

APPENDIX

ISSUE PAPER

Reducing Unnecessary Regulatory Burdens (RURB)

An Independent Review of Malaysian Logistics

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FOREWORD FROM GOH SWEE SEANG

I was asked by The Director General of MPC to carry out this study on reducing unnecessary regulatory burdens in the logistics industry as part of the regulatory review initiatives of MPC under the Tenth Malaysia Plan 2011-2015.

I am very conscious that this is the first time such a regulatory review has been undertaken for this particular sector and this is in the early stage of review. While much of the information about the sector is not yet well established, the review offers the opportunity to make recommendations at a formative stage of modernising regulatory environment of logistics. I intend using the Terms of Reference (Annex A) as a framework to allow me to take a broad look at all aspects of the logistics regulatory regime.

Any review can of course only be as good as the quality of the information on which it is based. In carrying out this review, I therefore hope that everyone who is in the position to provide me with relevant and robustly-based information will do so. I will use this to formulate options and make recommendations on how to reduce unnecessary regulatory burdens in your business activities.

Thank you in advance for your help.

Goh Swee Seang

INTRODUCTION

1. The Malaysia Productivity Corporation (MPC) has appointed Goh Swee Seang to undertake the review on how to reduce unnecessary regulatory burdens (RURB) in the Malaysian logistics industry.
2. The Tenth Malaysia Plan 2011-2015 has mandated MPC to review all business regulations with the aim of modernising the Malaysian regulatory environment.
3. This Issue Paper is to spread the word that the review is being conducted and to ask stakeholders in the logistics business to provide information. The information collected will be used to inform the Government on the options to improve existing regulations and/or regulatory practices.

ABOUT THIS ISSUES PAPER

Who is this Issues Paper aimed at?

4. This Issues Paper is aimed at logistics business stakeholders who have information and experience in regulatory affairs relating to logistics. This review will cover any issue relating to the existing regulations, the regulatory regimes and compliance with the requirements.
5. We are interested in everyone's views, so please provide as much information as you can on the questions asked in this review. We know that people and businesses will have different experiences in regulatory compliance at this stage, so do not feel you have to answer the questions that are not relevant to you, for example where you do not have personal experience. We would welcome any other views not raised in the questions.
6. We have sent this Issues Paper document to many people and organisations but may not have reached everyone who may be interested in this area. Please share this document with, or tell us about anyone you think will want to be involved in this review.

Purpose of the Review

7. The review will analyse the regulatory environment of the logistics industry and formulate options to reduce unnecessary regulatory burdens (RURB). The options will then be submitted to the Government through various committees such as PEMUDAH, Malaysian Logistics Services Council (MLSC) and Malaysia Services Development Council (MSDC) for their response and action. The review

is advisory only and it is up to the Government to decide which of the options it will adopt and implement.

Scope for the Review

8. This review applies to all states of Malaysia. This will cover the logistics players, their supporting services and their customers.
9. We define **logistics** here as the process of planning, implementing, and controlling the efficient, effective flow and storage of goods, services, and related information from point of origin to point of consumption for the purpose of conforming to customer requirements. This definition shall include inbound, outbound, internal, and external movements, and return of materials for environmental purposes.

Duration on the Review

10. This review commences with a period of collecting information from interested parties and other sources which begins on March 2015 and runs until end of May 2015. After this information has been assessed and researched, a draft report will be released later in the year.

HOW TO RESPOND

11. We shall be organising focus group meetings with your trade associations in month of April 2015 to discuss and gather issues relating to unnecessary regulatory burdens to the logistics industry. We shall send the invitation to your trade associations on the meetings.
12. Should you wish to have a one-on-one meeting on this review, please contact us to fix a date and time. We would be pleased to meet you at your convenience.
13. Should you wish to write your response to us, please email us at ruslina@mpc.gov.my or mohdzulkify@mpc.gov.my
Please ensure your response reaches no later than 1st June 2015. We will acknowledge your response.

Queries about this Issues Paper

14. Please direct any queries about this Issues Paper to:
Phone: 03 – 7960 0173 (Ms. Ruslina *and/or* Mr. Mohd Zulkify)

Fax : 03 – 7960 0211

Email : ruslina@mpc.gov.my or mohdzulkify@mpc.gov.my

Appreciate if you indicate your interest to this notification using the **EXPRESSION OF INTEREST** form attached (Annex 2).

Confidentiality

15. The information from you may need to be passed to colleagues within MPC, published in a summary of responses received and referred to in independent report. However, individual names will be kept confidential and will not be published in the report. We will acknowledge your organisation with your consent.

