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Main topic : Impact of Multinational Corporation in Malaysia

Abstract

Malaysian government policies that maintain a business environment with opportunities for growth and profits have made Malaysia an attractive manufacturing and export base in the region. The private sector in Malaysia has become partners with the public sector in achieving the nation's development objectives. Certainly the Malaysian trade unionism, besides the labour relations has largely been shaped by legislation and executive action. The development of labour legislation was primarily dictated by the intense concern of the government to achieve the status of a fully developed industrials country by giving more opportunities for foreign direct investment. Unfortunately only about 8 per cent of the total workforce is unionised. Unions try to maintain independence from both the government and political parties, but government control is pervasive, even extending to the internal affairs of a union. Malaysian Trades Union Congress (MTUC), which covers both private and public sectors and has 500,000 members, is not recognised as a trade union confederation in law. Instead, the MTUC is registered under the Societies Act, and therefore does not have the right to conclude collective bargaining agreements, nor to undertake industrial action, but provides technical support to affiliated members. In the name of globalisation, many MNC's are adopting dubious and unethical means to evade union recognition and refuse to bargain with the union. Many MNC's are also using the judicial review as a way to cause protracted delay in settlement of industrial disputes which also contribute to the low in union density in Malaysia.

Introduction : MNC's outlook in general in Malaysia

Malaysia ranks as among the world's top 20 attractive countries for foreign direct investment (FDI), according to the World Investment Prospects Survey 2007-2009 FDI by the United Nations Conference on Trade and Development (UNCTAD). The two largest Asian economies- China and India emerged in the top two positions, followed by the US, Russia, Brazil, among the top five destinations. Among the Southeast Asian countries, Malaysia was the third favourite FDI location, after Vietnam and Thailand, which was placed 6th and 12th in the overall ranking. (*Source: www.mida.gov.my 10 October 2007)*

Multinational corporations from more than 60 countries have invested in over 3,000 companies in Malaysia's manufacturing sector, attracted by the conducive business environment which has made the country one of the world's top locations for manufacturing and service based operations. Many of them have re-invested in multiple projects.

With the country's strong info structure and infrastructure, a will educated and multilingual work force, large foreign companies and many multinational make multinational corporations(MNCs) found Malaysia to be an attractive services. Currently 1052 regional establishments were approved, which included 67 Operational Headquaters, 182 International Procurement Centres, 29 Regional Distribution Centres, 579 representative offices and 195 Regional Offices. The main sources of foreign investment were from USA, Germany and Japan.

Part 1: Economic and Government's Policies - MNC's strategies concerning trade, foreign direct investment and taxation of state revenues.

Malaysia is a country on the move. From a country dependent on agriculture and primary commodities in the sixties, Malaysia has today become an export-driven economy spurred on by high technology, knowledge-based and capital-intensive industries. The structural transformation of Malaysia's economy over the last 40 years has been spectacular. Often dubbed the "lucky country" because of its wealth of mineral resources and fertile soils, Malaysia did not rest on its laurels but took decisive steps to progress from an economy dependent on agriculture and primary commodities to a manufacturing-based, export-driven economy spurred on by high technology, knowledge-based and capital-intensive industries.

The mid-1997 economic and financial crisis which hit several countries in the Asia Pacific Region and caused a currency crisis and stock market crash in Malaysia, provided further proof of the strength and resilience of the Malaysian economy. Within less than two years, helped by selective exchange controls and the pegging of the ringgit, Malaysia bounced back and went on track towards economic recovery.

The increasing trend of outsourcing of core as well as non-core activities by large MNCs, open greater investment opportunities in the provision of support The increasing trend of outsourcing of core as well as non-core activities by large MNCs, open greater investment opportunities in the provision of support services. Malaysia continues to enjoy healthy surplus in the external trade, low unemployment as well as strong international reserves and high national savings. (*Source: www.mida.gov.my 14 October 2007)*

Government's policies

Government policies that maintain a business environment with opportunities for growth and profits have made Malaysia an attractive manufacturing and export base in the region. The private sector in Malaysia has become partners with the public sector in achieving the nation's development objectives.

A major factor that has attracted investors to Malaysia is the government's commitment to maintain a business environment that provides companies with the opportunities for growth and profits. This commitment is seen in the government's constant efforts to obtain feedback from the business community through channels of consultation such as regular government-private sector dialogues. These allow the various business communities to air their views and to contribute towards the formulation of government policies which concern them.

