

DRAFT

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Chapter 2
Customs

MALAWI

Diagnostic Trade Integration Study

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ACRONYMS

| | |
|---------|---|
| ACB | Anti-Corruption Bureau |
| ACP | Africa Caribbean Pacific |
| ACV | Agreement on Customs Valuation |
| ADMARC | Agricultural Development and Marketing |
| AIDS | Acquired Immunodeficiency Syndrome |
| ASYCUDA | Automated System for Customs Data |
| CG | Commissioner General |
| COMESA | Common Market of Eastern and Southern Africa |
| CRF | Clean Report of Findings |
| DFID | Department for International Development |
| EPZ | Export Processing Zones |
| EU | European Union |
| GATT | General Agreement on Tariffs and Trade |
| HIV | Human Immunodeficiency Virus |
| IMF | International Monetary Fund |
| MCCCI | Malawi Confederation of Chambers of Commerce and Industry |
| MCI | Ministry of Commerce and Industry |
| MRA | Malawi Revenue Authority |
| NAFTA | North American Free Trade Agreement |
| PSI | Pre-shipment Inspection |
| SADC | Southern African Development Community |
| SGS | Société Générale de Surveillance |
| USAID | United States Agency for International Development |
| WCO | World Customs Organization |
| WTO | World Trade Organization |

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CHAPTER 2 CUSTOMS

2.1 INTRODUCTION

For 60 years Malawi was a British Protectorate before being incorporated into the Federation of Rhodesia and Nyasaland in 1953. Malawi achieved independence in 1964. In 1994 Malawi became a Multi-Party State after many years of having only one party.

Malawi is a member of:

- the WTO (acceded in 1995);
- COMESA (one of the nine countries that have already committed to the Free Trade Area);
- SADC (including the SADC Trade Protocol that came into effect in September 2000 and that initiates a gradual phase down towards free trade in that area);
- the Cotonou Agreement between the EU and the ACP countries which adopts the Lome Convention and its trade preferences system; and
- the World Customs Organization.

It also has a fully reciprocal bilateral trade agreement with Zimbabwe and an asymmetrical bilateral trade agreement with the Republic of South Africa.

Malawi has a relatively high population of 11.5 million with about 75 percent living in the rural areas and about 65 percent living below the poverty line. There are severe health problems, with the HIV/AIDS pandemic being arguably the biggest challenge to Malawi's development plans. English is one of the two official languages spoken, the other being Chichewa. English is taught in all schools and is spoken in all offices.

The country is land-locked, bounded by Tanzania in the north, Zambia in the west and Mozambique to the east and south. The entire country covers an area of just 118,000 square kilometres. It is 835 kilometers long and just under 160 kilometers wide at its widest point.

Lakes account for around 20 percent of the total surface area, the smallest of which are in the south. The largest is Lake Malawi, which is 585 km long and 80 km wide, and is the third largest lake in Africa, covering 24,420 square kilometers. The lake has over 500 fish species most of which are found nowhere else in the world. Lake Malawi is one of the main tourist attractions; however this sector is under-developed. Poor transportation infrastructure, competing

attractions in nearby countries and inadequate marketing limit access to the tourist market.

As a landlocked country, Malawi is dependent on overland movement of exports and imports. Its transport network and its connections to neighboring countries are, therefore, of utmost economic importance. Over the years the sector has been characterized by high transport costs due to institutional weaknesses, restrictive policies and regulations, and a poorly maintained and inadequate road network, especially in rural areas, where on the aggregate, the highest percentage of economic production takes place.

Malawi has ideal growing conditions. Its varied topography means it can grow tobacco, tea, coffee, wheat, cotton, beans, groundnuts, macadamia nut, rice, maize, sugar and spices. There are tobacco estates in the plains of the Central Region, tea plantations in the Southern Region and sugar cane farms in the Northern Region. Maize is the chief food crop and is virtually all grown by smallholder farms throughout the country. The Government strategy has been to focus on the promotion of textile and garment industries, wood processing and agro processing, among others.

There are two main airports, Lilongwe International (formerly Kamuzu) and the Chileka Airport, which serves the business city of Blantyre. Lilongwe and Blantyre both stand at about 1100 meters above sea level.

There are three Customs Collections - North, Central and South. Within these Collections there are 3 Customs rail stations, 15 Customs border stations, 3 inland Customs stations, 2 Customs airports, 5 Customs lake stations and one surtax office.

The Malawi Revenue Authority (MRA) was created under the Malawi Revenue Authority Bill, 1998, establishing the MRA as the main body responsible for the “assessment and collection, on behalf of the Government, of specified revenue; for the administration and enforcement of laws relating to such revenue; and to provide for matters incidental thereto or connected therewith.”

Formally, the MRA is a self-financing Regulatory Parastatal, responsible to the Ministry of Finance. Originally it was managed by a Board consisting of the Secretaries of Treasury and Commerce and Industry, the Accountant General, the Governor of the Reserve Bank, representatives of the Society of Accountants and Chamber of Commerce, and two private sector representatives appointed by the Minister of Finance. The Board was empowered to appoint a Commissioner General of the Authority for a four-year term. The Board’s mandate lapsed at the

end of 2001 and a new board had not been appointed at the time of the mission. It is understood that a new board was appointed on June 1 this year.

The MRA budget is based on a rebate of 2.5 percent of revenues collected and paid to Treasury.

2.1.1 Terms of Reference

Under the Terms of Reference stipulated by the World Bank, the consultant was assigned two main tasks:

1. Evaluating the overall functioning of customs administration;
2. Evaluating progress Malawi has made in meeting its obligations as a WTO member.

Further, this report is required to evaluate the functioning of customs inspection, customs evaluation, and customs clearance, providing the basis for an evaluation of the impact of customs on the overall efficiency of Malawi's trading system. The consultant is also to identify the needs and priorities for trade-related technical assistance, drawing on previous work conducted under the auspices of the recent TPR report, Malawi's Needs Assessment report, and other recently completed studies on Malawi.

A copy of the Terms of Reference in full is at **Annex 1**.

2.1.2 Methodology

As part of the Integrated Framework mission team, the consultant conducted interviews with several public and private sector organizations. These were carried out in conjunction with other members of the team when appropriate. A large proportion of interviews were conducted with MRA personnel. A number of interviewees provided information on the basis that their identities would remain confidential.

The consultant also undertook on-site inspections of operational work areas.

Much of the information obtained in the course of the study is anecdotal and based on the perceptions of the interviewees rather than fact. Wherever possible, the consultant made efforts to obtain data or corroborate opinions. This study would have benefited from more data being available to support or refute the anecdotal information provided by those interviewed. This is particularly so in assessing the progress of Customs in recent years, especially since the inception of the MRA.

2.2 THE MRA MISSION

The MRA was established as the main body “responsible for assessment and collection, on behalf of the Government, of specified revenue; for the administration and enforcement of laws relating to such revenue; and to provide for matters incidental thereto or connected therewith.”

Customs itself has not had a more specific mission since the inception of the MRA. However, in 1996, as part of an IMF/DFID study that, among other matters, recommended the establishment of a revenue authority, the following mission statement for the Malawi Customs and Excise Department was drafted, discussed and agreed.

