Australian Government
Department of Industry, Innovation and Science
Anti-Dumping Commission

Consideration report number: 362

Application for a dumping duty notice and countervailing duty notice

Submitted by: Capral Limited

In relation to certain aluminium extrusions exported to Australia from Malaysia and the Socialist Republic of Vietnam

8 August 2016

Customs Act 1901 Part XVB

Contents

1. **Findings and recommendations ... 2**
1.1. Background ... 2
1.2. Findings ... 2
1.3. Recommendations ... 2
2. **The application and Australian industry ... 3**
2.1. Lodgement of the application ... 3
2.2. Compliance with subsection 269TB(4) ... 3
2.3. The goods the subject of the application ... 4
2.4. Like goods and the Australian industry ... 7
2.5. Australian industry information ... 9
2.6. Market size ... 10
3. **Reasonable Grounds – dumping ... 12**
3.1. Findings ... 12
3.2. Legislative framework ... 12
3.3. Export price ... 12
3.4. Normal value ... 13
3.5. Dumping margins ... 17
3.6. Volumes ... 17
4. **Reasonable grounds - subsidisation ... 18**
4.1. Findings ... 18
4.2. Legislative framework ... 18
4.3. Consultation - Governments of Malaysia and Vietnam ... 18
4.4. Subsidy programs ... 18
4.5. Amount of countervailable subsidy ... 22
4.6. Volumes ... 23
5. **Reasonable grounds – injury to the Australian industry ... 24**
5.1. Findings ... 24
5.2. Legislative framework ... 24
5.3. The Applicant’s claims ... 24
5.4. Approach to injury analysis ... 24
5.5. Volume effects ... 25
5.6. Price effects ... 27
5.7. Profit and profitability effects ... 28
5.8. Other injury factors ... 29
6. **Reasonable grounds – causation ... 31**
6.1. Findings ... 31

6.2. Cause of injury to the Australian industry 31
6.3. Causation - the Applicant's claims 32
6.4. Volume effects 32
6.5. Price effects 32
6.6. Profit and profitability effects 35
6.7. Comparison of export prices and non-injurious price 35
6.8. Injury from factors other than dumping 36
6.9. Conclusion – material injury caused by dumping and subsidisation........... 36
7. Appendices and attachments 38

Abbreviations

Abbreviation	Full reference
ABF	Australian Border Force
ABS	Australian Bureau of Statistics
the Act	the *Customs Act 1901*
aluminium extrusions	certain aluminium extrusions
Capral	Capral Limited
China	the People's Republic of China
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CTMS	cost to make and sell
EAA	East Asia Aluminium Co Ltd
EXW	ex-works
FOB	free on board
the goods	the goods the subject of the application
KG	kilogram
LBA	LB Aluminium Berhad
LME	London Metals Exchange
MIDA	Malaysian Investment Development Authority
Mien Hua	Mien Hua Precision Mechanical Co., Ltd
MJP	Major Japanese Port
MYR	Malaysian Ringgit
the Parliamentary Secretary	the Assistant Minister for Industry, Innovation and Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science
PM Bintulu	Press Metal Bintulu Sdn. Bhd
PMB	Press Metal Berhad
PMS	Press Metal Sarawak Sdn Bhd
REP 148	*Trade Remedies Branch Report No. 148*
REP 248	*Anti-Dumping Commission Report No. 248*
Review 248	*Review No. 248*
SG&A	selling, general and administrative
USDOC	United States Department of Commerce
Vietnam	the Socialist Republic of Vietnam
VND	Vietnamese Dong
WTO	World Trade Organisation

1. Findings and recommendations

1.1. Background

This report provides the result of the consideration by the Anti-Dumping Commission (the Commission) of an application lodged under subsection 269TB(1) of the *Customs Act 1901* (the Act)[1] by Capral Limited (Capral) for the publication of a dumping and countervailing duty notice in respect of certain aluminium extrusions (aluminium extrusions) exported to Australia from Malaysia and the Socialist Republic of Vietnam (Vietnam).

Capral allege that the Australian industry for aluminium extrusions has suffered material injury caused by aluminium extrusions exported to Australia from Malaysia and Vietnam at dumped and subsidised prices.

The legislative framework that underpins the making of an application and the Commissioner's consideration of an application is contained in Divisions 1 and 2 of Part XVB.

1.2. Findings

In accordance with subsection 269TC(1), the Commission has examined the application and is satisfied that:

- the application complies with the requirements of subsection 269TB(4) (as set out in section 2.2.3 of this report);
- there is an Australian industry in respect of like goods (as set out in section 2.4 of this report); and
- there appear to be reasonable grounds for the publication of a dumping and/or countervailing duty notice in respect of the goods the subject of the application (as set out in chapters 3 to 6 of this report).

1.3. Recommendations

Based on the above findings, the Commission recommends that the Commissioner of the Anti-Dumping Commission (the Commissioner) decide not to reject the application and initiate an investigation to determine whether a dumping and/or countervailing duty notice should be published.

The Commission further recommends that:

- exports to Australia from Malaysia and Vietnam during the investigation period 1 July 2015 to 30 June 2016 be examined to determine whether dumping and/or subsidisation has occurred; and
- details of the Australian market from 1 July 2012 be examined for injury analysis purposes.

If the Commissioner agrees with these recommendations, he must give public notice of the decision (**Attachment 1**) in accordance with the requirements set out in subsection 269TC(4).

[1] All legislative references are to the *Customs Act 1901* unless otherwise specified.

2. The application and Australian industry

2.1. Lodgement of the application

2.1.1. Legislative framework

The procedures for lodging an application are set out in section 269TB.

The procedures and timeframes for the Commissioner's consideration of the application are set out in section 269TC.

2.1.2. Application timeframe

Table 1 below summarises the timeframes in relation to this application.

Event	Date	Details
Application lodged and receipted by the Commissioner under subsections 269TB(1) and (5)	28 June 2016	The Commission received an application from Capral alleging that the Australian industry has suffered material injury caused by aluminium extrusions exported to Australia from Malaysia and Vietnam at dumped and subsidised prices.
	8 July 2016	The Commission notified Capral that the application contained critical and important deficiencies which if left unaddressed, create doubt on the reasonableness of the grounds for the publication of a dumping duty and/or countervailing duty notice.
Applicant provided further information in support of the application under subsection 269TC(2A)	18 July 2016	The applicant provided further information and data in support of its application without having been requested to do so (as provided in subsection 269TC(2A)). The application is taken to include that further information and data, and to have been lodged and received on 18 July 2016, when the additional information was lodged and received. Accordingly, the 20 day period for consideration of the application was restarted.
Consideration decision due under section 269TC(1)	8 August 2016[2]	The Commissioner shall decide whether to reject or not reject the application within 20 days after the applicant provided further information.

Table 1 – Application timeframe

2.2. Compliance with subsection 269TB(4)

2.2.1. Finding

Based on information submitted by the applicant, the Commission considers that the application complies with subsection 269TB(4).

2.2.2. Legislative framework

Subsection 269TC(1) requires that the Commissioner reject an application for a dumping and/or countervailing duty notice if, among other things, the Commissioner is not satisfied that the application complies with subsection 269TB(4).

[2] If a legislated due date falls on a weekend or a public holiday in Victoria, the effective due date is taken to be the next working day

2.2.3. The Commission's assessment

Table 2 below summarises the Commission's assessment of compliance with subsection 269TB(4).

Requirement for the application	Details
Lodged in writing under subsection 269TB(4)(a)	The applicant lodged in writing confidential and non-confidential versions of the application. The non-confidential version of the application can be found on the electronic public record on the Commission's website at www.adcommission.gov.au.
Lodged in an approved form under subsection 269TB(4)(b)	The application is in the approved form (Form B108) for the purpose of making an application under subsection 269TB(1).
Contains such information as the form requires under subsection 269TB(4)(c)	The applicant provided: • a completed declaration; • answers to all questions that were required to be answered by the applicant; • completed versions of all appendices; and • sufficient detail in the non-confidential version of the application to enable a reasonable understanding of the substance of the information submitted in confidence.
Signed in the manner indicated in the form under subsection 269TB(4)(d)	The hard copy of the application was signed in the manner indicated in Form B108 by a representative of the applicant.
Supported by a sufficient part of the Australian industry under subsection 269TB(4)(e) and determined in accordance with subsection 269TB(6)	As set out in section 2.4.1, the Commission is satisfied that there is an Australian industry producing like goods. Capral has provided information regarding 8 other producers of like goods in the application. This information is consistent with past investigations, reviews and inquiries into aluminium extrusions from China. Capral provided letters of support from 6 of the 8 Australian producers of the goods. The Commission is satisfied that the level of support for the application (based on actual and estimated production volumes) complies with the requirements of subsections 269TB(6)(a) and (b). Details of the assessment is in Capral's Confidential Attachment A-1.
Lodged in the manner approved under section 269SMS for the purposes subsection 269TB(4)(f)	The application was lodged in a manner approved in the Commissioner's instrument made under section 269SMS, being by mail to the Commission's address provided in that instrument. The application was therefore lodged in a manner approved under subsection 269SMS(2).

Table 2 – Compliance with subsection 269TB(4)

2.3. The goods the subject of the application

Table 3 below outlines the goods as described in the application and their corresponding tariff classifications.

Full description of the goods, as subject of the application
The goods the subject of this application are: *"Aluminium extrusions that:* • *are produced by an extrusion process;* • *are of alloys having metallic elements falling within the alloy designations published by The Aluminium Association commencing with 1, 2, 3, 5, 6 or 7 (or proprietary or other certifying body equivalents);* • *have finishes being:* - *as extruded (mill);* - *mechanically worked* - *anodized; or* - *painted or otherwise coated, whether or not worked;* • *have a wall thickness or diameter greater than 0.5 mm;* • *have a maximum weight per metre of 27 kilograms; and* • *have a profile or cross-section fitting within a circle having a diameter of 421 mm".*
Further information
The goods under consideration include aluminium extrusion products that have been further processed or fabricated to a limited extent, after aluminium has been extruded through a die. For example, aluminium extrusion products that have been painted, anodised, or otherwise coated, or worked (e.g. precision cut, machined, punched or drilled) fall within the scope of the goods. The goods under consideration do not extend to intermediate or finished products that are processed or fabricated to such an extent that they no longer possess the nature and physical characteristics of an aluminium extrusion, but have become a different product.

Tariff classification (*Schedule 3 of the Customs Tariff Act 1995)*

Tariff code[3]	*Statistical code*	*Unit*	*Description*
7604.10.00	06	Kg	Non alloyed aluminium bars, rods and profiles
7604.21.00	07	Kg	Aluminium alloy hollow angles and other shapes
7604.21.00	08	Kg	Aluminium allow hollow profiles
7604.29.00	09	Kg	Aluminium alloy non hollow angles and other shapes
7604.29.00	10	Kg	Aluminium alloy non hollow profiles
7608.10.00	09	Kg	Non alloyed aluminium tubes and pipes
7608.20.00	10	Kg	Aluminium alloy tubes and pipes
7610.10.00	12	Kg	Doors, windows and their frames and thresholds for doors
7610.90.00	13	Kg	Other

Previous investigations
Anti-dumping measures currently apply to aluminium extrusions exported to Australia from the People's Republic of China (China). A history of the main cases relating to aluminium extrusions exported to Australia from China are summarised below. This information is also available on the Commission's electronic public record.

[3] The goods exported to Australia from Malaysia and Vietnam (which are DCS countries) are subject to a 5 per cent rate of customs duty under the following tariff codes.

2009-2011	The then Australian Customs and Border Protection Service initiated an investigation, following an application from Capral. Following the investigation, the then Attorney-General published a dumping duty notice and a countervailing duty notice (*Trade Remedies Branch Report No. 148* (REP 148) refers). Following a review by the former Trade Measures Review Officer, the then Attorney-General amended the dumping duty notice and countervailing duty notice as a result of a reinvestigation of certain findings made in REP 148. International Trade Remedies Report No. 175 refers.
2013	The Federal Court handed down its decision that the dumping duty and countervailing duty notice cannot impose different variable factors for each finish of aluminium extrusion.[4]
2015	The Commissioner initiated an all exporter *Review of Measures No. 248* (Review 248) following an application from PanAsia Aluminium (China) Co., Ltd. Following Review 248, the then Parliamentary Secretary to the Minister for Industry and Science published a notice declaring that she had altered the dumping duty notice and countervailing duty notice as if different variable factors had been ascertained for exporters generally. The Commission conducted a continuation inquiry (*Report No. 287* refers), following an application by Capral. The then Assistant Minister for Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science continued the measures for a further five years, until 28 October 2020.

Table 3 – The goods as described in the application

Tables 4 below provides examples of the coverage of the goods and like goods (and intended end-use applications) and will be used for this investigation. Examples of the goods and like goods are outlined in columns 1-4 and non-subject goods are outlined in columns 5 to 7.

< GUC >				< Non GUC >		
1	2	3	4	5	6	7
Aluminium extrusions	Aluminium extrusions with minor working	Aluminium extrusions that are parts intended for use in intermediate or finished products	Aluminium extrusions that are themselves finished products	Unassembled products containing aluminium extrusions, e.g. 'kits' that at time of import comprise all necessary parts to assemble finished goods	Intermediate or partly assembled products containing aluminium extrusions	Fully assembled finished products containing aluminium extrusions
< Examples >						
Mill finish, painted, powder coated, anodised, or otherwise coated aluminium extrusions	Precision cut, machined, punched or drilled aluminium extrusions	Aluminium extrusions designed for use in a door or window	Carpet liner, fence posts, heat sinks	Shower frame kits, window kits, unassembled unitised curtain walls	Unglazed window or door frames	Windows, doors

Table 4 – The goods and like goods

[4] *PanAsia Aluminium (China) Limited v Attorney-General of the Commonwealth* [2013] FCA 870.

2.4. Like goods and the Australian industry

2.4.1. Finding

The Commission is satisfied that there is an Australian industry producing like goods to the goods the subject of the application, on the basis that:

- Capral and other Australian producers manufacture goods that have characteristics closely resembling the goods the subject of the application; and
- the goods are wholly manufactured in Australia.

2.4.2. Legislative framework

Subsection 269TC(1) requires that the Commissioner reject an application for a dumping and countervailing duty notice if, among other things, the Commissioner is not satisfied that there is, or is likely to be established, an Australian industry in respect of like goods.

Like goods are defined under subsection 269T(1). Subsections 269T(2), 269T(3), 269T(4), and 269T(4A) are used to determine whether the like goods are produced in Australia and whether there is an Australian industry.

2.4.3. Locally produced like goods

Table 5 below summarises the Commission's assessment of whether the locally produced goods are identical to, or have characteristics that closely resemble, the goods the subject of the application and are therefore like goods.

Factor	The Applicant's claims	The Commission's assessment
Physical likeness	Capral claims that: • the goods made by the Australian industry incorporate a wide variety of alloys; • are available in thousands of shapes and profiles (new or proprietary shapes can also be produced by creating new dies); and • are available in various finishes i.e. mill finish, painted, powder coated or anodised.	Capral's claims are consistent with previous investigations, reviews and inquiries for China. The Commission has examined websites and Annual Reports of exporters from Malaysia and Vietnam and is satisfied that the Australian industry manufactures like goods that closely resemble the physically appearance of imported goods, in terms of: • alloy composition; • shapes and profiles; and • finish types.
Commercial likeness	Australian industry products compete directly with imported goods in the Australian market, as evidenced by the supply of imported extrusions to many customers of the Australian industry.	Capral's claims are consistent with previous investigations, reviews and inquiries for China. Based on Capral's sales data and data from the ABF import database, the Commission is satisfied that the Australian industry manufactures like goods that are sold to the same or similar customers and therefore compete directly with imported goods.

Factor	The Applicant's claims	The Commission's assessment
Functional likeness	Both Australian produced and imported goods have comparable or identical end-uses as evidenced by the Australian industry customers that source equivalent imported extrusions. The application provides examples of end use applications such as commercial and residential buildings for window and door frame systems, prefabricated houses/building structures, roofing and exterior cladding, curtain walling, shop fronts, fencing, airframes, road and rail vehicles, marine, electrical and general engineering.	Capral's claims are consistent with previous investigations, reviews and inquiries for China. The Commission has examined websites and Annual Reports of exporters from Malaysia and Vietnam and is satisfied that the Australian industry manufactures like goods that are used in the same or similar end-uses and are therefore functionally alike to imported goods.
Production likeness	Australian industry products are manufactured in a similar manner to the imported goods. The manufacturing process is described at Appendix 1.	Capral's claims are consistent with previous investigations, reviews and inquiries for China. The Commission has examined websites and Annual Reports of exporters from Malaysia and Vietnam and is satisfied that the Australian industry produces like goods in a similar manufacturing process, using the same or similar raw materials as imported goods.
Commission's assessment		
Based on the analysis above, the Commission considers that locally produced aluminium extrusions have characteristics that closely resemble the goods the subject of the application and therefore are like goods. The Commission will further examine the issue of like goods during the course of the investigation.		

Table 5 – Like goods assessment

2.4.4. Manufacture of like goods in Australia

Table 6 below summarises the Commission's assessment of whether the like goods are wholly manufactured in Australia and whether the like goods are therefore considered to have been manufactured in Australia, as per subsection 269T(2).

The Applicant's claims
Capral claims that aluminium extrusions are fully manufactured in Australia using Australian and imported raw materials. The major raw material used in producing aluminium extrusions is aluminium billet which is substantially transformed into aluminium extrusions via a capital intensive extrusion manufacturing process. To demonstrate its production processes, Capral provided Appendix 1.
The Commission's assessment
Based on the description of the manufacturing process provided by Capral and previous findings in investigations, reviews and inquiries, and the fact that these processes take place at manufacturing facilities in Australia, the Commission is satisfied that aluminium extrusions are wholly manufactured in Australia.

Table 6 – Manufacture of like goods in Australia

2.5. Australian industry information

Table 7 below summarises the Commission's assessment of whether the applicant has provided sufficient information in the application to analyse the performance of the Australian industry.

Have the relevant appendices to the application been completed?		
A1	Australian production	Yes
A2	Australian market	Yes
A3	Sales turnover	Yes
A4	Domestic sales	Yes
A5	Sales of other production	Not applicable
A6.1	Cost to make and sell (and profit) – Domestic sales	Yes
A6.2	Cost to make and sell (and profit) – Export sales	Yes
A7	Other injury factors	Yes

General administration and accounting information – Capral	
History	Capral commenced operations in Australia in 1936
Ownership	Capral is a publicly listed company on the Australian Securities Exchange (ASX Code: CAA)
Operations	Capral manufactures and sells aluminium extrusions and other semi-finished, non-ferrous products under its company name. Capral is a major extruder and distributor of aluminium products. The manufacturing business produces extrusion products at five sites at Bremer Park (Qld), Penrith (NSW), Campbellfield (Vic), Angaston (SA) and Canning Vale (WA). Capral operates 8 major distribution centres and ten 'Capral Aluminium Centres' across all States and the Northern Territory. The distribution business supplies aluminium extrusion products and related components to residential and commercial construction markets, as well as to industrial fabrication and manufacturing markets. Capral also distributes a range of rolled aluminium products and hardware products that are complimentary to its aluminium extrusion products.
Financial year	Capral's financial year is the 12-month period ending 31 December. Capral also produces 6 monthly accounts for periods ending 30 June.
Audited accounts	Capral's accounts are audited annually
Annual reports	A copy of Capral's 2014 and 2015 Annual Reports were included with the application as Attachment A-2.9

Production and sales information	**Cost to make and sell information**	**Other injury factors**
Confidential Appendix A2 and A4 to the application contains required data.	Confidential Appendix A6 to the application contains required data.	Confidential Appendix A7 to the application contains required data.

The Commission's assessment
The Commission notes that, in its application, Capral provided information for the period 1 April 2012 to 31 March 2016, which was satisfactory given that the application was lodged in June 2016 and access to information such as ABS trade data was not available to Capral for more recent months. Based on the information in the application, the Commission is satisfied that there is sufficient data on which to analyse the performance of Capral for the purposes of this report. However, as noted in section 1.3, the injury analysis period for the investigation will be from 1 July 2012 and the investigation period will be 1 July 2015 to 30 June 2016. The Commission will require that Capral provide data for the most recent quarter, 1 April 2016 to 30 June 2016. The Commission will also seek data for 1 July 2012 to 30 June 2016 from all other Australian producers of aluminium extrusions.

Table 7 – Australian industry information

2.6. Market size

Capral estimated the size of the Australian market for aluminium extrusions using its own data, Australian Bureau of Statistics (ABS) import data and estimates of other Australian producers based on past investigations and market intelligence. Capral completed Confidential Appendix A2 to the application, using the above data to estimate the size of the Australian market.

The Commission compared Capral's estimates of import volumes to data sourced from the Australian Border Force (ABF) import database. The Commission's estimates of import volumes obtained from the ABF import database is based on the following methodology:

- data was extracted from the ABF import database based on relevant tariff classifications and statistical codes;
- the data was filtered based on the goods description to exclude import transactions that appeared not to be the goods under consideration;
- the data was filtered to exclude goods with a dumping duty exemption from China for not being the goods; and
- the data was filtered to exclude line items where the free on board (FOB) price per kg was outside a range of $2 to $10 AUD (considered a reasonable price range for the goods based on observations from previous investigations, reviews and inquiries into aluminium extrusions) in order to exclude outlying data.

Capral's estimates of import volumes from Malaysia and Vietnam were found to be reasonable, however its estimates of total import volumes appears to be overstated. On account of the variances observed in Carpal's estimates, the Commission has relied on data from the ABF import database and Capral's estimates of aluminium produced in Australia to estimate the size of the Australian market for aluminium extrusions as depicted in Figure 1 below. Figure 1 compares years ending 31 March.

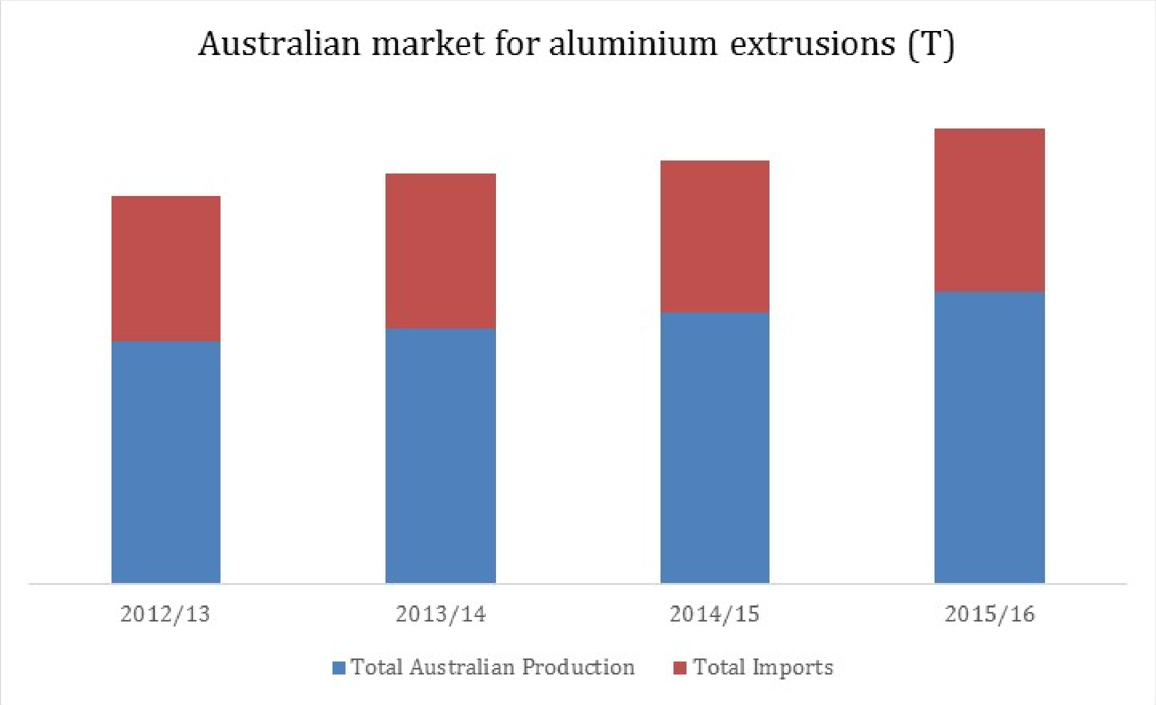

Figure 1 – Australian market for aluminium extrusions

The Commission estimates that the size of the Australian market for aluminium extrusions increased in each year from 2012/2013.

The Commission's estimates of the size of the Australian market for aluminium extrusions are at **Confidential Attachment 2**.

3. Reasonable Grounds – dumping

3.1. Findings

Having regard to the matters contained in the application and to other information considered relevant, pursuant to paragraph 269TC(1)(c), the Commission considers that there appear to be reasonable grounds to support the claims that:

- the goods have been exported to Australia from Malaysia and Vietnam at dumped prices;
- the estimated dumping margin for exports from Malaysia and Vietnam is greater than 2 per cent and therefore is not negligible; and
- the estimated volume of goods from Malaysia and Vietnam which appear to have been dumped is, for each country, greater than 3 per cent of the total Australian import volume of goods and therefore is not negligible.

3.2. Legislative framework

Subsection 269TC(1) requires that the Commissioner reject an application for a dumping duty notice if, among other things, the Commissioner is not satisfied that there appear to be reasonable grounds for the publication of a dumping duty notice.

Under section 269TG, one of the matters that the Assistant Minister for Industry, Innovation and Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science[5] (Parliamentary Secretary) must be satisfied of in order to publish a dumping duty notice is that the export price of goods that have been exported to Australia is less than the normal value of those goods, i.e. that dumping has taken place (to an extent that is not negligible). This issue is considered in the following sections.

3.3. Export price

3.3.1. Legislative framework

Export price is determined by applying the requirements in section 269TAB taking into account whether the purchase or sale of goods was an arms length transaction under section 269TAA.

3.3.2. The Applicant's estimate

Capral's estimated export price is pursuant to subsection 269TAB(3), based on all relevant information. In particular, Capral relied on ABS FOB prices from the relevant tariff classifications to estimate the export price and quantities of aluminium extrusions exported to Australia from Malaysia and Vietnam.

3.3.3. Export prices in application

Capral's estimate of the monthly FOB export prices in AUD per kg, for the period April 2015 to March 2016 are shown in Table 8 below.

[5] The Minister for Industry, Innovation and Science has delegated responsibility with respect to anti-dumping matters to the Parliamentary Secretary, and accordingly, the Parliamentary Secretary is the relevant decision maker. On 19 July 2016, the Prime Minister appointed the Parliamentary Secretary to the Minister for Industry, Innovation and Science as the Assistant Minister for Industry, Innovation and Science.

Month	Weighted average export price AUD/FOB kg Malaysia	Weighted average export price AUD/FOB kg Vietnam
Apr 2015	$4.17	$3.78
May 2015	$4.23	$3.76
Jun 2015	$3.94	$3.71
Jul 2015	$4.27	$3.83
Aug 2015	$4.17	$3.90
Sep 2015	$4.13	$3.93
Oct 2015	$4.11	$3.66
Nov 2015	$4.05	$3.47
Dec 2015	$3.94	$3.60
Jan 2016	$4.01	$3.36
Feb 2016	$3.93	$3.48
Mar 2016	$3.70	$2.77

Table 8 – Capral's export price estimates

3.3.4. The Commission's assessment

The Commission examined export price calculations and supporting evidence provided by Capral.

To verify the reliability of the export price estimates by Capral, the Commission compared the export price in the application to data obtained from the ABF import database, using the methodology outlined in section 2.6.

The Commission identified an immaterial variance of approximately 1 per cent between Capral's estimated annual weighted average FOB export prices and the annual weighted average FOB export prices for Malaysia and Vietnam from the ABF import database. Given the immaterial variance, the Commission considers that Capral's estimate of export price are reasonable and reliable.

Similarly, as outlined in section 2.6, the Commission found that Capral's estimates of import volumes from Malaysia and Vietnam were reasonable and reliable.

Capral's calculation of export price is at **Confidential Attachment 3**.

The Commission's calculations of export price and import volumes is at **Confidential Attachment 4**.

3.4. Normal value

3.4.1. Legislative framework

Normal value is determined by applying the requirements in section 269TAC taking into account whether:

- the purchase or sale of the goods was an arms length transaction under section 269TAA;
- the goods were sold in the ordinary course of trade under section 269TAAD;
- there has been an absence or low volume of sales of like goods in the country of export; and

- the situation in the market of the country of export is such that sales in that country are not suitable for determining normal value under subsection 269TAC(1).

3.4.2. The Applicant's estimate

Capral stated that, for the purposes of its application, it was unable to obtain domestic selling price information for aluminium extrusions sold in Malaysia and Vietnam. In the absence of domestic selling price information, Capral constructed a normal value pursuant to subsection 269TAC(2)(c).

As required by subsections 269TAC(5A) and 269TAC(5B), in ascertaining the normal value of the goods under subsection 269TAC(2)(c), the costs of production or manufacture, the selling, general and administrative (SG&A) costs and profit are established in accordance with sections 43, 44 and 45 of the *Customs (International Obligations) Regulation 2015*.

Table 9 below summarises the approach taken by the applicant to estimate normal values and the evidence relied upon.

Country	Basis of estimate	Details
Malaysia	<u>Costs of production</u> • London Metals Exchange (LME) price for aluminium ingot; • a billet premium; • Major Japanese Port (MJP) premium; • conversion costs; and • packaging costs. <u>SG&A expenses</u> <u>An amount of profit</u>	The LME price for aluminium ingot and MJP premium for each month was sourced from Harbour Aluminium via an independent publication available by paid subscription.[6] The billet premium was based on Capral's average billet premium for 2015. Conversion costs and packaging costs are based on Capral's 2015/16 costs sourced from Confidential Appendix A6.1. Capral's own labour costs have been adjusted downwards to reflect lower per capita income for Malaysia (the 2014 Malaysian per capita income amount has been used as sourced from World Bank Data). SG&A expenses and profit were sourced from Press Metal Berhad's (PMB) 2015 Annual Report. The normal value is for packaged mill finish goods at ex-works (EXW) terms.