Liberal Equity Policy

Generally, foreign investors in Malaysia's manufacturing sector can hold 100% equity in projects which export at least 80% of their production. However, effective from 17 June 2003, 100% foreign equity holding is allowed for all investments in new projects, as well as investments in expansion/diversification projects by existing companies irrespective of their level of exports.

Attractive Tax Incentives

Malaysia's company tax rate is attractive at 27%-2007; 26%-2008 and further cut to 25% in 2008 is applicable to both resident and non-resident companies. Malaysia also offers a wide range of tax incentives for manufacturing projects under the Promotion of Investments Act 1986 and the Income Tax Act 1967. The main incentives are the Pioneer Status, Investment Tax Allowance, Reinvestment Allowance, Incentives for High Technology Industries and Incentives for Strategic Projects and Incentives for the Setting-up of International/ Regional Service-based Operations permanently filled by foreigners.

In addition to that, single-tier tax system will be effective from the year of assessment 2008. Profits are only taxed at the company level and dividends received are exempted from tax. Eventually its encourage long term investment in equalities, particularly in companies that declare generous dividends.(*Star 8 September 2007*)

Employment and labour market

Malaysia offers investors a young, educated and productive workforce at very competitive costs. Malaysia's literacy rates are high at more than 94% and school leavers entering the job market have at least 11 years of basic education.

Malaysia offers investors a young, educated and productive workforce at costs competitive with other countries in Asia. Backed by the government's continued support of human resource development in all sectors, the quality of Malaysia's workforce is one of the best in the region. Literacy levels are high at more than 94% and school leavers entering the job market have at least 11 years of basic education. In addition, labour productivity has grown steadily at more than 3.3% per annum over the last few years surpassing that of many developed countries.

Industrial Training

In 1993, the Human Resource Development Fund (HRDF) was launched by the government to encourage training, retraining and skills upgrading in the private sector. Employers, in the manufacturing and service sectors who contribute to this fund are eligible to apply for grants to defray or subsidies the costs incurred in training and retraining their workforce.

The National Vocational Training Council under the Ministry of Human Resources coordinates the planning and development of a comprehensive system of vocational and industrial training programmes for all public training agencies. It also develops the National Occupational Skills Standards (NOSS) on a continuous basis. To-date, there are more than 700 standards covers certificate, diploma and advanced diploma qualifications. Besides the increasing number of public training institutions such as technical schools, polytechnics, industrial training institutes and skills development centres to meet the growing requirements of the industrial sector, collaborative efforts between the Malaysian government, enterprises and foreign governments have resulted in the establishment of several advanced skills training institutes such as the German-Malaysian Institute, Malaysia France Institute, Japan Malaysia Technical Institute, British Malaysia Institute and Malaysian Spanish Institute.

Infrastructure development

Developed Industrial Parks

Industries in Malaysia are mainly located in over 200 industrial estates or parks and 13 Free Industrial Zones (FIZs) developed throughout the country. New sites, fully equipped with infrastructure facilities such as roads, electricity and water supplies, and telecommunications, are continuously being developed by state governments as well as private developers to meet demand.

FIZs are export processing zones which have been developed to cater to the needs of export-oriented industries. Companies in FIZs are allowed duty free imports of raw materials, components, parts, machinery and equipment directly required in the manufacturing process. In areas where FIZs are not available, companies can set up Licensed Manufacturing Warehouses (LMWs) which are accorded facilities similar to those enjoyed by establishments in FIZs.

Part 11 : Industrial Harmonies and Challenges for Trade Union

- **Violation and Lack of law enforcement**

Only about 8 per cent of the total workforce is unionised. Unions try to maintain independence from both the government and political parties, but government control is pervasive, even extending to the internal affairs of a union. Malaysian Trades Union Congress (MTUC), which covers both private and public sectors and has 500,000 members, is not recognised as a trade union confederation in law. Instead, the MTUC is registered under the Societies Act, and therefore does not have the right to conclude collective bargaining agreements, nor to undertake industrial action, but provides technical support to affiliated members.

Union recognition extremely slow: Obtaining a response from an employer to a request for union recognition should take a maximum of 21 days. However, in reality this takes much longer if a dispute occurs, as it gets taken to the Director General of Industrial Relations (DGIR), the Director-General of Trade Unions (DGTU), then to the Minister of Human Resources, who has the final say, unless that is challenged in the High Court. The High Court is fairly limited, in practice, in its ability to overturn a previous decision. It is not uncommon for recognition claims to take between 18 and 36 months to settle, particularly if a dispute develops. MTUC noted that some applications are taking as long as three to five years.

