NATIONAL INTEREST ANALYSIS OF MALAYSIA'S PARTICIPATION IN THE TRANS-PACIFIC PARTNERSHIP

INSTITUTE OF STRATEGIC AND INTERNATIONAL STUDIES (ISIS)

MALAYSIA

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This study report has been prepared in good faith based on four main criteria:

1. *All assessments were carried out based on the final TPP text that was released to the public domain on Thursday, 5 November 2015.*
2. *The study report was conducted independently by the Study Team of ISIS Malaysia and facilitated by the Government of Malaysia.*
3. *The Study Team observed the confidentiality requirements of the Non-Disclosure Agreement. The release of any part of this study report is at the discretion of the Minister of International Trade and Industry, Malaysia.*
4. *This study report is prepared for discussion purposes only.*

PREAMBLE

At a Cabinet meeting held on 15 August 2013, the decision was taken that the Institute of Strategic and International Studies (ISIS) Malaysia should conduct an objective and independent National Interest Analysis (NIA) of Malaysia's participation in the Trans-Pacific Partnership (TPP). The first meeting with the Ministry of International Trade and Industry (MITI) was held on 9 September 2013 and preparatory work commenced soon after. This document represents the final study report of the NIA and covers the national interest criteria and its impact on Malaysia’s security, social and economic interests.

BACKGROUND OF THE STUDY

The TPP was initially a free trade agreement (FTA) between the four Asia Pacific Economic Cooperation (APEC) countries of Brunei Darussalam, Chile, New Zealand and Singapore (P4). It was signed on 3 June 2005 and came into force on 1 January 2006. In September 2008, the US Trade Representative announced that the US will negotiate entry into the P4 agreement. In November of the same year, the governments of Australia, Peru and Vietnam announced their inclusion as well. The TPP is an economic partnership agreement negotiated by 12 countries in three continents, namely Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, United States and Vietnam.

MITI commissioned a study by the United Nations Development Programme (UNDP) in May 2010, which listed the key advantages and challenges to Malaysia entering into TPP negotiations. The Malaysian Cabinet gave the go-ahead to join the negotiations in August 2010 and it became the ninth member of the pact, participating as a full negotiating member in October 2010 during the third round of negotiations in Bandar Seri Begawan.

OBJECTIVES

The study aims to evaluate Malaysia's national interests in being a party to the TPP agreement. The following objectives are covered in the study:

i. to formulate the NIA Framework in order to address definitions as to what constitutes the country's national interests; and
ii. to analyse the impact and implications of becoming party to the TPP. This study attempts to identify the potential benefits, risks, opportunities, and the challenges on Malaysia's participation in TPP.

OUTPUT AND DELIVERABLES

This study report finalises the NIA study that was conducted starting September 2013. Preparatory work to finalise this study report started soon after the conclusion of the TPP negotiation on 5 October 2015. This report took 25 days (5-30 November 2015) to study the final TPP text.

SCOPE OF WORK

The scope of work in this NIA covers relevant policy documents, reports from past studies, TPP releases, Expert Research, memorandums submitted to the Government by various NGOs and the final TPP text.

Whenever relevant, the study is also intended to provide a reference or comparison with other economic partnership agreement and preferential treatment and examine the depth of liberalisation to be undertaken by the country.

The output of the study attempts to address the following :

i. The potential opportunities, threats and challenges to Malaysia from the TPP member countries;
ii. The externalities that would be derived including efficiency gains, transfer of technology, increased productivity, and increased competitiveness of Malaysian firms; and
iii. Implications towards the *rakyat* on the issue of access to affordable medicine, cost of living, consumerism, and market access.

TABLE OF CONTENTS

PREAMBLE 2
- Background of the Study 2
- Objectives 3
- Output and Deliverables 3
- Scope of Work 3

Glossary 6
Executive Summary 9
Consequences of Not Participating in the TPP 13
Malaysia's National Interest Analysis 16
- Framework 16
- Methodology 17
- Understanding Positions Taken By Negotiators 18
- Role of Government Policy 18

PILLAR I: SECURITY 19
- Sovereignty and Security 19
- Geopolitical Consideration 30
- Food Security 38
- Energy Security 41
- Technology and Cyber Security 44
- Health and Safety Safeguards 47
- Public Order and Stability 58

PILLAR II: SOCIAL 67
Bumiputera Participation and Welfare 67
Education / Human Resource Development 77
Good Governance 79
Social Harmony 87
Cost of Living 89
Labour Standards 100
Environment 108
PILLAR III: ECONOMIC 115
Market Access 115
Investment 140
Competition 163
Small and Medium Enterprises (SMEs) 177
Innovation 187
Job Creation 192
Wealth Creation 196
APPENDIX: TABLES AND FIGURES 200
STAKEHOLDER’S ENGAGEMENT LIST 222

GLOSSARY

ABS	Access Benefit Sharing
AFAS	Asean Framework Agreement on Services
AMS	Asean Member States
AP	Approved Permit
APEC	Asia-Pacific Economic Cooperation
ASEAN	Association of Southeast Asian Nations
ATIGA	Asean Trade in Goods Agreement
Bernas	Padiberas Nasional Berhad’s
BIP	Service Industry Division
BNM	Bank Negara Malaysia
BPFK	Biro Pengawalan Farmaseutikal Kebangsaan
CBU	Complete-Build-Up
CIDB	Construction Industry Development Board
CKD	Completely-knocked down
DE	Data Exclusivity
EBA	Everything but Arms
EEV	Energy-efficient vehicles
EEZ	Exclusive economic zone
EIF	Enter-Into-Force
EU	The European Union
FAO	UN’ Food and Agriculture Organisation
FDA	US Food and Drug Administration
FDI	Foreign Direct Investment
FGV	Felda Global Venture
FIC	Foreign Investment Committee
FTA	Free Trade Agreement
FTAAP	Free Trade Area of the Asia Pacific
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
GI	Geographical Indication
GLC	Government-Linked Companies
GMO	Genetically Modified Organism

GMP	Good Manufacturing Practice	NAFTA	North American Free Trade Agreement
GP	Government Procurement	NAP	National Automotive Policy
HADR	Humanitarian and Disaster Relief	NCA	Non-commercial assistance
ICSID	International Centre for Settlement of Investment Disputes	NCM	Non-conforming Measures
ILO	International Labour Organisation	NDT	Non-discriminatory treatment
ISDS	Investor-State Dispute Settlement	NKEA	National Key Economic Area
LTH	Lembaga Tabung Haji	OBOR	One Belt-One Road
MaHTAS	Malaysian Health Technology Assessment	OECD	Organization of Economic Cooperation & Development
MAI	Malaysian Automotive Institute	Petronas	Petroliam Nasional Berhad
MFN	Most-Favored-Nation	PPP	Public-private partnership
MJEPA	Malaysia:Japan Economic Partnership Agreement	PRF	Permanent Reserve Forest
MKD	Menteri Kewangan Diperbadankan	PSD	Pharmaceutical Service Division
MOPI	Malaysian Organisation of Pharmaceutical Industries	RCEP	Regional Comprehensive Economic Partnership
MSC	Multimedia Super Corridor	ROO	Rules of Origin
MyCC	The Malaysia Competition Commission	SCM	Securities Commission Malaysia
MyIPO	Intellectual Property Corporation of Malaysia	SEANWFZ	Southeast Asian Nuclear Weapons Free Zone Treaty
NAM	Non:Aligned Movement (NAM)	SME	Small and Medium Enterprises

SOE	State-owned enterprises
TPA	Trade promotion authority
TRIPS	The Agreement on Trade-Related Aspects of Intellectual Property Rights
TRQ	Tariff Rate Quotas
TTIP	Transatlantic Trade and Investment Partnership
UPOV	The International Union for the Protection of New Varieties of Plants
USPTO	United States Office of Intellectual Property Policy and Enforcement
WEF	World Economic Forum
WTO	World Trade Organisation
ZOPFAN	Zone of Peace, Freedom and Neutrality

EXECUTIVE SUMMARY

Malaysia's participation in the TPP is, on balance, in the national interest. To be sure, critical domestic issues will have to be addressed and cannot be taken lightly in areas relating to Bumiputera, labour, Investor-State Dispute Settlement (ISDS), intellectual property (IP) and state-owned enterprises (SOE). They will need to be managed politically and through public policies if they are not to be economically and socially disruptive.

The realities of global political economic developments, however, mean that Malaysia must secure its future with the necessary institutional frameworks to be able to engage, advance and defend its interests.

The Government has secured numerous exclusions and exemptions to safeguard the nation's and stakeholders' interests. This has been possible because Malaysia was an early participant in TPP negotiations. These might not be uniformly viewed as favourable or sufficient but nonetheless, they are more favourable to Malaysia than originally expected. This NIA concludes that the TPP should still set into motion significant structural changes that will result in net positive outcomes.

Security Pillar. Participation in the TPP is positive for Malaysia's security interests. Concerns that it will result in the loss of Malaysia's sovereignty and equality are not without basis but may have been over-amplified. Malaysia's security is built on a foreign policy of close and friendly relations with countries. Given the slow progress at the multilateral level and the threat of rising protectionism, Malaysia needs multiple and diversified institutional arrangements with its main economic partners. Currently, Malaysia does not have any with Trans-Pacific countries except Chile.

With multiple agreements at multiple levels, the impact of Malaysia's TPP participation on relations with its major trading partners (such as Asean, China and the European Union) is not expected to be significant. Other countries like Indonesia, the Philippines and Thailand have also expressed their interest to join the TPP. Dealing with the US, however, poses special challenges. For example, US certification requirements are asymmetric and do open the possibility for renegotiation or the introduction of new terms. Malaysia will need to continue ensuring that it is not pressured to accept commitments that are beyond its ability and which are contrary to its national interests, in the TPP and elsewhere.

In terms of the security sub-pillars, TPP provisions have net positive effects on Malaysia's food and energy security. Health and safety, technology and security remain under government control. For example, the ability to carry out compulsory licensing during health emergencies is not compromised. There will be significant short-term adjustment costs due to the legal and institutional reforms needed to conform to the labour standards in the TPP. The Government is aware of the effects that removing restrictions on trade union membership and the right to strike may have (including extending these rights to foreign workers) and are seeking mitigating measures.

Social Pillar. The Government retains its rights of affirmative action for the Bumiputera community. Market access obligations in government procurement (GP) will gradually reduce preferences over time and could lead to some discontent, but will encourage more equitable and efficient allocations of preferences. The government also retains the right to control goods and services that affect the customs, culture and religion of the Bumiputera. In education, there is greater access through the encouragement of private investments. Domestic reforms, however, are needed to reduce inequalities in the quality of education between the public and private sectors. The TPP will require greater transparency and changes to current administrative practices, which will strengthen good governance initiatives by promoting predictability and coherence in the regulatory environment. Moreover, stimulus packages given during economic crises are exempted from GP disciplines for 25 years.

The positive effects on wealth and job creation resulting from the TPP should lead to greater social harmony. However, the impact on income distribution is indeterminate, given the many factors that can determine this. There is an overall positive impact on the cost of living as a result of greater access to, and competition in, Malaysian markets. The prices of some goods and services, however, will not decline as they are still subject to domestic regulations and competitive supply conditions. There should not be a significant impact on timely access to affordable and essential medicines due to safeguards and the nature of IP provisions.

The standard of living and welfare of workers should improve over time as Malaysia adapts to the ILO Declaration 1998. The TPP will also bring about stronger standards and enforcement in environmental protection, however, although the right to benefit from foreigners' use of Malaysian flora and fauna is constrained.

Economic Pillar. TPP participation is consistent with Malaysia's New Economic Model and ambitions to become a high income economy. Malaysia will have fewer tariff restrictions in four new markets – the US (90 per cent), Canada (95 per cent), Mexico (77 per cent) and Peru (81 per cent) of all tariff lines. Malaysian exporters gain a competitive advantage in market access compared to competitors who are not party to the TPP. Independent estimates suggest positive effects on Malaysia's GDP and investment over a ten-year period. These will therefore also have positive effects on wealth and job creation. These estimates, however, depend critically on the extent that Malaysia reduces its non-tariff measures and undertakes domestic economic reforms – the less it liberalises, the smaller the effect of the TPP.

Bumiputera participation. The GP threshold for supply of goods and services is expected to change the status quo for Bumiputera participants. Recipients of contracts above relevant thresholds will now have to compete openly, while those below the thresholds – the majority of awardees – should remain unaffected. For construction contracts, there is a 30 per cent Bumiputera reservation ensuring that there will be minimum Bumiputera participation. Thus, while there will now be greater competition, Bumiputera preferences will still remain.

There is policy space for equity ownership by Bumiputera in real estate, oil and gas and privatised government-owned assets. The government is also able to continue offering direct assistance through licensing and permits to Bumiputera for the purpose of increasing its participation in the local economy. The Government maintains the right to control activities such as gambling permits, and products such as information content and alcohol. Halal certification, Syariah legal services, religious schools, pilgrimage and zakat continue to be controlled by the State.

Labour. Adhering to the principles of the ILO Declaration 1998 will have a positive impact by addressing unacceptable labour practices and raising the country's image. Malaysia will need to amend, in a manner that it deems fit and proper, nine laws in areas related to forced labour and freedom of association in order to conform to the ILO Declaration 1998. The impact of allowing the formation of trade unions is expected to be negatively viewed by employers. The Government is aware of the potentially disruptive threat of labour actions and is studying measures to mitigate them. These include limiting the activities that dismissed, suspended or retired workers can participate in, and retaining a degree of control over the formation of union.

ISDS. It is not new to Malaysia as provisions are already present in Malaysia's Bilateral Investment Treaties and Free Trade Agreements. It is now made more acceptable with carve-outs for government policies regulating public health, safety and environmental protection. Bank Negara Malaysia (BNM) retains complete autonomy in managing the Ringgit, foreign exchange reserves and capital controls. Malaysia can also elect to deny tobacco control measures from ISDS provisions. Ultimately, all TPP participants are subject to the same investment rules and regulations.

SOE. Malaysia is able to comply with TPP obligations on competition policy through the Competition Act 2010. There are concerns raised by Khazanah Nasional Berhad over its ability to comply with these disciplines and carry out certain social and economic programmes. The TPP does require conformity to certain disciplines covering non-discriminatory treatment (NDT) and commercial considerations in the domestic market, and non-commercial assistance (NCA) in overseas markets. However, exclusions and exemptions for SOEs provide room for them to continue carrying out social and economic development programmes, albeit with greater focus and transparency. Given that SOEs manage national resources, however, complying with the TPP will have positive consequences as a result of greater competitiveness and good governance.

Intellectual Property (IP). The impact on prices of medicine is minimal when the agreement comes into force. There is a data exclusivity (DE) period of five to eight years for biologic drugs, but this impact may not be significant since an 18-month access window safeguard applies. It incentivises biologics and biosimilars to be introduced in Malaysia as soon as they are made available elsewhere. There is also not much impact from patent term extension as Malaysia's approving and patenting bodies are reported to, and have, taken steps to be efficient at processing patent and medicine applications. There is no impact from patent linkage since local authorities will not be required to reject generic medicine applications. Malaysian consumers may incur increased burden from additional royalty payments to foreign content creators amounting to $USD115 million a year due to copyright extension from 50 to 70 years for books, music and films. Cost of education is unlikely to be affected by the extension because textbooks are frequently updated and only the latest textbooks are widely used.

Rice. The issue of food security is addressed because Malaysia has the right to adopt or maintain any measures relating to wholesale and distribution services for rice. Bernas still maintains its control over rice supply and hence its price. The price of rice may not decrease in the short run, as tariff is only eliminated in the 11th year. The lowering of tariffs on rice imports from the US, however, will not have a significant impact on local farmers because of the price and local consumer preferences.

Alcohol and tobacco. The Government can still maintain the implementation of price and supply control on these products indefinitely under the TPP through excise duty and restricted license distribution. The transition period for tariff elimination is 15 years.

Automobiles. Cars from Japan and the US are expected to be cheaper to import in the first 12 years. The Government, however, will be able to maintain the excise duties prevailing at that time. Despite tariff elimination and removal of quantitative restrictions, cars from the US are not expected to impact national cars.

CONSEQUENCES OF NOT PARTICIPATING IN THE TPP

This NIA concludes that Malaysia’s participation in the TPP is in its national interest. The opposite also holds true. While it is not possible to be definitive or complete about the consequences of non-participation, given the fluidity of global politics and economics, and the fact that future uncertainties are involved, it is nevertheless possible to venture certain conclusions about likely consequences, based on what is known about the state of present international economic relations.

1. Non-participation places the country’s policy of close and friendly relations with countries at risk. At the political level, Malaysia continues to maintain good relations with most countries, with diplomatic ties and regular official visits. In terms of formal institutional economic arrangements, however, Malaysia is engaged mainly with Asean and its dialogue partners. (Malaysia’s four bilateral FTAs outside of East Asia and Oceania are Chile, India, Pakistan and Turkey. These are primarily trade in goods agreements.) Apart from Asia-Pacific Economic Cooperation (APEC) and a bilateral FTA with Chile, Malaysia does not have institutional linkages with North or South America. By not joining a comprehensive agreement such as the TPP, Malaysia sends a strong signal that there are countries that it wishes to develop close economic and commercial ties into the future, and others on which it either places lesser priority or does not.

2. Closely related is the fact that Malaysia passes on a major opportunity to diversify its economic relationships, which increases the possibility of it being subject to disproportionate political influences. In an age of increasing interdependence, political influences per se do not necessarily constitute a direct threat to the country’s national interests; they are the modern realities. Over-dependence, however, has to be avoided if countries are to resist the pressures that inevitably accompany and remain sovereign and independent. As a rising global economic, military and political power, China is the obvious case in point. Malaysia requires the most intensive engagements with China across a wide spectrum of activities but this should not be at the expense of equally intensive engagements with others. By not participating in the TPP, Malaysia will effectively be placing itself in this position.

3. Drilling down further, Malaysia’s non-participation in the TPP can be expected to negatively impact Malaysia-US relations. For the US, the multi-country TPP is an important pillar of its ‘pivot’ or ‘rebalance’ to Asia and it desires to see the agreement broaden out to a prospective Free Trade Area of the Asia-Pacific (FTAAP). While executive-to-executive relations may not be dramatically affected, especially given the desire of both sides to strengthen defence cooperation, a rejection of the TPP is likely to be seen by at least some members of the US Congress as an act of partiality towards China. This could incentivise US legislators to continue pursuing Malaysia on alleged issues such as human trafficking, currency manipulation and environmental degradation. It is worth noting that the TPP will most likely survive regardless of whether a Democrat or Republican administration is elected in 2016, as the latter are pro-trade and view the TPP as an instrument of US foreign economic policy.

4. Malaysia’s non-participation in the TPP is at the expense of deepening its existing political relations not only with the US, but also with other members, like Mexico and Canada. Mexico is the world’s 14th largest economy and 11th largest in terms of population. In 2014, Malaysia and Mexico celebrated 40 years of diplomatic relations and the two enjoy trade relations that are stronger with each other than many countries closer to them. From the nature of their USD2-5 billion annual trade, it is evident that they are welded together by global production networks whose products are destined for the North American market. Canada has long been an education destination for Malaysians and, of late, also Malaysian oil and gas investments. Petronas has invested CAD7 billion in British Columbia, and in 2013, announced its intention to build a liquefied natural gas plant and pipeline that over the next 30 years would total CAD36 billion. Along with Chile and Peru, Malaysia’s non-participation in the TPP could constrain efforts to deepen political relations with these countries.

5. It is clear that other Asean countries are concerned about the political consequences of their non-participation in the TPP. Thus, Indonesia, the Philippines and Thailand have, on a number of occasions, registered their interest to join following the conclusion of negotiations on 5 October 2015 and continue to do so. Whether or not they will be able to substantively move on this issue, as Vietnam has boldly done, remains to be determined. While there is clear political interest, domestic constituents have voiced issues about their capacity given the TPP’s ‘high standards.’ Malaysia’s ability to secure exclusions and exemptions in key areas, however, may give them confidence that negotiating acceptable packages is possible. Should these countries, or others in the region, take decisive steps to enable them to join the TPP, Malaysia risks finding itself in the unenviable position of having opted-out of the TPP as others are opting-in.

6. The most direct and obvious consequence of Malaysia’s non-participation in the TPP is the inability of Malaysian exporters to access the lower or zero tariffs of Malaysia’s export markets. (These have been estimated in a separate study.) The industries, at present, that stand to be affected include palm oil, textiles and clothing and, prospectively, automotive components. On palm oil, for example, Canada currently levies an 11.0 per cent import duty on Malaysian refined palm oil and palm kernel oil. Indonesia, a non-TPP participating country but which enjoys Canada’s GSP privileges, can export duty-free. Mexico levies a 10 per cent duty on these items. For the textiles and apparel industry, the US is Malaysia’s most important export destination, followed by Japan. By opting out of the TPP, Malaysia risks experiencing trade diversion, as participating countries have preferential access to one another’s markets. The overall impact at the national level may not seem large but the costs of trade diversion can be very important for specific industries and for Malaysia’s export earnings.

7. The investments that Malaysia could receive as a result of TPP participation are a potentially much larger figure, and thus a greater loss in the event of non-participation. Malaysia’s forward interests, that is, its investments made abroad, would not also be covered by the higher standards and stricter rules that the TPP countries will have to adhere to. The decision not to follow-through with the TPP is unlikely to be positively viewed by investors, both foreign and domestic. Given that the 2005 US-Malaysia FTA negotiations are now integrated into the TPP, US companies, investors and bankers, in particular, are expected to be especially negative. Malaysia’s more competitive position and lower cost structures among TPP countries is, all things being equal, expected to result in more investment both for exports and to take advantage of the

domestic market. In the event that Malaysia is outside the TPP, those that rely on access to TPP export markets have every incentive to invest in other participating countries or else find new markets outside the TPP.

8. If Malaysia were not to participate in the TPP, it is unlikely to be able to restart the Malaysia-European Union (EU) FTA negotiations as the latter has similar requirements and standards. Thus, the failure to effect the TPP could turn out to be a double jeopardy by denying Malaysia both access to Trans-Pacific and European countries. Countries within the TPP that have finalised arrangements with both regions will have a significant competitive advantage compared to those that do not. Six TPP countries have already concluded EU arrangements, namely, Canada, Chile, Mexico, Peru, Singapore and, most recently, Vietnam. The US and the EU are in the midst of negotiating the Transatlantic Trade and Investment Partnership (TTIP) and have met more than 10 times. Australia, New Zealand, Japan and Malaysia have indicated their interest to either start or restart FTA negotiations. If and when the TTIP is concluded, it, together with the TPP, will be the largest of such arrangement among developed countries, setting the de facto standards for global trade and investment. If Malaysia were not to join the TPP, it could be the only country to do so and also not secure an arrangement with the EU.

9. The TPP provides a first layer of defence against rising protectionism in the form of non-tariff measures (NTMs), a defence that would not be available to Malaysia if it did not join the TPP. WTO has consistently reported a net rise in the stock of trade restrictive measures since 2008, even as tariffs overall have declined. As at May 2015, 1,828 measures remained in effect; despite removals by some members, new ones have been added. Members of an agreement such as the TPP are not entirely free from NTMs but given the transparency rules, complaints and dispute settlement procedures, may be expected to be much less frequently experienced than would otherwise be the case. The incentives for members to levy such measures against each other are also constrained. Indeed, by joining the TPP and adhering to certain requirements such as labour and environmental provisions, Malaysia may be able to limit the extent to which it is subject to new measures.

10. Without the TPP, Malaysia would not have sufficient incentives to liberalise its economy and is unlikely to undertake economic reforms and thus lifting welfare. It has been a matter of some debate as to whether Malaysia could enjoy significant welfare improvements by not participating in the TPP but still unilaterally undertake the domestic economic reforms that would be required under TPP rules and disciplines. Unfortunately, although this argument is more than a century old, it is far from what has been or is universally practiced. In an increasingly interdependent world, trade and investment obligations, rules and disciplines have to be commonly (though not uniformly) interpreted, understood and legally locked-in. Thus, undertaking voluntary economic reforms that Malaysia considers acceptable but which are not mutually agreed and legally enforceable are unlikely to be a sound basis for integration.

MALAYSIA’S NATIONAL INTEREST ANALYSIS

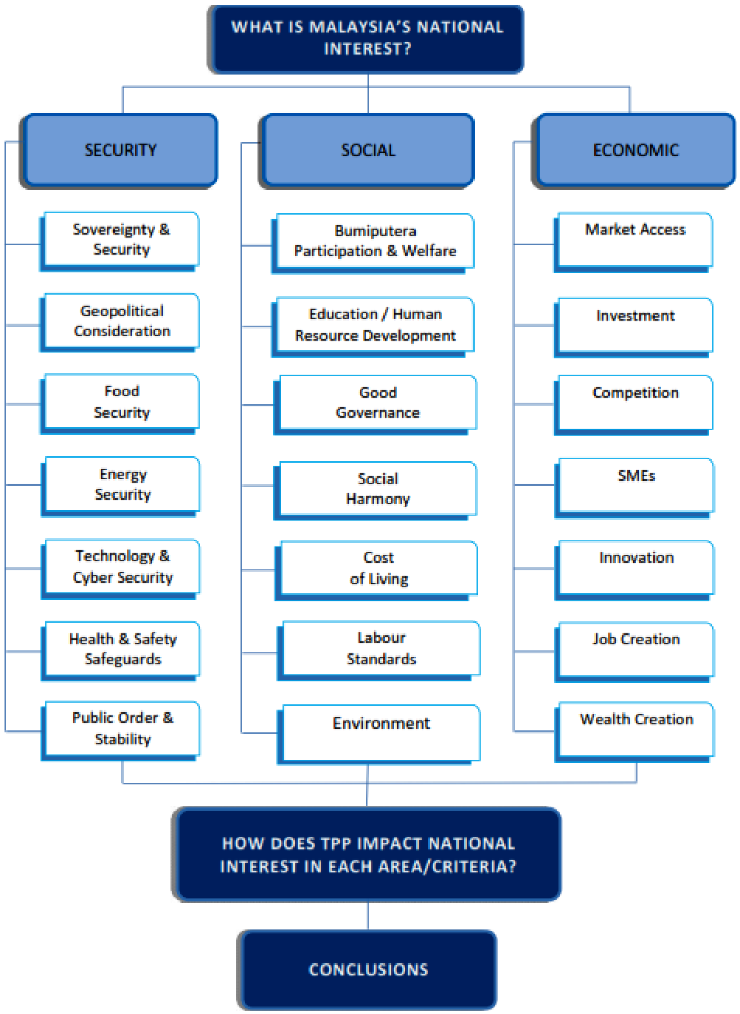
A country’s national interest is shaped by the many factors that promote or demote its ability to be and remain viable, capable and influential as a political entity. The term ‘political’ is underscored because in the economic realm, economies are much more globalised, interactive and interdependent than ever before. This is as a result of liberalisation efforts, much of it competitive in nature and designed to pursue foreign investment, technology and human resource capabilities. The faster the economic growth that takes place, the more rapidly development can occur and the greater the political capacity of the nation to defend and advance its interests. For the purposes of this report, Malaysia’s national interest is taken to be the policies, actions and conditions needed for the nation’s security, social and economic prospects.

FRAMEWORK

The NIA Framework that has been formulated for this study report specifically takes these into account. Each of these pillars is further disaggregated into components that, through consultations, have been identified as critical to the nation. Under the Security Pillar, for example, the TPP’s proposed provisions on sovereignty, geopolitics, food, energy, technology and cyber security, health and safety safeguards and public order and stability are assessed. The Social Pillar comprises Bumiputera participation and welfare, education/human resource development, good governance, social harmony, cost of living, labour standards and environment. The Economic Pillar components are market access, investment, competition, small and medium enterprises (SMEs), innovation, job creation and wealth creation.

At the macro level, these three Pillars can be said to be mutually reinforcing. Economic prosperity generally contributes to social welfare and the nation’s security, social welfare is required for economic prosperity and security, while the nation’s security, desirable in and of itself, enhances economic prosperity and social stability. In assessing the specific effects of the TPP obligations, however, it should be noted that some may have positive effects in one Pillar but negative ones in others. For example, greater market access should generally lower consumer goods prices and thus the cost of living (positively impacting the Social Pillar). However, it may also cause job losses, particularly among uncompetitive SMEs and farmers (negatively impacting the Security and Economic Pillars). Trade models are able to capture the net monetary value of economic benefits but they cannot place a value on intangible but no less important political, social and security consequences.

Figure 1: National Interest Analysis Framework



METHODOLOGY

Determining what is (or is not) in the nation's interest is seen to be essentially the product of four things: (1) stakeholder interests, (2) perceptions, (3) facts and (4) impact analyses derived from the final text of the agreement. The process is therefore not entirely free from normative value judgements. The starting point for the NIA was stakeholder interviews during which time information about their interests and views were gathered. Stakeholders interviewed included over 100 members of civil society organisations (CSOs), business executives, politicians, academics, and government officials (including Lead Negotiators for the different chapters). These issues were then gathered up and available literature studied. On key proposals, further consultations were held with subject matter experts to determine their veracity and impact.

The impact of the TPP on the NIA Framework is analysed according to the balance of interest principle. That is, in order to demonstrate a true and fair overall impact assessment, all pillars and sub-pillars are given an equal weightage in terms of importance, relevance and influence. The impact on the NIA Framework is then analysed by compartmentalising the concluded text (that was released on 5 November 2015) under each sub-pillar according to its merits. Analysis and conclusion of each sub-pillar were done through extensive stakeholder engagement, final text reviews and secondary research.

UNDERSTANDING POSITIONS TAKEN BY NEGOTIATORS

Discussions with Malaysian negotiators of the various chapters of the Agreement show that they are acutely aware of the possible impacts of proposed provisions on national interest components and have incorporated many of these concerns in their negotiations, either by seeking exclusions, safeguards, flexibilities or rejecting proposals outright. The fact that negotiation mandates are proposed and approved by the Malaysian Cabinet before proceeding with negotiations further underscores the integrity of the process.

Malaysia is not alone in seeking to defend its national interests and there are areas where these are identical to other countries. In the matter of stringent IP, for example, a bloc of participating countries, including Malaysia, has come out to reject discriminatory proposals.

The differences in views and positions of stakeholders about the TPP are to be expected and opposition is likely to remain despite the best efforts taken by negotiators as reflected in the final text. Civil and frank dialogue that accepts the need to engage and seeks to find common ground on the terms for doing so would seem to be more compatible with the national interest than overt politicisation of this process.

ROLE OF GOVERNMENT POLICY

Another misconception is that the TPP somehow removes the role of government intervention or prevents them for acting in ways that it sees fit. It would seem illogical that any TPP members, especially democratically elected ones, would agree to give up their right to make and implement public policies in their national interests. Some TPP proposals are undoubtedly aimed at restricting the scope of government policy, such as the ISDS proposal in the initial stage of negotiation. The manner in which such policies are made may have to be modified to be non-discriminatory and transparent so as not to infringe on the rights of other TPP countries. Their sovereign right and ability to do so is not disputed in the TPP context per se.

PILLAR I: SECURITY

This section considers how the TPP may affect the internal and external dimensions of Malaysia's national security interests. The first part addresses the issue of national sovereignty in relation to dominance by large and powerful countries, external interference and restrictions on Malaysia's policy space. The second part discusses the geopolitical implications of Malaysia's participation in the TPP. It considers how Malaysia's strategic interests may be affected by an unprecedented partnership beyond trade with 11 other countries in the Asia-Pacific, and one in which China, a global power, is currently absent. The third part disaggregates national security into five specific areas, viz. (1) food, (2) energy, (3) technology and cyber security, (4) health and safety safeguards and (5) public order and stability.

SOVEREIGNTY AND SECURITY

<table>
<tr><td rowspan="4">1.</td><td colspan="4">ISSUES</td><td>Malaysian sovereignty and equality</td></tr>
<tr><td colspan="4">SUB ISSUES</td><td>Dominance by large and powerful countries</td></tr>
<tr><td colspan="2">IMPACT</td><td colspan="2">NATURE OF IMPACT</td><td rowspan="2">IMPACT ON NATIONAL INTEREST</td></tr>
<tr><td>YES</td><td>NO</td><td>(+)</td><td>(-)</td></tr>
<tr><td></td><td>✓</td><td></td><td>✓</td><td></td><td>The sovereignty and equality of states are the basic building blocks of international law. The hallmarks of sovereignty are:
1. Exclusive jurisdiction over a territory and population;</td></tr>
</table>

2. Non-intervention in the exclusive jurisdiction of other states; and
3. The need for states to give their consent to be bound by international obligations.[1]

In order for Malaysia to be a sovereign state, it must therefore have the right not only to govern its affairs within its borders and conduct diplomatic relations, but to also accede to treaties and other binding international agreements such as the TPP.[2]

There nevertheless remain real public concerns that the TPP compromises Malaysia's sovereignty. The nature of these concerns appear to stem *inter alia* from the following, viz. that:

1. Large and powerful countries such as the US can use their dominant position to secure their desired objectives and outcomes;
2. Large countries can also exercise undue influence in the way that rights and obligations are interpreted and implemented, including in the making of Malaysian domestic laws, regulations and policies; and
3. The rules and disciplines imposed would restrict the policy space of countries such as Malaysia to regulate their affairs in a way that they see fit.

As a relatively small country, Malaysia has carefully navigated its national security interests in the midst of global superpower rivalries, starting from the Cold War to the present time. The country has consistently strived to maintain its independence through active participation in multilateral organisations, association with likeminded countries in the Non-Aligned Movement (NAM), Organisation for Islamic Countries and South-South cooperation and, most notably, the Association of Southeast Asian Nations (Asean). Its position in the latter led it to initiate the Zone of Peace, Freedom and Neutrality (ZOPFAN) in 1971 and the Southeast Asian

[1] *Ian Brownlie, Principles of Public International Law (4th Ed.), (Oxford: Clarendon Press, 1990), pp. 287-288.*
[2] *ibid. pp. 287-288. As the (then) Permanent Court of Justice determined in the landmark S.S. Wimbledon case (1923), "the right of entering into international engagements is an attribute of State sovereignty."*

					Nuclear Weapons Free Zone Treaty (SEANWFZ) in 1995. Malaysia’s foreign policy of establishing close and friendly relations with all countries (except Israel) has held it in good stead. Malaysia’s foreign relations include the world’s superpowers, including the United States (US) and China. While there may be reason to suspect that large countries will use their considerable bargaining power to their advantage in all their international negotiations (not just the TPP), this cannot *prima facie* be taken as a disqualifying factor. If it were, Malaysia would be limited to inking agreements with countries of similar size and negotiating strength, or with much smaller ones. Limiting its relationships in this way would not be in the country’s national interest as the absence of engagement hinders the country’s ability to manage its affairs and opens it to influences that are outside of its control. In the pursuit of balance between its security and prosperity interests, Malaysia has to be prepared to engage pragmatically with various countries at all times, even those with which it has basic foreign policy differences. Given the multidimensional and often complex nature of these relationships, any disagreements have to be sensitively managed. The process is necessarily one where actions and responses have to be carefully calibrated so as not to jeopardise overall relationships and risk turning these into even greater security threats. Of all the security challenges that Malaysia faces, none is more fundamental than with respect to its territorial integrity. Malaysia has multiple border disputes and unresolved demarcation delimitations in the South China Sea, the Celebes Sea and the Straits of Johor. Parties involved include China, Indonesia, the Philippines and Singapore. In the Spratly Islands, Malaysia occupies three islands that are within its exclusive economic zone (EEZ) but over which China claims ownership as a group.[3] China has pressed its claims to James Shoal (Beting Serupai) and Luconia Shoals (Beting Patinggi Ali), which lie just 80 and 100 kilometers respectively from the

[3] *The three islands that Malaysia occupies are Swallow Reef (Pulau Layang Layang), Ardasia Reef (Terumbu Ubi) and Mariveles Reef (Terumbu Mantanani).*

					Malaysian shoreline. A Chinese vessel has been stationed in the Luconia Shoals since 2013 despite Malaysia making frequent diplomatic protests. China’s increasing assertive posture has also taken the form of land reclamation efforts on disputed islands, reportedly involving a total of 2,000 acres, construction of dockyards and airfields.[4] Asean ministers have issued a number of joint communiqués regarding their ‘serious concerns’ at these developments, which have ‘eroded trust and confidence, increased tensions and may undermine peace, security and stability in the South China Sea.’[5] Elsewhere, Malaysia has demarcation disagreements with Indonesia in the Celebes Sea, five land and related maritime borders with Sabah and four in Sarawak. At the same time, the Philippines continues to maintain its claim on Sabah and has protested against the joint Malaysia-Vietnam submission to the UN Commission on the Limits of the Continental Shelf. There is, as well, an unresolved tripartite (Malaysia-Indonesia-Singapore) maritime boundary in the Straits of Johor, two border demarcation disputes with Thailand (Bukit Jeli and in the Gulf of Thailand) and still undetermined borders with Singapore. All of these have very important implications for Malaysia’s sovereignty. Malaysia’s approach to protecting its sovereignty has therefore had to be carefully calibrated, especially as larger and more powerful countries are involved. Malaysia’s border disputes with its immediate neighbours have been handled bilaterally but against a backdrop of strong Asean interactions and institutions. Tensions have occasionally arisen, such as with Indonesia, but these have, for the most part, been peacefully defused and managed. With China, Malaysia has chosen a policy of emphasising strong friendly relations based on economic foundations, while pursuing quiet bilateral diplomacy and using Asean channels, notably the pursuit of the Asean Code of Conduct of Parties on the South China Sea (CoC).

[4] *US Secretary of Defense Ashton Carter, ‘The United States and the Challenges of Asia Pacific Security,’ International Institute for Strategic Studies (IISS) Shangri-La Dialogue 2015, Singapore, 30 May 2015*

[5] *‘Joint Communique of the 48th ASEAN Ministerial Meeting,’ Kuala Lumpur, Malaysia, 4 August 2015*

					Malaysia has consistently maintained that superpower rivalries carry high strategic costs and risks for countries in the region. Forming an alliance with one party at the expense of the other (the ‘bandwagon’ effect) exacerbates contestations and is seen to be detrimental to Malaysia’s security interests. Rather than opt for the classical balancing of (hard military) power, Malaysia has opted for a policy of equidistance or what might be termed a ‘balancing of benefits’ by strengthening its ties with both China and the US, not only in the defence but also in the economic and social fields. In doing so, Malaysia avoids overdependence on, and domination by, any one party and is better placed to defend its sovereignty and equality. Maintaining balanced relationships between the US and China provides Malaysia with a degree of security stability that it is not considered possible under alternative options. Malaysia has had a long history of defence cooperation with the US dating back to the 1960s. This has included arms sales, joint training exercises, access to Malaysian ports, and airfields and bases for US military jungle-warfare training. Despite not being in political agreement with the US on a number of issues, particularly its Middle East policies, Malaysia has maintained its military-to-military cooperation and, in recent years, has strengthened it in key areas such as anti-terrorism and the exports and transhipment of weapons of mass destruction. On the visit of US President Barack Obama to Malaysia in 2014, the Malaysia-US relationship was elevated to a Comprehensive Partnership.[6] Malaysia also joined the US-led Proliferation Security Initiative (PSI) at the time. Defence cooperation with China has been a more recent phenomenon. In 2005, Malaysia and China signed a Memorandum of Understanding on Bilateral Defence Cooperation, the first of its kind for China with a Southeast Asian nation. In 2012, the two countries held their first Security Defence and Strategic Consultations. Following the visit by Chinese President Xi Jinping in 2013, an agreement was reached to have joint military exercises involving all three services. Malaysia’s relations with China were also designated a Comprehensive Strategic Partnership, albeit earlier in 2013. This boosts ties in trade, politics, social, and defence and security cooperation. In September 2015, China and Malaysia held its first ever joint military exercise in the Straits of Malacca involving humanitarian and disaster relief, armed escort and anti-piracy exercises.

[6] *‘Joint Statement By President Obama And Prime Minister Najib of Malaysia,’ Putrajaya, Malaysia, 27 April 2014*

					Malaysia’s institutional arrangements in the economic area, however, do not exhibit the same kind of balance. Apart from Singapore, Malaysia’s traditional export market, China is the country’s largest export market. Following a decision taken by Asean and China leaders in 2002, a free trade area came into effect in 2010 with the six original Asean members lowering tariffs on over 90 per cent of imports to zero.[7] In 2013, negotiations began to upgrade the economic relationship by making more goods eligible for zero duty treatment, further liberalising services and investment and undertaking trade and investment facilitation. A bilateral target of reaching US$1 trillion in trade by 2020 was also agreed. On top of this Asean Plus One institutional arrangement, Malaysia and China are also parties in the larger Regional Comprehensive Economic Partnership (RCEP), which includes Asean member states, together with Australia, China, India, Japan, New Zealand and South Korea. In contrast to China, Malaysia does not have a formal institutional arrangement with the US. A proposal to launch a FTAAP in 2006, in which the 21 members of the Asia-Pacific Economic Cooperation (APEC), including China, Malaysia and the US, also bore no results. Efforts began in 2005 to negotiate a bilateral Malaysia-US FTA, with one motivation being to counter the declining share of US trade and investment. The decision made by the US to formally negotiate the TPP in 2010 led to two rounds of negotiation (Melbourne in March and San Francisco in June) before Malaysia joined (in Brunei Darussalam in October). The Malaysia-US FTA negotiations are now officially superseded by the TPP. US involvement in the TPP preceded President Obama’s 2012 announcement of the US ‘pivot’ or ‘rebalancing’ towards Asia. It has nonetheless become the centrepiece of its economic pillar and has remained so. While not all countries in Asean have been able to respond positively to the TPP, Malaysia is clearly seeking to address the issue of US economic engagement within the context of this 12-country plurilateral framework. Doing so significantly complements its existing institutional arrangements by diversifying the sources of trade and investment, particularly vis-à-vis the US, which apart from being a final export destination is also an important source of investment and technology.

[7] *The six Asean members are Brunei Darussalam, Indonesia, Malaysia, the Philippines, Singapore and Thailand. The other four members (Cambodia, Laos, Myanmar and Vietnam) are expected to comply by the end of 2015.*

	SUB ISSUES				External interference through US certification requirements
	✓			✓	Sovereign states have a duty not to interfere in the exclusive jurisdiction of other countries. In practice, however, this principle is modified by other international laws, derogated by national laws or, in some cases, openly breached by practice. The nature of exactly when interference occurs and the extent to which it occurs, however, is a matter that requires serious examination. The mere fact that two parties of unequal bargaining strength enter into negotiations, or even the fact that the more powerful party is able to extract concessions, are not sufficient (as some parties often contend) to demonstrate that interference has taken place and that the sovereign rights of a state have been compromised. The act of intervention must be so palpable and overwhelming so as to constitute coercion that the terms agreed could be nullified. The fact that countries, including Malaysia, have been able to secure exclusions, exemptions and non-conforming measures (NCMs) from the articles of the TPP would tend to militate against the <u>general</u> idea that the TPP is dictated by any one party or group of parties. As negotiating rounds have progressed and deadlines have been postponed, demands in specific chapters have noticeably reduced or disappeared. There are numerous examples but among them are the demand for the removal of export tax and the removal of tobacco control from ISDS procedures. These would (presumably) not have been possible if the US and others had, indeed, been applying such coercive pressure as to force acceptance or compliance. Despite the above, it is still possible for the application of pressure in <u>specific</u> areas. In the TPP, the commonly cited example where pressure is brought to bear is during the process of US certification. While the US President has the right to negotiate international agreements, the US Constitution assigns the final authority to the US Congress to regulate foreign commerce. From 1934 to 1974, the President was given the power by Congress to negotiate and implement trade laws without further reference to Congress. This power has since been removed and from 1988, the President has been required by law to certify that prospective trade partners to an FTA have taken the necessary measures to enable to comply with obligations before the agreement takes effect. The US government reviews the laws, regulations and administrative practices of prospective trade partners, advises them of any shortcomings and undertakes government-to-government consultations. If and when

					requested, assistance is provided to partners to comply with the commitments as set out in the agreement. It is only when all issues have been ironed out that the President formally notifies the other party concerned that the US has satisfied its domestic requirements and proceeds to undertake the exchange of letters whereby the FTA can enter-into-force (EIF). This review process continues into the post-EIF period with further monitoring and oversight. When the US government detects trade issues or when there is a complaint by its companies, consultations are initiated and further assistance is given when requested. In the event that the matters cannot be resolved in a mutually agreeable manner, it may be referred to the dispute settlement mechanism (DSM) established under the FTA. Opponents of FTAs with the US criticise the certification requirement, viewing them as a breach of state sovereignty. The asymmetric requirement (i.e. that the laws, regulations and practices of trade partners be vetted and changed *prior* to US notification) is seen as unwarranted. It is also seen as an opportunity for the US to use its position during the process of consultations and assistance to reopen negotiations, reinterpret obligations, extract additional concessions and generally impose the changes that it wishes to see.[8] US FTAs with South American states (such as the Central American States, Dominican Republic, Colombia, Panama and Peru) and with the Republic of Korea are claimed to be classic instances where the US has ‘approved’ or actually ‘drafted’ the laws and regulations of other countries. There can be little doubt that the US certification requirement can open the door for opportunities for it to renegotiate previously agreed terms or to insist on more stringent ones. Certification may be considered intrusive by its nature and is not a requirement of the other parties to the TPP. Whether this represents interference in the sovereign affairs of other countries, however, is a matter of fact for determination. In the absence of any evidence of illegal or illegitimate influence, countries voluntary enter into negotiations with the US and voluntarily conclude them and cannot be considered as unwitting victims or bystanders.

