

Trade

Malaysia

1. Trans-Pacific Partnership Agreement ("TPP")

On 4 February 2016, Malaysia signed the TPP with 11 other member countries, namely the United States of America (USA), Singapore, Japan, Australia, New Zealand, Brunei, Canada, Chile, Mexico, Peru and Vietnam. The motion backing Malaysia's signing of the TPP was passed in the Dewan Rakyat (House of Representatives) on 27 January and in the Dewan Negara (Senate) on 28 January 2016. The TPP is expected to come into force in 2018 upon the completion of the ratification processes in each member country.

If ratified, the TPP will grant Malaysia access to four new preferential markets i.e. the USA, Mexico, Peru and Canada.

What to expect under the TPP?

A. **Changes to law:** the Malaysian Minister of International Trade and Industry ("**MITI**") announced that 26 amendments would be made to 17 laws in order for Malaysia to comply with its obligations under the TPP. Laws and policies relating to labour, intellectual property, customs, government procurement and anti-corruption, amongst others, are expected to be revised.

B. Potential economic opportunities:

- *More extensive tariff reduction coverage for trade in goods:* For instance, under the existing Malaysia-Japan FTA, the import of certain types of plywood from Malaysia into Japan do not enjoy tariff elimination. However, under the TPP, such goods will

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enjoy gradual elimination of import tariffs. Separately, the automotive sector in Malaysia will see a gradual reduction in import duties for imported cars, and the removal of the excise duty rebate for locally assembled vehicles with local content compared to complete built-up units imported into Malaysia.

- Removal of foreign equity restrictions for certain industries: An example of such liberalisation of the Malaysian economy includes the distributive trade sector. Presently, foreign equity in convenience stores is capped at 30%. The TPP only expressly preserves the requirement for shares in convenience stores to be held at least 30% by Bumiputera(s) and does not make reference to any foreign equity cap. As such, we expect that foreign investors will be able to own up to 70% equity in convenience stores upon entry into force of the TPP.
- Relaxed Government Procurement rules: Presently, Malaysia is not party to the WTO Government Procurement Agreement. As such, the TPP represents Malaysia's first foray into liberalising its government procurement rules to allow further penetration by foreign participants to supply goods, services and construction services to the Malaysian Government.
- Level playing field against state-owned enterprises ("SOE"): Whilst Malaysia has managed to secure some carve-outs and flexibilities for its SOEs, particularly relating to its ability to carry out certain social and economic development programmes, the TPP contains disciplines that will require SOEs to act in accordance with commercial considerations and not distort competition in the market through non-commercial assistance.

2. Trade Remedy Actions

The primary legislation governing trade remedy actions in Malaysia are the *Countervailing and Anti-Dumping Duties Act 1993* and the *Safeguards Act 2006*.

Below are recent trade remedy investigations which have been initiated by the Malaysian Government against foreign exporters of various products to Malaysia:

- (a) cold-rolled coils of alloy and non-alloy steel falling

under various HS Codes in heading 7209 and 7225 originating from China, Korea and Vietnam. These will be subject to provisional anti-dumping duties ("ADD") from 25 January 2016 to 23 May 2016, at rates of up to 23.78%;

(b) prepainted, painted or colour coated steel coil falling under various HS Codes in heading 7210 originating from China and Vietnam. These will be subject to definitive ADD from 24 January 2016 to 23 January 2021, at rates of up to 52.10%;

(c) polyethylene terephthalate with intrinsic viscosity more than 0.70 dL/g falling under various HS Codes in heading 3907 originating from China, Indonesia and Korea. These will be subject to definitive ADD from 14 March 2015 to 13 March 2020, at rates of up to 14.91%.

(d) hot rolled steel plate products of iron or non-alloy steel and other alloy steel, of a width of 600mm or more, of a thickness between 6mm to 75mm falling under various HS Codes in heading 7208 and 7225 from various countries. Definitive safeguard duties will be applied at reducing rates starting at 17.4%.

