

A Pact of No Return?

The FTA's expressed purpose is to promote world economic integration by eliminating trade barriers between countries. How will such a pact between Malaysia and the world's biggest trading nation, the United States, benefit the former?

■ By Wan Imran

MINISTER of International Trade and Industry, Datuk Seri Rafidah Aziz, when asked when details of Malaysia's free trade agreement (FTA) with the United States would be made known to the public, reportedly said that the Government would only do so 'after the agreements have been signed'.

This non-transparency on behalf of the Government has sparked much concern from Malaysians given the fact that government transparency represents one of the major issues brought up by the US in its FTA negotiations.

Official transparency has not only been a long-debated issue among Malaysians but foreign investors as well. This is considering that many democratic nations like the US, the United Kingdom and the European Union (EU) as well as countries like Turkey, India, Pakistan

and even Thailand (with its Official Information Act of 1997) have adopted the Freedom of Information Act or its equivalent. This piece of legislation allows citizens access to government documents and statistics.

So far, the US, being among the pioneers of the Freedom of Information law, seems to be keeping to its conviction – many issues concerning US interests in Malaysia can be easily obtained from US government departments and agencies.

The transparency issue was brought to the fore again when the Ministry of International Trade and Industry (Miti) informed the local press that Malaysia was the US' 10th largest trading partner. This raised questions about the accuracy and quality of research conducted by the government as, according to the US Census Bureau, from 2005 to 2006 Malaysia was ranked as the 11th largest exporter to the US. It was France that was at number 10.

In terms of US exports, Malaysia ranks at number 17. A report by the US Congressional Research Service (CRS) says the US represents Malaysia's biggest export market, followed by Singapore and Japan. In terms of imports, Malaysia's largest trading partner is Japan, followed by the US and Singapore.

Many multinational corporations utilise Singapore's position as a free-trade entry-port harbour and bilateral trade treaties between Singapore and Malaysia as a trade route to sell their products to Malaysia, as many corporations have their Asia Pacific regional headquarters in Singapore.

Also according to the US CRS report, semiconductors and parts for computers account for more than half of US exports to Malaysia (*see tables for the top five US states that export to Malaysia, Malaysia's top exports to the US, and the trade balance*).

The aim of bilateral trade agreements is to liberalise trade between two countries. FTAs are akin to a 'marriage contract' where both the signing parties have certain commitments and expectations to live up to.

This also means being open and honest


without keeping too many secrets from each other. In an FTA, a country's trade policies, laws and legislations represent a country's 'behaviour' or 'attitude' towards its partner in the relationship. But some of these 'behaviour' may be a hindrance to mutual respect or understanding and become barriers to trade.

But just what are the US' expectations of Malaysia? What are the possible risks and benefits of such an agreement or 'marriage' between the US and Malaysia, whose Gross Domestic Product (GDP), according to the World Bank, is only US\$130.1 billion, compared to the US' US\$12.5 trillion, making it the largest economy in the world?

The US is in fact one of Malaysia's largest investors. In 2000 alone, its investments in the country were valued at US\$1.4 billion (RM4.76 billion).

According to a US Trade Representative's (USTR) report dated March 2006, the US sees Malaysia as 'a gateway to the dynamic Southeast Asian region, a market approaching US\$3 trillion'.

But some of the main questions remain:



Rafidah: Grappling with transparency issue

What are Malaysia's current trade relations and ties with the US' top 20 trading partners? What type of collaborations, and in what particular field, does Malaysia currently have with these other top exporters to the US and the Asean countries that could further strengthen its position? Are Malaysia's goods and services as well as incentives to attract foreign direct investment (FDI) in direct competition with or complimentary to those of these top 20 US trading partners and members of Asean? How are they, compared with the emerging economic giants like China or India? What are Malaysia's competitive advantages or key selling points compared with those of neighbouring countries and the world? These are important questions yet to be answered by Miti.

