

Regulatory Strategies For Facilitating Exports By Microenterprises in Malaysia

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ABSTRACT

There is a perception that microenterprises should not export. This is due to their size hence they do not have the necessary resources to do so. This is very much reflected in the statistics on who contributes to Malaysia's exports. However, there are benefits of exporting which can be tapped by microenterprises. However, interviews conducted on some microenterprises indicate some factors that inhibit them from exporting. Thus, export facilitation for microenterprises is important. Based on this premise, this paper uses the concept of regulatory strategies to analyse the components of regulatory ecosystem underlying facilitation of exports by microenterprises in Malaysia. The focus will be on four broad categories of policies and measures namely export promotion policy, SME capacity building policies, border policies, and measures and food safety assurance programs. This paper concludes by highlighting the important role of border policies and measures and food safety assurance programmes in enhancing exports by microenterprises.

INTRODUCTION

The involvement of microenterprises in exports is always downplayed because of the size of such enterprises. As the microenterprises are market players, they are the ones who should decide whether to export or not. Nevertheless, the Government still plays a relevant role in ensuring the bounties of

international trade will trickle down on all including the microenterprises. One of the useful platforms is export facilitation. Based on these premises, this paper looks at the regulatory and institutional challenges to export facilitation for microenterprises in Malaysia. This paper will start with a discussion on the position of microenterprises in global trade. Such discussion highlights the low intensity of exports by SMEs in general and microenterprises in particular. This negative assumption becomes the baseline from which the export interest or capacity of microenterprises is linked to the notion of export facilitation. Then, the notion of export facilitation as it concerns SMEs will be discussed. This will be followed by a reference made to the concept of regulatory strategies. This concept will then be used to analyse the regulatory eco-system underlying facilitation of exports by microenterprises in Malaysia.

The focus will be on four broad categories of policies and measures namely export promotion policy, SME capacity building policies, border policies, and measures and food safety assurance programmes.

MICROENTERPRISES IN INTERNATIONAL TRADE

It is always said that small and medium enterprises (SME) are under-represented in the global economy including in terms of exports and foreign direct investment (FDI) (OECD, 2004) (OECD, 2018). In order to export, one may need to mass-produce and for that matter, the relevant enterprises need to have strong financial backing. Hence, they do not have the capacity to export. But first, it is important to know who a microenterprise is. The definition of microenterprise, as well as small and medium enterprises, is found in Table 1.

Table 1 Categories of business entities according to sales turnover and number of employees, in Malaysia

	Micro		Small		Medium	
	Sales turnover	Number of employees (full-time)	Sales turnover	Number of employees (full-time)	Sales turnover	Number of employees (full-time)
Manufacturing	<RM300k	<5	RM300k – RM15 million	5 – 75	RM15 million – RM50 million	75 – 200
Services and other sectors			RM300k – RM3 million	5 – 30	RM3 million – RM20 million	30 – 75

Table 1 shows a wide gulf between microenterprises with employees fewer than 5, and medium enterprises whose employees can be up to 200 persons (the same goes to sales turnover which sees a significant gap between both in terms of productive capacity). As will be seen below, policy mechanisms for the promotion and protection of SMEs can have flaws if they do not consider the disparity between micro and very small enterprises, and medium-sized enterprises which at any time may acquire the same stature as big corporations.

Despite the under-represented state of SME trade globally, exports can be beneficial to microenterprises. By exporting, the microenterprises can secure a niche market and generate sales more consistently amidst stiff competition among local players. Enterprises and companies may also enjoy earlier payment, build their brand name and in some countries, get tax exemptions. This is on top of other government measures to promote trade which are usually participated by medium and big firms. In reality, however, exports by SMEs are relatively low. As of 2017, exports by SMEs accounted for 17.8% of

Malaysia's total exports. The figure for those coming from microenterprises should be

lower. Be it as it may, the experience of other countries may paint a different picture.