[6] The Commission compared the data relied on by the applicant with data available to it from other pricing agencies and has no reason at this stage to doubt the reliability of the data Capral relied on.

Country	Basis of estimate	Details
Vietnam	Costs of production • LME price for aluminium ingot; • a billet premium; • MJP premium; • conversion costs; and • packaging costs. SG&A expenses An amount of profit	The LME price for aluminium ingot and MJP premium for each month was sourced from Harbour Aluminium via an independent publication available by paid subscription. The billet premium was based on Capral's average billet premium for 2015. Conversion costs and packaging costs are based on Capral's 2015/16 costs sourced from Confidential Appendix A6.1. Capral's own labour costs have been adjusted downwards to reflect lower per capita income for Vietnam (the 2014 Vietnam per capita income amount has been used as sourced from World Bank Data). SG&A expenses and profit were sourced from a third party analytical report of East Asia Aluminium Co Ltd's (EAA) 2014 Annual Report. The normal value is for packaged mill finish goods at EXW terms.

Table 9 – Capral's normal value methodology

3.4.3. Adjustments

In its application, Capral highlighted that the ABS export prices for aluminium extrusions are at the FOB level, which includes inland freight to the port of export. In contrast, the normal values it constructed are EXW.

For the purposes of the application, Capral did not apply an upward adjustment to normal values to account for inland freight to ensure fair comparison to the export prices.

The Commission notes that the largest exporters of aluminium extrusions to Australia from Malaysia and Vietnam are located close to ports.[7] EAA is close to a port in Hai Phong, Vietnam and PMB is located close to Malaysia's largest port, Port Klang. Therefore inland freight expenses for these companies are likely to be minimal. The Commission has not included an adjustment for inland transport for the purposes of this report, noting that it will have the effect of increasing Capral's estimated normal values and dumping margins. The Commission will consider adjustments further during the course of the investigation.

3.4.4. Normal values in application

Capral's monthly estimates of normal values for the period April 2015 to March 2016 at an EXW level in AUD per kg are shown in Table 10.

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[7] http://www.worldportsource.com/ports/

Month	Weighted average normal value AUD/EXW kg Malaysia	Weighted average normal value AUD/EXW kg Vietnam
Apr 2015	$5.10	$4.59
May 2015	$4.84	$4.35
Jun 2015	$4.87	$4.38
Jul 2015	$4.46	$3.99
Aug 2015	$4.26	$3.81
Sep 2015	$4.45	$3.99
Oct 2015	$4.23	$3.78
Nov 2015	$4.24	$3.79
Dec 2015	$4.17	$3.73
Jan 2016	$4.35	$3.89
Feb 2016	$4.36	$3.90
Mar 2016	$4.18	$3.74

Table 10 – ATM's normal value estimates

3.4.5. The Commission's assessment

The Commission examined the normal value calculations and supporting evidence provided by Capral and makes the following observations.

Cost to make:

- Capral's use of published aluminium and MJP premium pricing data is reasonable and relevant in estimating the main raw material cost of aluminium extrusions from Malaysia and Vietnam. This data is contemporaneous and consistent with benchmarks used to establish normal values for exporters from China in Review 248;
- The Commission compared the billet premium provided by Capral with billet premiums paid by cooperative exporters from China for the purposes of Review 248 and found them to be relevant and reliable;
- Capral's labour costs adjusted downwards for lower per capita income based upon World Bank data is reasonable and takes into account lower labour costs in Malaysia and Vietnam; and
- The Commission compared Capral's estimates for conversion costs and packing costs with costs incurred by cooperative exporters from China for the purposes of Review 248 and found them to be relevant and reliable.

SG&A and profit:

- With regards to Malaysia, the amounts for SG&A and profit was derived from PMB 2015 Annual Reports. PMB is the largest exporter of aluminium extrusions to Australia from Malaysia and therefore that information is reasonable and relevant. The 2015 calendar year covers the majority of the past 12 months (1 April 2015 to 31 March 2016) and is therefore contemporaneous; and
- With regards to Vietnam, SG&A and profit was derived from EAA 2014 Annual Reports. EAA is the largest exporter of aluminium extrusions to Australia from Vietnam and therefore that information is reasonable and relevant. The 2014 calendar year is not within the past 12 months (1 April 2015 to 31 March 2016), however the Commission notes that an applicant can only provide information reasonably available to it. It is also noted that the

profit and SG&A figures utilised for Vietnam's normal values were both lower than those provided for Malaysia; and
- The Commission compared the SG&A and profit provided by Capral for Malaysia and Vietnam to cooperative exporters from China for the purposes of REP 248 and considers they are relevant and reliable.

The Commission also notes that Capral's estimates of normal values are for mill finish aluminium extrusions, which is a conservative estimate because mill finish goods do not include additional manufacturing processes which incur additional costs. Whilst imports from Malaysia and Vietnam may include different finishes, based on the goods description reported in the ABF import database, the majority of imports from Malaysia and Vietnam were generically referred to as 'aluminium extrusions' with some imports described as 'mill finish'. On this basis, the Commission considers that Capral's approach of calculating normal values for mill finish aluminium extrusion reasonable in the circumstances.

As a result of the above, the Commission considers that Capral's estimates of normal values for Malaysia and Vietnam are reasonable and reliable.

Capral's calculations of normal values, dumping margins and the Commission's comparison is at **Confidential Attachment 5**.

3.5. Dumping margins

3.5.1. Legislative framework

Dumping margins are determined in accordance with the requirements of section 269TACB. Dumping margins are expressed as a percentage of the export price.

Dumping margins and dumping volumes cannot be negligible, otherwise the investigation must be terminated. Whether the dumping margins and dumping volumes are negligible is assessed under section 269TDA.

3.5.2. ATM's dumping margin estimates

Table 11 below summarises the dumping margins estimated by the applicant.

Country	Applicant's estimate
Malaysia	9.5%
Vietnam	10.2%

Table 11 – Capral's dumping margin estimates

3.5.3. The Commission's assessment

Given the findings in sections 3.3.4 and 3.4.5, which found that Capral's estimates of export price and normal value are reasonable and reliable, the Commission considers Capral's dumping margin estimates are also reasonable and reliable for the purposes of this report.

3.6. Volumes

Based on the Commission's estimates, using information from the ABF import database, imports of aluminium extrusions from Malaysia and Vietnam individually represent more than 3 per cent of the total import volume of aluminium extrusions for the period 1 April 2015 to 31 March 2016, and are therefore not negligible as defined in subsection 269TDA(4).

4. Reasonable grounds - subsidisation

4.1. Findings

Pursuant to subsection 269TC(1)(c), the Commission considers that there appear to be reasonable grounds to support Capral's claims that:

- the goods exported to Australia from Malaysia and Vietnam have been subsidised;
- the estimated subsidy margin for exports from Malaysia and Vietnam is each greater than 2 per cent and therefore is not negligible; and
- the estimated volume of goods from Malaysia and Vietnam is each greater than 4 per cent of the total Australian import volume and therefore is not negligible.

4.2. Legislative framework

Subsection 269TC(1) requires that the Commissioner reject an application for a countervailing duty notice if, among other things, the Commissioner is not satisfied that there appear to be reasonable grounds for the publication of a countervailing duty notice.

Under section 269TJ, one of the matters that the Parliamentary Secretary must be satisfied of in order to publish a countervailing duty notice is that subsidisation has taken place (to an extent that is not negligible). This issue is considered in the following sections.

4.3. Consultation - Governments of Malaysia and Vietnam

In accordance with subsection 269TB(2C) the Commission invited the Governments of Malaysia and Vietnam for consultations during the pre-initiation phase. The purpose was to provide an opportunity for the Governments of Malaysia and Vietnam to respond to the claims made within the application in relation to countervailable subsidies, including whether they exist and, if so, whether they are causing, or are likely to cause, material injury to an Australian industry, with the aim of arriving at a mutually agreed solution.

To assist in determining whether it wished to undertake consultations and what it would like to consult on, the Governments of Malaysia and Vietnam were provided with a non-confidential version of the countervailing application.

The Commission was not contacted by Governments of Malaysia and Vietnam during the pre-initiation phase.

4.4. Subsidy programs

4.4.1. Legislative framework

The determination as to whether there is a countervailable subsidy is made in accordance with subsection 269T(1), subsection 269T(2AA), section 269TACC and section 269TAAC.

4.4.2. Notifications relied on by the Applicant

Capral's subsidy application is based predominately on the following sources of information:

- Malaysia - the World Trade Organisation's (WTO) Trade Policy Review for Malaysia, dated January 2014;[8] and
- Vietnam - the Government of Vietnam's "*New and Full Notification Pursuant to Article XVI:1 of the GATT 1994 and Article 25 of The Agreement on Subsidies and Countervailing Measures*", dated 25 September 2015.[9]

4.4.3. The Applicant's claims

Table 12 below summarises Capral's claims that the goods exported to Australia have benefited from countervailable subsidies.

Country	Program (number and description)	Details
Malaysia	Program 1 - Income Tax Reductions	Capral outline that: • the corporate tax rate in Malaysia is 25 per cent; • direct tax incentives reduce the corporate income tax rate in Malaysia for certain companies awarded a 'pioneer status'; • pioneer status limits tax liability to 30 per cent of a company's statutory income, which can mean an effective tax rate of below 10 per cent – for five years (though certain promoted activities qualify for longer periods); • aluminium extrusions are included in the Malaysian Investment Development Authority's (MIDA) Appendix 1A listing promoted products/activities to which tax incentives for pioneer status activities are available; and[10] • MIDA Appendix 1A at No. XV lists "Supporting products or services" which include "metal castings, metal forgings, and moulds tools and dies".
	Program 2 - Investment Tax Allowance	Capral outline that the Income Tax Allowance, an alternative to pioneer status for companies participating in a promoted activity or form of production, offers higher deductions for certain types of investments in less-developed areas, including Sabah, Sarawak, and the Eastern Corridor of peninsular Malaysia, and to strategic projects in other regions.
Vietnam	Program 1 - Preferential Import Tariffs	Capral outlines that: • preferential import tariffs are granted for enterprises investing in regions or sectors entitled to investment incentives; • the Government of Vietnam provides for the exemption from import duties on capital equipment used in "fixed assets of investment projects"; • the subsidy is contained in Import and Export Tariff Law 2005 and Decree No.87/2010/ND-CP dated 13 August 2010; • the program is administered by the Ministry of Finance; and • the list of eligible sectors includes manufacturers of nonferrous metals and cast iron metallurgy.

[8] Trade Policy Review, Report by the Secretariat – Malaysia, Document WT/TPR/S/292, 27 January 2014 at Non-Confidential Attachment C-1.1 of Capral's application.
[9] WTO Committee on Subsidies and Countervailing Measures, G/SCM/N/253/VNM of 25 September 2015 at Non-Confidential Attachment C-1.4 of Capral's application.
[10] See "No. XIII Manufacture of non-ferrous metal and their products 2 Bars, rods, shapes or sections of non-ferrous metals except EC copper rods" at www.mida.gov.my/env3/index.php?page=incentives-for-investment

Country	Program (number and description)	Details
	Program 2 - Corporate tax incentives	Capral outlines that: • incentives on corporate income tax are granted for enterprises operating in regions or sectors that require development. A range of corporate tax reductions/exemptions are afforded to eligible enterprises; • the legal basis for the program is included in the Law on Corporate Income Tax No. 14/2008/QH12 and guideline documents; and • the program is administered by the Ministry of Finance.
	Program 3 - Incentives on non-agricultural land tax	Capral outlines that: • incentives on non-agricultural land use tax are granted and involve an exemption or reduction in land use tax for a project in a sector and region entitled to investment incentives under investment laws; • the relevant legislation is ‘Law on Non-agricultural land use tax No.48/2010/QH12’, effective from 1 January 2012 and ‘Decree No.53/2011/ND-CP’, dated 1 July 2011; and • the program is administered by the Ministry of Finance.

Table 12 – Subsidy Details

To evidence that subsidies from the above programs were received by exporters of aluminium extrusions from Malaysia and Vietnam, Capral provided the following.

Country	Exporter	Details
Malaysia	PMB	Program 1: • Capral highlights that, at page 65 of PMB’s 2014 Annual Report, Press Metal Bintulu Sdn. Bhd (PM Bintulu), an 80 per cent owned subsidiary of PMB, was in of receipt of income tax reductions (alleged Program 1) having been granted pioneer status. Program 2: • Capral highlights that, at Note 22 of PMB’s 2014 Annual Report,[11] Press Metal Sarawak Sdn Bhd (PMS) has received from MIDA an Investment Tax Allowance (alleged Program 2) of 100 per cent on capital expenditures incurred towards the production of aluminium products over a period of 5 years from January 2008 to 23 January 2013; and • PMB’s 2014 Annual Report highlights that Investment Tax Allowance “carry-forwards” of Malaysian Ringgit (MYR) 206,558,000 exist, which are likely to apply to PMS and impact PMB’s future tax assessments.

[11] The Commission notes that PMB’s 2015 Annual Report contain similar disclosures

Country	Exporter	Details
	LB Aluminium Berhad (LBA)	Programs 1 and 2: • Capral notes, that LBA's 2015 financial statements contain an item for "reinvestment allowances" totalling MYR 876,000 in 2015; and. • Capral provided a quote from LBA's quarterly report on financial performance for the period ended 31 January 2016, which states "*The Group's effective tax rates for the quarter under review and financial period to date are lower than the statutory tax rate due to the availability of non-taxable income and reinvestment allowance arising from capital expenditure incurred during the current and previous financial years*." On the basis of the above, Capral believes that LBA, or members within the corporate group, were in receipt of benefits associated with pioneer status eligibility and investment tax allowances.
	Other exporters	Capral expects that the remaining Malaysian aluminium extrusions producers and exporters received income tax and investment incentives for their operations during the period of investigation.
Vietnam	EAA	Program 1: • Capral notes that EAA's turnover increased by 50 per cent in 2014. The sharp rise in EAA's annual turnover indicates that the company has recently expanded its operations and is now able to sell increased volumes of aluminium extrusions. As a consequence, Capral suggests that the company would have received benefits under alleged Program 1 for import duty and tax exemptions on new capital equipment used in the expanded production capacity of the company. Program 2: • Capral provided an independent analytical report of EAA's 2014 income statement, which indicates that the company declared a net profit before tax of Vietnamese Dong (VND) 56,711,000,000 (USD $25.4 M) on which it paid tax of VDN 5,699,000,000 (USD $2.54 M) at a rate of 10 per cent. In 2013, the company paid tax at a rate of 8.75 per cent, and in 2012 EAA paid no tax. Program 3: • As EAA is located on an industrial park, Capral submits that EAA would also be eligible for land-use tax exemptions under alleged subsidy Program 3. On the basis of the above, Capral considers that EAA has received corporate tax reductions from the Vietnam Ministry of Finance.

Country	Exporter	Details
	Other exporters	Programs 2 and 3: • Capral claim that other Vietnamese exporters of aluminium extrusions to Australia include Mien Hua Precision Mechanical Co., Ltd (Mien Hua) and CND Glass Aluminium Co., Ltd. Mien Hua has the capacity to produce approximately 50,000 tonnes of aluminium extrusions per annum and it claims that it and its sister companies are "the largest aluminium extruder makers" in Vietnam with more than US$100 million in annual turnover. Mien Hua was established in 2001 and is a foreign-invested company operating in the Long An Province; and • Capral anticipates that for Mien Hua to assert that it and its sister companies are the largest aluminium extruders in Vietnam that it would also be eligible for benefits under Subsidy Programs 2 and 3 identified above.

Table 13 – Evidence in relation to specific exporters

4.4.4. The Commission's assessment

The Commission considers that the evidence relied on by Capral as outlined above at sections 4.4.2 and 4.4.3 establishes the basis for each alleged subsidy program and is relevant, reliable and contemporaneous.

The existence and nature of the Malaysian and Vietnamese subsidy programs are supported by publicly available information from the Government of Malaysia website www.gov.my and Government of Vietnam websites at http://www.moj.gov.vn and www.customs.gov.vn.

It is also noted that other jurisdictions have found the relevant subsidy programs outlined in Table 12 to exist and to be countervailable. For example:

- the US Department of Commerce (USDOC), found that certain Malaysian companies received countervailable subsidies in relation to income tax reductions from the pioneer status at above de minimis levels in investigations into Wire Rod, Extruded Rubber Thread and Frozen Warm Water Shrimp. In addition, the USDOC found that at least one Malaysian company received countervailable subsidies in relation to the investment tax allowance in its investigation into Frozen Warm Water Shrimp;
- the USDOC found that countervailable subsidies were received in relation to various income tax and import tariff programs in relation to its investigation into Frozen Warm Water Shrimp from Vietnam; and
- the Canada Border Services Agency found that countervailable subsidies were received in relation to various income tax and import tariff programs in its investigation into Certain Oil Country Tubular Goods from Vietnam.

Conclusion

Program 1 and 2 for Malaysia and Programs 1-3 for Vietnam appear to be countervailable subsidies, because they are financial contributions by the respective Governments that involve the conferral of a financial benefit which is specific.

Having regard to sections 269T, 269TACC and 269TAAC, the Commission considers that Capral's subsidy claims are reasonable.

4.5. Amount of countervailable subsidy

4.5.1. Legislative framework

Subsidy margins are determined under section 269TACD.

The amount of the countervailable subsidisation and the volume of subsidised goods cannot be negligible. Whether the countervailable subsidisation and the volume of subsidised goods are negligible is assessed under section 269TDA.

4.5.2. Applicant's claims

In its application Capral stated that:

> *"It was not possible to quantify the level of benefit received by the recipient companies (as actual value of benefit under each program is not available to Capral), however, it is considered that the aggregate benefit received by each exporter is above negligible levels."*

4.5.3. The Commission's assessment

Although Capral have not provided an estimated amount of subsidy received or subsidy margin, the Commission accepts that an applicant can only provide information available to it. Finding evidence regarding amounts of subsidies received, and estimating subsidy margins, is not always possible.

The Commission considers that Capral have identified the nature of the subsidies, their main characteristics, whether the subsidies are paid directly or indirectly to the exporter/producer, and how the exporter/producer benefits from the subsidies. As a result, reasonable grounds have been shown for the existence of subsidies under each program listed above.

The Commission considers that Capral provided reasonable evidence of receipt of subsidies, where possible, in relation to the largest exporters of aluminium extrusions from Malaysia and Vietnam. These entities account for the vast majority of exports to Australia from Malaysia and Vietnam.

The Commission has not conducted any previous investigations in relation to the alleged programs from Malaysia and Vietnam, therefore, for the purposes of this report, it is unable to rely on previous findings to estimate its own subsidy margins.

Notwithstanding the above, given that the standard income tax rate for corporations in Malaysia and Vietnam is 25 per cent and 22 per cent respectively, the highest possible benefit for exporters from Malaysia and Vietnam in relation to income tax rate programs alone is substantial.

4.6. Volumes

Based on the Commission's estimates, which is based on information from the ABF import database, imports of aluminium extrusions from Malaysia and Vietnam individually represent more than 4 per cent of the total import volume of aluminium extrusions for the period 1 April 2015 to 31 March 2016, and are therefore not negligible as defined in subsection 269TDA(8).

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5. Reasonable grounds – injury to the Australian industry

5.1. Findings

Pursuant to subsection 269TC(1)(c), having regard to the matters contained in the application, and to other information considered relevant, the Commission considers that there appear to be reasonable grounds to support the claims that the Australian industry has experienced injury in the form of:

- price suppression;
- loss of profits;
- reduced profitability;
- reduced capital expenditure;
- reduced return on investment; and
- increased closing stocks.

5.2. Legislative framework

Under sections 269TG and 269TJ, one of the matters that the Parliamentary Secretary must be satisfied of in order to publish a dumping duty and/or countervailing duty notice is that the Australian industry has experienced material injury. This issue is considered in the following sections.

5.3. The Applicant's claims

5.3.1. Background

Capral claims that the Australian industry has been injured through:

- price suppression;
- loss of profits;
- reduced profitability;
- reduced capital expenditure;
- reduced return on investment; and
- increased closing stocks.

5.3.2. Commencement of injury

In its application, Capral states that:

> "*The injury from the dumping and subsidised exports from Malaysia commenced following the imposition of measures on exports from China in 2009. The level of injury escalated as volumes from Vietnam increased in 2013/14. 'Material' injury from the dumped and subsidised exports commenced in 2015/16."*

5.4. Approach to injury analysis

5.4.1. Legislative framework

The matters that may be considered in determining whether the industry has suffered material injury are set out in section 269TAE.

The Commission has also had regard to the *Ministerial Direction on Material Injury 2012.*[12]

[12] Ministerial Direction on Material Injury 2012, 27 April 2012, available at www.adcomission.gov.au

5.4.2. Data relied on

This chapter analyses the economic condition of the Australian industry and provides an assessment as to whether the Australian industry has suffered injury.

Noting that only Capral provided relevant data to the Commission as part of this application, the Commission's injury analysis is limited to Capral's data and data obtained from the ABF import database.

It is noted that Capral is the largest manufacturer of aluminium extrusions in Australia and it is estimated that Capral represented more than 40 per cent of the volume of aluminium extrusions produced in Australia during the period 1 April 2015 to 31 March 2016. The Commission is satisfied that Capral's data is relevant and reliable for the purposes of this report. The Commission is of the view that Capral's data is sufficient for the purpose of assessing injury to the Australian industry for the purposes of this report. As outlined further below at section 6.9, Capral's data alone may not be sufficient for assessing injury to the Australian industry as the investigation progresses.

5.4.3. Injury analysis period

The purpose of the injury analysis period is to allow the Commission to identify and examine trends in the Australian market which in turn assists the Commission in its examination of whether material injury has been caused by dumping over the investigation period.

The injury analysis period for the purposes of this report is from 1 April 2012. All Figures below compare years ending 31 March.

As noted in section 1.3, the investigation will focus on a different investigation period and injury analysis period, meaning that the following analysis is subject to change.

5.5. Volume effects

Capral did not claim lost sales volume or lost market share as an injury factor in its application.

5.5.1. Sales volume

Figure 2 below shows that Capral's domestic sales volumes of all finish types of aluminium extrusions increased in each year from 2012/2013.

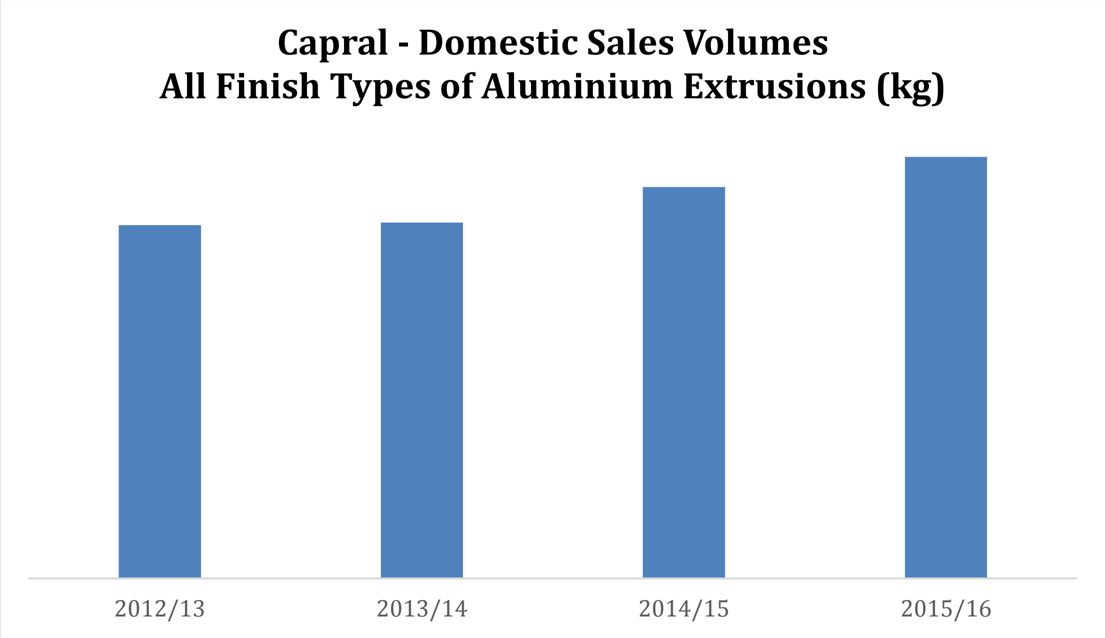


Figure 2 – Capral's domestic sales of aluminium extrusions

5.5.2. Market share

Figure 3 below shows the Australian industry's market share increased in each year from 2012/2013.

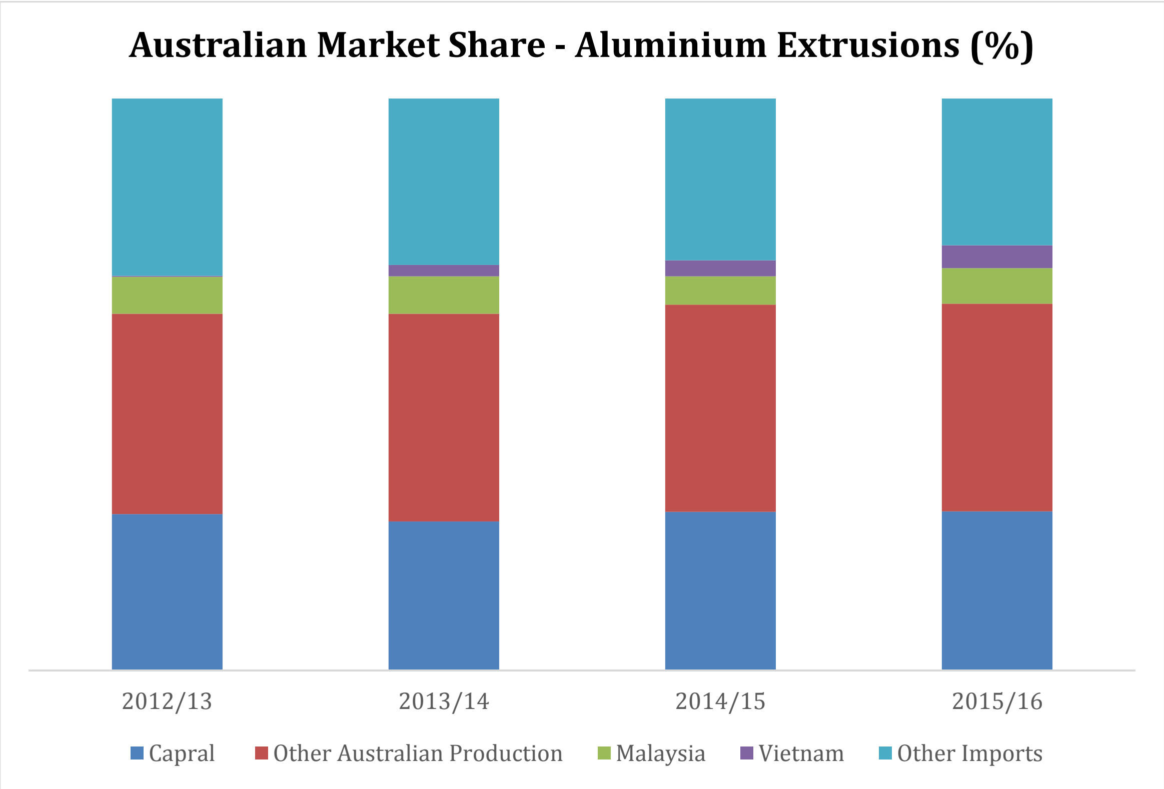


Figure 3 – Australian market share for aluminium extrusions

5.5.3. Import volumes

Figure 4 below, which is based on the Commission's estimates of import volumes, shows that, over the injury analysis period:

- imports from China fluctuated, decreasing by less than 1 per cent;

- imports from Malaysia increased 13 per cent;
- imports from Vietnam increased substantially, albeit from a low base; and
- imports from all other countries decreased.

Collectively, the Commission estimates that, by the end of the injury analysis period, imports from Malaysia and Vietnam represented approximately 28 per cent of the total volume of imports.

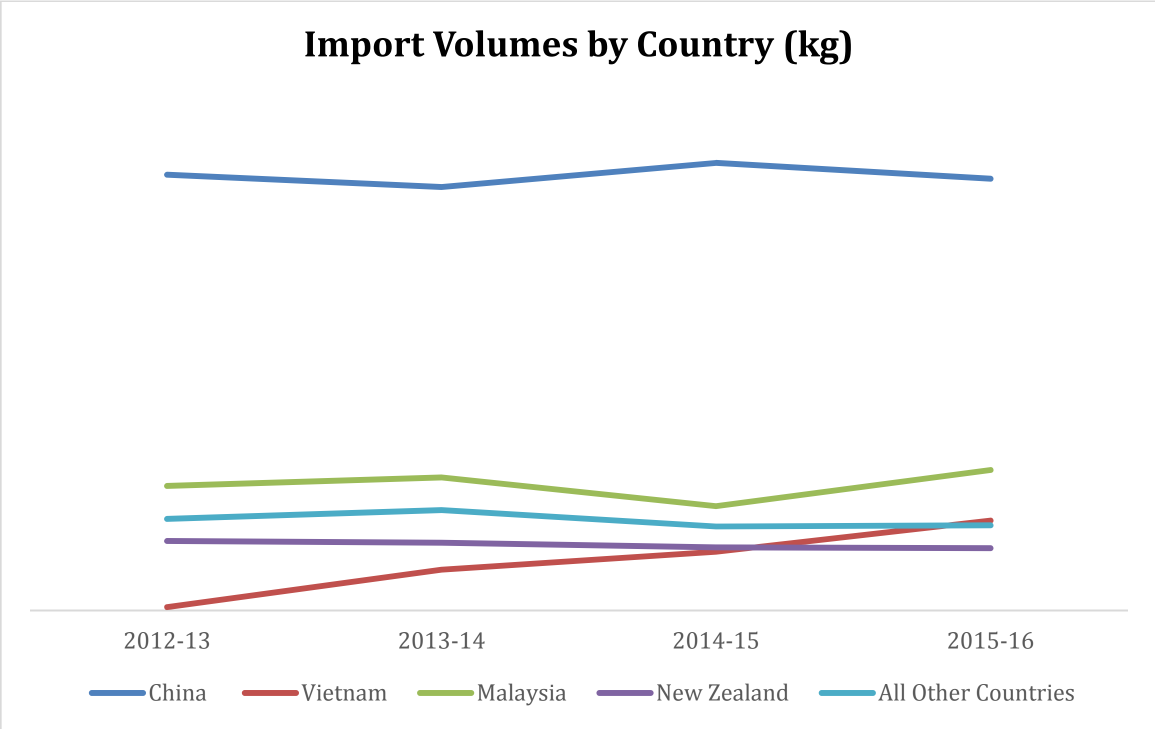


Figure 4 – Import volumes by country

5.5.4. Conclusion – volume effects

Based on the above, the Commission considers that Capral has not suffered injury in terms of lost sales volumes or lost market share.

