MALAYSIA

TRADE SUMMARY

The U.S. goods trade deficit with Malaysia was $21.1 billion in 2007, a decrease of $2.9 billion from $24.0 billion in 2006. U.S. goods exports in 2007 were $11.7 billion, down 6.9 percent from the previous year. Corresponding U.S. imports from Malaysia were $32.8 billion, down 10.3 percent. Malaysia is currently the 20th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Malaysia were $1.6 billion in 2006 (latest data available), and U.S. imports were $840 million. Sales of services in Malaysia by majority U.S. owned affiliates were $1.5 billion in 2005 (latest data available), while sales of services in the United States by majority Malaysia-owned firms were not available in 2005 ($292 million in 1998).

The stock of U.S. foreign direct investment (FDI) in Malaysia was $12.5 billion in 2006 (latest data available), up from $10.3 billion in 2005. U.S. FDI in Malaysia is concentrated largely in the manufacturing and mining sectors.

FREE TRADE AGREEMENT NEGOTIATIONS

The United States and Malaysia initiated negotiations on a Free Trade Agreement (FTA) in June 2006. Malaysia is the United States' 10th largest trading partner with more than $49.1 billion in total trade during 2006. The United States is seeking additional access to the Malaysian market through the FTA as well as to address the wide range of market access barriers U.S. companies' face in the Malaysian market.

The United States has expressed its goal of concluding the FTA by the summer of 2008. While progress has been made toward this objective, significant work remains.

IMPORT POLICIES

Tariffs

Tariffs are the main instrument used to regulate the importation of goods in Malaysia. The simple average applied normal trade relations/Most Favored Nation tariff rate is approximately 8.1 percent, but duties for tariff lines where there is significant local production are often higher.

The level of tariff protection is generally lower on raw materials than for those goods that have value added content. In addition to import duties, a sales tax of 10 percent is levied on most goods. Neither import duties, nor this sales tax is applied to raw materials or machinery used in export production. Beverage alcohol and wine are subject to an effective tariff of up to 500 percent when import duties and excise taxes are combined. Adjustments to excise taxes made each year as part of the budget process can sharply raise costs and make it difficult for U.S. companies to negotiate long-term supply contracts in this sector or market strategically. Bound tariffs range up to 434 percent on imported spirits, 148 percent on beer, and 115 percent on wines and sparkling wines.

Twenty-seven percent of Malaysia's tariff lines (principally in the construction equipment, agricultural, mineral, and motor vehicle sectors) are also subject to nonautomatic import licensing designed to protect import-sensitive or strategic industries.

Import Restrictions on Motor Vehicles

Malaysia has long protected its automobile manufacturing industry from foreign competition using high tariffs and nontariff trade barriers. Malaysian government policies also distinguish between "national" cars, *i.e.*, domestic producers Proton and Perodua, and "non-national" cars, which include most vehicles manufactured in Malaysia by non-Malaysian owned firms. Significant barriers, including highway bans, also exist to the importation, sale, and usage of large motorcycles.

The Malaysian government has slowly started to dismantle some of its protections in order to meet its commitments under the WTO and the ASEAN Free Trade Agreement (AFTA). In March 2006, the Malaysian government issued a new National Auto Policy (NAP) that paves the way for further sectoral liberalization.

Nonetheless, certain government policies continue to block trade in the automotive and motorcycle sectors. The Ministry of International Trade and Industry oversees a system of approved permits (APs) that allows the holder to import cars and motorcycles and distribute them locally. 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. In addition to restricting market access for imports, many of the permits are sold for profit, with the associated costs passed on to consumers, further raising the cost of imported vehicles. APs continue to be capped at an estimated ten percent of the domestic market. Under the NAP, no new APs will be issued to any existing or new company before the AP system's scheduled elimination in 2010.

