

The Honorable J. Dennis Hastert  
Speaker  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Mr. Speaker:

In accordance with section 2104(a)(1) of the Trade Act of 2002 (the Trade Act), and pursuant to authority delegated to me by the President, I am pleased to notify the Congress that the President intends to initiate negotiations for a free trade agreement (FTA) with Malaysia. We expect these negotiations to get underway by May 2006, and we will be consulting closely with the Congress regarding these negotiations, as required by the Trade Act.

The Administration is committed to negotiating and implementing trade agreements that open markets to benefit our farmers, ranchers, workers, businesses, and families. With the continued help of Congress, we can move promptly to advance America's trade interests.

We believe the United States has much to gain in pursuing a negotiation with Malaysia. Malaysia already is our 10<sup>th</sup> largest trading partner with \$44.2 billion in total trade during 2005. The increased access to Malaysia's market that an FTA would provide would further boost trade in a wide range of both industrial and agricultural goods and services, enhancing employment opportunities in both countries. An FTA would give U.S. exports comparable treatment to that which Malaysia affords goods from its ASEAN and other trading partners with which it has or currently is negotiating preferential trade agreements, including China, Japan, India, Australia and New Zealand.

An FTA with Malaysia will help foster economic growth and create higher paying jobs in the United States by reducing and eliminating barriers to trade and investment between Malaysia and the United States. It would increase benefits to consumers through increased competition in both countries. The FTA also will enable us to address market access impediments, including both tariff and nontariff barriers in Malaysia, the largest U.S. export market in Southeast Asia. The National Association of Manufacturers estimates that when Malaysia's expected economic growth is combined with the benefits of an FTA, U.S. exports of manufactured goods could double by 2010.

An FTA with Malaysia also would benefit U.S. agricultural producers, ensuring that they are not at a competitive disadvantage with other major agricultural exporters. An FTA would create opportunities for U.S. exporters of fresh fruits and nuts, wheat, soybeans, animal feeds and feed ingredients. Malaysia also is a net sugar importer. An FTA also may create opportunities to eliminate Malaysia's unjustified use of nontariff barriers and improve the transparency of its regulatory and licensing procedures in this sector, which also would boost U.S. exports. With Malaysia having recently implemented policies to support development of its biotechnology sector, the U.S. agricultural and industrial biotechnology sectors both may benefit.

Liberalization of Malaysia's financial services, telecommunications, energy, audio-visual, distribution, healthcare and other services would create opportunities for U.S. firms, which are

highly competitive in these sectors. Malaysia has moved slowly to liberalize its services sector to date, but further opening would support Malaysia's efforts to attract investment, diversify its exports and build the knowledge-based economy it hopes will put it on a higher competitive plane. Malaysian officials have assured us that they understand that addressing these issues, including financial services, will be essential for the successful conclusion of these negotiations.

An FTA also would encourage greater liberalization of foreign investment between the United States and Malaysia. The United States already is the largest investor in Malaysia. Liberalization of Malaysia's investment regime would support the further development of the supply and processing chains between U.S. and Malaysian companies, supporting high-paying jobs in the United States.

We would seek to strengthen Malaysia's protection of intellectual property through the FTA. Malaysia already has taken steps to strengthen its IPR regime in order to provide the framework necessary to further enhance trade and investment. However, Malaysia has high piracy rates for optical media and is a substantial exporter of counterfeit and pirated product. We will seek to include provisions that bring Malaysia's intellectual property and customs regimes up to the standards set in our other recent FTAs, as indicated below in our specific negotiating objectives.

An FTA would help strengthen our cooperation with Malaysia in multilateral and regional fora. Malaysia plays an active and constructive role in WTO negotiations and worked closely with the United States in the lead up to the 2005 Hong Kong Ministerial. Malaysia also is a consistent partner in APEC and is working with the United States on the APEC IPR Initiative.

An FTA with Malaysia also would advance President Bush's Enterprise for ASEAN Initiative, under which we hope to enhance our trade and economic ties to ASEAN countries. We concluded an FTA with Singapore in May 2003 and are seeking to conclude an FTA with Thailand. In addition, we have Trade and Investment Framework Agreements (TIFAs) with Indonesia, Philippines, and Brunei Darussalam, and have nearly concluded negotiations on a TIFA with Cambodia. We negotiated a TIFA with Malaysia in 2004 and have met three times under this agreement, addressing a range of bilateral issues. An FTA with Malaysia would promote U.S. interests in the region, encourage the negotiation of trade agreements with the high standards inherent in FTAs with the United States and reinforce a strong US-ASEAN relationship, which is a force for stability and development in the Southeast Asian region.

