

**FIG Working Week 2012
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**LIBERALIZATION OF
THE SURVEYING
PROFESSIONS IN
MALAYSIA**

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Introduction

- Paper is a foresight when Malaysia liberalizes the surveying profession fully.
- Presently the profession is to certain extent liberalized
- In most probably, Probably due to lack of guidelines and policy, the profession & Malaysian public are yet to feel the full impact of the exercise.

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Questions on Liberalization in accordance to WTO

- Are we allowed to introduce the various requirements for
 - Surveying profession ?
 - local and foreign?
- Are they not contradicting with WTO requirements ?
- To what extent can we introduce the domestic regulations?
- Can the government provide assistance?

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Structure of Presentation

- Malaysia and WTO obligation
- Local scene of surveying profession
- Liberalization exercise so far
- Full Impacts of Liberalization on surveying profession

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Part One

Malaysia and WTO obligation

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WTO and Trade Liberalization

- Malaysia became World Trade Organization (WTO) member in 1995.
- Bound by WTO obligations and annexures
- One of them is GATS- General Agreement of Trade in Services
- Malaysia is to open her domestic market to foreign players
- By liberalizing any trade barrier which may include policies, laws, regulation, guidelines, bureaucracy, etc
- In this case- services sectors – surveying profession

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World Trade Organization

Objective

- Support open markets across international borders by negotiating agreements between member nations
- To remove restricting trade barriers.

*WTO DG:
Sunderland 1994*

Function

".....while their primary goal is to remove obstacles to free trade, rules must be transparent and predictable.

WTO acknowledges that free trade is not without conflict, and that to ensure economic development and well-being, there must be no "undesirable side effects."

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Benefits In Return

- Receive reciprocal treatment from other country members.
- Malaysia to
 - gain concessions in penetrating foreign
 - give locals chance in promoting goods & services abroad
 - Thus gain wider consumer market

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Ultimate Aim of Liberalization

- The enhanced, new market access and reduction of trade barriers would:
 - Bring in much needed investments
 - bring both physical and technological development
 - leading towards an overall better societal quality of life
 - reduce poverty.

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How & Where

- By liberalizing the trade barriers
- i.e MINIMIZE, REMOVE, IMPROVE WHATEVER
 - i. Regulations, Policies, Guidelines
 - ii. Bureaucracy &
 - iii. Processes
- Trade barrier are usually in form of quotas, equitable interests, subsidies, taxation or tariffs.

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Why?

- Trade barriers may eventually ;-
 - slow down the much anticipated developmental progress:
 - encourage protectionism
 - opportunities for trade are neither developed nor capitalized fully
- IN All, it reduces the efficiency of the world economy

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Practical Application

- In dealing and eliminating trade barriers.....
- country members do not necessarily need to remove
 - ALL or ANY regulations so much so there is none left
- OR
- Resulting to **NEGATIVE SIDE EFFECTS TO THE NATION**

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Definition

- LIBERALIZE.....
- to be more free, open , ease
 - By making the process easy whilst the regulations still stand

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Part Two

Local scene of surveying profession

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Malaysian Surveying Communities

- Government surveyors.
- Private licensed surveyor:
 - Categorized as either micro, small or medium size business organization (sole proprietor, partnership or Company)
 - Mostly family business
 - Their sources of capital mostly come from personal pockets, loan or re-investment.

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Break down of Land Surveying Professional in Malaysia

- 6000 members of a Surveying Institution (RISM).
- > 400 licensed land surveyors registered with Authorized Land Surveyors Association
- Breakdown of firms
 - Large firms < 1%
 - Mainly Small to Micro firms > 80 %
- Small and Micro firms mainly sole proprietor and partnership practices.

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Definition from SMIDEC for Services Industry

- Firm size definition:
 - Micro – less than 5 permanent staff with income < RM200,000.00
 - Small – between 5 to 19 permanent staff with income of RM200,000 – RM 1M
 - Medium – between 20 to 50 permanent staff with income of 1 M to 5 M
 - Large – more than 50 permanent staff with income of > RM 5 M
- ***SMIDEC means Small & Medium Industries Development Corporation

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Local Requirements to Practice Land Surveying

- To practice – Except for Government Surveyors, Professionals must register with the LS Board.
- Basic requirements:
 - Malaysian
 - Academically qualified or passes board examination.
 - Fulfilled Article-ship requirement
 - Fulfilled required years of experience
 - 21 year old and above
- Foreign professional requires approval from the Minister in-charge to practice locally.

