MALAYSIA

TRADE SUMMARY

The U.S. goods trade deficit with Malaysia was $11.6 billion in 2011, down $267 million from 2010. U.S. goods exports in 2011 were $14.2 billion, up 1.0 percent from the previous year. Corresponding U.S. imports from Malaysia were $25.8 billion, down 0.5 percent. Malaysia is currently the 23rd largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Malaysia were $2.1 billion in 2010 (latest data available), and U.S. imports were $1.2 billion. Sales of services in Malaysia by majority U.S.-owned affiliates were $4.3 billion in 2009 (latest data available), while sales of services in the United States by majority Malaysia-owned firms were $294 million.

The stock of U.S. foreign direct investment (FDI) in Malaysia was $16.0 billion in 2010 (latest data available), up from $13.2 billion in 2009. U.S. FDI in Malaysia is led by the manufacturing and banking sectors.

In December 2009, the United States announced its intention to enter into an Asia-Pacific trade agreement called the Trans-Pacific Partnership (TPP), with the objective of shaping a high standard, broad-based regional agreement. This agreement will create a potential platform for economic integration across the Asia-Pacific region, a means to advance U.S. economic interests with the fastest-growing economies in the world, and a tool to expand U.S. exports, which are critical to U.S. economic recovery and the creation and retention of high-paying, high-quality jobs in the United States. In addition to Malaysia, the TPP negotiating partners currently include Australia, Brunei, Chile, New Zealand, Peru, Singapore, and Vietnam. Japan, Canada, and Mexico also have expressed interest in joining the negotiations.

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. 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. The simple average *ad valorem* equivalent across all products with a specific tariff is 392 percent. Distilled spirits 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.

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 between 40 percent and 168 percent.

Biotechnology Labeling

In July 2007, Malaysia's Parliament passed biosafety legislation that includes potentially trade restrictive language for biotechnology-derived commodities and processed products, including mandatory labeling and a strict liability and redress enforcement regime. On July 8, 2010, the Malaysian Ministry of Health posted amendments to the Food Regulations1985 [P.U. (A) 437/1985] that require strict mandatory labeling of food and food ingredients obtained through modern biotechnology. The amendments also include a requirement that no person shall import, prepare or advertise for sale, or sell any food or food ingredients obtained through modern biotechnology without the prior written approval of the Director of the Ministry of Health. The labeling regulation is scheduled to enter into force in July 2012. Use of the labels "GMO Free" or "Non-GMO" is not permitted. The labeling requirements only apply to foods and food ingredients obtained through modern biotechnology but not to food produced with GMO feed.

Import Restrictions on Motor Vehicles

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, including a nontransparent import permit and gazette pricing system, excise duties that disproportionately affect imported vehicles, and special tax reductions for vehicles with Malaysian-manufactured components.

The Malaysian National Automotive Policy maintains a system of "approved permits" (APs), which confer the right to import cars and motorcycles and distribute them in Malaysia. The AP system is administered in a nontransparent manner and in fact operates as a *de facto* import quota 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 called for the phase out of the AP policy in 2010, the NAP was revised in 2010 so as to extend the policy through 2020. In 2011, the Malaysian government began another review of the NAP, but has provided no details on the scope and timing of the review process.

In addition to the cap on imported automobiles imposed through the AP system, other policies further limit the competitiveness of U.S. automobiles. The Malaysian government establishes the value of imported automobiles by an official gazette price, which then serves as the basis for substantial import duties and excise taxes. In contrast, 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 the price of imported vehicles is substantially higher than that of domestically produced automobiles.

Pork Import Licensing

Malaysia's Department of Veterinary Services (DVS) requires a permit for all pork imports. In 2011, Malaysian officials instituted a series of measures that further seriously restricted imports of U.S. pork. In June 2011, DVS declared that all establishments seeking to export pork to Malaysia must complete an extensive and burdensome application form and submit to an individual plant audit by DVS. Companies seeking to export to Malaysia are required to pay a fee for each plant audited. Malaysia also expects industry or the government in the exporting country to pay all associated expenses for the Malaysian inspectors. Plant approvals may be valid for up to two years, after which time Malaysia would require a new application and audit. In May 2011, DVS also prohibited the importation of pork bellies and pork spare ribs into Malaysia. The ban would have decreased the already limited number of pork products that may be imported to Malaysia from 10 to 8. Since that time, Malaysia has stated that it will impose a new quota system for pork bellies and spare ribs, but that until such time as individual plants are inspected and approved, these products cannot be imported.

EXPORT TAXES

Malaysia is the second largest producer and exporter of palm oil and products made from palm oil. Malaysia's palm oil production accounts for approximately 15 percent of world production and its exports account for 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 has traditionally used procurement to support national public policy objectives. These objectives include encouraging greater participation of *bumiputera* (native Malays) 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. 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.

