

BRIEF ON THE TRANS-PACIFIC PARTNERSHIP (TPP)

1. MALAYSIA'S INVOLVEMENT IN FREE TRADE AGREEMENTS

- International trade is an important contributor to Malaysia's economic growth and development. Malaysia's trade policy is to pursue efforts towards creating a more liberalised and fair global trading environment. While Malaysia continues to accord high priority to the rule-based multilateral trading system under the World Trade Organisation (WTO), Malaysia is also pursuing regional and bilateral trading arrangements to complement the multilateral approach to trade liberalisation.
- The failure of Doha Development Agenda launched at the Ninth WTO Multilateral Trade Negotiations in November 2001 and the subsequent collapse of talks threaten the credibility of the multilateral trade system and raises attention of countries to Free Trade Agreements (FTAs). Since then, FTAs have played a central role in this trend towards regional integration. Malaysia too needs to pursue the bilateral and regional trading arrangement to ensure Malaysia continues to be able to gain market access in the international market and remains an attractive location for foreign investment.
- Currently, Malaysia has already implemented six (6) bilateral FTAs with Japan, Pakistan, India, New Zealand, Chile and Australia. Together with ASEAN, apart from ASEAN Trade in Goods Agreement (ATIGA), Malaysia has implemented five (5) regional FTAs with Korea, China, Japan, India, and Australia-New Zealand. Malaysia's trade with these FTA partners comprises 62 per cent of Malaysia's global trade in 2012.

2. BACKGROUND AND STATUS OF TPP

- The TPP is an initiative to establish a comprehensive Free Trade Agreement (FTA). There are 21 working groups negotiating 29 chapters under the TPP covering the following:
 - a. The Traditional Areas such as:
 1. Market Access;
 2. Technical Barriers to Trade;
 3. Sanitary and Phytosanitary Measures;
 4. Rules of Origin;
 5. Customs Cooperation;
 6. Investment;
 7. Services; and
 8. Legal and Institutional.

b. New FTA Issues:

1. Government Procurement;
2. Competition;
3. Intellectual Property;
4. Labour;
5. Environment; and
6. Horizontal Issues.

- Negotiations cover:
 - i. legal texts which prescribe rules and disciplines on the subject areas; and
 - ii. market access which confers access opportunities for goods, services, procurement and investment.
- Negotiations commenced in March 2010. The original participants are Australia, Brunei, Chile, New Zealand, Peru, Singapore, United States and Viet Nam. Malaysia joined the negotiations on 5 October 2010 during the Third Round in Brunei Darussalam.
- Mexico and Canada were accepted as members and joined the negotiations at the 15th round in December 2012. Japan has been accepted as the 12th member and will join the negotiations in the later part of the forthcoming 18th Round to be hosted by Malaysia in July 2013.
- There has been some progress in the negotiations. In 14 out of 29 Chapters, negotiations on technical and less contentious issues are considered substantially closed. The chapters are: Sanitary and Phytosanitary (SPS), Customs, Cross-Border Trade in Services, Telecommunications, Temporary Entry, Government Procurement, Labour, Cooperation and Capacity Building, Competitiveness and Business Facilitation, Development, Small and Medium Enterprises, Regulatory Coherence, Initial and General Definitions Chapter and Administrative and Institutional Provisions Chapter.
- While negotiations in these chapters are substantially closed, there are still outstanding issues that are sensitive and will require discussion at a later stage of the negotiations. Negotiators maintain the maxim "*Nothing is agreed until everything is agreed*" as the negotiating approach is that the TPP must be concluded as a single undertaking.
- For Malaysia, the difficult areas are those relating to the areas of Intellectual Property Rights (IPR), State-Owned Enterprises, Labour and Environment. Sensitive issues are put aside for further deliberation by all negotiating countries.

- The options put forth in dealing with these sensitive issues include:
 - i. watered-down commitments;
 - ii. longer transition periods for implementation;
 - iii. limiting commitments through the Non-Conforming Lists; and
 - iv. absolute carve-outs.

The options are not limited to the above and other forms of flexibilities can be adopted on a case-by-case basis.

- All negotiators endeavour to achieve the goal set by the TPP Leaders of concluding the negotiations by the end of the year. During the 19th APEC Ministers Responsible for Trade (MRT) Meeting in April 2013 at Surabaya, a plan of action was agreed to achieve this goal. Conclusion of negotiations will ultimately depend on whether Malaysia's concerns and interests are adequately addressed in the negotiations.

3. RATIONALE FOR JOINING TPP

- The Government views the TPP as an important initiative as Malaysia seeks to expand market access opportunities, enhance our competitive advantage, builds investor confidence in the country which draws foreign investments and builds capacity through FTAs.
- Consultations with various stakeholders have revealed an increasing need by our own companies for more open markets and trade facilitative measures. Malaysian products have met world standards and are able to compete at the global level. Malaysian companies are also increasingly becoming global investors and they require a level of transparency and predictability that can only be guaranteed effectively through binding agreements like FTAs.
- There is also interest from foreign companies in non-TPP countries that are increasingly exploring Malaysia as a base of their operations to enjoy the benefits of the TPP. In addition, there are Malaysian companies that export to the US and Canada who are increasingly interested to see the negotiations concluded, especially since the graduation of Malaysia from the list of countries that enjoy from the General System of Preferences (GSP).
- The TPP will also allow Malaysia to continue to be an integral part of the deepening economic integration taking place within the Asia Pacific region, but also enable Malaysia to engage in a more concrete way important trading partners such as the US, Canada, Mexico and Peru, with which we currently do not have any structured

framework, such as trade agreements. As a member of the TPP, Malaysia will also be able to participate as an important link in the whole regional supply chain.

