the Act to bring it in line with the Protocol.

Finally, on environmental measures with trade implications, it is important that Malawi should avoid unilateral measures. She should therefore cooperate with other countries both within and outside the SADC region on environmental protection. A careful analysis of any environmental measure should be made to ensure that it is in line with Malawi's obligations on trade under the international and regional agreements.

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## **2.1 LIST OF ACRONYMS**

CBD	: Convention on Biological Diversity
CITES	: Convention on the International Trade of Endangered Species
COMESA	: Common Market for Eastern and Southern Africa
EMA	: Environment Management Act
GATT	: General Agreement on Tariffs and Trade
GMO	: Genetically Modified Organism
LMO	: Living Modified Organism
MEA	: Multilateral Environmental Agreement
MPSRP	: Malawi Poverty Reduction Strategy Paper
NEPAD	: New Partnership for African Development
SADC	: Southern Africa Development Community
SADCC	: Southern Africa Development Coordination Conference
SPS	: Sanitary and Phytosanitary
TBT	: Technical Barriers to Trade
TRIPS	: Trade Related Aspects of Intellectual property
WTO	: World Trade Organization

### **3.0 INTRODUCTION AND BACKGROUND**

Malawi is one of the poorest countries in the world. Her economy is primarily agro based. Such being the case, she heavily relies on imports of manufactured products from other countries. Trade between Malawi and other countries is regulated through various international, regional and bilateral agreements. Malawi is a member of the World Trade Organization (WTO), Southern Africa Development Community (SADC), and the Common Market for Eastern and Southern Africa (COMESA). All these organizations, among other things, aim at achieving economic growth through liberalized trade.

Emphasis has been placed on trade liberalization as one way of coming out of poverty. However, there are also some urgent concerns pressing the nation. It has been noted that the nation is losing most of its biological diversity and there is an alarming degradation of the environment and this appears to be inter-linked to issues of trade liberalization and poverty. Responsible environmental management has therefore been included as a principle of national policy in the Constitution. Malawi then produced a *National Environmental Policy* in 1994<sup>5</sup> that outlines strategies that can be used to redress environmental degradation and facilitate sustainable utilization of natural resources.

Due to the importance that Malawi attaches to environment protection, she is a signatory to a number of multilateral international agreements such as the *Convention of Biological Diversity*, the *Cartagena Protocol on Biosafety*, the *Vienna Convention and the Montreal Protocol on Substances that Deplete the Ozone Layer*, the *Convention on Combating Desertification*, *Convention of Migratory Species of Wild Animals*, *Basel Convention on Hazardous Substances*, *Convention on International Trade of Endangered Species (CITES)*, and others. She also adheres to the principles of the *Stockholm and Rio Declarations*. At the regional level, Malawi is also a party to a number of *SADC Protocols* relating to the environment and natural resources.

There is therefore a need for the national regulatory framework to comply with the obligations under the various agreements that Malawi is committed to. This work analyzes the relationship between trade and environment and all matters incidental thereto. This paper has seven sections containing the Executive Summary, Table of Contents and List of Acronyms, Introduction and Background Information, Approach and methodology, Discussion, Recommendations, and the Conclusion respectively.

### **4.0 APPROACH AND METHODOLOGY**

In conducting this assignment, the consultant adopted the following approach

- Appraised himself with the relevant literature on trade and environment including the following laws, principles and policies, the GATT/WTO and its related instruments, the *SADC Protocol on Trade*, *COMESA Treaty*, *Convention on Biological Diversity*, *Cartagena Protocol on Biosafety*, *Montreal Protocol on Substances that Deplete the Ozone Layer*, *Basel Convention*, *Convention on International Trade in Endangered Species*, *Agenda 21*, *Rio Declaration on the Environment*, *New Partnership for African Development (NEPAD)*, Malawi Constitution, *Environment Management Act* and other Acts on the environment

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<sup>5</sup> The Policy has now been revised.

- and natural resources, Acts on trade and investment, *National Environmental Policy*, National Strategy for Sustainable Development, Malawi Poverty Reduction Strategy Paper, Vision 2020, *Integrated Trade and Industrial Policy*
- Analyzed the information collected from the literature review with a view of identifying key thematic areas for promoting advocacy
  - Writing of the comprehensive CEPA Report on trade and the environment<sup>6</sup>

## **5.0 DISCUSSION**

### **5.1 The link between trade and environment and its effects on poverty reduction**

Governments today are faced with the task of ensuring and promoting continued economic growth and the eradication of poverty. Malawi is not an exception. She accordingly launched the *Malawi Poverty Strategy Reduction Paper* in 2002 whose overall goal is to achieve sustainable poverty reduction through empowerment of the poor. One of the engines for economic growth is liberal trade and investment. At the same time, governments have to protect the environment and to conserve natural systems and ecosystems. These two goals often clash. Liberal trade focuses on reducing barriers to trade in products so as for economies to grow. Most of the economic policies also focus on the extraction and use of natural resources. Environmental protection, on the other hand, focuses on whether the processes of producing the products and whether the extraction of the natural resources are environmentally sustainable.<sup>7</sup>

However, one of the root causes of environmental degradation in many countries including Malawi is poverty. Its alleviation, therefore, is very “critical to natural resource conservation, protection and sustainable utilization.”<sup>8</sup> Principle 5 of the *Rio Declaration* states that the eradication of poverty is “an indispensable requirement for sustainable development, in order to decrease the disparities in standards of living and better meet the needs of the majority of the people...” Proponents of liberalized trade therefore argue that trade can produce the economic growth that can enable people to live a decent life and to have the economic resources to protect the environment.<sup>9</sup> Liberalized trade can also enable poor countries to have cleaner technologies for protecting the environment.<sup>10</sup> Distorting the trading system to protect the environment is therefore not good both for protecting the environment and for promoting economic growth.<sup>11</sup> Some traders also argue that environmental measures oftentimes increase the costs of production and that this is not good for business.<sup>12</sup>

Environmental proponents however are concerned that liberalized trade can destroy the economic base of many countries if not properly managed and thereby exacerbate the poverty problem. The natural resources have to be used optimally with the view of sustainable development.<sup>13</sup>

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<sup>6</sup> It was not possible to hold consultations with the relevant Ministries and institutions due to limited time. However, the consultant is of the view that the consultations could not have changed the substance of the report.