What are the US' personal objectives and interests? According to the USTR reports, an FTA with Malaysia 'will support President (George) Bush's Enterprise for Asean initiative, which seeks to create a network of FTAs across the region. This agreement will build on our FTAs with

| State | US\$ mil |
|---------------|---------------|
| California | 1,942,191,137 |
| Texas | 1,755,128,948 |
| Oregon | 914,641,433 |
| Arizona | 778,635,471 |
| Massachusetts | 617,424,506 |

Singapore, as well as our future FTAs with Thailand and Korea to solidify the United States economic partnership within the region'.

It seems that the US' current tactic is to create a chain of FTAs to alleviate some of the country's economic problems and diversify its economic risks, a move very much akin to the old British Empire's New Imperialism policy adopted after World War I to arrest the decline of the empire's economy in the face of competition from other European industrial nations. It saw Britain scrambling to secure its hold upon its colonies and intensifying its search for new colonies such as South Africa.

The US' strategy of 'more liberalised' trade and negotiating free trade flows with its free trade allies is an attempt to create a chain of FTAs across Southeast Asia. The idea is to hammer separate agreements with each country, very much similar to Joseph Chamberlain (of the UK's Liberal Party and President of the Board of Trade)'s campaign for Tariff Reforms For a More Harmonised Set of Tariffs within or among the British colonies to strengthen the Empire's volatile economy.

The only difference is that the US is doing this in the name of free trade to secure its economic position in the face of strengthening world currencies and the energy crisis, by targeting its top trading partners and securing deals to stabilise trade and strengthen the dollar.

US subsidies on its agricultural commodities have cost farmers in many countries to lose their jobs. They have depressed prices in the world markets, where a tonne of US rice costs an average of US\$415 (RM1,411) but due to the subsidies are selling in poor countries like Honduras at US\$274 (RM931).

Due to the elimination of trade barriers through bilateral trade treaties with the US and pressure from the International Monetary Fund (IMF), many developing and Third World countries have had to lower their tariffs, causing a surge of US products and commodities into their local markets.

According to the Carnegie Endowment of

TOP
MALAYSIAN EXPORTS TO THE
UNITED STATES FOR 2005

| Products | RM mil |
|---------------------------------|-----------|
| Electrical Machinery | 14,793.85 |
| Machinery | 12,920.13 |
| Furniture & Bedding | 758.94 |
| Rubber | 680.64 |
| Instruments | 619.15 |
| Mineral Fuel, Oil, etc | 507.04 |
| Knit Apparel | 437.03 |
| Wood | 340.96 |
| Fats & Oils | 319.93 |
| Woven Apparel | 262.44 |
| Miscellaneous Chemical Products | 170.24 |
| Plastic | 138.90 |
| Iron & Steel | 133.33 |
| Fish & Seafood | 124.08 |
| Cocoa | 112.26 |
| Toys & Sports Equipment | 102.81 |

International Peace (CEIP), Mexico has lost 1.3 million farming jobs since 1993. The US currently dumps some 3.8 million tonnes of its subsidised rice on world markets.

On June 18, 2004, Brazil filed a complaint to the WTO about how US

MALAYSIA'S
TRADE BALANCE
WITH THE US IN 2006

| | |
|---------------------------|----------------------|
| Malaysian Exports to US | US\$34,298.8 million |
| Malaysian Imports from US | US\$11,637.1 million |
| Balance | US\$12,661.7 million |

subsidies on cotton were violating international treaties. The US is the world's second-largest producer of cotton but thanks to government subsidies, it has become number one.

The US responded to this complaint by appealing to the WTO. Only a year after the filing, in March 2005, the WTO decided that US subsidies violated international treaties and warned that if the US did not stop its cotton subsidies, Brazil would have the right to impose trade sanctions on the US.

Only this year, on Jan 24, Australia, Canada, the EU, Argentina and Brazil filed complaints against US subsidies on corn. The US is the world's largest corn exporter, where in 2006 alone it exported 50 million tonnes.

One of the most important questions that arise is, what possible defence does the Malaysian economy have against exposure to US internal policies which in turn affect trade of its products?

According to the US CRS report, some of the key areas of interest brought up in the FTAs are those concerning:

- Intellectual Property Rights
- Automobiles
- Services
- Government Procurements
- Capital Controls

Intellectual Property Rights

Investigations as well as seizures done in countries worldwide by the International Intellectual Property Alliance reveal that Malaysia is the world's top exporter of pirated optical discs for video games!

