MALAYSIA

TRADE SUMMARY

The U.S. goods trade deficit with Malaysia was $23.3 billion in 2005, an increase of $6.0 billion from $17.3 billion in 2004. U.S. goods exports in 2005 were $10.5 billion, down 4.3 percent from the previous year. Corresponding U.S. imports from Malaysia were $33.7 billion, up 19.6 percent. Malaysia is currently the 18th largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to Malaysia were $1.2 billion in 2004 (latest data available), and U.S. imports were $616 million. Sales of services in Malaysia by majority U.S.-owned affiliates were $1.5 billion in 2003 (latest data available), while sales of services in the United States by majority Malaysia-owned firms were not available in 2003 ($292 million in 1998).

The stock of U.S. foreign direct investment (FDI) in Malaysia in 2004 was $8.7 billion, up from $7.3 billion in 2003. U.S. FDI in Malaysia is concentrated largely in the manufacturing, and mining sectors.

FREE TRADE AGREEMENT LAUNCHED

USTR notified Congress of the President's intent to initiate negotiations on a Free Trade Agreement (FTA) with Malaysia on March 8, 2006. The announcement followed more than a year of discussions with Malaysia under their Trade and Investment Framework Agreement, concluded in 2004. In announcing its intent to launch negotiations, the Administration noted that Malaysia is our 10th largest trading partner with $44.2 billion in total trade during 2005 and that the increased access to Malaysia's market that an FTA would provide would further boost trade in a wide range of both industrial and agricultural goods and services, enhancing employment opportunities in both countries. It highlighted expected gains from liberalization of foreign investment between the United States and Malaysia as well as from the strengthening of Malaysia's intellectual property and customs regimes. An FTA with Malaysia also would advance President Bush's Enterprise for ASEAN Initiative, under which the United States hopes to enhance our trade and economic ties to ASEAN countries, reinforcing a strong U.S.-ASEAN relationship, which is a force for stability and development in the Southeast Asian region. Finally, an FTA with Malaysia would deepen our relationship and support our cooperative efforts on key economic, political and security issues. Malaysia plays an important role in the WTO, developing and Muslim worlds as well as in ASEAN and has been a constructive partner on counterterrorism, counternarcotics and other issues.

IMPORT POLICIES

Tariffs

Tariffs are the main instrument used to regulate the importation of goods in Malaysia. The simple average applied normal trade relations (NTR) most-favored nation (MFN) tariff rate is approximately 8.56 percent, but duties for tariff lines where there is significant local production are often higher.

The level of tariff protection is generally lower on raw materials and increases for those goods that have value-added content. In addition to import duties, a sales tax of 10 percent is levied on most goods. Neither import duties nor this sales tax is applied to raw materials or machinery used in export production.

Seventeen 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.

Import Restrictions on Motor Vehicles

Malaysia has long protected its automobile manufacturing industry from foreign competition using high tariffs and non-tariff trade barriers. Government policies also distinguish between "national" cars (i.e., domestic producers Proton and Perodua) and "non-national" cars, which include most vehicles manufactured in Malaysia by non-Malaysian owned firms.

The government has slowly started to dismantle some of its protections in order to meet its commitments under the WTO and the ASEAN Free Trade Agreement (AFTA Agreement). In October 2005, the government issued a new National Auto Policy (NAP) framework that may pave the way for further sectoral liberalization, though a complete NAP has yet to be issued. In January 2004, the government eliminated local content requirements that were inconsistent with its obligations under the WTO TRIMS Agreement. Nonetheless, government policies continue to block open trade in the automotive sector, for example, through the approved permit system, and offering tax rebates for national manufacturers.

The Ministry of International Trade and Industry oversees a system of approved permits (APs) that allows the holder to import cars and distribute them locally. The AP system was designed to provide *bumiputera* (ethnic Malay) companies easy entry into the automobile distribution and service sector. The AP system acts as quota by restricting the total number of automobiles that can be imported in a given year relative to the size of the domestic market. APs continue to be capped at an estimated 10 percent of the domestic market. In addition to restricting market access for imports, many of the permits are sold for profit, with the associated costs passed on to consumers further raising the cost of imported vehicles. Reforms of the AP system in the 2005 NAP framework are not expected to alter its trade-distorting impact in the short to medium term, though the framework proposes elimination of the AP system at an unspecified future date.