The Malaysian government amended the automotive tax regime several times from 2004 to 2006 to meet its AFTA commitments. The import duty rate for vehicles with at least 40 percent ASEAN content was lowered from 20 percent to 5 percent in 2006. To compensate for the revenue lost by cutting import tariffs, the Malaysian government, since 2004, has imposed steep automobile excise taxes. The high tax rates continue to excessively burden automakers; however, the NAP eliminated a 50 percent rebate on excise taxes that was available to domestic car manufacturers Proton and Perodua, plus two locally incorporated joint ventures assembling imported kits. On January 1, 2007, the upper limits on excise taxes for most vehicle categories were reduced from 125 percent to 105 percent, and the upper limit on motorcycles was reduced from 50 percent to 30 percent.

The NAP also implemented a support mechanism for locally assembled vehicles called the industrial adjustment fund. Components sourced from locally registered components manufacturing companies are eligible for deduction from the taxable base of locally assembled vehicles for the purpose of calculating excise and sales taxes. Foreign automakers have complained that the new mechanism essentially revives the local content program that had been abolished in 2004. The small scale nature of many foreign carmakers prevents them from sourcing components locally, thus preventing them from benefiting from this fund. A major U.S. automaker exited the Malaysian market in early 2008 because of the discriminatory treatment it faced and its inability to own a controlling share in its Malaysian subsidiary.

Textiles

Import duties on textiles and apparel range between 0 percent and 30 percent. Malaysia does not require import licenses or impose burdensome labeling requirements on the import of textiles.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Meat Import Licenses and Halal Certification

Malaysia requires that all meat, processed meat products, poultry (except turkey), eggs and egg products originate from plants inspected and approved by the Ministry of Agriculture's Department of Veterinary Services (DVS). The U.S. Food Safety and Inspection Service made a formal request to DVS for equivalence that if approved, would obviate the need for plant-by-plant food safety approval. However, *Halal* (produced in accordance with Islamic practices) approval is required on a plant-by-plant basis.

All meat (except pork), processed meat, poultry (except turkey), egg, and egg product imports require import licenses issued by DVS. DVS often restricts imports of chicken parts through this import licensing requirement, especially when local producers believe they are facing low prices. Similarly, the State of Sarawak has put in place package-size restrictions that have effectively banned imports. (The States of Sarawak and Sabah on the island of Borneo maintain separate quarantine restrictions from those of Peninsular Malaysia.)

All meat, processed meat products, poultry (except turkey), eggs, and egg products must receive *Halal* certification from an approved Islamic Center. Slaughterhouses, meat processors, and egg processors must also be inspected and approved by the Department of Islamic Development (JAKIM) for *Halal* beef, lamb, poultry, and egg exports. Officials from DVS and JAKIM travel together on the inspection visits. U.S. *Halal* product suppliers must be under the supervision of an approved U.S. Islamic Center. Each individual product, rather than the plant, must receive *Halal* certification. U.S. producers have expressed concern that Malaysia's *Halal* certification process is confusing and nontransparent. Malaysia's *Halal* requirements are considered relatively strict compared to those of other countries.

The plant/product approval is issued on the joint recommendation of DVS and JAKIM following an on-site inspection. The Malaysian Government has the right to re-inspect approved plants after 1 year. In practice, 3 or more years may elapse between visits to the United States by a Malaysian inspection team, which limits the opportunities for U.S. companies to obtain certification for new products, as well as for companies to reapply or correct problems if they fail the first inspection.

In September 2007, JAKIM announced that in 2008, all meat and poultry will need to originate from dedicated *Halal* slaughterhouses, requiring them to provide fulltime *Halal* slaughtering and processing operations. This requirement, if implemented, would render all currently approved U.S. plants ineligible to export to Malaysia. The U.S. Government is discussing with DVS and JAKIM possible ways to address this problem, including accepting time based *Halal* slaughter and processing, which is the current practice.

In May 2007, Malaysia announced that it would expand access for U.S. beef and re-authorize U.S bone-in beef and other beef products from cattle of all ages, in accordance with World Organization for Animal Health Bovine Spongiform Encephalophathy guidelines. However, the DVS announcement excluded beef offal since Malaysia does not define offal as edible meat. U.S. officials are working with DVS to clarify that the definition for edible beef products includes edible offal.