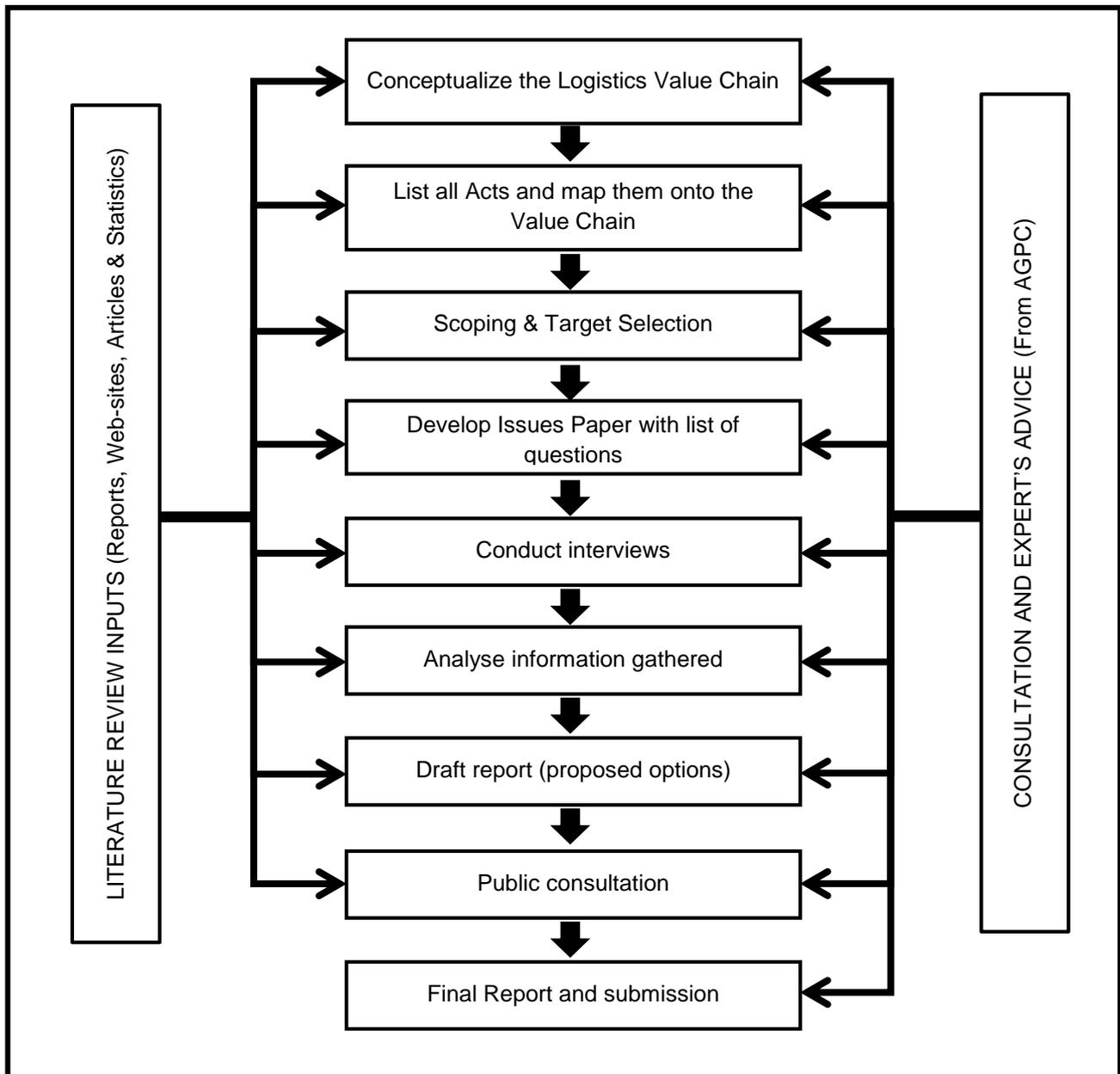
WHAT HAPPENS NEXT?

16. The RURB project timetable is as follows:

- Preparation of Issues Paper and data collection from March to May 2015
This will include:
 - A literature review
 - Formulate a set of questions
 - Focus group discussions with stakeholders
 - Interviews with stakeholders
 - Discussions and verifications with regulators/authorities
- Analysis and interpretation of information/data beginning in June and completing in September 2015. This includes the data analysis, options development, consultation with logistics players/experts, testing of options with regulators/authorities
- Preparation of publication of final draft report for public consultations will take place between October and November 2015. This will cover:
 - Public consultation to obtain feedback on options and other views
 - Present recommendations to various committees for decisions
- Preparation and submission of final report in January 2016.