To efficiently and effectively:

- Collect revenue through customs and excise duties and surtax
- Facilitate legitimate trade and travelers
- Protect society through the enforcement of the law relating to import and export prohibitions and restrictions
- Advise government on customs, excise and surtax matters
- Collect and provide import, export and surtax statistics.

This mission aligns closely with those of most Customs organizations internationally, whereas the MRA mission is focused only on revenue related matters. As a result, emphasis on non-revenue issues has diminished to a very low level. Whilst resources are allocated for non-revenue matters, their efficiency and effectiveness does not get sufficient attention. This is linked to inadequate performance as perceived by stakeholders. This is also underlined by the lack of any performance measurement mechanism, apart from revenue targets set by the Ministry of Finance. Further, there appears to be no management attention or intention to giving priority to those other factors.

The absence of non-revenue performance standards coincides with Customs falling behind in facilitation measures. Even though Malawi compares favorably in this regard with some other countries in the region, traders, transport operators and the Malawi Confederation of Chambers of Commerce and Industry (MCCCI) point to inconsistency and slowness in Customs processing and decision making as an inhibiting factor in conducting competitive business. There were also several references to a Customs lack of effectiveness in protecting industries from low standard imports and from those on which the correct duties and taxes have not been paid.

On the other hand, many acknowledged that Customs management, and efficiency had improved under the MRA.

Except for revenue collections, performance measurement and management statistical information is extremely limited. At present, for example, there are no data available on:

- volume of declarations processed at the various entry points;
- processing times;
- allocation of resources;
- detections of breaches of the law;
- breaches by particular individuals or companies; and
- extra revenue collected as a consequence of Customs intervention.

When the ASYCUDA processing system becomes fully operational at the end of 2002, more detailed and timely information can be expected. However, a variation in management focus so as to include non-revenue collection goals will be needed to ensure the routine production of comprehensive management and performance data for use by Customs and external entities alike.

2.3 WORLD TRADE ORGANIZATION (WTO)

Malawi is an original member of the WTO and consequently is obliged to conduct Customs business within all WTO multilateral agreements that are binding on Malawi. Those most relevant to Customs are covered in detail in the following paragraphs.

2.3.1 Valuation

The Agreement on Customs Valuation (ACV) sets international rules for Customs valuation that are designed to be fair, uniform and neutral, and it precludes the use of arbitrary and fictitious Customs values. Through its precise methodology, it assists the trading community and Customs authorities to determine, with more certainty, the Customs values and the amount of duties payable, therefore contributing to the facilitation of trade. The main characteristics of this agreement are:

- a positive system of Customs valuation based on the price actually paid or payable for the imported goods.
- intended to provide a fair, uniform and neutral system for the valuation of goods for Customs purposes, conforming to commercial realities and outlawing the use of arbitrary or fictitious Customs values.

- recognizes that Customs valuation should, as far as possible, be based on the actual price of the goods to be valued which is generally shown on the invoice. This price, subject to certain adjustments, is known as transaction value.
- for a large majority of imported goods, the transaction value will be the Customs value. Use of the transaction value of the imported goods, therefore, constitutes the first, and most important method referred to in the Agreement.

A Protocol to the 1979 Agreement, deemed to form an integral part of it, contains provisions concerning the special problems and trading needs of developing countries, permitting them some flexibility in applying the Agreement. The Protocol is located in Annex III of the GATT 1994 Valuation Agreement. The Agreement also provides for technical assistance by the developed countries to the developing countries.

The ACV does not merely set out a methodology to value goods. Apart from its overall purpose to permit freer trade, there are aspects of ACV that require certain fundamental procedural considerations that are designed to add certainty and transparency to the Customs process. One is that the onus of proof in establishing the value rests with the declarant. Another is that the final determination of value should not impede the release of goods. Whichever of the methods available is used, Customs has the right to demand proof from the declarant to support the valuation declared. In practice, the declarant will often have difficulty in producing evidence immediately, but Customs, under ACV, cannot delay release for this reason. It is therefore necessary to release the goods, under security if necessary, pending the final determination of the value.

In this context, there are practical organizational and procedural requirements for the effective management of ACV, which include post clearance audit, reduced physical examinations (physical examination has little bearing on establishing the value), intelligence-led risk management and profiling. At present, Malawi Customs does not have the capacity to meet all of these requirements. (See later comments concerning PSI.)

Even though Malawi has adopted ACV and it is a requirement of the current PSI contract to value goods in this way, in practice the provisions are not always applied. In fact the current legislation related to valuation is not compliant with ACV requirements. Price lists, minimum prices and domestic prices are often used to determine the customs value. The administration acknowledges that the ACV is not applied consistently, but cites difficulties with widespread non-compliance and a high volume of informal trade as reasons for applying

arbitrary values. There is a proposed review of legislation to be undertaken in the near future which should pay particular attention to ACV issues.

It is reported that, in some instances, values can be “negotiated” by importers or their agents. Apart from falling outside the ACV rules, this practice lends itself to corruption through coercion and should be abolished eventually; but, in the meantime, should be controlled carefully and transparently.

It is planned to amend section 162 of the Customs and Excise Act to allow the CG to delegate the authority to settle cases out of court. Currently it is only the CG that can offer settlement and the fines range from Kw10, 000 to 10 times the amount of duty evaded. There are presently no internal guidelines as to what level of fine to impose and even if the amendment is allowed, clear guidelines will be needed to avoid the possibility of abuse.

Technical training on ACV has been provided since March 2001 under the Pre Shipment Inspection contract with Société Générale de Surveillance and so there is little need for more technical training. However, the lack of accompanying organizational and procedural changes leaves the administration with little capacity to apply valuation methods that fall within the ACV rules. The administration would benefit from a high-level seminar or workshop, provided by WCO or a Customs administration that has fully implemented WTO valuation, and aimed at developing a strategy for full implementation. (See later comments concerning PSI.)

Given the current low level of acceptance and experience in the areas of post clearance audit and risk management, Customs would benefit from a period of professional advice in these areas. Technical assistance leading up to implementation could be provided through a short-term (three to six months) technical advisor appointment.

2.3.2 TRIPS

There is virtually no attention paid by Customs to intellectual property issues. This is not uncommon in developing countries where pirating is widespread and where it provides cheap substitutes for relatively expensive goods. Normally, Customs would be required to act on directions based on specific industry complaints initiated in the Ministry of Commerce and Industry. There appears to be little incentive for Malawi to be active in prosecuting intellectual property rights.

Any drive to increase interest and activity by MCI should factor in the administrative role of Customs.

2.3.3 Anti-Dumping

Malawi does not currently apply anti-dumping measures, however legislation has been enacted under Sections 85 and 86 of the Customs & Excise Act, and the Fourth Schedule of the Customs Tariff to provide for such action. The provisions as they stand are insufficient in substance and detail to comply with WTO requirements.

The MRA, the Ministry of Finance and the Ministry of Commerce and Industry (MCI) all have a stake in the question of anti dumping measures but policy development does not appear to be coordinated.

The issue of anti-dumping was raised at a meeting between MCI officials and the mission team. There were a number of disadvantages identified in the prospective application of anti-dumping measures by Malawi:

- The process is usually a long and complex process;
- New legislation will required to comply with WTO requirements;
- There are high costs associated with investigation, review and appeal provisions;
- The overhead of building and maintaining the capacity to initiate, investigate, prosecute and defend cases, compared to the likely economic benefit for Malawi is likely to be prohibitive; and
- There may be cheaper and more immediately effective remedies available such as under the WTO Agreement on Safeguard Measures.

