



**Session Title:** ASEAN and Regional Outlook

**Date & Time:** 5 April, 9:30am – 10:30am

**Moderator:** **Nathan Bush**, Partner, Head of Investigations for Asia & Head of Antitrust and Competition for Asia DLA Piper

**Speakers:** **Datuk Seri J Jayasiri**, Secretary General, Ministry of International Trade & Industry, Malaysia

**Dr Deborah Elms**, Executive Director, The Asian Trade Centre

**Introduction & Purpose:** A curated discussion on the immediate issues involving aluminum and steel, Section 301, measures in the Trump administration and longer-term prospects for trade integration in the region.

### **Summary of the session**

*Moderator: What's your perspective on the prospects for integration with the different initiatives unfolding in the region from TPP11 and the initiatives with ASEAN, APEC and RCEP? How do you see these interacting and overlapping? What are the implications for the countries in the region?*

### **Speaker: Datuk Seri J Jayasiri**

Jayasiri noted **many of the players are involved in the same initiatives in the region.** For instance, New Zealand and Australia are in the regional comprehensive economic partnership (RCEP) and the Trans-Pacific Partnership (TPP) before the latter ended up as Comprehensive and

Progressive Agreement for TPP (CPTTT) or TPP11. Since the earlier initiatives negotiated didn't go far enough, he said Malaysia became involved in more ambitious and higher standard initiatives, which explained why countries that were not in the earlier initiatives also wanted to join in.

**The RCEP was won because there were too many FTAs.** Additionally, we think some of the business concerns, especially on the rules of origins, could be addressed in a single undertaking under an umbrella agreement like RCEP.

Secondly, **all these regional initiatives complement each other**, Jayasiri **replied when** asked, "Why are you negotiating the TPP when you have RCEP?" As a country that depends on the global market, **we want to use every opportunity available to open up markets.** The TPP initiative opens up the North American and Latin American markets where we don't have FTAs with Mexico, Canada and Peru. ASEAN is a totally different initiative. Its markets are different from TPP.

Thirdly, **these initiatives open up markets that strengthen rules.** This augurs well for APEC's bigger initiative of a FTA for Asia Pacific where Malaysia is a member. Also, the players of all these initiatives put together account for over 50% of global trade, representing huge numbers in the World Trade Organization (WTO).

*Moderator: What are some of the ways the TPP agreement (TPPA) effectively changed following the US withdrawal. What do the suspended provisions mean for US companies and the TPP members?*

**Speaker: Dr Deborah Elms**

**TPP is the most important agreement in the last 20 years** because it helps rationalize what have been amassed for businesses trying to do business in Asia. The TPPA is **transformative.** It **makes business much easier and smoother.** Once phased in, TPP will become more like an operating system in the background.

With the US out, the difference is the 20 suspended provisions but it's not that you had a benefit that went away. It's just that some things are no longer

going to be given to you in the future, said Deborah, citing that copyright don't need to be extended to 70 years if you don't already have that provision. You can keep copyright's life at 50 years.

Most of the 622-page **TPP**, now reduced to 580 pages, **is still intact** as the 20 suspensions were relatively modest changes in the rules sections. There are no changes in the 11 countries' schedules, tariff, services, investment, state enterprise provisions and government procurement commitments. Access between the 11 is amazing and kudos to Malaysia for staying in it.

*Moderator: They have been speculations and wishful aspirations they may come a day the US is back at the table. How does Malaysia review the US's return and what issues do you anticipate that would be back in play? Are they specific sectors that would be back for renegotiation?*

**Speaker: Datuk Seri J Jayasiri**

During TPP11 negotiations, with the possibility of the US returning, 22 provisions were suspended and not deleted from the agreement. The rationale being when the US returns, we can revert to the original TPPA, said Jayasiri. If terms are to be changed with the US return, he does not envisaged any appetite for renegotiation after going through five to six years of TPP negotiations and another year of CPTPP negotiations.

Things will get more complicated when new members join CPTPP with it possibly coming into force by this year-end. The conditions for entry are very simple. All you need is six countries to ratify. Once the agreement is in force, members will draw up the guidelines for extension. Korea wants to be a founder member. **"When we start extension negotiations, we may have new members. This will change the dynamics when the US decides to come.**

Do you abandon CPTPP, revert to TPPA and have the US onboard? What happens to the new members? All this gets very complicated. **If the US wants to return, it has to be a clean entry with no further negotiations. Otherwise, it will be another long-protected negotiation."**

**Speaker: Dr Deborah Elms**

Dr Deborah agrees it will be complicated, finding it hard to imagine the two parties in the US agreeing to accept the TPP in whatever format it is now. “We may from a year from now have a different dialogue about trade domestically in the US. **We are getting a live experiment of what happens when you disrupt trade and a real-life example on trade on a daily basis,**” citing the recent China and US relations. **We might end up on a real road experience that results ironically in the US getting back into the TPP with minimal conditions.**

*Moderator: Having just returned from the US, what are your observations and perspective on how the Trump administration is procedurally different in handling trade matters?*

**Speaker: Dr Deborah Elms**

After interviewing people in Washington last week on the Section 301 in particular, Deborah describes this section as the US’s unilateral attempt to change behavior out of various countries and in this case China. The **US**, led by its **trade representative Robert Lighthizer**, who drafted this tool in the 1980s, has brought it back into use against China, **arguing that the WTO rules do not account for Chinese behavior and has the system order flipped.**

With the sanctions just announced, US\$50 billion worth of tariffs plus an unspecified and extraordinarily complicated parallel investment system coming within 60 days from now, she said there is **a lot of confusion now in Washington**, including agencies tasked with carrying out both the tariff discussions and investment regime changes.

