6. Unnecessary regulatory burdens on petrol service stations

6.1 Quota of foreign workers

There are about 3291 petrol stations operating throughout the country. Depending on the size, petrol stations employ between 10-30 workers. Working at petrol stations is not just about manning the gas pump. In fact, most petrol stations in Malaysia practise self-service policy where motorists refuel their own vehicles. Apart from dedicated personnel at the payment counter and the NGV station, there are merchandising, toilet and general cleaning duties and maintenance work. As petrol stations are open everyday for twenty-four hours, the workers work on three eight-hour shifts.

Petrol stations in Malaysia have problems with hiring staff and experience a very high turn over of employees. There are more temporary than permanent staff. Temporary staff are usually students waiting for their SPM results and those on semester break. They are only available at certain times and only for short periods of at most a few months. Even permanent staff regard working at petrol stations as a stepping stone to something better.

The high turn over of staff causes administrative problems especially with regard to the Employee Providence Funds (EPF), the Social Security (SOCSO), the Income Tax Department (LHDN). As part of the employment requirement, they must be notified of any new hiring or termination.

Petrol station operators have resorted to hiring foreign workers, as it is difficult to attract local job seekers. Foreign workers are hired on a five year contract which is renewable. This solves the issue of high staff turn over.

6.1.1 Issues

Petrol station operators are in the dark over the quota of foreign workers. They are unclear how many foreign workers they can hire at one time and why some stations can hire more than others. There is no clear statement or guideline from the Labour Department (JKTSM) on the number of foreign workers for petrol service stations.

Few locals consider working at petrol stations on permanent basis. They do not find the renumeration very attractive even with the recently implemented minimum wage of RM900 in Peninsular Malaysia and RM800 in Sabah and Sarawak. They find the jobs rather physically taxing as they must be on their feet at all times. They are also selective in their duties preferring to work indoor as cashiers or supervisors. Petrol station operators have to depend on foreign workers to take up cleaning and maintenance duties and out door jobs such as manning the NGV station.

6.1.2 The objective of quota on foreign worker intake

Petrol station operators are encouraged to employ local workers. Therefore, imposing a quota on hiring foreign workers means job opportunity for local workers.

6.1.3 What are the impacts of these regulatory arrangements?

Petrol stations experience shortage of workers and have to make do with temporary staff. This is a burden to business since they have to continuously train new employees. Futhermore, the situation does not provide operational stability for the business.

6.1.4 Options to resolve the issues

1. Petrol station operators propose that the number of foreign workers be increased to at least 50% of the total workforce in order to provide stability to their daily operation.

2. Petrol service station operators also require a clear guideline from JKTSM on hiring foreign workers.

6.1.5 Recommendations

It is recommended that the Labour Department (JKTSM) look into the matter and issue a guideline on hiring foreign workers for petrol stations.

6.2 Operational licence for controlled goods

Approval for operating a petrol station is under the purview of the Ministry of Domestic Trade, Co-operatives and Consumerism (MDTCC) as stated in section 3A (2) of the Petroleum Regulations 1974.

Petrol station operators must also apply for a retail licence of controlled goods from MDTCC for selling petrol fuel; RON 95, RON 97 and diesel fuel as these items are declared controlled goods under the a *Petroleum and Electricity (Control of Supplies) Act 1974*.

Most petrol stations in Malaysia operate convenience stores that sell items which may include controlled goods declared under the *Control of supplies Act 1961* and Supplies Control Rules & Regulations, such as sugar, all purpose flour, and cooking oil. A single composite licence obtained from MDTCC allows the sale of petrol fuel and diesel fuel and any or several of these goods.

6.2.1 Issues

Rice is another controlled item sold at petrol station convenience stores but the retail licence must be obtained from the Ministry of Agriculture (MOA) rather than MDTCC.

6.2.2 The objective of retail licence for rice

The main objective for requiring retailers to obtain a licence to sell rice is to enable MOA to regulate the marketing of rice in accordance with the *Control of Padi and Rice Act 1994*.

