

MALAYSIA

## Don't let TPP jeopardise Malaysia's future

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The Trans-Pacific Partnership is a lopsided agreement favouring the United States. Two leading American economists have urged Putrajaya to safeguard Malaysians before signing the deal, which is set to be concluded at year-end. – The Malaysian Insider file pic, October 2, 2015.

Prime Minister Datuk Seri Najib Razak is facing his last best chance to reverse the course of the Trans-Pacific Partnership, or TPP, a new international economic agreement that would lock in unequal trading relationships between advanced economy countries, such as the United States, Japan, Canada, and Australia, and developing economies like Malaysia.

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TPP negotiators are now in what they hope is the final round to conclude this agreement. Political leaders will boast of negotiating for the best interests of their people and country.

But the reality is that special corporate interests – in the United States as elsewhere – have been given far too much influence on the negotiations. The agreement will go far beyond just cutting tariffs and quotas to mandate fundamental changes in each country's legal, judicial, and regulatory institutions – a sop to the moneyed lobbies who have had more access to the process than concerned citizens or even lawmakers.

Given past experience with US-led trade agreements, and what we glean from documents leaked from the confidential negotiations, it is clear that Malaysia's negotiators are giving away much to advanced country business interests.

It is less clear why they would, given the economic loss Malaysia is expected to get in return for such a deal.

Typically, one thinks of negotiation as one side giving something in order to get something else in return. But with the TPP, it is not clear what Malaysia would be getting.

Economists at the United Nations Conference on Trade and Development, UNCTAD, forecast that Malaysia would actually be a net trade loser as a result of joining TPP, with difference between the value Malaysia produces for export and the value it imports, the trade balance, declining by US\$17 billion (RM75 billion) per year as a result of the agreement. In other words, the TPP would make Malaysia worse off by the most straightforward of economic measures.

These trade agreements are not free-trade agreements, but managed trade agreements, and typically managed for the interests of corporate interests.

And while the name Trans-Pacific Partnership suggests a “partnership”, it is a special kind of partnership, where one country, the US, calls most of the shots, giving into other “partners” the bare minimum necessary to secure compliance from their corporate and other special interests.

Not surprisingly, the big winners are corporate interests in the US, the big losers are ordinary citizens, both in the US and elsewhere.

But Malaysia stands out as one of the countries where as it now stands even the country's economic interests stand to lose, with iron and steel, aluminium, mineral fuels, plastics, and rubber are among the sectors that will be hurt.

The shock to this industrial employment and investment will occur at the same time that Malaysian agricultural producers face greater import competition.

But the harm the TPP would do to Malaysian industry is just the tip of the iceberg. Other features make it an even more dramatically bad deal.

First, TPP would restrict member countries' governments – including Malaysia's – from passing regulations to protect public health, safety, and the environment, or any other aspect of the public good.

That's because the TPP would create investor-state dispute settlement (ISDS) mechanisms that would allow foreigners to sue the government when they think a regulation will harm their profits. The arbitration would be private and binding, even if the outcome contradicts domestic laws.

And the company could be compensated for the loss of its expected profits, not just for its past investments, even if its profits are generated by selling products that kill people and if there is no discrimination involved in the regulation.

International corporate interests tout ISDS mechanisms as investment-protecting, but that is sheer nonsense: they are demanding similar provisions of European countries whose legal system provides every bit as good protection for property rights as the US.

In reality they are a backhanded way of undermining countries' ability to protect the health and safety of their citizens, the environment, or even the economy. Cigarette companies, for instance, can sue a government for requiring particular packaging for tobacco products – simply by claiming it hurts their profits.

These are not hypothetical threats – similar investment agreements already exist and have led to such suits.

Malaysia's TPP partner Peru is currently facing a US\$800 million claim by US investor Renco over whether Renco can continue to operate a lead smelter – ranked among the world's 10 most polluted sites – and whether it can avoid paying compensation for the victims and to remediate the site.

In another case, Australia is currently facing a suit over public health warning labels on cigarette packages intended to curb tobacco smoking, as is Uruguay (which is not a TPP partner).

Canada, under threat of suit, backed down from similar proposed regulations. And Mexico has been forced to pay US\$15 million after arbitrators found error with a state government decision shut down an unpermitted toxic waste dump found to be leaking into the groundwater.

Existing ISDS mechanisms are bad enough. Their radical expansion under TPP would be disastrous.

Second, the TPP would effectively outlaw countries' efforts to protect themselves from international financial speculators, who inject money into local economies when they're hot and take money out as soon as they cool.

Such unchecked short-term capital flows cause instability and promote crises, as Malaysia knows full well from the 1997-98 Asian financial crisis. Malaysia used capital controls to protect its people from the worst effects of that crisis.

The result was a shorter and shallower downturn than elsewhere, with a smaller legacy of debt burdening future growth.

Mainstream economists now widely recognise that capital controls are an essential tool for financial regulation – even the International Monetary Fund, which once campaigned against them, has finally admitted their importance.

Since the crisis, Malaysia, has discarded its capital controls (<http://www.themalaysianinsider.com/malaysia/article/no-ringgit-peg-najib-tells-us-fund-managers>), but would be well advised to reinstate them were it to face another episode of financial turbulence like the last.

The TPP would effectively prevent it from even having the choice of reinstating them in the future – throwing it into the hands of the IMF, with the consequence surrender of its economic sovereignty, or forcing it to face even worse choices.

Malaysians need to reflect: what would have happened back then if there had been an agreement like TPP in place? Most likely, Malaysia would still be suffering the economic and political consequences.

A third way TPP locks in the unequal advantages of advanced economy countries is by raising intellectual property (IP) protection in ways that raise profits for intellectual property owners at the expense of everyone else.

The impact of more stringent IP can be seen most clearly when it comes to life-saving medicines. Driven by “Big Pharma” lobbyists, American negotiators are pressing TPP countries to accept protections that will boost their profits, not from innovating new medicines but by keeping potential competitors out of the market and charging consumers higher prices.

It accomplishes this through a variety of seemingly arcane rule changes – buried in jargon about “patent linkage” and “biologics” – which collectively would allow pharmaceutical companies to extend their monopolies for many more years than they currently can.

Mylan, a leading generic medicine manufacturer, has warned that TPP may in effect shut their business out of participating countries – meaning not only will Malaysians pay more for medicines, but that some medicines may cease to be readily available in Malaysia.

Rightly done, greater trade and investment integration with the world promises a lot for Malaysia, but the TPP is not the way to accomplish it.

There is no evidence that such kinds of provisions are contained in the TPP. What they will do is ensure that more of the wages of hardworking Malaysians end up in the pockets of global corporations.

If Najib truly believes in putting the Malaysian people first, he will instruct his negotiators in Atlanta to ensure (a) that Malaysia at least gains economically from the trade agreement; (b) that its citizens continue to have access to generic medicines at affordable prices; and (c) that the TPP leaves Malaysia's economic future its own hands, not those of multinational investors.

The bottom line must be that TPP make space for Malaysia's development needs. His negotiators have a hard task ahead, for as it now stands, TPP is designed to set the economy back and to take away some of the critical tools that it needs to promote the health of its people and its economy. – October 2, 2015.

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