

NOTIFICATION OF LAWS AND REGULATIONS
UNDER ARTICLE 18.5 OF THE AGREEMENT

MALAWI

Corrigendum

The following communication, dated 13 November 1995, has been received from the Ministry of Trade and Industry in Malawi.

Please find attached copies of the Fourth Schedule of the Malawi Customs and Excise (Tariffs) order and also sections 85 and 86 of the Customs and Excise Act (Cap. 42:01) on Dumping.

¹English only.

FOURTH SCHEDULE
DUMPING DUTIES TARIFF
INTRODUCTORY NOTE

Any entry appearing in this Schedule under the heading "REMARKS", is included solely for the purpose of information and does not, as such, in any way extend, curtail or govern the tariff imposed or the goods subjected thereto.

PART I - INTERPRETATION

In this Schedule unless inconsistent with the context

"actual cost" means the cost of the goods to the importer expressed in the terms of the currency of Malawi, free on board at the port of shipment of place of despatch to Malawi, and, in the case of goods exported to Malawi on consignment or for which nominal charges are made, the price free on board at which similar goods are ordinarily sold for export, or, if there is no such price then the domestic market value of such goods;

"domestic market value" means the market price at which, at the date of purchase thereof by the importer, such or similar goods are freely offered for sale or for consumption in the country from which the goods are exported to all purchasers in the usual wholesale quantities in the ordinary course of trade in the principal market of such country, including the cost of packages ordinarily used in those markets plus the extra cost of packages and packing for export, carriage to the place in such country at which the goods are finally loaded, ready for export, on a ship, aircraft or vehicle for despatch to Malawi and all other expenses incidental thereto, not being abnormal costs incurred as the result of a state of war strikes, lock-outs, or civil commotion, but shall not include any drawback of duty allowed or other taxation remitted by the Government of that country on the exportation of the goods therefrom:

Provided that -

- (i) in the application of this definition to goods exported to Malawi on consignment or for which nominal prices are charged or for which no charge is made there shall be substituted the words "time of exportation to Malawi" for the words "date of purchase thereof by the importer"; and
- (ii) When goods are sold in the country from which they are exported to Malawi under such conditions that no domestic market value can be calculated or when goods exported to Malawi are not sold for consumption in the country from which they are so exported, or are sold there in or under any manner or condition considered by the Controller to be unusual or peculiar in the marketing of such goods, the Controller may

determine a value, and the value so determined shall be deemed to be the domestic market value of such goods;

- "export price" means the price free on board at which goods are sold by the exporter to the importer in Malawi;
- "free on board" means free on board any conveyance;
- "on consignment" means consigned by a supplier outside Malawi to an importer within Malawi for sale on commission, such goods being the property of, or being held in the interest of, such supplier until sold or disposed of by the person within Malawi.

PART II - IMPOSITION OR AMENDMENT OF DUMPING DUTIES

1. If, after investigation by a board or person appointed by the Minister, the Minister is satisfied, in respect of goods which are of a kind or class grown, produced or manufactured in Malawi -
- (a) that the conditions set out in any of the items in column 1 of paragraph 4 of this Part obtain or are likely to obtain;
 - (b) that detriment from one or more of such conditions may result to an industry in Malawi; and
 - (c) that it would be in the public interest to impose in respect of such goods a dumping duty, he may, in accordance with Section 83 (1) and 84 of the Act, by order impose a dumping duty, or vary such duty, by amendment to Part III of this Schedule.

DUMPING DUTIES TAKEN

2. (a) The kinds of dumping duty which may be imposed, and the rates thereof, shall be those set out in columns 2 and 3 respectively of paragraph 4 of this Part against the appropriate item in column 1 of that paragraph.
- (b) The rate of dumping duty may be a specified percentage of the value of the goods in question or a specified rate per unit of quantity of such goods.
- (c) A dumping duty may be imposed to apply generally or may be limited in application to those goods:
- (i) imported from or grown, produced or manufactured in a particular country; or
 - (ii) imported into Malawi or exported or conveyed to Malawi or grown, produced, manufactured, sold or disposed of by a particular person.
3. Whenever a freight dumping duty is imposed in respect of any goods the Minister may for that purpose determine and specify the minimum rate of freight charges which shall be applicable to that class or kind of goods when conveyed from any particular country or place to any place of discharge in Malawi or to any place in Africa at which goods are discharged from removal overland into Malawi.

Provided that the minimum rate of freight charges so determined shall in no case exceed the normal freight as certified in terms of column 3 of item 4 in paragraph 4 of this Part.

4.