The ministries involved need to consider these issues carefully in deciding about any measure that might be needed for Malawi. In the event that it was decided to introduce anti-dumping, Customs would need substantial funding and capacity development to carry out normal value, export price and injury investigations. There is virtually no capability to do so at present.

2.4 WORLD CUSTOMS ORGANIZATION (WCO)

Malawi is an active (i.e. paid-up) member of the WCO. The WCO is an intergovernmental organization dedicated to enhancing the efficiency and effectiveness of Customs administration worldwide. It has developed a number of standard instruments for Customs administration. Based in Brussels, it provides an international forum for the discussion and determination of Customs issues as well as training and technical assistance, which is delivered nationally, regionally or at the WCO Secretariat.

Malawi utilizes WCO tools such as the Harmonized System Convention on commodity classification and the Nairobi Convention on mutual assistance. It also participates in WCO training and technical assistance activities.

One of the most important WCO conventions, known as the Kyoto Convention, is aimed at the harmonization and simplification of Customs procedures. Revised in 1999, it serves as a blueprint for modern Customs administration. Malawi is not yet a signatory, but has expressed the intention to sign the Convention in the near future. Although it has adopted some of the basic elements, there is considerable development needed to comply with the more advanced provisions. (See above reference to organizational and procedural requirements related to Valuation.)

2.4.1 Pre-Shipment Inspection (PSI)

PSI is used by Governments to assist in establishing the nature and value of goods in the country of export and is widely used by countries to combat revenue leakage caused by inefficient Customs administration, valuation fraud and corruption. Using their offices located in exporting countries, specialist companies conduct checks of goods prior to shipment and issue a certificate that must eventually be presented by the importer to Customs in the importing country.

WCO policy recommends against PSI, stating that its use reduces the capacity of Customs to carry out its proper functions. Many administrations report that the use of PSI to determine classifications and values has had a severe adverse impact on the skills of Customs officials. Some companies provide for training of Customs officials under the terms of their contract, often in conjunction with a “sunset” clause that is meant to restore their functions to Customs.

Another consideration is the cost of PSI relative to the investment that would be necessary to bring the Customs administration to a fully effective state. The cost of these services in Malawi is said to be equivalent to 1.5 percent of the value of the goods subject to inspection. Based on that rate, the annual cost of PSI services in Malawi is estimated to be in excess of Kw 750 million, or 150 percent of the budget of the MRA. This money is of course, exported.

There is a widely held view that Governments would realize better long-term benefits by investing funds of this magnitude in improvements to management and operation of their national Customs administrations.

PSI was first introduced in Malawi in 1992. The current PSI contract (with Société Générale de Surveillance - SGS) began in March 2001 with a two-year sunset clause to phase out PSI as a trade-off for higher salaries in the MRA and for increased revenues. Under the contract, SGS undertakes to verify valuation, tariff classification and origin data for imports valued at greater than US\$2000 CIF. SGS also provides technical training and management development through a sub-contract arrangement with Crown Agents.

SGS issues a Clean Report of Findings (CRF) to the importer who is obliged to present it with the import declaration. There are certain inadequacies that have been identified:

- Current legislation is silent on PSI, which causes ambiguity in terms of the legal responsibilities of Customs, the contractor and the declarant.
- There are no sanctions against the PSI contractor for incorrect CRF assessments.
- There are no penalties for failure to present a CRF.
- Some importers (3 percent of transactions) fail to apply for an inspection prior to shipment and therefore no CRF is available at importation.
- There is widespread under-valuation reported.
- Avoidance of the CRF process by arranging the invoiced value to be shown as less than US\$2000.
- Malawi's porous borders allow a practice of splitting consignments into less than \$2000 parcels prior to crossing the border, using "informal traders" to clear them across the border and re-assembling the consignment on the Malawi side.

On one hand, these inadequacies are losing significance because of the phasing out of PSI in March 2003. However, Customs will still need to implement a system, prior to March 2003, that will ensure that data currently obtained through PSI will be both presented and valid. Based on the information provided, there is little to suggest that Customs is preparing itself for post-PSI responsibilities, either in terms of technical capacity or systems.

When asked about this problem, senior management said that there were many officials still in service who had the experience of performing the full range of Customs work pre-PSI (1992), and therefore there would not be any significant problems in taking over in 2003. This argument could only be sustained if Customs was operating effectively prior to 1992, and secondly, that there had been no changes in the environment since that time. If the former were true, it is difficult to see why PSI would have been introduced in the first place. In the case of the latter, the development of international standards in procedures, valuation, trade rules and other related issues, new regional and bi-lateral agreements, increased volumes of trade, faster and more efficient transport, etc,

all contribute to a vast shift in the Customs environment. Customs administrations all around the world have had to make substantial efforts at reform and modernization to adjust. Malawi has been making changes too; but in the vital space occupied by PSI for the past 10 years, very little in Customs has changed, except that skill levels have diminished.

The conclusion is that not only is Customs facing a large and crucial challenge in the coming year, it also faces the obstacle that its management is not preparing for it. The workshop suggested above to examine valuation issues could be used simultaneously to assess Customs readiness for the loss of PSI services.

2.5 SADC

Malawi is a member of SADC and signed the Trade Protocol in 1996. The Trade Protocol, in all its aspects, is likely to impact on Customs. However, there are parts of it related to Customs procedures, trade laws and other trade relevant issues that specifically relate to, or have a greater direct significance for Customs. These include inter alia rules of origin, co-operation between Customs, procedures and transit. Each of these matters is dealt with by a Customs Advisory Working Group, the activities of which are fully funded by the USAID RAPID program.

Malawi Customs is invited to all meetings of the working groups and participates actively.

2.6 LEGISLATION

Plans are underway for a major review of the Customs and Excise Act. Proposals for the amendment of some provisions of the Act have been submitted to the current session of parliament.

In general, the legislation appears to be dated (e.g., no WTO valuation provisions, inconsistency with international and regional agreements, references to amounts in Kwachas are too low to be meaningful). A full review of legislation during the mission was not envisaged under the terms of reference, but such a review could identify areas requiring attention and could recommend changes.

A brief overview of the legislation indicates that the following should be included:

- Sections 85 and 86 of the Customs & Excise Act (the Act) and the Fourth Schedule of the Customs Tariff concerning Dumping Duties;

- Section 94 of the Act concerning duty remission;
- Section 111 of the Act concerning valuation and the associated Schedule (not in accordance with the WTO Agreement on Customs Valuation);
- Section 117 of the Act concerning origin (definition for manufactured products may be inconsistent with regional and bilateral preferential agreements);
- Section 128(3) of the Act concerning decisions about customs agents licensing “without assigning reason”; and
- Part XX of the Act concerning settlement of cases (as to transparency of decisions.)
- Regulation 130 concerning bond and licenses for customs agents.

This list is not exhaustive but indicates that a full review would be justified to ensure that legislation is aligned with international standards including valuation regimes, delegations of authority, administrative penalties and effective and transparent appeal mechanisms.

2.7 STAKEHOLDER PERCEPTIONS

Customs policies and procedures have an impact on other agencies, the private sector and the public at large; so it is important to recognize the needs and views of those affected by Customs.

