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Commissioner Oettinger,

PUBLIC CONSULTATION ON THE RENEWABLE ENERGY STRATEGY

The Malaysian Palm Oil Council (MPOC) is keen to have an open dialogue with European policymakers. In this spirit, MPOC has recently contributed to the European Commission's Public Consultation on the Renewable Energy Strategy. However, the complex and technical nature of the policy questions involved require a more sophisticated and detailed response than that allowed for in the consultation document. Therefore, please find enclosed a fuller submission to the questions posed by your consultation. This document outlines MPOC's outstanding track record of technological achievement, economic development, and leadership in the field of sustainability, but also expresses MPOC's concerns over escalating efforts to deny market access to palm based biofuels.

Despite the Malaysian palm oil industry's success in meeting EU sustainability standards, the EU continues to discriminate against palm biodiesel by distorting the greenhouse gas savings value of palm oil. Such distortions in policymaking in Europe misrepresent Malaysia' exemplary record of conservation, and could have significant consequences for economic development and poverty alleviation efforts in Malaysia. As an industry that is 40%, comprised of small holders, the palm oil sector is a key part of both of these objectives for Malaysia.

The attached submission presents MPOC's complete responses to the Public Consultation and outlines MPOC's concerns with the current framework of the Renewable Energy Directive.

1. MPOC calls on the EU to commit to openness, transparency and non-discrimination as driving elements in the EU's renewable energy policy. For instance, the arbitrary default value of 19% attributed to palm oil does not reflect publicly available assessments, while requests for clarification from the EU have gone unanswered;

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2. MPOC considers that many of the administrative and technical requirements of sustainability criteria are flawed and apply a significant administrative burden on Malaysian smallholders. This burden unfairly favors EU producers and discriminates against the more than 600,000 palm oil producers in Malaysia who contribute more than RM 80 billion in export revenue to the country, and 40% of which comes from Malaysian smallholders;
3. Malaysia's primary plantation of oil palm is the highest yield, highest energy output oilseed crop in existence. MPOC urges the EU to engage with Malaysia and other developing nations to negotiate a mutually beneficial approach to facilitate exports of biofuel feedstock; and MPOC looks forward to engaging in a dialogue with the European Union over the organization's concerns with the Renewable Energy Strategy, and hopes that continued dialogue will resolve concerns related to openness and transparency.

I trust that you will give this document your fullest consideration. I look forward to hearing from you.

Best regards



Dr. Yusof Basiron
Chief Executive Officer

Malaysian Palm Oil Council response to Review of Renewable Energy Directive

Section A: General Policy Approach

2. Are other policy elements necessary to promote renewable energy post-2020; such as

- Enhanced focus on R&D to bring down the costs of renewable technologies
- Facilitation policies (faster and easier permitting, improved access to the grid and further grid investments, availability of more sites for renewables etc)
- Abolition of support mechanism or subsidies to other energy sources
- Public procurement obligations in support of renewable
- Better financing possibilities
- Continue to ensure sustainability and scalability
- ✓ Other (please specify)

MPOC strongly believes that a commitment to openness, transparency and non-discrimination should be principles at the heart of EU biofuels policy both currently and in the future. The methodology, input data and calculations which lead towards the adoption of particular default values should be released and made available for public and scientific scrutiny. Currently, Malaysia, along with other countries, has been assigned an arbitrary default value with little or no access to information which would allow sufficient understanding of how that value was calculated. The default value of 19% for palm oil is contradictory to a range of scientific and industry information, including life-cycle assessments and analyses on the default values conducted by European scientists.

The effect of the default values for palm oil is to discriminate against the feedstock in terms of access to the European market, when compared with benefits accruing to default values for EU-produced feedstock, such as rapeseed. As these default values are arbitrary and the process lacks transparency and openness, these values are both potentially discriminatory and in conflict with the EU's trade obligations.

MPOC therefore believes that the principles of transparency, openness and non-discrimination, if properly applied to EU renewable energy policies, would result in increasing uptake of renewable energies, increased price competition, and better efficiency.

Section C: Administrative procedures

1. Which of the following issues relating to administrative procedures, information and training do you consider acting as a serious impediment to further growth of renewables following Member States' implementation of the provisions of the Directive?

☒ Length and complexity of administrative procedures relating to authorisation/certification/licensing

☐ Lack of commonly agreed technical specifications

-- Lack of information on support schemes or other

-- Lack of credible and certified training or qualification

--Other

The palm oil industry supports over half a million workers – almost half of whom are smallholders. These smallholders own and till small plots of land between two and four hectares in size. These smallholdings support 1 million people and constitute approximately 40 per cent of Malaysia's total planted area. The oil palm crop is often their single source of daily income and support for their families' survival. These producers are an important pillar for our nation's economy and prosperity.

