# MALAYSIA

## TRADE SUMMARY

The U.S. trade deficit with Malaysia was $14.5 billion in 2003, an increase of $852 million from $13.7 billion in 2002. U.S. goods exports in 2003 were $10.9 billion, up 5.6 percent from the previous year. Corresponding U.S. imports from Malaysia were $25.4 billion, up 6.0 percent. Malaysia is currently the 16th largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to Malaysia were $1.1 billion in 2002 (latest data available) and U.S. imports were $498 million. Sales of services by majority U.S.-owned affiliates were $1.7 billion in 2001 (latest data available).

The stock of U.S. foreign direct investment (FDI) in Malaysia in 2002 was $8.6 billion, up from $7.7 billion in 2001. U.S. FDI in Malaysia is concentrated in the manufacturing, mining, and wholesale sectors.

## IMPORT POLICIES

### Tariffs

Tariffs are the main instrument used to regulate the importation of goods in Malaysia. The simple average applied most-favored nation (MFN) tariff rate is approximately 9.29 percent, but 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 that significantly exceed 100 percent.

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 relied on high tariffs and an import quota and licensing system on imported motor vehicle parts to protect its automobile manufacturing industry. The government phased-out one element of these protectionist measures on January 1, 2004, when it completely eliminated local content requirements that were inconsistent with its obligations under the World Trade Organization (WTO) Agreement on Trade-Related Investment Measures (TRIMS).

The government announced a reduction in import duties on autos and auto kits beginning January 1, 2004. However, an expanded auto excise tax program went into effect at the same time, which has kept the tax burden on automobiles, on average, unchanged. High import tariffs hamper the efforts of U.S. auto makers trying to compete in the Malaysian market. The tax regime continues to protect two domestic producers: Malaysian automobile manufacturers Proton and Perodua receive a 50 percent rebate on excise taxes that is not made available to any other car makers.

The import duty/excise tax schedule is complex, with the tax level applied varying according to engine capacity. 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:

| | **Tariff (%)** | **Excise (%)** |
|---|---|---|
| Automobiles (CBU) | 70-200 | 60-100 |
| Multipurpose Vehicles (CBU) | 4-130 | 30-90 |
| Multipurpose Vehicles (CKD) | 0-20 | 30-90 |
| 4WD (CBU) | 40-130 | 50-90 |
| 4WD (CKD) | 10-20 | 50-90 |
| Motorcycles (CBU) | 40-50 | 10-50 |
| Motorcycles (CKD) | 5-30 | 10-50 |

The government has said the automotive tax regime will be amended again in 2005 so that Malaysia can meet its commitments under the ASEAN Free Trade Area (AFTA) agreement. The import duty rate for vehicles with at least 40 percent ASEAN content should fall to 20 percent in 2005, and to 5 percent in 2008. The Malaysian government has not determined whether the excise duty will be adjusted at that time.

**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.

**Textiles**

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

## STANDARDS, TESTING, LABELING AND CERTIFICATION

**Nutritional labeling**

Malaysia requires that certain processed, packaged food products sold in Malaysia be 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. Nutrition Labeling Regulations 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. The regulations went into effect September 1, 2003, only five months after they were gazetted, leaving companies a very short transition time to use existing stock. The Ministry of Health extended the enforcement date for the regulations until March 1, 2004.

**Halal 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). 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. This certificate is issued on the joint recommendation of the Malaysian Department of Veterinary Services 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 years may elapse before a Malaysian inspection team visits the United States, which limits the opportunities for new products to obtain certification.

Although the government of Malaysia applies no 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.

**Drug Registration**

The drug registration process is relatively long, and it can take up to 3 years for some products to gain marketing approval. In early 2003, the National Pharmaceutical Control Bureau indicated that it would no longer approve the registration of pharmaceuticals manufactured or sourced from Indonesia as a retaliatory measure, because Indonesian authorities were not registering Malaysian- manufactured pharmaceuticals. U.S. pharmaceutical companies applying to re-register drugs they manufactured in Indonesia were forced to identify alternative sources to supply the Malaysian market.

## 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.

## 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. Malaysian law 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 has not ratified the WIPO Copyright Treaty or the WIPO Performance and Phonograms Treaty, which extend traditional copyright protections in cyberspace.

Malaysia is also a member of the WTO and a party to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). In 2000, the Malaysian 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 TRIPS obligations. Malaysia does not provide data exclusivity protection, i.e., protection of the dossier submitted by pharmaceutical companies in support of drug registration, as called for under Article 39.3 of TRIPs. The Optical Disc Act 2000 established a licensing and regulatory framework to control the manufacture of copyrighted works 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, to place identification codes (SID codes) on each disk, and to allow regular inspections of their operations.

**Optical Media Piracy**

Malaysia has a significant problem with piracy of copyrighted materials, particularly optical media products. Malaysia's production capacity for CDs and DVDs 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. As noted above, Malaysia has tightened its laws on intellectual property, but enforcement and prosecution remain an ongoing challenge.