Pork imports are controlled by licensing and restrictions on the types of cuts that can be imported. Import levels of chicken meat generally exceed the minimum access commitments of 6,552.5 tons that Malaysia established during the Uruguay Round of Multilateral Trade Negotiations. In the Uruguay Round, Malaysia negotiated for a number of tariff-rate quotas (TRQs), but has never implemented them. Ministry of Agriculture officials have indicated that TRQs will be implemented in April 2008.

Biotechnology

Malaysia's Parliament passed the Biosafety Bill in the summer of 2007, which mandates labeling of products derived in part from genetically modified (GM) organisms. The Ministry of Natural Resources and Environment is the lead Ministry for implementation and is currently in the process of drafting regulations stipulated in the Biosafety bill.

Malaysia currently places no restrictions on the import of bioengineered food or feed. To date, the only GM product officially approved to be imported into Malaysia is 'Roundup Ready' soybeans. The value of U.S. exports to Malaysia of soy, soybean meal, and oil is about $100 million.

Malaysia also has yet to produce a biotechnology crop commercially; however, several genetically modified crops have been produced at the experimental stage.

EXPORT TAXES

Malaysia is the second largest producer and largest exporter of palm oil and products made from palm oil, accounting for approximately 15 percent of world production and 30 percent of world trade in vegetable oils. Malaysia uses export taxes to discourage the export of crude palm oil and to encourage development of the local refinery sector, taxing it at 10 percent to 30 percent *ad valorem*. Refined palm oil and products are currently not subject to export taxes. The Malaysian government waives export taxes on exports of crude palm oil to Malaysia-invested foreign vegetable oil refineries that include investment by Malaysian persons, giving Malaysia-invested plants a decided competitive advantage in foreign markets, including the United States.

GOVERNMENT PROCUREMENT

Malaysia is not a party to the WTO Agreement on Government Procurement. Malaysia's official policy calls for procurement to be used to support national public policy objectives. These objectives include encouraging greater participation of *bumiputera* (ethnic 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. Generally, international tenders 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 procurement foreign companies are required to take on a local partner before their bids will be considered. In October 2003, Prime Minister Abdullah Badawi announced that the Malaysian government would introduce open tenders for government procurements and major projects, with direct negotiations limited to special cases.

Malaysia's government procurement system lacks transparency and competitive bidding. The U.S. Government has voiced concerns about the nontransparent nature of the procurement process in Malaysia. The Malaysian government's central tender website provides links to other ministries' websites, but not all of them provide relevant information on government tenders. In September 2005, the Ministry of Finance announced that the purchase of roadway, decorative, and outdoor lighting fittings, together with equipment and accessories for all government projects, must be sourced from one of three local *bumiputera* manufacturers. In October 2007, press reports highlighted several recent government directives instructing relevant ministries to award contracts for certain products only to bumiputera-owned businesses, in one case naming a specific company to receive the contract.

EXPORT SUBSIDIES

Malaysia offers several export allowances. Under the export credit refinancing scheme operated by the Central Bank, commercial banks and other lenders provide financing to all exporters at a preferential rate for both pre-shipment and post-shipment. Malaysia also provides tax incentives to exporters, including double deduction of expenses for overseas advertising and travel, supply of free samples abroad, promotion of exports, maintaining sales offices overseas, and research on export markets.

In addition, Malaysia provides investment incentives through the Pioneer States and Investment Tax Allowance programs. Malaysia has not submitted a notification of its subsidies to the WTO Committee on Subsidies and Countervailing Measures since 1995. The United States recently 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.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Malaysia is a member of the World Intellectual Property Organization (WIPO) and is a party to the Berne Convention for the Protection of Literary and Artistic Works and the Paris Convention for the Protection of Industrial Property. In 2006, Malaysia acceded to the Patent Cooperation Treaty. Malaysia has not ratified the WIPO Copyright Treaty or the WIPO Performance and Phonograms Treaty (which extend traditional copyright principles to the digital environment) but has indicated its intention to accede to these conventions.

