



## ABOUT THE AUTHORS

**CHRISTINA CHATIMA**  
is Director for Trade, Ministry of Industry, Trade and Tourism.

**CHARITY MUSONZO**  
is Deputy Director for Trade, Ministry of Industry, Trade and Tourism.

**TAWONGA MUNTHALI**  
is Content Coordinator, Ministry of Industry, Trade and Tourism.

**TEMWA GONDWE**  
Gondwe is Country Manager, Malawi Trade Portal, Project Management Group (PMG)/Imani.

**JOHN MATEKENYA**  
is a Data Expert, Malawi Trade Portal, PMG/Imani.

**CHRISPINE NDALAMA**  
is a Legal Expert, Malawi Trade Portal, PMG/Imani.

## APPROVING MANAGER

# SmartLessons

*real experiences, real development*

## Opening Doors to Transparency in Cross-Border Trade: Lessons from the Malawi Trade Portal

*Most business leaders in Malawi see the Malawi Trade Portal (MTP) as a step forward in the provision of public information via online platforms and the promotion of transparency in the delivery of public services. Its purpose is to facilitate trade by promoting easier access to information on laws, regulations, measures, standards, procedures, and forms related to the governance of exports, imports, and transit of goods. This SmartLesson describes how the MTP is helping authorities facilitate trade by increasing transparency and accountability and by reducing the time it takes to access regulatory information on trade across borders. And it shares the lessons the authors believe are the most replicable.*

### BACKGROUND

In an environment where trade information can be difficult to access and businesses spend a lot of time and resources just to acquire even basic information on how to conform to trading procedures, the very idea that all this information can be packaged in one place and be made available online has been described as nothing less than amazing! At a click of a button, traders can access information that previously took weeks or months to acquire.

Implementation of the Malawi Trade Portal project began in June 2015 with support from the World Bank Group's Trade Facilitation Support Program (TFSP). Costs for its first 12 months came to about \$650,000. Malawi has an obligation under Article X of the General Agreement on Trade and Tar-

iffs to publish all trade-related information promptly and transparently. The TFSP provided funding for the establishment of the platform and contracted the Project Management Group and Imani Development Consultants to provide technical assistance to the MTP Secretariat, which is based in the Ministry of Industry, Trade and Tourism.

Because Malawi is landlocked, trade facilitation can play a pivotal role in its quest to become a net exporting country, as articulated in its national medium-term development agenda. Trade costs related to non-tariff barriers remain high. And lack of access to basic trade information on how to comply with trading procedures is a key impediment to trade, and it fuels the lack of transparency and accountability. As one oil seed trader

attested during a user-validation event, the Malawi Trade Portal has significantly eased the burden on traders.

*“Traders like me face a number of complications—including onsite visits as well as having to deal with multiple government agencies at various locations—just to obtain the necessary papers, forms, permits, and clearances needed to facilitate my import or export business. I also experience long delays, congestion, increased costs, and loss of competitiveness, usually because I often arrive at the border without all necessary documentations. It’s good to have this portal, because we won’t have to go around anymore asking for information and documents. We can just log on to this website and find all the information we need.”*

—An oil seed trader

The MTP is expected to help traders reduce transaction costs and consequently improve the country’s competitiveness. The MTP website contains almost all regulatory trade-related information for import, export, and transit. The information comprises all laws, regulations and other legal instruments, all license and permit requirements, prohibitions, restrictions, technical standards, sanitary and phytosanitary measures, the entire commodity classification and tariffs, all procedures for license or permit application and clearance, and copies of all forms as well as instructions. The information collected is aggregated and integrated into the Trade Portal so it can be presented dynamically in response to traders’ queries. The ob-

jective is for traders to see all the obligations they need to comply with to import or export specific goods—in response to a single query.

## LESSONS LEARNED

***Lesson 1: During data collection, we observed that discrepancies exist between de facto regulations and de jure practices.***