The following is a summary of the comments made about Customs by not only stakeholders external to the organization, but also those within MRA. It is important to stress that the comments reflect the perceptions of those interviewed and are not necessarily factual.

Although constrained by the availability of interviewees and the time limits of the mission, it was possible to interview a large cross-section of stakeholders. Many of the comments were made confidentially so as to avoid the possibility of any future adverse treatment or retribution. This alone tells part of the story.

Quoting an MCI study to identify Malawi’s institutional needs in the area of trade development:

“The Ministry must also ensure that other Agencies, such as the Department of Customs, are provided with up-to-date information on trade agreements, and supplied with intelligence on those areas where non-compliance is suspected or can be anticipated....

“Malawi’s experience demonstrates very forcefully that there is a huge gulf between trade agreements in their theoretical manifestation and practice on the ground. But comments from stakeholders suggest that this is an example of a more general problem of lack of capacity to regulate for, and enforce key components of trade agreements. In general, insufficient priority is attached to this component of the trade policy cycle.”

At one level there appears to be a significant involvement by the private sector in Customs business through membership of the MRA Board. The General Manager from ADMARC chairs the recently appointed Board and the previous Chair was the General Manager for SEDOM, a parastatal designed to promote small businesses. The previous Commissioner General of the Malawi Revenue Authority came from Inde Bank (before that he was Head of Malawi Investment and Promotion Association). The Chairman of the Malawi Chamber of Commerce and Industry is a Board Member, as are the Permanent Secretary for the Department of Industry and Commerce, and a representative from the Society of Accountants.

It is therefore paradoxical that those interviewed from both the public and private sectors (including some of those mentioned above), are somewhat critical of the state of Customs/stakeholder relationships.

Government stakeholders interviewed pointed to a lack of coordination and understanding between MCI, Ministry of Finance and MRA (Customs). They claim on one hand that other ministries do not have staffs that are trained in Customs matters, and on the other, that Customs officials do not understand the rules, leading to widespread ad hoc decision making. Border posts, particularly Mwanza, by far the largest, are seen as weak and not enforcing policies and legislation.

They say that Customs officials are reasonably competent, but need training and financial resources to be properly effective. According to stakeholders (and MRA management,) the budget provided (2.5 percent of revenue) is not adequate to run the organization efficiently. A counter argument is that organizational efficiency is adversely affected by the weakness in overall quality of the current human resources and by poor deployment that is unrelated to ability or workload distribution. Considering the combination of the effects of lack of quality in human resources, poor deployment, complex procedures, a poor decision-making framework and transaction-based processing (as against risk-based processing), applying more resources would not appear to be the most productive means of improving efficiency.

There were several observations expressed that Customs decision-making is heavily influenced by political factors. Examples given ranged from nepotism in staff appointments to decisions about valuation of goods and concessions granted. The abolition of the Board of Directors is also seen as a demonstration of this influence.

Many of the private sector stakeholders' views overlap with those of their Government counterparts. Generally, there is a perception that despite Customs becoming a more progressive organization since the inception of the MRA, there are many lasting inefficiencies that need to be addressed. Many industrialists would welcome a more open partnership with Customs to meet mutual interests and ultimately to contribute to the economic development of Malawi.

The main interest of the biggest players in the private sector is to work within an efficient, transparent, predictable and fair Customs system. They do not see this as being the current situation.

There are complaints of delays caused by poor processes, lack of localized decision-making, loss of documents and a requirement for "informal" payments to be made.

Decisions are pushed upwards for two reasons. First, there is a fear amongst officials that in making decisions, they are exposed to criticism from above for not making "correct" decisions, or being accused of corruption if they make decisions that (legitimately) favor declarants. Secondly, there is a tendency in management to locate much of the operational decision making at the top. Exactly why this occurs is not clear; however, it might be because there is a perhaps justified lack of confidence in the judgment of more junior officials. There are also allegations, inside and outside MRA, that top-level interventions in decision-making involve political interference and corruption.

The widespread reporting of regular and numerous losses of declaration documents in the Customs system is also disturbing. It is difficult to envisage a high incidence of such a problem as mere inefficiency, particularly when some clients appear to be free of such inconvenience.

One industry source estimated that the cost overheads of delays and inconveniences caused by Customs amount to 20 percent of total costs. Another estimated the cost at half a million dollars. While these appear to be arbitrary and perhaps therefore not in any way accurate, they are indicative of the dimension of the problem as perceived by those close to the Customs system. Others complain that they have lost major contracts while waiting for critical decisions by Customs on duty waivers. From another angle, one industry observer

commented that there are enormous national revenue losses caused by political interference and inconsistent decision-making.

Both private and public sector stakeholders are keen to participate in regular dialogue with Customs, not only to receive information, but also to raise matters of concern and to pro-actively contribute to policy development and strategic initiatives of Customs. This would also assist in improving communication generally and helping to overcome any misperceptions that are held. There are complaints that ready access to information about legislation, policies and changes is difficult. Whilst there is currently a regular forum for stakeholders to meet with the Commissioner, these meetings tend to be informational with very little opportunity given for, or interest in, hearing or acting on private sector viewpoints. Many of the larger players choose not to attend for this reason.

Consideration could be given to widening the role of the Board to meet with stakeholder groups regularly. A further functional role could be to act as the first point of contact for complaints related to corruption and officer behavior.

2.8 COMPLIANCE MANAGEMENT

The principle behind compliance management is to provide the necessary information, support and incentives to maximize the number of declarants that will voluntarily comply with all requirements. If Customs clients know clearly what they are required to do, they are given the support necessary to do it, and there are commercial or other benefits in choosing to comply, then there is a high chance that they will do so. Benefits should include discriminatory treatment such that compliant traders would gain from streamlined processes, reduced likelihood of inspections and special considerations such as inspections at premises and periodic payment.

With a higher proportion of compliant (and therefore “low risk”) clients, Customs is able to divert more attention and resources to the non-compliant clients. In principle, they will be subjected to a greater degree of scrutiny and therefore, more inconvenience, costs and risks. Clearly, the tendency would be for more declarants to comply.

The first steps would be to conduct trials, limited to a small number of regular, high volume importers who are considered by Customs to be honest and capable of producing accurate information about their imports. Based on initial findings, Customs should progressively expand the trials. This concept was discussed with some of the high volume importers and transport operators, and they would welcome the opportunity to participate in such trials with Customs. The

EPZ program is another area that could be included, even though it is not a large user of Customs resources.

Essential supporting mechanisms such as an intelligence database and risk profiles need to be developed, and disincentives for non-compliance need to be applied. In the case of unintentional errors of a relatively minor nature, a system of administrative penalties should be introduced. Additional to the recovery of revenue short-paid, a penalty of a certain percentage, set by law, can be applied automatically.

Assistance in the form of technical expertise from a donor administration or specialist consultant will be required.

2.8.1 Customs Agents

The Commissioner General under the Customs and Excise Act and Regulations can license customs Agents. In practice, a committee is delegated to review applications, interview prospective agents and make recommendations. Licenses are renewable annually at the discretion of the Commissioner General.

Traders say that customs agent licensing is not properly controlled. There are many “brief case” agents who have neither the skill, and qualifications nor the integrity to operate efficiently. Proper exercise of the legislation and review process should enable a higher standard to be reached and maintained but this appears not to be the case. A more rigorous application of the laws should result in more reliable declarations, and ultimately more revenue.