Arbitrary refusal of union recognition by DGTU: MTUC had lodged a complaint to the ILO in September 2003, the MTUC listed cases over the previous 36 months in which the DGTU had arbitrarily denied organizational and collective bargaining rights to more than 8,000 workers in the manufacturing companies. At the end of 2006, the MTUC had listed many cases in which the DGTU had refused union recognition.

Employers' challenges to Ministerial orders for recognition of trade unions were often encountered, and numerous cases were pending at the High Courts and Courts of Appeal. The MTUC noted that anti-union employers, including multinational companies, are increasingly choosing this path in order to evade union recognition for five to seven years. In November, the government announced its plan to revise the Employment Act in 2008, ostensibly to provide additional flexibility to employers to retrench workers and to encourage greater foreign investment despite there has been increasing union-busting activity in MNC recently.

Limited social security for workers

- ***No minimum wage law***

Since Malaysia don't have minimum wage, MNC intend to recruit more foreign workers rather then local because they willing to work for longer hours and been paid very low.

There is no justification for the government to further delay the passing of a minimum wage legislation to be applicable to all workers. Many MNC employers take undue advantage of the absence of a minimum wage regulation to suppress wages. Hundred of thousands of workers are paid as low as RM400 per month. By enforcing a decent minimum wage government will be able to attract more Malaysian workers and reduce dependency on foreign labour.

- **Refusal on retrenchment fund**

The often unpredictable boom-recession cycle in economic affairs has made it extremely difficult for workers to plan their careers and the future of their families with any measure of certainty, as they do not know when they will be deprived of their livelihoods.

In many cases, both husband and wife who are breadwinners have been retrenched without prior notice at the same time. The impact of such uncertainty is more severe on workers who are in their latte forties or early fifties and have large families to support. They will find it difficult to secure alternative jobs during their advanced years upon being retrenched.

Given the greater emphasis placed on private sector participation in national economic activities, coupled with the downsizing of public sector involvement in infrastructure development and services, workers' fear for the unknown will not only become worse but will also severely affect their productivity. There is therefore a pressing need to set up a social safety net in order to cushion the impact of retrenchments on workers and their families. The MTUC proposes that a National Retrenchment Scheme be set up for this purpose.

Employers and workers should each require making a statutory contribution of RM1.00 per worker per month towards the Scheme. The contributions will grow at the rate of RM2.00 per worker per month, and contributions from the existing 5 million SOCSO members will be able to yield RM10 million a month, or RM120 million a year to the Scheme. This is another form of compulsory savings for workers, and will also help to increase national monetary reserves. Unfortunately it has been refused by the employer and workers are at their own dispend once has been retrenched until they found new job.

- **Trade union rights-migrant workers intimidated to not join trade unions.**

There are approximately 2.5 to 3 million migrant workers in Malaysia, 1.8 million of whom are documented. Migrant Workers (Close to 2 million as of September 2007) are prohibited from joining a trade union. The Ministry of Human Resources have declared that migrant workers can join a trade union in their workplace but the Immigration Department, which issues the work permit strictly prohibit migrant workers from joining an association; And employers impose a condition that they cannot join a trade union. The Labour Department has done nothing to rectify this conflicting policy.

Most migrant workers, who come from all over South East Asia and South Asia, work long hour, for very low pay, if any, and are often subject to verbal and physical abuse. The MTUC continually called for migrant workers to be given full rights to associate and form labour unions, and continued to advocate for that right. The system for registering migrant workers also discourages workers from asserting from their rights because it grants total discretion to employers to terminate workers for virtually any reason.(ITUC annual survey of violations of trade union rights 2007)

- **Efforts and Progress made in realising the Principle and Right**

The Malaysian Cabinet in 1988 lifted the ban on unionisation in the electronic sector but restricted union registration to in-house unions, following the successful lobby by the American Semiconductor Multinational companies in Malaysia. The Cabinet through The Human Resources Minister have instructed the DGTU to grant only In-House unions in the electronic sector. This is the follow-up of the DGTU's ruling in 1976, that electronic and electrical are two separate sectors, thereby effectively baring the electronic workers from joining the established Electrical Industry Workers Union (EIWU).

