

TRANS-PACIFIC PARTNERSHIP AGREEMENT (TPPA)

跨太平洋伙伴关系协定（跨协）

The Pros & Cons of TPPA to Malaysian Businesses
Part 1 – January 2016

跨协对于马来西亚工商界的利与弊
第1部 – 2016年1月



In collaboration with:
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What is TPPA?

The Trans-Pacific Partnership Agreement (TPPA) is a comprehensive and high-standard 30 chapters multi-lateral free trade agreement (FTA) that brings together 12 Pacific Rim countries, namely Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, United States, and Vietnam. TPP aims to create the world's biggest free-trade area. The key priority of this game changing trade partnership converges on improved market access and cross-border trade, fair and level playing field, and regulatory transparency.

TPPA is expected to be positive for Malaysia as the TPP will become a free trade region to 800 million people, accounting for approximately 30% of global trade and 40% of the world's GDP.



TPP Population



800 million

TPP Gross Domestic Product (GDP)



USD 27.8 trillion¹

(About 40% of the world's GDP)

¹Source: PwC. 2015

Standard Legal Scopes/Chapters	Traditional FTA Scopes/Chapters		TPPA: New Scopes/Chapters
Chapter 1 – Initial Provisions 27 – Administrative & Institutional Provisions 28 – Dispute Settlement 29 – Exceptions and General Provisions 30 – Final Provision	2 – National Treatment & Market Access for Goods 3 – Rules of Origin 4 – Textiles & Apparel 5 – Customs Administration 6 – Trade Remedies 7 – Sanitary and Phytosanitary 8 – Technical Barriers to Trade 9 – Investment 10 – Cross Border Services	11 – Financial Services 12 – Temporary Entry 13 – Tele-communications 14 – E-Commerce 15 – Government Procurement* 16 – Competition Policy 18 – Intellectual Property 21 – Cooperation & Capacity Building 22 – Competitiveness and Business Facilitation	17 – State-owned Enterprises (SOEs)* 19 – Labour* 20 – Environment* 23 – Development 24 – SMEs 25 – Regulatory Coherence 26 – Transparency and Anti-Corruption

* New scope for Malaysia

什么是跨协？

跨太平洋伙伴关系协定（跨协）是一项综合性及达30个高标准章节的多边自由贸易协议，涉及12个环太平洋的成员国，包括澳洲、文莱、加拿大、智利、日本、马来西亚、墨西哥、新西兰、秘鲁、新加坡、美国及越南。跨协旨在创造一个世界最大型的自由贸易区域。这贸易合作伙伴关系的关键优先元素是改善市场准入、促进跨境贸易、增强公平竞争环境，以及提高监管透明度。

TPPA将开发一个拥有8亿人口的自由贸易区，占全球贸易额约30%，和全球生产总值的40%，预计将为马来西亚带来正面效应。



跨协人口



跨协国内生产总值



标准法定范围/章节	传统自由贸易协议的范围/章节		跨协：新范围/章节
章节 1 – 基础规定 27 – 行政与制度性条款 28 – 争端解决 29 – 例外及一般条款 30 – 最终条款	2 – 国民待遇及货品市场准入 3 – 原产地规则 4 – 纺织品及成衣 5 – 关务管理 6 – 贸易救济 7 – 食品安全检验及动植物防疫检疫措施 8 – 技术贸易障碍 9 – 投资 10 – 跨境服务业	11 – 金融服务业 12 – 暂准进入 13 – 电信 14 – 电子商务 15 – 政府采购* 16 – 竞争政策 18 – 知识产权 21 – 合作及能力建构 22 – 竞争力及企业便利	17 – 国营企业* 19 – 劳工* 20 – 环境* 23 – 发展 24 – 中小型企业 25 – 监管一致性 26 – 透明度及反贪

* 马来西亚涉及的新范围。

Why Malaysia should sign the TPPA?

Being a trade-dependent economy, Malaysia will be able to tap into the TPPA member countries, in particularly the four new markets, i.e. United States, Canada, Mexico and Peru, where Malaysia has yet to establish any FTAs.

The elimination or lowering of import tariffs, and removal of other trade barriers play critical role for our businesses as they open door to new global markets, will certainly strengthen the competitive of our products and services. By being the original 12-signatories to the TPPA, Malaysia stands to gain from its first mover membership advantage, together with Vietnam, Brunei and Singapore in ASEAN.

The four new FTA markets:



