MALAYSIA

TRADE SUMMARY

The U.S. trade deficit with Malaysia fell to $13.0 billion, down $1.7 billion from a trade deficit of $14.6 billion during 2000. U.S. goods exports to Malaysia totaled $9.4 billion in 2001, a decline of $1.6 billion (14.2 percent) from the level of U.S. exports to Malaysia during 2000. Malaysia was the United States' 18th largest export market in 2001. U.S. imports from Malaysia totaled $22.3 billion in 2001, a decrease of $3.2 billion (12.6 percent) from the level of imports during the same period in 2000.

U.S. exports of private commercial services (i.e., excluding military and government) to Malaysia were $1.1 billion in 2000 (latest data available), and U.S. imports were $363 million.

The stock of U.S. foreign direct investment (FDI) in Malaysia at the end of 2000 was $6.0 billion, up 3.0 percent from the previous year. U.S. FDI in Malaysia is concentrated largely in the manufacturing, energy and financial sectors.

IMPORT POLICIES

Tariffs are the main instrument used to regulate the importation of goods in Malaysia. However, 17 percent of Malaysia's tariff lines (principally in the construction equipment, agricultural, mineral, and motor vehicle sectors) are also subject to non-automatic import licensing designed to protect import-sensitive or strategic industries. The average applied MFN tariff rate is approximately 9.18 percent; however, duties for tariff lines where there is significant local production are often higher. For example, 6.8 percent of tariff lines have rates between 16 percent and 20 percent, 16.9 percent of tariff lines have rates that exceed 20 percent, and several lines (such as automobiles) have rates well over 100 percent.

The level of tariff protection is generally lower on raw materials; it increases for those goods which have value-added content. In addition to import duties, a sales tax of 10 percent is levied on most imported goods. Similar to import duties, however, this sales tax is not applied to raw materials and machinery used in export promotion.

Import Restrictions on Motor Vehicles

Malaysia maintains several measures to protect the local automobile industry, including high tariffs and an import quota and licensing system on imported motor vehicles and motor vehicle parts. In order to qualify for certain tax/tariff incentives for domestic production, companies are required to satisfy local content requirements of 45 percent to 60 percent for passenger and commercial vehicles, and 60 percent for motorcycles. Malaysia also prohibits large-displacement motorcycle traffic from its tollways. This ban serves as an effective non-tariff barrier to U.S. exports of large motorcycles. Arguing that the national car industry requires additional time to become competitive internationally as a result of the 1997 to 1999 regional financial crisis, Malaysia requested in the WTO additional time before reducing or abolishing these measures. In 2001, Malaysia reached an agreement with WTO members on an extension of these measures until December 31, 2003. The extension requires a phase out of local content requirements in selected auto industry sectors that are inconsistent with Malaysia's obligations under the WTO Agreement on Trade Related Investment Measures (TRIMS).

Pursuant to the extension program, the government announced that it had abolished the Local Materials Content Program (LMCP) and had removed 11 items from the Mandatory Deleted Items (MDI) list effective January 1, 2002. The remaining 19 items on the MDI list will be removed on January 1, 2004, (see "Investment Barriers" below). Malaysia also sought similar delays in the liberalization of its auto sector within the ASEAN Free Trade Area (AFTA). Malaysia secured from ASEAN members in 2001 an extension until 2005 of its commitments to reduce auto sector tariffs in AFTA. Customs tariffs and excise duties (up to 60 percent) for motorcycles are also significant barriers for U.S. companies.

Malaysia's 1998 fiscal year budget increased tariffs on a range of motor vehicles, and these rates continue to apply. Although the specific tariff depends on engine capacity, in general, the currently applied tariffs rates for completely built-up (CBU) and completely knocked-down (CKD) vehicles are as follows: 140 percent to 300 percent for automobiles (CBU); 80 percent for automobiles (CKD); 42 percent to140 percent for vans (CBU); 40 percent for vans (CKD); 60 percent to 200 percent for four-wheel drive/multipurpose vehicles (CBU); 40 percent for four-wheel drive/multipurpose vehicles (CKD). In October 2001, import duties on (CBU) motorcycles were slashed from between 80 percent and 120 percent to 60 percent. Import duties are 30 percent for motorcycles (CKD).