In 1989, the first in-house union formed was deregistered following a High Court decision. In this case the Company changed its business registration number. The court ruled that the company became a "separate establishment". The union became defunct. The Union's appeal to the Court of Appeal was dismissed with cost in 2004. In 2005 the DGTU deregistered the in-house union quoting the court decision.

The union was de-registered NOT in pursuance of Trade Unions Act 1959. (Refer 2007 AR – According to the Government). Following the de-registration, workers representatives set up a protem committee to form the Electronics Industry Employees Union (EIEU), in 2005 but was rejected by the DGTU on technical grounds in 2007. The protem committee forwarded another application to the DGTU which is awaiting registration by the government since July 2007.

The MNC's set up shop in Malaysia in 1974. It has been 30 years (going into the second generation) of workers without a national union. In the past 36 months the DGTU has arbitrarily denied organizational rights and rights to collective bargaining to more than 8000 workers from the following manufacturing companies: In these companies, unions had accepted members but based on objections raised by employers, the DGTU ruled that the unions are not permitted to represent and as a result the unions' right to collective bargaining was denied.

Below is the list of MNCs companies which refuse the formation of union

Metal Industry Employees Union

(1)	Ueda Plating (M) Sdn. Bhd.	60 members
(2)	Hiroshige (M) Sdn. Bhd.	713 members
(3)	Diamet Klang (M) Sdn. Bhd.	96 members
(4)	Soritsu Technology (M) Sdn. Bhd.	135 members
(5)	Kobe Precision (M) Sdn. Bhd.	160 members
(6)	Kawamura (M) Sdn. Bhd.	67 members
(7)	NSK Micro Precision (M) Sdn. Bhd.	294 members

National Union of Petroleum & Chemical Industry

(8)	Shin-Etsu Polymer (M) Sdn. Bhd.	1158 members
(9)	SNC Industrial Laminates Sdn. Bhd.	268 members
(10)	W.R. Grace Specialty Chemical (M) Sdn. Bhd.	51 members
(11)	Ryoka (M) Sdn. Bhd.	272 members
(12)	Takahata Precision (M) Sdn. Bhd.	494 members

Electrical Industry Workers Union

(13)	Mitsumi (Segamat) Sdn. Bhd.	1079 members
(14)	Matsushita Electronics Corp (M) Sdn. Bhd	1670 members
(15)	Malaysian Appliance Components Sdn. Bhd. (General Electric)	334 members

Even in situations where the DGTU has ruled infavour of the unions the following employers cited the restrictive provisions of the trade union act to challenge his decision at the High Court and Court of Appeal :

(16) Top Thermo Manufacturers Sdn. Bhd.
(17) Senju Metal Industries Sdn. Bhd.
(18) Kiswire Malaysia Sdn Bhd.
(19) Pacific Quest (M) Sdn. Bhd.
(20) Dipsol Chemicals Sdn. Bhd.
(21) Syarikat Marulee (M) Sdn.Bhd.
(22) White Horse Ceramic Industries Sdn. Bhd.

Pending a decision of the Court more than 2000 employees from the above named companies are denied the right to collective bargaining.

In the name of globalisation, many MNC's are adopting dubious and unethical means to evade union recognition and refuse to bargain with the union. Many MNC's are also using the judicial review as a way to cause protracted delay in settlement of industrial disputes.

Japan-and Korea based multinational corporations(MNCs) have demonstrated vehement opposition to trade unions. Japanese employers successfully persuaded the authorities Director General of the Department of Trade Unions to remove more than 3000 workers from union membership. Industrial unions organising in metal, electrical, chemical and non-metallic mineral products were denied union recognition despite majority representation. Japanese MNCs also avoiding union recognition by filing challenges in the High Court, which often drag on for three to five years. (ICFTU, annual survey of violation of Trade union rights 2003)

In other cases, in 2006 the DGTU turned down a recognition claim by the National Union of Petroleum and chemical industry workers at four companies of the Kaneka group. The company's refusal to recognize the union and the slowness of official procedures meant the application had dragged on for five years, by which time many of the original union members had left. Hence the union no longer had enough members to be recognized.

Specific Case on MNCs' behavior in Malaysia
British American Tobacco(BAT) an United Kingdom based and Japan based Company- Top Thermo Manufacturing(M) Sdn.Bhd.

1. **BAT on a Union Busting Mission**

British American Tobacoo has launched a series of activities to kill the 44 years old BAT Employees' Union which represent 629 employees of the company. The company has categorized Production Technicians as Process Specialists and denied them the right to union membership. In a complaint to the DGIR, union stated that apart from the change of designation, their duties remain substantially unchanged. They still operate production machines. They have given them a salary increase because their workload has increased as a result of reduction of number of workmen.