6.2.3 What are the impacts of these regulatory arrangements?

Applying for retail licences from two different ministries is considered **duplication of regulations**. This causes inconvenience and unnecessary paperwork to petrol station operators.

6.2.4 Options to resolve the issues

1. The sale of rice is included in the composite licence issued by MDTCC.

2. Since petrol station operators are managed by the principal oil companies such as Petronas and Shell, MOA could award licences to sell rice to the principal companies instead of individual petrol stations.

6.2.5 Recommendations

The second option is preferred as it reduces tremendously the effort of managing the licensing.

6.3 Subsidised diesel management

Diesel is a subsidised item for vehicle consumption. Currently consumers pay RM2.00 per litre of diesel, while the Government tops up the difference between the market price and the consumer paying price. The Government spends about RM 24.8 billion in fuel subsidies annually. The majority of subsidies is for diesel rather than for RON 95. Currently the Government is subsidising RM0.80 for each litre of diesel.

6.3.1 Issues

MDTCC allocates a monthly quota of subsidised diesel to each oil company based on projected sales. The quota is divided among stations under the oil company based on their projected sale for that month. Each dealer must manage the sale of subsidised diesel to ensure that it is within the limit of the allocated quota. The dealer must also write an appeal to MDTCC via the oil company if the allocated quota is less than the projected sale of that month.

6.3.2 The objective of monthly quota of subsidised diesel

The reason for the quota allocation is to regulate and prevent abuse of subsidised diesel by consumers. Examples of such consumers are factories which are not eligible for subsidised diesel, those who buy diesel in unapproved containers and motorists who modified the fuel tanks of their vehicles to accomodate larger volume of diesel.

6.3.3 What are the impacts of these regulatory arrangements?

The current approach to regulating subsidised diesel is ***overzealous*** and not practical. Writing monthly appeals to MDTCC adds paperwork to petrol station dealers.

It must also be difficult for MDTCC to deal efficiently with the monthly written appeals from the many petrol stations as there are over 3000 petrol stations in Malaysia.

Petrol stations risk running out of subsidised diesel should MDTCC reject the appeal or give delayed response, as is often the case. This results in the affected dealer being heavily penalised by the principal oil company.

The logistics industry will be most affected in cases of diesel shortage (dry tank) at petrol stations***.*** Trailers, and other logistics transports won't be able to reach their destinations on schedule. This will lead to huge losses to the businesses that depend on the logistics industry. Ultimately, the country's economy will suffer.

6.3.4 Options to resolve the issues

1. Maintain the current practice
2. MDTCC could allow appeals for additional subsidised diesel to be made through an online system and respond quickly to such requests.

6.3.5 Recommendations

To enable effective action, option 2 is preferred.

6.4 Health, safety and the environment

Petrol stations are hazardous places because they store and sell a highly flammable liquid. Safety rules must be observed when filling up fuel at petrol stations to prevent potentially fatal accidents. Notices on safety such as “No Smoking”, “Switch-off Engine, ‘’Turn-off Handphone” signs are clearly displayed.

6.4.1 Issues

Many customers tend to flout safety rules at petrol stations, such as by smoking or leaving the vehicle’s engine switched on when refueling. It may be due to ignorance in some cases, but **poor enforcement of the regulations** also encourages these customers not to adhere to safety rules. Some of them become aggressive when advised by employees. Sometimes employees suffer physical abuse by these customers when service is refused.

There is no standard of procedure (SOP) in dealing with customers who flout safety rules. Apart from giving them a warning and refusing to serve them, there is not much that can be done. Lack of enforcement emboldens these law breakers because they know they can get away with it.

6.4.2 The objective of safety rules

The main objective is to protect the health and safety of people at the petrol stations especially during refueling, and potentially those living or working nearby.

6.4.3 What are the impacts of these regulatory arrangements?

The health and safety of customers and employees are at risk. Employees face verbal and physical abuse when they attempt to uphold safety rules.

It is a difficult situation for petrol station dealers. The onus is on them when customers flout safety rules. However, the well-being of the employees are also uppermost.