5.6. Price effects

Price depression occurs when a company, for some reason, lowers its prices. Price suppression occurs when price increases, which otherwise would have occurred, have been prevented. An indicator of price suppression may be the margin between prices and costs.

Capral claim that the Australian industry has suffered price suppression, but not price depression.

Figure 5 below shows the movement in weighted average unit cost to make and sell (CTMS) and unit selling prices provided by Capral over the injury analysis period.

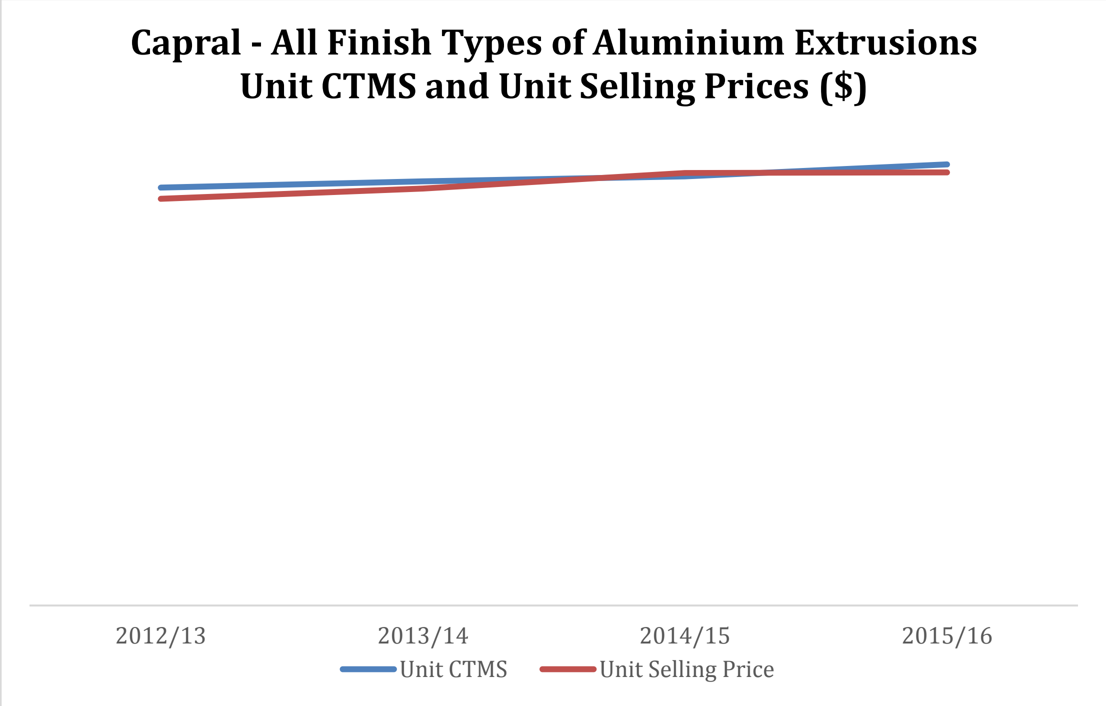


Figure 5 – Capral's unit CTMS and unit selling prices of aluminium extrusions

Figure 5 above shows that:

- Capral's unit selling prices and unit CTMS increased in each year of the injury analysis period;
- unit selling prices increased to a greater extent than unit CTMS in 2014/15, at which point Capral was profitable. However in 2012/13, 2013/14 and 2015/16 unit CTMS exceeded unit selling prices; and
- in the most recent year, 2015/16, unit CTMS increased to a greater extent than unit selling prices, which were relatively flat.

5.6.1. Conclusion – price effects

Based on the above, there appear to be reasonable grounds to support Capral's claims that the Australian industry suffered injury in the form of price suppression.

5.7. Profit and profitability effects

Figure 6 below shows Capral's total profit and unit profitability over the injury analysis period.

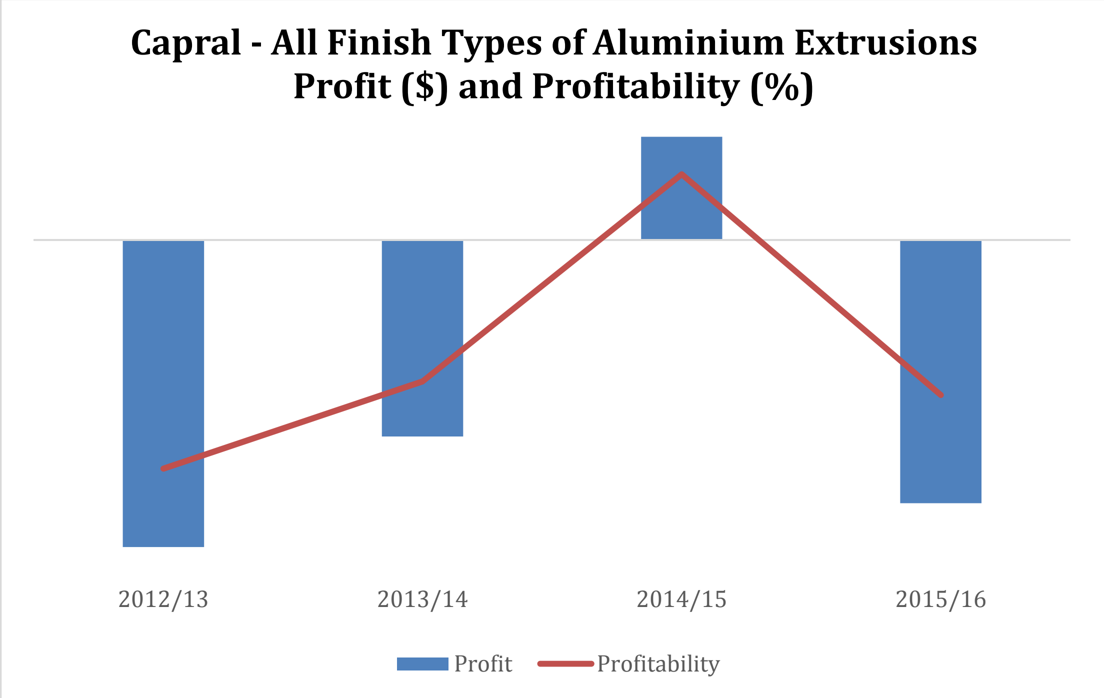


Figure 6 – Capral's profit and profitability of aluminium extrusions

Figure 6 above shows that Capral experienced an improvement in profit and profitability in 2013/14 and 2014/15 at which point Capral was profitable. However in 2015/16, Capral's profit and profitability declined to be negative.

5.7.1. Conclusion – profit and profitability effects

Based on the above, there appear to be reasonable grounds to support the claim that the Australian industry has suffered injury in the form of reduced profits and reduced profitability.

5.8. Other injury factors

Capral claimed injury in the form of 'other injury factors' regarding:

- reduced capital expenditure;
- reduced return on investment; and
- increased closing stocks.

The Commission analysed Capral's Confidential Appendix A-7 and makes the following observations.

<u>Capacity and capacity utilisation</u>

Capral's capacity remained at the same level throughout the injury analysis period. Capral's capacity utilisation increased in every year of the injury analysis period, consistent with observations in section 5.5, where Capral's sales volumes increased in each year of the injury analysis period.

<u>Closing stock</u>

Capral's closing stock increased in 2013/14 and 2014/15. However in 2015/16, closing stock experienced a slight decrease. Over the injury analysis period, closing stocks increased by a total of 15 per cent.

Return on investment

Capral's return on investment was negative in 2012/13 and 2013/14. In 2014/15, return on investment increased whereby it was positive. However, return on investment declined in 2015/16 to again be negative.

Cash flow

Capral's receivables turnover and inventory turnover showed an overall increase throughout the injury analysis period.

Employment numbers

Capral's employment numbers decreased in 2013/14, however increased in 2014/15 and 2015/16. Over the injury analysis period, employment numbers increased by a total of 33 per cent.

Capital expenditure

Capral's capital investment more than halved in 2013/14 before increasing in 2014/15. In 2015/16, capital investment decreased by 10 per cent. Over the injury analysis period, capital investment halved.

Revenue

Capral's revenue increased in each year of the injury analysis period, showing an overall increase of 27 per cent.

5.8.1. Conclusion – other injury factors

The Commission has considered the other injury factors outlined above and there appear to be reasonable grounds to support the claim that the Australian industry has suffered injury with respect to:

- reduced capital expenditure;
- reduced return on investment; and
- increased closing stocks.

These will be considered further during the course of the investigation.

5.8.2. The Commission's assessment

The Commission's assessment of the economic condition of the Australian industry forms **Confidential Attachment 6**.

6. Reasonable grounds – causation

6.1. Findings

Having regard to the matters contained in the application, and to other information considered relevant, the Commission considers that there appear to be reasonable grounds to support the claims that the Australian industry has suffered injury caused by dumping and/or subsidisation, and that the injury is material.

6.2. Cause of injury to the Australian industry

6.2.1. Legislative framework

Under section 269TG and 269TJ, one of the matters that the Parliamentary Secretary must be satisfied of in order to publish a dumping duty and/or a countervailing duty notice is that the material injury suffered by the Australian industry was caused by dumping and/or subsidisation. This issue is considered in the following sections.

Matters that may be considered in determining whether the Australian industry has suffered material injury caused by dumped or subsidised goods are set out in section 269TAE.

6.2.2. Cumulation of injury

Subsection 269TAE(2C) sets out the requirements for assessing the cumulative material injury effects of exports of goods to Australia from different countries. Where exports from more than one country are simultaneously the subject of an investigation, the Parliamentary Secretary may cumulatively assess the effects of such imports if:

- the margin of dumping established for each exporter is not negligible; and
- the volume of dumped imports from each country is not negligible;
- the amount of countervailable subsidy in respect of the exportations from each country exceeds the negligible level, and the volume of those exportations is not negligible; and
- cumulative assessment is appropriate in light of the conditions of competition as between the imported goods and between the imported goods and the like domestic goods.

The Commission considers that there are reasonable grounds to support that:

- as outlined in chapter 3, the margin of dumping for exporters from Malaysia and Vietnam is not negligible;
- as outlined in chapter 3, the volume of dumped imports from Malaysia and Vietnam is not negligible;
- as outlined in chapter 4, the subsidy margins for the exportations from Malaysia and Vietnam exceed the negligible level, and the volume of those exportations is not negligible; and
- as outlined in chapter 2 and based on pervious investigations, reviews and inquiries, the conditions of competition between imported products and between imported and domestically produced aluminium extrusions are similar.

Based on the above, the Commission has cumulatively assessed the injury from Malaysia and Vietnam for the purposes of this report. Further consideration will be given to this issue during the investigation.

6.2.3. Size of the dumping and subsidy margins

Under subsections 269TAE(1)(aa) and 269TAE(1)(ab), the Parliamentary Secretary may have regard to the size of each of the dumping and subsidy margins in respect of the goods exported to Australia.

The dumping margins outlined in Chapter 3 were 9.5 per cent for Malaysia and 10.2 per cent for Vietnam, which are not negligible. As outlined in section 4.5, the Commission also considers that the size of the countervailable subsidies received are above negligible levels. The Commissioner is satisfied that the dumping and subsidy margins, in and of themselves, are likely to enable importers of aluminium extrusions to have a competitive advantage on price compared to the Australian industry.

6.3. Causation - the Applicant's claims

Table 14 below summarises the causation claims of the applicant.

Injury caused by dumping and/or subsidisation
Volume effects • Capral did not claim lost sales volumes as an injury factor, however it claims that, following imposition of anti-dumping measures on Chinese imports, imports from Malaysia and Vietnam have increased. Price effects • The dumped and subsidised exports of aluminium extrusions from Malaysia and Vietnam have contributed to price suppression experienced by Capral in 2015/16 as costs of production have increased and selling prices have remained flat; and • Price undercutting by imports from Malaysia and Vietnam have prevented Capral from raising prices to recover increases in raw material costs. Profit effects • Inability to raise prices have in turn seen a decline in Capral's profit and profitability.
Injury caused by other factors
Capral claim in its application that: • injury is currently not being caused by other factors and factors other than dumping during 2015/16 should have assisted Capral; • the fall in the AUD (relative to the USD) should have made imports more expensive, however, import prices have fallen and undercut Capral's selling prices. A reduction in the MJP premium should also have assisted, however, this has been negated by an overall increase in production costs in 2015/16; and • circumvention of existing ant-dumping measures by Chinese exporters was previously a factor – however, this was resolved in 2015, with import prices from Malaysia and Vietnam being the main driver of pricing in the Australian market.

Table 14 – Capral's causation claims

6.4. Volume effects

Whilst Capral do not appear to have suffered injury in terms of lost sales volume or loss of market share, the Commission considers that the volume of imports from Malaysia and Vietnam (at approximately 28 per cent of total imports) are substantial enough to have impacted the Australian industry's prices and profit as outlined below.

6.5. Price effects

The Commission notes that the market for aluminium extrusions appears to have expanded over the injury analysis period. The Commission accepts that customers can purchase either from the Australian industry or from an import supply source.

Import offers and movement in the price of import offers can therefore be used to negotiate prices with the Australian industry. Based on previous investigations, reviews and inquiries, the Commission established that the Australian market for aluminium extrusions is price sensitive and that the Australian industry is required to respond to the price of imports in order to remain price competitive.

Figure 7 below shows FOB export prices for the injury analysis period as obtained from the ABF import database. Figure 7 shows that the prices of aluminium extrusions from Malaysia and Vietnam are below those from China. FOB export prices for these countries, generally trended upwards during the injury analysis period. In 2012/13 and 203/14 Malaysian export prices were the lowest, however in 2014/15 and 2015/16 export prices from Vietnam were the lowest.

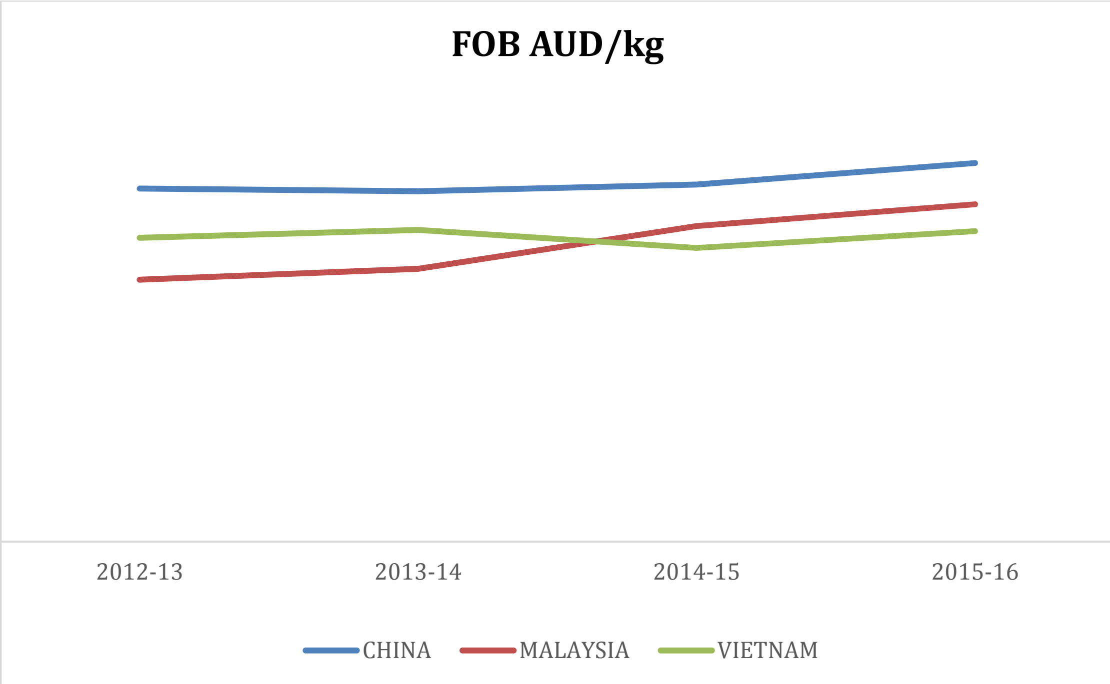


Figure 7 – FOB AUD/kg Injury Analysis Period

Figure 8 below shows FOB export prices on a monthly basis for the past 12 months as obtained from the ABF import database. Figure 8 shows that the prices of aluminium extrusions from Malaysia and Vietnam were below those from China in each month and that prices from Vietnam were the lowest in each month. FOB export prices from China remain fairly static, whereas FOB export prices from Malaysia and Vietnam decreased during the last 12 months.

Figure 8, also shows that the AUD decreased relative to the USD (noting that the goods from Malaysia and Vietnam are predominately invoiced in AUD or USD) during the middle part of the last year, however recovered in March 2016. The Commission was unable to account for the effect of differences in prices for various finish types in its analysis of Figures 7 and 8.

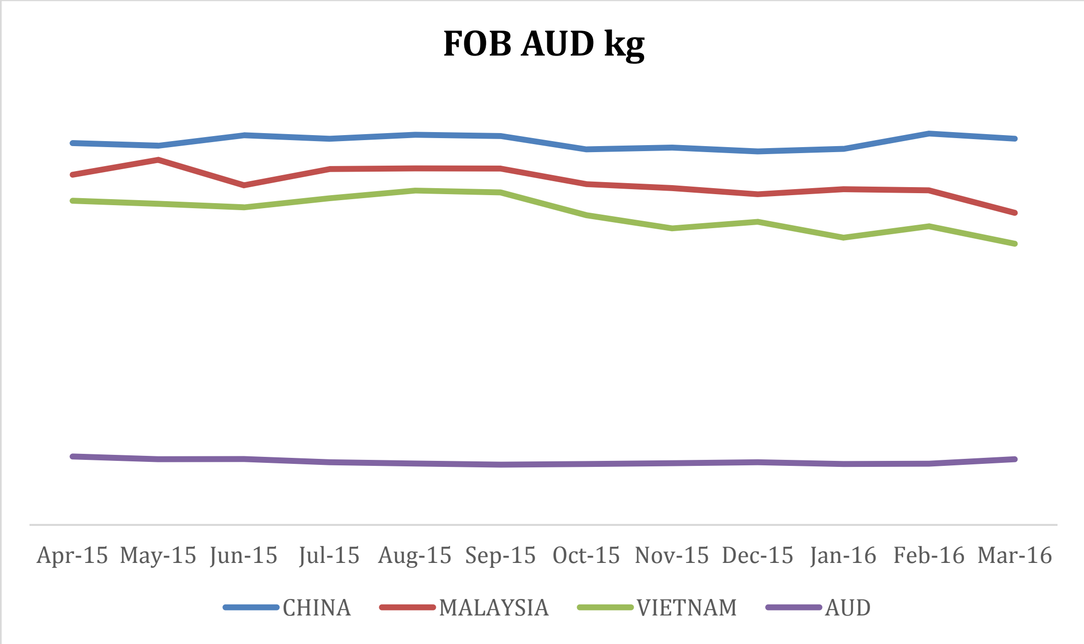


Figure 8 - FOB AUD/kg Last 12 Months

6.5.1. Price undercutting

Price undercutting occurs when imported product is sold at a price below that of the Australian industry.

Capral provided 6 examples of price undercutting with its application. Evidence gathered by Capral relies on its own market intelligence.

To substantiate Capral's claims of price undercutting and examples, the Commission compared Capral's selling prices to reasonable estimates of the selling prices of imports from Malaysia and Vietnam into the Australian market at free into store prices. To estimate the free into store prices for Malaysia and Vietnam, the Commission added verified post exportation and importation costs (e.g. ocean freight, marine insurance, customs duty and clearance charges, Australian inland transport etc.) from an importer from Review 248 to FOB export prices obtained from the ABF import database.

The Commission again notes that it is unable to accurately filter the ABF import database by finish type, noting that different finish types incur substantially different costs. For example, anodised aluminium extrusions can be upwards of 20 per cent higher than mill finish aluminium extrusions. This cost difference reflects the higher costs required to conduct additional manufacturing processes.

At the most conservative level, Figure 9 shows that Capral's selling prices of mill finish aluminium extrusions were undercut by the estimated selling prices of imports from Vietnam. Capral's selling prices of mill finish were similar to estimated selling prices of imports from Malaysia. However, a comparison of Capral's overall sales of aluminium extrusions shows significant levels of price undercutting from estimated selling prices of imports from Malaysia and Vietnam.

The Commission considers that there are reasonable grounds to establish evidence of price undercutting for the purposes of this report, however this will be further examined during the investigation.

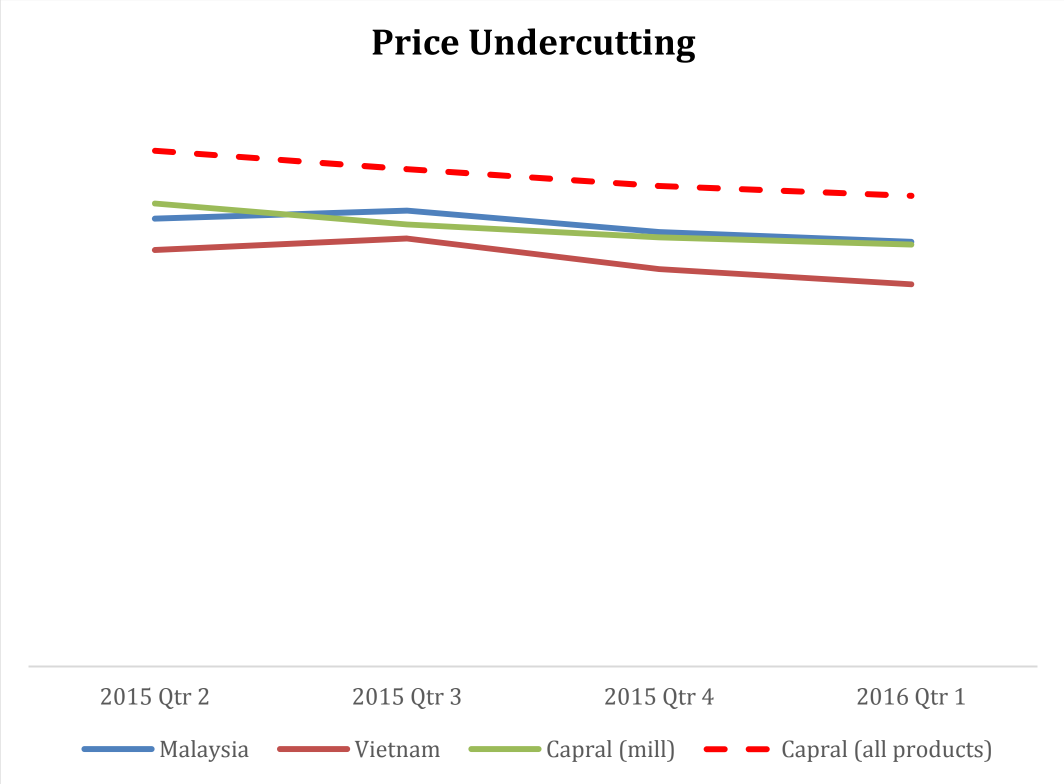


Figure 9 – Price undercutting

The Commission's price undercutting analysis is at **Confidential Appendix 7**.

6.6. Profit and profitability effects

The Commission considers that there appear to be reasonable grounds to conclude that the estimated dumping margins, price effects and price undercutting from goods from Malaysia and Vietnam contributed to Capral's deterioration in profit in 2015/16.

However, the Commission also notes that, on June 16 2016, Capral issued an Earnings Guidance Notice, advising that sales volumes have improved from those expected and that it had upgraded its half year earnings before interest, tax, depreciation and amortisation.[13] The Commission will further examine the profitability of the Australian industry as part of the investigation.

6.7. Comparison of export prices and non-injurious price

As an additional test to establish whether there is a causal link between the alleged dumped and subsidised goods and material injury, the Commission sought to compare weighted average export prices of alleged dumped imports with an estimate of a non-injurious price (NIP) for the 12 months ending 31 March 2016.

To calculate the estimated NIP, the Commission calculated an unsuppressed selling price (USP) using the weighted average unit selling price of Capral's aluminium extrusions for 2014/15. The Commission has no evidence to suggest that this period was affected by dumping and subsidisation from Malaysia and Vietnam, therefore the Commission considers this to be a period unaffected by dumping and subsidisation. As outlined in Figure 6, 2014/15 was a profitable year for Capral.

The Commission then deducted amounts from that USP for importer SG&A and profit, including into-store costs, Customs duty and overseas freight. These amounts

[13] Source: www.asx.com.au

were based on data from REP 248. These calculations provided for a NIP at FOB terms.

The weighted average export price for the investigation period was lower than the NIP. The Commission considers the comparison of export price to the NIP to be a reasonable indicator of injury to the Australian industry.

The Commission's calculations of the NIP and the comparison with export price are at **Confidential Appendix 8**

6.8. Injury from factors other than dumping

6.8.1. Capral's claims

Capral did not attribute any of its injury to factors other than dumping, in its application.

Capral claim that, if anything, certain other factors should have assisted its recent performance during 2015/16. For example, in its opinion:

- the fall in the AUD relative to the USD should have made imports more expensive, however, import prices have fallen and undercut Capral's selling prices; and
- a reduction in the MJP premium should also have assisted it, however, this has been negated by an overall increase in production costs in 2015/16.

6.8.2. Commission's consideration

Confidential Figure 10 below shows that raw material costs (comprising of primary aluminium and MJP premium), in both USD and AUD terms, reduced during the last 12 months. The fall in raw material costs was consistent with Capral's unit CTMS (which also reduced during the last 12 months), Capral's unit selling prices (with the exception of one quarter) and export prices from Malaysia and Vietnam.

The Commission considers that the reduction in raw material costs observed in Confidential Figure 10 (aluminium) may have impacted on Capral's unit selling prices and may explain the reduction in export prices from Malaysia and Vietnam.

The Commission will further consider the effect of raw material costs and other potential injury factors during the investigation.

<Figure 10 redacted as it contains confidential information>

Confidential Figure 10 – Capral Unit CTMS vs Raw Material (Aluminium) Costs

The Commission's raw material cost comparisons are at **Confidential Appendix 9**.

6.9. Conclusion – material injury caused by dumping and subsidisation

The Commission considers that based on:

- an increase in import volumes of aluminium extrusions to Australia from Malaysia and Vietnam;
- the size of the dumping margins;
- the likelihood that exporters from Malaysia and Vietnam have benefited from countervailable subsidies; and
- the preliminary assessment of price undercutting,

there appear to be reasonable grounds to support the claim that dumping and subsidisation of aluminium extrusions exported from Malaysia and Vietnam caused material injury to the Australian industry.

While the Commissioner is satisfied that the threshold to initiate an investigation has been met (appears to be reasonable grounds), the threshold to publish a dumping and/or countervailing notice is higher. Relevantly, the Commission notes that the volume of production from producers of aluminium extrusions in Australia, other than Capral, is close to 60 per cent of total Australian production. Therefore, as part of this investigation, to allow a clearer, more accurate and complete injury and causation analysis, the Commission will seek sales and cost data from other Australian aluminium extrusion producers.[14] This information will be used in future injury and causation analysis.

[14] The Commission has included the required appendices on its electronic public record

7. Appendices and attachments

Appendices	Confidentiality	Title
Appendix 1	Public	Capral's manufacturing process
Appendix 2	Public	WTO Trade Policy Review for Malaysia
Appendix 3	Public	Government of Vietnam's "*New and Full Notification Pursuant to Article XVI:1 of the GATT 1994 and Article 25 of The Agreement on Subsidies and Countervailing Measures*"

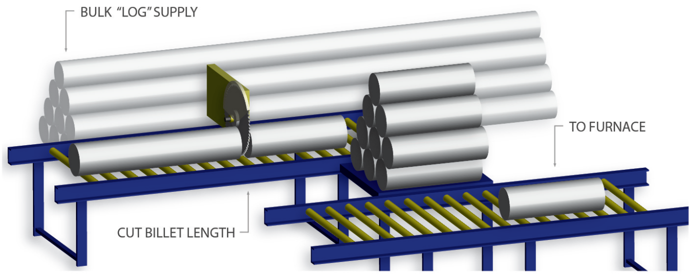
Attachments	Confidentiality	Title
Attachment 1	Public	Public notice
Attachment 2	Confidential	Commission's analysis of the Australian market
Attachment 3	Confidential	Capral's export price estimates
Attachment 4	Confidential	Commission's import volume and export price calculations
Attachment 5	Confidential	Capral's normal value and dumping margin estimates and the Commission's comparison
Attachment 6	Confidential	Commission's assessment of the economic condition of the Australian industry
Attachment 7	Confidential	Commission's price undercutting analysis
Attachment 8	Confidential	Comparison of NIP and export prices
Attachment 9	Confidential	Raw material cost comparisons

Aluminum Extrusion Process Explained In 10 Illustrated Steps

To create an extrusion, we go through a series of specifications and drawings to ensure quality satisfaction. Calculations and estimates are produced to guarantee accurate shapes and tolerances. Once the design questions have been answered, the actual extrusion process begins with billet, the aluminum material from which profiles are extruded. The billet must be softened by heat prior to extrusion.

