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Committee on Technical Barriers to Trade

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**EUROPEAN UNION – TOBACCO PRODUCTS, NICOTINE CONTAINING PRODUCTS AND
HERBAL PRODUCTS FOR SMOKING. PACKAGING FOR RETAIL SALE OF ANY OF THE
AFOREMENTIONED PRODUCTS**

**STATEMENT BY MALAWI TO THE COMMITTEE ON TECHNICAL BARRIERS TO TRADE AT ITS
MEETING OF 17, 19-20 JUNE 2013**

The following communication, dated 25 June 2013, is being circulated at the request of the delegation of Malawi.

1. We have placed this item on the agenda to reiterate the continued serious concerns of Malawi about the WTO-consistency of the EU Tobacco Products Directive (TPD).
2. Members will recall the detailed intervention of Malawi at the last meeting of this Committee in March. We also submitted written comments and questions to the EU TBT Enquiry Point in April. We asked the EU to provide credible scientific evidence to support the TPD in the context of a number of specific issues. With regret, we note that the EU has not answered any of our questions or addressed any of our concerns. We therefore take this opportunity to request for written responses from the EU.
3. Mr. Chairman, before turning to Malawi's specific concerns, it is worthwhile to recall that the TBT Agreement reflects a carefully-negotiated balance of rights and obligations among WTO Members. This balance is embodied in particular in TBT Article 2.2. On the one hand, Article 2.2 recognizes that Members may take measures to promote their legitimate objectives, including the protection of human health. On the other hand, technical regulations cannot be more trade-restrictive than necessary to fulfil such legitimate objectives. Thus, Mr. Chairman, while no one questions the EU's goal of protecting health, the means to achieve those goals must comply with the disciplines of the TBT Agreement. This was the bargain accepted by the EU, Malawi and other Members at the conclusion of the Uruguay Round.
4. The need to maintain this careful balance is particularly acute for least-developed countries such as Malawi, which does not have a widely-diversified economy, and which depends on maintaining its negotiated access to the markets of developed countries. We would highlight for Members some of the facts that we provided to the EU TBT Enquiry Point:
 - a. Out of a population of 15 million people in Malawi, 1.5 million are tobacco farmers. Tobacco is the backbone of their economic activities as a cash crop.
 - b. 25% of the tax base that supports government operations comes from the tobacco industry.
 - c. Tobacco contributes at least 60% of Malawi's foreign exchange earnings.
5. Thus, the adoption and implementation of the TPD would have disastrous consequences not only on the livelihood of Malawians, but for the national economy as a whole. We therefore insist that no trade restrictive tobacco regulation should be introduced in the EU in the absence of strong and credible scientific evidence to justify such measures. To do otherwise disrupts the balance

embodied in the TBT Agreement which should be considered every time when a new technical regulation is proposed.

6. Mr. Chairman, a number of measures set out in the TPD are indeed "more trade-restrictive than necessary" to fulfil the EU's health objectives, contrary to the EU's obligations under Article 2.2. I would highlight for Members a few examples of such WTO-inconsistencies:

- a. First, the ingredients bans do not have a valid scientific basis. The prohibition against placing on the market any tobacco products with a "characterising flavour" is extremely vague, as is the ban on additives that "create the impression" of health benefits. Mr. Chairman, additives do not "create impressions", and a measure based on such ill-defined concepts as these does not provide a serious basis for a health regulation. These measures are not based on science and evidence and would therefore be in violation of the EU's obligations under the TBT agreement.
- b. Second, the enlarged health warnings are similarly problematic. Such enlarged warnings are based on two fundamentally wrong assumptions: that consumers currently lack information on the risks associated with smoking, and that larger warnings will discourage smoking, particularly at the stage of smoking initiation. Such assumptions are demonstrably incorrect. The Commission has ignored the real factors that contribute to smoking initiation, particularly social interaction within peer groups.
- c. Third, the prohibition against "misleading" elements also lacks a scientific basis. All Members would agree that no product can be promoted through misleading means, but the Commission has yet to explain how colours or small-diameter cigarettes can "mislead".
- d. Fourth, we also see no legitimate basis for the Commission's requirements regarding the appearance and contents of unit packs. For example, cigarettes must be sold in "cuboid" packages. We are at a loss to understand why mandating sales in "cuboid" packages makes any contribution at the EU's health objectives.

7. Mr. Chairman, I would stress that these are simply examples rather than an exhaustive list.

8. We would also note that other developing countries have also expressed concerns about the WTO-consistency of the TPD, including the Dominican Republic, Guatemala, Mexico, Nicaragua, Nigeria, Indonesia, the Philippines, Zambia and Zimbabwe.

9. Before closing, Mr. Chairman, I would like to stress one extremely important point. Malawi is not seeking any favours from the EU, and is not in this context invoking any "special and differential treatment". Rather, we are seeking to ensure only that the EU respects the binding obligations that it undertook when it accepted the TBT Agreement at the end of the Uruguay Round. One way to do this is to ensure that its technical regulations have a valid scientific and evidentiary basis that can withstand scrutiny. To date, this evidence has been entirely lacking in the EU's purported justifications of the TPD.

10. Mr. Chairman, we thank Members for their attention, and once again we urge the EU to ensure that the TPD is brought into conformity with its WTO obligations.
