Towards a Peoples' Charter on Trade.

The PSM has been part of the network of groups that have objected to some of the Trade Agreements being negotiated by the Malaysian government. We mobilized against the FTA with the US in 2005 - 2006, then against the TPPA in 2014 – 2016. Now we are part of a group responding critically to the proposals being brought up in the RCEP.

The person on the street might wonder why the PSM is so much against these trade agreements? Is the PSM against trade? Or is the PSM opposing for the sake of opposing? Aren't these Trade Agreements necessary for Malaysia's continued growth?

This position paper attempts to answer these questions and explain why these sort of trade agreements have become harmful to the global economy. It also will argue that different sorts of trade agreements are possible, and will proceed to sketch out the broad principles of People Centric Trade Agreements.

Is the PSM against Free Trade?

According to the Treasury's Economic Report 2016/17, the value of Malaysia's exports of goods and services in 2016 was RM 829 billion in current prices. This is 69% of our GDP[1]. If we factor in the value of intermediate goods imported in order to manufacture electronic components and other exported goods, we would find that approximately 33% of value added in Malaysia is for export. And that's a huge percentage. So obviously, no sane Malaysian would argue that Malaysia should cease trading. Engaging in the world market is an important source of income for the nation, and this engagement obviously has to continue.

What the PSM is protesting is the fact that Trade Agreements are being used to promote other, non trade related issues. Barriers to free trade are regulations such as import taxes and tariffs. But the current Trade Agreements (eg TPPA and RCEP) spend a lot more time on other issues such as

I. ***The rights of foreign investors***. The TPPA for example enshrines the following as the inalienable rights of foreign investors -
    a. To receive "National Treatment" which means that Third World governments will now be restricted from taking special steps to develop the capacity of local businesses[2].
    b. To be free of all requirements to develop local expertise or purchase from local suppliers[3].
    c. To invest in any sector of the economy that is open to private capital whether it be water supply, power generation or Health Care provision[2].

d. The right to by-pass the Malaysian Legal System and take their disputes with our government directly to a private International Tribunal where the same group of lawyers change hats from being litigants to being judges from case to case![4]

II. ***Intellectual Property Rights*** which will strengthen the monopoly position that many large Multi-Nationals already have in the Pharmaceutical and IT sectors.

a. Patent periods are extended using newer regulations.[6]
b. The onus of initiating action against patent infringements is being shifted from the originator company to governments.
c. Copyright laws on books and internet knowledge are being strengthened.

TPPA Article 18.77 (6)(a): Each Party shall provide penalties that include sentences of imprisonment as well as monetary fines sufficiently high to provide a deterrent to future acts of infringement.

(Do you know that a 3 month course of Sofosbuvir, an anti-viral drug, can cure 95% of Hepatitis C patients? Unfortunately, most of the 300,000 patients with Hepatitis C in Malaysia cannot afford this drug which now costs RM 150,000 for a 3 month course for one patient. This is because Malaysia is party to some of the IPR agreements that exist. A 3 month course of Sofosbuvir can be obtained in India for RM 4000. But Malaysian pharmacies are barred from procuring from India because it would infringe patent laws. So issues regarding strengthening Intellectual Property Rights are not boring issues that academics discuss. They impact on the lifes of ordinary Malaysians!)

III. ***The right to bring in capital and to take out profits*** in any amount and at any time[5]. The government's powers to regulate capital movement is severely restricted.

Precisely because countries like Malaysia and Vietnam need trade with the US and with European Union, the governments of the West are using Trade Agreements to "liberalize" the Global Economy in ways that benefit the Billionaire Class – the richest 0.001% of the population of the World!

Liberalization of the Global Economy is the Root Cause of the Economic Malaise afflicting the World!

The collapse of the Warsaw Pact and the ensuing liberalization of the World Economy through the WTO agreements and the various Free Trade Agreements that have been agreed to, have resulted in the following processes -

a. The ***off-shoring of production*** by Multinational Companies (MNCs) from the advanced economies of Europe and the US to Third World Countries where wages are about a tenth of wages in the advanced countries[7].
b. Production in Third World Countries is often out-sourced to independent Third World contractors who the MNCs play off against each other to keep production costs and ***wages down***. (See Appendix One for I-phone story)
c. The MNCs sell these cheaply produced goods in the advanced countries at 80 – 90% of the prices that existed prior to the outsourced production. Since their production costs are now only 10% of what they were before, the MNCs make ***fabulous profits***!
d. The MNCs shift their headquarters to Tax Havens so that they can avoid paying taxes in their home country (whose military they still rely on to maintain the world disorder!)
e. The MNCs also use Transfer Pricing to declare a large portion of their profits in the Tax Havens so as to ***avoid paying taxes***. See Appendix Two for an explanation of this.
f. Countries all over the world have been reducing corporate taxes in an effort to keep their corporations at home. In Malaysia corporate tax has dropped from 40% of profits in the 1980s to 25% currently. We are still chasing Singapore which stands at 20% currently. It's a "***race to the bottom***".