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Source of Cadastral and Surveying Works

- Government Contract.
 - Jobs given on rotation basis by government agencies
- Individual private client.
- Land Developers.
 - consistently engaging trusted LLS
- Utilities, Oil and Gas companies.
- Foreign collaborations.

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Cadastral Surveying Business Cake

- Cadastral Surveying – ~ Malaysian Dollar (RM) 200 M based on deposited money by clients to the Land Surveying Board (LSB).
 - Simple average portion for ~400 practicing licensed land surveyors is ~ RM 0.5 M
 - Small compared to economy of country or world
- Figure **does not** include engineering surveying and other surveying fields involving licensed land surveyors locally or internationally

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Part Three

Liberalization exercise so far

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Liberalization of Trade Services

- Firstly to identify services sectors or sub-sectors and the modes of supply in which she is willing to liberalize.
- must stipulate the expected time line for the liberalization of identified sectors or sub-sectors in a process called "scheduling".
- Since 2005 till to date, more than thirty countries have requested Malaysia to liberalize or further liberalize for a wide range of professional services placed under the current commitments.

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Further Request For Liberalization

- To eliminate restrictions in additional sectors not committed under GATS such as on
 - limits on foreign equity,
 - intra-corporate transferees,
 - transparency of policies and
 - domestic regulatory procedures.

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Sectoral Commitment

- Malaysia continues to relax some of the policies in regard to professional services
 - foreign companies can now operate in Malaysia
 - Can work in the field of
 - accounting,
 - auditing, bookkeeping and taxation,
 - engineering services.
 - However they must work together with the locals through joint ventures or partnerships.
 - Their equity in the company should not exceed thirty percent.

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Significant Moves Towards Liberalization

- On 7th Oct, 2010, Prime Minister in his budget speech announced liberalization.
- To spur further private investment and accelerated growth.
 - Bumiputra (original inhabitants) equity holding policy was diluted
 - Previously it is a must for all companies to have a 30% Bumiputra equity holding - a 41 year old controversial policy (NEP)
 - considered by many as trade barrier.
 - 100% foreign equity allowed
 - in key sectors such as healthcare, education and professional services,

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Foreign Participations

- At ASEAN level agreements signed between member countries.
- Mutually Recognized Agreement (MRA):
 - G2G
 - Governments agreeing and accepting each others professionals to practice
 - Recognition of basic qualification
 - Parties need to agree and satisfy requirement sets by each party.

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Liberalization Existing Practices

- Foreign experts act as consultants
- Not as practitioner.
 - Local-foreign partnership would be the best option.
- Theoretically firms could have foreign equity with local licensed practitioners as directors.
- Local partners are required, this is to cater for liabilities and transparency since land title is infeasible.

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Liberalization of surveying-ASEAN Level

- MRA for Surveying Qualifications signed on 9 November 2007.
- No progress has been made since then.
- This is:
 - seen as first few steps towards a broader liberalization under the umbrella of "professional services"
 - In preparation for trade liberalization and to facilitate the mobility of surveying professions within the ASEAN region.
 - To allow and enable surveying professionals to work within and outside the territories and jurisdictions of their countries of origin

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MRAs at ASEAN Level

- MRA for Engineering Services (9 December 2005)
- MRA for Nursing Services (8 December 2006)
- Framework MRA for surveying qualification (9 November 2007)
- MRA for Architectural Services (26 February 2009)
- Framework MRA for Accountancy Services (26 February 2009)
- MRA for Medical Practitioners Services (26 February 2009)
- MRA for Dental Practitioners Services (26 February 2009)

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RISM Position on Liberalization

- Decision of Surveying Services Liberalization workshop on 15 December 2009 in Kuala Lumpur.
- The followings were RISM position:
 - Foreign equity limited to 49%
 - Practice only by registered/licensed persons
 - Practice via firms
 - Board of Directors majority by registered/licensed persons
 - Senior Management and Local Manager must be registered/licensed persons
- This position was put to all the various Surveying Boards for consideration. However, this position is not binding to the boards.