[8] *‘An Open Letter to the Political Leaders of the Countries Negotiating the Trans-Pacific Partnership Agreement,’ TPP: No Certification, 12 May 2015*

					All decisions on the 'consultations', 'assistance' and 'advice' given by the US, whether uniformly agreed to or not by stakeholders, must ultimately be approved and implemented by the legally authorised arms of governments of the countries concerned, usually their executives and legislatures. In the case of Malaysia, the Cabinet approves negotiating mandates and is the final decision making body. Only the Malaysian Parliament can pass the necessary laws or amendments of laws to give the changes effect. The claim that the US certification process alone constitutes interference in the national sovereignty of countries is not logical and cannot be regarded as valid. The US' primary, if not only source, of leverage is the withholding of EIF. For any country to enter into negotiations whilst preserving its autonomy, the decision to decline the demands of the US (or any other country for that matter) – in effect, opting-out – must remain within the realms of possibility. The decision as to whether to accept or reject any US demands must be made on the totality of real and perceived benefits and costs of acceding or exiting the TPP. This is true not only during the certification period but also post-EIF as well. Many Malaysians are unaware that US surveillance of Malaysia's trade and investment policies has been in practice for almost three decades. Since 1986, the US Trade Representative has been required to prepare a National Trade Estimate (NTE) Report on Foreign Trade Barriers, which has included Malaysia. The NTE Report addresses many of those in the TPP such as import policies, government procurement, services and investment barriers and SOEs. From 1989, a Special 301 Report has also been required to highlight countries that do not provide 'adequate and effective protection' of US IP. Malaysia was on the Watch List of the Special 301 Report until 2012. In addition, the US Department of State, from 2000, has compiled a Trafficking In Persons (TIP) Report.[9]

[9] *In 2014, Malaysia was downgraded from Tier 2 (Watch List) status to Tier 3, but was restored to Tier 2 (Watch List) in 2015.*

					The effect of US surveillance on government-to-government consultations and the resulting policy changes are highly sensitive and not made public. It is clear, however, that even if Malaysia were not a party to the TPP that this would not preclude the identification of any trade or investment issues and, possibly, for pressures to be applied for change, if these were deemed necessary.[10] So long as Malaysia is a trading partner of the US, it will be covered by the application of US laws and the Malaysian government will need to assess the extent to which recommended policy changes are or are not in the country's national interest.
	SUB ISSUES				Restrictions on Malaysia's policy space
	✓			✓	On the matter of restricted national policy space, concerns have been expressed that TPP disciplines create a legal regime that serves the US and its large private corporations. The issue commonly cited is that of the controversial ISDS provisions but, in reality, extending to others as well. It has to be noted in this regard that the exercise of sovereign power is never unfettered but conditioned by the legal obligations assumed at the multilateral, regional and bilateral levels. These obligations are entered with the consent of states as provided under international law and are mutually binding among all contracting parties. In trade, Malaysia is, in addition to the obligations in the World Trade Organisation (WTO), also party to two other international agreements, seven regional agreements and seven bilateral. In investment, Malaysia is signatory to eight international agreements, 13 regional and 71 bilateral. These legally binding commitments are reciprocal and more, that is, all signatories adopt them; in no instance are they unilateral or is Malaysia singled out. This is an important fact that is often neglected in discussions about the TPP. By agreeing to make these commitments, Malaysia benefits more than it is restricted since one or more participants also agrees to abide by the rules of the economic partnership arrangement.

[10] *India, for example, is not a negotiating party to the TPP but is in intensive consultations with the US to avoid being listed as a Priority Watch Country under the Special 301 Report for the practices of its pharmaceutical industry.*

					Malaysia's concerns about the TPP are not about the restricting of policy space *per se*, as the restricting of policy space are in areas that the Government wishes to maintain country-specific exemptions and flexibilities. These include: 1. ISDS; 2. Bumiputera policies; 3. Poverty alleviation; 4. GP; 5. SOE; 6. Labour; <u>and</u> 7. Environment. In addition, the Government places high priority on the use of capital controls when needed, and exemptions of economic stimulus packages. Each of these areas is addressed in the respective pillars and sub-pillars of this study report. In reality, most of these areas of concern are shared by other participating developing countries in the TPP, differing only by degree of emphasis. In this regard, the actual impact on Malaysia's sovereignty depends on the general and specific nature of the exclusions, exemptions and NCMs in each of the areas. In investment, for example, government procurement and measures to protect legitimate public welfare objectives are excluded from most prohibitions against performance requirements. Government measures aimed at environmental, health and related objectives are also excluded.[11] This restores policy space for participating countries in the areas concerned.

[11] *Article 9.9.3(f) Performance Requirements and Article 9.15 Investment and Environmental, Health and other Regulatory Objectives of the Investment Chapter.*

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<tr><td></td><td></td><td></td><td></td><td></td><td>Still other areas pose more difficulties. TPP provisions on government procurement (GP) and SOEs are likely to impact the manner in which Bumiputera policies and the transformation of government-linked companies (GLCs) in Malaysia are carried out. To the extent that these reforms lead to higher standards of good governance and/or competitiveness or that can be accommodated by systemic changes, the effects are positive. There are strong indications that other TPP participating members are using TPP provisions to externally-induce internal government reforms.

Efforts by government negotiators to retain Malaysia's policy space in key areas have resulted in country-specific exclusions, exemptions, NCMs and transition periods. Even after taking into account substantial exclusions and flexibilities, it is likely that existing policy space in some areas will be constrained, at least when compared to the past. These constraints, while possibly necessitating change, neither causes Malaysia to infringe its legal obligations nor to abandon policies considered essential for the country. Malaysian sovereignty remains intact.</td></tr>
<tr><td colspan="6">GEOPOLITICAL CONSIDERATION</td></tr>
<tr><td rowspan="4">2.</td><td colspan="4">ISSUES</td><td>Relations with major trading partners</td></tr>
<tr><td colspan="4">SUB ISSUES</td><td>Asean</td></tr>
<tr><td colspan="2">IMPACT</td><td colspan="2">NATURE OF IMPACT</td><td rowspan="2">IMPACT ON NATIONAL INTEREST</td></tr>
<tr><td>YES</td><td>NO</td><td>(+)</td><td>(-)</td></tr>
<tr><td></td><td></td><td>✓</td><td>✓</td><td></td><td>Malaysia officially considers Asean to be a cornerstone of its foreign policy. Initially, Asean had to face difficult and dangerous circumstances upon its establishment in 1967 but has since progressed in more positive directions. These include the Asean Free Trade Area (1992), the Asean Charter (2008), the Master Plan on Asean Connectivity (2010), and the establishment of an Asean Community, comprising an Economic Community, Political-Security Community and Social Cultural Community as declared by the Asean Leaders in Kuala Lumpur recently. In 2012, Asean also launched the RCEP, which comprises the 10 Asean Member</td></tr>
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					States (AMS) and Australia, China, India, Japan, Republic of Korea and New Zealand. Given Asean's importance to Malaysia and other AMS, Asean centrality in all regional matters has been emphasised.[12] In this connection, concerns have been expressed that Malaysia's participation in the TPP (along with Brunei Darussalam, Singapore and Vietnam) will dilute its commitment to the organisation. Some also see Asean being divided into two blocks, one comprising AMS who are members of TPP, and the others who are not. This raises the prospect of the erosion of Asean and RCEP preferences and risks increasing economic disparities within the region. TPP signatories will have easier access to developed economies, viz. Australia, Canada, Japan, New Zealand and the US, while non-signatories will not. The non-participation of Cambodia, Indonesia, Laos, Myanmar, Thailand and the Philippines in the TPP also means there is the possibility that they may experience trade and investment diversion. In addition, there is the prospect of different rules, which would further add to the spaghetti bowl of complex trade and investment rules.[13] Trade simulations suggest, however, that the impact of the TPP on these may be -1.0per cent or less of GDP even after taking into account the effect of removal of non-trade measures.[14] The actual economic impact of the TPP on non-participating AMS thus does not appear to be highly significant. These estimates also apply to China, India and South Korea who are non-TPP participants in the larger Asean-driven RCEP. All non-TPP AMS, however, are negotiating the RCEP, together with China, India and South Korea, and this is expected to result in (at least) a standard trade in goods agreement. With the inclusion of the world's top two

[12] *The Asean Economic Community Blueprint states: "Asean shall work towards maintaining 'Asean Centrality' in its external economic relations, including but not limited to, its negotiations for FTAs and CEP agreements."*

[13] *Mireya Solis, 'The Containment Fallacy: China and the TPP,' Brookings Institution, 24 May 2013 <http://www.brookings.edu/blogs/up-front/posts/2013/05/24-china-transpacific-partnership-solis>.*

[14] *Kawasaki Kenichi, 'The Relative Significance of EPAs in Asia Pacific', RIETI Discussion Paper Series 14-E-009, The Research Institute of Economy, Trade and Industry, Japan, January 2014.*

most populous countries, the income gains from RCEP could be substantial, possibly up to twice the income gains that the TPP alone could yield.[15]

What the RCEP negotiations will be able to secure in terms of services, investment, IP protection, competition, economic and technical cooperation and dispute settlement is uncertain at this time. Until these can be ascertained, it will not be possible to argue, as some have done, that the TPP and RCEP are substitutable or that Malaysia will gain more from one than the other.[16] The RCEP is thought to be more acceptable to developing countries because consideration is to the varying levels of development between members. Having to cater to the weaker economies most likely means, however, that RCEP commitments may not be of the same standards as the TPP, at least over the short to medium terms.

It is apparent that the different configuration of TPP participants and not economic motivations alone are a primary motivating factor for joining the TPP. The US, Canada, Chile, Mexico and Peru are the TPP participants not engaged in the RCEP. Of these, the US figures highly being not only an important economic partner – both bilaterally and as a third party consumer and investor – but also its global and regional strategic-military role is unmatched. The importance of the latter is often not articulated due to regional sensitivities. However, it is clear from the substance of their bilateral relationships that many countries in the region value the relationship beyond the strictly economic.

Despite the inclusion of Australia and New Zealand, the RCEP is predominantly seen as an Asia-only arrangement. A decision not to be in the TPP therefore not only denies an opportunity to establish a working EPA with North and South American states but risks sending the wrong signals to the US administration and lawmakers. Participating in both the TPP and RCEP helps ensure that there is no miscommunication, thus preserving Malaysia's national interests on the political and economic fronts. Given the nature of its regional and bilateral relationships, it is unlikely that

[15] *ibid. p. 12*

[16] *Khazanah Research Institute, for example, has argued that Malaysia will gain more from the RCEP than the TPP because (i) the RCEP is geographically more relevant for Malaysia; (ii) there will be greater market access for Malaysian products as China and South Korea will commit to greater tariff liberalisation; it will encourage more foreign direct investment into Malaysia from Japan and China; and (iv) it is expected to complement Asean's efforts in becoming a single production base (which will ensure Malaysia remains in the radar of investors). 'The State of Households,' Khazanah Research Institute, November 2014, p. 56.*

					Malaysia’s participation in the TPP will give rise to the perception that it is de-emphasising Asean’s importance. There are indications that some AMS may be thinking along these lines. On 27 October 2015, following his meeting with US President Obama, Indonesian President Joko Widodo stated that Indonesia intended to join the TPP.[17] Philippine President Benigno Acquino III has also affirmed on multiple occasions that the Philippines wishes to join the TPP. His two-term limit will expire in May 2016, however, and any further movement will most likely have to await his eventual successor. Thailand’s government has made differing statements following conclusion of TPP negotiations, while Cambodia, Laos and Myanmar have yet to officially respond one way or the other. While the political will and capacity of non-TPP participating AMS to join the TPP is uncertain, in the event that other AMS do not or cannot participate in the TPP, Malaysia, along with the other TPP participating AMS, can act as an interim bridge to non-TPP AMS. Over the longer-term there is the possibility that there will be a convergence towards higher standards of commitments.[18] RCEP can therefore help to solidify Asean centrality in the region, as it will integrate existing FTAs between Asean and RCEP participants with TPP countries.
	SUB ISSUES				China
		✓	✓		Concerns that the TPP is an effort aimed at the ‘containment’ of China are unfortunate but perhaps understandable. Containment is a Cold War term that was originally used by the US to signify efforts to strategically stop the growing spread of influence of the (then) Soviet Union, but later encompassing all Communist countries. It is clear that containment does not have the same meaning in the economic realm as China is now deeply integrated not only with countries in Asia, but also North America and Europe. Rather, containment is loosely used to describe the ability of China to influence or impose the extent to which trade and investment occur outside of its shores.

[17] *Further details on exactly how Indonesia intends to accede to the TPP following EIF remain forthcoming.*
[18] *Peter A. Petri, Michael G. Plummer and Fan Zhai, ‘The TPP, China and the FTAAP: The Case for Convergence,’ 56th Annual American Association for Chinese Studies Conference, George Washington University, Washington, DC, 19 May 2014, p. 7-8.*

					The fact that the US administration has repeatedly stated that the TPP is a major pillar of its 'pivot' or 'rebalancing' towards Asia has popularised the idea that it is an instrument, if not of US 'hegemony', then to defend its interests in the region, not least vis-à-vis the People's Republic of China. In seeking trade promotion authority, US President Obama's widely publicised warning to US lawmakers that China should not be allowed to 'write the trade rules' for the Asia-Pacific region has further made the issue a contentious one.[19] Among other things, this gives the impression that Malaysia, along with other participating countries, is part of a US-led 'alliance' to defend its interests in the region and exclude China. It is neither in Malaysia's or the other 10 TPP participating countries' national interests to be seen to isolate China, even if such a thing were possible. The TPP includes countries such as Brunei Darussalam, Chile, Mexico and Peru, all of which have no reason or interest to isolate China. More importantly, the US has gone on record to welcome China and any other country wishing to participate in the TPP on the condition that the agreement's standards are met.[20] Chinese officials have also stated they have few concerns about the TPP. Like the other TPP participating countries, Malaysia is actively engaged and supports of more than one arrangement in which there are different configurations of countries. The multiplicity of regional arrangements, including the 16-country RCEP and the prospective 21-country FTAAP helps to ensure that no one country establishes or dominates the trade and investment regimes. This is supplemented by bilateral agreements, which further diversifies Malaysia's economic partnerships, reducing dependence and, overall, making them more resilient. China is actively participating in RCEP but also negotiating deeper relations with Asean (the so-called China-Asean Upgrade). This will ensure that more goods are included under tariff-free terms and that there are greater services and investment liberalisation and customs facilitation. At the same time, China has taken the initiative to restart the FTAAP, a proposal originally mooted by the US. While it is by no means certain how the FTAAP will progress, it is clear that China is taking measures to protect its own national interest.

[19] *Remarks of President Barack Obama, 'Weekly Address: Fighting for Trade Deals that Put American Workers First,' Washington, DC*, 25 April 2015
[20] *Remarks by Hillary Rodham Clinton, 'Delivering on the Promise of Economic Statecraft,' Singapore Management Uni*versity, Singapore, 17 November 2010

					The impact of Malaysia joining the TPP is likely to have limited, if any, negative impact on its bilateral relationship with China. The strength of Malaysia's existing economic ties with China suggests the unlikelihood of a rift in Malaysia-China relations. China is Malaysia's largest trading partner, and Malaysia has remained China's largest trading partner in Asean since 2008. Last year, trade between the two countries amounted to US$102 billion. Moreover, the Malaysian and Chinese governments signed a five-year plan to strive for US$160 billion by 2017, by expanding investment, tourism, education and infrastructure. This is especially in view of the fact that Malaysia has strongly supported China's initiatives including One Belt-One Road (OBOR), the Asian Infrastructure Investment Bank (AIIB), as well as the FTAAP. These ensure that Malaysia is showing no undue partisanship or favouritism in the matter, and that it is merely acting consistently with its policy of cooperation with countries. This is true not just of Malaysia but most of the other TPP members, the exceptions being Japan and the US. It is clear that the public insufficiently appreciates the need for nuanced responses to safeguard Malaysia's security interests. Many Malaysians are having serious misgivings about US foreign policy and military interventions while viewing China favourably. The reasons for this have had to do with US policies that have consistently supported Israel at the expense of the rights of the Palestinians to their homeland, and the US-led invasions of Afghanistan and Iraq after the 11 September 2001 attacks of the Twin Towers in New York City (9/11) and Iraq in 2003. The Pew Research Centre reports that while 54 per cent of Malaysians polled had favourable attitudes towards the US (the lowest among Asean countries surveyed), 78 per cent favoured China.[21] Only 7 per cent of Malaysians favoured being 'tough with China on territorial disputes' while 83 per cent favoured a 'strong economic relationship with China.' 54 per cent also viewed US military presence in Asia as a 'bad thing', the highest among Asian countries. With respect to the TPP, the Pew survey showed that almost three times more Malaysians favoured strong economic ties with China than the US. A slightly higher number, 43 per cent favoured having economic ties with both. As stated

[21] *Richard Wike, Bruce Stokes and Jacob Poushter, 'Asia in Focus,' Global Attitudes & Trends, Pew Research Centre, June 2015 <http://www.pewglobal.org/2015/06/23/3-asia-in-focus/>.*

					previously, the TPP is one important component in helping to ensure balanced economic relationships. In the event this occurs, fears of China's non-participation in the TPP would further recede. By being party to both agreements, Malaysia is strategically well placed to ensure that regional trading and investment are not dominated by any one large party at the expense of another, thus protecting its national security interests.
	SUB ISSUES				The European Union (EU)
		✓	✓		The EU is a long and important economic partner of Asean and Malaysia. Asean is the EU's third largest trading partner outside of Europe and within Asean, Malaysia is the second most important after Singapore. In 2007, the EU and Asean commenced FTA negotiations but encountered an obstacle posed by Myanmar's membership of Asean. From 2009, a bilateral format was adopted instead. From 2010, the EU launched negotiations with Singapore and Malaysia, with Vietnam in 2012 and Thailand in 2013. Its negotiations with Singapore concluded in October 2014 and it is currently in the process of ratification, while those with Vietnam were completed in August 2015. After two rounds of negotiations, the EU suspended talks with Thailand in 2014 following the latter's military takeover of the civilian government of Prime Minister Yingluck Shinawatra. EU trade sanctions against Myanmar were lifted in 2013 and privileges under the 'Everything But Arms' (EBA) scheme of its Generalised System of Preferences (GSP) were implemented and made retrospective in 2012. Malaysia is the EU's 23rd largest trading partner while the EU is Malaysia's fourth. The EU also has one of the largest stocks of foreign direct investment in Malaysia. Malaysia placed FTA negotiations with the EU on hold in 2012 ostensibly as a result of its participation in the TPP. In July 2015, discussions between both sides were held in Brussels to restart the negotiating rounds although no date has yet been set. With the exception of Thailand, Malaysia remains the only country not to have concluded a FTA with the EU and risks being placed on a competitive disadvantage vis-à-vis access to EU markets and investment if it is unable to secure an institutional arrangement. Proactive engagement by the EU with Asean and Malaysia provides reassurance that the TPP will not have a significant impact on EU relations if Malaysia were to accede to the agreement. The EU itself started negotiations not only with the US in the Transatlantic Trade and Investment Partnership (TTIP), but also with

					Japan in 2013. Negotiations of both have yet to conclude and are likely to be delayed owing to the US Presidential elections in November 2016, but there are good prospects of them doing so. There were initially concerns that TPP provisions might affect Malaysia's national interests by undermining its bilateral relations with the EU. For example, the case of perceived weaker IP protection, in particular, for geographical indication (GIs), under the TPP, were seen as restricting Malaysia's ability to conclude negotiations on a similar agreement with the EU. The concluded text of the TPP, however, shows this not to be the case as GIs for the bulk of EU-protected products (such as wine, spirits and cheeses) are excluded. Indeed, bilateral FTAs with the EU do not automatically grant protection to all EU GIs and only smaller subsets are chosen for their importance in bilateral trade. This has enabled many TPP participating countries such as Canada, Mexico, Singapore and Vietnam to conclude trade negotiations with the EU. If Malaysia succeeds in completing FTA negotiations with the EU and RCEP, in addition to the TPP, it will have important implications for Malaysia's economic prosperity and geopolitics in the future. Malaysia would have stronger market access to the world's largest and most powerful countries, viz. the US, China, EU, India and Japan, as well as to new important mid-sized ones such Canada, Mexico and Peru. (Malaysia already has existing bilateral FTAs with Australia, Chile, Japan and New Zealand.) From a security perspective, accession to TPP can only serve to enhance Malaysia's relations by complementing or supplementing existing agreements or creating new ones. Failure to accede to the TPP, however, can have real and tangible negative competitive and geopolitical repercussions.

<table>
<tr><td colspan="6">FOOD SECURITY</td></tr>
<tr><td rowspan="4">3.</td><td colspan="4">ISSUES</td><td>Food supply</td></tr>
<tr><td colspan="4">SUB ISSUES</td><td>Improved access to food supply</td></tr>
<tr><td colspan="2">IMPACT</td><td colspan="2">NATURE OF IMPACT</td><td rowspan="2">IMPACT ON NATIONAL INTEREST</td></tr>
<tr><td>YES</td><td>NO</td><td>(+)</td><td>(-)</td></tr>
<tr><td></td><td>✓</td><td></td><td>✓</td><td></td><td>Food security is premised upon the UN Food and Agriculture Organisation (FAO)’s mandate that all peoples should at all times have access to sufficient, safe, and nutritious food that meets dietary needs and food preferences for an active and healthy lifestyle.

As a basic Malaysian staple, rice has historically received strategic emphasis in Government policies even as the country has been a net importer. Lacking the highly productive deltaic plains of its northern neighbours, self-sufficiency has historically fluctuated between 68-86 per cent and is set at 70 per cent under the Tenth Malaysia Plan. More diverse food options available to the urban and middle- to upper-middle social classes also means that rice is decreasing in share of the total food budget.[22]

The destabilising effects of inadequate access to affordable rice were clearly seen in the 2008 global food crisis. Then, at the height of the crisis, Vietnam, amongst other key rice exporters, temporarily imposed rice export restrictions which threatened rice importers. Sharp increases of global rice prices prompted the Government to implement the National Policy on Food Security in response to huge public outcry. An</td></tr>
</table>

[22] *Hamid R. Alavi et al, 2008. Trusting Trade and the Private Sector for Food Security in Southeast Asia, The World Bank.*

					allocation of nearly RM3.5 billion was used to increase food production and rice buffer to ensure a stable supply of grain.[23] Soon after, however, food prices including rice, plunged, rendering these programmes redundant and led to subsequent severe overhang of rice stocks nationally. Furthermore, excess imported rice was dumped onto the local market, dampening demand for local rice and threatening the livelihoods of local farmers.[24] Under the TPP, however, limiting the use of export restrictions will improve Malaysia's access to supply of rice, a clear benefit to the country's food security. This is because 30-40per cent of domestic rice consumption is imported, with Vietnam, a member of TPP, being the leading rice supplier to Malaysia.[25] Moreover, it also has potential huge savings - in billions, to the Government while maintaining overall public order and stability, once there is better and more stable access to key rice exporters by preventing emergency, knee-jerk reaction spending on rice stockpile programmes. The country has begun a process of gradual liberalisation of the agricultural sector, coinciding with the Government’s Economic Transformation Programme (ETP) of small-scale agriculture into a private sector-led agribusiness industry National Key Economic Area (NKEA). In this respect, the TPP may be consistent with meeting the food security interests of the future for Malaysia by promoting integrated and international trading networks, modern farming methods, technology and innovation transfer, and green infrastructure investments. It is likely that benefits to be reaped under the TPP will boost and complement ongoing efforts by the Ministry of Agriculture and the Malaysian Agricultural Research and Development Institute. Additionally, improved supply chains can address information gaps, reducing transaction costs while increasing the response rate to changes in consumer preferences and tastes. This should provide consumers with better choices while enabling producers and distributors to capture wider and premium market shares.

[23] *Federation of Malaysian Consumer Association (FOMCA). 2008. Food crisis in Southeast Asia: the political-economic impact of the rise of commodity prices. Selangor.*
[24] *Tey, Y. S. (2010). Malaysia’s strategic food security approach. International Food Research Journal, 17(3), 501–507.*
[25] *Malaysia imports 30 pct of country’s rice requirements, Vietnam Plus, 27 November 2013*

					Increased capacity-building, skills transfer, and joint venture initiatives could also assist in the integration of small- to medium-scale Malaysian farmers or producers to sophisticated supply chains or niche markets in other participating TPP countries. It is anticipated that sanitary and phyto-sanitary requirements under the TPP will induce the production and importation of safer and higher quality food commodities.
4.	ISSUES				Fishing in Malaysian waters
	SUB ISSUES				Foreign vessels fishing in Malaysian waters
	IMPACT		NATURE OF IMPACT		IMPACT ON NATIONAL INTEREST
	YES	NO	(+)	(-)	
		✓	✓		Malaysian waters will not need to be open to foreign fishing vessels to fish (or attempt to fish), to fuel, supply or tranship any fish, or to conduct research. This will assist in preventing overfishing, reducing the bycatches of non-target species and promoting the recovery of the fish stock. (Annex I for Cross Border Trade in Services and Investment). Statistics by the Department of Fisheries shows that since the year 2000, there are no issuances of licenses to foreign vessels to fish in Malaysian waters. Enforcement of foreign fishing within Malaysia's Exclusive Economic Zone, however, is not extensive given the country's long coastline.

<table>
<tr><td rowspan="4">5.</td><td colspan="4">ISSUES</td><td>Bernas as the nation’s sole rice importing entity</td></tr>
<tr><td colspan="4">SUB ISSUES</td><td>Preserving Bernas' role in food security</td></tr>
<tr><td colspan="2">IMPACT</td><td colspan="2">NATURE OF IMPACT</td><td rowspan="2">IMPACT ON NATIONAL INTEREST</td></tr>
<tr><td>YES</td><td>NO</td><td>(+)</td><td>(-)</td></tr>
<tr><td></td><td></td><td>✓</td><td>✓</td><td></td><td>Under the TPP, Padiberas Nasional Berhad’s (Bernas) maintains its role as the sole entity to import rice in Malaysia until 10 January 2021. Its current operations are preserved under Annex II for Cross Border Trade in Services and Investment.

Note: Further analysis on rice is provided under the Market Access (Specific Goods) subpillar of this study.</td></tr>
<tr><td></td><td colspan="5">ENERGY SECURITY</td></tr>
<tr><td rowspan="4">6.</td><td colspan="4">ISSUES</td><td>Preserving autonomy in the O&G sector</td></tr>
<tr><td colspan="4">SUB ISSUES</td><td>Managing foreign participation in the O&G sector</td></tr>
<tr><td colspan="2">IMPACT</td><td colspan="2">NATURE OF IMPACT</td><td rowspan="2">IMPACT ON NATIONAL INTEREST</td></tr>
<tr><td>YES</td><td>NO</td><td>(+)</td><td>(-)</td></tr>
<tr><td></td><td>✓</td><td></td><td>✓</td><td></td><td>Malaysia will maintain control via the Petroleum Development Act 1974, which safeguards Malaysia's O&G resources, over how upstream activities will be conducted. Malaysia will also retain control over the extent of foreign participation, with the exception of the 12 upstream activities listed in Annex I for Cross Border Trade in Services and Investment:</td></tr>
</table>

					1. Seismic data acquisition; 2. Directional drilling services, gyro while drilling services, measurement while drilling services, and logging while drilling services; 3. Cementing related services; 4. Gas turbines and related maintenance and repair services; 5. Control valves services; 6. Oil country tubular goods; 7. Induction motor services; 8. Distributed Control Systems (DCS) services; 9. Transformer services; 10. Structural steel; 11. Linepipes; <u>and</u> 12. Process pipes. Annex II for Cross Border Trade in Services and Investment reinforces Petroliam Nasional Berhad's (Petronas) role as the exclusive owner of Malaysia's petroleum resources. Foreign entities that wish to participate in any O&G related activities are required to obtain licenses from the company, and are still subjected to additional requirements. Petronas decides on the form and conditions of contractual arrangements available for foreign participation, as well as on the selection of the contract parties.

<table>
<tr><td rowspan="4">7.</td><td colspan="4">ISSUES</td><td>Utility services for gas, water and electricity supply, and waste management</td></tr>
<tr><td colspan="4">SUB ISSUES</td><td>Managing supply to avoid disruption</td></tr>
<tr><td colspan="2">IMPACT</td><td colspan="2">NATURE OF IMPACT</td><td rowspan="2">IMPACT ON NATIONAL INTEREST</td></tr>
<tr><td>YES</td><td>NO</td><td>(+)</td><td>(-)</td></tr>
<tr><td></td><td></td><td>✓</td><td>✓</td><td></td><td>As stated in Annex I for Cross Border Trade in Services and Investment, only persons registered and established in Malaysia can supply services for gas, water and electricity, and the disposal of waste. Malaysia also retains exclusive rights in relation to the collection, treatment and disposal of hazardous waste, as stated in Annex II for Cross Border Trade in Services and Investment.</td></tr>
<tr><td rowspan="4">8.</td><td colspan="4">ISSUES</td><td>Ensuring sufficient sources of alternative energy</td></tr>
<tr><td colspan="4">SUB ISSUES</td><td>The application of atomic energy</td></tr>
<tr><td colspan="2">IMPACT</td><td colspan="2">NATURE OF IMPACT</td><td rowspan="2">IMPACT ON NATIONAL INTEREST</td></tr>
<tr><td>YES</td><td>NO</td><td>(+)</td><td>(-)</td></tr>
<tr><td></td><td></td><td>✓</td><td>✓</td><td></td><td>According to Annex II for Cross Border Trade in Services and Investment, Malaysia retains the right to use atomic energy for:
1. Electric power plants based on fossil fuel/materials;
2. Nuclear power generation including nuclear fuel cycle; and
3. Electric power generation.</td></tr>
</table>

					Furthermore, Malaysia's Atomic Energy Licensing Act 1984 will remain unchanged.
	TECHNOLOGY AND CYBER SECURITY				
9.	ISSUES				Balancing control and freedom of the cyber sphere
	SUB ISSUES				Commitments to ensure free flow of data and prohibition of imposing custom duties on digital products
	IMPACT		NATURE OF IMPACT		IMPACT ON NATIONAL INTEREST
	YES	NO	(+)	(-)	
		✓	✓		The digital revolution has transformed all areas of life - the way information is disseminated, businesses transacted, operations of the Government, and conduct of national defence. A country that is able to innovate on par with, or ahead of changing times, bolsters its own security by guaranteeing itself an edge over its competitors. Recognising this, Malaysia's plan is to transform into a knowledge-based society that produces and not merely consumes content. This policy, heavily technology-dependent and long promoted by the Government through countless ICT-related sub-policies, strategies and initiatives, must necessarily continue beyond 2020 when the country is expected to have achieved developed nation status.[26] This progression towards a digital and knowledge-based economy is not without its risks. A digitally dependent Malaysia now relies on an interdependent network of information technology infrastructures, which exposes the country to new vulnerabilities and threats. These new cyber threats are in many ways significantly different from the more traditional risks that governments have been used to addressing. Exploiting security flaws appears to be far easier, less expensive and more anonymous than ever before. The dynamic nature of cyber threats and our commitment to the use of ICT for socio-

[26] *See, for example, the National IT Agenda, National Broadband Plan, National Cyber Security Policy, Intellectual Property (Commercialisation) Policy, Science and Technology Policy, National Strategic ICT Roadmap, National Wireless Communications Technology Roadmap and Digital Malaysia. Under the Economic Transformation Programme, communications content and infrastructure is an Entry Point Project with partners such as CISCO, Google Malaysia, and AT&T.*

					economic development brings about the critical need to protect these critical infrastructures. There are no apparent or critical risks to the domestic technology sector if Malaysia accedes to the TPP. Much of this is due to the fact that the country's information and telecommunications sector has been autonomously liberalised in stages since the mid-1990s when the Multimedia Super Corridor (MSC) was established so that foreign integration in the local technology industry has been seamless. Parallel to this, the country developed a corpus of legal and regulatory frameworks, considered one of the most advanced in the region related to technology and data protection. In addition to numerous IT-related laws enacted in the mid-1990s to support the MSC, several others have been passed since to reflect technological developments for the present and future. The Electronic Commerce Act was passed in 2006 and the Personal Data Protection Act 2013 is the latest addition to the body of cyber laws. The TPP, however, entails commitments to ensure free flow of data by avoiding unnecessary barriers to its use and development, such as prohibition of imposing custom duties on digital products and not imposing any requirements related to localisation of computer servers in Malaysia, including cyber-security and confidentiality conditions. However, there will be no impact on Malaysia's ability to regulate and censor foreign content as deemed appropriate according to Malaysia's decency standards, which is preserved under Annex I for Cross Border Trade in Services and Investment. Moreover, Article 14.11 (Cross-Border Transfer of Information by Electronic Means) of the E-Commerce Chapter permits restrictions on the cross-border transfer of data for legitimate public policy purposes. In addition, the Personal Data Protection Act 2013 remains unchanged, ensuring consumer privacy is protected as stated under Article 14.8 Personal Information Protection of the E-Commerce Chapter. Also, cyber-security is enhanced when governments and SMEs are able to partake in capacity building initiatives, and cooperate jointly on cyber-security policies and solutions.
	SUB ISSUES				Scope of commitments and liabilities of internet service provider (ISP)
		✓	✓		Another area of commitments under the TPP is the scope of commitments and responsibilities of local Internet Service Providers, as discussed in Section J: Internet Service Providers of the IP Chapter. These commitments do not amount to internet policing and censorship, e.g. the provisions will not require internet service providers (ISPs) to terminate Internet accounts or adopt a "three strikes"-style graduated response regime. They are only

					required to cooperate - when appropriately notified by copyright owners - to remove infringing copyrighted digital content. Moreover, the contested content is restored once a valid counter-notice is received. Also, ISPs do not have to monitor uploads on their networks to receive safe-harbour protection. Measures including the take-down of pirated online content or penalties for infringements are not new. They are already provided for under Malaysia's Copyright (Amendment) Act 2010 and the Malaysia-Japan Economic Partnership Agreement (MJEPA). The TPP will not require Malaysia to introduce any major changes to ISP liability provisions relating to Internet copyright infringement. Safeguards for ISP are provided for under Article 18.82 Legal Remedies and Safe Harbours, limiting the scope of ISP liability and the extent of monetary remedies for inappropriate notification of infringement, whereby penalties for false notices or false counter-notices are levied to curb abuse of the notification process. Moreover, ISP's failure to satisfy safe-harbour requirements does not result in automatic liability, but still needs to be proven in court.
	SUB ISSUES				Autonomy in managing foreign participation in the telecommunications sector
		✓	✓		With regards to managing foreign participation in the telecommunications sector, Malaysia is committed to undertake obligations or disciplines to provide access and interconnection at any feasible point by the public telecommunications service providers. However, in order to operate in the territory of Malaysia, foreigners need to obtain licenses and adhere to domestic laws and regulations. The Minister of Telecommunications and Multimedia retains the exclusive rights to grant licences or otherwise to any company to operate in Malaysia as stipulated in Annex 1 for Cross-Border Trade in Services.

<table>
<tr><td colspan="6">HEALTH AND SAFETY SAFEGUARDS</td></tr>
<tr><td rowspan="4">10.</td><td colspan="4">ISSUES</td><td>The extent to which timely access to affordable and lifesaving medicine are affected by stronger IP commitments</td></tr>
<tr><td colspan="4">SUB ISSUES</td><td>Exclusion of emergency public health measures from IP commitments</td></tr>
<tr><td colspan="2">IMPACT</td><td colspan="2">NATURE OF IMPACT</td><td rowspan="2">IMPACT ON NATIONAL INTEREST</td></tr>
<tr><td>YES</td><td>NO</td><td>(+)</td><td>(-)</td></tr>
<tr><td></td><td></td><td>✓</td><td>✓</td><td></td><td>Ensuring that the public has unrestricted access to essential medicine at affordable prices has always been a cornerstone of Malaysian healthcare policy. Public healthcare is heavily subsidised and the use of generics and biosimilars are prioritised. Unknown by many, in a historic move in 2004, the Ministry of Health issued the world's first compulsory license, allowing a local company to import patented anti-HIV drugs at a heavily discounted price in response to a growing HIV-related public health crisis. Hence, the use of compulsory licensing, as provided for under WTO’s Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) which allows a government to temporarily override a patent during public health crisis, is also available under TPP.

At the same time, the Government also recognises the importance of developing a knowledge-based economy that will propel the nation towards its high income nation status goal by 2020. This commitment entails strengthening IP laws, in a manner that makes Malaysia more competitive in attracting high quality foreign direct investment (FDI), creating jobs in high-value and technologically advanced sectors in the process, such as the biotechnology and pharmaceutical industry.

Although a stronger IP regime can appear to be contradictory to Malaysia's public health policies, the Government has demonstrated its ability, both in the past and through its participation in the TPP, of achieving a fine balance between ensuring access to essential medicine and providing the appropriate incentives for the latest drugs to be produced or brought into the domestic market.</td></tr>
</table>

As far as accessibility to essential medicines is concerned, there are no limitations on the ability to use compulsory licensing and parallel importation on patented medicine at a much lower price, as stated in Article 18.6, 18.41 and 18.50.3 of the IP Chapter. The Chapter incorporates the Doha Declaration on the TRIPS Agreement, and confirms that Malaysia is not prevented from taking measures to protect public health, including responding to epidemics such as HIV/AIDS.

In addition, compulsory licensing is not likely to result in DSM for three reasons:

1. Developing countries, including Malaysia, are not considered to contribute significantly to innovator's profits compared to their profits in key markets such as the US and EU;
2. Ethical and moral reasons; viewed as predatory and opportunistic if DSM is undertaken against countries with public health emergencies; and
3. There have only been 2 IP-related disputes arbitrated at the WTO, involving both the United States and Brazil regarding objections to local manufacturing provisions in each country's patent law. However, both cases were settled informally. Furthermore, the United States has not resorted to using WTO disputes settlement to resolve its concern over India's compulsory licensing on patent related to cancer drugs in 2013, Thailand's and Malaysia's compulsory licensing on patented HIV drugs in 2005 and 2003 respectively, giving weight to the argument that governments are able to use compulsory licensing on essential patented drugs when necessary without backlash from the innovators or governments of their respective host countries.

Moreover, US FTA signatory countries that went against IP commitments — namely Peru, Mexico and Canada — were only subjected to bilateral consultation processes via the USTR Special 301 Report. In particular, not only did Chile remain in the report's watch list after signing the US-Chile FTA, but its commitment further deteriorated and has since been placed under the priority watch list, infringing on key IP provisions in the US-Chile FTA such as patent linkages, DE, non-protection of encrypted program carrying satellite signals and widespread piracy issues. Also, Mexico and Canada were consistently placed under the watch list primarily for piracy and border enforcement related issues.

The impact on prices of medicines is discussed in greater detail under the Cost of Living sub-pillar.

	SUB ISSUES				Data exclusivity (DE)[27] for patented medicines
		✓	✓		Before a medicine is produced, significant investment is required to demonstrate that the drug meets regulatory requirements in terms of its efficacy and safety for its intended use. The clinical trials data obtained from such extensive testing is then submitted for marketing approval purposes. Hence DE or regulatory data protection, protects an innovator's investment as this provision prevents generic manufacturers from unfairly "free-riding" on an innovator’s clinical trials data in obtaining marketing approval, especially when approval is granted close to patent expiry. In other words, health authorities are not allowed to approve generics based on innovator's clinical trials data. **Differences between DE and patent protection.** Patent protection protects innovator’s original research while DE protects innovator’s investments in obtaining safety efficiency information of the related medicine. Also, DE runs concurrently with patent protection period. It does not extend the patent protection term, but merely protects innovator's investment in obtaining marketing approval even after expiry of the related patent. In the absence of DE, a long delay in obtaining marketing approval, for example, close to patent expiry, may discourage the pharmaceutical company from actually marketing the drug. This is because generic versions can easily enter the market and outcompete the original patented medicine upon patent expiry. This is especially true for the development of biologic medicines that require a much longer period of testing and higher R&D expenditure compared to normal medicines. A stipulated DE period at least guarantees the innovators' ability to recoup its costs and provides predictability of its earnings, the incentives of which are necessary for them to undertake such large research and development costs in the first place. Nevertheless**,** there is wide consensus that DE, in general, hinders accessibility. Hence, prices of affordable medicine can remain higher for a longer period.[28] Also, it can be used to encourage the development and

[27] *DE protects innovator's investment by preventing health authorities and generic manufacturers from relying on innovators’ clinical trials data in obtaining marketing approval*

					testing of unpatentable pharmaceuticals.[29] As such, marketing exclusivity is granted for unpatented medicines even though they do not demonstrate any newness or improvement in efficacy. For example, a commonly used tactic is where a medicine is now made available for over-the-counter (OTC) use when it was previously limited to doctor's prescription. As such, DE is granted for a "new use" for the same drug. Therefore generic companies are only allowed to continue selling the prescriptive version and barred from marketing the OTC variant. DE also encourages the slow release of improved variants of existing medicine i.e. OTC vs prescribed, so that the innovator's monopoly is prolonged (second or third indications) for the same medicine. The need to independently re-conduct clinical trials constitutes a direct welfare loss since an identical test verifying the efficacy and safety of the medicines has already been undertaken by the innovators. Moreover, requiring relatively inexperienced and less competing generic manufacturers in developing countries to undertake similar clinical trials will needlessly impose additional risks on the test subjects involved, both humans and animals. **DE under WTO TRIPS agreement.** WTO Member countries are required to protect undisclosed clinical trials data from unfair commercial use without specifying how protection should occur.[30] Unfair commercial use includes (1) creating confusion with activities of goods of a competitor, (2) falsely discrediting a competitor, or (3) misleading the public as to the nature and suitability of the goods as described under the The Paris Convention for the Protection of Industrial Property, 1883. In particular, TRIPS only applies to "unfair trade practices" and member countries must only prevent disclosure.[31]

[28] *Public Citizen, 2012. Bantah TPP, 2013, International AIDs Society, 2013.*
[29] *Robert Galantucci 2007. Data Protection in a U.S.-Malaysia Free Trade Agreement: New Barriers to Market Access for Generic Drug Manufacturers.*
[30] *https://www.citizen.org/documents/DataExclusivityMay04.pdf*
[31] *Robert Galantucci 2007. Data Protection in a U.S.-Malaysia Free Trade Agreement: New Barriers to Market Access for Generic Drug Manufacturers.*

					Malaysia's Current Directive on DE. In Malaysia, DE was already introduced since February 2011. DE is available for new pharmaceutical products containing a new chemical entity and also for second uses for a period of five and three years respectively. Biologics, however, are not covered under this directive. Any pharmaceutical companies that file for DE and marketing approval must complete their applications with Biro Pengawalan Farmaseutikal Kebangsaan (BPFK) within 18 months from the date the product is first registered or granted marketing authorisation in its original country, otherwise protection of data is forfeited. This safeguard effectively limits the time lag of marketing approval between Malaysia and other countries to a maximum of 18 months. Moreover, protection of exclusivity starts from the date of DE filling in the country of origin, rather than from the date of obtaining approval in Malaysia (concurrent period). These two conditions prevent extended market exclusivity of patented medicine in Malaysia by ensuring that DE expires in a timely manner, allowing generics to be introduced in Malaysia as soon as they available elsewhere, in particular, the United States or other advanced countries. However, there are two notable differences between the TPP and Malaysia's data protection provisions summarised in **Table 1** in the Appendix. Firstly, data protection is introduced for biologic medicine when there is currently none available in Malaysia. The period of protection is at least a minimum of eight or five years and other additional measures that delivers a comparable outcome. Secondly, the starting date of the exclusivity period is calculated from the date marketing approval and DE is granted in Malaysia, and not from the first marketing approval and DE granted in the country of origin. The Chapter entails only one minor change to the current DE provisions for small molecule medicines that can potentially delay entry of generics, which is the change in the concurrency period.

