MALAYSIA

TRADE SUMMARY

In 2000, the U.S. trade deficit with Malaysia was $14.6 billion, an increase of $2.23 billion from the U.S. trade deficit of nearly $12.4 billion in 1999. U.S. merchandise exports to Malaysia totaled $11 billion, an increase of $1.9 billion (21.1 percent) from the level of U.S. exports to Malaysia in 1999.

U.S. exports of private commercial services (i.e., excluding military and government) to Malaysia were $1.1 billion in 1999, and U.S. imports were $375 million. Sales of services in Malaysia by majority U.S.-owned affiliates were $1.1 billion in 1998, while sales of services in the United States by majority Malaysia-owned firms were $286 million. Malaysia was the United States' 17th largest export market in 2000. U.S. imports from Malaysia totaled $25.6 billion in 2000, an increase of $4.1 billion (19.3 percent) from the level of imports in 1999. The stock of U.S. foreign direct investment (FDI) in Malaysia at the end of 1999 was $6 billion, an increase of 4.3 percent from the level a year earlier. 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. Although the average applied MFN tariff rate is approximately 9.18 percent, duties applicable to goods for which there is significant local production are often higher. For example, 6.8 percent of tariff lines have rates between 16 and 20 percent, 16.9 percent of tariff lines have rates (such as automobiles and motorcycles) that exceed 20 percent, and several lines 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 or which undergo further processing. In addition to import duties, a sales tax of 10 percent is levied on most imported goods. Like import duties, however, this sales tax is not applied to raw materials and machinery used in export promotion. Malaysia has been an active participant in multilateral and regional trade fora such as the World Trade Organization (WTO) and the Asia-Pacific Economic Cooperation (APEC) forum.

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 to 60 percent for passenger and commercial vehicles, and 60 percent for motorcycles. Arguing that the national car industry requires additional time to become competitive internationally as a result of the 1997/1998 regional financial crisis, Malaysia has requested additional time before reducing or abolishing these measures. Malaysia has requested an extension of the phase-out period for local content requirements in selected auto industry sectors that is inconsistent with its obligations under the WTO Agreement on Trade-Related Investment Measures (TRIMS) (see "Investment Barriers" below). Further, ASEAN has accepted Malaysia's request for an extension until 2005 of its commitments under the ASEAN Free Trade Area (AFTA) to reduce tariffs in the auto sector. Customs tariffs and excise duties (up to 50 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 to 300 percent for automobiles (CBU); 80 percent for automobiles (CKD); 42 to140 percent for vans (CBU); 40 percent for vans (CKD); 60 to 200 percent for four-wheel drive/multipurpose vehicles (CBU); 40 percent for four-wheel drive/multipurpose vehicles (CKD); 80 to 120 percent for motorcycles (CBU); and 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 to 10 percent in the first year, and the annual allowance was reduced from between 12 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 to 30 percent for construction materials.

Duties on High-Value Food Products

In 2000, import duties on 136 categories of food products (fresh, dried, and processed) were reduced from between 5 and 20 percent to between 2 and 12 percent. The 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 and 30 percent. The applied tariff on soy protein concentrate is 20 percent.

Duties on Alcoholic Beverages and Tobacco Products

In 1999, excise duties were increased on tobacco products (which now are between $10.50 and $48.00/kg depending on the product) and alcoholic beverages. In the 2001 budget, the Government announced an increase in the sales tax on tobacco from 15 percent to 25 percent and an increase in the sales tax on alcohol from 15 percent to 20 percent. Current applied tariff rates for alcohol are as follows, reflected in Malaysian ringgit (RM) per decaliter (RM/dal): RM 89 for beer; RM 120 for wine; RM 120 for vermouth; RM 118 for mead; RM 587 for brandy; and between RM 98 and 100 for liqueurs. The ringgit is currently pegged at RM3.80=USD1.00.

Tariff-Rate Quota for Chicken Parts

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.

Rice Import Policy

The sole authorized importer of rice is a government corporation (Bernas) which has wide power to regulate imports and has responsibility for ensuring purchase of the domestic crop.

Float Glass Tariff

Malaysia levies a 60 percent duty on “rectangular-shaped” float glass; although this classification is broadly construed to include glass cut to other shapes approximating a rectangle. The rate for float glass in other shapes is 30 percent. 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 (AFTA) Common Effective Preferential Tariff (CEPT) scheme, imported float glass from other ASEAN countries is subject to a 20 percent tariff.