In addition to complementing our cooperative efforts with Malaysia on global and regional trade issues, an FTA would further enhance our broader relationship with Malaysia. An FTA would reinforce the shared interests of the United States and Malaysia and promote common values, facilitating our efforts to work together on a wide range of issues. An FTA with Malaysia would deepen our relationship and support our cooperative efforts on key political and security issues. Malaysia plays an important role in the developing and Muslim worlds as well as in ASEAN. It is currently the chair of the Non-Aligned Movement, the Organization of the Islamic Conference and of ASEAN. Malaysia has been a constructive partner on counterterrorism and an FTA with Malaysia could help strengthen this cooperation.

Initial consultations with the Congressional Oversight Group (COG) and other Members of Congress regarding the FTA negotiations with Malaysia have been positive, and our decision to move ahead with negotiations with Malaysia was strongly influenced by the bipartisan expressions of interest we have received from members of Congress and U.S. industry. The Administration will continue to consult closely with the Congress, including the Congressional Oversight Group, throughout the negotiation process.

Our specific objectives for negotiations with Malaysia are as follows:

– *Trade in Goods:*

- Seek to eliminate tariffs and other duties and charges on trade between Malaysia and the United States on the broadest possible basis, subject to reasonable adjustment periods for import-sensitive products.
- Seek to eliminate non-tariff barriers in Malaysia to U.S. exports, including permit and licensing barriers on agricultural and other products, restrictive administration of tariff-rate quotas, unjustified trade restrictions that affect new U.S. technologies, and other trade restrictive measures that U.S. exporters identify.
- Seek to eliminate government practices that adversely affect U.S. exports of perishable or cyclical agricultural products, while improving U.S. import relief mechanisms as appropriate.
- Pursue a mechanism with Malaysia that will support achieving the U.S. objective in the WTO negotiations of eliminating all export subsidies on agricultural products, while maintaining the right to provide *bona fide* food aid and preserving U.S. agricultural market development and export credit programs.
- Pursue fully reciprocal access to Malaysia market for U.S. textile and apparel products.

– *Customs Matters, Rules of Origin, and Enforcement Cooperation:*

- Seek rules to require that Malaysia's customs operations are conducted with transparency, efficiency, and predictability, and that customs laws, regulations, decisions, and rulings are not applied in a manner that would create unwarranted procedural obstacles to international trade.
- Seek rules of origin, procedures for applying these rules, and provisions to address circumvention matters that will ensure that preferential duty rates under an FTA with Malaysia apply only to goods eligible to receive such treatment, without creating unnecessary obstacles to trade.
- Seek terms for cooperative efforts with Malaysia regarding enforcement of customs and related issues, including in the area of trade in textiles and apparel.

– *Sanitary and Phytosanitary (SPS) Measures:*

- Seek to have Malaysia reaffirm its WTO commitments on SPS measures and eliminate any unjustified SPS restrictions.
- Seek to strengthen collaboration with Malaysia in implementing the WTO SPS Agreement and to enhance cooperation with Malaysia in relevant international bodies on developing international SPS standards, guidelines, and recommendations.

– *Technical Barriers to Trade (TBT):*

- Seek to have Malaysia reaffirm its WTO TBT commitments and eliminate any unjustified TBT measures.
- Seek to strengthen collaboration with Malaysia in implementing the WTO TBT Agreement and create a procedure for exchanging information with Malaysia on TBT-related issues.

*Intellectual Property Rights:*

- Seek to establish standards to be applied in Malaysia that build on the foundations established in the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights and other international intellectual property agreements, such as the World Intellectual Property Organization (WIPO) Copyright Treaty, the WIPO Performances and Phonograms Treaty, and the Patent Cooperation Treaty.
- Seek to establish high standards for trademark protection and an appropriate balance between trademark and geographical indications.
- In areas such as patent protection and protection of information submitted to obtain marketing approval, seek to have Malaysia apply levels of protection and practices more in line with U.S. law and practices, including appropriate flexibility.
- Seek to strengthen Malaysia=s laws and procedures to enforce intellectual property rights, such as by ensuring that Malaysian authorities have authority to seize and destroy pirated and counterfeit goods, equipment used to make such goods, and documentary evidence.
- Seek to strengthen measures in Malaysia that provide for compensation of right holders for infringements of intellectual property rights and to provide for criminal penalties under Malaysian law that are sufficient to have a deterrent effect on piracy and counterfeiting.