United States



Canada

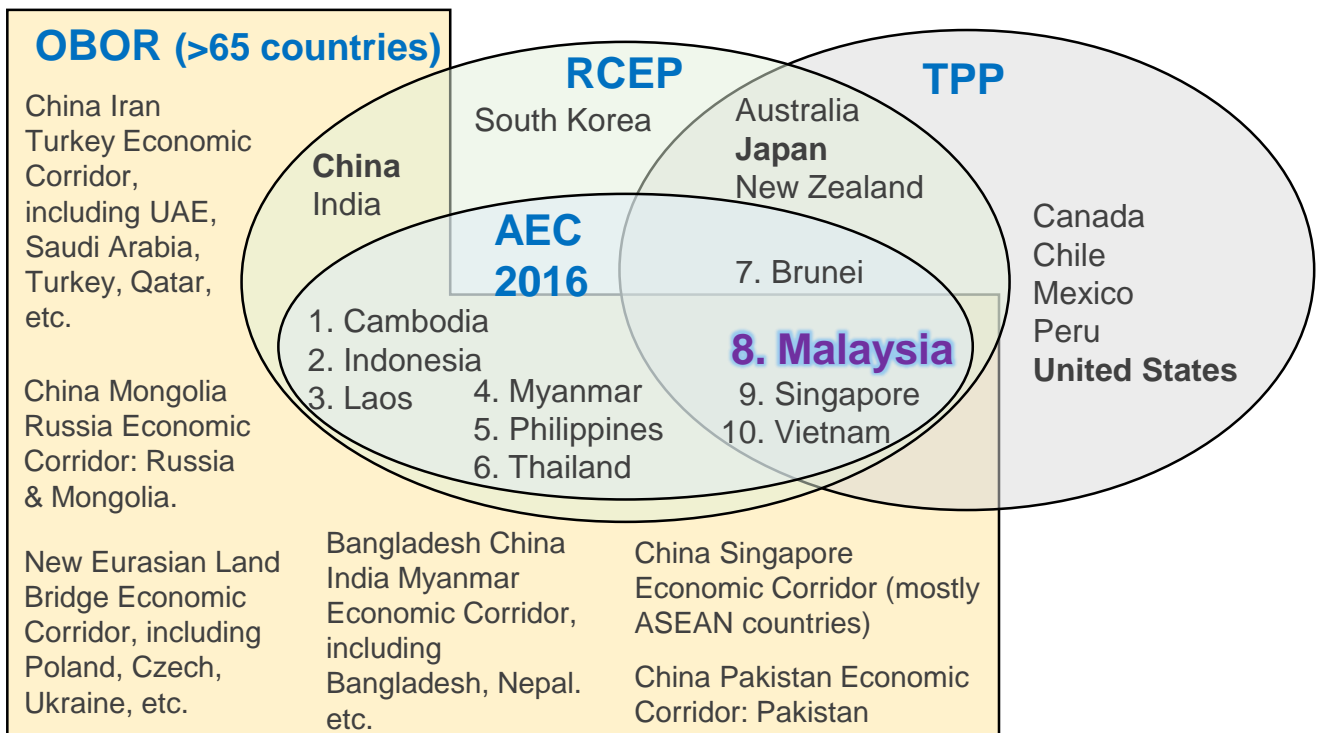


Mexico



Peru

Malaysia is placed in a **favourable and strategic positions** in the ASEAN region by involving in various regional initiatives i.e. AEC, RCEP, TPP, and China's One Belt, One Road (OBOR) – the 21st-century Maritime Silk Road and the Silk Road Economic Belt's initiatives. Malaysia is so well-positioned as the magnet for investment because of its resources, strategic location, facilities and infrastructures, and socio-economic stability.



为什么马来西亚应该签署跨协？

作为一个依赖贸易的经济体，马来西亚将能够进军跨协其他的成员国，特别是尚未建立任何自由贸易协定，即美国、加拿大、墨西哥和秘鲁这四个新市场。

消除或降低进口关税，以及消除其他贸易关税壁垒发挥关键作用，为大马企业进入新的全球化市场打开方便之门，这将会加强我国产品和服务的竞争力。作为最先签署跨协的12成员国之一，马来西亚和东盟的越南、汶莱和新加坡占有先行参与者的优势。

四个自由贸易协议的新市场：



美国



加拿大

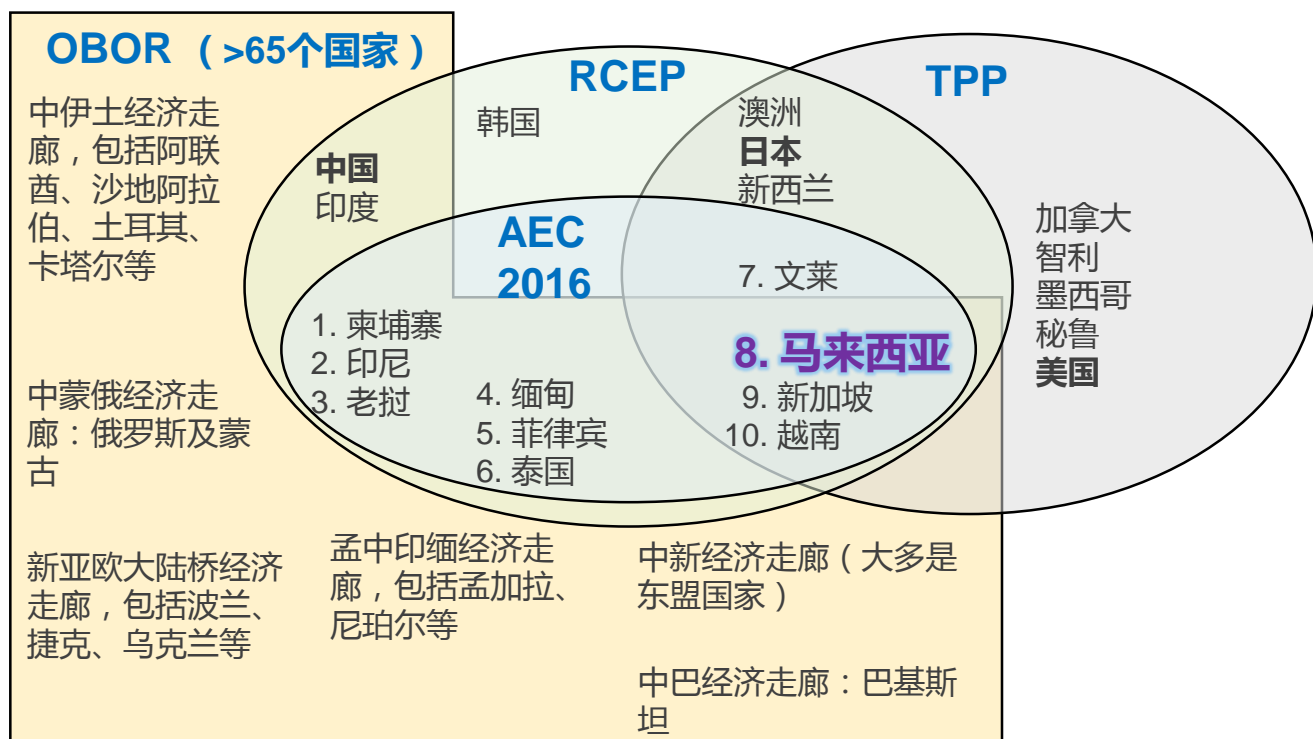


墨西哥



秘鲁

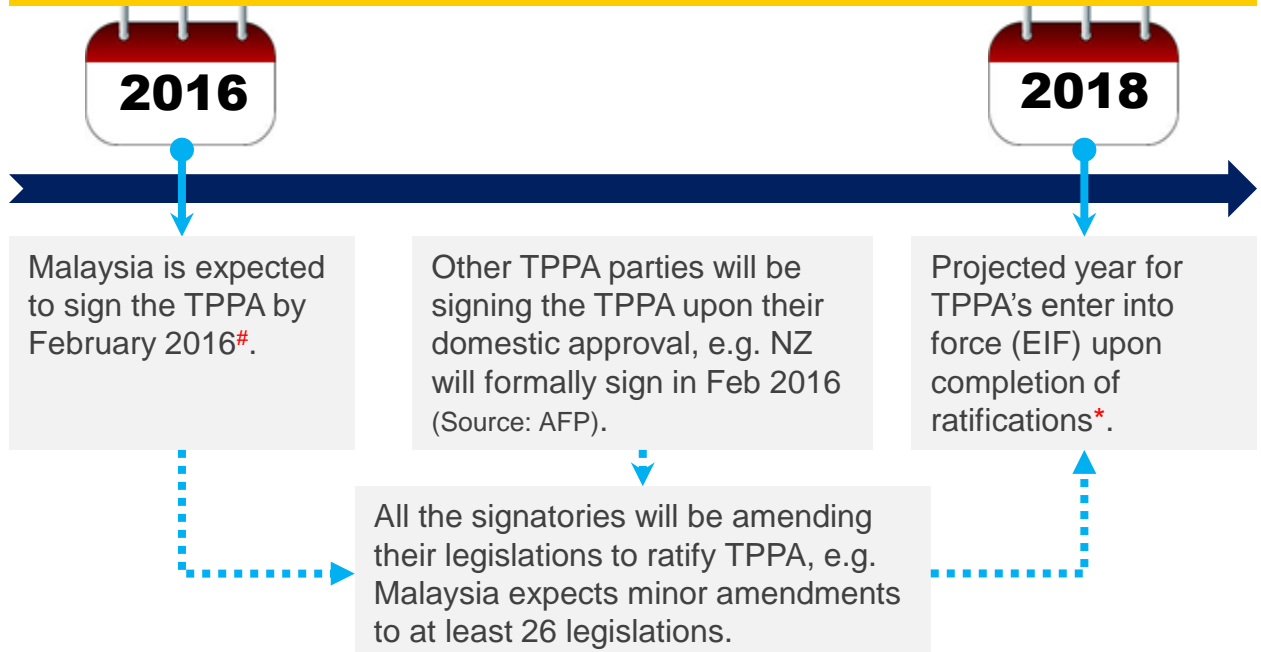
通过参与各项区域性的倡议，即东盟经济共同体(AEC)、区域全面经济伙伴关系(RCEP)、跨太平洋伙伴关系(TPP)及中国的一带一路(OBOR) – 21世纪海上丝绸之路和丝绸之路经济带，马来西亚处于一个**非常有利及富有策略性的位置**。马来西亚因其资源、地理位置、基础设施和社会经济的稳定，对吸引更多投资十分有利。



