MALAYSIA

TRADE SUMMARY

U.S. goods exports in 2013 were $13.0 billion, up 1.3 percent from the previous year. Corresponding U.S. imports from Malaysia were $27.3 billion, up 5.2 percent. The U.S. goods trade deficit with Malaysia was $14.3 billion in 2013, up $1.2 billion from 2012. Malaysia is currently the 25th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Malaysia were $2.5 billion in 2012 (latest data available), and U.S. imports were $1.4 billion. Sales of services in Malaysia by majority U.S.-owned affiliates were $7.3 billion in 2011 (latest data available), while sales of services in the United States by majority Malaysia-owned firms were $243 million.

The stock of U.S. foreign direct investment (FDI) in Malaysia was $15.0 billion in 2012 (latest data available), up from $12.4 billion in 2011. U.S. FDI in Malaysia is led by the manufacturing and mining sectors.

Trade Agreements

Malaysia is a participant in the Trans-Pacific Partnership (TPP) negotiations, through which the United States and 11 other Asia-Pacific partners are seeking to establish a comprehensive, next-generation regional agreement to liberalize trade and investment. This agreement will advance U.S. economic interests with some of the fastest-growing economies in the world; expand U.S. exports, which are critical to the creation and retention of jobs in the United States; and serve as a potential platform for economic integration across the Asia-Pacific region. The TPP agreement will include ambitious commitments on goods, services, and other traditional trade and investment matters. It will also include a range of new and emerging issues to address trade concerns our businesses and workers face in the 21st century. In addition to the United States and Malaysia, the TPP negotiating partners currently include Australia, Brunei, Canada, Chile, Japan, Mexico, New Zealand, Peru, Singapore and Vietnam.

IMPORT POLICIES

Tariffs and Import Licensing Requirements

Almost all of Malaysia's tariffs are imposed on an *ad valorem* basis, with a simple average applied tariff rate of 6.5 percent. Duties for tariff lines where there is significant local production are often higher. In general, the level of tariffs is lower on raw materials than for value-added goods.

On roughly 80 products – most of which are agricultural goods – Malaysia charges specific duties that represent extremely high effective tariff rates. The simple average *ad valorem* equivalent across all products with a specific tariff is 392 percent. Beverages, alcohol, and wine are subject to an effective tariff of up to 500 percent when import duties and excise taxes are combined.

A large number of Malaysian tariff lines related to import-sensitive or strategic industries (principally in the construction equipment, agricultural, mineral, and motor vehicle sectors) are subject to import licensing requirements.

Tariff-Rate Quotas on Selected Agricultural Products

The Malaysian government maintains tariff-rate quota systems for 17 tariff lines, including live poultry, poultry meat, milk and cream, pork, and round cabbage. These products incur in-quota duties between 10 percent and 25 percent and out-of-quota duties as high as between 40 percent and 168 percent.

Import Restrictions on Motor Vehicles

Malaysian automotive policy makes a fundamental distinction between "national" cars, (*e.g.*, domestic producers Proton and Perodua) and "non-national" cars, which include other vehicles assembled in Malaysia. Malaysia applies high tariffs in the automobile sector, and its National Automotive Policy (NAP) includes nontariff measures that significantly raise the cost of imported vehicles. In 2011, the Malaysian government began another review of the NAP and results of this review were announced by the government in January 2014. The new NAP seeks to transform the country into a hub for energy efficient vehicles, but maintains Malaysia's non-transparent import permit and gazette pricing system, excise duties that disproportionately affect imported vehicles, and special tax reductions for vehicles with Malaysian-manufactured components. In addition, Malaysia also has traffic restrictions and noise standards that affect the usage of large motorcycles.