First, the heated billet is placed into the extrusion press, a powerful hydraulic device wherein a ram pushes a dummy block that forces the softened metal through a precision opening, known as a die, to produce the desired shape.

1 The aluminum extrusion process really begins with the design process, for it is the design of the product–based on its intended use–that determines many of the ultimate production parameters. Questions regarding machinability, finishing, and environment of use will lead to the choice of alloy to be extruded. The function of the profile will determine the design of its form and, hence, the design of the die that shapes it.

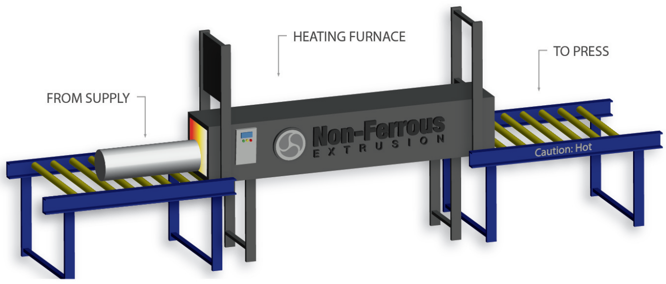


2 Billet is the starting stock for the extrusion operation. Extrusion billet may be a solid or hollow form, commonly cylindrical, and is the length charged into the extrusion press container. It is usually a cast product but may be a wrought product or powder compact. Often it is cut from a longer length of alloyed aluminum, known as a log.

Alloys are metals composed of more than one metallic element. Aluminum extrusion alloys contain small amounts (usually less than five percent) of elements such as copper, manganese, silicon, magnesium, or zinc. These alloying elements enhance the natural properties of aluminum and influence the extrusion process.

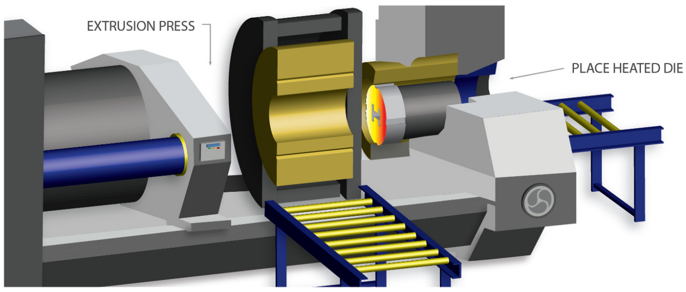
Billet length varies according to a number of factors, including the desired length of the finished profile, the extrusion ratio, the length of the runout, and the requirements of the extrusion press.

Standard lengths may run from about 26 inches (660 mm) up to 72 inches (1,830 mm). The outside diameter may range from 3 inches (76 mm) to 33 inches (838 mm); 6-inch (155 mm) to 9-inch (228 mm) diameters are the most common.



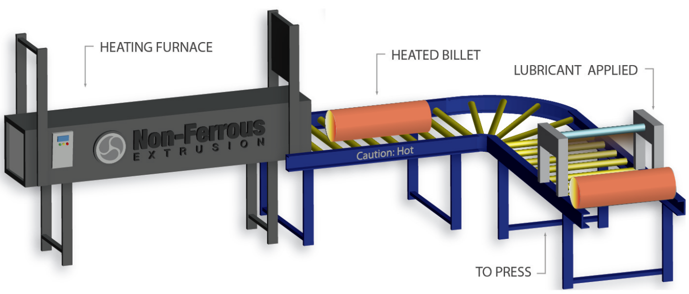
3 During extrusion, the billet is still solid, but has been softened in a heating furnace. The melting point of aluminum varies with the purity of the metal, but is approximately 1,220° Fahrenheit (660° Centigrade). he metal bakes in an oven until a desired temperature is satisfied.

Extrusion operations typically take place with billet heated to temperatures in excess of 700°F (375°C), and–depending upon the alloy being extruded–as high as 930°F (500°C).



4 The dies are pulled from the inventory for cleaning and prep. To prepare the die for the actual extrusion process, the extrusion tools and die are preheated. Doing so allows the pressed aluminum to pick up the die characteristics and increase the overall quality of the final product.

5 Extrusion of aluminum profiles combines design variation with high production output and is therefore the most economic shaping process. Since the aluminum alloys for extrusion need to be heated to at least 450 °C and must bond at this temperature, it is vital that a release agent or lubricant be applied between the aluminum billet and dummy block.

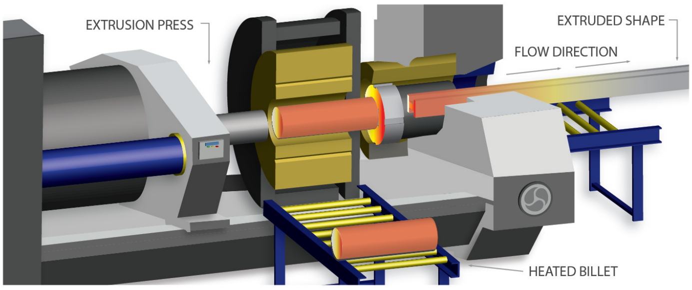


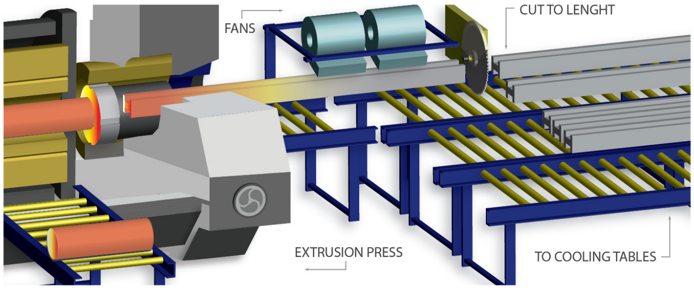
6 The aluminum billet becomes plastic in form. The extrusion process has been likened to squeezing toothpaste out of a tube. When pressure is applied at the closed end, the paste is forced to flow through the open end, accepting the round shape of the opening as it emerges. If the opening is flattened, the paste will emerge as a flat ribbon. Complex shapes can be produced by complex openings. Bakers, for example, use a collection of shaped nozzles to decorate cakes with fancy bands of icing. They're producing extruded shapes.

The actual extrusion process begins when the ram starts applying pressure to the billet within the container. Various hydraulic press designs are capable of exerting anywhere from 100 tons to 15,000 tons of pressure. This pressure capacity of a press determines how large an extrusion it can produce. The extrusion size is measured by its longest cross-sectional dimension, sometimes referred to as its fit within a circumscribing circle diameter (CCD).

As pressure is first applied, the billet is crushed against the die, becoming shorter and wider until its expansion is restricted by full contact with the container walls. Then, as the pressure increases, the soft (but still solid) metal has no place else to go and begins to squeeze out through the shaped orifice of the die to emerge on the other side as a fully formed profile.

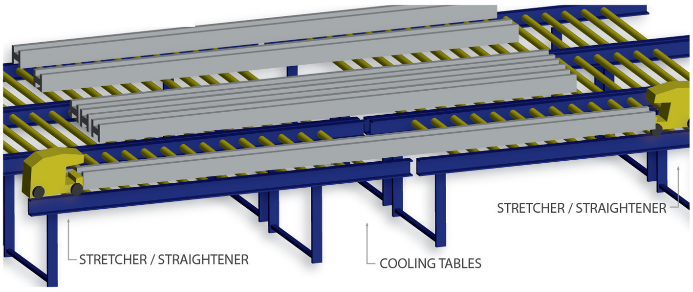
Extrusion rates vary, depending on the alloy used and the shape of the die. A hard alloy, given a complex shape, may emerge from the press as slowly as one or two feet per minute; a soft alloy taking on a simple shape may be extruded at a rate of 180 feet per minute, or even faster.





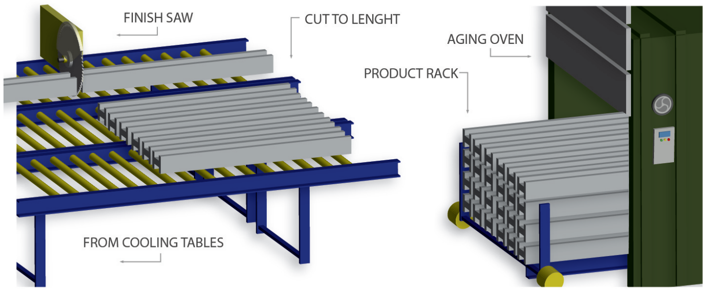
7 Depending on billet size and die opening, a continuous extrusion as much as 200 feet long may be produced with each stroke of the press. The newly-formed extrusion is supported on a runout conveyor as it leaves the press. Depending on the alloy, the extrusion is cooled after emerging from the die, either naturally or through the use of air or water quenches. This is a critical step to ensure sufficient metallurgical properties after aging. The extrusion is then transferred to a cooling table.

8 A stretcher and/or straightener may be employed, after the profile has been quenched (cooled) to straighten the extrusion and correct any twisting that may have occurred subsequent to extrusion. (The stretcher may also be used to impart cold work to the extrusion.) Conveyors feed the work to the saw.



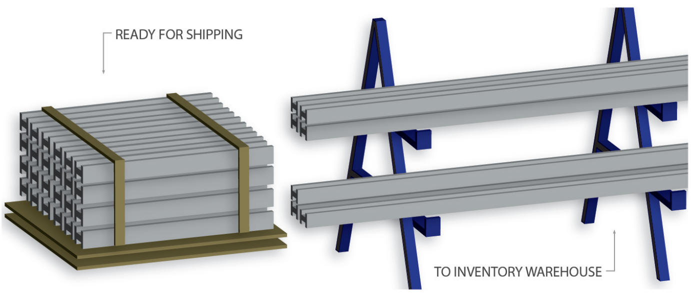
9 Typically, a finish cut saw is used to cut the profile to the specified commercial length. Circular saws are the most common in use today and are generally similar to a radial arm saw that cuts across the profile at a perpendicular angle to the length of the extrusion. Other saws may swing down onto the profile (like a power miter saw), or may operate more like a table saw, with the circular blade rising up to make the cut, then dropping down below the table for the return pass. A typical, circular, finish cut saw may be 16 – 20 inches in diameter, with more than a hundred carbide-tipped teeth. Larger saws are used for larger-diameter presses. Lubricated saws are equipped with delivery systems that feed the lubricant through the teeth of the saw for optimal efficiency and cut surface. Automatic devices clamp profiles in place for sawing.

Some extrusion alloys reach their optimal strength through the process of aging, sometimes known as age-hardening. Natural aging occurs at room temperature. Artificial aging takes place through controlled heating in an aging oven and is sometimes referred to as precipitation heat-treating.



When the profile emerges from the press it is in a semi-solid state, but rapidly solidifies as it cools or is quenched (whether by air or water). Non-heat-treatable aluminum alloys (such as those utilizing manganese or magnesium) derive their strength through natural aging and cold working. Heat-treatable alloys (such as those utilizing copper, zinc, and magnesium with silicon) are further strengthened or hardened through controlled thermal treatments that affect the metallurgical structure of the alloys.

10 After sufficient aging, whether in an aging oven or at room temperature, the profiles are moved to other areas of the plant for finishing or fabricating, or to be packed and prepared for shipment to the customer. Profiles are palletized in such a way as to be protected from surface damage, twisting, or other hazards. Customers may specify their own packaging requirements, or the type of extruded product may suggest a particular method of packaging for ease of storage or delivery.



APPENDIX 2

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WT/TPR/S/292

27 January 2014

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Trade Policy Review Body

TRADE POLICY REVIEW

REPORT BY THE SECRETARIAT

MALAYSIA

This report, prepared for the sixth Trade Policy Review of Malaysia, has been drawn up by the WTO Secretariat on its own responsibility. The Secretariat has, as required by the Agreement establishing the Trade Policy Review Mechanism (Annex 3 of the Marrakesh Agreement Establishing the World Trade Organization), sought clarification from Malaysia on its trade policies and practices.

Any technical questions arising from this report may be addressed to Sergios Stamnas (tel: 022/739 5382) and Katie Waters (tel: 022/739 5067).

Document WT/TPR/G/292 contains the policy statement submitted by Malaysia.

Note: This report is subject to restricted circulation and press embargo until the end of the first session of the meeting of the Trade Policy Review Body on Malaysia. This report was drafted in English.

CONTENTS

SUMMARY 7
Economic Environment 7
Trade Policy Framework 8
Trade Policy Developments 8
Sectoral Policy Developments 10
Outlook 11
1 ECONOMIC ENVIRONMENT 12
1.1 Overview 12
1.2 Recent Economic Performance 12
1.3 Balance of payments 16
1.4 Key Policy Developments 17
1.4.1 Macroeconomic policies 17
1.4.2 Structural policies 18
1.4.2.1 Fiscal reform/consolidation 18
1.4.2.2 Privatization 19
1.4.2.3 Competition policy 19
1.4.2.4 Corporate governance and anti-corruption action 19
1.4.2.5 Labour market policies 20
1.5 Composition and Pattern of Trade 21
1.6 Trends and Patterns in Foreign Direct Investment 23
2 TRADE AND INVESTMENT REGIME 26
2.1 Introduction 26
2.2 General Framework 26
2.3 Trade Policy Formulation and Objectives 27
2.4 Trade Agreements and Arrangements 29
2.4.1 WTO 29
2.4.2 Regional and preferential agreements (RTAs and PTAs) 29
2.4.2.1 RTAs 29
2.4.2.2 PTAs 33
2.4.3 Other agreements and arrangements 33
2.5 Investment Regime 34
2.5.1 Overview 34
2.5.2 Foreign investment regime 35
3 TRADE POLICIES AND PRACTICES BY MEASURE 37
3.1 Introduction 37
3.2 Measures Directly Affecting Imports 38
3.2.1 Customs procedures, customs valuation, and rules of origin 38
3.2.1.1 Registration, documentation, and clearance requirements 38
3.2.1.2 Customs valuation 40

3.2.1.3 Rules of origin 40
3.2.2 Tariffs 40
3.2.2.1 Applied MFN tariffs 41
3.2.2.2 MFN tariff dispersion and escalation 43
3.2.2.3 Tariff rate quotas 44
3.2.2.4 Tariff bindings 45
3.2.2.5 Duty concessions/exemptions 45
3.2.2.6 Tariff preferences 46
3.2.3 Import licensing, restrictions, and prohibitions 46
3.2.3.1 Licensing 46
3.2.3.2 Quotas 47
3.2.3.3 Prohibitions 48
3.2.4 Contingency measures 48
3.2.5 Standards and other technical requirements 49
3.2.5.1 Standards, testing, and certification 49
3.2.5.1.1 Malaysian standards 49
3.2.5.1.2 Halal certification 50
3.2.5.1.3 Accreditation and quality management standards 51
3.2.5.1.4 International cooperation 51
3.2.5.1.5 Transparency 51
3.2.5.2 Sanitary and phytosanitary regulations 52
3.2.5.2.1 Food standards 52
3.2.5.2.2 Biosafety 53
3.2.5.2.3 Risk analysis 53
3.2.5.2.4 Transparency 53
3.2.5.3 Labelling and packaging requirements 54
3.2.6 Government procurement 54
3.2.7 State trading 57
3.3 Measures Directly Affecting Exports 57
3.3.1 Procedures 57
3.3.2 Export prohibitions, restrictions, and licensing 58
3.3.3 Export duties and taxes 58
3.3.4 Duty and tax concessions 59
3.3.5 Export subsidies 59
3.3.6 Free zones and other measures 60
3.3.7 Export finance, insurance, and guarantees 60
3.3.8 Export promotion 60
3.4 Measures Affecting Production and Trade 61
3.4.1 Taxation and tax incentives 61
3.4.1.1 Indirect taxes 62

3.4.1.2 Direct taxes 63
3.4.1.3 Tax incentives 63
3.4.2 Financial assistance..64
3.4.2.1 Funding and other financial measures 65
3.4.2.1.1 Technology and R&D..65
3.4.2.1.2 SMEs..65
3.4.2.2 Other subsidies..66
3.4.3 Government-linked companies..68
3.4.4 Competition and consumer protection policy 69
3.4.4.1 Competition policy 69
3.4.4.2 Price and supply controls..71
3.4.4.3 Consumer protection 73
3.4.5 Corporate governance 73
3.4.6 Intellectual property rights..74
3.4.6.1 Industrial property 75
3.4.6.1.1 Patent and utility models..75
3.4.6.1.2 Trade marks..76
3.4.6.1.3 Geographical indications..76
3.4.6.1.4 Plant variety protection 77
3.4.6.1.5 Industrial designs and layout designs of integrated circuits (topographies)................77
3.4.6.1.6 Trade secrets..78
3.4.6.2 Copyright and related rights 78
3.4.6.3 Enforcement..79
4 TRADE POLICIES BY SECTOR..82
4.1 Introduction..82
4.2 Agriculture and livestock 83
4.2.1 Features..83
4.2.2 Government policy..84
4.2.3 Border measures 85
4.2.4 Domestic support..86
4.2.5 Rice 87
4.3 Fisheries 88
4.4 Mining and quarrying 90
4.5 Energy..91
4.5.1 Hydrocarbons..94
4.5.2 Electricity 96
4.6 Manufacturing..98
4.6.1 Automotive industry..99
4.7 Services..102
4.7.1 Introduction..102

4.7.2 Financial Services 105
4.7.2.1 Introduction 105
4.7.2.2 Onshore banking 108
4.7.2.3 Onshore insurance 109
4.7.2.4 Labuan (offshore) banking and insurance 110
4.7.2.5 Development finance institutions 111
4.7.3 Telecommunications 112
4.7.4 Air Transport 114
4.7.4.1 Institutional and regulatory structure 114
4.7.4.2 Airports and ground handling services 114
4.7.4.3 Airlines and air services agreements 114
4.7.4.4 Sales, reservation, marketing, repair, and maintenance services 116
4.7.5 Maritime Transport 116
4.7.5.1 Legal and institutional framework 116
4.7.5.2 Shipping 116
4.7.5.3 Ports 117
4.7.5.4 Maritime transport-related commitments made under the GATS and RTAs 118
4.7.6 Tourism 118
4.7.7 Professional services 121
4.7.7.1 Accounting (including audit) and taxation services 121
4.7.7.2 Legal services 122
4.7.7.3 Architectural services 122
4.7.7.4 Engineering services 122
4.7.7.5 Quantity surveying services 123
REFERENCES 124
5 APPENDIX TABLES 130

CHARTS

Chart 1.1 Product composition of merchandise trade, 2009 and 2012 22
Chart 1.2 Direction of merchandise trade, 2009 and 2012 23
Chart 1.3 Foreign direct investment stock, 2008 and 2012 24
Chart 1.4 Direct investment abroad stock, 2008 and 2012 25
Chart 2.1 FTA negotiation procedures 27
Chart 2.2 Vision 2020 and associated economic and social strategies 28
Chart 3.1 Average applied MFN tariff rates, by HS section, 2009 and 2013 42
Chart 3.2 Distribution of MFN tariff rates, 2009 and 2013 43
Chart 3.3 MFN tariff escalation by two-digit ISIC industry, 2009 and 2013 44
Chart 4.1 Structure of the financial sector, by asset share, 2012 105
Chart 4.2 Insurance: total premium volume, 2008-12 109
Chart 4.3 Tourist arrivals, 2012 119

TABLES

Table 1.1 Selected macroeconomic indicators, 2009-12 13
Table 1.2 Basic economic and social indicators, 2009-12 14
Table 1.3 Balance of payments, 2009-12 16
Table 2.1 RTAs in force, July 2013 29
Table 2.2 Main features of new RTAs, 2010-13 31
Table 3.1 Malaysia's tariff structure, 2009 and 2013 41
Table 3.2 Summary analysis of the Malaysian preferential tariff, 2013 46
Table 3.3 Malaysian standards aligned to international standards, 2008 and 2012 50
Table 3.4 Structure of direct and indirect tax revenue, 2009-12 61
Table 3.5 Raids and inspections related to copyright infringement, 2009-12 80
Table 4.1 Self-sufficiency ratios, 2009-12 84
Table 4.2 Overview of domestic agricultural support measures, 2009-11 87
Table 4.3 Energy subsidies, 2009-11 93
Table 4.4 Fuel price subsidies and comparison, 2012 96
Table 4.5 Services commitments in Malaysia's trade agreements, 2013 104
Table 4.6 Banking institutions, 2009, 2011, and 2013 108
Table 4.7 Insurance companies, 2012 110
Table 4.8 Offshore banking and services, 2012 111
Table 4.9 Selected telecommunication indicators, 2009-12 112
Table 4.10 Telecommunications licensing regime, 2013 113
Table 4.11 Domestic market share of Malaysian carriers (passenger transport), 2010-12 115
Table 4.12 ASEAN ASAs, 2013 115
Table 4.13 Fiscal incentives for hotels and tourism projects, 2013 120

BOXES

Box 4.1 Services liberalization, 2010-13 102

APPENDIX TABLES

Table A2. 1 WTO notifications, 1 January 2010 to 31 October 2013 130

Table A3. 1 Malaysia's tariff summary, 2009 and 2013 132

Table A4. 1 Quota utilization for TRQ products, 2011 134
Table A4. 2 Services liberalization, 2009-13 136
Table A4. 3 Legislation governing services sectors, 2013 139
Table A4. 4 Federal and state ports: volume of traffic, ownership, and operation, 2013 140
Table A4. 5 Maritime transport commitments under the GATS and FTAs: market access, modes 1-3 141

SUMMARY

Economic Environment

1. Malaysia's strong overall economic performance during the period under review was led by pragmatic economic management and appropriately calibrated macroeconomic policies. The economy continued to undergo a significant external rebalancing due to a decline in external surpluses, while policies continue to ensure sustainable and inclusive growth in order to turn Malaysia into a high income country by 2020. Despite a slowdown in total factor productivity (TFP) growth during 2008-12, Malaysia remains externally competitive with its comparative advantage seemingly shifting from electrical goods and electronics manufacturing towards processed commodities and natural gas.

2. Malaysia's economy recovered rapidly from contraction in 2009 and moved towards more sustainable and moderate growth rates as, *inter alia*, the engines of growth shifted markedly from export-oriented manufacturing to domestic services. Robust domestic demand offset external weakness and fuelled growth at an annual average rate of 4.1% (2009-12). Malaysia's low inflation rate rose steeply from 2009 to 2011 due to temporary supply-side and cost-related factors, before falling in 2012 to below its 2010 level of 1.7%, one of the lowest in the Asia-Pacific region. In addition, its low official unemployment rate has further declined to 3% in 2012.

3. During the period under review, a slightly accommodative monetary policy continued to strike the right balance between supporting growth and keeping inflation in check. The benchmark interest rate at 3% has remained unchanged since May 2011, resisting a renewed trend among regional peers toward lowering rates. In 2011 and 2012, the real effective exchange rate of the ringgit fluctuated narrowly after a strong appreciation between September 2009 and April 2010. In line with its various capital markets and financial-sector development plans, Malaysia has relaxed or abolished several foreign-exchange policies. Its fiscal deficit declined gradually from 6.7% of GDP in 2009 to 4.5% in 2012 while Government debt is estimated to have risen to just below the self-imposed ceiling of 55% of GDP. Plans for fiscal consolidation, tax reform, and expenditure rationalization are under way. Several key initiatives have been implemented to improve public finances, including the resumption of subsidy rationalization. The long-awaited goods and services tax (GST) is to be implemented by April 2015.

4. Despite a significant narrowing, the trade and current account balances remain in surplus. Malaysia's adequate foreign exchange reserves rose steadily between 2009 and 2011, after which they evolved around a relatively flat trend; as of 15 November 2013, they were US$136.7 billion (9.7 months of imports, 3.7 times the short-term external debt). External debt (short-term) rose steadily during the period under review (except for 2012).

5. Malaysia's economy remains strongly outward-oriented, with trade in goods and services accounting for 162.4% of GDP. Although relatively well diversified, a considerable proportion of its foreign trade is increasingly intra-regional (Asia-Pacific); the share of commodities in total trade rose, but manufactures remain the main traded goods.

6. Between 2008 and 2012 Malaysia's FDI stock rose by 58.8%, the same pace as its equally important stock of direct investment abroad, and continued to be mainly directed to manufacturing and services activities. The EU and Singapore remained the main FDI stockholders. FDI inflows eased somewhat in 2012, reflecting the uncertain global economic outlook and the diminishing appeal of Malaysia as a base for labour-intensive industries.

7. Malaysia has undertaken a major liberalization effort in its services sector since 2009, removing or reducing restrictions on foreign equity participation in a swathe of services subsectors. While a full list of remaining FDI caps across all sectors of the economy was not available, FDI limits were identified in the context of this Review in: fisheries, energy, telecommunications, telecommunications, and air and maritime transport. Foreign participation in public-private partnership projects may only be considered in certain cases. The investment environment remains affected to a certain extent by policies favourable to the *bumiputera* community and Malaysians in general.

Trade Policy Framework

8. The direction of Malaysia's trade policy remains focused on ensuring that Malaysia becomes a self-reliant and industrialized nation by 2020. Emphasis is, *inter alia*, being placed on integrating Malaysian companies into global value chains and developing commercial ties with new markets. There have been no changes to the institutions responsible for trade policy formulation since 2010. Various new trade-related laws have entered into force: the Quarantine and Inspection Services Act, the Strategic Trade Act, the Competition Act and the Price Control and Anti-Profiteering Act.

9. Malaysia continues to negotiate new regional trade agreements (RTAs) both bilaterally and together with its ASEAN partners. Seven new RTAs entered into force for Malaysia during the review period. Three are ASEAN RTAs with third countries (Australia and New Zealand, India, and Korea), and four are bilateral agreements (with Chile, India, New Zealand, and Australia). Malaysia has signed and ratified the Trade Preferential System of the Organization of the Islamic Conference (TPS-OIC) and the Developing Eight Preferential Tariff Arrangement (D8-PTA); these are expected to enter into force imminently. Malaysia is in the process of negotiating RTAs with Turkey, the European Union, and the European Free Trade Association. It is a participant in the Trans-Pacific Partnership (TPP) negotiations as well as in the ASEAN Regional Economic Partnership (RCEP) negotiations.

10. At the ASEAN level, efforts are focused on achieving an ASEAN economic community by 2015; three new ASEAN agreements entered into force over the review period: the ASEAN Trade in Goods Agreement (ATIGA); the ASEAN Comprehensive Investment Agreement (ACIA) and the ASEAN Agreement on Customs in 2012. Additionally, there has been further liberalization within ASEAN with respect to trade in services, financial services, and air transport. ASEAN Regional Comprehensive Partnership negotiations are on-going.

11. During the period under review, Malaysia was not involved in any new WTO dispute settlement cases either as complainant or respondent. It has maintained a consistent flow of notifications to the WTO, although notifications are outstanding in a few areas, while in a few others (e.g. tariff-rate quotas, domestic support in agriculture) there have been relatively long submission gaps. Reforms undertaken since 2010 to improve the business environment in Malaysia have included cutting processing times for dealing with customs permits; eliminating and simplifying licensing requirements; and reducing the time required for the approval of construction permits. Additionally, a National Policy on the Development and Implementation of Regulations, issued in 2013, requires federal government entities to follow certain steps in developing regulations affecting business, trade, and investment. A National Committee on Investments (NCI) was established in 2010 to assess and approve investment projects in a more swift and streamlined fashion, and in the same year the Malaysia Corporate Identity (MyCoID) scheme was introduced to simplify business interactions with multiple government agencies.

Trade Policy Developments

12. The tariff remains one of the main trade policy instruments, albeit a minor source of tax revenue (1.3% of total tax revenue in 2012). Following the adoption of the HS 2012 tariff nomenclature, Malaysia's customs tariff was streamlined by reducing the number of its tariff lines (by 9.3%). The tariff involves a multiplicity of rates (19 *ad valorem*, 19 specific, 11 compound, 2 alternate duties), whose number remains virtually unchanged since 2009. As a result of unilateral tariff cuts during the period under review the average applied MFN tariff rate dropped from 7.4% in 2009 to 5.6% (2013). Tariff dispersion was reduced, though tariff escalation remains pronounced. Tariff rates continue to range from zero to 90%, although non-*ad valorem* tariffs tend to conceal much higher peak rates; 80% of rates were 10% or below in 2013. While more than 80% of tariff rates are bound, the average gap appears to have risen to at least 10 percentage points between applied and bound MFN rates, thus allowing considerable leeway for raising applied tariffs, though this does not seem to have occurred during the period under review. The gap between the simple average applied MFN tariff rate and the average preferential rate on imports from different preferential or FTA trading partners was also reduced.

13. Trade facilitation was strengthened by, *inter alia,* further shifting customs clearance from clearance-based controls to post-clearance audit controls; Malaysia's ease of trading across borders remains highly ranked in international comparisons.

14. Import prohibitions are maintained mostly for national security, religious, and environmental reasons. A considerable portion of Malaysia's tariff lines remain subject to import licensing, most of which is non-automatic and continues being used as a tool of trade and industrial policy for, *inter alia,* regulating the flow of imports and promoting selected strategic industries. Although Malaysia's recourse to anti-dumping action dropped markedly, with no case initiated from 2007 to 2011, in 2012 investigations were launched on imports of steel wire rod, biaxially oriented polypropylene film, and hot rolled coils, virtually all of Asian origin.

