

TOWARDS A PEOPLES CHARTER ON INTERNATIONAL TRADE AGREEMENTS

Preamble

Malaysia is a trading nation. The value of our exports was RM 829 billion in 2016 or 69% of our Gross National Product (GDP). If one takes into account the value of imports of intermediate products that become components of these exports, one would find that about 33% of all value added in Malaysia is for the export market. Therefore trade is important to us as a nation and we would be preposterous for anyone to say that we should stop promoting trade with other countries!

However, many of us are deeply concerned about the adverse effects of the Free Trade Agreements that our Government has been gleefully entering into. It is becoming increasingly clear that these “Trade Agreements” are being used to insist on additional rules such as longer and stronger intellectual property protection that keeps medicines unaffordable for longer and stronger investor rights globally thus creating ever worsening income disparity and increasingly severe economic pressure on the bottom 60% of the population all over the world. Also these Trade Agreements have created a “regulatory chill” as governments are afraid to intervene with policies and program to help the marginalized sectors or protect the environment because the ISDS (Investor State Dispute Settlement) provisions in these Agreements give large foreign companies the right to sue governments in International Tribunals under various provisions such as “fair and equitable treatment” and the “expropriation” clause.

Previously held beliefs that trade agreements should be welcome as it benefits the Rakyat are no longer tenable. The Trade Agreements being negotiated nowadays give extensive rights to foreign investors, demand patent extensions for essential medicines, increase the prices of books and other educational resources, make sharing of seeds among small farmers illegal and commit our governments to the ISDS mechanisms which allow foreign investors to sue our government in private international tribunals. This is why these Agreements are discussed under a shroud of secrecy! Ordinary citizens all over the world would be horrified to learn of the concessions that our negotiators are granting the richest corporations.

We should remember the primacy of human rights and our nation’s commitments under the various UN Human Rights instruments. Trade agreements should not perpetuate or aggravate

the inequalities within and between countries. The neoliberal approach to Trade Agreements have made these agreements toxic to the majority of our people!

We need to shift away from this toxic model of Trade Agreements – we need a new model. There is an urgent need to stop the race to the bottom that our governments are engaged in as they compete with each other for export markets and Foreign Direct Investment (FDI). Taxes, tariffs, wages and environmental protection are all pushed downwards as our governments compete with each other to attract FDI. We have to stop undermining each other! This madness has to stop!

It is now time we open up the dialogue on the kind of trade agreements that we want to see in place. We have to move forward from our stance of protesting each Trade Agreement when it is being discussed without putting forward to the people of Malaysia the kind of Trade Agreement we would like to see. We believe that trade agreements must be fair to all the nations signing on to the agreement and also to the various social sectors in the participating countries. These Trade Agreements must uphold the principles of Democracy, Welfare of the majority, Environmental Protection and the National Constitution. The Governments that partake in these Trade Negotiations should ensure that these principles are upheld.

To kick-start this dialogue process, PSM therefore would like to put forward nine themes that we think should define future Trade/Investment Agreements. Several of these ideas were expressed by participants in a forum that the PSM held titled “*A People's Charter on International Trade Agreements*” on 26th April 2017 in Kuala Lumpur. The proposals contained in this document are meant to be discussed, modified, added to and delineated more clearly as contemporary Trade Agreements intrude into many sectors of the economy and are immensely complex..

Trade agreements must comply to the pillars of democracy and the constitution. Putrajaya, MITI and the respective Ministries, whom enter into trade negotiation should be subjected to the constitution. **We need a people centered Trade Agreement!**

PEOPLES CHARTER ON INTERNATIONAL TRADE AGREEMENTS

Proposals for a People- Centered Trade Agreement

1. Trade Agreements should not restrict the capacity of our Governments to

- Improve the economic well-being of the bottom 60% of our populations;
- Provide affordable and good quality health care and education to our people;
- Guarantee food security for the country;
- Provide good quality affordable amenities such as transport, housing, electricity, water, etc;
- Protect the environment for future generations;
- Develop the technological and industrial capacity of our people;
- Deepen the local consumer market and expand domestic aggregate demand;
- Protect the financial stability of the national economy.