Summary of the Review Process

17. The RURB process is summarised in the schematic diagram below. You can refer to other RURB reports on the MPC website to see how this review process has been used in other reviews.



CONTEXT

What is a Regulatory Burden on Business?

18. Regulatory burdens arise from the costs imposed by regulation and its enforcement that would otherwise not arise for businesses. Regulatory requirements create a change in business behaviour and practices and can adversely impact on businesses in various ways. These costs or impacts include:
 - a. Administrative and operational requirements such as reporting, record keeping, getting legal advice and training
 - b. Requirements on the way goods and/or services are managed and handled, such as prescriptions on transportation and handling methods, occupational registration requirements, requiring professionals to use particular techniques
 - c. Requirements on the characteristics of what is transported or handled, such as dangerous and restricted goods
 - d. Lost opportunities due to prohibitions, such as ban on import/export of certain goods.

Unnecessary Regulatory Burdens

19. While it is usually necessary that some burden is placed on business for regulation to achieve objectives, where regulation is poorly designed or written, or it is not administered or enforced well, it may impose greater burdens than necessary. In reviewing existing regulation, it is those regulatory burdens which can be considered '**unnecessary**' that are of primary interest.
20. The common types of regulatory burdens experienced by business are as follows:
 - a. Excessive coverage by a regulation – that is, the regulation affects more activity that was intended or required to achieve its objective
 - b. Subject-specific regulation that covers much the same issues as other generic regulation
 - c. Prescriptive regulation that unduly limits flexibility such as preventing businesses from:
 - i. Using the latest technology
 - ii. Making changes to better meet customer demand
 - iii. Meeting the underlying objectives of regulation in different ways
 - d. Overly complex regulation
 - e. Unwieldy licence application and approval processes, excessive time delays in obtaining responses or duplicative information requests

- f. An overlap or conflict in the activities of different regulators
 - g. Inconsistent application or interpretation of regulation by regulators.
21. It is important to note that the relative burden placed on small businesses may be greater than that imposed on larger businesses as they may have to devote proportionately more effort to achieve equivalent compliance. They may also be disadvantaged where regulations are anti-competitive.
 22. You can read more on this from: *A Guide to Reducing Unnecessary Regulatory Burdens: A Core Concept*. This booklet can be downloaded from www.mpc.gov.my

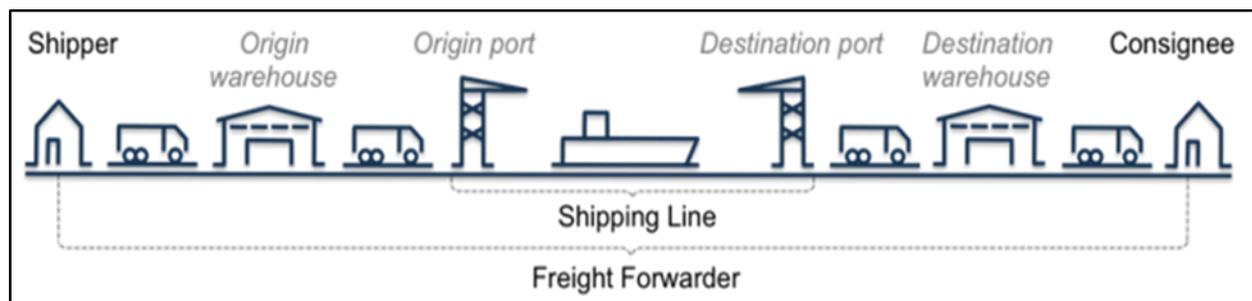
REGULATION AND POLICY

23. The study will address both written regulation and its implementation by regulators. Written regulations cover primary and secondary legislative instruments (gazetted Acts and Regulations) and quasi regulation such as guidelines, standards, circulars, written instructions, procedures and forms, etc.
24. The implementation of written regulation is frequently neither effective nor efficient. It will be wrong to assume that once a regulation is approved everyone complies, or that regulators administer and enforce the written regulation.
25. How regulators implement regulation crucially influences whether it achieves the Government's intended policy objectives and the compliance costs imposed on business.
26. However when regulators follow best practices, they are likely to implement regulation effectively and efficiently. These practices include:
 - i. uses risk analysis to identify areas of intrinsically potentially high adverse impacts and/or possible low compliance
 - ii. maximises the potential of voluntary compliance
 - iii. uses a range of enforcement instruments flexibly in order to respond to different types of non-compliance as in responsive regulation
 - iv. applies regulations consistently across businesses and industry sectors
 - v. displays sufficient transparency to enable business to know the requirements of the law
 - vi. maintains an on-going dialogue between government and the business community
 - vii. have sufficient accountability to enable business to question and appeal decisions and to address possible cases of corruption

