



MEMORANDUM

FOR : The Directors
Biodiversity Management Bureau
Environmental Management Bureau
Forest Management Bureau
Climate Change Service

FROM : The OIC Director
Policy and Planning Service

SUBJECT : **ASEAN EXPERTS MEETING ON TRADE AND ENVIRONMENT
RELATIVE TO ASEAN-CANADA FREE TRADE AGREEMENT
(ACAFTA)**

DATE : 14 APR 2023

In line with conduct of the Ad-Hoc ASEAN Expert Group Meeting on Trade and Environment under the ASEAN-Canada Free Trade Agreement (ACAFTA) held on 12 April 2023, we would like to reiterate our call for nomination of technical experts who would join the discussions on Trade and Environment under ACAFTA.

Please be informed that the Department of Trade and Industry (DTI) had requested the nomination of focal points who will represent the Philippines as technical experts in such discussions. Noting the cross-sectoral nature of Environment, the DTI had outlined the proposed composition of the Philippine expert group on Environment, to wit:

Lead Agency	Department of Environment and Natural Resources (DENR)
Supporting Agencies	National Economic Development Authority (NEDA)
	Board of Investments (BOI)
	Department of Energy (DOE)
	Climate Change Commission (CCC)
	Tariff Commission (TC)
	DTI Export Marketing Bureau (EMB)
	DTI Bureau of Philippine Standards (BPS)

We would appreciate receiving the details (Name, Position, Office, Contact Number and Email Address) of your nominated focal person by 17 April 2023. Attached are the letter of the DTI and proposed non-papers of Canada and ASEAN for your ready reference.

For your information and appropriate action, please.


CHERYL LOISE T. LEAL



Undersecretary for Policy, Planning and International Affairs <ouppia@denr.gov.ph>

1050

Request for Technical Experts for the ASEAN-Canada FTA (ACAFTA) Negotiations on Environment

Michael Allen C. Fernandez <MichaelAllenFernandez@dti.gov.ph>

Wed, Apr 5, 2023 at 1:32 AM

To: BOI_attached <MCHDichosa@boi.gov.ph>, Angelita Arcellana <afarcellana@boi.gov.ph>, Mary Ann Raganit <MERaganit@boi.gov.ph>, Elyjean Portoza <EDCPortoza@boi.gov.ph>, "edcportoza@gmail.com" <edcportoza@gmail.com>, Ian Dennis Baniqued <idrbaniqued@boi.gov.ph>, "Maricon A. Almonte" <maalmonte@boi.gov.ph>, "Stephanie Luzette M. Macapagal" <SLMMacapagal@boi.gov.ph>, "reab@climate.gov.ph" <reab@climate.gov.ph>, "herrerars@climate.gov.ph" <herrerars@climate.gov.ph>, "delacruz@climate.gov.ph" <delacruz@climate.gov.ph>, "cuencara@climate.gov.ph" <cuencara@climate.gov.ph>, Policy Research and Development Division <prdd@climate.gov.ph>, "ilaganj@climate.gov.ph" <ilaganj@climate.gov.ph>, "eccd.ierspems@gmail.com" <eccd.ierspems@gmail.com>, "repwimpy.fuentebella@doe.gov.ph" <repwimpy.fuentebella@doe.gov.ph>, "repwimpy@gmail.com" <repwimpy@gmail.com>, Michael Sinocruz <msinocruz@doe.gov.ph>, "mike_sinocruz@yahoo.com" <mike_sinocruz@yahoo.com>, "Lilian C. Fernandez" <lfernandez@doe.gov.ph>, "lilian.fernandez1315@gmail.com" <lilian.fernandez1315@gmail.com>, "William G. Quinto" <wquinto@doe.gov.ph>, "williamquinto1211@gmail.com" <williamquinto1211@gmail.com>, william quinto <wquinto1211@gmail.com>, "Allan D. Rabe" <arabe@doe.gov.ph>, "Christopher Edmundo V. Manalo" <cevmanalo@doe.gov.ph>, "tophetski@yahoo.com" <tophetski@yahoo.com>, "icalapit@doe.gov.ph" <icalapit@doe.gov.ph>, "jdt.doe@gmail.com" <jdt.doe@gmail.com>, "Jayser D. Tan" <jtan@doe.gov.ph>, OUEIEA Secretariat <oueiea.denr@gmail.com>, "ouppia@denr.gov.ph" <ouppia@denr.gov.ph>, "odpps@yahoo.com" <odpps@yahoo.com>, "amaromarsjr@gmail.com" <amaromarsjr@gmail.com>, "psddivision@gmail.com" <psddivision@gmail.com>, "policy@denr.gov.ph" <policy@denr.gov.ph>, "lsmojica@denr.gov.ph" <lsmojica@denr.gov.ph>, "hjpdonato@denr.gov.ph" <hjpdonato@denr.gov.ph>, "ma.carmelacariaga.denr@gmail.com" <ma.carmelacariaga.denr@gmail.com>, "uerd.erdb@gmail.com" <uerd.erdb@gmail.com>, "lynlei14@gmail.com" <lynlei14@gmail.com>, "ruedagirlie31@gmail.com" <ruedagirlie31@gmail.com>, Neil Catajay <NeilCatajay@dti.gov.ph>, Bureau of Philippine Standards <BPS@dti.gov.ph>, BPS Standards Conformity Division <bps.scd@dti.gov.ph>, "Ma. Teresita G. Del Rosario" <MaTeresitaDelRosario@dti.gov.ph>, Catherine Antonio <CatherineAntonio@dti.gov.ph>, "Jasmin E. Metre" <JasminMetre@dti.gov.ph>, "Mario U. Gaudiano" <MarioGaudiano@dti.gov.ph>, "Avelino T. Molina Jr." <AvelinoMolina@dti.gov.ph>, Bianca Pearl Sykimte <BiancaPearlSykimte@dti.gov.ph>, Rudolph Jay Velasco <RudolphJayVelasco@dti.gov.ph>, "Mary Fatima N. Barrameda" <MaryFatimaBarrameda@dti.gov.ph>, "Maria Teresa S. Loring" <MariaTeresaLoring@dti.gov.ph>, "Louise Kaye G. Mendoza" <LouiseKayeMendoza@dti.gov.ph>, "Maria Jaena P. Go-Aco" <MariaJaenaGoAco@dti.gov.ph>, "RGEdillon@neda.gov.ph" <RGEdillon@neda.gov.ph>, "baganapin@neda.gov.ph" <baganapin@neda.gov.ph>, "MDLabadan@neda.gov.ph" <MDLabadan@neda.gov.ph>, "rdballester@neda.gov.ph" <rdballester@neda.gov.ph>, "ntnatural@neda.gov.ph" <ntnatural@neda.gov.ph>, "Rory Jay S.C. Dacumos" <rsdacumos@neda.gov.ph>, Tariff Commission <TC.Assist@mail.tariffcommission.gov.ph>, "mpmendoza@mail.tariffcommission.gov.ph" <mpmendoza@mail.tariffcommission.gov.ph>, "mapaderon@mail.tariffcommission.gov.ph" <mapaderon@mail.tariffcommission.gov.ph>, "nmjuliano@mail.tariffcommission.gov.ph" <nmjuliano@mail.tariffcommission.gov.ph>, "Maria Ana Michaela R. Feliciano" <mrfeliciano@neda.gov.ph>, "Lara Gianna V. Hidalgo" <lvhidalgo@neda.gov.ph>, "CVIsaac@neda.gov.ph" <CVIsaac@neda.gov.ph>, "butchbmarquez@gmail.com" <butchbmarquez@gmail.com>, "oad@erdb.denr.gov.ph" <oad@erdb.denr.gov.ph>, "jIAGcopra@neda.gov.ph" <jIAGcopra@neda.gov.ph>
Cc: SEOM-Philippines <SEOM-Philippines@dti.gov.ph>, ASEAN-CANADA FTA PH Secretariat <asean-canadaftaphsecretariat@dti.gov.ph>