Background of TPPA Negotiation



If approved by the Malaysian Parliament ...



* 60 days after all ratifications completed by 12 signatories or else 60 days after the expiry of 2-year period from the signing of TPPA if at least 6 signatories with minimum 85% GDP ratified the agreement.

[#] The February 2016 signing is calculated based on the requirement of at least 90-day Congressional review period from the announcement of Notice of Intent by President Obama on 5 Nov 2015.

跨协谈判的背景

2005

最初的自由贸易协定四国，由文莱、智利、新西兰及新加坡于2005年签署，并在2006年起生效。

美国及马来西亚在5年后才加入，而日本则是最后加入的成员国。

2010-2013

美国、澳洲、秘鲁及越南于2010年3月加入跨协谈判。**马来西亚**于同年10月加入。

接着，加拿大及墨西哥于2012年12月加入，日本随后于2013年7月加入。

2015

2015年10月5日完成谈判。

普华永道（PwC）及马来西亚策略及国际研究所（ISIS）为马来西亚参与跨协作出了有关的潜在经济影响及国家利益的深入研究。

2016

国会在2016年1月召开特别会议辩论跨协。

如果马来西亚的国会通过 . . .

2016

马来西亚预计将于2016年2月份签署跨协[#]。

2018

预计完成正式审核程序后，跨协正式生效的年份^{*}。

其它成员国将在获得各自国内的批准后签署跨协，如新西兰将会于2016年2月正式签署（来源：AFP）。

所有签署成员国将须修订各自的法律以正式批准跨协，如马来西亚预计将会对26项法规作出少许修正。

^{*} 12个成员国正式批准程序后的60天，否则，在2年截止期限后有最少6个成员国和最低85%国内生产总值正式批准跨协程序后的60天。

[#] 2016年2月的签署是基于在2015年11月5日奥巴马总统宣布意向通知后至少90天国会审查期的要求。

Benefits of TPPA: Market Access and Investment

1. Remove or substantially lower barriers to trade in goods, services and investments across all TPP countries.

2. “National treatment (NT)” and “most-favoured-nation (MFN)” provide non-discriminatory treatment to investors of TPP countries.

3. Prohibitions on “performance requirements”, e.g. local content and technology transfer as conditions of foreign investment.

4. Protection against expropriation and the definition of “investment” is expanded beyond assets that investor owns/controls” to include characteristics of investments such as capital commitment, financial instruments (bonds, loans, derivatives etc.), and intangible assets such as IP rights, licenses and permits.

12 Pacific rim nations agree to create world's largest free trade area



- More predictable investment environment will **facilitate inbound foreign investment**.
- **Fair market access and protection** for Malaysian businesses and investors.
- Export industries can benefit from **reduction in transaction costs and speedier procedures**.

Major Beneficiaries in Four (4) Selected Sectors

Plantation & Commodities

- E.g. palm oil and rubber.
- Malaysia graduated from the Generalised Scheme of Preferences (GSP) status with the US since 2014, which resulted in the expiry of tax-exempt privilege being accorded.
- With TPPA, United States and Canada will be more likely to buy palm oil and rubber from Malaysia vis-à-vis Indonesia.
- However, the export volume may be limited by logistics costs, time, and competition from their own domestic edible oils.

Electronics & Electrical (E&E)

- Although E&E exports are already enjoying zero or low duties, the increase in market access lies on the access to the U.S. government procurement market which is being offered to foreign business, estimated at RM650 billion.
- Most key E&E companies in Malaysia are already in compliance to international labour standards, including the International Labour Organisation (ILO) Convention. Thus, the impact on labour costs and labour disruptions arising from the TPPA in this industry is expected to be minimal.

跨协的好处：市场准入与投资

1. 去除或大幅度降低跨协成员国境内的货物和服务贸易壁垒及投资限制。

2. “国民待遇”和“最惠国待遇”确保跨协成员国的企业或投资者在外国经商时，不会遭受歧视性的待遇。

3. 禁止“实绩要求”作为外国投资的条件，包括使用当地材料和技术转移等等。

4. 维护征收和“投资”的定义是超出投资者拥有/控制的资产，并包括投资的特点，即包含有关资本承担、金融工具（债券、贷款、期货、期权和衍生产品），及无形资产如知识产权、执照和许可证。

12 Pacific rim nations agree to create world's largest free trade area



- 一个更可预测的投资环境将有利于引进**外国投资**。
- 为我国商人和投资者**提供更合理的市场准入和保障**。
- 出口业可从**较低交易成本和更快的流程**上获益。

4个主要受益的行业

种植与大宗商品

- 例如棕油和橡胶。
- 自2014年起，马来西亚已经不在美国的普遍优惠制度（普惠制）名单中，因此，当中不再存有免税特权。
- 相对于印尼，美国及加拿大更可能通过跨协从马来西亚购买棕油和橡胶。
- 然而，出口量可能会因为物流的成本和时间，以及来自当地油产的竞争而受限。

电子及电器

- 虽然电子及电器的出口已经享受零税率或低关税，但在市场准入的增加下，国外企业估计仍将获得美国政府6,500亿令吉的采购市场。
- 此外，马来西亚大部分主要的电子及电器公司已经符合国际劳工权利标准，包括国际劳工组织宣言。因此，跨协所带来的劳工成本和劳工中断的影响预料很小。

Benefits of TPPA: Market Access and Investment

Wood

- Japan and the US are Malaysia's two major export markets which account for 33% of total wood-related exports, while Malaysia sources 24% of its wood imports from TPP countries.
- Lower import duties on plywood and furniture in TPP countries may increase our exports. Plywood accounts for 28% of total revenue from wood export. The key export market for plywood is Japan, which currently accounts for 15% of the plywood export.
- Companies can expect a total savings of about RM3.2 billion from payment in import duties, while access to cheaper products such as sawn logs and sawn timber could help alleviate the domestic shortage.