<sup>7</sup> The MPRS recognizes that sustainable utilization of natural resources has to be encouraged, page v.

<sup>8</sup> Clause 3.1(b) of the *National Environmental Policy*, 2004

<sup>9</sup> Weiss E.B et al, *Reconciling Environment and Trade*, Transnational Publishers, New York, 2001, 3

<sup>10</sup> Percival R.V et al, *Environmental Regulation*, Aspen Law and Business, New York, 2000, 1150

<sup>11</sup> Weiss, id.

<sup>12</sup> The requirement for labeling, packaging, storage may pose challenges to some companies.

<sup>13</sup> Preamble of the Marrakesh Agreement

Despite these clashes, it has to be noted that trade and environmental policies can be complementary and mutually supportive.<sup>14</sup> “Environmental protection preserves the natural resource base on which economic growth is premised, and trade liberalization leads to the economic growth needed for adequate environmental protection.”<sup>15</sup> A proper balance between environmental protection and trade liberalization may lead to reduction of poverty and enhancement of sustainable livelihoods. The WTO Secretariat Trade and Environment Report cautioned that there is no basis for sweeping generalizations that trade or the environment is good or bad for the other.<sup>16</sup> The Report concluded that win-win outcomes could be assured through well-designed policies in both fields.

It should be noted that Malawi has an Integrated Trade and Industrial Policy, 1998. The Policy aims at promoting and facilitating private enterprise efforts in order to make Malawi a manufacturing based economy.<sup>17</sup> The Policy highlights a number of steps that Malawi has taken to liberalize the economy. These include price decontrol, elimination of foreign exchange rationing and industrial licensing, import liberalization and the passing of the investment Promotion Act.<sup>18</sup> Further, the development of agro-industries is one of the policy objective guiding industrial development.

The policy does not make any reference to environment management. It appears therefore that environmental considerations have not been linked to the issues of trade promotion for sustainable economic growth.

## **5.2 Regulatory Framework For Trade and Environment**

### **5.2.1. International Trade Regulation and Environment Management**

The General Agreement on Tariffs and Trade/ World Trade Organization (GATT/WTO) regulates the multilateral trading regime. The WTO is a product of the Marrakesh Agreement that completed the Uruguay Round of the GATT negotiations in December 1993.<sup>19</sup> The GATT had entered into force on January 1, 1948 and its basic purpose is to liberalize trade.<sup>20</sup> The WTO is an umbrella agreement establishing the WTO structure, including the GATT, and other agreements.<sup>21</sup>

The preamble to the Marrakesh Agreement commits members to enter into mutually advantageous arrangements directed to the substantial reduction on tariffs and other barriers to trade and to the elimination of discriminatory treatment in international commerce. It also refers explicitly to the objective of sustainable development and the importance of environment protection.

The cornerstone of the GATT/WTO is the principle of non-discrimination. This principle is amplified in two key provisions. The first is the most favored nation (MFN)

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<sup>14</sup> Article 2.19-2.22 of Agenda 21, U.N. Doc. A/CONF.151/4 (1992)

<sup>15</sup> Parameters of the Discussion in the WTO,  
[http://www.wto.org/english/tratop\\_e/enviro\\_backgrnd\\_e/cls3\\_e.htm](http://www.wto.org/english/tratop_e/enviro_backgrnd_e/cls3_e.htm), 10/17/04

<sup>16</sup> Id.

<sup>17</sup> Page iii, the mission statement of the policy

<sup>18</sup> Page 1

<sup>19</sup> Percival R.V et al, *Environmental Regulation*, 2002 supp., third ed., Aspen Law & Business, New York, 2002, 302

<sup>20</sup> Weiss E. B et al, 5

<sup>21</sup> Trebilcock M. J et al, *The Regulation of International Trade*, 2<sup>nd</sup> ed, Routledge, London, 1999, 25



principle contained in Article I. This Article provides that government import and export regulations should not discriminate between other countries' products. This principle is subject to one important exception. The exception is contained in Article XXIV that permits the formation of regional blocks, either in a form of customs union or free trade areas.<sup>22</sup> This exception is subject to two conditions. First, the general incidence of duties after the formation of such an arrangement should not be higher than the average levels of duties prevailing on the part of member countries to such an arrangement prior to its formation. Second, the duties and other restrictions on trade must be eliminated with respect to substantially all the trade between the constituent members of the regional trading block.

The second principle on non-discrimination under the GATT is that of national treatment contained in Article III. This Article provides for non-discrimination of like products against imports. Like products from any contracting party must be accorded treatment no less favorable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale.<sup>23</sup>

The GATT also prohibits the use of quotas, import or export licenses commonly referred to as quantitative restrictions. The prohibition is contained in Article XI. It has to be noted that many of the environmental goals on their face violate this provision.

### **5.2.3 Environmental Regulation under the GATT/WTO**

The most favored nation, the national treatment, and the ban on quantitative restrictions make reference to the term "like products". It appears therefore that member states must only consider the characteristics of the products themselves and not the process relating to how the product is produced.<sup>24</sup> Yet, from the environmental perspective, the process of producing a product is often more important than the product characteristics. For example, some products may be produced by processes that pollute the water, air, and land, or that destroy natural resources and habitats of living organisms. The effects might be far more destructive to sustainable development. For this reason, some governments have therefore called for banning of imports that have been produced by environmental damaging processes. This approach, albeit good for the environmental protection and sustainable development nonetheless violate the GATT provisions which commit states to only consider product characteristics.

