US FTA

STOP the US Free Trade Agreement

Don't Let USA Rule M'sia

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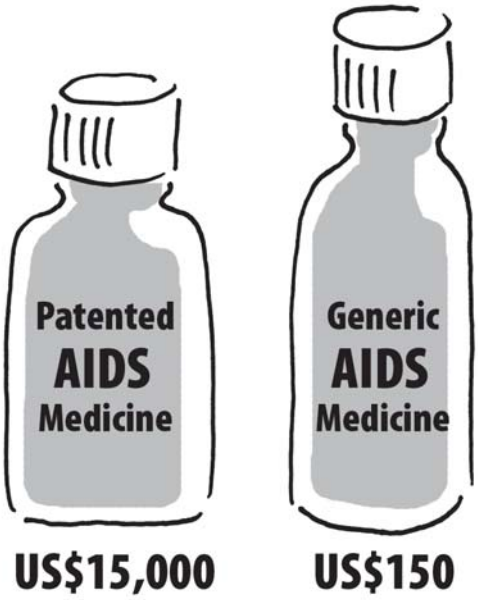
Prices of Medicines Will Shoot Up

Based on previous USFTAs which are almost all the same, USA will make demands that will cause the prices of medicines to be more expensive in Malaysia.



> When generic AIDS medicines became available, they reduced the price of treatment from US$15,000 per patient per year to US$150 per patient per year. The price dropped by 100 fold.

More patented medicines

Firstly, more medicines will be patented if a USFTA is signed. A patent gives an exclusive right to a company (a monopoly) to make or import a new invention. For example, in Malaysia plants do not have to be patented but with the signing of the USFTA these will be able to be patented. This means the knowledge of the indigenous groups and even the existing plants used for medicinal values to cure illness like malaria will be able to be patented.

Longer patent protection

Secondly, if a USFTA is signed, the duration of patents will last longer than the existing 20 years as required by the World Trade Organization (WTO). This means patients will have to wait longer before the patent monopoly is finished and generic versions of medicines can be bought. A generic version is just as safe and effective as the original medicine. For example, Glaxo makes Panadol which is the brand name for paracetemol. The same paracetemol can be made by a generic company and this generic version of might be called "Super". Generic medicines are much cheaper, for example when generic AIDS medicines became available, they reduced the price of treatment from US$15,000 per patient per year to US$150 per patient per year. The price dropped by 100 fold.

Longer time needed to produce cheap generic medicines

Thirdly, through the USFTA, USA accompanies can also get a monopoly on medicines through the 'data exclusivity' provision. Currently generic companies do not have to redo the clinical trials that the first company making the medicine had to do to prove its medicine was safe and effective. At the moment, generic companies can rely on the first company's results. But data exclusivity will stop generic companies from being able to do this for at least 5 years. So even if the medicine is not patented, Malaysians will still have to pay the very high monopoly price for medicines for at least five years before generic medicines can be sold to them.

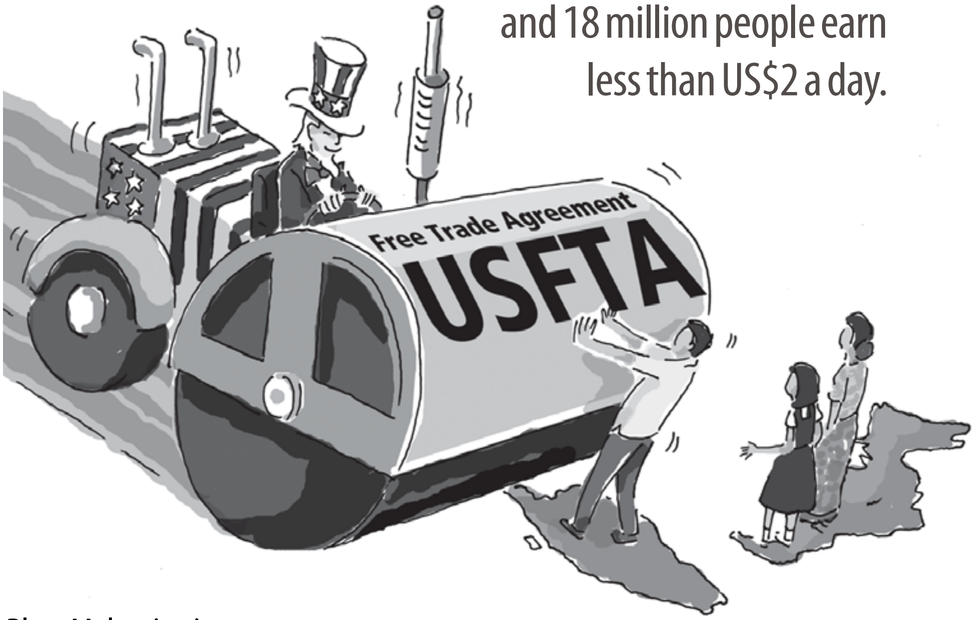
We may not be able to make or import cheaper medicines