Textile & Garments

- In 2014, Malaysia's exports of garments to TPPA countries accounted for 59% of total exports, of which the U.S. market accounted for 34%. A 10% tariff reduction across all textile products exported to the US could result in savings of RM190 million per year.
- The removal of non-tariff barriers in Mexico and Peru may encourage higher exports from the current value of RM83 million.
- The "yarn forward" rule which requires yarn to be sourced from a TPP country as a qualifying criterion for zero duty may spur capital investments in yarn and fabric making in Malaysia, including investments from non-TPP countries.
- For accumulation sourcing rule, we can expect needs for more transparency in sourcing, including potentially disclosure of companies' strategic sourcing and business operations.
- The US also requires Malaysia to establish and maintain a registration system covering all companies that are engaged in the production of textile or apparel goods or the export to the US.

"Yarn Forward" rule

- Require Malaysia to use yarn from TPP countries in order to enjoy zero or low tariff for textiles and garments, which may increase production cost and potentially negate the cost advantage arising from the lower tariffs being accorded.
- May lead to some changes or disruption in sourcing strategies. However, there are provisions under Short Supply List, which allow opportunities for members to source materials from non-TPP countries.
- May induce businesses that previously source inputs from non-TPP countries to consider relocating closer to their production base, benefiting Vietnam for mass production and Malaysia for higher quality and higher value-added garment manufacturing.

TPPA的好处：市场准入与投资

木材

- 两大主要的出口市场，即日本及美国已占全部木材相关出口的33%，而马来西亚则从跨协市场进口其24%的木材。
- 较低的胶合板和家具进口税预料将增加马来西亚的出口。胶合板占木材出口收入的28%。胶合板主要出口市场是日本，目前占了胶合板出口的51%。
- 相关公司预料可节省约32亿令吉的进口税，同时获得更便宜的产品，如锯原木和锯材，有助于缓和国内短缺的问题。

纺织及制衣

- 在2014年，跨协成员国占马来西亚服装出口的59%，其中美国更占了马来西亚服装出口的34%。在出口至美国的纺织品减少10%关税下，每年将能节省1.9亿令吉。
- 墨西哥和秘鲁去除非关税壁垒会提高比目前8,300万令吉的价值更高的出口。
- “纱线原产地”规则要求纱线必须从跨协成员国中生产或获取，以获得零关税的优惠。这将刺激包括来自非跨协成员国在马来西亚设厂制造纱线及布料的资本投资。
- 对于累计采购规则，可以预料采购活动的透明度将需提高，这包括可能需要公开采购策略和业务运作。
- 美国也要求马来西亚设置和维持一个涵盖从事生产纺织或成衣出口至美国的公司的注册系统。

“纱线原产地”规则

- 马来西亚出产的纺织品和成衣必须使用产自跨协成员国的纱线，方可享有免或低关税的优惠待遇。这将导致生产成本上扬，从而减弱较低关税所带来的成本优势。
- 可能会导致采购策略产生变化或中断。但供应短缺清单（Short Supply List）允许成员国使用产自非跨协成员国的原料。
- 吸引之前采购产自非跨协成员国的原料的企业将他们的生产迁移至更接近服装生产基地，这将有利于越南作出大量的生产，而马来西亚则受益于制作高品质及高附加值的成衣。

SMEs: Opportunities and Challenges

SMEs are important to the Malaysian economy, contributing more than 35.9% of the real GDP. TPPA deliberately includes a chapter dedicated to SMEs, i.e. Chapter 24. Several other chapters, such as Chapter 22 on Competitiveness and Business Facilitation and Chapter 14 on E-Commerce, also contain provisions to help SMEs make use of the opportunities provided by TPPA.

Selected provisions on SMEs from TPPA

- Chapter 24 contains elements on how to assist SMEs to integrate into the global supply chain and also benefit from expanding overseas. Among others, each TPP country will develop a website that explains TPPA and the international SME committee will meet regularly to review how far TPPA is benefitting SMEs. However, the chapter is persuasive in nature, thus not legally binding. Hence, there is no recourse in the event that some TPP countries do not fulfil their obligations under this chapter.
- Chapter 22 requires TPP countries to establish a committee to promote trade, investment and economic integration, including providing “recommendations aimed at enhancing the participation of SMEs in regional supply chains”.
- Chapter 14 will facilitate cross-border e-commerce, and also includes provisions to promote cooperation between TPP countries to help SMEs make use of e-commerce.

Opportunities & challenges

- Chapter 24 does not specifically address the issue of increased competition faced by SMEs. While the interests of some 247,939 Bumiputera SMEs are safeguarded in the form of carve-out for government procurement and thresholds capping, those SMEs that do not fall under these carve-outs will need to compete openly with foreign companies in the domestic market.
- SMEs can now take advantage to reach out to international markets with less cumbersome procedures using e-commerce. It is important for SMEs to evaluate their strengths and weaknesses and put in place a strategic plan to expand globally. Our SMEs may lack the ability to compete with other TPP counterparts like US on home ground since our SMEs are much smaller in scale, lack access to capital and latest technologies, and the quality of their products may also fall short of export requirements. But this can be overcome by prompt adaptation to market changes.

There are now **more opportunities for SMEs**. Past experiences from other FTAs indicate that **if the SMEs are ready to participate**, the market access for goods and cross-border services is expected to benefit SMEs in terms of lower costs arising from greater tariff elimination, lowering of non-trade barriers, and lower cost derived from the effectiveness of internet and e-commerce.