The government amended the automotive tax regime in 2004 and twice in 2005 to meet its commitments under AFTA. The import duty rate for vehicles with at least 40 percent ASEAN content was set at 20 percent in October 2005 and will be lowered to 5 percent in 2008. However, the government imposed automobile excise taxes for the first time in 2004 and increased rates in 2005 to compensate for the revenue lost by cutting import tariffs. The high tax rates continue to overburden automakers and discriminate against foreign-owned manufacturers. Domestic car manufacturers Proton and Perodua, plus two locally incorporated joint ventures assembling imported kits, received a 50 percent rebate on excise taxes. The Government of Malaysia suggests that the rebate practice will discontinue upon adoption of the new NAP framework, though dates for changing this practice have not been disclosed. Elimination of the rebate would level the playing field significantly among non-national manufacturers.

The import duty/excise tax schedule is complex. In general, the current applied import tariffs and excise tax rates for completely built-up (CBU) and completely knocked-down (CKD) vehicles are as follows:

	ASEAN Tariff (%)	**Non-ASEAN Tariff**	**Excise (%)**
Automobiles (CBU)	15	30	80-200
Automobile (CKD)	0	10	80-200
Multipurpose Vehicles (CBU)	15	30	55-160
Multipurpose Vehicles (CKD)	0	0-10	55-160
4WD (CBU)	15	30	55-160
4WD (CKD)	0	10	55-160
Motorcycles (CBU)	15	30	20-50
Motorcycles (CKD)	0	0-10	20-50

Textiles

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

STANDARDS, TESTING, LABELING AND CERTIFICATION

Nutritional labeling

Malaysia requires that certain processed, packaged food products commonly consumed by Malaysians are labeled with nutritional information. These items include cereals, breads, milk, canned meat, canned fish, canned fruits and canned vegetables, fruit juices, soft drinks and salad dressings. Regulations on Nutrition Labeling and Claims issued in March 2003 outline what type of nutritional information is required and the format in which the information is to appear on the package. The regulations limit the kinds of nutritional claims, such as "reduced sodium," "low cholesterol," or "high fiber," that can appear on food packaging. Effective July 1, 2005, more than 50 food products must meet these labeling requirements. To comply with these regulations, U.S. food product importers must affix separate labels at ports of entry, a labor intensive and costly task (the generally small volume of such U.S. exports to Malaysia keeps most U.S producers from producing Malaysia-specific labels at the point of origin).

Meat Import Licenses and Halal Certification

Malaysia requires that all meat, processed meat products, poultry, and egg and egg products originate from plants inspected and approved by the Ministry of Agriculture's Department of Veterinary Services (DVS). DVS requires these food safety inspections despite assurances from the U.S. Department of Agriculture (USDA) Food Safety and Inspection Service.

All meat, processed meat, poultry, egg, and egg product imports require import licenses issued by DVS. DVS often restricts imports of chicken parts through this import licensing requirement, especially when local producers believe they are facing low prices. The State of Sarawak actually issued a ban on certain chicken parts imports, which was subsequently rescinded after the issue was raised in the U.S.-Malaysia Trade and Investment Framework Agreement (TIFA). However, Sarawak put other restrictions in place that effectively banned imports. (The States of Sarawak and Sabah on the island of Borneo maintain separate quarantine restrictions from those of Peninsular Malaysia.)

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). Slaughterhouses, meat processors and egg processors must also be inspected and approved by the Department of Islamic Development (JAKIM) for halal beef, lamb, poultry and egg exports. DVS and JAKIM travel together on the inspection visits. U.S. halal product suppliers must be under the supervision of an approved U.S. Islamic Center. U.S. producers have expressed concern that the halal certification process is confusing and non-transparent. Each individual product, rather than the plant, must receive halal certification. Malaysia's halal requirements are considered relatively strict as compared to other countries.