Optical Media Piracy

The piracy of copyrighted materials, particularly those stored on optical media, is a serious concern in Malaysia. Malaysia's production capacity for compact discs (CDs) and digital video discs (DVDs) significantly exceeds local demand plus legitimate exports, despite the Malaysian government's efforts to revoke optical disc factory licenses in the past two years. Moreover, the resulting surplus is alleged to be exported globally. Retail piracy also continues to be a problem.

The International Intellectual Property Association estimates 2006 industry losses in Malaysia due to piracy at $59 million. Malaysia has remained on the Special 301 Watch List since October 2001, due in part to its failure to substantially reduce pirated optical disc production and export.

The Optical Disc Act of 2000 established a licensing and regulatory framework to control the manufacture of optical discs and to fight piracy. Under the Act, manufacturers are required to obtain licenses from both the Ministry of International Trade and Industry and the Ministry of Domestic Trade and Consumer Affairs (MDTCA), to place source identification (SID) codes on each disc and to allow regular inspections of their operations. U.S. industry is seeking changes in the law that would ensure that inspection authority covers any time, day or night, for all locations where optical media production may occur and also include as offenses acts such as "gouging" or tampering with the SID codes and "burning" of recordable discs.

Enforcement

In 2007, the Malaysian government continued to make progress in IPR enforcement, including by establishing a specialized Intellectual Property court in mid 2007 to help alleviate the backlog of infringement cases. Both judges and prosecutors have been assigned to handle IPR cases on a full time basis. The Malaysian government is registering significantly more IPR cases in court; 538 cases had been registered by mid 2007, more than in all of 2006. Malaysia's courts have also imposed sentences of imprisonment and/or fines for convicted offenders. In 2007 Prime Minister Abdullah Badawi announced a new national IP policy that includes some 5 billion ringgit ($1.5 billion) earmarked for spending over the next several years.

Pharmaceuticals and Medical Devices

Sales of counterfeit pharmaceutical products are a continuing concern in Malaysia. The Ministry of Health and the MDTCA have sought to improve their enforcement efforts, sharing information, and collaborating with industry in their efforts. The new specialized IP court is expected to improve prosecution of crimes that involve counterfeit pharmaceutical products.

In April 2007, the Ministry of Health announced that Malaysia would provide data protection for pharmaceuticals for 5 years for new chemical entities, and 3 years for new indications. The Malaysian government does not have an effective patent linkage mechanism to prevent the regulatory approval of versions of pharmaceutical products that are still covered by a patent; U.S. industry has reported several cases involving the registration of generic versions of pharmaceuticals which are still subject to patent protection.

Trademarked Consumer Products

A number of U.S. consumer product companies have also suffered significant losses due to the manufacture and sale of counterfeit trademarked products in Malaysia. The U.S. Government has discussed with Malaysia the importance of strengthening enforcement against trademark counterfeiting.

SERVICES BARRIERS

Malaysia's services sector constitutes about 59 percent of the national economy and remains highly protected.

Telecommunications

Under the GATS, Malaysia made limited commitments on most basic telecommunications services and partially adopted the WTO reference paper on regulatory 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. However, in certain instances Malaysia has allowed greater than 30 percent equity participation in the telecommunications market. For example, one foreign company was allowed to invest up to 61 percent in a wireless telecommunications company. Yet it had to reduce its equity holding down to 49 percent after 5 years.

Distribution Services, including Direct Selling

Malaysia's requirements for the licensing and operation of direct selling companies include a provision that a locally incorporated direct selling company must allow for 30 percent *bumiputera* equity. The MDTCA also "recommends" local content targets. 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).

The Malaysian government also included local content requirements in the "Guidelines on Foreign Participation in the Distributive Trade Services," which went into effect in December 2004. 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. The Malaysian government continues to consider changes to these guidelines, in response to complaints from both domestic and foreign businesses.

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. Under the Legal Profession Act of 1976, the practice of Malaysian law is normally restricted 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. The Attorney General has authority to grant limited exceptions on a case-by-case basis, provided the applicant has 7 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 "Banking" below). Malaysia limits such foreign attorneys' scope of services to advice concerning home country and international law. Persons not licensed as lawyers are subject to criminal penalties if they directly or indirectly undertake activities relating to the Malaysian legal system, including drafting documents.