MPOC considers that many of the administrative and technical requirements of sustainability criteria are substantially flawed and often require an unnecessary level of administration which puts smallholders in developing countries at a significant disadvantage, and discriminates in favour of European producers. These criteria in their current form therefore constitute a significant barrier for smallholders seeking to export palm oil into Europe.

Equally, compliance with the Renewable Energy Directive sustainability criteria is a highly costly exercise, which renders importation into Europe as a renewable energy source uneconomical for many, and again is favourable to European-produced feedstocks.

2. Which policy response to the problems identified above do you consider appropriate?

-- The approach of the current Directive to lay down a general framework for Member State action is fine

-- Strengthen rules to intrude more directly into Member States procedures in terms of roles of different actors (e.g. one stop shop), maximum time frame or other

-- Push for more standardisation and harmonisation on EU level or mutual recognition

✓ Other (please specify)

MPOC believes, as stated in the response to section A2, that increased transparency and openness in the process of calculating default values would be a positive policy development. Increased transparency with relation to the process of assessing and confirming certification schemes would also be a positive development.

Recognition of the work of third countries in the field of sustainability is not adequately considered or respected under the current RED criteria, including the calculation of the default values and the decision-making process concerning the sustainability criteria. Malaysia in particular has proven committed to measuring the life cycle GHG emissions from palm oil and to implementing national laws and regulations which ensure sustainability, the conservation of high conservation value land, and the protection of biodiversity. The Malaysian palm oil industry is continuing its reputation for innovation and excellence, by building on these national requirements and investing in further measures to improve the sustainability of palm oil including substantial investments in methane capture technology, use of co-products and by-products as biomass, and continued support for the Malaysian Palm Oil Wildlife Conservation Fund (MPOWCF). However, many of these actions are not suitably recognised within the framework of the RED: emissions from palm oil (e.g. as calculated in the default values) are based on a 'worst case scenario' without significant consideration of methane capture technology. Third country sustainability and GHG reduction actions must be recognised by the European Commission for any international biofuels market to be successful.

The Malaysian government has committed to maintaining 50% forest cover, a level which significantly exceeds that of any European Union country. The Malaysian Palm Oil Council has, through MPOWCF, made available RM20m for wildlife conservation and continues to offer additional match-funding for other conservation efforts. For every one hectare of land which is developed, four hectares of land are protected. This helps to ensure biodiversity can be protected and crucial forest land can be preserved in the fight against climate change.

Despite these efforts, the European Commission continues to provide millions of Euros on an annual basis to organisations which routinely attack the Malaysian people through spreading of untruths and disinformation, politically-motivated PR campaigns, and consistent use of scare tactics. Organisations including Friends of the Earth, which recent figures show was granted over 700,000€ in 2011, should not be funded by the European Commission to conduct activities which directly attack the Malaysian Government, Malaysian industries, and the Malaysian people; and whose actions threaten to undermine the economic prosperity and alleviation of poverty that the palm oil industry has brought to over 1 million people throughout Malaysia.

Section G: Renewables in transport

Transport is almost entirely dependent on oil consumption. There is a growing recognition that major efforts are needed to reduce GHG emissions and fossil fuel dependency in this sector. The Directive requires that 10% of transport fuel should come from renewable energy sources but more efforts to reduce oil dependency and GHG emissions are needed post-2020.

1. What do you consider to be the main barriers against a stronger uptake of renewable energy in transport?
 - Costs
 - Pace of technology development
 - Lack of standards
 - Lack of infrastructure
 - Lack of awareness
 - ✓ **Lack of suitable information**
 - Limits of availability of sustainably produced biofuels

✓ Other (please specify)

MPOC considers that a major barrier to the uptake of and investment in renewable energy is the lack of appropriate and substantiated information in relation to the environmental impact of biodiesel from a palm oil feedstock.

Many recent politically-motivated campaigns in Europe have spread significant misinformation about the environmental impact of oil palm plantations. As a result of this and other factors, such as trade distortions, palm oil's enormous potential as a source of renewable energy for the transport sector has not been fully developed.

