

MP raises fears on EU-Malaysia FTA
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By S Pathmawathy

An opposition parliamentarian has cautioned the government against endorsing the free trade agreement (FTA) with the European Union (EU), saying the deal will make local companies vulnerable.

Charles Santiago (DAP-Klang) said the EU was forcing Malaysia to agree to a "state-investor dispute settlement mechanism", that would ensure the interests of investors in the country are protected.

mtuc syabas pc 091007 charles santiagoThe EU-Malaysia FTA negotiations have been going on in Kuala Lumpur since yesterday to outline "specific terms" of the agreement.

"One of the most worrying 'specific terms' is the investment chapter of the FTA that the EU wants Malaysia to adopt. Specifically, the investment chapter contains provisions that allow investors to sue governments directly," Santiago said.

According to him, the investment protection chapter allows investors to circumvent domestic laws and get disputes referred to international arbitration.

"Most importantly, the state-investor dispute mechanism allows investors to sue governments before international arbitration panels."

Governments put at mercy of arbitration panels

Santiago said many countries that signed such FTAs have fallen into the trap.

"More than 300 cases have been referred to international arbitration since the 1990s. Most of these cases have resulted in governments paying out millions to investors," he said.

The tricky mechanism, he explained, puts governments at the mercy of international arbitration panels if it was perceived that state policies jeopardised the profits of investing companies.

"Here in Parliament, we are making laws in the best interests of the nation. But these laws can be overturned by an international arbitration panel if judged as detrimental to investors," Santiago stressed.

tobacco cigarette warning label in australia 041206Citing an example, he said in February last year tobacco giant Philip Morris filed a request to the International Centre for Settlement of Investment Disputes for arbitration in a dispute with Uruguay.

Philip Morris argued that recent tobacco regulations enacted by Uruguay violated several provisions of the Switzerland-Uruguay bilateral investment treaty.

The tobacco company was challenging new provisions under Uruguay's tobacco regulations, the most prominent being a requirement that cigarette packets include "pictograms" of graphic images of the health consequences of smoking.

"Clearly, Philip Morris is critical of the health policy of the Uruguayan government as it will impact on its profits," said Santiago.

Such investor protection would have an impact on the sovereignty of the country and "limit the state's ability to regulate and develop policies in the best interests of its citizens", he said.

The MP added that Malaysia should take heed from countries such as Australia in opposing "greater rights for foreign companies".

Australia, in its trade policy, specifies that the government will not grant or support greater legal rights for foreign businesses or agree to any provision that constrains the government's ability to make laws on "social, environmental and economic matters".

Santiago urged Malaysia to take a similar position "to protect our regulatory space and sovereignty" and reject any form of pressure from the EU.

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