

A Legal Guide to Strengthen the Malawian Fertilizer Market



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Acronyms

ADMARC	Agricultural Development Marketing Company
ADP-SP	Agriculture Development Program Support Program
AFAP	African Fertilizer and Agribusiness Partnership
AGRA	Alliance for a Green Revolution in Africa
AMS	Aggregate Measure of Support
AOAC	Association of Official Analytical Chemists
ASWAP	Agricultural Sector Wide Approach Program
ATCC	Agricultural Technology Clearing Committee
AU	African Union
B2B	Business-to-Business
CAADP	Comprehensive Africa Agriculture Development Program
CAN	Calcium Aluminum Nitrate
CCF	Country Cooperation Framework
COMESA	Common Market for Eastern and Southern Africa
EAC	East African Community
ECOWAS	Economic Community of Western African States
ERP	Economic Recovery Plan
ETG	Export Trading Group
EU	European Union
FAO	Food and Agriculture Organization of the United Nations
FISP	Fertilizer Input Support Program
FFRA	Fertilizer Farm Feeds and Remedies Act
FOB	Free on Board
GDP	Gross Domestic Product
Ha	Hectare
IFDC	International Fertilizer Development Centre
IFPRI	International Food Policy Research Institute
ISO	International Organization for Standardization
Kg	Kilograms
Km²	Square Kilometers
LDC	Least Developed Country
MBS	Malawi Bureau of Standards
MDGs	Millennium Development Goals
MDGS	Malawi Growth and Development Strategy
MFRS	Malawi Fertilizer Regulatory Services
MK	Malawian Kwacha
MoAFS	Ministry of Agriculture and Food Security
MoIT	Ministry of Industry and Trade
MT	Metric Tonnes

NAPF	National Agricultural Policy Framework
NASFAM	National Small Holder Farmers Association of Malawi
NAFSN	New Alliance for Food Security and Nutrition
NFS	National Fertilizer Strategy (of Malawi)
NEPAD	The New Partnership for Africa's Development
NML	New Markets Lab
NTB	Non-Tariff Barrier
PPP	Public Private Partnership
RAP	Regional Agricultural Policy
R&D	Research and Development
REC	Regional Economic Community
SADC	Southern Africa Development Communities
SDGs	Sustainable Development Goals
S&DT	Special and Differential Treatment
SFFRFM	Smallholder Farmers Fertilizer Revolving Fund of Malawi
SMEs	Small- and Medium-Sized Enterprises
SSA	Sub-Saharan Africa
SSTP	Scaling Seeds and Technologies Partnership Program
TFTA	Tripartite Free Trade Area
USAID	United States Agency for International Development
USD	United States Dollar
VAT	Value Added Tax
WTO	World Trade Organization

Executive Summary

Access to quality agricultural inputs, including fertilizer, plays an important role in achieving the goals that governments and non-state actors have set to eradicate poverty and ensure food security, including under the New Alliance for Food Security and Nutrition (New Alliance) and Sustainable Development Goals (SDGs). Malawi has taken a number of steps to advance these goals, generate sustainable growth in the agricultural sector, and address the needs of smallholder farmers and the rural poor. However, while Malawi has experienced gross domestic product (GDP) growth in the last decade, more than 50 percent of its population still lives in poverty (World Bank 2015), and the agricultural sector continues to face challenges.

Use of fertilizer in Malawi is by far higher than that in neighboring countries. In fact, Malawi has one of the highest average use rates of fertilizer per ha in sub-Saharan Africa (SSA), which comes close to the target set by the Abuja Declaration. Nonetheless, fertilizer use still is less than half the recommended level (IFDC 2013), and there is a disparity between smallholder farmer and estate use. Availability and affordability of quality fertilizer are key factors, both of which are directly impacted by the legal and regulatory framework. A well-designed legal and regulatory system will play a critical role in enabling the development, access, and availability of high-quality agricultural inputs, contributing to a vibrant agricultural sector that will benefit Malawi's small-scale farmers. Legal systems also will play a role in creating robust food systems, strengthening food security, reducing rural poverty, and ensuring environmental sustainability.

Malawi has pledged to address certain priority policy challenges, including the development and implementation of domestic and regional agro-inputs policies that encourage greater private sector participation in production, marketing, and trade under the New Alliance (G8 Cooperation Framework, n.d.), and steps are underway to address these gaps. A well-designed legal and regulatory framework, with streamlined procedures for market entry and trade could encourage the availability of a wide-range of fertilizers that would cater to the different needs of farmers working in different soil and climatic conditions. Similarly, a well-designed legal and regulatory system could improve the affordability of fertilizer by reducing costs of importation, transport, and distribution. Conversely, a complex and inefficient regulatory system may discourage the availability and affordability of fertilizers through cumbersome requirements, thereby increasing costs.

The legal and regulatory framework in Malawi is limited, and a stand-alone piece of legislation governing fertilizer is lacking. The current legal framework consists of an outdated broad umbrella law that covers areas such as farm seeds, sterilizing plants, and some remedies, while the few provisions applicable to fertilizer do not provide a complete legal framework with sufficient detail. Thus, the opportunity exists to establish a modern, forward-looking legal and regulatory framework on fertilizer that could serve as a regional or international best practice.

As the legal and regulatory system is tested in practice, a number of new opportunities, challenges, and gaps will arise. Recognizing the need for a comprehensive legal framework on fertilizer, the Malawian Government has drafted a Fertilizer Act and implementing Regulations. A Fertilizer Policy is also being developed with assistance from the International Food Policy Research Institute (IFPRI). When approved, the new legal framework likely would mark a significant improvement over the current situation by addressing some of the limitations, loopholes, and gaps. However, the draft Fertilizer Act and Regulations have been under development since 2003 and will require renewed momentum (the proposed changes are highlighted in Table 1 below and in the following chapters). These proposed amendments are one example of how Malawi's legal and regulatory framework continues to evolve and take shape over time.

This Legal Guide to Strengthen the Malawian Fertilizer Market (Malawi Legal Guide or Legal Guide) has been developed by the New Markets Lab (NML) in collaboration with the African Fertilizer and Agribusiness Partnership (AFAP) under the '*Support for the Establishment of a Regional Fertilizer Policy and Regulatory Framework for East and Southern Africa*' project, which is being implemented with support from the Scaling Seeds and Technologies Partnership (SSTP) of the Alliance for a Green Revolution in Africa (AGRA) through the U.S. Agency for International Development (USAID). The project is designed to contribute to the development of a regulatory environment that is conducive to opening markets and encourage harmonization of fertilizer policies in the region, thereby increasing the availability of a wide range of better quality fertilizer grades, types, and technologies to farmers in Eastern and Southern Africa at more affordable prices. The project covers Ethiopia, Malawi, Mozambique, and Tanzania, each of which is the subject of a separate Legal Guide.

Both primary and secondary data were used in the development of this Legal Guide, including legal texts, regulations, policy documents, studies, and reports collected from different sources. In particular, AFAP studies on the four focus countries provided useful information and data. NML and AFAP carried out consultations in July 2016 in Lilongwe, Malawi with representatives of key stakeholders involved in the fertilizer industry, including government institutions, fertilizer companies, and farmer organizations. These consultations helped the partners gain knowledge of stakeholder priorities, experiences, and challenges with the legal and regulatory system.

The Malawi Legal Guide is structured in three chapters, which provide detailed information on the market, policy, legal, and regulatory framework for fertilizer in Malawi and identify key regulatory challenges and approaches along the entire fertilizer value chain. Chapter One sets the context by providing background information on the agricultural sector and level of fertilizer use in Malawi. It also takes a cursory look at the fertilizer market along the entire supply chain:

manufacturing, distribution, and importation. Chapter Two examines the policy, legal, and regulatory frameworks governing fertilizer in Mozambique. Among other things, the chapter covers business registration, licensing, permits, product registration, and import requirements. Chapter Two also assesses the legal and regulatory framework and raises implementation challenges that are likely to impact agricultural sector development. Chapter Three discusses these implementation challenges and presents efforts underway to encourage regional harmonization of fertilizer regulatory frameworks.

Opportunity exists for Malawi to create an enabling environment conducive to development of the fertilizer industry, as the country is in the process of developing its first Fertilizer Act and implementing Regulations and has not yet established an independent regulator dedicated exclusively to fertilizer. Putting in place regulatory and institutional frameworks is, however, only a critical first step in building a vibrant fertilizer industry in the country. What matters most is how effectively regulations are implemented and enforced.

The Legal Guide is designed to articulate the legal and regulatory framework in the fertilizer supply chain and identify key regulatory challenges facing the fertilizer market. Because it is meant to serve as a guide, it could be used to share information on the legal and regulatory environment, facilitate discussion among stakeholders, and guide ongoing efforts to establish an enabling environment conducive to development of the fertilizer sector. The key legal and regulatory issues presented in the Legal Guide are summarized in Table 1 below.

Table 1: Summary of Key Regulatory Issues in Malawi

Issue	Current Status	Possible Approaches
Developing a Comprehensive Legal and Regulatory System for Fertilizer	<ul style="list-style-type: none"> • One of the primary challenges facing the Malawian fertilizer industry is the absence of a comprehensive and modern legal framework governing the different stages of the fertilizer supply chain. The Fertilizers, Farm Feeds and Remedies Act (FFRA) governs several different commodities and only contains a few provisions on fertilizer, leaving a noticeable regulatory gap. • The few fertilizer provisions contained in FFRA are outdated and fail to reflect the current market environment in the country and the world more broadly. The absence of a comprehensive legal framework has led to varying interpretations and practices, which has created uncertainty and unpredictability in the market. • Efforts have been underway since 2003 to develop a new Fertilizer Act and Regulations, both of which are in draft, but Parliament has not yet approved the drafts. More recently, a new Fertilizer Policy has also been drafted but it has not finalized, and this delay has held up approval of the draft law and regulations further. • Although blending is undertaken by some companies, there are no clear rules on blending. 	<ul style="list-style-type: none"> • Enact the draft Fertilizer Act and Regulation, which will be critical for Malawi as the country seeks to enhance agricultural productivity, increase economic development, and reduce poverty. • Although a fertilizer policy is a useful overarching framework, it need not precede a fertilizer law or regulations and should not slow down the process of building the legal and regulatory environment. There are a number of countries in the region that have issued fertilizer laws without previously having a fertilizer policy in place. • Adding specific rules on blending could encourage the increased production and use of blended fertilizer.
Establishing an Institutional Framework for Fertilizer	<ul style="list-style-type: none"> • Malawi lacks an institutional framework that can effectively regulate the different stages of the fertilizer value chain. Currently, the regulatory authority is spread over disparate institutions such as the Ministry of Industry and Trade (MoIT), Malawi Bureau of Standards (MBS), and Ministry of Agriculture and Food Security (MoAFS). Each of these institutions operates without a clearly defined legal mandate for 	<ul style="list-style-type: none"> • Establish an institutional framework that could effectively enforce the legal system, which is an important priority for the government and private sector. • Establish the MFRB, and clearly articulate its role. While it is true that the powers and responsibilities of the MFRB could be gathered from the different

