MALAYSIA

TRADE SUMMARY

U.S. goods exports in 2014 were $13.1 billion, up 1.0 percent from the previous year. Malaysia is currently the 24th largest export market for U.S. goods. Corresponding U.S. imports from Malaysia were $30.4 billion, up 11.6 percent. The U.S. goods trade deficit with Malaysia was $17.3 billion in 2014, an increase of $3.0 billion from 2013.

U.S. exports of services to Malaysia were $2.7 billion in 2013 (latest data available), and U.S. imports were $1.5 billion. Sales of services in Malaysia by majority U.S.-owned affiliates were $7.8 billion in 2012 (latest data available), while sales of services in the United States by majority Malaysia-owned firms were $399 million.

The stock of U.S. foreign direct investment (FDI) in Malaysia was $16.4 billion in 2013 (latest data available), up from $14.1 billion in 2012. U.S. FDI in Malaysia is led by the manufacturing and mining sectors

Trade Agreements

Malaysia is a participant in the Trans-Pacific Partnership (TPP) negotiations, through which the United States and 11 other Asia-Pacific partners are working to establish a comprehensive, high-standard, next-generation regional agreement to liberalize trade and investment in the Asia-Pacific. Once concluded 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; set high standards for regional trade and investment that promote U.S. interests and values; and serve as a potential platform for economic integration across the Asia-Pacific region. The United States is proposing to include in the TPP agreement ambitious commitments on goods, services, and other traditional trade and investment matters, and enforceable labor and environment obligations. TPP will also address a range of new and emerging issues of concern to U.S. businesses, workers and other stakeholders in the 21st century. In addition to the United States and Malaysia, the TPP negotiating partners currently include Australia, Brunei, Canada, Chile, Japan, Mexico, New Zealand, Peru, Singapore, and Vietnam.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Meat and Poultry Products – Halal Standards

Malaysia requires all domestic and imported meat (except pork) to be certified as halal by Malaysian authorities. Malaysian regulations require producers' halal practices to be inspected and approved for compliance with Malaysian standards on a plant-by-plant basis prior to export.

In January 2011, Malaysia implemented a food product standard, MS1500: 2009, which sets out general guidelines on halal food production, preparation, handling, and storage, and that go beyond internationally-recognized halal standards contained in the Codex Alimentarius. Specifically, the standards require slaughter plants to maintain dedicated halal production facilities and ensure segregated storage and transportation facilities for halal and non-halal products. In contrast, the Codex allows for halal food to be prepared, processed, transported, or stored using facilities that have been previously used for non-halal foods, provided that Islamic cleaning procedures have been observed.

Malaysia also requires audits of all establishments that seek to export meat and poultry products to Malaysia, an issue on which the United States has raised concerns. Following an audit in October 2014, Malaysia's Department of Veterinary Services within its Ministry of Agriculture in December 2014 approved one U.S. turkey producer and one U.S. beef producer to export specific products to Malaysia.

Sanitary and Phytosanitary Barriers

Agricultural Biotechnology

Although biotech crops are generally not approved for planting in Malaysia, the Malaysian government allowed biotech papaya trials in 2014. However, the government has not yet published the results of these trials. Biotech crop events are supposed to be sold in the Malaysian market only if they have been approved for use in food and feed, and for processing. While Malaysia has approved a few corn and soybean biotech events for release on the market, bulk shipments of corn and soybeans face the risk of rejection if a variety that has not yet been approved is detected. Malaysia published new biotech labeling guidelines in 2013 that were to be enforced starting in July 2014, including for processed food. However, the Malaysian government has not yet begun enforcing these guidelines.

IMPORT POLICIES

Tariffs and Import Licensing Requirements

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

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

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

Tariff-Rate Quotas on Selected Agricultural Products

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

Import Restrictions on Motor Vehicles

Malaysian automotive policy makes a fundamental distinction between "national" cars (*e.g.,* domestic producers Proton and Perodua) and "non-national" cars, which include other vehicles assembled in Malaysia. Malaysia applies high tariffs in the automobile sector and has traffic restrictions and noise standards that affect the usage of large motorcycles. The country's National Automotive Policy (NAP) includes nontariff measures that significantly increase the cost of imported vehicles. In 2011, the Malaysian government began another review of the NAP, and the Malaysian government announced results of this review in January 2014. The new NAP seeks to transform the country into a hub for energy efficient vehicles, but maintains Malaysia's non-transparent import permit and gazette pricing system, excise duties that disproportionately affect imported vehicles, and special tax reductions for vehicles with Malaysian-manufactured components. The Ministry of International Trade and Industry began gathering industry and stakeholder comments and feedback on the 2014 NAP in October. A revised NAP is expected to be released in 2015.

