

TPP Benefits And Concerns

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KUALA LUMPUR, Nov 5 (Bernama) -- Following is the latest list of Frequently Asked Questions pertaining to the Trans Pacific Partnership Agreement (TPPA) made available on the International Trade and Industry Ministry website at <http://fta.miti.gov.my/index.php/pages/view/258>.

There are seven main topics, the first one being on the TPP benefits and concerns.

Eleven questions are answered under the TPP benefits discussion on how the TPPA can benefit the country.

1. Why Free Trade Agreements (FTAs)?

As a trading nation with a small domestic market, Malaysia will continue to adopt an open trade and investment regime to promote economic growth, provide opportunities for high skilled employment and promote technological development and innovation.

Hence, Malaysia needs to ensure that the global market is governed by transparent and predictable rules, and remains liberal. The WTO continues to remain our key priority.

As the World Trade Organisation (WTO) process takes longer, Malaysia has embarked on Free Trade Agreements to seek better market access opportunities for Malaysian goods and services from Malaysia.

To date Malaysia has signed 13 FTAs:

ASEAN Free Trade Area (1992)

ASEAN-China (2004)

ASEAN-Korea (2006)

ASEAN-Japan (2008)

ASEAN-India (2009)

ASEAN-Australia-New Zealand (2009)

Malaysia-Japan (2005)

Malaysia-Pakistan (2007)

Malaysia-New Zealand (2009)

Malaysia-Chile (2010)

Malaysia-India (2011)

Malaysia-Australia (2012)

Malaysia-Turkey (17 April 2014)

Besides the TPP agreement negotiations of which were concluded on 5 October 2015, Malaysia is also negotiating the following FTAs:

Regional Comprehensive Economic Partnership (RCEP) agreement; Malaysia-EU FTA; Malaysia-European Free Trade Association Economic Partnership Agreement (MEEPA); and ASEAN-Hong Kong FTA.

2. How does the TPP benefit Malaysia?

(i) Market Access

Malaysian exporters will gain competitive advantage over regional competitors in exporting products such as electrical and electronics, chemical products, palm oil products, rubber products, wood products, textiles as well as automotive parts and components.

The TPP will provide preferential access for goods and services from Malaysia into four "new" FTA markets, namely the US, Canada, Mexico, and Peru. For these markets, exports are likely to increase upon entry into of force of the TPP, as:

- import duties for almost 90% of the products will be eliminated in US.
- import duties for almost 95% of the products will be eliminated in Canada;
- import duties for almost 77% of the products will be eliminated in Mexico; and
- import duties for almost 81% of the products will be eliminated in Peru.

In addition, Japan did not include plywood in the Malaysia-Japan Economic Partnership Agreement (FTA) and the ASEAN-Japan FTA will offer preferential access to plywood and its products sourced from Malaysia.

The rules of origin that allow for accumulation of inputs from all TPP parties will make it easier for goods from Malaysia to qualify for preferential duty.

This also offers greater opportunities for Malaysian producers of parts and components products to supply to the regional value chain.

The high regional value content in the rules of origin for automotive vehicles and parts and components will encourage auto manufacturers currently sourcing parts and components from outside TPP countries to source them from Malaysia.

(ii) Benefit to Consumers

- Malaysia will eliminate import duties for almost 85% of products imported from TPP countries upon entry into force of the agreement. We can generally expect consumers in Malaysia to enjoy a wider choice of better quality TPP-origin products at competitive prices.

(iii) Improving Governance and Transparency

- The TPP is also expected to enhance transparency and good regulatory practices, both internally and among TPP members, through better coordination and information exchange.

3. How were concerns to Malaysia addressed?

As in all negotiations, there is need for a balanced outcome for all parties. Hence the need to compromise in some areas.

In the case of Malaysia, our mandate was based on the Constitution, preserving the rights of the states and ensuring key policies for socio-economic development are preserved, including our Bumiputera policies.