- viii. monitors compliance in order to assess the effectiveness of enforcement activities
- ix. is adequately resourced and has the skills to be able to fulfil its responsibilities

PRINCIPAL LOGISTICS REGULATION

27. There are many players involved in the transportation of goods, in particular, between countries - the import-export logistics chain. This international logistics chain involves basically five physical and two documentation steps, starting from the shipper (goods exporter) to the consignee (goods importer).
28. Costs and time (delays) are key factors in the supply chain. Costs that are incurred in these steps and have to be borne by either the shipper or the consignee. The figure below illustrates the physical steps of transportation in this primary logistics chain for land-sea transportation of goods.



29. The regulation of logistics and its related businesses in Malaysia is administered by different ministries and agencies. The governing regulations and the principal regulators on the primary logistics chain are as shown in the table below (*Note that this listing is not exhaustive*).

Businesses	Acts, Regulations & Licences	Regulators
Shippers & Consignees	<ul style="list-style-type: none"> • Promotion of Investment Act 1986 • Industrial Coordination Act 1975 • Customs Act 1967 • Goods and Services Tax Act 2014 • Acts governing imports and exports 	Permit Issuing Authorities Examples: MITI, AELB, SIRIM, MIMA etc.
Forwarding Agents	<ul style="list-style-type: none"> • Customs Act 1967 • Goods and Services Tax Act 2014 • Companies Act, 1965 • International Integrated Logistics Services (IILS) Licence 	Customs, SSM, MOT
Hauliers & Transporters	<ul style="list-style-type: none"> • Road Transport Act 1987 • Commercial Vehicles Licensing Board Act 2010 • Land Public Transport Act 2010 • Land Public Transport Regulations (2011/2013/2014) • Suruhanjaya Pengangkutan Awam Darat Act 2010 • Companies Act, 1965 	MOT, SPAD, RTD(JPJ), Puspakom
Railways	<ul style="list-style-type: none"> • Railway Act 1991 	MOT, KTM
Warehousing LMW	<ul style="list-style-type: none"> • Customs Act 1967 • Goods and Services Tax Act 2014 • MIDA Act 1965 • Dealing with Construction Permits • Ordinary Warehouse Licence • Certificate of Completion and Compliance (CCC) • Public Bonded Warehouse Licence • Private Bonded Warehouse Licence 	MIDA Local Authorities Customs
Ports Operators	<ul style="list-style-type: none"> • Customs Act 1967 • Goods and Services Tax Act 2014 • Port Authorities Act 1963 • Ports (Privatisation) Act 1990 • Bintulu Port Authority Act 1981 • Johor Port Authority By-Laws 2011 • Kuching Port Authority By-Laws 1961 • Kuantan {Port Authority By-Laws 1980 • Penang Port Commission Act 1955 • Port Klang By-Laws 2012 	Marine Department Customs Ports Authorities
Free Zones Operators	<ul style="list-style-type: none"> • Customs Act 1967 • Free Zone Act 1990 • Exclusive Economic Zone Act 1984 • Construction Permits (Local Authorities Act) 	MOF Local Authorities
Ships Operators	<ul style="list-style-type: none"> • Langkawi International Shipping Registration Act 2006 • Carriage of Goods by Sea Act 1950 • Federation Light Dues Act 1953 • Maritime Act 2004 • Merchant Shipping Ordinance Act 1952 • Federation Light Dues Act 1953 	MOT MMEA

QUESTIONS

30. We would like to gather views, experience and feedback on your dealing with regulation. We would welcome any suggestions to improve the current regulations and regulatory practices. Below is a list of questions which we would like you to think through and provide us with your views and feedback.

