

BRIEFING ON TPPA

Textiles & Apparel Industry in Malaysia

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1


Brief Background

- Negotiations concluded, after 5 years, on 5 October 2015. Signing scheduled in February 2016.
- A comprehensive FTA comprising binding rules and disciplines and market access commitments, reflected in chapter texts, annexes, schedules and side letters.
- Membership is open to all APEC economies but can consider non-APEC countries.
- Current membership: Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, Vietnam and US.
- Interest shown by Korea, Taiwan, Indonesia, Thailand and Philippines.
- Widely expected to be a building block towards the wider Free Trade Area of the Asia Pacific.

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2

30 Chapters in the TPPA...




MITI
MINISTRY OF INTERNATIONAL TRADE AND INDUSTRY

Standard Legal Chapters	Traditional Trade Issues	New Issues
1 – Initial Provisions 27 – Administrative & Institutional Provisions 28 – Dispute Settlement 29 – Exceptions 30 – Final Provision	2 – Market Access 3 – ROOs 4 – Textiles and 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 – Telecommunications 14 – E-Commerce 15 – Government Procurement 16 – Competition Policy 18 – Intellectual Property Rights 21 – Cooperation and Capacity Building 22 – Competitiveness / Business Facilitation	17 – Competition (SOE) 19 – Labour 20 – Environment 23 – Development 24 – SMEs 25 – Regulatory Coherence 26 – Transparency and Anti Corruption

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Flexibilities that we have obtained in TPP...



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- Longer transition periods
- Differential thresholds
- Non-Conforming Measures
- SOE – country specific annex
- Preferential treatment for Bumiputra and SME
- State Governments excluded in GP, SOE, Environment
- Export taxes maintained

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Legal and Institutional Issues



Entry into Force

- 60 days after the date on which all original signatories have notified the Depository in writing of the completion of their applicable domestic procedures (ratification);
- If not all signatories have ratified within 2 years of the date of signature , 60 days after the expiry of this period if at least six of the signatories, which together account for at least 85 per cent of the combined gross domestic product of the original signatories in 2013 have ratified; **or**
- If both do not take place, 60 days after the date on which at least six of the original signatories, which together account for at least 85 per cent of the combined gross domestic product of the original signatories in 2013, have ratified.

TPP Commission

- Comprising representatives of all parties, responsible for the administration of the Agreement, including review of Agreement; supervise work of all Committees; resolve difference or disputes regarding interpretation or application of Agreement; and issue interpretation of the agreement.

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5

Legal and Institutional Issues (cont...)



Accession

Open to any State or separate customs territory that is a member of APEC, and such other State or separate customs territory as the Parties may agree . Parties to decide on accession procedures .

Withdrawal

Parties may withdraw from this Agreement by providing written notice of withdrawal to the Depository and the other Parties. Withdrawal shall take effect six months after written notice.

Exceptions

- general exceptions;
- security exceptions;
- temporary safeguard measures (capital controls);
- taxation measures;

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Dispute Settlement Mechanism (DSM)



- The DSM establishes the procedures for the avoidance and settlement of disputes.
- The Chapter provides for the process of settlement of disputes, first through a process of consultations before reference to an independent Panel, established in accordance with agreed procedures.
- A Panel shall comprise three members, selected in accordance with the procedures set out in the Chapter.
- Panel findings and recommendations are binding on the Parties to the dispute.
- Parties must implement findings and bring the offending measure into compliance with the Agreement.
- If a Party fails to comply with the panel recommendations, the Parties to the dispute may agree to a mutually acceptable compensation.

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7

Investment



- Key obligations of market access and protection through non-discriminatory treatment, minimum standard of treatment and disciplines on expropriation, transfers, performance requirement and board of directors.
- Safeguards and exceptions available.
- Non-conforming measures – **Annex I** (binding current non-discriminatory measures) and **Annex II** (policy space for existing discriminatory measures)
- ISDS – outlines procedures for settlement of disputes between foreign investor and host government.
- Improvements and safeguards in TPPA – government's right to regulate; avoiding frivolous claims; interpretation by Joint Commission binding on Tribunal.