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

EXPORT TAXES

Malaysia taxes exports of palm oil, rubber, and timber products in order to encourage domestic processing. Malaysia is the world's second largest producer and exporter of palm oil and products made from palm oil. Malaysia lowered its export tax rates on crude palm oil in 2013 from 23 percent to between 4.5 percent and 8.5 percent. The tax that Malaysia imposes on exports of crude palm oil depends on fluctuations in the market price. Owing to the falling price of crude palm oil, the export tax was removed from September through December 2014. Malaysia to kept exports of crude palm oil duty free for the first quarter of 2015, but the government announced on March 16 the 4.5-percent duty would resume on April 1. Refined palm oil and refined palm oil products are not subject to export taxes.

GOVERNMENT PROCUREMENT

Malaysia has traditionally used government procurement to support national public policy objectives, including encouraging greater participation of *bumiputera* in the economy, transferring technology to local industries, reducing the outflow of foreign exchange, creating opportunities for local companies in the services sector, and enhancing Malaysia's export capabilities. It generally invites international tenders only when domestic goods and services are not available, and in those cases, foreign companies find they need to take on a local partner before their tenders will be considered. Procurement also often goes through middlemen rather than directly with the governmental entity or is negotiated rather than tendered.

Malaysia is not a signatory to the WTO Agreement on Government Procurement, but is an observer.

EXPORT SUBSIDIES

Malaysia maintains several programs that appear to provide subsidies for exports. The new NAP finalized in 2013 increased the income tax exemption for high value-added exports of motor vehicles and parts based on the percentage increase in the value added of exports. The United States has raised questions on these and other policies, some of which appeared to establish export subsidies.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Malaysia was removed from the Special 301 Watch List in 2012 following improvements in protecting intellectual property rights (IPR). In recent years, Malaysia acceded to the WIPO Copyright Treaty and the WIPO Performance and Phonogram Treaty. Malaysia also enacted legislation to define Internet Service Provider liability and to prohibit unauthorized camcording of motion pictures in theaters. Malaysia has taken steps to enhance its IPR enforcement regime, including through active cooperation with rights holders, ongoing training of prosecutors for specialized IPR courts, the reestablishment of a Special Anti-Piracy Taskforce, and *ex officio* enforcement actions. In addition, new revisions on industrial designs and trademarks laws are nearing completion.

Despite Malaysia's success in improving IPR protection, several important issues remain, including the relatively widespread availability of pirated and counterfeit products in Malaysia, high rates of piracy over the Internet, and continued challenges posed by book piracy. In addition, the United States has urged Malaysia to continue its efforts to improve the protection against unfair commercial use, as well as unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products. Malaysia has yet to join the Hague Design System or the Madrid Protocol.

SERVICES BARRIERS

The services sector constitutes 48 percent of the Malaysian economy and has been a key driver of economic and job growth in recent years. Since 2009, Malaysia has liberalized 43 services sub-sectors, and 100 percent foreign equity participation is allowed in private hospital services, medical specialist clinics, department and specialty stores, incineration services, accounting and taxation services, courier services, private universities, vocational schools, dental specialist services, skills training centers, international schools, vocational schools for special needs, and quantity surveyors services. In November 2014, the Lower House of the Parliament passed amendments to laws governing architectural services, quantity surveying services and engineering services, which eased restrictions on foreigners working in these professions in Malaysia. The amended law entered into force in 2015.

Telecommunications

Malaysia allows 100 percent foreign equity participation in Applications Service Providers (suppliers which do not own underlying transmission facilities). However, liberalization of telecommunications services for Network Facilities Providers and Network Service Provider licenses has yet to be implemented, and only 70 percent foreign participation is currently permitted, although, in certain instances, Malaysia has allowed greater equity participation. Malaysia made limited GATS commitments on most basic telecommunications services and partially adopted the WTO Reference Paper on regulatory principles.

