FTA offers limited gains with high costs

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THE letter by the Federation of Malaysian Manufacturers (*The Star*, March 25), suggests there is much to gain from the Malaysian-US Free Trade Agreement, while minimising or not recognising that there are serious costs.

CAP agrees there may be some gains, but these are limited, and the costs are overwhelming.

The FMM admits that Singapore suffered a worsening of its trade deficit with the US after its FTA with the US, but argues that what is important is not the trade surplus or deficit but the overall increase in trade volume and value.

We do not agree that overall trade volume or value is the only important item. If imports grow much faster than exports, there is a negative effect on the trade balance and balance of payments.

More significantly, a higher influx of imports can displace local products, with negative effects on incomes and livelihoods of local farmers and firms affected.

There may indeed be some gains, but it would depend on many factors such as the rules of origin and yarn forward rule (in the case of textiles) and the time frame for the US to eliminate the tariffs (on textiles, the US has not agreed on immediate elimination).

We also feel that with the exception of textiles (where competition is tougher after the WTO's removal of the previous) quota system, Malaysian exporters can make progress even without the FTA.

On the other hand, Malaysian manufacturers and farmers will also have to anticipate loss of business when the tariffs protecting them are eliminated, for example, national motor vehicles.

In agriculture, the biggest area of gains to Malaysia would have been removal of US subsidies. But this is off the agenda for the US. And heavily subsidised American long-grain rice can compete with local rice if allowed to be imported tariff-free by Bernas.

Thus on trade in goods alone it is by no means clear that Malaysia will gain on balance, and there are legitimate concerns that even here there will not be a net benefit.

A piecemeal approach in highlighting presumed gains in some sectors only is not prudent.

The FMM makes the point that the FTA will not give overwhelming rights to investors. It says Malaysia has already signed Investment Guarantee Agreements (IGAs) and will not give up anything (on investment) in an FTA.

It must be noted that the IGAs are very limited in scope (the investments covered) and treatment (the obligations to Malaysia) as compared with the FTA.

A typical FTA with the US has the following investment provisions:

- A VERY broad coverage of investment (including not only direct investment but also portfolio investment, contracts, credit, intellectual property, etc). Pre-establishment rights are conferred to investors (i.e. potential investors already have rights even before entry), which would severely erode the Government's space to screen and control investment inflows;
- NATIONAL treatment would be accorded to foreign investors (i.e. treatment equal to or better than that given to local investors);
- A BAN on performance requirements such as technology transfer, use of local materials and services, restrictions on equity holdings, obligation to form joint ventures, etc;
- A BLANKET ban on restrictions on freedom of transfer of funds in and out of the country.
- PROHIBITION on expropriation including indirect expropriation (which includes policy measures that can affect a foreign company's future profits), a definition that goes beyond that in IGAs; and
- AN EXTREME dispute settlement system in which foreign investors (with investors being broadly defined) can directly sue the Government in an international court for expropriation (which includes indirect expropriation), with the Government liable to pay financial compensation.

Under the US-Canada-Mexico FTA, over a hundred cases on "indirect expropriation" have been taken up, with governments asked to pay many millions of dollars.

These FTA provisions go far beyond Malaysia's obligations under the IGAs, and it is misleading for the FMM to imply that an FTA with the US would not oblige Malaysia to undertake any heavier commitments.

While initially Malaysia would be able to list certain exceptions in certain sectors (which would have to be negotiated with the US), an iron framework would have been set up in which the default position would be total rights to US investors and little regulatory authority to the Government, and would put Malaysia at a grave disadvantage in any present or future negotiations.

It should be remembered that Malaysia took a leading role in successfully opposing an investment agreement in the WTO.

The proposed WTO investment agreement had far less obligations than the one now being put forward in the FTA with the US (for example, the WTO agreement did not include pre-establishment rights, covered only direct investment and direct expropriation, and did not allow investor-to-state dispute cases).

Malaysia also chaired the informal group on "Singapore issues" in the WTO that opposed not only the inclusion of investment but also of competition policy and government procurement in WTO rules.

This group in July 2004 successfully caused the exit of these three issues from the WTO's Doha negotiations. Malaysia rightly took credit for its leadership for this.

Yet the three issues have come back through the "side door" of the FTAs, and the provisions on all these three issues in the proposed FTA with the US are far more aggressive than what was ever proposed at the WTO. An FTA of the type that the US asks of its partners would entail severe costs to Malaysian consumers, industries, service providers and farmers.

Heavier even would be the cost to the government and the people in terms of the loss of policy space to fashion our own economy and society.

Thus, the FMM should try to look at the overall picture and not just anticipate the gains that some export-oriented companies may gain.

SM MOHAMED IDRIS,
President,
Consumers Association of Penang.

PERDANA LEADERSHIP FOUNDATION
YAYASAN KEPIMPINAN PERDANA