Dear Sirs/Mesdames,

Good evening.

This refers to the proposed Experts' Group Meeting on Environment under the ASEAN-Canada FTA (ACAFTA) Negotiations on **12 April 2023, 10:00 AM - 12:30 PM (Manila Time)**.

We would like to take this opportunity to express our appreciation to agencies for providing focal points on Trade and Environment under the ACAFTA Negotiations. We have endorsed the same to the ASEAN Secretariat, while **other agencies are still welcome to provide additional nominations, if any.**

Further, in anticipation of the 3rd Meeting of the ACAFTA Trade Negotiating Committee (TNC) on 18 April 2023, ASEAN is pressed to already convene the experts' group on Environment to discuss the following:

1. **Possible elements for Environment** provisions under the ACAFTA, noting ASEAN TNC's preference to have a Chapter on Trade and Sustainable Development (TSD) to cover the following elements, instead of having separate chapters for each of the issue:
 - Labour
 - **Environment**
 - Inclusive Trade (i.e. Gender, and Indigenous People)
2. **Proposed Way Forward on Environment** provisions, particularly on the following:
 - The timing to conduct an experts group meeting with Canada, following ASEAN experts' discussion
 - The mechanism of such dialogue (e.g whether to have one expert dialogue for all three issues or have three separate dialogues for each of the issues)
 - Canada's non-paper on Environment

Discussions are on a without prejudice basis and will be subject to ASEAN TNC's decision. In line with this, we are seeking relevant agencies' comments on the following:

1. Availability to join the ASEAN experts' group meeting on 12 April 2023, 10:00 AM - 12:30 PM (Manila Time) via videoconferencing platform
2. Comments on the proposed agenda, if any
3. Views on ASEAN's Non-Paper on Trade and Sustainable Development, if any
4. Views on Canada's Non-Paper on Environment, if any

Attached are the documents for your reference and information. Sending also my viber details for urgent concerns/inquiries (+639178414249).

Thank you and we hope for your kind feedback.

Kind regards,

Michael Allen C. Fernandez (Mr)

Regional Relations and Arrangements Division

Bureau of International Trade Relations

Department of Trade and Industry

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From: Michael Allen C. Fernandez

Sent: Friday, March 24, 2023 2:17 PM

To: BOI_attached <MCHDichosa@boi.gov.ph>; Angelita Arcellana <afarcellana@boi.gov.ph>; Mary Ann Raganit <MERaganit@boi.gov.ph>; Elyjean Portoza <EDCPortoza@boi.gov.ph>; edcportoza@gmail.com <edcportoza@gmail.com>; Ian Dennis Baniqued <idrbaniqued@boi.gov.ph>; Maricon A. Almonte <maalmonte@boi.gov.ph>; Stephanie Luzette M. Macapagal <SLMMacapagal@boi.gov.ph>; reab@climate.gov.ph <reab@climate.gov.ph>; herrerars@climate.gov.ph <herrerars@climate.gov.ph>; delacruz@climate.gov.ph <delacruz@climate.gov.ph>; cuencara@climate.gov.ph <cuencara@climate.gov.ph>; Policy Research and Development Division <prdd@climate.gov.ph>; ilaganj@climate.gov.ph <ilaganj@climate.gov.ph>; eccd.ierspems@gmail.com <eccd.ierspems@gmail.com>; repwimpy.fuentebella@doe.gov.ph <repwimpy.fuentebella@doe.gov.ph>;



**AD-HOC ASEAN EXPERT GROUP MEETING ON TRADE AND ENVIRONMENT
UNDER THE ASEAN-CANADA FTA**

12 April 2023, 09:00-11:30 (GMT+7)

Video Conference Meeting

PROVISIONAL ANNOTATED AGENDA

AGENDA ITEM 1: ADOPTION OF THE AGENDA

The Meeting may wish to adopt the provisional annotated agenda of the Meeting.

<Indonesia to lead>

AGENDA ITEM 2: BUSINESS ARRANGEMENT

ASEC to brief the Meeting on the business arrangement of the Meeting.