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Non-Conforming Measures (Investment and Services)



- Bumiputera preferences and land policies
- PETRONAS' role under the Petroleum Development Act (PDA)
- Right to impose any condition when disposing assets of SOEs for the first time; and for subsequent transfers of assets in strategic sectors
- MFN exemption for ASEAN preferences
- Cultural services
- Wholesale and distribution services
- Air transport services

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9

Investment (ISDS)



- **Investor-State Dispute Settlement (ISDS) is NOT new for Malaysia**
- 74 Bilateral Investment Treaties (BITs)
- 8 FTAs (Malaysia-Japan, Malaysia-India, Malaysia-Pakistan, Malaysia-New Zealand, ASEAN-China, ASEAN-Korea, ASEAN-Australia-New Zealand, ASEAN-India) which contain ISDS provisions.
- 2 cases against Malaysian Government
 - Philip Gruslin vs Malaysia
 - Malaysian Historical Salvors Sdn Bhd vs Malaysia
- 2 cases by Malaysian investors against foreign Governments
 - MTD vs Chile
 - Telekom vs Ghana
- Safeguards in TPPA

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10

Labour



- Not about movement of labour.
- Key obligation is to adopt and maintain the ILO Declaration 1998.
- The elements :
 - 1) freedom of association & right to collective bargaining;
 - 2) eliminate forced labour;
 - 3) abolish child labour;
 - 4) eliminate employment discrimination
- Bilateral Labour Consistency Plan with US .

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11

Market Access



- Standstill on export duties
- Textile products - yarn forward rule but with short supply list

Malaysia's Offer -goods

- 85% of tariffs to be eliminated upon entry into force;
64.5% are already without duties
- Tariffs on sensitive products eliminated over 10-15 years;

TPP Partners' Offer -goods

- Immediate elimination by US (90%), Canada (95%), Mexico and Peru (80%)
- Japan – wood products
- GP markets open to Malaysian suppliers

Services

- Opportunities for Malaysian service providers in professional, construction, telecommunication, oil and gas, health, education and financial services

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12

TEXTILES AND APPAREL

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Textiles and Apparel a Balanced Package

- Opportunities from preferential access to new FTA markets:
US, Canada, Mexico and Peru.
- Takes into account the interests of all TPP parties and the dynamics of their industry.

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14

Market Access



- All textile tariffs reduced and eventually eliminated in all 12 countries.
- All tariff lines see significant duty cuts on day one.
- All tariffs go to zero – some immediately, some after a phase-out.
- Duties on sensitive US textile and apparel products eliminated over phase-out period of 10 or 12 years.

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15

Market Access cont...



- **US** : **72.9%** textiles tariff lines constituting 36.44% of total exports to US will see duty elimination upon entry into force. Without TPP, only 11% of tariffs or 0.9% of total exports are duty free. In 2014, apparel exports of over USD530 million and duties paid of more than USD100 million. **Total Potential Duty Savings – USD100 million.**
- **Canada**: 90.9% textiles tariff lines constituting 89.55% of total exports to Canada will see duty elimination upon entry into force. Without TPP, only 40% of tariffs or 12.46% of total exports are duty free.
- **Mexico**: 27.57% textiles tariff lines constituting 0.74% of total exports to Mexico will see duty elimination upon entry into force. Without TPP, only 12.67% of tariffs or 0.02% of total exports are duty free.
- **Peru**: 13.25% textiles tariff lines constituting 2.53% of total exports to Peru will see duty elimination upon entry into force. Without TPP, only 6.52% of tariffs or 0.02% of total exports are duty free.

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16

Staging of Duty Elimination



Country	Range of MFN Import Duty (%)	Elimination at Entry Into Force (%)	Less Than 5 Years (%)	6 to 10 Years (%)	More Than 10 Years (%)
Canada	4.5-18	90.9	7.2	1.9	-
Mexico	5-30	27.6	-	65.9	6.5
Peru	9-17	13.3	-	11.3	75.5
US	0.5-32	72.9	7.2	-	20
Chile	6	87.6	3.3	9.1	-
Viet Nam	3-100	98.7	0.3	0.4	0.5
Japan	2.4-9.8	98.8	-	1.2	-
New Zealand	5-10	81.7	5.5	12.7	-
Australia	5-10	81.8	18.2	-	-
Brunei	5-10	96.6	-	3.4	-
Singapore	0	100	-	-	-
Malaysia	2-30	99.2	-	0.8	-

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17

Rules of Origin



- Adopting Yarn-Forward Rule:
 - ❖ Promotes TPP regional supply chains
 - ❖ Keeps benefits of TPP within the TPP region
- Short Supply List – permits some flexibilities
 - ❖ 194 products -186 permanent, 8 temporary.
 - ❖ Included 2 Malaysian shirting products
- Rules permit “cut-and-sew” for some products, e.g. travel goods including handbags, synthetic babies garments, brassieres

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18

Other Obligations



- Strong enforcement & customs cooperation provisions to prevent fraud
- Textile specific safeguard provision that allows TPP Parties to temporarily re-impose higher tariffs if imports from a TPP country cause or threaten to cause serious damage to domestic producers.

