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Committee on Technical Barriers to Trade

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

**STATEMENT BY INDONESIA TO THE COMMITTEE ON TECHNICAL BARRIERS TO TRADE
20 AND 21 JUNE 2019**

The following communication, dated 1 July 2019, is being circulated at the request of the delegation of Indonesia.

1. The Government of Indonesia is disappointed with the adoption of Delegated Regulations, effective on 12 May 2019, as the implementation of the Amendment of EU Directive of Renewable Energy. The Delegated Regulation negates all the inputs and considerations provided by the Government of Indonesia and other Palm Oil Exporting countries
2. The Government of Indonesia received a letter on 3 May 2019 stating that the EU-RED II and Delegated Regulation are not intended to limit the importation of oil palm products to the EU. In addition, it was also stated that the technical requirements contained in the Delegated Regulations are beyond the scope of the WTO TBT Agreement.
3. We beg to differ with the EU on this important issue. The requirements stipulated in the delegated regulation are technical regulations to a product and or group of products which are clearly fall under the TBT agreement. Some provisions, such as the 2008 base year determination and determination of the annual average rate of expansion of global production areas and the determination of production area conversion thresholds above areas with high carbon stocks used as the basis for calculating ILUC high and low risk, are clear indication that these are technical regulations that should be met by producers of biodiesels in order to help with EU environmental achievement.
4. The structure, design, and expected operation of this standard are expected to discriminate biodiesels generated from palm oil against other biodiesel products produced within EU members countries, such as rapeseed and sunflower. Moreover, the expected operation of this regulation will also curb the demand of palm oil biodiesels and create unnecessary barriers to trade in contravene with the TBT Agreement.
5. The RED and Delegated Regulations stated that biofuel feedstocks which have a significant annual expansion rate of production areas, the level of consumption will be limited to the consumption level in 2019. Moreover, vegetable oils that do not meet ILUC criteria will be phased out gradually up to 0% in 2030. This is certainly a discriminatory practice that violates the National Treatment principle (article III: 4) and general elimination of quantitative restriction (article XI: 1) GATT and articles 2.1 and 2.2 of TBT Agreement.
6. The EU continued denial that this issue is fall under TBT Agreement is alarming and threatening the credibility of TBT Committee. Moreover, it is also threatened the credibility of EU Proposal on Procedures to Enhance Transparency and Strengthen Notification Requirements. If, pragmatically, members start denying that a de facto standard or technical regulation is not a standard or technical regulation under the TBT Agreement, all the STCs in this committee would need to be decided by the Dispute Settlement Body.

7. In addition, Indonesia firmly believes that any weighting on the sustainability issues should not covers only deforestation. It shall also take into account the overall aspect of sustainable development which include environmental, social, and economic aspect. This is a global commitment under Sustainable Development Goals (SDGs) 2030, of which the EU has committed to and shall obliged to.

8. The palm oil crops have a very high productivity. It produces up to 10 times more compared to other vegetable oils with a smaller land use rate. EU intention to phase out of palm oil biodiesel will only increase sharply the demand for other vegetable oils which will lead to massive land clearing. Due to this reason, we expect the EU to review the policy of limiting the use of palm oil to prevent further environmental degradation.