3. Customs

3.1 Exemption Of Certificate Of Approval Requirement For Certain Hybrid Products

SIRIM, Malaysia's appointed certifying agency, recently announced the exemption of the requirement for certificate of approval for hybrid products (including electrical products, toys or medical devices that incorporate communication technology such as Bluetooth, WiFi and remote control applications) under 77 tariff codes effective from 10 February 2016, subject to the following conditions:

- (a) the importation is carried out by companies operating in:
 - (i) Free Industrial Zones (FIZ);
 - (ii) Licensed Manufacturing Warehouses (LMW); or
 - (iii) Bonded Warehouses; and

- (b) the imported product is for re-export only.

This exemption does not however extend to imports into the

Principal Custom Areas of Malaysia.

3.2 Increase in Excise Duty Rates

The *Excise Duties (Amendment) Order 2016* came into force on 1 March 2016 increasing the rates of excise duties for alcoholic drinks.

For instance, the excise duty on beer made from malt under subheading 2203.00 was increased from RM 7.40 per litre per 15% volume per litre to RM 175.00 per 100% volume per litre. For sparkling wine under subheading 2204.00, this has increased from RM 34.00 per litre per 15% to RM450.00 per 100% volume per litre.

There has also been a corresponding increase across various other alcoholic drinks under headings 2206 and 2208.

3.3 Customs Prohibition of Imports/Exports

As of 1 June 2016, the following goods require an import license from the Pharmaceutical Services Division of the Ministry of Health:

Description	HS Code
Nicotine and its salts	2939.99
Essential oils containing nicotine	2106.90
Nicotine tables and chewing gum	2106.90
Nicotine patches	3824.90
Mixture and preparation for vaporizer smoking	3824.90
Phosphorus	2804.70
Hypophosphoric acid (diphosphoric (IV) acid (H ₄ P ₂ O ₆)) and its salt	2809.20
Alpha-Phenylacetoacetonitrile (APAAN)	2926.90

The following goods require an export license from the Pharmaceutical Services Division of the Ministry of Health:

Description	HS Code
Alpha-Phenylacetoacetonitrile	2926.90

3.4 GST Update: One Year Anniversary

The Goods and Services Tax (“**GST**”) regime was implemented in Malaysia on 1 April 2015. As at 31 January 2016, the Royal Malaysian Customs Department

("Customs") has investigated 1,190 GST-related cases. The target GST collection for 2016 has been set at RM39 billion and Customs has announced that it will increase audits by sending more officers into the field.

Following the introduction of the GST regime, the *Price Control and Anti-Profiteering Act 2011* ("PCAP") was also implemented and enforced to address concerns amongst consumers of unreasonable increases in prices of goods and services. As at 8 March 2016, the Malaysian Ministry of Domestic Trade, Co-operatives and Consumerism has issued 2,848 investigatory notices and 209 investigation papers were subsequently opened. Presently, 16 cases have been prosecuted, 13 cases have been compounded and 1 case remains outstanding.

3.5 Exemption of Registration and Establishment License Requirement For Certain Medical Devices

The *Medical Device (Exemption) Order 2016* ("MDEO 2016") gazetted on 8 April 2016 provides for the exemption of medical devices from the registration and establishment license requirement (for importers and manufacturers) under the Medical Devices Act 2012 in the following categories:

- (a) medical devices for 'personal use'¹;
- (b) for purposes of demonstration for marketing;
- (c) for purposes of education;
- (d) for purposes of clinical research or performance evaluation of medical devices;
- (e) custom-made medical devices;
- (f) special access medical devices².

In addition, Class A medical devices, which include non-invasive devices such as administration sets for gravity infusion, bandage, syringe without needles, urine collection bottles and others are now exempted from the conformity assessment procedures.

¹ Brought into Malaysia for the use of a particular individual only and not to be placed in the market.