Lastly, Malaysia was a world leader when it issued a type of compulsory license to import cheaper AIDS medicines in November 2003 (for a two year period). Compulsory licensing is a tool provided under the WTO which allows for governments or other companies to import or make a patented medicine without the patent owners' permission, if a small royalty is paid and some procedures are followed. Many countries saw Malaysia as a role model at that time. If USFTA is signed, it will be more difficult for Malaysia to use this tool in the future.

With such a potential for higher cost of most medicines when the USFTA is signed, are we able to afford the medicines at such a rate?

Farmers May Lose Livelihood

Nearly 2 million Mexican farmers have left their land since the onset of NAFTA, with 8 out of 10 people live in poverty and 18 million people earn less than US$2 a day.



One of the main demands by the American government when it comes to agriculture is to export more of its farm products to Malaysia, in particular rice, soya bean and meat (chicken and beef) by requiring Malaysia to reduce its tariffs on all American farm products to zero.

Rice farmers' protection may be removed

Malaysia currently has a 40% tariff on rice to protect its farmers and in the 9th Malaysian Plan, Malaysia aims to reach 90% self-sufficiency in rice production. Some 296,000 farmers depend on rice for their livelihood, with 116,000 farmers exclusively involved in the cultivation of padi in Malaysia today. The rice sector in Malaysia is currently relatively protected in view of ensuring food security and protection of rural livelihoods.

But if the tariff were to be reduced to zero then American rice (which has been subsidized by the USA government so that it can be sold at 25% below the cost of production) would flood into Malaysia.

Farmers forced to leave lands

The impact of such provision on agriculture can be seen in the North American Free Trade Agreement (NAFTA) where grain imports from America after NAFTA have devastated thousands of farm livelihoods throughout Mexico. Nearly 2 million farmers have left their land since the onset of NAFTA, with 8 out of 10 people live in poverty and 18 million people earn less than USD$ 2 a day.