	<p>fertilizer due to the lack of a comprehensive fertilizer law. This gap has created uncertainty and unpredictability in the system.</p> <ul style="list-style-type: none"> • The draft Fertilizer Act aims to establish an autonomous fertilizer agency, the Malawi Fertilizer Regulatory Board (MFRB). However, the powers and responsibilities of the MFRB are not clearly articulated in the draft Fertilizer Act. • Similarly, the draft Fertilizer Act aims to establish a fertilizer Secretariat, but again its powers and responsibilities are not clearly stated. 	<p>provisions of the Act, in the interest of transparency and predictability, it would be better to clearly spell these out in the draft Fertilizer Act.</p> <ul style="list-style-type: none"> • Define the powers and responsibilities of the Secretariat, which could also enhance the transparency and predictability of the regulatory framework.
Improving Regulatory Structure	<ul style="list-style-type: none"> • The proposed Fertilizer Act could benefit from greater structural clarity; as currently drafted, it does not address issues systematically and coherently, making it difficult to follow and understand. 	<ul style="list-style-type: none"> • Simplify the draft Fertilizer Act by addressing regulatory issues along the supply chain (such as production, importation, distribution, and so forth) in separate, consecutive sections.
Addressing Regulatory Fragmentation/Creating a One-Stop Shop	<ul style="list-style-type: none"> • Multiple government institutions are involved in fertilizer regulation, which creates a significant burden on fertilizer importers and contributes to increased costs. • The new draft Fertilizer Act, in its current form, foresees creation of an autonomous fertilizer agency, the MFRB. Although creation of this institution would reduce transaction costs, help preserve institutional memory, and build necessary regulatory expertise, the draft legislation, in its current state, stops short of establishing the agency as a one-stop shop that coordinates functions. 	<ul style="list-style-type: none"> • Establish MFRB as an independent regulatory agency that can act as a one-stop shop, where businesses could complete all requirements. This agency could play an important role in facilitating a more efficient regulatory environment for the fertilizer industry. • In addition, the Malawi Investment and Trade Centre, itself a good regulatory practice, could be expanded to include fertilizer and other inputs. • As Malawi aims to significantly expand use of fertilizer in the country, streamlining the regulatory structure becomes increasingly urgent. The resulting reduction of regulatory costs will translate to reduced price of fertilizer at the farm gate level.
Addressing Gaps in Legal and Regulatory Framework	<ul style="list-style-type: none"> • The draft Fertilizer Act has critical gaps that will impact the development of the market. Specifically, the draft Fertilizer Act does not include: <ul style="list-style-type: none"> ➤ Specific requirements for agrodealers; 	<ul style="list-style-type: none"> • Address gaps in the legal system, which will determine the effectiveness of the regulatory framework in responding to market and farmer needs. Clear provisions with sufficient detail on

	<ul style="list-style-type: none"> ➤ Specific testing principles; ➤ Fertilizer standards; and ➤ Specific rules on importation, exportation, and fertilizer in transit. 	these issues for regulators and market stakeholders alike would support effective implementation of a comprehensive regulatory framework.
Filling Gaps in Bio-Fertilizer Regulation	<ul style="list-style-type: none"> • There are no specific rules that take into account the unique nature of bio-fertilizers. 	<ul style="list-style-type: none"> • Address gap in regulation of bio-fertilizers in the draft Fertilizer Act and subsequent regulations.
Clarifying Conditions for Refusal of Registration for Fertilizer Dealer or Importer	<ul style="list-style-type: none"> • Under the draft Fertilizer Act, authorities may reject applications for registration to sell or import fertilizer when an applicant has a prior conviction under the Fertilizer Act or its implementing regulations within three years immediately preceding the date of application. This can be problematic in some cases: <ul style="list-style-type: none"> ➤ Refusal of registration does not appear to be linked to the severity of the violation (no distinction is made between major and minor offences); ➤ An applicant may have already been subject to penalties for violation of the Act, including payment of requisite fines. 	<ul style="list-style-type: none"> • Amend the draft Fertilizer Act to adjust the provisions on refusal of a registration based on severity of prior violation.
Clarifying Appeal Process for Cancellation of Registration to Sell or Import Fertilizer	<ul style="list-style-type: none"> • The draft Fertilizer Act foresees the possibility of appeal from a decision to cancel a registration to sell or import fertilizer, which is a good regulatory practice, but the grounds for cancellation are not clearly articulated in the draft Fertilizer Act or draft Fertilizer Regulations. 	<ul style="list-style-type: none"> • Provide clear grounds for cancellation of registration as the draft Fertilizer Act and draft Fertilizer Regulations go through revisions. Filling this gap will narrow discretion for regulators, increasing transparency and predictability in the regulatory system.
Evaluating Rules on Confidentiality	<ul style="list-style-type: none"> • The draft Fertilizer Act includes provisions on confidentiality, and the MFRB is required to treat as confidential every application for a certificate of registration, except when ordered to release such information by the Minister or court of law. • Confidentiality plays an important role in protecting the applicant's information from undue use by third parties. However, some of the information required for registration is 	<ul style="list-style-type: none"> • Evaluate the requirement in a way that balances the need for confidentiality with interest in access to information by specifically stating which information should be kept confidential.

	not sensitive.	
Increasing Inspection Capacity	<ul style="list-style-type: none"> There are not enough qualified fertilizer inspectors in the country. 	<ul style="list-style-type: none"> Increase the number of inspectors and improve their capacity through continuous training to help improve regulatory functions across the fertilizer value chain.
Streamlining the Process for Import Permits	<ul style="list-style-type: none"> Import permits are valid for six months and renewal for the same period. Regulators assert two reasons for requiring an import permit: one is quality control and the other data collection, yet these goals could be achieved through other means. 	<ul style="list-style-type: none"> Evaluate process for import permits; quality can be ensured through existing quality control procedures.
Ensuring Appropriate Penalties for Violations	<p>Under the draft Fertilizer Act, every person who contravenes any provision of the draft Act or any regulations enacted under the draft Act shall be guilty of an offense and liable for a fine not exceeding MK 1,000,000 and imprisonment for five years with hard labor. The fines and terms of imprisonment are defined in general terms and have not been linked to different provisions.</p> <ul style="list-style-type: none"> As currently drafted, imposition of fines and prison terms appears to be under the complete discretion of the regulator. 	<ul style="list-style-type: none"> Evaluate penalties in light of deterrence goals, with penalties clearly defined and set at an appropriate level. In addition, consider raising fines without additional sanctions, particularly since the appropriateness of hard labor as part of the penalty should be questioned.
Addressing Value-Added Tax (VAT) for Services	<ul style="list-style-type: none"> Under current tax laws, fertilizer is exempt from customs duties and VAT in order to encourage fertilizer use and affordability. However, services related to fertilizer, such as port and transport services, are still subject to VAT. 	<ul style="list-style-type: none"> Eliminate VAT for fertilizer-related services, which could lower the price of fertilizer and increase affordability of fertilizer in line with the government's regulatory goals.
Improving Access to Finance	<ul style="list-style-type: none"> Farmers' access to quality seed, fertilizer, and agrochemicals is limited by challenges in accessing finance. 	<ul style="list-style-type: none"> Address certain legal elements of financial services delivery and tools for financing and present innovative solutions to challenges with access to finance, such as those around institutional capability (legal structures for aggregation models, including cooperatives, and other financial services delivery mechanisms), risk management (creation of collateral registry), and bankability.

		<ul style="list-style-type: none"> • Promotion of grain futures markets. • Focus on analysis and increased collaboration between regulators and financial services providers to develop models that could close gaps related to financing for seeds, fertilizers, and agrochemicals.
<p>Encouraging Regional Harmonization</p>	<p>Farmers near national borders share similar soils and farming systems with farmers in neighboring countries. Regional harmonization of fertilizer rules and regulations would enable farmers in Malawi to benefit from fertilizers developed in neighboring countries without having to register each fertilizer blend anew.</p> <ul style="list-style-type: none"> • Malawi is a member of the Common Market for Eastern and Southern Africa (COMESA) and Southern African Development Community (SADC). • COMESA, in partnership with AFAP, has undertaken a review of national policies and regulations on fertilizer importation, manufacturing, distribution, and use, with the aim of developing recommendations for the establishment of a harmonized regulatory framework for the region. • Regional harmonization of fertilizer in SADC has not yet moved forward. The SADC Ministers of Agriculture adopted the Regional Agricultural Policy (RAP) in 2014. While an important development in the move towards regional harmonization of agricultural policies, including fertilizer and other inputs, the RAP is meant only to define some common objectives and measures to guide members rather than serving as a binding mechanism that prescribes specific obligations for the member states. • In SADC, the broad policy objectives included in the RAP would need to be translated into specific legal instruments. As it stands now, the RAP represents a political commitment but 	<ul style="list-style-type: none"> • Encourage development of a regional fertilizer strategy within COMESA and SADC to increase competition in the local market and allow manufacturers and suppliers the opportunity of operating in a larger market with fewer constraints. It also could reduce administrative costs by sharing resources and facilities within the regional market. • Malawi could take a lead on fertilizer harmonization efforts within the COMESA and SADC, as stakeholders in Malawi’s fertilizer market stand to benefit from a harmonized regional market.

	not a legal commitment.	
Establishing National Fertilizer Dialogue Platform	<ul style="list-style-type: none"> • One way of establishing a healthy fertilizer environment is by establishing a public-private forum where issues affecting fertilizer could be discussed and addressed on a regular basis. In Mozambique, the <i>National Platform for Dialogue and Promotion of Fertilizer Use</i> (AMOFERT) plays an important role for dialogue among a range of fertilizer industry stakeholders (public and private sectors with civil society). • In addition to facilitating regular dialogue, such a forum also could improve understanding of the respective roles and responsibilities of the public and private sectors in the fertilizer market. 	<ul style="list-style-type: none"> • Establish a public-private platform to discuss fertilizer issues. Mozambique's Platform could provide a model. • Alternatively, a special committee or task force could be established within an existing public-private dialogue forum that addresses fertilizer issues.
Raising Awareness of the Legal and Regulatory System	<ul style="list-style-type: none"> • Stakeholders have reported that importers, suppliers, agrodealers, farmers, and even regulators have limited knowledge and awareness about legal and regulatory frameworks. • Limited knowledge of legal and regulatory processes and difficulty accessing legal assistance leaves small- and medium-sized enterprises (SMEs) and smallholder farmers vulnerable and undermines efforts to implement formal legal frameworks to regulate and strengthen the fertilizer market. • Small farmers in Malawi are the most vulnerable stakeholders in the fertilizer value chain because of their lack of knowledge about their rights and obligations in fertilizer transactions. 	<ul style="list-style-type: none"> • Address challenges through (i) increased dissemination of information regarding laws and regulations, particularly as these systems change over time, (ii) the provision of assistance to SMEs and farmers in preparing or interpreting legal documents such as contracts, and (iii) the provision of transactional legal services to individuals working with the agricultural sector. • All of these could be done in combination with the development of a legal education curriculum to train and equip lawyers and improve delivery of agricultural legal services to stakeholders. • Train farmers on the aspects of the legal and regulatory system that impact them, and enhance knowledge of their rights and obligations to make them informed partners in the fertilizer industry.
Training Farmers	<ul style="list-style-type: none"> • Small farmers in Malawi are the most vulnerable stakeholders in the fertilizer value chain because of their lack of knowledge 	<ul style="list-style-type: none"> • Train farmers on the aspects of the legal and regulatory system that impact them and enhance

	about their rights and obligations in fertilizer transactions.	their knowledge of their rights and obligations to make them informed partners in the fertilizer industry.
Strengthening Output Demand	<ul style="list-style-type: none"> Farmers' interest in purchasing fertilizer is largely determined by their ability to access output markets. Farmers lack the incentive to spend their resources on fertilizer if they do not see returns from fertilizer use. 	<p>Consider a number of actions to strengthen output demand:</p> <ul style="list-style-type: none"> ➤ One measure could be to provide timely and regular information about output prices. ➤ Developing on- or near-farm storage capacity also could increase options for farmers, reducing the pressure to sell at harvest lows and increasing opportunities to connect to more steady demand. ➤ Training farmers on proper handling and storage could significantly enhance income by reducing post-harvest losses. ➤ Contract farming arrangements could be used to both help farmers access high-quality fertilizer and connect farmers with sustainable market demand.

