

# SEMINAR KHAS EKONOMI INTAN

## TPPA : Negotiations, Benefits and Challenges

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# Malaysia and FTAs

## I. Concluded and implemented

- **seven bilateral FTAs** : Japan, Pakistan, New Zealand, India, Australia, Chile and Turkey.
- **six regional FTAs** : AFTA, China, Korea, Japan, Australia/New Zealand and India.

## II. Signed but yet to ratify

- Trans-Pacific Partnership Agreement (TPPA)

## III. Under Negotiations

- i. Malaysia- EU FTA (MEUFTA)
- ii. Malaysia-EFTA Economic Partnership Agreement (MEEPA)
- iii. Regional Comprehensive Economic Partnership (RCEP)
- iv. ASEAN-Hong Kong FTA (AHKFTA)

# TPPA: Background

- Origins from the **(P4)** free trade agreement signed by **New Zealand, Singapore, Chile** and **Brunei** in 2005; entered into force in 2009.
- TPPA began with inclusion of the **United States, Australia, Peru** and **Vietnam** in March 2010. Scope expanded with inclusion of new issues.
- First Round - March 2010. **Malaysia** 9<sup>th</sup> Member in **October 2010**.
- **Canada** and **Mexico** joined in December 2012 (15<sup>th</sup> Round) and **Japan** in July 2013 (18<sup>th</sup> round).
- Admission to negotiations is by consensus.
- Membership in TPPA is **voluntary**.

# TPPA: Background

- Negotiations concluded on 5 October 2015.
- A comprehensive FTA comprising binding rules and disciplines and market access commitments , reflected in chapter texts, annexes, schedules and side letters.
- **Membership is open to all APEC economies** but can consider non-APEC countries.
- **Interest shown** by Korea, Taiwan, Indonesia, Thailand and Philippines.
- Widely expected to be a building block towards the wider Free Trade Area of the Asia Pacific.

# 4/2/2016 – Signing of TPPA

- **Parliament approved** Malaysia's participation in TPP and this paved the way for Malaysia to sign the TPP in Auckland, New Zealand on **4 February 2016**.
- Parliamentary approval – a precedent for international treaties.



# Current Status

- Signing is indication of acceptance of outcome of negotiations.
- Signatories to undertake process to ratify the Agreement in order to bring the Agreement into force.
- Ratification of the TPPA is likely to take place within 2 years after which the Agreement will enter into force (2018).

## Malaysia's Domestic Process

- Amendment of relevant laws and regulations (20 laws)
- Outreach programmes to engage stakeholders
- Capacity building programmes for implementors and business entities

# 30 Chapters in the TPPA...



## Standard Legal Chapters

- 1 – Initial Provisions
- 27 – Administrative & Institutional Provisions
- 28 – Dispute Settlement
- 29 - Exceptions
- 30 – Final Provision

## Traditional Trade Issues

- 2- Market Access
- 3 – ROOs
- 4 – Textiles and Apparel
- 5 – Customs Administration
- 6 – Trade Remedies
- 7 – Sanitary and Phytosanitary
- 8 – Technical Barriers to Trade
- 9 – Investment
- 10 – Cross Border Services
- 11 – Financial Services
- 12 – Temporary Entry
- 13 – Telecommunications
- 14 – E-Commerce
- 15 – *Government Procurement*
- 16 – *Competition Policy*
- 18 – Intellectual Property Rights
- 21 – Cooperation and Capacity Building
- 22 – Competitiveness / Business Facilitation

## New Issues

- 17 – Competition (SOE)
- 19 – Labour
- 20 – Environment
- 23 – Development
- 24 – SMEs
- 25 – Regulatory Coherence
- 26 – Transparency and Anti Corruption

## Entry into Force

- 60 days after the date on which all original signatories have notified the Depository in writing of the completion of their applicable domestic procedures (ratification);
- If not all signatories have ratified within 2 years of the date of signature , 60 days after the expiry of this period if at least six of the signatories, which together account for at least 85 per cent of the combined gross domestic product of the original signatories have ratified; **or**
- If both conditions are not met, 60 days after the date on which at least six of the original signatories, which together account for at least 85 per cent of the combined gross domestic product of the original signatories have ratified.

## TPP Commission

- Comprising representatives of all parties, responsible for the administration of the Agreement, including review of Agreement; supervise work of all Committees; resolve difference or disputes regarding interpretation or application of Agreement; and issue interpretation of the agreement.



## Accession

Open to any State or separate customs territory that is a member of APEC, and such other State or separate customs territory as the Parties may agree . Parties to decide on accession procedures .

## Withdrawal

Parties may withdraw from this Agreement by providing written notice of withdrawal to the Depository and the other Parties. Withdrawal shall take effect six months after written notice.

