Why the Malaysian Parliament Should Rejectthe TPPA in the Public Interest
Jomo Kwame Sundaram*The Edge Weekly* (Malaysia) 16 January 2016 annotated

Malaysia's Parliament has a rare opportunity to do the right thing – to unite across party lines to protect the public interest for present as well as future generations of Malaysians. The prevailing presumption in the US is that for the Trans-Pacific Partnership Agreement (TPPA) to come into effect, it must first be ratified by national legislatures, including the Malaysian Parliament and the US Congress.

Who Gains From Freer TTPA Trade

Most people think the TTPA is about greater growth from freer trade. Nothing could be further from the truth. Even the overly optimistic computable general equilibrium (CGE) projections, made on methodologically moot grounds, recognize that more trade does not mean more growth. After all, freer trade will not only mean more of some exports, but also more of other imports with no guarantee that all partners will benefit in the absence of adequate compensatory mechanisms.

The net gains for growth from increased trade are difficult to estimate reliably and depend very much on crucial assumptions made for modelling.Even TPPA advocates acknowledge limited net economic benefits from trade liberalization, with the widely cited 2012 Peterson Institute projections[1] suggesting modest additional GDP growth after ten years. Hence, while everyone agrees that the TPPA is likely to result in greater trade, there is no reliable evidence that increased tradewill mean more growth, let alone economic welfare improvements, for all.

More realistic United Nations Global Policy Model (GPM) projections released early this week incorporate effects on employment not considered by the CGE models which typically assume full employment[2]. Even accepting the CGE projections of TPPA trade impacts, the GPM offers more realistic macroeconomic projections, considering changes in employment and inequality, and their likely impacts on economic growth.

The GPM finds that overall economic gains will be negligible for other participating countries – less than 1% after ten years for developed countries, and less than 3% for developing countries. The projected increases in aggregate demand and economic growth are even more limited than the Peterson Institute's already modest claims, and even negative forthe US and Japan, as the TPPA will likely lead to employment losses and greater inequality.

The GPM projects a total of 771,000 net jobs lost in all TPPA countries over the decade as well as greater inequality, with a lower labour share of national income. It will also lead to losses in GDP and employment in non-TPPA countries.

These projections are largely due to two changes. First, more production for export will partly replace production for domestic markets, with negative consequences, as exports are less labour-intensive and use more imported inputs than production for domestic markets. Second, businesses will strive to become more competitive by cutting labour costs, negatively affecting income distribution, thus further weakening domestic demand.

The TPPAis not mainly about 'freer trade', especially for Malaysia[3]. As many studies have shown, both the USA and Malaysia are among the world's most open economies, with little more trade to be gained byfurther reducing tariffs. The main remaining trade constraints are non-tariff barriers,which the TPPAdoes not address, e.g. the campaign against Malaysian palm oil or earlier US restrictions on Malaysian solar panel imports.

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[1]The Peterson Institute study has also been criticized by others, e.g. http://www.sustainabilitynz.org/wp-content/uploads/2014/02/EconomicGainsandCostsfromtheTPP_2014.pdf.

[2]Trading Down: Unemployment, Inequality and Other Risks of the Trans-Pacific Partnership Agreement. By JeronimCapaldo and Alex Izurieta, with Jomo Kwame Sundaram. GDAE working paper, Tufts University, January 2016.http://www.ase.tufts.edu/gdae/policy_research/TPP_simulations.html

[3]The assumptions of subsidy cuts in the Malaysian Ministry of International Trade and Industry (MITI)-commissioned modelling by Price Waterhouse Cooper (PWC) that are part of their assumed 50% cut in non-trade measures (NTMs), that generate 90% of the GDP gains, are not in the TPPA text released in November 2015.

Similar CGE models have yielded different projections on economic gains. The US Department of Agriculture's Economic Research Service study did not see much of a growth dividend from increased trade[4]. The Peterson Institute claimedmodest growth gains come fromlarge,but dubious projected increases in foreign directinvestment (FDI). Further,there is no evidence that FDI reliably increases economic growth more than domestic investment.

OECD or developed countries with more competent trade negotiating capacity – such as the US, New Zealand, Canada, Australia, Japan – had delayed TPPA agreement in Honolulu in mid-2015 before the Atlanta deal in October. The delay was due to squabbling over how best to manage trade in particular areas, reflecting influential lobbies in their countries; thus, the TPPAwilllikely advance interestscontraryto freer trade.

Observers involved were surprised by Malaysia's minimal demands in the negotiations – in contrast to Vietnam, for example, presumed to have modest negotiating capacity – beyond the predictable exceptions for politically favoured businesses in the name of NEP affirmative action. Curiously, many wishful-thinking Malaysians opposed to such abuses continue to support the TPPA, presuming that it will somehow, almost magically, improve governance and address other problems in the country.