<ASEC to lead>

**AGENDA ITEM 3: ASEAN'S PROPOSAL ON POSSIBLE ELEMENTS FOR
TRADE AND ENVIRONMENT PROVISIONS UNDER ACAFTA**

Taking into account ASEAN TNC's decision to place provisions on i) trade and environment, ii) trade and labour, as well as iii) inclusive trade into one stand-alone chapter on Trade and Sustainable Development (TSD) chapter under ACAFTA, the Meeting may wish to discuss ASEAN's proposal on elements on trade and environment under the TSD chapter, for ASEAN TNC's consideration.

<ASEC to lead>

**AGENDA ITEM 4: PROPOSED WAY FORWARD ON THE NEGOTIATIONS ON
TRADE AND ENVIRONMENT PROVISIONS UNDER ACAFTA**

The Meeting may wish to discuss on the proposed way forward to be submitted to ASEAN TNC for consideration and decision.

<Indonesia to lead>

AGENDA ITEM 5: OTHER MATTERS

The Meeting may wish to discuss other matters.

<Indonesia to lead>

AGENDA ITEM 6: ADOPTION OF THE NOTE-TO-FILE

The Meeting may wish to consider and adopt the note-to-file of the Meeting.

<ASEC to lead>

ASEAN Experts Meeting on Trade and Environment relative to ASEAN-Canada Free Trade Agreement (ACAFTA)

AFTER ACTIVITY REPORT

DATE AND TIME	12 April 2023 10:00 AM
VENUE	Via Webex
AGENDA	<ul style="list-style-type: none"> I. ASEAN's Proposal on possible elements for Trade and Environment provisions under ACAFTA II. Proposed Way Forward on the Negotiations on Trade and Environment provisions under ACAFTA III. Other Matters IV. Adoption of the Note-to-File
ATTENDEES/ PARTICIPANTS	<p>National Economic Development Authority</p> <ul style="list-style-type: none"> - Ms. Lara Hidalgo - Ms. Jessa Agcopra <p>Tariff Commission</p> <ul style="list-style-type: none"> - Ms. Nicole Miralles <p>Department of Energy</p> <p>DENR-Ecosystems Research and Development Bureau</p> <ul style="list-style-type: none"> - Mr. Conrado Marquez <p>DENR-Policy Studies Division, PPS</p>
HIGHLIGHTS OF DISCUSSIONS	<p>There is no Chair assigned for ASEAN - Canada. Indonesia (Ms. Adis Ranitya) as the ASEAN chair will be the interim chair for the said meeting.</p> <p align="center">ASEAN's Proposal on possible elements for Trade and Environment provisions under ACAFTA</p> <p>The ASEAN Secretariat provides a brief background on the different levels of Environmental Commitment in ASEAN and CAN is proposing to form part in the ACAFTA.</p> <p>The Paragraph on Environment</p> <ul style="list-style-type: none"> - The ASEAN Secretariat explained that Canada is proposing an enforceable provision. - Canada had tabled two (2) non-papers. The non-papers includes elements on core provisions on environmental governance, provisions on obligations of MEAs, provisions on complementary areas, and areas of cooperation related to Global Environmental Challenges with linkages to trade - In areas of cooperation, the difference is the level of commitment both sides are willing to commit. ASEAN is not willing to go beyond the proposed. <p>On the proposal of Canada, elements to be negotiated in Environment are:</p> <ol style="list-style-type: none"> 1. Provisional Environmental Governance 2. MEAS

3. Complementary Areas
4. Global Environmental Challenges.
 - Proposed meeting schedule with Canada on April 18, 2023.
 - The preference of the ASEAN Trade Negotiating Committee (TNC) is to place labor, environment and inclusive trade on a Trade and Sustainability Development (TSD) Chapter under ACAFTA and to use the TSD Chapter under AANZFTA as a point of reference.
 - ASEAN Experts to share with the TNC on their preliminary assessment on the timing to conduct and informal dialogue with Canada, the mechanism of such dialogue, and Canada's non-papers on 3 outstanding issues.
 - During the TNC meeting on February, Canada informed ASEAN their flexibility to have a TSD Chapter

Broad elements that could be explored include:

1. basic principles
2. cooperation
3. contact points
- 4 non-applications of the dispute settlement chapter to the TSD Chapter

Canada's Proposal	ASEAN's Position
<p>Core provisions:</p> <ul style="list-style-type: none"> ● Provision to ensure availability of domestic procedures and remedies for violations of environmental laws ● Provisions to ensure domestic environmental laws are effectively enforced ● Provisions to promote transparency, public participation and accountability <p>Commitments to address global environmental issues:</p> <ul style="list-style-type: none"> ● Provisions to reaffirm Parties' existing commitments in multilateral environmental agreements ● Provisions to reaffirm more targeted commitments such as combating illegal logging and illegal wildlife trade, addressing climate change, promoting circular economy, 	<p>Recommending the TNC to have either:</p> <ul style="list-style-type: none"> ● a dedicated chapter on Environment; or ● a TSD chapter that would cover both environment and labor (similarly to the upgraded AANZFTA TSD Chapter) <p>Proposed elements under the environment chapter, would include:</p> <ul style="list-style-type: none"> ● Basic Principles ● Cooperations (including technical assistance) ● Contact Points ● Non-application of the DSM to the Environment Chapter

among others

Trade and Environment:

- Provisions to promote trade and investment in environmental goods and services

Institutional Mechanisms:

- Establishment of a Committee on the Environment
- Enforceable Dispute Settlement Mechanism

The Interim Chair explained that the TNC is recommending either a dedicated chapter on Environment or a TSD Chapter that would cover both environment and labor (similar to the upgraded AANZFTA TSD Chapter)

ASEAN Member States (AMS) Forum on Canada's non-paper

- Vietnam : Ms. Huong asked if ASEAN needs to commit to the high level of environmental protection standards of Canada. She emphasized that it should be Cooperation and not commitment.
- Indonesia said that ASEAN should craft a counter proposal that describes our goals. ASEAN would want to have the same objective with Canada, the scope of Environment Chapter based on the ASEAN proposal.
- Malaysia : Ms. Barathi remarked on elements regarding Pursuing high levels of environmental protection and Effective enforcement of environmental laws. She said that ASEAN needs to look into the "high level" of environmental protection because AMS have different levels of environmental protection. She suggested replacing "effective" with other terms or look at the concept in a careful manner.
- The body was informed that the labor experts group proposed to come up with a consultation mechanism that would be acceptable to AMS and would provide a venue for ASEAN and Canada to discuss the implementation of the Chapter.
- Malaysia : Ms. Barathi remarked on the inclusion of pursuing high levels of environmental protection, there should be a provision that would take into account the different levels of commitments.