In sensitive areas, Malaysia negotiated longer timeframe to implement obligations, especially for government procurement and state-owned enterprises, and intellectual property rights.

We also excluded certain sections or measures sensitive to Malaysia from the investment and services obligations, including land, privatisation and divestment and Bumiputra preferences.

4. How is sovereign rights preserved?

The TPP reaffirms the sovereign rights of governments to regulate for public interest, including measures undertaken to protect human, plant and animal health, and national security.

The State's right to regulate in areas under the State list is preserved. For example, land approvals are subject to terms and conditions set by the States.

5. What flexibility is provided for implementation of Bumiputera policies?

While there are 30 Chapters in the TPP, not all Chapters impact the implementation of

Bumiputera policies. For the key chapters which impact on the implementation of Bumiputera policies, the following flexibilities are provided:

- Government Procurement

Flexibility provided for Bumiputera participation includes setting aside up to 30% for Bumiputera contractors in construction services that is open to TPP members.

For construction services not open to TPP members, the current Bumiputera preferences will be maintained. In addition, the Central Contract programme and price preference for goods and services given to Bumiputera suppliers and manufacturers will be maintained.

- State Owner Enterprises

SOEs will have the flexibility to give preferences to Bumiputera and SME suppliers up to 40% of their annual purchases.

- Services and Investment

Malaysia may maintain current policies and adopt new policies related to Bumiputera concerns through the creation of new and additional licences/permits in investment and services.

6. Intellectual Property (IP) for pharmaceutical

- Achieving sustainable public health outcomes depends on the interplay of national health policy, regulatory environment, trade and competition settings, procurement policies, innovation strategies and the intellectual property (IP) system.

- Patent is one of many types of IP. Patent protection is generally intended to strengthen market-based incentives for private-sector stakeholders to invest resources in product research and development of new technologies.

- Such incentives are considered especially valuable in the medical world, particularly in the development of new drugs, due to the considerable financial and technical resources required, coupled with the high risk of failure even at the late stage in product development and issues related to product liability.

- New drugs are expensive to develop, but are relatively cheap to reproduce. In such instances, it would be unsustainable for companies to invest capital in product development and regulatory approval if their competitors were in a position to immediately introduce replica products.

- However, the Government recognises that innovation cannot take place in isolation from concerns about access to medicine, and access has to be seen in the broader context of the need for innovation and effective regulation.

- Without incentives, it is doubtful that the private sector would have invested so much in the discovery or development of medicines, many of which are currently used both in developed and developing countries. On the other hand, the Government is also aware of the concerns raised about the impact on the prices of pharmaceuticals in Malaysia.

- Malaysia's objective in the negotiations was for the right balance to be achieved between providing strong intellectual property protection so that new medicines can continue to be discovered, and addressing the need to obtain essential medicines.

- In the TPP, all Parties understand developing countries' need for access to affordable medicines, and agreed that the flexibilities and exceptions under the World Trade Organisation Agreement on Trade-Related Aspects of Intellectual Property Rights are important to countries dealing with health crises including HIV/AIDS.

- Parties to the TPP have already affirmed their shared commitment to the Doha Declaration on TRIPS and Public Health, which aims to assist developing countries in addressing public health concerns through the WTO flexibilities.

7. Will TPP result in patent extension?

- On the claims that the TPP will extend patent protection, it is important to note that the patent protection for pharmaceutical drugs remains at 20 years, in accordance with the TRIPS.

Only in the event there is an unreasonable delay would the patent period be extended.

However, since Malaysia is able to provide marketing approval within the current international benchmark of below two years, the likelihood of an extended period should not arise.

On patent, Malaysia is able to grant patent below five years and therefore the likelihood of an extended period should not arise.

8. TPP and pharmaceutical data protection

- On Pharmaceutical Data Protection, Pharmaceutical data protection has been in force in Malaysia since 2011. Pharmaceutical test data of innovator products is protected for a period of five years.