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. Only licensed architects may submit architectural plans.

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. The license is only valid for the duration of a specific 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 nontemporary 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

Foreign accounting firms may provide accounting and taxation services in Malaysia only through affiliates. All accountants who wish 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 MIA. Malaysian citizens or permanent residents who received degrees from local universities or are members of at least one of the

11 overseas professional bodies recognized by Commonwealth countries may apply for registration. The American Institute of Certified Public Accountants is not recognized by Commonwealth countries.

Banking

The Malaysian government's banking policies are based on the belief that limiting foreign participation in financial services will encourage the development of domestic financial services providers. Its policies are guided by the Banking and Financial Institutions Act of 1989 and the 10 year Financial Sector Master plan, unveiled in 2001, which sets out a three phase strategy for developing the Malaysian banking sector. Phase I focused on developing a core set of domestic banking institutions through mergers of commercial banks with merchant banks, discount houses, and stock brokerage firms. Within the first 4 years of the Plan, the number of domestic financial institutions declined from 63 to 9. According to the Plan, Phase II was to include the removal of many restrictions on incumbent foreign financial institutions; implementation of such reforms has been mixed. During Phase III the Malaysian government will "consider" introducing new foreign competition.

Foreign institutions are limited to an equity stake in investment banks of 49 percent. Currently, foreign participation in commercial banks is still restricted to an aggregate maximum stake of 30 percent. In 1994 Bank Negara revoked authorization of foreign banks to operate in Malaysia, unless they incorporated locally. Foreign banks currently operate in Malaysia under a grandfathering provision, but with all-Malaysian Boards of Directors. New licenses are considered on a case-by-case basis for foreign banks, with a clear preference for foreign Islamic banks. Bank Negara generally requires all banks, including U.S. banks, to maintain their back office and computer operations in Malaysia, citing data privacy concerns as well as claiming that any operations outside of Malaysia are "outsourcing," even for foreign banks based elsewhere. This decision prevented some foreign banks from keeping up with global trends in Internet banking, but Bank Negara has waived the requirement on a case-by-case basis for foreign banks willing to reinvest sufficiently in Malaysia.

On December 28, 2005, Bank Negara announced that locally incorporated foreign banking institutions currently operating in Malaysia would be allowed to open four additional branches in 2006, with one branch in a market center, two in semi-urban centers, and one in a nonurban center. Each location must be approved by Bank Negara. Some foreign banks have obtained permission to open more than four, particularly if the new branches will be in underserved areas. Standard Chartered, for example, announced its intention to open six more branches. Foreign Islamic banks are exempt from branching restrictions.

On October 14, 2004, Bank Negara completed the issuance of three Islamic banking licenses to three Middle Eastern Islamic banks. Bank Negara encourages all commercial banks operating in Malaysia to set up full-fledged Islamic banking subsidiaries in which foreigners may take a 49 percent equity stake. The government of Malaysia continues to offer various tax incentives and other measures to achieve its stated goal of becoming a global hub for Islamic Banking. In June 2005, Bank Negara established the Fund for Shariah Scholars in Islamic Finance to provide funding for research grants and scholarships. In August 2006, Bank Negara announced the launch of its three-pronged Malaysia International Islamic Financial Center Initiative, including special tax and regulatory treatment, scholarships, and efforts to work toward global harmonization of Islamic banking and insurance practices. This was acted upon, in part, in the Malaysian government's 2007 budget, released September 1, 2006, which proposes a 10 year tax exemption on Islamic financial products in foreign currencies and tax relief for persons engaged in Islamic finance studies. Malaysia's 2008 budget provides further incentives to the Islamic finance industry.

The Federal Territory of Labuan was established as an International Offshore Financial Center in October 1990. Businesses receive preferential tax treatment for offshore banking activities, trust and fund management, offshore insurance and offshore insurance-related businesses, and offshore investment holding businesses. On September 16, 2006, Bank Negara lifted the requirement to maintain a physical presence in Labuan for existing and new financial institutions licensed to conduct Islamic financial business in international currencies. Islamic banks and insurance companies will be given greater flexibility to open operation offices anywhere in Malaysia. They may choose to remain subject to regulation by the Labuan Offshore Financial Services Authority in order to retain the favored tax treatment extended to offshore businesses in Labuan, 3 percent or RM20,000 (approximately $5,970), whether or not they maintain a physical presence there. This option is not available for conventional banks that are required to maintain a physical presence in Labuan in order to retain the favorable tax treatment.