These processes have resulted in

- A net loss of purchasing power by the working class. The majority of displaced industrial workers in the advanced countries are either chronically unemployed or are re-employed in jobs that are less secure and with lower pay. Factory jobs have increased in the Third World, but wages are 10 times lower than in the West.

Economist 2015

- Drop in Corporate Tax Income in many countries because of tax evasion by the MNCs and the Billionaire class. This has led to run-away sovereign debt in many countries of the world and pressures to reduce the social safety nets in these countries.
- Fabulous profits for the richest 0.001%. This is reflected in the OXFAM report for 2017 that says –

  Top 1% of the world's population (70 million individuals) own as much wealth as the rest of the world's population combined. In 2010, 388 individuals held as much wealth as the poorer 50% of the world's population, while by 2015 the wealth of the richest 62 individuals matched the wealth of the poorer 50%.

  Oxfam report in January 2016

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The net result is that Global Aggregate Demand does not grow sufficiently to provide investment opportunities for all the surplus profits of the Billionaire class. Hence you have

i. Low investment rates
ii. Chronic unemployment especially among the youth.
iii. Budgetary constraints for Governments, and an increasingly high debt.
iv. Diversion of some of the surplus profits into real property and the explosion of land and property prices, and the resulting homelessness in the millennium generation[8].

The stubborn recession that the world is experiencing is directly due to the fact that too much of the income of the world is being sequestered in the investment portfolios of the super rich – the Billionaire class.

The TPPAs and the RCEPs strive to further liberalize the World Economy in ways that will enable the super-rich and the MNCs to garner an even larger share of the wealth being produced. Obviously that's only going to aggravate sluggishness of demand growth and recessionary tendencies in the global economy.

Features of a People-Centric Trade Agreement

A people-centric trade agreement would attempt to correct the imbalances that have been created by a global economic order that gives far too many perks to the billionaire class. Just as the existing billionaire-centric Trade Agreements uses the stick and carrot mechanism of market access and punitive tariffs to create an environment more favourable for the huge MNCs, the people should lobby for Agreements that use the same sticks and carrots (ie access to markets and tariffs) to achieve economic benefits for the majority. Such an agreement would aim

- To redistribute a greater share of the nation's income to the poorer 80% of the population by increasing the minimum wages in stages. This would grow aggregate demand and thus stimulate investments and job creation. Small and medium businesses would have a larger market to sell to. It would be a win-win situation for 90% of the population!

- To close tax loopholes and ensure that the richest companies pay their fair share of taxes. There should also be gradual elevation of corporate tax rates. This would need the cooperation of all the countries in the region as otherwise, there would be capital flight out of the country that is unilaterally raising corporate taxes.
- To be more strict regarding the awarding of patent or copyright rights especially for goods and services that relate to health care and to education. Much of what is canvassed under IPR arguments creates monopoly conditions for the large MNCs! This reality has to be exposed!
- The Investor-State Dispute Settlement (ISDS) system has to be totally revamped. The foreign investor will have to file his claims in the host nation's courts first and can only take the claim to an international tribunal upon exhaustion of remedies within the county's own legal system (or if there are inordinate delays in the host country's legal process). The International tribunal should be comprised of 3 judges from three of the countries participating in the trade agreement but which are not involved in the dispute being litigated. In the TPPA setting this would mean that in the case of an US firm suing Malaysia, the three judges sitting on the tribunal would be drawn from 3 of the other 10 countries participating in the TPPA ie not from the US or from Malaysia. And the trial should take place in Malaysia so that local groups and communities affected by the MNCs activities can attend the trial. It should be clearly stated that environmental and health issues take precedence over company profits in ISDS litigation.

A Practical Example!