中小型企业：机会与挑战

中小型企业对我国经济是十分重要的，为我国贡献超过35.9%的GDP。跨协有专门为中小型企业设一个章节，即第24章。其它章节也含有关于如何协助中小型企业掌握跨协将带来的商机的条款，例如第22章关于竞争力和商业便利和第14章关于电子商务。

一些涉及中小型企业的跨协条款

- 第24章论及如何协助中小型企业融入全球供应链及从扩展海外生意中获益。例如各成员国将开发一个网站以将解释跨协的协议，及国际中小型企业委员会将定期召开会议以检讨跨协协助中小型企业的程度。但是这一章只属承诺性质，没有法律约束。倘若某一跨协成员国没有实施旨在促进中小型企业参与全球供应链的发展项目和活动，其他成员国没有追索权
- 第22章要求成员国设立一个委员会，研究如何促进贸易和投资，以及经济一体化，其中特别提到“旨在提高中小型企业参与区域供应链的建议”。
- 第14章要求成员国应致力于携手合作帮助中小型企业克服使用电子商务的障碍。

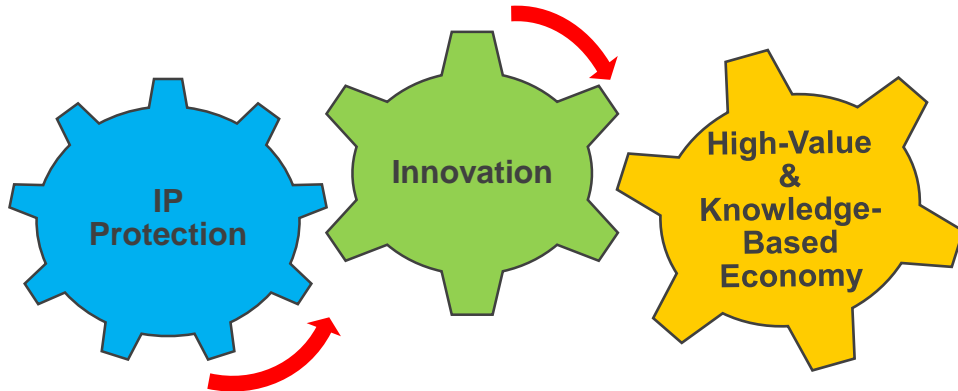
机会与挑战

- 第24章没有具体探讨如何解决中小型企业将面对竞争加剧的问题。在政府采购及其门槛的例外条款下，约247,939个土著中小型企业的利益有得到保障。但是其他不受切离条款涵盖的非土著中小型企业将须在国内市场与外国公司公开竞争。
- 小型企业现在可以利用比较简易手续的电子商务方式连接国际市场。所以中小型企业必须评估各自的优势及弱点并制定全球扩展计划，这是重要的。相对其他跨协成员国如美国的中小型企业，我国的中小型规模较小、缺乏资本和多数产品的质量亦未能达到出口要求。然而，及时适应市场的变化能够克服此难题。

中小企业将有更多商机。从过往的自由贸易协议经验指出，若中小企业作好参与的准备，货物及跨境服务的市场准入由于大幅度取消关税、更低的非贸易壁垒，以及从互联网及电子商务的效益而达到更低的成本，中小企业将有望受益。

Intellectual Property (IP): Pros and Cons

Intellectual property (IP) protection plays significant role in developing high-value and knowledge-based economy. The standards adopted in different types of IP (patents, copyrights and trademarks, etc.) can provide businesses with more assurance as they invest in more innovative products and services.



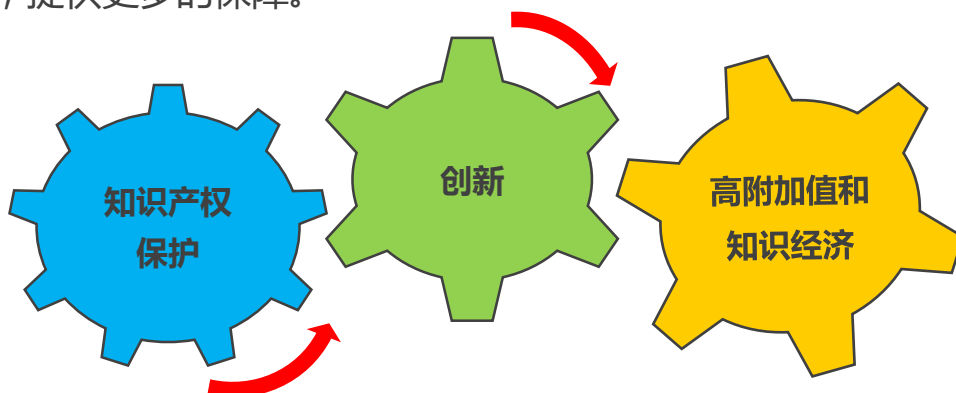
- **Patent protection remains at 20 years**, except unreasonable delays in approval (Malaysia has been efficient in approval process).
- The scope of data exclusivity will now include biologics with options to provide for period of 5 or 8 years. **Malaysia opted for 5-year period.** While the data exclusivity serves as incentives for biologics producers for their R&D works, the impact is anticipated to be insignificant on the small number of Malaysian biopharmaceutical manufacturers as past records have shown that the generics (biosimilar) were registered between 6-13 years after the first marketing approval of the biologics counterparts. Furthermore, the 18-month access window incentivize pharmaceutical companies to bring their new medicines to Malaysia quickly, hence Malaysians have early access to these new drugs, and consequently early access of similar generic drugs. Therefore, public access to biosimilars is not expected to be jeopardised by TPPA.



- The contentious issues for Malaysia are in pharmaceuticals that could potentially make generics less available, hence pushing up the cost of affordable and life-saving medicines. Malaysia's public healthcare which is currently heavily subsidised and dependent on dispensation of generic drugs and biosimilar may potentially place further pressure on the government's ability to provide free or affordable public health services. However, the final obligation of 5-year data exclusivity for biologics vis-à-vis 8 or 12 years during the negotiation stages does not seem to pose detrimental risks.
- The extension of copyright protection, i.e. from 50 to 70 years for books, music and film will limit accessibility due to higher burden in royalty payments.

知识产权：利与弊

知识产权的保护在开发高附加值和知识经济上扮演着非常重要的角色。在不同类型的知识产权（专利，版权和商标等）所采用的标准，可以为企业在投资大量的创新产品和服务时，提供更多的保障。



- **专利保护期限依然维持在20年**，除非在批准过程中出现不合理的延迟（马来西亚在批准过程中都有效率）。
- 数据专有权的范围将会包含生物药，各成员国可选择给予5年或8年的保护期限。**马来西亚选择了5年的期限**。数据专有权可以激励生物药生产商的研发工作，同时，其对少数的马来西亚药物制造商的影响预计不大。过往的记录显示，生物学名药（生物仿制药）会在其相对生物药第一次获得营销批准后的6至13年后注册。同时，18个月的准入窗口将激励药物公司把新药品尽快带进马来西亚，因此，马来西亚将会更快获取这些新药品，同时也造就该学名药可以更快面世。这使到大众利益不会因跨协受损。



- 马来西亚的争议点是在药物方面（专利，专利链接，数据专有权），因为这恐怕将导致仿制药减少，从而推高救命药品的成本负担。马来西亚的公共医疗服务目前靠补贴维持并依赖非专利药物和生物仿制药。因此，跨协将冲击政府提供免费或可负担公共医疗服务的能力。然而，有关生物药品五年的数据专有期限，相比在谈判期间提出的8年或12年，似乎不会造成不利风险。
- 书籍、音乐、影片等的版权保护期将从50年延长至70年。更高的版权费用将限制使用量。

What is Dispute Settlement Mechanism?