A major recent concern for Malaysia has been the so-called 'middle income trap'. Strengthening international specialization is likely to reinforce the existing international division of labour, instead of accelerating productivity gains in line with a more dynamic and transformational approach to trade and development. Yet, as a middle income country, it will also be difficult for Malaysia to compete successfully with Vietnam and other such developing economies on the basis of labour costs for the primary commodity production promoted by the TPPA. All this is likely to work to keep Malaysia stuck in the middle income trap.

Unfortunately, despite the exaggerated claims of its proponents, the TPPA provisions for thetrade in goods are probably among its less dangerous aspects. For example, despite the 1997-98 Southeast Asian financial crisis as well as the 2008-09 financial meltdown and ensuing protracted Great Recession, TPPA provisions for further liberalization of financial services will undermine national prudential regulation and expose economies to greater vulnerabilities from abroad.

What Kind of Partnership?

Many ostensible provisions and safeguards in the TPPA have hazardous, asymmetric implications. For instance, compared to Malaysia, the US federal government has much less scope for discretionary spending compared to the state governments which are, in many instances, larger than many other TPPA economies. The converse is true in Malaysia, which means that exempting state governments from TPPA provisions, e.g. on government procurement, will have different implications for the two countries.

The TPPA is mainly about greatly strengthening investor rights, including those associated with intellectual property[5]. The evidence shows that stronger intellectual property rights (IPRs) hardly promote research, but often actually impede innovation,besidesundermining public health and consumer

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[4]The USDA predicted the TPP will result in a 0.01% increase in GDP for Malaysia by 2025 based on removal of all tariffs and tariff rate quotas among TPP countries http://www.ers.usda.gov/media/1692509/err176.pdf. This did not happen, and its projections do not take into account some crucial qualifications, e.g. see table 8. Rashmi Banga has used two different methods to look at the TPPA impact on Malaysia, coming to similar conclusions: http://wtocentre.iift.ac.in/workingpaper/TPP%20PAPER.pdf. An earlier UNDP study found that 82% of the welfare gains and 75% of the 1% GDP gain by 2020 can come from unilateral liberalization according to a summary released by MITI: http://www.miti.gov.my/cms/documentstorage/com.tms.cms.document.Document_58177aea-c0a8156f-ea80f3a0-a2df432b/UNDP%20Study%20-%204%20Scenarios%20%28August%2013%29.pdf.

[5]TPPA: The New Age of Foreign Corporations. G SNijar, Faculty of Law, University of Malaya, Kuala Lumpur, Processed.

welfare by limiting competition and raising prices. The TPPA will greatly strengthenIPRs for big pharmaceutical, information technology, mediaand other companies, e.g. by allowing'Big Pharma'longer monopolies on patented medicines, keeping cheaper generics off the market, and blockingthe development and availability of similar new medicines.

The recent prosecution of Martin Shkrelifor running a Ponzi scheme is instructive, as it shows that US IPR legislation does not provide effective checks against'price-gouging'. Shkrelihad defended increasing the price of Daraprim -- which treats a life-threatening infection in patients with cancer, HIV/AIDS and other immune problems --by5,555 percent from$13.50 to $750 a pillas 'altruistic'!

The rapid drafting of the six thousand plus pages of the TPPA was 'assisted' by five hundred odd official corporate trade (and investment) advisers to the US Trade Representative. The TPPA will thus greatly strengthen foreign investor rights at the expense of Malaysian businesses and the public interest. The TPPA's investor-state dispute settlement (ISDS) system will oblige governments to compensate foreign investors for losses of expected profits in binding *private* arbitration!

ISDS will confer private foreign investors with the right to sue national governments for regulatory or policy changes that, theyclaim, diminish the expected profitability of their investments. It has been and can be applied even where rules are non-discriminatory, or profits are made by causing public harm.

Foreign corporate interests claim that the ISDS is necessary to protect property rights where the rule of law and credible courts are lacking -- clearly displaying contempt for national courts such as Malaysia's.Yet, the same is being sought by the US in the Transatlantic Trade and Investment Partnership(TTIP) deal with the EU. But instead of needed reforms to improve the judiciary's performance and reputation, the TTPA will expose Malaysia to new risks and liabilities.

The basic problem remains: ISDS provisions make it hard for governments to fulfil their basic obligations – to protect their citizens' health and safety, to ensure economic development and stability, and to safeguard the environment. For example, the most popular herbicide sold in the world has been declared by the WHO to be carcinogenic.Bybanningsuch toxic materials, with the ISDS, the governmentwould be liable to compensateits manufacturers not to harmour people, instead of forcing them to compensate those already harmed!

The taxpayer will be hit twice – first, to pay for the health damage caused, and then, to compensate agro-chemical manufacturers for their lost profits if the government bans it. Thus, the ISDS may even deter the government from banning the substance, putting the public at risk.