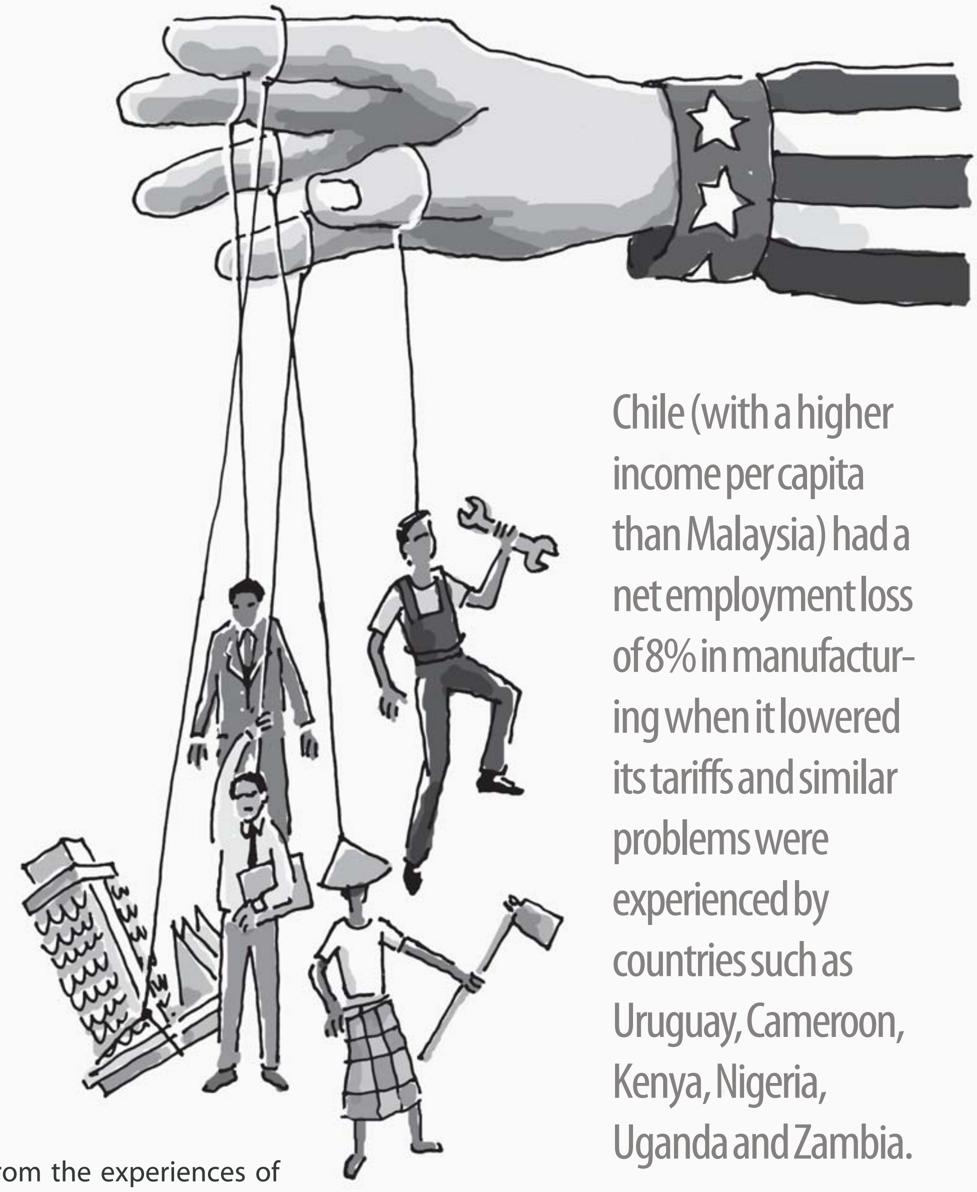
Unable to export crops to US

Malaysian farmers are unlikely to be able to export significantly more of their crops to America due to a few reasons. Firstly, the American law does not allow the United States Trade Representative (USTR) to offer significantly lower tariffs to Malaysia. Secondly, even if Malaysia is given a lower tariff, the American government's huge subsidies to their farmers will make it hard for Malaysian products to compete. And thirdly the Mexican experience showed that even with lower tariffs given for Mexican fruits and vegetables, the American Government can still put up other trade barriers to restrict the exports of the agriculture products from entering their country.

With such bleak future lies ahead for the agriculture sector in Malaysia once the Malaysia-US FTA is signed, the Malaysian government must ensure that a proper cost benefit analysis is done so that the goal of achieving self-sufficiency in agriculture will not be compromised and no serious detriment will be incurred.

Wages May Fall & Workers Lose Jobs

THE American Government has said that it wants all Malaysia's tariffs on manufactured products (ie everything other than farm produce) from the USA to be reduced to zero. What does this mean for Malaysians?



Reducing tariffs to zero: Less money for development

Economists predict that quickly reducing the tariffs will have a bigger impact on small companies than on large ones because small businesses do not have the same financial capacity to adjust to such changes. The Malaysian Government will have less money to retrain any workers who become unemployed because it is getting less money once it lowers the tariffs.

Loss of jobs

Malaysia could also learn from the experiences of other countries. An independent study by the European Union of the impact of its FTA with countries in North Africa such as Turkey, Israel, Egypt and Morocco has found that reducing tariffs like that will cause many people to lose their jobs.

Senegal lost one-third of its manufacturing jobs when it reduced its tariffs on imported manufactured goods because Senegalese companies could not compete with the cheaper imports.

Chile (with a higher income per capita than Malaysia) had a net employment loss of 8% in manufacturing when it lowered its tariffs and similar problems were experienced by countries such as Uruguay, Cameroon, Kenya, Nigeria, Uganda and Zambia.

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Falling wages

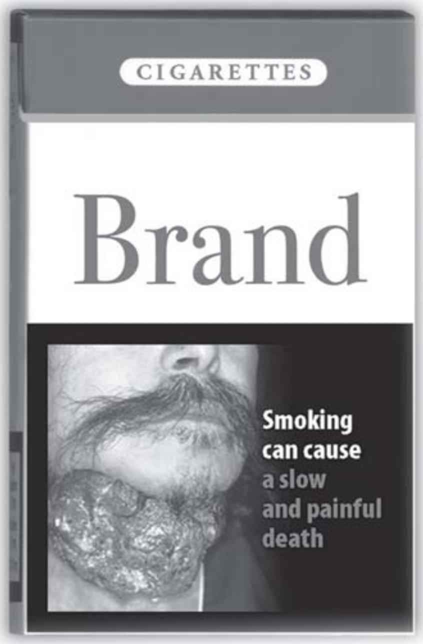
The higher unemployment also causes wages to fall for those who still have a job because they are worried about losing their jobs to the unemployed according to the European Union's study and Ecuador's experience.