15. Export taxes (1.5% of total tax revenue in 2012) and/or restrictions, which are applied to certain goods (e.g. timber, crude palm oil), continue to, *inter alia,* discourage exports of certain commodities and essential goods and reduce their domestic prices, thereby ensuring adequate domestic supplies and assisting downstream processing of the products concerned. Exports of price-controlled essential goods (i.e. wheat flour, diesel, petrol RON 95, liquefied petroleum gas, sugar, and cooking oil), four of which are subsidized, are prohibited unless approval is granted. Import duty exemptions or drawbacks for intermediate goods used in the production of exports are in place so that the import duties do not feed through to become implicit taxes on exports. Support is available for exports of certain fresh and dried fruits, fresh and dried flowers, ornamental plants and ornamental fish, and manufactures, in the form of statutory income tax exemption ranging from 10% to 50% of the value of increased exports depending, *inter alia*, on the activity, value-added and/or ownership. Similar exemption of statutory income tax equivalent to 50% of the value of increased export is available to companies in selected services sectors. Other support measures remain in place, such as export processing zones involving local content requirements (since 2011), concessionary credits, insurance, and guarantees, as well as government-sponsored promotion and marketing assistance.

16. Measures involving grants, tax concessions, and low-interest loans continue to support production and trade of various agricultural and manufactured products, and encourage SMEs, R&D, and environmental-protection activities. The Malaysian economy remains one of the most highly subsidized in the region and the world. A reform aimed at rationalizing the subsidies regime on gasoline, cooking gas, electricity, and road tolls was launched but has accomplished little so far; renewed emphasis was placed on these efforts in October 2013.

17. Standards improvement and development activities remain among Malaysia's priorities for achieving developed-nation status by 2020. During the period under review the share of compulsory Malaysian standards and standards aligned with international standards continued to rise. Regulatory and institutional improvements were undertaken in the area of SPS. Further emphasis has been placed, *inter alia,* on halal certification and biosafety issues.

18. State involvement in the economy persists in numerous areas (e.g. oil, gas, key strategic utilities, and services) although competition challenges for government-linked companies (GLCs) were intensified due to several developments. Efforts to improve their productivity seem to have borne fruit in some cases. Preferential government procurement procedures and expanded countertrade/offset requirements continue to be used as an instrument of industrial policy to favour locally owned businesses; international tenders are invited only if goods and services are not available locally. GLCs, which are not governed by the public sector's procurement rules and regulations, are encouraged to purchase from locally owned businesses. Malaysia became an observer to the WTO Agreement on Government Procurement in 2012, and efforts were undertaken to improve transparency and "integrity pacts" in its procurement procedures.

19. During the period under review significant changes were brought to the legal and institutional framework governing competition policy, which also covers GLCs, but not certain anti-competitive practices, agreements or activities covered by their individual legislation (e.g. energy and communications). Price and supply controls over essential goods and services were reinforced, while sugar price subsidies were abolished and those on petrol were reduced. Consumer protection was strengthened in several areas (advertisements, personal data protection, credit sales, consumer redress). Substantial progress was made in further improving the regulatory framework of corporate governance by, *inter alia,* raising standards in this area.

20. Malaysia strengthened its intellectual property regime through significant amendments to its patent, industrial designs, copyright and trade mark laws and/or regulations, and expanding its international commitments. Its proactive enforcement approach was intensified with new initiatives (e.g. Basket of Brands (BOB) scheme).

Sectoral Policy Developments

21. The contribution of agriculture (including forestry and fisheries) remains at around one tenth of GDP. However, continuous adoption of new technologies has enhanced its TFP growth, while the self-sufficiency ratio for major agricultural products remained largely stable during the review period. The new agricultural policy supports the development of the agri-food industry with emphasis being placed, *inter alia,* on promoting biotechnology as well as high value agriculture. Malaysia continues to maintain a relatively liberal trade regime for agriculture with generally low applied MFN tariffs averaging 2.9% (WTO definition) in 2013. However, peak non-*ad valorem* tariff rates maintained almost exclusively on certain agricultural products continue to allow for higher tariff protection (*ad valorem* equivalents up to 1,439.2% for alcoholic beverages, tobacco refuse). Tariff-rate quotas related to multilateral agricultural market-access commitments with in-quota rates ranging from zero (round cabbages) to 25%, and out-of-quota rates from 20% to 90% (round cabbages), remain in place. The Government also implements measures to support the domestic processing of certain agricultural products (e.g. through non-automatic export licensing and export duties) as well as to promote exports (e.g. through corporate tax relief); export duties on crude palm oil were considerably reduced to improve its export competitiveness and reduce domestic stocks. Malaysia continues to provide increasing amounts of product-specific support (i.e. price support to paddy rice) and general support (e.g. fertilizer subsidies, and soft loans) mainly focused on rice-related activities. Rice is a strategic crop for which the authorities revised their approach by ensuring the availability, accessibility, and affordability rather than self-sufficiency. It remains the sole item subject to the import monopoly of the firm Padiberas Nasional Berhad (BERNAS), non-automatic import/export licensing, and price and supply controls. Fish production targets have been largely exceeded, despite the use of precautionary measures, such as the limitation on licences issue. A fisheries input control regime and certain resource enhancement and environmental-sustainability measures are in place. Domestic support for fisheries has included additional diesel fuel subsidies (until end May 2011 for trawlers above 70 GRT).

22. The contribution of mining (including fuels) and quarrying to GDP dropped slightly to 10.4% in 2012. Mining products remain subject to relatively high tariff protection, ranging from zero to 50% (portland cement), export licensing, and export taxes, thereby assisting downstream processing.

23. During the review period, efforts were made to reduce Malaysia's dependence on oil and gas and to cope with rising energy demand by increasing the share of renewable sources in the total primary energy supply. However, in spite of these efforts, the contribution of renewable energy remains negligible. Some action was also taken to improve energy efficiency. Energy subsidization for all consumers remains a major and long-standing fiscal, budgetary, developmental, environmental, and thereby political issue. State involvement in the oil, gas and electricity sectors persists, with government-linked company PETRONAS remaining the biggest contributor to the government budget. It allows, *inter alia,* for subsidization of power generators through a government-imposed low natural gas price, a pass-through element that is intended to benefit the end users. Furthermore, electricity tariffs vary depending on the category of users and their consumption, thus allowing for cross-subsidization among different consumer groups; for example, average tariffs for commercial and agricultural activities are higher than those charged to industrial and residential consumers.

24. Whereas manufacturing's share of GDP decreased slightly over the review period, its share of employment remained relatively stable. Manufacturing ranks 3rd behind construction and services in terms of TFP growth. With the notable exception of automotive products, manufacturing remains relatively open to both trade and foreign investment. Since 2009, Malaysia's average applied MFN tariff on imports of industrial products has dropped from 8% to 6.2% (2013) due to nomenclature changes. This level is more than double the average tariff level affecting agricultural products (WTO definition). Preferential treatment for locally produced goods in government procurement contracts, export licensing and export taxes on principal commodities, corporate tax exemptions for exports, and several tax and non-tax incentives for production and trade continue to support manufacturing activities. The automotive sector remains protected by an average applied MFN tariff of 17.3%, the highest of all HS sections, although tariffs on imports from ASEAN member countries were reduced to zero in 2010. Non-tariff measures such as the gazetted price system and the import licensing system of "approved permits" remain in place; the latter should be eliminated in the near future (2015, 2020). In

addition, an array of tax measures are still in use (e.g., high excise duties affecting disproportionately large vehicles, targeted excise duty exemption on sales of "national cars", and reduction on domestically assembled four-wheel-drive vehicles, and enhanced tax exemptions on statutory income from exports), as well as non-tax measures (soft loans and grants) within the framework of the National Automotive Policy.

25. The services sector continues to be a very dynamic segment of the economy, with annual growth averaging 5.9% over 2009-12. In 2012, it accounted for just over 50% of GDP and employment, and attracted the biggest share of the economy's approved investments. The Government has continued to autonomously liberalize foreign equity restrictions in a swathe of services sectors; in 2012 it commenced implementation of partial or complete lifting of foreign equity restrictions in 17 services subsectors, under 6 sectors: professional services; communications services; distribution services; educational services; environmental services; and health-related and social services. Over the review period Malaysia has undertaken comprehensive modernization and streamlining of its financial services legislation. New laws have removed the caps on foreign direct investment in the banking and insurance sectors. The issuing of insurance and banking licences is now based on prudential and the "best interest of Malaysia" criteria. Malaysia is seeking to promote itself as a centre for Islamic finance, health care, and education services, as well as a transportation hub for both air transport and shipping.

Outlook

26. Malaysia's economic fundamentals remain, by and large, sound. Despite its impressive rebound from the global financial crisis, Malaysia's economy remains vulnerable to exogenous shocks to global growth or risk aversion through international trade, commodity prices, and financial channels. Equitable and sustainable growth depends on implementing diversification and improved total factor productivity - enhancing structural reforms especially those aimed at addressing fiscal consolidation, tax reform and expenditure rationalization concerns. These and related reforms would increase the flexibility of the Malaysian economy and its ability to respond to growing external competition.

1 ECONOMIC ENVIRONMENT

1.1 Overview

1.1. Malaysia's trade and investment policies during the period under review have been implemented against a background of strong overall economic performance that reflects pragmatic economic management in the face of large external shocks, with macroeconomic policies being appropriately calibrated to the outlook and risks.[1] The economy experienced significant rebalancing, reflecting surging domestic demand and weak external demand. Total factor productivity has grown more slowly (section 1.2), but Malaysia remains well positioned in terms of ease of doing business (section 2.5.1) and externally competitive although its competitiveness seems to be shifting towards processed commodities and natural gas and away from electrical goods and electronics manufacturing.[2] Malaysia is the 11th leading exporter and importer of goods and commercial services in the Asia-Pacific region. There has been a rise in the share of commodities in its total trade, although manufactures remain predominant.[3] An increasing share of its foreign trade is intra-regional (Asia-Pacific), although its exports remain relatively well diversified.

1.2. Despite Malaysia's strong economic fundamentals and impressive performance during the period under review, there are weaknesses that pose downside risks to its economic outlook. Action is being taken to address these.[4] According to the IMF, endogenous risks relate, *inter alia,* to: elevated housing prices and growing household debt, possibly affecting the financial sector (section 4.7)[5]; slower-than-expected implementation of diversification and productivity-enhancing structural reforms (section 1.4.2); the scarcity of skilled workers; high redundancy costs; and the need to foster technological readiness and greater competition in (final) product markets. Exogenous risks could include shocks to global growth or risk aversion that could impact Malaysia through trade, commodity prices, and financial channels, and could trigger capital flow volatility; nevertheless, the continued strength of intra-ASEAN trade seems to provide some resilience against these risks.

1.2 Recent Economic Performance

1.3. Malaysia's economy recovered rapidly from contraction in 2009 as the drivers of economic growth shifted from export-oriented manufacturing to domestic services (Table 1.1).[6] Between 2009 and 2012 the economy grew at an annual average rate of 4.1%.[7] In 2012 and early 2013, robust domestic demand offset weak external demand and fuelled growth.[8] Private and public investment has been a key driver of the expansion, supported by favourable financing conditions and the catalytic effects of large projects under the Economic Transformation Program (ETP) (section 2.3), particularly in oil, gas, and infrastructure. Consumption growth has also been vigorous (Table 1.1), supported by a strong labour market, credit to households, and government transfers. The robust pace of economic activity is expected to continue in 2013 supported by strong investment growth, supportive fiscal and monetary policies, higher household income due to tight/healthy labour market conditions, and modest improvement in the export sector. On the supply side, all the major economic sectors are expected to record continued expansion supported by the services and manufacturing sectors. The economy is expected to expand between 4.5%

[1] IMF (2013b).

[2] According to the World Economic Forum *Global Competitiveness Report 2013-2014* in 2013 Malaysia ranked 24th (out of 148 economies) up from 25th (out of 144 countries) the previous year. The Institute for Management Development (IMD) *World Competitiveness Yearbook 2013* ranked Malaysia 15th (out of 60 economies) in 2013 compared to 14th position (out of 59 countries) the previous year, ahead of Australia, the United Kingdom, China, Korea (Rep. of), and Japan; Malaysia achieved top ten positions in two of the four factors assessed; Business Efficiency (4th) and Economic Performance (7th) (Malaysia Productivity Corporation online information. Viewed at: http://www.mpc.gov.my/home/?sstr_lang=en&cont=ds&id=7&item=d7&s_item=7i3&t=3). Malaysia Productivity Corporation (2013b); World Bank (2013b); and Gil Sander et al. (2013).

[3] UNESCAP (2012).

[4] IMF (2013b); and Gil Sander et al. (2013).

[5] The Government is putting in place measures to increase the supply of more affordable housing, and the real property gains tax rate was further raised on 1 January 2013 (IMF, 2013b).

[6] World Bank (2010).

[7] Achieving Malaysia's Vision 2020 goal of high-income status requires average growth of 6% during the 10th Malaysia Plan period (section 2.3) (World Bank, 2010).

[8] IMF (2013b); and Gil Sander et al. (2013).

and 5% in 2013; in 2014, in tandem with an improved global economic outlook, the domestic economy is projected to grow at a stronger pace of 5% to 5.5%.[9] Medium-term growth prospects are good in the absence of new external shocks, especially more pronounced changes in commodities prices.

Table 1.1 Selected macroeconomic indicators, 2009-12

	2009	2010	2011	2012
National accounts	(Percentage change, unless otherwise indicated)			
Real GDP (at 2005 prices)	-1.5	7.4	5.1	5.6
Consumption	1.4	6.2	8.6	7.1
Private consumption	0.6	6.9	6.8	7.7
Government consumption	4.9	3.4	15.8	5.1
Gross fixed capital formation	-2.7	11.9	6.2	19.9
Exports of goods and non-factor services	-10.9	11.1	4.6	-0.1
Imports of goods and non-factor services	-12.7	15.6	6.1	4.7
XGS/GDP (%) (at current market price)	91.4	93.3	91.6	87.1
MGS/GDP (%) (at current market price)	71.1	76.3	75.2	75.3
Unemployment rate (%)	3.7	3.3	3.1	3.0
Productivity	(Percentage change)			
Labour productivity	-2.1	4.8	1.8	2.0
Prices and interest rates	(%)			
Inflation (CPI, %age change)	0.6	1.7	3.2	1.6
Fixed 3-months deposit rate	2.08	2.50	2.91	2.98
Savings deposit rate	0.93	0.94	1.08	1.04
Exchange rate				
RM/US$ (annual average)	3.52	3.22	3.06	3.09
Real effective exchange rate (%age change)	-1.6	5.7	-2.1	1.8
Nominal effective exchange rate (%age change)	-1.2	6.7	-1.8	3.0
	(% of GDP, unless otherwise indicated)			
Overall Government balance	-6.7	-5.4	-4.8	-4.5
Current Government balance	0.2	1.0	0.3	0.3
Current revenue	22.3	20.0	21.0	22.1
Tax revenue	14.9	13.7	15.3	16.1
Current expenditure	22.0	19.0	20.6	21.8
Development expenditure, net	6.9	6.4	5.1	4.7
Government total debt (end-period)	50.8	51.1	51.6	53.3
Saving and investment				
Gross national savings	33.4	34.2	34.9	31.9
Gross domestic investment (gross fixed capital formation)	17.8	23.3	23.3	25.8
Savings-investment gap	15.5	10.9	11.6	6.1
External sector				
Current account balance	15.5	10.9	11.6	6.1
Net merchandise trade	19.7	17.2	17.1	13.3
Merchandise exports	77.6	80.4	79.1	74.7
Merchandise imports	57.9	63.3	62.0	61.4
Services balance	0.6	-0.2	-0.7	-1.5
Capital account	-0.0	-0.0	-0.0	0.0
Financial account	-11.2	-2.5	2.6	-2.4
Direct investment	-3.1	-1.8	-1.1	-2.3
Balance-of-payments	1.9	-0.3	10.7	0.4
Merchandise exports (%age change in RM)	-16.5	16.0	9.1	0.5
Merchandise imports (%age change in RM)	-16.2	22.3	8.7	5.4
Service exports (%age change in RM)	-4.7	4.2	7.5	5.8
Service imports (%age change in RM)	-7.4	10.3	12.0	12.1

[9] The *2014 Budget Speech* introducing the Supply Bill (2014), "Strengthening economic resilience, accelerating transformation and fulfilling promises", 25 October 2013. Viewed at: http://www.fmm.org.my/upload/speech.pdf.

	2009	2010	2011	2012
Gross official reserves (US$ billion, end-period)	94.0	102.0	138.4	138.3
in months of following year's imports	6.5	5.9	7.2	7.2[a]
Total external debt (US$ billion; end-period)	68.0	73.6	81.0	82.6
of which short term	22.6	25.8	32.7	30.4
Debt service ratio[b]	6.5	7.6	10.4	10.1

a Based on 2012 import data.
b Per cent of exports of goods and services.

Source: Bank Negara Malaysia online information; data provided by the Malaysian authorities; and IMF, International Financial Statistics.

1.4. Since 2009, changes in the overall sectoral pattern of Malaysia's GDP and employment have been relatively minor, with services accounting for about one half of economic activity followed by manufacturing at about one quarter (Table 1.2, section 4.7). From 2008 to 2012, total factor productivity (TFP) growth slowed to 0.76% (2.12% in 2000-07) and its contribution to GDP growth eased to 18% (38% in 2000-07) due to slower output growth, particularly weaker export performance affected by the global economic slowdown.[10] The deterioration in TFP growth has been most pronounced in the mining sector (section 4.4). A recent revealed comparative advantage analysis shows that Malaysia's competitiveness is moving towards processed commodities and natural gas and away from electrical and electronics (E&E).[11] Malaysia's participation in Global Value Chains (GVCs) is quite high as compared to other top exporting economies, and its domestic value added in exports has risen considerably (sections 2.3 and 4.6).[12]

Table 1.2 Basic economic and social indicators, 2009-12

	2009	2010	2011	2012
Real GDP at market price (US$ billion, 2005 prices)	178,710.6	210,069.8	232,467.4	243,288.9
Current GDP at market price (US$ billion)	202,251.4	247,533.5	289,037.6	304,725.7
GDP per capita at current market price (US$)	7,202.2	8,658.3	9,979.2	10,387.1
	(Annual percentage change)			
GDP by economic activity at constant 2005 prices				
Agriculture	0.1	2.4	5.8	1.0
Mining and quarrying	-6.5	-0.3	-5.5	1.4
Manufacturing	-9.0	11.9	4.7	4.8
Construction	6.2	11.4	4.7	18.1
Services	2.9	7.4	7.0	6.4
Electricity, gas, and water	2.0	7.7	3.4	4.3
Wholesale and retail trade	1.7	8.3	7.1	4.8
Restaurants and hotels	4.5	7.0	6.0	5.4
Transport, storage, and communication	1.3	8.4	6.5	7.0
Finance and insurance	4.4	8.2	6.8	7.8
Real estate and business activities	3.6	7.6	5.3	7.2
Government services	3.4	5.9	12.3	9.5
Other services	3.8	4.4	4.9	3.9
	(%)			
GDP by economic activities at current prices				
Agriculture	9.2	10.4	11.8	10.1
Mining and quarrying	11.4	10.9	10.4	10.4

[10] The authorities indicated that in tandem with the disruption to domestic economic growth in 2009, the overall performance of the TFP shrank; in 2009, the TFP growth shrank by 4.8%, the first contraction since 2001. According to the Malaysia Productivity Corporation, during 2008-12 the country's TFP growth surpassed that of Indonesia, Thailand, Japan, the United States, and Australia (Malaysia Productivity Corporation, 2013b).
[11] The revealed comparative advantage is an index used for calculating the relative advantage or disadvantage of a certain country in a certain class of goods or services as evidenced by trade flows (Gil Sander et al., 2013).
[12] For more information on this matter see UNCTAD (2013b); and EIU (2012a).

	2009	2010	2011	2012
Manufacturing	23.8	24.5	24.3	24.2
Construction	3.3	3.4	3.4	3.9
Services	51.3	49.9	49.1	50.4
Electricity, gas, and water	2.5	2.4	2.3	2.3
Wholesale and retail trade	13.5	13.4	13.6	13.6
Restaurants and hotels	2.7	2.7	2.7	2.7
Transport, storage, and communication	6.6	6.4	6.3	6.3
Finance and insurance	8.1	7.7	7.3	7.5
Real estate and business activities	5.2	5.0	4.9	5.0
Government services	7.9	7.5	7.7	8.5
Other services	4.9	4.7	4.5	4.4
Other (import duties)	1.0	1.0	1.0	1.1
Share of sector in total employment				
Agriculture	11.9	11.6	11.3	11.1
Mining and quarrying	0.4	0.4	0.3	0.3
Manufacturing	27.6	28.3	28.6	28.9
Construction	6.6	6.4	6.3	6.2
Services	53.5	53.3	53.4	53.5
Electricity, gas and water	0.8	0.8	0.8	0.8
Wholesale and retail trade; hotels and restaurants	18.4	18.7	19.1	19.5
Transport, storage, and communication	5.8	5.7	5.8	5.8
Finance, insurance, real estate, and business	7.1	7.0	7.0	6.9
Government services	10.7	10.4	10.2	10.0
Other services	10.6	10.5	10.5	10.5

Source: Bank Negara Malaysia online information; data provided by the Malaysian authorities; and IMF, International Financial Statistics.

1.5. Malaysia's already low rate of unemployment further declined to 3% in 2012 and 3.1% in 2013 (Table 1.1). In the first quarter of 2013, registered foreign workers numbered 2.1 million (about 16% of total employment, section 1.4.2.5), and had been mostly illegal workers. The informal sector, which comprised 1 million workers (8.2% of total employment) in 2012, helps to keep official unemployment rates low by absorbing unemployed persons, and is estimated to contribute as much as 13% of GDP, a contribution seemingly taken into account in the compilation of GDP; in 2012, the services sector recorded the highest number of informal workers (59.4%).[13]

1.6. Inflation rose sharply from 2009 to 2011 due to temporary supply-side and cost-related factors, including higher energy and commodity prices, upward adjustments to administered prices, and disruptions to domestic food supplies, but in 2012 it eased back, slightly below its 2010 level of 1.7%, amongst the lowest in the Asia-Pacific region (Table 1.1). Explanatory factors were benign supply-side conditions including a decline in domestic fuel prices and moderation in food prices, despite domestic demand pressures such as strong credit growth; a positive output gap; and rising wages in domestically oriented industries.[14] The Government's network of price controls (including subsidies) for major household goods (food and non-alcoholic beverages), fuels, and public utilities play a major part in keeping inflation rates low (sections 3.4.2.2 and 3.4.4.2). More than 30% of the goods basket in Malaysia's Consumer Price Index consists of food and non-alcoholic beverages; housing, water, electricity, gas, and other fuels account for 22.6% of total weight, and transport for 14.9%. This system has shielded both households and firms from realizing the full price effect of these goods, thus protecting their purchasing power.[15] Since 2010, headline inflation has not averaged higher than the upper bound of the forecast range. The expected strengthening of the ringgit against the U.S. dollar, together with moderating global fuel and food prices, should help to contain inflationary pressures in 2013.[16] According to the authorities, headline inflation was expected to remain modest in 2013, most likely to average the lower end of the 2%-3% forecast range announced earlier in the year. However, the possibility of a gradual withdrawal of fuel and food subsidies and the planned adoption of a goods and services tax (GST) (section 1.4.2.1) could temporarily put upward pressure on consumer prices.

[13] Department of Statistics (2013); Baharudin et al. (2011).
[14] IMF (2012 and 2013b); and Gil Sander et al. (2013).
[15] Gil Sander et al. (2013).
[16] EIU (2013a).

1.3 Balance of payments

1.7. Despite a significant narrowing of Malaysia's current account surplus in recent years, reflecting surging domestic demand, weak external demand, and strong imports of capital goods (Table 1.3), according to the IMF, Malaysia's external position is stronger than warranted by medium-term fundamentals and desirable policies. It reflects structural factors, including insufficient social safety nets, investment bottlenecks, and large exports of non-renewable resources (e.g. hydrocarbons).[17] Between 2009 and 2012, the trade surplus as a share of GDP moved from 19.7% to 13.3% (Tables 1.1 and 1.3).

Table 1.3 Balance of payments, 2009-12

(RM million)

	2009	2010	2011	2012
Current account balance	110,727	87,183	102,426	57,348
Goods and services balance	144,529	135,306	145,293	111,611
Goods balance	140,355	136,751	151,565	125,614
Exports	552,920	641,135	699,591	703,152
Imports	412,565	504,384	548,026	577,538
Services balance	4,173	-1,444	-6,272	-14,003
Exports	98,751	102,900	110,630	117,007
Transportation	16,472	15,696	15,482	13,665
Travel	54,995	58,350	60,146	62,548
Imports	94,578	104,344	116,902	131,010
Transportation	32,290	38,087	40,546	41,677
Travel	22,827	26,733	31,187	35,654
Income balance	-14,215	-26,333	-21,806	-36,024
Compensation of employees	-1,463	-2,082	-2,331	-3,040
Investment income	-12,752	-24,251	-19,475	-32,985
Current transfers (net)	-19,587	-21,790	-21,061	-18,239
Capital and financial account	-80,224	-20,057	23,132	-22,878
Capital account (net)	-51	-111	-133	159
Financial account (net)	-80,173	-19,946	23,265	-23,037
Direct investment	-22,315	-13,977	-9,337	-21,748
Malaysia's direct investment abroad	-27,436	-43,160	-46,662	-52,864
Direct investment in Malaysia	5,121	29,183	37,325	31,116
Portfolio investment	-1,781	48,467	26,139	58,388
Assets	-22,177	-23,176	-18,522	-21,455
Liabilities	20,396	71,643	44,661	79,843
Financial derivatives	2,369	-698	-76	954
Other investment	-58,447	-53,738	6,539	-60,632
Public sector	-182	119	-1,337	-1,702
Assets	3,366	2,878	1,430	1,882
Liabilities	3,547	2,759	2,767	3,584
Private sector	-58,265	-53,856	7,876	-58,930
Net errors and omissions	-16,671	-69,754	-30,876	-30,597
Overall balance of payments	13,831	-2,628	94,682	3,873

Source: Department of Statistics online information. Viewed at: http://www.statistics.gov.my/portal/index.php?lang=en [24.07.13].

1.8. According to the IMF, Malaysia's international reserves remain adequate (Table 1.1).[18] As of 15 November 2013, they were US$136.7 billion (9.7 months of imports, 3.7 times the short-term external debt).[19]

1.9. Malaysia's external debt (short-term) rose from US$22.6 billion (32.6% of GDP) in 2009 to a peak of US$32.7 billion (29.1% of GDP) in 2011 (Table 1.1). Since then it has declined slightly but rose to US$36 billion (28.8% of GDP) by the first half of 2013; the authorities indicated that this

[17] IMF (2013b).
[18] IMF (2013b).
[19] Bank Negara Malaysia online data. Viewed at: http://www.bnm.gov.my/files/publication/msb/2013/6/i_en.pdf.

rise reflected higher medium- and long-term external debt following a net drawdown of external borrowing by the non-bank private sector for investment purposes as well as higher short-term external debt arising from net drawdown of interbank borrowing, as well as the weakening of the ringgit against regional and major currencies. Nevertheless, according to the IMF, it is expected to remain on a steady downward trend over the medium-term reflecting sustained current account surpluses and some shift towards domestic debt.[20] The debt-service-to-exports ratio has increased steadily since 2009, but remains comparatively low (Table 1.1).

1.4 Key Policy Developments

1.4.1 Macroeconomic policies

1.10. According to the IMF, Bank Negara Malaysia (BNM)'s slightly accommodative monetary policy strikes the right balance between supporting growth and keeping inflation in check.[21] As one of the first central banks in the region to start a policy tightening cycle after the 2008−09 global crisis, BNM has kept its benchmark interest rate at 3% since May 2011, resisting a renewed trend among regional peers toward lowering rates. A number of macro-prudential regulations (section 4.7) were adopted in the course of 2010 and 2013 to curb the rise in private sector credit, in particular to alleviate household debt, and to prevent the build-up of risks to financial stability.[22]

1.11. Malaysia operates a managed float of the ringgit against an undisclosed trade-weighted basket of currencies.[23] In 2011 and 2012, the real effective exchange rate of the ringgit fluctuated narrowly after strong appreciation between September 2009 and April 2010.[24] Malaysia has been exposed to volatile capital flows, a standard feature of emerging markets, and this is likely to continue in the near term. Malaysia retains multiple layers of buffer against volatile capital flows. Its policy response so far, characterized by two-way exchange rate flexibility while smoothing excessive exchange rate fluctuations, has been successful. Its sound banking system and liquid capital markets facilitate the absorption of flows, while a stable core of domestic institutional investors and comfortable levels of official international reserves provide additional buffers against any volatility in external demand for domestic securities.[25]

1.12. In line with various capital markets and financial-sector development plans (section 4.7.2.1), Malaysia has relaxed or abolished several foreign-exchange policies.[26] Since 18 August 2010, exporters and importers have been free to determine the currency of settlement (except the currency of Israel) for international trade in goods and services. Since January 2012, licensed onshore banks have been permitted to trade one foreign currency directly against another with any resident. As from June 2013, non-residents have been permitted to undertake anticipatory hedging involving ringgit for current account transactions with onshore banks (section 4.7.2.2). The ban on offshore trading of the ringgit was the last substantial measure of the September 1998 exchange controls remaining in place in April 2013.[27]

1.13. Malaysia's fiscal deficit declined gradually from 6.7% of GDP in 2009 to 4.5% in 2012 (Table 1.1). In 2012, spending exceeded original budget projections by about 2% of GDP, particularly in wages, pensions, fuel subsidies, and transfers to target groups; however, this overspending was offset by higher-than-targeted revenues, lower development expenditures, and a higher-than-expected nominal GDP figure.[28] The 2013 and 2014 Budgets envisage a further

[20] IMF (2013b).