					The change in the starting date of data protection may be applied retrospectively, but applicable to only to as few as 33[32] drugs that are newly registered and five for second indications since 2011. However, it is worth noting that the relevant patent applications were neither completed nor filed for most of these DE protected medicine, partly due to incomplete applications or insufficient follow up from the innovator. The net impact is negligible as these potential impacts are substantially mitigated because of the 18 months' access window which is preserved, as well as timely expiry of DE that does not usually exceed the patent protection period i.e. DE runs concurrently with patent protection. As such, for innovator medicine that was introduced early in the patent term, accessibility to the generic equivalent is not hindered once patent expires. Pharmaceutical companies will no longer be able to obtain data protection for a patented medicine in Malaysia if they do not file for both marketing approval and DE with BPFK within 18 months from the date of first marketing approval and DE in any other countries. This safeguard effectively limits the time lag of marketing approval between Malaysia and other countries to a maximum of 18 months.
	SUB ISSUES				DE is now made available for biologic drugs
	✓			✓	**Effectiveness of DE for small molecule products and large molecule/biological medicine.** Patent is sufficient for protecting small chemical products since generics are required to have the same active ingredients used in the original medicine. Hence, DE does not provide additional protection to small chemical medicine innovators. Biosimilars – pseudo-generics, however, are not required to be identical to their biologic medicine counterpart. As such, patent protection is of a narrower scope and there is greater uncertainty surrounding the effectiveness of patent, which may not encompass highly similar biologic drugs. In other words, patent protection for

[32] *http://portal.bpfk.gov.my/images/reg-info/DataEx/DE-Table-Update_26-08-2015.pdf*

					biologics are weaker compared to chemical drugs since most biologic medicines are considered to be naturally occurring and are derived from living cells. The practice of patenting biologics can even be considered ethically questionable, and may not be granted on the grounds of protecting morality under Article 18.37 of the IP Chapter. This creates a ‘patent protection gap’ that, without extended period of DE – would create a situation in which it is possible to rely on an innovator’s clinical data for marketing approval while circumventing the related innovator's patent, if any at all. Hence, DE is the only effective mechanism protecting bio-innovator's investments. The only clear negative impact from the IP Chapter on public health will be that DE is now made available for biologic medicine. Firstly, the change in the starting date of DE also applies, but any potential delay is limited to a maximum of an additional 1.5 years due to the 18 months access window for the application of DE safeguard, which also applies to biologics. Secondly, patients’ timely access to the latest biosimilars may be delayed due to five to eight years of data protection for biologic drugs. In this case, as shown in **Figure 2** in the Appendix, DE is an issue because regulatory approval for the sale of biologics are usually granted late into the patent protection term[33], hence extending the exclusivity period of the biologic medicine - a pseudo patent extension. This longevity is slightly pronounced for biological medicine because they are granted a minimum exclusivity period of eight years or five years with additional measures resulting in comparable outcomes. However, the impact on affordability is minimal since biosimilars are not significantly cheaper compared to their original counterparts - only between 15 per cent to 30 per cent cheaper in the EU, while generic drugs are at least 80 per cent cheaper or more.[34] This is because biosimilar manufacturers are still required to undertake clinical trials to demonstrate safety and efficacy of their biosimilars since exact replicates of the original is scientifically impossible.[35] Moreover, it

[33] *Joanna T. Brougher,2010. The Biosimilars Act: Promoting or Discouraging the Development of Generic Biologics?, Biotechnology Healthcare. 2010 Winter; 7(4): 22–23*
[34] *Blackstone and Fuhr, 2012. Innovation and Competition: Will Biosimilars Succeed? Biotechnology Healthcare, Spring; 9(1): 24-27*
[35] *The Trans-Pacific Partnership and Innovation in the Bioeconomy: The Need for 12 Years of Data Protection for Biologics, Biotechnology Industry Organization, 2013*

					takes longer and costs more to develop biosimilars, requiring up to eight to 10 years with a cost of $100m to $200m while generics only require three to five years to develop with a cost of $1m to $5m.[36] Most importantly, biosimilars are only highly similar to the reference product; compared to generics, they are not bioequivalent and this lack of guaranteed efficacy may not appear to be desirable to consumers. A transition period of five years is provided for under Article 18.83: Final Provisions of the IP chapter in complying with data protection exclusivity for biologics. *Note: Further analysis on patients' preferences for original medicine is further discussed in in the Cost of Living subpillar.*
	SUB ISSUES				Patent term extension and adjustment provisions that prolong expiry of a patent in the event of unnecessary delays in the patent approval and product marketing approval process
		✓	✓		The protection period of patent is <u>extended</u> in the event of unnecessary delay as a result of the patent approval process. The protection period of patent is also <u>adjusted</u> for delays due to marketing approval process. In other words, the total effective patent term = 20 years + extension period + adjustment period. Currently, Malaysia does not practice patent term extension to compensate for delays in the regulatory approval process. This includes delays in patent review and approval by the Intellectual Property Corporation of Malaysia (MyIPO) and delays in granting marketing approval by the BPFK. Under the TPP, however, extensions and adjustments are not granted automatically but are subject to a start/stop system - countdown 'starts' during official regulatory review but 'stops' when delays are caused by applicants. Patent extension is only granted if MyIPO took more than five years to review a particular patent application. As for patent extension from unreasonable curtailment, the duration of unreasonable delay is to be determined by BPFK, who may adopt procedures that can expedite the marketing approval process, but the same principle also

[36] *Ibid.*

					applies. This is highlighted in **Table 2** in the Appendix. A coherent and transparent patent extension and adjustment system can be seen positively for Malaysia's public health since excessive patent expiry is prevented in Malaysia relative to other countries, thus promoting timely entry of generics. Currently, patent for some oncology small molecule drugs was found to have an additional nine years of protection relative to Western countries.[37] However, patent term extension and adjustment only serves to extend the innovator's market share and monopoly profits. Since Malaysia is a net importer of IP with more than 90 per cent of patents owned by foreign-owned companies, patent term extension and adjustment will not enhance consumer welfare. Nevertheless, there is no impact on consumers' timely access to the latest generics as MyIPO has taken steps to improve the patent registration process and BPFK has reported that they are already efficient at processing medicine applications. Moreover, any patent term extension only applies to patents filed after TPP. A transition period of 4.5 years is provided for under Article 18.83 Final Provisions of the IP chapter.
	SUB ISSUES				Patent linkage will require the Government to put in place a system that enables a pharmaceutical patent holder to notify BPFK that a generic version of their product has been submitted
		✓	✓		Currently, there is no system in place that links the marketing approval process for new medicines to the statuses of the relevant patent. Thus, patent linkage will require the Government to put in place a system that enables a pharmaceutical patent holder to notify BPFK that a generic version of their product has been submitted.

[37] *The Citizen, 2014. Article response by Leonard Ariff Abdul Shatar*

					The United States Office of Intellectual Property Policy and Enforcement (USPTO) describes three benefits of the patent linkage system: 1. Greater transparency to allow generic manufacturers to determine expiry of patents as well as the related medicine of protected by the patent; 2. Reducing wasteful and unnecessary infringement litigation by allowing innovators to pre-emptively remove potentially infringing medicine during its marketing approval process; and 3. Improving productivity and efficiency in research and development (R&D) activities due to improved transparency and predictability of the product registration and marketing approval process. There is no impact on consumers' timely access to latest generics as the commitment only entails a ‘soft’ linkage. Moreover, patent linkage commitment does not apply to biologic medicine as most biologics are naturally occurring and therefore are not patentable. This is considered ‘soft’ linkage because BPFK is only required to put in place a notification system to allow patent holders to notify BPFK in the event that a potentially patent infringing generic medicine has been submitted. This is highlighted in **Table 3** in the Appendix. However, BPFK is allowed to follow through with the application and will not be required to undertake any enforcement procedures, including vetting and barring the registration as practiced by US Food and Drug Administration (FDA), which is ‘hard’ linkage. Moreover, any disputes are to be conducted in Malaysia's judicial courts, rather than mediated by BPFK. A transition period of 4.5 years is provided for under Article 18.83 Final Provisions of the IP chapter. On the other hand, this soft linkage may be beneficial as it ultimately promotes greater transparency by improving the patent registration, approval and related database, allowing local generic manufacturers and other interested parties to determine statuses of patent as well as other related interlinked patents in a timely and efficient manner, thus facilitating the entry of latest generics into the domestic market.

	SUB ISSUES				Annex 26-A on Transparency and Procedural Fairness for Pharmaceutical Products and Medical Devices related to procedural fairness in procurement of pharmaceutical products
		✓	✓		Since Malaysia does not operate a comprehensive national healthcare programme encompassing both the public and private sector, it is not subjected to transparency and procedural fairness requirements for listing new pharmaceutical products or devices. MOH retains autonomy in deciding which medicines are included in the National Formulary and The National Essential Medicine List.
	SUB ISSUES				Border enforcement and criminal procedures in relation to counterfeit medicine
	✓		✓		Article 18.76 of the IP Chapter, which strengthens border enforcement and criminal proceedings measures, will curtail the circulation of counterfeit drugs in the domestic market, which may endanger public health and safety. A transition period of four years is provided for under Article 18.83 Final Provisions of the IP Chapter.
11.	ISSUES				Adopt and maintain present Halal standards
	SUB ISSUES				The maintenance and application of Halal standards under Sanitary and Phytosanitary requirements Article 7.3 (Scope)
	IMPACT		NATURE OF IMPACT		IMPACT ON NATIONAL INTEREST
	YES	NO	(+)	(-)	
		✓	✓		The Sanitary and Phytosanitary Measures chapter Article 7.3 does not prevent Malaysia from adopting or maintaining halal requirements for food and food products in accordance with Islamic law.

12.	ISSUES				GMO Food Products
	SUB ISSUES				Impact on Malaysia's ability to label food products sourced from Genetically Modified Organism (GMO)
	IMPACT		NATURE OF IMPACT		IMPACT ON NATIONAL INTEREST
	YES	NO	(+)	(-)	
		✓	✓		Under the TPP, only standards, technical regulations, or conformity assessment procedures relating to the production, processing, or labelling of products organic products are covered under Annex 8-G of the Technical Barrier to Trade chapter. Malaysia is still allowed to administer the use of food labelling on, for example, GMO foods. This is stated in Article 7.12 of the Sanitary and Phytosanitary Measures Chapter, whereby Malaysia can still impose certification requirements, consistent with WTO standards, for human, animal, plant life or health purposes.
PUBLIC ORDER AND STABILITY					
13.	ISSUES				Adopting the relevant principles of Convention 87 Freedom of Association and Protection of the Right to Organise (Article 19.3 Labour Rights)
	SUB ISSUES				Removing restrictions on union formation and the right to strike
	IMPACT		NATURE OF IMPACT		IMPACT ON NATIONAL INTEREST
	YES	NO	(+)	(-)	
	✓			✓	TPP Parties are required to adopt and maintain in their laws and practices the fundamental labour rights as stated in the International Labour Organisation (ILO) Declaration on Fundamental Principles and Rights at Work and its Follow-Up (1998). These rights include:

					1. Freedom of association and the right to collective bargaining; 2. The elimination of forced labour; 3. The abolition of forced labour; and 4. The elimination of employment discrimination. A sudden and wholesale imposition of ILO best practices necessitates a revision of a number of domestic labour-related laws. These amendments will be fully enforceable and supported by trade sanctions. Examples of Malaysia’s commitments in areas relating to freedom of association include: 1. Trade Union Act 1959 a) To allow the formation of trade unions across establishment, trade, occupation or industry; b) To remove broad restrictions relating to the registration and cancellation of union registrations; c) To remove restrictions relating to the election of representatives and leadership of unions; d) To provide more freedom on provisions relating to strikes; and e) To provide more freedom for affiliation with international bodies. 2. Industrial Relations Act 1967 a) To remove broad restrictions on the scope of collective bargaining and strikes; and b) To streamline the list of Essential Services alongside international standards. The full impact of these commitments on social and industrial harmony remains unforeseen. The amendments in the Trade Union Act 1959, for example, may lead to an increase in the magnitude of strikes. This is due to a broader scope of union membership via the inclusion of dismissed, suspended or retired workers, and the removal of restrictions on the subjects in which workers can collectively bargain with their employers.

					The extension of labour rights to temporary foreign workers (who do not owe their allegiance to the country) may also be volatile, given their large presence in Malaysia's labour force. 2.07 million workers were holding temporary employment visit passes as of 31 December 2014, and 1.5 million Bangladeshi workers will be arriving onto Malaysian shores in stages over the next three years to meet the demands of employers in the plantation, construction, manufacturing and service sectors. These numbers are significant, as the Trade Union Act 1959 will have to be amended to allow non-citizens to run for election as the executive of a union if they have been legally working in Malaysia for a minimum of three years. Such legal and institutional reforms may have a negative impact on public order and stability in Malaysia. Indeed, there is no denying that freedom of association will promote and protect workers' rights, and generally improve working conditions in Malaysia overall. The ability of workers and employers to form, join and leave organisations of their own choosing is also a reflection of a free and open society, and of a modern and democratic legal system. However, strikes and unions have also been used negatively, whether as negotiating tools to pressure employers to succumb to employee demands (like the remuneration of a particular group of workers), or as platforms to criticise the Government's economic and social policies. The impact of allowing the formation of trade unions is also expected to be viewed negatively by employers due to cost issues, as over-empowering workers may increase wages. This could subsequently compel companies (especially small and medium enterprises - SMEs) to adopt costly technology instead of manpower as the basis of their operations. The primary concern is that it is unclear how unions will react with more power and freedom under the TPP, given Malaysia's current restrictions on trade union membership and the right to strike. In total, only 6.5 per cent of Malaysia's labour force are trade union members as of September 2014.[38] The number of trade unions

[38] *Malaysia's labour force (employed and unemployed) stood at 14,103,600 as of September 2014. 'Labour Market in Malaysia, September 2015,' Department of Statistics Malaysia, 25 November 2015*

					in Malaysia has increased from 578 in 2001 to 727 as of September 2014, while trade union memberships have increased from 764,881 in 2001 to 918,673 as of September 2014.[39] The Government is aware of the potentially disruptive threats of labour actions and is studying measures to mitigate them. Malaysia has also secured some policy space in the process of conforming to labour standards in the TPP. This is evident on the issue of Essential Services, which is a list that contains a class of occupations which have been legislated to have special restrictions on labour actions. The Industrial Relations Act 1967 lists 15 Essential Services that range from banking, postal and airport services, to those that are provided by the Government (such as customs and immigration), to those related to Malaysia's defence and security. Under the TPP, however, a Party's list of Essential Services must be consistent with ILO standards. According to the ILO, the following may be considered to be essential services: 1. The hospital sector; 2. Electricity services; 3. Water supply services; 4. Telephone services; 5. The police and armed forces; 6. The fire-fighting services; 7. Public or private prison services; 8. The provision of food to pupils of school age and the cleaning of schools; <u>and</u> 9. Air traffic control.

[39] *'Statistik 2014 Kesatuan Sekerja (berakhir September 2014)', Malaysian Trades Union Congress, 20 November 2014*

Although Malaysia's Essential Services will be limited to occupations in nine sectors, the Government is allowed to formulate a Minimum Services Requirement list to enable the services removed to operate at a minimum level in the event of a strike. For example, there will not be a total shutdown of banks if employees in banking services are on strike.

Other mitigating measures that Malaysia has secured include:

1. Maintaining some control over the formation of unions e.g. the Government retains the power to deny the registration of unions if a name could potentially inflame sensitivities such as race, religion or politics;
2. Providing for a quorum requirement of in-house strikes to two-thirds of members with a simple majority consent of members (i.e. 50 per cent plus one); and
3. Limiting the activities that dismissed, suspended or retired workers can participate in e.g. they are not allowed to go on strike.

All strikes must also be borne out of a trade or labour dispute, which prevents sympathy strikes and wildcat strikes. The former is a strike to support another cause or body of workers, whereas the latter is an authorised strike that is not supported by a union's leadership.

In the long run, the legal and institutional reforms that Malaysia commits itself to, in areas relating to freedom of association, will result in a more mature and productive workforce that is in line with the international labour standards of the ILO. There will, however, be significant short-term adjustment costs; therefore, the requirements of TPP labour provisions necessitate special attention by the Government if they are not to have prolonged negative impacts on public order and stability.

<table>
<tr><td rowspan="4">14.</td><td colspan="4">ISSUES</td><td>Adopting the relevant principles of Convention 105 Forced Labour (Article 19.3 Labour Rights and Article 19.6 Forced or Compulsory Labour)</td></tr>
<tr><td colspan="4">SUB ISSUES</td><td>The elimination of forced labour and human trafficking</td></tr>
<tr><td colspan="2">IMPACT</td><td colspan="2">NATURE OF IMPACT</td><td rowspan="2">IMPACT ON NATIONAL INTEREST</td></tr>
<tr><td>YES</td><td>NO</td><td>(+)</td><td>(-)</td></tr>
<tr><td></td><td>✓</td><td></td><td>✓</td><td></td><td>Parties are required to eliminate all forms of forced labour, including child labour, under the TPP. This requirement is also extended to trade relations with non-TPP partners, as Parties are obliged to discourage “the importation of goods from other sources produced in whole or in part by forced or compulsory labour, including forced or compulsory child labour.[40]” In order to conform to these standards, Malaysia has made commitments in areas relating to forced labour. These include:

1. <u>Passport Act 1966</u> (implementing regulations)
a) To reinforce that the retaining of workers’ passports by employers is illegal.

2. <u>Workers’ Minimum Standard of Housing and Amenities Act 1990</u>
a) To ensure that the Act covers all sectors and not only plantations.

3. <u>Private Employment Agencies Act 1981</u>
a) To ensure that all entities that recruit a foreign worker (both direct employers and recruitment agencies) are covered by the Act, including provisions on the limitations of recruitment fees charged to foreign workers.</td></tr>
</table>

[40] *Article 19.6 Forced or Compulsory Labour*

4. Children and Young Persons (Employment) Act 1966

   a) To ascertain occupations that are considered hazardous for children and young persons under 18 years of age; and

   b) To ensure that a minimum age of 13 years is established for admission to light work.[41]

These commitments may be viewed negatively by employers and recruitment agencies due to cost issues. Both parties will have to provide employees with more under the TPP, in relation to foreign worker housing and freedom of movement. Minimum wage aside, foreign workers must have access to acceptable housing conditions with secure facilities to provide for the safekeeping of passports, as well as other valuables. Protections against the withholding of passports mean that employers will have less control over preventing employees from absconding. The Government levies charged for the employment of foreign workers are now the obligation of employers, rather than foreign workers.

However, these commitments will have a positive impact on working conditions in Malaysia by addressing unacceptable labour practices. More importantly, these commitments will reduce the dependency of foreign workers on employers and recruitment agencies, which will subsequently reduce the conditions available for forced labour to take place.

Labour standards in the TPP also address the issue of human trafficking. There have been concerns with respect to Malaysia’s Tier 3 ranking in the US Department of State’s 2014 Trafficking in Persons Report, as reported in the international media. Tier 3 (the lowest tier) is given to governments who do not fully comply with minimum standards for the elimination of trafficking, or are not making significant efforts to do so. Although human trafficking is not directly linked to labour issues in Malaysia, the US Congress associates the issue of trade with workers’ rights. Malaysia’s ranking and its membership of the TPP were widely debated in Congress in the lead up on the vote to grant President Obama trade promotion authority (TPA) in June 2015.

[41] *The implementing regulations of Sabah Labour Ordinance (Cap. 67) and Sarawak Labour Ordinance (Cap. 76) will also have to be amended to reflect this commitment.*

					Despite granting TPA, Congress prohibited 'fast track' approval of a deal that included Tier 3 countries. Malaysia's subsequent upgrade to a Tier 2 in the 2015 report – which was released while the TPP was still under negotiation – raised issues of credibility, as Malaysia was accused of not improving its efforts to combat human trafficking since 2014. The TPP will address these concerns by helping to reinforce regulations in Malaysia's Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007. The Malaysia-United States Labour Consistency Plan highlights Malaysia's commitment to strengthen forced labour victim protection services. Malaysia shall: 1. "Allow victims of trafficking to move freely and from shelters; 2. Provide victims of trafficking access to legal counsel of their choice; 3. Allow victims of trafficking to work and find new employment under clearly established procedures; 4. Enable non-governmental organisations to own and operate shelters for trafficking victims; and 5. Waive any fees associated with the required pass provided through the Labour Department for foreign workers who are involved in an investigation of violations of labour law… to remain in Malaysia and seek alternative employment."[42] In the area of forced labour, TPP requirements will have a positive impact by addressing unacceptable labour practices in Malaysia and raising the country's image overseas.

[42] *'Forced Labour,' Malaysia-United States Labour Consistency Plan, November 2015, p. 7.*

15.	ISSUES				Defence capabilities
	SUB ISSUES				Domestic arms and explosives
	IMPACT		NATURE OF IMPACT		IMPACT ON NATIONAL INTEREST
	YES	NO	(+)	(-)	
		✓	✓		As stated in Annex II for Cross Border Trade in Services and Investment, Malaysia reserves the right to maintain or adopt any measures affecting the arms and explosives sector.

16.	ISSUES				Gambling and betting
	SUB ISSUES				Provision of gambling and betting-related equipment
	IMPACT		NATURE OF IMPACT		IMPACT ON NATIONAL INTEREST
	YES	NO	(+)	(-)	
		✓	✓		As stated in Annex II for Cross Border Trade in Services and Investment, Malaysia reserves the right to maintain or adopt any measures related to the provision of gaming and betting-related equipment.

PILLAR II: SOCIAL

This section outlines the social aspect of Malaysia's national interest and considers how the TPP provisions affect its constituent components. All three pillars are critical in ensuring Malaysia's national interest, there being no way of objectively according one pillar a higher priority than others. However, the social pillar has the added dimension of being 'about the people' and is, therefore, central to the TPP debate. A large part of the concerns expressed by stakeholders revolve around the repercussions of the TPP provisions on the rakyat, especially the more vulnerable segments. Most, if not all, the TPP provisions have either a direct or indirect impact on the rakyat. This section identifies seven components – (1) Bumiputera participation and welfare; (2) education/human resource development; (3) good governance; (4) social harmony; (5) cost of living; (6) labour standards; and (7) environment.

BUMIPUTERA PARTICIPATION AND WELFARE

17.	ISSUES				The right of the Government to set affirmative measures for Bumiputera in relation to Government procurement
	SUB ISSUES				Specific measures for Bumiputera goods and services suppliers
	IMPACT		NATURE OF IMPACT		IMPACT ON NATIONAL INTEREST
	YES	NO	(+)	(-)	
	✓			✓	The GP chapter under the TPP represents the Government's first real attempt at adopting high-quality public procurement disciplines in history. It goes without saying that the fundamental premise and practices of active Government support for Bumiputera stand to be affected by the TPP, as with any substantive liberalisation initiative, even those undertaken independently. Despite securing a high initial threshold, measures in relation to the goods and services procurement will alter the status quo of Bumiputera participation in the present system. A small segment of Bumiputera suppliers of

					high procurement value will immediately have to face an equal chance of winning bids with their competitors. On the other hand, preference for Bumiputera suppliers of low procurement value, which represent the bulk recipient of contracts and value, will remain unaffected post EIF. As thresholds for goods and services procurement are reduced over time, so do preferences for Bumiputera. The threshold declines at a much steeper rate for goods procurement of 8 years rather than for services procurement of 10 years. It is important to note, however, that the margin of preference for Bumiputera contractors will increase as a result of a decrease in thresholds for both goods and services over time. Apart from the agreed threshold and the margin of preference, there is no other safety net to support Bumiputera suppliers as a result of the realignment of the new GP policy. It is possible to anticipate that rumbles of discontent of the affected group may pose challenges to the Government in getting support to sign, and subsequently, ratify the TPP. The Government will have to think about how to manage any fallout as a result of high-quality procurement practices. However, to be fair, such stiff competition should drive Bumiputera suppliers to be more merit-based, efficient, resilient and adaptive towards value-added activities. Those who are able to compete in such an environment are most likely Bumiputera manufacturers. *Note: This issue correlates with Good Governance (no. 24) and Competition sub-pillars (no. 84).*
	SUB ISSUES				Specific measures for Bumiputera contractors in GP
	✓			✓	The high initial threshold value of Special Drawing Rights (SDR) 63 million for construction procurement projects cannot shield Bumiputera contractors from foreign competition. Based on official statistics from the Construction Industry Development Board (CIDB), only G7 (large construction companies with financial limit exceeding RM10 million) companies will be affected post EIF as per **Table 4**. This means that G7 companies will be exposed to greater competition in an industry that is already crowded by local contractors in high value

					GP projects. Such access is not going to be viewed favourably by G7 companies as they represent the largest recipients of Government construction contracts in value terms. Construction companies of sizes G1 to G6, of which account for the largest number of Government contractors, remain unaffected come EIF. However, there are carve-outs for construction procurement projects above the threshold whereby 30 per cent of the total contract value can be allocated to Bumiputera contractors. In addition, any public-private partnership (PPP) including build-operate-transfer and public work concessions are not subjected to the GP obligations. The GP chapter does not limit Bumiputera participation in construction services contracts above the threshold value. As G7 companies are already competing in a liberalised market, the further participation of Bumiputera contractors for construction projects above the threshold may result in a total Bumiputera participation of more than the 30 per cent allocated. *Note: This issue correlates with Good Governance (no. 24) and Competition sub-pillars (no. 84).*
	SUB ISSUES				Activities of SOEs on Bumiputera-related policy and procurement
	✓			✓	The TPP does not prohibit SOEs from carrying out social obligations and offering preferential treatment to Bumiputera suppliers. However, considering the fact that Bumiputera suppliers supply goods and services to SOEs in a large scale, any restrictions to the current practice will be contested. Restrictions on such purchases will only apply to SOEs with an annual turnover of SDR 500 million for the first five years (and after which, SDR200 million) and they are subject to a maximum of 40 per cent of the total value of an SOE’s annual budget. The carve-out has to be shared among Bumiputera enterprises, enterprises based in Sabah and Sarawak and small and medium enterprises (SMEs).

					Note: This issue correlates with Competition sub-pillars (no. 84).
	SUB ISSUES				Procurement in the event of an economic crisis
		✓	✓		The construction industry plays a vital role in steering a country out of an economic crisis where preferential treatment has to be applied to achieve greater impact. Under the TPP, the Government is allowed to do so within 25 years of EIF. Such policy space will benefit Bumiputera construction companies and SOEs greatly.
	SUB ISSUES				GP measures to address rural development and poverty eradication
		✓	✓		The Government has the policy space to award procurement contracts to local (including Bumiputera) contractors in relation to rural development programmes in rural areas with less than 10,000 residents and poverty eradication programmes for households earning below Malaysia's Poverty Line Income. This will greatly assist residents of dispersed areas in Sabah and Sarawak, but much less so in Peninsular Malaysia.
18.	ISSUES				Policy space involving the special position of the Malays and natives of Sabah and Sarawak
	SUB ISSUES				Land and real estate
	IMPACT		NATURE OF IMPACT		IMPACT ON NATIONAL INTEREST
	YES	NO	(+)	(-)	
		✓	✓		There is no obligation under the TPP that will limit the state authority to liberalise any acquisition or dealings of land by foreign individuals and enterprises owned by foreign nationals. The powers and functions of state governments in granting approvals are preserved.

	SUB ISSUES				O&G
	✓		✓		Petronas, as the regulator of the O&G industry in Malaysia, retains its role as the exclusive owner of the petroleum resources and may continue to award contracts to Bumiputera companies subject to a maximum of 40 per cent of the total value of its annual budget. In addition, Petronas has carved out twelve of its upstream activities involving Bumiputera in order to continue providing preferences to the community.
	SUB ISSUES				Devolvement, divestment and privatisation of Government-owned entities and assets
	✓		✓		The Government may continue to devolve, divest and privatise *Menteri Kewangan Diperbadankan (MKD)* companies as practiced today.
	SUB ISSUES				Direct assistance to Bumiputera for the purpose of supporting its participation in the Malaysian economy
	✓		✓		There are concerns about the Government's restricted policy space to support the participation of Bumiputera in the local economy, particularly in the private sector. The TPP will not limit the Government to continue creating new and additional licenses or permits (e.g.: approved permits for automobiles and distributive trade) as long as they do not affect existing and future foreign participation in the local economy.
	SUB ISSUES				The Government's role in regulating national and state unit trusts to support Bumiputera participation in equity holding
	✓		✓		The TPP does not restrict the Government's role in continuing to maintain any measures involving national and state unit trusts (e.g. Amanah Saham Bumiputera, Amanah Saham Johor).

	SUB ISSUES				Import restriction on rice and paddy
	✓			✓	The function of Bernas and its future entities involving the importation of rice and paddy will not be affected.
19.	ISSUES				Policy space involving culture, customs and religion of the Bumiputera community
	SUB ISSUES				Gaming, betting and gambling activities and equipment
	IMPACT		NATURE OF IMPACT		IMPACT ON NATIONAL INTEREST
	YES	NO	(+)	(-)	
	✓		✓		There is no impact on the issuance of licenses involving gaming, betting and gambling activities as the Government retains its right to regulate the industry.
	SUB ISSUES				Communication and media content (including printed materials)
	✓		✓		There were concerns raised by religious groups on the free flow of media content involving materials that are deemed sensitive and against local customs and Islam as a result of Malaysia being a member of the TPP. The powers of the Minister of Communication remain intact and he/she may only permit licenses if the content is deemed to be aligned with the public interests. The Government maintains its right to review the importation and distribution of books, magazines, periodicals or newspapers, works of art and films, programming licensed for broadcast on television, cable and satellite stations. In addition, any performance by foreign artists must comply with the Central Agency for Application for Filming and Performance by Foreign Artistes Guidelines.

	SUB ISSUES				Health, food and food product safety requirements
	✓		✓		As stated in Article 7.3, Malaysia can continue adopting or maintaining its halal requirements for food and food products in accordance with Islamic law and this does not constitute a barrier to trade. Furthermore, the Government reserves the right to adopt or maintain any measures relating to wholesale and distribution of liquor and alcoholic beverages.
	SUB ISSUES				Legal services involving mediation and Syariah law
	✓		✓		The Government maintains its right to adopt or maintain any measures involving mediation and Syariah law.
	SUB ISSUES				Islamic schools providers by foreigners
	✓			✓	Foreigners are not allowed to operate and own religious schools in Malaysia as stipulated under Education Act 1996. *Note: Private Islamic schools are already liberalised under the current education system.*
	SUB ISSUES				Measures relating to Islamic activities
	✓		✓		The TPP will not restrict the activities of Lembaga Tabung Haji (LTH) or/and its subsidiaries as long as it continues to administer and support Muslims' expenditure for the annual pilgrimage. In addition, it will not prevent the Government from offering preferences to any procurement for religious purposes.

20.	ISSUES				Bumiputera preferences in the services industry
	SUB ISSUES				Postal Services
	IMPACT		NATURE OF IMPACT		IMPACT ON NATIONAL INTEREST
	YES	NO	(+)	(-)	
	✓		✓		Malaysia has reserved exclusive rights for the collection and delivery of letters by Pos Malaysia as provided for under the Postal Services Act 2012. The same preference is accorded to the national postal services of other TPP member countries, such as Australia Post, Brunei Postal Service Department, Canada Post Corporation and Mexican Postal Service.
	SUB ISSUES				Manufacturing and assembly of motor vehicles
	✓		✓		Since the announcement of the National Automotive Policy (NAP) 2009, Malaysia had already liberalised allowing foreign car manufacturers to hold 100 per cent equity in firms to produce vehicles with engine capacity of larger than 1,800 cubic centimetres (cc) and costing more than RM150,000. NAP was subsequently reviewed in 2014 to further liberalise the car manufacturing and assembly sector by allowing the issuance of new Manufacturing License (ML) for motor vehicles in the category of energy-efficient vehicles (EEV) across all segments while maintaining the existing policy on the issuance of new ML for the non-EEV segment. The auto market is already somewhat liberalised today. This is due to the fact that there are foreign car manufacturers (i.e. Honda and Volkswagen (via DRB-Hicom)) which have obtained the ML to produce cars of less than 1,800 c.c. and with an on-the-road price of less than RM150,000. The Government’s issuance of the ML licenses to these two car manufacturers is beyond what is stipulated under NAP 2014. This exposes Proton to a much higher competition but less so with Perodua, which is competing in a much smaller car segment.

					However, Annex I of Chapter 10 limits Malaysia’s offer in car manufacturing and assembly to foreign car manufacturers with equity holding of up to 49 per cent. No foreign equity restrictions are imposed on: 1. Cars with the engine capacity of more than 1,800cc with an on-the-road price of more than RM150,000; 2. Pick-up trucks and commercial vehicles; 3. Hybrid and electric vehicles; and 4. Motorcycles with the engine capacity of 200cc and above.
	SUB ISSUES				Manufacturing of batik fabric and apparel
	✓		✓		There is a cap of 30 per cent of foreign equity for batik fabric and apparel. This is in line with the Government’s current policy on batik.
	SUB ISSUES				The fishing industry
	✓		✓		In line with Fisheries Act 1985, foreign fishing vessels (boat, craft, and ship) are not allowed to operate in Malaysian waters without a license or permit.
	SUB ISSUES				Bumiputera shipping companies
	✓		✓		Bumiputera shipping companies will not face foreign competition as foreign shipping vessels are not permitted to provide and supply domestic shipping services, maritime cabotage services and Government cargo. However, permission will only be granted to a joint venture corporation with Malaysian individuals or Malaysian-controlled companies or both, provided that the aggregate foreign shareholding in the joint venture is less than 51 per cent.

	SUB ISSUES				Distributive trade services involving Bumiputera
	✓			✓	All in all, Malaysia’s offers in distributive trade under the TPP are noticeably less than in the Asean Framework Agreement on Services (AFAS) 9 whereby foreign equity is allowed up to 51 per cent. Post EIF, foreigners from the TPP countries are barred from operating supermarkets, mini markets, permanent wet markets, permanent pavement markets, fuel stations, news agents, medical halls (traditional alternative medicines), local cuisine restaurants, bistros, jewellery stores, textile shops and franchise license. This is in accordance with existing policies under Distribution Trade Services in Malaysia (Amendment) 2010, Franchise Act 1998 and Companies Act 1965. However, hypermarkets, superstores, departmental stores, specialty stores, franchise businesses and convenience stores must be locally incorporated and they must: 1. Be owned by Bumiputera with no less than 30 per cent equity; 2. Allocate 30 per cent of Stock Keeping Units for Bumiputera SME products; 3. Appoint Bumiputera director/directors; and 4. Formulate plans for human resource development such as capacity building and transfer of knowledge to assist Bumiputera participation in the distributive trade. In addition, foreign equity of less than 30 per cent is allowed only when the foreign company is not associated with the franchisor as per Franchise Act 1998. At present, there are only three foreign-based franchise convenience stores (7-Eleven – Berjaya Retail Bhd, Circle K – Mofaz and Tesco Pernama Express - LTAT) and these have either zero or a maximum of 30 per cent of foreign equity. Foreigners are not allowed to provide wholesale and distributive services that have significant Bumiputera participation such as fabrics and apparels of batik, passenger cars and commercial vehicles.

	SUB ISSUES				Freight road transportation services
		✓		✓	According to Bumiputera Logistics Entrepreneurs Association, there are more than 60 freight transportation services owned and operated by Bumiputera. Under the TPP, foreigners are not allowed to own more than 49 per cent of equity shareholding in such services. This sector was already liberalised under Asean whereby foreign equity holding is allowed for less than 70 per cent.
	SUB ISSUES				Passenger road transport
		✓		✓	The Government maintains its rights to regulate any measures relating to passenger and scheduled passenger road transportation services covering urban and suburban railway, taxi and bus services. A high degree of Government involvement in passenger road transport will drive prices up while compromising on the quality of service rendered to the public as evidenced today.
EDUCATION / HUMAN RESOURCE DEVELOPMENT					
21.	ISSUES				Preserving national identity and the national language
	SUB ISSUES				Job security for Malaysian educators in public schools
	IMPACT		NATURE OF IMPACT		IMPACT ON NATIONAL INTEREST
	YES	NO	(+)	(-)	
	✓		✓		The Government recognises that education is a driver of economic growth and social development in Malaysia. Education will transform and propel Malaysia into becoming a high-income nation. The Education Blueprint (2013-2025) is a comprehensive national education policy aimed at addressing past weaknesses

					brought about by more inward-looking policies and to start producing the talent that Malaysia needs to meet economic requirements and thrive in a more globalised and competitive world. Malaysia could not have achieved the success it has today in alleviating poverty without providing access to education for the disadvantaged. Education, particularly from pre-school to the secondary level, is a critical means to addressing poverty and low incomes by enabling school leavers to secure better jobs and facilitate social mobility. Despite state education being highly subsidised, there are still cohorts from lower income groups who join the work force earlier owing to the need to earn an income to support their families. Schools, however, are more than just providers of quality education for employment purposes. They have also been tasked with character building through moral and religious education and instilling a sense of patriotism and national unity. The school setting is especially vital in a multi-ethnic country such as Malaysia, where students of different backgrounds and ethnicities are provided the opportunity to interact with one another. Nevertheless, further liberalisation in the education sphere, is not desirable given its highly sensitive role in strengthening social cohesion and stability, which may not be prioritised sufficiently by foreign teachers or education providers. Under the TPP, the Government has ensured that excluding foreigners from providing educational services in preschools, religious schools, public primary and secondary schools covering the Malaysian national curriculum preserves this national interest.[43] Priorities are given to local educators, providing job security for those seeking employment in primary and secondary schools in the public sector. With this provision, they are able to uphold the importance of our national language and identity, and instil national unity. The exclusion of foreigners however, may hinder the participation of English-speaking teachers from other TPP Parties, when and if there is a need for more teachers to address the plummeting standards of English in

[43] *Annex 1 of Cross-Border Trade in Services and Investment*

<table>
<tr><td></td><td></td><td></td><td></td><td></td><td>our public schools and the widening academic achievement gap between private and public schools as well as urban and rural schools.</td></tr>
<tr><td rowspan="4">22.</td><td colspan="4">ISSUES</td><td>Greater access to Higher Education and Technical and Vocational Education Training (TVET) institutions</td></tr>
<tr><td colspan="4">SUB ISSUES</td><td>Increase employability and marketability</td></tr>
<tr><td colspan="2">IMPACT</td><td colspan="2">NATURE OF IMPACT</td><td rowspan="2">IMPACT ON NATIONAL INTEREST</td></tr>
<tr><td>YES</td><td>NO</td><td>(+)</td><td>(-)</td></tr>
<tr><td></td><td>✓</td><td></td><td>✓</td><td></td><td>In line with the Government’s objective of establishing Malaysia as a regional champion, the education sector is open for foreigners to set up private schools, higher learning and technical and vocational education training (TVET) institutions in the country. This is in line with current policy. Due to the nature of private institutions being more market-responsive, Malaysia is able to produce graduates with increased employability following market demands. The TPP allows for more cooperation and capacity building among Parties where it would benefit Malaysia in transiting from a labour-intensive to a high-wage and high-value economy.</td></tr>
<tr><td colspan="6">GOOD GOVERNANCE</td></tr>
<tr><td rowspan="4">23.</td><td colspan="4">ISSUES</td><td>Transparency and Regulatory Coherence</td></tr>
<tr><td colspan="4">SUB ISSUES</td><td>Stronger governance</td></tr>
<tr><td colspan="2">IMPACT</td><td colspan="2">NATURE OF IMPACT</td><td rowspan="2">IMPACT ON NATIONAL INTEREST</td></tr>
<tr><td>YES</td><td>NO</td><td>(+)</td><td>(-)</td></tr>
<tr><td></td><td>✓</td><td></td><td>✓</td><td></td><td>The TPP is expected to have a positive impact on good governance initiatives in Malaysia. If anything,</td></tr>
</table>

					provisions within the specific chapters on Transparency and Regulatory Coherence are expected to complement and accelerate the ongoing domestic reform process executed through the National Transformation Policy 2010. In fact, within Asean and among its TPP negotiating countries of Brunei, Singapore, Vietnam, and Malaysia, cooperation to achieve region-wide regulatory goals and a convergence of standards is also already taking place through, for example, the 1998 Asean Framework Agreement on Mutual Recognition Arrangements and the Asean Consultative Committee on Standards and Quality.[44] In general, the Government should support the TPP provisions that: 1. Promote clarity and predictability in legal or administrative procedures; 2. Strengthen coordination and consultation among Government agencies to reduce duplication and redundancy; <u>and</u> 3. Encourage regulatory impact assessments (RIA) in consultation with relevant stakeholders, in particular, SMEs, while recognising and retaining the integrity of specific national circumstances – including the importance of maintaining public health and welfare – should be supported. Moreover, the Government retains flexible policy space in addressing and prioritising, in a transparent manner, regulatory concerns and barriers to trade in the future via cooperation and capacity building efforts, as well as through a joint ministerial Committee on Regulatory Coherence.[45]

[44] *"Asean cooperation on standards and conformance to facilitate trade in the region", Asean, http://www.asean.org/communities/asean-economic-community/category/standards-and-conformance; Asean* Framework Agreement on Mutual Recognition Arrangements, *ASEAN, http://www.asean.org/communities/asean-economic-community/item/asean-framework-agreement-on-mutual-recognition-arrangements-2.*
[45] *Thomas J Bollyky, "Regulatory coherence in the Trans-Pacific Partnership talks" in C.L. Lim, Deborah Elms, Patrick Low (eds.)*, The Trans-Pacific Partnership: A Quest for a 21st Century Trade Agreement, *Cambridge University Press, Nov. 2012, pp. 171-186.*

24.	ISSUES				GP market access and disciplines
	SUB ISSUES				GP transition period, including treatment of procurement disputes
	IMPACT		NATURE OF IMPACT		IMPACT ON NATIONAL INTEREST
	YES	NO	(+)	(-)	
	✓		✓		In order to allow Malaysia to conform to GP obligations, the country will not be subjected to Chapter 28: DSM for five years after EIF.

25.	ISSUES				Side letter on registered textile and apparel between Malaysia and the US
	SUB ISSUES				Rules and regulations to identify and address customs and offences
	IMPACT		NATURE OF IMPACT		IMPACT ON NATIONAL INTEREST
	YES	NO	(+)	(-)	
	✓		✓		The TPP introduces discipline and transparency procedures in the textile and apparel industry. This is to deter the hiring of illegal foreign workers and trans-shipment activities. However, the US is able to undertake self-certification on other parties, including Malaysia.

