

## **TPP agreement: 4 busted myths and a pressing issue**

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**STORY BY STEPHANIE JACOB**

**The release of the full Trans-Pacific Partnership agreement has led to more debate and discussion, some logical but others less so. Here are the four remaining myths that need to be put aside and one serious issue that needs to be addressed.**

With the release of the full Trans-Pacific Partnership (TPP) agreement text on Nov 5, 2015; everyone can see the results of five years of secret negotiations between the 12 participating countries. Each of the countries involved will now have to debate and decide whether it wants to sign on.

Our government has decided that it will present the deal to Parliament in early 2016 for debate on whether Malaysia should become a signatory.

Among the issues likely to be covered are the impact on state-owned enterprises (SOE), small and medium enterprises (SME) and bumiputera companies. And the new data protection for biologics which may mean more expensive medicines.

Critics also fear Malaysia will lose its sovereignty and the ability to legislate under the investor-state dispute settlement (ISDS) mechanism. There are those worried over US dominance and the deal will alienate China, an important trading partner.

So there are many things to consider before we put pen to paper.

Tiger hopes there will be a robust, fair and informed debate which focuses on evaluating the deal versus scoring political points. Here are four of the myths that Tiger feels should be totally dealt with before the debate begins, and one issue which should be seriously looked at.

### **Myth 1: The country will suffer because of the TPP agreement**

Free trade alone is not bad for Malaysia. On the contrary, it is very necessary to try and open up new markets for our exports. Malaysia has a population of about 30 million people so it is simply not possible to rely solely on the local market to sustain our economy.

And of course, as we are trying to get better access to other markets, so are other countries trying to get better and fairer access to ours. A bit of give and take is necessary. What must be evaluated is if on balance, the benefits outweigh the costs. And this is what must be foremost on the minds of lawmakers when they debate this issue next year in Parliament.

### **Myth 2: TPP agreement is a new form of colonisation by the US**

Another popular criticism against the TPP agreement is that the US will use it as a means to dominate and control the other participating countries through the trade deal. While it is undeniable that trade and economic measures can be used as policy tools, it is up to the countries negotiating the deal to ensure that they do not concede anything that will allow them to be controlled by a foreign power, and for that matter, by big multinational companies.

In the case of the TPP agreement, the fact that negotiations went on for five years and that Malaysia did secure some of its country specific requests – particularly when it comes to protecting and maintaining SOE, SME and bumiputera privileges – shows that no country had it all their own way.

Free-trade deals do not mean that a country's rules are removed entirely for foreign companies and they have *carte blanche*. Rather, it means providing an even playing field at that enjoyed by local companies. Countries, Malaysia included, can still impose rules and regulations, just so long as they are equally administered.

### **Myth 3: TPP agreement will alienate and/or affect trade with China**

There is no reason this should happen. The TPP agreement does not restrict trade with any countries outside the participating nations, and countries are free to enter into free-trade agreements (FTAs) with others outside the group.

In any case as International Trade and Industry Minister Mustapa Mohamed has highlighted that Malaysia and China have already had an FTA in place for close to 10 years via the Asean-China FTA. And that almost 90% of all duties on products traded between the two have been eliminated.

Then there is the Regional Comprehensive Economic Partnership (RCEP) which is being negotiated by 16 countries, including Malaysia and China. So even if Malaysia

signs on to the TPP agreement, it is by no means cutting of its economic ties with China in order to cosy up to the Americans.

#### **Myth 4: Malaysia will lose sovereignty its in TPP agreement**

Any mechanism that takes or limits a government's ability to legislate should definitely not be agreed to. However, the ISDS mechanism does not do that.

It does not give foreign companies greater rights, rather, it is meant to offer investors recourse should they feel unfairly treated.

Critics argue that there is the local court system for that. But it is understandable that foreign companies (Malaysian ones included) would prefer an impartial and non-aligned arbitration system due to concerns over potential bias.

And just like the ISDS will protect investors from the other 11 nations who invest in Malaysia, it will also protect Malaysian companies which venture abroad. In other words, this protects our businesses too.

Mustapa recently noted that the mechanism is not unique to the TPP agreement. In fact, it is part of 74 Bilateral Investment Treaties and eight FTAs that Malaysia has signed. Read: this is not something new.

From all this, there have only been two cases against Malaysia. One of which the government won, while the other was annulled. Meanwhile, Telekom Malaysia used the mechanism in a dispute with the government of Ghana in 2003.

What is important is that the mechanism does not become a tool for big multinational companies to use to pressure governments into giving into their demands. There must be strict penalties against companies who bring frivolous suits to ensure that only genuine issues are brought forward.

Furthermore, there must also be nothing in the structure of the mechanism that limits how governments can legislate especially for things like healthcare, safety and defence.

If the structure of the ISDS mechanism in TPP fulfils all these, then it should not be a stumbling block to signing this deal

#### **The issue: Biologics will get more expensive**

There is a back and forth going on between Mustapa and several opposition members of parliament (MPs), particularly Klang MP Charles Santiago, Lembah Pantai MP Nurul Izzah and Kelana Jaya MP Wong Chen – all of whom are members of the TPP Parliamentary Caucus.

“The Malaysian government and 11 other states in the US-led agreement have agreed to an extension to patent terms and a five-year minimum patent term for medicines grouped as ‘biologics’. That makes the TPP a bad deal,” the opposition MPs said in a statement.

Mustapa, however, has explained the extension saying that Malaysia has had a pharmaceutical data protection process since 2011 which protects the test data for a period of five years. Under the TPP agreement, the government will extend that same data protection to biologics products. This is necessary in order to provide non-discriminatory treatment, he said.

There are two issues here: the first is patents on medicines and the second is the biologics issue. In terms of patents, the current 20-year period still applies and has not been extended.

The only time a patent can be extended is if there is a unique delay in patent or marketing approval. This appears avoidable so long as an efficient approval system is in place, which Mustapa said Malaysia does.

The bigger issue is biologics which is increasingly being used in treatment for cancer, HIV and other serious illnesses.

A debate must be had as to whether the data exclusivity period, which will be introduced, will potentially limit cutting-edge life-saving medicine because it is too expensive and there are no generics available. The government will have to outline how it plans to make these types of medicine accessible during the protection period when it is likely to be exorbitant.

Hopefully by moving on from the four myths and focusing on the more important issues like that of biologics, there can be a thorough and comprehensive analysis over the deal.

The TPP discussion could very be easily hijacked for political point-scoring and that will make it pointless. Tiger is calling for all Malaysian lawmakers to engage in a high-quality and mature discussion on the merits and demerits of the deal.

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