[21] Should downside risks to the growth outlook materialize, BNM has ample room to cut rates and allow the exchange rate to act as a shock absorber. However, the Government's relatively high debt level affords limited space for a fiscal response in a downside scenario (IMF, 2013b).

[22] Gil Sander et al. (2013).

[23] IMF (2013b).

[24] The IMF's Consultative Group on Exchange Rate Issues (CGER) – and External Balance Assessment (EBA)-based estimates suggest that the REER is undervalued relative to the level consistent with fundamentals and desirable policies, but these methodologies do not appear to fully capture Malaysia's structural characteristics (IMF, 2013b).

[25] IMF (2013b); and Gil Sander et al. (2013).

[26] EIU (2012a).

[27] The Malaysian authorities view remaining exchange control regulations as prudential in nature and necessary to ensure the availability of adequate information on the settlement of payments and receipts as part of the monitoring mechanism on capital flows (IMF, 2013b).

[28] IMF (2013b); and Gil Sander et al. (2013).

decline in the fiscal deficit to 4% and 3.5% of GDP respectively, consistent with the Government's plan to reduce its deficit to 3% of GDP by 2015. Government debt is estimated to have risen to 53.3% of GDP at end 2012, just below the Government's self-imposed ceiling of 55%, reflecting, *inter alia*, declining growth and oil prices. The authorities are committed to bringing debt down to about 48% of GDP by 2017, through their fiscal consolidation plan (section 1.4.2.1).

1.4.2 Structural policies

1.14. According to the IMF, the sustained implementation of broad structural reforms is a prerequisite for turning Malaysia into a high income nation by 2020.[29]

1.4.2.1 Fiscal reform/consolidation

1.15. During the period under review, tax reform has involved: the modernization and streamlining of the petroleum income tax system on upstream petroleum companies (2010); the reduction of top marginal individual income tax rate (2010, 2013); the re-imposition (2010) and increase (2012, 2013) of the real property (estate) gains tax (RPGT); the increase of the service tax rate (2011); the reduction of income tax rates on cooperative societies (2013); and the introduction of income tax treatment for limited liability partnership and business trusts. Malaysia made paying taxes costlier for firms by reintroducing the RPGT but made tax compliance easier and less costly by improving electronic tax payment systems and the availability of appropriate and easier-access software.[30] To modernize and streamline the tax administration system, as from 2010 the self-assessment system was implemented for companies, sole proprietors, partnerships, cooperatives, and salaried groups, and income tax assessment has been on a current year basis.[31]

1.16. The authorities are committed to fiscal consolidation, tax reform and expenditure rationalization.[32] Several key initiatives have been implemented to improve public finances, including the establishment of a Fiscal Policy Committee (FPC) (mid-June 2013) supported by a Fiscal Policy Office within the Ministry of Finance. Subsidy rationalization (sections 3.4.2.2 and 4.5) has resumed since the last price hike in December 2010, by reducing fuel subsidy by RM 0.20 per litre (as from 3 September 2013), and abolishing the subsidy on sugar (as from 26 October 2013), while cash transfers were given to targeted low-income and vulnerable groups. Ongoing measures to rationalize spending, include the optimal use of Government assets; intensive use of information technology (IT) to deliver public services; controlling the size of the civil service; cutting back on non-critical spending; and promoting greater inter-agency cooperation to implement programmes. Measures to enhance revenue collection continue to focus on broadening the tax base, improving tax administration, promoting higher compliance, and intensifying tax education. Under the 2014 Budget the long-awaited Goods and Services Tax (GST) is to be implemented in April 2015 at 6%, thus broadening the tax base, promoting overall tax compliance, and bringing in the informal sector (section 1.2) into the tax; the sales tax and service tax are to be abolished.[33] Audits, enforcement, and investigations are being intensified. The Government has been vigilant against tax evasion, under-declaration of customs duties, and money laundering.

1.17. To address long-term spending pressures the authorities intend to undertake reforms to the public pension scheme, to housing and student loan programmes, and to the civil service. According to the IMF, fiscal consolidation must be underpinned by a concrete plan, taking account, *inter alia,* of the potential long-term decline in oil-related revenue and increases in age-related government spending. It should be complemented by reforms to: broaden the revenue base away from volatile oil- and gas-related receipts; and boost the efficiency and inclusiveness of government spending, including through continued gradual reform of universal fuel subsidies, accompanied by targeted support measures for vulnerable groups.[34] At the same time the IMF

[29] IMF (2013b).

[30] According to the World Bank, in 2012, Malaysia ranked 15th (out of 185 economies) in paying taxes, up from 25th the previous year (World Bank, 2013b).

[31] MIDA online information. Viewed at: http://www.mida.gov.my/env3/index.php?page=taxation.

[32] IMF (2013b).

[33] The *2014 Budget Speech* introducing the Supply Bill (2014), "Strengthening economic resilience, accelerating transformation and fulfilling promises", 25 October 2013. Viewed at: http://www.fmm.org.my/upload/speech.pdf; and Treasury online information. Viewed at: www.treasury.gov.my/data/er/chapter4.pdf.

[34] IMF (2013b).

underlines the need for streamlining fiscal incentives for investment, with their budgetary costs made more transparent.

1.4.2.2 Privatization

1.18. Despite persistent wide-ranging direct and indirect state involvement in the economy, little privatization action was undertaken during the period under review, although there has been increased interest in revamping efforts in this area (sections 3.4.3, 4.2.1, 4.5.2, 4.6, 4.6.1, and 4.7). Emphasis remains placed on the Economic Transformation Program (ETP) of Government Linked Corporations (GLCs), which are now subject to more intensive competition as a result of the recent liberalization of some services sectors (sections 2.3 and 4.7), the move towards free-trade agreements (section 2.4.2), and the entry into force of new competition legislation (sections 1.4.2.3 and 3.4.4).

1.4.2.3 Competition policy

1.19. Despite passing new comprehensive legislation (2010 Competition Act) and recent initiatives to improve the competitive environment, the Government remains accommodating of market dominance of certain corporations including those in energy and communications, which are exempt from the scope of the new legal framework (section 3.4.4).[35] To assure new investors and maintain orderly development and growth in the country's manufacturing sector, the Industrial Co-ordination Act 1975 (sections 2.5.1 and 3.4.4.1) requires manufacturing companies of a certain size to apply for a manufacturing licence, for approval by the Ministry of International Trade and Industry (MITI), thus possibly avoiding excessive and unhealthy competition in the same area.[36]

1.4.2.4 Corporate governance and anti-corruption action

1.20. Malaysia, a regional leader in corporate governance, undertook regulatory, institutional, and other initiatives (e.g. the Corporate Governance Blueprint, Malaysian Code on Corporate Governance 2012) to improve its corporate governance environment during the period under review (section 3.4.5); nevertheless, reform still seems to be required in certain areas, including encouraging companies to demonstrate a strong commitment to high levels of transparency rather than adhering only to minimum legal requirements, as suggested by recent World Bank and Asian Development Bank reports.[37]

1.21. Lack of transparency, and thus lack of public accountability, creates scope for administrative discretion and therefore corruption (section 2.5.1). According to World Bank estimates, corruption costs Malaysia approximately RM 10 billion annually, equivalent to 1%-2% of annual GDP; according to Transparency International's Bribery Survey 2011, 50% of the surveyed companies lost business or procurement contracts due to competitor corruption.[38] Malaysia's anti-corruption strategy forms an integral part of the country's general policy objectives, which are embodied in its concept of, *inter alia,* "Vision 2020" and the Government Transformation Programme (GTP) (section 2.3).[39] In recent years, business organizations and the Government have introduced corporate codes of conduct to address anti-corruption issues (e.g. 2011 anti-corruption principles,

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[35] Commercial activities governed under the Energy Commission Act 2001 and the Communications and Multimedia Act 1998 are exempt from the new competition regime as these Acts already contain specific competition regulations and policies.

[36] The authorities indicated that the objective of the Industrial Co-ordination Act 1975 is not to eliminate competition within established industries.

[37] Asian Development Bank (2013).

[38] Transparency International online information. Viewed at: http://www.transparency.org/research/bps2011. According to the Heritage Foundation, it seems that the country's perceived level of corruption has increased, and there is no sign of effective anti-corruption measures (Heritage Foundation online information, "2013 Index of Economic Freedom - Malaysia factsheet". Viewed at: http://www.heritage.org/index/country/malaysia; and Business Anti-Corruption Portal online information, "Malaysia Country Profile". Viewed at: http://www.business-anti-corruption.com/country-profiles/east-asia-the-pacific/malaysia/general-information/#c78142).

[39] Malaysia signed the United Nations Convention against Corruption on 9 December 2003 and ratified it on 24 September 2008 (http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=XVIII-14&chapter=18&lang=en#EndDec).

the corporate liability clause, the 2011 Corporate Integrity Pledge[40], the Whistleblower Protection Act). The Government has recognized red tape as an obstacle to doing business and a source of opportunities for corruption to occur; to address the issue it, *inter alia,* simplified compliance with government administrative requirements (e.g. permits, regulations, reporting), relaxed regulations on property investments by foreign investors, and released a guidebook on registering property. To combat grand corruption, the GTP aims to complete all corruption cases within one year; the target is to have 85%, 90%, and 95% of all corruption cases tried over each year between 2013 and 2016.[41]

1.4.2.5 Labour market policies

1.22. In July 2011, a new scheme to register foreign workers (this category excludes expatriates) residing in Malaysia, the 6P Program, was launched.[42] In line with similar developments in the region, a minimum wage (benefiting some 3.2 million workers) aimed at boosting wages of low skilled workers and enhancing productivity has been in effect since January 2013 (fully implemented since 2014, blanket deferment for SMEs until end 2013).[43] A Private Retirement Scheme (PRS), an alternative to supplement the mandatory Employees Provident Fund (EPF), was introduced in July 2012 to address the gaps in retirement savings and provide an alternative platform for their accumulation to complement the mandatory system. An Unemployment Insurance System was the subject of an International Labour Organisation (ILO) study, which was finalized in 2013; the authorities indicated that many areas covered by the study need further consultations with stakeholders. Malaysia remains one of the world's largest importers of foreign labour, which keeps labour costs in check[44]; the Government wishes to reduce reliance on foreign labour but has devised few plans to do this without harming the country's economic expansion.[45] To address persisting labour market rigidity seemingly hampering dynamic job growth[46], and to become a high income advanced nation by 2020, the authorities established Talent Corp (1 January 2011) and Talent Roadmap 2020 (24 April 2012). These are aimed at retaining highly qualified expatriates by easing the qualifications for a residency pass (a 10-year renewable multiple entry visa that enables top foreign talent to continue to reside and work in Malaysia) since April 2011; a Returning Expert Programme (REP) has encouraged returning qualified top Malaysian professionals by offering tax incentives since 2001.[47] Furthermore, the retirement age for private sector workers was raised from 55 to 60 as from 1 July 2013.

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[40] As of April 2013, 150 companies (including Siemens Malaysia Sdn Bhd) had signed the pledge since its implementation (Business Anti-Corruption Portal online information, "Malaysia Country Profile". Viewed at: http://www.business-anti-corruption.com/country-profiles/east-asia-the-pacific/malaysia/general-information/#c78142; and Transparency International online information. Viewed at: http://www.transparency.org/country#MYS).

[41] Transparency International online information. Viewed at: http://www.transparency.org/country#MYS.

[42] The registration process for foreign workers under the 6P Program was completed on 31 August 2011. A total of 2,320,034 foreign workers (legal and illegal) were registered of which 1,303,126 (56%) were illegal (EIU, 2012a).

[43] According to the IMF, preliminary analyses suggest that it is likely to have a limited impact on inflation and unemployment. While the minimum wage should provide incentives for affected firms to shift to more capital-intensive production technologies, a sustained increase in productivity would require implementing complementary reforms (sections 1.1 and 1.4.2) (IMF, 2013b).

[44] They are engaged mainly in the manufacturing, plantation, and construction sectors, and as domestic helpers (EIU, 2012a; and Gil Sander et al. (2013).

[45] Measures taken to reduce dependency on foreign workers include the introduction of a minimum wage, priority given to the locals through job advertisement in JobsMalaysia, extension of the retirement age to prolong the career of local workers, and the establishment of training institutes in order to increase the number of local skilled workers by 50% by 2020.

[46] The expanding economy and the shift in production to higher-value-added products and more-sophisticated processes have led to more demand for skilled labour, which is often in short supply. National affirmative-action guidelines for *bumiputeras* restrict recruitment, even if they are not strictly enforced (EIU, 2012a).

[47] These returning Malaysian professionals (degree holders with at least ten years of relevant experience), mainly in finance and accounting, engineering, oil and gas, healthcare, and information and communication technology (ICT), are eligible for a ten-year residence pass and a flat income-tax rate of 15% for five years (EIU, 2012a; and Talent Corp online information. Viewed at: http://www.talentcorp.com.my/).

1.5 Composition and Pattern of Trade

1.23. The openness of Malaysia's economy is such that during the period under review its dependence on foreign trade has remained high though characterized by a rising trend in imports and a drop in exports, depending on endogenous and exogenous economic developments (sections 1.1 and 1.2). The ratios of exports and imports of goods and services to GDP were 87.1% and 75.3% in 2012 respectively, compared with 91.4% and 71.1% in 2009 (Table 1.1). Trade in services, which remains a minor component of Malaysia's foreign trade, accounted for 16.2% of total trade in goods and services in 2012, virtually the same as in 2009 (Tables 1.1 and 1.3, and section 4.7).

1.24. A shift in the composition of merchandise trade reflects domestic economic developments leading, *inter alia,* to a rise in the share of commodities.[48] Manufacturing (mainly office machines and telecommunication equipment) and mining remain Malaysia's main exports. Nevertheless, the share of manufactured products dropped from 69.6% in 2009 to 61.6% in 2012 (Chart 1.1), while the share of mining (mainly fuels) rose from 16.3% to 22.7%. Mining's share of imports also rose, while the share of manufactured products dropped (Chart 1.1).

1.25. The direction of merchandise trade remains relatively diversified and oriented towards Asia, Malaysia's main supplier and market. Asia, being the world's fastest growing consumer market with rising income and a growing middle class, has propped up intra-regional and global trade in recent years. Complementarities among economies in ASEAN, with increasing trends towards vertical specialization, accelerated trade and investment initiatives among countries of the region. In addition, regional and bilateral free-trade agreements (FTAs) have facilitated trade and investments across Asia to support growth among partner countries. During the review period there has been a minor shift away from the markets of the EU and the United States, towards Singapore, China, and Japan which were the main individual export destinations for Malaysian products in 2012 (Chart 1.2). The shares of China and Singapore, Malaysia's two major merchandise suppliers as of 2012, in total imports rose, while those of Japan, the EU, and the United States dropped (Chart 1.2). Malaysia's trade with ASEAN partners covers more than 25% of its international trade making intraregional demand an important driver of Malaysian growth, alongside global demand, global financial shocks, and commodity price movements.[49] It is projected that upon implementation of the Trans-Pacific Partnership (TPP) Agreement, Malaysia's trade with TPP signatories will be boosted by 76.3%; this calculation includes access to the emerging Latin American markets with which Malaysia has still to conclude an FTA (Mexico and Peru).

[48] In 2010, Malaysia's exports in terms of technological sophistication were 30% resource-based, 30% sophisticated manufacturing, 15% mid-level manufacturing, 10% low tech manufacturing, and 5% knowledge-based services (UNCTAD, 2013b).

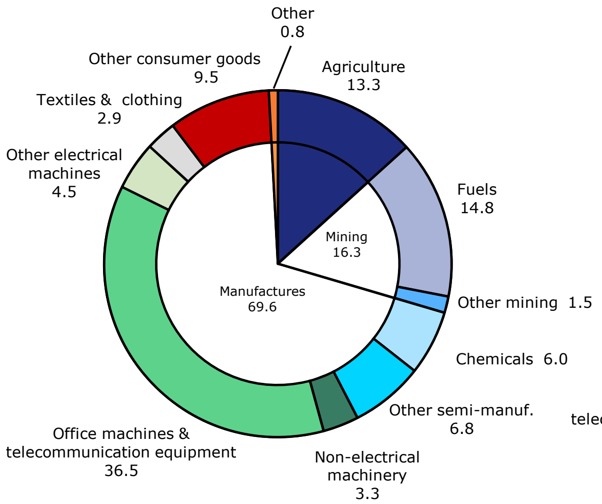
[49] IMF (2013b).

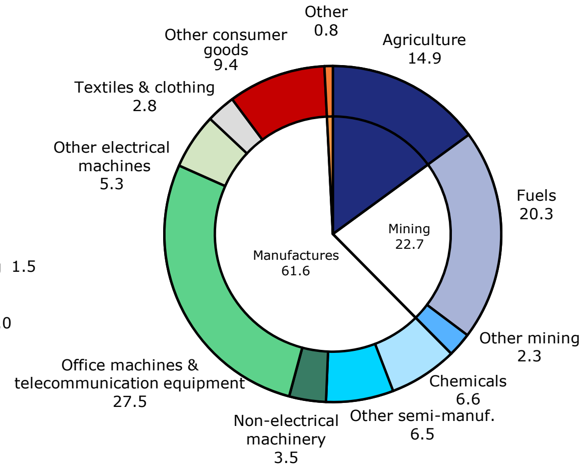
Chart 1.1 Product composition of merchandise trade, 2009 and 2012

Per cent

2009	2012

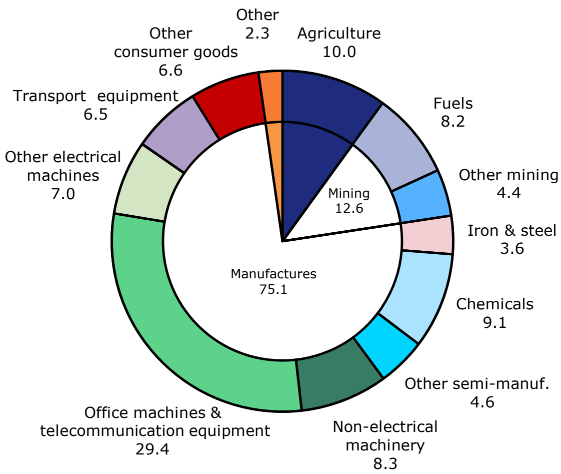
(a) Exports (f.o.b.)

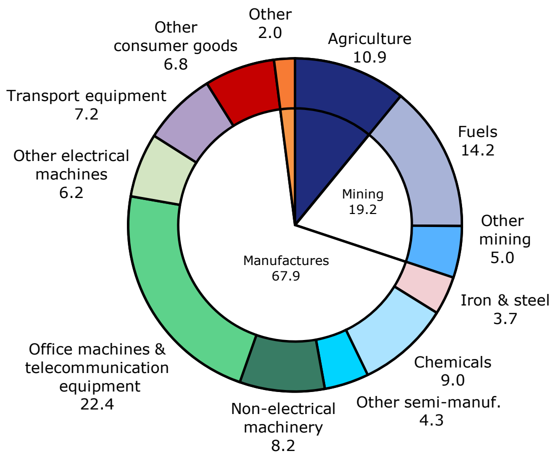




Total: US$157.2 billion **Total: US$227.3 billion**

(b) Imports (c.i.f.)





Total: US$123.6 billion **Total: US$196.4 billion**

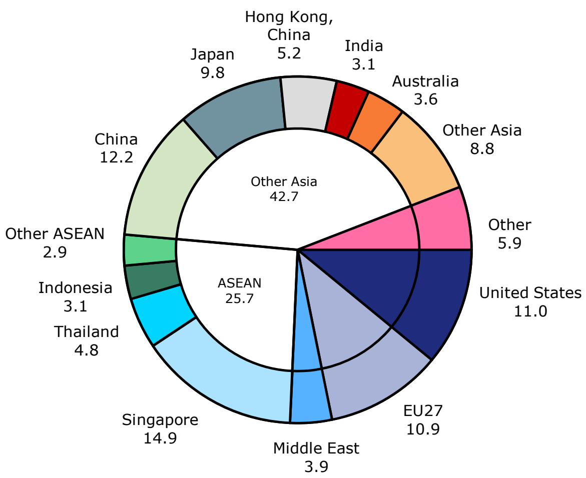
Source: UNSD, Comtrade database (SITC Rev.3).

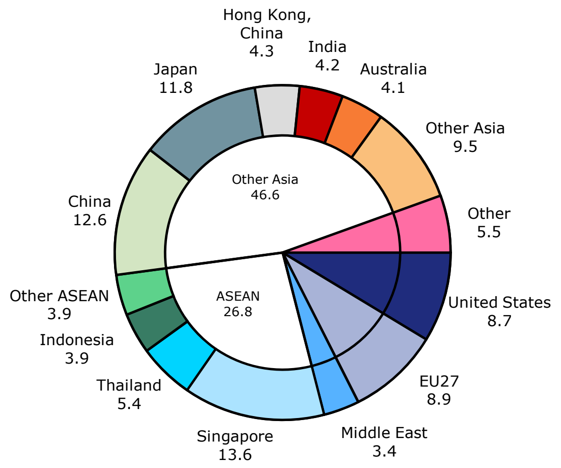
Chart 1.2 Direction of merchandise trade, 2009 and 2012

Per cent

2009 | **2012**

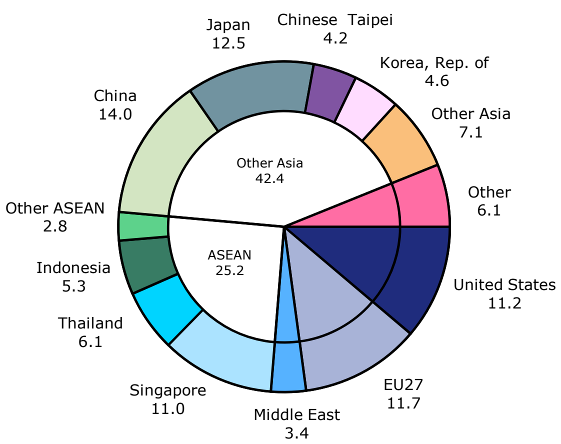
(a) Exports (f.o.b.)

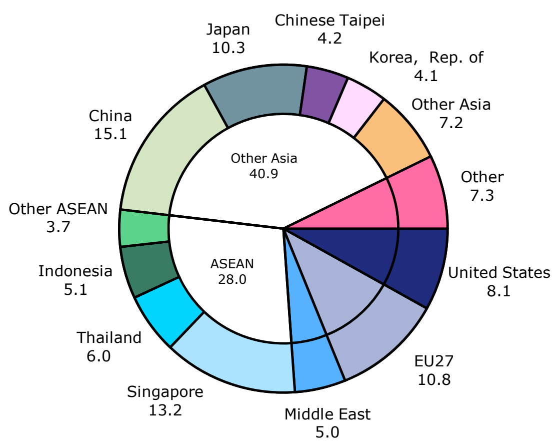




Total: US$157.2 billion | **Total: US$227.3 billion**

(b) Imports (c.i.f.)





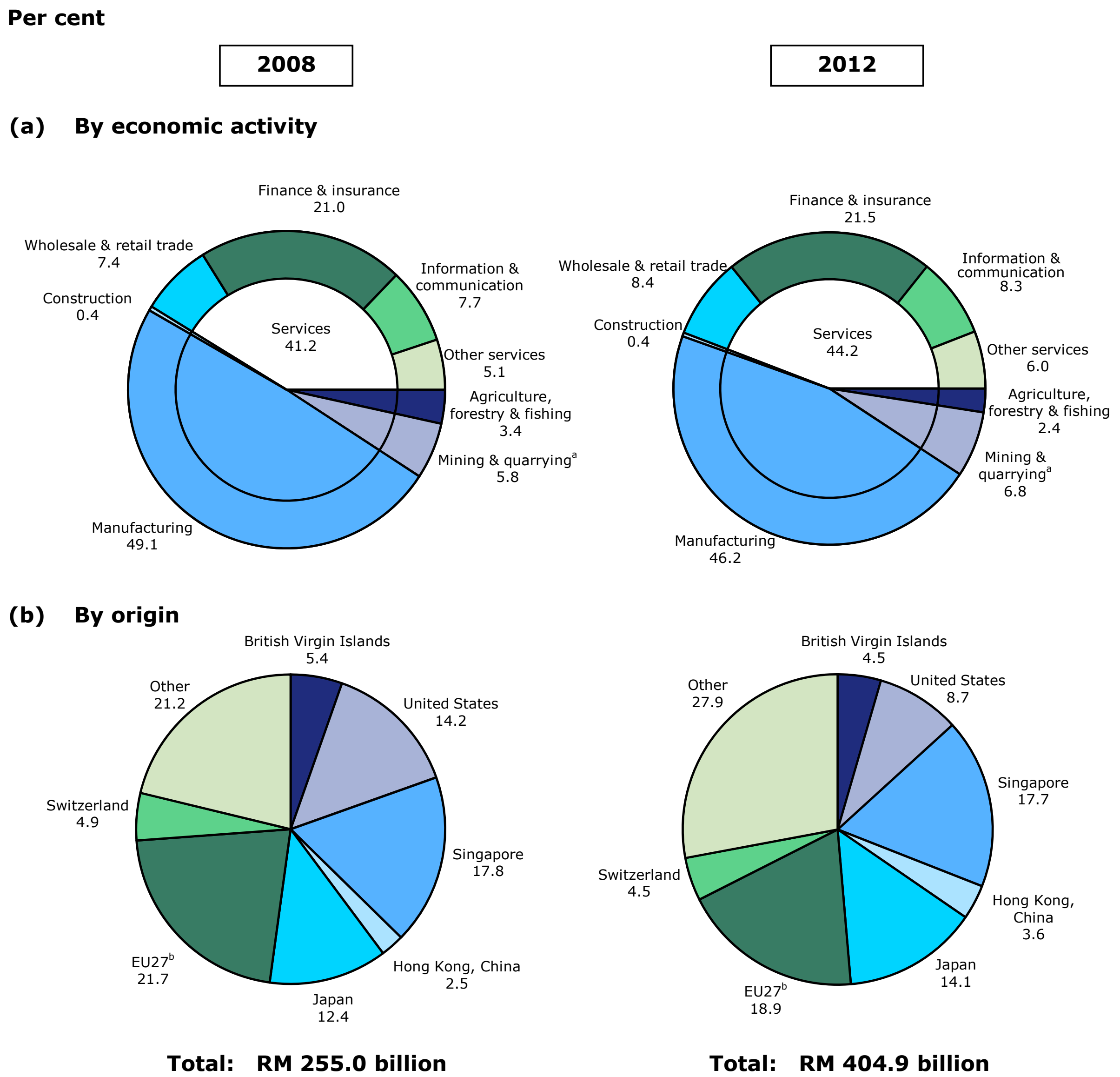
Total: US$123.6 billion | **Total: US$196.4 billion**

Source: UNSD, Comtrade database.

1.6 Trends and Patterns in Foreign Direct Investment

1.26. Following government efforts to encourage foreign direct investment (FDI) in the services sector (sections 2.3, 2.4, 2.5, and 4.7), between 2009 and 2012, FDI inflows peaked to US$12.2 billion in 2011, dropping to US$10.1 billion in 2012 reflecting the uncertain global economic outlook and the diminishing appeal of Malaysia as a base for labour-intensive industries.[50] As a result Malaysia's share of Asia's total FDI inflows rose from 0.5% to 2.5% (2012).[51] Between 2008 and 2012, its FDI stock rose by 58.8%, and continued to be directed mainly to manufacturing and services activities (Chart 1.3). The EU and Singapore remain the main FDI stockholders, followed by Japan and the United States. In 2013, Malaysia ranked 16th (19th in 2012) among top prospective host economies for transnational corporations.[52] Further plans to relax foreign ownership restrictions in 2012-16, and progress in the Trans-Pacific Partnership (TPP) Agreement negotiations (section 2.4.2.1) are, *inter alia,* expected to help increase FDI inflows, further aiding the country in achieving its stated goal of advanced economy status by 2020. For 2013, FDI was expected to be sustained as a result of larger inflows compared to the previous year; as of the first half of 2013 FDI had been largely channelled into manufacturing (44% of total net inflows) and oil and gas (30%), while the financial services sector (18%) also continued to receive considerable inflows as well.

Chart 1.3 Foreign direct investment stock, 2008 and 2012



a Including oil and gas.
b Only Denmark, France, Germany, Luxembourg, the Netherlands, and the United Kingdom.