- In the long run, the TPP will bring benefits of lower cost of goods and more efficient production by taking advantage of the competition and economies of scale. The successful conclusion of the TPP will form an unprecedented market of 793 million people, with a combined GDP of USD27.5 trillion. This far surpasses the limited domestic market of 29.5 million people and a GDP of USD 300 billion in Malaysia. With the TPP, we aim to open up new market opportunities and horizons for Malaysians to go on the offensive and take advantage of the international market place.
- In the recently implemented FTA with Australia, Malaysia now enjoys duty free access into the Australian market from the day the FTA entered into force. This is a huge benefit for Malaysian companies that are already exporting but also provides opportunity for Malaysian companies that have yet to do so.
- The TPP will provide such an opportunity to a seamless market with preferential access, far beyond our population and also provide investment opportunities globally and also regionally.
- While acknowledging these benefits, the Government will ensure that the cost to the Government will not outweigh the benefits. The Government will continue to strongly protect Malaysia's interest in this important negotiation. We will not sacrifice the right of the Government to continue to chart our own course in pursuit of economic growth, socio-economic restructuring and developed nation status.
- We will embrace the positive proposals in the negotiations while finding ways to address the difficult issues in a manner that brings about benefit for Malaysia and its people.
- There have been concerns raised by certain organisations on Malaysia's participation in the TPP. The government has been engaging stakeholders, both from the business sector and the non-governmental organisations, to update and explain to them the positions taken and how Malaysia is dealing with issues of concern in the negotiations.

4. OBJECTIVES OF TPP

- The objectives can be categorised into three main areas:
 - I. To continue the trade and investment liberalisation efforts being undertaken through the WTO and the FTA initiatives of each of the TPP member countries in the region.
 - II. To develop transparent and predictable rules and disciplines with adequate recourse in the event of any disputes.

III. To develop a more transparent and inclusive regulatory environment which allows all relevant parties to engage in a meaningful and constructive manner on matters of significant economic impact.

- These goals are no doubt in line with our own economic transformation and domestic reform programmes.

5. CHALLENGES FOR MALAYSIA IN THE TPP

- It is to be noted that negotiations on these issues are still pending and Malaysia has put up its positions as well as concerns which is based on its prevailing laws, regulation and policies.

I. Government Procurement (GP)

- GP issues relate to the Build-Operate-Transfer (BOT) and threshold for construction services.
- On BOT, Malaysia has carved it out from the scope of commitments. As for threshold for construction services, Malaysia's current offer has been set at a very high threshold.
- Areas of interests to the Bumiputra business community and SMEs have been excluded from our initial offers and Malaysia will maintain this position.
- Malaysia will continue to maintain preferences for selected groups, but at the same time allowing the business sector in Malaysia to participate in the sizable government procurement market of other parties.

II. Intellectual Property Rights (IPR)

- IPR issues revolve around access to medicine and healthcare, increase in pharmaceutical prices and longer copyright protection term.
- Malaysia has strongly raised objections towards proposals that could delay the entry of generic drugs into the market and result in high cost in the prices of medicines.

- Malaysia is working with TPP members for an outcome that would strike a balance between the continued need to allow access to affordable drugs and healthcare and sufficient incentives for drug companies to innovate.

III. State-Owned Enterprises (SOE)

- On SOE, the issue is the impact arising from the proposed disciplines on the role of SOEs in the Malaysian economy with regard to provision of public goods and services, development of strategic industries and implementation of socio-development programmes.
- In the SOE Chapter, while acknowledging that a level-playing field is necessary to allow both local and foreign companies to grow, Malaysia is advancing the argument that countries have different economic systems in place with SOEs and GLCs playing important roles in economies such as Malaysia.
- Malaysia is seeking to have flexibilities in the agreement that will allow the continued existence of such entities to participate in the economy and provide public and social goods and services.

IV. Labour and Environment

- For Labour, Malaysia is seeking to strike a balance between workers' rights and maintaining harmonious employer-employee relations within the context of the Malaysian scenario.
- In the area of Environment, while supporting a chapter that provides for environmental preservation, we do not want to allow environment clauses to be used as a disguised barrier to trade.
- Some of the key issues for Malaysia are enforcement where forestry, biodiversity, water and land are under the State Jurisdictions; elimination of fisheries and fossil fuel subsidies, adopting stronger provisions in conservation, binding all the commitments in Multilateral Environmental Agreements (MEAs) under this chapter, and subjecting the environment chapter to Dispute Settlement Mechanism.