Restrictions on Construction Equipment

In October 1997, Malaysia increased tariffs on construction equipment and imposed a licensing regime affecting imports of heavy construction equipment. In addition, the initial capital allowance tax deduction for imported heavy equipment was reduced from 20 percent to 10 percent in the first year, and the annual allowance was reduced from between 12 percent and 20 percent to 10 percent. In April 1999, another licensing requirement was established for certain iron and steel products. Current applied tariff rates for construction equipment are as follows: five percent for heavy machinery and equipment; 50 percent for multi-purpose vehicles; 50 percent for special purpose vehicles; and 10 percent to 30 percent for construction materials.

Duties on High-Value Food Products

In October 2001, import duties on 84 categories of food products (fresh, dried and processed) were reduced from between 5 percent and 30 percent to between 2 percent and 15 percent. The previous year, import duties on 136 categories of food products (fresh, dried, and processed) were cut from between 5 percent and 20 percent to between 2 percent and 12 percent. The Malaysian Government significantly reduced import duties on prepared cereals, prepared vegetables, prepared/preserved fruits, nuts, fruit juices, pasta, and various seafood items. However, duties for some processed and high-value products, such as canned fruit, snack foods, and other processed foods, range between 20 percent and 30 percent. The applied tariff on soy protein concentrate is 20 percent.

Duties on Selected Goods

In October 2001, the Malaysian Government reduced import duties on selected goods that had been imposed to protect local producers from import competition. The Malaysian Government also rationalized the import duties on selected intermediate and finished goods in order to avoid anomalies and to reduce the cost of doing business. Import duties on 55 "long-protected" items (including suitcases, textiles, and cigarette lighters) were reduced from between 20 percent and 105 percent to between 10 percent and 50 percent. Import duties on 25 intermediate goods, with duties higher than finished goods (including cocoa paste, plugs and sockets, and ball point pen parts) were reduced from between 10 percent and 30 percent to between 5 percent and 25 percent. Import duties on 109 products, where the rates were not consistent with rates on goods from the same category (including adhesives, lingerie, and linens) were reduced from between 25 percent and 30 percent to between 0 percent and 25 percent. Import duties on 27 items, which are competitive or not produced locally (including hydraulic fluids, color television receivers, and binoculars) were eliminated.

Rice Import Policy

The sole authorized importer of rice, a government corporation (Bernas), has wide power to regulate imports and has responsibility for ensuring that domestic crops are purchased.

Float Glass Tariff

Malaysia levies high duties (30 percent to 60 percent ad valorem duties) on rectangular-shaped float glass. To qualify for the lower ad valorem MFN tariff rate, exporters often must resort to time-consuming, wasteful procedures such as cutting off one or more corners or cutting one edge in a slanted fashion. Under the ASEAN Free Trade Area Common Effective Preferential Tariff (CEPT) scheme, imported float glass from other ASEAN countries is subject to a 20 percent tariff.

Film and Paper Products

Malaysia no longer has import duties on instant print film. In October 2001, the Malaysian Government eliminated import duties on other film for color photography. Effective February 2000, Malaysia increased the tariff on newsprint (rolls and sheets) to 10 percent. In August 1994, the Malaysian Government raised tariffs on several categories of imported kraft linerboard (used in making corrugated cardboard boxes) to between 20 percent and 30 percent, depending on the category. These tariff increases are subject to review every two years and were to be phased out after five years. The 1998 review reduced tariffs to 10 percent for all categories. Tariffs were not changed in 2000.