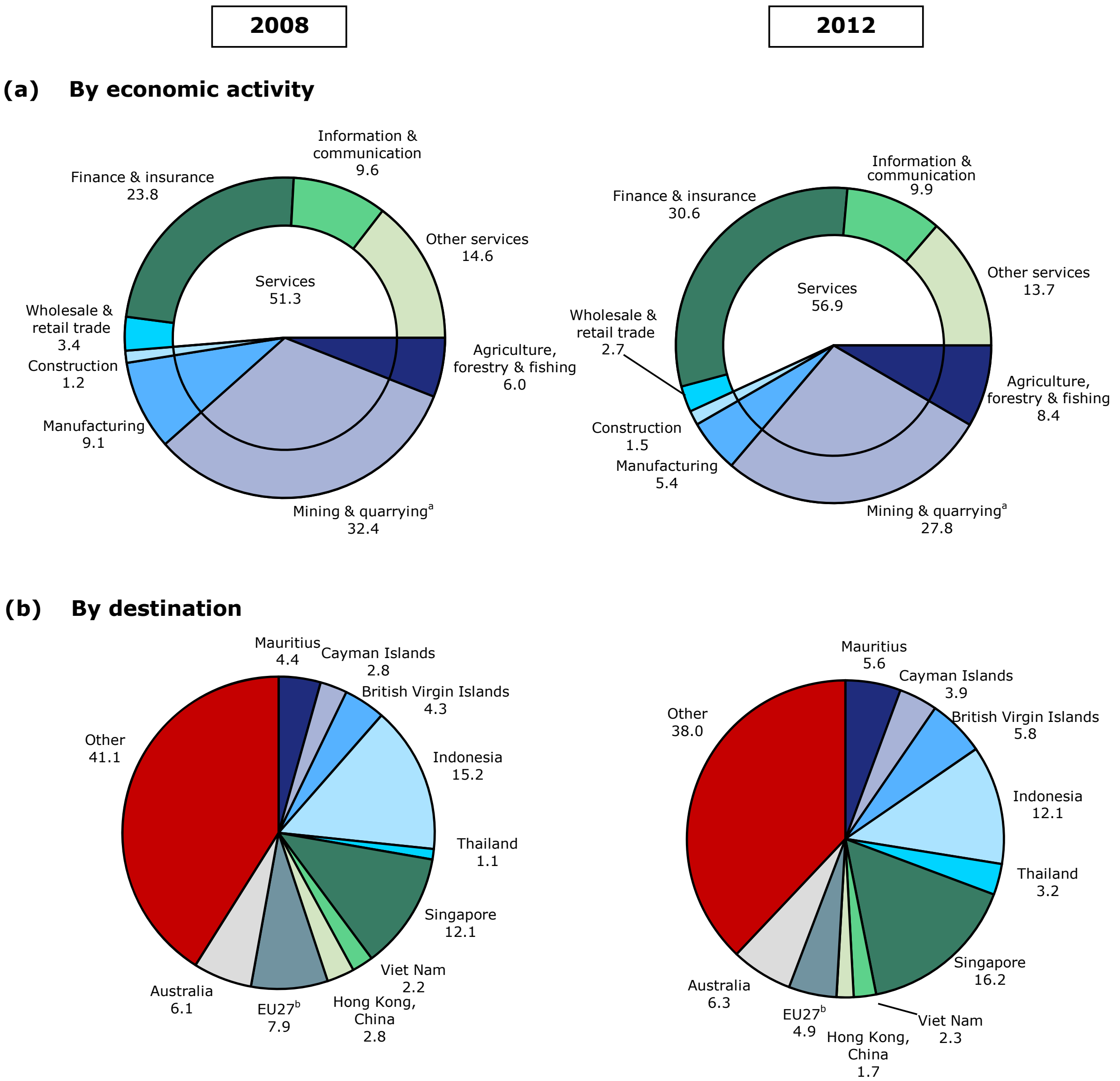
Source: Bank Negara Malaysia online information.

[50] UNCTAD (2013b); and EIU (2012a).
[51] UNCTAD (2013b).
[52] UNCTAD (2013b).

1.27. Malaysia remains a major investor abroad. Malaysian companies invest abroad to expand markets, benefit from economies of scale, and thus enhance their competitiveness. Direct investment abroad (DIA) stock grew by 58.8% between 2008 and 2012, from RM 231.8 billion to RM 368.2 billion, *inter alia* reflecting GLC's PETRONAS (section 4.5.1) investment in shale oil and gas in Canada (Chart 1.4); between 2009 and 2012, Malaysia's share of Asia's total DIA rose from 3.7% to 5.5%.[53] A large share of DIA continues to be in the services sector, mainly finance and insurance, and primarily in the region, with Singapore becoming the main destination (Chart 1.4).

Chart 1.4 Direct investment abroad stock, 2008 and 2012

Per cent



Total: RM 231.8 billion | **Total: RM 368.2 billion**

a Including oil and gas.
b Only Germany, the Netherlands, and the United Kingdom.

Source: Bank Negara Malaysia online information.

[53] UNCTAD (2013b).

2 TRADE AND INVESTMENT REGIME

2.1 Introduction

2.1. Since Malaysia's previous Review in 2010, there have been no changes to the main institutions involved in formulating trade policies. However, medium-term trade and investment policy objectives have been clarified and articulated in various recent strategy documents, all of which have the overriding objective to ensure that Malaysia becomes a self-reliant and industrialized nation by 2020. These strategies, *inter alia*, emphasize the importance of driving private sector growth; reducing state involvement in the economy; encouraging high value-added activities; integrating Malaysian companies into global value chains; and developing commercial ties with new markets.

2.2. Malaysia has not been involved in any new WTO dispute settlement cases over the review period, either as a complainant or respondent. It has maintained a consistent flow of notifications to the WTO, although some remain outstanding. Malaysia continues to negotiate new regional trade agreements (RTAs) both bilaterally and together with its ASEAN partners. Since 2010, new agreements have entered into force, with Australia, New Zealand, India, Korea, and Chile. Further integration has also taken place within ASEAN.

2.3. In 2012, Malaysia began a second wave of autonomous services-sector liberalization; commencing reductions to, or elimination of, foreign equity thresholds in a number of subsectors as well as formalizing the market access status quo in accountancy services where full foreign equity participation was already permitted. Regulatory reforms undertaken since 2010 have included cutting processing times for dealing with customs permits; eliminating and simplifying licencing requirements; and reducing the time required for the approval of construction permits. Additionally, a National Policy on the Development and Implementation of Regulations, issued in 2013, requires federal government entities to follow certain steps in developing regulations affecting business, trade, and investment. Regulatory impact analyses must be conducted, stakeholders must be consulted, and all laws and regulations must be reviewed every five years. The general assessment of Malaysia's business climate is very positive, although further reforms are deemed necessary to improve government services, tackle corruption, increase the country's technological readiness, and address various labour-related issues.

2.2 General Framework

2.4. Malaysia is a federation of 13 states and 3 federal territories (Kuala Lumpur, Putrajaya, and Labuan). The executive power of the Federation is vested in the Head of State (Yang di-Pertuan Agong) and exercisable by him or the Cabinet, which is presided over by the Prime Minister. The legislative authority of the Federation is vested in Parliament.[1] Each State has its own state constitution, executive council, and legislative assembly. The division of legislative authority between the federal government and states is demarcated in the Federal Constitution.[2] Among matters falling under federal competence are external affairs, trade, commerce, industry, shipping, fisheries, communications, and transport. Land, agriculture, and forestry are within the purview of the state legislative assemblies. Social welfare, public health, sanitation, and the prevention of diseases are among the matters under joint authority. State governments have licensing powers within their spheres of competence. While taxation is under federal responsibility, the Parliament may, by law, assign proceeds from taxes collected, raised or levied within the State, to the State, such as revenue from lands, mines, and forests.[3]

2.5. Malaysia's judicial system consists of superior and subordinate courts. The superior courts are the Federal Court, the Court of Appeal, the High Court in Malaya, and the High Court in Sabah and Sarawak. The subordinate courts are the sessions courts and the magistrates' courts. Among

[1] Parliament consists of the Yang di-Pertuan Agong and the two Houses of Parliament: the Senate and the House of Representatives.

[2] Under Article 74 of the Constitution, Parliament may make laws with respect to matters enumerated in the Federal List and the Concurrent List in the Ninth Schedule. State legislative assemblies may make laws with respect to matters enumerated in the State List and Concurrent List in the Ninth Schedule. Under Article 77 of the Federal Constitution, the State Legislative Assembly has the power to make laws with respect to any matter not enumerated in any of the lists in the Ninth Schedule. Ninth Schedule to the Constitution viewed at: http://www.wipo.int/wipolex/en/text.jsp?file_id=200347#LinkTarget_1655.

[3] Federal Constitution, Article 110 and Tenth Schedule, Part III.

the superior courts, the Federal Court is the highest and final court of appeal in Malaysia, followed by the Court of Appeal and the two high courts.[4]

2.3 Trade Policy Formulation and Objectives

2.6. As at the time of Malaysia's previous TPR, the Ministry of International Trade and Industry (MITI) has key responsibility for developing Malaysia's policy positions on international trade and investment in various fora, including the WTO, FTAs, UNCTAD, and APEC. The key MITI agencies with trade-related functions are: the Malaysian Investment Development Authority (MIDA), which takes the lead in promoting Malaysia's manufacturing and services sectors; the Malaysian External Trade Development Corporation (MATRADE), which is responsible for exporter development and export promotion activities; and the Malaysia Productivity Corporation (MPC), which undertakes various activities related to monitoring and enhancing the productivity and competitiveness of the economy.

2.7. Other key government entities with trade-related functions are the Economic Planning Unit (EPU), which is responsible for developing Malaysia's five-year development plans (see below), and the Performance Management and Delivery Unit (PEMANDU), which is responsible for implementing the Government's Economic Transformation Program (ETP) (see below). Both of these entities are under the responsibility of the Department of the Prime Minister.

2.8. MITI coordinates national consultations on WTO issues, including on the Doha Development Agenda (DDA), in 11 working groups that bring together ministries, government agencies, the private sector, academia, and other stakeholders.[5] According to the authorities, the working groups meet as and when necessary. Consultations with relevant stakeholders (including non-governmental stakeholders) are conducted at all stages of FTA negotiations (Chart 2.1).

Chart 2.1 FTA negotiation procedures

Source: Information provided by the authorities.

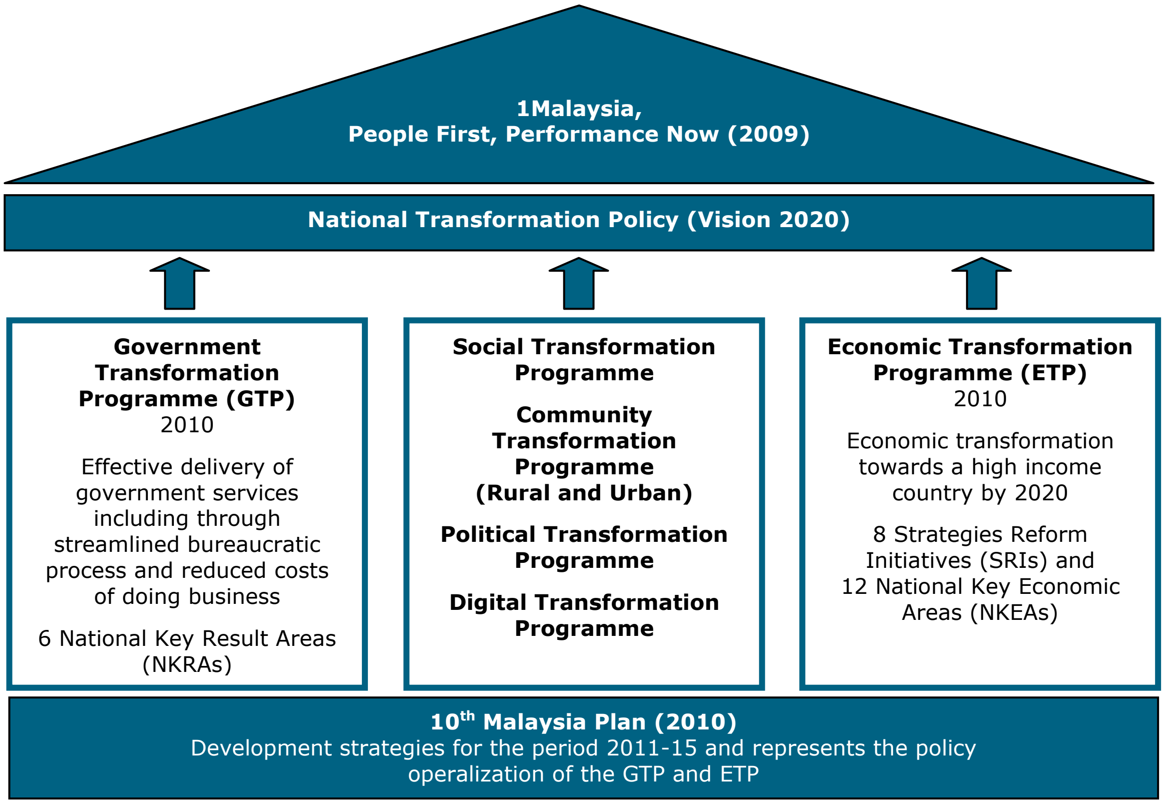
2.9. The direction of trade policy may be understood in the context of Malaysia's long-term objective, developed in 1991 by the then Prime Minister, to transform itself into a self-reliant and industrialized nation by the year 2020 (Vision 2020). Following the global financial crisis in 2009, a fresh approach with new strategies was developed to give new impetus to realizing this vision. This began with the Prime Minister commissioning a study by a group of eminent persons, the National Economic Advisory Council (NEAC). The NEAC produced the New Economic Model for Malaysia (NEM) in 2010, which concluded that in order for Malaysia to achieve economic growth (with an income per capita target of US$15,000-20,000) on an inclusive and sustainable basis, an economic, social, and governmental transformation was required. Based upon these recommendations, the Government developed a range of strategies. At the heart of these strategies is the Government's 1Malaysia Policy, which seeks to reinforce national unity and

[4] The jurisdiction of the superior court is set out in the Court of Judicature Act 1964 (Act 91), whilst the jurisdiction of the subordinate courts is stipulated in the Subordinate Courts Act 1948 (Act 91).

[5] The respective working groups cover: agriculture; services; non-agriculture market access (NAMA); trade and environment; trade related aspects of intellectual property rights (TRIPs); WTO rules; investment; competition policy; government procurement; trade facilitation; and e-commerce. MITI online information. Viewed at: www.miti.gov.my/cms/content.jsp?id=com.tms.cms.section.Section_f5694606-c0a81573-78d578d5-759be8c9.

maintain political stability (Chart 2.2).[6] The two key strategies affecting the climate for business, trade, and investment, the Economic Transformation Programme (ETP) and Government Transformation Programme (GTP) are being implemented through the Government's 10th Malaysia Plan for the period 2011 to 2015.

Chart 2.2 Vision 2020 and associated economic and social strategies



Source: Pemandu.

2.10. Included among the numerous reforms proposed in the GTP, ETP, and the 10th Malaysia Plan are the importance of encouraging private-sector led growth and integrating Malaysian companies into global value chains. They illustrate the need for Malaysia to redouble its efforts to attract investment, encourage greater competition, drive productivity and innovation, and nurture skills. They foresee a movement away from sectoral diversification towards higher value-added and knowledge intensive activities, and specialization. As part of this specialization strategy, 12 national key economic areas (NKEAs) have been identified under the ETP as drivers of economic activity that have the potential to contribute significantly to economic growth: oil, gas, and energy; palm oil and rubber; financial services; tourism; business services; electric and electronics (E&E) industry; wholesale and retail trade; education; healthcare; communications content and infrastructure; agriculture; and greater Kuala Lumpur/Klang Valley. The ETP also incorporates eight strategic reform initiatives originally put forward by the NEAC: reenergizing the private sector; developing quality workforce and reducing dependency on foreign labour; creating a competitive domestic economy; strengthening of the public sector; transparent and market friendly affirmative action; building the knowledge base infrastructure; enhancing the sources of growth; and ensuring the sustainability of growth.

2.11. The reports propose a leaner role for the Government in the economy, *inter alia*, through a new wave of privatizations of government-linked companies (GLCs), trade and investment liberalization (particularly with respect to services sectors), regulatory reforms at various government levels, and the removal of distortionary price controls. The reports further stress that Malaysia must make stronger inroads into fast-growing markets in Asia and ASEAN as well as the Gulf states, through trade promotion activities, trade agreements, and other measures, such as

[6] ETP viewed at: http://etp.pemandu.gov.my/Overview-@-Overview_of_ETP.aspx; and 10th Malaysia Plan viewed at: http://www.pmo.gov.my/dokumenattached/RMK/RMK10_Eds.pdf.

extended networks of flight routes. This is to be undertaken in conjunction with strengthening links with Malaysia's traditional export markets including Australia, Europe, and the United States.

2.12. Since 2009, various new trade-related laws have entered into force, notably, the Malaysian Quarantine and Inspection Services Act (section 3.2.5.2); the Biosafety Act (section 3.2.5.2.2); the Strategic Trade Act (section 3.3.2); the Competition Act (section 3.4.3); and the Price Control and Anti-Profiteering Act (section 3.4.4.2).

2.4 Trade Agreements and Arrangements

2.4.1 WTO

2.13. Malaysia is an active participant in the regular work of the WTO as well as in the DDA round of negotiations. It grants at least MFN treatment to all trading partners. Malaysia is a participant in the WTO Information Technology Agreement (ITA) and signatory to the GATS protocols on telecommunications (Fourth Protocol) and Financial Services (Fifth Protocol).[7] It is not a signatory to the WTO plurilateral Agreement on Trade in Civil Aircraft. It became an observer to the plurilateral Government Procurement Agreement (GPA) in 2012. Malaysia submitted an initial offer in the DDA negotiations on services in 2005 and a revised offer in 2006.[8]

2.14. During the review period, Malaysia has not been involved in any new WTO dispute settlement cases either as complainant or respondent. However, Malaysia did participate as a third party to the *Australia – Tobacco Plain Packaging* (DS434) complaint raised by Ukraine.

2.15. Malaysia has maintained a reasonably consistent flow of notifications to the WTO (Table A2.1). As at end October 2013, notifications were outstanding with respect to: agriculture (tariff quotas); import licensing procedures; quantitative restrictions; and customs valuation. It has not yet notified its MFN tariffs for 2013, nor has it submitted import data for 2012. It has not notified "any new, or any changes to existing laws, regulations or administrative guidelines which significantly affect trade in services", which it is obliged to notify under Article III:3 of the GATS.

2.4.2 Regional and preferential agreements (RTAs and PTAs)

2.4.2.1 RTAs

2.16. Malaysia is a member of ASEAN, which has component agreements on goods (ASEAN Trade in Goods Agreement (ATIGA)), services (ASEAN Framework Agreement on Services (AFAS)) and investment (Comprehensive Investment Agreement (ACIA)). Including ASEAN members, Malaysia's network comprises 13 RTAs encompassing 17 trading partners. In a number of cases, Malaysia has negotiated bilateral agreements with third countries to supplement commitments under ASEAN RTAs (Table 2.1).[9] Malaysia is also a signatory to the Global System of Trade Preferences among Developing Countries (GSTP) under which it grants a 10% preferential tariff for certain woven fabrics made of man-made fibres.[10]

Table 2.1 RTAs in force, July 2013

Country	ASEAN Members	ASEAN FTA (entry into force)	Bilateral FTAs (entry into force)
Australia		■ (2010)	■ (2013)
Brunei Darussalam	■		
Cambodia	■		
Chile			■ (2012)
China		■ (2005[a] and 2007[b])	
India		■ (2010)	■ (2011)

[7] WTO documents GATS/SC/52/Suppl.2, 11 April 1997; and GATS/SC/52/Suppl.3, 26 February 1998.
[8] WTO documents TN/S/O/MYS, 31 January 2005; and TN/S/O/MYS/Rev.1, 31 January 2006.
[9] MITI online information. Viewed at: http://www.miti.gov.my/cms/content.jsp?id=com.tms.cms.section.Section_8de83760-7f000010-72f772f7-f5047602.
[10] UNCTAD online information. Viewed at: http://www.unctadxi.org/Secured/GSTP/Concessions/malaysia_en.PDF.

Country	ASEAN Members	ASEAN FTA (entry into force)	Bilateral FTAs (entry into force)
Indonesia	■		
Japan		■ (2009)	■ (2006)
Korea, Rep. of		■ (2010[a] and 2009[b])	
Lao PDR	■		
Myanmar	■		
New Zealand		■ (2010)	■ (2010)
Pakistan			■ (2008)
Philippines	■		
Singapore	■		
Thailand	■		
Viet Nam	■		

a Entry into force of goods component of the agreement.
b Entry into force of services component of the agreement.

Source: WTO RTA database. Viewed at: http://rtais.wto.org.

2.17. At the ASEAN level, there have been several developments since Malaysia's Review in 2010, as ASEAN members states have continued to work towards achieving an ASEAN Community by 2015.[11] The ASEAN Community comprises three pillars: political-security; socio-cultural; and economic. An AEC Blueprint sets out the targets and deadlines for advancing the economic pillar (the ASEAN Economic Community (AEC)). As reported by MITI, by June 2013 Malaysia had implemented over 88% of the AEC Blueprint measures (328 out of the 372 measures).[12] It also completed its ASEAN tariff elimination programme in 2012; 99.1% imports from Malaysia's ASEAN partners are now duty free.[13] Malaysia maintains duties on 73 tariff lines covering tropical fruits and tobacco (levied at 5%), and rice (15% and 20%). Malaysia is not obliged under the ATIGA to further liberalize these tariff lines. An additional 82 tariff lines are excluded from liberalization, including alcoholic beverages and arms. Further services liberalization within ASEAN has also been undertaken over the review period (section 4.7).

2.18. In order to implement the AEC Blueprint targets, the Agreement on the Common Effective Preferential Tariff Scheme for the ASEAN Free Trade Area (CEPT-AFTA) was reviewed in 2008 and enhanced into a more comprehensive legal instrument, the ASEAN Trade in Goods Agreement (ATIGA). This entered into force in May 2010. The ATIGA preserves, consolidates, and streamlines all the provisions in the CEPT-AFTA; enhances the transparency of Members' tariff reduction schedules; codifies non-tariff measures (NTMs), and a mechanism has been set up to monitor their elimination; and it includes a dedicated chapter on trade facilitation. To help exporters, Malaysia adopted a pilot self-certification system for the issuance of Certificates of Origin under the ATIGA in 2010. According to the authorities, 100 exporters were self-certified by end 2012.[14] This pilot project is has been extended until 2015.

2.19. The ASEAN Comprehensive Investment Agreement (ACIA) and the ASEAN Agreement on Customs (AAC) entered into force in 2012. The ACIA replaced the ASEAN Investment Agreement (AIA) and ASEAN Investment Guarantee Agreement (IGA).[15] It brings together liberalization, protection, promotion, and facilitation measures under a single comprehensive agreement. Among its features are national treatment and MFN obligations, a single negative list with reservations to investment a broad definition of investors and investments, and the inclusion of portfolio investment and intellectual property; and adoption of investor-state dispute settlement mechanisms. The AAC supersedes the 1997 agreement and has provisions on trade facilitation, closer partnership, and mutual assistance between customs administrations. It also promotes a new customs culture based on voluntary compliance, control by exception and an electronic

[11] The end-goal of the ASEAN Community is to achieve a single market and production base, in which there is a free flow of goods, services, investments, and skilled labour, and a freer flow of capital, along with equitable economic development, and reduced poverty and socio-economic disparities.
[12] The AEC Blueprint is a dynamic document, hence the number of measures contained therein has increased.
[13] MITI (2013).
[14] MITI (2013).
[15] IGA was an investment guarantee agreement among signatory ASEAN members and centred on the protection and promotion of investments. The AIA established a more liberal and transparent investment climate among ASEAN members.

customs environment. It is also intended to align ASEAN members' customs practices and procedures with international best practice.

2.20. Seven new RTAs entered into force for Malaysia during the review period. Three are ASEAN RTAs with third countries (Australia and New Zealand, India, and Korea), and four are bilateral agreements (with Chile, India, New Zealand, and Australia) (Table 2.2). In addition, the goods part of ASEAN's RTA with China was amended in 2010. The Protocol to Incorporate Technical Barriers to Trade and Sanitary and Phytosanitary Measures into the ASEAN-China TIG Agreement was signed in November 2012 and entered into force in January 2013.

Table 2.2 Main features of new RTAs, 2010-13

ASEAN RTAs	
Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area (AANZFTA)	
Date of signature/entry into force	2009/2010
End of transition period for Malaysia (goods liberalization)	2020: 96.2% of tariff lines will be duty free; 307 tariff lines will continue to attract tariffs between 5% and 20%, mainly covering iron and steel, vegetables, glass, tobacco, agriculture, and automotive parts
Selected features	Services (see section 4.7); competition; electronic commerce; elimination of agricultural export subsidies; intellectual property rights; investment; bilateral safeguard
WTO consideration status	Factual presentation not distributed
Malaysia's merchandise trade with Australia and New Zealand (2012)	Australia: 2.4% of total imports; 4.1% of total exports New Zealand: 0.4% of total imports; 0.5% of total exports
Framework Agreement on Comprehensive Economic Co-operation between ASEAN and the Republic of India, Agreement on Trade in Goods	
Date of signature/entry into force	2009/2010
End of transition period for Malaysia (goods liberalization)	2019: 79.5% of tariff lines will be duty free; 2,126 tariff lines will continue to attract tariffs between 2% and 20%, mainly covering plastics, rubber, special woven fabric, articles of apparel and clothing accessories, and iron and steel
Selected features	Bilateral safeguard; services are not covered under this agreement
WTO consideration status	Factual presentation not distributed
Malaysia's merchandise trade with India (2012)	1.9% of total imports; 4.2% of total exports
Framework Agreement on Comprehensive Economic Co-operation among the Governments of the Republic of Korea and ASEAN	
Date of signature/entry into force	Goods: 2006/2010; services: 2008/2009
End of transition period for Malaysia (goods liberalization)	2016: 93.8% of tariff lines will be duty free; 521 tariff lines will continue to attract tariffs of 5%, mainly covering dairy products, edible fruit and nuts, inorganic chemicals, chemicals, plastics, ceramics, glass and glassware, iron and steel, aluminium, electrical machinery, and non-locomotive vehicle parts
Selected features	Services (see section 4.7); bilateral safeguard; investment agreement to be negotiated
WTO consideration status	Factual presentation not distributed
Malaysia's merchandise trade with Korea (2012)	4.1% of total imports; 3.6% of total exports

BILATERAL RTAs	
Malaysia-Chile Free Trade Agreement (MCFTA)	
Date of signature/entry into force	2010/2012
End of transition period for Malaysia (goods liberalization)	2016: 98% of tariff lines will be duty free; 133 tariff lines will continue to attract tariffs between 5% and 40%, mainly covering fireworks and explosives, ammunition, tobacco, and alcoholic beverages
Selected features	Services are not covered under this agreement; bilateral safeguard
WTO consideration status	Factual presentation not distributed
Malaysia's merchandise trade with Chile (2012)	0.1% of total imports; 0.1% of total exports
Malaysia-India Comprehensive Economic Cooperation Agreement (MICECA)	
Date of signature/entry into force	2011/2011
End of transition period for Malaysia (goods liberalization)	2019: 82.8% of tariff lines will be duty free; 1,790 tariff lines will continue to attract tariffs between 5% and 20%, mainly covering tropical fruit, chemicals and plastics, ceramics, iron and steel, textiles, electric and electronic products, and auto motives
Selected features	Services (see section 4.7); investment; intellectual property rights; bilateral safeguard
WTO consideration status	Factual presentation distributed (WTO documents WT/COMTD/RTA/5/1 and WT/REG329/1) Date of consideration in WTO: 16 September 2013
Malaysia's merchandise trade with India (2012)	1.9% of total imports; 4.2% of total exports
Malaysia New Zealand Free Trade Agreement (MNZFTA)	
Date of signature/entry into force	2009/2010
End of transition period for Malaysia (goods liberalization)	2016: 99% of tariff lines will be duty free; 89 tariff lines will continue to attract tariffs between 5% and 40%, mainly covering firearms, bullets, rice, tobacco, and liquor products
Selected features	Services (section 4.7); competition; environment; investment; intellectual property rights; labour; bilateral safeguard
WTO consideration status	Factual presentation distributed (WTO document WT/REG306/1) Date of consideration in WTO: 20 November 2012
Malaysia's merchandise trade with New Zealand (2012)	New Zealand: 0.4% of total imports; 0.5% of total exports
Malaysia Australia Free Trade Agreement (MAFTA)	
Date of signature/entry into force	2012 /2013
End of transition period for Malaysia (goods liberalization)	2025: 99% of tariff lines will be duty free. 87 tariff lines are excluded from liberalization; these mainly relate to firearms, bullets, artillery weapons, tobacco, and liquor products
Selected features	Services (see section 4.7); competition; electronic commerce; environment; intellectual property rights; investment; labour; bilateral safeguard
WTO consideration status	Factual presentation not distributed
Malaysia's merchandise trade with Australia (2012)	Australia: 2.4% of total imports; 4.1% of total exports

Source: WTO Secretariat and MITI online information. Viewed at: http://www.miti.gov.my/cms/index.jsp.

2.21. Malaysia has signed and ratified both the Trade Preferential System of the Organization of the Islamic Conference (TPS-OIC) and the Developing Eight Preferential Tariff Arrangement (D8-PTA), but as at October 2013 neither had entered into force. The TPS-OIC, which brings together 40 signatory economies, comprises a Framework Agreement, a Protocol on the Preferential Tariff Scheme (PRETAS), and the TPS-OIC Rules of Origin.[16] According to the authorities, the OIC is discussing arrangements to implement the agreement now that the minimum number of participants required to sign and ratify the TPS-OIC Protocol on the Preferential Tariff Scheme (PRETAS) and the TPS-OIC rules of origin has been met. Contracting parties to the D8-PTA are Iran, Malaysia, Nigeria, Turkey, Indonesia, and Pakistan; the target date for implementation was 1 November 2013. However, as at end November 2013, no contracting party had submitted their final offer list thus delaying its implementation.

2.22. Malaysia is in the process of negotiating RTAs with Turkey, the European Union, and the European Free Trade Association (EFTA).[17] It is a participant in the Trans-Pacific Partnership (TPP) negotiations together with Australia, Brunei Darussalam, Canada, Chile, Japan, Mexico, New Zealand, Peru, Singapore, Viet Nam, and the United States. It is also a participant in the Regional Comprehensive Partnership (RCEP) negotiations launched in 2012, which aims to deepen the linkages among the 16 participating economies (ASEAN members plus countries with which it has existing FTAs: Australia, China, India, Japan, Republic of Korea, and New Zealand).[18] An ASEAN-India FTA on services and investment agreements has been concluded and it is expected to be signed in December 2013.

2.4.2.2 PTAs

2.23. Malaysia receives GSP (Generalized System of Preferences) treatment from the EU and Turkey until 31 December 2013, as well as Japan, Norway, the Russian Federation, Belarus, and Switzerland.

