MALAYSIA

TRADE SUMMARY

The U.S. goods trade deficit with Malaysia was $17.8 billion in 2008, a decrease of $3.2 billion from $20.9 billion in 2007. U.S. goods exports in 2008 were $13.0 billion, up 11.0 percent from the previous year. Corresponding U.S. imports from Malaysia were $30.7 billion, down 5.8 percent. Malaysia is currently the 21st largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Malaysia were $1.9 billion in 2007 (latest data available), and U.S. imports were $1.0 billion. Sales of services in Malaysia by majority U.S.-owned affiliates were $2.2 billion in 2006 (latest data available), while sales of services in the United States by majority Malaysia-owned firms were not available in 2006 ($292 million in 1998).

The stock of U.S. foreign direct investment (FDI) in Malaysia was $15.7 billion in 2007 (latest data available), up from $12.6 billion in 2006. U.S. FDI in Malaysia is concentrated largely in the manufacturing sector.

FREE TRADE AGREEMENT NEGOTIATIONS

The United States and Malaysia initiated negotiations on a Free Trade Agreement (FTA) in June 2006. The last round of negotiations was in Washington, D.C. in July 2008. While solid progress has been achieved, significant work remains to conclude the agreement. The issues identified in this report have also been included in the FTA negotiating process.

IMPORT POLICIES

Tariffs and Import Licensing Requirements

Malaysia’s simple average applied tariff rate is 8.4 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 than for value added goods. Beverages, alcohol, and wine are subject to an effective tariff of up to 500 percent when import duties and excise taxes are combined. In addition, adjustments to excise taxes made each year as part of the budget process can raise costs sharply and make it difficult for U.S. companies to negotiate long term supply contracts in the beverage, alcohol and wine sector.

Several Malaysian tariff lines (principally in the construction equipment, agricultural, mineral, and motor vehicle sectors) are subject to non-automatic import licensing designed to protect import sensitive or strategic industries. Malaysia also maintains performance requirements that are needed to receive a customs waiver for operations in Foreign Trade Zones.

Tariff-Rate Quotas on Selected Agricultural Products

In April 2008, the Malaysian government implemented tariff-rate quota (TRQ) systems for 17 tariff lines, which include products such as live poultry, poultry meat, milk and cream, pork, and round cabbage. These products now incur in-quota duties between 10 percent and 25 percent and out-of-quota duties as high as between 40 percent and 50 percent. Before TRQ implementation, the applied tariff rate was zero for these products.

Import Restrictions on Motor Vehicles

Malaysia has long protected its automobile manufacturing industry from foreign competition using high tariffs and nontariff trade barriers. Even for cars produced in Malaysia, Malaysian government policies distinguish between "national" cars, (*e.g.,* domestic producers Proton and Perodua) and "non-national" cars, which include most vehicles manufactured in Malaysia by non-Malaysian owned firms. A major U.S. automaker exited the Malaysian market in early 2008 because of the discriminatory treatment it faced and its inability to own a controlling share in its Malaysian subsidiary. Malaysia has traffic restrictions and noise standards that affect the usage of large motorcycles.

The Malaysian government has started to slowly dismantle some of its protections in order to meet its commitments under the WTO and the ASEAN Free Trade Agreement (AFTA). It cut Malaysia's auto import duty from 40 percent to 5 percent by 2006 to meet its AFTA commitments, but then imposed steep excise taxes to compensate for the lost revenue. In January 2007, the ceiling on excise taxes for most vehicle categories was reduced from 125 percent to 105 percent and on motorcycles from 50 percent to 30 percent. In March 2006, the Malaysian government issued a new National Auto Policy (NAP) that paves the way for further sectoral liberalization. In November 2008, the Malaysian Deputy Prime Minister stated that Malaysia would review the NAP to potentially further liberalize the sector.

Malaysia maintains a system of approved permits (APs) that allows the holder to import cars and motorcycles and distribute them locally. The AP system was designed to provide *bumiputera* (ethnic Malay) companies easy entry into the automobile and motorcycle distribution and service sector. The AP system acts as a quota by restricting the total number of vehicles that can be imported in a given year, which is currently capped at 10 percent of the market. Moreover, many AP holders sell their permits, with the associated costs passed on to consumers, increasing the price of imported vehicles.

