

Subject to Legal Review for Accuracy, Clarity, and Consistency

The Honorable Michael Froman
United States Trade Representative
Office of the United States Trade Representative
Washington, DC
United States

Dear Ambassador Froman,

I have the honour to confirm the following understanding reached between the representatives of the Government of Malaysia (Malaysia) and the Government of the United States of America (United States) during the negotiations of Chapter 20 of the Trans-Pacific Partnership Agreement (TPP Agreement). The Government of Malaysia will establish the National Committee to Coordinate the Implementation of Environment Chapters under our Free Trade Agreements (FTAs), including the TPP Agreement. I have attached the Terms of Reference for the National Committee and will keep the United States, and others as appropriate, informed of its work.

In addition, our two Governments have reached the following understanding during the negotiations of Chapter 20 of the TPP Agreement:

The Governments of the United States of America and Malaysia recognize that access to traditional knowledge, as well as the equitable sharing of benefits that may result from that knowledge, can be adequately addressed through contracts that reflect mutually agreed terms between users and providers.”

I have the honor to propose that this letter and your letter in reply confirming that your Government shares this understanding shall constitute an agreement between our two Governments, which shall enter into force on the date of entry into force of the TPP Agreement as between the United States and Malaysia.

Sincerely,

Mustapa Mohamed
Minister of Trade and Industry

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Reply:

The Honorable Mustapa Mohamed
Minister of Trade and Industry
Ministry of Trade and Industry
Kuala Lumpur, Malaysia

Dear Minister Mustapa,

I am pleased to acknowledge your letter of [date], which reads as follows:

“I have the honor to confirm the following understanding reached between the representatives of the Government of Malaysia (Malaysia) and the Government of the United States of America (United States) during the negotiations of Chapter 20 of the Trans-Pacific Partnership Agreement (TPP Agreement). The Government of Malaysia will establish the National Committee to Coordinate the Implementation of Environment Chapters under our Free Trade Agreements (FTAs), including the TPP Agreement. I have attached the Terms of Reference for the National Committee and will keep the United States, and others as appropriate, informed of its work.

In addition, our two Governments have reached the following understanding during the negotiations of Chapter 20 of the TPP Agreement:

The Governments of the United States of America and Malaysia recognize that access to traditional knowledge, as well as the equitable sharing of benefits that may result from that knowledge, can be adequately addressed through contracts that reflect mutually agreed terms between users and providers.”

I have the honour to confirm that my Government shares this understanding, and that your letter and this reply shall constitute an agreement between our two Governments, which shall enter into force on the date of entry into force of the TPP Agreement as between the United States and Malaysia.

Sincerely,

Ambassador Michael B.G. Froman

Letter Attachment: Terms of Reference for Malaysia's National Committee:

**National Committee (NC) to Coordinate the Implementation of Environment Chapters
in Free Trade Agreements (FTAs)
Terms of Reference (TOR)**

1. Context

Cabinet of Malaysia in its meeting dated XXX has agreed to establish a National Committee (NC) to coordinate the implementation of environment chapters in Free Trade Agreements (FTAs) signed by the Government of Malaysia. Many of the environmental matters are under the jurisdiction of the State Governments as described in the Ninth Schedule of the Federal Constitution. Therefore, a committee comprising all Federal and State Government representatives is required to coordinate and oversee the implementation of Malaysia's obligations under the Environment Chapters in all FTAs, such as commitments to address illegal logging, fishing and wildlife trafficking.

2. Objectives

Two (2) objectives of establishing the NC are:

- i) to coordinate the implementation of Malaysia's obligations under the Environment Chapter in all FTAs in order to ensure consistent and effective implementation of its environmental obligations in each respective FTA; and
- ii) to provide a framework for constructive dialogue related to implementation issues by the Federal and State Governments of the Environment Chapters in all FTAs, including sharing of information and experiences in improving levels of environmental protection.

3. Term

- 3.1 The NC will exist until dissolved by consensus among the members and agreed by the Cabinet.
- 3.2 Prior to any agreement to dissolve the NC, an alternative and equivalent means of achieving the objectives laid out in this TOR will be pursued.

4. Members

- 4.1 Chairman of the NC is the Minister responsible for Natural Resources and Environment. Alternate Chairman will be the Deputy Minister responsible for Natural Resources and Environment.