2.8.2 Automation

At the time of the mission, Customs was in the process of installation of ASYCUDA at the main border crossing, Mwanza. Together with Blantyre, which is already operating, this will bring over 70 percent of import transactions under automated processing. Other posts are coming on line in the near future. Once bedded down, presently forecast at December 2002, the current version (2.7) will be upgraded to ASYCUDA ++ (version 3.1). In principle, this will provide an effective platform to support compliance and risk management principles.

However, there is some apathy amongst technical staff to accept ASYCUDA. This is a common problem in countries where substantial corruption is present and where capacity to cope with modern and accountable Customs practices is limited. In some countries, the resisting forces have been so strong that computer systems have been subverted and parallel manual systems reintroduced, usually

to re-establish corruption opportunities. MRA management will need to be vigilant in this respect.

The ASYCUDA implementation team has tried to involve the customs staff at all levels, the importers and other government agencies, in order to solicit constructive comments and suggestions, as well as commitment to the project. Meetings have been held at every customs office in the country and many meetings at trade locations for the general public and trade. Monthly meetings involving the Statistical office, the Reserve Bank, Bureau of Standards, etc. have also been used as a forum for interaction on implementation.

It was reported that many people from all areas, especially middle management and the technical division of Customs, did not take part. They seemed to consider that the project would not have any impact on them and they were too busy dealing with “more important issues”. Perhaps they felt that instead of being involved in change they were being told what to do, and held some resentment. It appears that when the actual implementation occurred they suddenly found that the junior officers were aware and knowledgeable about the changes and felt very vulnerable. They then used their seniority to instruct junior staff to bypass the system. This caused some discontent from junior staffs that were enthusiastic to use the computerized system.

The problems still exist at some sites but the volume of pressure from junior staff, the importers and senior management is slowly working in favor of the project. Constant reviews must still be carried out at all sites to ensure the middle managers have not “restructured” the procedures.

The reasons for the resistance observed in Malawi were not fully investigated; but, like the experiences in other countries, it appears to stem from a number of fears, rational or not:

- that new technology will threaten jobs;
- that individuals might see themselves losing relevance and opportunities to exercise discretionary power (legitimately or otherwise);
- a reluctance to trust technology instead of the knowledge and experience of “the old hands.”

There was an indication that the technical assistance currently being provided by DFID is to be reviewed. Any reduction to the support for implementation of ASYCUDA ++ will have obvious negative consequences. If this were the case, it would be vital for Customs to find an alternative form of technical assistance.

2.8.3 Export Processing Zones (EPZs)

Most of the original EPZ companies have ceased to operate, due mainly to loss of market access in South Africa rather than any administrative weakness. Customs is said not to be as effective now as it was at the outset of the program. Nevertheless, EPZ's do not pay duty on imports of raw materials and there is little market for diverting their relatively expensive finished products into the domestic market of Malawi.

There would therefore appear to be high compliance and little incentive for corruption or other illegal Customs-related practices. The transaction based inspection regime that is currently in place is working to the satisfaction of the remaining players but could reasonably be replaced by periodic documentary checks of transactions, subject to continued compliance.

2.8.4 Transit

Most clearances of cargo are made inland at Blantyre or Lilongwe. As nearly all cargo arrives by road, there is a heavy dependence on the secure transit of goods. A computerized system for transit has been operating for some years but is not working effectively. Set up under an assistance program by the Harvard Institute, the system, introduced as a trial, was never fully implemented. Poor communications infrastructure and vulnerable software have contributed to uncompleted transactions and fraudulent abuse. It was estimated that over 400 containers have been lost in transit, causing significant losses in revenue.

There is a bond guarantee system in place to protect the revenue in the case of losses. Road transport operators post an amount in Kwachas fixed by Customs, which is operated as an imprest balance. When the liability of transit shipments in progress reaches the limit, no further shipments can be authorized until clearance at destination is notified and the bond guarantee limit reinstated to an acceptable level.

Operators, particularly the larger ones, complain that the amounts are set at too low a level, thereby restricting the number of shipments that can take place simultaneously and causing blockages at the borders. Another complication is that the system sometimes fails to record acquittals causing the bond guarantee level to be overstated. Delays cause higher transport costs and unreliable service to clients, many of whom are relying on timely delivery of inputs to competitively manufacture goods for domestic and export markets.

The Transit Module of ASYCUDA++ will support a more rigorous control of transit goods when introduced late in 2002. Customs also plans to clear all goods

at the border posts at which ASYCUDA is operating, lowering the demand on resources needed to service the inland temporary stores (currently 32), reducing the overall volume of transit transactions and therefore also the associated risks.

A new solution for transit security in the form of an electronic seal has recently been developed and has attracted attention in regions with high dependency on international transit trade. NAFTA and SADC countries have expressed interest in this technology and Malawi should monitor developments in this area. This would present a simple, practical and useful form of technical assistance in the medium term.

The consultant has discussed with operators and Customs, a suggestion to apply compliance management principles to the remaining transit traffic by entering into agreements with selected operators to increase the bond levels and allow for control by post-transit Customs audits. This principle could also be applied to containerized goods that are entered at the border, but selected for physical examination. This would save time and costs, as the container would need to be opened only once, at the destination in the owner's premises.

2.8.5 Origin

It is claimed that there is little control exercised by Customs on verification of origin of goods. Goods from certain countries are accorded preferential rates of duty based on the presentation to Customs of a certificate attesting to the origin. Industry sources report that people without any particular authority, expertise or knowledge of the true origin, quite regularly sign these certificates.

Verification of origin is also a function required of the PSI contractor.

There does not appear to be a regulated system of determining who can and can't certify origin. This is an issue that should be raised with MCI and in the context of SADC working group meetings on the subject.

2.8.6 Revenue Leakage

There are neither data nor estimates available that give an indication of the amount of revenue that is lost because of breaches of customs and tax laws. Stakeholders and Customs officials have reported that duty and tax evasion is widespread. Add to this the difficulties presented by Malawi's porous borders, and the high incidence of corruption that has been reported, and there is a high likelihood of substantial revenue leakage. Based on the experiences of other African countries, leakage through under-valuation, origin fraud,

misclassification and smuggling in Malawi could be many billions of Kwachas annually.

Malawi, being a poor country and relying heavily on Customs revenues and taxes to fund government programs, can ill-afford to ignore this dimension of possible revenue shortfall. The MRA is already behind its revenue targets.

2.9 CORRUPTION

There is very little direct evidence of corruption in Customs. The Malawi Anti Corruption Bureau (ACB) has reported one case as follows:

“On 30th June 2000, the Parliamentary Legal Affairs committee recommended that the suspects be prosecuted under the Corrupt Practices Act. Farook, of Farook Wholesalers and a number of Customs Officers are alleged to have connived to evade customs duty amounting to Kw250 Million.”

The following appeared in another ACB report:

“Members of staff of the Malawi Revenue Authority Customs and Excise Department comprising Senior Management and senior staff were on 2nd and 4th June 2000, addressed by the Bureau. Alexious Nampota, the Bureau's Deputy Director, addressed the staff at the Institute of Tax Administration in Blantyre upon a request by the Malawi Revenue Authority.

Through his address, members of staff were informed of the role and responsibilities of the Bureau, definition of corruption and the evil and dangerous effects of corruption. A total of 38 Customs officers were addressed.