There exists an **Investor-State Dispute Settlement (ISDS)** clause for foreign corporations to seek recourse for international arbitration, in the event investors were targeted by or treated unfairly under new government regulations; or against host-state for expropriation. This provision is also important in protecting the interest of Malaysian companies investing abroad.

Benefits & opportunities

- The ISDS does not preclude the government from introducing new legislation or policies that are designed to preserve public interest and welfare, namely safety, environment and health.
- Criticism of the ISDS provisions largely lies on the threat and risks on sovereignty of nation states, but the ISDS provides safeguard provisions such as the need for consultation and mediation before filing for claims (Article 9.17), and the proof of losses to limit frivolous claims; investors to pay attorney fees; and finally the time threshold of three years and six months to bring an action (Article 9.20).
- The provisions in TPPA strengthen the transparency and integrity of ISDS. The conditions and timeline for arbitration to convene; provisions for hearings and documents are to be made public, with the exception of protected information or those categorised as national security.

Challenges

- Although ISDS creates a more competitive situation for investors in dealing and operating their businesses, there is a risk for the government to legislate new law.
- TPP Parties are allowed to adopt a “negative-list”. This means governments can safeguard in the public interest and preserves certain investments policies, thus allowing liberalization to foreign entry except those listed in NCM (non-conforming measure). These NCM may downplay or negate the potential of TPPA in respective of attracting FDI and potential for outward investments at TPP member countries.



Investor-State Dispute Settlement (ISDS)

什么是争端解决机制？

若投资者在新政策下被针对或遭遇不公平对待时，抑或被政府强制征收时，国外投资者可通过**投资者-东道国争端解决机制（ISDS）**，寻求国际仲裁的介入。这项规定也同时在保护马来西亚公司在海外投资的利益。

好处与机会

- 这项机制无法阻止政府针对国家利益与福利而作出的新法案或政策，当中包括安全、环境及卫生课题。
- 大体上，针对投资者-东道国争端解决机制的批评，是在于国家的主权面临威胁及风险；然而，此机制也在第9.17条文下给予保障条款，此条文规定提交索赔前必须先进行协商及调节，以及在第9.20条文下避免出现琐碎的索赔，此条文规定投资者必须出示损失的证明及支付律师费，并且可能花上3年又6个月的时间结案。
- 跨协的规定加强了此机制的透明度和完整性。除了涉及国家安全及受保护的信息以外，所有召开仲裁的条件和时间表，以及听证和文件的细则都必须对外公开。

挑战

- 虽然投资者—东道国争端解决机制将为投资者的投资和业务运作打造更具竞争力的环境，但存有政府制定新法律的风险。
- 跨协成员国可设立一份负面清单。各成员国的政府可以在公共利益的前提下维持特定投资政策。这意味着除非在不符措施（Non-Conforming Measure）中明确列明的例外产业，其它产业市场将开放给外资进入。这些不符措施恐怕将削弱跨协吸引外资和成员国对外投资的潜力。



投资者-东道国争端解决机制（ISDS）

E-Commerce: New Business Opportunities

Key provisions

- No customs duties on electronic transmissions.
- No less favourable treatment to digital products.
- Authentication and electronic customs administration documents to facilitate trade.
- Free cross-border data flow.
- Prohibition of forced data localisation requirement.
- Cooperation among TPP countries to help SMEs make use of e-commerce.

Benefits & opportunities

- Fair market access of digital products across TPP markets.
- Electronic authentication and signatures as well as paperless customs will facilitate electronic transactions and customs and export delivery.
- Companies may consolidate its existing data centres and use only one data centre to serve multiple TPP markets, this increases economies of scale. This will benefit SMEs that seek to expand to other TPP countries, as they will not need to set up a data centre in every TPP market they serve, which will reduce cost.
- Free cross-border data flows and no forced data localization in TPP may provide more business opportunities to Malaysia's shared services and data storage industries, thereby enhancing Malaysia's position in these industries.
- This chapter may also facilitate the emergence of non-traditional exporters in fields such as health care and research labs. For example, companies providing healthcare management services may serve clients across TPP markets when there are no restrictions on cross-border transfer of information

Challenges

- E-commerce may be further enhanced in the TPP member countries. This will pose even more challenges to the local brick and mortar retailers.
- Retailers may leverage on e-commerce, but they may not have the capacity and capability to penetrate foreign markets compared to savvier e-commerce companies from TPP countries with more mature e-commerce, such as the US and Japan.

电子商务：新商机

主要条款

- 不得对成员国彼此间的电子传输课征关税。
- 不得给予来自其他成员国的数位产品较低之待遇。
- 电子签章和认证及电子形式的贸易行政文件将是贸易便利化。
- 确保通过电子方式跨境移转资讯。
- 禁止强制计算设施的地理位置。
- 促进成员国之间的合作，以协助中小型企业使用电子商务。

好处与机会

- 来自协定成员国的数位产品生产者和供应商将可在公平的情况下进入其他成员国的市场。
- 电子认证、电子签章及电子形式的贸易行政文件将有利于成员国之间的电子交易及海关和出口程序。
- 企业可以只设立一个数据中心来服务多个跨协市场，这将有利于增加数据中心的规模经济效益。欲拓展海外市场的中小型企业也将受益，他们将不必担心须在每个市场建立数据中心，这将减低成本。
- 跨协允许跨境数据流通和禁止强制计算设施位置，这将为我国的共享服务和数据储存中心行业提供更多的商机，从而这将提升我国在这些行业的优势。
- 这一章可促使非传统出口的出现，如卫生保健和研究实验。例如，当跨协成员之间不限制跨境数据流通，提供卫生保健管理服务的公司将可同时服务来自整个跨协市场的客户。

挑战

- 跨协将促进电子商务的进一步发展。这将对本地实体零售店带来更多挑战。
- 虽然本地实体零售商可以利用电子商务开拓市场，但相比来自电子商务业较成熟的国家—例如美国和日本—更有经营电子商务的企业，本地商家恐怕缺乏能力渗透外国市场。

Carve-outs for Government Procurement (GP) and State-Owned Enterprises (SOEs)

TPPA acknowledges the legitimate role played by SOEs in achieving social and development goals, while recognises the need for level playing field. TPPA now establishes the new rules regarding the conduct of state owned enterprises (SOEs) to make decisions on a commercial basis, hence **private businesses can now compete in the region on a level playing field**. In the area of government procurement, parties to TPPA are required to conduct procurement in a more transparent manner in order to provide predictability to suppliers.