- In both Labour and Environment Malaysia together with other parties are seeking to have a dispute resolution mechanism that is more consultative in nature and also not sanctioned based.

6. ISSUES RAISED BY NGOs

I. Investor – State Dispute Settlement (ISDS) and Sovereignty

- On the issue of ISDS, foreign investors are drawn to Malaysia not only by economic incentives, but also a transparent and predictable investment regime which allows recourse in the event of disputes. Likewise, we now have many private Malaysian companies who have become active overseas investors, driven by reasons such as securing market access, gaining access to raw materials, gaining strategic assets, brand and technology as well as decentralising of operations to diversify risks and improve returns, as Malaysia is relatively a small economy.
- Thus, ISDS is not only for foreign, but also Malaysian investors which are increasingly looking outwards. Furthermore, ISDS is not new to Malaysia as we have signed and ratified 64 Investment Guarantee Agreements (IGAs) since 1963 which also have provisions on ISDS.
- To date, only two cases have been taken against Malaysia under the ISDS, one of which has been decided in favour of the Government and the other is annulled. ISDS provisions have been used by Malaysian companies on two occasions to protect their investments abroad. In one case, the decision was in favour of the Malaysian investor and in the other, there was a settlement between the disputing parties.
- There are adequate provisions in the TPP that gives countries the policy space to adopt measures to fulfil specific purposes, including for environment, health and other regulatory objectives.
- Investor State Dispute Settlement (ISDS) mechanism is meant to give assurance to investors that in the event of a dispute, investors have recourse to international arbitration in addition to domestic courts. ISDS in no way infringes the policy freedom of a Government, it merely outlines the process by which a dispute over the underlining substantive principles in the Agreement will be arbitrated.

II. Small and Medium Enterprises

- The TPP has taken a conscious decision to address all SME issues in all areas under negotiations. These concerns such as increased competition are addressed through longer transition periods for liberalisation. It is also addressed in the form of carve-outs of GP procurement activities and through thresholds.
- The TPP aims also to develop uniform rules which will have a significant positive impact on SMEs where different standards or rules and regulations used for trade can have a debilitating effect on their overall cost of doing business.
- In addition, the TPP has developed a Chapter that touches on SME-specific issues such as lack of information and through the Chapter hopes to look into ways how the TPP can facilitate the development of SMEs and promote SMEs into the international market.

III. Confidentiality of Negotiations

- A number of issues have been raised pertaining to the confidentiality of these negotiations. On this subject, apart from the need to comply with the confidentiality requirement as provided by Malaysia's domestic law, Malaysia too owe a duty of care to preserve and protect its positions as well as the positions of the other countries from being exposed during the course of the negotiations.
- During negotiations, no commitments are firmly taken and these commitments remain fluid. If the position/stance of the countries are revealed, it may have an adverse impact particularly when a compromise needs to be taken. Negotiations require countries to consider the positions or proposals from other negotiating partners. Not all of such positions can be accommodated without some form of flexibility or changes. A compromise has to be achieved to enable parties to obtain a win-win situation. Negotiation process must allow room for the negotiators to work through a solution acceptable to all. In addition, some of these positions relates to sensitive issues which cannot be disclosed.
- There is a need to respect each other's laws on confidentiality and the understanding reached between the negotiating partners. It is for this reason that Malaysia signed the 'confidentiality agreement' together with all TPP members.
- While there is a need to maintain a certain degree of confidentiality of negotiating proposals and positions that are evolving as the negotiations progress, this has not prevented governments from consulting stakeholders on the proposals.

- Furthermore, for transparency purposes dedicated sessions are held at each negotiating round to enable negotiators to brief and have a dialogue with stakeholders.
- The allegation that US Multinational Companies have access to the text is not true. Like all the other members, the US is also obligated to maintain a level of confidentiality in respect of the positions of other members in the negotiations.

IV. Engaging Stakeholders

- The Government will continue its engagement with the public. Relevant Ministries have in the past conducted numerous consultations with various groups and individuals. These groups and individuals represent both the commercial interests of the country as well as civil society organisations.
- Stakeholders consulted by MITI include business groups such as Federation of Malaysian Manufacturers (FMM) and various Chambers of Commerce and Industry, specific industry associations and also NGOs like the Malaysian AIDS Council, *Majlis Tindakan Ekonomi Melayu* (MTEM), Third World Network, Malaysian Treatment Access and Advocacy Group, Consumers Association of Penang, PT Foundation, MyPlus, Suara Rakyat Malaysia, Jaringan Rakyat Tertindas, Pesticide Action Network Asia and the Pacific, Malaysia Trade Union Congress (MTUC) and National Cancer Society.
- Besides consultations and dialogue, the Government also enlists technical experts from the Malaysian private sector. To date, we have enlisted an expert to assist with technical issues related to textile, clothes and footwear negotiations.
- Others Ministries and Agencies involved in the negotiations like the Ministry of Finance, Ministry of Domestic Trade, Consumerism and Cooperatives, Ministry of Human Resource and the Ministry of Natural Resource and Environment, have also undertaken consultations with their own stakeholders on a continuous basis.