We need to work with the Peoples' Movements in other ASEAN countries to lobby that the ASEAN Free Trade Treaty incorporates an additional agreement that all participating countries commit to increasing their minimum wage by 10% every year for the next 5 years. This would increase the domestic market within ASEAN and present more business opportunities for entrepreneurs in ASEAN countries. If a certain ASEAN country does not comply with the minimum wage increase, its exports to other ASEAN countries should be charged a cumulative import tax of 5% for each year that it fails to comply.

In a similar manner, all ASEAN countries should agree to increase corporate tax by 1% each year until they reach a tax level that is 40% of profits. This would augment government income which can be used to provide a better safety net for the population and to fund the switch to non-polluting sources of electricity generation. The increase in government expenditure would also augment aggregate demand in the ASEAN region and thus provide a deeper market for

ASEAN businesses. ASEAN countries that fail to increase their corporate tax as stipulated should face an additional tariff on the goods and services they export to other ASEAN countries.

The creation of deeper domestic markets in Asian and African countries would play a big part in weaning the developing countries off their dependence on the US and EU markets!

Runaway greed on the part of the billionaire class is a major cause of our economic problems today. The solution lies in curbing the excessive power and privileges that the super-rich enjoy and creating a more inclusive and environmentally sustainable economy. An important component of that solution is the realization that "Free" Trade Agreements have been the battering rams that have been used by the political elite of advanced countries to create this lop-sided economy that favours the billionaires. We have to take over these Battering rams and put them to use to fashion a more just and stable world.

Jeyakumar Devaraj
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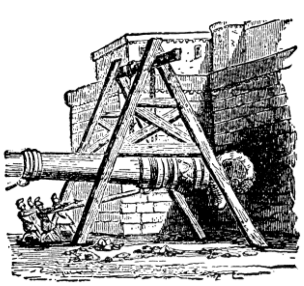
Notes.

1. Page I vii of the Economic Report of the Ministry of Finance.
2. National Treatment – Article 9.4 in the TPPA.
3. Articles 9.9 and 9.10 in the TPPA.
4. ISDS – Article 9.18 of the TPPA
5. Capital control – Article 9.8 of the TPPA.
6. Evergreening – 18.37; Data exclusivity – 18.52
7. Monthly Minimum Wage (From internet sources)
   - USA 10.50 USD x 8hr x 26 x 4.4 = RM9609
   - Australia 17.70 x 8hr x 26 x 3.33 = RM12,149
   - Malaysia RM 1000 per mnth
   - China USD 327 per mnth x 4.4 = RM1438 (For Shanghai – the highest rate)
8. Those born between 1982 – 2004

9. A **battering ram** is a siege engine that originated in ancient times and designed to break open the masonry walls of fortifications or splinter their wooden gates. Rams proved effective weapons of war because old fashioned wall-building materials such as stone and brick were weak in tension, and therefore prone to cracking when impacted with force. With repeated blows, the cracks would grow steadily until a hole was created. Eventually, a breach would appear in the fabric of the wall—enabling armed attackers to force their way through the gap and engage the inhabitants of the citadel.



Appendix One: The i-phone story

The huge MNC that designs and manufactures i-phones has outsourced production to a set of Chinese companies who assemble the finished product. The fully manufactured i-phone is bought by the MNC at USD 180 and then sold in the US market at USD 500. See below

Cost of components purchased by factory in China	USD 120
Price of fully manufactured i-phone at Chinese factory gate	USD 180
Retail price of i-phone in US Stores	USD 500

As the USD 500 price is significantly lower than the price of similar products produced wholly in the US, this MNC manages to expand its market share.

The Chinese participants in this venture make USD 60 per phone (the Chinese worker makes USD 6.50 per phone!), while the MNC makes USD 320 (minus transport costs, storage costs, retail costs etc)

Source: *Imperialism in the Twenty First Century*. John Smith. Monthly Review Press.

Appendix Two: Use of Transfer Pricing to Avoid Tax

An MNC outsources production to China and buys the finished product from its "partner" companies in China at USD 200 and then retails the same in the US at USD 500. So it would have to declare profits of USD 300 to the authorities and pay tax on this.

The way out is to create another subsidiary company located in a low tax country eg the Cayman Islands, and get this subsidiary to "buy" from the Chinese partner at USD 200 (on paper – the i-phone doesn't physically go anywhere near the Caymans), and resell to the US subsidiary of the MNC at USD 450. Thus profit that has to be declared in the US is only 500 – 450, or USD 50. The bulk of the profits is declared in the Caymans where this company has tax free pioneer status.