The NAP includes a system of "approved permits" (APs), which confer the right to import and distribute cars and motorcycles. The AP system was initially designed to provide *bumiputera* (ethnic Malay) companies with easier entry into the automobile and motorcycle distribution and service sectors. However, the AP system is administered in a nontransparent manner and effectively operates as a cap by restricting the total number of imported vehicles in a given year. Currently, the cap on imported vehicles is set at 10 percent of the domestic market. Although the previous NAP had included a commitment to phase out the AP system by 2020, the revised NAP replaced this commitment with a proposed six month in depth study to assess the impact of terminating the program on its *bumiputera* beneficiaries.

Other policies further limit the competitiveness of U.S. automotive imports. The value of imported automobiles is established by the Malaysian government by an official gazette price. The officially set price serves as the basis for the assessment of import duties and excise taxes imposed by Malaysia. Meanwhile, through the use of the Industrial Adjustment Fund, the Malaysian government provides credits for the domestic content in locally assembled vehicles, which substantially lowers the tax burden on domestic products. The combined effect of these policies is to ensure that the number of imported vehicles is small and that the price of imported vehicles is substantially higher than that of domestically produced automobiles.

Pork Import Licensing

Pork may be imported into Malaysia only if Malaysia's Department of Veterinary Services (DVS) issues a permit authorizing its importation. The permits are granted on a case-by-case basis and are sometimes refused without explanation. In any event, the export of pork products from U.S. slaughter establishments is prohibited until such time as Malaysia conducts a systems audit of the U.S. sanitary system for pork. DVS has agreed to undertake such an audit in the first half of 2014 with the goal of moving towards reopening Malaysia's market to U.S. pork products.

EXPORT TAXES

Malaysia taxes exports of palm oil, rubber, and timber products in order to encourage domestic processing. Malaysia is the world's second largest producer and exporter of palm oil and products made from palm oil. Malaysia lowered its export tax rates on crude palm oil on January 1, 2013 from 23 percent to between 4.5 percent and 8.5 percent. The tax that Malaysia imposes on exports of crude palm oil depends on fluctuations in the market price. Refined palm oil and refined palm oil products are not subject to export taxes. On January 1, 2013, the Malaysian government eliminated a duty-free quota for exports of crude palm oil.

GOVERNMENT PROCUREMENT

Malaysia has traditionally used government procurement to support national public policy objectives, including 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. It generally invites international tenders only when 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 find they need to take on a local partner before their tenders will be considered. Procurement also often goes through middlemen rather than directly, or is negotiated rather than tendered. Many State-owned enterprises in Malaysia also apply procurement policies that favor bumiputera suppliers. The U.S. Government continues 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, but became an observer on July 18, 2012.

EXPORT SUBSIDIES

Malaysia maintains several programs that appear to provide subsidies for exports. The NAP increased the income tax exemption for high value added exports of motor vehicles and parts. The income tax exemption is based on the percentage increase in value added of exports. The United States has raised questions on these policies, some of which appeared to be export subsidies prohibited under WTO rules. These include: Single or Double Deduction for the Promotion of Exports, Tax Exemption on the Value of Increased Exports (provided minimal levels of domestic value-added are met); Market Development Grants; Tax Exemption for Malaysia International Trading Company; Free Industrial Zones, Free Commercial Zones, Licensed Manufacturing Warehouses and Export Processing Zones. Moreover, 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.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Malaysia was removed from the Special 301 Watch List in 2012 and remained off the Watch List in 2013 following improvements in recent years in protecting intellectual property rights (IPR). In December 2011, the Malaysian Parliament passed amendments to the copyright law designed to, inter alia, bring the country into compliance with the WIPO Copyright Treaty and the WIPO Performance and Phonogram Treaty, define Internet Service Provider (ISP) liabilities, and prohibit unauthorized cam cording of motion pictures in theaters. Malaysia subsequently acceded to the WIPO Copyright Treaty and the WIPO Performance and Phonogram Treaty in September 2012. In addition, the Ministry of Domestic Trade, Cooperatives, and Consumerism (MDTCC) took steps to enhance Malaysia's enforcement regime, including active cooperation with rights holders on matters pertaining to IPR enforcement, ongoing training of prosecutors for specialized IPR courts, and the reestablishment of a Special Anti-Piracy Taskforce. In recent years, the MDTCC has also instructed its enforcement division to begin to take *ex officio* action, resulting in significant seizures of pirated products. In addition, there have been new law revisions on industrial designs and trademarks which are near completion, and it is reported that the government aims to join the Hague Design System and the Madrid Protocol in 2014. These positive efforts to protect intellectual property should be furthered with the completion of specialized IP courts in all 13 Malaysian states.