It seems that Malaysia's ambition to go global is impeded by its non-compliance with and non-ratification of many international treaties under the World Intellectual Property Organisation (WIPO) and United Nations Education, Science, and Cultural Organisation (Unesco).

Out of 20 international

treaties under WIPO alone, Malaysia ratified only four. Malaysia's Copyright Act of 1987 still contains many loopholes in comparison with international copyright laws. Some of the important treaties for the protection of Malaysian Creations, Products and Services under WIPO which Malaysia has not signed are:

- The Budapest Treaty on the international recognition of Deposits of Microorganisms for the Purpose of Patent Procedures
- The Nice Agreement Concerning the International Classification of Goods and Services for the Purpose of the Registration of Marks
- The Lisbon Agreement for the Protection of Appellations of Origins and their International Registrations
- The World Copyright Treaty (WCT) and WIPO Performance and Phonograms Treaty (WPPT)
- The Nairobi Treaty for the Protection of the Olympic Symbol

As for treaties under Unesco, among those not signed by Malaysia include:

- Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property
- Convention on Technical and Vocational Education
- Regional Convention on the Recognition of Studies, Diplomas and Degrees in Higher Education in Asia and the Pacific
- Convention for the Safeguarding of Intangible Heritage-Convention for the Protection of Underwater Cultural Heritage
- International Convention Against Doping in Sports
- Convention for the Protection and Promotion of the Diversity of Cultural Expressions.

But one of the main reasons for Malaysia's 'lack of international

cooperation, signing and ratification' of such international/multilateral treaties is in fact the lack of international market research by its department, divisions and agencies, as well as the bureaucratic red tape among them.

For example, although Malaysia had ratified the WTO Uruguay Round Agreement, which includes the Trades Related to Intellectual Property Rights (TRIPs) agreement, the Malaysian Intellectual Property Organisation (MyIPO) is a government agency under the Ministry of Domestic Trade and Consumer Affairs (MDTCA), whereas Unesco treaties govern Education, Science and even Cultural Ministries in Malaysia.

Miti, as the Ministry in charge of increasing exports and foreign market penetration, should have been able to advise and assist companies, especially GLCs, in targeting and penetrating lucrative markets like the US.

Automobiles

The US is the world's largest automotive manufacturer and market. In 2005 alone, US motor companies manufactured over 15.4 million units of automobiles, with General Motors producing about 9.04 million, and Ford Motors 6.4 million.

Interestingly, its top auto imports do not include those from Malaysia, as national car Proton has yet to penetrate the lucrative US market.

Despite the statement by Proton's new management to increase quality of its cars, US standards are the highest for automotive manufacturing in the world, it being the

founder and pioneer of automobiles. Any manufacturer capable of achieving such standards would be capable of penetrating almost any market worldwide.

Miti, as the Ministry in charge of increasing Malaysian exports and foreign market penetration, should have been able to advise and assist Malaysian companies, especially government-linked corporations (GLCs), in targeting and penetrating lucrative markets like the US.

But according to the data on Malaysian exports, Malaysia exports a lot of raw materials and is a manufacturing outsource for US corporations. If Malaysia continues this trend in attracting FDI, how will it hold up against global competitors like China and India as well as the opening up of new opportunities in other Asean countries in the long run?

According to the US CRS report, under the US FTA with Malaysia, the question of protective tariffs for Proton was raised. Proton currently has not signed any cooperative agreements with a new partner and a sudden elimination of tariffs without proper restructuring of Proton could damage the corporation heavily.

But how would the sudden surge of US automobiles in Malaysia affect the overall Malaysian automotive industry, which also imports European, South Korean and Japanese automobiles?

Services

In terms of services, one of the main fields mentioned was the financial services sector, which in Malaysia is still growing compared with such an advanced player like the US. One huge difference, for example, is that since the signing of the Gramm-Leach-Bliley Act of 1999, many US financial services have been through mergers and acquisitions to become 'universal' banks, turning into one-stop superstores offering almost every means of financial services available under the sun.