This certificate is issued on the joint recommendation of Malaysia's Department of Veterinary Services (DVS) in the Ministry of Agriculture and Pusat Islam following an on-site inspection. The government of Malaysia has the right to re-inspect approved plants after one year. In practice, up to three or more years may elapse before a Malaysian inspection team visits the

United States, which limits the opportunities for new products to obtain certification as well as for companies to reapply if they fail the first inspection.

On March 7, 2006, Malaysia announced it would resume U.S. boneless beef imports from cattle under 30 months of age, lifting a ban which had been imposed since the December 2003 announcement of a case of Bovine Spongiform Encephalophathy (BSE) in the United States. U.S. officials continue to work with DVS to determine the steps necessary to ensure resumption of exports to Malaysia.

Although the Government of Malaysia applies no import duty on poultry parts, imports are regulated through licensing and sanitary controls. Import levels appear to be below the minimum access commitments established during the Uruguay Round.

GOVERNMENT PROCUREMENT

Malaysia is not a signatory of the WTO Government Procurement Agreement (GPA). Malaysia's official policy is explicitly discriminatory, calling for procurement to be used to support national public policy objectives. These objectives include 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 services sector, and enhancing Malaysia's export capabilities. As a result, foreign companies do not have the same opportunities 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. In addition, a considerable proportion of government projects and procurement is awarded without transparent, competitive bidding. After taking office in October 2003, Prime Minister Abdullah Badawi announced that the government would introduce open tenders for government procurements and major projects, with direct negotiations limited to special cases.

Some U.S. companies have voiced concerns about the non-transparent nature of the procurement decision-making process in Malaysia. The government's new central tender website merely provides links to other ministries' websites, not all of which provide user-friendly information on government tenders. In September 2005, the Ministry of Finance announced that the purchase of roadway, decorative, and outdoor lighting fittings, together with equipment and accessories for all government projects, must be sourced from one of three local *bumiputera* manufacturers.

U.S. firms have also expressed concern about anticompetitive bias in the Malaysian government's software procurement policy. The policy, announced on July 16, 2004, is not technology-neutral. Instead, it establishes a preference in government procurements for Open Source Software (OSS) "in situations where the advantages and disadvantages of Open Source Software (OSS) and proprietary software are equal."

The government justifies its preference for OSS by noting its desire to control the source code. Malaysia's government has announced specific targets for the share of OSS in specific sectors.

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.

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 has not ratified the WIPO Copyright Treaty or the WIPO Performance and Phonograms Treaty, which extend traditional copyright principles to the digital environment.

In 2000, Malaysia's parliament amended the Copyright Act, the Patents Act, and the Trademarks Act, as well as legislation on layout designs of integrated circuits and geographical indications, in order to bring Malaysia into compliance with its obligations under the WTO TRIPs Agreement. In 2004, Malaysia passed the "Protection of New Plant Varieties Act 2004" in line with the requirements of Article 27.3 (b) of the TRIPS Agreement. Enabling regulations for this law are pending. Malaysia does not prohibit other companies from relying on test and other undisclosed information submitted by another company to the government to obtain marketing approval of pharmaceuticals and agricultural chemicals, as called for under TRIPS Article 39.3.

Optical Media Piracy

Malaysia has a significant problem with piracy of copyrighted materials, particularly those stored on optical media. Malaysia's production capacity for Compact Discs (CDs) and Digital Video Discs (DVDs) far exceeds local demand plus legitimate exports. U.S. industry estimates Malaysia's excess capacity is between ten to twenty times that needed for the legitimate market. The resulting surplus is exported globally-Pirated products believed to have originated in Malaysia have been identified throughout the Asia-Pacific region, North America, South America, Europe, and Africa. Better enforcement of licensed and unlicensed production facilities is needed, as is a concerted effort to reduce the outflow of pirate goods from the country.

The International Intellectual Property Association (IIPA) estimates 2005 industry losses in Malaysia due to piracy at $147.3 million. IIPA estimates 2005 piracy rates at 60 percent for business software, 49 percent for music, and 50 percent for movies. Malaysia has remained on the Special 301 Watch List since October 2001, specifically because of its failure to substantially reduce pirated optical disc production and export.