However, member states may implement environmental measures that violate GATT provisions if the measures fall within the policies outlined under Article XX of the same. Article XX (b) exempts measures that are necessary to protect human, animal, or plant life or health whereas Article XX (g) exempts those measures that relate to the conservation of exhaustible natural resources provided such measures are made effective in conjunction with restrictions on domestic production or consumption. The two exceptions are sometimes referred to as environmental exceptions. They are, however,

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<sup>22</sup> Another exception relates to least developing countries.

<sup>23</sup> An exception is contained in Article III: 8 of the GATT which permits government agencies to favor local producers in purchasing goods for governmental purposes and not with a view to commercial resale.

<sup>24</sup> An early case of Belgian Family Allowances, BISD 2S/18 (adopted on 7 November, 1952), the GATT Panel refused to take into account the labor laws and systems of family allowances for fear of opening up potential of thousands of societal and process differences and that the logic behind the principle of non discrimination would be undermined if the Panels do not consider product characteristics.

subject to the chapeau<sup>25</sup> language. The “measures must not be applied in such a manner which would constitute a means of arbitrary or unjustifiable discrimination between two countries where the same conditions prevail, or a disguised restriction on international trade.” Thus, even if a measure satisfies subparagraphs (a) and (g) of Article XX, it still cannot be justified if the measure constitutes arbitrary or unjustifiable discrimination or a disguised restriction on international trade.

#### **5.2.4 Jurisprudence of Environmental Measures under the GATT/WTO**

Environmental policies have been considered under the GATT/WTO. A few cases will be considered. The first step for GATT panels is to find out if the disputed measure falls under Article XX (b) or XX (g) and then to proceed to the chapeau.<sup>26</sup> However, the Panels have strictly interpreted Articles XX (b) and XX (g) such that many environmental measures had been found to be contrary to GATT. A measure could be considered necessary under Article XX (b) if only there were no alternative measures consistent with the GATT, or less inconsistent with it.<sup>27</sup> As for Article XX (g), the measure will pass only if it primarily relates to conservation and must be made effective in conjunction with domestic production or consumption.<sup>28</sup>

Even if a measure is found to fall under the exceptions, the chapeau of Article XX presents another hurdle. It has been noted that the exceptions may be invoked as a matter of right, but the chapeau is there to ensure that the measures should not be applied to frustrate the legal obligations of a member under the substantive provisions of the GATT.<sup>29</sup> Many measures have therefore failed to pass the chapeau test for constituting arbitrary or unjustified discrimination or for being unjustified restrictions on trade. The factors that are analyzed includes, unilateralism/multilateralism, conditioning market access on the adoption of certain policies, rigidity and inflexibility of the measure, fairness and due process, international negotiation and location of the humans, plants, or animals to be protected and the resources to be conserved.<sup>30</sup>

Panels have tried to incorporate the values of environmental management into the framework of the GATT. One specifically referred to the objective of sustainable development prescribed in the preamble.<sup>31</sup> One also noted that the protection of human health, plants or animals and the conservation of natural resources must find expression and that members have a large measure of autonomy to determine their environmental policies and objectives.<sup>32</sup>

#### **5.2.5 Other WTO Agreements Affecting the Environment**

##### **5.2.5.1. Technical Barriers to Trade Agreement (TBT)**

The TBT agreement establishes a means to regulate technical barriers to trade that relate to product characteristics and production methods. Under the Agreement, a

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<sup>25</sup> The introductory clause of article XX of GATT.

<sup>26</sup> *Reformulated Gasoline Case*, WT/DS2/AB/R (1996)

<sup>27</sup> *Thai Cigarettes Case*, GATT B.I.S.D (1990)

<sup>28</sup> *Canada Measures affecting exports of unprocessed herring and salmon*, 1987 WL 421961 (GATT)

<sup>29</sup> *Reformulated Gasoline Case*, *id.*

<sup>30</sup> See *Shrimp Turtle Case*, 1998 WL 720123 (WTO), *Tuna Dolphin I and II*, 30 I.L.M 1594 (1991) and 33 I.L.M 839 (1994)

<sup>31</sup> *Shrimp Turtle*, Appellate Body, *id.*

<sup>32</sup> *Reformulated Gasoline*, *id.*

technical regulation is defined as “a document that lays down product characteristics of their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labeling requirements as they apply to a product, process or production method.<sup>33</sup> And technical standards are defined as “documents approved by a recognized body that provide for common and repeated use, rules, guidelines or characteristics for products or related process and production methods, with which compliance is not mandatory.<sup>34</sup>

The TBT Agreement also contains the national treatment and the most favored nation principles and therefore members must accord products treatment no less favorable than that accorded to like products of national origin and like products from other countries.<sup>35</sup> Second, members must ensure that technical regulations are not prepared or applied with a view to or with the effect of creating unnecessary obstacles to international trade.<sup>36</sup> Finally, technical regulations are not permitted to be more trade restrictive than necessary to fulfill a legitimate objective, taking into account of the risks non-fulfillment would create. When assessing the risks, members must consider the available scientific and technical information, related processing technology or intended end uses of products. Additionally, the TBT Agreement directs members to rely on relevant international standards as a basis for their technical regulations.<sup>37</sup> There are also notice and transparency provisions.<sup>38</sup>

The TBT Agreement specifically lists the protection of human health or safety and the environment as a legitimate objective.