Source: New Markets Lab

Chapter One: An Overview of the Agricultural Sector and Use and Supply of Fertilizer in Malawi

Overview of the Agricultural Sector in Malawi

Malawi is located on the east coast of southern Africa, covering an area of 118,500 square kilometers (km²). Within this area, 74 percent of the country is land and 26 percent is made up of lakes and rivers. Agriculture is the single most important sector in Malawi's economy, generating more than 75 percent of foreign exchange earnings, employing over 85 percent of the population, and accounting for about 30 percent of the GDP (WDI, 2014). Agriculture in Malawi is mainly rain-fed and is dominated by smallholder farmers. In 2014, the population was estimated at 16 million people, 84 percent of whom lived in rural areas (World Bank 2015). With around 134 persons per km² of land, Malawi is one of the most densely populated countries in the world (FAO 2015).

As in many African countries, smallholder farmers in Malawi, who cultivate 96 percent of total cropland and produce 99 percent of total agricultural output, are the primary stakeholders in the agricultural sector. These small, resource-poor farmers cultivate more than three million hectares (ha), with an average land holding of 0.5 to 0.8 ha. This environment has made farming difficult, with stagnant low productivity (IFDC 2013). These challenges are exacerbated by weak links to markets; high import and export costs; and limited access to extension services, land, and credit (IFDC 2013). The most important food crops are maize, cassava, and potatoes, while tobacco and cotton are grown as cash crops (FAO 2015). The average cereal yield among smallholders is 2.0 metric tons (MT) per ha, and Malawi's agriculture has been characterized by low and stagnant yields, factors that are contributing to pervasive poverty and food insecurity. Yields of major crops are far lower than both Malawi's potential and world averages in most cases (FAO 2015).

Low productivity among smallholders can be attributed to declining soil fertility, due to the high number of subsistence farmers, dependency on rain-fed farming systems and the limited use of traditional production technologies (Chirwa et al., 2011). In addition, limited access to improved inputs is also a contributing factor to the low agricultural productivity (IFDC 2013).

Malawi's socioeconomic indicators have shown significant progress during the 2005 to 2013 period (FAO 2015). During this period Malawi's average annual GDP growth was 5.5 percent (WDI, 2014). Despite the progress in terms of GDP, over 50 percent of the population still lives in poverty. National poverty rates show a noticeable difference between urban and rural areas,

since it is estimated that three out of five people in rural areas live in poverty, compared to only one in five inhabitants in urban areas (FAO 2015). Poverty continues to be higher in the rural areas, which is associated with the limited development of agriculture, limited access to the market, and low productivity of food crops.

Eradication of extreme poverty and hunger are commitments of the international community and part of the New Alliance commitments, Millennium Development Goals (MDGs), and, building upon these, the SDGs, which aim to eradicate poverty and hunger by 2030. Given that a large majority of the poor in Africa, including Malawi, live in rural areas and rely heavily upon agriculture, agricultural productivity and rural development are a significant factor in all of these efforts. The New Alliance, launched in May 2012, was founded upon the understanding that investment in agriculture is key to ending hunger and poverty in Africa and that creating the conditions that will allow the African countries to improve agricultural productivity and develop their agroindustry by attracting more private investment in agriculture will help unlock this potential (New Alliance 2014).

The ten New Alliance participating countries, including Malawi, adopted ‘Country Cooperation Frameworks’ (CCFs), which list policy commitments, including those to reform or develop policies that will facilitate responsible private investment in agriculture in support of smallholder farmers. Notably, the Government of Malawi has made commitments to facilitate increased access of fertilizer and other inputs by developing or reforming policies and regulations to enhance the participation of the private sector in the production, importation, and distribution of inputs including fertilizer (New Alliance 2012; See Box 1 below, which outlines commitments related to inputs, including fertilizer). Action on a number of commitments is in progress, and fully addressing identified constraints and implementing the government’s commitments could significantly improve the climate for private investment in agriculture, enhance food security, and address poverty.

Malawi has made commitments to facilitate increased access of inputs by developing or reforming policies and regulations to enhance the participation of the private sector in the production, importation, and distribution of inputs, including fertilizer (New Alliance 2012). More specifically, Malawi made commitments to create a conducive enabling environment with reduced risk in doing business and fair market returns for smallholder farmers; improve access to water; improve productivity, and increase uptake of nutritive foods and diets so as to reduce malnutrition. Addressing these constraints could significantly improve the investment climate for private companies, and unlock further investment opportunities (New Alliance 2014-2015) (See Box 1 below).

Box 1: Malawi Inputs-Related Commitments Under the G8 Cooperation Framework to Support the New Alliance for Food Security and Nutrition

Objective	Framework Policy Actions (G8)
<p>Create a competitive environment with reduced risk in doing business for private sector investments in various value chains related to food security and nutrition, and ensure consistency and coherence in policies.</p>	<ol style="list-style-type: none"> 1. Fast track finalisation of the National Agriculture Policy, National Irrigation Policy and Industry and Trade Policy 2. Eliminate export bans on other crops but not maize; review the Special Crops Act and the Control of Goods Act in relation to the Malawi Growth and Development Strategy (MGDS) and the National Export Strategy 3. Realign existing Government policies and strategies to ensure that they are coherent and consistent and ensure that the various relevant departments work together 5. Fast track the doing business reforms and review taxation regimes in order to maximise incentives to investment in the growth clusters under the National Export Strategy and to support agricultural mechanization 6. Fast track the implementation of the Financial Sector Development Strategy, particularly the Government is committed to facilitating and enabling rural empowerment through increased access to finance for farm inputs and agricultural and water development 7. Government will make the Export Development Fund more cost effective and focused on service delivery 8. Government will make the Malawi Investment and Trade Centre, a one stop shop whose roles will include promotion and attraction of investment to the key clusters of the NES, trade facilitation and ensuring smooth information flow to investors. <i>Status: In place and could be extended to fertilizer.</i>
<p>Improve access to land, water, farm inputs, and basic infrastructure to support food security and nutrition.</p>	<p>Commitment to implementation of SADC and COMESA Seed Harmonization Programme through:</p> <ol style="list-style-type: none"> a. Enactment of crop variety protection legislation b. Enactment of amended phytosanitary legislation (Malawi Plant Protection Act, 1969) c. Review of National Seed Certification System (Seed Act, 1996) d. Review of the current Pesticide Act e. Fast track the development of the Fertilizer Regulatory Framework and the Contract Farming Strategy <i>Status: Draft Fertilizer Act, Regulation, and Policy under consideration.</i> <p>5. Government is committed to maintain its ongoing efforts to increase sustainability, transparency, accountability and value for money in its approach to the Farm Input Subsidy Programme.</p>
<p>Reorganize extension services targeting nutrition, agribusiness and cooperative programs focusing on priority crops in their primary growing area</p>	<ol style="list-style-type: none"> 4. Government will gradually fill existing vacancies in extension and agricultural research to facilitate implementation of quality control/regulatory services (seed certification, phytosanitary and food safety). 5. Government will foster a favorable enabling environment for contract farming. <i>Status: Under development.</i>

Source: Adapted from G8 Cooperation Framework to Support the “New Alliance for Food Security and Nutrition” in Malawi

Commitments to increase investment in agriculture also abound within African institutions. In 2014, the African Union (AU) launched the Comprehensive African Agriculture Development Program (CAADP), which, among other things, requires African governments to allocate 10 percent of their national budgets to agriculture to attain a six percent annual growth rate in the agricultural sector and a 20 percent reduction in poverty for the entire continent. This commitment was reaffirmed by the AU Heads of State and Government in 2014 under the Malabo Declaration on Accelerated Agricultural Growth and Transformation for Shared Prosperity and Improved Livelihoods, which pledged to end hunger in Africa by 2025 through, *inter alia*, doubling current agricultural productivity levels. Increased access to quality and affordable crop inputs will play a major role in these efforts.

In recognition of the urgent need for a strategic investment program to increase the availability and use of fertilizer in the continent, the AU Ministers of Agriculture convened in Abuja on 12 June 2006 and adopted the Abuja Declaration. The Abuja Declaration not only declared fertilizer, from both inorganic and organic sources, as a strategic commodity without borders, but it also called upon the AU Member States to accelerate farmers' timely access to fertilizers. In what appears to be a very ambitious goal, the Abuja Declaration calls for the AU Member States to increase the level of fertilizer use from the current average of eight kg per ha to an average of at least 50 kg per ha by 2015. Although this goal largely has remained unfulfilled, it nevertheless shows the increased importance AU Member States attach to the use of fertilizer to enhance agricultural productivity.

Malawi has emphasized fertilizer as an important mechanism to enhance agricultural productivity and eradicate poverty. Both the **Malawi Growth and Development Strategy** (MGDS) (MGDS I, 2006–2011 followed by the MGDS II 2011–2016) and the **Economic Recovery Plan** (ERP) emphasize increased use of fertilizer and other inputs as critical elements in enhancing agricultural productivity and promoting economic development.

The Government of Malawi reviewed various national development strategies and agricultural laws and policies in order to produce the **National Agricultural Policy Framework** (NAPF). The NAPF seeks to promote agricultural productivity and sustainable management of land resources to achieve national food security, increased incomes, and ensure sustainable socio-economic growth and development (MoAFS, 2011). Malawi has also issued a **Fertilizer Strategy** which emphasizes increased use of fertilizer and other inputs as a critical element in enhancing agricultural productivity and promoting economic development.

The legal and regulatory environment will play a critical role in translating the broad goals of the public sector at the international, regional, and national levels into concrete action to enhance use of fertilizer and increase agricultural productivity. Depending upon their design and implementation, legal and regulatory frameworks can encourage or discourage the availability of

and access to quality fertilizer, and the numerous rules and requirements will individually and or together play a role. African governments should thus ensure that legal and regulatory systems facilitate, not inhibit, their desire to enhance agricultural productivity, *inter alia*, through increased use of fertilizer.

