



**EUROPEAN UNION – TOBACCO PRODUCTS, NICOTINE CONTAINING PRODUCTS AND
HERBAL PRODUCTS FOR SMOKING. PACKAGING FOR RETAIL SALE OF ANY OF THE
AFOREMENTIONED PRODUCTS**

**STATEMENT BY MALAWI TO THE COMMITTEE ON TECHNICAL BARRIERS TO TRADE AT ITS
MEETING OF 19-20 MARCH 2014**

The following communication, dated 21 March 2014, is being circulated at the request of the delegation of Malawi.

1. Malawi deeply regrets the approval by the European Parliament of the revised EU Tobacco Products Directive (TPD) on 26 February.
2. We wish to reiterate, in the strongest possible terms, three key points about the TPD that Malawi has made clear in previous meetings:
 - a. First, the TPD violates the WTO obligations of the EU;
 - b. Second, the measure will not achieve the health objectives of the EU; and
 - c. Third, it will impose significant hardship on Malawi and other least-developed tobacco exporting countries, particularly in Africa.
3. Mr. Chairman, please allow me to elaborate briefly on each of these three points.
4. First, the EU TPD is WTO-inconsistent. This proposed measure has been under examination in this Committee for a year. During this time, many Members have taken the floor to explain why the proposed Directive would breach the EU's binding obligations under the TBT Agreement. In particular, Members have pointed out why the TPD is inconsistent with the EU's obligations under Article 2.2 of the Agreement, as it is clearly "more trade-restrictive than necessary" to fulfil the EU's health objectives. We note that similar concerns have been raised by Members in the TRIPS Council about the inconsistency of the TPD with the EU's obligations under the TRIPS Agreement. Malawi fails to understand why the EU disregarded all such arguments and approved this measure.
5. At the meeting of the TBT Committee on March 6-7, 2013, the EU representative stated that "throughout the legislative process, WTO aspects would be duly taken into account." However, the approval of the TPD by the European Parliament last month shows that the EU's binding WTO obligations were demonstrably not taken into account.
6. Second, the TPD will not achieve the EU's health objectives. Mr. Chairman, it is worth stressing that Malawi and other WTO Members fully support the right of the EU to protect health. The protection of health is an entirely legitimate objective, but both the text of the WTO Agreements and the jurisprudence of the Appellate Body have made clear that any measures to protect health must be WTO-consistent. Any approach to the contrary would erode the rules-based multilateral trading system on which we all depend.
7. Malawi has previously made clear that any measures to address smoking and protect health must be based on credible scientific evidence. Over the past year, Malawi has sought information from the EU regarding the evidence on which the TPD is based. While the EU has provided us with

some general answers, I regret to say that the explanations offered to date have been wholly unconvincing. The TBT Agreement does not permit the adoption or application of regulations that are based on assumptions or vague expectations rather than actual evidence.

8. Third, Mr. Chairman, I would invite Members to consider the real-world impact that this measure will have on countries such as Malawi.

9. Malawi is one of the most tobacco-dependent economies in sub-Saharan Africa. We recall what we have already stated in this Committee:

- a. Out of a population of 15 million people in Malawi, 1.5 million are tobacco farmers. Tobacco is the backbone of their economic activities as a cash crop.
- b. A quarter of the tax base that supports government operations comes from the tobacco industry.
- c. Tobacco contributes at least 60% of Malawi's foreign exchange earnings.

10. Thus, as we have stated before, the adoption and implementation of the TPD will have disastrous consequences – not only on the livelihood of Malawians, but for the national economy as a whole. Unlike the vast and highly diversified economy of the EU, Malawi's economy is heavily dependent on tobacco. The TPD will impair the ability of Malawi to market a key export crop in the EU, and this, in turn, will increase poverty in a country that is already one of the poorest in the world.

11. Article 12.3 of the TBT Agreement provides that Members "shall," when adopting technical regulations, "take account of the special development, financial and trade needs of developing country Members, with a view to ensuring that such technical regulations... do not create unnecessary obstacles to exports from developing country Members." Yet the TPD fails to take account of the special development, financial and trade needs of least-developed, tobacco-dependent countries, particularly in sub-Saharan Africa, and this measure will constitute a major and entirely unnecessary obstacle to exports from such countries.

12. Mr. Chairman, some have portrayed this as a "health versus trade" debate. But it is not. There is no incompatibility between health and trade. Rather, all WTO Members can and must take legitimate measures to protect health while at the same time respecting their WTO obligations. We recall the succinct and compelling statement of the Appellate Body: "we are not saying that a Member cannot adopt measures to pursue legitimate health objectives such as curbing and preventing youth smoking.... however, if it chooses to do so, this has to be done consistently with the TBT Agreement." All Members should be concerned and disappointed that the EU has chosen to disregard this core principle.

13. Malawi reserves all of its WTO rights and obligations with respect to the EU TPD following its entry into force.