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Proposal by Other Professional Bodies

- Proposed Amendments to Architect Acts 1967, Registration of Engineers Acts 1967 and Quantity Surveying Acts 1967 (Act under control of Ministry of Work).
 - Allow 30% equity to **anyone** (including foreigners) and not confined to the relevant professions.
- However, Malaysia Institution of Architect, Malaysia Institution of Engineers and Royal Institution of Surveyors Malaysia stand:
 - Allow 30% to **allied professions** (including foreigners) and not just to anyone.

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Working Groups on WTO Issues

- Various working group set-up covering 11 sectors proposed the following on foreign equity limit:
 - 30% for professional services; accounting , engineering and etc.
 - 10% for Construction Services
 - 49% for telecommunications
 - 100% for computer services and etc.

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Part Four

Impacts of Liberalization on Surveying Profession

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Liberalization-Unlimited Scenario

- i. e 100% liberalization without any restriction
- Potentially micro and small local practices would succumb due to influx of competition from "better" counterpart overseas
 - **REASONS**
 - Better – financially strong,
 - technologically more advance,
 - efficient, better equipped and more resourceful.
 - Different work culture.-Malaysian are more laid back.
 - Market saturated and more competitive

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Disadvantages 1

- Local professionals may end-up working for foreign firms rather than for themselves.
- Majority of profits may go abroad.
- Defeat the idea of self-sustainability & financial independence
- Worst scenario - Owner living abroad with local professionals running the show.
 - Indicates business interest, profits and personal convenience take precedent over professional concerns, safety, quality and professionalism.

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Disadvantages 2

- Legally dangerous for the host country, end users and public. In the event of breach of professional duties or contractual obligations, the consumer and public would have difficulties in tracking and pinning down the real owner or litigate the matter in court.
- It involves tricky legal issues on conflict of laws, jurisdiction and enforcement of the court order, if any.
- Wealth would not be distributed evenly amongst practitioners
- Small or micro local practices may closed.

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Disadvantages 3

- The Reciprocal scenario may not work.
- Small and micro practices do not have the adequate or necessary resources to export services.
- They may not be able to satisfy the conditions set by foreign government.
- Will this safeguard the national interest or disadvantage the host?

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Disadvantages 4

- Question of integrity
 - Without clear guideline or regulations any one with economic and financial capabilities inclusive individual business man and non-professional surveyor could also operate or offer surveying services locally.
 - Leading & exposing the public to presumably reduced standards of practice and quality as usually demanded from a professional surveyor.
- Question of accountability
 - Whom and where should the public claim for compensation in events of legal infringement .

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Disadvantages 5 - Social implication

- Issue of sovereignty.....perceived as DILUTING
- We are not so free any more.....in deciding policies that affect international trades.
- Perceptionlost the total liberty in determining or inserting our wishes in promulgating LAWS, POLICY, DOMESTIC REGULATIONS ETC.
- WE HAVE TO FOLLOW AS CLOSELY AS POSSIBLE TO THE REQUIREMENT OF WTO.

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Technology Transfer or What?

- Liberalization is put in place in return of the technology transfer.
- Total liberalization could defeat the whole purpose of liberalization for Malaysia as a host country – might not get the necessary technology transfer.
- May have a negative side effect to host country (Malaysia) – Locals are mainly technology users only where IP is not own by local players.
- Could be seen as a camouflage for economic invasion by others in the local market.