Fertilizer Use in Malawi

Fertilizer use in Malawi has seen a significant increase in the last decade, and demand of fertilizer has steadily risen from 25 kg per ha in 2004 to 44 kg per ha in 2014 (FAO 2015). An estimated one-third of the country's farming population use fertilizer. Comparably, fertilizer use among smallholder farmers in Malawi is higher than in neighboring countries. This can be attributed to the Farm Input Support Program (FISP) program.

However, fertilizer use still is less than half the recommended level (IFDC 2013). Further, there is a great disparity in the use of fertilizer between smallholder farmers and estate farms. Smallholder average fertilizer consumption is 34 kg per ha, which is even lower than the national average and recommended use, whereas estate farms consume an average of 150 kg per ha (IFDC 2013). Based on recommended application rates, the potential fertilizer demand could increase to 600,000 MT (IFDC 2013). Limited demand and use of fertilizer has been influenced by erratic rainfall, resulting in high variability of crop yields. In addition, low output prices relative to fertilizer prices have also dampened fertilizer demand. The demand-depressing effects of low output prices are aggravated further by farmers' lack of market information, financial constraints to purchasing fertilizer, and a lack of knowledge on best fertilizer/agronomic practices (IFDC 2013).

Table 2: Use of Fertilizer in Malawi

Year	Fertilizer distributed	Surface Area applied	Fertilizer per hectare
	ton	ha	kg / ha
2004	227 927	9117	25
2005	261 036	8701	30
2006	291 982	8588	34
2007	302 547	8404	36
2008	305 605	8489	36
2009	328 580	8425	39
2010	310 431	8169	38
2011	330 828	8271	40
2012	330 560	8062	41
2013	350 070	8141	43
2014	360 175	8186	44
Average	309 067	8414	37

Source: Kamchacha 2015

The types of fertilizers used in Malawi include Urea (33 percent) 23:21:0+4S (29 percent), CAN (15 percent), and Compound-D (seven percent) (AFAP 2016). Malawian farmers use a narrow range of fertilizer products that have been selected based on traditional practices, while estate and commercial farmers use a broader range of formulations tailored to their specific crop and soil requirements (AFAP 2016).

Malawi’s Agricultural Input Subsidy Program

Input subsidies were an important feature of Malawi’s agricultural sector for decades, until they were largely abolished in the 1990s as part of structural reform programs (FAO 2015). A large-scale input subsidy program was reintroduced during the 2005/06 crop season to increase agricultural productivity and improve food security following the 2005 food crisis (FAO 2015). The overall objective of the Farm Inputs Subsidy Program (FISP) was to “increase resource poor smallholder farmers’ access to improved agricultural inputs in order to achieve food self-sufficiency and increase resource poor smallholder farmers’ incomes through increased food and cash crop production” (Dorward et al 2011).

The program has resulted in the noticeable growth of subsidized fertilizer and seed sales and the growing involvement of the private sector in procurement and importation of inputs (FAO 2015). The program has also created awareness of the use of fertilizer and has resulted in an increase in agricultural production. Nonetheless, the program has been controversial, in part due to the appropriateness and sustainability of the system and also due to the way in which it is being administered.

An important concern with the system relates to its sustainability. The program accounts for up to 80 percent of the MoAFS budget, creating budgetary pressures on other activities such as research and development, which are critically important for sustainable agricultural development in the country (See Table 3). Sustaining such a large expenditure for the subsidy program could present a challenge for Malawi, given limited resources, and donors may not be inclined to support the program indefinitely. A future program may require a careful articulation of the objectives of the program and a clear timeline to phase it out once the objectives are met.

Table 3: Malawi’s FISP Budget (USD millions)

	2008/09	2009/10	2010/11	2011/12
Cost	139.14	135.04	129.99	129.48
Donor Support	33.75	17.48	22.05	44.85
% of MoAFS budget	67.6	52.7	60.1	48.9

Source: FAO (2015)

Most of the concerns surrounding the FISP are related to the way the system is being administered and implemented, and some stakeholders have raised questions regarding the program's transparency. The involvement of the state agencies (ADMARC and SFFRFM) in the market also has created some concern about the fairness of the rules of the game. These agencies benefit from government transport and storage facilities at costs well below market levels, which offsets their situation compared with private sector distributors (AFAP 2016). The participation of state agencies in the market can create challenges with the distribution of subsidized fertilizer, at times adding transportation costs (AFAP 2016). Other concerns with the FISP include delays in settlement of the vouchers (reimbursement); administrative challenges; and selection of beneficiaries based on political considerations (rather than need). The proposed reforms to the program aim to address some of these concerns by allowing increased participation of the private sector in the supply, distribution, and direct retail of some of the fertilizer. Overall, Malawi seems to be moving towards more targeted fertilizer subsidies and increasing reliance on social safety nets.

Given the legal and regulatory focus of this Malawi Legal Guide, the international disciplines on agricultural subsidies are worth a brief mention for context. The Agreement on Agriculture of the World Trade Organization (WTO) establishes disciplines on domestic subsidies that Members provide to their agricultural sectors. Agricultural domestic support measures that have a direct effect on production and trade are subject to certain disciplines that determine the extent of their use. Measures are classified according to a "traffic light system" comprised of an amber box, blue box, and green box, and all Members must commit to reduce the amount of money spent on domestic support measures for the agricultural sector each year, i.e., their "Aggregate Measure of Support (AMS)." Measures that fall under the amber box, or subsidies that distort trade and production such as some input support subsidies, count towards the AMS calculation and any amber box subsidy above the AMS is prohibited.

However, Article 6(2) of the Agreement on Agriculture provides special and differential treatment (S&DT) for developing countries, exempting certain domestic support measures from the AMS calculation. Under 6(2), developing countries Members may exempt from their AMS calculation any domestic support measures that are intended to "encourage agricultural and rural development" as "an integral part of the development programs of developing countries," including "agricultural input subsidies generally available to low-income or resource-poor producers." As a developing country, the S&DT provisions of the Agreement on Agriculture, would apply to Malawi, which would likely pertain to the FISP program. Domestic support is, however, a complicated area of law and would bear further assessment. It is important to be aware of this context, and no other international or regional trade rules limit Malawi's ability to provide input subsidies.

The Fertilizer Supply Chain in Malawi

The fertilizer market in Malawi was liberalized in the 1990s. Since then, the private sector has been active in fertilizer production, importation, and distribution. However, although the government liberalized its agricultural input markets two decades ago, the public sector continues to play an important role in the fertilizer market through the FISP program. As a result, Malawi currently has a hybrid public-private fertilizer supply system. In addition to private companies, the government plays an important role in the fertilizer supply system through state agencies, the Smallholder Farmers Fertilizer Revolving Fund of Malawi (SFFRFM), and the Agricultural Development and Marketing Corporation (ADMARC). The SFFRFM is the main recipient of subsidized fertilizer imported by the private importers who deliver the product to the SFFRFM regional warehouses. These facilities, in turn, deliver the product to the ADMARC rural warehouses and then to the retail outlets located in rural areas closer to farmers. The state agencies are generally involved in the distribution of subsidized fertilizer using their outlet network in the rural areas that can reach smallholder farmers. They have about 321 small- to medium-size warehouses and 11 central depots across the country, catering mainly to the FISP (IFDC 2013).

There are 14 fertilizer importers in Malawi, with Farmers World and ETG leading the market and Nyiombo, SFFRFM, Malawi Fertilizer Company, and Optichem 2000 operating in the next tier (AFAP 2016). The largest seven companies provide 81 percent of the total supply (AFAP 2016). Malawi Fertilizer Company and Optichem have blending facilities, as they import raw materials to do blending. The blended products are mainly being supplied to the sugar, coffee, and tea estates (See Figure 1 below).

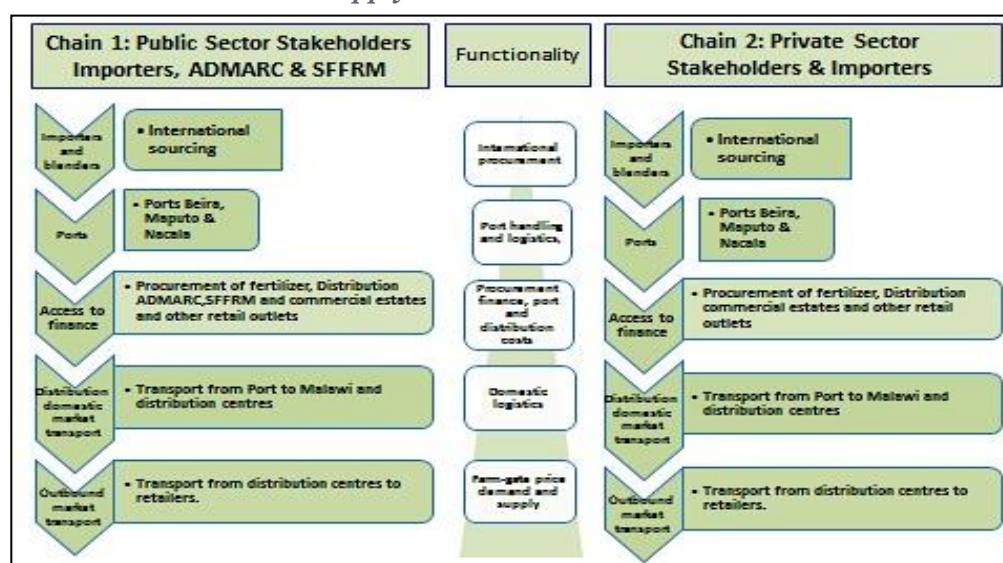
Private companies supply an informal network of about 250 independent agrodealers supported by donor programs through the Agri-Input Suppliers Association of Malawi (AISAM) and the Citizens Network for Foreign Affairs (CNFA), as well as donor-funded programs and NGOs involved in input procurement and distribution to smallholder farmers (AFAP 2016). Private firms are currently the major importers of fertilizers and account for 92 percent of fertilizer imports. The FISP accounts for an average of 45 percent of the fertilizer imports, while the remaining 55 percent is sold in the open market (AFAP 2016). All importers are involved in wholesale and distribution activities; however, the existing dealer networks for fertilizer are not well developed in the market and only cover certain areas mainly because of the limited demand for fertilizer at the farmer level (AFAP 2016).

Figure 1: Main Suppliers of Fertilizer in Malawi

No	Name of Supplier
1	Agora *
2	Agricultural trading
3	ARL (former Yara)
4	Export Trading Group (ETG) *
5	Farmers World *
6	Malawi Fertilizer Company *
7	Mulli Brothers
8	Nyiombo Fertilizer *
9	Optichem 2000 Limited *
10	Rab Processors
11	Sea land Investment
12	SFFRFM *
13	Simama General dealers
14	Transglobe Limited
Total	
Footnote: * Largest companies	
<i>Source: Kamchacha 2015</i>	

The public-private nature of the fertilizer market in Malawi has given rise to two tiers of supply chain in the country. The first supplies the FISP and is comprised of the private sector, as importers, and the public sector, as distributors. This supply chain is dominated and driven by the public sector. The second is outside of the FISP system, which supplies to the market, and the importation and distribution are carried out entirely by the private sector with no involvement of the public sector.