In addition, Malaysia uses an industrial adjustment fund to provide for locally assembled vehicles. Components sourced from locally registered components manufacturing companies are eligible for tax reductions, raising concerns that this fund revives the local content program that had been abolished in 2004. Because of the small-scale operations of many foreign carmakers in Malaysia, they cannot source components locally, thus preventing them from benefiting from this fund.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Halal Certification

The Malaysian government reopened its market for U.S. beef and beef products in June 2007 and for offals in May 2008. However, approval of each exporting slaughter plant's *halal* practices (meat produced in accordance with Islamic practices) is required on a plant-by-plant basis prior to export, severely limiting imports to Malaysia. In addition, in 2008 the Malaysian government has said that it is considering a revised protocol that would require slaughter plants to be dedicated to *halal* production; maintain separate lines, coolers, and warehousing for *halal* and non-*halal* product; and other measures that could block exports of U.S. beef and beef products to Malaysia. Currently, commercial slaughter plants in the United States that export to Malaysia and other *halal* markets schedule specific production periods for *halal* slaughter. This is consistent with Codex guidelines, which allow for *halal* food to be prepared, processed, transported, or stored using facilities which have been previously used for non-*halal* foods, provided that proper cleaning procedures according to Islamic requirements have been observed.

Meat Import Licenses

Pork imports must be licensed, and Malaysia restricts the types of cuts that can be imported.

Biotechnology

Malaysia's Parliament passed the Biosafety Bill in 2007, that included potentially trade restrictive language for biotechnology-derived commodities and processed products, including mandatory labeling and a strict liability and redress enforcement regime. The implementing regulations for this law are currently being drafted.

Malaysia currently places no restrictions on the import of biotechnology food or feed. To date, the only biotechnology product officially approved for import into Malaysia is a biotechnology soybean. The value of U.S. exports to Malaysia of biotechnology soy, soybean meal, and oil is about $100 million. Malaysia also has yet to produce a biotechnology crop commercially, although several biotechnology crops have been produced at the experimental stage.

EXPORT TAXES

Malaysia taxes exports of palm oil, rubber, and timber products in order to protect domestic processing production. Malaysia is the second largest producer and largest exporter of palm oil and products made from palm oil, accounting for approximately 15 percent of world production and 30 percent of world trade in vegetable oils. Malaysia uses export taxes of 10 percent to 30 percent *ad valorem* to discourage the export of crude palm oil and to encourage development of the local refinery sector. Refined palm oil and products are not subject to export taxes. The Malaysian government waives export taxes on exports of crude palm oil to Malaysia-invested foreign vegetable oil refineries that include investment by Malaysian persons, giving Malaysia-invested plants a competitive advantage in foreign markets, including the United States.

GOVERNMENT PROCUREMENT

Malaysia's official policy calls for procurement to be used to support national public policy objectives. These objectives include encouraging greater participation of *bumiputera* 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. International tenders generally are invited only where domestic goods and services are not available. In domestic tenders, preferences are provided for *bumiputera* suppliers and other domestic suppliers. In most procurement, foreign companies are required to take on a local partner before their tenders will be considered. Moreover, Malaysia's government procurement system lacks transparency and competitive bidding. The U.S. Government will continue to raise concerns about the nontransparent nature of the procurement process in Malaysia. Malaysia is not a signatory to the WTO Agreement on Government Procurement.

EXPORT SUBSIDIES

Malaysia offers several export allowances. Under the Central Bank's export credit refinancing scheme, commercial banks and other lenders provide financing to all exporters at a preferential rate for both pre-shipment and post-shipment. Malaysia also provides a series of tax and investment incentives to exporters, including those through the Pioneer States and Investment Tax Allowance programs. Malaysia has notified these subsidies to the WTO Committee on Subsidies and Countervailing Measures since

1995. The United States has submitted questions to Malaysia, pursuant to Article 25.8 of the WTO Agreement on Subsidies and Countervailing Measures, requesting that Malaysia provide further information regarding these programs.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

The United States and Malaysia have held detailed discussions on the full range of IPR issues in the context of the FTA negotiations. While the negotiations have not yet been concluded, Malaysia has taken, or is considering, a number of steps to strengthen its IPR regime and enhance its business environment.