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19

Australia

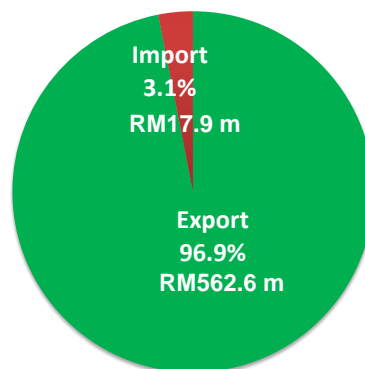


Top Malaysia's Exports

Product	Value (RM)	%
Apparel & clothing	228.02 m	41%
Textiles	334.56 m	59%

Top Malaysia's Imports

Product	Value (RM)	%
Apparel & clothing	2.14 m	12%
Textiles	15.78 m	88%



Source: Department of Statistics Malaysia,
Jan - Nov 2015P

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20

Brunei

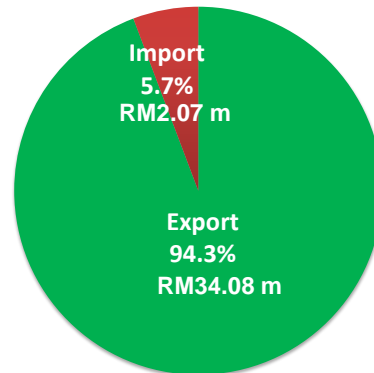


Top Malaysia's Exports

Product	Value (RM)	%
Apparel & clothing	25.07 m	74%
Textiles	9.01 m	26%

Top Malaysia's Imports

Product	Value (RM)	%
Apparel & clothing	1.69 m	82%
Textiles	0.38 m	18%



Source: Department of Statistics Malaysia,
Jan - Nov 2015P

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Canada

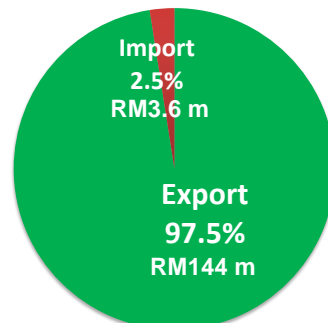


Top Malaysia's Exports

Product	Value (RM)	%
Apparel & clothing	121.66 m	84%
Textiles	22.39 m	16%

Top Malaysia's Imports

Product	Value (RM)	%
Apparel & clothing	0.47 m	13%
Textiles	3.17 m	87%



Source: Department of Statistics Malaysia,
Jan - Nov 2015P

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22

Chile

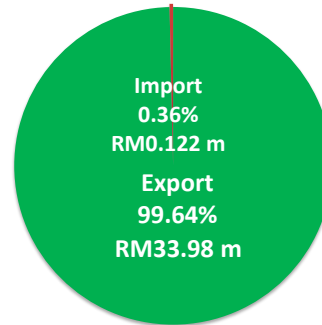


Top Malaysia's Exports

Product	Value (RM)	%
Apparel & clothing	30.52 m	90%
Textiles	3.45 m	10%

Top Malaysia's Imports

Product	Value (RM)	%
Apparel & clothing	0.122 m	100%
Textiles	-	-



Source: Department of Statistics Malaysia,
Jan - Nov 2015P

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23

Japan

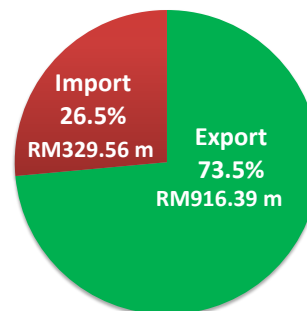


Top Malaysia's Exports

Product	Value (RM)	%
Apparel & clothing	413.63 m	45%
Textiles	502.76 m	55%

Top Malaysia's Imports

Product	Value (RM)	%
Apparel & clothing	51.65 m	16%
Textiles	277.91 m	84%



Source: Department of Statistics Malaysia

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24

Mexico

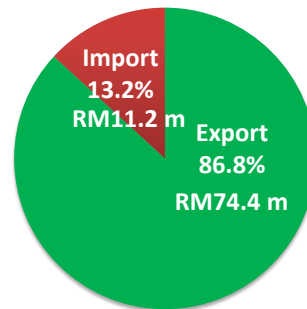


Top Malaysia's Exports

Product	Value (RM)	%
Apparel & clothing	40.96 m	55%
Textiles	33.45 m	45%

Top Malaysia's Imports

Product	Value (RM)	%
Apparel & clothing	8.83 m	78%
Textiles	2.46 m	22%



Source: Department of Statistics Malaysia

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25

New Zealand

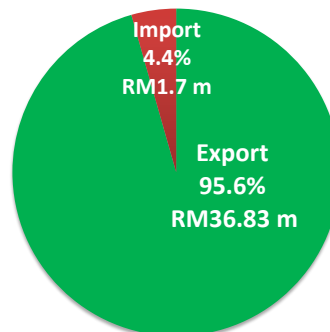


Top Malaysia's Exports

Product	Value (RM)	%
Apparel & clothing	4.52 m	12%
Textiles	32.3 m	88%

Top Malaysia's Imports

Product	Value (RM)	%
Apparel & clothing	0.039 m	2%
Textiles	1.66 m	98%



Source: Department of Statistics Malaysia

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26

Peru

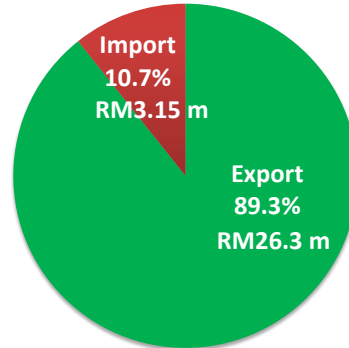


Top Malaysia's Exports

Product	Value (RM)	%
Apparel & clothing	16.4 m	62%