6.4.4 Options to resolve the issues

The followings are options to resolve the issues:

1. SOP that enables immediate action on law breaking customers as well as protect the employees from harm.
2. Enforcement of the law by the police through random inspection.
3. Public awareness campaign through the media.

6.4.5 Recommendations

It is recommended that option 3 be carried out while formulating option 1.

6.5 Abuse of subsidised diesel

Subsidised diesel is generally meant for domestic vehicle consumption. Land transportation companies are eligible for further subsidy of diesel for their commercial vehicles. Motorists must bring their vehicles to the station to be filled up. Customers are not allowed to purchase diesel by filling up containers such as barrels or drums.

Commercial enterprises such as factories are not eligible for subsidised diesel and have to pay the full price. The significant difference between the commercial and subsidised prices can lead to abuse of subsidised diesel. Examples include some enterprises trying to buy diesel at the subsidised price from petrol stations. Smuggling of illegally purchased subsidised diesel to neighbouring countries where the prices are significantly higher have also been reported.

6.5.1 Issues

Poor enforcement of the regulations results in some customers purchasing large amount of diesel at the subsidised price and then selling it to commercial enterprises for a profit. There are several ways this is done:

1. The vehicle's fuel tank is modified to accomodate larger volume of diesel

2. Additional container is used to purchase diesel

These customers can use intimidation to force petrol station employees into allowing them get away with the purchase.

6.5.2 The objective of these regulatory arrangements

The main objective of the policy is to minimise Government's loss via subsidy of diesel to unauthorised recipients.

6.5.3 What are the impacts of these regulatory arrangements?

- There is a substantial loss of Government's money because diesel is heavily subsidised.
- Employees fear for their safety if they refuse the customers' demand.
- Petrol station dealers risk being penalised by their principal oil companies and facing criminal charges for not preventing such transaction.

6.5.4 Options to resolve the issues

The following options are suggested as means to resolve the issue:

1. SOP that enables immediate action on law breaking customers as well as protect the employees from harm.
2. Swift enforcement by MDTCC. MDTCC enforcement officers could be stationed at selected petrol stations which record suspiciously high consumption of diesel.
3. Swift enforcement by police.
4. Limit the amount of diesel per transaction.

6.5.5 Recommendations

Option 4 is recommended as it is most effective and could be immediately employed.

Note: Response from MDTCC

MDTCC has decided on four steps to be implemented in its effort to prevent the abuse of subsidised diesel and petrol (Utusan Malaysia dated 29th June 2014) . The four steps are:

- A monthly sales quota of 600,000 litres of diesel and petrol will be imposed on all petrol stations in the East Coast of Sabah. This will affect 72 petrol stations in the area between Kudat and Tawau.
- As of 1st August 2014, approval for sales quota for each petrol station will be decided by the relevant state MDTCC instead of the principal oil company.
- Beginning 1st January 2015, it will be compulsory for oil tankers carrying subsidised diesel or petrol to be painted in standard blue and have a large written sign “Minyak Subsidi” on it. These requirements will be included in the approval letter for licence, PDA3 (approval for distribution of petroleum products). This is meant to prevent attempts to smuggle or make illegal sales of subsidised diesel and petrol.
- To prevent illegal sales of subsidised diesel and petrol, a limit of 500 litres will be imposed on the second application (additional quota) for “Fleet card” holders in the public transport category (school busses, express busses, mini busses, cars for hire, taxis). Applications for additional quota must be made to the relevant state MDTCC. Currently these “Fleet card” holders enjoy unlimited additional quota.

6.6 Unauthorised purchase of subsidised diesel by farmers

It is a regulatory requirement that subsidised diesel must be delivered to vehicles and not be collected in containers.

Smallholding paddy farmers use tractors to till their lands. As it is not possible to bring the tractors to the petrol stations, they want to purchase subsidised diesel in containers such as drums and barrels to take back to the farms.

6.6.1 Issues

Petrol stations make allowances for paddy farmers as they have no other means of getting their supply of diesel.