– *Trade in Services:*

- Seek improved transparency and predictability of Malaysian regulatory procedures, specialized disciplines for financial services, and additional disciplines for telecommunications and other sectors as appropriate.
- Pursue a comprehensive approach to market access, including any necessary improvements in access to the telecommunications, financial services, express delivery, professional services, or other sectors.

– *Investment:*

- Seek to establish rules that reduce or eliminate artificial or trade-distorting barriers to U.S. investment in Malaysia, while ensuring that Malaysian investors in the United States are not accorded greater substantive rights with respect to investment protections than U.S. investors in the United States, and to secure for U.S. investors in Malaysia important rights comparable to those that would be available under U.S. legal principles and practice.
- Seek to ensure that U.S. investors receive treatment as favorable as that accorded to domestic or other foreign investors in Malaysia and to address unjustified barriers to the establishment and operation of U.S. investments in Malaysia. Provide procedures to resolve disputes between U.S. investors and the Government of Malaysia that are in keeping with the Trade Promotion Authority goals of being expeditious, fair, and transparent.

– *Electronic Commerce:*

- Seek to have Malaysia affirm that it will allow U.S. goods and services to be delivered electronically to its market and to ensure that Malaysia does not apply customs duties to digital products or unjustifiably discriminate among products delivered electronically.

– *Government Procurement:*

- Seek to establish rules requiring government procurement procedures and practices that are fair, transparent, and predictable for suppliers of U.S. goods and services that seek to do business with Malaysia, and that ensure that U.S. suppliers receive treatment as favorable as that accorded to domestic or other foreign suppliers in Malaysia.
- Seek to expand access for U.S. goods and services to Malaysia's government procurement market.

– *Transparency/Anti-Corruption/Regulatory Reform:*

- Seek to make Malaysia=s administration of its trade and investment regime more transparent, and pursue rules that will permit timely and meaningful public comment before Malaysia adopts trade- and investment-related measures.
- Seek to eliminate Malaysia government regulation or other measures that discriminate against or deny full market access for U.S. exporters or investors.
- Seek to ensure that Malaysia applies high standards prohibiting corrupt practices affecting international trade and investment and enforces such prohibitions.
- *Competition:*
  - Address possible issues involving competition-related matters, if appropriate.
- *Trade Remedies:*
  - Provide a safeguard mechanism during a transition period to allow a temporary revocation of tariff preferences if increased imports from Malaysia are a substantial cause of serious injury or threat of serious injury to the domestic industry.
  - Make no changes to U.S. antidumping and countervailing duty laws.
- *Environment:*
  - Seek to promote trade and environment policies that are mutually supportive.
  - Seek an appropriate commitment by Malaysia to effectively enforce its environmental laws.
  - Establish that Malaysia will strive to ensure that it will not, as an encouragement for trade or investment, weaken or reduce the protections provided for in its environmental laws.
  - Help Malaysia strengthen its capacity to protect the environment through the promotion of sustainable development, such as by establishing consultative mechanisms.
- *Labor, including Child Labor:*
  - Seek an appropriate commitment by Malaysia to effectively enforce its labor laws, particularly those relating to internationally-recognized labor rights and prohibiting the worst forms of child labor.

- Establish that Malaysia will strive to ensure that it will not, as an encouragement for trade or investment, weaken or reduce the protections provided for in its labor laws.
- Based upon review and analysis of Malaysia=s labor law and practices, establish procedures for consultations and cooperative activities with Malaysia to strengthen its capacity to promote respect for core labor standards, including compliance with ILO Convention 182 on the worst forms of child labor.
- *State-to-State Dispute Settlement:*
  - Encourage the early identification and settlement of disputes through consultation.
  - Seek to establish fair, transparent, timely, and effective procedures to settle disputes arising under the agreement.

In addition, the FTA with Malaysia will take into account other legitimate U.S. objectives including, but not limited to, the protection of health, safety, environment, essential security, and consumer interests.

We are committed to concluding these negotiations with timely and substantive results for U.S. workers, consumers, businesses, farmers, and ranchers, and will pursue these specific objectives, keeping in mind the overall and principal U.S. negotiating objectives and priorities that the Congress has identified. We look forward to continuing to work with the Congress as negotiations with Malaysia begin, and we commit to work with you as we bring them to a successful conclusion.

Sincerely,

Rob Portman