MPOC believes that misinformation over the environmental impact of palm oil has led to inadequate and flawed decision-making within public bodies, and as a result, palm oil is not adequately or appropriately utilised as a source of renewable energy in the European Union. The current literature on the carbon emissions resulting from the cultivation and processing of palm oil is incomplete, highly variable and a subject of considerable ongoing debate. The current EU Renewable Energy Directive's arbitrary default values constitute an unjustifiable trade barrier to the uptake of biofuel from a palm oil feedstock.

This artificial barrier to the importation of palm oil for use as a biofuel is a large hindrance to the uptake of renewable energy, particularly given that palm oil is the cheapest, most efficient and highest yielding biofuel feedstock available on the global market.

Section H: Sustainability

Currently biofuels have to comply with sustainability criteria in order to benefit from support or to be counted towards renewable energy targets. This is in order to avoid negative side effects from an increasing use of biofuels. In addition, the Commission is currently considering introducing additional requirements related to indirect land use change and criteria for solid and gaseous biomass for energy.

1. Do you think that additional sustainability criteria are necessary in the post 2020 period?

✓ **No, the existing criteria are already burdensome to implement**

- No, the existing binding sustainability criteria are sufficient
- Yes, sustainability criteria should apply to both all biomass and fossil fuels
- Yes, additional criteria should be introduced to promote only the best performing biomass (please specify which)

The palm oil industry in Malaysia is an innovative, technologically advanced and sustainable industry, and as a result is currently meeting or exceeding all the criteria demanded by the European Union for certification, for example under the ISCC scheme. Despite the fact that Malaysian producers are self-evidently able to meet these criteria, it is clear that the existing sustainability criteria are highly burdensome and costly to implement, particularly for smallholders and producers in developing nations.

MPOC considers that many of the underlying assumptions used to formulate the current sustainability criteria are substantially flawed and often based on incorrect or incomplete scientific information. As a result, MPOC considers that this measure raises serious concerns over the European Union's compliance with obligations under the World Trade Organisation.

MPOC also finds that the sustainability criteria are an unwarranted incursion into the domestic sovereignty of Malaysia to determine how land in Malaysia is utilised.

Finally, MPOC strongly urges the EU not to adopt an additional criteria for 'indirect land use change' given that the current state of scientific knowledge and modelling is deeply flawed. Given the broad range of factors under consideration when seeking to determine the impact of ILUC, it can reasonably be asserted that no model is capable of capturing the impact of the Renewable Energy Directive on land use change, particularly in developing nations. It is worth noting that this position is supported by countless academic studies, scientific reports and other analyses, many of them conducted by scientists or institutions in EU countries.

Impact on Smallholders

The palm oil industry contributes approximately RM80 billion to Malaysia's export revenue and supports over half a million workers – almost half of whom are smallholders. These smallholders own and till small plots of land between two and four hectares in size. These smallholdings support 1 million people and constitute approximately 40 per cent of Malaysia's total planted area. The oil palm crop is their single source of daily income and support for their families' survival. These producers are an important pillar for our nation's economy and prosperity.

MPOC considers that many of the underlying assumptions used to formulate the current sustainability criteria are substantially flawed and often based on incorrect or incomplete scientific information. These criteria in their current form therefore constitute a significant barrier for smallholders seeking to export palm oil into Europe. Compliance with the Renewable Energy Directive sustainability criteria is a highly bureaucratic and costly exercise, which renders importation into Europe as a renewable energy source uneconomical for many. Any extension of the criteria would increase this burden and effectively bar Malaysian smallholders from importing to Europe.

Scientific basis for current criterion

The current state of scientific data on carbon emissions caused by the use of individual biofuel feedstocks is incomplete, highly variant and often contradictory. This scientific base has significant weaknesses in justifying the existing sustainability criteria, and certainly does not warrant an extension of the criteria.

Current estimates on the 'carbon footprint' of palm oil range from very low to very high. The highly variant range of 'possible' carbon emissions from different activities associated with palm oil production virtually ensures that a default value can and should be constructed which is greater than the EU's threshold figure. A significant amount of research indicates that palm oil cultivation results in fewer carbon emissions than other oilseed crops. In addition, there has been little work completed on the emissions from plantations on degraded forest. Plantations on degraded forest and other croplands are common in Malaysia. MPOC maintains that the current state of the scientific knowledge base on these areas is insufficient to justify a restrictive trade measure, which is skewed against imports of palm oil for use as a biofuel feedstock. The EU must make significant additional efforts to ensure that the scientific basis for the current criteria is fair before making any moves to expand the criteria.

