

8 March 2018

H.E. J.Jayasiri
Secretary General
Ministry of International Trade and Industry
Malaysia

Dear Secretary General

In connection with the signing on 8 March 2018 in Santiago, Chile of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (the Agreement), I have the honour to confirm the following agreement reached between the Government of Malaysia and the Government of New Zealand during the course of negotiations on the Agreement.

1. With respect to Malaysia:

- a) No investor of New Zealand shall have recourse to dispute settlement against the Government of Malaysia under Chapter 9, Section B (Investor State Dispute Settlement) of the Agreement except in accordance with this side letter.
- b) Any dispute between an investor of New Zealand and Government of Malaysia that would otherwise be subject to Chapter 9, Section B (Investor State Dispute Settlement) of the Agreement should be resolved amicably through consultation and negotiations between the investor and the Government of Malaysia. This may include the use of non-binding third party procedures, such as good offices,



conciliation or mediation. A request for consultations and negotiations shall be made in writing and set out a brief description of facts regarding the measure or measures at issue.

- c) If the dispute cannot be resolved as provided for in paragraph 1(b) within six months from the date of receipt of the written request for consultations, it may be submitted to arbitration in accordance with Chapter 9, Section B (Investor State Dispute Settlement) of the Agreement provided that the Government of Malaysia consents to the application of this Chapter to the dispute.
- d) Where the Government of Malaysia has provided consent under paragraph 1(c), a request for consultations pursuant to paragraph 1(b) shall be deemed to be a written request for consultations under Article 9.18.2 (Consultation and Negotiation) of the Agreement.

2. With respect to New Zealand:

- a) No investor of Malaysia shall have recourse to dispute settlement against the Government of New Zealand under Chapter 9, Section B (Investor State Dispute Settlement) of the Agreement except in accordance with this side letter.
- b) Any dispute between an investor of Malaysia and the Government of New Zealand that would otherwise be subject to Chapter 9, Section B (Investor State Dispute Settlement) of the Agreement should be resolved amicably through consultation and negotiations between the investor and the Government of New Zealand. This may include the use of non-binding third party procedures, such as good offices, conciliation or mediation. A request for consultations



and negotiations shall be made in writing and set out a brief description of facts regarding the measure or measures at issue.

- c) If the dispute cannot be resolved as provided for in paragraph 2(b) within six months from the date of receipt of the written request for consultations, it may be submitted to arbitration in accordance with Chapter 9, Section B (Investor State Dispute Settlement) of the Agreement provided that the Government of New Zealand consents to the application of this Chapter to the dispute.

- d) Where the Government of New Zealand has provided consent under paragraph 2(c), a request for consultations pursuant to paragraph 2(b) shall be deemed to be a written request for consultations under Article 9.18.2 (Consultation and Negotiation) of the Agreement.

I have the honour to propose that this letter and your letter of confirmation in reply shall constitute an agreement between the Government of New Zealand and the Government of Malaysia which shall enter into force on the date of entry into force of the Agreement for both the Government of New Zealand and the Government of Malaysia.

Yours sincerely,



Hon David Parker
Minister for Trade and Export Growth
New Zealand



8 March 2018

Hon David Parker
Minister for Trade and Export Growth
New Zealand

Dear Minister,

I have the honour of acknowledging receipt of your letter of 8 March 2018, which states as follows:

"In connection with the signing on 8 March 2018 in Santiago, Chile of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (the Agreement), I have the honour to confirm the following agreement reached between the Government of Malaysia and the Government of New Zealand during the course of negotiations on the Agreement.

1. With respect to Malaysia:

- a) No investor of New Zealand shall have recourse to dispute settlement against the Government of Malaysia under Chapter 9, Section B (Investor State Dispute Settlement) of the Agreement except in accordance with this side letter.
- b) Any dispute between an investor of New Zealand and Government of Malaysia that would otherwise be subject to Chapter 9, Section B (Investor State Dispute Settlement) of the Agreement should be resolved amicably through consultation and negotiations between the investor and the Government of Malaysia. This may include the use of non-binding third party procedures, such as good offices, conciliation or mediation. A request for consultations and negotiations shall be made in writing and set out a brief description of facts regarding the measure or measures at issue.
- c) If the dispute cannot be resolved as provided for in paragraph 1(b) within six months from the date of receipt of the written request for consultations, it may be submitted to arbitration in accordance with Chapter 9, Section B (Investor State Dispute Settlement) of the Agreement provided that the Government of Malaysia consents to the application of this Chapter to the dispute.
- d) Where the Government of Malaysia has provided consent under paragraph 1(c), a request for consultations pursuant to paragraph 1(b) shall be deemed to be a written request for consultations under Article 9.18.2 (Consultation and Negotiation) of the Agreement.

2. With respect to New Zealand:

- a) No investor of Malaysia shall have recourse to dispute settlement against the Government of New Zealand under Chapter 9, Section B (Investor State Dispute Settlement) of the Agreement except in accordance with this side letter.
- b) Any dispute between an investor of Malaysia and the Government of New Zealand that would otherwise be subject to Chapter 9, Section B (Investor State Dispute Settlement) of the Agreement should be resolved amicably through consultation and negotiations between the investor and the Government of New Zealand. This may include the use of non-binding third party procedures, such as good offices, conciliation or mediation. A request for consultations and negotiations shall be made in writing and set out a brief description of facts regarding the measure or measures at issue.
- c) If the dispute cannot be resolved as provided for in paragraph 2(b) within six months from the date of receipt of the written request for consultations, it may be submitted to arbitration in accordance with Chapter 9, Section B (Investor State Dispute Settlement) of the Agreement provided that the Government of New Zealand consents to the application of this Chapter to the dispute.
- d) Where the Government of New Zealand has provided consent under paragraph 2(c), a request for consultations pursuant to paragraph 2(b) shall be deemed to be a written request for consultations under Article 9.18.2 (Consultation and Negotiation) of the Agreement.

I have the honour to propose that this letter and your letter of confirmation in reply shall constitute an agreement between the Government of New Zealand and the Government of Malaysia which shall enter into force on the date of entry into force of the Agreement for both the Government of New Zealand and the Government of Malaysia."

I have the further honour to confirm that your letter reflects the understandings made by the Government of Malaysia and the Government of New Zealand during the course of the negotiations on the Agreement and that your letter and this letter in reply shall constitute an agreement between the Government of Malaysia and the Government of New Zealand which shall enter into force on the date of entry into force of the Agreement for both the Government of New Zealand and the Government of Malaysia .

Yours sincerely,


J. Jayasri
Secretary General
Ministry of International Trade and Industry
Malaysia