The government is making determined efforts to reduce the 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. A prolonged crackdown in the summer of 2003 had some success in curbing open market sales of pirated goods, and driving much of the sales force underground.

Government and industry cooperation has expanded in the past several years. For example, the Ministry and the Business Software Alliance (BSA) have coordinated several "crackdowns" targeting corporate use of unlicensed software. Police and legal authorities are generally responsive to requests from U.S. firms for investigation of copyright infringement cases. But much work remains in educating the general public about the value of intellectual property rights to the businesses that own them. The government's plan to impose price ceilings on CDs and video CDs, which explicitly cites the high price of original products as a major driver of piracy (see "Other Barriers"), suggests there is room for better understanding of intellectual property issues even within official circles.

The Malaysian government made some progress in prosecuting manufacturers and vendors of pirated goods in 2003. The government took action against sixteen factories licensed under the Optical Disk Act, and sealed their production lines pending prosecution for piracy. Two of those factories subsequently had their licenses revoked. Twelve illegal factories were shut down. Bottlenecks in the judicial system and the courts' lack of familiarity with intellectual property law still have a noticeable adverse effect, however. More than 800 infringement cases are awaiting investigation, and another 124 are pending prosecution.

The International Intellectual Property Association (IIPA) estimates 2002 industry losses in Malaysia due to piracy at $240 million. IIPA estimates 2002 piracy rates at 68 percent for business software, 70 percent for music, and 75 percent for movies. Malaysia has been on the Special 301 Watch List since October 2001 for its failure to substantially reduce pirated optical disc production and export.

**Pharmaceuticals**

Sales of counterfeit pharmaceuticals are a growing problem in Malaysia. Counterfeit medicines 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 siphon off profits of legitimate manufacturers, and leave companies vulnerable to lawsuits from patients who may have adverse reactions to the counterfeit products.

**Trademarked Consumer Products**

A number of U.S. consumer product companies have also suffered significant losses due to the manufacture and sale of counterfeit 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 lack of training and the scarcity of information about ongoing counterfeiting activities. Complicating enforcement of trademark-related violations is a Court of Appeals interpretation of the trademark law that requires enforcement officials have a “Trade Description Order” to conduct criminal raids when the counterfeit product seized is not identical to the trademarked original. Penalties meted out to offenders are small, although higher penalties have been adequately provided for in the Malaysian legal system.

## SERVICES BARRIERS

Malaysia’s services sector constitutes about 56 percent of the national economy and remains highly protected. Malaysia has yet to submit an offer for further liberalization of its services sectors in the current round of WTO negotiations.

**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. 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.

**Direct Selling**

The Malaysian government requirements for the licensing and operation of direct selling companies include a provision that no more than 30 percent of a locally incorporated direct selling company may be foreign-owned. The Ministry also “recommends” local content targets. Local companies that seek multi-level direct selling licenses require paid-up capital of RM 2.5 million ($657,000), while companies with foreign shareholders must have paid-up capital of twice that amount, or RM 5 million ($1.3 million).

**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. Malaysia limits foreign attorneys' scope of services to advice concerning home country and international law. 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 may collaborate with a Malaysian firm, but the Malaysian company is expected to design and is 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**

The Malaysian government limits foreign participation in financial services in an effort to encourage the development of domestic financial services providers. The governments 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. 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. However, in September 2003, Bank Negara announced plans to issue three Islamic banking licenses to foreign banks active in the Islamic banking sector. 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 requires approvals from Bank Negara.

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 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, though the Malaysian 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 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. 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. As of mid-December 2003, foreign participation limits remained unchanged, in part because the consolidation of stock broking firms globally has reduced companies' interest in having a Malaysian presence. 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. In September 2003, the Securities Commission began allowing foreign firms operating in Malaysia to seek listing on the Kuala Lumpur Stock Exchange.

**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**

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. 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. Malaysia regularly censors movies and television shows deemed offensive on religious or sexual grounds.

## INVESTMENT BARRIERS

Malaysia encourages direct foreign investment, particularly in export-oriented manufacturing and high-tech industries, but retains considerable discretionary authority over individual investments. Especially in the case of investments aimed at 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. 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. In June 2003, the government extended indefinitely the policy permitting 100 percent foreign ownership in new investment and expansion of existing investments in manufacturing concerns. 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 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

### Price Controls

In July 2003, the Ministry of Domestic Trade and Consumer Affairs announced it would impose a ceiling on the retail price of all optical disk media. The government said it was motivated by a desire to undercut trade in counterfeit movies and music by lowering the price of legitimate products. Industry groups and the U.S. Government countered that the move represented an unfair restriction on market access, and would do little to combat piracy. After further consideration, the Ministry amended the price control plan to apply only to CDs and video CDs produced in Malaysia. The government has since postponed the scheduled enactment date from January 1, 2004 to April 1, 2004.

### Transparency

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. 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. The Malaysian government 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.