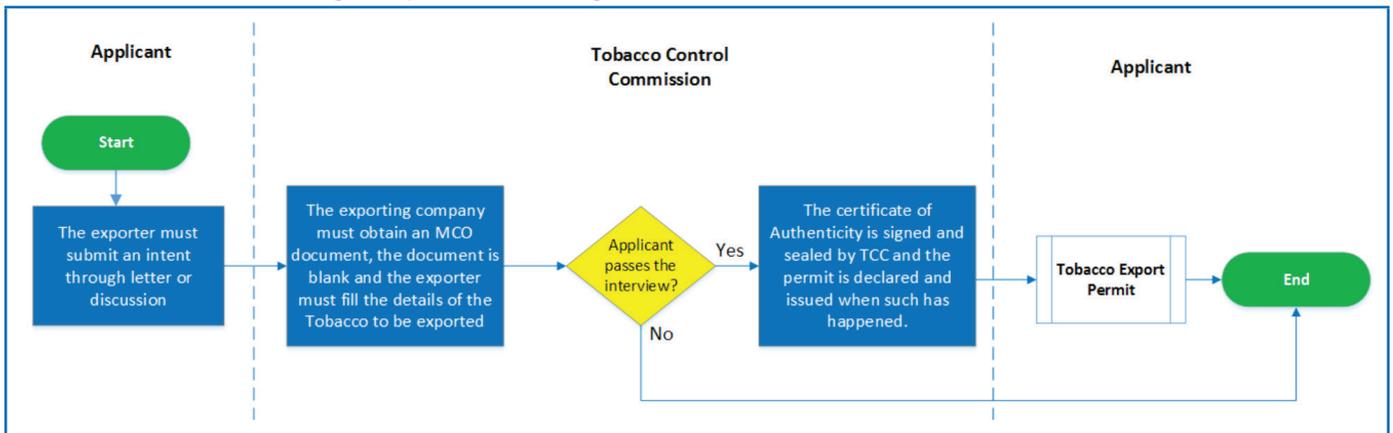
Although it is reasonable to expect that officials would implement regulations as prescribed in the law, there were cases where the practice was misaligned, thereby adding a layer of further requirements that have no legal backing. For example, the tobacco regulations<sup>1</sup> prescribe the law on “Restriction on Export of Tobacco,” which says there is need for an export permit (used interchangeably with “license” in the Act), issued under the Control of Goods Act, to export any type of tobacco. The Control of Goods Act is the core of the Ministry of Industry, Trade and Tourism, so it would make sense for the ministry to issue such a permit. However, in practice, the Tobacco Control Commission has taken over the regulation of exporting tobacco, in total exclusion of the Ministry of Industry, Trade and Tourism.

To address these discrepancies in application, the authorities found it helpful to develop flowcharts of procedures. (See Flowcharts 1 and 2.) These flowcharts also helped raise awareness among the private sector as to which procedure is actually permissible under the law. This process addresses

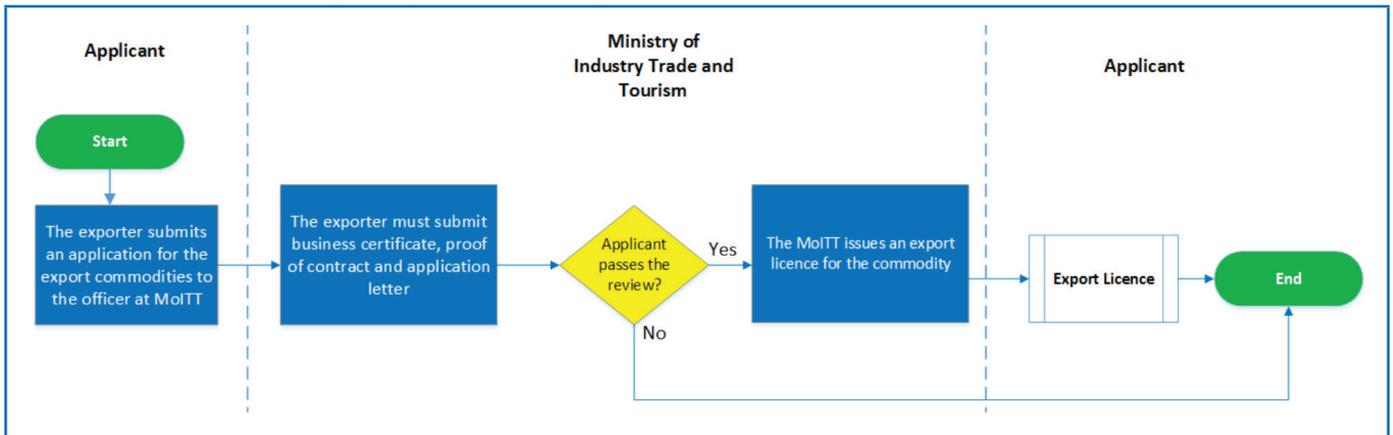
<sup>1</sup> The Tobacco (Export) (Amendment) Regulations (2010), Regulation 2 (1) [Regulation made under the Tobacco Act CAP 65:02 of Laws of Malawi].