Whilst the DGIR is still carrying out investigations to ascertain the status of seventy redesignated Production Technicians on 9th January 2007, company informed the union that all 200 sales and promotion personnel will no longer be covered under the collective agreement.

BAT has also announced plans to outsource a number of core traditional activity which will make the position of boileman, chargeman, electrician and others redundant: and 109 employees will be retrenched. Therefore unions membership been reduced by 60%. The president and most of the members of the union executive committee can no longer be members. BAT's action is clearly intended to weaken and kill the in-house union.

Certainly, BAT Employees' Union's hope for justice was shattered when Human Resources Minister Dato Fong Chan Onn ruled that the company's decision not to allow production workers to continue their union membership was correct. Minister's decision clearly demonstrates the power and influence of large multinational corporations in the country.

Subsequently, on February 28 several long serving technical and maintenance service employees were denied entry into the factory compound by the security guards without any prior notification. All of them had earlier refused company's call to leave through a voluntary separation scheme. Following union's strong protest, company has directed all the eight employees to stay at home on paid leave until end of March. Action by the company shows that these employees will be terminated under the pretext of retrenchment.

BAT has now requested another company to take over the maintenance service, who have brought in their own crew. MTUC has requested the Director General of Human Resources to urgently intervene to stop the termination. On the 10 October 2007, MTUC submitted a complaint to the ILO and OECD.

Nature of complain against the company:

- Unfair labour practice and anti Union activities
- Union busting activities
- Failure to commence Collective Bargaining with BATEU
- Background-The British American Tobacco Employees Union is a trade union of workmen, duly registered under the Trade Union Act 1959 to represent employees in British American Tobacco (Malaysia) Bhd and its subsidiary companies.
- British American Tobacco (M) Bhd is a subsidiary of UK based British American Tobacco PLC.

Summary of the Violation by Top Thermo Manufacturers(M) Sdn Bhd.

Likewise BAT, the Top thermo manufacturing (M) Sdn. Bhd is a Japanese based company also practiced the union busting tactics. It has been extremely uncooperative and going to great length to deny their employees the right to be represented by union. In four years of the workers joined the industrial union the company has been:

- Dismissed the organizer;
- Openly adopted discriminatory practices against union members;
- Refused to extend cooperation to Human Resources Ministry officials;
- Obstructed the process of recognition;
- Refused to accept the departments ruling on membership scope of the Metal Industry Employees' union;
- Continue to defy the human resources Minister's order to recognize the union; and
- Has caused frustration and delay by abusing the legal process.

Conclusion

As a whole it can be described that the MNC has played a paramount role toward employment trend in Malaysia specifically toward the growth of inhouse trade unions' which attributed to low union density. Apart from that it can be summaried by saying that many issues now facing by the labour movement, and pose a great challenge to its ability to protect workers' interests. These issues include:

- Power and influence of multinational corporations (MNCs) coupled with their strong anti-union stance, since the 1970s. These have restricted growth and influence of trade unions, removed well-established minimum standards, blocked minimum wage legislations, weakened collective bargaining and flooded the labour market with foreign workers.
- Trade liberalisation and deregulation arising from globalisation and competition
- Implementation of technology without due regard to implications on workforce.

- Core labour standards and non-ratification of Convention 87 on Freedom of Association and the Right to Organise and bring relevant legislation, policy and practices in line with the letter and spirit of Conventions 87 and 98.
- Sub-contracting/outsourcing jobs become trend among MNCs also contribute to weaken the union movement and fragmentation at the union level.
- Unfavourable national labour laws, excluding trade unions from many economic activities
- Bargaining power and influence of MNCs has tremendously increased. Argument by MNCs is that labour standards and workers' rights' clauses will drive away investors.
- On-going process of massive restructuring, mergers and acquisitions, especially by the MNCs, and the constant downsizing have led to deteriorating employment, working and living conditions across the globe.
- Traditional work systems are changing, with increasing focus on flexibility
- Restructuring, leading to flatter organizations and work intensification
- Environmental protection
- The harmful **"**race to the bottom**"** competition and cost-cutting measures by unscrupulous employers. The consequence: precarious jobs
- More women are joining the workforce; exposure of women to discrimination, low wages, sexual harassment and poor working conditions.
- Violations of trade union rights.