- 4.2 Members of the NC are as follows:

Member of State Executive Councils/State Ministers responsible for Natural Resources and Environment or their representatives;

Minister responsible for International Trade and Industry or its representatives;

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Minister responsible for Energy, Green Technology and Water or its representatives;

Minister responsible for Plantation and Commodities or its representatives;

Minister responsible for Fisheries or its representatives;

Minister responsible for Transport or its representatives;

Director General of Economic Planning Unit, Prime Minister's Department or its representatives;

Director General of State Economic Planning Units or its representatives;

Director General of Department of Environment or its representatives;

Director General of Forestry Department Peninsular Malaysia or its representatives;

Director of Sabah Forestry Department or its representatives;

Director of Sarawak Forestry Department or its representatives;

Director General of Department of Wildlife and National Parks (PERHILITAN) or its representatives;

Director of Sabah Wildlife Department or its representatives;

Director of Sabah Parks or its representatives;

Attorney General Chambers of Malaysia or its representatives; and

Director General of Department of Royal Custom Malaysia or its representatives.

4.3 The NC can review the list of its members.

5. Secretariat

5.1 Ministry responsible for Natural Resources and Environment will be the secretariat for the NC.

6. Working Level Committee

6.1 NC may establish a working level committee comprising all relevant ministries and agencies to provide support to the NC.

6.2 The working level committee shall meet on a regular basis.

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7. Quorum

7.1 The quorum necessary for the NC meetings shall be 16, whom must be representing different Ministries or Agencies. A duly convened meeting of the NC at which a quorum is present shall be competent to exercise all or any of the authorities, powers and discretions vested in or exercisable by the NC.

8. Frequency of Meetings

8.1 The NC shall meet at least twice a year and at such other times as the Chairman shall require.

9. Notice of Meetings

9.1 Meetings of the NC shall be called by the Secretariat of the NC at the request of the Chairman.

9.2 Unless otherwise agreed, notice of each meeting confirming the venue, time and date together with an agenda of items to be discussed, shall be forwarded to each member of the NC and any other person required to attend, no later than 7 working days before the date of the meeting.

10. Decision of Meetings

10.1 Policy decisions of meetings must be made by consensus.

10.2 Administrative decisions of meetings may be made by majority.

11. Minutes of Meetings

11.1 The Secretariat shall minute the proceedings and resolutions of all meetings, including the names of those present during the meetings.

11.2 Minutes of NC meetings shall be circulated to all members, once agreed by Chairman, no later than 7 working days after the date of the meeting.

12. Duties

12.1 The NC shall:

12.1.1 coordinate and monitor the implementation through coordination and cooperation among the relevant Ministries and Departments, the implementation of Malaysia's obligations under the Environment Chapters of all FTAs at Federal and States level;

12.1.2 discuss and provide recommendations to any issues arising in implementing Malaysia's obligations under the Environment Chapters of all FTAs;

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- 12.1.3 monitor the implementation of the NC's recommendations;
- 12.1.4 consult relevant persons having expertise in any matters considered by the Committee, as appropriate;
- 12.1.5 discuss and provide recommendations as to the directions of Environment Chapters in future FTAs to be entered by the Government of Malaysia;
- 12.1.6 consult, discuss and determine further actions that may be taken in relation to any disputes that may arise in relation to Environment Chapter; and
- 12.1.7 carry out any other duties as deemed appropriate.

13. Confidentiality

- 13.1 All information supplied to the NC will be treated on a strictly confidential basis subject to legal requirements (e.g., the Official Secrets Act 1972). In order to meet confidentiality requirements, all NC meetings will be held 'in committee'.
- 13.2 NC members must ensure that any information acquired or created for NC consideration is only used for performing duties as an NC member. Members shall not use the confidential information to provide inequitable benefit, gain or advantage to any individual, private or public agency or group.
- 13.3 For the avoidance of doubt, requirements on confidentiality will apply equally to NC expert advisors and staff supporting the NC.
- 13.4 The obligations under this paragraph shall continue to be binding notwithstanding the dissolution of the NC.

14. Reporting and Transparency

Summary reports of the NC's work will be provided to Malaysia's FTA partners through the reporting mechanism established under the respective FTAs.

15. Review

The NC shall, every three (3) years, review its own performance and terms of reference to ensure it is operating at maximum effectiveness and recommend any changes it considers necessary to the Cabinet for approval.