<table>
<tr><td rowspan="4">26.</td><td colspan="4">ISSUES</td><td>Currency intervention data</td></tr>
<tr><td colspan="4">SUB ISSUES</td><td>Bank Negara is required to adhere to the joint declaration of macroeconomic policy of the TPP countries</td></tr>
<tr><td colspan="2">IMPACT</td><td colspan="2">NATURE OF IMPACT</td><td rowspan="2">IMPACT ON NATIONAL INTEREST</td></tr>
<tr><td>YES</td><td>NO</td><td>(+)</td><td>(-)</td></tr>
<tr><td></td><td>✓</td><td></td><td>✓</td><td></td><td>Malaysia already discloses foreign reserve holdings, but is now required to disclose intervention data every six months, as stated in the Joint Declaration of the Macroeconomic Policy Authorities of Trans-Pacific Partnership Countries.</td></tr>
<tr><td rowspan="4">27.</td><td colspan="4">ISSUES</td><td>Border enforcement</td></tr>
<tr><td colspan="4">SUB ISSUES</td><td>Enforcement of copyright and trademarks at border</td></tr>
<tr><td colspan="2">IMPACT</td><td colspan="2">NATURE OF IMPACT</td><td rowspan="2">IMPACT ON NATIONAL INTEREST</td></tr>
<tr><td>YES</td><td>NO</td><td>(+)</td><td>(-)</td></tr>
<tr><td></td><td>✓</td><td></td><td>✓</td><td></td><td>Customs officers are provided with greater ex-officio authority in temporarily detaining suspected counterfeit and copyright infringing goods.</td></tr>
</table>

<table>
<tr><td rowspan="4">28.</td><td colspan="4">ISSUES</td><td>Patent Linkage</td></tr>
<tr><td colspan="4">SUB ISSUES</td><td>Patent linkage will require the Government to put in place a system that enables a pharmaceutical patent holder to be notified that a generic version of their product has been submitted to BPFK for regulatory approval</td></tr>
<tr><td colspan="2">IMPACT</td><td colspan="2">NATURE OF IMPACT</td><td rowspan="2">IMPACT ON NATIONAL INTEREST</td></tr>
<tr><td>YES</td><td>NO</td><td>(+)</td><td>(-)</td></tr>
<tr><td></td><td>✓</td><td></td><td>✓</td><td></td><td>Patent Linkage for Malaysia is only soft linkage. It promotes greater transparency by improving the patent registration, approval and related database, allowing local generic manufacturers and other interested parties to determine the status of patents.</td></tr>
<tr><td rowspan="4">29.</td><td colspan="4">ISSUES</td><td>Enforcement of the environmental conservation</td></tr>
<tr><td colspan="4">SUB ISSUES</td><td>The enforcement of environmental protection will be in line with the national environmental laws</td></tr>
<tr><td colspan="2">IMPACT</td><td colspan="2">NATURE OF IMPACT</td><td rowspan="2">IMPACT ON NATIONAL INTEREST</td></tr>
<tr><td>YES</td><td>NO</td><td>(+)</td><td>(-)</td></tr>
<tr><td></td><td>✓</td><td></td><td>✓</td><td></td><td>Improvement in the enforcement capacity of Malaysia in protecting the environment from trade and development related activities.</td></tr>
</table>

<table>
<tr><td rowspan="4">30.</td><td colspan="4">ISSUES</td><td>Transparency requirement in SOEs</td></tr>
<tr><td colspan="4">SUB ISSUES</td><td>SOEs disclosure requirement</td></tr>
<tr><td colspan="2">IMPACT</td><td colspan="2">NATURE OF IMPACT</td><td rowspan="2">IMPACT ON NATIONAL INTEREST</td></tr>
<tr><td>YES</td><td>NO</td><td>(+)</td><td>(-)</td></tr>
<tr><td></td><td>✓</td><td></td><td>✓</td><td></td><td>Article 17.10 requires parties to make a list of SOEs publicly available on an official website within 6 months of EIF, and to have the list updated annually. It also sets out the disclosure requirements when requested by another Party. This is a positive impact in that it inculcates transparency and good governance.</td></tr>
<tr><td rowspan="4">31.</td><td colspan="4">ISSUES</td><td>Clear GP rules</td></tr>
<tr><td colspan="4">SUB ISSUES</td><td>Text of Chapter 15: GP sets out clear disciplines and processes in public procurement</td></tr>
<tr><td colspan="2">IMPACT</td><td colspan="2">NATURE OF IMPACT</td><td rowspan="2">IMPACT ON NATIONAL INTEREST</td></tr>
<tr><td>YES</td><td>NO</td><td>(+)</td><td>(-)</td></tr>
<tr><td></td><td>✓</td><td></td><td>✓</td><td></td><td>Rules on GP promote internationally adopted best practices and good governance which bring greater predictability and recourse to suppliers such as a tender advertisement, tendering period, technical specification and tender award system.

Changes are expected in terms of clear thresholds and Bumiputera carve-outs, best value for money for goods and services irrespective of source and removal of offsets that may complicate or limit the procurement process.</td></tr>
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<table>
<tr><td rowspan="4">32.</td><td colspan="4">ISSUES</td><td>Labour standards</td></tr>
<tr><td colspan="4">SUB ISSUES</td><td>High standards in the Labour Chapter are ultimately in line with Malaysia’s aspiration to be a high-income economy by 2020, and to be seen as a model of successful development</td></tr>
<tr><td colspan="2">IMPACT</td><td colspan="2">NATURE OF IMPACT</td><td rowspan="2">IMPACT ON NATIONAL INTEREST</td></tr>
<tr><td>YES</td><td>NO</td><td>(+)</td><td>(-)</td></tr>
<tr><td></td><td>✓</td><td></td><td>✓</td><td></td><td>There are nine laws and acts that must be amended to coincide with labour standards in the TPP:

1. Employment Act 1955;
2. Trade Union Act 1959;
3. Child and Young Persons (Employment) Act 1966;
4. Passport Act 1966 (implementing regulations);
5. Industrial Relations Act 1967;
6. Sabah Labour Ordinance (Cap. 67);
7. Sarawak Labour Ordinance (Cap. 76);
8. Private Employment Agencies Act 1981; <u>and</u>
9. Workers’ Minimum Standards of Housing and Amenities Act 1990.

Moreover, adhering to the ILO Declaration 1998 will further enhance fundamental liberties as enshrined in the Federal Constitution on issues such as freedom of association (Article 10 Freedom of Speech, Assembly and Association), forced labour (Article 6 Slavery and Forced Labour) and employment discrimination (Article 8 Equality).

Note: Further analysis on good governance relating to the enforcement of labour standards is provided under the Public Order and Stability and Labour Standards sub-pillars of this study.</td></tr>
</table>

33.	ISSUES				ISDS
	SUB ISSUES				ISDS provisions in the TPP ensure a high level of investment protection while preserving the Government’s right to regulate
	IMPACT		NATURE OF IMPACT		IMPACT ON NATIONAL INTEREST
	YES	NO	(+)	(-)	
	✓		✓		Despite safeguards in place (such as guidelines on what ‘fair and equitable treatment’ and indirect expropriation entail, and carve-outs on the Government’s right to regulate), good regulatory practices should be adopted at all times to prevent exposure to ISDS provisions. These include transparency and better management of contracts to limit the possibility of breaches in contractual obligations. *Note: Further analysis on good governance in relation to ISDS is provided under the Investment subpillar of this study.*
34.	ISSUES				Import license/ Approved Permit (AP) for cars
	SUB ISSUES				The TPP has introduced rules and regulations on import licenses. High level of transparency will be promoted.
	IMPACT		NATURE OF IMPACT		IMPACT ON NATIONAL INTEREST
	YES	NO	(+)	(-)	
	✓		✓		MITI must be transparent with the dissemination of open and franchise AP system. Foreign companies are not allowed to import cars but they can do a joint venture (JV) with local players so monitoring can still be done.

<table>
<tr><td rowspan="4">35.</td><td colspan="4">ISSUES</td><td>Agricultural goods</td></tr>
<tr><td colspan="4">SUB ISSUES</td><td>15 products are included in the Tariff Rate Quota (TRQ) Mechanism</td></tr>
<tr><td colspan="2">IMPACT</td><td colspan="2">NATURE OF IMPACT</td><td rowspan="2">IMPACT ON NATIONAL INTEREST</td></tr>
<tr><td>YES</td><td>NO</td><td>(+)</td><td>(-)</td></tr>
<tr><td></td><td>✓</td><td></td><td>✓</td><td></td><td>TPP introduces tight procedures in managing the information and calculation of TRQs. Customs needs to monitor information dissemination of TRQs and has to explain and justify the quotas that are unfulfilled.</td></tr>
<tr><td colspan="6">SOCIAL HARMONY</td></tr>
<tr><td rowspan="4">36.</td><td colspan="4">ISSUES</td><td>Preserving the social contract</td></tr>
<tr><td colspan="4">SUB ISSUES</td><td>Broad carve outs in relation to the special position of the Malays and natives of Sabah and Sarawak</td></tr>
<tr><td colspan="2">IMPACT</td><td colspan="2">NATURE OF IMPACT</td><td rowspan="2">IMPACT ON NATIONAL INTEREST</td></tr>
<tr><td>YES</td><td>NO</td><td>(+)</td><td>(-)</td></tr>
<tr><td></td><td></td><td>✓</td><td>✓</td><td></td><td>The coverage of Bumiputera-related exclusions and exemptions is comprehensive throughout the entire TPP agreement.</td></tr>
</table>

<table>
<tr><td rowspan="4">37.</td><td colspan="4">ISSUES</td><td>Poverty eradication</td></tr>
<tr><td colspan="4">SUB ISSUES</td><td>Can the TPP reduce or eradicate poverty?</td></tr>
<tr><td colspan="2">IMPACT</td><td colspan="2">NATURE OF IMPACT</td><td rowspan="2">IMPACT ON NATIONAL INTEREST</td></tr>
<tr><td>YES</td><td>NO</td><td>(+)</td><td>(-)</td></tr>
<tr><td></td><td></td><td>✓</td><td>✓</td><td></td><td>The poverty rate in Malaysia as of 2014 has been reduced to 0.6 per cent.[46] Trade theory suggests that trade liberalisation increases the incomes of developing countries and favour the large number of unskilled workers in them.[47] A large number of empirical studies, however, have not found this to be the case. Income distribution has either worsened or effects were marginal and ambiguous.[48]

It is without a doubt that international trade will bring about stronger economic growth but the economic benefits may not reach the poorest people. Job creation is expected from large investments particularly in the manufacturing of electrical and electronic, chemical, palm oil, rubber, wood, and textile products, as well as automotive parts and components. However, there are potential job losses for low-skilled workers who may not be able to compete in industries with demands for skilled and semi-skilled workers. For the public at large, economic development and continued state support are needed to prevent even more Malaysians from falling between the cracks. Promises of real income gains following economic integration have done little to incentivise the majority of the B40, who are locked into low-paying jobs and other who are self-employed. This has not been helped by the vast numbers of foreign workers who have been taken in, the majority of whom are unskilled and depress wages. The impact of wealth and job creation under the TPP on poverty eradication is therefore, <u>indeterminate</u>.</td></tr>
</table>

[46] *Economic Planning Unit, Prime Minister's Department Malaysia http://www.epu.gov.my/documents/10124/644c2b23-f34b-4813-bf71-dcda76acd351 [Accessed: 20th November 2015]*
[47] *This is known as the Stolper-Samuelson theorem.*
[48] *Donald Davidson. 1996. Trade Liberalisation and Income Distribution'. National Economic Bureau of Economic Research. Working Paper No. 5693 (August)*

<table>
<tr><td colspan="6">COST OF LIVING</td></tr>
<tr><td rowspan="4">38.</td><td colspan="4">ISSUES</td><td>Overall impact on cost of living</td></tr>
<tr><td colspan="4">SUB ISSUES</td><td>Improvement of market access and its impact on cost of living</td></tr>
<tr><td colspan="2">IMPACT</td><td colspan="2">NATURE OF IMPACT</td><td rowspan="2">IMPACT ON NATIONAL INTEREST</td></tr>
<tr><td>YES</td><td>NO</td><td>(+)</td><td>(-)</td></tr>
<tr><td></td><td>✓</td><td></td><td>✓</td><td></td><td>The fundamental premise of trade liberalisation is that it will improve market access of goods and services between trading partners. Market access improvement under the TPP involves:
a. Tariff elimination and reduction;
b. Removal of Non-Trade Barriers (NTB); and
c. Trade facilitators i.e. improvement in procedures and control of movement of goods across international borders.

As a result, goods and services become more competitive in terms of price and distribution efficiency. An efficient market will ultimately affect taste and preference of consumers which in turn, will push cost of living down.

However, governments still have room to manoeuvre by seeking exclusions, long transition periods and so forth for certain goods and services. In general, food, housing and everyday expenses have been on the rise in recent years and further contributed to the overall rise in living costs. For the purpose of analysing the effects of TPP to the cost of living in Malaysia, it is imperative to first ascertain what will and will not be affected by the agreement.

The TPP will have a positive impact on the cost of living particularly with the gradual elimination of import duties on selected food items and goods, resulting in competitive prices. However, prices of certain goods and services will still be subjected to domestic regulations and competitive supply conditions.</td></tr>
</table>

	SUB ISSUES				Under the TPP, prices of these services and goods <u>will not</u> be affected: a. public transport b. utilities (electricity &water) c. housing d. essential food items (rice, sugar and flour) e. tobacco & cigarettes products f. liquor and alcoholic beverages g. telecommunications- fixed line
		✓		✓	a. <u>Public transport:</u> The Government is entitled to award toll concessions or increase toll rates (Exclusion of Public-Private Partnership contractual agreements from the GP chapter). The Government maintains its right to regulate rates for buses, taxis and railway services as stated in Annex II: Cross-Border Trade in Service and Investment (Passenger road transportation services covering taxi services and scheduled passenger road transportation) b. <u>Utilities (electricity and water)</u>: The Government has the policy space to regulate tariff rates of utilities as stated in Annex I: Cross-Border Trade in Service and Investment (Utilities) c. <u>Housing:</u> Status quo in the public housing industry due to restricted competition especially in areas where Projek Perumahan Rakyat (PPR) and PR1MA are not subjected to the Government Procurement chapter. (Annex 15-A General Notes).

					However, foreign construction companies may operate in Malaysia as long as: • They are registered with CIDB and locally incorporated; <u>and</u> • Senior Management and Board of Directors must be of Malaysian majority. d. <u>Essential food items:</u> • The price of flour for domestic consumption is controlled by the Government. • The price of sugar will be controlled by the importers and distributors of raw and refined sugar in the domestic market. • Bernas (and future entities like Bernas) maintains its function and has the sole right to determine the supply and prices of both imported and locally produced rice and paddy. *Note: This issue correlates with the Market Access sub-pillar.* e.& f. <u>Tobacco and Cigarettes Products & Liquor and Alcoholic Beverages:</u> The Government maintains its right to control the price and supply of these products under TPP through excise duty and restricted license distribution. *Note: This issue correlates with the Market Access sub-pillar.* g. <u>Telecommunications- Fixed Line:</u> The tariffs and rates of fixed lines are regulated by the Government.

39.	ISSUES				Competitive rates for mobile services and multimedia
	SUB ISSUES				Presence of foreign service suppliers to create a more competitive market
	IMPACT		NATURE OF IMPACT		IMPACT ON NATIONAL INTEREST
	YES	NO	(+)	(-)	
	✓		✓		The tariffs and rates of public telecommunications such as mobile services and multimedia (including subscription-based television), are not regulated by the Government and are subject to market forces. Nevertheless, the Government may intervene through indirect means or by introducing means that may bring down the rates. The Minister may or may not grant licenses for foreigners to operate in Malaysia, but the presence of more telecommunication service providers will create a competitive market and the rates are expected to decline.
40.	ISSUES				Price of imported goods
	SUB ISSUES				Cheaper imported goods
	IMPACT		NATURE OF IMPACT		IMPACT ON NATIONAL INTEREST
	YES	NO	(+)	(-)	
	✓		✓		Imported goods will be cheaper as import duties for almost 85 per cent of these goods will be eliminated when the agreement comes into force. Cheaper imported goods will also benefit local producers who import intermediary goods to produce their final products. Ultimately, consumers will enjoy a wider choice of goods at competitive prices. *Note: This issue correlates with the Market Access sub-pillar.*

41.	ISSUES				Prices of medicine
	SUB ISSUES				Will TPP affect the price of medicine?
	IMPACT		NATURE OF IMPACT		IMPACT ON NATIONAL INTEREST
	YES	NO	(+)	(-)	
	✓			✓	Of utmost importance is the contentious potential increase in prices of medicine stemming from stronger IP under the TPP. Malaysia operates a two-tier healthcare system whereby public healthcare medicines are heavily subsidised and the use of generics and biosimilars are encouraged. The public sector accounted for nearly half of total expenditure for the top 150 prescription medicine - both generic and patented.[49] Nevertheless, medicines make up 15 per cent of out of pocket private expenditure in 2011.[50] The Malaysian Organisation of Pharmaceutical Industries (MOPI) estimates that generic prescriptions amount to 70 per cent in terms of the volume of medicine prescribed, while almost all patented and specialised drugs are imported, which is estimated to account for more than 80 per cent of the local pharmaceutical market share.[51] Biologic drugs currently make up only 5-10 per cent of total sales according to Pharmaceutical Association of Malaysia (PhAMA).[52] The IP Chapter will not have significant impact on timely access to affordable medicine when the agreement comes into force, due to the safeguards included in the annexes of the IP Chapter annexes and the nature of the related IP provisions. Firstly, there will be no impact on the prices of generic medicine because the 18 months' access window for the application of DE for patented medicine is preserved, as stated in Annex 18-C of the IP chapter. Pharmaceutical companies will no longer be able to obtain data protection for a patented medicine in

[49] *Hassali et al. 2015. Chapter 10 Pharmaceutical Pricing in Malaysia. Pharmaceutical Prices in the 21st Century, editor Zaheer-Ud-Din Babar*
[50] *Ministry of Health, 2014. Health Expenditure Report 1997-2012. Malaysia National Health Accounts.*
[51] *Piong. J. and Loong C.M. 2013. Malaysia Pharmaceutical Industry, Journal of Pharmaceutical Machinery and Engineering*
[52] *Not ready to benefit from biologics and biosimilars. The Edge Malaysia, June 15, 2015.*

					Malaysia if they do not file for marketing approval and DE with BPFK within 18 months from the date they were first granted marketing approval and DE in other countries. This safeguard effectively limits the time lag of marketing approval and DE between Malaysia and other countries to a maximum of 18 months. Secondly, although access to biosimilars may be delayed due to a minimum of 5 to 8 years of data protection for biologics, they are not significantly cheaper compared to their original counterpart — only lesser by 15 to 30 per cent in the EU; prices for generic drugs are usually lesser by 80 per cent or more compared to the originals. [53] This is because biosimilar manufacturers are still required to undertake clinical trials to demonstrate the safety and efficacy of their biosimilars since exact replicates of the originals are scientifically impossible.[54] A longer time frame is usually required to develop biosimilars compared to generics despite having gained access to innovators' data. Likewise, the 18 months' access window condition imposed on the registration for data protection also applies to biologic drugs. Moreover, healthcare providers, practitioners and consumers may not prefer generics and biosimilars due to their perceived lack of efficacy or equivalency by the public at large. Our understanding of this issue is based on the assumption that consumers at large are very sensitive to prices and will therefore opt for generics whenever they are available due to their lower prices. Yet, several studies have shown that this is not always true. Most physicians had negative perceptions about the safety, efficacy and quality of generics, particularly those that are manufactured locally. This is a leading cause of the limited use of generic medicines in private medical centres.[55] To patients, although accessibility to some generics may be hindered as a result of stronger patent protection, patients are no worse off if they had strictly preferred original medicine. For example, a study[56] showed that the majority of respondents considered generics to be suitable for less serious illnesses, but not for critical or

[53] *Blackstone and Fuhr. 2012. Innovation and Competition: Will Biosimilars Succeed? Biotechnology Healthcare, Spring; 9(1): 24-27*
[54] *The Trans-Pacific Partnership and Innovation in the Bioeconomy: The Need for 12 Years of Data Protection for Biologics, Biotechnology Industry Organization, 2013.*
[55] *Kumar et al. 2015. Knowledge and perceptions of physicians from private medical centres towards generic medicines : a nationwide survey from Malaysia, Journal of Pharmaceutical Policy and Practice.*
[56] *Wong ZY, Hassali MA, Alrasheedy AA, Saleem F, Yahaya AH, Aljadhey H. 2014. Patient's beliefs about generic medicines in Malaysia. Pharmacy Practice, Oct-Dec; 12(4):474.*

					life threatening diseases. Moreover, some were sceptical about the efficacy of generics simply because they were cheaper. Cross-country comparisons Most US FTA signatories did not experience significant increase of burden on consumers as a result of higher medicine prices. High income partners such as Singapore, Mexico, Australia and South Korea, had strong social safety nets or regulatory oversight on medicine prices. On the other hand, prices were already high in the following developing countries — Vietnam, Chile and Central America as a result of inefficient GP system, collusive behaviour of local pharmaceutical manufacturers and lax enforcement — not stronger IP regime. Lastly, newer signatories such as Peru, Colombia and Panama, were subjected to a less stringent IP regime as a result of the May 10th agreement; thus impact is minimal. However, Jordan and Guatemala reported higher medicine prices post FTA as a result of stringent DE provisions - hindering accessibility of generics - even though patents were not filed for the newly introduced medicine. But prices of drugs used for treating cancer or HIV were not reported, presumably unaffected as nothing prevented these countries from using compulsory licensing during public health crises. Moreover, DE only lasts for a maximum of 5 years and generics can be introduced thereafter; this is because DE has been used in lieu of patent protection for the newly introduced medicine post FTA. From the countries surveyed, Jordan's and Guatemala's experience are the exception rather than the norm. Recent US FTAs suggest that their experiences have been taken into account, which were reflected in the May 10th Agreement signed in 2007 by the US. The agreement places limits on IP provisions, enabling greater access to affordable medicine particularly for developing countries. These concessions are reflected in the TPP through appropriate transition periods, allowing each TPP member sufficient time to conform to the IP provisions. The following investigates the prices and access to generics in the following countries after signing a bilateral agreement with the US in greater detail. No adverse effects from stronger IP were seen for the following countries due to the following mitigating/offsetting measures: • Singapore — pre-existing strong IP regime and comprehensive private — (ElderShield and MediSave) and public — (MediShield, MediFund and Community Health Assist Scheme) safety nets. • Mexico — A combination of social insurance and voluntary public health insurance for the lower income

					households, and prioritising the use of generics in the public sector.[57]
					• Australia — Pharmaceutical Benefits Scheme (PBS), government subsidises the cost of prescription medicine and determines reference prices.[58] Moreover, the Transparency Chapter only emphasizes processes regarding listing of pharmaceuticals for reimbursements and does not target pricing of pharmaceuticals.
					• Peru, Colombia, Panama — Protection of DE to start from the date of DE filling in the country of origin (US) — generic medicines becomes available no later than they are available in the United States. Also, patent extensions and linkage are not mandatory due to flexibilities provided for under the US' New Trade Policy for the related countries.[59]
					• South Korea — National Health Insurance and supplementary private health insurance.
					
					Although high prices of medicines were found to be prevalent in the following countries, they are not associated with a stronger IP regime:
					• Vietnam[60]— Introduction of DE via the US-Vietnam bilateral trade agreement and its ascension to WTO/TRIPS did not result in high medicinal prices; an ineffective and decentralised procurement did.[61]
					• Central America — 90 per cent of marketed drugs are either distributed by the innovator or branded generics manufacturers.
					  – Chile — domination of branded local generics/collusion, branded generics on average cost 6.5 times more than non-branded generics. Branded generics have nearly 40 per cent of the market share while the market share of non-branded generics have decreased between 12 to 30 per cent by 2012;[62];
					  – DR-CAFTA, Dominican Republic — domination of branded local generics/collusion, removal of criminal penalties for patent infringement.[63]

[57] *Moise. P. & Docteur. E. 2007. Pharmaceutical Pricing and Reimbursement Policies in Mexico. OECD Health WP*
[58] *Koff et al. 2011. Study on the Economic Impact of "TRIPS-Plus" Free Trade Agreements.*
[59] *Baker B.K. 2008, Ending Drug Registration Apartheid - taming data exclusivity and patent/registration linkage. Journal of Law and Medicine.*
[60] *The U.S. bilateral agreement with Vietnam is not a free trade agreement, but only a bilateral agreement.*
[61] *Oxfam. 2013. Putting public health at risk: US proposals under the TPPA to exacerbate Vietnam's access to medicine crisis. Ref 05/13*
[62] *OECD. 2014. Competition issues in the distribution of pharmaceuticals. Global Forum on Competition.*
[63] *Koff et al. 2011. Study on the Economic Impact of "TRIPS-Plus" Free Trade Agreements.*

					• US-Jordan FTA — In 2007, several studies showed that out of 103 medicines registered and launched without patent protection since 2001, at least 79 per cent do not have a generic equivalent due to introduction of DE via US-Jordan FTA. Prices of DE-protected medicine were found to be 3 to 8 times higher than neighbouring Egypt.[64] [65] From the countries surveyed, Jordan's experience is the exception rather than the norm. These studies failed to consider the nature of the IP provisions of the FTA which included "hard" linkage provisions that differ from the TPP, which effectively hinders registration of generics until DE expires. Moreover, DE only lasts for a maximum of 5 years and generics can be introduced thereafter. This is because pharmaceutical companies have used DE in lieu of patent protection for the newly introduced medicine post FTA. • DR-CAFTA, Guatemala — DE was applied retrospectively to older medicine, thus prices of medicine rose as much as eight times although no patents were available. Generics were also barred from the market.[66] However, governments of both countries were not prevented from using compulsory licensing when necessary and the corresponding applicable period of DE is only 5 years. <u>Other factors contributing to medicine price inflation</u> From the studies surveyed, stronger IP is only one of the many reasons that can increase prices of medicine. Other key reasons include lack of control over pharmaceutical prices, lack of scale of local generic manufacturers that are also dependent on imported raw materials, delayed expiry of patents in Malaysia, currency fluctuations, increased cost of research and development marketing budgets, and uncompetitive procurement and distribution practices: • Prices of medicine rose by 28 per cent p.a between 1996 and 2005 due to the lack of government regulation and price control.[67]

[64] *Abbott RB. et al. The price of medicines in Jordan: the cost of trade-based intellectual property. (2012) 9(2) Journal of Generic Medicines 75-85 - See more at: http://www.themalaymailonline.com/what-you-think/article/losing-the-myths-on-the-tppa-a-rebuttal-to-ideas-malaysian-on-regulatory-da#sthash.7H4Vf4Hn.dpuf*
[65] *Oxfam. 2007. All costs, no benefits: How TRIPS-plus intellectual property rules in the US-Jordan FTA affect access to medicines.*
[66] *Godoy A.S. 2013, Of Medicines and Markets: Intellectual Property and Human Rights in the Free Trade Era, Chapter 3: Market Failures and Fallacies, Stanford University Press.*
[67] *Smith et al. 2009. Trade, TRIPS, and pharmaceuticals. The Lancet, Volume 373, No. 9664, p684–691, 21.*

					• Prices of essential medicine in private pharmacies were found to be 6 to 16 times higher than the international referenced price for generics and innovator brand medicines respectively. In dispensing doctor clinics, medicines were also 15 and 7 times higher for innovator brand and generics respectively. This is because the markups on medicine ranged from 25 per cent to 76 per cent for innovator brands and from 10 per cent to 300 per cent for generics.[68] • Mean retail drug prices in Penang were 30 per cent to 150 per cent higher than the mean retail prices in Australia. In addition, variation between retail prices was also noticed between pharmacies in Penang, with a difference of 80 per cent between the highest and lowest prices. They concluded that Malaysia has a higher average of retail prescription drug prices compared to Australia due to the lack of domestic pharmaceutical market and price regulation.[69] • Locally manufactured generics were found to be 40 per cent more expensive than their innovator counterparts and 18 per cent to 56 per cent more expensive than imported generic medicine. This phenomenon can be explained by extensive retail mark-up in the private sector and lack of scale of local manufacturers that are dependent on imported raw materials.[70] • Privatisation of Government Medical Store, lack of pro-generics policies and overlapping role of Malaysian Health Technology Assessment (MaHTAS) and Pharmaeconomic Unit at the Pharmaceutical Service Division (PSD).[71]

[68] *Babar et al. 2007. Evaluating Drug Prices, Availability, Affordability, and Price Components: Implications for Access to Drugs in Malaysia.*
[69] *Hassali, M. A., Shafie, A. A., Babar, Z.-U.-D. and Khan, T. M., 2012. A study comparing the retail drug prices between Northern Malaysia and Australia. Journal of Pharmaceutical Health Services Research, 3: 103–107*
[70] *Shafie A.A. and Hassali M.A., 2008. Price comparison between innovator and generic medicines sold by community pharmacies in the state of Penang, Malaysia. Journal of Generic Medicine. 6 (1) , pp. 35-42.*
[71] *Hassali et al. 2015. Chapter 10 Pharmaceutical Pricing in Malaysia. Pharmaceutical Prices in the 21st Century, editor Zaheer-Ud-Din Babar*

<table>
<tr><td></td><td></td><td></td><td></td><td></td><td>Additional burden on Malaysian patients due to the prior practice of extending patents on an ad-hoc and discretionary basis. This prevents entry of affordable generics into Malaysia despite ‘patent cliff’ occurring in the US and Europe, which allows generics to be marketed in those countries but not in Malaysia.</td></tr>
<tr><td rowspan="5">42.</td><td colspan="4">ISSUES</td><td>Copyright extension</td></tr>
<tr><td colspan="4">SUB ISSUES</td><td>Copyright protection extended from 50 to 70 years.</td></tr>
<tr><td colspan="2">IMPACT</td><td colspan="2">NATURE OF IMPACT</td><td rowspan="2">IMPACT ON NATIONAL INTEREST</td></tr>
<tr><td>YES</td><td>NO</td><td>(+)</td><td>(-)</td></tr>
<tr><td>✓</td><td></td><td></td><td>✓</td><td>In the short term, Malaysians will incur increased burden from a stronger IP regime since Malaysia is a net content consumer.

For example, an extension of copyright protection from 50 to 70 years entails longer royalty payments to foreign content creators, amounting to approximately USD 115 million a year over the long term, due to copyright extension on copyrighted goods such as books, films and music (the net cost for New Zealand and Australia has been estimated at $55 million and $88 million per year). This large increase is to be expected since Malaysians will not only have to pay additional royalties to copyright holders of the TPP countries, but to all non-TPP countries as well. However, this net cost does not imply price increases, but merely savings foregone due to paying royalties for a longer period. Moreover, this amount may be overestimated since Malaysians’ consumption of foreign copyrighted contents may not be equivalent to their Australian and New Zealander counterparts.

There is no impact on cost of education since textbooks are updated frequently and only the latest editions are widely used, i.e. the impact of copyright extension on cost of textbooks is irrelevant.</td></tr>
</table>

<table>
<tr><td rowspan="4">43.</td><td colspan="4">ISSUES</td><td>Social services</td></tr>
<tr><td colspan="4">SUB ISSUES</td><td>The rights of Malaysia in retaining social services</td></tr>
<tr><td colspan="2">IMPACT</td><td colspan="2">NATURE OF IMPACT</td><td rowspan="2">IMPACT ON NATIONAL INTEREST</td></tr>
<tr><td>YES</td><td>NO</td><td>(+)</td><td>(-)</td></tr>
<tr><td></td><td></td><td>✓</td><td>✓</td><td></td><td>Malaysia maintains its right to adopt or maintain any measures related to social welfare. Therefore, Malaysia maintains its right to distribute cash assistance (Bantuan Rakyat 1Malaysia (BR1M), Baucer Buku 1Malaysia (BB1M) etc.) to address rising cost of living. (Annex II: Cross Border Trade in Services and Investment)</td></tr>
<tr><td colspan="6">LABOUR STANDARDS</td></tr>
<tr><td rowspan="4">44.</td><td colspan="4">ISSUES</td><td>Improving labour standards in Malaysia</td></tr>
<tr><td colspan="4">SUB ISSUES</td><td>Conforming to the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up (1998)</td></tr>
<tr><td colspan="2">IMPACT</td><td colspan="2">NATURE OF IMPACT</td><td rowspan="2">IMPACT ON NATIONAL INTEREST</td></tr>
<tr><td>YES</td><td>NO</td><td>(+)</td><td>(-)</td></tr>
<tr><td></td><td>✓</td><td></td><td>✓</td><td></td><td>The Labour Chapter aims to ensure that trade and investment activities within the TPP do not occur at the expense of workers’ rights. Parties are required to conform to the high labour standards set out in the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up (1998), which encompass the following:
1. Freedom of association and the effective recognition of the right to collective bargaining;
2. The elimination of all forms of forced or compulsory labour;
3. The effective abolition of child labour, a prohibition on the worst forms of child labour and other labour</td></tr>
</table>

					protections for children and minors; and 4. The elimination of discrimination in respect of employment and occupation. Malaysia has been a member of the ILO since 1957, and it has ratified 16 ILO Conventions of which 15 are in force. In terms of the eight fundamental ILO Conventions that form the ILO Declaration 1998, Malaysia has ratified six. Although Malaysia maintains the freedom to ratify ILO Conventions of its own choosing, the TPP does require the Government to adhere to the relevant principles outlined in the following Conventions that are not ratified: 1. Convention 87 Freedom of Association and Protection of the Right to Organise, 1948; 2. Convention 105 Abolition of Forced Labour, 1957 (which the Government denounced in 1990); and 3. Convention 111 Discrimination (Employment and Occupation), 1958. In the long-run, the implementation of rights outlined in the ILO Declaration 1998 will have a positive impact on Malaysia by developing its labour market into more productive and competitive international labour standards. The Declaration will also encourage stricter enforcement of labour laws. These standards should be strived for, being consonant with Malaysia's eventual aspiration to reach high-income status by 2020.
	SUB ISSUES				The Malaysia-United States Labour Consistency Plan commits Malaysia to amend nine laws in the areas of forced labour and freedom of association
	✓			✓	In a letter dated 11 May 2015, 14 top Democratic senators insisted that President Obama require four countries – Brunei Darussalam, Malaysia, Mexico and Vietnam – to implement stronger labour standards before the TPP takes effect. They argued that American workers will not be able to compete against workers in countries where fundamental workers' rights are not protected. Specific concerns with regards to Malaysia include: 1. Its long-standing prohibitions on strikes, federations, and leadership roles for migrant workers;

					2. Forced labour in three Malaysian industries, including electronics, garments, and palm oil; and 3. Incidences of child labour in Malaysia's palm oil sector.[72] Similar concerns were highlighted in the 2014 Investment Climate Statement on Malaysia by the US Department of State, which mentioned that "a system of government controls strongly discourages strikes"[73] and "race-based preferences in hiring and promotion are widespread in government, government-owned universities and government-linked corporations."[74] There may be a negative impact due to short-term adjustment costs that will arise as a result of significant legal and institutional reforms that Malaysia must undertake in order to conform to the ILO Declaration 1998. Malaysia will need to amend, in a manner that it deems fit and proper, nine laws in areas relating to forced labour and freedom of association:[75] 1. Employment Act 1955; 2. Trade Union Act 1959; 3. Child and Young Persons (Employment) Act 1966; 4. Passport Act 1966 (implementing regulations); 5. Industrial Relations Act 1967; 6. Sabah Labour Ordinance (Cap. 67); 7. Sarawak Labour Ordinance (Cap. 76); 8. Private Employment Agencies Act 1981; and 9. Workers' Minimum Standards of Housing and Amenities Act 1990.

[72] *"Sens. Brown, Cardin, Schumer, Stabenow, Casey, Franken, Markey, Baldwin, Peters, Udall, Blumenthal, Schatz, Merkley, and Warren Call for Strong Labor Standards in Trans-Pacific Partnership and Implementation of Standards In TPP Countries," Sherrod Brown – Senator for Ohio, 11 May 2015 <http://www.brown.senate.gov/newsroom/press/release/sens-brown-cardin-schumer-stabenow-casey-franken-markey-baldwin-peters-udall-blumenthal-schatz-merkley-and-warren-call-for-strong-labor-standards-in-trans-pacific-partnership-and-implementation-of-standards-in-tpp-countries>.*

[73] *US Department of State. 2014 'Investment Climate Statement – Malaysia', June 2014, p. 13.*

[74] *ibid. p. 14.*

[75] *As stated in the Malaysia-United States Labour Consistency Plan, these amendments must be made prior to EIF of the TPP agreement between the US and Malaysia.*

					Taking cautionary steps to maintain a significant degree of control over these amendments will help to ensure that the Government is able to manage the pressures of domestic labour reforms. For instance, restrictions in areas relating to freedom of association, such as trade union membership and the right to strike, have been in place for decades. Furthermore, Malaysia does not intend to ratify Convention 87 (Freedom of Association and Protection of the Right to Organise, 1948).[76] According to the Malaysian Employers' Federation (MEF), ratification of Convention 87 poses risks to industrial harmony as it encourages fragmentation of the trade union movement.[77] There are also concerns that there may not be sufficient regulations on workers' right to strike once ratification takes effect. Nonetheless, the Government strives to embody the principle of Convention 87. Article 10(1)(c) in the Federal Constitution provides for freedom of assembly and association for all citizens, with Clauses (2)(c) and (3) of the Article clarifying that this right may be restricted by Parliament in the interest of security, public order or morality. Key issues relating to Convention 87 are addressed in the Public Order and Security subpillar of this study.
	SUB ISSUES				Parties are expected to uphold acceptable conditions of work "with respect to minimum wages, hours of work, and occupational safety and health" (Article 19.3.2 Labour Rights)
		✓	✓		In addition to the ILO Declaration, Parties are expected to uphold acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health. This resonates with the concept of Decent Work as defined by the ILO, in terms of promoting opportunities for both men and women to obtain

[76] *'Review of annual reports under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work,' International Labour Organisation, February 2014, p. 3.*
[77] *'Country Baselines under the 1998 ILO Declaration Annual Review (2000-2014): Malaysia,' International Labour Organisation, 2014, p. 203.*

					work in conditions of freedom, equity, security and human dignity. This requirement will not impact Malaysia because it has been upholding acceptable conditions of work prior to TPP negotiations. The minimum wage was introduced in 2013 under the New Economic Model, and it will increase from RM900 to RM1,000 under the 2016 budget. The Employment Act 1955 clearly states that working hours shall not exceed eight hours per day or 48 hours per workweek of six days, as each workweek includes a 24-hour rest period. The Act also sets overtime rates and mandates public holidays, annual leave, sick leave, and maternity allowances. Malaysia is also not required to amend its Occupational Safety and Health Act 1994, as the Act already complies with ILO standards. Most importantly, the TPP provides Parties with the freedom to decide on how best to 'uphold acceptable conditions of work,' as the Labour Chapter does not set a floor for minimum wage or a ceiling for hours of work. Article 19.7 Corporate Social Responsibility of the Labour Chapter also encourages local enterprises to adopt voluntary corporate social responsibility initiatives on issues that will benefit society at large.
	SUB ISSUES				The elimination of discrimination (employment and occupation) (Article 19.3 Labour Rights)
		✓	✓		Discrimination in employment and occupation can be direct or indirect. According to ILO standards, direct discrimination occurs when rules, practices or laws explicitly cite a particular ground (such as race, colour, sex, religion, political opinion, national extraction or social origin) to deny equal opportunities, whereas indirect discrimination occurs when rules or practices appear on the surface to be neutral but in practice lead to exclusions.[78] The TPP's requirement to eliminate discrimination will not impact current policies that provide assistance to

[78] *'Elimination of discrimination in respect of employment and occupation,' International Labour Organisation, accessed 26 November 2015 <http://www.ilo.org/declaration/principles/eliminationofdiscrimination/lang--en/index.htm>.*

					Bumiputera participation in the Malaysian market. Such policies are protected in Annex II for Cross Border Trade in Services and Investment. Specifically, there is no impact on Bumiputera in the distribution services sector, as Annex I for Cross Border Trade in Services and Investment requires all companies with foreign equity to appoint Bumiputera directors and formulate plans on human resource to assist Bumiputera participation. Annex I for Cross Border Trade in Services and Investment also protects the employment of Malaysians at the management level in the transport, distribution and construction (and other related engineering) services sectors: 1. <u>Transport</u> – the majority of senior managers and board of directors shall be Malaysians in all joint ventures or corporations seeking to register ships in the Malaysian Traditional Registry; 2. <u>Distribution</u> – all distributive trade companies with foreign equity shall hire personnel at all levels including management to reflect the racial composition of the Malaysian population; <u>and</u> 3. <u>Construction and related engineering</u> – the senior management and board of directors of each foreign entity in the construction and related engineering services shall be of Malaysian majority, with control over management and investment.

45.	ISSUES				The elimination of forced labour
	SUB ISSUES				Exploitation and abuse of workers
	IMPACT		NATURE OF IMPACT		IMPACT ON NATIONAL INTEREST
	YES	NO	(+)	(-)	
	✓		✓		Forced labour is generally defined as any form of work or service into which people enter against their freedom of choice and which they are unable to leave without punishment or the threat of punishment.[79] A key feature of forced labour is the exploitation of the poor and vulnerable, which are thought to be the most susceptible, by recruiting agents and intermediaries through deception over conditions of employment and contracts.[80] Forced labour is a leading cause of poverty and a hindrance to economic development.[81] Most victims of forced labour are subjected to debt bondage where they are trapped in a vicious cycle and are unable to break free from the clutches of poverty. Under the TPP, Malaysia is obliged to conform to high labour standards and protect the welfare of workers by providing minimum wage, a minimum standard of housing and other benefits. Workers should be allowed free access to and from their workplace, and their wages and passports shall not be withheld. Malaysia will have better labour standards, which may consequently contribute to economic growth and poverty eradication in the long run.

[79] *Plant, R.,2007. Forced labour, slavery and poverty reduction: challenges for development agencies, Presentation to UK- High level conference to examine the links between poverty, slavery and social exclusion. Foreign and commonwealth office and DFID, London 30 October 2007. Available from: http://www.ilo.int/wcmsp5/groups/public/---ed_norm/---declaration/documents/statement/wcms_096992.pdf [Accessed: 20th November 2015]*

[80] *Plant, R. 2007. Forced labour, slavery and poverty reduction: challenges for development agencies, Presentation to UK- High level conference to examine the links between poverty, slavery and social exclusion. Foreign and commonwealth office and DFID, London 30 October 2007. Available from: http://www.ilo.int/wcmsp5/groups/public/---ed_norm/---declaration/documents/statement/wcms_096992.pdf [Accessed: 20th November 2015]*

[81] *International Labour Standards on Forced Labour, http://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/forced-labour/lang--en/index.htm [Accessed: 20th November 2015]*

<table>
<tr><td rowspan="4">46.</td><td colspan="4">ISSUES</td><td>Dispute Settlement Mechanism (DSM)</td></tr>
<tr><td colspan="4">SUB ISSUES</td><td>Labour provisions in the TPP will be subject to DSM if a matter arising under the Labour Chapter is not resolved within 60 days</td></tr>
<tr><td colspan="2">IMPACT</td><td colspan="2">NATURE OF IMPACT</td><td rowspan="2">IMPACT ON NATIONAL INTEREST</td></tr>
<tr><td>YES</td><td>NO</td><td>(+)</td><td>(-)</td></tr>
<tr><td></td><td>✓</td><td></td><td>✓</td><td></td><td>Conforming to labour standards in the TPP will promote awareness of labour laws and compliance procedures. DSM ensures appropriate access to impartial, transparent and independent tribunals that comply with due process of the law, and do not entail unreasonable costs or time limits or unwarranted delays.

The mechanism will have a <u>positive impact</u> on Malaysia’s labour market overall, as the possibility of being exposed to DSM should encourage the strict implementation and enforcement of labour laws in Malaysia. This will subsequently result in an increase of labour inspections (and inspectors) to ensure that Parties do not waive or derogate from their statutes and regulations on labour standards.

In order to mitigate the direct exposure to DSM, however, Articles 19.10 Cooperation, 19.11 Cooperative Labour Dialogue, 19.12 Labour Council and 19.15 Labour Consultations highlight the avenues available to resolve any matter arising under the Labour Chapter, before recourse to DSM is permitted. Disputes should be resolved through consultation and cooperation as much as possible, as penalties under DSM would be sanction-based with compensation in the form of fines, suspension of benefits and other punitive measures.</td></tr>
</table>

<table>
<tr><td colspan="6">ENVIRONMENT</td></tr>
<tr><td rowspan="4">47.</td><td colspan="4">ISSUES</td><td>Enforcement in the environmental protection issues with regards to:
1. the ozone depleting substances;
2. preventing the pollution of the marine environment from ships; <u>and</u>
3. protection of endangered species of wild flora and fauna</td></tr>
<tr><td colspan="4">SUB ISSUES</td><td>Lack of enforcement of environmental protections</td></tr>
<tr><td colspan="2">IMPACT</td><td colspan="2">NATURE OF IMPACT</td><td rowspan="2">IMPACT ON NATIONAL INTEREST</td></tr>
<tr><td>YES</td><td>NO</td><td>(+)</td><td>(-)</td></tr>
<tr><td></td><td>✓</td><td></td><td>✓</td><td></td><td>As stated in Article 20.4, there is a need to recognise the agreed Multilateral Environmental Agreements (MEAs) and the enforcement activities will take into account the relevant obligations under that agreement.

