# MALAYSIA

## TRADE SUMMARY

The U.S. trade deficit with Malaysia was $17.3 billion in 2004, an increase of $2.8 billion from $14.5 billion in 2003. U.S. goods exports in 2004 were $10.9 billion, down 0.2 percent from the previous year. Corresponding U.S. imports from Malaysia were $28.2 billion, up 10.8 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 $1.2 billion in 2003 (latest data available), and U.S. imports were $494 million. Sales of services in Malaysia by majority U.S.-owned affiliates were $1.4 billion in 2002 (latest data available), while sales of services in the United States by majority Malaysia-owned firms were $232 million.

The stock of U.S. foreign direct investment (FDI) in Malaysia in 2003 was $7.6 billion, up from $7.0 billion in 2002. U.S. FDI in Malaysia is concentrated largely 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 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. The government has slowly begun to dismantle some of its protections in order to meet its commitments to the WTO and the ASEAN Free Trade

Agreement (AFTA Agreement). For instance, in January 2004, the government completely eliminated local content requirements that were inconsistent with its obligations under the WTO TRIMS Agreement. Government policies, however, continue to block open trade in the automotive sector.

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. 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 costs of imported vehicles.

The government amended the automotive tax regime in 2004 and again in 2005 to meet its commitments under the AFTA Agreement. The import duty rate for vehicles with at least 40 percent ASEAN content fell to 20 percent in 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 them in 2005 to make up for the revenue it lost by cutting import tariffs, so the tax burden for automakers remains high. The tax regime continues to protect domestic producers: Malaysia's automobile manufacturers Proton and Perodua, plus two locally incorporated joint ventures assembling imported kits, receive a 50 percent rebate on excise taxes . The excise tax rebate was extended to certain other local producers, but the exact criteria for the exemption remain unclear at this point. The government is expected to announce other incentives for domestic car makers by mid-2005.

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) | 20 | 50 | 90-250 |
| Automobile (CKD) | 0 | 10 | 90-250 |
| Multipurpose Vehicles (CBU) | 20 | 50 | 40-170 |
| Multipurpose Vehicles (CKD) | 0 | 10 | 40-150 |
| 4WD (CBU) | 20 | 50 | 80-170 |
| 4WD (CKD) | 0 | 10 | 80-150 |
| Motorcycles (CBU) | 20 | 40 | 20-60 |
| Motorcycles (CKD) | 0 | 0-10 | 20-60 |

### 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 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. Enforcement of the regulation began on 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 Malaysia's 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 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 party to the plurilateral WTO Government Procurement Agreement (GPA). Malaysia's 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 services 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 Malaysia's government's procurement decision-making process.

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, but instead gives preference to Open Source Software (OSS) for government procurement, "in situations where the advantages and disadvantages of Open Source Software (OSS) and proprietary software are equal." 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 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 TRIPS obligations. 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 expected in 2005. 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 embodied on optical media. Malaysia's production capacity for CDs and 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. U.S. industry reports that Malaysia is the largest exporter of pirated entertainment software in the world. 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.

Malaysia has tightened its laws on the protection of intellectual property. The Optical Disc Act 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, to place identification codes (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 such acts as ‘gouging’ or tampering with the SID codes and ‘burning’ of recordable discs. Enforcement and prosecution remain an ongoing challenge.

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. A prolonged crackdown in the summer of 2003 had some success in curbing open market sales of pirated goods and drove much of the sales force underground.

The International Intellectual Property Association (IIPA) estimates 2004 industry losses in Malaysia due to piracy at $188 million. IIPA estimates 2004 piracy rates at 63 percent for business software, 52 percent for music, and 50 percent for movies. Malaysia has remained on the Special 301 Watch List since October 2001, in particular due to its failure to substantially reduce pirated optical disc production and export.

In 2004, Malaysia’s government made further progress in prosecuting manufacturers and vendors of pirated goods. The government arrested the owners of four factories licensed under the Optical Disc Act suspected of producing pirated VCDs. Six illegal factories running eight production lines were shut down in 2004. The government also made some headway in tackling the judicial backlog for infringement cases. Through the first 10 months of 2004, 160 cases went to trial, with 51 cases recording guilty pleas. Malaysia’s courts have imposed deterrent sentences imprisonment and/or fines for the offenders.

Government and industry cooperation has expanded in the past several years. For example, the Malaysian government 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.

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 do not have a firm measure of problem, but expect to complete a market survey in the first half of 2005 that will provide an estimate. 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 siphon off profits of legitimate manufacturers, and leave companies vulnerable to lawsuits from patients who may have adverse reactions to the counterfeit products.

In 2003, Malaysia's Ministry of Health announced to local industry groups its intention to require all medicines and health care products to be affixed with a hologram label as part of the government's effort to combat rising counterfeiting in these goods. The proposed labeling policy would apply to pharmaceuticals, over-the-counter medicines, and traditional medicines. U.S. pharmaceutical companies oppose the mandatory requirement scheme because of concerns about cost and efficacy of this “one-size-fits-all" approach. The Ministry of Health has deferred implementation of the policy until May 2005.

**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 the lack of training and scarcity of information about ongoing counterfeiting activities. Complicating enforcement of trademark-related violations is a Malaysian 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. igh 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 56 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. 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

Malaysia's 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).

The Malaysian Government also included local content requirements in new "Guidelines on Foreign Participation in the Distributive Trade Services" issued in October 2004. Among other provisions, department stores, supermarkets and hypermarkets must provide 30 percent of shelf space in their premises for goods and products manufactured by bumiputera-owned small and medium industries. The guidelines also require that the stores "sell at least 30 percent" of these bumiputera products, a rule which does not take into account discretionary behavior on the part of consumers.

### 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 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 and 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 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 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. 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. In 2004, Bank Negara pressed existing foreign banks, including U.S. banks, to expand back office operations or establish significant computing operations in Malaysia.

In September 2003, Bank Negara announced plans to issue three Islamic banking licenses to foreign banks active in the Islamic banking sector. Bank Negara similarly implied in a December 2004 announcement that it would give licenses to three foreign commercial banks in 2005. 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 approval 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, 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. As of mid-December 2004, foreign participation limits remained unchanged, in part because the consolidation of stock-broking firms globally has reduced companies' interest in having a presence in Malaysia. In September 2004, Malaysia announced that up to five foreign stock brokerage firms and five global fund management firms could obtain licenses to operate in Malaysia. Application approvals are set for early 2005. 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. 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 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 foreign direct investment, particularly in export-oriented manufacturing and high-technology industries, but retains considerable discretionary authority over individual

investments. 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. 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 the expansion of existing investments in manufacturing concerns, and 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 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 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 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. Malaysia's 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.