Figure 2: The Two-Tier Fertilizer Supply Chain in Malawi



Source: AFAP 2016

From 2010 to 2014, fertilizer imports grew steadily from 310,431 tons (2010) to 360,175 tons (2014) per annum (AFAP 2016). The final retail prices to smallholder farmers are USD 859 per ton for MOP and USD 758 per ton for Urea (AFAP 2016). The main cost components are Cost, Insurance, and Freight (CIF), port charges, taxes, transportation, and total profit margins by traders. The largest cost component of fertilizer destined for the Malawi market is the CIF of fertilizer. This cost accounts for 72 percent and 68 percent respectively to the retail price of MOP and Urea.

The second largest cost component is total margins, which account for 12 percent and 14 percent of the retail price of MOP and Urea respectively. Transport costs tend to be fairly high in landlocked countries like Malawi, where they account for nine percent and 10 percent of the retail price of MOP and Urea respectively (AFAP 2016). Port charges, bagging, and handling are the third largest component, accounting for five percent and six percent of the retail price of MOP and Urea respectively. Finally, taxes account for two percent of the retail price of both MOP and Urea (AFAP 2016).

Table 4: Cost Breakdown for MOP and Urea (%) in Malawi

Fertilizer	CIF cost	Port Charges, Bagging, Handling	Transport	Taxes	Margin
MOP	72	5	9	2	12
Urea	68	6	10	2	14

Source: Adapted from AFAP 2016

As a landlocked country, the availability and cost of fertilizer in Malawi are greatly influenced by the choice of entry port in neighboring countries. The main ports of entry are Beira and Nacala, Mozambique and Dar es Salaam, Tanzania. Each of these ports offers different cost structures as a result of their level of efficiency on product loading and unloading and the distance to delivery points in Malawi (IFDC 2013). In many cases, inefficient port facilities cause delays at port and increased demurrage, which when combined with poor roads and insufficient and obsolete transportation equipment, contribute to high transportation costs (IFDC 2013). Therefore, the cost of fertilizer is heavily influenced by government policies and regulations not only in Malawi, but also those in Mozambique and to a lesser extent Tanzania.

Domestic transportation costs to reach retail outlets in Malawi are high and remain a major component of the overall cost structure. This is mainly the result of poor road conditions in the country. As noted, margins are also a major cost component of the fertilizer supply chain. Major importer margins remain high compared to neighboring countries. The reason for such high margins remains unexplained, and this is an area in which effective regulations could play an important role by checking possible abuses by importers and distributors.

Chapter Two: The Institutional, Policy, Legal, and Regulatory Framework for Fertilizer

Fertilizer Policy and Strategy

Countries typically govern fertilizer through a combination of policy and legal instruments. A fertilizer policy generally is viewed as the foundation upon which the legal and regulatory systems is structured. Fertilizer policies can be useful in setting the overall direction for development of the enabling environment for fertilizer, with laws and regulations then put in place to create more specific, and more binding, rules and obligations.

Malawi does not currently have a specific policy on fertilizer, but a Fertilizer Policy is under development. A fertilizer strategy has also been in place since 2012 (discussed below). Although in general, a policy is considered a broad statement of intent by the government and a strategy a description of how policy objectives and goals can be achieved, the difference between the two often matters little from a practical perspective, and, traditionally, some countries have tended to use policies while others have favored strategies. Box 2 below outlines the policy, legal and regulatory instruments governing the fertilizer sector in Malawi.

Box 2: Malawi's Policy, Legal, and Regulatory Instruments Related to Fertilizer

Current Instruments:

- Malawi Growth and Development Strategy (MGDS), 2011-2016 (current)
- Agricultural Sector Wide Approach (ASWAp), 2010
- National Fertilizer Strategy (NFS), 2012
- Fertilizers, Farm Feeds and Remedies Act (FFRA), 1973, as amended 1996

Instruments under Development:

- Fertilizer Act (under development since 2003; modified 2007)
- Fertilizer Regulations (under development since 2003)
- Fertilizer Policy

Source: New Markets Lab

The overarching national development framework, the **Malawi Growth and Development Strategy (MGDS)** (2006–2011) followed by the MGDS II (2011–2016), aims to “reduce poverty through sustained economic growth and infrastructure development.” The MGDS has

placed a great deal of emphasis on the agricultural sector, which is expected to help Malawi achieve sustained economic growth and reduce poverty. In particular, MDGII aims to maintain yearly average GDP growth of 6.9 percent, in which agricultural productivity, diversification, and commercialization would play an important role.

Despite being recognized as the driver of economic growth in all of Malawi's overarching policy frameworks, agricultural development priorities were only recently translated into a series of sector-specific strategic documents. In order to achieve the goals articulated in the MGDS, MoAFS and its development partners formulated the **Agriculture Development Program Support Program (ADP-SP)**, which seeks to align donor funding with the government's development goals in order to increase productivity of food and cash crops, while ensuring sustainable use of natural resources, and advancing food security, real economic growth, and poverty reduction (IFDC 2013). Another pillar of the country's economic development agenda is the **Economic Recovery Plan (ERP)**, launched in May 2012, which stipulates short- and medium-term implementation plans for achieving poverty eradication focused on commercial agriculture and agro processing (including value addition), tourism, energy, mining, and infrastructure development.

In 2010, the government also decided to adopt a more broad-based development approach through the formulation of the **Agricultural Sector Wide Approach (ASWAp)**, which foresees a single comprehensive priority program and budget framework for the agricultural sector, based on the MGDS and consistent with CAADP (MoAFS, 2011). It also offers a formalized process for better coordination, harmonization of investments, and alignment of funding arrangements between the government and donors and encourages the involvement of the private sector, farmers' organizations, and civil society in the implementation process. The ASWAp has three focus areas: a) Food security and risk management, b) Agri-business and market development, and c) Sustainable land and water management. Strategies for implementation include promoting commercial agricultural production involving smallholder farmers; agricultural diversification; agro-processing for import substitution and value addition; development of the domestic and export markets for inputs and outputs; and development of more public-private partnerships involving producers, buyers, input dealers, service providers, and policy makers in the value chain.

The **National Fertilizer Strategy (NFS)** aims to improve the productivity and profitability of smallholder agriculture through the adoption and use of fertilizer. The NFS sets out short-, medium-, and long-term actions for developing private sector-led fertilizer markets. The NFS also identifies priority actions that are likely to accelerate farmers' access to affordable fertilizer and create incentives for its use (IFDC 2013).

The NFS identifies the following strategic issues affecting fertilizer markets in Malawi:

- Availability of fertilizer measured in terms of timeliness of importation and distribution and including the issue of the country's installed capacity to produce blended fertilizer, potentially using available natural resource deposits;
- High fertilizer costs due to poor transport infrastructure, equipment, and rural feeder roads;
- Challenges with fertilizer accessibility due to distance to markets and price (both of which are closely related to transport issues) and farmers' purchasing power to buy fertilizer;
- Fertilizer utilization, related to the proper type of fertilizer according to specific crops and soil/environmental conditions; and
- New research and extension and the establishment and enforcement of a legal framework.

To address these issues, the NFS sets five objectives: (1) increase timely fertilizer availability; (2) facilitate farmers access to affordable fertilizer; (3) improve utilization of fertilizer and related inputs; (4) facilitate infrastructure improvement; and (5) create an enabling environment for public-private partnerships in support of fertilizer industry development (IFDC 2013). In order to achieve these objectives, the government has also prioritized the following initiatives and actions:

- Increased private sector capacity for bulk procurement, blending, and distribution and for the proper use of fertilizer and other inputs among farmers;
- Government market intervention through a subsidy program;
- Collaboration and partnership with the private sector and international development organizations to enhance knowledge and skills among farmers and input dealers in nutrient requirements according to specific crops and ecological conditions; and
- Scaled up investment in transport infrastructure, mainly rural access roads and roads for access to coastal ports, which could also include enhanced transport services.

Institutional Framework

Malawi does not yet have in place the necessary institutional framework for fertilizer regulation. The sector is governed by the **Fertilizers, Farm Feeds and Remedies Act (FFRA 1973, as amended 1996; CAP 67:04)**, which covers a number of other areas in addition to fertilizer. The FFRA establishes that the Minister in charge of agriculture may create a Registry for fertilizer; however, this is entirely within the Minister's discretion, and the powers and responsibilities of a Registry are not clearly defined in the Act itself. A Registry has not yet been established, and no other specific body exists to regulate fertilizer. The FFRA also foresees the possibility of

designating technical advisors and analysts to provide support to the Minister; however, this structure is *ad hoc*, with powers and responsibilities once again left to ministerial discretion. Importantly, the Chitedze Research Station conducts soil mapping and develops blends. MBS provides inspectors, takes samples of the product for analysis (in their laboratory), conducts verification procedures, and decides whether specifications are within the acceptable regulated limits of variation. However, these functions remain limited due to capacity challenges. In practice, the Agricultural Technology Clearing Committee (ATCC) provides advice to MoAFS regarding approval of new fertilizer, and the Malawi Bureau of Standards (MBS) is responsible for carrying out inspections and sample testing at the border for quality control. Fertilizer typically is released quickly onto the market unless MBS has questions regarding the samples, in which case the supplier may need to conduct one year of trials. Notably, it is much more time consuming to gain approval under the subsidy program, which is the conduit most suppliers use to sell to smallholder farmers.

The latest version of the **Draft Fertilizer Act** proposes establishment of an autonomous regulatory body, the **Malawi Fertilizer Regulatory Board (MFRB)**, which would be responsible for the administration and enforcement of the provisions of the Act and regulations enacted thereunder (PART II Section 3(a)). Under the Draft Act, the MFRB would have a Secretariat, headed by a Director and staff appointed in accordance with public service regulations (PART II Section 3(a)). The roles and functions of the Secretariat are not clearly provided, but it is meant to be in charge of all aspects of fertilizer governance covered by the Act. Members of the Board are to be drawn from a range of institutions, including different departments of the MoAFS, the private sector, the Environmental Affairs Department, MBS, and farmer associations. The Draft Fertilizer Act also stipulates that inspectors and analysts shall be appointed to perform inspection, sampling, and analysis according to the provisions of the Act. The inspectors are mandated to issue certificates of approval after testing of samples has proven satisfactory.

Legal and Regulatory Framework for Fertilizer in Malawi

A carefully designed legal and regulatory framework for fertilizer can help facilitate availability, quality, and access to fertilizer by its end users. By setting clear standards for fertilizer quality and efficacy, the legal and regulatory framework can help mitigate investment risk and boost the confidence of both fertilizer businesses and farmers. A Fertilizer Act or Law is a particularly important part of this framework, as it can establish basic requirements for the activities along the value chain, including licensing, shipment, and sale of fertilizer, helping to streamline market operations and contribute to reduce costs.