Malawi Revenue Authority has the mandate to assess, collect and account for government revenue. These members of staff therefore, need to know and understand the dangerous effects of corruption since government relies on revenue for its development activities.”

Another reported case concerned an official, who was caught altering data in the transit computer system such that a large number of containers were removed from the system, and therefore not accounted for or entered.

When asked, senior management said that there had been only one or two isolated cases of corruption involving Customs officials in the past two years. They said that there are reporting mechanisms available to traders and the public to report instances of corruption, but few reports were received. Several stakeholders said that experience had taught them that it is safer not to make reports, citing examples of no action being taken on the allegations and then being subjected to retribution by the alleged offenders on future transactions.

Anecdotally, corruption is endemic in Customs at all levels. These allegations come from the private sector, other ministries and from within the MRA itself. Corruption is said to vary from minor cases of “speed money” paid to cut through bureaucracy (often deliberately manufactured by the perpetrators), to very large amounts paid to avoid the proper payment of revenue due by misrepresenting values, tariff classifications and origin of goods. Large-scale corruption is said to involve politicians and senior management of the MRA. Stakeholders have alleged that the ACB is also subject to political influence.

Another form of alleged corruption involves the determination of penalties. At present, no cases are taken to court, all being settled in accordance with the legislation by the Commissioner General. Whilst this is a normal means with which to reach a satisfactory conclusion to less serious infractions of the law, the handling of the cases is not seen as being either transparent or consistent.

If the allegations mentioned above are true, then it is difficult to see how any external intervention can have a direct impact. Political will and determined top-level management are needed to underpin any strategy for fighting corruption. If that support became evident, then an integrity strategy could be developed following the principles of the WCO’s Arusha Declaration (See Annex 2.) The WCO has developed workshops and a self-assessment guide that could be utilized as a starting point. A Code of Conduct was issued in 1996 and each officer was required to sign a statement that he/she had read and understood it and would abide by it. It was re-launched under the MRA in 2001.

Malawi would not be the only Customs organization with corruption problems. Customs anywhere must deal with the combination of power, opportunity and incentive and there are few administrations that could say that they are completely free of the problem. If quick fixes were available, this would not be the case. Much has been written on the subject and if there was a consensus, it would be that simple solutions do not have an impact. A multi-faceted approach is needed, comprising reforms across the full range of administration, from legislation and procedures, to personnel policies and incentives/sanctions.

2.9.1 Reward System

Reward systems are common in many developing countries. Typically they are based on financial rewards to individuals who are responsible for uncovering underpayments of duties and taxes and, in size, are often linked to the amount of revenue involved. They are usually designed to meet two objectives: to compensate officials for relatively low pay, and to encourage officials to find and report infractions. In this way, they may offer a legitimate alternative to indulging in corruption.

A serious disadvantage with systems that reward individuals is that the tendency is for them to act individually to maximize personal reward. This causes them to resist sharing information and to find ways to intervene in the process to increase their opportunities to receive rewards. During interviews with the private sector, complaints were made about over-zealousness of some officials who appeared to be trying to create offences from innocent situations.

Customs had a reward system prior to the beginning of the MRA, but none has been operational since that time. The old system is presently under review with the intention of introducing a new system (See Annex 3). The issues raised above should be carefully considered during this process.

2.9.2 Training & Development

Training is conducted through the Institute of Tax Administration. All officials are given a 2-3 week induction course followed by specialist courses depending on the assigned work area. Advanced specialized courses are provided for more senior officials.

Management development is limited to a program conducted with the assistance of DFID. This program should be expanded so that more middle and senior managers can be exposed to modern management theory and practical guidance.

2.9.3 Other Human Resource Issues

The present actual staffing of the MRA is approximately 1000 out of a nominal establishment of 1400. Since the inception of the MRA, there has been a program of increasing the graduate strength although there have been problems in meeting the remuneration requirements of prospective recruits.

The salary level of base level recruits is Kw12000 (about \$180) per month. This is considerably better than pre-MRA and above most other comparable countries in the region. Managers receive more than Kw65000.

Appointment at entry level requires at least a School Certificate, while officer level requires a degree and directors and above requires a master's degree. Management positions are publicly advertised. Applicants are interviewed and a short list of suitable candidates is presented to the Commissioner General (formerly the Board) for decision.

In theory, promotions are based on qualifications and performance. There is no formal performance appraisal system. In practice advancement is said to be mainly dependent on personal and political relationships.

2.9.4 External Assistance

Customs has benefited from many diverse external assistance inputs. However, there does not appear to have been any formal evaluation of the impact of this assistance on the organization. For example, a DFID funded diagnostic study conducted in 1996 generated a detailed strategic plan; but six years later, there is no evidence available to show that anything at all was implemented.

Currently, DFID funds a number of long-term expatriate technical support staff that provide guidance in development and implementation of ASYCUDA, investigation and training. At the time of writing, DFID was planning to withdraw the long-term position in favor of short-term ad hoc assistance.

SGS, under its current contract, delivers some technical training under a sub-contract arrangement with Crown Agents. Other assistance is provided from time to time by the WTO (valuation) and the WCO, but details were not available.

2.9.5 Conclusions

The first impression of Customs is that it is running at two levels: one that is traditional, lacks strategy and relies heavily on the personality of the Commissioner General; and the other that has at its base the new outlook of the MRA, a modern, externally focused and business-like approach.

There is a widespread lack of confidence in the integrity of the organization amongst those who must deal with Customs. Even though mechanisms exist to make representations, there are fears that the bodies concerned are not beyond political influence and that there is a genuine likelihood of retribution against complainants.

Whilst there are several well-educated, skilled and conscientious officials in the service of Customs, overall efficiency is frustrated by outmoded procedures and management practices, lack of incentive and a relatively weak position in the Government's administrative framework. In short, Customs does not yet have the capacity to effectively carry out its mandate.

External perception of Customs is that it is slow, inefficient, corrupt, poorly managed and lacking technical expertise. There is a fear of making decisions leading to relatively low-level decisions being elevated to the highest level. Based on the interviews and evidence available to the consultant, there is little to refute these perceptions. At an individual level, there are some notable exceptions. In particular, some of the senior staff recruited since the inception of the MRA, appear to be both capable and motivated to drive positive change in Customs.

In order to improve the situation, Malawi Customs must look to model itself on the best practices found in modern Customs administrations in other parts of the world, to realize the following characteristics:

- Adhering to widely accepted international standards and conventions.
- Clear and precise legislation.
- Responsive and timely service to clients.
- Well-trained and well-respected officials.
- Flexibility to enable it to anticipate and react to changes in the environment.
- Up to date systems and technology.
- Transparent decision-making processes with accessible rights of appeal.
- A respected and responsible partner to the Government and business.

2.9.6 Practical Solutions – Some Options

- Redefine the structure and operation of stakeholder meetings to engender two-way communication and prior input to Customs initiatives and policy development.
- Define the role of the Board to include a point of first contact for complaints.
- Consider a period of professional outsourced management to overcome resistance to necessary changes. Examples:
 - Zambia model: appointments of foreign Commissioner General and Commissioner of Customs.
 - Mozambique model: award a contract to a private company to guide and manage the change program.
- Conduct a high-level workshop to study the implications of the full implementation of WTO Valuation and the retirement of the PSI contract in 2003.

