MALAYSIA

In 1997, the U.S. trade deficit with Malaysia was $7.2 billion, a decrease of $2.1 billion from the U.S. trade deficit of $9.3 billion in 1996. U.S. merchandise exports to Malaysia were $10.8 billion, an increase of $2.3 billion (27.1 percent) from the previous year. Malaysia was the United States' sixteenth largest export market in 1997. U.S. imports from Malaysia were $18 billion in 1997, an increase of $192 million (1.1 percent) from the level of imports in 1996.

The stock of U.S. foreign direct investment (FDI) in Malaysia in 1996 was $5.3 billion, concentrated largely in the manufacturing, petroleum, and finance 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, forestry, logging, 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 of Malaysia has declined to approximately 8.1 percent, duties for tariff lines where there is significant local production are often higher. For example, 15.8 percent of product tariff lines in Malaysia’s tariff schedule have rates over 24 percent, 25.9 percent of tariff lines have rates over 15 percent, and many lines have rates well over 100 percent.

The level of tariff protection is generally lower on raw materials and increases for those goods with value-added content or which undergo further processing. In an effort to reduce its current account deficit, the Malaysian Government, in the context of announcing its Fiscal Year 1998 budget, recently increased tariffs on several items, including construction equipment, motor vehicles, and certain appliances. Malaysia has also announced plans to eliminate non-essential construction projects, to delay importation of certain high cost items such as passenger aircraft and ships, and to promote consumer austerity. The Government urges Malaysians to purchase domestic products, instead of imports, whenever possible. Malaysia has been an active participant in multilateral and regional trade fora such as the World Trade Organization (WTO) and Asia-Pacific Economic Cooperation (APEC). Through November of 1998, Malaysia chairs the annual APEC process.

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. Malaysia also maintains local content requirements of 45 to 60 percent for passenger and commercial vehicles, and 60 percent for motorcycles. The Malaysian Government has announced that local content restrictions will be phased out by the year 2000 in accordance with its WTO commitments (see Investment Barriers). These restrictions have restricted the ability of U.S. firms to penetrate the Malaysian market. In October 1997, Malaysia announced substantial tariff increases on both completely built-up (CBU) units and completely knocked-down (CKD) units, as demonstrated in the chart below. In addition, excise duties on motorcycles will increase from a maximum of 20 percent to a maximum of 50 percent. Malaysia is also considering new emissions standards for motorcycles which could restrict market opportunities for imports.

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Product	Old Tariff (%)	New Tariff (%)
Automobiles (CB)	140-200	140-300
Automobiles (CKD)	42	80
Vans (CBU)	35	42-140
Van (CKD)	5	40
4wd/ Multipurpose (CBU)	50	60-200
4wd/ Multipurpose (CKD)	5	40
Motorcycle (CBU)	60	80-120
Motorcycle (CKD)	5	30

Restrictions on Construction Equipment

In October 1997, Malaysia imposed a restrictive licensing regime on imports of heavy construction equipment and raised import duties for the second year in a row, as detailed below. In October 1996, it had raised duties on construction equipment from 5 to 20 percent. In addition, the initial capital allowance for imported heavy equipment will be reduced from 20 to 10 percent in the first year, and the annual allowance will be reduced from between 12 percent and 20 percent to 10 percent.

Products	Old Tariff (%)	New Tariff (%)
Heavy machinery & equipment	0	5
Multi-purpose vehicles	0-30	50
Special Purpose Vehicles	35	50
Construction Materials	5-25	10-30

Duties on High Value Food Products

Duties for processed and high value products, such as canned fruit, snack foods, and many other processed foods, range between 20 and 30 percent. The applied tariff on soy protein concentrate is 20 percent.

Plastic Resins

In December 1993, tariffs on plastic resins were increased for a five-year period from 2 to 30 percent for non-ASEAN countries and from 1 to 15 percent for ASEAN countries. In 1994, Malaysia also instituted a five-year restrictive import licensing system.

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, and import levels remain well below the minimum access commitments established during the Uruguay Round.

Float Glass Tariff Differentials

Malaysia levies high duties (65 sen/kilogram or 50-100 percent ad valorem equivalent) on rectangular-shaped float glass. Nearly all float glass that moves in world trade is rectangular. To qualify for the lower ad valorem MFN tariff rate of 30 percent levied on non-rectangular float glass, 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. This is an inefficient and expensive process which requires distributors to recut each piece of glass into a rectangular shape once it has cleared customs.

Rice Import Policy

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

Film and Paper Product Tariffs

Malaysia applies a 25 percent tariff on imported instant print film that is estimated to cause an annual trade loss of $10-$25 million for U.S. industry. 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 to be phased out after five years and are subject to review every two years. Malaysia did not change the tariff levels after the 1996 review.

GOVERNMENT PROCUREMENT

Malaysian Government policy calls for procurement to be used to support national objectives such as encouraging greater participation of ethnic Malays (so-called bumiputra) in the economy, transfer of 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 face a level playing field in competing for contracts and in most cases are required to take on a local partner before their bid will be considered. Some U.S. companies have voiced concerns about the transparency of decisions and decision making processes. Malaysia is not a party to the plurilateral WTO Government Procurement Agreement.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Malaysia is a member of the World Intellectual Property Organization (WIPO), the Berne Convention for the protection of literary and artistic works, and the Paris Convention. Malaysia provides copyright protection to all works (*inter alia* video tapes, audio material, and computer software) published in Berne Convention member countries regardless of when the works were first published in Malaysia. Trademark infringement and patent protection have not been serious problem areas in Malaysia for U.S. companies.