Ending Multilateralism?

Like many other recent bilateral and plurilateraltrade agreements, the TPPAhasless to do with freeing trade, but instead advances the interests of the powerful business interestsinvolved, as the Cato Institute and other 'market liberals' have noted.As trade liberalization guru Professor JagdishBhagwati has shown, such agreements are not only sub-optimal, but also undermine multilateral trade liberalization as well as multilateralism more generally.

The rush to conclude the TPPA before the mid-December Nairobi World Trade Organization (WTO)ministerial may have killed the Doha 'Development' Round of trade negotiations (in line with US-EU preferences), which began in 2001 with the promise of rectifying the anti-development and food security outcomes of the previous Uruguay Round following the Seattle WTO ministerial fiasco.

Regardless of their pious denials, ASEAN members joining the TPPA have inadvertently also undermined existing commitments, e.g. to the ASEAN Free Trade Area (AFTA) and ASEAN Economic Community (AEC). Such political re-alignment also abandons the late TunRazak's commitment to make ASEAN a 'zone of peace, freedom and neutrality' (ZOPFAN), an irony for the host of the last ASEAN summit.

It is no secret that the main US motivation for the TPPA was to exclude China. At his last State of the Union address earlier this week, President Obama triumphantly announced, "With TPP, China does not set the rules in that region, we do"[6]. Broad support for the Asian Infrastructure Investment Bank (AIIB), even from traditional US allies, was a major embarrassment.One can understand why Vietnam, anerstwhile US enemy, is keen to join the TPPA, to strengthen its hand in its often difficult bilateral relations with its giant neighbour to the north, although they too will be compelled to pay a high economic price for Uncle Sam's 'protection'.

Yet, despite its own problems with China, Philippine President Noynoy Aquino chose not to participate in the negotiations. Thailand, with an economy even more open than Malaysia's, also chose to stay away. On the other hand, Singapore's existing bilateral arrangements with the US go much further than the TPPA in line with its own unique strategic considerations. Already, some other, mainly European governments have conveyed their dismay at the TPPA as it will weaken their own negotiating positions for the Trans-Atlantic Trade and Investment Partnership.

But why is the Malaysian government so keen to join, considering the dubiouseconomic benefits as well as huge risks involved. In response to President Obama's 'pivot to Asia', Prime Minister Najibmay want to signal his own 'pivot to America', which may be his prerogative regardless of his late father's legacy, which previous Prime Ministers have maintained. There have already been some 'benefits',e.g.US allegations of human and labour rights violations, which had previously disqualified Malaysia from consideration, were dropped before the mid-2015 Honolulu meeting.

Now that the Najib administration's political alignment has beenclearly signalled, we must now turn to the long term welfare of Malaysians. In the US, President Obama has more, albeit shrinking support from Republicans, than from his own Democrats, for the TPPA. Criticisms of the TPPA have been growing among US politicians, not only among all Democrat presidential contenders, but also the leading Republican aspirants. Hence, it would be appropriate for the TPPA parliamentary vote to be a matter of conscience for all Members of Parliament without the party whips being exercised. After all,some Opposition MPs have already signalled their support for the TPPA.

If the TPPA is simply a trade deal, there would be less grounds for concern. Unfortunately, its other provisions will undermine Malaysian development prospects and the public interest, with the ability for the government and the public to set things right, irreversibly signed away. There are influential segments of the Malaysian elite who hope that joining the TPPA will reduce poor governance, corruption and other abuses. Unfortunately for them, this is merely wishful thinking. Also, the TPPA is not a 'hop-on, hop-off' option, as some naively think.

Undoubtedly, we Malaysians have many problems and challenges to address -- together. There is a great deal to get and set right, but dreaming that the TPPA will somehow, miraculously, solve some, if not all of our most vexing problems is, sadly, deluding ourselves. Let us address such problems, but not by fooling ourselves that our interests coincide with those of the foreign corporations who drafted the TPPA.

Members of Parliament -- from the BarisanNasional and the opposition -- have an opportunity to reject this threat to the Malaysian public interest. They are our last defence against a TPPA'own-goal'.

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[6]Despite touting the TPP as his main foreign policy priority for 2016, he only spent 28 seconds of his hour-long speech on it."That's how we forged a Trans Pacific Partnership to open markets, and protect workers and the environment, and advance American leadership in Asia. It cuts 18,000 taxes on products made in America which will then support more good jobs here in America.With TPP, China does not set the rules in that region, we do.We want to show our strength in this new century? Approve this agreement, give us the tools to enforce it. It's the right thing to do." https://www.whitehouse.gov/the-press-office/2016/01/12/remarks-president-barack-obama-%E2%80%93-prepared-delivery-state-union-address