EXPORT SUBSIDIES

Malaysia maintains several programs that appear to provide subsidies for exports. The revised National Automotive Policy (NAP) 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. In 2006, the United States 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 several programs, some of which appeared to be prohibited export subsidies. These include NAP, Single or Double Deduction for the Promotion of Exports, Tax Exemption on the Value of Increased Exports, Market Development Grants, Tax Exemption for Malaysia International Trading Company and Free Industrial Zones. Malaysia provided answers to the U.S. questions in September 2010, but numerous issues remain. Moreover, under the Central Bank's export credit refinancing scheme, commercial banks and other lenders provide pre-shipment and post-shipment financing to all exporters at a preferential rate.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Malaysia continues to demonstrate a commitment to protecting and enforcing intellectual property rights (IPR) and to pursuing needed legislative and regulatory improvements, and has made important progress with respect to the protection and enforcement of IPR in the past few years. In December 2011, the Malaysian Parliament passed amendments to the copyright law designed, among other things, to implement the WIPO Internet Treaties and prohibit unauthorized camcording of motion pictures in theaters. In addition, the Ministry of Domestic Trade, Cooperatives, and Consumerism (MDTCC) took steps to enhance Malaysia's enforcement regime, including through 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 2011, MDTCC launched its "Basket of Brands" initiative, a voluntary program where participating trademark holders receive more proactive protection efforts in exchange for a commitment to testify in any resulting prosecutions.

Still, IPR concerns remain, and Malaysia remained on the Special 301 Watch List in 2011. The Special 301 report included reports of continued availability of pirated and counterfeit products in Malaysia. U.S. companies also report continued high rates of piracy over the Internet, although in June 2011 the Malaysian government took action to block access to several pirate websites. Book piracy also remains a problem. The United States has encouraged Malaysia to accede to the WIPO Internet Treaties and the Budapest Treaty. In addition, the United States has urged Malaysia to provide effective protection against unfair commercial use, as well as unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products, and to provide an effective system to address patent issues expeditiously in connection with applications to market pharmaceutical products.

SERVICES BARRIERS

The services sector constitutes 45 percent of the national economy and has been a key driver of economic and job growth in Malaysia in recent years. In an effort to establish a knowledge-based services economy, Malaysia aims to increase the services sector to around 60 percent of GDP by 2020. In 2009, the Malaysian government announced a limited set of liberalization measures covering 27 service subsectors. In 2011, it announced plans to further liberalize 17 services subsectors in phases during 2012. These include private hospital services; medical and dental specialist services; architecture, engineering, accounting, taxation, and legal services; courier services; education and training services; as well as telecommunications services. Under this plan, Malaysia will allow up to 100 percent foreign equity participation in selected subsectors, although specific limits and other details have not yet been announced.

Telecommunications

Malaysia made limited GATS commitments on most basic telecommunications services and partially adopted the WTO reference paper on regulatory commitments. As reflected in Malaysia's GATS commitments, foreign companies are allowed 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. In certain instances Malaysia has allowed greater than 30 percent equity participation in the telecommunications sector, 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 have subsequently been asked to divest to lower foreign equity levels. However, Malaysia has announced that in April 2012 foreign companies will be permitted to receive licenses as an applications service, network facilities or network service provider, at equity levels generally above what Malaysia committed to in the WTO.

Distribution Services, including Direct Selling

Guidelines governing certain distribution services include requirements for the sale of locally produced products. Under revised guidelines issued in 2010, department stores, supermarkets, and hypermarkets are required to reserve at least 30 percent of total stock-keeping units and 30 percent of shelf space in their premises for goods and products manufactured by *bumiputera*-owned small and medium size industries. Malaysia also requires that foreign-owned large retailers ("hypermarkets") and locally incorporated direct selling companies must have 30 percent *bumiputera* equity. In addition, the Malaysian government issues "recommendations" for local content targets, which are in reality mandatory. Domestic 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 of Malaysia has authority to grant limited exceptions on a case-by-case basis to non-Malaysian citizens or permanent residents who have apprenticed with a Malaysian lawyer, are competent in *Bahasa* Malay (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)*.

However, liberalization in the legal services sector is expected to begin in 2012 with the passage of pending amendments to the relevant laws governing the legal profession. These amendments are expected to permit the establishment of international joint ventures for certain areas of practice. This liberalization initiative, however, will only be applicable to Peninsular Malaysia.

Architectural Services

Foreign architectural firms currently 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. When liberalization is implemented in 2012, 100 percent foreign equity in architectural firms will be allowed.

Engineering Services

The engineering sector is scheduled to be liberalized in 2012, once pending amendments to relevant Acts have been passed. 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. In general, a foreign engineer must be registered as a professional engineer in his or her home country, have a minimum of 10 years of experience, and have a physical presence in Malaysia of at least 180 days in each 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. According to the most recent liberalization plan, foreign accountants and auditors were to be allowed to wholly own a practice in Malaysia beginning in January 2012, but to date this aspect of the plan has not been implemented.

