

# 泛太平洋伙伴合作协议

## Trans-Pacific Partnership Agreement (TPPA)

泛太平洋伙伴合作协议 (Trans-Pacific Partnership Agreement, TPP协议) 是一项多边关系的自由贸易协定，目前由12个国家参与，综合市场达7亿9千3百万人和27兆5千亿美元的国内生产总值。TPP协议最终将成为世界最大的自由贸易区，所参与的国家包括一些世界上最强大的经济体，并代表40%以上的全球贸易。马来西亚在2010年加入TPP协议的谈判，现定于2013年10月完成。

自由贸易的概念对一个像马来西亚这样的贸易国家来说是很重要的。马来西亚中华总商会 (总商会) 认同，一个全面的亚太地区自由贸易协议，可能为马来西亚的公司在扩展市场准入机会时带来好处，也能让马来西亚吸引外资。总商会认为政府需要确保这项协议对大马利大于弊。

### 对此协议的一些主要关注点包括:

- (a) TPP协议是高度机密协议，现在仍没有提供任何的成本效益分析。
- (b) 据悉目前已经完成了14章，但是大马国际贸易与工业部并未透露任何有关已经谈判和同意的资料。
- (c) 在限制性原产地规则里或许会排除从非TPP协议国家所进口的制造品，如中国。
- (d) 更严厉的知识产权条款，如限期更长的专利和版权条款将会阻碍创新；限制取得可负担药物的管道和影响获取知识的管道，如书本和数字信息。
- (e) “投资者与东道国投资争端解决机制” (Investor State Dispute Settlement, ISDS) 条款可能会限制我国政府为确保稳定的监管环境而决定的公共决策、修定和通过新法令的主权。
- (f) 对亚洲一体化的影响。东亚经济的一体化已经是市场主导型而不是机构主导。目前有几种经济一体化的模式在东盟地区实行。这些所有的努力在TPP协议问世后可能将会受到影响。
- (g) TPP协议可能会影响未来新兴产业的发展，发展中国家可能无法和发达国家竞争，如在创新和科技方面的发展。

### 总商会建议，在商讨泛太平洋伙伴合作协议时，应考虑下列因素：

#### (a) 公平

马来西亚只有在TPP协议提供一个真正公平贸易的机制下，才应参与有关协议。公众的利益必须列为优先考量，一个普通市民的权益，必须与企业的利益拥有同等的地位，才能在促进经济的同时，也改善社会福利。TPP协议也应该包含如同世界贸易组织提供予发展中国家的特殊和差别待遇条款，以增加这些国家的贸易机会。

#### (b) 透明度

政府对TPP协议谈判作出议定前，必须咨询国内各主要的工商会，以及受影响的相关行业，以取得各界的回馈。总商会认为，要真正取得有效的咨询，应该仿效美国的制度，成立一个透明的企业界咨询委员会。

#### (c) 国家利益应重于商业利益

总商会认为，对非关贸易的课题，如金融条例 (如资本管控)、投资、政府采购及知识产权等课题方面，相比商业利益，马来西亚的国家利益必须给予优先考量。

#### (d) 有关协议应涵盖中国

总商会建议，TPP协议应与其他自由贸易协议相辅相成，以在亚太地区建立一个有前景的自由贸易领域。如果中国被摒除在TPP协议以外，有关协议将无法在亚洲建立一个有效的供应链。

总商会已于2013年7月17日发表文告，向各界表明本会立场。本会法律组主任蔡文洲律师和成员林道钦律师也接受南洋商报的专题访问。以下是本会对南洋商报的问题所作出的回应，以及本会对TPPP协议之看法和意见回馈，谨此摘录，供会员商家参阅。

## 1 How do ACCCIM see TPPA? Is it a good deal or the cost it brings will be much more than benefit?



(a) TPPA is a multilateral free trade agreement which aims to promote economic integration in the Asia-Pacific region by reducing tariff barriers and promoting free trade among its members. It is currently participated by 12 countries and forms a combined market of 793 million people and GDP of USD27.5 trillion. TPPA would eventually be the largest free trade bloc in the world and participating countries include some of the world's most robust economies and represents more than 40% of global trade. The TPPA negotiation is scheduled to be completed by October 2013.

(b) The Malaysian Government represented by the Ministry of International Trade and Industry (MITI) is in the midst of negotiating the provisions under the TPPA. It is believed that TPPA consists of 29 Chapters covering major industries from, and not limited to, agriculture, automotive, electronics and electrical, Government procurement, higher education, hospitality, investment, manufacturing, pharmaceutical, to financial and professional services. On top of that, it also emphasized on issues of investor-state dispute, rules of origin, competition policy, intellectual property rights, labour and environmental standards, temporary entry of business persons etc.