Preventing farmers from putting diesel in containers results in them not being able to obtain subsidised diesel for their tractors. On the other hand, allowing use of containers can result in abuse of the provision because the diesel may be sold to commercial enterprises.

Poor enforcement of the regulations is the main reason for the situation to continue.

6.6.2 The objective of these regulatory arrangements

The main objective in prohibiting the sale of fuel in containers is to prevent abuse of subsidised diesel.

6.6.3 What are the impact of these regulatory arrangements?

Petrol station dealers risk being penalised by their principal oil companies and facing criminal charges for allowing unauthorised purchase of subsidised diesel.

6.6.4 Options to resolve the issues

1. Maintain the current practice
2. MDTCC makes special allowances for farmers to make non-vehicle purchase of subsidised diesel based on their needs upon getting authorisation from MDTCC.

6.6.5 Recommendations

Adopting option 2 would be most practical. Farmers would not face any hardship and petrol stations operators would not be flouting the law.

Note:

MDTCC has verified that it has already implemented this option. However, it is likely that most farmers are not aware of such policy. Information on the policy should be accessible to the public in order for it to be effective. The followings are suggestions for the dissemination of information on the policy:

- MDTCC could make the relevant information on the policy available on its official website.
- MDTCC could seek the coorperation of relevant authorities such as the MOA and its agencies to ensure that farmers are well informed.

6.7 Time constraint in signing dealership agreement

The Fair Trade Practices Policy (FTPP) which was approved on 26 October 2005 contained elements to address unfair trade practices (box 6.1). The Fair Trade Practices Commission (FTPC) was set up to implement the policy. However, FTPP was modified in 2009 and became the *Competition Act 2010* which addresses only competition issues. FTPC is now known as the Malaysia Competition Commission (MyCC). The major change in the new policy is that there are no more provision to address unfair trade practices.[1]

Principal oil companies such as PETRONAS, Shell, and Petron appoint dealers to operate their respective petrol stations. Upon appointment, each dealer enters into a dealership agreement with the relevant principal oil company.

Box 6.1 **The Fair Trade Practices Policy (FTPP), 2005**

Objectives:

1. promote and protect competition in the market;

2. create dynamic and competitive entrepreneurs;

3. provide fair and competitive market opportunities for businesses;

4. prohibit anti-competitive practices including those originating from outside the Malaysian territory and affecting the domestic territory;

5. prohibit unfair trade practices in the economy;

6. promote rights of SMEs to participate in the market place;

7. promote consumer welfare; and

8. encourage socio-economic growth, generate efficiency and equity.

6.7.1 Issues

The principal oil company dictates the terms of the dealership agreement. The dealership agreement is made available to the potential dealer prior to signing. However, the potential dealer is not given sufficient time to study and understand the terms of the agreement. There is no opportunity for the potential dealer to seek legal advice due to the time constraint put upon by the principal oil company.

6.7.2 The objective of the dealership agreement

The objective of the dealership agreement is to legally bind the business arrangement between the dealer and the principal oil company.

6.7.3 What are the impacts of these regulatary arrangement?

Entering into a dealership agreement without fully comprehending its legal consequences puts the dealer at a disadvantage. This is considered unfair trade practices.

6.7.4 Options to resolve the issues

The following options are put forward to resolve the issue

1. Principal oil company allows the potential dealer access to the dealership agreement at least 48 hours prior to signing.

2. A standardised dealership agreement should be made available on the website of the principal oil company.

3. The government could re establish the Fair Trade Practices Policy to address unfair trade practices.

6.7.5 Recommendations

Option 2 is preferred as it is only fair to allow potential dealers the opportunity to study and understand the terms of the dealership agreement.

In the longer term, the Government could consider establishing trade practices legislation which ensures fair trading.

6.8 References

[1] *The Fair Trade Practices Policy*. Retrieved from the Malaysia Competition Commission (MyCC) website (22nd July 2014): http://mycc.gov.my/the-fair-trade-practices-policy-ftpp/