MALAYSIA

TRADE SUMMARY

The U.S. goods trade deficit with Malaysia was $12.9 billion in 2009, down $4.9 billion from 2008. U.S. goods exports in 2009 were $10.4 billion, down 19.7 percent from the previous year. Corresponding U.S. imports from Malaysia were $23.3 billion, down 24.3 percent. Malaysia is currently the 21st largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Malaysia were $2.0 billion in 2008 (latest data available), and U.S. imports were $1.3 billion. Sales of services in Malaysia by majority U.S.-owned affiliates were $3.7 billion in 2007 (latest data available), while sales of services in the United States by majority Malaysia-owned firms were $422 million in 2007.

The stock of U.S. foreign direct investment (FDI) in Malaysia was $13.3 billion in 2008 (latest data available), up from $13.0 billion in 2007. U.S. FDI in Malaysia is led by the manufacturing and mining sectors.

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 7.4 percent in 2009. 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. U.S. companies believe that tariff reductions on such products as frozen French fried potatoes, restaurant equipment, and food and confectionary products would allow them to increase their exports significantly.

On roughly 80 products – most of which are agricultural goods – Malaysia charges specific duties that represent extremely high effective tariff rates. These tariffs appear to be aimed at protecting small and rural farmers from foreign competition. 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. In addition, adjustments to excise taxes made each year as part of the budget process can raise costs sharply and make it difficult for U.S. companies to negotiate long-term supply contracts in the beverage, alcohol and wine sector.

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 non-automatic import licensing. Malaysia also maintains performance requirements that must be met to receive a customs waiver for operations in Foreign Trade Zones.

Malaysia has an extensive network of preferential trade relationships. In addition to being a member of the Association of Southeast Asian Nations (ASEAN), Malaysia has bilateral trade agreements with Japan, Pakistan, and New Zealand as well as regional agreements, as part of ASEAN, with China, Korea, Japan, India, Australia, and New Zealand. Malaysia is currently negotiating additional preferential trade agreements with Australia, Chile, India, and members of the Organization of the Islamic Conference.

Tariff-Rate Quotas on Selected Agricultural Products

The Malaysian government maintains tariff-rate quota (TRQ) systems for 17 tariff lines, which include products such as 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

Malaysia has applied tariffs and nontariff barriers in the automobile sector for more than 20 years. In addition, Malaysian government policies distinguish between "national" cars, (*e.g.*, domestic producers Proton and Perodua) and "non-national" cars, which include most vehicles manufactured in Malaysia by non-Malaysian owned firms. Malaysia has traffic restrictions and noise standards that affect the usage of large motorcycles.

The Malaysian government has started to slowly dismantle some of its measures in order to implement its commitments under the WTO and the ASEAN Free Trade Agreement (AFTA). It cut Malaysia's automobile import duty from 40 percent to 5 percent by 2006 to meet its AFTA commitments, but then imposed steep excise taxes to compensate for the lost revenue. In January 2007, the ceiling on excise taxes for most vehicle categories was reduced from 125 percent to 105 percent and on motorcycles from 50 percent to 30 percent. In November 2008, the Malaysian Deputy Prime Minister stated that Malaysia would review the National Auto Policy (NAP) to consider liberalizing the sector. It implemented new measures in this sector in January 2010. The new policy reduced the intra-ASEAN duty rate from 5 percent to zero percent in January 2010. It lifted the freeze on manufacturing licenses for luxury vehicles, pick-up trucks, commercial vehicles, and hybrid electric vehicles, and promotes green technology by providing a duty exemption and a 50 percent excise tax reduction for the manufacture of hybrid electric vehicles.

In the new policy, Malaysia retained a system of approved permits (APs) that provides holders with the right to import cars and motorcycles and distribute them locally. The revised NAP extends the phase out dates for APs to December 31, 2020 from the previous 2010 date. The AP system was designed to provide *bumiputera* (ethnic Malay) companies easy entry into the automobile and motorcycle distribution and service sector. The AP system acts as a quota by restricting the total number of vehicles that can be imported in a given year, which is currently capped at 10 percent of the market. Moreover, many AP holders sell their permits, with the associated costs passed on to consumers, increasing the price of imported vehicles.

Malaysia continues using an industrial adjustment fund to provide for locally assembled vehicles. Components sourced from locally registered components manufacturing companies are eligible for tax reductions, raising concerns that this fund revives the local content program that had been abolished in 2004.

Meat Import Licenses

Malaysia requires all meat imports to be licensed and restricts the types of pork and poultry cuts that may be imported. These import permits can, and often are, used to restrict imports of chicken meat and pork cuts when domestic prices are low. The Department of Veterinary Services will often provide import licenses for less than the quantity requested. Malaysia also requires import licenses for wheat flour, liquid milk, other dairy products such as cheese, yogurt, milk powder, ice cream and butter, eggs, wine, seafood, and rice.

EXPORT TAXES

Malaysia taxes exports of palm oil, rubber, and timber products in order to protect domestic processing production. Malaysia is the second largest producer and largest exporter of palm oil and products made from palm oil, which account for approximately 15 percent of world production and 30 percent of world trade in vegetable oils. Malaysia uses export taxes of 10 percent to 30 percent *ad valorem* to discourage the export of crude palm oil and to encourage development of the local refinery sector. Refined palm oil and products are not subject to export taxes. The Malaysian government waives export taxes on exports of crude palm oil to Malaysia-invested foreign vegetable oil refineries, giving Malaysia-invested plants an advantage in foreign markets, including the United States.