US financial services are also more efficient and cost effective with the signing of the Check Clearing for the 21st Century Act. This Act allows for the recipient of a paper

cheque to create a digital version, thus eliminating the need and costs associated with hauling tonnes of paper cheques across the country for cheque-clearing.

US banks are also among the largest in the world, owning a total of US\$2.5 trillion (RM8.5 trillion) in assets. They include JP Morgan Chase with assets worth US\$983 billion, followed by Bank of America (US\$838 billion) and Citibank (US\$685 billion).

But of more concern to Malaysians is the current US Patriot Act 2001, under which US financial services and banks are required to 'share' their customer information with the US Department of Homeland Security and other government agencies for any suspected money laundering or terrorist-funding activities. Officially, Islamic countries are on the highest priority watch list for monetary movement around the globe.

Government procurement

As for Malaysian Government procurements, one of the sensitive issues concerns Bumiputera contracts and an allowance for US companies and corporations to offer their services directly to the government. The transparency level of the Malaysian Government had also been questioned, particularly concerning Malaysia's use of Approved Permits (APs) for imports and exports of various products ranging from automobiles to steel and even agricultural produce.

According to the Malaysian Trade Classification and Custom Duties Order 2006/07 published by MDC Publishers, 17 agencies and Ministries currently utilise the APs. Among other issues is the fact that Malaysia has not yet implemented the Freedom of Information Act. Seventy other countries promote local government transparency to their citizens as well as internationally, and allow for government documents, research and expenditure information to be made transparent for all.

Capital controls

As for capital controls, one hot factor

The Government should seriously consider adopting a more transparent stance by implementing the Freedom of Information Act to boost confidence of international investors. It should also reduce bureaucracy for local and international businesses.

concerns the Fair Currency Enforcement Act recently introduced by Congress, pertaining to countries which engage in currency manipulation and price controls. The Malaysian ringgit had only recently been depegged against the US dollar and is currently on a managed float by Bank Negara Malaysia.

With the rise of the ringgit against the US dollar, the FTA talks with the US have raised the question of whether it is actually a positive sign of strength of the Malaysian economy, or merely signals from foreign investors or speculators locally to buy long on the ringgit, creating a temporary rise in the currency price.

Upon the signing of an FTA with the US for a more open market economy, can Malaysia face heavy speculation such as the one during the 1997 Asian Economic Crisis?

As for the issue of capital controls, the US FTAs with Singapore and Chile also allow for investors to sue the government for damages caused by possible government capital controls.

One of the most important questions left to answer is, what are the settlement clauses for any trade disputes which may arise in an FTA between the US and Malaysia in the future? Chapter 11 of the North American Free Trade Agreement

(Nafta) allows or gives the right to individuals and corporations to sue the government for any damages to trade arising from a treaty country's policies.

Seeing Malaysia's position, stepping into the FTA ring without proper preparations is almost equivalent to a featherweight challenging the heavyweight boxing champion! The Malaysian Government should be taking steps such as adopting a more proactive stand globally by ratifying the important treaties under WIPO and Unesco to offer more protection for Malaysian goods and services locally and internationally. This would give more confidence to foreign investors.

Malaysia should also take a more proactive stand with international organisations such as the International Labour Organisation (ILO), World Health Organisation (WHO) and so on. But most of all, Malaysia should work on securing its position with the other US top trading partners, Asean and the Organisation for Islamic Conference (OIC) nations to strengthen its position as a gateway for foreign investments.

The Government should seriously consider adopting a more transparent stance by implementing the Freedom of Information Act to boost confidence of international investors. It should also reduce bureaucracy in Government for local and international businesses and reduce the hassles of setting up business and obtaining licences.

The very least the Government could do currently is to review Malaysia's double-taxation treaty with the US signed 18 years ago by former Finance Minister Tun Daim Zainuddin, which is currently limited mainly to shipping and air transport.

To date, Malaysia has yet to ratify the 2003 United Nations Convention Against Corruption, which is also an important instrument in issues concerning transparency and sovereign risks for foreign investors. **mb**

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