(c) The idea of free trade is important to a trading nation like Malaysia. ACCCIM recognises the possible main benefits of a comprehensive free trade agreement for the Asia Pacific region for Malaysian companies when they seek to expand market access opportunities and for Malaysia to attract foreign investments. ACCCIM is of the views that that the Government need to ensure that the costs to Malaysia will not outweigh the

benefits. Not much is known about the TPPA drafts due to the Government's commitment to the confidentiality of negotiations, as such ACCCIM is unable to comment whether TPPA is a good deal or the costs it will bring outweigh the benefits.

## 2 When was the consultation held between MITI and ACCCIM? It has been few years since Malaysia started negotiation in TPPA; was there any engagement before the latest round of consultation, particularly regarding TPPA?

(a) ACCCIM took the initiative to organise a Roundtable Discussion on TPPA on 1<sup>st</sup> November 2012 at ACCCIM Conference Room.

ACCCIM had invited guests and MITI to the Roundtable Discussion; they were namely, Mr. Paul Brown, Economic Counsellor of US Embassy in Malaysia, Mr. Brian Smythe, Deputy High Commissioner of New Zealand in Malaysia, Mr. Filbert Tay, First Secretary of Singapore High Commission in Malaysia and Mr. Matt Ingeneri, Deputy Economic Counselor of U.S. Embassy in Malaysia, Mr. Jayasiri, Malaysia's Chief Negotiator for TPPA (MITI), Dato' Ooi Say Chuan, the Lead Negotiator of Horizontal Issue (MITI) and Mr. Peter Brian, Principal Assistant Director (MITI). The Roundtable Discussion was more of a briefing session than a consultation.

- (b) Session Between Y.B. Dato' Sri Mustapa Mohamed, Minister of MITI and National Associations / Chambers of Commerce was held on 28<sup>th</sup> May 2013 at MITI.

At the meeting, MITI had presented a briefing on Free Trade Agreements (FTA) and TPPA. MITI informed that FTA was important to Malaysia as Malaysia was ranked no. 3 in the world for trade dependence. MITI also informed that 17 rounds of TPPA negotiations had been concluded.

MITI recognized the need to conduct more briefings and consultations with private sector organisations on TPPA as this was an important subject

- (c) ACCCIM has submitted request to YAB Prime Minister (in a memorandum dated 12<sup>th</sup> January 2013) and MITI (in two memoranda dated 7<sup>th</sup> February 2013 and 25<sup>th</sup> March 2013) that ACCCIM and national level chambers of commerce and affected stakeholders should be invited to consultative sessions on TPPA in order to address ACCCIM's concerns and feedbacks.

- (d) ACCCIM attended a Roundtable Discussion on TPPA organised by the National Chamber of Commerce and Industry of Malaysia (NCCIM) on 12<sup>th</sup> July 2013 wherein the concern on the confidentiality of negotiation was raised.

- (e) There was no consultation held between MITI and ACCCIM. MITI only had briefing sessions with ACCCIM.

The Government should conduct consultative sessions with all national level chambers of commerce and affected stakeholders so as to obtain feedback before concluding the negotiation under TPPA. This is essential to minimise the impacts and provide business sustainability in the light of global challenges while optimising the benefits and opportunities under the TPPA. ACCCIM

suggests that a similar U.S. system of cleared corporate advisory committee be set up so that meaningful consultation can take place.

### 3 How was the consultation? Did MITI state the cost and benefit of TPPA during the consultation?

There was no consultation held between MITI and ACCCIM. MITI only brief ACCCIM generally on the possible benefits.

### 4 Is ACCCIM satisfied with the consultation held?

ACCCIM would like to have a consultation rather than a briefing.

### 5 Which part or provision that ACCCIM most concern on? Why?

Based on leaked chapters on the internet and some reports, ACCCIM notice certain important issues relating to developing countries like Malaysia.

- (a) On the issue of rules of origin, in order to enjoy the benefits of free trade, it may require a certain value of the goods to be produced within a TPP country. It was reported that this issue prompted a recent debate between two TPP countries on textiles and apparel. One requires an apparel product could only be considered from within the free trade area if the entire manufacture of the product has occurred within the FTA region. The other country seeks a less restrictive approach, which would allow its products manufactured from materials of non-TPP country, primarily China. If the first approach were adopted, would the same rule apply to all industries, particularly the manufacturing sector? This issue remains a question mark due to the secrecy of the negotiations.

