

Trade Agreement between the Government of the Republic of
Zimbabwe and the Government of the Republic of Malawi

IT is hereby notified that His Excellency the President has been pleased, under the provisions of section 87 of the Customs and Excise Act [*Chapter 177*], to declare that the Agreement concluded with the Government of the Republic of Malawi under the powers conferred upon him by section 86 of the Act, and published in the Schedule shall come into force on the 5th May, 1995.

SCHEDULE

TRADE AGREEMENT BETWEEN THE GOVERNMENT OF
THE REPUBLIC OF ZIMBABWE AND THE GOVERNMENT
OF THE REPUBLIC OF MALAWI

The Government of the Republic of Zimbabwe and the Government of the Republic of Malawi (hereinafter referred to as "the Contracting Parties"):

DETERMINED to facilitate economic activity through Cross Border Initiatives (CBI) for the Southern and Eastern Africa Region;

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

RECOGNISING that the Trade Agreement entered into on the 1st day of October, 1986 is deficient in several respects;

AWARE of the need to liberalise their bilateral trade through the simultaneous elimination of tariff and non tariff barriers;

DESIROUS of establishing effective procedures for the joint administration of the Trade Agreement;

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

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ARTICLE I

Definitions

1. In this Agreement, unless inconsistent with the context—

“Zimbabwe” means the area in respect of which the Government of the Republic of Zimbabwe is a contracting party to the General Agreement on Tariffs and Trade (GATT);

“Malawi” means the area in respect of which the Government of the Republic of Malawi is a contracting party to the General Agreement on Tariffs and Trade (GATT);

“Contracting Party” means a party to this Agreement;

“Customs duty” means any tax or surtax levied on imported goods and any other charges of equivalent effect but does not include sales tax, excise duty or similar tax as levied both on internal transactions and on imported goods in each country;

“Imported goods” means goods which are treated as originating in either country;

“Dumping” means the introduction of products of a Party into the commerce of the other at lower than the normal domestic value of the products;

“Quantitative restrictions” means prohibitions or restrictions on imports into, or exports from, any other Member States, as the case may be, whether made effective through quotas, import licences, foreign exchange allocation practices or other measures with equivalent effect, including administrative measures and requirements restricting imports or exports.

2. The Annexure to this Agreement shall be read with and forms an integral part thereof.

ARTICLE II

Import duties

1. Goods grown, produced or manufactured in the territory of a Contracting Party shall be imported into the territory of the other free of customs duty.

2. Notwithstanding the provision of this Article, a Contracting Party may impose an equivalent duty or tax where this is countervailing duty or tax.

3. To qualify for such duty free treatment, the goods shall be accompanied by a certificate of origin issued in accordance with Article III hereof by a body authorized by the country of origin.

ARTICLE III

Rules of origin

For the purpose of this Agreement—

- (a) The following categories of goods shall be considered as grown or produced in the territory of a Contracting Party—
- (i) mineral products extracted from its soil;
 - (ii) agricultural produce harvested or gathered therein;
 - (iii) live animals born and raised therein;
 - (iv) products obtained therein from live animals;
 - (v) forest products harvested therein;
 - (vi) fish and other fish products gathered therein or from its marine economic zone;
 - (vii) scrap and waste resulting from manufacturing operations within the Contracting Parties; and
 - (viii) products obtained therein exclusively from products specified in (i) and (vii) above;
- (b) Goods shall be considered as manufactured in the territory of a Contracting Party if they qualify under the Rules of Origin contained in the Annexure.

ARTICLE IV

Compliance with standards

If so required, goods grown, produced or manufactured in the territory of a Contracting Party shall, when exported to the territory of the other, comply with national standards.

ARTICLE V

Quantitative import and export restrictions

1. Subject to the provisions of paragraph 2 of this Article and the provisions of paragraph 2 of Article II, of this Agreement, goods grown, produced or manufactured in the country of either Contracting Party shall be exempt from the imposition by either Contracting Party of any quantitative or administrative import or export restrictions whether imposed directly or indirectly.

2. After consultation with each other, either Contracting Party may impose—

- (a) export restrictions temporarily applied to prevent or relieve critical shortages of foodstuffs or other products essential to the exporting Contracting Party;
- (b) import and export restrictions necessary to the application of standards or regulations for the classification, grading or marketing of commodities;
- (c) import restrictions, that do not discriminate among exporting countries, on agricultural products necessary to the enforcement of Government measures which 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;
- (d) import and export restrictions on wild animals, wild animal trophies and wild animal products;
- (e) import and export restrictions necessary for the protection of the life and health of humans, animals and plants;
- (f) import and export restrictions on gold and other precious metals in any form, currency, rough and uncut precious stones provided that existing arrangements on gold refining are respected;
- (g) import and export restrictions taken in time of war or any other emergency; and

(h) measures for the protection of—

- (i) public morals;
- (ii) national treasures of artistic, historical or ecological value;
- (iii) essential security interests; and
- (iv) strategic materials.

