

**RESPONSE BY INDONESIA TO MALAWI'S COMMUNICATION
'THE EFFECTS OF CANADA'S 'TOBACCO ACT' ON MALAWI'**

The following communication, dated 25 June 2010, is being circulated at the request of the delegation of Indonesia.

1. In a communication dated 23 March 2010, the delegation of Malawi provided comments to the Committee on Technical Barriers to Trade on the effects of Canada's Cracking Down on Tobacco Marketing Aimed at Youth Act on Malawi's exports of Burley Tobacco (G/TBT/W/329). Malawi expressed concern that Canada's law is inconsistent with Canada's obligations under the WTO Agreement on Technical Barriers to Trade ("TBT Agreement"). In particular, Malawi is concerned about the consistency of the law's prohibition on the manufacture and sale of cigarettes, little cigars, and blunt wraps containing certain flavourings and additives enumerated in a Schedule to the law with Articles of 2.2 and 2.8 of the TBT Agreement.

2. In its comments, Malawi compares the approach Canada has taken to reducing youth smoking in its law to similar laws of other countries, such as France, Australia, and the United States. Malawi implies that the regulatory approach taken by these other countries, which ban only products with characterizing confectionary or fruit flavours, is less trade-restrictive than Canada's law and therefore somehow consistent with the TBT Agreement.

3. Indonesia strenuously objects to any suggestion by Malawi or any other WTO Member that the manner in which the United States has restricted certain flavoured cigarettes is consistent with the General Agreement on Tariffs and Trade 1994 ("GATT 1994"), the TBT Agreement or other WTO Agreements. Indonesia notes that it has requested that the Dispute Settlement Body establish a panel to hear its dispute with the United States regarding a measure in the Family Smoking Prevention Tobacco Control Act of 2009 that bans the production and sale of clove cigarettes, but allows the sale of other cigarettes, including menthol cigarettes.¹

4. Indonesia does not disagree with Malawi that reducing youth smoking is a legitimate health objective. Nor does Indonesia necessarily disagree that limiting a ban to "characterizing flavours" is a more precise approach to discouraging youth smoking than limiting all flavourings and additives. However, even a more targeted ban must be non-discriminatory, based on scientific and technical evidence, and at a minimum, cover those characterizing flavours shown to attract youth smokers.

¹ See United States – Measures Affecting the Production and Sale of Clove Cigarettes, Request for Establishment of a Panel by Indonesia, 9 June 2010, WT/DS406/2.

5. Indonesia maintains that the ban on the sale of clove cigarettes in the United States is inconsistent with various US obligations under the relevant WTO rules and principles, and should not be viewed as a "model" for regulations in other countries intended to restrict the production and sale of flavoured cigarettes arguably designed to attract youth.