#### **5.2.5.2. The Agreement on Sanitary and Phytosanitary Measures (SPS Agreement)**

The SPS Agreement gives WTO members the right to adopt SPS measures that aim at protecting human, animal, and plant life.<sup>39</sup> SPS measures are defined as,

- (a) measures that are adopted to protect animal or plant life or health within the territory from risks arising from entry, establishment or spread of diseases
- (b) measures taken to protect human or animal life or health within the territory of the member from risks arising from additives, contaminants, toxins or disease causing organisms in foods, beverages or feed stuffs
- (c) measures applied to protect human life or health from risks arising from diseases carried by animals, plants or products or from the entry or spread of pests
- (d) measures established to prevent or limit other damage from the entry or spread of pests.<sup>40</sup>

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<sup>33</sup> Annex 1 of the TBT Agreement

<sup>34</sup> Annex I, Article 2.2

<sup>35</sup> Article 2.1

<sup>36</sup> Article 2.2

<sup>37</sup> Article 2.4

<sup>38</sup> The notice provision applies if a relevant international standard does not exist, or when the proposed regulation is not in accordance with relevant international standards, and when the proposed regulation may have significant trade impacts whereas the transparency provision requires that regulations should be published promptly

<sup>39</sup> Article 2.1

<sup>40</sup> Annex 1, Article 1(a)-(d)

The SPS Agreement also lays down instruments that would qualify as SPS measures. The instruments include laws, decrees, regulations, inspection, quarantine treatment, certification and approval procedures, processes and production methods, packaging and labeling requirements with respect to the transport of animals or plants.<sup>41</sup>

Member states are allowed to implement measures providing for a higher level of protection than provided in international standards.<sup>42</sup> However, the adoption of an SPS measure is subject to a number of conditions,

- (a) the measure may be applied only to the extent necessary to protect human, animal or plant life and may not be more trade restrictive than required to achieve appropriate level of protection
- (b) the measure must be based on scientific principles and not maintained without scientific evidence. Provisional application of measures is allowed in cases where scientific evidence is insufficient
- (c) the measures must be based on assessment of risks
- (d) where identical conditions prevail, measures must not discriminate arbitrarily or unjustifiably between members or between their territory and that of other members
- (e) the measures must not constitute a disguised barrier to international trade

Further, the measures must recognize the equivalency of alternate measures utilized by other countries to guard against similar risks, must be transparent, and must not involve procedures that act as unjustified barriers to trade.

### **5.2.5.3 Trade Related Aspects of Intellectual Property (TRIPS)**

Article XX (d) of the GATT exempts measures that are necessary to secure compliance with laws or regulations that relate to the protection of patents, trademarks and copyrights, and the prevention of deceptive practices. This exemption is also subject to the chapeau of Article XX of the GATT. The measures must therefore not constitute a means of arbitrary or unjustifiable discrimination, or a disguised restriction on trade.

The Uruguay Round of GATT negotiations also produced a comprehensive agreement on TRIPS. Part I of the Agreement contains the National Treatment and the Most Favored Nation obligations with respect to intellectual property rights.<sup>43</sup> It also sets out standards for availability, scope and use of intellectual property rights relating to copyrights, trademarks, and patents.

Members are permitted to “exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment.”<sup>44</sup> Members may also exclude from patentability plants and animals other than microorganisms, and essentially the biological processes for the production of plants or animals other than microorganisms and microbiological processes.

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<sup>41</sup> Annex A

<sup>42</sup> Article 3.3

<sup>43</sup> Article 3, and 4

<sup>44</sup> Article 27

### **5.3. ENVIRONMENTAL AGREEMENTS WITH TRADE IMPLICATIONS AND THEIR RELATIONSHIP WITH THE GATT/WTO**

The GATT does not make any reference to trade measures taken pursuant to multilateral environmental agreements.<sup>45</sup> GATT Panels have however expressed a preference for trade measures imposed pursuant to environmental agreements.<sup>46</sup> Several multilateral environmental agreements explicitly sanction the use of trade measures to protect human life, animal or plant life and the conservation of natural resources. These include the *Montreal Protocol on Substances that Deplete the Ozone Layer*,<sup>47</sup> the *Basel Convention on Trans boundary Movement of Hazardous Waste*,<sup>48</sup> and the *Convention on International Trade in Endangered Species*.<sup>49</sup> All these conventions contain a ban on trade against non-parties and this would appear to violate the principle of non-discrimination.<sup>50</sup> For the *Montreal Protocol*, a sanction will be imposed only if the non-party is not in compliance with the basic obligations of the Protocol. Other relevant conventions include the *Rotterdam Convention (PIC)*, and the *Cartagena Protocol on Biosafety*. Challenges against these provisions have not yet been brought under the GATT/WTO.

### **5.4. REGIONAL TRADE AND INVESTMENT REGULATORY FRAMEWORK**

Malawi is both a member of Southern Africa Development Community (SADC) and the Common Market for Eastern and Southern Africa (COMESA), two regional blocks that aim to liberalize trade.

#### **(a) SADC**

SADC was formed on 17 August 1992 by Southern African States.<sup>51</sup> Initially, the Southern African States were operating under the Southern Africa Development Coordination Conference (SADCC) that was formed in 1980. The formation of SADC was actually a transformation of the SADCC. Article 22 of the SADC Treaty calls for member states to conclude protocols in areas of cooperation within the community. Member states therefore concluded the *SADC Protocol on Trade* and signed the same on 24 August 1996.<sup>52</sup> One of the objectives of the Protocol is to liberalize intra-regional trade in goods and services on the basis of fair, mutually equitable and beneficial arrangements among member states.<sup>53</sup>

The Protocol envisages the creation of a free trade area in that it calls on members to eliminate all barriers to trade within a time frame of 8 years, to phase out and eventually eliminate all import and export duties, and to adopt and implement policies

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<sup>45</sup> Contrast with NAFTA's Article 104

<sup>46</sup> *Shrimp Turtle* at para. 186.

<sup>47</sup> 26 I.L.M. 15

<sup>48</sup> 28 I.L.M. 657

<sup>49</sup> 27 U.S.T. 1087

<sup>50</sup> About 20 multilateral environmental agreements include provisions that can affect trade, see [http://www.wto.org/english/tratop\\_e/cte01\\_e.htm](http://www.wto.org/english/tratop_e/cte01_e.htm), 10/13/04

<sup>51</sup> Namely Angola, Botswana, Democratic Republic of Congo, Lesotho, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia, and Zimbabwe.