To retain the capacity to carry out these responsibilities, the following concessions to foreign investors **should NOT be written into the Trade Agreement –**

- i. **Fair and equitable treatment** - The toxic 'fair and equitable', (FET) clause has been used by investors to sue governments whenever laws/regulations are changed in ways that harm foreign investors. This would mean that the government cannot amend our laws if it will harm the investment of an investor (even in the event of a financial crisis, or when the investor's products or actions are proven to be detrimental to the rakyat and environment)
- ii. **Pre establishment rights for investors**
- iii. The demand for "**National Treatment**"- Trade agreements incorporate clauses such as "National treatment " meaning investments and investors from other negotiating countries must be treated no less favourably than domestic investments and investors. This provision drastically restricts policy space to regulate or carry out any affirmative action duly needed to address domestic socio-economic needs.
- iv. Any **restrictions on performance requirements** such as manpower training, technology transfer, use of locally sourced components, etc.
- v. The definition of "**expropriation**" to include loss of expected future profits because of changes in the laws of the country. No indirect expropriation clauses!

2. Trade Agreements should not curtail our access to medicines.

The idea that knowledge can be owned by corporations which then use this “ownership” to create monopolies that jack up the price of medicines to astronomical levels is repugnant to us. This practice is nothing more than the “fencing of the commons”. Knowledge is something that is built on from one generation to the next. Every advance in human knowledge is predicated on the knowledge and technology created by previous generations.

Yes, brilliant insights and hard work on the part of scientists should be rewarded, and the money invested by corporations in developing new medicines should be recognized and given fair compensation. But certainly not monopoly rights for over a period of 20 years. We therefore call for, in the short term, **for a rejection of any attempt to strengthen intellectual property protection beyond the TRIPS** regulations on Intellectual Property Rights.

In particular the following should be rejected

- a) **Data Exclusivity and market exclusivity extensions** should be rejected. A measure that could delay regulatory approval for medicines that are off patent, by providing an additional way of getting a monopoly. This will only serve to delay the market entry of affordable generic medicines and goes well beyond the intellectual property protections required by the World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).
- b) **Trips plus** measures, access to affordable generics of new essential medicines for a number of diseases for the world’s poorest people in low and middle income countries will be seriously compromised by TRIPS+ provision.
- c) **Patent term extensions**
- d) **“Ever greening”** – the renewing of patents for a different use of the same medicine – has to be rejected.
- e) **Patenting of medical procedures and techniques should be resisted.**

Meanwhile the “flexibilities” within TRIPS such as “Compulsory Licensing” and “Parallel Imports” should be fully utilized to meet the health needs of our people.

For the longer term we need to work to reclaim the commons. The current Intellectual Property Rights have to be replaced by something more humane and decent. The TRIPS agreement itself has conceded too much to corporate greed.

No to privatization of health sector - Trade agreements should not make market access commitments that facilitate privatization of health sector. If Malaysia wants to stop any future privatization plans, or re nationalize the privatized service when such privatization measures in the health sector turns out to be hindering the realization of the right to health, such commitments in trade agreement may be problematic.

3. Trade Agreements should not undermine Food Security.

Right to impose tariffs on imported food so as to protect local farmers and fishermen

Every country should have the right to impose tariffs on imported food so as to protect local farmers and fishermen. The advanced countries give huge subsidies to their farmers and from time to time dump their excess food products in other countries. With the liberalization of trade and no border protection, the import of heavily subsidized agricultural product from another country at much lower price will jeopardize local products like rice, vegetables and poultry. This will affect farmer's livelihood and income. When local agricultural businesses close down due to unfair competition, we will depend heavily on imported products. This is dangerous in term of food security and sovereignty.

GMO labeling.

GMO labeling of food and seeds, etc must be strictly adhered to. There are some quarters which argue that GMO labelling is a form of non-tariff barrier and that it should not be made mandatory.