Incursion into Malaysian sovereignty

MPOC strongly objects to the domestic legislation of the European Union seeking to dictate land use in a developing nation such as Malaysia. The Malaysian Government has made a commitment to retaining more than 50 per cent of Malaysian forests under reserve. The areas on which oil palm plantations are grown are designated as areas for agriculture by the Malaysian Government. It is completely erroneous to draw a causal relationship between demand for palm oil and the removal of forest cover. Forest cover is only removed in those areas designated for agriculture.

MPOC also wishes to express our concern over the attitude of the European Union which suggests that developing nations should not be allowed to use our land and forest resources as a source of economic growth and development. Given the very high level of forest land under permanent reserve in Malaysia compared with the small amount remaining in Europe due to centuries of deforestation in the pursuit of economic development, MPOC believes that the Malaysian people should be accorded the same opportunities for growth and development as Europeans have historically enjoyed.

Trade Implications

MPOC has serious concerns that the sustainability criteria in its current form breaches the European Union's obligations under the World Trade Organisation. International legal and trade experts in several countries have also voiced these concerns. Andrew Mitchell, Visiting Associate Professor of Law at Georgetown University, opined that the sustainability criteria may breach WTO law.

"By restricting the biofuels and bioliquids that can be taken into account in calculating gross final consumption of energy from renewable sources in EU Members to those that meet the sustainability criteria, the EU Renewable Energy Directive is probably inconsistent with the EC's obligations under the GATT".

Notwithstanding the Malaysian palm oil industry's impressive ability to meet and exceed arbitrary targets and criteria set by European policymakers, MPOC considers that many of the criteria required to be met for a biofuel to be treated as a renewable fuel under the Renewable Energy Directive deliver an inherent and particular advantage to biofuel feedstocks grown in developed nations. MPOC considers that the Directive discriminates against 'like' products in a manner which is more trade restrictive than necessary to achieve the stated aim of reducing deforestation in developing nations. For this reason, MPOC considers that, given that the current sustainability criteria raises considerable concerns over breaching WTO law, any addition to or expansion of the sustainability criteria will present similar problems.

Indirect Land Use Change

The state of scientific knowledge on ILUC is in its infancy and the models used to calculate ILUC are deeply flawed and incomplete. Current models of the indirect impact of biofuel use on land use change use base data on global land use which is contradictory and highly variant. The process of modelling the indirect impact of biofuels is extremely difficult as there is a considerable range of factors which need to be considered. Current models fail to capture the vast majority of these factors, particularly in relation to land use change in developing nations. In developing nations, land use change is highly reliant on government policy, levels of poverty and food security.

MPOC urges the European Union to adopt a sensible policy approach in relation to land use change and rather than seeking to control the product at the very end of the supply chain – namely biofuels – engage with developing nations on the issue to help them find solutions at source.

MPOC believes that ILUC is too indirect to be appropriately measured with the required degree of scientific certainty and any attempt to regulate the importation of biofuels on the basis of ILUC is likely to be a scientifically weak and intellectually flawed regulation. MPOC also maintains that arbitrary regulation of trade in this manner is highly counterproductive for the international trading system and the pursuit of more and better renewable energy sources.

Section I: Regional and international dimensions

The cooperation mechanisms of the current Directive offer a framework for cooperation between Member States and with third countries. A number of initiatives are currently under consideration for putting regional coordination in practice, both within the EU as well as with neighbouring regions.

2. Do you think the EU should further facilitate cooperation with third countries when it comes to the development of the potential for renewable energy?

— No, the EU should first focus on developing its own renewable potential

- ✓ **Yes, cooperation with third countries should be further promoted (please specify how and with whom, i.e. only neighbouring countries or more widely)**

Developing nations, including Malaysia, have a significant part to play in providing sources of renewable energy, particularly for biofuels. Malaysia's primary plantation of oil palm is the highest yield, highest energy output oilseed crop in existence. MPOC urges the EU to engage with Malaysia and other developing nations to negotiate a mutually beneficial approach to facilitate exports of biofuel feedstock. MPOC believes that with proper communication and consultation on internationally or bilaterally agreed approaches, rather than unilateral imposition of arbitrary trade controls, can create conditions from which both Malaysia and the EU can benefit.

4. Which measures do you consider appropriate and necessary in order to foster cooperation with third countries in this area?

— Bilateral agreements between Member States and third countries

— Agreements between the EU and third countries

- ✓ **Other measures (please specify)**

Malaysia, the European Union and other affected third countries should reach common accord that arrangements which facilitate the import of biofuels comply fully with international trade obligations. Arrangements to enable consumers to be satisfied that biofuels are sustainably produced should be voluntary systems of certification, not centrally-endorsed or certified government systems.