<sup>52</sup> The member states that concluded and signed Protocol are Botswana, Lesotho, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia, and Zimbabwe. The DRC and Seychelles have also joined,

<sup>53</sup> Article 2.

that will eliminate all existing non tariff trade barriers.<sup>54</sup> Members are also called upon not to apply any new quantitative restrictions and to phase out all existing restrictions on the imports of goods.<sup>55</sup>

The Protocol contains the National Treatment and the Most Favored Nation principles just like the WTO.<sup>56</sup> It also contains provisions regulating Technical Regulations and Sanitary and PhytoSanitary Measures.<sup>57</sup> The later calls on members to base their technical regulations and the sanitary measures on international standards.<sup>58</sup>

Just like the GATT/WTO system, the SADC Protocol also contains general exceptions to the substantive provision against the prohibition of quantitative restrictions on imports. Article 9 provides that a member will not be prevented to adopt measures that are; necessary to protect human, animal or plant life or health, necessary to secure compliance with laws and regulations that are consistent with the provisions of the WTO, necessary to protect intellectual property rights, relating to the conservation of exhaustible natural resources and the environment, and necessary to ensure compliance with existing obligations under international agreements. However, the adoption of such measures is subject to the introductory language of Article 9 of the Protocol. The measures must “not be applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between member states or a disguised restriction on intra-SADC trade.”<sup>59</sup> Thus, a member may still impose quantitative restrictions on imports of goods if it can show that such action has been taken in order to achieve the policies falling under Article 9.

The inclusion of measures to ensure compliance with existing obligations under international agreements is very important as it answers the question about trade related provisions under multilateral environmental agreements, among other things.<sup>60</sup>

#### **(b) COMESA**

Article 29 of the Preferential Trade Area for Eastern and Southern African States required steps to be taken to develop the preferential trade area into a common market and eventually into an economic community. COMESA was eventually formed to provide for “sustainable growth and development by promoting a more balanced and harmonious development of production and marketing structures... and to raise standards of living of the people”<sup>61</sup> Members also committed themselves to abolish all non tariff barriers to trade among themselves.<sup>62</sup>

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<sup>54</sup> See Articles 3-6.

<sup>55</sup> See Article 7. However, a member may apply a quota system provided that the tariff rate under such a quota is more favorable than the rate under the Protocol.

<sup>56</sup> See Articles 11 and 28 respectively.

<sup>57</sup> See Articles 16-17

<sup>58</sup> In case of technical regulations, member states depart from international standards if they are inappropriate or ineffective. However, if they are based on international standards, the presumption is that they are not an obstacle to trade. Further, members are called upon to accept equivalent technical regulations of other members provided they adequately fulfill the objectives

<sup>59</sup> See Article 9

<sup>60</sup> This provision is even better than Article 104 of NAFTA that provides a similar exception but specifically lists the environmental agreements.

<sup>61</sup> Article 3 of the COMESA Treaty..

<sup>62</sup> See Articles 4 and 49. But restrictions may still be imposed to protect an infant industry.

Further, any practice that essentially negates the objective of free and liberalized trade and that prevents, restricts, or distorts competition is prohibited.<sup>63</sup> Just like the GATT/WTO and SADC, the COMESA Treaty calls upon members to refrain from implementing measures that discriminate against the same or like products of other member states.<sup>64</sup>

However, members may still introduce or execute restrictions or prohibitions affecting the protection of human, animal or plant health or life, among others, provided notice has been given to the Secretary General of COMESA of its intention to do so.<sup>65</sup> The difference between COMESA and the GATT/WTO and SADC is that under COMESA notice has to be given to the Secretary General if a member intends to restrict imports to protect human, animal or plant life, whereas the GATT/WTO and SADC do not require notice to be given.

Member states may nonetheless implement measures to protect human, animal or plant life subject to the requirement that the restrictions or prohibitions are not imposed so as to stultify the free movement of goods.<sup>66</sup>

### **5.5 Bilateral Trade Agreements**

Malawi has bilateral trade arrangements with South Africa and Zimbabwe and maintains a customs Agreement with Botswana.<sup>67</sup> However, environmental concerns have not been integrated in these arrangements.

### **5.6 Aid Conditionalities**

Malawi relies on aid from various multilateral institutions. Currently, the World Bank and the African Development Bank have issued a series of operational policies and procedures on the requirement for projects financed by the banks to comply with environmental and social interests.<sup>68</sup> It is not clear how Malawi will deal with the other donors on aid as there are no policy guidelines on the same.

## **5.7. NATIONAL REGULATORY FRAMEWORK**

### **a. TRADE AND INVESTMENT**

Malawi has several pieces of legislation regulating trade and investment as outlined hereunder:

#### ***Investment Promotion Act, Cap 39:05***

This is the Act that establishes the Malawi Investment Promotion Agency (MIPA). The general objective of the Agency is “to promote, attract, encourage, and facilitate local and foreign investment in Malawi.”<sup>69</sup> However, the Agency accords priority to investment in manufacturing, agriculture, mining, fisheries, tourism, forestry and other productive sectors as may be determined.<sup>70</sup>

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<sup>63</sup> See Article 55.

<sup>64</sup> National Treatment principle. See Article 57.

<sup>65</sup> See Article 50 (c).

<sup>66</sup> See Article 50(2).

<sup>67</sup> *Integrated Trade and Industrial Policy*, page 28

<sup>68</sup> Handl G, *International Environmental Law*, Tulane Law School, Part 3, 2003 at page 744

<sup>69</sup> Section 8

<sup>70</sup> See Section 8(2). But the determination is with the approval of the Minister.

It appears that the Act promotes the investment in natural resource utilization. However, no reference is made to the need to protect the environment or to the national laws on the same both in the Act and in the Statement of investment Policies under the Schedule of the Act. Further, the Secretary for Natural Resources is not even a member of the Board of Directors for MIPA. One therefore wonders how environmental considerations will be integrated in the promotion of investment in Malawi.