Textiles

Import duties on textiles and apparel range between 0 percent and 30 percent. The sales tax on textiles and apparel is 10 percent. Malaysia does not impose import licenses or burdensome labeling requirements on the import of textiles.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

All meat, processed meat products, poultry, eggs, and egg products must receive *halal* (produced in accordance with Islamic practices) certification from Pusat Islam (the Islamic Center). This certificate can only be obtained through an on-site inspection by representatives of the Malaysian Department of Veterinary Services from the Ministry of Agriculture and Pusat Islam. The Government of Malaysia has the right to re-inspect the plant again after one year. Each individual product, rather than the plant, must receive *halal* certification. U.S. producers have expressed concern that the *halal* certification process is confusing and non-transparent.

Although the Government of Malaysia applies a zero import duty on chicken parts, imports are regulated through licensing and sanitary controls. Import levels remain well below the minimum access commitments established during the Uruguay Round.

EXPORT SUBSIDIES

Malaysia offers several export allowances. Under the export credit refinancing scheme operated by the Central Bank, commercial banks and other lenders provide financing to exporters at a preferential rate for both post-shipment and pre-shipment credit. Malaysia also provides tax incentives to exporters, including double deduction of expenses for overseas advertising and travel, supply of free samples abroad, promotion of exports, maintaining sales offices overseas, and research on export markets.

GOVERNMENT PROCUREMENT

Malaysia is not party to the plurilateral WTO Government Procurement Agreement. Malaysian Government policy calls for procurement to be used to support national public policy objectives, such as encouraging greater participation of *Bumiputera* (ethnic Malays) in the economy, transferring technology to local industries, reducing the outflow of foreign exchange, creating opportunities for local companies in the service sector, and enhancing Malaysia's export capabilities. As a result, foreign companies do not have the same opportunity as some local companies to compete for contracts and, in most cases, foreign companies are required to take on a local partner before their bids will be considered. Some U.S. companies have voiced concerns about the non-transparent nature of the Malaysian government's procurement decision-making process.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Malaysia is a member of the World Intellectual Property Organization (WIPO), and is a party to the Berne Convention for the Protection of Literary and Artistic Works, and the Paris Convention for the Protection of Industrial Property. Malaysia provides copyright protection to all works (including video and sound recordings, and computer software) published in Berne Convention member countries, regardless of when the works were first published in Malaysia. Malaysia was scheduled to meet its obligations under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) on January 1, 2000. In 2000, the Malaysian Government passed a number of new laws and amendments to existing legislation in order to bring Malaysia into compliance with its TRIPS obligations. New legislation on plant varieties is still being drafted.

As the number of manufacturing licenses for CDs has increased, so too have piracy rates for music and video discs. Malaysia's production capacity for CDs exceeds local demand plus legitimate exports, and pirated products believed to have originated in Malaysia have been identified throughout the Asia-Pacific region, North America, South America, and Europe. U.S. copyright industries estimate losses in Malaysia due to piracy at $316 million. In April 2000, USTR placed Malaysia on the Special 301 Priority Watch List for its failure to substantially reduce pirated optical disc production and export. After an out-of-cycle review, in October 2001, USTR moved Malaysia to the Special 301 Watch List from the Priority Watch List, in recognition of the steps Malaysia has taken to implement new legislation and enforce protection of IPR. At the time of the review, USTR stipulated that Malaysia's placement on the Watch List depends upon the full implementation of all provisions of the Optical Disk Act and prosecution of IPR offenders.

The Malaysian Government is aware of its piracy problem and has expressed its determination to move against illegal operations. The Prime Minister and his cabinet have publicly spoken out about the need to improve IPR protection. A special task force, chaired by the Minister of Domestic Trade and Consumer Affairs, includes representatives from all ministries and agencies with responsibility for IPR. Government and industry cooperation has expanded. For example, in July 2000, the Ministry and the Business Software Alliance (BSA) launched "Crackdown 2000" targeting corporate use of unlicensed software. In July 2001, the government banned sales of optical media at night markets.