- Brunei agreed with the proposal to have a mention or provision on AMS' capabilities on environmental protection
- Indonesia suggest to have a softer language such as "encourage" instead of pursuing,
- The term "high level" is very subjective. There is a need to emphasize the rights to exercise enforcement of environmental laws of respective AMS. Canada should explain why they included the "effective enforcement of environmental laws"
- Malaysia : Ms. Barathi mentioned that the sanctions should be in a cooperative manner and that sanctions should be in accordance with domestic laws
- ASEAN Secretariat (ASEC): Mr. Brava mentioned that the proposals should not weaken the environmental measures of both sides (ASEAN and Canada). ASEAN could propose elements and not the full language.
- Formulate a language that could reflect both Trade and Environment, during the negotiations. The text in AANZFTA can be used.
- Singapore : Ms. See Wan Yin agreed to take into account different levels of capabilities. The AANZFTA could be a reference.
- On the proposal for establishing contact Points, ASEAN Experts prefer to have Contact points.
- Malaysia : Ms. Barathi raised their reservation and requested to be clarified on the nature of the text.
- Cooperation and Non-application of TSD elements should be included in the proposal. The ASEAN Secretariat proposed to merge elements on complementary areas and on global environmental challenges under Cooperation.
- Ms. Barathi remarked that climate change should not be included in trade agreements as this could create potential issues on trade. It should be dealt with under the AMS' respective MEAs.
- On Cooperation Areas, the areas of cooperation should be those linked to trade. The areas of cooperation on environmental areas of shared priorities shall be discussed further in the next ASEAN Ad-Hoc session. ASEAN needs to establish initiatives on the environment and emphasize a specific area of cooperation.

- The Indonesian representative intended to provide in the context of cooperative mechanism, to support and encourage each member.
- Ms. Barathi cautioned the ASEAN regarding climate and trade, as this had never been part of any FTAs before. Climate and trade could be disadvantageous for developing countries.
- The Interim Chair reminded the body to raise reservations for areas of cooperation that could be discussed during the next Ad Hoc Meeting.
- Singapore : Ms. See Wan Yin agreed to be named as Trade and Environment. On the specific proposal and needs, there is a need to consult internally for comments.
- The ASEC to circulate the documents for experts further comments

Non Application of Domestic Settlement Mechanism (DSM)

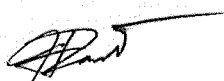
- Consultation mechanism on a voluntary basis as possible way to foster compliance. Specifics of consultation mechanism to be discussed further.
- ASEC mentioned that in other FTAs, particularly those with Market Access, instead of being subject to Dispute Settlement, they have consultation mechanisms dedicated for specific committees or on a case to case basis and adhoc basis. There is an article for Consultation and the consultation can be conducted through contact points. Contact points can escalate the issue to the Joint Committee.
- To formulate a softer language regarding consultation mechanism and a voluntary mechanism. The Discussion should be at the negotiation stage.
- Indonesia concurred with using other FTAs as reference in establishing the contact points and if the contact points cannot resolve the issue then this should be escalated to the Higher Committee.
- Malaysia had stressed on having capacity building and technical assistance under the cooperation areas.

Proposed Way Forward on the Negotiations on Trade and Environment provisions under ACAFTA

1. Timing to conduct an informal dialogue with CAN. Ideal to have the informal Dialogue before the TNC meeting which is in May or June 2023.

	<p>2. The Mechanisms of the dialogue (whether to have 1 informal Dialogue for all the issue or three expert dialogue for all of the issues; ASEAN experts prefer to have three separate dialogues for each of the issue Trade and labor/ Environment/ Inclusive Trade)</p> <p style="text-align: center;">Adoption of the note-to-file</p> <ul style="list-style-type: none"> - The decision would need to be confirmed by those states that are not on the meeting: Laos and Myanmar - The decision needs to be presented to the TNC Meeting. - These two documents will be annexed to the NTF for circulation to AMS today.
WAYS AHEAD	<p>Taking into consideration ASEAN's proposed sequence for the Expert-level Dialogue on Trade and Labour/Environment/Inclusive Trade, some preliminary assessment on the following points would need to be discussed by ASEAN experts:</p> <ul style="list-style-type: none"> a. The timing to conduct an informal dialogue with Canada: May or June 2023 b. The mechanism of such dialogue (e.g. whether to have one expert dialogue for all three issues or have three separate dialogues for each issue) c. Canada's Non-paper on the three outstanding issues
ATTACHMENTS	<ul style="list-style-type: none"> <input type="checkbox"/> Activity Photos <input type="checkbox"/> Others (please specify)

PREPARED BY:

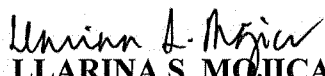


HAZEL JASMINE DONATO-CHUA
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APPROVED BY:



FOR. LLARINA S. MOJICA
Chief
Policy Studies Division

24 March 2023

Please see attached distribution list

**Subject: Request for Technical Experts for the ASEAN-Canada
FTA (ACAFTA) Negotiations on Environment**

Dear Sirs/Mesdames,

This refers to the previous letter dated 20 April 2022 regarding the request for technical experts for the ACAFTA Negotiations on Environment.

Following the endorsement of the Reference Paper for a Possible ASEAN-Canada FTA, and the launch of negotiations in November 2021, there have been two (2) meetings of the Trade Negotiating Committee (TNC) to-date to discuss and agree on the way forward for the outstanding issues, including Environment.