***Malawi Bureau of Standards Act, Cap 51:022***

This Act provides for the promotion of standardization of commodities and of the manufacture, production, processing or treatment thereof. The Act also establishes the Malawi Bureau of Standards.

Under Section 20 of the Act, the Bureau may declare specifications or code of practice to be Malawi standards. It should be noted that a specification is defined as a description of a commodity by reference to its nature, quality, purity, composition etc.<sup>71</sup> When a standard has been declared, no person may manufacture or sell a commodity unless the commodity is in conformity with the standard.<sup>72</sup>

Some standards may have significant trade impacts as sometimes it is impossible and impracticable to comply. This is more so considering that the definition of specification under the Act is very wide.

***Control of Goods Act, Cap 18:08***

This Act, among other things, controls the imports and exports of goods to and from Malawi respectively. Under the Act, the Minister may make regulations prohibiting the import and export of goods, restricting the sale, distribution and dealing with goods. The Act can have significant trade consequences depending on how it is used. For instance, under the *Control of Goods (Import and Export) (Agriculture) Regulations*, the Minister may prohibit, restrict the importation or exportation of virtually all-agricultural produce, including vaccines and toxins.

Apart from the *Control of Goods Act*, there are other Acts that may prohibit or restrict the import and export of goods. These Acts, among others, include, the *Seed*,<sup>73</sup> *Milk and Milk Producers*,<sup>74</sup> *Meat and Meat Products*,<sup>75</sup> and *Control of Diseases in Animals*.<sup>76</sup>

***The Customs and Excise Act***

For enforcement of import or export restrictions of goods, the above Act comes in. The Act provides that no goods may be imported or exported contrary to any written law.<sup>77</sup> If goods are imported contrary to customs laws, they are liable to forfeiture.<sup>78</sup> However, at present there is no list of the restricted or prohibited goods.

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<sup>71</sup> See Section 2.

<sup>72</sup> See Section 20. However, persons may be exempted if it is impossible or impracticable to comply with the standard, or if it is desirable in the public interest that the person should be permitted to manufacture the commodity...

<sup>73</sup> Cap. 67:07. The Act also requires some packages to be labeled in clear and legible letters

<sup>74</sup> Cap 67:05. The Act also regulates how milk products may be transported, handled, and stored

<sup>75</sup> Cap 67:02

<sup>76</sup> Cap 66:02

<sup>77</sup> section 21

<sup>78</sup> Section 145



## **b. ENVIRONMENTAL REGULATION AND TRADE**

Environmental and natural resource statutes with trade implications are outlined hereunder,

### ***The Environment Management Act.***

This Act is the framework law on the environment. It seeks to promote the sustainable utilization of natural resources. The Act contains a number of provisions that may have significant effects on trade.

(a) Under Section 35 of the Act, the Minister may take actions to control the importation of alien plants species and may also prohibit access to or the exportation of any component of the biological diversity of Malawi.

(b) Under Section 39 no person may import, export or transport any hazardous waste or substance except under a permit issued by the Minister. Thus, the Minister may regulate the dealing in hazardous waste or substances by the grant or refusal of issuing permits in order to protect the environment. Further, the Minister may impose conditions to be adhered to in the permit for the protection of the environment and human, animal, or plant life

(c) The Minister may, in consultation with the minister responsible for agriculture make rules controlling the manufacture, importation and exportation of pesticides and other hazardous substances.<sup>79</sup> The rules may also require for the registration, labeling, packaging, and also make provision for the distribution, transportation and handling of pesticides. The Minister, may, in some circumstances completely ban some pesticides.<sup>80</sup>

(d) The Minister may make rules restricting or prohibiting the use of any appliance that uses ozone-depleting substances. For this to be effective, there must be control on the import and exports of such appliances. Section 41(3) of the Act provides that no imports or exports of appliances that uses ozone-depleting substances can be done without a license.

(e) Finally, under the Environment Management (Ozone Depleting Substances) Regulations, 1998, no new ozone-depleting substances will be imported to Malawi as of 1 January 2005. Further, in the amendments submitted to the Ministry of Justice by the Ministry of Natural Resources and Environmental Affairs has proposed a ban on imports of methyl bromide from non parties in accordance with the provisions of the Montreal Protocol and also labeling requirements for ozone depleting substances.

### ***The Biosafety Act***

This Act provides for the safe management of biotechnological activities. Under Section 17 of the Act, no person may import, develop, produce or use genetically modified organisms (GMOs)<sup>81</sup> without a license. The Act also imposes labeling requirements of GMO products and a prohibition on advertising relating to GMOs. The Act therefore seeks to protect the environment, human or plant and animal life from the

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<sup>79</sup> Section 40 of the Act

<sup>80</sup> A *Pesticides Act* is now in place and has detailed provisions on the regulation of pesticides in order to protect human life and the environment.

<sup>81</sup> Genetically modified organisms means “an organism whose genes or genetic material has been modified in a way that does not occur naturally through mating or natural recombination.” See Section 2.

dangers of biotechnology. However, some key provisions including the prior informed consent are lacking.

***The National Parks and Wildlife Act***

Under the Act, imports and exports of wildlife and wildlife products may be restricted or prohibited. This Act makes specific reference to the control of imports and export of wildlife or products thereof in order to assist in management of wildlife resources or conservation efforts that may be subject to international, regional, or bilateral agreement in Section 96. Thus Malawi may implement the trade restrictions under the *Convention on International Trade in Endangered Species* under the said Section 96 of the Act.

Further, according to Section 87 (1) of the Act and the Regulations<sup>82</sup> made thereunder, no person can carry on trade in live animals unless he is in possession of a wild animals dealers permit.

