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Is the TPPA a Trojan horse?

IN the midst of the nation's current woes, there is a plan ostensibly for the growth of global commerce which deserves our serious attention. This is the Trans Pacific Partnership Agreement (TPPA).

A lot of the criticism levelled against the TPPA has to do with its highly secretive nature, with much of its negotiations done behind the proverbial closed doors whereby access and transparency are not taken into account.

Its secretive nature strips the TPPA of any legitimacy. How can a trade agreement that will ultimately affect the lives of millions of people on both sides of the Pacific ignore the people's views and sentiments? And yet the nation that is leading the negotiations is supposed to be a democracy?

It has been noted that the TPPA will not be ratified, until after each state member has gone through its own domestic process and signed the document. While this may be the case, it is still highly disconcerting that the public of each member state has had little to say whatsoever on the clauses and terms that will constitute the agreement itself.

Malaysian academic and lawyer Gurdial Singh Nijar pointed out on July 20, that many of the clauses of the TPPA were only made known due to Wikileaks disclosing some chapters and since then, the text is being made available on a limited "need-to-know" basis to selected groups and people, who then sign a non-disclosure agreement which applies for up to five years after the treaty has been ratified and comes into full force.

US President Barrack Obama has secured "Fast Track authority" from Congress which allows the US Congress to vote "Yes or No", but disallows any changes to the text of the agreement, a move aimed at thwarting any meaningful criticism of the TPPA by members of Congress.

International Trade and Industry Minister Datuk Seri Mustapa Mohamed has assured Malaysians that the "Constitution, sovereignty, and core policies such as government procurement, state-owned enterprises and the bumiputra agenda will be safeguarded."

Asian Strategy and Leadership Institute (ASLI) director, Tan Sri Ramon Navaratnam has also issued statements calling for Malaysians to support the TPPA on the basis that "...if we opt out of the TPPA, we will also find it much more difficult to break out from our present middle income trap. Our capacity to innovate and compete at higher levels, to increase our domestic and foreign investment, and to raise our technology, incomes, employment and quality of life can be seriously affected" while at the same time dismissing *ad hominem* critics of the TPPA by stating that"...we could regress by looking at the short term and narrow minority interests and opting out of the vital TPPA."

The biggest beneficiaries of the TPPA are not the individual member states and their people, but instead the large multinational corporations, a factor that seems to be missing from much of the analysis of its supporters.

There are numerous articles and online resources which cover extensively what the TPPA is and a whole multitude of well-argued critiques against it by some notable analysts in Malaysia which the defenders of the TPPA appear to have ignored.

What is striking is that the likes of Navaratnam seem to cherry-pick clauses in the TPPA, while failing to acknowledge some of the more pressing and well grounded grievances that have been made by critics of the TPPA. To exemplify this, the following are some key points as observed by the Consumers Association of Penang (CAP) on the clauses negotiated under the TPPA.

- The Investor to State Dispute System (ISDS) whereby foreign companies are able to claim billions of ringgit from governments for any loss of future profits due to introduction of changes in national or state policies, or even through the implementation of new laws and policies. Former US Secretary of State Hillary Clinton is also of the view that the ISDS mechanism empowers investors to sue foreign governments to weaken their environmental and public health rules. If approved, the ISDS may supplant the role of the judiciary as an arbiter in disputes. One such example would be the case of Thailand which had lost a suit to a tobacco company, Phillip Morris, on the grounds that the country's anti-smoking regulation, namely the graphic health warnings on cigarette packs, which had increased in size, had adversely affected the brand image of the tobacco company, undermining Thailand's efforts in progressing its social health policies.
- The sovereign right of the nation to make policies and of parliament to enact laws and the judiciary to interpret laws may be jeopardised because of the TPPA's ISDS system whereby foreigners can sue the government in a foreign tribunal which has been shown to be biased in favour of foreign investors. Even if the ISDS cuts both ways in this regard whereby Malaysian investors abroad can utilise the same protection mechanisms in the TPPA countries, by virtue of agreeing to the TPPA, we still open up the Malaysian economy and regulatory policies to be circumvented by stronger and larger multi-national corporations that will be able to dictate policies and regulations.
- Restriction on the government's ability to regulate flow of funds in and out of the country, thus losing crucial policy tools to ensure financial stability and avoid financial crises, increasing vulnerability to any global financial crisis.
- The elimination of tariffs across the board will threaten the viability of many local industries and jeopardise the jobs and livelihoods of thousands of local people.