Malaysia has tightened its laws on the protection of intellectual property. The Optical Disc Act of 2000 established a licensing and regulatory framework to control the manufacture of optical

discs and to fight piracy. 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 (MDTCA), to place source identification (SID) codes on each disk, and to allow regular inspections of their operations. This law should be modernized to ensure inspection authority covers all locations where optical media production may occur and also include as offenses acts such as 'gouging' or tampering with the SID codes and 'burning' of recordable discs. In November 2005, the Recording Industry Association of Malaysia reported forensic evidence that 12 of the 44 licensed CD production factories in Malaysia were also producing pirated discs. Enforcement and prosecution are ongoing and significant challenges in Malaysia.

In 2005, Malaysia's government continued to make progress in prosecuting manufacturers and vendors of pirated goods. The MDTCA did not renew the licenses of five CD factories found to have been involved in piracy activities and is investigating fourteen other licensed CD manufacturers. The government also made some headway in tackling the judicial backlog for infringement cases. Malaysia's courts have imposed deterrent sentences of imprisonment and/or fines for the offenders. The Minister of Domestic Trade and Consumer Affairs has pledged the creation of a specialized IP court by mid-2006.

The government is making further efforts to reduce trade in pirated goods. A special task force, chaired by the Minister of Domestic Trade and Consumer Affairs and including representatives from all ministries and agencies with responsibility for IPR, has overseen the expansion of enforcement staff and a more vigorous program of raids on sellers of pirated products. The Ministry was expected to add over 700 more enforcement officers in 2006 to complement the existing 1400 officers.

Malaysia continues to impose a hologram-labeling requirement for optical discs containing copyrighted material.

Pharmaceuticals

Sales of counterfeit pharmaceuticals are a growing problem in Malaysia. Industry groups currently are working on a market survey that would provide an estimate of the extent of the problem. Counterfeit medicines that have been identified include "drugs" with the wrong ingredients, insufficient active ingredients, and those with fake packaging. The copied drugs are believed to originate in China. Unregistered generic copies of patented products, primarily imported from India, are also available in Malaysia. Both street vendors and health professionals sell the counterfeit products. The counterfeit medicines may create risks for consumers' health, reduce sales by legitimate manufacturers, and leave legitimate companies vulnerable to lawsuits from patients who may have adverse reactions to the counterfeit products.

In 2005 Malaysia's Ministry of Health implemented a requirement that all medicines and health care products be affixed with a hologram label in an effort to combat rising counterfeiting. The labeling policy applies to pharmaceuticals and traditional medicines, though over-the-counter medicine and cosmetics are currently exempt. Pharmaceutical companies opposed the mandatory labeling requirement because of concerns about the cost and efficacy of this "one-size-fits-all"

approach, and have called on the Ministry of Health to review the effectiveness of the directive on a regular basis. Industry reports of out-of-sequence numbering of hologram labels have raised concerns about the existence of counterfeit labels.

Trademarked Consumer Products

A number of U.S. consumer product companies have also suffered significant losses due to the manufacture and sale of counterfeit trademarked products. The volume is difficult to determine because of the broad scope of products involved. Counterfeiting in Malaysia goes beyond the counterfeiting of luxury branded products to include printer cartridges, plastic container systems, motor oil, household cleaning agents, shampoo and skin care items, herbicides, and penlight batteries. Counterfeiters have improved the quality of packaging and marketing so that consumers are misled into purchasing the products. The products have caused harm to individuals and damage to automobiles and household goods. Some of the pirated goods are produced in Malaysia, while many are brought into the country from China, Thailand, and India.

Enforcement by the local government is hampered by the lack of training and scarcity of information about ongoing counterfeit activities. Complicating enforcement of trademark-related violations is a Malaysian Court of Appeals interpretation of the trademark law that requires enforcement officials to have a "Trade Description Order" to conduct criminal raids when the counterfeit product seized is not identical to the trademarked original. High specificity requirements necessary to seize a shipment suspected of containing pirated or counterfeit products also represent an enforcement obstacle to U.S. industry.

SERVICES BARRIERS

Malaysia's services sector constitutes about 57 percent of the national economy and remains highly protected.

