



**PROPOSAL TO INTRODUCE PLAIN PACKAGING OF
TOBACCO PRODUCTS IN NEW ZEALAND**

**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.

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1. Malawi shares the concerns that have been expressed by Cuba about New Zealand's proposed plain packaging measure.
 2. Malawi considers that plain packaging represents an ineffective and excessive regulatory proposal and violates WTO obligations, most notably under the TBT Agreement and the TRIPS Agreement. Indeed, similar legislation in Australia has been challenged in WTO dispute settlement by Ukraine, Honduras, the Dominican Republic, Cuba and Indonesia. In light of this, Malawi is both surprised and disappointed that New Zealand nonetheless chose to proceed with the First Reading of the Smoke-free Environments (Tobacco Plain Packaging) Amendment Bill on February 11 of this year.
 3. Mr. Chairman, it would be far preferable for New Zealand to wait to see whether the Australian plain packaging law is upheld as WTO-consistent or not. It could then proceed in light of the authoritative rulings of the Panel and the Appellate Body.
 4. Malawi recalls the important statement of the Appellate Body in US – Stainless Steel: "when enacting or modifying laws and national regulations pertaining to international trade matters, WTO Members take into account the legal interpretation of the covered agreements developed in adopted panel and Appellate Body reports" which enhances security and predictability. Yet New Zealand has nonetheless chosen to proceed with highly contentious legislation that is likely to be held to be WTO-inconsistent in the near future. This does not enhance the security or predictability of the multilateral trading system.
 5. Malawi therefore respectfully requests New Zealand to await the outcome of the Australian case before it determines next steps.
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