In April 2000, the Malaysian Parliament passed amendments to the Copyright Act, the Patents

Act, and the Trademarks Act, as well as legislation on layout designs of integrated circuits and geographical indications. On September 15, 2001, the Optical Disc Act of 2000, establishing a licensing and regulatory framework for manufacturing copyrighted works and piracy, came into full effect. Under the Act, manufacturers are required to obtain licenses from both the Ministry of International Trade and Industry and the Ministry of Domestic Trade and Consumer Affairs, to place identification codes (SID codes) on each disk, and to allow regular inspections of their operations.

Suppressing CD-based digital piracy is consistent with the government's objective to establish the Multimedia Super Corridor as the preeminent locus of high-technology manufacturing and innovation in Asia. The police and legal authorities are generally responsive to requests from U.S. firms for investigation and prosecution of copyright infringement cases. However, despite thousands of raids and inspections since April 1999, few criminal prosecutions for piracy have taken place. No companies licensed under the Optical Disc Act have been closed, despite failing to abide by the terms of their licenses. Notwithstanding the efforts of the government, illegal production of optical discs remains a significant problem in Malaysia, and its effects have been observed throughout the region.

SERVICES BARRIERS

Basic Telecommunications

Under the WTO Basic Telecommunications Agreement, Malaysia made limited commitments on most basic telecommunications services and partially adopted the reference paper on regulatory commitments. Malaysia guarantees market access and national treatment for these services only through acquisition of up to 30 percent of the shares of existing licensed public telecommunications operators, and limits market access commitments to facilities-based providers, constituting one of the most restrictive regimes for an economy of this level of development. Value-added service suppliers are similarly limited up to 30 percent foreign equity. Restrictions on their activities tend to benefit the dominant provider, Telekom, and hamper the development of a more efficient information infrastructure.

On February 1, 2000, the Communications and Multimedia Act went into effect. The Act clarifies the meaning of "dominant position" and the types of activities that can lead to "substantial lessening of competition", in addition to setting up a process for identifying such behavior and penalizing it. This is Malaysia's first legislation to address anticompetitive activities and may pave the way for similar laws in other industries.

Direct Selling

In May 1999, the Malaysian Government announced new requirements for the licensing and operation of direct selling companies. These requirements include the provisions that: a) no more than 30 percent of a locally incorporated company may be foreign-owned; b) local content of products marketed through direct selling companies should be no less than 80 percent; c) no new products will be approved for sale that do not meet local content requirements; and d) all price increases will be approved by the Ministry of Domestic Trade and Consumer Affairs. Companies meeting these conditions receive one-, two-, or three- year operating licenses. The Ministry has stated that the local content targets are not mandatory, but that adherence to this equity policy is mandatory.

In October 2001, the Minister of Domestic Trade and Consumer Affairs announced that the Malaysian Government had lifted its moratorium on multi-level direct selling licenses. Licenses will be issued to companies with paid-up capital of RM 2.5 million ($657,000). Companies with foreign shareholders must have paid-up capital of RM 5 million ($1.3 million). The paid-up capital requirement for single-level and mail order companies is RM 500,000 ($131,578). Existing licensed companies will be given one year to comply with this ruling. Single-level companies have been permitted to apply for multi-level licenses, provided they have been operating for three years and have annual sales of more than RM 1 million ($263,157).

Legal Services

Foreign lawyers may not practice Malaysian law or operate as foreign legal consultants, nor may they affiliate with local firms or use their international firm's name. Foreign law firms may not operate in Malaysia except as minority partners with local law firms, and their stake in any partnership is limited to 30 percent. Under the Legal Profession Act of 1976, the practice of Malaysian law is normally restricted to Malaysian citizens or permanent residents who have apprenticed with a Malaysian lawyer, are competent in Bahasa Malaysia (the official language), and have a local law degree or are accredited British Barristers at Law. The Attorney General has authority to grant limited exceptions on a case-by-case basis, provided the applicant has seven years of legal experience. Malaysian lawyers are required to practice in partnerships or sole proprietorships. Malaysian law does not allow for foreign legal consultancy, except on a limited basis in the Labuan International Offshore Financial Center (see "Banking" below). Persons not licensed as lawyers are subject to criminal penalties if they directly or indirectly undertake activities relating to the Malaysian legal system, including drafting documents.