Undermining Tobacco Control Measures

The proposed US-Malaysia Free Trade Agreement (FTA) may have negative impact on measures controlling tobacco use as multinational corporations have used intellectual property protections, particularly trademark and trade secret protection, to challenge these measures.

As in the United States, smoking is a major public health issue in Malaysia. More than one in four Malaysian adults smoke and it is estimated that 10,000 Malaysians die a year from smoking-related disease. Nearly half of the health ministry's budget is spent on treating tobacco-related disease.

To address these major public health and fiscal problems, Malaysia has signed and ratified the Framework Convention on Tobacco Control, and is undertaking serious measures to reduce the toll of smoking on the health of its people.



BAT, Imperial Tobacco and Japan Tobacco have argued that European warning label requirements violate the companies' trademark rights, by encumbering their use of cigarette packaging to display trademarks and distinguish their products.

Photos show graphic warning labels in the European Union. Singapore and Thailand have similar labels

It has instituted a prominent government-run counter-smoking campaign, raised tobacco taxes, and adopted appropriate regulatory policies, such as a planned move to larger and more graphic warning labels.

The Malaysian public health efforts are unfortunately being undermined by the efforts of leading multinational tobacco companies, Philip Morris and British American Tobacco (BAT). These companies have long skirted advertising restrictions by undertaking a panoply of brand-stretching and indirect advertising practices, a problem the country has sought to address with a comprehensive ad ban adopted in 2003. Now the companies are working to undermine tobacco tax increases by offering discounts and adding cigarettes to the pack.

A U.S.-Malaysian FTA that includes the features commonly found in U.S. trade agreements and that applies to tobacco products will assist the tobacco multinationals in their efforts to undermine public health efforts to reduce smoking rates and diminish the toll of smoking-related death and disease.

FTA Rules

The standard model US free trade agreement includes a rollback and elimination of tariffs on goods, and establishment of a range of rules covering non-tariff issues, including trade in services and intellectual property. Both tariff and non-tariff provisions in FTAs threaten important tobacco control objectives.

Over the last two decades, the tobacco companies have invoked a range of trade rules in an attempt to defeat sound tobacco control rules. Inclusion of tobacco products in a US-Malaysian FTA would give them enhanced ability to do so in Malaysia.

ıntellectual Property

The tobacco multinationals have relied especially on intellectual property rules to challenge sound tobacco control policy.

They have argued in Canada, Brazil, Thailand and elsewhere that plain packaging requirements for cigarette packaging or even large health warnings threaten their trademarks, and undermine the very purpose of trademarks, which is to provide easily determinable distinguishing marks for one company's product over another.

For instance, BAT, Imperial Tobacco and Japan Tobacco have argued that European warning label requirements violate the companies' trademark rights, by encumbering their use of cigarette packaging to display trademarks and distinguish their products.

The companies have also claimed that efforts to ban the use of the terms "light" "mild" and "low" may infringe trademark rights, because those terms are incorporated into cigarette names. In late 2001, Canada proposed health regulations to prohibit the use of the terms "light" and "mild" on tobacco packaging. Canada proposed the regulation in response to findings by public health experts that the "mild" and "light" descriptors are fundamentally misleading. "Mild" and "light" cigarettes are not less hazardous to smokers' health.

Though Philip Morris disclaimed any health benefits for "light" or "ultralight" cigarettes, and agreed that "consumers should not be given the message that descriptors means that any brand of cigarettes has been shown to be less harmful than other brands", the company nonetheless insisted it should still be able to use the terms, which it alleged communicate differences of taste to consumers. Barring use of the terms, Philip Morris argued, would violate Canada's obligations under the World Trade Organisation (WTO) and North American Free Trade Agreement (NAFTA).

Cigarette companies have also challenged efforts to require the disclosure of cigarette ingredients as a violation of their trade agreement-protected trade secret rights, notably in Thailand.

Services

Provisions in services agreements might be used to challenge national advertising bans or restrictions, particularly restrictions that apply to certain forms of advertising but not others. They might also be used to challenge rules restricting distribution outlets for tobacco products. So too might restrictions on Internet sales of cigarettes be subjected to a services agreement challenge.

Investments

Tobacco companies might invoke trade/investment agreements to challenge national law which are deemed to restrict tobacco sales. The provisions of the agreements provide considerable means for the industry to do so. Each of the potential intellectual property claims of the industry – on warning labels, bans on "light," "mild" and "low," and ingredient disclosure – can be recast as an expropriation and therefore, subjected to challenge.

Conclusion

Given the overwhelming public policy interest in reducing smoking rates, there is no legitimate basis for concluding the US-Malaysia FTA.

(Source: Essential Action, USA)

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