Under the Reference Paper for a Possible ASEAN-Canada FTA, the scope and ambition of the provisions on Environment are as follows:

Environment. *Canada and ASEAN agree that an ASEAN-Canada FTA will include provisions on environment. Canada indicated that the provisions should be comprehensive and enforceable, aimed at ensuring that environmental protection is upheld as trade and investment is liberalized. Provisions should also promote robust environmental governance as well as address global environmental issues. ASEAN has never undertaken environment provisions in its previous FTAs. ASEAN has hence indicated that provisions on environment should only be limited to collaboration and cooperation elements.*

According to Canada, environmental governance refers to a party's environmental management framework (e.g. laws, regulations, policies, and programs) with respect to the environment, including climate change. These types of commitments relate to striving for high levels of environmental protection; ensuring the effective enforcement of domestic environmental laws; not derogating from, or waiving, those laws to encourage trade or investment; ensuring availability of domestic procedures and remedies for violations of environmental laws; and promoting transparency, public participation, and accountability.

Canada further clarified that the core provisions in Canada's agreements are designed to respect the sovereign rights of Parties to establish and maintain their own levels of environmental protection. In this regard, environmental commitments/obligations are based on the Parties' own respective domestic policy, legislative and regulatory frameworks. At the same time, parties agree to work together to strive to improve their levels of protection over time as they cooperate to implement their obligations.

Noting that the TNC may not necessarily have the expertise and knowledge in discussing technical matters on Environment, the Meeting agreed on the importance of having expert-level discussions, and to plan for an informal ASEAN-Canada Expert-Level Dialogue that would discuss each sides' expectations, possible scope, and exchange best practices, among others. The proposed expert-level dialogues would strictly be exploratory in nature, on a without prejudice basis, and that ASEAN's experts would have no mandate to

OFFICE OF THE ASSISTANT SECRETARY FOR INDUSTRY DEVELOPMENT AND TRADE POLICY GROUP

negotiate any commitments. Below are the specific areas where experts are expected to exchange views and provide the ASEAN TNC their preliminary assessments on:

- a. The timing to conduct an informal dialogue with Canada
- b. Mechanism of such dialogue (i.e. whether to have one expert dialogue for all three issues or have three separate dialogues for each of the issues)
- c. Canada's Non-Paper on Environment

The discussions that the experts will share the ASEAN TNC will help guide the TNC in determining ASEAN's approach in engaging Canada on Environment.¹ We have attached the draft ASEAN's Proposed Sequence for reference and information.

As the government agency that has the purview on environment-related issues, we respectfully request your office to nominate a principal and alternate focal point who will represent the Philippines as technical expert(s) in such discussions. Noting the cross-sectoral nature of environment, outlined below is the proposed composition of the Philippine expert group on environment:

Lead Agency:	Department of Environment and Natural Resources (DENR)
Supporting Agencies:	National Economic Development Authority (NEDA)
	Board of Investments (BOI)
	Department of Energy (DOE)
	Climate Change Commission (CCC)
	Tariff Commission (TC)
	DTI Export Marketing Bureau (EMB)
	DTI Bureau of Philippine Standards (BPS)

Attached is a sample focal points template for your reference and information. Noting that ASEAN is pressed to formally convene the first meeting of the expert group² as soon as possible, **we hope to receive your nominated representatives at the earliest possible time.**

Enclosed for further reference are (1) the backgrounder on the ASEAN-Canada FTA Negotiations, including the endorsed Reference Paper for a Possible ASEAN-Canada FTA; and (2) ASEAN and Canada's Non-Paper.

Should you have any further queries, you may contact Mr. Michael Allen Fernandez through email (MichaelAllenFernandez@dti.gov.ph) or mobile (+639178414249).

Thank you for your support and cooperation.

Sincerely,



Digitally signed by Gepty
Allan Batarra
Date: 2023.03.24 12:38:29
+08'00'

Atty. ALLAN B. GEPTY
Assistant Secretary

¹ The ASEAN experts are guided to take into consideration ASEAN TNC's preference to have all outstanding issues on labor, environment, gender, and indigenous people covered under the ambit of Trade and Sustainable Development Chapter.

² The 1st Meeting of the Experts Group is being proposed to be convened in April 2023.

**Proposed Approach on the Discussions
on Labour, Environment and Inclusive Trade Provisions
under the ASEAN-Canada FTA (ACAFTA) Negotiations**

ASEAN Non-Paper

1. This ASEAN non-paper provides a general overview of ASEAN frameworks on environment, labour, and inclusive trade. It proposes a way forward in regard to the discussions on these three outstanding issues under the ACAFTA negotiations.

2. In the *Reference Paper for a Possible ASEAN-Canada FTA* (Reference Paper), ASEAN and Canada agreed to negotiate provisions on environment, labour, and “other issues that would help ensure that the benefits and opportunities associated with a future ASEAN-Canada FTA are widely shared”. However, the nature of the provisions on these outstanding issues remains to be discussed and agreed upon by both sides.

I. Environment

3. ASEAN has a number of framework documents that provide for cooperation on trade and environment-related issues. The *ASEAN Economic Community (AEC) Blueprint 2025* identified a number of strategic measures to attain sustainable economic development, including, among others: i) developing a framework to support the utilisation of effective and low-carbon technologies, ii) promoting good agricultural practices and sustainable forest management, and iii) increasing resilience to climate change. The *ASEAN Socio-Cultural Community (ASCC) Blueprint 2025* also identified a number of relevant strategic measures, including i) promoting capacity building, cooperation, and global and regional partnerships on sustainable management of natural resources, ii) strengthening global partnerships and supporting the implementation of relevant international agreements and frameworks, e.g. the United Nations Framework Convention on Climate Change (UNFCCC), iii) promoting cooperation for the protection, restoration, and sustainable use of the coastal and maritime environment, and iv) strengthening regional cooperation to protect, restore and promote sustainable use of terrestrial ecosystems resources.

4. In 2022, ASEAN developed two policy documents on specific elements relevant to trade and the environment. These are the *Implementation Plan for the Framework for Circular Economy for the ASEAN Economic Community (2023-2030)* and the *Concept Note for an ASEAN Strategy for Carbon Neutrality*. While these documents are not legally binding, they might have implications on ASEAN's FTA negotiations. For example, the circular economy implementation plan has an initiative to include circular economy elements in ASEAN and ASEAN Plus trade agreements to facilitate the movement of circular goods. Meanwhile, the carbon neutrality strategy concept note identified key pillars such as nature-based solutions and ecosystem-based approach, market-based solutions, and investment in low-carbon technologies, that could be advanced through ASEAN economic agreements, considering the nexus between trade, investment, and environment inherent in those pillars.