No to UPOV 1991

Malaysia should not be forced to sign on to UPOV 1991 for this agreement makes the sharing of seeds amongst small farmers illegal and requires them to pay royalties for 20 or 25 years.

We should reject extensions of intellectual property rights over agricultural chemicals as well as patent extensions for new uses of old chemicals.

Trade agreements should not restrict the government's power to continue to provide subsidies to farmers, smallholders and fisher folk.

4. No to ISDS Provision - Trade Agreements should not emasculate governments

We agree that investors need to have their rights protected like protection from arbitrary seizure of their assets and from any form of victimization. However the ISDS (Investor State Dispute Settlement) gives them far too much rights and results in a “regulatory chill” whereby governments are afraid to enact legislation to protect public health or the environment as they fear the MNC might sue them in an International Tribunal.

Foreign investors should have all the rights that Malaysian investors enjoy. They should have the right to sue the government for breach of contract and file Judicial Review actions if they feel a particular government decision was prejudiced against them. But they should do this **utilizing avenues available in the Malaysian Legal System.**

An International Court of Appeal can be constituted to if parties want to pursue their case after exhaustion of the legal processes within the country, but this International Court must comprise of senior Judges drawn from the countries that are party to the multi-national Trade Agreement. It should be clearly stated that health and environment concerns are more important than the profits of corporations.

As the ISDS is a flawed system victimizing governments, Malaysia should renegotiate to remove all ISDS provisions in existing Bilateral Investment Treaties and Free Trade Agreements previously committed to.

5. The role of Small and Medium sized business entities (SMEs) in our national economy should be protected and enhanced.

SMEs are business entities with a gross revenue of below 50 million per year and with less than 200 employees. At present they are a very important component of the Malaysian economy. They play an important role in distributing goods and services to all regions of our country where 98.5 % of business establishments in Malaysia are SME’s. The presence of thousands of small owner-operated businesses augments aggregate demand in our rural areas and smaller towns and this in turn generates business opportunities and jobs for micro businesses in these regions. It also reduces the rate of migration to our cities and mitigates urban congestion.

Trade Agreements must not undermine the SME sector by giving huge marketing chains the license to compete with and undermine our SMEs.

6. The Trade Agreements of the future should play a role in cutting down tax evasion by the Billionaire Class.

Under the current system, large MNCs produce goods (and services) at low costs in Asian countries, and then sell these products with a large mark-up in Europe and North America thus making a huge profit. These MNCs avoid paying taxes in both the Asian or African country where the product is manufactured or in their home countries where the product is sold by using “transfer pricing” to “declare” their abundant profits in a tax haven. In most cases, the product does not actually transit the tax haven – it’s all only in the “paperwork”. This widespread practice reduces government revenue and worsens the imbalance in wealth distribution between the top 0.01% of the richest and the rest of the world population.

Thus trade agreements should not in any way facilitate transfer pricing and instead **should have provision that restrict transfer pricing, the use of Tax Havens and the avoidance of paying taxes by MNCs.**

7. The Special and Differential Treatment Principle must be preserved.

Malaysia is now a middle income country. Our per capita income is now about 10 times higher than the poorest 10 countries in Africa. So when dealing with these countries and other poorer countries in Africa and Less Developed Countries in Asia, the Malaysian government must observe the “special and differential treatment principle” whereby the countries mired in poverty must be given more favorable terms with regards to access to markets, financing and technology, education, diversification of production, infrastructure, institutional development and human resources.

Trade should not be only about Malaysia benefiting especially if it is at the expense of a country that is more unfortunate compared to us. We should attempt to

- Excuse Less Developed Countries from making extensive commitments in all trade agreement chapters, until they reach equivalent levels of development.
- Upgrade the livelihood of the people in the poorer nations engaged in regional cooperation with us;
- Work towards a better minimum wage in the countries that we are engaging with;
- Prevent the race to the bottom, where countries compete amongst each other for FDIs and export markets;
- Promote Energy and Resource Democracy which allows local people, particularly women, to make decisions over the use of local resources and the best way to fulfil their needs.
- Advance the general welfare of all the inhabitants of the nations involved in Trade Agreements with us.