GOVERNMENT PROCUREMENT

Malaysia's official policy is to use procurement to support national public policy objectives. These objectives include 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. International tenders generally are invited only where domestic goods and services are not available. In domestic tenders, preferences are provided for *bumiputera* suppliers and other domestic suppliers. In most procurements, foreign companies are required to take on a local partner before their tenders will be considered. 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.

EXPORT SUBSIDIES

Malaysia maintains several programs that appear to provide subsidies for exports. 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. Malaysia also provides a series of tax and investment incentives to exporters, including those through the Pioneer Status and Investment Tax Allowance programs. Malaysia notified these subsidies to the WTO Committee on Subsidies and Countervailing Measures in 2009. The United States has submitted questions to Malaysia, pursuant to Article 25.8 of the WTO Agreement on Subsidies and Countervailing Measures, requesting that Malaysia provide further information regarding these programs. As of the end of 2009, Malaysia has not responded.

The revised National Automotive Policy increases 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. If the value added is at least 30 percent, then 30 percent of the export value is exempt from income tax; if the value added is at least 50 percent, then 50 percent is exempt.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Despite efforts to strengthen its IPR regime over the past few years, including by creating an IPR court in 2007, Malaysia has remained on the Special 301 Watch List since 2001 because of continuing concerns including its failure to substantially reduce pirated optical disc production and exports.

SERVICES BARRIERS

Malaysia's services sector constitutes 45 percent of the national economy and has been a key driver of economic and job growth in Malaysia for several years. In an effort to establish a knowledge-based services economy less reliant on manufactured exports, the government aims to increase the share of the services sector to GDP to around 60 percent by 2020. In support of this objective, in May 2009, the Najib administration announced a limited set of liberalization measures covering some 27 service subsectors. Further reforms reportedly are being considered.

Telecommunications

Malaysia made limited GATS commitments on most basic telecommunications services and partially adopted the WTO reference paper on regulatory commitments. Based on Malaysia's GATS commitments, foreign companies are entitled to acquire only up to a 30 percent equity stake in existing licensed public telecommunications operators and foreign participation is limited to facilities-based suppliers. These limitations are not reflected in Malaysian law, however, but in ministerial policy. In certain instances Malaysia has allowed greater than 30 percent equity participation in the telecommunications market, but the manner in which such exceptions are administered is nontransparent and is perceived by foreign suppliers as arbitrary. In some cases, firms permitted to invest up to a certain equity limit are subsequently asked to divest to lower foreign equity levels. The United States will continue to urge Malaysia to bind foreign equity limits to the full extent permissible under Malaysian law, *i.e.*, to 100 percent, to foster a more predictable and hospitable investment climate.

Distribution Services, including Direct Selling

Guidelines governing distribution services include requirements for the use of locally-produced products. Among other provisions, 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. The guidelines also require that at least 30 percent of a store's sales consist of *bumiputera* products. These guidelines are currently under review by the Malaysian government.

Locally incorporated direct selling companies must allow for 30 percent *bumiputera* equity. The Malaysian government also "recommends" local content targets, which effectively translates into a requirement. Local companies that seek direct selling licenses require paid-in capital of RM1.5 million (approximately $397,000), while companies with foreign shareholders must have paid-in capital of RM5 million (approximately $1.3 million).

Legal Services

Foreign lawyers may not practice Malaysian law, nor may they affiliate with local firms or use the name of an international firm. 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. The Attorney General has authority to grant limited exceptions on a case-by-case basis under the law restricting the practice of Malaysian law 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, provided the applicant has seven years of legal experience. Malaysian law does not allow for foreign legal consultancy except on a limited basis in the Labuan International Offshore Financial Center (see section on "Financial Services" below).

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.

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. 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, a 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 an 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 only the Malaysian company may submit the plans for domestic approval.

Accounting and Taxation Services

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. Foreign accountants and auditors are only allowed to practice with registered Malaysian accountants, with foreigners permitted to hold no more than 40 percent of shares.

Financial Services

In 2009, the Malaysian government announced a liberalization package for the conventional and Islamic financial sectors. As part of this package, foreign equity limits were increased from 49 percent to 70 percent for domestic Islamic banks, investment banks, insurance companies, and Islamic insurance operators. Foreign equity above 70 percent is considered on a case-by-case basis for insurance companies if the investment is determined to facilitate the consolidation and rationalization of the insurance industry. Foreign equity of 70 percent is allowed for unit trust management companies providing retail services and for stock broking companies. Foreign equity of 100 percent is allowed for fund management companies providing wholesale services.

Advertising

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

Audio-Visual and Broadcasting

The Malaysian 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 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.

INVESTMENT BARRIERS

As part of a strategy to “move up the value chain,” Malaysia encourages foreign direct investment in export-oriented manufacturing and high-technology industries, for example, through special tax abatements not available in other industries. The government retains considerable discretionary authority over individual investments in these sectors, however, while foreign investment in other sectors is heavily restricted. Among the restrictions imposed by the Malaysian government are limitations of foreign equity (generally capped at 30 percent) and requirements that foreign firms enter into joint ventures with local partners, especially in the production of goods or services for the local market.

OTHER BARRIERS

Transparency

The lack of transparency in government decision-making and procedures in Malaysia has impeded U.S. firms' access to the Malaysian market. The Malaysian government has taken steps to fight corruption, including through the Anti-Corruption Agency (ACA) which is part of the Office of the Prime Minister. The ACA is authorized to conduct investigations and prosecute cases with the approval of the Attorney General. Few senior officials or politicians have been prosecuted for corruption, however. Malaysia has signed, but not yet ratified, the UN Convention against Corruption.