II. Labour

5. ASEAN labour priorities are reflected in the: (i) *AEC Blueprint 2025*, albeit limited to the movement of skilled labour; (ii) the *ASCC Blueprint 2025*, although more on the social protection of workers particularly migrant workers; (iii) and the *ASEAN Labour Ministers' Work Programme 2021-2025*, which focuses on four key result areas, namely: skilled and adaptable workforce; productive employment; harmonious, safe and progressive workplace; and expanded social protection.

III. Inclusive trade

6. ASEAN's policy direction on inclusive trade, particularly as it relates to micro, small, and medium enterprises (MSMEs) is quite clear and defined in some of ASEAN's trade agreements, including the Regional Comprehensive Economic Partnership (RCEP) Agreement, which has a standalone SME Chapter. Reference to gender and inclusiveness, while mentioned in the *AEC Blueprint 2025*, is also made in the context of MSMEs, i.e., the need for improved policy environment for MSMEs and to drive MSME productivity and innovation, as well as gender opportunities for micro-enterprises and SMEs. The AEC Blueprint also highlighted the need to enhance human capital development for MSMEs, particularly youth and women.

7. Outside the AEC sphere, ASEAN's objectives on gender mainstreaming are well documented in the ASEAN's *Gender Mainstreaming Strategic Framework 2021-2025*, which has its strategic objectives and the following entry points: (i) ASEAN policies, institutions, and practices better embody its vision for a fairer, more equitable, and inclusive world, including through commitment and support amongst ASEAN senior leadership and Dialogue Partners; (ii) ASEAN builds its knowledge, technical competencies, and capacity on gender and inclusion issues; (iii) ASEAN policies and action plans better reflect the needs of women and girls in the region; and (iv) ASEAN supports intergovernmental processes and Member States' gender mainstreaming and gender-focused initiatives.

8. On the other hand, ASEAN's approach to inclusiveness is more broad-based. For instance, the *ASCC Blueprint 2025* identified several strategic measures on inclusiveness, resilience, and dynamism that focus on population groups that include women and vulnerable and marginalised groups, as well as children, youths, the elderly, persons with disabilities, migrant workers, and people living in remote and border areas. The relevant strategic measures relate to equitable access to resources and opportunities; inclusive growth to ensure equitable access to economic opportunities; promotion of indigenous and traditional knowledge in adapting to the impacts of climate change; and promotion of social entrepreneurship.

IV. ASEAN's approach to environment, labour, and inclusive trade in its FTA

9. Until recently, when ASEAN agreed on a Chapter on Trade and Sustainable Development (TSD) under the ASEAN-Australia-New Zealand FTA (AANZFTA) upgrade negotiations, no ASEAN trade agreement – either internal or with non-ASEAN partners – include provisions on environment, labour, and gender. Limited reference to indigenous peoples can be found in the General Provisions and Exceptions Chapter in the current AANZFTA and in the Regional Comprehensive Economic Partnership

(RCEP) Agreement although this is only in regard to New Zealand's Treaty of Waitangi. The TSD Chapter in the upgraded AANZFTA also made reference to "women's economic empowerment". As there may be some domestic sensitivity on the use of certain terms, including the terms "gender" and "indigenous peoples", the TNC could explore the use of some alternative terms, e.g., "women's economic empowerment" for gender and "local communities" for indigenous peoples, as long as it is still within the scope of cooperation.

10. It should be noted that, while the upgraded AANZFTA alludes, to a certain extent, elements of inclusive trade, e.g., indigenous peoples, women's economic empowerment, environment – such as climate, green and blue economy, circular economy – labour and issues under the Sustainable Development Goals (SDGs), such is limited only to economic cooperation and is not subject to disputes under the Chapter on Dispute Settlement.

V. Proposed approach to the environmental, labour, and inclusive trade provisions under the ACAFTA

11. Considering the highly divergent levels of development and capacity among the ASEAN Member States as well as between ASEAN and Canada, both sides may wish to consider a pragmatic and flexible approach to environmental, labour, and inclusive trade provisions, within a scope of voluntary cooperation and collaboration and with no recourse to dispute settlement. Taking into account the above points, ASEAN would like to suggest placing possible provisions on environment, labour, and inclusive trade in a stand-alone TSD Chapter under ACAFTA.

12. The elements of provisions that could be explored could include:

1. Basic Principles

- Recognition of the importance of environmental, labour, and inclusive trade cooperation as a mechanism to strengthen efforts and capacities to collaborate on areas relevant to environment, labour and inclusive trade;
- Reaffirmation of commitments and obligations under relevant multilateral agreements to which they are individually a Party;
- Aspiration to promote high standards of protection commensurate with countries' respective needs, capabilities and national circumstances;
- Respect for sovereign rights of each country to develop, set, administer and enforce relevant laws and policies;
- Recognition of the inappropriateness of using relevant measures, particularly to protect environment and labour standards, as a disguised means of trade protectionism;
- Consideration of each country's priorities, level of development and available resources; and
- Complementarity with existing regional and multilateral initiatives to address environment, labour, and inclusive trade issues.

2. Cooperation

- Climate and environment;
- Green and blue economy;
- Circular economy;

- Energy;
- Labour;
- Issues under the Sustainable Development Goals; and
- Any other areas as mutually agreed by the Parties.

3. Contact Points

4. Non-Application of the Dispute Settlement Chapter to the Trade and Sustainable Chapter.

VI. Suggested Way Forward

13. Taking into consideration the above points, ASEAN is proposing the following action points for Canada's consideration:

- a. To keep the discussion on the three outstanding issues at the level of the TNC, for the time being, to try to agree on the possible scope, elements and level of commitment of provisions on environment, labour, and inclusive trade under ACAFTA;
- b. To have a chapter on Trade and Sustainable Development under ACAFTA, which would encompass provisions related to environment, labour, and inclusive trade;
- c. To establish an expert group on Trade and Sustainable Development after the TNC decides on the possible scope, elements, and level of commitments of provisions related to the three outstanding issues under ACAFTA;
- d. To continue utilising the Expert Deployment Mechanism (EDM) for mutual exchange of information, sharing of best practices, and in-depth discussion on possible inclusion of environmental, labour, and inclusive trade elements in the ACAFTA.

