CIVIL SOCIETY LETTER

Malaysia Must Reject TRIPS-Plus Provisions in the Malaysia-EU Trade Negotiations to Protect Public Health, Food Security and National Interests

URGENT

21st September 2026

YAB Dato' Seri Anwar Ibrahim
Prime Minister of Malaysia and Minister of Finance
Malaysia

cc.
YB Datuk Seri Johari Abdul Ghani
Minister of Investment, Trade & Industry, Malaysia

YB Datuk Seri Dr. Dzulkefly Ahmad
Minister of Health, Malaysia

YB Datuk Armizan Bin Mohd Ali
Minister of Domestic Trade and Cost of Living, Malaysia

Dear YAB Dato' Seri,

We, the undersigned civil society organisations, patient groups and public interest organisations, respectfully **urge the Government of Malaysia to reject all TRIPS-plus intellectual property (IP) provisions in the ongoing negotiations for a Malaysia-European Union (EU) Free Trade Agreement (FTA).** We understand that the next round of trade negotiations is expected to take place on 21-25 September 2026.

We recognise the importance of strengthening Malaysia's economic and trade relations with the EU. However, trade negotiations **must not result in commitments that undermine the rakyat's access to affordable medicines, the domestic generic pharmaceutical industry, the rights of Malaysian farmers as well as policy space to safeguard national interests.**

Based on the EU's proposals[i] made public to date, **we are particularly concerned about TRIPS-plus proposals especially those relating to data and marketing exclusivity, patent term extensions, trade secrets, enforcement, industrial designs, and plant variety protection**.

The EU's proposals go beyond Malaysia's obligations under the WTO TRIPS Agreement and will unnecessarily delay generic and biosimilar competition, increase costs and restrict Malaysia's ability to pursue public-interest policies.

1. Protect access to affordable medicines and Malaysia's generic pharmaceutical industry

The EU's proposed data and marketing exclusivity provisions could significantly extend monopoly protection beyond Malaysia's existing data exclusivity directive under the Ministry of Health. Similarly, the EU proposal for patent term extensions of up to five years would extend monopolies beyond the 20-year term required under TRIPS. International experience indicates that such extensions can result in substantial additional costs to health systems.

A 2022 review of 91 studies of the impact of intellectual property provisions on medicine prices found 'that the stronger pharmaceutical monopolies created by TRIPs-plus intellectual property rules are generally associated with increased drug prices, delayed availability and increased costs to consumers and governments.'[ii] The combined impact of the patent term extensions and data exclusivity in Colombia's EUFTA was estimated to lead to an increase of US$756million in Colombia's total pharmaceutical spending in 2025.[iii]

These provisions would be particularly damaging to Malaysia's objective of developing a competitive domestic generic pharmaceutical industry. The New Industrial Master Plan (NIMP) 2030 identifies the domestic generic industry as strategically important for improving affordability, accessibility and domestic production.

Malaysia is also a net importer of intellectual property, with approximately US$2.7 billion in net IP royalty outflows in 2024 compared with receipts of around US$348 million.[iv] **Stronger and longer IP protection will increase royalty outflows and, in turn, place additional costs on Malaysian consumers, public health programmes and domestic manufacturers, while further worsening Malaysia's external payments position.**

2. Reject UPOV 1991 and protect Malaysia's plant variety protection system

We are equally concerned about the EU proposal requiring Malaysia to protect plant varieties in accordance with the 1991 Act of the International Convention for the Protection of New Varieties of Plants (UPOV 1991). **Malaysia should not agree to amend its national plant variety protection (PVP) regime to conform to UPOV 1991 or undertake an obligation to join the UPOV Convention.**

Malaysia already has a nationally tailored PVP framework under the Protection of New Plant Varieties Act 2004 (Act 634). This framework provides protection for commercial plant breeders while also preserving important farmers' rights to save, use, exchange and sell farm-saved seeds of protected varieties. It also contains safeguards addressing Malaysia's national circumstances, including measures to prevent biopiracy of local plant genetic resources, for national deposit of seed samples and to ensure availability of seeds of protected varieties at reasonable prices, and safeguards government's policy space to protect national interests.

Conforming to UPOV 1991 (a rigid one-size fits all model) undermines these carefully calibrated measures and safeguards.[v] It risks restricting farmers' ability to save, use, exchange and sell farm-saved seed, increasing seed costs, encouraging greater corporate concentration in the seed sector and weakening Malaysia's policy space for sustainable agricultural development. These consequences will have implications not only for farmers but also for food security, agrobiodiversity and the resilience of Malaysia's agricultural system.

The fact that the EU-India FTA did not require India to align its PVP legislation with UPOV 1991 demonstrates that such a commitment is not an inevitable requirement of an EU trade agreement.