## 6 According to your understanding, what would be the impact of TPPA towards the nation, businesses and workers?

- (a) Another concern is TPPA's impact on Asian integration. It has been argued that the East Asian economic integration has been market-driven and not institution-driven. The production networks have prospered despite FTAs in which the rule of origin issue complicates the sourcing of imported intermediate inputs. The Asia Pacific region, and especially East Asia, has enjoyed rapid growth of trade and development based on the idea of open regionalism. The priority in East Asian economic integration is to promote the participation of least-developed economies in the production networks, as well as deepening the integration and specialization of middle-income economies in those supply chains. The TPPA may not be currently pointed in that direction and risk overshadowing East Asian and ASEAN-style economic cooperation within the APEC - an approach that is still quietly delivering real progress in economic integration, as it has in years past.
- (b) In addition, currently there are several models of economic integration being pursued in the region. For example, the East Asia Summit is developing a Comprehensive Economic Partnership for East Asia, and ASEAN. China, Japan and the Korea are pursuing the East Asia Free Trade Area (EAFTA). All these efforts may be impacted by the advent of the TPPA, which will add a strong 'non-Asian' flavour to economic integration efforts in Asia and force Asian economies to develop different strategies for regional integration.
- (c) ACCCIM is of the view that the TPPA should complement other FTAs in order to build a promising free trade environment in the Asia Pacific region. TPPA could interfere with the

efficient supply chain developed in Asia if China remains outside of TPPA.

## 7 MITI said that there was a "confidentiality agreement", therefore the detail or draft of TPPA could not disclose to the public. What are the comments of ACCCIM towards this?

- (a) The negotiations under TPPA are highly confidential. All texts and documents are not disclosed. It has come to ACCCIM's attention in November 2012 that the SME Chapter was the first Chapter concluded among the TPPA members.

Until now, the details of the SME Chapter remain undisclosed. With SME industry playing a crucial role in the economic development of Malaysia, and for the country to promote a free market access economy without getting the relevant parties involved, this situation raises great concerns among our members.

- (b) ACCCIM is of the view that there must be commitment to transparency rather than confidentiality.

## 8 What are the comments of ACCCIM regarding other provisions that believed to be in TPPA, e.g. Investor State Dispute Settlement (ISDS), prohibition of imposing capital control, Government procurement, patents and copyrights?

Again based on leaks and unconfirmed reports;

- (a) Investor State Dispute Settlement (ISDS) provides foreign investors extended rights to sue the Governments if a law or policy harms their investment. It is reported that the Australian Government has rejected this provision. Critics argued that this provision



would limit Government sovereignty in public policy-making, power to amend or pass any new laws so as to ensure a constant regulatory environment, and foreign corporations will be able to challenge the Government even if the measures are for domestic health and environmental reasons. These ISDS can cost Malaysia a lot. ACCCIM is of the view that the Government should negotiate the exceptions and non-conforming measures in the best light of public interest and welfare of the nation.

(b) ACCCIM is of the view that as far as non-trade-related issues, such as financial regulation (e.g. capital control), investments, Government procurement and intellectual property, Malaysia's national interest must take priority over commercial interests. It is suggested that the TPPA should include the provision of Special and Differential Treatment as provided in the WTO to increase trading opportunities for developing countries.

(c) On the area of Intellectual Property Rights (IPR), ACCCIM is of the view that:

Developed countries are keen on including strong IPR rules in the TPPA because they own the most IPRs, and want the highest protection for their IPRs holders. Rigid IPR rules are likely to discourage innovation and increase global disputes over IPR violation. It is believed that the IPR Chapter may likely to require TPP member countries to implement IP laws far beyond the WTO rules. Aggressive provisions like longer patent and copyright terms would limit the access to affordable medications and affects access to knowledge, such as books and digital information.

## 9 Does ACCCIM think that MITI have enough engagement or consultation with various organizations and public?

There has been no consultation session for ACCCIM but just briefings conducted by MITI.

## 10 Does ACCCIM think that Malaysia should sign TPPA? Does Malaysia has the ability compete with other member countries?

ACCCIM is of the view that since TPPA is the largest FTA in the world and as a major trading nation Malaysia should take part in it if it creates a real free-trade regime that put public interest first, with the views of ordinary citizens given as much weight as those of corporate interests in order that it will strengthen the economy and improve social well-being. However, the negotiations are highly secretive and we do not have any verified information on the cost and benefit of TPPA. ACCCIM therefore suggests that the negotiation should defer and not conclude in October 2013.

## 11 Who will be the winners and losers if Malaysia signs TPPA?

ACCCIM recommends the following factors to be taken into consideration when negotiating TPPA:

- (1) Fairness;
- (2) Transparency;
- (3) National interest to take priority over commercial interests; and
- (4) TPPA should include China.

## 12 Did ACCCIM registered to attain the 18th round of TPPA negotiation held in Kota Kinabalu as one of the stakeholder?

We have registered as a stakeholder in the upcoming Stakeholder Forum on 20<sup>th</sup> July 2013. We have also attended the 16<sup>th</sup> round of Stakeholder Forum in Singapore in March 2013.