Table 2 Exports by size (selected OECD countries)

	Country	Year	0 – 9 employees	10 – 49 employees	50 – 249 employees	250 or more employees
			USD			
1	Germany	2016	55482.50	68809.50	151781.00	833901.00
2	Cyprus	2016	304.10	681.20	388.70	316.60
3	France	2016	17576.60	24746.70	48475.00	342172.00
4	Netherlands	2016	41025.30	65499.70	145280.00	127651.00
5	South Korea	2015	25330.10	28984.90	53469.30	417795.00
6	United Kingdom	2016	63282.00	34341.00	60122.40	225518.00
7	United States	2014	189987.00	80663.70	142764.00	1028500.00

Not all countries have a smaller volume of exports from smaller-sized enterprises. The most significant example is the United States in which exports by very small enterprises surpassed those by medium-sized enterprises and the only category that the former "lose to" are big-sized enterprises. However, in Malaysia, as stated, exports by micro- and small enterprises are still low.

A series of interviews conducted on selected microenterprises in Malaysia leads us to the following factors that inhibit them from exporting. First, failure to meet demand even from the local market which can be related to the following problems:

- Problem in having access to raw materials
- Labour shortages
- Inadequate machinery or automation
- Prices too low

Second, there is difficulty to meet export production requirements or standards. All producers must have the ability to meet such requirements and standards which originate from both the exporting country (Malaysia) and the importing countries. The question now is whether microenterprises have the capacity to bear costs arising from meeting those requirements and standards. Third, even if the producers have already exported, due to their limited resources, they will face challenges to

sustain production and meet the increasing demand from the export market.

There is a need for a Government policy that addresses the obstacles faced by the micro and small producers, including the export or trade requirements/standards that may vary between countries. This brings us to the discussion on export facilitation.

EXPORT FACILITATION FOR SMEs

Export facilitation usually refers to measures or policies that make export less cumbersome for businesses. It is not a stand-alone term. It is used interchangeably with the term trade facilitation. Trade facilitation refers to various measures or policies which aim at reducing the costs of exports and imports (Portugal-Perez & Wilson, 2010). As exporters may rely on imported raw materials and other imported inputs, the need to delimit the boundaries between import facilitation and export facilitation becomes less compelling.

Export facilitation may be aimed at reducing the complexity of various laws and rules governing international trade. There have been studies that show that export barriers have a negative impact on export performance of SMEs. The study by Altintas, Tokol, and Harcar (2007) shows that there is a link between export barriers and export performance of SMEs in Turkey whereby if

export barriers (particularly procedural and competition barriers) decrease, the export performance of SMEs increases. The study by Al-Hyari, Al-Weshah, and Alnsour (2012) shows that economic and political-legal barriers, governmental barriers, financial and information barriers have a significant negative relationship with the export performance of SMEs in Jordan.

Export facilitation may also strive towards encouraging exports by enterprises and companies in a particular country through promotional and capacity building activities. The study by Lederman, Olarreaga, and Payton (2010) shows that there is a slight increase in exports as a result of the works by the agencies responsible for exports generally, but the study does not distinguish between experienced exporting firms and SMEs which lack experience in exports. Hashim, Ahmad, and Zakaria (2010) suggest that the SMEs in the study, in general, agreed that the internationalisation incentives had contributed to their success in exporting. However, the study by Ahmed, Mohamed, Johnson, and Leong (2002) indicates under-utilisation of export promotion initiatives by SMEs not only in Malaysia but also in other countries.

As part of the 2015 Budget, the Government reintroduced the Services Export Fund (SEF) totalling RM300 million to encourage SMEs to conduct market feasibility studies and undertake export promotion to penetrate new markets (Malaysian Prime Minister's Department, 2014). This is on top of the budget allocated to MATRADE. However, as stated earlier, the share of SMEs of overall Malaysian exports was still at an unsatisfactory level let alone the export share microenterprises.

WHAT ARE THE REGULATORY STRATEGIES?

It is important to choose the right regulatory strategies for facilitating exports by microenterprises in Malaysia. Before

attempting to make such choice, it is useful to explain what regulatory strategy is.

Baldwin, Cave and Lodge (2012) promote 7 types of regulatory strategies namely:

- (a) Command and Control (C&C)
- (b) Incentive-Based Regimes (IBR)
- (c) Market-harnessing Controls (MHC)
- (d) Disclosure Regulation (DR)
- (e) Direct Action and Design Solutions (particularly Nudging) (DADS(N))
- (f) Rights and Liabilities Laws (RLL)
- (g) Public Compensation/Social Insurance Schemes (PC/SIS)

THE REGULATORY ECO-SYSTEM FOR MICROENTERPRISE EXPORT FACILITATION IN MALAYSIA

Various export promotion and development policies in Malaysia have been in operation for a long time but their effectiveness in promoting the export readiness of SMEs particularly in the agribusiness sector can always be questioned. At the same time, these policies interact with other laws, policies, and regulations that are already in place. There is a need to look at these policies from the perspective of an eco-system. This is to give a more holistic view of the elements that regulate how microenterprises can export and how such activity is facilitated. The relevant policies are explained as follows.

