

**Subject to Legal Review for Accuracy, Clarity and Consistency**

[DATE]

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

Dear Minister Mohamed:

I have the honor to confirm that the United States and Malaysia have reached agreement with respect to “Malaysia Registered Textile and Apparel Enterprises,” a bilateral instrument in accordance with Article 5 of Chapter 4 of the TPP Agreement attached to this letter.

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. This agreement shall be subject to dispute settlement under Chapter 28 of the TPP Agreement, and shall enter into force on the date of entry into force of the TPP Agreement between our two governments.

Sincerely,

Michael B. G. Froman

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The Honorable Michael Froman  
United States Trade Representative  
600 17<sup>th</sup> Street, NW  
Washington, DC 20508

Dear Ambassador Froman:

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

I have the honor to confirm that the United States and Malaysia have reached agreement with respect to “Malaysia Registered Textile and Apparel Enterprises,” a bilateral instrument in accordance with Article 5 of Chapter 4 of the TPP Agreement attached to this letter.

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. This agreement shall be subject to dispute settlement under Chapter 28 of the TPP Agreement, and shall enter into force on the date of entry into force of the TPP Agreement between our two governments.

I have the honor to confirm that the understanding referred to in your letter is shared by my Government, and that your letter and this letter in reply shall constitute an agreement between our two governments.

Sincerely,

Minister Mustapa Mohamed

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### **Malaysia Registered Textile and Apparel Enterprises**

1. Malaysia shall establish or maintain a monitoring mechanism to monitor the importation, production, and exportation of textile and apparel goods to the United States, including in a free trade zone,<sup>1</sup> as specified in this Article. This mechanism shall provide the relevant information necessary for each Party to ascertain, with respect to its law, whether a violation of laws involving textile and apparel goods or a customs offence is occurring or has occurred.
2. Malaysia shall establish or maintain a registration system covering all enterprises operating in its territory that are engaged in the production of textile or apparel goods or the export to the United States of such goods.
3. Malaysia shall ensure that its officials have legal authority to verify or otherwise confirm, on request of the United States, whether a claim that a textile or apparel good of a registered enterprise is originating or a product of Malaysia (as marked for export to the United States) is accurate. This mechanism will allow for on-site government site visits of such enterprises, by Malaysia, in accordance with its law, and by the United States without prior notice to the enterprise, to verify that the enterprises comply with laws of Malaysia involving textile and apparel goods and that their production of and capability to produce such goods are consistent with claims that the good is originating and qualifies for preferential tariff treatment, and that a customs offence has not occurred or is not occurring. Government officials of Malaysia may accompany the government officials of the United States during the site visit. The United States shall inform Malaysia of the dates of the site visits 20 days in advance. Under this mechanism, Malaysia shall provide to the United States within 35 days of the completion of each such site visit, a written report regarding the results of that site visit, including any conduct discovered as a result of the site visit that Malaysia believes to be a customs offence.
4. For each shipment of textile or apparel goods that a registered enterprise produces for exportation to the United States or exports to the United States, Malaysia shall require the enterprise to maintain in Malaysia records relating to such production or exportation for a period of five years from the date on which such records are created. Malaysia also shall require each registered enterprise that produces textile or apparel goods to maintain in Malaysia records relating to its production capabilities in general, the number of persons it employs, and any other records and information necessary for officials of Malaysia or the United States to the extent practicable to verify the enterprise's production and exportation of textile or apparel goods, including:
  - a) records demonstrating that the materials used to produce or assemble textile and apparel goods were obtained or produced by the enterprise and were available for production, such as:

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<sup>1</sup> For Malaysia, "free trade zones" include free commercial zones and free industrial zones as defined in Malaysian law.

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- (i) bills of lading;
  - (ii) customs clearance records or equivalent records, if the materials were imported into Malaysia; and
  - (iii) transaction records, including:
    - (A) commercial invoices and purchase orders, if the materials were purchased,
    - (B) transfer records,
    - (C) mill certificates if the materials were spun, extruded (for yarns) or woven, knitted or formed by any other fabric forming process (e.g., tufting), and
    - (D) production records if the registered enterprise produced the materials;
- b) with respect to textile and apparel goods the enterprise has produced that are claimed as originating goods or marked as products of Malaysia, production records that substantiate the claim or marking, such as:
- (i) cutting records for products assembled from cut components;
  - (ii) assembly or production records that the production manager maintains on the factory floor that document daily production, including workers' daily production records, wage records, production steps, and sewing tickets; and
  - (iii) employee time cards, payment records, or other documentation showing which employees were working, how long they worked, and what work they performed during the period the goods were produced;
- c) with respect to textile and apparel goods that a subcontractor has produced in whole or in part for the enterprise and that are claimed as originating goods or marked as products of Malaysia, records that substantiate the claim, such as:
- (i) cutting records for products assembled from cut components;
  - (ii) if partially assembled by the subcontractor, production records documenting the partial assembly;
  - (iii) bills of lading; and
  - (iv) transfer documents to the shipper or primary contractor and proof of payment by the shipper or primary contractor for the work done.

5. Malaysia shall establish and maintain a mechanism to ensure that textile and apparel goods that are imported into or exported from Malaysia or that are processed in a free trade zone in Malaysia en route to the United States are marked with the correct country of origin, are originating (if a claim for preferential tariff treatment is made or a certification of origin completed), and that the documents accompanying the goods accurately describe the goods. This mechanism will provide for:

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- (a) immediate referral by Malaysian officials of suspected violations of this Agreement or other customs offences to the appropriate enforcement authorities; and
- (b) issuance by Malaysia to the United States of a written report of each violation of a law or each custom offence of Malaysia relating to trade in textiles or apparel goods or a customs offence, including a failure to maintain or produce records. Malaysia shall issue the report not later than 30 days after it determines that a violation has occurred, and shall include in the report any enforcement action taken and the ultimate resolution of the matter.

Malaysia shall designate in the report any information it considers to be confidential, except the name of any enterprise that its enforcement authorities have determined to have engaged in a customs offence.

6. Two years after entry into force of the agreement, and annually thereafter Malaysia shall make available to the United States information about the enterprises that are part of the registration system in paragraph 2.

7. Malaysia and the United States shall consult in order to review the operation and effectiveness of this agreement at the end of five years from its entry into force and thereafter on request of either Party, unless the Parties notify each other in writing that such review is not necessary.