Architectural Services

A foreign architectural firm may operate in Malaysia only as a joint-venture participant in a specific project with the approval of the Board of Architects. Malaysian architectural firms may not have foreign architectural firms as registered partners. Foreign architects may not be licensed in Malaysia but are allowed to be managers, shareholders, or employees of Malaysian firms. Only licensed architects may submit architectural plans.

Engineering Services

Foreign engineers may be licensed by the Board of Engineers only for specific projects, and must be sponsored by the Malaysian company carrying out the project. The license is only valid for the duration of a specific project. In general, a foreign engineer must be registered as a professional engineer in his or her home country, have a minimum of 10 years experience, and have a physical presence in Malaysia of at least 180 days in one calendar year. To obtain temporary licensing for a foreign engineer, the Malaysian company often must demonstrate to the Board that they cannot find a Malaysian engineer for the job. Foreign engineers are not allowed to operate independently of Malaysian partners, or serve as directors or shareholders of a consulting engineering company. A foreign engineering firm may establish a non-temporary commercial presence if all directors and shareholders are Malaysian. Foreign engineering companies can collaborate with a Malaysian firm, but the Malaysian company is expected to design and required to submit the plans.

Accounting and Taxation Services

Foreign accounting firms may provide accounting and taxation services in Malaysia only through affiliates. All accountants who wish to provide auditing and taxation services in Malaysia must register with the Malaysian Institute of Accountants (MIA) before they may apply for a license from the Ministry of Finance. Citizenship or permanent residency is required for registration with MIA. Malaysian citizens or permanent residents who received degrees from local universities or are members of at least one of the 11 recognized overseas professional bodies recognized by Commonwealth countries may apply for registration. Members of the American Institute of Certified Public Accountants (AICPA) are not eligible to become members of the MIA.

Banking

In March 2001, Bank Negara Malaysia (the central bank) unveiled a ten-year Financial Sector Masterplan for developing a more competitive and resilient financial system. The plan is focused on building competitive domestic banks and defers the introduction of new foreign competition until after 2007. Foreign banks must operate as locally controlled subsidiaries. Foreign-controlled companies are required to obtain 50 percent of their local credit from Malaysian banks. The Federal Territory of Labuan was established as an International Offshore Financial Center in October 1990. Foreign investors receive preferential tax treatment for offshore banking activities, trust and fund management, offshore insurance and offshore insurance-related businesses, and offshore investment holding business. In 2000, the Bank of China was permitted to resume operations in Malaysia after a 41-year hiatus. Otherwise, the Government of Malaysia has continued its longstanding policy of granting no new licenses to either local or foreign banks.

Insurance

The Financial Sector Masterplan recommends phased liberalization of the insurance industry, including lifting existing restrictions on employment of expatriate specialists, increasing caps on foreign equity, and fully opening the reinsurance industry to foreign competition. Branches of foreign insurance companies were required to incorporate locally under Malaysian law by June 30, 1998. However, the Malaysian Government has granted individual extensions. Foreign shareholding exceeding 49 percent is not permitted unless the Malaysian government approves higher shareholding levels. As part of the 1997 WTO Financial Services Agreement, Malaysia committed itself to allow existing foreign shareholders of locally incorporated insurance companies to increase their shareholding to 51 percent. New entry by foreign insurance companies is limited to equity participation in locally incorporated insurance companies and aggregate foreign shareholding in such companies may not exceed 30 percent.

