MALAYSIA

In 1996, the U.S. trade deficit with Malaysia was $9.3 billion, an increase of $637 million from the U.S. trade deficit of $8.6 billion in 1995. U.S. merchandise exports to Malaysia were $8.5 billion, a decrease of $297 million (3.4 percent) from the level of U.S. exports to Malaysia in 1995. Malaysia was the United States' seventeenth largest export market in 1996. U.S. imports from Malaysia were $17.8 billion in 1996, an increase of $341 million (2.0 percent) from the level of imports in 1995.

The stock of U.S. foreign direct investment (FDI) in Malaysia in 1995 was $3.6 billion, an increase of 55.9 percent from the level of U.S. FDI in 1994. U.S. FDI in Malaysia is concentrated largely in the manufacturing, petroleum, and finance sectors.

IMPORT POLICIES

In general, Malaysia has reduced tariffs on a range of goods, but retains relatively high rates in certain sectors to regulate imports. Duties on a trade-weighted basis average less than 10 percent, but the rates for tariff lines where there is significant local production are often higher. Malaysia's 1997 budget, announced on October 25, 1996, increased duty rates by 5 to 20 percentage points on selected heavy equipment, manufacturing inputs, and hotel supplies to promote domestic sourcing and to address domestic concerns about Malaysia's chronic current account deficit. The 1997 budget also reduced or eliminated some tariffs, mostly on consumer products not manufactured in Malaysia. The following policies have been identified as significant barriers to U.S. exports.

Construction Machinery Tariffs

In October 1996, Malaysia raised tariffs on a number of construction equipment items (tractors, excavators, backhoe loaders, etc.) from zero to between 5 and 20 percent ad valorem. Malaysia's stated reason for the tariff increases was to encourage reconditioning and repair of existing equipment, thereby reducing demand for imports.

Import Restrictions on Motor Vehicles

Malaysia maintains several measures to protect its local automobile industry. Tariffs for most vehicles range from 35 to 50 percent for completely knocked down units and 50 to 200 percent for those completely built up. Tariff rates on major components range from 5 to 42 percent.

In addition to these high customs duties, importers are also subject to a lengthy and uncertain import licensing process that further restricts market access. Road taxes, based on engine displacement, are an additional burden on imports which tend to have larger engines. The government uses administrative measures to enforce local content requirements of 45 to 60 percent on assemblers of passenger vehicles, and 45 percent on assemblers of commercial vehicles. Assemblers who fail to comply with the local content policy are subject to penalties. The Government of Malaysia has announced that local content restrictions will be phased out by the year 2000 to comply with World trade Organization (WTO) commitments.

Malaysia also maintains a 60 percent duty on motorcycle imports. As it does with automobiles, the government uses administrative measures to enforce local content requirements of 60 percent on assemblers of motorcycles.

Import Restrictions on Tobacco and Cigarettes

To encourage greater use of local tobacco in cigarettes and to maintain high domestic leaf prices, Malaysia levies import duties of 50 Malaysian Ringgit (RM) per kilogram (approximately U.S. $20), plus five percent ad valorem on unprocessed tobacco. The quantities of flue-cured tobacco which may be imported are subject to government approval.

Plastic Resins

In December 1993, tariffs for 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.

Film and Paper Product Tariffs

Malaysia applies a 25 percent tariff on imported U.S. instant print film. U.S. industry estimates that this market access restriction has resulted in an annual trade loss of $10- $25 million.

In April 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 over a maximum of five years and are subject to review every two years.

Tariff-Rate Quota for Chicken Parts

Chicken imports are regulated by a tariff-rate quota. In-quota tariff rates are 50 to 70 percent, depending on the specific product. The volume of in-quota imports are also restricted through licensing and sanitary controls.

Agriculture and Food Products

The sole authorized importer is a government corporation (Bernas) with the responsibility of ensuring purchase of the domestic crop and wide power to determine imports. Duties for processed and high-value products, such as canned fruit, snack foods, and many other processed foods, range between 0 and 30 percent.