Implementing the commitments stated in the agreed MEAs will:
1. Have a positive impact on environmental protection as enforcement activities will be carried out effectively;
2. Improve the enforcement capacity in Malaysia for environmental protection from trade and development related activities; <u>and</u>
3. Improve the protection given to the endangered species from any trade related activities.</td></tr>
</table>

<table>
<tr><td rowspan="3">48.</td><td colspan="4">ISSUES</td><td>Sustainability in the marine food industry</td></tr>
<tr><td colspan="4">SUB ISSUES</td><td>The potential removal of the fisheries subsidy <u>if</u> the fish stock level falls under a threshold set by the national authorities or Relevant Fisheries Management Organization (RFMO)</td></tr>
<tr><td colspan="2">IMPACT</td><td colspan="2">NATURE OF IMPACT</td><td rowspan="2">IMPACT ON NATIONAL INTEREST</td></tr>
<tr><td></td><td>YES</td><td>NO</td><td>(+)</td><td>(-)</td></tr>
<tr><td></td><td>✓</td><td></td><td>✓</td><td></td><td>One of the potential issues under the Environment Chapter is the provision to remove direct fisheries subsidies if it is used for fishing that negatively affect fish stocks based on the best scientific evidence available. Article 20.16 (Para 5(a)) of the Environment Chapter requires all parties to ensure the sustainability of the fish stock. In order to do so, any subsidies that negatively affect fish stock that are in an overfished condition should be abolished. However, the other subsidies (livelihood and catch incentives) can be maintained unless proven that these subsidies are affecting negatively on the fish stock in Malaysian waters.

The purpose for the inclusion of this obligation is to address the issues of overfishing and unsustainable utilisation of fisheries resources that will affect the environment. In this context, Malaysia is committed to refrain from introducing new, extending or enhancing existing subsidies that may contribute to overfishing in its waters. It is important to note that the removal of the fishery is only applicable if, and only if, there is any evidence of overfishing set by the national authorities or RFMO.

The fisheries subsidy programmes consist of a livelihood subsidy, catch subsidy, fuel subsidy, other support programmes and infrastructure development. Local associations (Persatuan Nelayan) are responsible for managing these subsidies at the community level. LKIM is responsible for the registration of fishing boats that entitle the registered fishermen to obtain livelihood subsidies. Each boat is entitled to receive livelihood subsidy for two fishermen (a captain and one crew). Fishermen will also be provided with e-diesel or e-petrol cards that entitle them to receive livelihood subsidy (LKIM, 2014).</td></tr>
</table>

					The fishing areas are divided into four zones with every zone given a different amount of subsidies. This includes diesel, petrol and catch incentives and livelihood incentives. In the context of TPP, the subsidies that the agreement refers to are the diesel and petrol subsidies. The low price of diesel and petrol will encourage more fishing in the respective zones. In 2012, fish-catching incentives amounted to a total of RM84.19 million were given to local fishermen so that they can earn an extra income and improve their standard of living. In terms of socio-economics, any removal of subsidies will have a negative impact on the recipients, lessening their income and worsening their existing low standard of living. Besides, local fishermen have little incentive to move up the value chain and they usually generate income by selling to the middlemen, which in turn sell them at a higher price to a wholesaler. As such, middlemen profit the most when prices of fish are high. Thus, the proposed removal of direct fishery subsidies must be compensated with social safety net to ensure the livelihood of these fishermen is maintained. Presently, Malaysia is undertaking a nationwide survey to ascertain the level of the fish stocks in its waters. As of 2014, Malaysia is one of the biggest per capita consumers of fisheries and marine products in the world at 56.5kg per person which is way above the world average of 20kg per capita. According to the Fisheries Development Authority of Malaysia (Lembaga Kemajuan Ikan Malaysia - LKIM), in 2013, a total of 1.48 million tonnes of fish landed in the jetty all across the country with a total value of RM 8.33 billion. Most of them are from the Plegic and Demersal species. In 2010, the number of fish landed across the country totalled at 1.42 million with a total value of RM 6.65 billion. Even though the data may suggest that fish catch is on an increasing trend, there is no real hard evidence to suggest that we are overfishing. This can only be done once data of the stock of fish is available in the domain. The potential removal such subsidy, in theory, will not only help to improve the quality of assistance to low income earners but also improve fish stock in the Malaysian waters. Presently the cost of subsidies to

					fishermen is large but its impact is still very minimal. It has been forecasted that the amount of subsidies will reach RM1 billion by the end of 2015 where 76 per cent of the total subsidies come from the fuel subsidy alone. The huge amount can be used for other necessary development (e.g. education and the reduction of the role played by the middlemen) that may help to further improve the livelihood of the community. In fact, a direct fuel subsidy may not have an effective role after all. Research has shown that these types of subsidy are only effective in enhancing capacity. It is not as beneficial as other livelihood incentives and support programs. This type of subsidy can create perverse incentives for increased exploitation of fisheries leading to a degradation of fishery resources. Any revenue enhancing or cost-reducing subsidy will increase any marginal profits at each existing level of fishing effort and therefore leads to an increase in fishing. Therefore, as these subsidies are effectively promoted an ineffective form of controlling the catch, it will eventually contribute to exploitation activities. Again, in the future, depletion of fishery resources will lead to a lower source of income for the low-income earners. In the case of Malaysia, over 70 per cent of the fishermen are fishing within 5 nautical million and thus depletion of fish stock will create unsustainable livelihood in the future. Apart from ensuring the sustainability of fishery resources, the removal of direct fishery subsidy will help Malaysia to combat illegal, unregulated and unreported fishing activities in terms of monitoring and enforcing systems to deter them from engaging in such activities. As the system requires a checking of the fish stock at regular intervals, this provision will in fact help to control and conserve the fish stock to a level at which it is sustainable. However, this can only be done once the initial stock-taking of the fishery resources is completed as to determine whether the issue of overexploitation of fishery resources is really happening in Malaysia. In addition, the issue of subsidy is a politically sensitive issue to be discussed in the Malaysian context. However, it is important to note that the obligation intends to ensure and protect the fishery resources from depleting and ensuring that it is at a sustainable level. It is also of a national interest for Malaysia to protect these resources for food security purposes. However,

					this needs to be done without sacrificing the welfare and socio-economics of the fishermen. It is important to identify the current and future fish stock level and ascertain whether or not this issue can be mitigated by having a more targeted social welfare policy.
49.	ISSUES				Trade and rights of National Biodiversity
	SUB ISSUES				Conserving the national biodiversity and ensuring that the benefits arising from the utilisation of genetic resources are shared equitably as well as recognizing the traditional knowledge associated with the genetic resources.
	IMPACT		NATURE OF IMPACT		IMPACT ON NATIONAL INTEREST
	YES	NO	(+)	(-)	
	✓		✓		Convention on Biological Diversity Index ranked Malaysia 12th based on the country's richness and endemism in four terrestrial vertebrate classes and vascular plants.[82] Statistics show that approximately 60 per cent of the country's total land area is still forested, including permanent reserved forest (PRF), state land forests, national parks, and wildlife and bird sanctuaries. This is in line with Malaysia's commitment to maintaining at least 50 per cent of forest and tree cover in perpetuity, as pledged at the 1992 Rio Earth Summit. In addition, a total of 10.6 per cent of Malaysia's land area has been designated as terrestrial protected areas. The remaining land use consists of agricultural crops, rubber plantations, oil palm plantations, urban and other uses. Malaysia has an estimated 15,000 species of vascular plants, 306 species of mammals, 742 species of birds, 242 species of amphibians, 567 species of reptiles, over 449 species of freshwater fish, over 500 species of marine fish and more than 150,000 species of invertebrates. The TPP ensures that every species is given necessary protection and recognition. Article 20.17 and a side

[82] *Convention on Biological Diversity Report, 2014*

					letter to 11 countries with regards to bio-diversity require all parties to recognise the principles of Access Benefit Sharing (ABS). This means that any access or use of genetic resources must take place with the approval — or prior informed consent — of the country providing the resources. The conditions for access or use of genetic resources, including how any resulting benefits would be shared, must be agreed upon — ABS must be based on “mutually agreed terms.” To enable the ABS Mechanism to take effect, Malaysia needs to have a specific law on ABS. The law is still in the consultation stage and, with the establishment of the law, it will no doubt protect Malaysia’s biodiversity from the practice of extracting the compound of the biodiversity for profit-making without any consent. The immediate impact of recognising the principles includes, among others: 1. Local biodiversity to be preserved and protected under local law; 2. The benefit of any biodiversity to be mutually shared and to be approved by the local authorities; and 3. The Government has the right to ensure that local biodiversity is sustainably used, protected and maintained.
50.	ISSUES				Biopiracy
	SUB ISSUES				The TPP requires Malaysia to accede to the International Union for the Protection of New Varieties of Plants (UPOV 91) Convention with a transition period of 4+ years
	IMPACT		NATURE OF IMPACT		IMPACT ON NATIONAL INTEREST
	YES	NO	(+)	(-)	
	✓			✓	The TPP requires Malaysia to accede to the UPOV 91' Convention with a transition period of four years after EIF. Complying with the UPOV91 treaty entails significant amendments to the Protection of New Plant Varieties Act 2004 (PNPV Act 2004). For example, there are provisions that will be affected as a result of

<table>
<tr><td></td><td></td><td></td><td></td><td></td><td>acceding to the UPOV91, such as:
1. 15-years' protection for new plant varieties discovered by small farmers and indigenous communities;
2. Requiring prior informed consent of the local indigenous community; and
3. Disclosing the parental source of the variety of interest, will be removed or watered down under the UPOV91.

Without these specific provisions preventing bio-piracy as currently provided for under the PNPV Act 2004, Malaysia's diverse genetic resources will become vulnerable to biopiracy once again under UPOV91. A case in point is Muscodor Strobelli, a micro-organism that was developed to treat stem rot in oil palm trees, patented in 2007 by a foreign university professor bioprospecting in Malaysian rainforest under the guise of biodiversity conservation studies. The PNPV Act 2004 was only gazetted and implemented in 2008.</td></tr>
<tr><td rowspan="4">51.</td><td colspan="4">ISSUES</td><td>Climate Change</td></tr>
<tr><td colspan="4">SUB ISSUES</td><td>Climate change issues are not being highlighted enough in the TPP to bring about Malaysia’s commitment to carbon intensity reduction</td></tr>
<tr><td colspan="2">IMPACT</td><td colspan="2">NATURE OF IMPACT</td><td rowspan="2">IMPACT ON NATIONAL INTEREST</td></tr>
<tr><td>YES</td><td>NO</td><td>(+)</td><td>(-)</td></tr>
<tr><td></td><td></td><td>✓</td><td></td><td>✓</td><td>The TPP does not address climate change as it entails changes in energy policy that would increase fracking and fossil fuel exports. This is mitigated by the Environment chapter, which has provisions that include incentives to regulate and promote a more sustainable development growth model. The Parties are also free to pursue any policymaking with regards to low emissions.

There is no impact on Malaysia with regards to addressing climate change. We have voluntarily pledged to lower our carbon intensity up to 40 per cent, and there no restrictions in the TPP to prevent this.</td></tr>
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PILLAR III: ECONOMIC

The next section studies the Economic Pillar of Malaysia's national interest and examines the impact that the TPP may have on selected issues under seven sub-pillars. The sub-pillars highlighted are: (1) market access; (2) investment; (3) competition; (4) SMEs; (5) innovation; (6) job creation; and (7) wealth creation. In undergoing the study, different stakeholders' interests were analysed to ensure that the analysis was done holistically. The dynamism of the relationship between the parties concerned was also taken into account. Since the TPP will encourage more trade and investment activities among member countries, items under the Economic Pillar are expected to be directly impacted once the TPP is implemented.
</td></tr>
<tr><td colspan="6">MARKET ACCESS</td></tr>
<tr><td rowspan="5">52.</td><td colspan="4">ISSUES</td><td>Food supply</td></tr>
<tr><td colspan="4">SUB ISSUES</td><td>Improved access to food supply</td></tr>
<tr><td colspan="2">IMPACT</td><td colspan="2">NATURE OF IMPACT</td><td rowspan="2">IMPACT ON NATIONAL INTEREST</td></tr>
<tr><td>YES</td><td>NO</td><td>(+)</td><td>(-)</td></tr>
<tr><td>✓</td><td></td><td>✓</td><td></td><td>TPP will boost demand for Malaysia's food exports, such as palm oil and seafood.

Malaysia will also gain access to dairy markets via the US, Japan, New Zealand and Canada, of which Malaysia is currently not self-sufficient. The removal or reduction of duties means that Malaysian consumers can enjoy cheaper and premium products from markets like the US.

(Refer to Chapter 4: Appendix 1 to Annex 4-A: Short Supply List of Products).</td></tr>
</table>

<table>
<tr><td rowspan="4">53.</td><td colspan="4">ISSUES</td><td>Cheaper imported goods and locally produced goods for Malaysian consumers</td></tr>
<tr><td colspan="4">SUB ISSUES</td><td>Competitive prices for both imported and locally produced goods</td></tr>
<tr><td colspan="2">IMPACT</td><td colspan="2">NATURE OF IMPACT</td><td rowspan="2">IMPACT ON NATIONAL INTEREST</td></tr>
<tr><td>YES</td><td>NO</td><td>(+)</td><td>(-)</td></tr>
<tr><td></td><td>✓</td><td></td><td>✓</td><td></td><td>Consumers in Malaysia can enjoy competitive prices for both imported and locally produced goods, on a wide range of products as import duties for almost 85 per cent of them will be eliminated when the agreement comes into force. There will be a positive impact on the consumers because they will enjoy a wider choice of better quality TPP origin products. There will also be a positive impact on our producers who import intermediary goods to produce their final products. There will be a negative impact on local producers though as they must be competitive to secure a portion of the domestic and TPP members' market share.

(Refer to Chapter 4: Appendix 1 to Annex 4-A: Short Supply List of Products)</td></tr>
<tr><td rowspan="4">54.</td><td colspan="4">ISSUES</td><td>Malaysian exporters gain a competitive advantage in market access compared to our competitors in the region who are not in the TPP</td></tr>
<tr><td colspan="4">SUB ISSUES</td><td>Exporters of products such as electrical and electronic, chemical, palm oil, rubber, wood, and textile products, as well as automotive parts and components are expected to be more competitive</td></tr>
<tr><td colspan="2">IMPACT</td><td colspan="2">NATURE OF IMPACT</td><td rowspan="2">IMPACT ON NATIONAL INTEREST</td></tr>
<tr><td>YES</td><td>NO</td><td>(+)</td><td>(-)</td></tr>
<tr><td></td><td>✓</td><td></td><td>✓</td><td></td><td>Exporters of products such as electrical and electronic, chemical, palm oil, rubber, wood, and textile products, as well as automotive parts and components are expected to be more competitive than our counterparts who</td></tr>
</table>

					are not in the TPP. There will be a positive impact on the industries highlighted because they are already competitive. They will benefit as they gain access to bigger markets abroad. There will be a negative impact for the industries that are less competitive. This is where the survival of the fittest will be tested. This has happened in Mexico under the North American Free Trade Agreement (NAFTA) for the textile and toy-making industries. Local producers must compete with foreign firms that set up shop in the *maquiladoras* at the US border. *(Refer to Annex 2-D: Tariff Elimination Schedule: Country Specific Annex)*
55.	ISSUES				Market Access to four new countries
	SUB ISSUES				New FTA markets
	IMPACT		NATURE OF IMPACT		IMPACT ON NATIONAL INTEREST
	YES	NO	(+)	(-)	
	✓		✓		The TPP will provide preferential access to goods and services from Malaysia into four “new” FTA markets, namely the US, Canada, Mexico, and Peru. There will be a positive impact on exporters and future exporters because exports are likely to increase upon EIF of the TPP as import duties for almost 90 per cent of the products will be eliminated in the US, Canada (95 per cent), Mexico (77 per cent), and Peru (almost 81 per cent). *(Refer to Annex 2-D: Tariff Elimination Schedule: Country Specific Annex).*

56.	ISSUES				Rules of Origin (ROO)
	SUB ISSUES				Four specific formulae for ROO that needs to be adhered
	IMPACT		NATURE OF IMPACT		IMPACT ON NATIONAL INTEREST
	YES	NO	(+)	(-)	
	✓			✓	There are four specific formulae for ROO that needs to be adhered to so that goods can enjoy preferential tariff rates given to TPP originating goods (strict formula ensures there are no free-riders from non-TPP countries). There will be a negative impact on producers who have to adjust to new supply chains to get tariff preferences for their goods. This is true for our textile and apparel producers. However, there will be a positive impact on producers of auto parts and components in Malaysia. Since their supply chain is in the country, they can enjoy preferential tariff rates under the TPP. *(Refer to Annex 2-D: Other TPP Countries' Tariff Elimination Schedule and Annex I and II of Cross*-Border *Trade in Services and Investment Non-Conforming Measures: Country Specific Annexes)*

57.	ISSUES				Regional content of ROO for automobiles
	SUB ISSUES				Specified regional content of ROO for automobiles
	IMPACT		NATURE OF IMPACT		IMPACT ON NATIONAL INTEREST
	YES	NO	(+)	(-)	
	✓		✓		As highlighted by the Australian Trade Commission, Malaysia has a promising automotive industry and is currently the third largest producer of vehicles in ASEAN after Thailand and Indonesia, which are not part of the TPP. The industry has slowly expanded since the Government introduced policies in the 1960s to promote the automotive sector. With such high hopes for its automotive industry, the spillover effect is very positive on its complementary industry, the car parts and components sector. According to the Market Watch 2012 Report, "In 2011, Malaysia imported RM9.1159 billion worth of cars and RM4.4867 billion car parts and components, and in turn exported RM654.2 million worth of cars and RM 2.2 billion car parts and components". Our major export partners are other Asean countries like Thailand and Indonesia, China, Syria and the United Kingdom.[83] Auto manufacturers currently sourcing parts and components from outside the TPP countries may now choose to source them from Malaysia. There will be a positive impact on our supply and parts producers as they are able to conform to the regional content required in the TPP agreement. They have the capacity and supply chain structure to export its goods abroad.

[83] *Automotive to Malaysia, Australian Trade Comission Report, 11th March 2014, accessed at http://www.austrade.gov.au/Australian/Export/Export-markets/Countries/Malaysia/Industries/Automotive on the 27th of November 2015*

					There will be a positive impact on future exports of national cars provided that they are competitive enough to do so. *(Refer to Chapter 3, Appendix 1 to Annex: 3-D: Provisions related to the Product-Specific Rules of Origin for certain vehicles and parts of vehicles)*
58.	ISSUES				Trade Remedies
	SUB ISSUES				Allowance for Anti-Dumping measures and countervailing duties
	IMPACT		NATURE OF IMPACT		IMPACT ON NATIONAL INTEREST
	YES	NO	(+)	(-)	
	✓		✓		As a safeguard, the TPP allows for anti-dumping measures and countervailing duties to be implemented on imports to curb dumping activities of imports as highlighted in Article 6.8 of the Trade Remedies Chapter. This is very much in line with the WTO practices highlighted in Article VI of GATT 1994, which is currently being implemented.
59.	ISSUES				Market Access for services
	SUB ISSUES				Unregulated Services Sector
	IMPACT		NATURE OF IMPACT		IMPACT ON NATIONAL INTEREST
	YES	NO	(+)	(-)	
	✓		✓		Presently there are nine unregulated service sub-sectors in Malaysia which fall under the jurisdiction of the Service Industry Division (BIP). They are; motor vehicle workshop, restaurant and catering, wellness and

					beauty, car parking services, management consulting services, storage and warehouse, market research, pest control services, transportation services of gas and petroleum through pipelines, translation and interpretation services and repair of watches and optical equipment. When the TPP is realised, foreign direct investments may be channelled into these sub-sectors. This will hopefully encourage the authorities to increase their monitoring into these sectors and go beyond "the focus on the development of these services to become more competitive and viable." As BIP`s main goal is to focus on the market access of these sectors by promoting more investments, the liberalization that comes with TPP is very much line with its interest.
60.	ISSUES				Technical Barriers to Trade
	SUB ISSUES				Mutual Recognition Agreements (MRAs) to be implemented under the TPP
	IMPACT		NATURE OF IMPACT		IMPACT ON NATIONAL INTEREST
	YES	NO	(+)	(-)	
	✓		✓		Malaysia has many existing MRAs with our ASEAN trading partners and other FTA counterparts. According to the ASEAN Secretariat, "Following the signing of the ASEAN Framework Agreement on Mutual Recognition Agreements (MRAs) in 1998, three sectoral MRAs have been concluded in ASEAN each in the area of electrical and electronic, telecommunication and cosmetics. Member Countries are currently in various preparation stages to implement those sectoral MRAs." This will impact Malaysia and its trading partners positively because even with the TPP we are still able to perform our commitments, which existed prior to TPP. *(Refer to Article 8.6: Conformity Assessment, Chapter 8: Technical Barriers to Trade).*

MARKET ACCESS (TEXTILES)					
61.	ISSUES				Strict ROO with a long permanent Short Supply List (allowance for fabrics, yarns and fibre)
	SUB ISSUES				Yarn –forward-rule prevails
	IMPACT		NATURE OF IMPACT		IMPACT ON NATIONAL INTEREST
	YES	NO	(+)	(-)	
	✓			✓	The yarn forward ROO requirement is being pushed by the US as it has been the minimum standard in their trade policies since President Ronald Reagan. Since 1988, there were only two FTAs that did not have the yarn forward rule provision in the agreement; Jordan FTA and the AGOA's Wearing Apparel Rules of Origin – 3rd Country Rule. Presently Malaysia has a small but significant presence in the global apparel market. Our export share to the world market for apparel is one per cent, which is highlighted in **Table 5** in the Appendix. The yarn forward rule is still implemented but with flexibility on the Short Supply List and Product Specific ROO for Vietnam and Malaysia. Flexibilities are given to our two major products of exports to the US (men's and women's shirts) at EIF. The De Minimis rule of 10 per cent by weight of the component is applicable under TPP. This rule allows for the use of small amounts of materials, based on weight that otherwise would not be permitted under ROO. There will be a negative impact on producers. Looking at the temporary supply list, Malaysian textile and apparel producers can only outsource 20 per cent of the items on the list. Additionally the strict yarn forward rule will have a negative impact on the textile industry because it serves as a barrier for free riders outside of TPP. This indirectly affects our local industry, which depends on materials from China. The Permanent Short Supply List will negatively impact our textile producers because the products listed are not favourable to the existing production supply chain. Producers need to re-adjust their supply chain to gain benefit from

					the preferential tariff rates under the TPP rules. This strict rule will have a positive impact on textile manufacturers who can emerge as the main provider of synthetic yarn in the country and the region. As the sector expands to cater to increase world demand for textile and apparel there will be a positive impact on employment and investment in this sector. Additionally since we already have the expertise and know-how for the production of the two main products, we will benefit as we already have a competitive advantage. Nevertheless we need to improve if we want to compete effectively with Vietnam in the long-run. *(Refer to Chapter 4: Appendix 1 to Annex 4-A: Short Supply List of Products)*
62.	ISSUES				Tariff elimination/ staging for textiles
	SUB ISSUES				The schedule of tariff elimination differs for different products being exported to the US. EIF, 5 years, 10 years, 12 years
	IMPACT		NATURE OF IMPACT		IMPACT ON NATIONAL INTEREST
	YES	NO	(+)	(-)	
	✓		✓		Malaysia's share of global apparel exports is as significant as that of Mexico and this is highlighted in **Table 6**. Unlike Mexico, Malaysia is expected to benefit more from the proposal primarily due to an enhanced market access and the fact that Mexico is already a part of the NAFTA. Under the NAFTA, they have already had preferential access to the US market. With the possibility of wider market access, this should motivate local businesses to strengthen and grow in the wake of the TPP. Local designers and skilled seamstresses in this sector might be more attracted to join the industry locally instead of looking for jobs that are not related to their expertise outside Malaysia. This scenario is envisioned with the assumption that wages for workers in the sector will rise over time as exports in textile and apparel increase.

					The biggest chunk of our exports to the US, which accounts for 47 per cent of our apparel exports will only enjoy 0 per cent tariff in year 11. This is where our strength lies but this can only be enjoyed in our 11th year. This will have a negative impact on our exporters in the short run. Producers exporting to the US can enjoy 0 per cent tariff at EIF for almost 37 per cent of our apparel exports to the US at EIF. This will have an immediate positive impact on these exporters. Overall, there will be a positive impact on the sector as the tariff reduction of the US is still better than what we have without the TPP. *(Refer to Chapter 2: 2-D. Malaysia Tariff Elimination Schedule)*
63.	ISSUES				Side letter on registered textile and apparel enterprises between Malaysia and the US
	SUB ISSUES				Establishes rules and regulations to identify and address customs procedures and offences
	IMPACT		NATURE OF IMPACT		IMPACT ON NATIONAL INTEREST
	YES	NO	(+)	(-)	
	✓			✓	The provisions in the side letter enable the US to do its certification on us. Therefore there will be no room for illegal workers and trans-shipment activities, which translates into no room for error on our part. Our monitoring system must be impeccable. There will be negative impacts on the Government if the implementation standards are not at par. Under the TPP, our monitoring system is expected to be impeccable.

					With that said, the regulations put in place, will have a positive impact on the sector as it introduces discipline and transparency in the textile and apparel industry. *(Refer to Side Letter: US-MY Letter Exchange on Registered Textile and Apparel Enterprises)*
64.	ISSUES				Treatment of Batik
	SUB ISSUES				Preferential tariff rates on handicraft and folklore articles
	IMPACT		NATURE OF IMPACT		IMPACT ON NATIONAL INTEREST
	YES	NO	(+)	(-)	
	✓		✓		There will be a positive impact on our batik industry as Malaysian batiks and handicraft produced in and exported from Malaysia can enjoy preferential tariff treatment. This translates to greater access to the U market and other TPP countries for local producers. This will then lead to more exports, which will result in an increase in employment and growth in research and development in this sector. *(Refer to Chapter 4: Article 4.2: Rules of Origin and Related Matters)*

65.	ISSUES				Emergency action
	SUB ISSUES				Special safeguard to respond to serious damage or threat in the event of sudden import surge
	IMPACT		NATURE OF IMPACT		IMPACT ON NATIONAL INTEREST
	YES	NO	(+)	(-)	
	✓		✓		As a safeguard the TPP allows for anti-dumping measures and countervailing duties to be implemented on imports to curb dumping activities of imports as highlighted in Article 6.8 of the Trade Remedies Chapter. This is very much in line with the WTO practices highlighted in Article VI of GATT 1994, which are being implemented currently. For textile and apparels, however, a special provision has been put in place. There will be a positive impact on the local textile and apparel producers as there is a mechanism to curb dumping of imported goods in the domestic market. To implement this measure, strict procedures for implementation need to be followed. This restriction may be viewed negatively by regulators in Malaysia, as it is a departure from what we are used to. (Refer to Chapter 4: Article 4.3: Emergency Actions)

MARKET ACCESS (SPECIFIC GOODS)					
66.	ISSUES				Rice – state trading enterprise
	SUB ISSUES				Bernas and future entities like Bernas remain as the sole distributors of rice in Malaysia
	IMPACT		NATURE OF IMPACT		IMPACT ON NATIONAL INTEREST
	YES	NO	(+)	(-)	
	✓			✓	Vengedasalam, et al. (2011) stated that in Malaysia, "Production of rice has only been sufficient to meet about 65 percent of the domestic needs, thus the remaining 35 percent is imported from the main exporters, Thailand and Vietnam."[84] The issue of food security is addressed because Malaysia reserves the right to adopt or maintain any measures relating to wholesale and distribution services for rice under the TPP. There is no impact on the price of rice with the elimination of tariff to 0 per cent in 11 years as Bernas can maintain its function as the sole importer and distributor of rice in Malaysia. Currently, it is involved in the procurement and processing of paddy, as well as the importation, warehousing, distribution and marketing of rice in Malaysia. To date, Bernas is already importing rice at 0 per cent tariff, even when the real tariff for rice products is 20 per cent among Asean countries and 15-40 per cent for rice products from the US. Bernas can still import at 0 per cent tariff in the phasing out duration but tariff must be eliminated in the 11th year. The price of rice may not decrease in the 11th year after EIF because Bernas still maintains its control over rice supply and hence its price. The study found that, "Large net welfare gains and a significant reduction

[84] *Vengedasalam, et.,al, 2011, Malaysian Rice Trade and Government Interventions, University of Sydney.*

					in Government expenditures are likely if all forms of Government interventions were to be eliminated and a free market allowed."[85] With or without the TPP, it is highly unlikely that the price of rice will increase significantly due to the fact that it is a controlled good, which is highlighted in the Section 5, Akta Kawalan Bekalan 1961.[86] The lowering of tariffs on rice imports from the US, however, will not have a significant impact on local farmers because of the price and local consumer preferences. *(Refer to Annex II Malaysia: Cross-Border Trade in Services and Investment Non-Conforming Measures, No. 11: Wholesale and Distribution Services)*
67.	ISSUES				Alcohol and tobacco
	SUB ISSUES				To maintain excise and domestic duties permanently - 15 years until 0 per cent tariff
	IMPACT		NATURE OF IMPACT		IMPACT ON NATIONAL INTEREST
	YES	NO	(+)	(-)	
	✓		✓		The impact of tariff elimination for tobacco and alcohol to 0 per cent in 15 years is positive for the Malaysian society as the Government can still maintain the implementation of price and supply control on these two products indefinitely under the TPP through excise duty and restricted license distribution.

[85] *ibid*
[86] *Senarai Barang-Barang Kawalan, http://www.kpdnkk.gov.my/kpdnkkv3/index.php?option=com_content&view=article&id=194&Itemid=288&lang=my, accessed on the 25th of November 2015*

					In 15 years the tariff for alcohol and tobacco will be eliminated to 0 per cent, which will translate into cheaper prices for these two products in the Malaysian market. The Government however still maintains its control over prices through excise duty. It also maintains its control over the supply of tobacco and alcohol products through the restricted distribution of license to distributors in Malaysia. Presently these two measures are put in place so that these products are not too readily available for under-aged consumers. Under the TPP the status quo remains. *(Refer to Annex II Malaysia: Cross-Border Trade in Services and Investment Non-Conforming Measures, No. 11: Wholesale and Distribution Services)*
68.	ISSUES				National cars
	SUB ISSUES				1. Other autos from TPP countries will enter the Malaysian market 2. Side Letter on Auto Imports with the US 3. Import license/AP for cars
	IMPACT		NATURE OF IMPACT		IMPACT ON NATIONAL INTEREST
	YES	NO	(+)	(-)	
	✓		✓		At the Malaysian Automotive Institute (MAI) Review and Insight 2014/2015 media briefing, it was stated that Proton's market share was 17.4 per cent, putting it at second place after Perodua with 29.4 per cent market share in the domestic market. National car brands still have the biggest piece of the pie at almost 47 per cent market share collectively. Toyota however has secured 15.3 per cent of the market share, the third biggest after Proton. As tariff for completely-built-up (CBU) car units will be fully eliminated in the 12th year after EIF, cars from Japan

					and the US are expected to be cheaper to import. The Government, however, will be able to maintain the excise duties prevailing at that time. This impacts the consumers positively. The complete elimination of automotive tariff is very much in line with Malaysia's commitments with our FTA partners; Japan from 2016 and Australia from 2018. Presently most of the automotive brands (including US brands) are currently entering Malaysia from Asean at duty free (under ATIGA) and without any quantitative restriction. *(Refer to Chapter 3: Appendix 1 to Annex: 3-D: Provisions related to the Product-Specific Rules of Origin for certain vehicles and parts of vehicles)* Our side letters on automotive with the US and Canada highlight that Malaysia cannot impose import quotas for American and Canadian made cars at EIF. This will not impact our national cars since imports from the US, in particular, are very low (5,653 units sold in 2011).[87] According to the Malaysian Automotive Market Survey, 2011, "American cars make up a small minority in the Malaysian market. They are present in the form of JV between American, South Korean and Japanese brands under General Motors. Most American cars that are sold in Malaysia have low engine displacement and differ from American cars sold in the United States."[88] Moreover, American and Canadian made cars are 'left-hand drive' and are not suitable for the Malaysian market. With this said, they do not pose a direct competition with our national cars. According to an International Trade Administration 2015 Report in 2014, U.S. car exports to left-hand drive countries only made up 6.7 per cent of its total exports.[89] Even though countries such as Australia, the United Kingdom,

[87] *Malaysian Automotive Market, https://a4rzero.wordpress.com/2011/07/06/automarket-malaysia/, accessed on the 27th of November 2015*

[88] *ibid*

[89] *Trends in U.S. Vehicle Exports, International Trade Administration, U.S. Department of Commerce, 2015.*

					Japan, South Africa, New Zealand and Hong Kong are much larger than in Malaysia, the total number of car imports from the US is low. Therefore, our commitments with the US will unlikely lead to a significant increase of car imports from the country. There are however strict regulations on the transparency of the distribution on Franchise APs and MITI must be transparent with its dissemination to importers. The granting of Franchise APs with no restriction with the US will impact our national car manufacturers at EIF only if there is a big demand for American cars by Malaysian consumers which is highly unlikely looking at recent data on American car imports. With additional players in the local market our national cars will need to compete for a bigger market share and this will hopefully strengthen their position as our national cars. *(Rules and regulation for Import License is highlighted in Chapter 2 Market Access)*
69.	ISSUES				Agricultural goods
	SUB ISSUES				15 products are included in the TRQ Mechanism
	IMPACT		NATURE OF IMPACT		IMPACT ON NATIONAL INTEREST
	YES	NO	(+)	(-)	
	✓		✓		For all of the 15 products listed in the TRQ section, Malaysia will administer all TRQs provided in the TPP through an import licensing system (Refer to Chapter 2: Malaysia Appendix A Tariff Rate Quota Schedule). The band for in-quotas will be extended by 1 per cent every year. There will be a positive impact on our farmers for chicken meat and eggs as they are already exporting their produce abroad. According to Wahab (2014), Malaysia is self-sufficient in producing poultry meat. Output is expanding but at a slow pace **Table 7**. It is the most popular source of protein in the country hence the high

					consumption per capita. As of now there are no U.S plants that are certified to export poultry meat to Malaysia due to the strict Halal requirements.[90] Plants in the U.S must get approval from the Government before sourcing can be done. As for chicken and duck eggs, the industry in Malaysia has been able to export table eggs to neighbouring countries. The export of table eggs in 2012 is 23.79 per cent higher than in 2011. The per capita consumption of chicken/duck egg is reported at 328 pieces, which is 16 per cent above full self-sufficiency level. According to the Layer Chicken Industry in Peninsular Malaysia Status of The Industry in 2012 and Prospects for 2013 Report in 2012, "about 1,492 million eggs were exported." Most of the eggs were exported to Singapore (1.4 billion) while the rest were exported to Hong Kong, Timor Leste, Angola, Maldives, Gambia, Brunei Darussalam, Indonesia and Sabah and Sarawak. [91] From the analysis above these industries are expected to grow significantly with the TPP. The tariffs will be eliminated in the 12th year for chicken/duck eggs and in the 16th year for poultry meat. By that time these sectors will emerge more efficiently with experience in exporting activities to a greater market within the region. Malaysia can use this platform to promote its Halal produce to other TPP countries in the future. As for milk products the liberalisation process, which will take place under the TPP, will allow cheap imported milk to enter the market in the first 16 years and beyond. In 2007 it was reported that 95 per cent (1.03 billion litres) of the milk in Malaysia were imported from foreign countries such as Australia, New Zealand and Holland. As of now we are far from being self-sufficient. In 2014 alone, we have only produced 18.12 million litres of milk according to a Pemandu website.[92]

[90] *GAIN Report at http://www.thefarmsite.com/reports/contents/MalaysiaPoultry14March2014.pdf, accessed on the 26th of November 2015*

[91] *Layer Chicken Industry in Peninsular Malaysia Status of The Industry in 2012 and Prospects for 2013, Federation of Livestock Farmers` Associations of Malaysia, http://flfam.org.my, accessed on the 26th of November 2015*

[92] *Refer to EPP: Cluster 16, http://etp.pemandu.gov.my/Agriculture-@-Agriculture_-_EPP_13-;_Dairy_Clusters.aspx, accessed on the 26th of November 2015*

					The liberalisation of this sector in the long run may impact the small farmers negatively because there will be no more protection given under the TRQ regime. As a safeguard financial assistance/subsidies to farmers can still be implemented under the TPP through BR1M, other technical or social safety net programmes. Additionally the strict procedure highlighted in implementing Tariff Rate Quotas (TRQs) may have a negative impact on regulators. They need to manage the information and calculation of TRQs transparently. Even unfulfilled TRQs need to be published online and must be easily accessible. This will benefit importers in Malaysia and exporters to other TPP countries because it promotes higher transparency in managing and disseminating data on TRQs, which is very much in line with the rules in WTO. Presently, our U-Custom needs to work flawlessly so that monitoring and information dissemination of TRQs can be done smoothly. As of now there is a lot of room for improvement. (Refer to Chapter 2: 2-D: Malaysia Appendix A Tariff Rate Quotas)
	SUB ISSUES				Pork (meat of swine)
	✓		✓		Only around 40 per cent of Malaysians consume pork and the consumption is forecasted to remain unchanged at around 240,000 tonnes per year. According to a USDA Report 2014, "the effective per capita consumption among the actual pork consumers is about 20 kg per annum. Malaysia is largely self-sufficient in pork, with production accounting for about 97 per cent of domestic consumption. Production is stagnant, with little growth expected."[93] This is because the Cabinet has approved the concept of Pig Farming Area (PFA) & Modern Pig Farming 2007 that approved pig farming in the states of Negeri Sembilan, Sabah and Sarawak. These states have been developing its PFAs. The other states need to modernise its pig industry through the Modern Pig Farming

[93] *USDA GAIN: Malaysia Pork Supply and Demand, The Pig Site, http://www.thepigsite.com/reports/?id=3523; accessed on the 25th of November 2015*

					requirements. With the TPP it is highly unlikely that PFAs will increase significantly given the demographic trends, and the outright opposition to pork in Malaysia.[94] Additionally as the Government has control over the endorsement of these areas and its businesses, the growth in this sector is minimal for exports in the future. The elimination of outbound tariff to 0 per cent for pork carcasses in 15 years translates into significantly cheaper import prices for frozen pork carcasses for consumers in Malaysia. This will impact the Malaysian consumers only when Vietnam can increase their pig production for exports in 15 years. As of now their export value is considered as insignificant. [95] As for fresh pork carcasses due to the lack of competition within the region, pork farmers are somewhat protected even after full liberalisation takes place. *(Refer to Chapter 2: 2-D: Malaysia Appendix A Tariff Rate Quotas)*
70.	ISSUES				Sugar
	SUB ISSUES				Wholesale and Distribution Services for Sugar
	IMPACT		NATURE OF IMPACT		IMPACT ON NATIONAL INTEREST
	YES	NO	(+)	(-)	
	✓			✓	The issue of food security is addressed because Malaysia reserves the right to adopt or maintain any measures relating to wholesale and distribution services for sugar under the TPP. In Malaysia only those in the business

[94] *ibid*
[95] *Nguyen. 2014. Pig Production and Marketing in Vietnam, http://www.angrin.tlri.gov.tw/English/2014Swine/p145-152.pdf, accessed on the 25th of November 2015*

					of producing sugar-based products and those who export 80 per cent of their sugar- based output can maintain its ability to import refined sugar directly from other TPP countries. Additionally Central Sugar Refinery Sdn. Bhd., MSM Malaysia Holdings Bhd., Gula Sabah Sdn. Bhd., Gula Padang Terap Sdn. Bhd. and Admuda Sdn. Bhd. can still maintain their function as raw sugar importers and distributors for the domestic market. Inputs of raw or refined sugar from TPP countries will ensure that Malaysia’s manufacturers can enjoy preferred tariff in the region. The price of sugar, however, may not decrease significantly in the TPP because these distributors still maintain their control over sugar supply and hence its price. This may impact the consumers negatively because the price of sugar may not necessarily be cheaper in the market after the TPP is implemented. With or without the TPP, it is highly unlikely that the price of sugar will increase significantly due to the fact that it is a controlled good, which is highlighted in Section 5, Akta Kawalan Bekalan 1961.[96] *(Refer to Annex II Malaysia: Cross-Border Trade in Services and Investment Non-Conforming Measures, No. 11: Wholesale and Distribution Services)*

[96] *Senarai Barang-Barang Kawalan, http://www.kpdnkk.gov.my/kpdnkkv3/index.php?option=com_content&view=article&id=194&Itemid=288&lang=my, accessed on the 25th of November 2015*

71.	ISSUES				Furniture goods
	SUB ISSUES				High ROO threshold
	IMPACT		NATURE OF IMPACT		IMPACT ON NATIONAL INTEREST
	YES	NO	(+)	(-)	
	✓			✓	In 2012 it was reported that, “the prices of Malaysian-made furniture are expected to be cheaper when compared to products made in developed countries, but certainly of better quality than others produced in Indo-China.”[97] It was further highlighted that the Malaysian-made products were quite competitive because of the high quality rubber wood that we have in Malaysia. The high-value products were given new brand names by international customers, which were mostly European. However as of 2012, there were only 20 Malaysian manufacturers that had established their brand in the world furniture market. At EIF, the high ROO threshold will have a negative impact on manufacturers who are not able to outsource items from Indonesia, China and other non-TPP countries as inputs from those countries are not entitled for TPP preferential tariff. These producers make up the majority of the sector in Malaysia. With the high threshold Malaysia wants to promote its domestic industry so that it will be favourable for domestic manufacturers who have been sourcing their products within the country. This will hopefully encourage made in Malaysia brands which are already competitive to go abroad. Those manufacturers who do not conform to the threshold will need to readjust their operations to gain from the TPP.

[97] *Malaysia in top eight among world's furniture exporter, the Sun Daily, http://www.thesundaily.my/node/88352, 3rd March 2012*

					(Refer to Chapter 3: Annex 3-D: Product Specific Rules of Origin)
72.	ISSUES				Iron and steel
	SUB ISSUES				Elimination of Tariffs
	IMPACT		NATURE OF IMPACT		IMPACT ON NATIONAL INTEREST
	YES	NO	(+)	(-)	
	✓			✓	Malaysia's iron and steel industry contributes about 4 per cent to the GDP and employs around 150,000 people in 2014. To date the industry is experiencing falling output and revenues with production expected to decrease by 5 per cent to reach 5.6 million tonnes in 2014 compared to 6 million tonnes in 2013.[98] The Exim Bank 2015 Report also mentioned that, "the industry is facing downside risks such as low steel prices due to oversupply, flood of cheap steel imports from China whereby local steel players find it difficult to compete, inefficiency in production when plant capacity utilization remains below 80 per cent." Higher operating costs in Malaysia have made this sector inefficient in competing. Even with anti-dumping duties as high as 29 per cent being imposed by the Government on the imports of hot-rolled coil steel from China, Indonesia and South Korea, this may not stop steel companies to import these products that are of high quality.[99] With the TPP, manufacturers of iron and steel in Malaysia will have to compete to ensure their survival (especially with the US and Japan) in as early as five years. This will have a negative impact on our local iron and steel producers as they are now facing tough competition with China even without the TPP. Those with most-favoured-nation (MFN) tariff of 15 per cent currently will be eliminated in 10 years under the TPP.

[98] *Lee, K. T., 2015, Industry Assessment : Iron & Steel Industry – An Update (Malaysia), Exim Bank Report, http://www.exim.com.my/sites/default/files/industry_assessment_-_iron_and_steel_industry_-_an_update_malaysia_jan_2015.pdf, accessed on the 26th of November 2015*
[99] *ibid*

<table>
<tr><td></td><td></td><td></td><td></td><td></td><td>Those lower than 15 per cent need to be phased out from 5 to 7 years under the TPP (Refer to Chapter 2: Malaysia Tariff Elimination Schedule).