Textiles	9.8 m	38%

Top Malaysia's Imports

Product	Value (RM)	%
Apparel & clothing	3.15 m	100%
Textiles	-	



Source: Department of Statistics Malaysia,
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27

Singapore

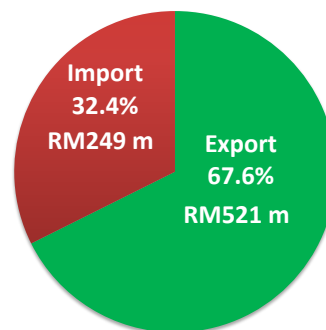


Top Malaysia's Exports

Product	Value (RM)	%
Apparel & clothing	333.76 m	64%
Textiles	187.4 m	36%

Top Malaysia's Imports

Product	Value (RM)	%
Apparel & clothing	139.8 m	56%
Textiles	109.58 m	44%



Source: Department of Statistics Malaysia

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28

Vietnam

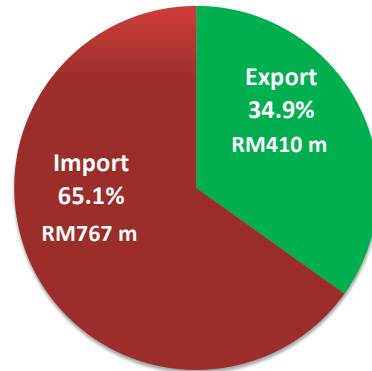


Top Malaysia's Exports

Product	Value (RM)	%
Apparel & clothing	21.8 m	5%
Textiles	389 m	95%

Top Malaysia's Imports

Product	Value (RM)	%
Apparel & clothing	391 m	51%
Textiles	376 m	49%



Source: Department of Statistics Malaysia,
Jan - Nov 2015P

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29

United States

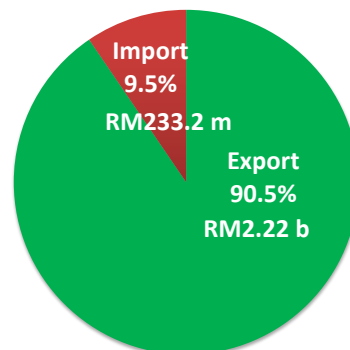


Top Malaysia's Exports

Product	Value (RM)	%
Apparel & clothing	1.86 b	84%
Textiles	358 m	16%

Top Malaysia's Imports

Product	Value (RM)	%
Apparel & clothing	34.67 m	15%
Textiles	198.56 m	85%



Source: Department of Statistics Malaysia,
Jan - Nov 2015P

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Non-participation in TPPA / Cost of late entry



- **Trade Rules:** Miss opportunity to craft rules.
- **More onerous commitments if join later**
- **Loss of preferential market access**
- **Viet Nam and Singapore, and future members,** will have advantage over Malaysia
- **Implications for FDI** and current investors
- **Disadvantaged in the regional supply chain** due to loss of preferential treatment
- **Sending wrong signals** – not ready to accept international standards, good governance and ability to negotiate high standard FTAs, like MEUFTA.

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31

WHY TPPA?



- Trade : 4 new preferential markets
- Investment : Attracting FDI and preserving existing investors
- International standards – Labour and Environment
- Good governance- transparency, anti corruption
- Negotiated rules have addressed key concerns
- Sensitive issues have safeguards, transitions and other flexibilities
- Confirms Malaysia is an open trading nation that is business friendly, worker friendly and environment friendly
- Staying out signals inability to accept disciplines and negotiate high standard FTAs

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32



Please visit www.miti.gov.my for the legal texts of the TPPA, a summary of the Agreement, FAQs and other useful material.

Thank you



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