- Malaysia has negotiated for concessions that were aimed at protecting national agendas and sensitive areas, namely Bumiputera agenda, government procurement and state-owned enterprises will get concession of a longer transition periods and differential treatments.
- The new level playing rules enable companies (e.g. IT or construction) to bid for government procurement projects in countries/markets previously inaccessible to foreigners. Ultimately, this will open up business opportunities for private Malaysian companies in domestic market and in all other TPPA member countries.
- TPP provides Malaysia some exclusions for procurement activities in goods (rice, electrical energy and natural water), services (financial services), and construction services (dredging services and slope works). Bumiputera suppliers and manufacturers will continue to enjoy the price preference for goods and services.
- Stimulus packages given during economic crisis are excluded from the GP requirement for 25 years.

Partial Liberalisation of Government Procurement of Construction Services:

- Construction services above a threshold value of SDR63 million (RM315 mil) will be liberalised upon entry into force (EIF). The threshold will be gradually reduced to SDR14 million (RM70 million) within 20-year period.
- The EIF will only have minimal impact as only 0.7% and 2.8% of government contracts in 2014 were above RM300 million and RM100 million, respectively. The 20-year period is gauged to be sufficient for local contractor to build their capabilities and competitiveness.
- Liberalization is not applicable for private-public partnership construction projects, rural development projects, corporatized government entities such as MRT, Prasarana, etc, and 30% allocation to Bumiputera.
- SME/Bumiputera's contractors will be protected under the above value thresholds and special conditions.
- Mid- and large-sized contractors previously having large exposure to Government-related projects are expected to be affected since these contractors have to compete with foreign contractors in the open competitive relative to international contractors. However, specialized contractors having to rely on past track records are expected to face increased pressure from competitors.

政府采购及国营企业的切离条款

跨协认可国营企业在实现社会发展目标上扮演着无可非议的角色，与此同时，跨协也承认需要拥有一个公平竞争的环境。因此，跨协为国营企业的实施设立了新规定，以让私人业界能在跨协区域享有公平的竞争环境。在政府采购方面，跨协成员国必须更透明化其采购以让供应商作出预测。

- 马来西亚在保护国家议程及敏感领域，即土著议程、政府采购及国营企业的谈判上成功获得特许权，包括比较长的过渡期及不同的待遇。
- 新的公平竞争规定使所有企业（如工艺科技及建筑工程）能竞标政府的采购项目。在这之前，外国企业是无法进入一些跨协成员国的市场。最终，这将开拓马来西亚私人企业在本土市场及其他跨协成员国市场的商机。
- 同时，跨协也在马来西亚采购物品（米、电力能源及天然水）、服务（金融服务）以及建筑工程（挖掘和边坡工程）上给予例外条款。土著供应商及制造商将继续享有货物及服务的价格优惠。
- 在经济危机时期，刺激方案将有25年的期限能排除在政府采购的要求以外。

政府采购建筑工程的局部自由化：

- 政府采购建筑工程将会部分自由化，一旦跨协正式生效，自由化的门槛为6,300万特别提款权（3.15亿万令吉）的价值以上，并在随后的20年里逐步减少至1,400万特别提款权（7,000万令吉）。
- 正式生效时只会对马来西亚造成很小的影响，因为在2014年里，只有0.7%的政府合约在3亿令吉以上，以及只有2.8%的政府合约在1亿令吉以上。另外，20年的期限足以让本地承包商建立起各自的竞争能力。
- 自由化并不包括公私合营的建筑工程、乡区发展项目、政府公司化实体如MRT、Prasanara等，以及土著获配的30%合约价值。
- 中小型企业或土著承包商将在以上所述的门槛以内和特殊条件下收到保护。
- 之前主要专注于政府项目的中型和大型承包商将会受到影响，因为这些承包商将面临与外国承包商的公开竞争。然而，依赖以往业绩的专业承包商预料将面临更大的竞争压力。

Labour: TPPA requires higher standards than existing Malaysian laws

- TPPA requires compliance with key International Labour Organization (ILO) principles:
 - Freedom of association
 - Right to collective bargaining
 - Elimination of forced labour
 - Elimination of child labour
 - Elimination of employment discrimination
 - Establish acceptable work conditions – minimum wage, work hours and occupational safety & health (already implemented in Malaysia)
- Workers will be allowed to form multiple unions, be members of multiple unions, hold strikes based on consent of simple majority, and foreign workers to hold posts in unions.
- The obligations of “acceptable conditions of work” under Article 19.3.2 does not require adherence to any international standards. These “acceptable” conditions can be determined by member countries. This implies that Malaysia can still maintain flexibility to implement additional domestic guidelines or pre-requisites that help to manage risks of disruptive labour disputes arising from the adoption of ILO rights.



TPPA labour standards are applicable across the board, whether companies’ business involve TPP countries or not.

Malaysia **must amend 8 laws** to comply with TPPA labour obligations and have specific plan in place to ensure compliance.

⬆ **Risk of production disruption** arising from labour disputes.

⬆ **Labour costs** due to compliance

Telecommunications: Pros and Cons

Key provisions

- Ensure reasonable, non-discriminatory and transparent access to and use of public communication infrastructures by suppliers from TPP countries.
- Promote transparent and reasonable rates for international mobile roaming

Benefits & opportunities

- Provide Malaysian telecommunications suppliers. market access to other TPP countries.
- Greater market competition may offer more choices, drive down prices and improve services to end-consumers, including businesses.
- International mobile roaming rates may become cheaper.

Challenges

The advantages possessed by the incumbents will be undermined, and will face greater competition from new foreign entrants.

劳工：跨协要求比我国现有法律更高的标准

- 制定符合国际劳工组织主要原则的法律，包括：
 - 结社自由
 - 集体协商的权益
 - 消除强制劳动
 - 废除童工
 - 消除就业与职业歧视。
 - 提供可接受的工作条件-最低工资、工时和职业安全与卫生（马来西亚已经实施）



无论公司的业务是否涉及协定成员国，**一律须符合协定规定的劳工标准。**

- 国际劳工组织宣言所保障的结社自由权益允许工人设立多个工会，同时参与多个工会、经简单多数同意可举行罢工、及放松外劳在工会不得担任工会职务的限制。
- 第19.3.2条关于可接受工作条件的条款没要求缔约方须符合任何国际标准。所谓“可接受”条件将由各缔约方自行决定。这意味着我国仍可制定额外的国内准则或先决条件来协助管理劳动纠纷发生的风险。

马来西亚必须**修订8项法律**以符合协定规定的劳工标准，及应有具体的方案以确保其法律符合本章规定的义务。

↑ 因劳工纠纷而导致**生产中断**的风险。

↑ 符合更高的标准导致**劳工成本**上升。

电信：利与弊

主要条款	好处与机会	挑战
<ul style="list-style-type: none">确保来自成员国的电信服务供应商可以在合理、非歧视及透明化的条款和条件下接取与使用公众电信服务设施。促进透明化及合理的国际行动漫游价格。	<ul style="list-style-type: none">跨协开放其他成员国境内的电信市场给我国的电信服务供应商。更激烈的市场竞争将提供更多选择、压低价、及提升终端消费者获得的服务，这将使其他企业收益。国际行动漫游价格可能会变得更便宜。	<p>我国现有的电信服务供应商在其境内所拥有的优势将被削弱，及将须面对来自新的外国竞争者带来的更激烈的竞争</p>

Financial Services – The Critical Sector

Through “Joint Declaration of the Macroeconomic Policy Authorities of Trans-Pacific Partnership Countries”, each party agree to refrain from devaluating its country’s exchange rate for competitive advantage purposes.