Despite Malaysia's success in improving its effective protection of IPR, key issues remain, including relatively widespread availability of pirated and counterfeit products in Malaysia, high rates of piracy over the Internet, and continued problems with book piracy. In addition, the United States urges Malaysia to continue its efforts to improve the protection against unfair commercial use, as well as unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products.

SERVICES BARRIERS

The services sector constitutes 48 percent of the Malaysian economy and has been a key driver of economic and job growth in recent years. Since 2009, Malaysia has liberalized 43 services sub-sectors. One hundred percent foreign equity participation is now allowed in private hospital services, medical specialist clinics, department and specialty stores, incineration services, accounting and taxation services, courier services, private universities, vocational schools, dental specialist services, skills training centers, international schools, and vocational schools for special needs and quantity surveyors services. Malaysia has also announced plans, requiring new legislation, to liberalize architectural services, quantity surveying services and engineering services.

Telecommunications

Malaysia began allowing 100 percent foreign equity participation in Applications Service Providers in April 2012. However, liberalization of telecommunications services for Network Facilities Providers and Network Service Provider licenses has yet to be implemented and currently only 70-percent foreign participation is permitted. In certain instances, Malaysia has allowed greater equity participation, but the manner in which such exceptions are administered is not transparent and is perceived by foreign suppliers as arbitrary. Malaysia made limited GATS commitments on most basic telecommunications services and partially adopted the WTO reference paper on regulatory commitments.

Distribution Services, including Direct Selling

Malaysia began allowing 100 percent foreign ownership of department and specialty stores in 2012. However, foreign owned larger retailers ("hypermarkets") and locally incorporated direct selling companies must still have 30 percent bumiputera equity. The guidelines also include requirements that 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. Malaysia is currently reviewing these guidelines. The Malaysian government also issues "recommendations" for local content targets, which are, in effect, mandatory.

Legal Services

Malaysia amended its Legal Professions Act in July 2012. The amendments, which have yet to be implemented, would in principle allow foreign law firms to practice in Malaysia through an international partnership or qualified foreign law firm license and empower local firms to employ foreign lawyers subject to certain conditions. However, practicing litigation will still be prohibited except on an *ad hoc* basis, as will work in real property law. While foreign lawyers will be allowed to structure transactions, only Malaysian lawyers will be able to make actual filings. 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.

In September 2013, Malaysia further amended the Legal Professions Act in two separate bills. The first bill removed the application of the Legal Professions Act's restrictions on the practice of law related to international arbitration proceedings. The second bill formalized additional restrictions on "fly in and fly out" activity by attorneys practicing either Malaysian or foreign law in the country.

Architectural Services

Architectural Services are among the 17 services sub-sectors the Malaysian government pledged to liberalize in 2012. However, the legislation that would allow 100-percent foreign equity in architectural firms has yet to be tabled in Parliament. At present, 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

The engineering sector was scheduled to be liberalized in 2012, but the pending amendments to the relevant acts were not completed before Parliament was dissolved and new legislation has yet to be introduced. Until then, 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. 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 non-temporary commercial presence if all directors and shareholders are Malaysian.

Accounting and Taxation Services

Since January 2012, foreign accountants and auditors have been allowed to wholly own a practice in Malaysia. 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 the MIA.