Like many others, Navaratnam has also alluded to the fact that failing to join the TPPA will deny Malaysia's full access to the markets within the new Free Trade Area, which includes countries such as the US, Canada, Mexico and Peru.

Malaysia already enjoys market access to the US and other developed countries for almost all important products, whereas our trade within the Asean region and Asian countries has already surged through mainly bilateral trade agreements, as emphasised by the president of CAP.

What these key factors indicate is that the biggest beneficiaries of the TPPA are not the individual member states and their people, but instead the large multi-national corporations, a factor which seems to be missing in much of the analysis of the staunch TPPA supporters who are either oblivious to the power and influence that these big corporations exercise upon nation-states, or worse are in favour of the deceptively short term gains they bring.

Gurdial Singh has asserted that "the TPPA will be a charter for multi-nationals and big businesses" whereby foreign companies can sue governments for regulatory policies that are seen as damaging their profits, receiving huge payouts in the process. This is further compounded by the strict Intellectual Property (IP) regulatory mechanism within the clauses of the TPPA that directly affect the ability of local pharmaceutical companies to produce cheap generic medications, arising from potential patent suits by the larger pharmaceutical corporations. These firms are determined to protect their monopoly and their profits. By pushing generic drugs out of the market, the TPPA adversely affects the accessibility of life saving generic medicines to poorer communities. Indirectly, it also means the loss of jobs for those employed in local industries manufacturing these medicines.

Even the claims about growth and benefits in trade revenue, are contestable. In 2014, a senior economist in the United Nations, Rashmi Banga, showed evidence that the TPPA may prove detrimental to Malaysia and its local industries.

His paper noted that while there may be an increase in Malaysia's exports to TPPA countries, its import rates may also further increase. Industries like steel, electrical machinery and automotive will also face stiff competition that may affect the jobs of tens of thousands of Malaysians. These are industries which are dependent on Government support that can now be circumvented by the pro-multi-national corporation policies of the TPPA.

Foreign policies are also affected by this agreement which undermines directly and indirectly the sovereignty of governments, should there be any policies which are not acceptable to foreign corporations and even certain powerful governments.

The most notable of which – as stated by Gurdial Singh – is a provision in the negotiating texts which prevents imposing trade sanctions against Israel that transgress the US–Israel Trade and Commercial Enhancement Act which requires US trade agreements to "discourage politically motivated actions to boycott, divest from, or sanction Israel and seeks to eliminate the politically motivated non-tariff barriers on Israel's commerce".

Such texts within the drafts of the TPPA suggest that this trade agreement is far more politically biased than initially thought of, and explains why the US is aggressively pushing through this trade agreement, even though it yields marginal economic benefits for the US.

These criticisms against the TPPA are but some of the examples which illustrate that its motives are more political than economic. Obviously, it is a tool to extend the hegemonic influence of powerful nations and foreign corporations to undermine policies of foreign governments deemed unfavourable to, or incompatible with, their own agendas.

Ultimately however, as other analysts such as Nile Bowie have opined the TPPA is a trade pact to address "the rising influence of China, which is not a participant (in the trade agreement) despite being the region's largest economy and the largest trading partner of Asia-Pacific Economies". It is a policy of containment wilfully perpetuated by the US in its own interest to curb China's influence in the economic sphere and "lure" other countries away from China.

The conclusion which can be drawn from all these arguments is that on the surface, the TPPA paints a rosy picture with an allurement that promises growth and wealth to countries that would embrace its terms. Hidden within this proverbial Trojan horse however, is a juggernaut whose agenda is to maintain its dominant economic and political hegemony, caring very little for those it may trample upon in the process.

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