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Education and Research EAER

State Secretariat for Economic Affairs SECO  
State Secretary

Mr Patrick Durisch  
Public Eye  
Avenue Charles-Dickens 4  
CH-1006 Lausanne

Bern, 17 June 2025

### **EFTA-Malaysia Free Trade Agreement**

Dear Mr Durisch,

Reference is made to your letter dated 6 June 2025. In that letter, you address several points with regard to the EFTA-Malaysia free trade negotiations. I am pleased to provide you with further information and hope that this will be of assistance to you.

I would like to first address your questions raised in respect of the *1991 Act of the International Convention for the Protection of New Varieties of Plants (UPOV 1991)*. Pursuant to the TRIPS Agreement, WTO Members have to provide for the protection of plant varieties, either through patents or a *sui generis* system or a combination thereof. The UPOV Convention establishes such a *sui generis* system, through its two versions of 1978 and 1991, with the latest version now being the only one accessible to new members.

Switzerland fully acknowledges that the obligation under TRIPS does not have to be fulfilled by joining UPOV or by adopting the most recent (1991) Act. In our free trade agreement (FTA) negotiations, we recognise the national legislation and priorities of partner countries that do not wish to accede to UPOV 1991. This goes for all of EFTA's negotiation partners. EFTA's approach is illustrated in the variations that exist in articles related to plant variety protection in its FTAs, such as the recently concluded agreements with India or Thailand, which does not contain any reference to UPOV, as correctly pointed out in your letter.

The Economic Partnership Agreement (MEEPA) contains a reference to UPOV, which does not amount to a binding commitment for either party to accede to the 1991 Act of the Convention. This reflects EFTA's and Switzerland's longstanding position that accession to UPOV 1991, or alignment with its substantive provisions, is not a precondition for concluding an FTA.

The reference to UPOV in the MEEPA was jointly developed and agreed upon by all parties during the negotiations, taking into account the respective situations and positions of all Parties. In this regard, it may be noted that Malaysia has been pursuing accession to the UPOV 1991 Convention and has consistently demonstrated strong interest in this goal. Malaysia publicly reaffirmed this position, in a letter dated 20 May 2024, to the UN Special Rapporteur on the Right to Food, in which it outlined the rationale behind its support for UPOV as a beneficial framework. The Malaysian government also made it clear that its intention to join UPOV predates, and is not dependent on, any FTA negotiations.



SECO-D-F9FF3401/839

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It is also worth noting that Malaysia has already undertaken a binding commitment to join UPOV under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and therefore expressed an interest to reflect it in the MEEPA as well.

I would now like to turn to your other queries, raised in your letter, pertaining to patent and regulatory data protection.

We share your view that access to medicines remains a major challenge for many governments, and most importantly, for the patients themselves. It is often those with the least financial means who are most affected, as they are disproportionately excluded from the medical care and essential health products they need.

Ensuring a functioning health system that provides effective prevention, treatment, and care is first and foremost the responsibility of national governments. One crucial avenue to strengthen health financing and build resilient public health infrastructure is through sustained economic growth. FTAs can serve as a driver of such growth by fostering trade, creating jobs, and increasing public revenues. These additional resources can, in turn, be invested in the health sector and thereby contribute to the progressive realization of the right to health.

FTAs also enhance legal certainty, which is a key factor in attracting investment. Their provisions promote clarity and predictability by aligning and sometimes clarifying or exceeding existing multilateral standards. In a global economy where an increasing share of goods and services incorporate intellectual property rights, including adequate and effective rules on intellectual property in FTAs is both relevant and necessary.

Intellectual property protection plays a vital role in incentivizing innovation and investment in the research and development of new medicines. By supporting innovation, it contributes to the availability of medical products and thus can play a meaningful role in advancing access to healthcare and the right to health.

Regarding your raised concerns, it should be emphasized that the provisions pursued by Switzerland and its EFTA partners in FTAs do not restrict access to medicines.

It is worth highlighting that the MEEPA explicitly includes a provision reaffirming the flexibilities related to compulsory licensing, as enshrined in the TRIPS Agreement and the Doha Declaration. The wording of the provision, which refers to compulsory licences, is fully aligned with the language and scope of the TRIPS Agreement. In addition, the MEEPA contains further provisions on patents that either clarify existing TRIPS standards or address procedural aspects of patent application processes. These provisions aim to improve legal certainty and administrative efficiency, without introducing new obligations. Regarding the protection of test data for pharmaceutical products, the MEEPA sets out general principles while leaving the details of implementation to the discretion of each partner country.

Please be assured that Switzerland and its EFTA partners always give special consideration to the development concerns of the partner country and its national laws when negotiating FTAs.

I trust that this information provides the clarifications sought in your letter. Should you wish to discuss this matter in more details, we would be pleased to meet with you.

Yours faithfully,

State Secretariat for Economic Affairs



Helene Budliger Artieda  
State Secretary

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