Export Promotion Policy

Export promotion policies are policy measures that promote the exporting activities at the company, industry or national level (Root, 1971). Such measures may aim at creating awareness about the importance of export growth, reducing trade barriers and giving assistance to potential and actual exporters (Serringhaus & Rosson, 1990). There have been studies that identify the policies and laws that entrust Government and public institutions with export promotion functions, expose the agencies created under those institutions

which are responsible for developing and promoting the exports of firms in Malaysia, and identify the policies and programmes run by those agencies and assess their effectiveness (Ahmed et al., 2002) (Ayob & Freixanet, 2014).

Malaysia has the Malaysia External Trade Development (MATRADE) Act 1992. The MATRADE Act 1992 is the Law that establishes the MATRADE, a corporation under the Ministry of International Trade and Industry (MITI) whose functions include to promote and develop Malaysia's external trade particularly the export of manufactured and semi-manufactured products. The MATRADE also performs capacity-building functions to improving the marketing skills of Malaysian exporters. However, the role to facilitate exports by microenterprises cannot be performed solely by MATRADE as it may focus more on finding markets for exporters whereas these enterprises may already have found the market for their products, but they can ensure their sales can sustain that matter more.

SME Capacity Building Policies and Initiatives

In Malaysia, the development of microenterprises is now the responsibility of the Ministry of Entrepreneurial Development (MED) especially through its agencies such as the SME Corporation (SMECorp) and SME Bank. These agencies under the MEC, the Ministry of Agriculture and even the Ministry of International Trade (MITI) have capacity building programs for microenterprises to export. They also provide support to enhance the resources of the microenterprises in general which can be used by them to explore export markets. The same is offered by statutory bodies responsible for socio-economic development namely the Majlis Amanah Rakyat (MARA) as well as by agencies under the states. Assistance is given to them in the forms of grants to upgrade premises and procure machines and equipment, easy credit as well as training. MATRADE is active not only in finding markets for micro and SMEs but it also conducts training for them.

Border Policies and Measures

Border policies and measures refer to those imposed on products whether brought into or out of the country at every entry check-points. The customs department is at the forefront of implementing these policies and measures because the department is the gatekeeper of the nation with regards to the outflow and inflow of goods. The Malaysian Royal Customs Department, which is under the Ministry of Finance is responsible to administer border measures which include import and export duties, sales tax, etc. in pursuant of statutes such as the Customs Act 1967, the Sales Tax Act 2018, etc. The Customs Department is only the gatekeeper; licensing, permit issuance, standard-setting and compliance, quarantine, inspection and other "non-tariff" requirements can be imposed by different agencies and departments depending on the type of product imported or exported.

Microenterprises will normally export food products. However, there are greater potential in processed and dry food products than life, fresh or liquid food products because the latter are subject to more stringent sanitary and phytosanitary (SPS) requirements. Several agencies are involved namely the Department of Agriculture, the Department of Veterinary Services and the Federation of Agriculture Marketing Authority (FAMA) and the Malaysian Quarantine and Inspection Services Department (MAQIS), depending on the types of products traded and whether the products are imported or exported. All three departments are under the Ministry of Agriculture. The reason why they are at play is that the imported products can harm human beings, animals and plants. The harm can come from pests, diseases and food that are consumed especially by human. As such, any of the agencies will require an import permit, the issuance of phytosanitary certificates and/or the conduct of post-entry quarantine before plants or plant products are imported [Malaysian Quarantine and Inspection Services

(MAQIS, 2019a]. For imports of animal and animal products, veterinary certificates, as well as other special approvals, will be needed depending on the type of the imported products (MAQIS, 2019b). This is in the case of imports.