The Malaysia Deposit Insurance Corporation (MDIC) was established in August 2005. Membership is compulsory for commercial banks licensed under the Banking and Financial Institutions Act of 1989 and Islamic banking institutions licensed under the Islamic Banking Act of 1983. Eligible deposits are insured for up to RM60000 (approximately $17,910). The MDIC maintains and administers two separate deposit insurance funds for conventional and Islamic deposits. Investments held in the Islamic Deposit Insurance Fund are made in accordance with Shariah principles.

Insurance

The 2001 Financial Sector Master plan recommended phased liberalization of the insurance industry, including increasing caps on foreign equity, fully opening the reinsurance industry to foreign competition, and lifting existing restrictions on employment of expatriate specialists. Foreign equity caps for insurance companies remain limited to 49 percent. In 1998 branches of foreign insurance companies must incorporate locally although a few companies were granted extensions until they could formulate a workable plan for local incorporation. Foreign shareholding exceeding 49 percent is permitted only with Malaysian government approval. As part of the 1997 WTO Financial Services Agreement, Malaysia agreed to allow existing foreign shareholders of locally incorporated insurance companies to increase their shareholding to 51 percent. New entry by foreign insurance companies is limited to equity participation in locally incorporated insurance companies and aggregate foreign shareholding in such companies may not exceed 30 percent. However, this limit has been subject to negotiation.

The Malaysian government continues to promote Islamic insurance (*takaful*) as part of its strategy to make Malaysia a global hub for Islamic financial services, including through new tax breaks announced in the 2007 budget. On September 16, 2006, Bank Negara announced that international *takaful* operators, both domestic and foreign, could apply for licenses to conduct business in international currencies as either incorporated entities or branches. Operations would receive a full tax exemption for 10 years beginning in 2007. International *takaful* operators will not be subject to foreign equity caps. On August 29, 2007, Bank Negara invited qualified local and foreign players to apply for licenses to provide reinsurance under Islamic principles (re-takaful) in Malaysia and to make Malaysia their center for re-*takaful* activities. New re-*takaful* operators will be given flexibility to conduct business in the country as a corporation, branch office, or joint venture with a Malaysian company.

Securities

Malaysia currently limits foreign ownership in stock brokerage firms to 49 percent and to 30 percent in unit trusts. The Securities Commission's 10 year Capital Market Master Plan, released in February 2001, proposed liberalizing foreign participation limits by 2003, at which time foreigners would be permitted to purchase a limited number of existing stockbrokerage licenses and to take a majority stake in unit trust management companies. Fund management companies may be 100 percent foreign-owned if they provide services only to foreigners, but they are limited to 70 percent foreign ownership if they provide services to both foreign and local investors. In March 2005, the Malaysian government allowed five foreign stock brokerage firms and a foreign fund management company to set up operations in Malaysia. More foreign fund management companies are expected to utilize four of the remaining licenses. In September 2003, the Securities Commission began allowing foreign firms operating in Malaysia to seek listing on the Kuala Lumpur stock exchange (Bursa Malaysia). Futures brokerage firms may now be 100 percent foreign owned. At the unveiling of its 2008 budget in September, the Malaysian Government announced its intention to permit the establishment of wholly foreign-owned Islamic fund management companies that would be permitted to invest all of their assets abroad. Fees received from the management of Islamic funds are tax exempt for 10 years. The Malaysia government provides tax incentives for existing stock brokerage firms to set up Islamic brokerage subsidiaries and will issue three new licenses to brokers that attract Middle Eastern funds.

Advertising

Only 20 percent of commercials in Malaysia can include foreign content. The Malaysian government recently relaxed enforcement of regulations governing the appearance of foreign actors in commercials shown in Malaysia. The government of Malaysia has an informal and vague guideline that commercials cannot “promote a foreign lifestyle.”