There are at least **five issues the Chinese have to address**. They include **intellectual property and cybersecurity theft into the US, and trade deficit challenges**. No one is clear who’s driving the negotiations. The Chinese don’t even know who to talk to. This is a mess. The result will be an escalating set of sanctions and counter sanctions.

A lot of the parts from Malaysia’s E & E sector go to China, which are then sent to the US. Deborah anticipates the **collateral damage done to Malaysia**,

**Singapore** is going to be significant. This is not going to be a localized challenge. It's going to hit a lot of us in this region much harder than we think.

I'm not trying to say the US complaints against China are unfounded but **the method used by them is problematic** even if you have an agreement on what the objectives were.

*Moderator: The steel and aluminum under the national security provisions of Section 232 also have a problem from the WTO perspective. How has it affected the region?*

**Speaker: Dr Deborah Elms**

The aluminum and steel tariff situation, rolled out ahead of Section 301, has been bungled so that allies have their backs up even before the 301 case against China was put up.

Most of the aluminum and steel into the US are provided by its main allies such as Canada and Germany and they were all targets under this national security 232 case. **The allies were particularly put off** by the way they were attacked over steel and aluminum. **Most of them have received a temporary exclusion from the imposition of national security complaints until May 1.**

Most notably among those who did not get off the list is **Japan**, which is furious because they are still subject to 25% tariffs on steel and aluminum for refusing to start a bilateral FTA with the US. They aren't going to join the coalition against the Chinese because they are righteously pissed off about the US withdrawal from TPP and a host of other things. We have some challenges on this.

**Another big challenge against the 232 case is the use of a national security argument.** Many of the countries in this region are eyeballing this as an excellent reason to have whatever protection policies that you want to use as the excuse in the future.

If the US can use national security as the reason for basic protection, I would love to use that excuse. For national security reason, bottled water is no longer allowed in my country. It is a national security exception that I now take and the US just took it for obviously unclear national security reason over steel and aluminum.

**Speaker: Datuk Seri J Jayasiri**

I totally agree with Deborah. The security exception in the GATT and recently in the WTO, nobody has invoked that article to take a measure. The security provision says that security can be narrowly defined as protecting your domestic industry.

How can you protect your domestic industry when you exclude the tariffs on the bigger exporters to the US? It's the smaller ones who are imposed the tariffs. That **argument of protecting the domestic industry under the guise of security will fail the test in the WTO.**

**If it's allowed in the WTO, it's the start of a slippery slope which can bring the WTO down** because everybody will start using the security argument and imposing all kinds of measures.

Honest trading nations like Malaysia won't want to see happening. **For us, no matter how many trade agreements that we negotiate, the supremacy of the multilateral trade agreement is something that we hold on dearly to.**

*Moderator: You sense that this is a very frightening precedent. We have another concern: the future of American trade policy after the Trump administration. If we imagine a future of perhaps more conventional administration coming from either side, what lessons do you think our trade partners are drawing from the experience of the Trump administration which is unfolding now?*

**Speaker: Datuk Seri J Jayasiri**

**The traditional way to deal with trade issues is to undertake consultation.** That's the whole reason why we have the WTO and the provisions for consultations. If we think that a solution to a trade problem is

through a unilateral measure, then countries which are affected will also have to find a solution.

This is where retaliation has already started. We don't want a trade war but a trade war is already there now. The extent to which we will not know unless this can be addressed carefully in the WTO. If you ask whether this is conventional, during or post Trump administration, people should sit down, talk and find solutions.

If consultations fail, then you go to the dispute settlement mechanism. Let the panel, which is picked by both parties and there are neutral members in it, decide. If you are not satisfied with the panel, you can still go to appellate body. All these mechanisms have been carefully negotiated in the Uruguay Round.

The appellate body today is at risk as the US is holding back some moves in the appellate body process but there is still the first line of resolution mechanism. That's the way we should be proceeding unless we come out with something new. **Unilateral action is not the way to resolve any of these issues or problems.**

**Speaker: Dr Deborah Elms**

It's really dangerous waters. I find it amazing how complacent business seems to be about the dangers that we are in. Asia is continuing to embrace sensible policies. When you have risks and uncertainties in the global system, **TPP will at least help set the rules of the games, make it challenging for countries that behave badly as it constraints some of the worst excesses of government behaviors although not completely.**

Engaging in multiple environments like TPP and RCEP shows the **governments' commitment to remain open.** That's critically important at a time of global uncertainties. Most Asian governments show desire to be constraint in these different settings and are open to embrace legally binding openness. Business communities should reinforce the government's enthusiasm for that. It's important that they stay engaged around these markets' open decisions and keep pushing for openness.

### **Takeaway from the session**

- Malaysia's various initiatives are seen as "building blocks" that could eventually contribute to the FTA on Asia Pacific and the global liberalization initiatives under the WTO.
- The transformative TPP is still very much intact. It's complicated if the US wants to return to it.
- US action against China will have far reaching consequences on some of the region's sectors like Malaysia's E & E sector.
- Potential trade issues in the past have been resolved through consultations. The unilateral way is not the solution.
- Important for business communities and government to be engaged in open market decisions.
- APTA's formation to assist in TPP11's implementation.