Film and Paper Product Tariffs

Malaysia applies a 25 percent tariff on imported instant print film. In August 1994, the Malaysian government raised tariffs on several categories of imported kraft linerboard (used in making corrugated cardboard boxes) to between 20 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.

EXPORT SUBSIDIES

Malaysia maintains two export subsidy programs: an extra tax deduction for export promotion expenses and low-cost export financing.

GOVERNMENT PROCUREMENT

Malaysia is not party to the plurilateral WTO Government Procurement Agreement. Malaysian government policy calls for procurement decisions to support national public policy objectives, such as encouraging greater participation of Bumiputeras (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 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. 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 is also a member of the WTO and was scheduled to meet its obligations under the Trade-Related Aspects of Intellectual Property Agreement (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 far 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. The International Intellectual Property Alliance (IIPA) estimates 1999 industry losses in Malaysia due to piracy at $286.8 million. IIPA estimates 1999 piracy rates at 71 percent for business software, 99 percent for entertainment, and 85 percent for movies. In April 2000, the United States Trade Representative (USTR) placed Malaysia on the Special 301 Priority Watch List for its failure to substantially reduce pirated optical disc production and export.

The Malaysian government is aware of the 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 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. In September 2000, the Ministry of Domestic Trade and Consumer Affairs gazetted the Optical Disc Act 2000 establishing a licensing and regulatory framework for manufacturing copyrighted work and piracy. Manufacturers are required to obtain licenses from both the Ministry of International Trade and Industry and the Ministry of Domestic Trade and Consumer Affairs. Manufacturers have been given six months to comply with the new act.

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. 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, no criminal prosecutions for piracy have taken place. 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 telecommunication 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 guaranteed only up to 30% 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 anti-competitive 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 the locally incorporated company may be foreign-owned; b) local content of products should be no less than 80 percent; c) no new products will be approved for sale that do not meet local content requirement; and d) all price increases will be approved by the Ministry of Domestic Trade and Consumer Affairs. These guidelines all spell out the conditions under which companies may receive one, two, and three year operating licenses. The Ministry indicated that the local content targets are not mandatory. But, adherence to Malaysia's national equity policy is mandatory. In May 2000, the Minister of Domestic Trade and Consumer Affairs announced that license issuance for direct selling companies would be frozen pending a review of existing licenses and company operations. In October 2000, the Ministry announced its intention to limit new licenses with the aim of reducing the number of direct selling companies. The proposed conditions for licenses include requirements for higher paid-up capital, marketing plans, and product quality.

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 2000, the Bank of China was permitted to resume operations in Malaysia after a 41-year hiatus. Otherwise, the Government of Malaysia has continued it longstanding policy of granting no new licenses to either local or foreign banks. 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 states that it will consider introducing new foreign competition after 2007. Foreign banks must operate as locally controlled subsidiaries. Foreign-controlled companies are required to obtain 60 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.

Insurance

Branches of foreign insurance companies were required to incorporate locally under Malaysian law by June 30, 1998. However the 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. 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.

Securities

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. Fifteen fund management companies with foreign equity ranging from 10 to100 percent (of which two are fully foreign-owned and four have over 50 percent foreign equity) currently operate in Malaysia. On February 22, 2001, the Securities Commission released its ten-year Capital Market Masterplan. The plan proposes to liberalize 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. Malaysia currently allows 49 percent foreign ownership in stockbroking companies and a 30 percent foreign stake in unit trusts. Currently there are stockbroking firms that have foreign ownership, eight futures booking companies, and 16 investment advisory companies.

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.” Advertising of alcohol and cigarette products is severely restricted.

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. Especially in the case of investments aimed at the domestic market, the Malaysian government 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. To alleviate the effects of the 1998-1999 economic downturn, Malaysia announced a temporary relaxation of 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 manufacturing concerns, was extended for three additional years in January 2001. 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 December 1999, Malaysia submitted a request to the WTO for a two-year extension to its transition period for its measures in the motor vehicle sector. The United States is working with other WTO Members on a case-by-case basis to review all such TRIMS extension requests, in an effort to ensure that the individual needs of those countries that have made requests can be addressed. This process does not limit a WTO Member’s rights under the TRIMS Agreement. No decision has yet been reached on Malaysia’s request.

ELECTRONIC COMMERCE

Malaysia currently applies no special restrictions on products or services traded via electronic commerce. Products which are ordered via the Internet and subsequently imported 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 anti-competitive 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.