The Government, however, can still maintain its export duty on scraps and this will have a positive impact on the Government’s income.</td></tr>
<tr><td colspan="6">MARKET ACCESS (FINANCIAL SERVICES)</td></tr>
<tr><td rowspan="4">73.</td><td colspan="4">ISSUES</td><td>Malaysia’s commitment in the TPP is very much in line with the Financial Sector Blueprint of 2011-2020 and the Capital Market Masterplan 2</td></tr>
<tr><td colspan="4">SUB ISSUES</td><td>The Monitoring Role of Bank Negara Malaysia and Securities Commissions Malaysia remains</td></tr>
<tr><td colspan="2">IMPACT</td><td colspan="2">NATURE OF IMPACT</td><td rowspan="2">IMPACT ON NATIONAL INTEREST</td></tr>
<tr><td>YES</td><td>NO</td><td>(+)</td><td>(-)</td></tr>
<tr><td></td><td>✓</td><td></td><td>✓</td><td></td><td>Financial institutions supplying financial services in the territory of Malaysia must be constituted as locally incorporated companies under the laws of Malaysia. Article 11.3 in the Financial Services Chapter highlighted that no national treatment will be given to financial service providers before its physical establishment in Malaysia. This enables the authority to carry out its duties in ensuring that companies in Malaysia are abiding by Malaysian laws in performing their operations.

Additionally Article 11.7 in the Financial Services Chapter highlighted that New Financial Service operators must comply with the Malaysian law in its business operations. Even though, with the TPP, there will be no restriction on the appointment of their senior managers and their board of directors, monitoring can still be done as stated in Article 11.3 in the Financial Services Chapter.

Bank Negara Malaysia (BNM) and the Securities Commission Malaysia (SCM) have the right to monitor and</td></tr>
</table>

					control the activities of the financial institutions that set up their operations in Malaysia. This includes Islamic Financial Services as well. This has a positive impact on our regulators. Malaysia reserves the right to adopt or maintain any measures relating to the development of the pension system in Malaysia for the first 3 years after EIF. Foreign players with attractive insurance packages will provide options for households in Malaysia as we allow foreign insurance companies to offer retirement products after three years. This will have a positive impact on households. In 2013 the Wall Street Journal highlighted that, "Still, authorities worry that Malaysians aren't saving enough for retirement. And as the Employees Provident Fund gets bigger, the Government is concerned it won't be able to generate high enough returns to fund people's retirements." In that year the Government approved 8 companies to manage 24 funds that have various different risk levels which held different securities like stocks, bonds and money-market instruments.[100] With the TPP workers can diversify their investments for retirement in 3 years which is in line with the Government`s efforts today. BNM's autonomy in managing the ringgit, foreign exchange reserves and transactions, and movement of capital will not be affected. There will be no restrictions on BNM's operations as it has sufficient flexibility in (i) implementing capital controls during episodes of severe balance of payment crisis or threat thereof as stated in Article 29.3: Temporary Safeguard Measures; and (ii) measures related to non-internationalisation of the ringgit in Annex II. Presently Malaysia already discloses foreign reserve holdings, but will now be required to disclose intervention data every 6 months as stated in the Joint Declaration of the Macroeconomic Policy Authorities of Trans-Pacific Partnership Countries. Additionally BNM has the right to implement capital controls even as a pre-emptive measure in response to an

[100] *Private Retirement Funds Find Malaysia a Tough Sell, Wall Street Journal, July 24, 2013, http://www.wsj.com/articles/SB10001424127887323610704578625203239507898 accessed on the 27th November 2015*

					incoming financial crisis. This will have a positive impact on our regulators since flexibility is preserved under the TPP. (Refer to Annex III: Malaysia`s Reservations to Chapter 11 (Financial Services)
INVESTMENT					
74.	ISSUES				Investment access
	SUB ISSUES				Attracting investments
	IMPACT		NATURE OF IMPACT		IMPACT ON NATIONAL INTEREST
	YES	NO	(+)	(-)	
	✓		✓		Attracting export-oriented or efficiency-seeking investments has been a cornerstone of Malaysia's economic development. Policy reforms aimed at liberalising foreign investment restrictions started with both the Investment Incentive Act and establishment of free trade zones in the 1970s, followed by provision of export incentives in the 1980s. These reforms have led to a surge in FDI ever since. With the notable exception of the automotive sector, foreign investment in the manufacturing sector, particularly in electric and electronics (E&E), has become a norm. This is reflected in both the high share of E&E exports and also Malaysia's total trade to GDP ratio. Significant progress has been made in liberalising the services sector, considered to the next frontier that will improve competitiveness of the Malaysian economy as well as attract more FDI. Since 2009, the Foreign Investment Committee (FIC) which governed foreign equity limits was abolished, 43 services sub-sectors were liberalised and 100 percent foreign equity participation was allowed in private hospital services, medical specialist clinics, department and specialty stores, incineration services, accounting and taxation services,

					courier services, private universities, vocational schools, dental specialist services, skills training centres, international schools, vocational schools for special needs, and quantity surveyors services.[101] In addition, Malaysia has taken steps to improve its business environment. It is ranked 18th out of 185 countries in the World Bank's Doing Business index in 2016, 20th out of 124 economies in the World Economic Forum's (WEF) Global Competitiveness Report (2014-2015) and 25th out of 125 economies in the WEF's 2014 Global Enabling Trade report. In particular, improvements were made to business regulations such as licensing requirements, application for construction permits and developing a policy and guidelines for ensuring quality of new regulations - National Policy on the Development and Implementation of Regulations.[102] However, compared to other countries, foreign investment remains highly restrictive in a few key areas. The OECD FDI Restrictiveness index is a useful indicator that draws attention to the extent of Malaysia's performance in liberalising its investment regime compared to its regional peers and OECD countries. It consists of four elements: 1) level of foreign equity ownership permitted; 2) screening and approval procedures; 3) restriction on key foreign personnel; and 4) other restrictions such as land ownership. It only captures key discriminatory measures that are typically listed in countries' list of reservations under FTAs or exceptions to National Treatment. However, the overall 30 per cent Bumiputera ownership requirement and the relatively dominant position of GLCs in the economy are considered as non-discriminatory and are not factored in. As such, this index understates the extent of Malaysia's restrictiveness to foreign investment. Moreover, it is based on statutory restrictions and does not assess actual enforcements. Malaysia's latest OECD FDI Restrictiveness index is ranked within the bottom 20th percentile among the

[101] *2015 National Trade Estimate Report on foreign trade barriers.*
[102] *WTO, Trade Policy Review Malaysia 2014.*

					countries surveyed. Its aggregate index of 0.212 is relatively high as shown in **Figure 3** in the Appendix, but it is the second best reformer between 1997 and 2010 in **Figure 4**. An OECD study[103] shows that a 10 per cent reduction in the index of restriction is associated with about 1.5 per cent to 2.6 per cent increase in the level of inward FDI stocks. The index reflected significant FDI barriers in several sectors as highlighted in the 2015 USTR National Trade Estimate Report 2015, 2014 WTO Malaysia Trade Policy Review and the 2013 OECD Investment Policy Review: Malaysia, which are retail, telecommunication, financial services, professional services, and mining and energy sectors. For example, in the real estate sector, foreign investors are not allowed to acquire properties below RM1,000,000, a threshold that was previously set at RM500,000 in 2014. Moreover, foreign investors are required to obtain state government's approval when acquiring land for commercial purposes and may be subjected to maximum foreign equity threshold conditions, and land rules vary from state to state. Also, any purchase of property worth RM20 million and above from Bumiputera owners or Government agencies must have explicit consent from the Economic Planning Unit. Performance requirements are also imposed on manufacturers in Free Trade Zones in order to qualify for customs waiver. Foreign participation in public-private-partnership is also subjected to various criterion: Foreign participation in public-private-partnership projects may be considered in certain cases, where: (a) their expertise is needed to upgrade efficiency, and such experience is not available locally; (b) their participation is necessary to promote the export market; (c) the supply of local capital is insufficient to absorb the shares offered; and (d) the nature of the business requires global linkages and international exposure. For projects of strategic and national importance, foreign ownership has to be widespread so as to ensure that no single foreign party would have influence on the company.[104]

[103] *Kalinova, B., A. Palerm and S. Thomsen. 2010. "OECD's FDI Restrictiveness Index: 2010 Update", OECD Working Papers on International Investment, 2010/03, OECD Publishing*

[104] *WTO, Trade Policy Review Malaysia 2014.*

					As for GLCs, they still play a significant role in the economy despite the Government's privatisation efforts. They are estimated to account for 36 per cent and 54 per cent of the market capitalisation of Bursa Malaysia and benchmark Kuala Lumpur Composite Index while total revenue is estimated at 17.5 per cent of GDP, higher than China and Thailand, and second only to Singapore.[105] Moreover, the privatisation programme stipulates that Bumiputera should take up at least 30 per cent of equity of a privatised entity while foreign participation is limited to 25 per cent of share capital. Although steps have been taken to improve the performance and governance of GLCs, particularly via the GLC Transformation Programme in 2004, evidence suggests that their performances are still below par.[106] Moreover, the Government and GLC procurement - estimated to be worth 25-30 per cent of Malaysia's GDP[107] - is the most restrictive barrier to FDI in certain service subsectors which predominantly consists of goods, construction, financial, ICT, telecommunication, sewage and sanitation services. Government and GLC procurement heavily promotes the use of local content and accords substantial preferences to Bumiputera companies as a socioeconomic developmental tool. Nevertheless, as shown in **Table 8**, Malaysia's FDI inward stock has grown at a healthy clip of approximately 8 per cent p.a. between 2008 and 2014 - almost doubling the stock of FDI despite the various remaining barriers in place. These liberalisation measures have led to an increase in Malaysia's share of FDI inflows among Asian countries from 0.5 per cent in 2008 to 2.5 per cent by 2012.[108] Moreover, FDI is also diversely distributed across sectors. Almost half are focused on the manufacturing sector especially in E&E, reflecting Malaysia's role in the global supply chain although this has slowed somewhat in recent years. Another quarter of FDI stock is found in financial and insurance activities.

[105] *OECD Investment Policy Reviews: Malaysia 2013.*
[106] *OECD Investment Policy Reviews: Malaysia 2013*
[107] *WTO, Trade Policy Review Malaysia 2014*
[108] *Ibid*

A noteworthy development is that the Construction and other Services (including Professional services) sectors have experienced greater growth between 2008 and 2014, reflecting the Government's policies in liberalising these sectors. The strong FDI performance in the financial sector also demonstrated the Government's initiative to establish Malaysia as a leading player in Islamic finance. FDI into mining and quarrying, including O&G, is mostly in the form of production and risk sharing contracts with Petronas.

From **Table 9**, the largest investors are from the EU, Singapore, US[109] and Japan. Together, they account for nearly 80 per cent of inward FDI stocks in Malaysia. Most countries invested in Malaysia at a sustained rate of nearly 8.0 per cent p.a., doubling their FDI stock in the process. The striking exception is the paltry 1.4 per cent p.a. growth rate achieved by the US, largely due to the onset of the Global Financial Crisis.

Moreover, many emerging countries including Saudi Arabia, United Arab Emirates and India, also feature prominently in terms of cross-border merger and acquisition (M&A) activities in Malaysia.[110]

Global inward FDI stocks have also grown at a rate of 8.2 per cent p.a. during the corresponding period despite the onset of the global financial crisis. Global FDI inflow into services remains pronounced, accounting for the largest share of announced greenfield and M&A deals.[111] Two thirds of global inward FDI stock is in the services sector with finance and business activities comprising the largest share, as shown in **Table 10**. By contrast, Malaysia's services sector accounts for half of total inward FDI stock.

Malaysia's competitiveness in attracting FDI relative to all other countries can be analysed systematically using shift share analysis that decompose the changes of Malaysia's inward FDI stock into 3 components:

a) *Worldwide growth effect*, where change is attributable only to the growth rate in world inward FDI

[109] *Inclusive of inward FDI stocks originating from the Bermudas, Cayman Islands and Virgn Islands*
[110] *OECD Investment Policy Reviews: Malaysia 2013*
[111] *UNCTAD World Investment Report 2014: Investing in the SDGs*

stock;

b) *Worldwide industry-mix effect*, where change is due to difference between a global industry's growth rate and overall growth rate in world inward FDI stock;

c) *Competitive effect*, where change is attributable to difference between Malaysia's industry growth rate and the corresponding global industry's growth rate.

The sum of all 3 components equals the *actual change* in inward FDI stock in Malaysia between 2008 and 2014. The competitiveness of each sector is shown in **Table 11.**

From **Table 11**, Malaysia is shown to be very competitive in attracting foreign investment in the Mining, Wholesale and Retail trade and Other Services sectors, denoted by their high competitiveness to actual change ratio. The high ratios in the sub-services sector are consistent with the discussions above, whereby substantial effort undertaken in recent years to liberalise the services sector has made investing in Malaysia more attractive compared to other countries. The notable exception, however, is the financial services sector. Although it makes up one fourth of total FDI stock in Malaysia, its relative competitiveness is very weak when compared to the performances of other sectors.

Although Malaysia appears to be performing well in attracting foreign investment on a global setting, its regional competitiveness, however, has been on a declining trend. **Figure 5** shows that Malaysia's share of total FDI stock into ASEAN has declined from nearly 30 per cent in 1980 to 10 per cent by 2011. It is possible that the use of capital controls during the Asian financial crisis, although only a temporary measure, had an unintended permanent effect on Malaysia's competitiveness in attracting foreign investment. Also, this trend is attributable to the emergence of other ASEAN countries onto the international scene. As such, FDI into these countries in lieu of Malaysia should not come as a surprise, which is brought about by the continually evolving production fragmentation process in the region.

Nevertheless, this trend does not capture the changes in the quality of FDI into the country, for example, a shift from resource-based and low-technology FDI to knowledge-intensive and higher valued added based activities, implying less capital invested. This attribute is then desirable and consistent with Malaysia's goal of

					moving up the production value-chain and achieving a high-income status nation. As such, in order to sustain Malaysia's competitiveness in attracting FDI, trade agreements, the TPP in particular, can reduce barriers to FDI through various provisions in the Investment Chapter. In particular, they provide for non-discrimination through national treatment (NT), MFN, fair and equitable provision, bars performance requirements, liberalisation of foreign ownership restrictions and require reasonable compensation in case of expropriation to ensure free and timely transfers. Additionally, procedures for investor-state arbitration by international tribunals are also established. These provisions are envisaged to act in a manner that is consistent with improving the domestic investment framework and the overall business climate. A more predictable, stable and equitable environment is expected to increase returns on existing foreign investment, thus stimulate additional investment. Together with the impact of other TPP disciplines, for example, stronger IP protection, regulatory coherence, greater transparency and governance and an overall signalling effect associated with the perceived improvement in Malaysia's credibility from its commitment to the TPP, indirect FDI gains are also to be expected. As net capital exporter, it is also in the interests of Malaysian investors abroad to take advantage of these liberal measures. The chapter also complements the exhaustive investment definition and coverage with the negative listing approach. It requires host countries to grant foreign investors direct access to all economic sectors unless clearly specified in the annexes. In other words, anything that is not forbidden is allowed. Protected sectors shall either be completely or partly excluded from market opening. Stakeholders have raised concerns about the consequences of involuntary exposure of market opening as a result of agreeing to such a liberal regime. But in reality, the negative listing approach safeguards existing domestic industries from competition as the cost of participation in new ventures is usually very high. All members, including Malaysia, reserve the right to safeguard their national interests in Annex I and II. All existing discriminatory measures in Annex I are subjected to the “ratchet” mechanism whereby a member can only choose to liberalise such a measure that cannot subsequently be more restrictive. These measures cannot be backtracked but only to improve and liberalise further in future. All measures under both Annex I and II are

					gathered by MITI based on sectoral input from various ministries, agencies and related government bodies. Annex II of the Investment Chapter allows the Government to have a considerable level of policy space on matters such as land matters, Bumiputera status, national and state unit trusts, Petronas's monopoly right over Malaysia's petroleum and hydrocarbon resources, and divestment or privatisation of government assets. Highly sensitive sectors such as arms and explosive, gaming and gambling, atomic energy, hazardous waste, the right to censorship, mediation and Syariah law are also listed in Annex II. Thus, a closer examination of the benefits of FTAs in promoting foreign investment is in order. Results of econometric studies examining the relationship between FTAs and FDI, however, are rather contradictory and inconsistent. Recent studies have included finer adjustments, for example, by taking into account the stages of development of the participating countries as well as differences in investment provisions to highlight the nuances of FTA analysis. The promotional effect of FTAs and BITs on FDI inflows into developing countries is still mixed. Some studies show little or no evidence[112] while others show a positive correlation.[113] A separate study examining countries - both developing and developed, that have trade agreements with the US are also inconclusive.[114] For example, out of all US TIFA, BITs and FTA signatories, only Australia, Malaysia, Bangladesh, Honduras, Trinidad and Tobago, Chile, Singapore and Morocco have benefitted.

[112] *Tobin, J. and S. Rose-Ackerman .2005. "Foreign Direct Investment and the Business Environment in Developing Countries: The Impact of Bilateral Investment Treaties", Yale Law School Research Paper, No. 293. Yackee, J.W. (2007), "Do Bits Really Work? Revisiting the Empirical Link between Investment Treaties and Foreign Direct Investment", University of Wisconsin Legal Studies Research Paper, No. 1054, October.*

[113] *Tobin, J. and S. Rose-Ackerman . 2006. Bilateral Investment Treaties: Do They Stimulate Foreign Direct Investment? June., Neumayer, E. and L. Spess (2005), "Do Bilateral Investment Treaties Increase Foreign Direct Investment to Developing Countries?", LSE Research Online, February*

[114] *Peinhardt, Clint and Allee, Todd, . 2012.Failure to Deliver: The Investment Effects of US Preferential Economic Agreements, The World Economy, 35, issue 6, p. 757-783.*

					FTA investment provisions effects on FDI have also been investigated.[115] FTAs with national treatment and MFN provisions - that liberalises foreign investment restrictions, together with DSM, were found to have an impact on inward FDI. The impact of ISDS on inward FDI, however, does not appear to be significant. Also, BITs increase FDI flows to signatory countries but only if those countries are not subsequently challenged before ICSID. As for Malaysia's experience, its bilateral and multilateral FTAs have collectively led to an increase of approximately RM1 billion in additional inward FDI, with as much as 70 per cent concentrated in the manufacturing sector.[116] FDI is expected to increase by 0.5 per cent, 0.1 per cent and 1.0 per cent if Malaysia signs the TPP, RCEP or both respectively.[117] Based on the surveys and competitive analysis above, there is no clear empirical evidence that FDI into Malaysia will increase with its participation in the TPP, in both the degree of certainty or magnitude. The misconception, however, is to assume that all FTAs are equal. Clearly, the TPP is unique among FTAs, given the breadth and depth of reforms that it aims to achieve despite the various exceptions included in Annex I and II. In other words, it is the extent of the ensuing structural reforms, accompanied or accelerated by participating in a FTA, rather than the FTA itself, that spurs greater domestic and foreign investment. Thus, despite its shortcomings, the Malaysia's OECD Restrictiveness sectoral indices are more suited for qualitatively assessing the potential FDI increases under the TPP, as shown in **Table 12**.

[115] *Tim Büthe and Helen V. Millionner. 2014. Foreign Direct Investment and Institutional Diversity in Trade Agreements: Credibility, Commitment, and Economic Flows in the Developing World, 1971–2007 . World Politics, 66, pp 88-122. Berger, A., M. Busse, P. Nunnemkamp and M. Roy (2010b), "Do Trade and Investment Agreements Lead to More FDI? Accounting for Key Provisions Inside the Black Box", Kiel Working Paper, No. 1647, September*

[116] *internal report*

[117] *Peter A. Petri, Michael G. Plummer and Fan Zhai, 2012. The Trans-Pacific Partnership and Asia-Pacific Integration: A Quantitative Assessment. Policy Analyses in International Economics 98*

					Based on **Table 12**, the manufacturing and mining sectors were already fully liberalised since 2010. Direct FDI gains as a result of further liberalisation will be limited. Potential sizable FDI gains, however, will be in the O&G procurement sector, which distinguishes between upstream and downstream activities. The upstream sectors, which are already highly competitive, will be further liberalised with the removal of restrictions on 12 activities. Most gains will be concentrated in the more restricted remaining upstream and downstream activities. These activities will be liberated partially, whereby participation by vendors who are of Bumiputera, SME, Sabah and Sarawak origins will be capped at a maximum of 70 per cent upon signing of the TPP. The percentage will then decline uniformly to 40 per cent by the end of the fifth year. Moreover, up to nine SOEs [118] will be subjected to this partial liberalisation measure. Additional investments in the manufacturing sector are likely to be efficiency-seeking in nature, i.e. increased FDI from non -TPP countries to TPP members to benefit from the preferential tariff treatments and ROO accorded under the TPP. Key beneficiary sectors include automotive parts and components and textiles manufacturers. Access to the TPP members' market (including GP), especially the US, are also expected to spur greater domestic investments in electrical and electronic, chemical, palm oil, rubber, wood, and textile products, as well as automotive parts and components. This is because the American procurement market, which is previously inaccessible to Malaysian-based suppliers, is now made available. Automotive liberalisation measures implemented under the NAP review 2009 remain firmly in place.[119] Therefore, there will be additional gains in foreign investment, reinvestment and capacity expansion for existing non-national car vendors from the resulting tariff reductions. However, such gains will be offset by

[118] *Axiata, UEM, MAHB, CIMB, MAS, Telekom, PLUS, IHH.*

[119] *No foreign equity restrictions on manufacturing and assembling : i) luxury passenger vehicles with engine capacity of 1,800 cc and above and on the road price not less than RM150,000; ii) pick-up trucks and commercial vehicles, iii) hybrid and electric vehicles, and, iv) motorcycles with engine capacity of 200cc and above.*

					declines in domestic investment made by national car-vendors. Moreover, gains in foreign investment may be limited due to the already well established and mature production networks in the automotive manufacturing industry - Malaysia no longer has the first or second mover advantage in attracting FDI without incurring significant tax revenue losses via deep tax breaks and incentives. Foreign FDI into the pharmaceutical sector has grown significantly and currently makes up the bulk of investment into the pharmaceutical industry. This can be seen in **Table 13**, where the share of foreign investment has increased from 20 per cent to nearly 60 per cent in recent years. It is likely that this increase is due to the preferential treatment accorded to foreign investors under the ETP. These initiatives include the off-take agreements (OTAs) and priority product registration for companies registered under EPP projects. OTAs for pharmaceutical products are designed to be import substituting by encouraging multinational corporations and other manufacturers to base their manufacturing in Malaysia as they will be given three-year GP agreements and another two years if they meet export criteria as opposed to a two-year contract. Also, the period for product registration is reduced from 18 months to 60 days for all EPP companies.[120] These preferences, however, will no longer be allowed as they do not conform to the national treatment and non-discrimination provisions in the GP Chapter. Government procuring entities cannot discriminate suppliers based on origin of products and the current practice of promoting pharmaceutical import substitution policies will need to be reviewed. In the absence of local manufacturing incentives, new foreign pharmaceutical firms may no longer undertake investments and choose to export pharmaceutical products to Malaysia instead. There may be additional FDI as a result of the relocation of export-oriented foreign generics manufacturers among the TPP members to

[120] *ETP Annual report 2014.*

					Malaysia due to its comparatively lower wages. There is no substantive liberalisation of the services sector under the TPP. Foreign investors preferences for key sectors examined such as financial, retail and wholesale trading (distribution), and telecommunication, remain unchanged under the TPP except for construction services (GP) and some distribution services. Foreigners will now be allowed operate in the 24 hours convenience store subservice sector. GP for construction services above the relevant thresholds are liberalised. Moreover, sub-sectors that explicitly exclude foreign participation include: • Education services covering preschool, primary, secondary and religious schools; • General doctor, dentist, pharmacist, nurse, midwife; • Distribution of utilities (water, gas, electricity and waste disposal); • Distribution of batik, motor and commercial vehicles • Supermarkets, mini markets, permanent wet markets, permanent pavement markets, fuel stations with or without kiosks, news agents, medical halls, Malaysian cuisine restaurants, bistros, jewellery stores • Franchise license • Postal delivery services • Foreign fishing vessels • Content applications service providers (CASP) • Real estate services • Defence related services (security exception) • Tourist guides • Customs brokers/agents

					• Lawyers (Sabah and Sarawak) • Cooperatives, proprietorship and partnership; and • Batik textiles and apparels. Only marginal liberalisation is undertaken for professional services, whereby foreign engineers, architects and lawyers are allowed temporary entry and licensing for a stipulated period of time. In addition, 'soft' liberalisation, i.e.: improving transparency, corporate governance and foreign investor protection, may also encourage further foreign participation in the Malaysian economy. In conclusion, there is potentially greater investment in several manufacturing and procurement activities as a result of Malaysia's participation in the TPP. As discussed, foreign participation has been a key national strategy in developing the country since the 1970s. This objective is well reflected in the TPP, recognising that further liberalisation is a vital prerequisite for moving Malaysia further up the global value chain and achieving its high income nation status by 2020. For example, although Malaysia is the only major energy exporting country in emerging Asia, it is not a member of the Organization of the Petroleum Exporting Countries (OPEC); Malaysia's natural comparative advantage in the O&G sector is not superior to many, yet it is now home to leading niche service providers in the global O&G industry. Therefore, with greater foreign participation in other sectors, together with the right government incentives, the learning curve of local suppliers is envisaged to be substantially shortened, enabling them to innovate quicker and compete more effectively in foreign markets.

75.	ISSUES				Sensitive sectors
	SUB ISSUES				Safeguarding sensitive sectors
	IMPACT		NATURE OF IMPACT		IMPACT ON NATIONAL INTEREST
	YES	NO	(+)	(-)	
		✓	✓		Annex II of the Investment Chapter allows the Government to have considerable level of policy space on matters such as land matters, Bumiputera status, national and state unit trusts, Petronas' monopoly right over Malaysia's petroleum and hydrocarbon resources, divestment or privatisation of government assets. Highly sensitive sectors, such as arms and explosives, gaming and gambling, atomic energy, hazardous waste, the right to censorship, mediation and Syariah law, are also listed in Annex II.
76.	ISSUES				Foreign exchange and movement of capital
	SUB ISSUES				BNM’s autonomy in managing cross-border trade of the Ringgit, foreign exchange reserves and transactions, and movement of capital
	IMPACT		NATURE OF IMPACT		IMPACT ON NATIONAL INTEREST
	YES	NO	(+)	(-)	
		✓	✓		There will be no restrictions on BNM’s operations as it will retain complete autonomy in (i) implementing capital controls during episodes of severe balance of payment crisis as stated in or threats thereof in Article 29.3: Temporary Safeguard Measures; and (ii) measures related to non-internationalisation of the Ringgit in Annex II. Also, Malaysia already discloses foreign reserve holdings, but will now be required to disclose intervention data every six months as stated in the Joint Declaration of the Macroeconomic Policy Authorities of Trans-Pacific Partnership Countries.

<table>
<tr><td colspan="6">INVESTMENT (INVESTOR-STATE DISPUTE SETTLEMENT)</td></tr>
<tr><td rowspan="5">77.</td><td colspan="4">ISSUES</td><td>Ensuring a high level of investment protection</td></tr>
<tr><td colspan="4">SUB ISSUES</td><td>The Investment Chapter outlines the obligations of governments in ensuring the predictability and transparency of government measures</td></tr>
<tr><td colspan="2">IMPACT</td><td colspan="2">NATURE OF IMPACT</td><td rowspan="2">IMPACT ON NATIONAL INTEREST</td></tr>
<tr><td>YES</td><td>NO</td><td>(+)</td><td>(-)</td></tr>
<tr><td>✓</td><td></td><td></td><td>✓</td><td>The overarching goal of ISDS provisions is to prevent harm from discriminatory treatment of foreign investors. In the event that there is a breach of investor protections afforded in the TPP, and when attempts to settle disputes have failed amicably, ISDS gives foreign investors the right to bring international arbitration proceedings against a host state. It also ensures that foreign investors are provided adequate compensation in the event of an expropriation. Collectively, these rights boost investor confidence by securing their investments overseas.

Active users of ISDS are normally the largest exporters of foreign investment capital. Claimants initiated 42 known treaty-based cases in 2014 alone, with 35 brought by investors from developed countries and five by investors from developing countries. [121] This corresponds to the historical trend that developed country investors have been the main users of ISDS, as they account for 80 per cent of all ISDS claims.[122] With regards to the TPP, the US is a primary concern because it has filed 127 total claims or 22 per cent worldwide, the largest individual country share of ISDS claims.[123]</td></tr>
</table>

[121] *'Recent Trends in IIAs and ISDS,' United Nations Conference on Trade and Development (UNCTAD), February 2015, p. 6.*
[122] *ibid. p. 6*
[123] *'ISDS Fact Sheet,' Trans-Atlantic Business Council, January 2015, p. 1*

					The Investment Chapter in the TPP could have a negative impact on Malaysia due to its exhaustive coverage of rights afforded to foreign investors. They are guaranteed direct recourse to international arbitration, bypassing domestic courts in the process. The Chapter also provides an exhaustive list of what constitutes as an “investment.” This could, in turn, expose the Government to more challenges and multi-million dollar compensation over their actions and policies, particularly as there are more investments from TPP countries coming into the country than vice versa. Bank Negara reports that Malaysian investments abroad amounted to RM590 billion by 2015, with just over a quarter located in TPP countries. Out of the total FDI stock of RM477 billion in Malaysia, at least half originated from TPP countries. Furthermore, there is also a lack of an appeals process in the TPP.[124] Article 9.22.11 Conduct of Arbitration states that Parties shall consider whether awards under Article 9.28 Awards should be subject to an appellate mechanism in the event that such a system is developed in future under other institutional arrangements. The Investment Chapter also provides for an interim review, which ensures that Parties are able to comment on proposed awards prior to issuance. Moreover, disputing Parties are provided with the option to challenge a tribunal award, as stated in Article 9.22.10 Conduct of Arbitration. There are also safeguards to protect governments by limiting the scope of potential abuses by foreign investors. The Investment Chapter provides guidelines as to what ‘fair and equitable treatment’ entails. It refers to ‘the customary international law minimum standard of treatment of aliens as the standard of treatment to be afforded to covered investments,’ as specified in Article 9.6 Minimum Standard of Treatment and Annex 9-A Customary International Law.[125] It is also clearly stated that a breach of ‘fair and equitable treatment’ refers to a denial of justice in criminal, civil or administrative adjudicatory proceedings, and a breach of due process. Furthermore, Article 9.6 is not breached if a Party takes or fails to take action that may

[124] *The EU is currently proposing an appellate mechanism as part of the TTIP with the US. Marta Latek, ‘Investor-State Dispute Settlement (ISDS): State of play and prospects for reform,’ European Parliamentary Research Service Briefing, 21 January 2014, p. 6-8.*

[125] *Other assurances in the Chapter include the right to national treatment; Most Favoured Nation treatment; full protection and security; free transfer of funds; and no expropriation of property without full and* prompt compensation.

					be inconsistent with an investor’s expectations, or if a subsidy or grant has not been issued, renewed or maintained, or has been modified or reduced. There are also guidelines to help arbitrators decide on whether or not a government measure constitutes indirect expropriation. The following factors, among others, will be considered on a case-by-case basis: 1. The economic impact of the Government measure (although the economic effect on an investment alone is not enough to determine that indirect expropriation occurred); 2. The extent to which the Government measure “interferes with distinct, reasonable investment-backed expectations,” as stated in Annex 9-B (Expropriation); and 3. The character of the Government measure. These guidelines ensure that ISDS provisions in the TPP will not be open to a wide range of interpretations. Good regulatory practices should be adopted at all times to prevent exposure to the processes of ISDS. These include transparency and better management of contracts to limit the possibility of breaches in contractual obligations. Furthermore, Article 9.17 Consultation and Negotiation of the Investment Chapter highlights that a dispute should be resolved via consultation and negotiation first, before seeking recourse to ISDS. Available avenues to do so include conciliation and mediation. It is only when a dispute cannot be resolved within six months of the receipt by the respondent of a written request for consultations can the claimant submit to arbitration. Ultimately, ISDS provisions are reciprocal. Investors and States from all TPP countries are subject to the same investment rules and regulations e.g. rights given to US investors in Malaysia will also be given to Malaysian

					investors in the US. All investors are subject to similar conditions for the purposes of the admission of their investments, except where reservations are taken for specific sectors.[126] This ensures that nationals and companies of all TPP countries will operate equally, and subsequently behave in a predictable manner.
	SUB ISSUES				ISDS may limit the Government's ability to implement policies in areas that affect public interest
		✓	✓		There are concerns that ISDS provisions in the TPP will limit the Government's ability to implement policies in public health, safety and security, or any other area that affects public interest. This is due to fears that such measures could expose the Government to ISDS proceedings due to a breach of investor protections afforded in the TPP. This should <u>not impact</u> Malaysia, as the Investment Chapter provides safeguards to protect the Government's right to regulate. Article 9.15 Investment and Environmental, Health and other Regulatory Objectives does not prevent governments from regulating to ensure that investment activities are sensitive to environmental, health or other regulatory objectives. Furthermore, Article 3(b) in Annex 9-B Expropriation affirms that non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public health, safety and the environment, do not constitute indirect expropriation (except in rare circumstances).[127] There is also a tobacco carve-out in the Exemptions Chapter, with Article 29.5 Tobacco Control Measures stating that Parties can elect to deny tobacco control measures from ISDS provisions in the Investment Chapter. The Exemptions Chapter further clarifies that a tobacco control measure refers to "the production or consumption of manufactured tobacco products (including products made or derived from tobacco), their distribution, labelling,

[126] *These reservations are outlined in Annex 9 of the Investment Chapter e.g. Mexico prevents foreign investors from filing disputes challenging 10 laws that cover everything from oil extraction to railways, as stated in C(1) of Annex 9L Investment Agreements.*

[127] *With regards to public health, regulatory actions include the pricing, supply of, and reimbursement of pharmaceuticals, diagnostics, vaccines, medical devices, gene therapies and technologies, health-related aids and appliances, and blood and blood-related products, as stated in Annex 9B Expropriation.*

					packaging, advertising, marketing, promotion, sale, purchase, or use, as well as enforcement measures, such as inspection, recordkeeping, and reporting requirements."[128] Malaysia also reserves the right to adopt or maintain measures relating to wholesale and distribution services of tobacco products in Annex II for Cross Border Trade in Services and Investment. These carve-outs ensure Malaysia retains the ability to protect public health by regulating manufactured tobacco products. Finally, Bank Negara retains complete autonomy in managing the Ringgit and foreign exchange reserves. Specifically, Bank Negara retains autonomy in implementing capital controls during crises of severe balance of payments (or similar threats thereof), and in measures related to the non-internationalisation of the Ringgit. Collectively, these exclusions will limit the ability of lawyers to argue that government measures constitute a breach of the TPP, for as long as such measures are designed and applied to protect legitimate public welfare objectives. It is also incumbent upon foreign investors to prove otherwise. ISDS in the TPP is now more acceptable with carve-outs for government measures.
	SUB ISSUES				Misalignment of Federal and State Government policies could expose Malaysia to ISDS proceedings
	✓			✓	The scope of the Investment Chapter also covers state government measures that breach investor protections afforded in the TPP. This may have a negative impact on Malaysia, as breaches by state governments are attributable to the federal government, except where reservations on certain sectors are provided. Parties' obligations shall apply to measures "adopted or maintained by the central, regional or local governments or authorities," as highlighted in Article 9.2.2(a) Scope. This provision underscores the dangers that a mismatch of policies between different levels of government would bring to Malaysia. Federal governments have been made to pay compensation for actions taken by state and local

[128] *This provision, however, does not apply to tobacco leaf.*

governments as a result of ISDS provisions. If responsibility is not taken, the issue is then what protections are available to attract foreign investors. Investments that deal with natural resources such as land and water are of particular concern, as they require the approval of state governments. For instance, the Canadian federal government has become liable to foreign investors due to policy and legislative actions taken by Canadian Provinces:[129]

1. In August 2008, US corporation Dow AgroSciences LLC served a Notice of Intent to Submit a Claim to Arbitration under Chapter 11 of NAFTA. The claim was USD2 million in damages for losses allegedly caused by a Quebec ban on the sale and certain uses of lawn pesticides containing the active ingredient 2,4-D. The dispute has been settled by agreement.[130]
2. In March 2015, US investor Bilcon stated it was seeking at least USD300 million in compensation after winning a NAFTA ruling. It served Canada with a Notice of Intent in February 2008 after the Nova Scotia and Canadian federal governments rejected Bilcon's proposal of expanding White Points quarry, because an environmental review found that the project would clash with 'community core values'.[131]

The experiences of the Canadian federal government highlights that it is imperative for governments to ensure that good regulatory practices are adopted at all times. As a safeguard to the misalignment of federal and state government policies, Malaysia has secured exemptions in the following areas:

1. ISDS will not apply for a three year period after entry into force for GP projects below specified thresholds (Annex 9K Submission of Certain Claims for Three Years After Entry into Force); and
2. Acquisitions or dealings of land by foreigners and foreign enterprises must be approved by the relevant State Authority (Annex II for Cross Border Trade in Services and Investment).

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129 *Barry Leon, Andrew McDougall and John Siwiec. 2011. 'Canada and Investment Treaty Arbitration: Three Prominent Issues – ICSID Ratification, Constituent Subdivisions, and Health and Environmental Regulation,' South Carolina Journal of International Law and Business, Vol. 8, No. 1, p. 64.*

130 *'Dow Agrosciences LLC vs. Canada,' United Nations Commission on International Trade Law (UNCITRAL), 25 August 2008 <http://www.uncitral.org/transparency-registry/registry/data/can/dow_agrosciences_llc.html>.*

131 *'Case No. 2009-4 – Award on Jurisdiction and Liability,' Permanent Court of Arbitration (PCA), March 2015, p. 212-215.*

<table>
<tr><td rowspan="4">78.</td><td colspan="4">ISSUES</td><td>Malaysia’s investment treaty programme</td></tr>
<tr><td colspan="4">SUB ISSUES</td><td>There may be more options for foreign investors of TPP Parties to utilise ISDS against the Government via other FTAs with Malaysia</td></tr>
<tr><td colspan="2">IMPACT</td><td colspan="2">NATURE OF IMPACT</td><td rowspan="2">IMPACT ON NATIONAL INTEREST</td></tr>
<tr><td>YES</td><td>NO</td><td>(+)</td><td>(-)</td></tr>
<tr><td></td><td>✓</td><td></td><td></td><td>✓</td><td>All countries in the TPP, including Malaysia, have treaties that contain ISDS provisions. It is not a new phenomenon to members, nor is it revolutionary. Malaysia has been a contracting party of the International Centre for Settlement of Investment Disputes (ICSID) Convention since 1966, and it has signed 74 investment protection agreements which contain either ISDS clauses or similar provisions since the 1970s. 65 of Malaysia’s current BITs and eight of its FTAs contain ISDS provisions.[132] For example, the Investment Chapter in the Malaysia-New Zealand FTA is supported by recourse to compulsory investor-state arbitration if a dispute cannot be settled through consultation and negotiation.[133] There is an ISDS clause in the Asean-Australia-New Zealand FTA that applies to disputes between a party and an investor of another party, which causes loss or damage to the covered investments of the investor. Other treaties that Malaysia is party to, which contain ISDS provisions or similar clauses, include:
1. Asean-China Investment Agreement;
2. Asean Comprehensive Investment Agreement; and
3. Investment Agreement among member states of the Organisation of the Islamic Conference (OIC).</td></tr>
</table>

[132] *‘2014 Investment Climate Statement – Malaysia,’ 2014, p. 13.*
[133] *‘The New Zealand-Malaysia Free Trade Agreement,’ New Zealand Ministry of Foreign Affairs and Trade, October 2009, p. 29*

The United Nations Conference on Trade and Development (UNCTAD) database highlights three cases that have been brought against Malaysia. These cases followed ICSID arbitration rules:[134]

1. Philippe Gruslin vs Malaysia in 1994 under the Belgium-Luxembourg-Malaysia BIT;
2. Philippe Gruslin vs Malaysia in 1999 under the Belgium-Luxembourg-Malaysia BIT; and
3. Malaysian Historical Salvors Sdn Bhd vs Malaysia in 2005 under the Malaysia-United Kingdom BIT.

The first was settled, while the remaining two were ruled in favour of Malaysia.

The UNCTAD database also highlights three cases that were brought by Malaysian investors. All cases followed ICSID arbitration rules, apart from Telekom Malaysia Berhad vs Ghana which followed UNCITRAL arbitration rules:

1. MTD Equity Sdn Bhd vs Chile in 2001 under the Chile-Malaysia BIT;
2. Telekom Malaysia Berhad vs Ghana in 2003 under Ghana-Malaysia BIT; and
3. Ekran Bhd v People's Republic of China in 2011 under China-Malaysia BIT.

The first was ruled in favour of Malaysia, while the remaining two were settled.