***The Fisheries Conservation and Management Act***<sup>83</sup>

Under Section 14 of this Act, any commercial fishing requires a license. The conditions that may be imposed include the area and location; the period, times and voyages; qualities, description and size of fish; the method of fishing; and the use to which fish may be put.<sup>84</sup> Further, the Minister may make regulations that may apply restrictions on, among other things, quantities and descriptions of fish that may be transported or transshipped.<sup>85</sup>

These provisions may impose significant fish trade restrictions while at the same time ensuring sustainable utilization of the available fish stocks.<sup>86</sup>

***The Forestry Act***

Under the Act, a person also requires a license to cut, take, fell destroy, collect and to remove forest produce.<sup>87</sup> In addition, the Minister, in consultation with the Minister responsible for trade, may make regulations imposing restrictions on imports, exports, and re-exports of certain types of forest produce. No such regulations have been made.

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<sup>82</sup> *The National Parks and Wildlife (Control of Trade in Live Animals) Regulations.*

<sup>83</sup> Chapter 66:05

<sup>84</sup> Section 15

<sup>85</sup> Section 18

<sup>86</sup> The Regulations, have, however, not been made yet.

<sup>87</sup> Section 46.. However, a person can collect forest produce for domestic use without a license.

## 5.8 TRADE IN BIODIVERSITY AND BIOTECHNOLOGY RELATED PRODUCTS.

Under Section 13 of the Constitution, the state has a responsibility to manage the environment in order to, among other things, conserve and enhance the biological diversity of Malawi. It has to be noted that Malawi is endowed with a diversified natural resource base.<sup>88</sup> Biological diversity means the “variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part...”<sup>89</sup> Biological diversity, therefore, “has an intrinsic value and is also vital for agricultural, medicinal, scientific, research, tourism and other socio-economic developments.”<sup>90</sup>

The conservation of biological diversity is therefore a matter of great concern to the nation. Accordingly, under Sections 35 and 36 of the Environment Management Act, the Minister may take measures to conserve the biological diversity of Malawi and to control or restrict the access by any person to genetic resources respectively. Further, the natural and genetic resources of Malawi can only be exploited or utilized only with a written authority of the Government, unless it is for domestic purposes.<sup>91</sup>

Trade in biodiversity related products restricted and controlled for two reasons. First, government is concerned about the loss of biological diversity as a result of unsustainable utilization that in turn destroys the country's economic base and compromises on the needs of future generations.<sup>92</sup> The *National Environmental Policy* recognizes that the country's economy is largely dependent on natural resources and that long-term food security and sustainable economic growth will be seriously affected if the resources are depleted or degraded.<sup>93</sup> Second, imports are also controlled because of the fear of alien invasive species.

Malawi is a signatory to the *Convention on Biological Diversity* whose objectives are to promote the conservation of biological diversity, sustainable use of its components, and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources.<sup>94</sup>

Under Article 15 of the Convention, nations have sovereign rights over their natural resources. It also requires parties to facilitate access to genetic resources for environmentally sound uses on mutually agreed terms. The authority to determine such access rests with national governments. Any access is however, subject to prior informed consent. The Article also provides for the sharing of benefits derived from the commercial and other utilization of genetic resources.

One issue of great concern to the conservation and sustainable use of biological diversity is the use and release into the environment of living modified organisms resulting from modern biotechnology. Biotechnology is the science that uses biological systems, living organisms, or derivatives thereof, to make or modify products or processes for specific use.<sup>95</sup> It has been recognized that biotechnology can substantially

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<sup>88</sup> *National Environmental Policy*, 2004 page 1

<sup>89</sup> Article 2.

<sup>90</sup> *Id.*, at 25.

<sup>91</sup> Section 4(b) of Environment Management Act.

<sup>92</sup> See Section 13 (d) of the Constitution

<sup>93</sup> See provision 2.3(g) of the Policy.

<sup>94</sup> Article 1.

<sup>95</sup> Article 2.

contribute to sustainable use of biological diversity.<sup>96</sup> However, it is also recognized that biotechnology can have adverse impacts on the conservation of biological diversity. Biotechnology products may cause harm to human health and to the environment. For instance, GMOs may displace native plant varieties thereby leading to loss of biodiversity.<sup>97</sup> It is therefore important that safety in the development, application, and transfer of biotechnology is ensured.

The safe use of biotechnology was considered in the *Convention on Biological Diversity*. The Convention recognizes that if this technology is developed and used with adequate measures of safety, it can contribute towards achieving the objectives of the Convention. The Convention calls on parties to regulate and control the risks of biotechnology products.<sup>98</sup> It further calls on the parties to consider the need of a protocol setting out procedures on advance informed agreement, in the field of safe transfer, handling and use of organisms resulting from biotechnology.<sup>99</sup> Countries accordingly adopted the *Cartagena Protocol on Biosafety*.

The objective of the protocol is “to contribute to ensuring an adequate level of protection in the field of safe transfer, handling and use of living modified organisms resulting from modern biotechnology that may have adverse effects on the conservation and sustainable use of biological diversity, taking also into account risks to human health...”<sup>100</sup> To achieve this objective, parties can take into account the precautionary principle. Parties to the Protocol are required to take domestic measures necessary to implement the Protocol and they have to ensure that actions relating to living modified organisms are undertaken in a manner that prevents and reduces the risks to biological diversity.<sup>101</sup>

Parties may also take action that is more protective of conservation and sustainable use of biological diversity than required under the Protocol provided that such action is consistent with the provisions of the Protocol and the obligations under international law.<sup>102</sup>

The Protocol applies to all trans boundary movement, transit, handling and use of all living organisms that may have adverse effects on the conservation of biological diversity, taking into account the risks to human health.<sup>103</sup> The cornerstone of the Protocol is the procedure of advance informed agreement.<sup>104</sup> The procedure consists of three steps, namely, notification, acknowledgement, and decision.<sup>105</sup> Of importance is the fact that a party of import can approve the import without conditions, can approve the

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<sup>96</sup> Chapter 16 of Agenda 21.

<sup>97</sup> Weiss et al, id. At 676

<sup>98</sup> Article 8(g).

<sup>99</sup> Article 19.3.

<sup>100</sup> Article 1.