Pursuing Inclusive and Sustainable Economic Growth - Together

Canadian Non-Paper on Environmental Provisions

ASEAN-Canada FTA Negotiations

February 10, 2023

Purpose of Document

The non-paper is intended to support a decision by the Trade Negotiating Committee to convene expert-level discussions between Canada and ASEAN Member States. As such, this non-paper provides an overview of Canada's approach to, and to highlight the benefits of including, environmental provisions in a possible ASEAN-Canada FTA. It is intended to provide a common understanding on the possible scope and coverage of the environmental provisions as well as the supporting rationale.

Context

The world is facing growing threats from the triple planetary crisis of climate change, biodiversity loss, and pollution. These challenges are deeply interconnected and, together, threaten the environment, economy, and human health and well-being. Left unabated, the threats could undo much of the progress made over recent decades in development, poverty reduction and prosperity creation. The crisis is global in nature and action is needed across all disciplines, including international trade.

The international community has highlighted the role that trade can play in the realisation of environmental goals – including at the World Trade Organization (WTO)¹, the Organisation for Economic Co-operation and Development (OECD)², the Asia Pacific Economic Cooperation (APEC) forum³ and in various Multilateral Environmental Agreements (MEAs)⁴. Examples include:

- Sustainable development, including the protection and preservation of the environment are fundamental goals of the **WTO**, as enshrined in Paragraph 1 of the Marrakesh Agreement establishing the WTO. There are a number of initiatives currently underway at the WTO, including the work conducted by the Committee on Trade and Environment, the Trade and Environmental Sustainability Structured Discussions (TESSD), and the Dialogue on Plastics Pollution and Environmentally Sustainable Plastics Trade (IDP). These forums serve to enhance discussion and information sharing on issues where trade, environmental and climate policies intersect. The WTO consistently refers to the need to promote mutual supportiveness between trade and environment agreements and describes this relationship as being vital for achieving sustainable development goals.
- The **OECD Joint Working Party on Trade and the Environment (JWPTE)** has produced over 120 detailed reports on the nexus between trade and the environment since its inception in 1991. The OECD JWPTE "Retrospective, 2008-2020" report, highlights that over the last 12 years,

¹ WTO, World Trade Report 2022: Climate Change and International Trade, [WTO | World Trade Report 2022 Climate change and international trade](#), viewed February 2023.

² OECD, How are trade and environmental sustainability compatible?, <https://www.oecd.org/trade/topics/trade-and-the-environment/>, viewed December 2022

³ APEC, List of Environmental Goods, https://www.apec.org/Meeting-Papers/Leaders-Declarations/2012/2012_aelm/2012_aelm_annexC, viewed December 2022.

⁴ WTO, WTO MEA Matrix compiles a number of MEAs that include trade provisions as part of their tools to reach their objectives. https://www.wto.org/english/tratop_e/envir_e/envir_matrix_e.htm, viewed December 2022

"[p]ublic and private stakeholder engagement and expertise have grown, along with awareness of the importance of policies at the trade and environment nexus. There is now little dispute that international trade flows, rules and policies are directly and deeply relevant to environmental performance, and that meeting environmental objectives require supportive trade policies."

- The APEC forum, which includes seven ASEAN member countries, has also been exploring the trade and environment nexus for nearly three decades. In 1994, APEC economies acknowledged the "inseparable linkages between environment protection and economic growth", and their contribution to "an enduring foundation for sustainable development"⁵. Since then, APEC has undertaken a number of initiatives and research projects aimed at examining how trade policy tools can support environmental sustainability. In 2012, the forum endorsed a list of 54 environmental goods that would benefit from reduced tariff rates (5% or less) by 2020⁶. The list is comprised of a number of products including, for instance, goods for technologies used for renewable and clean energy and pollution control, hazardous waste treatment, and environmental monitoring and assessment. According to APEC, global growth in the general goods trade grew by 1.7% from 2012-2021, whereas growth in these environmental goods grew by 7.3% over the same period⁷.

Why Environmental Provisions Belong in a Free Trade Agreement

Environmental provisions have long been part of FTAs but are increasingly being included by trading partners to provide a framework for proactive action to tackle environmental issues. For example, the WTO Members have increasingly adopted trade-related measures as part of their overall domestic policies to achieve climate objectives. From 2009 to 2019, a total of 4,355 measures to address climate change were notified to the WTO, increasing from 220 measures notified in 2010 to 580 measures notified in 2019⁸. In addition, over 250 Multilateral Environmental Agreements (MEAs) addressing diverse environmental issues are now in force, according to the WTO.⁹ About 15 of these MEAs include provisions to control trade in order to prevent damage to the environment.¹⁰

The OECD highlights in a recent report that environmental provisions enshrined in the trade agreements contribute to raising international environmental standards while protecting businesses and workers.¹¹ In addition, it contends that, contrary to common belief, economic growth and trade liberalization will gradually provide states, especially developing economies, with resources to mitigate the detrimental effects of trade on the environment. Promoting and safeguarding high levels of environmental protection, including through FTAs, can spur innovation, making domestic industries more competitive and more attractive to foreign investment.

⁵ Environment Vision Statement: https://www.apec.org/meeting-papers/sectoral-ministerial-meetings/environment/1994_environment/apec-environmental-vision-statement#:~:text=We%2C%20the%20Asia%20Pacific%20economies,secure%20future%20for%20our%20people.

⁶ APEC, List of Environmental Goods, https://www.apec.org/Meeting-Papers/Leaders-Declarations/2012/2012_aelm/2012_aelm_annexC, viewed December 2022.

⁷ Ibid.

⁸ WTO, Trade and Climate Change – Information Brief No. 1, November 2021, p.1.

⁹ WTO, WTO Matrix on Trade-Related Measures Pursuant to Selected Multilateral Environmental Agreement (MEAs), [WTO | WTO Matrix on Trade-Related Measures Pursuant to Selected Multilateral Environmental Agreements \(MEAs\)](#), viewed December 2022.