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Police and legal authorities are generally responsive to requests from U.S. firms for investigation and prosecution of copyright infringement cases. Nevertheless, the presence and frequency of pirated videotapes and computer software continues to increase, in particular at the retail level. The effect of Malaysian enforcement efforts would be enhanced through the resolution of lengthy litigation and frequent court backlogs, as well as the imposition of more substantial fines against infringers. Currently, relatively minor fines are levied, even in cases involving repeat infringers, and do not have a sufficient deterrent effect.

A new and growing source of concern for the United States is the establishment of a number of plants reportedly manufacturing pirated CDs (audio and visual) and CD-ROMs. The Malaysian Government is aware of the problem and has expressed its determination to move against illegal operations. Making the suppression of CD-based digital piracy is also consistent with the Malaysia Government's objective to establish the Multimedia Super Corridor as the preeminent locus of high-technology manufacturing and innovation in Asia.

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. Facing a tight labor supply situation, foreign companies have found it hard to operate manufacturing facilities efficiently due to the difficulty associated with obtaining permission from the Malaysian Government to bring in workers from abroad. Most foreign firms also face restrictions in the number of expatriate workers they are allowed to employ. In October 1996, Malaysia announced that high-technology companies which establish in the Multimedia Super Corridor (MSC) will be allowed attractive tax incentives.

Trade-Related Investment Measures

Malaysia has notified to the WTO certain measures that are inconsistent with its obligations under the WTO Agreement on Trade-Related Investment Measures (TRIMs). The measures deal with local requirements in the automotive sector. New projects or companies granted "Pioneer Status" are eligible to receive a 70 percent income tax exemption. Proper notification allows developing-county WTO Members to maintain such measures for a five-year transitional period after entry into force of the WTO. Malaysia therefore must eliminate these measures before January 1, 2000. The United States is working in the WTO Committee on TRIMs to ensure that WTO Members meet these obligations.

SERVICES BARRIERS

Basic Telecommunications

Under the WTO basic telecommunications agreement, Malaysia made commitments on most basic telecommunications services and partially adopted the reference paper on regulatory commitments. Malaysia guaranteed 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. At least two U.S. firms have investments in basic and enhanced services sectors.

Professional Services

Foreign professional services providers are generally not allowed to practice in Malaysia. 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. Foreign lawyers may not practice Malaysian law or operate as foreign legal consultants. They cannot affiliate with local firms or use their international firm's name.

Under Malaysia’s registration system for architects and engineers, foreign architects and engineers may only seek temporary registration. Foreign architectural firms are eligible only for special projects as agreed between Malaysia and an interested foreign government. Unlike engineers, Malaysian architectural firms may not have foreign architectural firms as registered partners. Foreign architecture firms may only operate as affiliates of Malaysian companies. Foreign engineering companies must establish joint ventures with Malaysian firms and receive "temporary licensing" which is granted only on a project-by-project basis and is subject to an economic needs test and other criteria imposed by the licensing board. Foreign accounting firms can provide accounting or taxation services in Malaysia only through a locally registered partnership with Malaysian accountants or firms, and aggregate foreign interests are not to exceed 30 percent. Auditing and taxation services must be authenticated by a licensed auditor in Malaysia. Residency is required for registration.

Banking

No new licenses are being granted to either local or foreign banks; foreign banks must operate as locally-controlled subsidiaries. Foreign-controlled companies are required to obtain 60 percent of their local credit from Malaysian banks.

Insurance

Branches of foreign insurance companies are required to be locally incorporated by June 30, 1998, and foreign share holding exceeding 49 percent is not permitted unless the Malaysian Government approves higher share holding levels. As part of Malaysia's WTO financial services offer, the Government committed to allow existing foreign shareholders of locally incorporated insurance companies to increase their share holding to 51 percent, once the WTO financial services agreement goes into effect in 1999. New entry by foreign insurance companies is limited to equity participation in locally incorporated insurance companies and aggregate foreign share holding in such companies shall not exceed 30 percent.

Securities

Foreigners may hold up to 49 percent of the equity in a stockbroking firm. Currently there are 11 stockbroking firms which have foreign ownership and 20 representative offices of foreign brokerage firms. Fund management companies may be 100 percent foreign-owned if they provide services only to foreign investors, but they are limited to 70 percent foreign-ownership if they provide services to both foreign and local investors.

Advertising

Foreign film footage is restricted to 20 percent per commercial, and only Malaysian actors may be used. The Government of Malaysia has an informal and vague guideline that commercials cannot "promote a foreign lifestyle." Advertising of alcohol products is severely restricted.

Television and Radio Broadcasting

The Malaysian Government maintains broadcast quotas on both radio and television programming. Sixty percent of television programming is required to originate from local production companies owned by ethnic Malays. This share is scheduled to increase to 80 percent by the year 2000. Sixty percent of radio programming must be of local origin. The Malaysian Ministry of Information announced in January 1998 that it would study the use of the Broadcasting Act of 1988 as the means of imposing further conditions on TV stations to provide additional air time to local programming.

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 are awarded without transparent, competitive bidding. The Malaysian Government has declared that it is committed to fighting corruption and maintains an Anti-Corruption Agency, a part of the Office of the Prime Minister, to promote that objective. The Agency has the independent power to conduct investigations and is able to prosecute cases with the approval of the Attorney General.