- 1) Which regulations concern you the most? Why?
- 2) Which regulations are the hardest to comply with? In what way?
- 3) Which regulations do you think are too onerous given what they are trying to achieve?
 - What do you think of the current costs involved in getting your application to maintain your business?
 - How about the application's processing time? Which exact processing stage is the most burdensome to maintaining the business?
- 4) Do you think any regulations are not justified at all?
- 5) Are some regulatory requirements inconsistent?
- 6) Do you consider inspectors and other regulatory administrators do a good or a poor job? In what way?
- 7) Do you find inspectors and administrators are consistent in their decisions?
- 8) Do you find they are helpful or unhelpful in advising you how to comply? Are there any publicly available guidelines?
- 9) How long do regulators take to respond to applications, queries, etc.?
- 10) Do you have any suggestions for reducing the burden of compliance of regulations?
- 11) Are there any other issues you want to suggest we should cover in our review?

SOME ISSUES OF CURRENT INTEREST

31. In general, the country has not made purposeful effort to review existing regulations over the years. There exist regulations which may be deemed obsolete as they no more serve the original purpose. For example, the need for Interstate Transfer Permit for rice is questionable in our current state of development.

32. Customs in its gate-keeping role for import-export operations is frequently a bottleneck in the logistics chain. Importers and exporters frequently experience delays and burdens in customs clearance due to various reasons such as:
 - a. Tariff codes issues - HS Code for new parts
 - b. Different requirements by different Permit Issuance Agencies
 - c. Still not fully automated, industry estimates on 70% electronic
 - d. Dagangnet applications is not user friendly
 - e. Too much data-entry required for Customs compliance
 - f. New GST concerns
33. Permits Issuance Agencies contribute a big share of issues on import-export logistics. For example, some permits can only be applied from the head offices as the states offices are only doing enforcement duties. Also permits issuance is not in sync with business requirements for speed and timeliness.
34. The preference by some importers and exporters to use Singapore ports is testimony that many inherent problems exists in logistics regulations, whether they are on permits applications, Customs clearance, licensing applications, or information submissions. There are many underlining burdens in terms of additional overheads, delays, avoidable costs, and inconveniences due to poor regulations and the regulatory regimes.
35. We hope that you will be able give us clear pictures on these issues and other problems you face in logistics. It would be preferable if you can cite real-case examples, provide quantitative evidences and qualitative explanation on any issues raised.

Terms of Reference

Reducing Unnecessary Regulatory Burdens on Business: Logistics

1. What the MPC has been asked to do

The 10th Malaysia Plan has mandated the Malaysia Productivity Corporation (MPC) to carry out regulatory reviews in order to make it easier to do business in Malaysia. Towards this end, the MPC has embarked on reviews of existing regulations which primarily impact on the 12 National Key Economic Areas (NKEA). The NKEAs were chosen on the basis of their high growth potential. Although the logistics sector is not identified in the NKEA, its efficiency and growth directly impact on the NKEA sectors. This review process will draw on the expertise and perspectives of the public and private sectors to help identify key issues and the appropriate solutions.

2. Conduct of the review

The study will emulate the approach used by the Australian Government Productivity Commission (AGPC) and the team will be guided by a regulatory expert Ms. Sue Holmes. The team will select a sample of businesses from the logistics chain operating in Malaysia and across the National boundary. The team will interview the senior management personnel to identify the regulatory issues of concern. Based on the principles of good regulatory practices, the team will formulate feasible options for further deliberation. These issues and options will be subject to further consultation with relevant stakeholders in order to develop concrete recommendations that will reduce unnecessary regulatory burdens.

Interested parties are welcomed to participate in this review. You can contact the persons below on matters relating to this review.

Mr. Mohd Zulkifly Rawawi

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Email: mohdzulkifly@mpc.gov.my

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Email: mazrina@mpc.gov.my

EXPRESSION OF INTEREST**MALAYSIA PRODUCTIVITY CORPORATION (MPC)****REDUCING UNNECESSARY REGULATORY BURDENS IN LOGISTICS****Please complete and submit this form with your submission (if any):****By email** : ruslina@mpc.gov.my**By Fax** : (03) 7960 0206**Or mail to** : Malaysia Productivity Corporation (MPC)
A-06-01, Tingkat 6, Blok A, PJ8
No.23, Jalan Barat, Seksyen 8
46050 Petaling Jaya, Selangor**Principal contact (name)** : _____**Position** : _____**Organisation** : _____**Address** : _____**City** : _____ **Postcode** : _____**Telephone (off)** : _____ **Mobile** : _____**Email address** : _____**Please indicate your interest in this review:** ()i.) Would like to be interviewed by the MPC ()ii.) Would like to make a submission ()iii.) Be informed of development of study including receiving the draft report ()**Please describe your area of specialisation:**

This publication is available from www.mpc.gov.my

Any enquiries regarding this publication should be sent to:

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