¹⁰ Ibid.

¹¹ OECD, How are trade and environmental sustainability compatible, [Trade and the environment - OECD](#), viewed December 2022.

Cooperation on environmental matters has become a common type of environmental provision and is found in 45% of notified RTAs¹². Environmental provisions can facilitate the exchange of experience and best practices and improve access to new and clean technologies that make local production processes more efficient. In that sense, environmental provisions could contribute to Parties better meeting international environmental standards.

Scope of Potential Environmental Provisions

While there are multiple models for inclusion of environment provisions in FTAs, the following are guiding principles for Canada:

Environmental provisions do not generally seek to harmonize the level of environmental protection between the Parties. Instead, such provisions support a high level of environmental protection while taking into account different national realities, capacities and levels of development. Accordingly, each Party is able to establish its own levels of domestic environmental protection and its own environmental priorities, and to establish, adopt, or modify its environmental laws and policies accordingly.

Environmental provisions are not to be applied in a manner that constitutes a means of arbitrary or unjustifiable discrimination or as a disguised restriction on trade between the Parties. International trade agreements are intended to level the playing field between domestic and foreign businesses. The environmental provisions should facilitate enjoyment of the enterprises of the Parties to the trade agreement in all respects, and dissuade a Party from lowering its standards or unfairly subsidizing its enterprises. Trade liberalisation should not occur at the expense of the environment.

The environmental provisions should provide institutional mechanisms to oversee its implementation, such as a Committee on the Environment and contact points. Such a Committee would also serve as the forum to discuss areas of cooperation of mutual interest, coordinate work with other committees as well as any other functions identified by the Parties.

The environmental commitments should be comprehensive and enforceable, aimed at ensuring that environmental protection is upheld as trade and investment are liberalized. Through a multi-step process, Parties can work together to address any differences and disputes under a mutually agreeable cooperative framework. Under this framework, Parties provide resources for technical assistance and capacity building to another Party that requires support to effectively strengthen and enforce its domestic regulations. Parties are equally welcome to share best practices and technical expertise.

In short, including Environmental Provisions in an Agreement with Canada:

Will	Will Not
<ul style="list-style-type: none"> • Facilitate the expansion of trade and investment between ASEAN and Canada, while contributing 	<ul style="list-style-type: none"> • Liberalize trade and investment at the expense of the environment;

¹² WTO, Trade and Climate Change – Information Brief No. 2

<p>to sustainable growth and development;</p> <ul style="list-style-type: none"> • Promote an economic growth that upholds the Parties' respective environmental standards and supports their climate goals; • Encourage the improvement of levels of environmental protection and strengthen cooperation between the Parties in areas of mutual interest; • Encourage collaboration, cooperation and dialogue to try to resolve matters and achieve a mutually acceptable resolution. 	<ul style="list-style-type: none"> • Seek to harmonize the levels of environmental protection between Canada and ASEAN members; • Impose areas of cooperation between Parties, without taking into account respective levels of development, national circumstances and relative capabilities; • Include environmental provisions applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination or as a disguised restriction on trade between the Parties.
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- **Facilitating the expansion of trade and investment between ASEAN and Canada, while contributing to sustainable growth and development would:**
 - Contribute to raising international environmental standards while protecting businesses and workers;
 - Create good jobs and new opportunities for people and businesses in Canada and in ASEAN Member States, while opening new markets in environmental goods and services for all Members States;
 - Improve access to and transfer of new technologies, and reduce tariffs on environmental goods and services.
- **Promoting an economic growth that upholds the Parties' respective environmental standards and supports their climate goals helps:**
 - Build a more sustainable global economy that will support the reduction of greenhouse gas emissions;
 - Meet the UN's Sustainable Development Goals, the targets for reducing emissions set in the Paris Climate Agreement of 2015 and the recent Kunming-Montreal Global Biodiversity Framework to halt and reverse nature loss.
- **Encouraging improving levels of environmental protection, taking into consideration the respective levels of development, national circumstances and relative capabilities would:**
 - Aim at a high level of environmental protection taking into account the different national realities, capacities and levels of development and respecting national policies and priorities.
 - Support opportunities for sustainable innovation, clean technologies, and regional competitiveness by creation of a platform for cooperation, through which identifying and facilitating win-win solutions to environmental issues for all parties become possible.
- **Recognizing that increased prosperity from liberalized trade between the Parties should not occur at the expense of the environment nor should be applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination or as a disguised restriction on trade between the Parties would:**
 - Encourage a mutually supportive relationship, which in turn is vital for achieving sustainable development goals.

- Level the playing field between domestic and foreign businesses and dissuade a Party from lowering its standards or unfairly subsidizing its enterprises.

Therefore, Canada and ASEAN could negotiate environmental provisions that include:

1. **CORE PROVISIONS ON ENVIRONMENTAL GOVERNANCE**, including, *inter alia*, commitments on:
 - Pursuing high levels of environmental protection;
 - Effective enforcement of environmental laws;
 - Not derogating from or waiving environmental laws to encourage trade or attract investment;
 - Domestic procedures and remedies for violations of environmental laws; and
 - Promoting transparency, public information and participation.
2. Provisions reflecting the importance of respecting the obligations of **MULTILATERAL ENVIRONMENT AGREEMENTS** (MEAs), which would also:
 - clarify the relationship between the FTA and the MEAs;
 - respect current and future MEA adherence and would not require countries to sign on to MEAs to which they are not yet a party.
3. Provisions on **COMPLEMENTARY AREAS**, including areas that strengthen the relationship between trade and environment, such as:
 - voluntary best practices of corporate social responsibility and responsible business conduct;
 - voluntary measures to enhance environmental performance; and
 - trade in environmental goods and services.
4. Areas of cooperation of mutual interest and benefit (taking into account national priorities and available resources) to address **GLOBAL ENVIRONMENTAL CHALLENGES** with linkages to trade. These areas include, but are not limited to:
 - Climate change;
 - Circular economy;
 - Sustainable forest management and trade;
 - Sustainable fisheries management;
 - Conservation of biodiversity and illegal wildlife trade; and
 - Plastic Pollution and Waste