ARTICLE VI

Co-operation in trade and customs administration

1. Customs officials of the Contracting Parties shall regularly consult on matters concerning the documentation and procedures relating to the certificates of origin issued under this Agreement.

2. Each Contracting Party's Customs Authority shall be the competent authority to verify and issue the certificates of origin for goods that are exported to the territory of the other Contracting Party.

ARTICLE VII

Goods in transit, for exhibition and samples

The Contracting Parties shall, subject to the laws and regulations in force in their respective countries 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—

- (a) samples of goods and publicity materials required only for obtaining orders and for advertising purposes, which are not for sale and/or of no 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; and

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

ARTICLE VIII

Trade promotion and facilitation measures

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

- (a) to allow the organisation of trade promotion activities in their respective countries in accordance with their laws and regulations; and
- (b) to furnish each other on request, with all necessary information concerning the possibilities or supplying goods originating from their respective countries.

ARTICLE IX

Facilitation of transit trade

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 countries of either of them and destined for a third country;
- (b) the country of a third party and destined for the country of either of them:

Provided that—

- (i) both parties shall continue to comply with provisions of the existing Transport Agreement between them; and
- (ii) such transit or movement of goods complies with the laws and regulations in force in either of the Contracting Parties.

ARTICLE X

Modes of payment

All payments between the Contracting Parties in pursuance of this Agreement shall be effected through normal banking chan-

nels including regional payment arrangements in accordance with the foreign exchange laws and regulations in force in their respective countries.

ARTICLE XI

Anti-dumping and countervailing duties

1. A Party may impose countervailing duties to offset subsidies granted directly or indirectly in respect of goods imported from the other country.

2. The Contracting Parties shall co-operate with each other in preventing dumping and other trade malpractices and shall, on request, provide all possible assistance concerning enquiries relating to—

(a) allegations of dumping, the granting of bounties of subsidies; and

(b) the country of origin of goods.

3. Notwithstanding the provisions of this Agreement, goods exported to the territory of the other Contracting Party that are priced below the fair market value of such goods in the exporting territory of the other Contracting Party, as determined in accordance with GATT rules, and inflict material damage on the economy of that Contracting Party will be subject to countervailing or anti-dumping duties.

4. Rates of countervailing or anti-dumping duties shall be established in such a way that the prices of such goods in the importing country are raised to the extent necessary to offset the advantage that would otherwise accrue to the benefit of the exporting country.

5. Notwithstanding the provisions of paragraph (3) of this Article, the Contracting Party of the exporting territory undertakes not to introduce counter measures that would have as one of their purposes the enhancement of exports of other types of goods to the territory of the other Contracting Party.

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ARTICLE XII

Safeguards

1. If any product which is the subject of a concession in terms of the provisions of this Agreement, is being imported into the territory of a Contracting Party in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers in such territory of like or directly competitive products, the party into whose territory the products are imported shall, subject to paragraph (2), be free to suspend the relevant concession in whole or in part or to withdraw or modify the concession.

2. Before a Contracting Party shall take action pursuant to the provisions of paragraph (1), it shall give notice in writing to the other Party as far in advance as may be practicable and shall afford such other Party an opportunity to consult with it in respect of the proposed action. In critical circumstances, where delay in acting pursuant to paragraph (1) would cause damage which would be difficult to repair, proof of which shall be furnished by the 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.

3. If agreement between the Parties with respect to action pursuant to paragraph (1), is not reached, the Party which proposes to take or continue such action shall, nevertheless be free to do so.

ARTICLE XIII

International obligations

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

ARTICLE XIV

Consultations

The Contracting Parties, having regard to the objectives to be drawn up in this Agreement and recognising that difficulties or problems may arise as a result of the operation of the Agreement, agree that—

- (a) a Party which proposes to take or authorises action which it considers may affect any benefit accruing to the other Party under this Agreement shall, whenever possible, consult in advance with, and give sympathetic consideration to any representation by, or proposals received from the other Party; and
- (b) a Party shall be free at all times to approach the other Party for consultations with a view to finding ways and means to solve any difficulty or problem in the operation of this Agreement.

ARTICLE XV

Trade Committee

1. With the aim of securing the full and effective implementation of the provision of this Agreement, a Joint Trade Committee shall be established consisting of representatives from both Contracting Parties.

2. The Joint Trade Committee shall meet at least once a year or at the request of either of the Contracting Parties.

3. The Joint Trade Committee shall be able to recommend to the Contracting Parties any measures it might deem necessary or desirable for the improvement of trade between the two countries.