A well-designed fertilizer law also can improve access to new fertilizer blends by facilitating entry of new products into the country. Adoption of good regulatory practices will play a role as

well. For example, while a number of countries continue to use registration of fertilizer as a means for controlling the products that enter the market, product registration is an example of an ex ante regulatory approach, and the regulatory purpose behind such an approach can generally be better achieved through other mechanisms, particularly when requisite capacity is developed alongside regulatory structures.

Overall, an effective legal and regulatory framework will be necessary to help the Government of Malawi achieve its goal of increasing the use of fertilizer and other inputs to build the agricultural sector and achieve economic development and poverty reduction. At present, however, the legal framework in Malawi has some notable gaps.

Fertilizer in the country is regulated under the **FFRA**, which is not a stand-alone piece of legislation governing fertilizer but is instead a more general umbrella law that covers other areas such as seeds, sterilizing plants, and other areas. Although the FFRA does include provisions applicable to fertilizer, it does not establish a complete regulatory framework. The FFRA provides that no person is allowed to add or subtract from fertilizer substances to alter their chemical composition. It also provides for fertilizer specifications and stipulates that all fertilizer importers should meet these standards. Fertilizers will not be allowed on the market if they are contaminated with heavy metal or other substances, and the containers in which the fertilizer is sold must be duly sealed and legibly marked or labeled. The penalty for contravening the FFRA is MK 1000, with a maximum of six months imprisonment. Apart from these provisions, no detailed rules are included in the FFRA to regulate fertilizer at the different stages of the value chain. Notably, the FFRA dates back to the 1970s and is based on fertilizer formulations that do not reflect the current soil needs of the country (AFAP (2016). This acts to restrict the types of fertilizers that can be used in the country, with little room for innovation and development of new formulations. Here the role of the Chitedze research station in mapping soil

Box 3: Key Features of Malawi's Draft Fertilizer Act

- Require a *certificate of registration* for all importers and traders of fertilizer;
- Establish the *Malawi Fertilizer Regulatory Board (MFRB)* as an autonomous regulatory agency in charge of enforcement of the Act;
- Clarify *mandate of the MOAFS* with the responsibility to sample, inspect, analyse, and test fertiliser distributed within Malawi;
- Require that all *labels* be placed or affixed to containers of any fertilizers;
- Establish a *fund* within MOAFS for inspection and enforcement of the Act;
- Establish that *fertilizers not in compliance would be liable to seizure* on complaint of the fertilizer regulator service to a competent court of law;
- Introduce *more severe penalties* for the contravention of the provisions of the Act, which could go up to MK 1,000,000.00 and imprisonment of up to five years with hard labor; and
- Give the *minister responsible for agriculture the mandate to make regulations* necessary or expedient for the purpose of giving full effect of the provisions of the Act.

Source: Draft Fertilizer Act 2007

and developing blends based on its analysis is critical. Over the last several decades, minerals in Malawi's soil have been depleted, and different formulations than those foreseen by the FFRA are now required. The Draft Fertilizer Act will address some of the outstanding gaps in the system (See Box 3).

The new Fertilizer Act is expected to fill regulatory and institutional gaps and better cater to the needs of farmers. For example, for the first time in Malawi, the latest version of the draft seeks to create a stand-alone fertilizer regulatory system with an autonomous institutional framework. Although the process of drafting the new act has been underway since 2003, the draft remains a work in progress.

Commercial Registration and Business Licensing

Companies wishing to engage in business in Malawi must first be registered with the Registrar General of the Ministry of Justice (the **Business Registration Act of 2012 and Companies Act (Cap 46:03)**). The requirements for business registration include provision of information about the company (such as the name and address of the business, description of the nature of the business, identification/passport numbers, place of business, and so forth). The fees for registration vary depending upon the capital of the company. The basic fee is MK 25,000, with MK 500 added for the first MK 1,000 capital and MK 20 for every MK 2,000 of capital thereafter. Business registration must be renewed every three years with payment MK 2,000.

A company also must obtain a business license from the Ministry of Industry and Trade (MoIT) under the **Business Licensing Act of 2012**. Applications for a business license shall be accompanied by the following:

- Copy of the business registration certificate;
- Copy of passport/identification card;
- Copy of certificate of registration for VAT;
- Proof of payment of the application fee of MWK 1,000; and
- Application form.

Malawian citizens should apply for business licenses at the local authorities where they intend to do business, while non-Malawian citizens must apply with the Chief Licensing Officer at the **MoIT**.

Licenses may be issued after a 21-day period, and during this time the licensing authority shall post notice of every application filed outside its office (Business Licensing Regulation 2014). License issuance fees are different for foreign nationals and Malawian citizens, with the fee for the former MK 60,000, and the fees for the latter ranging from MK 10,000 to MK 30,000,

depending upon the location of the business (Business Licensing Regulation 2014). Business licenses are valid for one year and can be renewed every business year by paying the renewal fee of MK 5,000. MoIT is given wide discretion to cancel licenses, which may occur at any time for breach of any condition subject to which the license was issued or renewed. However, before cancelling a license, the licensee should be given an opportunity to file an appeal with the Ministry.

Malawi has made some important strides in business licensing procedures. The Business Registration Act of 2013 established the electronic Malawi Business Registration System, and this year Malawi established online business registration. Applicants can complete the application for registration or renewal and fill out application forms online; businesses also get an automatic taxpayer identification number upon registry. The new system is connected to the **Malawi Revenue Authority (MRA)** and is expected to significantly reduce the amount of time to register a business.

Registration of Activities in the Fertilizer Sector

The **FFRA** does not contain specific rules on registration of fertilizer (including fertilizer blends), which is a notable aspect of Malawi's system. In practice, however, a new product still must go through testing and get the approval of the **Agriculture Technology Clearing Committee (ATCC)** before it can be used in the country. Under normal circumstances a three-season test will be conducted to check the efficacy of the fertilizer before approval, which costs USD 5,000 per trial. According to stakeholders in Malawi, if the fertilizer is approved in the SADC region, the period for testing can be reduced to one or two seasons; while this has not been formally institutionalized, it is an example of a practice that could be incorporated into regional harmonization efforts. The Chitedze Research Station seems to be moving away from conducting three seasons of tests on all fertilizers to requiring only one season of data for irrigation trials.

The **draft Fertilizer Act** requires that any person wishing to sell or import a fertilizer should be registered with the MFRB. The **draft Fertilizer Regulations** provide some detail on what the applicant should submit for the purpose of registration (including basic information about the applicant such as name and address and place of business). The MoAFS determines the application fees. Under the new draft, each certificate of registration is valid for a maximum period of three years from the date of issuance, and the certificate of registration can be renewed upon submission of a new application and payment of the registration renewal fee. The MFRB is required to issue a certificate of registration within 30 days of receipt of a completed application.

The draft Regulations include an innovative provision that stipulates if the MFRB fails to issue a certificate of registration within the prescribed time period, the applicant may begin selling

fertilizer while awaiting receipt of a certificate of registration from the MFRB. This prevents the applicant from undue waiting periods and allows for the market to continue to develop as government checks on the system are taking place. The draft Regulations also require the MFRB to provide the applicant with a copy of the Act in effect, regulations enacted under the Act, and the **Malawi Inspection Manual** at the time the certificate of registration is issued. Importantly, this provision allows the applicants know what their rights and responsibilities are, and it could also contribute to a more transparent system of registration.

The draft Fertilizer Act does not foresee the possibility of deregistration or suspension, nor does it provide rules on the cancellation of registration. It stipulates that any person aggrieved by a suspension or cancellation of their certificate of registration who desires to appeal against it shall do so within 30 days to the Minister, and if not satisfied with the decision of the Minister, then to a court of law.

Labeling

The **FFRA** requires that fertilizer products offered for sale shall be properly labeled with a guaranteed analysis and weight. The container in which fertilizer is sold shall be duly and legibly marked or labeled in English, which shall include the relevant information set out in the Third Schedule of the Act (Section 6.1 FFRA). Under the present system, quality control is based loosely on the truthfulness of the label (truth-in-labeling approach), although there are practices approaching product registration as noted above. The fertilizer range registered in Malawi is not wide enough to cater to all soil types, crops, and agro-ecological conditions prevailing in Malawi, however, and regulating quality at the retail level without unduly restricting private competition to introduce new compositions based on approved ingredients would be an effective way to address this gap. Although a good regulatory practice, ex post regulatory approaches (regulation of the market once activity is underway and not prior to entry into the market) requires competence to enforce. Enhancing the capacity of regulators is critical, particularly with regard to testing and inspection.

The **draft Fertilizer Act** also includes provisions on labeling. It requires that all fertilizers sold or distributed in Malawi shall be put in containers that are clearly labeled with certain information (See Box 4, as prescribed by the First Schedule, Section 10.1 draft Fertilizer Act). In the case of bulk shipments, the prescribed information shall accompany each delivery in written or printed form and be supplied to the purchaser at time to delivery (Section 10.2 Draft Fertilizer Act).

Under the draft Fertilizer Act, no person shall distribute or offer for sale misbranded fertilizer, meaning, among other things, that a label is false or misleading in any manner; a product is

distributed or offered for sale under the name of another fertilizer product; or it is not properly labeled as set forth by the Act (Section 13.1 Draft Fertilizer Act).

Box 4: Key Labeling Requirements under Malawi's Draft Fertilizer Act

- Brand (if applicable)
- Grade, only when primary nutrients are claimed;
- Guaranteed analysis;

Total nitrogen (N) _____ %
_____ % ammoniacal nitrogen
_____ % nitrate nitrogen
_____ % urea nitrogen
_____ % other recognized and determinable forms of N

(Note: If the chemical forms of N are claimed or required, the form shall be guaranteed in the format shown and the percentages of the individual forms shall add up to the total nitrogen percentage. No implied order of the forms of nitrogen is intended).

Available phosphate (P_2O_5) _____ %
Soluble potassium (K_2O) _____ %
(other nutrients, elemental basis) _____ %

- net weight
- sources of nutrients, when shown on the label, shall be listed below the guaranteed analysis statement; and
- name and address of the applicant.

Source: Draft Fertilizer Act 2007

Implementing labeling procedures also requires regulatory capacity. At present, labels often do not include necessary information, such as reference to guaranteed analysis (AFAP, 2016).

Quality Control

Quality control is a regulatory priority and is covered primarily through inspection procedures. Malawi does have fertilizer standards based on international (and regional, where applicable) standards, but **MBS** currently lacks the capacity to effectively test fertilizer samples against standards (AFAP, 2016).

Legally, the **FFRA** provides guidelines for testing fertilizer quality that include the sampling method as well as the analytical techniques to be employed. For example, for fertilizer that is packed in containers, samples shall be taken at random from different parts of the lot:

- If the quantity of fertilizer does not exceed three tonnes, samples shall be taken from not less than two unopened containers per 1.01 tonne or part thereof; and
- If the quantity exceeds 3.03 tonnes, samples shall be taken from one additional unopened container for every additional 1.01 tonne or part thereof.

