MALAYSIA

TRADE SUMMARY

The U.S. goods trade deficit with Malaysia was $13.1 billion in 2012, up $1.5 billion from 2011. U.S. goods exports in 2012 were $12.9 billion, down 9.8 percent from the previous year. Corresponding U.S. imports from Malaysia were $25.9 billion, up 0.6 percent. 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 $2.6 billion in 2011 (latest data available), and U.S. imports were $1.4 billion. Sales of services in Malaysia by majority U.S.-owned affiliates were $6.8 billion in 2010 (latest data available), while sales of services in the United States by majority Malaysia-owned firms were $255 million.

The stock of U.S. foreign direct investment (FDI) in Malaysia was $13.9 billion in 2011 (latest data available), up from $12.0 billion in 2010. 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 10 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, Mexico, New Zealand, Peru, Singapore, and Vietnam.

IMPORT POLICIES

Tariffs and Import Licenses

Almost all of Malaysia's tariffs are imposed on an *ad valorem* basis, with a simple average applied tariff rate of 6.5 percent in 2010. 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 and processed goods. U.S. companies state that tariff reductions on such products as frozen uncooked poultry parts, restaurant equipment, and food and confectionary products would allow them to increase exports and investment into Malaysia.

Malaysia imposes extremely high specific tariff rates on roughly 80 products, mostly agricultural goods. The simple average *ad valorem* equivalent across all products with a specific tariff is 392 percent. Non-alcoholic and alcoholic beverages, including 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. Malaysia also maintains performance requirements that must be met to receive a customs waiver for manufacturing operations in Foreign Trade Zones.

Tariff-Rate Quotas on Selected Agricultural Products

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

Import Restrictions on Motor Vehicles

Malaysia applies substantial tariffs of up to 35 percent in the automobile sector, and its National Auto Policy (NAP) includes nontariff measures that significantly raise the cost of imported vehicles, including an import permit and a government-imposed pricing system, excise duties that disproportionately affect imported vehicles, and special tax reductions for vehicles with components manufactured in Malaysia. Malaysian auto policy distinguishes between "national" cars, (*e.g.*, vehicles manufactured by domestic producers Proton and Perodua) and "non-national" cars, which include vehicles assembled in Malaysia by foreign companies. The NAP sets out a system of "approved permits," which confer the right to import and distribute cars and motorcycles. Currently, the cap on imported new and used vehicles is set at 10 percent of the domestic market. This system has been extended through 2020.

Other policies further limit the competitiveness of foreign auto imports. The value of imported automobiles is established by the Malaysian government, with the set price published in the official gazette. The officially set price serves as the basis for the assessment of import duties and excise taxes imposed by Malaysia. The effect of this policy is to raise the price of imported vehicles so that it is substantially higher than that of domestically produced autos. In addition, development of the large motorcycle market has been affected by Malaysian traffic restrictions and noise standards.

In 2011, the Malaysian government began another review of the NAP. The government has not provided any official details on the scope or timing of the review process. However the Minister of Trade has repeatedly said that the focus in revising the NAP will be on promoting production of energy-efficient vehicles.

Halal Certification Requirements

All domestic and imported meat (except pork) is required to be certified halal (produced in accordance with Islamic practices) by Malaysian authorities. Inspection and approval of producers' halal practices and verification of compliance with Malaysian standards is required on a plant-by-plant basis prior to import into Malaysia. Malaysian halal standards are stricter than the multilaterally-agreed Codex Alimentarius halal standard.

For example, in 2011, the Malaysian government began requiring that slaughter plants maintain dedicated halal facilities and ensure segregated transportation for halal and non-halal products. These new requirements exceed the Codex guidelines, which allow for halal food to be processed, transported, or stored using facilities which have previously been used for non-halal foods, provided that proper cleaning procedures conforming to Islamic religious requirements have been observed.

In January 2012, the Malaysian Department of Standards implemented MS2424:2012 General Guidelines on Halal Pharmaceuticals, a voluntary certification scheme. The guidelines enabled manufacturers of pharmaceutical products to apply for halal certification beginning on October 15, 2012 and established basic requirements for manufacturing and handling.

Pork Import Licenses

Pork may be imported into Malaysia only if Malaysia's Department of Veterinary Services (DVS) issues a permit authorizing its importation. DVS only allows the importation of 10 cuts of pork meat. The permits are granted on a case-by-case basis and are sometimes refused without explanation. In 2011, DVS proposed to ban the importation of pork bellies and spare ribs into Malaysia. Malaysia subsequently stated that it will impose a new quota system for pork bellies and spare ribs, but that until such time as individual foreign plants are inspected and approved by DVS, these products cannot be imported.

EXPORT TAXES

Malaysia taxes exports of palm oil, rubber, steel scrap, and timber products in order to encourage domestic processing. Malaysia is the second largest producer and exporter of palm oil and products made from palm oil, and accounts 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 made from palm oil are not subject to export taxes.

GOVERNMENT PROCUREMENT

Malaysia has traditionally used 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. In domestic tenders, preferences are provided to *bumiputera* suppliers and other domestic suppliers. In most procurement, foreign companies must take on a local partner before their tenders will be considered. Procurement also often goes through middlemen rather than being conducted directly by the government, or is negotiated rather than tendered. Many state-owned enterprises in Malaysia also apply procurement policies that favor *bumiputera* suppliers. International tenders generally are invited only where domestic goods and services are not available. The U.S. Government continues to raise concerns about the procurement process in Malaysia.

Malaysia is not a signatory to the WTO Agreement on Government Procurement, but became an observer to the WTO Committee on Government Procurement on July 18, 2012.