8. Full disclosure and Consultation with the People.

The current practice of negotiating Trade Agreements in secrecy has to stop. Although the Executive Branch of our Government is empowered by the Federal Constitution to make Treaties with other countries, in the case of Trade Agreements where there is a tremendous impact on the lives of our citizens there must be disclosure and consultation. We propose that

- ***The Government be transparent*** in relation to its international trade dealings and negotiations. It must disclose which countries it is negotiating or planning to negotiate FTAs and BITs (Bilateral Investment Treaties) with; it must disclose the consolidated negotiating text or at the very least Malaysia's negotiating proposals in the BITs & FTAs to enable proper analysis, democratic participation and government accountability.
- ***The Government hold widespread and systematic consultations*** with all affected sectors including patient groups, farmers, fisher folk, SMES, environmental groups, tobacco control groups, trade unions etc. It must not conclude agreements before such consultations are held.
- ***Cost-Benefit analyses are carried out*** – the Government should retain an independent entity to carry out short, medium & long term cost-benefit analyses (CBA) before beginning negotiations and at the end based on the final text before deciding whether to sign it. The terms of reference and CBAs must be released to the public as soon as they are completed. It is important that these CBAs look specifically at how the provisions of the Trade Agreement affect different socio-economic classes. What might be good for a certain group of businessmen might be very disadvantageous to the Orang Asli or to women in the B40 segment of the population. The differential impact of proposed provisions on different sector and strata of society must be looked at seriously.
- ***Human Rights and Environmental Impact (HREIA) Studies*** must be carried out before beginning negotiations and at the end, based on the final text before deciding whether to sign it. The terms of reference and impact assessments must be released to the public as soon as they are completed.
- Methodologies for HREIAs must provide data disaggregated by sex and then further disaggregated by labor status. ***Women's voices must be reflected*** in the assessments. Women's groups must be consulted, and they should be a key source of information for the assessment process.

- We need a ***National Referendum*** to set out the main parameters that our Government should follow when negotiating Trade Agreements.

9. Trade that enhances the livelihood of the inhabitants of negotiating countries.

The Malaysian government should identify what types of development policies are essential to build production (or supply) capacities in Malaysia, and what international transfers of resources and technology are essential to support, in particular, the development of such capacities in our country and align negotiations and resulting trade agreements with such policies.

Thus, states should play a primary role to establish cooperation among negotiating nations to advance the general welfare of all the inhabitants of the nations involved in trade agreements in contrast to the current trade agreements where states play a role only to facilitate and break down borders for their private enterprises.

Participating countries should work towards a regional agreed decent living wage, preventing the race to the bottom, countries competing amongst each offering low wages in order to attract FDI. Participating countries that do not comply with the agreed regional living wage must be punished with higher import tariffs on their products till they comply with the agreed regional understanding.

Call to Action

Too many people in Asia and Africa have come to believe the Thatcherite slogan – “***There is no Alternative***”. As our MITI Minister once remarked, “*we have to bite the bullet*” because he believes that there is no way forward for Malaysia without taking part in these mega trade deals like the TPPA. This is the position of many of our political leaders on both sides of the political divide in Malaysia.

If we want to turn the tide we have to propagate an alternative narrative. We have to assert that “***A better world is within our reach!***” And we need to present our people with a rational well-thought road map that details how we can move in that direction.

This is obviously a tremendous task, but we are not alone in this. All over the world, groups are looking for viable alternatives to the neo-liberal disorder afflicting most areas of the world, causing immense suffering, unemployment, withdrawal of benefits, marginalization, religious radicalization and degradation of the environment.

We wish to invite everyone who is similarly concerned with the current state of the global economy to give your feedback to the ideas laid out in this document. We will be calling for a series of discussions on the nine proposals listed above. We then need to take this message out to the people of this country. There is a lot of work to be done. But as the saying goes – a journey of a 100 miles starts with a single step! We hope you will join us in this effort.

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