The FFRA also states that if an examination, analysis, or test of samples of fertilizer being imported into Malawi shows that any such fertilizer does not comply with the legal requirements, MoAFS may: (a) order such fertilizer to be destroyed without compensation; or (b) remove such fertilizer from Malawi, at the request of the importer, for a specified period.

The **draft Fertilizer Act** provides some flexibility on the sampling and testing method and empowers the Minister of Agriculture to approve methods of inspection, sampling, sample preparation, and analysis as set forth in the proposed **Malawi Fertilizer Inspection Manual** and **Malawi Fertilizer Analytical Manual** under the draft Fertilizer Act. In cases not covered by such methods, or in cases where methods are available in which improved applicability has been demonstrated, the **MFRB** may adopt such appropriate methods from other sources.

When fertilizer is not packed in containers, not less than six samples shall be taken from different parts of the lot, where possible in the ratio of two samples per 1.01 tonne (or part thereof). The draft Fertilizer Act also empowers inspectors with the authority to enter any premise during regular business hours in order to have access to fertilizer and fertilizer records subject to provisions of the draft Fertilizer Act and regulations enacted thereunder.

The MBS is currently responsible for quality assurance by providing inspectors with access to business premises to assess quantities of product held, take samples for product analysis (in their laboratory), and conduct verification, which involves sending a letter to a distributor of declared nutrient levels and deciding whether such specifications are within the acceptable regulated limits of variation (AFAP 2016).

Importation and Exportation

The **MoIT** issues import and export permits, which are free of cost and usually issued within approximately seven days. A permit is valid for six months and can be renewed for the same period. While market stakeholders often question the need for import permits overall, they are a common practice, and Malawi's practices are relatively straightforward in comparison to other countries' systems. Regulators provide two reasons for requiring import permits: quality control

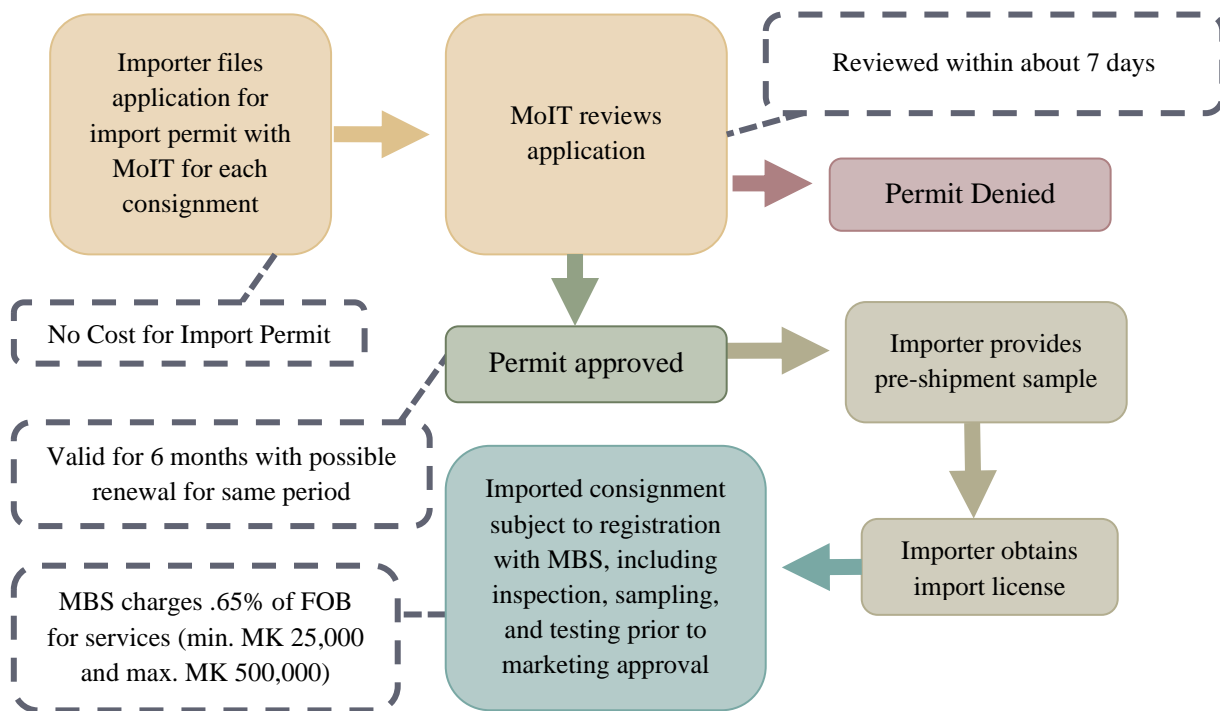
and data collection. The impact of the import permit in promoting quality control is unclear, however, since every consignment of fertilizer will have to go through the same quality control procedures irrespective of the import permit requirement. Requiring an import permit may allow maintenance of up-to-date data on the fertilizer imported into the country, but such data should be readily available from customs records.

The **FFRA** contains only a few provisions concerning the importation of fertilizer. The Act limits the importation, selling, and distribution of any fertilizer product if it is contaminated with heavy metal or other substance that would be harmful to the soil, environment, or public.

Apart from import permits, imports are regulated by testing and inspection. For imports, a pre-shipment sample is required before acquiring an import license. The port of entry is assumed to be engaged in continuous monitoring. For local products, registration is required with **MBS**, including inspection, sampling, and testing prior to market approval. MBS charges 0.65 percent of the FOB for its services (MK 25,000 minimum and MK 500,000 maximum).

The importer assumes responsibility for the quality of the fertilizer and its compliance with standards. Quality control of imported fertilizer is an important issue; as counterfeit fertilizer remains a challenge. Under Malawi's system, fertilizer cannot be imported unless its quality has been analyzed and approved, although capacity challenges do exist as noted above. An alternative regulatory practice for ensuring quality could be to require that any imported fertilizer be accompanied by a certificate of quality issued by a recognized certification authority of the country of origin of the exporter.

Figure 3: Fertilizer Importation Process in Malawi



Source: New Markets Lab

As pointed out earlier, Malawi does not impose customs duties or VAT on fertilizer imports. However, a VAT is levied on the port-related fees and charges for services as well as on the transport of the product from the port upcountry. Stakeholders feel that a VAT on all services related to fertilizer, including transport, should be eliminated in order to make fertilizer more affordable, especially to the Malawian smallholder farmer. Even if, as noted earlier, these costs contribute a small portion of the cost buildup of fertilizer in the country, abolishing them could have an impact and could be taken as part of a package of measures to reduce the cost of fertilizer in the country.

If a fertilizer producer in Malawi exports part or all of the product manufactured, the portion exported shall not be subject to inspection fees. Similarly, if a fertilizer importer in Malawi exports part or all of a consignment, that portion exported shall not be subject to inspection fees (AFAP 2016). There are no export quotas or other taxes, fees, and levies on fertilizer exports.

Chapter Three: Implementation of Legal System Governing Fertilizer in Malawi and Regional Harmonization

Regulatory Implementation

Currently, Malawi's legal and regulatory framework for fertilizer is limited, and important gaps in the legal and institutional framework on fertilizer will need to be addressed in order to create a vibrant fertilizer industry in the country. However, current efforts by the Government of Malawi to develop a comprehensive legal and regulatory framework for fertilizer provides an opportunity that could be bolstered from lessons learned by the experience of both countries within the region and international best practices, showcasing Malawi as a strong regional leader.

The current law covering fertilizer, the FFRA, is not dedicated to fertilizer and contains only a few provisions relating to the industry, leaving a significant legal gap. The few provisions are also outdated and do not correspond with the current national or global fertilizer market. The absence of a comprehensive legal framework also has given rise to unpredictable regulatory approaches. Regulatory authorities recognize that the provisions of the FFRA do not address current environment for fertilizer, and the law has largely lost its relevance and impact.

In recognition of these challenges, the government is drafting a new Fertilizer Act and Fertilizer Regulation. Draft versions of the Act and the Regulation have been available since 2003, but they have not been approved by parliament, nor is it clear when they will move forward or whether further changes will be made. Lack of progress in the sector could also be impacted by the absence of a fertilizer-specific policy, which is also under preparation by the government. Establishing a Fertilizer Policy could provide direction for the government and could also show a degree of political commitment for the promotion and use of fertilizer. However, while it is beneficial to have a fertilizer-specific policy, it is not necessary to have such a policy in advance of establishing a fertilizer law. Notably, there are a number of other countries in the region that have fertilizer laws without a fertilizer policy in place.

The other critical challenge facing the fertilizer market in Malawi is the absence of an institutional framework that can effectively regulate the different stages of the fertilizer value chain. Currently, regulatory authority is spread over different institutions such as the MoIT, MBS, and MoAFS. Each of these institutions operates without a clearly defined legal mandate given the lack of a comprehensive legal framework for fertilizer, which has created uncertainty and unpredictability in the system. Accordingly, establishing an institutional framework that could effectively enforce the laws is another important priority for the government.

A number of observations can be made with regard to the draft Fertilizer Act and the draft Fertilizer Regulation in their current forms. As noted, the proposed Fertilizer Act and Fertilizer Regulation were drafted in 2003 and updated in 2007 and address a number of important issues, which were left largely unregulated previously, but some gaps remain unresolved.

A positive development in the draft Fertilizer Act is the establishment of an autonomous agency in charge of fertilizer regulation, the MFRB. However, important issues will still need to be addressed. First, the powers and responsibilities of the MFRB have not been clearly stated in the draft. While these could be gathered from the different provisions of the draft Act itself, it would be better to clearly spell out the MFRB's responsibilities in the interest of transparency and predictability. Similarly, the draft Fertilizer Act aims to establish a Secretariat, but again its powers and responsibilities are not clearly outlined.

Second, the issue of regulatory fragmentation will remain under the new Fertilizer Act unless the current draft is amended. The proposed Act does not establish the MFRB as a one-stop shop, and different institutions will continue to be involved in various aspects of the regulation of fertilizer. For example, under current practice, the MoIT issues import permits, which is likely to continue given that the draft Act is silent on import permits. In consideration of the country's ambitious plans to expand use of fertilizer, overlapping procedures and requirements could negatively impact the cost of fertilizer. However, more streamlined procedures and regulatory structures could reduce regulatory costs, which could, in turn, translate to lower prices for fertilizer at the farmgate level. Establishing the MFRB as a one-stop shop could help facilitate a more efficient regulatory environment for fertilizer trade.

In addition, the draft Fertilizer Act contains either limited or no provisions in other areas including:

- Specific requirements for agrodealers;
- Specific testing principles;
- Fertilizer standards; and
- Specific rules on importation, exportation, and fertilizer in transit.

With regard to registration as an importer or dealer of fertilizer, registration can be refused when an applicant has been convicted of an offence under the Fertilizer Act or Fertilizer Regulations within three years immediately preceding the date of application. This prohibition could present challenges. First, if the applicant has already submitted the required penalty for violation of the Fertilizer Act, preventing registration may present an additional penalty. Second, the applicant could be denied registration for a prior violation of the provisions of the Fertilizer Act irrespective of the severity of the violation. A better approach could be to link refusal of registration only to specific and serious violations of the provisions of the Fertilizer Act.