EXPORT SUBSIDIES

Malaysia maintains several tax programs that appear to provide subsidies for exports. The NAP increases the income tax exemption for high value-added exports of motor vehicles and parts (the level of income tax exemption is based on the percentage increase in the domestic value-added of exports). Other programs include: 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 Companies and Free Industrial Zones.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Malaysia was removed from the Special 301 Watch List in 2012 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 liabilities, and prohibit unauthorized camcording of motion pictures in theaters. In September

2012, Malaysia acceded to the WIPO Copyright Treaty and the WIPO Performance and Phonogram Treaty.

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. Furthermore, the Malaysian government has blocked access to several international pirate web sites and continues to be willing to take action against local sites featuring pirated content.

The Ministry of Health issued directives in 2011 to provide regulatory data protection for pharmaceutical products for a five-year term. However, data protection is only granted to products introduced first in Malaysia.

Despite Malaysia's success in improving its effective protection of IPR, 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. The United States continues to encourage Malaysia to accede to the WIPO Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure**.**

SERVICES BARRIERS

Telecommunications

Malaysia began allowing 100 percent foreign equity participation in application service providers in April 2012. However, liberalization of foreign equity ownership in telecommunications services for network facilities providers and network service providers is yet to be implemented, with only 70 percent foreign participation currently permitted. In certain instances, Malaysia has allowed greater equity participation, but the manner in which such exceptions are administered is not clear. In the GATS, Malaysia made limited commitments on most basic telecommunications services, capped foreign equity commitments at 30 percent, and only adopted parts of the WTO reference paper on regulatory commitments.

Distribution Services

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. Malaysian government guidelines define a "hypermarket" as a stand-alone self-service store with a sales floor area of 5,000 square meters or more and selling a very wide variety of food and non-food consumer products. 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. These guidelines are currently under review by the Malaysian government. 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 come into force, will 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, the amendments will prohibit foreign lawyers from litigating except on an ad hoc basis, and will restrict foreign lawyers from practicing real property law. The Attorney General's Chambers is working with the Malaysian Bar Council to develop implementing rules for the amended law, but has not indicated when the amendments will come into force. Until the amended law is implemented, foreign lawyers may not practice Malaysian law, nor may they affiliate with local firms or use the name of an international firm.

Architectural Services

Architectural services are among the 18 services sub-sectors the Malaysian government pledged to liberalize in 2012. However, the necessary legislation to allow foreign equity of 100 percent in architectural firms has yet to be presented in Parliament. Currently, 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 is expected to be liberalized once pending amendments to relevant laws have been completed. 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. Also, under current law, a foreign engineering firm may establish a permanent commercial presence only if all directors and shareholders are Malaysian.

Accounting and Taxation Services

As of January 2012, foreign accountants and auditors are 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.

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 an equity share of 20 percent in cable and satellite operations. As a condition for obtaining a license to operate, video rental establishments are required to have local content comprise at least 30 percent of their inventories.

Financial Services

In December 2011, Malaysia released a new 10-year Financial Sector Blueprint that envisages further opening of the financial sector to foreign banks, although it does not contain specific market-opening commitments or timelines. The new Blueprint, which follows the previous 10-year Financial Services Masterplan, does not significantly deviate from the existing approach of the central bank, Bank Negara Malaysia (BNM), of granting foreign banks access to Malaysia on a case-by-case basis. Under the Blueprint, issuance of new licenses will be guided by prudential criteria and a "best interests of Malaysia" test. In determining the "best interests of Malaysia", BNM considers the contribution of the investment in 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. BNM has also stated that it wants to ensure that local banks control at least 50 percent of total banking assets in Malaysia. Presently, foreign banks are not allowed to open ringgit correspondent bank accounts with local banks, as this is deemed to be a conduit for "branching" by foreign banks. In addition, BNM sets controls on both foreign and local financial products.

As part of a liberalization effort in 2009, 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. Malaysia conditions, prohibits, or limits the offering of certain financial services, including in the areas of asset management and reinsurance. BNM currently allows a foreign bank to open four additional branches throughout Malaysia, subject to restrictions. BNM has conditioned foreign banks' ability to offer certain services on commitments to undertake back office activities in Malaysia.

To encourage multinational corporations to establish their treasury management services in Malaysia, the government announced in its 2012 budget an income tax exemption of 70 percent for five years, a withholding tax exemption on interest payments on borrowings, and stamp duty exemption on loan and service agreements. Malaysia has extended a concessionary tax rate of 10 percent on dividends of non-corporate institutional and individual investors in real estate investment trusts through December 2016. It provides an income tax exemption of 100 percent for 10 years and stamp duty exemption on loan and service agreements for Kuala Lumpur International Financial District status companies.

INVESTMENT BARRIERS

Foreign investment in certain sectors, including large retail stores, telecommunications, financial services, professional services, petroleum and gas, and mining is subject to extensive restrictions. Such restrictions may include prohibitions or limitations on foreign equity and requirements that foreign firms enter into joint ventures with local partners. Foreigners seeking to acquire land must obtain prior approval from the relevant state authorities for any acquisition of land for agricultural, residential, or commercial purposes. State authorities may impose conditions, including thresholds for foreign ownership. For example, in the state of Selangor, a company must have Malaysian interest of at least 49 percent to acquire agricultural land, whereas the state of Johor prohibits any foreign ownership of agricultural land.

OTHER BARRIERS

Transparency

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 post all draft laws and regulations on the Internet for a public comment period of 30 days. However, implementation of this new requirement remains uneven, and many ministries continue to consult selected stakeholders in an opaque, invitation-only manner.

The Malaysian government has identified fighting corruption as a high a priority in its Government Transformation Program. The Malaysian Anti-Corruption Commission is authorized to conduct investigations and prosecute cases with the approval of the Attorney General. Malaysia's anticorruption legislation makes bribery of foreign public officials a criminal offense.