During that period, the data related to safety and efficacy will belong exclusively to the pharmaceutical research company seeking regulatory approval.

The Government has agreed to extend data protection to biologics products, so as to provide non-discriminatory treatment.

- Biologics refer to non-chemical drugs produced using biotechnology processes. They are among the most exciting developments in modern medicine but also the most complex and expensive.

The shorter period of exclusivity will enable cheaper biosimilars to reach the market earlier.

- The final outcome on biologics gives two options for Parties: i) to provide for eight years of data protection, ii) five years of data protection and other measures recognizing that market circumstances also contribute to effective market protection, to deliver a comparable outcome in the market.

A review will be undertaken 10 years after entry into force of the TPPA.

- Malaysia is accorded a transition period of 5 years to introduce data protection for biologics.

- The final outcome in TPP is similar to Malaysia's policy of introducing data protection of five years.

9. The Investor-State Dispute Settlement (ISDS) mechanism

- One of the main concerns over the TPP is the inclusion of the Investor-State Dispute Settlement (ISDS) mechanism.

ISDS is not new to Malaysia as we have included ISDS in our bilateral investment treaties (BITs) and FTAs.

Foreign investors in Malaysia can bring an ISDS claim against the Government, and likewise, Malaysian investors abroad will also have the same protection mechanism in the TPP.

It is important to note that there are a large number of Malaysian companies investing abroad today. In fact, as at the end of last year, the stock of Malaysian investments overseas has exceeded foreign direct investments into Malaysia.

- TPP Parties retain their sovereign rights to regulate for legitimate public welfare objectives.

- TPP Parties can elect to deny ISDS for claims that challenge tobacco control measures.

- In the case of Malaysia, ISDS will not apply for a 3-year period after entry into force for government procurement projects below specified thresholds for contracts.

- Additional improvements to the ISDS mechanism:

.expedited review and dismissal of claims without merit (frivolous claims) and investors to pay for attorney fees and costs for frivolous claims;

.consolidation of claims arising from same events or circumstances;

.cannot make a claim if more than three years and six months have elapsed;

.pre-requirement to resolve a claim through consultation and negotiation before elevating to a formal dispute; and

.decision to not renew or maintain a subsidy is not an expropriation.

10. Will TPP lead to influx of foreign labour?

- The TPP does not provide for the right of entry of foreign labour. The entry of foreign workers, including professionals, will continue to be governed by Malaysia's own laws and regulations and will be based on the needs of the industries.

The Government will continue to prioritise employment opportunities for local workers.

- The Labour Chapter in the TPP contains disciplines that promote workers welfare and rights, including clauses relating to minimum wage and occupational safety and health, which Malaysia has already implemented.

- In 2014 alone, companies from across the world, including in the United States, Australia, Europe and Northeast Asia, have either set up shop or expanded their existing operations in Malaysia.

Of the 773 manufacturing projects which started production in 2014, 34.7% were foreign owned.

These created 35,130 jobs, of which 25% or 8,700 were at executive level requiring tertiary education.

- Some of the MNCs in Malaysia have strong linkages to our SMEs resulting in job creation and business opportunities in the software, packaging and display solutions and design and manufacturing of machine parts sector.

TPP and SMES (Small and Medium Enterprises)

- SMEs are already competing under existing FTAs, where more than 90% of import duty has been eliminated.

- SMEs will benefit from the TPP as they now have access to a more liberalized market under the TPP for their exports, in particular access to the 4 new markets where Malaysia does not currently have an FTA. They are US, Canada, Mexico and Peru.

- SMEs will benefit through participation in the regional supply chain as more inputs will be sourced from TPP members to meet the rules of origin requirement.

- Under the TPP, a chapter is dedicated to facilitate SMEs participation in the global supply chain, by enhancing transparency and sharing of information on-line, as well as developing capacity building programmes to assist SMES.

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