But...

Malaysia has an exception to provide forex intervention data on an aggregate basis over the period of 6 months and release the data within 6 months after the period, compared to the originally quarterly data and release within 3 months.

Malaysia reserves the right to provide subsidies or grant advantages to financial institutions that are integral for the orderly functioning and development of the capital market.

This includes subsidies and advantages granted in connection with the supply of any financial service deem to be strategically important and necessary, i.e. for local micro, small and medium enterprises.

And...



BANK NEGARA MALAYSIA
CENTRAL BANK OF MALAYSIA

Bank Negara Malaysia (BNM) still retains its autonomy in managing the local currency, forex reserves and capital controls.

JOINT DECLARATION OF THE MACROECONOMIC POLICY AUTHORITIES OF TRANS-PACIFIC PARTNERSHIP COUNTRIES

We, the macroeconomic policy authorities for countries that are party to the Trans-Pacific Partnership (TPP) (Authorities), welcome the ambitious, comprehensive, and high-standard agreement reached by our respective governments in Atlanta.

Acknowledging the importance of macroeconomic stability to the success of the TPP, we decided to strengthen our cooperation on macroeconomic and exchange rate policies. In promoting macroeconomic cooperation, we recognize the diversity of economies in the TPP region and the differences in their levels of development. We also recognize the importance of orienting our fiscal and monetary policies toward meeting domestic objectives, with due regard for the effects of our policies on other TPP countries. We further recognize that allowing real exchange rates to adjust in line with economic fundamentals facilitates smooth macroeconomic adjustment, helps to avoid prolonged external imbalances, and promotes strong, sustainable, and balanced global growth. To this end, our objective is to promote, through transparency and dialogue, market-determined and transparent exchange rate regimes that allow real exchange rates to adjust to reflect underlying economic fundamentals.¹ We further recognize that excessive volatility in capital flows can create policy challenges that may require a policy response.

I. Exchange Rate Policies

Each Authority confirms that its country is bound under the Articles of Agreement of the International Monetary Fund (IMF) to avoid manipulating exchange rates or the international monetary system in order to prevent effective balance of payments adjustment or to gain an unfair competitive advantage. Each Authority is to take policy actions to foster an exchange rate system that reflects underlying economic fundamentals, and avoid persistent exchange rate misalignments. Each Authority will refrain from competitive devaluation and will not target its country's exchange rate for competitive purposes.

-- RISK --

Upon entry into force of TPPA, Malaysia will be required to declare its forex intervention data for the very first time, and may attract more speculations on the Ringgit.



金融服务业 – 关键的领域

通过“跨太平洋伙伴关系成员国的宏观政策管理机构联合宣言”，各成员国同意不采取货币贬值措施以获取竞争优势

然而。

马来西亚有获得关于提供外汇干预数据的例外条款。原有规定为每季度后的三个月内发布前季度的累计数据，但马来西亚将在每半年后的六个月内发布前半年的累计数据。

马来西亚保留向对本地资本市场的有序运作和发展不可或缺的金融机构提供补贴或其他优势的权利。

这包括针对必要和具战略性意义的金融服务提供补贴和其它优势，例如提供给中小微型企业的金融服务。

以及。



BANK NEGARA MALAYSIA
CENTRAL BANK OF MALAYSIA

国家银行仍将保留管理本地货币、外汇储备和资本管制方面的自主管理权。

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-- 风险 --

自跨协正式生效后，马来西亚将首次公开其汇率干预的数据，这将有可能吸引投机客对令吉作出干扰。

Conclusion & Way Forward for Malaysia

Conclusion

The cost-benefit analysis conducted by two independent organisations concluded that under TPPA, Malaysia's national interest is taken care of and Malaysia is projected to achieve a gross domestic product (GDP) cumulative gain of USD107 billion to USD211 billion (RM890.07 billion) over a 10-year period from 2018 to 2027. This translates to an additional increase of GDP growth by 0.60 ~ 1.15 percentage points in 2027. Investment is projected to escalate by USD136-239 billion, while the accumulated savings from elimination of tariffs alone is estimated at USD12 billion over the same period. On the other hand, Malaysia's non-participation in the TPPA would not only foregone the potential GDP gains but will also cost the country a cumulative GDP loss of USD9 billion to USD16 billion over the same 10-year period. TPPA is a boost to Malaysian businesses for duty free export to TPP countries after our graduation from GSP in 2014.

Way Forward for Malaysia

Based on the above, the TPPA is expected to bring more positive than negative impacts to Malaysian businesses. To realize the maximum benefits and avert the potential costs, capacity building measures, short-term adjustments and structural reforms have to be undertaken by the industries, especially SMEs and the Government so that all are not left out in this new normal era. Some of these measures may include upskilling of workers, business process reengineering, upgrading of infrastructures or facilities, industry consolidation, productivity improvements, review of frameworks or guidelines and certifications, innovation, etc.



总结和马来西亚的前进路向

总结

根据普华永道所公布的成本效益分析报告，预料马来西亚在2018年至2027年期间国内生产总值将额外增长1,070亿美元至2,110亿美元（8,900.7亿令吉）。这预计能在2027年获得额外0.6至1.15百分点的增长。投资预计将提升1,360亿美元至2,390亿美元之间，在同个时段取消关税则能省下120亿美元。相反地，如果马来西亚没有参与跨协，不仅放弃国内生产总值取得1,070亿美元至2,110亿美元增长的潜力，与此同时，还将面临国内生产总值损失90亿美元至160亿美元。

马来西亚的前进路向

根据以上所述，跨协预料带来的利将多于弊。为了实现最大收益和转移潜在成本，工商界（尤其中小型企业）和政府皆须进行能力建设措施、短期调整和结构改革，以让所有人都可以在这新时代中受益。这些措施包括提高工人技能、业务流程再造、提升基本设施建设、产业整合、生产力提升、检讨现有框架或准则和认证，促进创新等等。



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