² For use by medical practitioners in emergency situations or in the event that conventional medical treatment has failed, is unavailable or unsuitable.

Commerce

4. Other business environment updates:

- A. Temporary ban on hiring new foreign workers: In February 2016, the Malaysian Government announced a temporary suspension on the intake of foreign workers including 1.5 million Bangladeshi workers. However, in view of lobbying by various quarters on the difficulties faced by the decision, the Cabinet lifted the freeze in May 2016 on hiring foreign workers in 4 sectors, i.e. manufacturing, construction, plantation and furniture-making industries. Other sectors will need to apply on a case-by-case basis.
- B. Revised minimum wage rate: On 29 April 2016, the Minimum Wages Order 2016 was published stating that the national minimum wage for employees other than domestic servants will be revised from RM900 to RM1,000 (for employees in Peninsular Malaysia) and from RM800 to RM920 (for employees in East Malaysia effective from 1 July 2016).

5. Allied Health Professions Act 2016 ("AHPA")

The AHPA received royal assent on 4 February 2016 and is expected to come into force in early 2017. The primary purpose of the AHPA is to regulate the registration and practice of 23 types of allied health professions within the healthcare industry which are to date largely left unregulated.

The AHPA will now regulate professions such as dietitians, physiotherapists, biochemists, occupational therapists, speech-language therapists and radiation therapists through the Malaysian Allied Health Professions Council established under the AHPA.

The AHPA will require individuals offering these services to register and obtain practicing certificates. In addition, the AHPA also seeks to regulate the advertising activities relating the allied health professionals.

6. Traditional and Complementary Medicine Act 2016 ("TCMA")

The TCMA came into force on 10 March 2016 and the Traditional and Complementary Medicine Council ("the

Council") will be established to oversee the operation of the TCMA. This Act is silent as to its transitional period but the Health Deputy Director-General (Medical) has reportedly indicated that the practitioners would be given up to two years to comply with the registration requirements under the Act.

The TCMA will bring about the following changes:

- Practising in unrecognised practice areas is prohibited and a breach may lead to a fine of up to RM30,000 and/or a prison term of up to two years;
- any person intending to practice traditional and complementary medicine in any recognised practice area ("**TCM Services**") must be registered as a practitioner, unless exempted by the Council. Provisionally registered practitioners must undergo at least a year of residency before they may apply for registration;
- the TCMA contains provisions on patient's rights, such as the right to be properly notified and informed of any harmful, unsafe or other effects prior to being provided the TCM Services;
- the TCMA also provides for implied terms or guarantees that apply where TCM services are provided by a registered practitioner. In the event of any non-compliance, the patient may cancel the contract without any liability; obtain compensation for any loss or damage suffered or obtain a refund of the money paid.

7. Registration of Engineers (Amendment) Act 2015 and Registration of Engineers (Amendment) Regulations 2015

The *Registration of Engineers (Amendment) Act 2015* and *Registration of Engineers (Amendment) Regulations 2015* came into force on 31 July 2015.

Under the Amended REA Legislation, the engineering services sector has been liberalized to be consistent with Malaysia's commitment under the ASEAN Framework Agreement on Services (AFAS).

Key changes are as follows:

- A. Ability for Foreign Engineers to be Registered with the Malaysian Board of Engineers ("BEM"): All recognized local or foreign engineers may be registered with BEM as professional engineers ("PE") or PEs with practicing certificates ("PCs"). There is, however, a limited residency requirement for the registration of PEs or PEs with PCs which requires the applicant to have been residing in Malaysia for a minimum period of 6 months prior to his/her application for registration.

- B. Engineering Consultancy Practice: An engineering consultancy practice can now be wholly foreign-owned (at least 70% by individual foreign PEs with PCs and the remaining 30% by any other foreign individuals or bodies corporate). This will provide greater structuring flexibility to foreign multi-national companies which intend to set up engineering operations in Malaysia.