ARTICLE XVI

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 the Agreement is being impeded as the result of—

- (a) the failure of the other Party to carry out its obligations under this Agreement; or
- (b) the application by the other Party of any measure, whether or not it conflicts with the provisions of this Agreement; or

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- (c) the existence of any other situation, the aggrieved Party may initiate discussion and consultation directly with the other Party.
2. If no satisfactory solution of the matter is effected between the Parties within a reasonable time, the matter may be referred to the Joint Trade Committee consisting of representatives from both Parties for investigation and appropriate recommendation or ruling.
3. In exceptional and serious circumstances, the Joint Trade Committee may authorize a Party to suspend the application, on to the other Party, of such concessions or obligations under the Agreement as are determined to be appropriate.

ARTICLE XVII

Implementation mechanism

1. The Government of the Republic of Zimbabwe hereby designates its Ministry of Industry and Commerce, and the Government of the Republic of Malawi hereby designates its Ministry of Commerce and Industry as their respective organs for the purpose of implementing this Agreement and other matters relating 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 XVIII

Entry into force, extension and termination

1. This Agreement shall come into force on a date to be fixed 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 Party upon six (6) months written notice.
3. At the termination of this Agreement, its provisions and the provisions of any separate contracts or agreements made in respect thereof, shall continue to govern any unexpired and exist-

ing obligations assumed or commenced thereunder until they are fully executed.

4. The Trade Agreement between Zimbabwe and Malawi which came into force on the said 1st October, 1986 is hereby abrogated and superseded by this Agreement.

DONE in 1994 in two originals in the English Language both texts being equally authentic.

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FOR THE GOVERNMENT
OF THE REPUBLIC OF
ZIMBABWE

.....
FOR THE GOVERNMENT
OF THE REPUBLIC OF
MALAWI

ANNEXURE

TO THE TRADE AGREEMENT BETWEEN THE
REPUBLIC OF ZIMBABWE
AND
THE REPUBLIC OF MALAWI

1. For the purpose 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 per cent. of the manufacturing costs of those goods, as determined herein, which shall constitute "local contents", 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 purposes 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 contruction 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, sewing and minor welding and riveting operations with or without the addition or 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;
- (c) 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 other aqueous solutions, removal of damaged parts, cleaning and similar operations;
- (d) changes of packing and breaking up of or disassembly of consignments;
- (e) 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 matching 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) repair, remodelling or alteration;
- (k) the addition of parts or components of minor importance for example screws, 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; and
- (b) the direct labour involved in the manufacture of the goods.

4. In the calculation of the costs of 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 as represented by their delivered price at the factory and used directly in the manufacture of such goods—
 - (i) where materials which are not wholly produced in the territory concerned are used directly in the manufacture, such goods will count to the extent of their prorated local content as determined in accordance with this Annexure;
 - (ii) locally manufactured materials or components which have been temporarily exported for further manufacture shall on return to the country of

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final manufacture be taken as 100 per cent.
imported content for the purposes of calculating
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;

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

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

the term "direct labour" shall be taken to refer to
those procedures applied to the input materials from
which the product is manufactured from the time they
first come into the hands of the work-force which
actually manufactures the product to the time the
finished article is put in retail package. It excludes such
functions as design, pattern making and dye making;
and

the following shall, *inter alia*, be excluded from "direct
labour costs": pensions contributions, overtime pay-
ments at above normal rates, cash in lieu of leave,
maintenance costs, incentive bonus not pre-determined,
the portion of salaries of foremen and supervisors not
related to the manufacturing process, fringe benefits,
business overheads, administration expenses and sala-
ries, or profit.

5.—

- (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 in-

curred 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 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 expense has not been incurred by the manufacturer at the normal open market price, the verifying authority may assess the amount of 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 incidental to the delivery of the imported materials shall be deemed to be that of imported materials;
- (d) 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 form and certified in such manner as may be agreed by the Contracting Parties to ensure accuracy and clarity.

6. For the purposes 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 charges inci-

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dental 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 manufacture shall be their delivered price at the factory;

- (b) the cost of local materials, including the cost of waste 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 operatives responsible for the manufacture of the goods as qualified herein;
- (d) the cost of direct manufacturing expenses as represented by—
 - (i) the operating costs of the machines 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 any 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 testers of the goods and fees paid to efficiency advisers;
 - (iii) power, light, water and other service charges directly attributable 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 the manufacture of the goods;
- (v) depreciation and maintenance of factory buildings, plant, machinery, tools and other items used in the manufacture of the goods;
- (vi) the cost of food supplied to factory workers, Workman's Compensation, insurance and contributions to manufacturer's association.

7. 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;
 - (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;
 - (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 salemen's commission or salaries;
 - (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 the expenditure incurred after the goods have left the factory, including—
 - (i) the cost of any materials and payment of wages incurred in the packing of the goods for export;
 - (ii) warehousing expenses incurred in the storage of the finished goods;

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- (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.