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. However, in practice, local stations have been granted substantial latitude in programming due to a lack of local programming. Sixty percent of radio programming must be of local origin. Foreign investment in terrestrial broadcast networks is prohibited and in cable and satellite operations is limited to 20 percent equity share. As a condition for obtaining a license to operate, video rental establishments are required to have 30 percent local content in their inventories. Malaysia regularly censors movies and television shows deemed offensive on religious or sexual grounds.

INVESTMENT BARRIERS

Malaysia encourages FDI in export-oriented manufacturing and high-technology industries, but retains considerable discretionary authority over individual investments and restricts foreign investment in other sectors. Especially in the case of investments focused on producing goods or services for the domestic market, the Malaysian government has used its authority to restrict foreign equity (normally to 30 percent) and to require foreign firms to enter into joint ventures with local partners. Foreign investment in the financial services industry is restricted and foreign investment in terrestrial broadcasting is prohibited. To alleviate the effects of the regional economic crisis, Malaysia in 1998 temporarily relaxed foreign ownership and export requirements in the manufacturing sector for those companies that did not directly compete with local producers. In June 2003, the Malaysian government permitted 100 percent foreign ownership of new investments aimed at expanding existing investments in manufacturing concerns. In September 2004 it announced that venture capital firms could be 100 percent foreign owned.

Malaysia’s announced goal with regard to attracting and retaining FDI is to “move up the value chain.” It is renewing tax abatements primarily for manufacturers of higher-technology products and other targeted industries, but not for manufacturers of more labor-intensive products, some of which have moved to China or elsewhere. FDI in Malaysia improved significantly in 2006 after a 2005 downturn. The Malaysian government has shifted its focus from attracting lower-wage and labor-intensive manufacturing to attract higher value manufacturers and service-related manufacturing industries. According to UNCTAD's World Investment Report, FDI inflows to Malaysia rebounded in 2006, rising to more than $6 billion, a 53 percent increase from 2005, and a 31 percent increase over 2004 inflows. However, outward flows of FDI more than doubled in 2006 to $6.04 billion, nearly equaling Malaysia's inward flows of $6.06 billion, suggesting a degree of disinvestment.

Malaysian government policies that have led to shortages of skilled and technical employees remain, particularly in the electronics and financial services sectors. While it has lifted quotas on the number of expatriate workers that financial services companies are allowed to employ, the requirement that each expatriate be approved by Bank Negara remains a bureaucratic impediment. In its 2008 budget, the Government announced its intention to exempt Islamic finance experts from the Middle East from paying income tax in an effort to attract talent from those countries (many of which do not tax income). This year, it established four additional immigration units intended to expedite visa approvals for expatriates. In September 2006, it announced its intention to allow professional spouses of expatriates to work; however, to date no such provisions have been implemented. Manufacturing companies with foreign paid-up capital of at least $2 million receive automatic approval for up to 10 expatriate posts.

In February 2007, the Malaysian government established "Pemudah," a task force of experts from the private sector and government, to promote faster reform in the delivery of government services, targeted at facilitating business and overhauling unnecessary licensing and bureaucratic procedures. The task force has been successful in reducing processing time for land transfers by 60 percent and tax refunds from one year to between 14 days and 30 days. Various registration and approval requirements with the Companies' Commission of Malaysia which ranged from one to 14 days have been reduced to a range of 1 hour to 5 days. The processing of expatriate visas now takes seven days, and the duration of "professional visit" visas has been extended from three months to 6 months.

OTHER BARRIERS

Transparency

The lack of transparency in government decision-making and procedures in Malaysia has served to impede U.S. 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 has the independent power to conduct investigations and is able to prosecute cases with the approval of the Attorney General. However, relatively few senior officials or politicians have been prosecuted for corruption, despite the fact that Malaysia has slipped in its ranking on Transparency International's corruption perceptions index from 33 in 2002 to 44 in 2006, and was at 43 in 2007. Malaysia has signed but not yet ratified the UN Convention against Corruption.