Optical Media Piracy

The piracy of copyrighted materials is a serious concern in Malaysia. For 2007, U.S. industry estimates losses in Malaysia due to copyright piracy at $181 million. Malaysia has remained on the Special 301 Watch List since October 2001, due in part to its failure to substantially reduce pirated optical disc production and exports. Malaysia's production capacity for compact discs and digital video discs significantly exceeds local demand plus legitimate exports, with the surplus apparently being exported globally. While the Malaysian government has revoked optical disc factory licenses in the past two years, this overcapacity persists.

The Optical Disc Act of 2000 established a licensing and regulatory framework to control the manufacture of optical discs and to fight piracy, including placement of source identification (SID) codes on each disc and to allow regular inspections of their operations. However, limitations in the Act have lessened its effectiveness. U.S. industry is seeking changes in the law that would ensure that inspection authority covers any time, day or night, for 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.

Enforcement

The Malaysian government has stepped up its enforcement efforts of the past few years. In 2007, Prime Minister Abdullah Badawi announced a new national IPR policy that includes some RM 5 billion ($1.5 billion) earmarked for spending over several years. The Malaysian government also has been prosecuting significantly more cases over the past couple of years with the establishment of the IPR court in mid-2007. Penalties imposed also have been strengthened with Malaysia's courts handing down sentences of imprisonment and/or fines for convicted offenders. Despite the positive trends, the U.S. IPR industry reports declining enforcement, and current IPR piracy levels indicate that it remains a serious problem. According to industry statistics, the number of anti-piracy raids launched dropped from 2,333 in 2007 to 668 in 2008.

Pharmaceuticals and Medical Devices

The Malaysian government recognizes that the sale of counterfeit pharmaceutical products are a continuing concern and has sought to improve its enforcement efforts, including better information sharing between ministries and collaboration with industry. It also is looking to the special IPR court to improve prosecution of crimes involving counterfeit pharmaceutical products.

Malaysia is considering legislation that would provide protection for test and other data submitted for the marketing approval of pharmaceuticals, for five years for new chemical entities and three years for new indications. The Malaysian government lacks an effective patent linkage mechanism to prevent the regulatory approval of versions of pharmaceutical products that are still covered by a patent; U.S. industry has reported several cases involving the registration of generic versions of pharmaceuticals that are still subject to patent protection.

SERVICES BARRIERS

Malaysia's services sector constitutes about 59 percent of the national economy and remains highly protected.

Telecommunications

Under the GATS, Malaysia made limited commitments on most basic telecommunications services and partially adopted the WTO reference paper on regulatory commitments. Based on Malaysia's GATS commitments, foreign companies are entitled to acquire only up to a 30 percent equity stake in existing licensed public telecommunications operators, and foreign participation is limited to facilities-based suppliers. These limitations are not reflected in Malaysian law, however, but in ministerial policy. In certain instances Malaysia has allowed greater than 30 percent equity participation in the telecommunications market.

Distribution Services, including Direct Selling

Guidelines governing distribution services include local content requirements. 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. The Malaysian government continues to consider changes to these guidelines in response to concerns raised from both domestic and foreign businesses.

Locally incorporated direct selling companies must allow for 30 percent *bumiputera* equity. The Malaysian government also "recommends" local content targets, which effectively translates into a requirement. Local companies that seek direct selling licenses require paid-in capital of RM1.5 million (approximately $397,000), while companies with foreign shareholders must have paid-in capital of RM5 million (approximately $1.3 million).

Legal Services

Foreign lawyers may not practice Malaysian law, nor may they affiliate with local firms or use the name of an international firm. 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. The Attorney General has authority to grant limited exceptions, on a case-by-case basis, to the law restricting the practice of Malaysian law 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, 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 section on "Banking" below).

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.

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. 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 a temporary licensing for a foreign engineer, a 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 nontemporary commercial presence if all directors and shareholders are Malaysian. Foreign engineering companies may collaborate with a Malaysian firm, but only the Malaysian company may submit the plans for domestic approval.