Conditions 1	Kind of dumping duty 2	Rate 3
1. Goods are exported to Malawi at no export price or at an export price which is less than the domestic market value thereof.	Ordinary	The amount by which the domestic market value exceeds the export price. Provided that if there is no export price the amount of duty shall, subject to the provisions of paragraph 1(c) of this Part, be an amount equal to the domestic market value of the goods.
2. Goods are: (a) imported on consignment; (b) imported for the account of a person resident in a country other than Malawi; (c) imported by an agent from a principal resident in a country other than Malawi; (d) imported by a person owning, controlling or having a financial interest in the business or firm supplying the goods; (e) exported to a business or firm in Malawi by a person owning, controlling or having a financial interest in such business or firm; or (f) sold by a person in Malawi who has been or is being compensated in any manner for any loss incurred in selling the goods,	Sales	The amount by which the domestic market value of the goods, plus the specified expenses and set forth in column 1 of this item, exceed the selling price in Malawi.

Conditions 1	Kind of dumping duty 2	Rate 3
and have been sold or offered for sale at a place in Malawi in the ordinary course of trade for an amount which is less than the domestic market value thereof plus the following specified charges, namely, freight, insurance and all charges to that place including landing, transportation, and delivery charges and any duty, other than a dumping duty, payable under this Act.		
3. Goods are exported to Malawi and a bounty has been or will be granted in respect of such goods in the country in which they have been grown, produced or manufactured or from which they are exported.	Bounty	The amount of such and a bounty, whether it is by way of a bonus, rebate, subsidy or otherwise and whether it is granted by a government or other authority or person.
4. Goods are conveyed to Malawi from a particular country or place of dispatch at a rate of payment, less than the rate, certified by a board or person appointed by the Minister, as being the normal rate chargeable on that class or kind of goods or by reason of the granting of rebates, refunds or other allowances, the net amount of freight charges is less than the normal rate as certified above.	Freight	The amount of which either the normal freight on the goods in question, as determined by the board or person appointed in terms of column 1 of this item, or, if a minimum rate of freight has been determined by the Minister in terms of paragraph 3 of the third part of this Schedule, the minimum freight so determined exceeds the freight actually paid.
5. Goods are imported into Malawi from a country the currency of which has been depreciated in relation to Malawi, or the currency of the country of origin of such goods which are imported into Malawi has likewise been depreciated.	Exchange	The amount by which the actual cost of the goods is less than such cost expressed in the currency of the country of origin or export of the goods and converted into the currency of Malawi at a rate which the Minister is hereby authorized to determine.

Conditions 1	Kind of dumping duty 2	Rate 3
6. Goods are exported to Malawi and the raw or manufactured materials from which the goods were wholly or partly manufactured, sold to producers, manufacturers in such country at a price which is lower than the price charged in such country at a price which is lower than the price charged in such country for sales of such materials for export to Malawi.	Surcharge	A rate in terms of money per unit of quantity of such goods which is equal to the difference between the amount charged to a manufacturer in the country in respect of which such rate is determined and the amount charged in that country for export to Malawi of the quantity of such raw of manufactured materials as is contained in such unit of quantity of such goods.

PART III - DUMPING DUTIES

Dumping duties of the kind and at the rate specified in column 3 of the table set out hereunder, shall, subject to any limit specified in column 4, be charged, levied, collected and paid on the goods specified in column 2, and imported into Malawi.

1 Heading	2 Description of goods	3 Kind and rate of dumping duty	4 Limit of application
1	All goods not elsewhere specified in this Tariff	Nil	-

Irrelevant text deleted

LAWS OF MALAWI

Cap. 42:01

Customs and Excise

Irrelevant text deleted

Investigations
as to dumping

85. The Minister may make regulations governing the manner in which complaints as to the dumping of goods shall be made and investigated and such regulations may provide, *inter alia*, that:

Cap. 18:01

(a) the board or person charged with the investigation of a complaint as to dumping shall have any or all of the powers, rights, privileges and duties conferred upon a Commissioner by the Commissions of Inquiry Act, with or without modifications; and

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(b) any or all of the provisions of the Commissions of Inquiry Act shall apply to an inquiry held for the purpose of investigating a complaint referred to in paragraph (a) and to persons summoned to give evidence or giving evidence at such an inquiry.

Payment of
dumping duties

86. Dumping duties shall be payable by the importer on the importation of the goods concerned except that in the case of sales dumping duty, such duty shall be payable by the seller of such goods within Malawi, and dumping duties shall be payable in addition to any other duty payable or paid on such goods:

Provided that where goods are imported under rebate of the ordinary duty for use in manufacture in Malawi no dumping duty shall be payable unless it is prescribed that the dumping duty shall apply to such goods.

Irrelevant text deleted