3. Avoid All TRIPS-plus proposals & Maintain Flexibility

The EU's proposed border measures would extend enforcement beyond the requirements of TRIPS and could allow customs authorities to detain goods on allegations of IP infringement, including patents and industrial designs. Unlike counterfeit trademarks or pirated copyright, alleged patent and other IP infringement often requires complex technical and legal assessment. Thus border measures beyond counterfeit trademarks or pirated copyright can disrupt legitimate trade in affordable generic medicines and other products. Similarly, excessively broad trade-secret protection can impede public-health responses, technology transfer and access to manufacturing know-how, particularly during health emergencies.

Importantly, Malaysia does not need to accept these provisions in order to conclude an ambitious trade agreement with the EU. The EU's recent agreements with India and Mercosur demonstrate that it is possible to negotiate trade agreements without provisions requiring patent term extensions and data/marketing exclusivity and other TRIPS-plus obligations.

Malaysia should also not repeat commitments made in previous trade negotiations that constrain its policy space, particularly where those commitments can adversely affect public health, farmers rights and national food security. Other countries who have made problematic FTA commitments have often been careful not to repeat them in subsequent FTAs since doing so would increase their legal liability.

We therefore respectfully call on the Government to:

1. **Reject all TRIPS-plus IP provisions** that go beyond Malaysia's WTO obligations, including data and marketing exclusivity, patent term extensions, excessive trade-secret and industrial design protection, expanded IP border measures and UPOV 1991 commitments;
2. **Protect Malaysia's policy space** including the use of compulsory licensing, government use and other public-health safeguards in our existing laws;
3. **Maintain Malaysia's existing Protection of New Plant Varieties Act 2004 (Act 634)** and reject any commitment to align with or accede to UPOV 1991;

4. **Ensure that the agreement does not undermine** access to affordable medicines, generic and biosimilar competition, domestic generic pharmaceutical industry, farmers' rights and the resilience of Malaysia's agricultural system; and
5. Ensure **transparency and meaningful consultation** with civil society, consumer organizations, patient groups as well as smallholder farmers, throughout the negotiations.

Finally, we highlight that these concerns were elaborated in detailed letters sent on 4th June (by Third World Network) as well as on 19th June (by Forum Kedaulatan Makanan Malaysia /FKMM) to the relevant Ministries but we understand that to date no response has been received from any Ministry as to the status of the negotiations.

We respectfully urge YAB Dato' Seri to direct the relevant ministries and negotiating teams to safeguard these essential national interests and ensure that Malaysia does not accept any TRIPS-plus commitments for they have long-term consequences for public health, farmers, national security and Malaysia's development policy space. And we look forward to engaging with the relevant ministries on the abovementioned points as well as to better understand the status of negotiations.

SIGNATORIES
1. Acacia Forest Industries Sdn Bhd
2. Agora Society Malaysia
3. AiGro
4. Colorectal Cancer Survivorship Malaysia
5. Crisis Home
6. DIRIBUMI
7. Eatcious Solutions 202503124632 (JM1022611-V)
8. Justice for Sisters
9. Kiro Studio
10. KOKORIU
11. Kuala Lumpur Aids Support Services Society
12. Lelaki Positif Malaysia
13. Lil Fierra Wellness
14. Malaysian Agroecology Society – SRI-Mas
15. Malaysian AIDS Council
16. Malaysian AIDS Foundation
17. Malaysian Food Sovereignty Forum (FKMM)
18. Malaysian Rare Disorders Society
19. Médecins Sans Frontières (MSF)-Malaysian chapter
20. My Starfish Foundation
21. PACOS
22. Penggerak
23. Peribadi
24. Persatuan Pendidikan Dan Kebajikan Jaringan Nelayan Pantai Malaysia (JARING)
25. Persatuan Pengguna Islam Malaysia
26. Persatuan Pengguna Luar Bandar dan Ekologi Malaysia (Rural Malaysia)
27. Persatuan Pengguna-Pengguna Pulau Pinang (Consumers' Association of Penang) - CAP
28. Persatuan Prihatin Anak Jati Johor

29. Persatuan Wecarejourney
30. Pertubuhan Alam Sekitar Sejahtera Malaysia- GRASS
31. Pertubuhan Idris
32. Pertubuhan Persaudaraan Pesawah Malaysia (PeSAWAH)
33. Positive Malaysian Treatment Access & Advocacy Group (MTAAG+)
34. PT Foundation
35. Sahabat Alam Malaysia (Friends of the Earth) – SAM
36. Stono Farms KKB Sdn. Bhd
37. Suara Mahasiswa (SMUMS)
38. Terabai Kenyalang Heritage Association of Sarawak
39. The Hope Village, Tuaran, Sabah
40. Together Against Cancer Association
41. Third World Network

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[i] https://circabc.europa.eu/ui/group/09242a36-a438-40fd-a7af-fe32e36cbd0e/library/ed8ac59f-9b06-41f5-8627-47f098baa2a7/details?download=true
[ii] https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9013034/
[iii] https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9013034/
[iv] https://data.worldbank.org/indicator/BM.GSR.ROYL.CD and https://data.worldbank.org/indicator/BX.GSR.ROYL.CD
[v] https://www.apbrebes.org/report_Malaysia