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Side effects & WTO

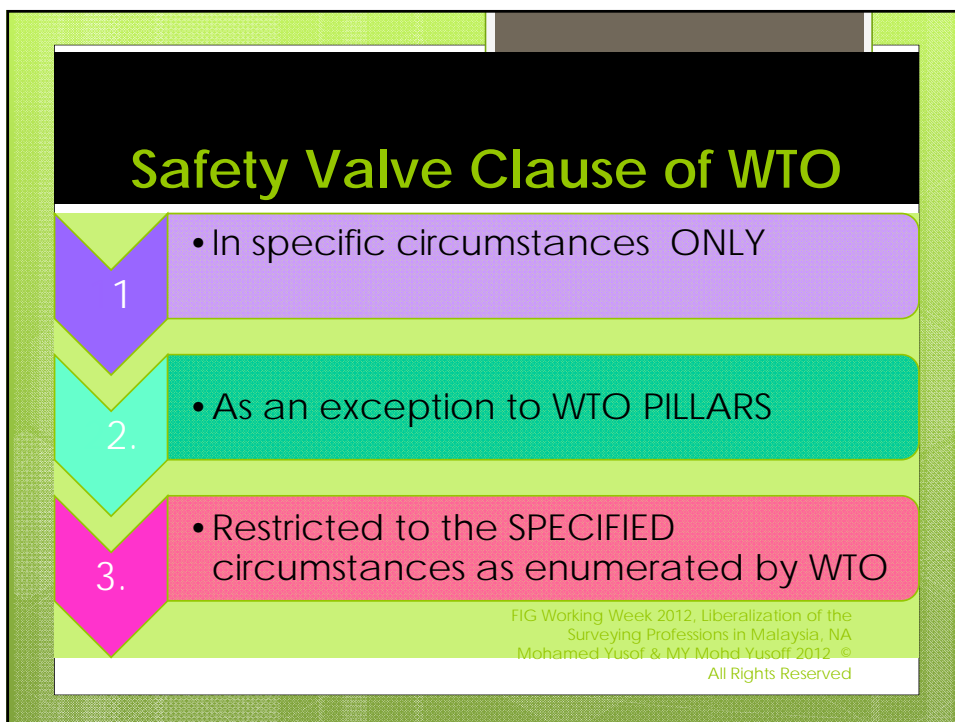
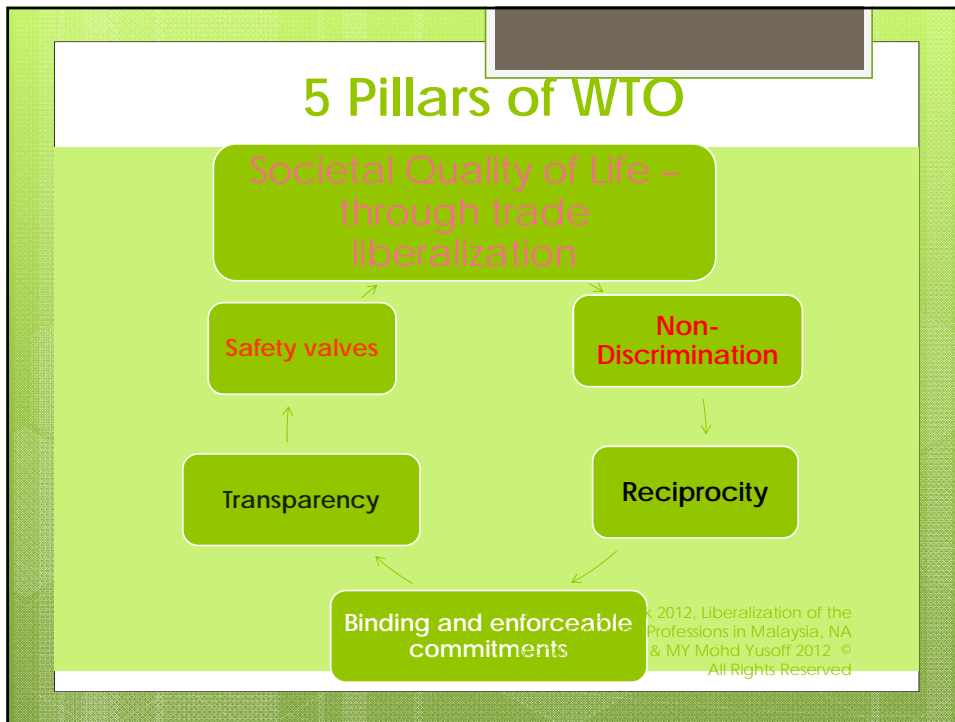
- The mentioned economic side effects is indeed against the wishes of WTO.
- In response Malaysia could still RESTRICT TRADE
 - By imposing or maintaining existing regulations
- They are still legally permissible and action valid.

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How Come & When

- Under the "safety valve " clause of WTO
- One of WTO 5 pillars
- As long as they are applied as specified by WTO

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The 3 circumstances

To attain non-economic objectives	To ensure "fair competition"	To permit intervention in trade for economic reasons
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Concluding Remarks

- Decision to liberalize lies with WTO member countries.
- Malaysia need to weigh the positive and negative effect and decide on liberalization readiness.
- Right timing and conducive condition is vital
- Profession should asses its capability and limitations to compete
 - Strengthen technology capabilities
 - enhance competency and competitiveness
- More studies is required on impact of Liberalization

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Thank you for your attention