- In particular, addressing the technical capacity of Customs to manage valuation, tariff classification and origin regimes.
- Redefine the Customs mission to encompass non-revenue objectives.
- Develop Customs performance indicators, measurement, standards and reporting.
- Review legislation and procedures against Revised Kyoto Convention and other international standards including those related to valuation regimes, delegations of authority, administrative penalties and effective and transparent appeal mechanisms.
- Review the need for the introduction of anti-dumping measures and consider alternatives.
- Eliminate negotiated decisions and settlements by introducing fixed administrative penalties for defined minor infractions.
 - All other infractions to be prosecuted in the courts.
- Obtain assistance to set up Customs Commercial Investigation, Intelligence and Post Clearance Audit Units (should be conjoined with the Tax Audit and Investigation Directorate of MRA):
 - Identify resource requirements.
 - Write position profiles.
 - Recruit/train personnel.
 - Consider contracting a private auditing company as an interim measure.
- Apply compliance management to:
 - Import clearance
 - Warehousing
 - EPZs
 - Transit control (including variable bond guarantees) to support the transit module of ASYCUDA ++.
- Consider the introduction of electronic seals for transit container traffic.
- Review licensing of Customs agents to include more stringent criteria and performance standards.
- In defining a new reward system, carefully weigh up the options and implications.
- Establish position profiles and competencies for all positions.
- Conduct a skills audit of personnel.
- Implement a transparent transfer and promotions system based on skills and efficiency.
 - Consider a requirement for anti-nepotism provisions in appointment, selections and promotions.
- Develop and implement an integrity strategy following the principles of the WCO's Arusha Declaration (See Annex 2), utilizing WCO tools such as workshops and the self-assessment guide.
- Provide management development opportunities for middle and senior managers.

ANNEXES

Annex 1 Terms of Reference

Integrated Framework Mission to Malawi

The consultant will have two main tasks:

1. Evaluating the overall functioning of customs administration.
2. Evaluating progress Malawi has made in meeting its obligations as a WTO member.

The consultant will write a report evaluating the functioning of customs inspection, customs evaluation, and customs clearance leading to an evaluation of the impact of customs on the overall efficiency of Malawi's trading system. The recent Trade Policy Review conducted by the WTO (February 2002) on Malawi also provides an overview of the issues the consultant will be asked to address.

1) Customs Administration

According to the 2001 IMF Country Report, Malawi has established export promotion zones where importers are waived from paying tariffs and income taxes for a specified number of years. In addition to this, Malawi has also put into place a Manufacturing under bond (MUB) scheme to give incentives to companies that devote only part of their production to exports.

The Export Promotion Zones (EPZs) also represents an important tool for the further development of Malawian exports. Legislation establishing EPZs was passed in 1995, and to date, 19 firms are operating under EPZs. Unfortunately there is very little information on the efficacy of these export incentive schemes for Malawi, such as import tariff drawbacks, tariff suspension schemes and the export promotion zones. This section will assess and review the workings of EPZs, the institutional framework of the EPZ and other incentive schemes and make recommendations for improvements.

Other potential areas to be addressed/assessed include customs clearance, existence and functioning of temporary admission and drawback mechanisms, pre-shipment inspection, customs valuation, documentation and related matters. A detailed analysis of any bottlenecks and malfunctioning of the inspections, customs evaluation and customs clearance system will be carried out.

An effort will be made to quantify the extra cost for traders (importers and exporters) of any malfunctioning in the system. Also, tariff line data on customs collection will be compared to the official tariff schedule in order to assess the extent of evasion and to understand better the actual incentive structure.

2) Compliance with WTO membership

As a WTO member, Malawi must comply with all WTO multilateral agreements under the Single Undertaking, which are binding on Malawi. This implies that Malawi has a number of commitments to undertake, many of which have been delayed. Malawi has received some technical assistance, but more is envisaged that will need to be identified.

The findings from the consultant's analysis will lead to recommendations for reforms. The consultant will also be expected to identify the needs and priorities for trade-related technical assistance, drawing on previous work conducted under the auspices of the recent TPR report, Malawi's Needs Assessment report, and other recently completed studies on Malawi.

Annex 2 The Arusha Declaration

DECLARATION OF THE CUSTOMS CO-OPERATION COUNCIL CONCERNING INTEGRITY IN CUSTOMS

The Customs Co-operation Council

NOTING that Customs is an essential instrument for the effective management of an economy and that it performs simultaneously the vital roles of combating smuggling and facilitating the flow of legitimate trade.

ACKNOWLEDGING that:

corruption can destroy the efficient functioning of any society and diminish the ability of the Customs to accomplish its mission;

a corrupt Customs:

- will not deliver the revenue that is properly due to the State,
- will not be effective in the fight against illicit trafficking, and
- will obstruct the growth of legitimate international trade and hinder economic development;

the Customs has no right to public recognition or trust if its staff break the law habitually.

CONSIDERING that corruption can be combated effectively only as part of a comprehensive national effort;

DECLARES that a top priority for all Governments should be to ensure that Customs is free of corruption. This requires a firm commitment at the highest political and administrative levels to maintaining a high standard of integrity throughout the civil service and particularly in the Customs.

DECLARES that a national Customs integrity program must take account of the following key factors:

1. Customs legislation should be clear and precise. Import tariffs should be moderated where possible. The number of rates should be limited.

Administrative regulation of trade should be reduced to the absolute minimum. There should be as few exemptions to the standard rules as possible.

2. Customs procedures should be simple, consistent, and easily accessible, and should include a procedure for appealing against decisions of the Customs, with the possibility of recourse to independent adjudication in the final instance. They could be based on the Kyoto Convention and should be so framed as to reduce to a minimum the inappropriate exercise of discretion.
3. Automation (including EDI) is a powerful tool against corruption, and its utilization should have priority.
4. In order to reduce the opportunities for malpractice, Customs managers should employ such measures as strategic segregation of functions, rotation of assignments and random allocation of examinations among Customs officers and, in certain circumstances, regular relocation of staff.
5. Line managers should have prime responsibility for identifying weaknesses in working methods and in the integrity of their staff, and for taking steps to rectify such weaknesses.
6. Internal and external auditing are essential, effective internal auditing being a particularly useful means of ensuring that Customs procedures are appropriate and are being implemented correctly. The internal auditing arrangements should be complemented by an internal affairs unit that has the specific task of investigating all cases of suspected malpractice.
7. The management should instill in its officers loyalty and pride in their service, an "esprit de corps" and a desire to co-operate in measures to reduce their exposure to the possibility of corruption.
8. The processes for the recruitment and advancement of Customs officers should be objective and immune from interference. They should include a means of identifying applicants who have, and are likely to maintain, a high standard of personal ethics.
9. Customs officers should be issued with a Code of Conduct, the implications of which should be fully explained to them. There should be effective disciplinary measures, which should include the possibility of dismissal.
10. Customs officers should receive adequate professional training throughout their careers, which should include coverage of ethics and integrity issues.

11. The remuneration received by Customs officers should be sufficient to afford them a decent standard of living, and may in certain circumstances include social benefits such as health care and housing facilities, and/or incentive payments (bonuses, rewards, etc.).
12. Customs administrations should foster an open and transparent relationship with Customs brokers and with the relevant sectors of the business community. Liaison committees are useful in this respect.

