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Page: 1/2

Committee on Technical Barriers to Trade

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**EUROPEAN UNION – AMENDMENTS TO THE DIRECTIVE 2009/28/EC,  
RENEWABLE ENERGY DIRECTIVE**

**STATEMENT BY MALAYSIA TO THE COMMITTEE ON TECHNICAL BARRIERS TO TRADE  
20 AND 21 JUNE 2018**

The following communication, dated 5 July 2018, is being circulated at the request of the delegation of Malaysia.

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1. It is with regret that Malaysia is compelled to raise for the second time the issue of discriminatory treatment of biofuels and bioliquids from palm oil under the proposed amendments of the Directive of the European Parliament and of the Council on the Promotion of the Use of Energy from Renewable Sources. We would also wish to make reference to our previous statement at the last TBT Meeting highlighting the concerns on such intended amendments to the Directive be captured in the Minutes of Meeting.

2. Malaysia had shown our utmost flexibility and made serious efforts to work constructively with the European Commission in finding a mutually acceptable way forward bilaterally; both in Geneva and Brussels as well as through the various WTO Committees. However, since our last meeting, the results; with some exceptions, had been disappointing.

3. Despite that, Malaysia commends the recent political agreement on the ambitious binding renewable energy target for the European Union of 32% and a target of 14% for renewable energy in transport by 2030, reached at the trilogue negotiations in Brussels, Belgium on 14 June 2018.

4. Malaysia however, wishes to reiterate our concerned with the discriminatory treatment of biofuels from palm oil under the updated Renewable Energy Directive (RED II). While we understand that the final text of the Directive will have to be formally approved by the European Parliament and the Council, Malaysia is of the view that the amendments, particularly on the provisions affecting palm oil is discriminatory and negatively impact the reputation of palm oil.

5. The press release of the European Parliament on 14 June 2018 and I quote, [Food-crop biofuels like palm oil, which have a high "indirect land use change" (ILUC, i.e. changing how land from non-crop cultivation, such as grasslands and forests, with a negative impact on CO2 emissions, is used), will be phased out through a certification process for low ILUC biofuels, which is to be set up].

6. The calculations of emissions from indirect land use change (ILUC) are questionable. Firstly, ILUC models give very inconsistent results as shown by studies done and commissioned by the European Commission. In this context, the European Commission has thus refrained from inclusion of ILUC in its computations of GHG emissions until now. Secondly, there is so much of uncertainties with respect to the assumptions used including among others, the methodologies, assumptions inputs regarding oil palm plantations and in estimating the greenhouse gas (GHG) emissions in the production of palm oil and projections of oil palm expansion types of land that will be used. Thirdly, due to the geography of Malaysia as well as other palm oil producing countries, there is a possibility that palm oil-based biofuels be disqualified under the EU RED due to the land conversion criteria. Additionally, palm oil planted on certain type of soil that naturally emits more

greenhouse gases (due to the soil's composition) is likely to fall foul of this requirement and subsequently, the EU's GHG criteria.

7. The statement to single out palm oil as having high ILUC is discriminatory and unfair. This tarnishes the reputation and image of the oil palm industry. There is no precedent for a phase out of the use of a specific crop. As such, the Malaysian oil palm industry is being penalised by unjustified allegations. Malaysia, with its long standing and established diplomatic and trade relations with the European Union, reiterates our readiness to engage and have dialogue to address the concern through science-based evidence.

8. Based on the troubling and seemingly inexplicable development, the only conclusion Malaysia could reach at this point is that the compromise agreements were unwarranted barriers to trade and the situation needed to be rectified.

9. As we indicated in the past, Malaysia among several other members that are most likely to be affected by the proposed related measures on palm oil. Such, we again call on the EU notify the draft measures to the TBT Committee, in accordance with the obligation of Article 2.9 of Agreement, swiftly. Receiving more information on the draft measures at an early stage before they are finalised and adopted would not only give opportunity to Malaysia; but other Members to comment on the draft measures.

10. Malaysia will continue to monitor the development of the intended amendments of the EU RED.

11. We look forward to the response from the EU.

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