Malaysia's experience as both a respondent and claimant of arbitration cases is a reminder that ISDS applies

[134] *Under the TPP, claimants may submit a claim under the ICSID Convention and the ICSID Rules of Procedure for Arbitration Proceedings, provided that (i) both the respondent and the Party of the claimant are parties to the ICSID Convention; (ii) the ICSID Additional Facility Rules, provided that either the respondent or the claimant is a party to the ICSID Convention; and (iii) the United Nations Commission on International Trade Law (UNCITRAL) arbitration rules (Malaysia has been a member of UNCITRAL since 2013).*

					to investors from both contracting parties. It is not linear or 'one-way' as its purpose is, for example, to protect both US investors in Malaysia and Malaysian investors in the US. The elimination of ISDS in the TPP will simply mean that Malaysian investors will not have the right to bring international arbitration against a host State overseas in the event of an expropriation. Malaysia's cases also demonstrate that the odds of winning a case do not only favour foreign investors. According to findings in disputes decided by tribunals before ICSID, 54 per cent of states have prevailed in arbitration cases with the following breakdown: 1. Award deciding that the claims are manifestly without legal merit – 1 per cent; 2. Award declining jurisdiction – 25 per cent; and 3. Award dismissing all claims – 28 per cent.[135] Having said that, foreign investors from TPP Parties do have the option of choosing to bring ISDS claims under different treaties entered by Malaysia, either via BITs, bilateral FTAs or the TPP itself. This possibility of 'treaty shopping' may have a negative impact for Malaysia. For example, a New Zealand investor can choose whether it wants to file a dispute under the TPP or the Malaysia-New Zealand FTA. However, this is mitigated by the fact that foreign investors are not allowed to 'shop' for ISDS provisions as the MFN Treatment clause does not apply to ISDS provisions i.e. foreign investors are not allowed to cherry-pick more favourable provisions in other FTAs. Malaysia's investment treaty programme exemplifies the increased use of investment treaties that contain a dispute resolution mechanism. According to UNCTAD, approximately 3,268 investment treaties were signed by the end of 2014.[136] The growing number of investment treaties has been accompanied by an increase in investment arbitration cases, as UNCTAD statistics also show that the number of known cases was over 600 at the end of 2014.[137] These statistics indicate that more and more treaties will require governments to approve and conform to ISDS provisions in future because effective dispute resolution mechanisms are a prerequisite

[135] *'The ICSID Caseload – Statistics (Issue 2015-1),' International Centre for Settlement of Investment Disputes (ICSID), 2015, p. 29.*
[136] *'Recent Trends in IIAs and ISDS,' UNCTAD, 2015, p. 6.*
[137] *ibid. p. 5.*

					for attracting and protecting foreign investors. Indeed, ISDS is increasingly accepted by Malaysia's major existing and potential trade partners. Malaysia should keep engaging with the system by negotiating for specific improvements in future treaties.
COMPETITION					
79.	ISSUES				Competition policy
	SUB ISSUES				The TPP requires the adoption and application of competition law
	IMPACT		NATURE OF IMPACT		IMPACT ON NATIONAL INTEREST
	YES	NO	(+)	(-)	
		✓	✓		The Competition Chapter in the TPP requires all TPP members to adopt or maintain national competition laws that promote economic efficiency and consumer welfare by proscribing anticompetitive business conduct. The laws should also take into account the APEC Principles to Enhance Competition and Regulatory Reform (Auckland, 13 September 1999). Malaysia is able to comply with the requirements under this chapter through its Competition Act 2010. Malaysia enacted the Competition Act 2010 and the Competition Commission Act 2010 in April 2010. With these, it joined 140 other jurisdictions worldwide with competition policies and laws.[138] As it was a new piece of legislation at that time, businesses were given an 18-month grace period to comply with the Act before it came into force in January 2012. The Malaysia Competition Commission (known as MyCC) was set up to implement the Act. The Act prohibits enterprises from engaging in two forms of conduct: (i) anti-competitive agreements; and (ii) abuse of dominant position. Such agreements include price fixing, market sharing,

[138] *'Conversation with YBhg Tan Sri Dato Seri Siti Norma Yaakob' at MIM, 27 March 2014*

					controlling production, market outlets or market access, technical or technological development or investment, and bid-rigging. MyCC has issued several guidelines to help interpret the Competition Act. Since its formation, MyCC has investigated many cases and imposed penalties on companies.[139]
80.	ISSUES				State-owned enterprises and designated monopolies
	SUB ISSUES				SOEs must conform to disciplines covering non-discriminatory treatment and commercial considerations (NDT and non-commercial assistance (NCA). There are concerns that these obligations may impinge upon certain social and economic development programmes that are being undertaken by some of the SOEs.
	IMPACT		NATURE OF IMPACT		IMPACT ON NATIONAL INTEREST
	YES	NO	(+)	(-)	
	✓		✓		The SOE Chapter in the TPP requires SOEs to conform to disciplines covering non-discriminatory treatment and commercial considerations (NDT) in the domestic market, and non-commercial assistance (NCA) in the overseas market. NCAs cover a wide range of assistance that a government can provide to an SOE. In the TPP, NCAs include grants and debt forgiveness; loans, loan guarantees on terms more favourable than those commercially available to that enterprise; or equity capital inconsistent with usual investment practice (including provision of risk capital); or goods and services other than general infrastructure on terms more favourable than those commercially available to that enterprise. No Party shall cause adverse effect to the interests of another Party through the use of NCAs.[140] The aim of these disciplines is to provide a fair and sustainable competitive environment for all TPP members. The definition of an SOE is clearly spelt out in the chapter as ‘an enterprise which is involved in commercial

[139] *http://www.mycc.gov.my/media-releases*
[140] *Article 17.6.1*

					activities and which the Government either directly owns more than 50 per cent of the share capital or controls the exercise of more than 50 per cent of the voting rights, or holds the power to appoint a majority of members of the board of directors or any other equivalent management body'. <u>Reasons for SOEs</u> There are a number of reasons why SOEs are set up by governments. Most countries maintain SOEs to provide efficient solutions through monopolies in sectors that are considered desirable for country's strategic goals. In some cases, optimal efficiency may be reached when the output is managed by a single entity owned by the State. This State ownership may also provide a route for the State to provide social and economic development through various programmes. The SOEs may also be used by a State to foster certain industries as part of the National Strategic Plan or to create clusters through vendor or similar programmes. It is often argued that many successful private sector firms have their origins as SOEs or part of the vendor-type nurturing programmes. Though these SOEs may not be the most economically efficient instrument, they may, however, be able to operate at socially optimal levels in helping the State to meet non-economic objectives. SOEs are not limited to developing countries. Many developed countries like Japan, France, Mexico and Portugal have a significant SOE presence, for example, Japan Post, Electricite de France, and Crown corporations in the UK and Australia. Many of the developed countries privatised a significant number of their SOEs during the 1980s and 1990s, and this has contributed to the declining influence of these remaining SOEs in their domestic economies. In developing countries, SOEs not only constitute a large proportion of their corporate market capitalisation, but they are also noted for their relative importance in their domestic economies. SOEs in China, Argentina, Indonesia, Malaysia, Vietnam, Saudi Arabia, India and Brazil control a significant proportion of the national economies.[141] More than 10 per cent of the world's biggest companies are SOEs. Collectively, SOEs account for more than 6

[141] *SOE Reforms in the TPP Negotiation, T.A.N Le, July 2015*

					per cent of global GDP. In an OECD report, 204 of the top 1,000 public listed companies are SOEs and together they account for 2.5 times global FDI flows. In some countries, SOEs account for more than 50 per cent of domestic GDP. Hence, SOEs can have huge distortionary impact in both domestic and international markets. There are fewer SOEs in OECD countries as a result of the wave of privatisation of these SOEs during the 1980s and 1990s. Studies indicated that countries with high CSS index or Country SOE Share Index (based on weighted average of sales, assets and market values among the country's top ten companies in that country) have less openness in trade and higher tariff barriers which has, in turn, a high correlation with inefficiencies in the market. SOEs in developing countries account for one-third of outward FDI from emerging economies. In OECD countries, the SOEs are mainly in the electricity sector, tobacco, warehousing, and motor vehicles. In developing countries, the SOEs are concentrated in the energy sectors (two-thirds) and utilities and telecom services. State support to SOEs can distort competition through either regulatory favouritism or direct and indirect financial support. These distortions allow SOEs to sell their services and products on more favourable terms than private firms in both domestic and international markets. From trade perspectives, SOEs venturing outside their domestic domains may cause significant impact and distortions on international markets. Countries may be using their SOEs to pursue non-commercial or strategic objectives and this may cause uneven playing fields for other firms in their international markets. Some counties may also provide unfair advantages to their SOEs in the international markets through providing cross-subsidisation assistance domestically. Government practices with SOEs which can distort competition include outright subsidisation, concessionary financing and guarantees, preferential treatment in regulation and procurement (exemption from information disclosure, exclusion from application of monopoly law), monopoly rights and incumbency advantages, captive equity, exemption from bankruptcy rules and information advantages, and other NCA. SOEs pose a challenge to trade policy due to their size and privileges. Many governments wish to retain the freedom to use SOEs to further national objectives, both domestically and internationally. SOEs generally have different policy goals from a private firm. Their goals may include increasing employment domestically, favouring suppliers and buyers in their pricing arrangements, and fulfilling foreign policy goals using trade.

SOEs competing against private sector firms which are profit-motivated may cause an uneven playing field. There are no coherent international governance mechanisms on SOEs, which would enable a level playing field in the market for all players. Without clear rules governing their behaviours, SOEs can distort markets at the expense of market efficiencies. The TPP, to a large extent, hopes to address these governance issues. **Table 14** in the appendix shows the significance of these SOEs on global economy.

In the past, SOEs tended to serve domestic markets. However, the trend of SOEs expanding into international markets has continued. There are several implications as a result of this. Governments may use SOEs to pursue strategic, commercial or non-commercial goals abroad and may hence involve anti-competitive effects, which may be detrimental to private sector firms competing in the same markets. SOEs may be used to export unemployment abroad through the creation of new jobs from securing projects overseas using unfair pricing or competition. Against this backdrop, it is not surprising that a number of SOE-related tensions and trade disputes have risen in the past. The TPP's SOE Chapter seeks to address many of these issues.

<u>SOEs in Vietnam</u>

Vietnam is one of the four ASEAN countries in the TPP. The state sector plays a significant role in the economy of Vietnam. According to the Steering Committee for Enterprise Renovation and Development, this sector accounted for 33 per cent of Vietnam's GDP in 2011.[142] Vietnam is unique in the TPP negotiations in that it is the only non-market economy. Their SOE sector was established in 1954 following the end of the 1954 war against France. In 1981, the government started a series of SOE reforms with a decree to 'develop and balance efficiencies of SOE sector'. This was followed by the Doi Moi programme in 1986 which sought to replace the 'bureaucratic centralised management system' with a market oriented economy. Further programmes were launched in 1994, 1995. 2001, 2003, 2005 and lastly, in 2014 when the government passed the Law on Enterprises. Under the 2005 Decree, SOE was defined as an enterprise which the government has

[142] *Trade Policy Review of Vietnam: Report by Secretariat, 13 August 2013*

					more than 50 per cent of the shares. The government also gave autonomy to SOEs to operate on a purely commercial basis.[143] The 2014 Law laid down the requirements for an SOE structure, its management, and appointment of executives, rights and obligations of the SOE. As a result of the various programmes, the number of SOEs decreased from nearly 7,000 in 1995 to about 1,300 in 2012.[144] About 60 per cent of these SOEs have not been equitised and there are plans to equitise 523 of these by the end of 2015. Shares in these SOEs are sold to private investors and the public through an auction process. Vietnam is subject to the same disciplines as the other TPP countries. It has, however, specific exemptions for it to cater for its programmes for SMEs and rural development. <u>SOEs in Malaysia</u> In Malaysia, many of the SOEs are owned or controlled by Khazanah Nasional Berhad (Khazanah). Set up on 3 September 1993 as a Government fully-owned public limited company, Khazanah has a mandate to create sustainable value for a globally competitive Malaysia through its four pillars: legacy investments, GLC transformation, new investments, and human capital management. Its current listed portfolio includes many SOEs.[145] Khazanah plays a catalytic role in driving various strategic industries and national initiatives through several social and economic development programmes. Other GLCs are held by GLICs (Government-linked investment companies) such as Employee Provident Fund (EPF), Lembaga Tabung Angkatan Tentera (LTAT), Lembaga Tabung Haji (LTH), Permodalan Nasional Berhad (PNB) and Ministry of Finance Incorporated (MKD). Though the pension funds are technically independent, the companies under them are generally considered as Government-linked in Malaysia. LTAT has many companies held under its listed company, Boustead Holdings Berhad.[146] There are more than 200 SOEs in Malaysia.[147] The GLCs collectively constitute a significant part of the economic structure of Malaysia. At the end of 2014,

[143] *WTO, Accession and political economy of SOE reform in Vietnam, Vu Thanh Tu Anh, 2014*
[144] *SOE reforms in TPP negotiation: is it a win-win for Vietnam, T.A.N Le, July 2015*
[145] *Building True Value, The Khazanah Report 2014*
[146] *LTAT Annual Report, pp263-266*
[147] *The Sun, 26 November 2015, pp12*

					they accounted for more than 36 per cent of the market capitalisation of the Bursa Malaysia and more than 50 per cent of the market capitalisation of the Kuala Lumpur Composite Index.[148] The top 17 GLCs (known as G20) operate in more than 40 countries including many of the TPP members. In 2014, this G20 derived about 34 per cent of their revenue from overseas and have 26 per cent of their total assets in overseas operations. They employed more than 98,000 employees in these overseas operations. The G20's social and economic development programmes cover a wide range of activities which supports the Government Transformation Programme and the Economic Transformation Programme, in particular the Bumiputera Agenda. The Government launched the GLC Transformation (GLCT) Programme ten years ago to transform the GLCs to create high performing GLCs which could accelerate Malaysia's social and economic development. GLCT officially ended in August 2015 but most of the policies and practices continue. In the period of GLCT, the significant impact of these GLCs can be seen on the national social and economic landscape. They include: • More than 370,000 employees, RM4 billion spent on training and development of Malaysian workforce; • More than RM98 billions of businesses given to more than 65,000 Malaysian suppliers, RM1.8 billion spent on vendor development programmes; and • RM6 billion spent on corporate responsibility initiatives. The GLCs support many of the Government's social and economic transformation programmes with significant beneficiaries like SEJAHTERA (6,458 low-income families), Pintar (184,052 students), and GEMS and SL1M (4,589 unemployed graduates trained). The GLCs have been the drivers of the Bumiputera Empowerment Agenda (BEA) in Malaysia. In G20, 79 per cent of the employees are Bumiputeras. <u>MARA, TERAJU and EKUINAS</u> In addition to the GLICs and GLCs being involved in supporting Malaysia's social and economic development initiatives, there are also three government institutions that are involved in these, namely, Majlis

[148] *GLC Transformation Programme Graduation Report, GLC 2015 Open Day*

					Amanah Rakyat (MARA), Unit Peneraju Agenda Bumiputera (TERAJU), and Ekuiti Nasional Berhad (EKUINAS). MARA was set up as a statutory body by an Act of Parliament in 1965, with responsibilities for developing, encouraging, facilitating and fostering the economic and social development in Malaysia, particularly in rural areas. Many of Its subsidiaries are involved in training and education of Bumiputeras, and asset management. TERAJU was established to lead, coordinate and drive Bumiputera Agenda with the aim to increase Bumiputera's control over the national economy. To date, TERAJU has provided business opportunities, business financing and development of human capital, private investment and value creation exceeding RM 47.95 billion.[149] It has also provided funding and human capital programme of more than RM62 billion through various funding programmes. EKUINAS was set up by the Government on 1 September 2009 as a private equity fund management company to promote equitable and sustainable Bumiputera economic participation. It invests in high-growth businesses and aggressively expanding, and thereafter profitably exiting once these investments mature. At the end of 2014, EKUINAS has a committed investment of more than RM2.4 billion in more than 30 investments.[150] It has achieved more than RM4.2 billion increase in Bumiputera equity, 9.4 per cent increase in Bumiputera management and 18.3 per cent increase in Bumiputera employees since its entry in its investments. <u>Impact of TPP on Malaysian SOEs</u> The disciplines in TPP will require greater transparency and governance not only for Malaysian SOEs, but for all SOEs in TPP member countries. In Malaysia, concerns have been expressed, in particular by Khazanah and Petronas, over the impact of TPP on their roles and operations to continue delivering their mandates on social and economic development for Malaysia. TPP requires SOEs to conform to certain disciplines covering NDT in the domestic market, and NCA in overseas markets. These disciplines are meant to create a fair and sustainable competitive environment for all global players. TPP allows numerous exclusions and exemptions from the obligations for many of the SOEs which, to a large extent, provide safeguards to these social and economic development roles, in particular for programmes involving Bumiputera, SMEs, and enterprises from Sabah and Sarawak. At the same time, these obligations will support the development of an environment that

[149] *www.teraju.org.my*
[150] *EQUINAS Annual Report 2014*

					encourages SOEs to develop their global competitiveness, and hence would support Khazanah's mandate to create a globally competitive Malaysia. The exclusions and exemptions for all Malaysian SOEs [151]include: <u>Threshold</u> • A high threshold of SDR 500 million (approximately RM3 billion) of turnover, transitioning to SDR 200 million (approximately RM1.2 billion) after five years. It is expected that most of the G20 and many of the other GLCs will be affected after five years when the turnover threshold falls to approximately RM1.2 billion. The transitioning period of five years may, however, provide the Government time to implement any transformation programme to make affected SOEs competitive globally. Except for Vietnam, all the other TPP countries have a threshold of SDR200 million upon EIF and do not enjoy the higher initial threshold. • Affected SOEs (those whose turnover exceeds the thresholds) can reserve up to 40 per cent collectively of their procurement for Bumiputera enterprises, SMEs and enterprises from Sabah and Sarawak. This will be applicable upon EIF. Though this 40 per cent carve out looks significant, it is not possible to ascertain the impact on the current practices of these SOEs due to the lack of reliable data on their procurement. It should be noted that these enterprises can still compete for the remaining 60 per cent of the procurement but without preferences. • Petronas can reserve up to 70 per cent collectively of their upstream procurement for Bumiputera enterprises, SMEs and enterprises from Sabah and Sarawak, except for 12 types of upstream goods and services which are open to competition. In 2014, Petronas invested more than RM50 billion on upstream expenditure. Similarly, the actual impact on Petronas is still unclear as to how much these 12 types constituted of the total. This 70 per cent threshold will reduce yearly until 40 per cent at the end of the fifth year. There is no ready access to reliable current procurement data to ascertain the impact of these thresholds on current practices. Again, these enterprises can still compete for the remaining portion of the procurement but without preferences.

[151] *TPPAnnex IV*

						Exclusions • The exclusion of sovereign wealth funds, independent pension funds, Bank Negara and Securities Commission, PNB and LTH (but their qualifying SOEs are subject to obligations). The major SOEs have already been included in the GLCT. • The exclusion of MARA, TERAJU and EKUINAS from the obligations for activities relating to Bumiputera development and participation programmes.[152] • The exclusion of all sub-central (state level) SOEs in TPP countries. Though this exclusion will allow the federal government to avoid subjecting these SOEs (which they may have little control over) to TPP obligations, many of these sub-central SOEs may miss the opportunity to adopt greater governance in their operations through TPP. Exemptions • The exemption of all SOEs in TPP countries to comply with NCA obligations if their services are in their domestic markets. The implication is that SOEs can continue to receive NCA from the Government if their services are for the domestic market. • Enterprises owned or controlled by Khazanah are exempted from DSM under Chapter 28 for two years from EIF, in light of ongoing developments of SOE reform legislation. The so-called 'peace clause' is meant to provide time for Khazanah to draft a legislation that may enable it to carry out its social and economic development role more effectively under the TPP.[153] Assuming that EIF will take place two years after signing of TPP, this would allow Khazanah a grace period of a total of four years (possibly to year 2020) to institute any necessary changes to its structures and operations to meet the challenges of the TPP. • Felda Global Ventures Berhad (FGV) may accord preferential treatment in its purchases of goods for the purpose of commercial resale to goods produced by its members/settlers who are participants in

[152] *TPP Annex IV, pp1*
[153] *TPP Article 17.2.5 footnote 10*

					the Felda schemes. This exemption allows FGV to fulfil its social and economic development toward its settler-members. • All existing and future development financial institutions may accord preferences to Malaysians. Petronas is Malaysia's national oil company. It is also an internationally respected oil company with sizeable operations in many TPP countries. TPP recognises the important role played by Petronas (as embodied in the Petroleum Development Act 1974) to safeguard national sovereignty over O&G reserves, to plan for both the present and future national need for O&G, to take part in distributing and marketing petroleum and petrochemical products at reasonable prices, to encourage provision of plant, equipment, and services by Malaysian companies, to produce nitrogenous fertilisers, and to spread the benefits of the petroleum industry throughout the nation. In addition to Petronas being allowed to reserve up to 70 per cent collectively of their all their upstream procurements for certain Malaysian enterprises, it is also allowed to provide NCAs as compensation for carrying out government-mandated projects in the O&G sector that are necessary to ensure an adequate and sustainable supply of hydrocarbons; or to develop capacity on the domestic O&G sector, provided that the government-mandated projects do not itself confer an advantage to the entity in commercial activities directly arising from that government-mandated project. The TPP disciplines will, no doubt, require SOEs to have greater transparency and governance with respect to its domestic procurement and overseas activities. These disciplines will also challenge our SOEs to be more competitive. However, we must take cognisance that Petronas is already an internationally respected oil company, and Malaysia had implemented the 10-year GLC Transformation (GLCT) Programme for SOEs to create sustainable value for a globally competitive Malaysia. The special 'peace clause' for Khazanah, as noted above, would allow Khazanah more than four years to institute any necessary changes to its structures and operations to meet the challenges of TPP. Under the TPP, Malaysian SOEs are still allowed to pursue certain social and economic development programmes through the 40 per cent reservation of procurement for Bumiputera enterprises, SMEs and enterprises from Sabah and Sarawak if these SOEs' turnover exceeds the threshold. All those SOEs that are not affected are still allowed to pursue social and economic development programmes without restrictions. Malaysian enterprises can compete in any of those procurement that have not been reserved. TPP also recognises the importance of the Bumiputera Agenda and has provided the three government institutions. MARA, TERAJU and EQUINAS, total exemptions for activities relating to

					Bumiputera development and participation programmes.
81.	ISSUES				National Treatment (NT)
	SUB ISSUES				The TPP has NT obligations that require each party to accord to investors of another Party treatment no less favourable than it accords to its own investors.
	IMPACT		NATURE OF IMPACT		IMPACT ON NATIONAL INTEREST
	YES	NO	(+)	(-)	
	✓		✓		The NT obligation is applied throughout the TPP agreement and it grants rights to foreigners to compete on an equal footing with their counterparts in a domestic market.
82.	ISSUES				Automobile and automobile parts industry
	SUB ISSUES				There are concerns that there will be greater competition in the automobile sector as a result of reduction in tariffs for cars from Japan and US (0 per cent tariff in the 12th year). CKDs will then not have cost advantage previously enjoyed before EIF.
	IMPACT		NATURE OF IMPACT		IMPACT ON NATIONAL INTEREST
	YES	NO	(+)	(-)	
	✓		✓		Currently, most car brands, including those from the US, are already entering Malaysia at duty free prices through Asean countries under ATIGA. Hence, the impact of the TPP on automobile may not be as significant as the other FTAs already in place. For Malaysian automobile parts manufacturers, TPP's 'rule of origin' will result in a positive impact as more car manufacturers seek products from them to meet this obligation. The issues relating to automobile and automobile parts industry are analysed further under the Market Access sub-pillar.

83.	ISSUES				Public utilities sectors
	SUB ISSUES				The opening up of the utilities sector (gas, water and electricity supply, and waste management services) may result in competition for the local companies.
	IMPACT		NATURE OF IMPACT		IMPACT ON NATIONAL INTEREST
	YES	NO	(+)	(-)	
		✓	✓		The possible influx of foreign players may induce greater efficiency among local players, thus making them more competitive in the long run. This would be a positive impact. However, some safeguards for local players are provided through Annexes I and II [154]which may negate this positive impact. As stated in Annex I, only persons registered and established in Malaysia can supply services for gas, water and electricity, and disposal of waste. Malaysia also retains exclusive rights for the collection, treatment and disposal of hazardous waste, as stated in Annex II.

[154] *TPP Annexes I & II*

84.	ISSUES				GP market access
	SUB ISSUES				The impact of GP market access on Bumiputera
	IMPACT		NATURE OF IMPACT		IMPACT ON NATIONAL INTEREST
	YES	NO	(+)	(-)	
	✓		✓		The upside of GP market access, of course, is savings to the Government and greater efficiency that will come from more competitive supply of goods and services. The TPP is about the creation of trade and investment opportunities and competition can exist in both domestic and foreign markets. An encouraging number of Bumiputera enterprises are already spreading their wings abroad and the GP market access provisions and disciplines should reward the capable ones that venture out. Those involved in fast growing niche markets such as halal products, for example, are likely to do well in a much more liberal economic environment.

<table>
<tr><td colspan="6">SMALL AND MEDIUM ENTERPRISES (SMES)</td></tr>
<tr><td rowspan="5">85.</td><td colspan="4">ISSUES</td><td>SME participation in the procurement system</td></tr>
<tr><td colspan="4">SUB ISSUES</td><td>SME policies must be consistent with the GP and other disciplines</td></tr>
<tr><td colspan="2">IMPACT</td><td colspan="2">NATURE OF IMPACT</td><td rowspan="2">IMPACT ON NATIONAL INTEREST</td></tr>
<tr><td>YES</td><td>NO</td><td>(+)</td><td>(-)</td></tr>
<tr><td>✓</td><td></td><td></td><td>✓</td><td>SMEs play a significant role in the economy of Malaysia. It employs about 6.2 million people in more than 600,000 enterprises[155] [156]. In 2014, it contributed almost 36 per cent to the overall GDP of the country. In the period of 2010-2014, SME's contribution to the country's GDP grew from 32.2 per cent to 35.9 per cent.[157] In 2014, the major SME sector was 'services'. It constituted almost 60 per cent of the total SME, by GDP contribution (See Table 15 in the Annex).

In January 2014, the definition of SME in Malaysia was revised. It now covers companies that have fewer than 200 employees or a turnover not exceeding RM50 million for the manufacturing sector, and fewer than 75 employees or a turnover not exceeding RM20 million for the services sector. In a survey by HSBC, more than 40 per cent of Malaysian SMEs are involved in cross-border and international trade[158] as of 2013.

<u>Impact of the TPP on SMEs</u>
On balance, the TPP will impact Malaysian SMEs positively. A major impact will be the greater market</td></tr>
</table>

[155] *http://www.ecommercemilliono.com/2013/12/malaysia-sme-statistics-ecommerce-readiness.html*
[156] *http://www.smecorp.gov.my/vn2/node/1940*
[157] *SME Annual Report 2014/15, pp 16*
[158] *https://www.hsbc.com.my/1/PA_ES_Content_Mgmt/content/website/commercial/news_events/news-release/pdfs/MYH_release_25012011v2.pdf*

					access for SMEs. Malaysia already has 13 trade agreements which account for 65 per cent of our global trade. The TPP will add another 8 per cent to 9 per cent to this resulting in more than 75 per cent of our trade being under preferential trade.[159] Other positive impact includes: • A more liberalised market due to lower tariffs. The TPP will eliminate import tariffs of between 77 and 90 per cent of products upon EIF.[160] • Increased business and FDI as a result of the ROO obligations which require manufacturers to source products from TPP countries. Manufacturers from non-TPP countries may seek to relocate their businesses to Malaysia to access the TPP markets. Malaysia can be a part of a greater supply chain network as a result of the TPP. These issues are further analysed in the Market Access sub-pillar. • The TPP provides for greater protection and facilitation for investments. The TPP obligations will also compel Malaysia to comply with international standards in areas like labour and environment. These will result in greater investment inflows into the country. Issues relating to labour and environment are analysed under their respective sub-pillars. • The TPP requires countries to set up publicly accessible websites containing information useful for SMEs interested in benefitting from the opportunities provided by the TPP.[161] TPP members will also set up a committee on SMEs to identify ways to: assist SMEs to take advantage of the commercial opportunities; explore capacity building opportunities; and other measures to further develop the SME sector. • A special carve-out for Malaysia under the SOE procurement, which allows affected SOEs (whose turnover is above the threshold of SDR500 million) to reserve up to 40 per cent collectively of their procurement for Bumiputera enterprises, SMEs, and enterprises from Sabah and Sarawak. The SOEs not affected by the threshold are allowed to continue with their current practices for Bumiputera enterprises, SMEs, and enterprises from Sabah and Sarawak. Further analyses are provided under the SOE sub-pillar.

[159] *http://www.beritadaily.com/news/2015-11-26/28008/eight-compelling-reasons-to-be-in-tppa*
[160] *http://www.smecorp.gov.my/vn2/node/1940*
[161] *TPP, Article 24.1*

					• The TPP allows a wide range of NCMs. These measures have, to a large extent, effectively offered protection to existing domestic players by imposing strict requirements on potential foreign entrants. The TPP also exempts SMEs from DSM under Chapter 28. A perceived negative impact on Malaysian SMEs could arise due to IP issues. These issues are further analysed under innovation and other sub-pillars. Yet, Malaysia's compliance to stricter IP disciplines may attract foreign investments into the sector. The impact on some of the SME industries are analysed below.
86.	ISSUES				Generic medicine manufacturers
	SUB ISSUES				Stronger IP rules not affecting viability of generic medicine manufacturers
	IMPACT		NATURE OF IMPACT		IMPACT ON NATIONAL INTEREST
	YES	NO	(+)	(-)	
		✓	✓		The stronger IP regime is not expected to materially affect the competitiveness of local generic manufacturers that already conform to high levels of manufacturing standards. Moreover, based on stakeholders' engagements, most do not have much export interest among TPP member countries. Local pharmaceutical manufacturers mostly consist of small and medium-sized firms and a few foreign players, represented by the Malaysian Organisation of Pharmaceutical Industries (MOPI). MOPI has 37 members and are primarily involved in the manufacturing of generics for domestic use and export purposes. Collectively, they export to more than 50 countries with an annual export value of nearly RM1 billion in 2012,

					including prescription and over-the-counter (OTC) drugs, traditional medicine, and health and food supplements.[162] Yet, a significant portion of industry exports are made up of vitamins, traditional medicine and supplements,[163] which do not fall under the scope of IP provisions. Moreover, nearly two-thirds of companies licensed by BPFK consist of traditional medicine manufacturers and the remainder are in modern medicine.[164] Also, most local pharmaceutical companies focus mainly on the domestic market. Those with the ambition to expand beyond Malaysia are eyeing the emerging markets like Nigeria, the Philippines, and Indonesia, which are not involved in the TPP. Local generic manufacturers have already conformed to high levels of manufacturing standards in medicinal products since 2002. BPFK is a member of the Pharmaceutical Inspection Cooperation Scheme (PIC/S), of which local generic manufacturers are subjected to. The scheme's mission is to develop and implement a harmonised Good Manufacturing Practice (GMP) standard and quality system in the field of medicinal products. Since becoming a PIC/S member, Malaysia has become an increasingly attractive investment destination for joint-venture and contract manufacturing opportunities.[165] Hence, Malaysian generic manufacturers are not expected to face additional compliance costs under the TPP. As far as the impact of DE on the industry is concerned, the 18-month access window - preserved under the TPP - ensures that any DE filed in Malaysia expires in a timely manner relative to its original country of filing. Any new medicine's data protection application has to be made within 18 months in Malaysia from its first worldwide approval. If the 18-month deadline is not met, the product loses data protection in Malaysia. Hence, there is no impact on local generic manufacturers' competitiveness both domestically and in their

[162] *http://www.matrade.gov.my/en/foriegn-buyers-section/69-industry-write-up--products/520-pharmaceutical*
[163] *Smith et al, 2009. Trade, TRIPS, and pharmaceuticals. The Lancet, Volume 373, No. 9664, p684–691, 21*
[164] *Piong. J. and Loong C.M. 2013. Malaysia Pharmaceutical Industry - Collaboration and Investment Opportunities, Journal of Pharmaceutical Machinery and Engineering*
[165] *Ibid*

					export markets. Also, there will not be any impact from the introduction of DE for biologics, as the industry at large lacks the necessary capital and level of technological capacity to produce biosimilars and only a handful has ventured into this sphere.[166] Moreover, DE for biosimilars is unlikely to stifle investments in the biosimilar sector since biosimilars generally require a longer timeframe to develop compared to generics, despite having gained access to innovators' data. Generic manufacturers will still be able to produce the latest generics since the patent term extension and adjustment provisions on the industry are also expected to be minimal. This is because MyIPO has taken steps to improve the patent registration process and BPFK has reported that they are already efficient at processing medicine applications. Moreover, any patent term extension only applies to patents that are filed after the TPP. Additionally, a more consistent and transparent patent adjustment and extension system under the TPP ensures that local generic manufacturers are not at a disadvantage compared to foreign generics manufacturers in their export markets by eliminating unnecessary delays in the expiry of locally filed patent. There is also no impact from patent linkage as only a "soft" linkage is required under the TPP. In other words, BPFK is only required to put in place a notification system. BPFK is allowed to follow through with the application and will not be required to undertake any enforcement procedures, including vetting and barring the registration as practiced by US Food and Drug Administration (FDA), which is a "hard" linkage. Moreover, any disputes are to be conducted in Malaysia's judicial courts, rather than mediated by BPFK.

[166] *Not ready to benefit from biologics and biosimilars. The Edge Malaysia, June 15, 2015.*

	SUB ISSUES				The low threshold in GP of goods, including medicine.
	✓			✓	Viability of some local generic manufacturers that are highly dependent on GP will be jeopardised due to the national treatment, non-discrimination provisions and low thresholds for goods in the GP chapter. Their manufacturing profit margins are higher than those of their peers and their earnings are at risk should competition intensify.[167] Of the RM2 billion worth of medicine that were procured for all MOH hospitals and clinics, 40 per cent were supplied on a concessional basis; 38 per cent on a centralised tendering basis whereby international bidders are invited only if there are suitable local suppliers; and, the remainder 20 per cent are procured at a decentralised level on a selective and limited tendering basis.[168] However, our local generic industry is aware that they cannot depend on local market alone and are aggressively looking for new export markets via the National Key Economic Areas (NKEA) Entry Point Project (EPP3) platform. The EPP3 creates opportunity for locally based generic manufacturers to upscale manufacturing capabilities and produce generics for export.
87.	ISSUES				Automobile and automobile parts
	SUB ISSUES				Market access and ROO for automobiles affecting both national and non-national car manufacturers.
	IMPACT		NATURE OF IMPACT		IMPACT ON NATIONAL INTEREST
	YES	NO	(+)	(-)	
	✓			✓	There are concerns that there will be greater competition in the automobile sector as a result of reduction in tariffs for

[167] *CIMB Sector Note, 2015. Pharmaceuticals TPP presents more threats than opportunities.*
[168] *Hassali et al, 2015, Chapter 10 Pharmaceutical Pricing in Malaysia. Pharmaceutical Prices in the 21st Century, editor Zaheer-Ud-Din Babar*

<table>
<tr><td></td><td></td><td></td><td></td><td></td><td>cars from Japan and the US (0 per cent tariff in the 12th year). CKDs vehicles will no longer have cost advantage previously enjoyed through these tariffs. Currently, most brands of cars, including those from the US, are already entering Malaysia at duty free prices through ASEAN countries under ATIGA. Hence, the impact on TPP on automobile may not be as significant as the other FTAs already in place. For Malaysian automobile parts manufacturers, TPP's 'rule of origin' will result in a positive impact as more car manufacturers seek products from them to meet this obligation. The issues relating to the automobile and automobile parts industry are analysed further under the Market Access sub-pillar.</td></tr>
<tr><td rowspan="4">88.</td><td colspan="4">ISSUES</td><td>Medical tourism</td></tr>
<tr><td colspan="4">SUB ISSUES</td><td>Stronger IP affecting medical tourism industry</td></tr>
<tr><td colspan="2">IMPACT</td><td colspan="2">NATURE OF IMPACT</td><td rowspan="2">IMPACT ON NATIONAL INTEREST</td></tr>
<tr><td>YES</td><td>NO</td><td>(+)</td><td>(-)</td></tr>
<tr><td></td><td>✓</td><td></td><td>✓</td><td></td><td>With access to the latest medicine due to stronger IP, Malaysia's competitiveness in medical tourism will be improved. The 18 months access window for DE safeguard compels innovator companies to come to Malaysia and obtain marketing approval early, allowing the public access to these lifesaving drugs.

Cost-sensitive Malaysians and tourists may continue seeking medical treatment in Malaysia since access to the latest generics are not affected as there is no delay in the entry of generics from patent term adjustment as MyIPO has taken steps to improve the patent registration process and BPFK has reported that they are already efficient at processing medicine applications.</td></tr>
</table>

89.	ISSUES				Batik
	SUB ISSUES				Investment and foreign participation in culturally sensitive sectors.
	IMPACT		NATURE OF IMPACT		IMPACT ON NATIONAL INTEREST
	YES	NO	(+)	(-)	
	✓		✓		The batik industry is well known as a traditional/cultural and micro enterprise sector. There are more than 320 batik SMEs registered with Malaysian Handicraft, predominantly located in the states of Kelantan and Terengganu, where batik was first introduced in 1910.[169] [170] Majority of batik entrepreneurs consists of women with a capital investment ranging from RM6,000 to RM10,000. Batik is the most popular handicraft product among individual buyers in Malaysia among both residents and tourists, to the extent that overseas outlets, such as Harrods of London, display and sell Malaysian batik for its aesthetic appeal. Malaysian batik and handicraft produced in and exported from Malaysia can enjoy preferential tariff treatment. This translates to more market access to the US and other TPP countries. More exports will lead to more employment and R&D growth in this sector. Foreign participation in the batik industry remains capped at 30 per cent due to its importance in the rural sector.

[169] *R Nordin, SSA Bakar. 2012. Malaysian Batik Industry: Protecting Local Batik Design by Copyright and Industrial Design Laws. International Journal of Business and Society 13 (2), 117.*

[170] *Mohd Salleh, Naimah and Othman, Mumtazah and Badari, Zainal and Azahari, Shamsul and Bohari, Sharizal Perception of problems and challenges faced by batik industry woman entrepreneurs in Malaysia. In: 10th international Interdisciplinary Congress on Women, 3-9 July 2008, Madrid, Spain*

90.	ISSUES				E-commerce businesses
	SUB ISSUES				Cooperation initiatives to facilitate the use of e-commerce among SMEs
	IMPACT		NATURE OF IMPACT		IMPACT ON NATIONAL INTEREST
	YES	NO	(+)	(-)	
	✓		✓		The E-commerce Chapter ensures close cooperation among TPP Parties to help businesses, especially SMEs, overcome obstacles and take advantage of electronic commerce. It also encourages cooperation on policies regarding personal information protection, online consumer protection, cybersecurity threats and cybersecurity capacity, especially with the rise of cyber-attacks and global diffusion of malware.

91.	ISSUES				SOE-derived business
	SUB ISSUES				There are concerns that the TPP may subject SOEs' procurement to open competition without taking cognisance of the Government's social and economic development programmes for SMEs
	IMPACT		NATURE OF IMPACT		IMPACT ON NATIONAL INTEREST
	YES	NO	(+)	(-)	
		✓	✓		The TPP provides some safeguards to SMEs' business derived from SOEs and Petronas. The TPP allows a qualifying SOE and Petronas to accord preferential treatment of up to 40 per cent of total procurement to SMEs, Bumiputera and companies from Sabah and Sarawak. These entities are also allowed to compete in the remaining 60 per cent without preferential treatment, thus providing them an incentive to improve their competitiveness. This will be a positive impact. (Annex IV and Schedule of Malaysia (1)).

92.	ISSUES				Copyright-based industries
	SUB ISSUES				Impact of copyright extension on local copyright-based industries
	IMPACT		NATURE OF IMPACT		IMPACT ON NATIONAL INTEREST
	YES	NO	(+)	(-)	
	✓		✓		Malaysia's copyright-based industries have grown at an annual rate of 11.1 per cent from 2000 to 2005, with its contribution to GDP rising from 4.7 per cent to 5.8 per cent during this period.[171] The direct beneficiaries from copyright extension - press and literature, software and databases, and motion picture and video related activities are also the dominant subsectors of the copyright-based industries, which will be further propelled under the TPP.

[171] *Vijayakumari Kanapathy, 2008, Economic contribution of copyright-based industries in Malaysia*

INNOVATION					
93.	ISSUES				Patent and patentable matter
	SUB ISSUES				Under the TPP, patents are available for: 1. new uses of known product 2. new methods of known product 3. new processes of using known products 4. inventions derived from plants
	IMPACT		NATURE OF IMPACT		IMPACT ON NATIONAL INTEREST
	YES	NO	(+)	(-)	
	✓			✓	IP laws embody a balanced incentive system between public and private interest.[172] It encourages innovators to materialise their ideas by guaranteeing exclusive rights to their efforts and investments. At the same time, it also provides for limitations of these private rights to ensure a wider access of these innovations - increasing social welfare, as well as spur further creativity once private knowledge becomes publicly available. The WTO's TRIPS Agreement sets the precedent for basic IP for each of its members, of which Malaysia is a part of since 2001. It encompasses basic principles such as national treatment, MFN, and DSM, while balancing between public health and a level of protection for IP. Much of the IP embodied in TRIPS were inherited from the Paris Convention for the Protection of Industrial Property (1883), which addressed patents, industrial design, trademarks and geographical indications, and the Berne Convention for the Protection for the Protection of Literary Artistic Works (1886), which focused on the copyright of authors, musicians, poets, painters, etc.

[172] *https://www.eff.org/issues/intellectual-property*

					Under TRIPS Agreement and Malaysia Patent (Amendment) Act 2006, patent protection must be available for inventions for at least 20 years. Under the TPP, the scope of patentable matter has now widened. Patent should now be made available for new uses, methods, processes of known products and inventions derived from plants. Exclusions, however, include diagnostic, therapeutic and surgical methods, (other than non-biological processes) and plants (other than microorganisms.) This wider scope of patentability is already provided under Part IVA: Utility Innovations in the Malaysian Patent Act. MOH is aware of ever-greening practices and are in continuous consultations with MyIPO to ensure there is no abuse of the patenting system. However, the exhaustive list of definitions for investments in the Investment Chapter, which now includes non-tangible assets, i.e., patent, may now make it harder for MyIPO to reject foreign patent applications. Patent protection may not be the only criterion to spur greater innovation. Many essential lifesaving drugs such as polio vaccine and penicillin were never patented, although this may be partly due to strong governmental and charitable funding in lieu of private investments. The progress of medical innovation is largely hinged on the medicine's potential commercialisation interest. The future of medicine - biologics - is driven by commercial potential in insurance-funded, rare, life-enhancing and symptoms-alleviating, non-commutable diseases, rather than in common and commutable diseases that are subjected to expropriation risks by foreign governments. Although, patent protection is a necessary, yet it is not a sufficient condition for spurring innovation, especially in the area of essential lifesaving medicine. Moreover, Malaysia is a net importer of intellectual property. Although 94 per cent of patent applications and 97 per cent of patent granted in Malaysia originate from outside the country, foreign pharmaceutical companies are only confining themselves to the importation and distribution channels, focusing on marketing and distributing original medicine and branded generics in the domestic market while undertaking very little R&D.[173] The elimination of performance requirements in the Investment chapter will not encourage innovation in the pharmaceuticals industry - neither will it enhance the transfer of technology or promotes cutting-edge foreign R&D activities in Malaysia, thus further confining Malaysian pharmaceutical manufacturers to the generics medicine manufacturing sector.

[173] *Piong. J. and Loong C.M. 2013. Malaysia Pharmaceutical Industry - Collaboration and Investment Opportunities, Journal of Pharmaceutical Machinery and Engineering*

					However, clearer patent laws give Malaysian inventors the right to stop others from manufacturing, copying, selling or importing the patented goods without permission of the patent holder. Also**,** a stronger domestic patent regime, coupled with suitable investment incentives, can possibly lead to higher levels of biotechnology FDI in bulk pharmaceutical manufacturing,[174] thus improving the quality of exports as experienced by Singapore after the signing of US-Singapore FTA in 2006.
94.	ISSUES				Copyright extension
	SUB ISSUES				Copyright protection extended from 50 to 70 years.
	IMPACT		NATURE OF IMPACT		IMPACT ON NATIONAL INTEREST
	YES	NO	(+)	(-)	
	✓			✓	Copyright laws give content creators the right to use and profit from their created work. The TPP, however, entails lengthening the term of copyright protection by an additional 20 years for existing works that have not fallen into the public domain, which goes beyond what is required by international standards set out in the Berne Convention (WIPO) and TRIPS agreement. Malaysia is a net importer of copyrighted goods and contents. Between 2010 and 2014, net royalty payments amounted to more than RM4 billion each year, a sum which is envisaged to increase with copyright extension. This is a deadweight loss to the economy as it only results in a transfer of wealth in the form of royalty payments to a small number of multinational copyright-holding companies, predominantly Disney Animation

[174] *Alexius A. Pereira, 2006. Biotechnology foreign direct investment in Singapore*

					and Hollywood-centric works in the US, at the expense of its TPP partners. However, improvement in IP related provisions can also lead to further innovation in local copyright-based industries - films, books and music. A case in point is Malaysia's prior amendment to the Copyright Act, which enabled local companies to offer pay-per-view services of U.S. based contents as well as Malaysian movies two to four months after its theatrical release in the local cinemas. Moreover, countries with longer copyright terms are a more attractive destination for cultural investment. Lastly, the extension of copyright for existing works encourages copyright owners to preserve and restore existing works. However, it can also be argued that many works have also been preserved and restored in the public domain after the expiry of copyright protection.
95.	ISSUES				Geographical Indication (GI)
	SUB ISSUES				GI identifies a good, in which its quality and reputation is attributable to its geographic origin, as opposed to a trademark which identifies a good with a particular producer.
	IMPACT		NATURE OF IMPACT		IMPACT ON NATIONAL INTEREST
	YES	NO	(+)	(-)	
	✓			✓	GI identifies a good, in which its quality and reputation is attributable to its geographic origin, as opposed to trademark which identifies a good with a particular producer. The majority of GI protected goods are wine and spirits, for example, champagne, cognac and Scotch Whisky. The Malaysian Geographical Indications Act came into force in 2001 and a registered GI is given 10 years of protection from the date of filling and is renewable every 10 years. Some well-known protected Malaysian GIs are listed in **Table 16** in the Appendix. The GI can be a useful tool in promoting and protecting local environmental resources, biodiversity, traditional knowledge and cultural identities. It also promotes rural development and employment.

					Under the TPP, however, these protected GIs may be opposed on the grounds that they are likely to cause confusion with a pre-existing trademark or the GI is a commonly used term in Malaysia. Introducing procedures for grounds of opposition and cancellation of any GI, except for wines and spirits, can increase the administrative burden of MyIPO.
96.	ISSUES				The spill over effects of offsets under GP
	SUB ISSUES				Offsets are allowed for a period of 12 years starting EIF
	IMPACT		NATURE OF IMPACT		IMPACT ON NATIONAL INTEREST
	YES	NO	(+)	(-)	
	✓		✓		The Government shall continue using offsets as an incentive to spark greater innovation and technology transfer to local players.