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. Foreign companies are entitled to acquire only up to a 30 percent equity stake in existing fixed line operations, an investment ceiling codified as part of Malaysia's WTO services offer which limits market access commitments to facilities-based providers. These restrictions constitute one of the most restrictive regimes for an economy of Malaysia's level of development. Value-added service suppliers are similarly limited to 30 percent foreign equity. Restrictions on these activities tend to benefit the dominant provider, government-controlled Telekom Malaysia, and hamper the development of a more efficient information infrastructure.

Malaysia has made marginal improvements to this regime reflected in its January 2005 revised services offer in the WTO, reflecting new domestic licensing categories, but these changes remain disappointing.

The new licensing categories introduced now allow for up to 49 percent foreign equity in suppliers categorized as "application service providers," but precisely what this category encompasses is unclear.

Distribution Services, including Direct Selling

Malaysia's requirements for the licensing and operation of direct selling companies include a provision that a locally incorporated direct selling company must allow for 30 percent Bumiputera equity. The Ministry also "recommends" local content targets. Local companies that seek multi-level direct selling licenses require paid-in capital of RM 1.5 million ($397,000), while companies with foreign shareholders must have paid-in capital of RM 5 million ($1.3 million).
The Malaysian government also included local content requirements in new "Guidelines on Foreign Participation in the Distributive Trade Services" that came into effect in December 2004. Among other provisions, department stores, supermarkets and hypermarkets must reserve at least 30 percent of shelf space in their premises for goods and products manufactured by *bumiputera*-owned small and medium size industries. The guidelines also require that at least 30 percent of a store's sales consist of *bumiputera* products, a rule that does not take into account discretionary behavior on the part of consumers.

Legal Services

Foreign lawyers may not practice Malaysian law, 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 law does not allow for foreign legal consultancy except on a limited basis in the Labuan International Offshore Financial Center (see "Banking" below). Malaysia limits such foreign attorneys' scope of services to advice concerning home country and international law. 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 an engineering consulting company. A foreign engineering firm may establish a non-temporary commercial presence if all directors and shareholders are Malaysian. Foreign engineering companies may collaborate with a Malaysian firm, but the Malaysian company is expected to design is required to submit the plans for domestic approval.

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 overseas professional bodies recognized by Commonwealth countries may apply for registration. The American Institute of Certified Public Accountants (AICPA) is not recognized by Commonwealth countries.

Banking

The Malaysian government limits foreign participation in financial services to encourage the development of domestic financial services providers. The government's policies are guided by the Banking and Financial Institutions Act of 1989 (BAFA) and the ten-year Financial Sector Masterplan unveiled in 2001. The plan is focused on building competitive domestic banks, in large part through banking consolidation, and defers the introduction of new foreign competition until after 2007. Therefore, the government encourages the establishment of investment banks through mergers of commercial banks with merchant banks, discount houses and stock brokering companies. Foreign institutions are allowed to hold an equity stake in investment banks of up to 49 percent currently, foreign participation in commercial banks is still restricted to an aggregate maximum stake of 30 percent. Foreign banks currently operate in Malaysia under a grandfathering provision. No new licenses are being granted to either local or foreign banks; foreign banks must operate as locally controlled subsidiaries. Foreign commercial banks are only allowed to open new branches if they also add other branches as directed by Bank Negara. In 2004, Bank Negara pressed existing foreign banks, including U.S. banks, to expand back office operations or establish significant computing operations in Malaysia.

On October 14, 2004, Bank Negara completed the issuance of three Islamic banking licenses to three Middle Eastern Islamic banks. Bank Negara encourages all commercial banks operating in Malaysia to set up full-fledged Islamic banking subsidiaries in which foreigners may take a 49 percent equity stake.

On April 1, 2003, the government removed the restriction that foreign-controlled companies were required to obtain 50 percent of their local credit from Malaysian banks. However, sourcing of funds of more than RM 50 million ($13.2 million) from local banks still requires approval from Bank Negara.

On April 1, 2005, the government abolished the requirement imposed on foreign-controlled companies for domestic borrowing. It has also allowed foreign-controlled companies to seek any amount of ringgit credit without Bank Negara's approval. On July 21, 2005, Bank Negara announced that the ringgit would no longer be strictly pegged at RM3.8 to $1 US. Currently, the central bank is managing the ringgit against a trade-weighted basket of floating currencies. To date, the ringgit has appreciated less than 1 percent against the dollar and many analysts believe that it is still undervalued by approximately 5 percent.