Made at Arusha, Tanzania on the 7th day of July, 1993 (81st/82nd Council Sessions)

Annex 3 Proposal for an Incentive Scheme for the Income Tax and Customs and Excise Divisions

Introduction

At its recent revenue performance review meeting held on 3rd January 2002, Management reemphasized the need for the development of an incentive scheme for the revenue collection divisions of MRA. An incentive review committee was then already in place. Its mandate is to review the incentive scheme implemented in the pre-MRA and post-MRA periods and recommend to management the most appropriate scheme for MRA.

this paper outlines recommendations of the committee after studying the current and pre-MRA incentive schemes. It should be noted that the paper only covers revenue collection; and the rest will be dealt with in phases.

1. Incentives for Customs and Excise, Income Tax and Surtax Divisions

This incentives scheme takes care of the risk/hardship that customs officers face in carrying out their job. For example:

Working at odd hours and off working hours

Fast teams in the field

Working at border stations with limited social/economic amenities

In this regard, the following rates are proposed:

- MRA 5 to MRA 7 K2,500.00
- MRA 8 and MRA 9 K2,000.00
- MRA 10 – MRA 12 K1,500.00

This allowance will be paid at mid-month. They will be applicable to all officers at all workstations.

2. Fraud Detection Reward

2.1 This reward will be payable to an officer who detects fraud leading to the recovery of revenue that would otherwise have been lost. The reward will be applicable to any officer in MRA (not only those in the revenue collection divisions) and informants from the general public.

2.2 The following rates are proposed:

| Revenue Recovered | Rate |
|---|------|
| Up to or more than K1 million but less than K2 million | 10% |
| From K2 million and above | 5% |

2.3 These rates are proposed to encourage officers in MRA and the general public to report fraud cases. The idea is to make the reward attractive enough to warrant reporting and make bribery unworthy.

2.4 The reward will be paid as soon as revenue is recovered with no questions and maximum protection of the revealer/informant.

2.5 If the reward is due to an MRA officer, it will be distributed as follows:

- 50 percent to the officer
- 30 percent to the station and
- 20 percent to the (MRA)

2.6 If the reward is due to an outsider the detector gets 100%. The committee believes that their proposal is in line with the MRA Act and will enhance revenue collection.

3. Cost Implications of Proposed Incentives

The cost implications for incentives to Customs and Excise and Income Tax Divisions are calculated on the basis of the number of employees at each grade. The attached tables indicate the cost implications of each alternative as discussed by the committee. The recommended alternative is scenario 1.

4. Source of Funding

4.1 It is proposed that the source of funding for this scheme should be the processing fees generated by MRA. These amount to about K1 million per month. This amount is not enough to cater for the incentive packages as can be seen in the table above. The other sources could be penalties and special self-financing facility. In the case of penalties, MRA would have to negotiate with Treasury for an arrangement where penalties charged and collected could be used for the scheme. Since the amount can be predicted, it is not difficult to estimate the required amount per month according to the scenario chosen. The self-financing facility applies to rewards where the amount recovered is automatically deducted with the equivalent of the reward before submission to Treasury.

Annex 4The Economy (National Statistics Office Report 2001)

| Price inflation rates (annual averages, %) | 1997 | 1998 | 1999 | 2000 |
|---|-------------|-------------|-------------|-------------|
| National | 9.2 | 29.5 | 44.9 | 29.5 |
| Urban | 11.6 | 34.4 | 54.0 | 37.4 |
| Rural | 8.2 | 28.1 | 40.6 | 25.1 |
| National product | 1997 | 1998 | 1999 | 2000 |
| GDP (factor cost, 1994 prices, K bn) | 12.3 | 12.6 | 13.0 | 13.3 |
| GDP (factor cost, current prices, K bn) | 38.0 | 52.3 | 72.2 | 85.9 |
| GDP per capita (K '000) | 4.38 | 5.60 | 8.22 | 10.38 |
| GDP growth rate (%) | 7.0 | 2.2 | 3.6 | 2.2 |
| Balance of payments (K bn) | 1997 | 1998 | 1999 | 2000 |
| Current account balance | -6.12 | -4.67 | -12.75 | -11.44 |
| Capital account balance | 3.46 | 9.84 | 10.65 | 13.98 |
| Balance (before debt relief) | -0.03 | -5.90 | 1.16 | 5.38 |
| Exchange rates, K per unit (end of year) | 1997 | 1998 | 1999 | 2000 |
| United States Dollar | 21 | 44 | 46 | 80 |
| South African Rand | 4.4 | 7.5 | 7.6 | 10.6 |
| Zimbabwe Dollar | 1.16 | 1.18 | 1.21 | 1.45 |
| Foreign trade (K bn) | 1997 | 1998 | 1999 | 2000 |
| Imports | 13.08 | 18.00 | 28.49 | 31.16 |
| Exports | 8.91 | 16.53 | 20.32 | 23.05 |
| Trade balance | -4.17 | -1.47 | -8.17 | -8.11 |
| Main imported commodities: | | | | |
| Fuel oils | 1.09 | 1.74 | 2.91 | 4.72 |
| Fertilizers | 0.61 | 0.89 | 1.25 | 1.05 |
| Main exported commodities: | | | | |
| Tobacco | 5.43 | 10.31 | 12.11 | 14.43 |
| Tea | 0.67 | 1.25 | 1.73 | 3.17 |
| Sugar | 0.38 | 1.18 | 0.86 | 2.70 |
| Trade with SADC | | | | |
| Imports | .. | 9.63 | 13.44 | 16.47 |
| Exports | .. | 2.74 | 3.20 | 3.80 |
| Balance | .. | -6.89 | -10.23 | -12.67 |

| Index of industrial production, annual average, 1984=100 | 1997 | 1998 | 1999 | 2000 |
|---|-------------|-------------|-------------|-------------|
| Total general industrial production | 128.0 | 129.8 | 110.4 | 111.5 |
| Goods for the domestic market | 115.7 | 121.6 | 93.1 | 87.8 |
| Export goods | 118.7 | 102.1 | 97.8 | 107.5 |
| All manufactured goods | 116.5 | 116.4 | 94.4 | 93.1 |
| Electricity and water | 198.6 | 211.8 | 208.9 | 224.7 |
| | | | | |
| Public finance (K bn) | 1997 | 1998 | 1999 | 2000 |
| Government revenue (excluding grants) | 8.46 | 10.84 | 14.63 | 20.44 |
| Taxes: | | | | |
| Income and profits | 3.47 | 4.63 | 6.17 | 8.46 |
| Goods and services | 2.67 | 4.05 | 5.45 | 8.09 |
| Trade taxes | 1.98 | 1.75 | 1.84 | 2.46 |
| Government expenditure | 13.21 | 16.41 | 23.19 | 35.82 |
| Type: | | | | |
| Recurrent | 11.40 | 11.08 | 13.95 | 24.64 |
| Development | 1.81 | 5.32 | 9.24 | 11.19 |
| Deficit (excluding grants) | -4.75 | -5.52 | -8.56 | -15.38 |
| Deficit (including grants) | -2.66 | -1.48 | -1.62 | -2.21 |
| | | | | |
| Debt | 1997 | 1998 | 1999 | 2000 |
| External debt (US \$ bn) | .. | 2.33 | 2.34 | .. |