Distribution Services

Malaysia allows 100 percent foreign ownership of department and specialty stores. However, foreign-owned larger retailers ("hypermarkets") and locally-incorporated direct selling companies must still have 30 percent *bumiputera* equity. The guidelines also include requirements that department stores, supermarkets, and hypermarkets must reserve at least 30 percent of shelf space in their premises for goods and products manufactured by *bumiputera*-owned small- and medium-sized enterprises. Malaysia is currently reviewing these guidelines. The Malaysian government also issues "recommendations" for local content targets, which are, in effect, mandatory.

Legal Services

On June 3, 2014, amendments to the Legal Professions Act came into force to allow foreign law firms and foreign lawyers to practice in Peninsular Malaysia.

Licenses may be issued to foreign law firms to operate an international partnership with a Malaysian law firm or as a Qualified Foreign Law Firm (QFLF) without partnering with a local firm. Foreign lawyers working in International Partnerships and QFLF must reside in Malaysia for not less than 182 days in any calendar year.

The amendments also authorize "fly-in-fly-out" activities whereby a foreign lawyer advising on non-Malaysian law may enter Malaysia for up to 60 days in a calendar year, subject to immigration approval. A foreign lawyer who has been authorized or registered to practice law in Malaysia is not subject to the 60-day limit.

Engineering Services

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 permanent commercial presence if all directors and shareholders are Malaysian.

Accounting and Taxation Services

All accountants seeking to provide auditing and taxation services in Malaysia must register with the Malaysian Institute of Accountants before they may apply for a license from the Ministry of Finance. Citizenship or permanent residency is required for registration with the Malaysian Institute of Accountants.

Financial Services

Under Malaysia's Financial Services Act, the issuance of new licenses is guided by prudential criteria and a nontransparent "best interests of Malaysia" test. In determining the best interests of Malaysia, the central bank of Malaysia, Bank Negara, considers the contribution of the investment to promoting new high value-added economic activities, addressing demand for financial services where there are gaps, enhancing trade and investment linkages, and providing high-skilled employment opportunities.

Bank Negara also sets controls on both foreign and local financial services. For example, interest rates on consumer savings accounts and fixed deposits are mandated. Fees on transactions are determined by the Association of Banks, but banks are not permitted to change these fees without Bank Negara approval. Partnerships between foreign insurers and foreign banks are not permitted, regardless of whether they are locally incorporated. Foreign banks are also not allowed to open Ringgit Correspondent Bank Accounts with local banks as Bank Negara considers this practice to make local banks conduits for "branching" by foreign banks. As a result, local banks are hesitant to partner with foreign banks to provide joint and seamless resources to U.S. multinationals.

As part of the 2009 liberalization package for financial services, foreign equity limits were increased from 49 percent to 70 percent for domestic investment banks, insurance companies, Islamic banks, and Islamic insurance operators. Foreign equity above 70 percent is permitted on a case-by-case basis for insurance companies if the investment is determined to facilitate the consolidation and rationalization of the insurance industry. Currently, mutual fund providers are restricted from entering Malaysia and marketing or selling their products. Reinsurance companies are required to conduct more than 50 percent of their reinsurance business in Malaysia and must have 5 percent cession and local retention. Bank Negara currently limits foreign banks to four branches in Malaysia, subject to restrictions. For example, foreign banks cannot set up new branches within 1.5 km of an existing local bank. In addition, Bank Negara considers ATMs as equivalent to separate branches and it also has conditioned foreign banks' ability to offer some services on commitments to undertake certain back office activities in Malaysia.

Advertising

Foreign content in broadcast commercials in Malaysia is limited to 20 percent.

Audio-Visual and Broadcasting

The Malaysian government maintains broadcast content quotas on both radio and TV programming. Eighty percent of TV programming must originate from local production companies owned by ethnic Malays and 60 percent of radio programming must be of local origin. Foreign investment in terrestrial broadcast networks is prohibited and is limited to a 20 percent equity share in cable and satellite operations. As a condition for obtaining a license to operate, video rental establishments are required to have 30-percent local content in their inventories.

Consumer Data Protection

The Personal Data Protection Act imposes requirements for registration and reporting by companies handling consumer data that ultimately touches most aspects of the economy. The law came into force November 15, 2013.

INVESTMENT BARRIERS

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

OTHER BARRIERS

Transparency

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