In the case of exports, producers must follow importing country requirements concerning customs duties and other taxes and charges as well as the non-tariff measures. With regards to requirements imposed by the Malaysian regulatory bodies, the SPS requirements (in the form of export permits, export licenses, and approval requirements) illustrated above may be imposed on exports of certain products. Further, health certificates may need to be acquired from the Food Safety and Quality Division of the Ministry of Health. Health certificates are crucial for fish and fishery products, animal-based products, milk, and dairy products and frozen fruits. Still one must see whether they are required by the importing country concerned.

Some countries apply a rather precautionary approach when facing allergy issues. As a result, exports of even dry products that contain dairy, nut, tomato and other elements may be rejected adding on to the costs borne by exporters regardless of whether they are substantiated by scientifically proven evidence. This happened to a 3-in-1 coffee powder product which had to be withdrawn from the US market because the product contained dairy elements. While this may impose extra hurdles on microenterprise as well as other producers, it reaffirms the importance of submitting to the “sovereign” demand of the importing country. One of the ways to reduce such failure rates is by having recourse to food safety assurance programmes.

Food Safety Assurance Programmes

Food safety assurance programmes refer to a planned and documented system of practice which assures that any particular type of food

will not cause harm to a consumer when it is consumed (premises (Food Hygiene Regulations 2009, Sub-regulation 2). In Malaysia, all food premises involved in the manufacturing of food are required to provide and make available a food safety assurance programme in the food premises (Food Hygiene Regulations 2009, Sub-regulation 9 (1) and Third Schedule). Thus, whether a microenterprise exports food product it must be aware of the food safety assurance programme provided that it is involved in food manufacturing.

In Malaysia, compliance with food safety assurance programmes is overseen by the Food Safety and Quality Division (FSQ Division), an agency under the Ministry of Health. It is part of the Food Security and Quality Programs whose planning, implementation, monitoring, and evaluation is one of the objectives of the Division (Ministry of Health Malaysia, 2015). The FSQ Division has to ensure that an effective food control system, including food safety assurance, can be done accurately and unsafe food is not permitted into the market including the exported market (Ministry of Health Malaysia, 2015).

There are three programmes under food safety assurance, and they result in the implementation of following certification schemes by the FSQ Division namely the Food Safety is the Responsibility of the Industry (MeSTI) Certification Scheme, the Good Manufacturing Practices (GMP) certification scheme and the Hazard Analysis and Critical Control Points (HACCP) certification scheme (Ministry of Health Malaysia, 2015).

GMP is an integral part of HACCP. GMP controls operational conditions within a food premise from the acquisition of raw materials until product distribution, and they are pre-requisites for producing safe food; HACCP on the other is a monitoring system to identify and control chemical, physical and biological hazards significant for food safety at different

points in the food production process. MeSTI on the other hand only requires the fulfilment of minimum requirements under the Food Hygiene Regulations 2009, hence more suitable to microenterprises and SMEs. One of the special features of MeSTI is that coaching is given by the relevant agencies to applicants. Those who have acquired HACCP and GMP certificates can also be given fast-track certification under MeSTI.

Obtaining HACCP certification will give companies access to the widest export markets as the EU and the US accept HACCP

certificates. MeSTI, however, has much narrower coverage as most countries still require HACCP. Singapore is an exception as it exclusively accepts MeSTI certificates for the importation of (1) ready-to-eat food products which are regulated from source such as infant formula, traditional cakes and *kuih-muih*, cooked rice products and other perishable products (Ministry of Health Malaysia 2016), (2) certain minimally processed food products namely sugarcane, coconut, fruit and vegetable products (Ministry of Health Malaysia 2016), and (3) pre-packed fresh vegetables and herbs (Ministry of Health Malaysia, 2016).

WHAT STRATEGIES SUIT THE RELEVANT MALAYSIAN REGULATORY ECO-SYSTEM?