GOVERNMENT PROCUREMENT

Incentives exist for local procurement. Many smaller civil construction projects (RM50 million or less) are restricted to local firms, and all contracts less than RM5 million ($2 million) are reserved for Malaysian contractors. Foreign firms are often required to bid on large infrastructure projects in joint ventures with local partners. Joint-venture bids must have at least 30-percent bumiputra (indigenous Malay) participation.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Malaysia has made significant progress in recent years in strengthening legislation and improving enforcement to protect intellectual property rights (IPR), and piracy rates have generally declined as a result. However, overall losses to software piracy climbed during the past year. Industry estimates indicate that software piracy losses climbed $40 million from $66 million in 1995 to $106 million in 1996.

Malaysia provides copyright protection to all works (including video tapes, audio material, and computer software) published in Berne Convention member countries, regardless of when the works were first published in Malaysia. Government authorities are responsive to requests from U.S. firms for investigation and prosecution of copyright infringement cases. The government is committed to further improvements in IPR enforcement. Trademark infringement and patent protection have not been serious problem areas in Malaysia for U.S. companies.

SERVICES BARRIERS

Insurance

Recent legislation will require local incorporation of all insurance companies by June 30, 1998. Moreover, no new insurance companies are being licensed except for reinsurers. Foreign equity in new insurance companies is normally limited to a minority stake (usually 30 percent), although the Central Bank sometimes grants exceptions. Those companies with more than 30 percent foreign equity face government calls to divest themselves of that equity over time. Several existing insurance companies are 100 percent foreign-owned, and additional firms have foreign equity in excess of 50 percent. The government will allow these firms to retain up to 49 percent foreign-held equity if they restructure ownership prior to June 30, 1998. Insurance for ships, aircraft, and property must be placed with Malaysian registered insurers.

Banking

Foreign banks are required to operate as locally-controlled subsidiaries and the Central Bank is currently issuing no new licenses to either local or foreign banks. Foreign and domestic banks in the second-tier of the banking system (because of their lower capitalization) are subject to more discretionary control by regulators than those in the first tier. Existing foreign banks are currently prohibited from opening additional branch offices. A Central Bank regulation that considers automated teller machines (ATMs) to be bank branches has made it impossible for foreign banks to set up ATMs separate from their existing branches. Foreign banks are also prohibited from joining local ATM networks. Measures requiring foreign-controlled companies to obtain 60 percent of their local credit from Malaysian banks put foreign banks at a competitive disadvantage.

Securities

Foreigners may only 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 are limited to 70 percent foreign-ownership if they provide services to both foreign and local investors.

Legal Services

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.

Advertising

Foreign film footage in television advertising 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 television commercials cannot “promote a foreign lifestyle.” Advertising of alcoholic beverages on television and radio is banned. Advertising of all types of hard liquor and wines will be prohibited in the print media and billboards under a new regulation. Tobacco advertising is also restricted; however, cigarette manufacturers manage to work around the regulations by advertising such things as clothing, travel agencies, and restaurants which use the brand names of their popular selling cigarettes.

Architecture and Engineering

Foreign architecture firms must operate through affiliation with Malaysian companies. Foreign architectural credentials are not always accepted. Foreign engineering companies must establish joint ventures with Malaysian firms and receive “temporary licensing.” The license is granted on a project-by-project basis, subject to an economic needs test and to criteria imposed by the licensing board.

Television and Radio Broadcasts

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 be increased to 80 percent by the year 2000. Sixty percent of radio programming must be of local origin.

Basic Telecommunications

In the recently concluded WTO negotiations on basic telecommunications services, Malaysia made commitments on most basic telecom services and 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 telecom operators. It did not guarantee the ability to provide resale service.

INVESTMENT BARRIERS

Malaysia maintains a widespread program of screening for foreign and domestic investments, applying such criteria as consistency with Malaysia's industrial master plan, compatibility with social policy, size of the investment, amount of local equity participation, type of required financing, ability of planned and existing infrastructure to support the investment, and the existence of a market for the project's output. Local and foreign investors who receive fiscal incentives often are subject to performance requirements, usually in the form of export targets, local content requirements, and technology transfer. The government promotes the holding of economic assets by indigenous Malays (bumiputra) and usually requires foreign and domestic firms to take on bumiputra partners and to have company workforces that reflect Malaysia's ethnic composition. General policy limits foreign equity to 30 percent, although 100 percent foreign ownership in export industries is generally permitted. Since in late 1995, the government has pressed foreign firms participating in retail and direct sales businesses to divest to minority ownership. An exception to these equity limits is in the autos sector, where greater foreign ownership has been allowed in certain circumstances where 50 percent of production is exported or technology is transferred.