On December 28, 2005, Bank Negara announced that locally incorporated foreign banking institutions currently operating in Malaysia would be allowed to open up to four additional branches in 2006 (one branch in a market center, two in semi-urban centers, and one in a non-urban center).

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.

Insurance

The insurance industry remains dominated by foreign providers, including several U.S. firms. The 2001 Financial Sector Masterplan recommends phased liberalization of the insurance industry, including increasing caps on foreign equity, fully opening the reinsurance industry to foreign competition, and lifting existing restrictions on employment of expatriate specialists. Branches of foreign insurance companies were required to incorporate locally under Malaysian law by June 30, 1998, although Malaysia's government has granted individual extensions. Foreign shareholding exceeding 49 percent is permitted only with Malaysian government approval. As part of the 1997 WTO Financial Services Agreement, Malaysia agreed 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. However, this limit has been subject to negotiation.

Securities

Malaysia currently allows 49 percent foreign ownership in stock-broking companies and a 30 percent foreign stake in unit trusts. The Securities Commission's ten-year Capital Market Masterplan, released in February 2001, proposed liberalizing foreign participation limits by 2003, at which time foreigners would be permitted to purchase a limited number of existing stock-broking 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. On March 22, 2005, the government allowed five foreign stock brokerages and a foreign fund management company to set up operations in Malaysia. More foreign fund management companies are expected to utilize four of the remaining licenses. In September 2003, the Securities Commission began allowing foreign firms operating in Malaysia to seek listing on the Kuala Lumpur Stock Exchange. Futures brokerage firms may now be 100 percent foreign-owned. Advertising Commercials are restricted to a maximum of 20 percent foreign film content. The government recently relaxed enforcement of regulations governing the appearance of foreign actors 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

Malaysia's 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. Foreign investment in terrestrial broadcast networks is prohibited. As a condition for obtaining a license to operate, video rental establishments are required to have 30 percent local content in their inventories. Malaysia regularly censors movies and television shows deemed offensive on religious or sexual grounds.

INVESTMENT BARRIERS

Malaysia encourages foreign direct investment in export-oriented manufacturing and high-technology industries, but retains considerable discretionary authority over individual investments, and restricts foreign investment in other sectors. Especially in the case of investments focused toward the domestic market, it has used this authority to restrict foreign equity (normally to 30 percent) and to require foreign firms to enter into joint ventures with local partners. As noted above, foreign investment in the financial services industry is restricted; foreign investment in terrestrial broadcasting is prohibited. 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 did not directly compete with local producers. In June 2003, the government extended indefinitely the policy, permitting 100 percent foreign ownership in new investment, if it was for the expansion of existing investments in manufacturing concerns. In September 2004, the government announced that venture capital firms could be 100 percent foreign-owned.

Malaysia continues to suffer shortages of skilled and technical employees, particularly in the electronics sector. Most foreign firms face restrictions in the number of expatriate workers they are allowed to employ. In June 2003, the government released new guidelines liberalizing the policy on employment of expatriates in the manufacturing sector. Manufacturing companies with foreign paid-up capital of at least $2 million receive automatic approval for up to 10 expatriate posts.

ELECTRONIC COMMERCE

Malaysia currently applies no onerous 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 the Internet unless the engineer is properly licensed.

OTHER BARRIERS

Transparency

U.S. companies have indicated that they would welcome improvements in the transparency of government decision-making and procedures and some U.S. companies have indicated a desire for measures regarding perceived anticompetitive practices in Malaysia. For example, the Malaysian government has not provided details of its proposed competition policy to local and foreign industry and has not sought public comments, despite U.S. government and industry requests for the opportunity to provide input on this proposed policy. Malaysia's government also has declared that it is committed to fighting corruption. To promote that objective, Malaysia maintains an Anti-Corruption Agency (ACA) that 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. However, relatively few senior officials or politicians have been prosecuted for corruption offenses. Malaysia has signed but not yet ratified the UN Convention Against Corruption.