Table 3 Regulatory regimes matched with regulatory strategies

Regulatory Regime Regulatory Strategy	Export Promotion Policy	SME Capacity Building Policies	Border Policies and Measures	Food Safety Assurance Programs
Command and Control			X	X (indirectly)
Incentive-based Regimes	X (conditional)	X (conditional)	X	X (indirectly)
Market-harnessing Controls (particularly Competition Law)				
Disclosure Regulation			X	X
Direct Action and Design Solutions (particularly Nudging)			X	X
Rights and Liabilities Laws (particularly Contract and Tort Laws)				
Public Compensation/Social Insurance Schemes				

The regulatory strategies found within the microenterprise export facilitation eco-system in Malaysia are (1) command and control, (2) incentive-based regimes, (3) disclosure regulation, and (4) direct action and design solution (nudging). The command and control strategy are obvious in border measures and policies. The command and control strategy can be prohibitive on microenterprises although it can be used to justify border measures and policies on public interest grounds. Excessive or unnecessary use will inhibit the export capacity of microenterprises. This can be a

serious concern. Interviews on some of the exporting enterprises indicate that high prices of raw materials are a problem for them. It is used rather indirectly in food safety assurance programmes. While such programmes are known to be voluntary, as stated above, under the Food Hygiene Regulations 2009, food manufacturers must provide and make available a food safety assurance programme.

Incentive-based regimes are supposed to be reflected in export promotion policy and SME capacity building policies. However, in

Malaysia, incentives given to SMEs and others whether with regards to export promotion or specifically for SME development were not contingent upon exportation. Unless and until a specific policy is crafted to such an effect, the characterisation of such policies as incentive-based can be less accurate. The failure of the relevant policy to ensure recipients export will give rise to regulatory inefficiencies. However, making incentives contingent upon exportation has its own risk i.e. violating WTO anti-subsidy rules. Certain aspects of border measures can be incentive-based. One example is relief given to import duties and other taxes on imported inputs if the inputs are used for exports. Food safety assurance programs can also be incentive-based if compliance results in faster and/or lower cost approvals.

Nudging and disclosure regulation exist in border measures and food safety assurance programs. Regarding border measures, such strategies are evident in self-declaration procedures. The strategies are also used concerning licensed warehouses and licensed manufacturing warehouse facilities. However, it remains to be seen as to what extent these facilities are open to and benefitted by microenterprises. Emphasis should be on nudging and disclosure regulation because they are cost-efficient.

The remaining strategies are not evident in the examined policies and measures. However, they may coexist with those policies and measures with the common goal to promote or even protect microenterprise interests in exports. First, market-harnessing control in the form of competition law works to correcting market imperfections and failures, and in export trade, breaking import and export cartels can affect efforts to facilitate exports by micro enterprises. Second is rights and liabilities. This regulatory strategy delimits the contractual rights and liabilities of microenterprises in their international trade transactions. It also imposes liabilities in the event of negligence. Enforcement cost can be

prohibitive on microenterprises as enforcement is through private actions which can be very expensive and less predictable due to the cross-border nature such transactions. Further, Malaysia still lacks legislative protection for micro and SMEs against unfair deals with its big partners. The last strategy, i.e. public compensation can be less desirable. Using public money to compensate microenterprises for their failed export venture may be fiscally unwise. But creating a social insurance scheme to minimise risks arising from export trade may be more acceptable.

CONCLUSION

After all the strategies have been analysed, it is clear that export facilitation for microenterprises cannot be affected by export promotion policy alone. That is also not the responsibility of a single department or agency. Effective governance and regulation will need the relevant departments and agencies to minimise working in silos.

The analysis points to a very significant role for departments and agencies responsible for border policies and measures, and food safety assurance programmes. The success of export facilitation for microenterprises will depend on the extent to which agencies such as customs and MOH respond to the needs of microenterprises for exports. A holistic and inclusive approach is needed where policy and regulatory administration needs more centralisation so that the catering for the needs of microenterprises effectively addresses the challenges associated with factors of production (access to raw materials, labour, credit, and technology) and risks posed by production standards.

With regards to which regulatory strategy to choose, preference should be given to those which are more cost-effective particularly in terms of enforcement. The command and control strategy may not be the best approach if clashes between the

export interests of microenterprises and public interests are minimal. More resources that would have been being invested in such a strategy should be channelled to disclosure regulation and some extent direct design solutions (nudging). This, however, requires the integrity of the systems that will be put in place. The use of the latest technologies including information technology will be necessary to ensure such integrity.

Finally, regulation and governance are not the only factors. Market participants will be needed to facilitate exports by microenterprises and if there are incentives for market players to partake in the process, success will be more predictable. There will be a lot of room for rights and liabilities regime, market-harnessing control and social security strategy in becoming the bases for innovations and creativity to improve the relevant policies and regulations.

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