<sup>101</sup> Article 2.

<sup>102</sup> Article 2.4.

<sup>103</sup> Article 4.1.

<sup>104</sup> This procedure, however, only applies to the first intentional trans boundary movement of living modified organisms for the intentional introduction into the environment of the party of import. Explicitly excluded from the procedure is the trans boundary movement of living modified organisms intended for direct use as food or feed, or for processing. See Article 7.1.

<sup>105</sup> See Articles 8-10.

import with conditions, can prohibit the import, and can require additional information to be provided.<sup>106</sup>

Parties are also required to undertake risk assessments in a scientifically sound manner. They also have to ensure that the handling, packaging and transportation of living modified organisms are done under conditions of safety.

Malawi enacted the *Biosafety Act* in 2002.<sup>107</sup> The Act has been described by some to fall short of Malawi's obligations under the Protocol.<sup>108</sup> However, as already discussed, under the Act, the Minister may restrict or prohibit imports of genetically modified organisms, imposes labeling requirements, safety in the handling, transport, and storage of genetically modified organisms, and a restriction on advertising of these products.

## **10 RECOMMENDATIONS**

(a) Malawi should encourage trade in goods that comply with acceptable environmental requirements.<sup>109</sup> Environmental protection, on the other hand, should not be relaxed for the sake of trade liberalization. Malawi should also seriously implement poverty reduction strategies including offering alternative livelihood opportunities and income generating activities to take off pressure on unsustainable trade in biodiversity related products. If this is done Malawi will be able to reduce poverty and achieve economic growth without destroying its natural resources.

(b) Compliance with the trade agreements is difficult to achieve. Malawi needs to do several things in order to comply with her obligations under the international and regional agreements when implementing environmental conservation measures. First, it is important that any environmental measure with trade implications do comply with the "core obligations" on trade. By embodying the principles of the Most Favored Nation and the National Treatment.

Thus, for the Most Favored Nation principle, legislation should provide for unconditional equality of treatment for like products originating or destined for territories of all members. This equality of treatment should extend to custom charges and duties, all regulations related to importation and exportation, and all internal taxes and charges.

Similarly, for the National Treatment principle, legislation must accord treatment no less favorable than that accorded to like products of national origin, and should not be applied in a manner that protects domestic producers. Any protectionist measure should be avoided.

As for quantitative restrictions, Malawi may impose laws, regulations and requirements affecting the internal sale of imported goods provided that they do not accord less favorable treatment to imported products.

In addition, Malawi can utilize the conditional exceptions under the agreements. Malawi can therefore assert that an environmental measure is necessary to protect human, plant or animal health or life or that it relates to the conservation of

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<sup>106</sup> Article 10.3.

<sup>107</sup> See page 14.

<sup>108</sup> *IFDC Report on Biotechnology Policies in Malawi*, 2004.

<sup>109</sup> See *National Strategy for Sustainable Development*, desired outcomes on Commerce and Industry

- natural resources. The measure must be less trade restrictive and primarily aimed at conservation respectively. Further, the measure must not constitute arbitrary or unjustifiable discrimination or a disguised restriction on trade.
- (c) As utilization of natural resources for commercial purposes requires a license, it is important that conditions for conservation of the natural resources be incorporated into the licenses. This will ensure that that the resources are utilized sustainably.
  - (c) Malawi has to avoid unilateral measures as far as possible if the measures are to be considered favorably. Multilateralism is one way of ensuring that the measures being implemented are not deemed to constitute arbitrary or unjustifiable discrimination and disguised restrictions on international trade. This is especially required for technical regulations and the sanitary measures. These must be based on international standards, where possible.
  - (d) The *Cartagena Protocol on Biosafety* is a comprehensive protocol. However, the recourse to the precautionary principle might conflict with the TBT and the SPS Agreement as the two agreements requires measures to be based on scientific evidence. Nonetheless, Malawi needs to implement national legislative and administrative measures in line with the Protocol. The Biosafety Act has to be amended. The need for risk assessments under the protocol requires capacity and therefore Malawi has to develop capacity in the area of biosafety.
  - (e) Malawi has to regulate trade in biodiversity products. It is important that Sections 35-36 of *EMA* be given effect. The Minister should therefore implement rules and regulations as required by the said sections. Further, all the regulations on natural resource management, as called for in the sectoral legislation should be made to give teeth to the legislation on the conservation and sustainable utilization of natural resources and biodiversity.
  - (f) The regulatory framework on trade should make reference to the need to protect biodiversity and the environment. Potential investors and traders must know that operating in Malawi will also entail being subject to environmental restrictions.
  - (g) The proposed ban on imports of ozone depleting substances from and to non-parties of the *Montreal Protocol* should be supported as it is expressly provided for under the Protocol. Similar bans as required under the *Basel Convention* and *CITES* should be proposed.
  - (h) Malawi should ensure that trade policies are made in a transparent manner and that consultations are conducted.

### **CONCLUSION**

Trade promotion and environmental protection are legitimate policy goals for any country in the world. However, the two policies often clash. It has now been recognized that the two policies can complement each other. Trade can generate the economic resources needed for environmental protection whereas environmental protection can preserve the natural economic base of countries. Reconciliation of the two policies can ensure that economic growth is sustainable.

Instruments regulating trade prohibits discrimination of any kind. They also prohibit quantitative restrictions of imports and exports. Members are allowed to depart from these prohibitions in order to protect the environment and conserve natural resources. The environmental measures must be imposed in an evenhanded manner. They

must not be used for protectionist measures or to discriminate between products from other countries.

There are a number of environmental agreements that expressly requires the use of trade measures. Other agreements also require the use of the precautionary principle. Because of the multilateral nature of these agreements, little problems are anticipated with the trade agreements.

The national framework for trade and investment makes no reference to environmental protection. On the other hand, the framework on environment and natural resources management refers to trade measures. It will be necessary to review the trade framework to ensure that environmental concerns are incorporated.