Financial Services

In 2009, the Malaysian government announced a liberalization package for the conventional and Islamic financial sectors, but equity limits continue to broadly apply in many areas. Bank Negara Malaysia (BNM) sets controls on both foreign and local financial products. 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 they are not permitted to change these fees without BNM approval. Credit card interest rates are capped at 18 percent *per annum*. Foreign banks are not allowed to open Ringgit Correspondent Bank Accounts with local banks. Consequently, local banks are hesitant to partner with foreign banks to provide seamless services to U.S. multinationals.

As part of the 2009 liberalization, foreign equity limits were increased from 49 percent to 70 percent for domestic Islamic banks, investment banks, insurance companies, and Islamic insurance operators. However, no new licenses are being granted for insurance companies. 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. Currently, mutual fund providers are restricted from being able to enter Malaysia and market or sell their products. International fund managers have to go through a local fund provider, which then establishes a "feeder" arrangement. Reinsurance companies are required to do more than 50 percent of their reinsurance activities in Malaysia and have 5 percent cession and local retention. Foreign companies are required to obtain a separate license in order to be able to offer "*Takaful*" (Islamic insurance products). In 2005, BNM made available five licenses for foreign stockbrokers and other asset managers. Only one license has been issued so far. The central bank currently allows foreign banks to open four additional branches throughout Malaysia, subject to restrictions, which include designating how the branches can be set up (*i.e.*, in market centers, semi-urban areas and non-urban areas). The policies do not allow foreign banks to set up new branches within 1.5 kilometers of an existing local bank.

Audiovisual 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.

INVESTMENT BARRIERS

Foreign investment in key sectors, including telecommunications, financial services, professional services, petroleum and gas, and mining, is subject to extensive restrictions, including in some cases prohibitions or limitations of foreign equity (generally capped at 30 percent) and requirements that foreign firms enter into joint ventures with local partners. The Ministerial Functions Act grants relevant ministries broad discretionary powers over the approval of specific investment projects. While investors in industries targeted for foreign investment by the government often can negotiate favorable terms with ministries or other regulatory bodies (including case-by-case waivers of certain regulations), investors in non-targeted industries face a complex web of regulations and policies, navigation of which can be an obstacle to investment.

Malaysia's complex network of preferences to promote the acquisition of economic assets by ethnic Malays and other indigenous groups are another obstacle to investment. The details of implementation are largely left to individual ministries, and policies and practices vary greatly. Some practices are explicit and contained in law or regulation while others are informal, leaving much ambiguity for potential investors. One of the Malaysian government's preference policies has been a requirement that foreign non-manufacturing and all domestic firms take on *bumiputra* partners. Prior to 2009, if a company sought public listing on the Bursa Malaysia (formerly Kuala Lumpur Stock Exchange), it was required to reserve at least 30 percent of its initial public offering for purchase by *bumiputra*. In 2009, the Malaysian government eased foreign ownership limits for 27 services subsectors, reducing *bumiputra* ownership requirements for new listings from 30 percent to 12.5 percent. However, *bumiputra* equity remains a consideration when companies apply for an array of required permits and licenses, many of which must be renewed either annually or biennially.

The Malaysian Industrial Development Authority screens all proposals for manufacturing and related projects in Malaysia, both foreign and domestic, to determine the extent to which they contribute to the government's goals and objectives, as outlined in the Third Industrial Master Plan (2006 to 2020), and related regional initiatives. Numerous other factors inform project approval, including the size of an investment, the export-orientation of production, the capital/labor ratio, the potential for technological diffusion into the local economy, and the ability of existing and planned infrastructure to support the effort. If both local and foreign firms propose similar projects, the local firm will be given preference. Applications for investment in sectors other than manufacturing are handled by the relevant ministries and sometimes require multiple approvals.

Investment regulations are specified in the Promotion of Investments Act of 1986 (PIA) and the Industrial Coordination Act of 1975. The PIA does not address services investment. The Malaysian government pledged in 2004 to replace the PIA with a more concise law covering investments in both manufacturing and services, but has yet to do so.

OTHER BARRIERS

Transparency

The lack of transparency in government decision-making and procedures continues to frustrate U.S. companies doing business in Malaysia. No systematic process exists for publishing draft regulations for comment, and draft legislation is rarely available to the public before it is formally introduced in Parliament.

Fighting corruption has been identified as a high a priority in Malaysia's Government Transformation Program. The Malaysian Anti-Corruption Commission, which is part of the Office of the Prime Minister, is authorized to conduct investigations and prosecute cases with the approval of the Attorney General. Malaysia's anticorruption legislation makes bribery of both domestic and foreign public officials a criminal offense.