Flowchart 1: Process of Obtaining an Export License through the Tobacco Control Commission



Flowchart 2: Process of Obtaining an Export License through the Tobacco Control Commission



directly what have been silent barriers to trade in the country.

**Lesson 2: Slow legal reforms can cause delays in the implementation of “good” policies.**

Part of the reason for a discrepancy between the law and practice is that the rate of legal reforms is much slower than the rate of new policies coming into play. For instance, ministries, departments, and government agencies typically adopt one of two approaches: 1) they regulate on the basis of policy, using their policies as law, without any legal backing, leaving room for them to go beyond their authority, or 2) they simply do not execute policies as they wait for legal

reform. An example of the first approach is the Fisheries Department, which regulates trade in fish and aquaculture products by using the Fisheries and Aquaculture Policy of 2001 instead of the Fisheries Conservation and Management Act of 1998, which has been under review for some years now.



Local fishermen on Lake Malawi.

A question arises as to whether necessity is a justifiable cause. Trade facilitation support from development partners should take a holistic approach, addressing not only the policy environment and formulation of policies but also the legal frameworks and the implementation of laws. This will help ensure that the legal framework does not frustrate the implementation of good trade-facilitation policies.

### ***Lesson 3: Lack of transparency breeds corruption.***

The lack of transparency in the application of commercial laws is overwhelming. The same regulations can be applied differently by different officers in the same department and across different borders. As some cross-border traders put it, “it depends on who is the officer in charge at the moment.” This lack of transparency and consistency creates opportunities for corruption. Each compliance process requires the trader to complete and submit application forms (say, in applying for some permits). There are cases where permits are given orally or where they are available but are simply not used in favor of semiformal approval processes. This lack of uniformity or systemization increases human contact, which fosters corruption. And private sector parties have pointed this out consistently in their interactions with the MTP Secretariat. It is not uncommon to find the same measure or procedure applied differently across different borders up and down the country.

The Trade Portal is raising awareness among traders on the correct application of the regulatory measures and increasing transparency. This reduction in human contact is already empowering traders, who can now counter the wrong application of the law by some officials. The hope is that this

will contribute to a reduction in the incidence of corruption.

### ***Lesson 4: It’s a jungle out there.***

One factor contributing to “thick” borders in Malawi is the presence of overlaps in the jurisdiction of agencies regulating the flow of goods into and out of Malawi. In some instances, the lack of clarity as to which agency is in charge of particular aspects of licensing—or indeed where exactly the line is drawn—has led to unnecessary delays in compliance by traders, thereby adding to costs. For example, the Iodization of Salt Regulations<sup>2</sup> stipulates that non-iodized salt for industrial use can be imported provided that there is prior approval by the minister. The Iodization of Salt Act is administered by the Ministry of Health. It is therefore self-evident that the ministry that the law recognizes to issue the waiver to import non-iodized salt is the Ministry of Health. However, the Trade Portal team found that the Ministry of Industry and Trade has been issuing these waivers—without even consulting the Ministry of Health. At times, this has caused tremendous inconvenience to traders when port public health officers have refused to recognize such waivers.

The Trade Portal is supported by a governance structure that brings together all perspectives to review progress on the project. This platform has also provided an opportunity for the ministries, departments, and agencies to begin to clarify jurisdiction in the application of responsibilities. This was not in the original project design, but it is a positive unintended outcome that, in hindsight, should have been programmed into the initial design.

<sup>2</sup> Salt Regulations (1998), Regulation 18 [Regulations made under the Iodization of Salt Act (1995)].



Malawi Trade Portal tool masthead/header.

## CONCLUSION

A combination of de jure and de facto application of the law is at the heart of the many constraints that the trader faces in Malawi. The slow process of legal reform is also slowing up the implementation of progressive policies that have the potential of facilitating trade. The overall lack of transparency in the administration of trade regulations, while alarming, could be easily resolved by ensuring access to relevant information. The Malawi Trade Portal is now live, and different categories of users—including transporters, small and medium enterprises, researchers, and private firms—have hailed it as robust and an enhancement to their ability to trade efficiently.

The inception of the Malawi Trade Portal is but one step forward in the quest to simplify trade procedures. The next step on the roadmap is to implement a national single window, with the aim of further reducing costs and time required to import and export. One positive externality so far has been improved public-private dialogue in an area that has lacked transparency. Overall, these trade-facilitation measures have the potential to spur growth, investment, and job creation, which is at the core of the government's development drive.



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