Accounting and Taxation Services

All accountants seeking 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. Foreign accountants and auditors are only allowed to practice with registered Malaysian accountants, with aggregate foreign shareholding not to exceed 40 percent. 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 is not recognized by Commonwealth countries.

Banking

The Malaysian government seeks to limit foreign participation in financial services in order to encourage the development of domestic financial services providers. The ten-year Financial Sector Master plan, unveiled in 2001, set out a three-phase strategy for developing and gradually liberalizing the Malaysian banking sector. Phase I focused on developing a core set of domestic banking institutions through mergers of commercial banks with merchant banks, discount houses, and stock brokerage firms. Within the first four years of the Plan, the number of domestic financial institutions declined from 63 to 9. Phase II of the Plan was to include the removal of many restrictions on incumbent foreign financial institutions. Malaysia has only partially implemented these reforms. During Phase III, the Malaysian government is to consider introducing new foreign competition, but the plan contains no time frame and few specifics on the reforms to be considered.

Foreign institutions are limited to an equity stake in investment banks of 49 percent. Currently, foreign participation in commercial banks is still restricted to an aggregate maximum stake of 30 percent. In 1994 Bank Negara (the Central Bank) revoked the authorization of foreign banks to operate in Malaysia unless they incorporated locally. Foreign banks currently operate in Malaysia under a grandfathering provision, but must have an entirely Malaysian Board of Directors. Bank Negara generally requires all banks, including U.S. banks, to maintain their back office and computer operations in Malaysia.

Insurance

The 2001 Financial Sector Master plan recommended 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 foreign specialists. Malaysia maintains a 51 percent equity cap on existing insurance companies. Foreign shareholding exceeding 51 percent is permitted only with Malaysian government approval. New entry by foreign insurance companies is limited to equity participation in locally incorporated insurance companies, and aggregate foreign shareholding in such companies may not exceed 30 percent.

Securities

Malaysia limits foreign ownership in stock brokerage firms to 49 percent and to 30 percent in unit trusts. 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. Futures brokerage firms may now be 100 percent foreign owned.

Advertising

Foreign content in commercials in Malaysia is limited to 20 percent. The Malaysian government relaxed enforcement of regulations governing the appearance of foreign actors in commercials shown in Malaysia in 2007.

Audiovisual 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, and 60 percent of radio programming must be of local origin. Foreign investment in terrestrial broadcast networks is prohibited and is limited to a 20 percent equity share in cable and satellite operations. 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 foreign direct investment (FDI) in export-oriented manufacturing and high-technology industries but retains considerable discretionary authority over individual investments and restricts foreign investment in other sectors. Malaysia seeks to attract and retain FDI in key sectors in order to "move up the value chain." It has renewed tax abatements primarily for manufacturers of higher-technology products and other targeted industries but not for manufacturers of more labor-intensive products, some of which have moved to China or elsewhere. The Malaysian government also uses its authority to restrict foreign equity (normally up to 30 percent) and to require foreign firms to enter into joint ventures with local partners, especially in investments in production of goods or services for the local market.

In an effort to enhance Malaysia's attractiveness to investors, the Malaysian government established in 2007 "Pemudah," a task force of experts from the private sector and government, to promote faster reform in the delivery of government services, targeted at facilitating business and overhauling unnecessary licensing and bureaucratic procedures. During its first year of operation, the task force introduced many reforms, including reducing processing time for land transfers by 60 percent and tax refunds from one year to between 14 days and 30 days.

OTHER BARRIERS

Transparency

The lack of transparency in government decision-making and procedures in Malaysia has served to impede U.S. firms' access to the Malaysian market. The Malaysian government has taken steps to fight corruption, including through the Anti-Corruption Agency (ACA) which is part of the Office of the Prime Minister. The ACA is authorized to conduct investigations and prosecute cases with the approval of the Attorney General. Few senior officials or politicians have been prosecuted for corruption, however, despite the fact that Malaysia has slipped in its ranking on Transparency International's corruption perceptions index from 33 in 2002 to 47 in 2008. Malaysia has signed but not yet ratified the UN Convention against Corruption.