Securities

Malaysia currently allows 49 percent foreign ownership in stockbroking companies and a 30 percent foreign stake in unit trusts. In February 2001, the Securities Commission released its ten-year Capital Market Masterplan. The plan proposes liberalizing foreign participation limits by 2003, at which time foreigners would be permitted to purchase a limited number of existing stockbroking licenses and to take a majority stake in unit trust management companies. Fund management companies may be 100 percent foreign owned if they provide services only to foreigners, but they are limited to 70 percent foreign ownership if they provide services to both foreign and local investors.

Advertising

Commercials are restricted to a maximum of 20 percent foreign film content and only Malaysian actors may be used in commercials shown in Malaysia. The Government of Malaysia has an informal and vague guideline that commercials cannot “promote a foreign lifestyle.”

Audio-Visual and Broadcasting

The Malaysian Government maintains broadcast content quotas on both radio and television programming. Eighty percent of television programming is required to originate from local production companies owned by ethnic Malays (an increase from the previous limit of 60 percent). However, in practice, local stations have been granted substantial latitude in programming due to a lack of local programming. Sixty percent of radio programming must be of local origin. The Communications and Multimedia Act of 1999, which calls on industry groups to establish content standards and could be the basis for modification of existing local content restrictions, transferred responsibility for regulating broadcasting from the Ministry of Information to the Ministry of Energy, Telecommunications, and Multimedia. Foreign investments in terrestrial broadcast networks are prohibited. As a condition for obtaining a license to operate, video rental establishments are required to have 30 percent local content in their inventories.

INVESTMENT BARRIERS

Malaysia encourages direct foreign investment particularly in export-oriented manufacturing and high-technology industries, but retains considerable discretionary authority over individual investments and prefers that foreign firms enter into joint ventures with local partners. Foreign equity participation in manufacturing is governed by the level of exports. Investments aimed at the domestic market are normally restricted to a foreign equity of 30 percent. To alleviate the effects of the regional economic crisis, in 1998 Malaysia temporarily relaxed foreign-ownership and export requirements in the manufacturing sector for those companies that do not directly compete with local producers. This incentive, which permits 100 percent foreign equity in new facilities and expansion and diversification of existing manufacturing concerns, is applicable until December 31, 2003. Malaysia continues to suffer shortages of skilled and technical employees, particularly in the electronics sector. Firms also face restrictions on the number of expatriate workers they are allowed to employ.

Trade-Related Investment Measures

In 1995, Malaysia notified WTO Members of measures that are inconsistent with its obligations under the WTO Agreement on Trade-Related Investment Measures (TRIMS). These measures are local content requirements in the motor vehicle industry related to investment incentives. Proper notification allowed developing-country WTO members to maintain such measures for a five-year transitional period, ending January 1, 2000. In 2001, the WTO granted Malaysia’s request for an extension, until December 31, 2003, to phase out local content provisions in the automotive sector. On January 1, 2002, the Malaysian Government abolished the Local Materials Content Program and announced the phased removal of 11 items from the Mandatory Deleted Items (MDI) list. These 11 items will be removed by June 1, 2002. Each of these actions was formally gazetted by the Malaysian government on January 1, 2002. The Ministry of International Trade and Industry has announced that the remaining 19 items on the MDI list will be removed on January 1, 2004.

ELECTRONIC COMMERCE

Malaysia currently applies no special restrictions on products or services traded via electronic commerce. Products that are ordered via the Internet and physically delivered are subject to applicable import duties. Engineering services may not be provided via Internet unless the engineer is properly licensed.

OTHER BARRIERS

U.S. companies have indicated that they would welcome improvements in the transparency of Malaysian government decision-making and procedures, and limits on anticompetitive practices. A considerable proportion of government projects and procurement is awarded without transparent, competitive bidding. The Malaysian government has declared that it is committed to fighting corruption. To promote that objective, Malaysia maintains an Anti-Corruption Agency (ACA) which is part of the Office of the Prime Minister. The ACA has the independent power to conduct investigations and is able to prosecute cases with the approval of the Attorney General.