The draft Fertilizer Act also foresees the possibility of appeal from a decision to cancel a registration, which is a good regulatory practice. However, the grounds for cancelling a registration are not clearly provided under either the draft Fertilizer Act or draft Fertilizer Regulations. This gap could give rise to wide discretion for regulators with the potential for abuse and could limit transparency and predictability of the regulatory system. There still is a chance to clarify the grounds for cancellation as the drafts go through revision.

The proposed Fertilizer Act also suffers from structural problems. It does not address issues systematically and coherently, making it difficult to follow and understand. Issues are covered in different sections of the Act, and stakeholders may find it difficult to get a clear and complete picture of the legal framework. One approach could be to address legal issues as they appear chronologically along the supply chain (such as manufacturing and production, labeling, distribution, cross-border trade, and so forth).

Another challenge related to the legal and regulatory framework relates to the penalties prescribed for the violation of the different provisions of the draft Fertilizer Act. Every person who contravenes any provision of the draft Fertilizer Act or any regulations enacted under the draft Fertilizer Act shall be guilty of an offense and be liable for a fine of up to MK 1,000,000.00 as well as imprisonment for up to five years with the possibility of hard labor. The fines and terms of imprisonment are defined in general terms and have not been explicitly linked with violations of different provisions, and the requirement for hard labor appears to be very inconsistent with existing good practices. Such discretion could open the door for abuse, as the application of fines and prison terms are fully under the discretion of the regulator. The best option would be to delineate specific fines and other possible penalties for each violation, with the appropriateness of hard labor questioned overall.

Perhaps one of the most pressing challenges to the legal and regulatory system is capacity. Putting in place the regulatory and institutional frameworks is one crucial step forward, but laws and institutions will have a minimal effect if enforcement is lacking or limited. Malawi's regulatory institutions face capacity challenges that must be overcome in order to step up efforts to prevent adulteration at the retail level when the product is sold from open bags. Capacity for enforcement should be strengthened, with a focus on increasing the number of trained inspectors. Improved testing and inspection capacity would not only bring down costs and improve the efficacy of fertilizer, but it would also allow for soil testing, which could pave the way for the blending of soil specific and crop specific formulations, which, when properly tested and labeled, could fill a need in the market. Improving capacity could also help Malawi to more fully implement a system of ex post regulation, which the legal system shows signs of already, which would be more aligned with the needs of the private sector as the fertilizer sector grows.

Regional Integration

As movement to harmonize Africa's regions gains momentum, economic and trade policies are becoming much more than national issues. In addition to national level laws and regulations, trade increasingly is subjected to regional and multilateral treaties. Malawi is both a WTO Member and a member of SADC and COMESA. In 2015, SADC, COMESA, and the East African Community (EAC) announced plans to establish the Tripartite Free Trade Area (TFTA), which will eventually have broader implications for trade in inputs such as fertilizer.

Malawi's development policies highlight regional economic integration as an important strategy to expand agricultural markets. More specifically, the NFS of Malawi identifies regional fertilizer policy as an important strategy to reduce fertilizer costs and increase use. Expanded regional fertilizer markets could realize efficiencies and economies of scale in trade, manufacturing, R&D, and testing. Regional approaches likewise can expand the market for fertilizer by harmonizing fertilizer policies among member states, allowing more efficient trade of fertilizer, and giving rise to acceptance of fertilizer compounds and shipments that have been approved or inspected by a member country. When well-implemented, regional efforts could avoid duplicate testing and compliance costs and allow for the redistribution of fertilizer across borders as demand develops throughout the season. Achieving regional standards, however, requires regulatory cooperation and support to countries that lack adequate existing capacity for inspections, laboratory testing, and regulatory enforcement.

Some regulators appear to be reluctant to advance regional fertilizer harmonization based on the assertion that fertilizer is soil-specific, or in other words, what is good in one region or sub-region might not be good in others. However, soil types and rainfall patterns cut across countries, meaning that neighboring countries are potentially the best, nearest source of supply and/or best market outlet for appropriate fertilizer types. Expanding input markets across borders, therefore, could be of significant benefit in achieving the economies of scale and savings on transport costs needed to bring input prices down and improve choice and availability (Keyser et al 2015). It also is important to note that regional harmonization can be misconstrued to mean creating uniform national regulations, but, as is true with international standards, regional harmonization often actually allows for differences in national legal and regulatory systems as long as regional standards are met (NML 2015).

The Abuja Declaration called for the AU Member States and Regional Economic Communities (RECs) to take appropriate measures to reduce the cost of fertilizer procurement at the national and regional levels, particularly through the harmonization of policies and regulations to ensure duty- and tax-free movement across regions and the development of capacity for quality control. Although this commitment was scheduled to be implemented by 2007, regional harmonization of fertilizer regulations has not progressed to a great degree in most regions. Regional fertilizer

harmonization stands in contrast to harmonization of seed regulations, where there has been significant effort across regions, even though implementation challenges remain.

Some steps have been initiated to facilitate regional harmonization of fertilizer systems. For example, COMESA, in partnership with AFAP, has undertaken a review of national policies and regulations on fertilizer importation, manufacturing, distribution, and use, with the aim of developing recommendations for the establishment of a harmonized regulatory framework for the region. Ultimately, the COMESA initiative is aimed at facilitating free trade of fertilizers across borders in the region, but a process will need to be put in place to reach this goal over time.

Work also has begun to harmonize fertilizer regulation within the EAC. The *EAC Harmonized Regulatory Instruments and Procedures for the Fertilizer Market* was adopted in September 2014 as one of the priority activities in the implementation of the EAC Food Security Action Plan (AFAP 2015). However, these initiatives have not yet been translated into practical action. To begin with, the framework document has not been submitted to the EAC Heads of State for possible adoption and subsequent domestication by the member states. The different legal instruments in support of the framework also are yet to be developed. The EAC harmonization effort is thus at a very initial stage, and it will likely take time for a harmonized fertilizer regime to emerge in the EAC.

Regional harmonization on fertilizer within SADC has not yet advanced significantly, although commitments to agricultural development and increased use of inputs are evident. The 2004 SADC Dar es Salaam Declaration on Agriculture and Food Security noted that inappropriate national agricultural and food policies and inadequate access by farmers to key agricultural inputs and markets are still among the major underlying reasons for the prevalence of hunger in the region. In order to address these problems, the Dar es Salaam Declaration called for the implementation of a series of short- and long-term measures aimed at strengthening cooperation between SADC Member States through the development of coherent regional policies and programs.

In 2014, the SADC Ministers of Agriculture adopted the Regional Agricultural Policy (RAP), which seeks to 'define common agreed objectives and measures to guide, promote and support actions at regional and national levels in the agricultural sector of the SADC Member States in contribution to regional integration and the attainment of the SADC Common Agenda.' The RAP aims to enhance regional trade in agriculture by further reducing tariffs and other barriers to trade. It also calls for improving farmers' access to and participation in regional input and output markets.

The RAP interventions include:

- Promoting competition in input and output markets;
- Promoting regional agricultural value-chains, Business-to-Business (B2B) and Public Private Partnerships (PPP) to increase production including importation, and distribution of agricultural inputs and provide markets for outputs;
- Eliminating tariffs and non-tariff Barriers (NTB) within SADC countries for trade in relevant intra-regional inputs and outputs, in line with the SADC Protocol on Trade; and
- Eliminating/reducing tariffs and non-tariff barriers in relevant inputs with third countries.

While the RAP does signal a move towards regional harmonization of agricultural policies, including fertilizer and other inputs, it is meant to outline some common objectives and measures to guide members and does not provide specific obligations (binding or not binding) with respect to fertilizer.

Efforts to harmonize fertilizer regulation are farther along within the Economic Community of West African States (ECOWAS), which provides an interesting benchmark for other regional work (See Box 5). The ECOWAS Council of Ministers formally enacted Regulation C/REG.13/12/12 Relating to Fertilizer Quality Control in the ECOWAS Region (ECOWAS 2012) at its ordinary session held in Abidjan on 2 December 2012. The regional regulations for fertilizer provide a detailed set of procedures for the functioning of domestic and regional fertilizer markets based on ex post regulation (truth-in-labeling approach) and harmonized quality control standards (Keyser et al, 2015).

Consistent with this approach, countries should not maintain approved lists of fertilizer types that can be sold to farmers and must allow importation of any type of fertilizer from another ECOWAS country as long as it is truthfully labeled and does not contain harmful substances. In principle, countries with such systems can freely trade fertilizer between one another, with imported fertilizer being subject to the same quality control procedures and level of inspections as it was in the country of origin, thereby improving consumer confidence and minimizing border delays (Keyser et al 2015). To support the ECOWAS Regulation, four implementing regulations also have been developed; however, none of these has yet been adopted by the ECOWAS Commission (Keyser et al 2015).

Box 5: Key Provisions of the ECOWAS Fertilizer Regulations

- **Product Registration Not Required:** The regional framework for fertilizer is built around the principle of truth in labeling. Countries therefore must not maintain approved lists of fertilizer types that can be sold to farmers or require product registration tests.
- **Free Movement of Fertilizers:** Fertilizers that comply with the prescribed quality standards shall be entitled to free movement throughout the ECOWAS region. Prior notification to the competent authority in the concerned countries is all that should be required to import and/or export fertilizer.
- **Standard Quality Definitions and Labeling Requirements:** Countries shall observe standard definitions of fertilizer terms and ensure that all fertilizer containers are clearly labeled with a minimum set of information including guaranteed nutrient content.
- **Requirements for Inspection and Analysis:** Member states are required to develop Inspection and Analysis Manuals based on Association of Official Analytical Chemists (AOAC), International Organization for Standardization (ISO), and/or European Union (EU) standards that describe the modalities and procedures for fertilizer sampling and inspection and business inspection.
- **Tolerance Limits:** The regulations set out specific tolerance limits for nutrient deficiency, weight, and maximum allowable heavy metal limits. Any product that exceeds the prescribed tolerance limits or contains other materials that are injurious to plant health shall not be allowed for sale.
- **Fertilizer Producers and Traders to be Licensed Professionals:** Licenses are compulsory for all fertilizer sector participants including importers, manufacturers, agrodealers, and distributors and must be renewed every three years by the official quality control and certification service of each member state. Every agrodealer or person selling fertilizer shall display the license in a conspicuous spot.
- **Manufacture and Importation:** The conditions and modalities to manufacture and import fertilizer will continue to be governed at the national level by regulations in each member state.
- **Access to Information:** Member states are required to ensure the full participation of fertilizer sector participants in public decision making on fertilizer related matters and organize public access to fertilizer related information available to public authorities.
- **Oversight and Administration:** The West Africa Committee for Fertilizer Control (WACoFeC), funded by the ECOWAS Commission, shall serve to monitor and facilitate the implementation of the regulations and support development of the national fertilizer sectors in the region.
- **Right to Appeal and Confidentiality:** Manufacturers, importers, and distributors will have the right to appeal any decision taken against them by licensing authority and to have their information treated confidentially.

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