Financial Services

Malaysia adopted a new Financial Services Act in late 2012 that largely reflected its latest 10-year Financial Sector Blueprint and envisages further opening of the financial sector to foreign banks, but does not contain specific market-opening commitments or timelines. The new Act, which follows the previous 10 year Financial Services Master Plan, does not significantly break with the existing case-by-case approach of the central bank, Bank Negara Malaysia , towards granting foreign banks access to Malaysia. Under the Act, issuance of new licenses will be guided by prudential criteria and a vague and nontransparent "best interests of Malaysia." In determining the "best interests of Malaysia," Bank Negara will consider the contribution of the investment to promoting new high value-added economic activities, addressing demand for financial services where there are gaps, enhancing trade and investment linkages, and providing high-skilled employment opportunities. Bank Negara has also stated that it wants to ensure that local banks have at least 50 percent of total banking assets in Malaysia, although their share at present is significantly beyond that.

Bank Negara also sets controls on both foreign and local financial products. For example, interest rates on consumer savings accounts and fixed deposits are mandated and significantly higher than in other Asian countries. Fees on transactions are determined by the Association of Banks, but banks are not permitted to change these fees without Bank Negara approval. Credit card interest rates are capped at 18 percent per annum. Partnerships between foreign insurers and foreign banks are not permitted, regardless of whether they are locally incorporated. Foreign banks are also not allowed to open Ringgit Correspondent Bank Accounts with local banks as Bank Negara considers this practice to make local banks conduits for "branching" by foreign banks. Correspondingly, local banks are hesitant to partner with foreign banks to provide joint and seamless resources to U.S. multinationals.

As part of the 2009 liberalization package for financial services, foreign equity limits were increased from 49 percent to 70 percent for domestic investment banks, insurance companies, Islamic banks, and Islamic insurance operators. Foreign equity above 70 percent is permitted on a case-by-case basis for insurance companies if the investment is determined to facilitate the consolidation and rationalization of the insurance industry. Currently, mutual fund providers are restricted from being able to enter Malaysia and market or sell their products. Reinsurance companies are required to conduct more than 50 percent of their reinsurance business in Malaysia and must have 5 percent cession and local retention. Takaful (Islamic insurance products) require a separate license for foreign companies that would like to offer them. Bank Negara currently allows foreign banks to open four branches throughout Malaysia, subject to restrictions, which include designating how the branches can be set up. The policies do not allow foreign banks to set up new branches within 1.5 km of an existing local bank. Bank Negara has considered ATMs as equivalent to separate branches. It has conditioned foreign banks' ability to offer some services on commitments to undertake certain back office activities in Malaysia.

Advertising

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

Audio-Visual and Broadcasting

The Malaysian government maintains broadcast content quotas on both radio and television programming. Eighty percent of television programming must 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.

Consumer Data Protection

Malaysia overhauled its consumer data protection laws with passage of the Personal Data Protection Act in 2010. The law imposes significant new requirements for registration and reporting by companies handling consumer data that ultimately touches most aspects of the economy. The law came into force November 15, 2013, with three months allowed for initial registration and reporting.

INVESTMENT BARRIERS

Foreign investment in sectors such as retail, telecommunications, financial services, professional services, oil and gas, and mining is subject to extensive restrictions, including limitations or, in some cases, prohibition, on foreign equity, and requirements that foreign firms enter into joint ventures with local partners. Pursuant to the National Land Code, foreigners must obtain prior approval from the relevant state authorities for any acquisition of land for agricultural, residential, or commercial purposes. These State authorities may impose conditions on ownership, including maximum thresholds on foreign equity in companies seeking to acquire land. Malaysia also maintains performance requirements that must be met to receive a customs waiver for manufacturing operations in Foreign Trade Zones.

OTHER BARRIERS

Transparency

U.S. companies continue to raise serious concerns about the lack of transparency in government decision-making and procedures in Malaysia. Following an announcement by Prime Minister Najib in February 2012, the Chief Secretary to the Cabinet in April 2012 issued a circular instructing all Ministries to publicly post all draft laws and regulations on the Internet for a 30-day public comment period. However, implementation of this new requirement remains uneven, and many Ministries continue to consult selected stakeholders in an opaque, invitation-only manner.