## Exceptions

- general exceptions;
- security exceptions;
- temporary safeguard measures (capital controls);
- taxation measures;

# Dispute Settlement Mechanism (DSM)



- The DSM establishes the procedures for the avoidance and settlement of disputes.
- The Chapter provides for the process of settlement of disputes, first through a process of consultations before reference to an independent Panel, established in accordance with agreed procedures.
- A Panel shall comprise three members, selected in accordance with the procedures set out in the Chapter.
- Panel findings and recommendations are binding on the Parties to the dispute.
- Parties must implement findings and bring the offending measure into compliance with the Agreement.
- If a Party fails to comply with the panel recommendations, the Parties to the dispute may agree to a mutually acceptable compensation.

# The Benefits

- Trade

- 4 new preferential markets – US, Canada, Mexico, Peru
- new export opportunities for auto parts and components
- participation in the global supply chain
- increased utilisation of e-commerce
- more open services market
- new opportunities in GP market

- Investment

- Attracting FDI and preserving existing investors
- opportunities in the textiles and auto parts and components.

- International standards – Labour and Environment

- Good governance - transparency, anti corruption

- **Consumers** enjoy wider choice and better quality of goods and services

- Cut red-tape: reducing costs and increasing customs efficiencies, through transparency and predictability of customs regulations - cheaper, easier, and faster for businesses to get their products to market
- Facilitate trade across the TPP region; support integration of regional supply chains
- Customs cooperation: to prevent smuggling, illegal transshipment, and duty evasion, and to guarantee compliance with trade laws and regulations
- Self-certification on Rules of Origin

- **Co-operation and capacity building to ensure all parties can benefit from TPPA**
- Mechanisms for **collaboration and facilitation of capacity-building** activities to help businesses, including SMEs participate in global trade
- **Areas of cooperation include science and technology cooperation**, and other joint development activities

# Intellectual Property Protection

- IPR: important in a **competitive environment**; contribute towards **innovation**, value add and economic growth
- Jobs and livelihood are undermined when ideas, brands and products are pirated and counterfeited.
- Protection of IPR such as patents, trademarks, designs, copyright or geographical indications, is important for inventors, creators and businesses to prevent unscrupulous competitors from making illegal copies.

- Enhance transparency of regulations, reduce restrictions and promote openness
- Facilitate cross border business activity
- Reduce costs, spur innovation, boosts competition & productivity
- Raise capability of domestic services suppliers
- Job creation

# The Challenges

## Implementation

- Policy changes – Labour, IPR, GP
- Adhering to treaty obligations – tariff reductions and other liberalisation measures; rules and disciplines eg. non-discrimination;
- Fulfilling transparency obligations;
- Sub-federal level obligations
- Avoiding transshipment/circumvention
- Enforcement and monitoring



# The Challenges

## Competition

- No more protection through tariffs.
- Local companies have to improve productivity , quality and cost to be competitive in local and global markets.
- Local products have to meet certain standards – may increase production cost
- Employers may incur additional costs to meet labour standards including potential strikes
- A more liberal services regime could lead to greater inflow of service providers

# Flexibilities

- Longer transition periods
- Different thresholds
- Non-Conforming Measures
- SOE – country specific annex
- Bumiputera policy
- State Governments excluded in GP, SOE, Environment

## 1. BUMIPUTERA AGENDA

### Government Procurement

- 30% set aside for Bumiputera contractors (construction services).
- Bumiputera suppliers and manufacturers will continue to enjoy the price preference for goods and services.
- Central Contract on existing items will continue.

### SOEs

- Flexibilities applicable for all SOEs in giving preferences for Bumiputera up to cumulative 40% (including SMEs and regional development) of their annual purchases.

### Non-conforming Measures (NCMs)

- Malaysia may maintain current policies and adopt new policies on Bumiputera through creation of new and additional licenses/permits in investment and services.

## 2. SMEs

### SOEs

- Flexibilities applicable for all SOEs in giving preferences for SMEs up to cumulative of 40% (including Bumiputera and regional development) of their annual purchases.

### Financial Services

- Malaysia has the right to provide subsidies or advantages for the supply of any financial service which we deem necessary for the development of micro, small and medium enterprises.

## 3. SOVEREIGNTY

- National interest – right to regulate and safeguards
- State's right to regulate –sectors under state's list

# *If we do not join.....*

- **Trade** : More onerous commitment if join later; no first mover advantage; no preferential access to market of 800 million people with combined GDP of US\$ 27 trillion
- **Viet Nam** and **Singapore** will have advantage over Malaysia. through preferential access to TPP markets
- **Investment**: Implications for FDI and current investors; no facilitation and protection for Malaysian investors overseas
- **Disadvantaged in the regional supply chain** due to loss of preferential materials
- **Lose out to new entrants joining TPP, example** Korea, Taiwan. Indonesia, Thailand.
- Signals inability to accept international standards and negotiate high quality FTAs.

Please visit [www.miti.gov.my](http://www.miti.gov.my) for the legal texts of the TPPA, a summary of the Agreement, FAQs and other useful material.

**Thank you**



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