JOB CREATION					
97.	ISSUES				IP
	SUB ISSUES				Stronger IP promoting IP-intensive jobs
	IMPACT		NATURE OF IMPACT		IMPACT ON NATIONAL INTEREST
	YES	NO	(+)	(-)	
	✓		✓		The direct beneficiaries from copyright extension under TPP are; press and literature, software and databases, and motion picture and video-related activities. Employment in the copyright-based industries is expected to be higher as a result from extending copyright from 50 to 70 years. This sector has grown by 10.7 per cent per annum between 2000 and 2005, making up 7.5 per cent of the total workforce.[175] The film and television industries currently contribute about 0.55 per cent of total employment.[176] Moreover, in the software-related industries, a stronger oversight and enforcement on piracy, resulting in a decrease in unlicensed software installation by 10 per cent, for example, can result in 3,452 new jobs.[177] There will be an increased creation of skilled and high-wage jobs from foreign affiliate pharmaceuticals due to stronger IP regime. It was estimated that there will be additional employment and wages paid amounting to 10,000 workers and $182 million in US affiliated IP-intensive companies in Malaysia.[178]

[175] *Vijayakumari Kanapathy, 2008. Economic contribution of copyright-based industries in Malaysia.*
[176] *Oxford Economics, 2014. The economic contribution of the film and television industries in Malaysia.*
[177] *Business Software Alliance, 2010. Piracy Impact Study: The economic benefits of reducing software piracy.*
[178] *Pham et al, 2014. The Economic Benefits of Intellectual Property Rights in the Trans-Pacific Partnership. NDP Analytics.*

98.	ISSUES				Automobile and automobile parts
	SUB ISSUES				Workers employed in both national and non-national cars manufacturers
	IMPACT		NATURE OF IMPACT		IMPACT ON NATIONAL INTEREST
	YES	NO	(+)	(-)	
	✓			✓	Market access and ROO for automobile and automobile parts may result in job losses for workers affiliated with national car manufacturing while creating jobs in the non-national car sphere. As many as 550,000 workers are employed in the automotive manufacturing, wholesale and distribution, and aftermarket services.[179]
99.	ISSUES				Investment into services sector
	SUB ISSUES				Exclusions from investments prevent job losses
	IMPACT		NATURE OF IMPACT		IMPACT ON NATIONAL INTEREST
	YES	NO	(+)	(-)	
	✓		✓		Based on **Table 17**, the share of workers in the services sector has increased steadily from 58 per cent in 2011 to 61 per cent in 2015. Given the relatively high share of employment in the services sector, the Government has ensured that the domestic labour market is not adversely affected by the TPP by excluding key subservice sectors from foreign investments, such as wholesale and distribution, accommodation and food, real estate,

[179] *NAP 2014 briefing. http://paultan.org/2014/01/20/nap-2014-full-text/powerpoint-presentation-10/*

					professional and administrative, and education and social work.
100.	ISSUES				Textile
	SUB ISSUES				Strict ROO
	IMPACT		NATURE OF IMPACT		IMPACT ON NATIONAL INTEREST
	YES	NO	(+)	(-)	
	✓		✓		Potential job creation in the textiles sector in order to meet higher demands from TPP countries as a result of the yarn-forward rule. The batik and other folklore industries may also expand under the TPP giving the chance for rural as well as urban enterprises to take part in a more liberalised economy and greater market access abroad.
101.	ISSUES				Livelihood of small farmers
	SUB ISSUES				The TPP requires Malaysia to accede to the UPOV 91, which will not affect the livelihood of small farmers.
	IMPACT		NATURE OF IMPACT		IMPACT ON NATIONAL INTEREST
	YES	NO	(+)	(-)	
		✓	✓		The TPP requires Malaysia to accede to the UPOV91 with a transition period of 4 years. Signing the UPOV91 treaty entails significant amendments to the Protection of New Plant Varieties Act 2004 (PNPV Act). For example, significant provisions in the PNPV Act 2004 that safeguard the rights of small farmers and indigenous communities to replant, save or exchange seeds among themselves will be removed.

					Nevertheless, safeguards - although weaker compared to the PNPV Act 2004 - for small farmers are already provided under Article 15 - Exceptions to the Breeder's Right of UPOV 91', whereby the breeder's right does not extend to plant breeding conducted: 1. Privately and for non-commercial purposes; 2. For research purposes; and 3. For other varieties. Moreover, the Ministry of Agriculture is still able to permit farmers to replant part of a protected variety on their own farms while protecting the breeder's interest. In short, small farmers are still able to save, exchange and reuse seeds and develop new plant varieties. Local researchers are also not at a disadvantage compared to foreign researchers after Malaysia's accession to UPOV91.
102.	ISSUES				Employment
	SUB ISSUES				More job creation is expected in competitive sectors
	IMPACT		NATURE OF IMPACT		IMPACT ON NATIONAL INTEREST
	YES	NO	(+)	(-)	
	✓		✓		There are many empirical analyses that link trade liberalisation to job creation. However, the findings are mixed based on country-specific variables and the policies implemented. Lee (2005), mentioned that a series of ILO case studies on China, India, Malaysia, Mexico and Brazil, which focused on the effects of the growth of trade on employment and wages in manufacturing industries, have found that the manufacturing sector felt

					the effects of trade expansion most strongly. In these studies, it was proven in these three countries that, "trade growth had a generally favourable effect on employment and wages in manufacturing."[180] Exporters of products, such as electrical and electronic, chemical, palm oil, rubber, wood, and textile products, as well as automotive parts and components are expected to be more competitive than our counterparts who are not in the TPP. There will be a positive impact on the industries highlighted because they are already competitive and poised for expansion. They will benefit as they can access bigger markets abroad. As these sectors expand, job creation is expected to increase in these particular sectors with the TPP realised.
WEALTH CREATION					
103.	ISSUES				The impact of stronger IP on consumer welfare
	SUB ISSUES				Copyright extension from 50 to 70 years
	IMPACT		NATURE OF IMPACT		IMPACT ON NATIONAL INTEREST
	YES	NO	(+)	(-)	
	✓			✓	This is the key IP provision will have immediate negative economic consequences. As most copyrighted materials are imported, this extension represents a significant additional burden to Malaysian consumers. The extension applies to all existing copyrighted works, but not for those that have already fallen into the public domain. Although Malaysian copyright owners, authors, animators, musicians, artists and filmmakers will benefit from the copyright term extension, the benefits are likely to be modest. The net costs will be small to begin with but will gradually increase over 20 years, and then levelling after that. **Figure 6** in the Appendix shows Malaysia's royalty receipts and payments for the use of IP (patent, trademarks, copyright, industrial

[180] *Lee, 2005, Trade Liberalization and Employment, DESA Working Paper No. 5*

					processes and designs including trade secrets, and franchises). A precise cost and benefit analysis of copyright extension is difficult to undertake as it is not possible to ascertain the true economic life of copyright works. Some products, such as computer software, have a very short economic life. For these products, the extension of copyright term will have no effect at all. However, other products do have an economic life that extends more than 50 years after the life of the author - Mickey Mouse being the most famous example. For these products, the costs and benefits are substantial.[181] The net cost of extending copyright protections by an additional 20 years was computed for Australia under the AUSFTA impact assessment study. The model assumes that each author receives a constant flow of royalties into the future. Based on the methodology adopted in the study, the estimated royalty payments will increase by approximately 25 per cent in current value terms on related copyrighted material, which amounts to AUD88 million a year.[182] Assuming a similar increase for Malaysia with a royalty payment totalling USD 1.4 billion in 2013, the estimated additional royalty payment amounts to USD 115 million a year[183] over the longer term. This large increase is to be expected since Malaysians will not only have to pay additional royalty to copyright holders of TPP countries, but to all countries as well since this provision is not preferential. The net cost to New Zealand over a very long term, including the initial 20-year period, is estimated to be around $55 million per year.[184] However, this net cost does not imply price increases of the related copyrighted goods, but merely the savings foregone that would otherwise been made from coming off a copyright earlier. Current prices of copyrighted goods will remain as they are for longer due to the copyright extension. Moreover, it is possible that Malaysia's net cost is overestimated given that Malaysians' consumption of foreign copyrighted contents may

[181] *Dee P., 2004, The Australia-US Free Trade Agreement An Assessment, Paper prepared for Senate.*
[182] *Ibid*
[183] *Assuming 1/3 of royalty payments are on related copyright material only, not inclusive of franchising fees.*
[184] *http://www.tpp.mfat.govt.nz/assets/docs/TPP_factsheet_Intellectual-Property.PDF*

					not be as much compared to the Australians and New Zealanders.
104.	ISSUES				Increased FDI
	SUB ISSUES				For selected industries, our strength lies in textiles, electronic and electrical manufacturing, and auto parts and components
	IMPACT		NATURE OF IMPACT		IMPACT ON NATIONAL INTEREST
	YES	NO	(+)	(-)	
	✓		✓		As investors from other TPP countries as well as those not yet in the TPP set up their operations here to benefit from the preferential tariff rate, investments in the sectors will increase, leading to more wealth creation in terms of GDP and job creation as was the case in Mexico under NAFTA.
105.	ISSUES				Increased GDP Growth with TPP
	SUB ISSUES				More investments are expected in attractive sectors
	IMPACT		NATURE OF IMPACT		IMPACT ON NATIONAL INTEREST
	YES	NO	(+)	(-)	
	✓		✓		There are many empirical analyses that linked growth to trade liberalisation. However, the findings are mixed based on country-specific variables and policies implemented. According to a study by Wacziarg., et. al (2008), "The new data set suggests that over the 1950–1998 period, countries that liberalised their trade regimes experienced average annual growth rates that were about 1.5

					percentage points higher than before liberalisation." Investment rates rose 1.5–2.0 percentage points after liberalisation took place. This confirms past findings that liberalisation encourages growth partly through its effect on physical capital accumulation. The study also highlighted that due to the liberalisation, the average trade to GDP ratio increased by about 5 percentage points. This suggests that trade policy liberalisation resulted in an increase of the actual level of openness for liberalisers.[185] Once the TPP is fully implemented, GDP growth is expected to increase as this is very much linked to the increase of Malaysian exports to other TPP members and increased foreign direct investments in attractive sectors in Malaysia.

[185] *World Bank Economic Review Volume 22, Issue 2 Published: May 2008, Pages: 187 – 231*

APPENDIX: TABLES AND FIGURES

Table 1: Summary of Malaysia's vs Proposed DE / Protection Framework

Drugs	Malaysia	TPP
Small molecule / chemical	First use: a. Data protection period: 5 years b. Application to be made within 18 months from the date of granting of DE in the country of origin. c. The starting date of the exclusivity period is calculated from the date marketing approval and DE is granted in the country of origin. Second use: a. Data protection period: 3 years b. Application to be made within 12 months from the date of granting of DE in the country of origin. c. The starting date of the exclusivity period is calculated from the date marketing approval and DE is granted in the country of origin.	First use: a. Protection period: 5 years b. Application to be made within 18 months from the date of granting of DE in the country of origin. c. The starting date of the exclusivity period is calculated from the date marketing approval and DE is granted in Malaysia, and no longer from the first marketing approval and DE granted in the country of origin. Second use: a. Protection period: 3 years **or** 5 years for a new pharmaceutical product combined with a new chemical entity that has not been previously approved. b. Application to be made within 18 months from the date of granting of DE in the country of origin. c. The starting date of the exclusivity period is calculated from the date marketing approval and DE is granted in Malaysia, and no longer from the first marketing approval and DE granted in the country of origin.
Large molecule / biologics	None	a. protection period: minimum of 8 years **or** 5 years and other additional measures that delivers a comparable outcome. b. application to be made within 18 months from the date of granting of DE in the country of origin. c. The starting date of the exclusivity period is calculated from the date marketing approval and DE is granted in Malaysia, and no longer from the first marketing approval and DE granted in the country of origin.

Source: Author's own calculation

Table 2 : Summary of Malaysia's current patent extension and adjustment practice vs TPP

Patent term	Malaysia	TPP
Extension	None	At least 5 years with start/stop system
Adjustment	None	To be determined by BPFK

Source: Author's own calculation

Table 3: Summary of Malaysia's current patent extension and adjustment practice vs TPP

	Malaysia	TPP
Patent linkage	None	Soft Linkage

Source: Author's own calculation

Table 4: Number and Value of Project Awarded by Project Value Range and Contractor Registration Grade in 2014 and how it affects G7 companies in the SDR63 million (approximately RM315 million) threshold

Grade	Project Value Range (RM Million)	>0.5-1	>1-5	>5-10	>10-50	>50-100	>100-300	>300-500	>500-1,000	>1,000	TOTAL
G1	No. of Projects	21	12		2						35
	Project Value	17.72	31.16		34.69						83.57
G2	No. of Projects	49	29	3	5						86
	Project Value	35.22	68.35	20.22	87.62						211.41
G3	No. of Projects	418	272	37	15	1					743
	Project Value	316.24	543.04	251.26	330.41	59					1499.95
G4	No. of Projects	156	736	23	14						929
	Project Value	120.76	1,459.30	150.64	266.66						1997.36
G5	No. of Projects	166	706	83	40	1	1				997
	Project Value	120.49	2,050.87	574.77	623.17	85.23	122.59				3577.12
G6	No. of Projects	146	310	262	42	1					761
	Project Value	105.57	826.76	1,927.28	723.24	65.98					3648.83
G7	No. of Projects	501	1,333	597	1,134	271	155	32	15	2	4,040
	Project Value	370.2	3,475.62	4,424.72	25,703.57	18,694.93	26,648.75	12,022.45	11,004.01	8,193.25	110537.5
Foreign	No. of Projects	6	46	24	40	10	21	8	7	12	174
	Project Value	4.81	104.98	175.47	1,058.68	798.63	3,931.42	2,749.25	4,144.23	27,698.39	40,665.86
TOTAL	No. of Projects	1,463	3,444	1,029	1,292	284	177	40	22	14	7,765
	Project Value	1,091.01	8,560.08	7,524.36	28,828.04	19,703.77	30,702.76	14,771.70	15,148.24	35,891.64	162,221.60

Source: CIDB

Table 5: Global Apparel Export Market Share of TPP Countries as of 2013

Exporters	Share of Global Exports
China	39 per cent
Bangladesh	5 per cent
India	4 per cent
Vietnam	4 per cent
Turkey	3 per cent
Indonesia	2 per cent
Sri Lanka	1 per cent
Thailand	1 per cent
Pakistan	1 per cent
Malaysia	1 per cent
Cambodia	1 per cent

Source: WTO, Standard Chartered Research

Table 6: Global Apparel Export Market Share of TPP Countries as of 2013

	Global apparel export market share, 2013 (%)	Change in market share: 2013-10	Apparel exports, USD Bil, 2013
Vietnam	3.7	2.8ppt	17.2
United States	1.0	-3.1ppt	5.9
Malaysia	1.0	-0.1ppt	4.6
Mexico	1.0	-3.4ppt	4.5
Peru	0.3	0.0ppt	1.4
Canada	0.3	-0.8ppt	1.3
Singapore	0.3	-0.6ppt	1.3
Japan	0.1	-0.2ppt	0.5
Chile	0.1	0.1ppt	0.3
Australia	0.0	0.00ppt	0.2
New Zealand	0.0	0.00ppt	0.2
Brunei	0.0	0.00ppt	0.2

Source: WTO, Standard Chartered Research

Table 7: Poultry Meat Supply in Malaysia (Metric Tonnes)

	2012	**2013**	**2014**
Production	1,374,500	1,408,862	1,437,039
Imports	52,595	53,600	54,000
Total Supply	**1,427,095**	**1,462,462**	**1,491,039**
Domestic Consumption	1,394,598	1,431,062	1,459,039
Exports	32,497	31,400	32,000
Total Distribution	**1,427,095**	**1,462,462**	**1,491,039**

Source: Global Agriculture Development Network Report, 2014

Table 8: FDI stock in Malaysia by Sector, 2008 to 2014 (RM million)

	2008	**2014**			
Sector	**A**	**B**	**B-A**	**(B-A) per cent**	**(B-A)per cent p.a**
Agriculture, Forestry and Fishing	**8 791**	**11 063**	**2 272**	**25.9**	**2.9**
Mining and Quarrying (including O&G)	**14 670**	**35 770**	**21 101**	**143.8**	**11.8**
Manufacturing	**125 268**	**204 071**	**78 803**	**62.9**	**6.3**
Services	**106 227**	**216 612**	**110 385**	**103.9**	**9.3**
Construction	1 116	3 420	2 304	206.3	15.0
Wholesale and Retail Trade	18 805	34 468	15 663	83.3	7.9
Financial and Insurance/Takaful	53 585	97 955	44 370	82.8	7.8
Information and Communication	19 701	45 010	25 309	128.5	10.9
Other Services	13 020	35 759	22 739	174.6	13.5
Total	**254 955**	**467 516**	**212 561**	**83.4**	**7.9**

Source: Bank Negara Malaysia statistics

Table 9: FDI stock in Malaysia by Country Groups, 2008 to 2014 (RM million)

	2008	**2014**			
Country group	**A**	**B**	**B-A**	**(B-A) per cent**	**(B-A)per cent p.a**
Europe	82,457	154,712	72 255	81.8	7.8
Singapore	45,287	87,629	42 342	88.5	8.2
United States*	62,335	69,061	6 727	11.4	1.4
Japan	31,513	66,447	34 935	107.8	9.6
Other Northeast Asia	12,292	34,689	22 397	149.5	12.1
Other Countries	8,066	26,727	18 660	178.6	13.7
Central and South America	9,868	14,330	4 462	37.5	4.1
Australia	2,380	11,996	9 617	163.0	12.8
Other ASEAN	757	1,925	1 168	154.3	12.4
Total	**254,955**	**467,516**	**212 561**	**83.4**	**7.9**

**inclusive of inward FDI stocks originating from the Bermudas, Cayman Islands and Virgn Islands.*
***Source: Bank Negara Malaysia statistics*

Table 10: Estimated world inward FDI stock by sector, 2007 and 2012 (USD million)

	2007	2012			
Sector	**A**	**B**	**B-A**	**(B-A) per cent**	**(B-A) per cent p.a**
Agriculture, hunting, forestry and fishing	**32,010**	**81,694**	**49 684**	**155.2**	**20.6**
Mining, quarrying and petroleum	**1,140,426**	**1,647,571**	**507 145**	**44.5**	**7.6**
Manufacturing	**4,245,834**	**5,914,629**	**1 668 795**	**39.3**	**6.9**
Services	**10,020,483**	**14,954,101**	**4 933 618**	**49.2**	**8.3**
Construction	135,807	293,278	157 471	116.0	16.6
Trade	1,660,215	2,116,111	455 896	27.5	5.0
Finance	3,041,894	5,416,129	2 374 235	78.1	12.2
Transport, storage and communications	920,466	1,454,652	534 186	58.0	9.6
Business activities	2,925,668	4,521,515	1 595 847	54.5 t	9.1
Total	**15,696,876**	**23,304,429**	**7 607 553**	**48.5**	**8.2**

Source: UNCTAD World Investment Report 2014: Investing in the SDGs

Table 11: Decomposition of increase in FDI stock in Malaysia, 2008 to 2014 (RM million)

	Growth	Industry Mix	Competitive	Actual	Competitive / Actual Ratio (%)
Agriculture, Forestry and Fishing	**4 260**	**9 384**	**- 11 372**	**2 272**	**-**
Mining and Quarrying (including O&G)	**7 110**	**- 586**	**14 577**	**21 101**	**69**
Manufacturing	**60 712**	**- 11 476**	**29 567**	**78 803**	**38**
Services	**51 483**	**15 334**	**43 568**	**110 385**	**39**
Construction	541	753	1 009	2 304	44
Wholesale and Retail Trade	9 114	- 3 950	10 499	15 663	67
Financial and Insurance/Takaful	25 970	15 854	2 546	44 370	6
Information and Communication	9 548	1 885	13 876	25 309	55
Other Services	6 310	792	15 637	22 739	69
Total	**123 565**	**12 656**	**76 340**	**212 561**	**36**

Source: Author's own calculation

Table 12: Malaysia OECD Restrictiveness index by sector, 1997 to 2013

Sector	1997	2003	2006	2010	2011	2012	2013
Primary	**0.33**	**0.32**	**0.32**	**0.245**	**0.245**	**0.245**	**0.245**
Manufacturing	**0.36**	**0.1**	**0.1**	**0**	**0**	**0**	**0**
Mining & Quarrying (incl. Oil extr.)	**0.11**	**0.1**	**0.1**	**0**	**0**	**0**	**0**
Tertiary	**0.625**	**0.581**	**0.561**	**0.329**	**0.329**	**0.266**	**0.266**
Construction	0.61	0.6	0.6	0.25	0.25	0.25	0.25
Distribution	0.588	0.57	0.57	0.437	0.437	0.437	0.437
Financial services	0.618	0.593	0.52	0.242	0.242	0.221	0.221
Communications	0.61	0.5	0.5	0.45	0.45	0.25	0.25
Total FDI Index	**0.51**	**0.426**	**0.416**	**0.243**	**0.243**	**0.212**	**0.212**

Source: OECD Website

Table 13: Investments in Pharmaceutical industry

	1996-2005	2006 -2009	2011-2014
Total Investment (RM million)	1,007	595	1,872
Domestic Investment (RM million)	757	514	788
Domestic Investment (per cent)	75	86	42
Foreign Investment (RM million)	250	81	1,084
Foreign investment (per cent)	25	14	58

Source: MIDA Annual reports & Gee et al, 2009

Table 14: Aggregate financial indicators for SOEs, per cent of selected benchmark aggregates (2010)

	Total SOE sales per cent	Total SOE profits per cent	Total SOE assets per cent	Total SOE market value per cent
GDP, global	5.7	0.5	35.8	7.8
Industry value added, global	20.8	1.9	131.1	28.7
Services value added	9.8	0.9	61.9	13.6
Manufacturing value added, global	36	3.3	226.5	49.7
Agriculture value added, global	140.3	12.8	884	193.8
Cross border trade, global	19.1	1.7	120.3	26.4
FDI flows, global	251.2	22.9	1582.6	346.9
Market capitalisation of listed companies, global	5	0.7	50.2	11
Stocks traded, global	5.4	0.5	34.1	7.5

Sources: Forbes and WDI

Table 15: Contribution of SME to the Total GDP (By Sector)

SME sector	SME GDP	Total GDP
Services	58.6	53.5
Manufacturing	21.7	23.0
Agriculture	12.4	9.2
Construction	5.7	4.3
Mining & Quarrying	0.4	9.0
Plus: import duties	1.1	1.1
Total	**100**	**100**

Source: SME Annual Report 2014/15

Table 16: List of registered GI in Malaysia

1	Sarawak Pepper	25	Umai Sarawak
2	Sabah Tea	26	Tenun Pahang Diraja
3	Borneo Virgin Coconut Oil	27	Biskut Dan San Sungai Lembing
4	Tenom Coffee	28	Kacang Goreng Sempalit
5	Sabah Seaweed	29	Gaharu Gopeng
6	Bario Rice	30	Terengganu Songket
7	Buah Limau Bali Sungai Gedung	31	Malacca Songket
8	Pisco	32	Isau Sarawak
9	Scotch Whisky	33	Durian Nyekak Sarawak
10	Sarawak Beras Biris	34	Ikan Terubok Mulut Besar Sarawak
11	Sarawak Beras Bajong	35	Bentong Ginger
12	Kuih Lidah Kampung Berundong Papar	36	Keningau Cinnamon
13	Tambunan Ginger	37	Tuhau Tambunan
14	Sarawak Sour Eggplant	38	Sabah Batik
15	Sarawak Layered Cake	39	Kelarai, Ulu Tomani Tenom
16	Sarawak Dabai	40	Batik Terengganu
17	Cognac	41	Tembaga Ladang
18	Parmigiano Reggiano	42	Ukiran Kayu Besut
19	Langkawi Cheese	43	Keropok Losong
20	Sarawak Litsea	44	Keropok Lekor Terengganu
21	Perlis Harumanis Mango	45	Pulau Duyong Boat
22	Champagne	46	Nasi Dagang Terengganu
23	Belacan Bintulu	47	Malaysia Durian Musang King
24	Sesar Unjur Sarawak		

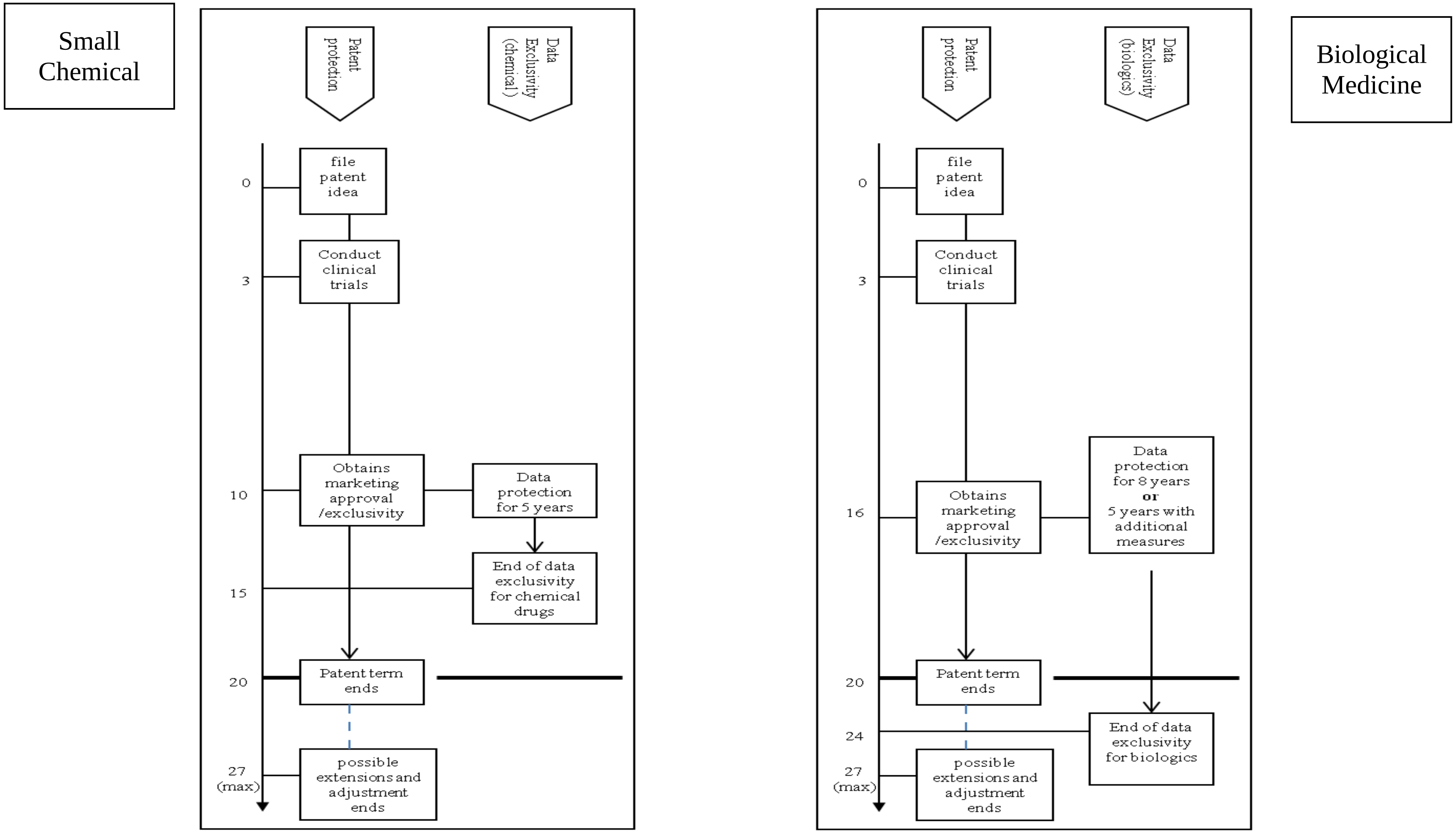
Source: MyIPO

Table 17: Malaysia's employment by industry, 2011 and 2015

Employment by industry		
	2011	**2015**
Industry ('000)	**12,675.8**	**13,711.4**
Agriculture, Forestry and Fishing	1,410.0	1,691.0
Mining and Quarrying	76.0	98.9
Manufacturing	2,222.3	2,174.1
Electricity, gas, steam and air conditioning supply	51.6	52.2
Water supply; sewerage, waste management and remediation activities	70.8	73.4
Construction	1,133.6	1,268.9
Services	**7,320.2**	**8,352.8**
Wholesale and retail trade; repair of motor vehicles and motorcycles	1,999.5	2,328.8
Transport and storage	605.2	627.6
Accommodation and food service activities	942.2	1106.5
Information and communication	207.6	219.5
Financial and insurance/takaful activities	317.6	361.2
Real estate activities	61.2	68.3
Professional, scientific and technical activities	329.0	369.2
Administrative and support service activities	448.9	622.4
Public administration and defence; compulsory social security	749.0	756.5
Education	785.0	913.1
Human health and social work activities	382.5	560.9
Arts, entertainment and recreation	86.4	78.6
Other services activities	181.5	201.9
Activities of households as employers	222.5	137.5
Activities of extraterritorial organisations and bodies	2.1	0.8

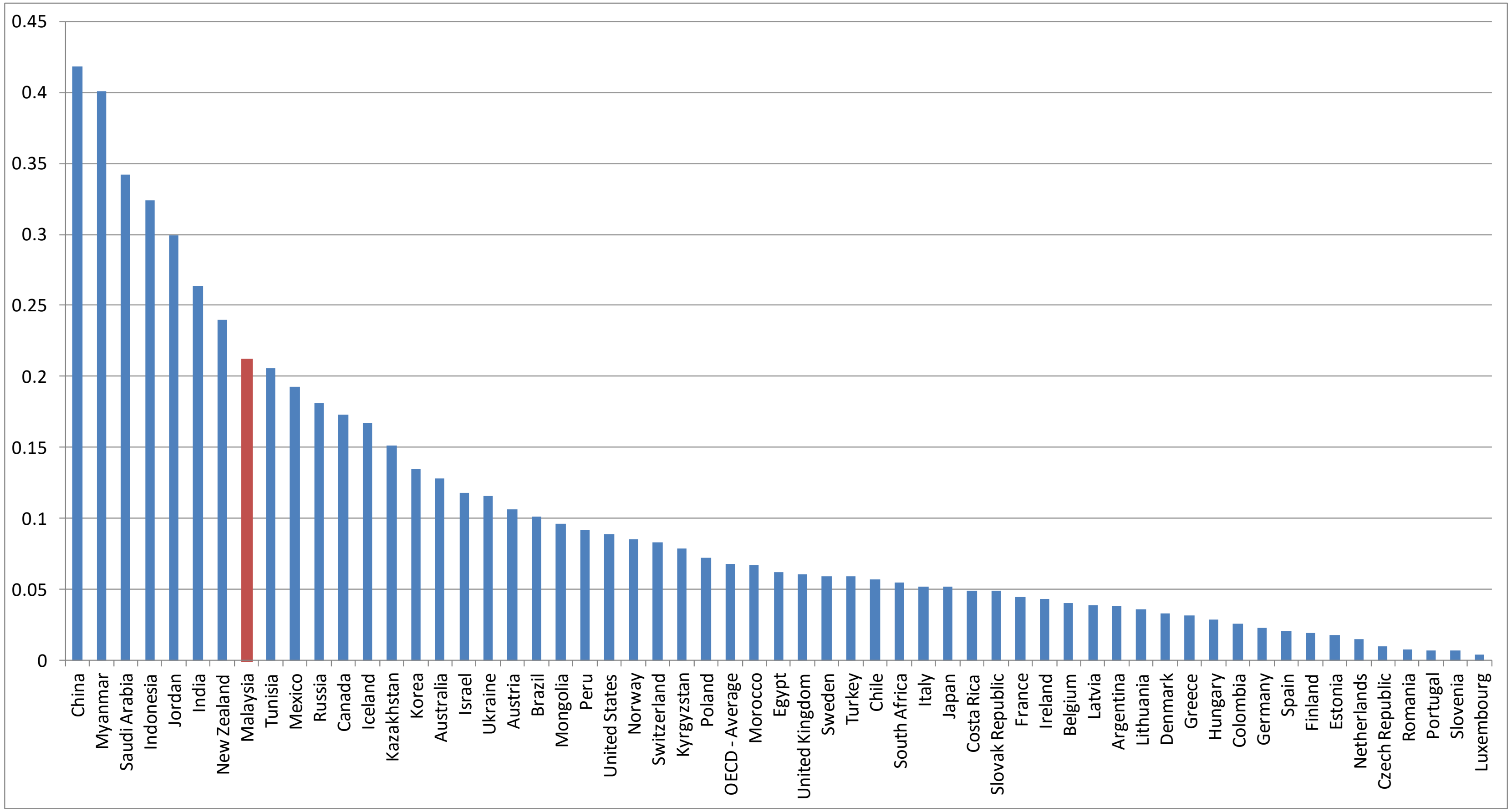
Source: Department of Statistics

Figure 2 : Difference in impact of DE between small chemical and biological medicine



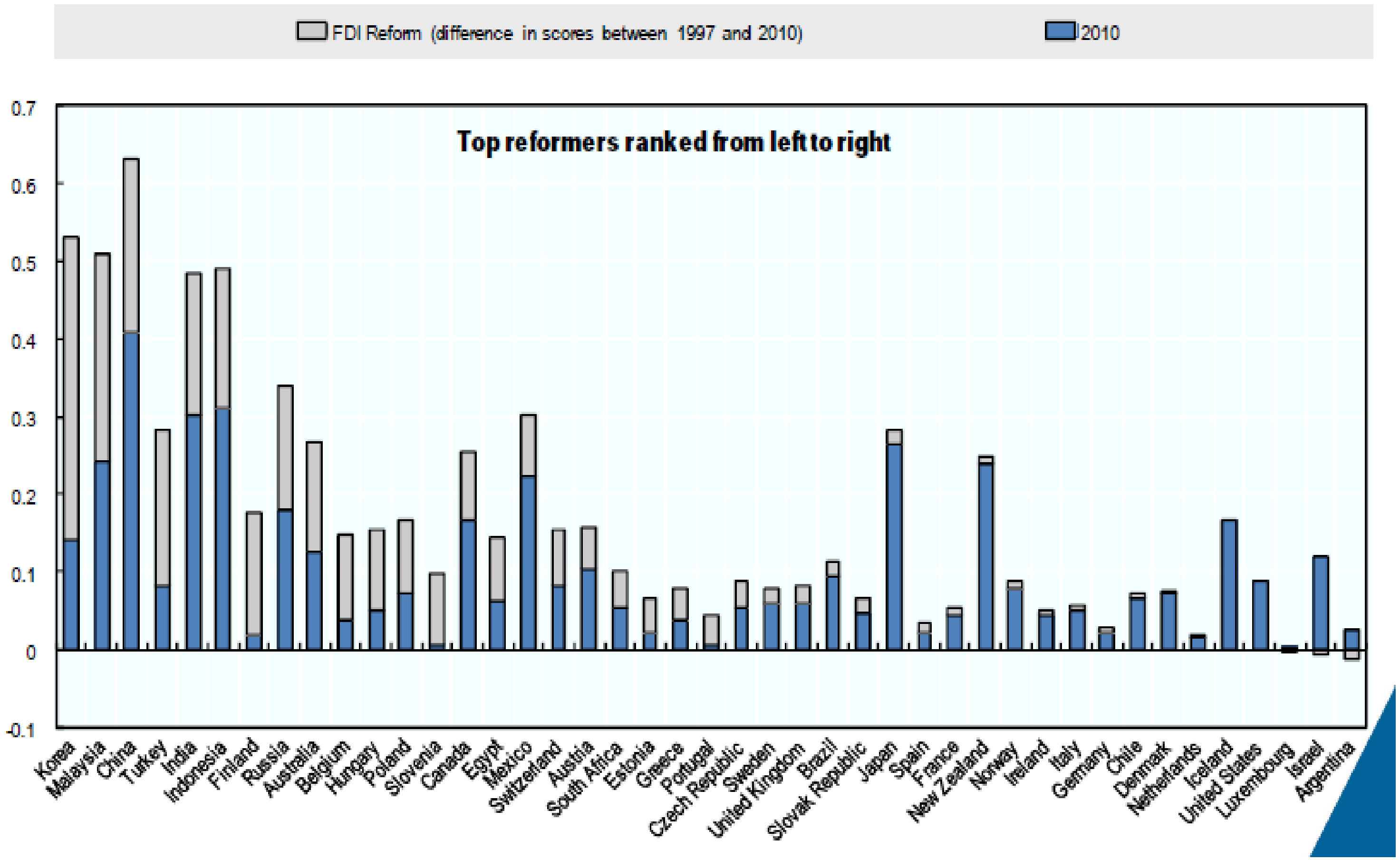
Source: Biotechnology Healthcare

Figure 3: Cross country OECD FDI Restrictiveness index in 2013



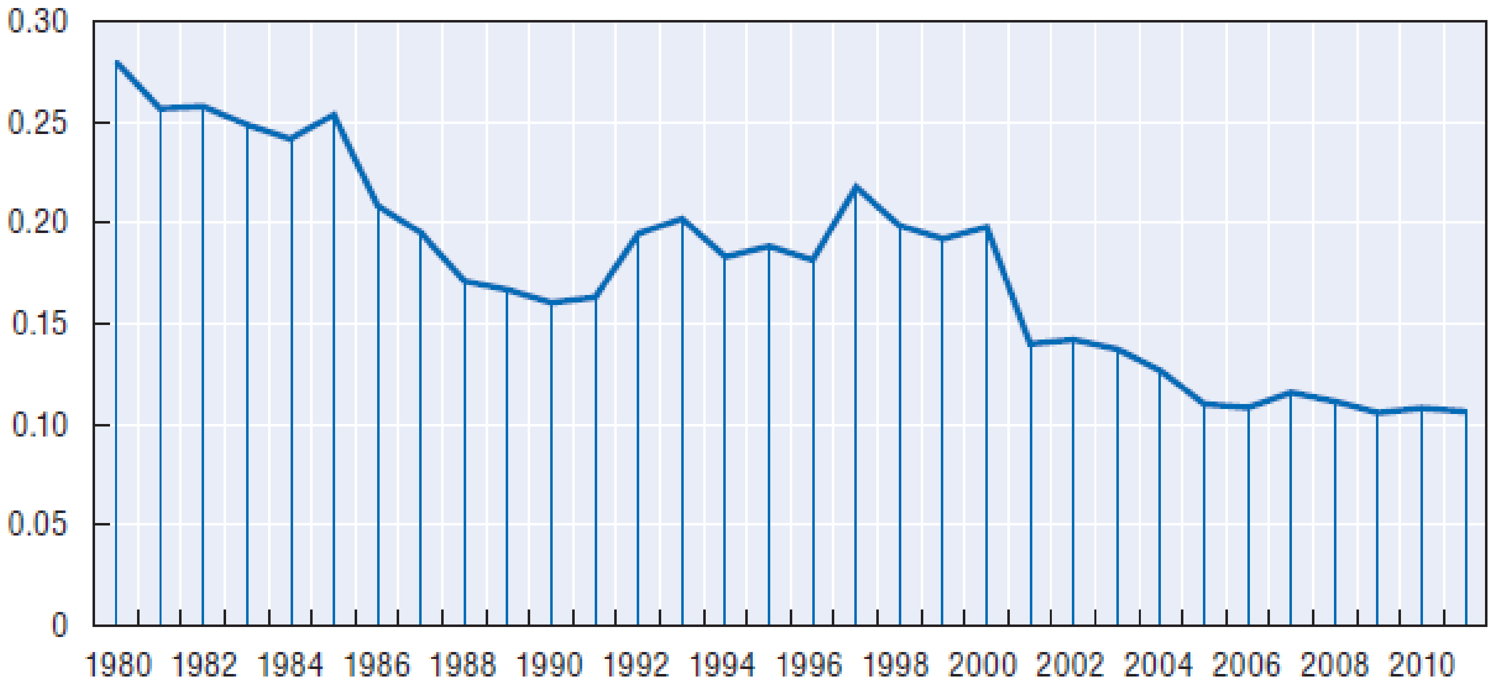
Source: OECD

Figure 4: Top reformer ranked from left to right



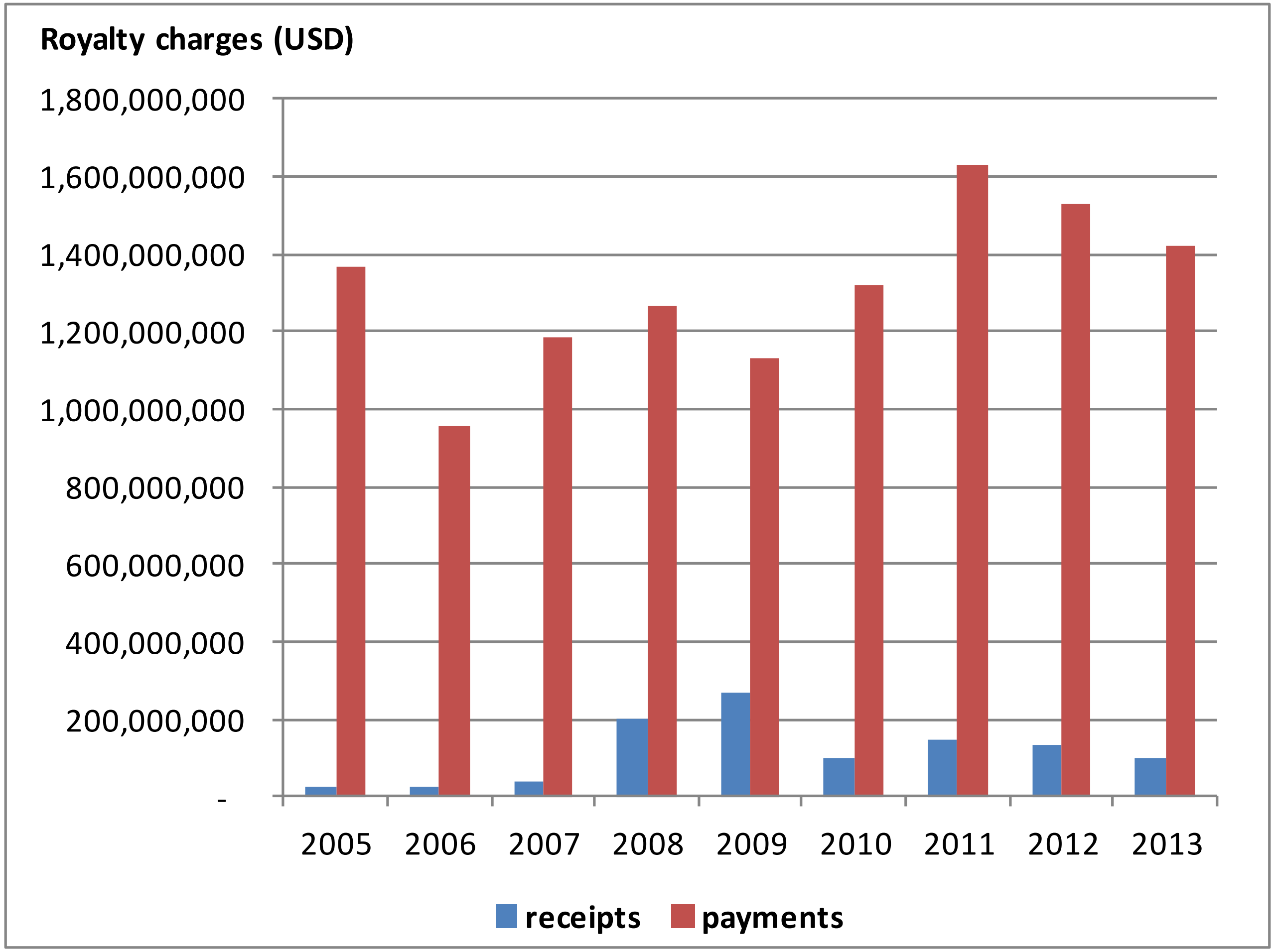
Source: OECD

Figure 5: Malaysian share of the total FDI stock into ASEAN, 1980-2011



Source: WTO

Figure 6: Malaysia's royalty receipts and payments between 2005 and 2013



Source: Department of Statistics, Malaysia

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Government Procurement Working Group
Ministry of Finance

Market Access Working Group
Ministry of International Trade and Industry (MITI)

Environment Working Group
Ministry of Natural Resource & Enviroment

Legal Working Group
Attorney General Chambers

Financial Service Working Group
Bank Negara Malaysia

Labour Working Group
Ministry of Human Resource

Competition and SOEs Working Group
Ministry Domestic Trade and Consumerism

Technical Barriers to Trade Working Group
Standards Malaysia

Cross-Border Service Working Group
Ministry of International Trade & Industry

Investment Working Group
Ministry of International Trade & Industry