2.4.3 Other agreements and arrangements

2.24. Malaysia is a member of APEC and has been participating in its trade and investment-related initiatives over the review period. These include: the second Trade Facilitation Action Plan (TFAP II), which called for a 5% reduction in transaction costs by 2010; the Supply Chain Connectivity Framework launched in 2009; and the 2010 Bogor Goals Assessment. Malaysia is also a proponent of the APEC Ease of Doing Business Action Plan (2010-15). This initiative has established goals for an APEC-wide improvement in five key areas of doing business by 2015: starting a business; dealing with permits; getting credit; trading across borders; and enforcing contracts.[19] In 2011, Malaysia extended the APEC Business Travel Card (ABTC) facilities to transitional ABTC member economies, including Canada, Russia, and the United States. Malaysia also extended its ABTC special lane facilities to seven major checkpoints.[20] The ABTC allows business travellers pre-cleared and facilitated short-term entry to participating member economies.

2.25. In October 2012, ASEAN Economic Ministers endorsed an ASEAN-Russia Trade and Investment Cooperation Roadmap, the objective of which is to enhance economic cooperation and address emerging challenges and opportunities for trade and investment between the respective countries. This builds on an Agreement on Economic and Development Cooperation between ASEAN and Russia signed in 2005.

[16] Framework Agreement on the TPS-OIC, the PRETAS, and the TPS-OIC Rules of Origin viewed at: http://www.oic-oci.org/oicv2/page/?p_id=40&p_ref=16&lan=en. As at October 2013, 30 of the 40 OIC members that had signed the Framework Agreement, had ratified it; 31 countries had signed and 15 had ratified the TPS-OIC Rules of Origin; of these, 12 members had submitted their Concession Lists.

[17] EFTA comprises Switzerland, Norway, Iceland, and Liechtenstein.

[18] As at October 2013, two rounds of RCEP negotiations had been held; the target date for conclusion is 2015.

[19] APEC (2012b).

[20] APEC (2012a).

2.5 Investment Regime

2.5.1 Overview

2.26. The Malaysian Investment Development Authority (MIDA), under MITI is the Government's principal agency for the promotion of manufacturing and services (excluding financial services and utilities). MIDA's National Committee on Investments (NCI), established in 2010, is charged with evaluating applications for manufacturing licences, income tax incentives, and customs duty exemptions.[21] The NCI is able to approve applications for incentives immediately. Manufacturing licences, which are required for persons engaging in manufacturing activities over a certain size, are issued automatically within seven days unless they relate to sensitive industries/activities: security, safety, health, environmental and religious considerations; projects proposed to be located in Sabah or Sarawak; or projects requiring approval under the Petroleum Development Act.[22] Under the NCI's client chart, responses to manufacturing licence applications in these sensitive areas should be provided within four weeks. A public-private-sector task force, called PEMUDAH, is responsible for identifying measures to improve the business environment in Malaysia.[23]

2.27. Investment activity in Malaysia (both domestic and foreign) continues to be regulated under the Promotion of Investments Act (PIA), and the Industrial Co-ordination Act (ICA). The PIA sets out rules on corporate income tax relief for the establishment and development in Malaysia of certain economic activities, as well as for the promotion of exports (section 3.4.1).[24] The ICA was enacted in 1975 with the objective of maintaining orderly development and growth in Malaysia's manufacturing sector, and requires manufacturing companies of a certain size to be licensed (see above).[25]

2.28. Malaysia's business environment has received positive assessments from various sources. For example, Malaysia was ranked 12th out of 185 economies in the World Bank's *Doing Business Index* in 2013[26]; 25th out of 144 economies in the World Economic Forum's (WEF) Global Competitiveness Report (2012-2013)[27]; and 24th out of 124 economies considered in the WEF's 2012 Global Enabling Trade report.[28] Malaysia has been ranked highly for: strong investor protection; low costs associated with importing and exporting; having an efficient and competitive market for goods and services; its supportive financial sector (and easily obtained credit); its high quality transport infrastructure and associated services; as well as for having a business-friendly institutional framework that is transparent and not over-burdened with red-tape. The World Bank has commended Malaysia for recently reducing processing times for obtaining construction permits and for registering property. Malaysia has received less positive rankings for its low level of technological readiness. Some of the most problematic factors for doing business in Malaysia have been identified: an inefficient government bureaucracy, corruption, and various labour-related issues (inadequate education, poor workforce ethics, and restrictive labour regulations).

2.29. Over the review period, Malaysia has been taking steps to modernize its business regulations, as mandated by the ETP and 10th Malaysia Plan (see above). This has involved, *inter alia*, reviewing licensing requirements, facilitating applications for construction permits, and developing a policy and guidelines for ensuring the quality of new regulations.

2.30. The review of business licensing requirements, by a newly established Regulatory Review Department within the Malaysia Productivity Commission (MPC) (see above), began in 2010. A

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[21] The NCI took over the responsibilities of the Action Committee on Industry (ACI), the National Committee on Investment in Services Sub-Sectors (NCIS), the Supreme Committee for Special Incentives (JTGI), and the Committee on Various Economic Corridors.

[22] The Industrial Coordination Act, 1975 requires person(s) engaging in any manufacturing activity with shareholders' funds of RM2.5 million and above or employing 75 or more full-time paid employees to obtain a manufacturing licence.

[23] PEMUDAH online information. Viewed at: www.pemudah.gov.my.

[24] Promotion of Investments Act (Act 327), 1986. Viewed at: www.agc.gov.my/Akta/Vol.%207/Act%20327.pdf.

[25] MIDA online information. Viewed at: www.mida.gov.my/env3/index.php?page=approval-of-projects. ICA viewed at http://www.agc.gov.my. There have been no amendments to this act over the review period.

[26] World Bank (2013a).

[27] World Economic Forum (2012a).

[28] World Economic Forum (2012b).

total of 761 licensing requirements at the federal, state, and local levels were identified and reviewed with a view to removing those deemed no longer relevant or burdensome. As a result of this exercise, 386 licensing requirements were eliminated by 2012 and the remainder are being looked at to see if they can be simplified. The authorities estimate that this will result in considerable reductions in business compliance costs.

2.31. As a result of efforts to improve the efficiency of dealing with construction permits in Kuala Lumpur, permit approval procedures have been reduced from 37 steps to 10. The time taken to approve permits has been reduced from 140 days to 100.

2.32. In 2013, the Government issued a National Policy on the Development and Implementation of Regulations to promote an effective, efficient, and accountable regulatory process. The policy applies to all federal government ministries, departments, statutory bodies, and regulatory commissions, which are now required to follow certain steps in developing regulations relating to trade, investment, and business.[29] Regulators are required to make sure that government intervention is justified, stakeholders are consulted, an impact analysis is conducted, adverse impacts on the capacity of the economy to generate wealth and employment are minimized, and regulations are not unnecessarily burdensome. The National Development Planning Committee (NDPC) is responsible for overseeing the implementation of this policy, and is assisted by the MPC and the National Institute of Public Administration. According to the authorities, three pilot projects are in train with MITI, the Federal Agricultural Marketing Authority, and the SPAN (the water commission) with MDC assisting them to undertake public consultations and impact analysis. Regulators must also ensure that all laws and regulations are reviewed every five years.[30]

2.33. PEMUDAH has also improved the process of dealing with multiple government agencies through the introduction of the Malaysia Corporate Identity (MyCoID), launched in February 2010, which acts as a single reference number for local companies to transact or register with various government agencies.

2.34. Malaysia's recent efforts to tackle corruption have included the establishment of an independent Malaysian Anti-Corruption Commission (MACC) in 2009. Under the MACC Act, Malaysia has criminalized both active and passive bribery and has included bribery of foreign public officials as an offence. The Act also extends to acts of bribery committed outside Malaysia by Malaysian citizens and permanent residents. As noted by the authorities, the MCCA has adopted a three-pronged strategy to combat corruption, through investigations, prevention, and community action. To enhance its effectiveness it has recently undertaken internal structural changes to promote operational efficiency as well as measures to prevent corruption. The latter have included encouraging companies to sign onto the Corporate Identity Pledge (as at June 2013, 179 companies had signed-on); civil society outreach programmes, and tender monitoring. The prosecution of corruption offences is the responsibility of the Attorney-General, some of whose staff are attached to the MACC's Legal and Prosecution Division. The MCCA has ratified the United Nations Convention on Corruption (UNCAC) and recently submitted a Self-Assessment Check List under the UNCAC Review Mechanism; according to the authorities, Malaysia has met with most of the Convention's requirements.[31] The MCCA is involved in various bilateral, regional, and international cooperation efforts to combat corruption. In 2013, the Government made it mandatory for each ministry to appoint a certified integrity officer (CeIO) in order to promote good governance within the federal administration.

2.5.2 Foreign investment regime

2.35. Over the review period, the Government has continued to autonomously reduce or eliminate foreign investment restrictions in a number of services subsectors, and has bound the status quo of market access in the accountancy sector where no FDI thresholds were previously in place (see section 4.7). While a full list of remaining FDI caps across all sectors of the economy was not

[29] State governments and local authorities may follow the policy on a voluntary basis.

[30] For more information, see National Policy on the Development and Implementation of Regulations, 2013. Viewed at: http://www.mpc.gov.my/home/?sstr_lang=en&cont=ds&id=2&item=d8&s_item=8i19&t=3 and the Best Practice Regulation Handbook, 2013. Viewed at: http://www.mpc.gov.my/home/?sstr_lang=en&cont=ds&id=3&item=d8&s_item=8i19&t=3.

[31] For more information about Malaysia's self-assessment, see UNOCD online information. Viewed at: http://www.unodc.org/unodc/treaties/CAC/country-profile/profiles/MYS.html.

available, economic activities where FDI limits were identified in the context of this Review were in the areas of: fisheries, energy, telecoms, air transport, and maritime transport.

2.36. As set out in the Guidelines on the Acquisition of Properties, foreign investors are not allowed to acquire properties below RM 1,000,000 increased from RM 500,000 as set out in the 2014 Budget Speech.[32]

2.37. Malaysia has various policies in place to support the ethnic Malay community (Bumiputera), which accounts for around 67% of Malaysia's total population. The policies that directly affect FDI are: (a) a requirement that the purchase by foreigners of property valued at RM 20 million or more from Bumiputeras and government agencies must be approved by the Economic Planning Unit, subject to the conditions set out in the Guidelines on the Acquisition of Properties; and (b) a requirement that foreign-owned companies with predominantly Malaysian-based operations that are seeking listing on the Malaysian Stock Exchange must allocate at least 12.5% of their initial public offering (enlarged issues and paid-up capital) to Bumiputera investors at the point of their listing.

2.38. The authorities indicated that foreign participation in public-private-partnership projects may be considered in certain cases, where: (a) their expertise is needed to upgrade efficiency, and such experience is not available locally; (b) their participation is necessary to promote the export market; (c) the supply of local capital is insufficient to absorb the shares offered; and (d) the nature of the business requires global linkages and international exposure. They further noted that, in general, foreign participation in any privatized entity is limited to a maximum of 25% of its share capital. For projects of strategic and national importance, foreign ownership has to be widespread so as to ensure that no single foreign party would have influence on the company.

2.39. There are no incentives in place (fiscal or otherwise) available solely to foreign investors.

2.40. As at October 2013, Malaysia had signed 74 investment guarantee agreements (IGAs), 64 of which were in force. One new IGA, with Syria, entered into force over the review period.[33] Most of Malaysia's RTAs also contain investment provisions.[34] Malaysia has double-taxation agreements in force with 70 jurisdictions.[35] Since 2010, new agreements entered into force with Germany and Lao PDR (in 2010), and an agreement with Senegal was signed in 2010 but has not yet entered into force.

[32] Guidelines on the acquisition of properties viewed at: http://www.epu.gov.my/en/guideline-on-the-acquistion-of-properties.

[33] Full list of the IGAs that Malaysia has signed, as well as the texts of the respective agreements viewed at: http://www.miti.gov.my/cms/content.jsp?id=com.tms.cms.section.Section_4ba7b2f7-c0a8156f-d9c0d9c0-ceda1f2f.

[34] There are no investment provisions in ASEAN's RTAs with India and Korea, or in the bilateral RTA between Malaysia and Chile.

[35] Full list of double taxation agreements viewed at: http://www.mida.gov.my/env3/index.php?page=double-taxation-agreement.

3 TRADE POLICIES AND PRACTICES BY MEASURE

3.1 Introduction

3.1. Since its previous Trade Policy Review in 2010, Malaysia has continued to liberalize its trade and trade-related policies, mainly through unilateral tariff cuts, notwithstanding the global economic crisis. Further reforms were made, including in intellectual property rights protection, competition policy, and consumer protection.

3.2. The tariff remains a main trade policy instrument and a minor source of tax revenue (1.3% of total tax revenue in 2012). Following the adoption of the HS 2012 nomenclature, Malaysia's customs tariff was streamlined by reducing the number of tariff lines (9.3% less). Almost all tariff lines remain *ad valorem*. Nonetheless, the tariff involves a multiplicity of rates whose number remains virtually unchanged since 2009. As a result of unilateral tariff cuts during the period under review the average applied MFN tariff rate dropped from 7.4% in 2009 to 5.6% in 2013. Although the average applied MFN tariff on industrial products has dropped, it remains more than two times higher than the average tariff level affecting agricultural products (WTO definition). Tariff dispersion was reduced, though tariff escalation remains pronounced. Peak *ad valorem* rates apply to agriculture (WTO definition). Tariff rates range from zero to 90% although non-*ad valorem* tariffs tend to conceal higher peak rates of up to 1,439.2% (alcoholic beverages, tobacco refuse); 80% of rates were 10% or below in 2013. Malaysia continues to maintain tariff-rate quotas related to its multilateral agricultural market-access commitments; in-quota rates range between zero (round cabbages) and 25%, and out-of-quota rates from 20% to 90% (round cabbages). While more than 80% of tariff rates are bound, the average gap between applied and bound MFN rates appears to have risen to at least 10 percentage points, thus allowing considerable leeway for raising applied tariffs, though this does not seem to have occurred during the period under review. The gap between Malaysia's simple average applied MFN tariff rate and the average preferential rate on imports from preferential or FTA trading partners was also reduced.

3.3. Malaysia has strengthened trade facilitation by, *inter alia,* further shifting customs clearance from clearance-based controls to post-clearance audit controls; its ease of trading across borders remains highly ranked in international comparisons. A gazetted price system continues to be used to help determine the customs value of new motor vehicles.

3.4. Import prohibitions are maintained mostly for national security, religious, and environmental reasons. A considerable portion of Malaysia's tariff lines remains subject to import licensing, most of which is non-automatic and is used as a trade and industrial policy tool for, *inter alia,* regulating the flow of imports and promoting selected strategic industries. The import licensing system of "approved permits" (AP) governing the importation and distribution of foreign-built or assembled cars, trucks, and motorcycles also remains in place. Although Malaysia's recourse to anti-dumping action dropped markedly, with no cases initiated from 2007 to 2011, three investigations were launched in 2012 on imports of steel wire rod, biaxially oriented polypropylene film, and hot rolled coils from 11 countries (virtually all of Asian origin).

3.5. Export taxes (1.5% of total tax revenue in 2012) and/or restrictions, which are applied to certain goods (e.g. timber), continue to, *inter alia,* discourage exports of certain commodities and essential goods and reduce their domestic prices, thereby ensuring adequate domestic supplies and assisting downstream processing of the products concerned. Exports of price-controlled essential goods (i.e. wheat flour, diesel, petrol RON 95, liquefied petroleum gas, sugar, and cooking oil), four of which are subsidized, are prohibited unless approval is granted. Import duty exemptions or drawbacks for intermediate goods used in the production of exports are in place so that the import duties do not feed through to become implicit taxes on exports. Support is available for exports of certain fresh and dried fruits, fresh and dried flowers, ornamental plants and ornamental fish, and manufactures in the form of statutory income tax exemptions ranging from 10% to 50% of the value of increased exports, depending, *inter alia*, on the activity, value-added and/or ownership. Similar exemption of statutory income tax equivalent to 50% of the value of increased export is available to companies in selected services sectors. Promotion measures remain in place for export processing zones, involving local-content requirements since 2011; concessionary credits, insurance, and guarantees; and government-sponsored promotion and marketing assistance.

3.6. Measures involving grants, tax concessions, and low-interest loans continue to support production and trade of various agricultural and manufactured products, and encourage SMEs, R&D, and environmental-protection activities. Individual taxi owners and car rental operators are exempt from the payment of excise duty on the purchase of domestically produced "national cars"; tour operators benefit from a 50% reduction of this duty on domestically assembled four-wheel-drive vehicles. A rationalization effort to reform the subsidies regime on gasoline, cooking gas, electricity and road tolls has accomplished little so far; renewed emphasis was placed on these efforts in October 2013.

3.7. Improvement and development activities on standards remain among Malaysia's priorities for achieving developed-nation status by 2020. During the period under review, the share of compulsory Malaysian standards and standards aligned with international standards continued to rise. Regulatory and institutional improvements were undertaken in SPS. Further emphasis has been placed, *inter alia,* on halal certification and biosafety issues.

3.8. State involvement in the economy persists in numerous areas (e.g. oil, gas, key strategic utilities, and services) although competition challenges for government-linked companies (GLCs) were intensified due to several developments. Efforts to improve their productivity seem to have borne fruit for some of them. Padiberas Nasional Berhad maintains its sole right to import rice and its monopoly was extended for ten years until 2021. Preferential government procurement procedures and expanded countertrade/offset requirements remain an instrument of industrial policy to favour locally owned businesses; international tenders are invited only if goods and services are not available locally. GLCs are encouraged to purchase from locally owned businesses. Malaysia became an observer to the WTO Agreement on Government Procurement in 2012, and efforts were undertaken to improve transparency and "integrity pacts" in its procurement procedures.

3.9. During the period under review, significant changes were brought to the legal and institutional framework governing competition policy, which also covers GLCs but not certain anti-competitive practices, agreements or activities (e.g. energy and communications). Price and supply controls over essential goods and services were reinforced, and sugar price subsidies were abolished. Consumer protection was strengthened in several areas (advertisements, personal data protection, credit sales, consumer redress). Substantial progress was made in further improving the regulatory framework of corporate governance by, *inter alia,* raising standards in this area.

3.10. Malaysia strengthened its intellectual property regime by passing significant amendments to its patent, industrial designs, copyright, and trademark laws and/or regulations, and expanding its international commitments. Its proactive enforcement approach was enlarged with new initiatives (e.g. Basket of Brands (BOB) scheme).

3.2 Measures Directly Affecting Imports

3.2.1 Customs procedures, customs valuation, and rules of origin

3.2.1.1 Registration, documentation, and clearance requirements

3.11. Since 2010, there have been no changes in Malaysia's import registration requirements. Import declarations must be made by consignors, customs brokers or corporations for customs brokerage/clearance. Additional declarations are required for taxable goods valued over RM 20,000. The commercial invoice and duplicates of the bill of lading must accompany the import declaration. Where applicable, a detailed packing list, import approval document (e.g. permit, licenses/certificates), sanitary and phytosanitary certificate, and a certificate of origin for goods subject to tariff preferences should be submitted. No fees are imposed for customs procedures by the Royal Malaysian Customs Department (RMCD).

3.12. Customs clearance has been fully automated since 2007; import declarations, duty assessment, payment of duties, and customs release are submitted electronically.[1] According to the authorities, all imports have benefited from electronic customs clearance since 2010. As of

[1] Currently, the RMCD has no facility to enable submission of other supporting documents (e.g. invoice, bill of lading) electronically with the import/export declaration. Most import licences can be submitted electronically with customs declarations.

November 2013, 26 of the 44 permit issuing agencies were issuing e-permits (i.e. paperless). Malaysia has continued to shift customs clearance from clearance-based controls to post-clearance audit controls based on risk management results subsequent to the release of the cargo from Customs' custody.[2] No data on the share or main types of imports that have been subject to post-clearance audit controls since 2010 are available. By November 2013, RMCD was in the final stage of negotiating a mutual recognition arrangement (MRA) with Japan Customs to facilitate trade between Malaysia and Japan.

3.13. In 2012, Malaysia ranked 11th (12th in 2011, 37th in 2010) out of 185 economies on the ease of trading across borders; according to World Bank/IFC, importing the same container of goods required on average 6 documents, took 8 days (10 in 2010) and cost US$420 (US$450 in 2010).[3] In 2012, cargo clearance (i.e. from shipment arrival to release) took on average 3.63 days (3.2 days in 2007) for sea cargo and 2.14 days for air cargo (0.8 days in 2007); customs formalities (e.g. registration, inspection and collection of duties) took 1.25 hours (13 hours in 2007) for sea cargo and 1.25 minutes (30 minutes in 2007) for air cargo. For importers registered as authorised economic operators (AEO), which replaced the Customs Golden Clients (CGCs)[4] in January 2010, the average time from the submission of customs declaration to the release of goods was 15 minutes in 2012 (same as in 2007 for CGCs); currently 48 companies are accredited as AEOs.

3.14. Malaysia has been a party to the World Customs Organization Revised Convention on the Simplification and Harmonization of Customs Procedure (Revised Kyoto Convention, RKC) since 30 June 2008. In line with its RKC obligations it undertook a time release study (TRS) in 2011, and a 2012 TRS was to help redefine customs clearance procedures and provide statistical evidence towards improving the clearance process, as well as to measure the impact and progress of the customs reform and modernization programme to be undertaken.[5] The overall TRS findings indicate that the Malaysian time release result is not yet fully consistent with all RMCD's commitments under its client charter. TRSs identified problems in areas relating to customs regulations and legislation, delays in payment of duty/tax, removal time of perishable consignments arriving by air, timing of submission of customs declarations, time for responding to rejections and queries raised by Customs, late physical removal of goods after release of customs documentation, minor process inefficiencies, no increase in RMCD resources, and longer processing time of consignments subject to preferential tariff rates.

3.15. Smuggling remains a concern and is due to various reasons including duties or tax evasion, circumvention of prohibitions, infringement of intellectual property rights, and the release of a large proportion of cargo traffic following risk-management evaluation without document examination or physical inspection. Between 2010 and 2012, the value of seized merchandise rose by 18.7% to RM 602.9 million, but the estimated forgone tax revenue dropped by 15.5% to RM 435 million, as some of these items are seemingly prohibited items (e.g. illegal drugs), thus not subject to duties and taxes. The main individual product categories, in terms of seizure value, were vehicles (mainly from the EU and Japan), cigarettes (Indonesia, East Asia, China), liquor (the EU and East Asia), and firecrackers, a controlled item (Thailand and China); vehicle smuggling rose both in terms of value and forgone tax revenue, *inter alia,* due to their high taxation level. Smuggling of certain subsidized essential goods under price controls (e.g. sugar, fuels (sections 3.4.2.2 and 3.4.4.2)), and endangered wildlife (e.g. tiger parts, ivory, reptiles) appears to remain important.[6] To tackle smuggling the RMCD took measures such as: enhancing risk assessment in cargo screening and targeting; deploying x-ray scanners; increased enforcement activities and operations; capacity building of enforcement officers; and intelligence sharing and cooperation with domestic and international agencies.

[2] More information about post-clearance audit controls is contained in UNCTAD (2011).

[3] World Bank (2013b).

[4] The CGC system, introduced in September 2004, for companies with records of high legal, regulatory, and security compliance, offered approved companies simplified and expeditious clearance, drawback, and refund claims through self-accounting, and deferred duty payment. The AEO was a response to security threats posed by the international trade supply chain.

[5] WTO Trade Facilitation online information, "Case Studies and Reports by Topic: Time Release Study Malaysia prepared by Dr. Roslan Mohamed, Assistant Director of Customs, 8 May 2012". Viewed at: http://www.wto.org/english/tratop_e/tradfa_e/casestudies_reports_e.htm [13 February 2013].

[6] *New Straits Times,* "Cargo scanning machines to deter smuggling", 10 November 2012. Viewed at: http://www.nst.com.my/nation/general/cargo-scanning-machines-to-deter-smuggling-1.172805#ixzz2KnK5XdHO [13 February 2013].

3.16. Malaysia's appeals system allows for complaints against Customs decisions to be made to the Director General of Customs; further appeals may be lodged with the Customs Appeal Tribunal, the Minister of Finance, and the High Court. In 2013 (January-October), there were 35 appeals to Director General of Customs and the Minister of Finance (29 in 2012, 23 in 2008) 17 to the Customs Appeal Tribunal (52 in 2012, 11 in 2008), and none to the High Court (1 each in 2008 and 2012).

3.2.1.2 Customs valuation

3.17. Since the previous Review of Malaysia, there has been no change in the basic framework of its customs valuation system. Valuation of goods for customs purposes is largely determined in accordance with the WTO Agreement on Customs Valuation principles and provisions. Under the current Customs (Rules of Valuation) Regulation[7], imports are valued at their c.i.f. price. The transaction value based on the price actually paid or to be paid is used for about 95% of imports. When this method cannot be used, valuation is based on the transaction value of identical or similar goods, the deductive value, the computed value or flexible valuation.[8]

3.18. Clause 11 of the Customs (Rules of Valuation) Regulation 1999 empowers the Minister of Finance to determine the minimum value of goods. The authorities indicated that this Clause has never been used. The Customs (Values of Imported Completely Built-up motor vehicles (New)) Order 2006 empowers the Minister of Finance to fix the value of imported CBU cars, as deemed appropriate, in accordance with Section 12 of the Customs Act 1967, with a view to tackling under-declaration. According to the authorities, this option has not been used during the review period as the value determined in the Order takes the form of a "gazetted value", which is accepted as the transaction value for the commercial importers (AP holders, sections 3.2.3.2 and 4.6), while for individual importers the WTO valuation methods apply. Commercial importers must submit information, including the transaction value of CBU cars, to the Valuation Section of Customs Headquarters. A committee comprising officers from the Ministry of Finance, the Ministry of International Trade and Industry (MITI), and RMCD reviews all documents and prices submitted before recommending the "gazetted value" to the Minister for approval.[9] According to the authorities the "gazetted price system" is a measure to assist in determining the customs value of any dutiable vehicles rather than a non-tariff barrier. No data on cases of under-invoicing/under-declaration since 2010 were available from the authorities.

3.2.1.3 Rules of origin

3.19. Malaysia has no national law governing rules of origin (ROO) for imports; it does not maintain any non-preferential rules of origin. Preferential rules apply to imports under preferential trading arrangements and FTAs (sections 3.2.2.6 and 2.4.2). Malaysia recognizes that ROOs need to be simple, easy to comply with, and consistent across its FTAs so as to ensure that preferential tariffs are widely used and benefit the small and medium enterprises (SMEs) (section 3.3.1). The ROOs in all its FTAs are generally based on the twin criteria of the wholly obtained or produced, for natural products (i.e. agriculture products, live animals, minerals, etc.), and substantial transformation. Substantial transformation comprises: the value-added (VA) method; the change in tariff classification (CTC) at HS 4-digit (change in tariff heading - CTH) or 6-digit (change in tariff sub-heading - CTSH) level; specified process of manufacture involving products such as textiles and chemicals; or a combination of the above.[10]

3.2.2 Tariffs

3.20. On 31 October 2012, Malaysia introduced the 2012 version of the Harmonized System of Tariff Classification (HS), consisting of 9,417 nine-digit lines (972 less lines than the

[7] The Customs (Rules of Valuation) Regulation 1999, which has been in force since 1 January 2000.
[8] Royal Malaysian Customs Department online information. Viewed at: http://www.customs.gov.my/index.php/bm/fasilitasi-perdagangan/kastam/105?start=2.
[9] If the committee has no reason to doubt the truth and accuracy of the declared customs value, the committee will approve the declared value as transaction value. However, in case of doubt, the committee will use another valuation method as set out in by the national legislation. For individual importers, the person importing the vehicle has bought and used it prior to importation therefore the transaction value method cannot be used and the RMCD would use another method based on the order set by the national legislation.
[10] Preferential rules of origin are available at: http://www.miti.gov.my/cms/index.jsp.

2009 schedule)[11] for MFN and preferential tariffs; and the 2012 version of the ASEAN Harmonised Tariff Nomenclature (AHTN) classification system, consisting of 12,337 ten-digit lines (7 more than in 2009) for preferential tariffs under intra-ASEAN trade. Malaysia is transposing its preferential tariff commitments into HS12; by November 2013, it had completed transposition relating to three FTAs (ASEAN, ASEAN-Australia-New Zealand, Malaysia-Australia), while transposition for another nine agreements was pending MITI's decision on issues related to merging tariff lines.

3.21. The tariff schedule is reviewed annually, mainly as part of the national Budget process. In addition regular reviews of the tariff structure and tariff rates are held through dialogues between the authorities and the business community. The Special Advisory Committee on Tariffs (SACT), under MIDA, receives and considers applications for tariff review, which may then be announced in the annual Budget.

3.2.2.1 Applied MFN tariffs

3.22. The tariff structure has changed slightly since the last Review of Malaysia. As a result of the tariff changes involving, *inter alia,* numerous unilateral tariff reductions, the 2013 simple average (unweighted) MFN tariff dropped to 5.6% (7.4% in 2009) (Table 3.1).[12] According to the authorities, under the 2009 and 2011 Budgets import duties were abolished for certain items or reduced, while some products were exempted from duties to curb inflationary pressures and support shopping activities; these changes affected about 300 tariff lines covering food products, electric goods, "tourism products" (cameras, watches, perfumes), and consumer products. No changes to the customs tariff are envisaged under the 2014 Budget. Tariff protection varies substantially across and within sectors, averaging 2.9% for agricultural products and 6% for industrial goods in 2013 (WTO definition).[13] Average tariffs are highest for articles of stone and transport equipment both at a 17.3%, and plastics and rubber at 13.4% (Chart 3.1, Table A3.1). By according varied and substantial levels of protection to selected industries, tariffs distort resource allocation and competition. Reducing high tariffs (mainly the out-of-quota agricultural duties (section 3.2.2.3)) would improve Malaysia's resource allocation and national welfare.

Table 3.1 Malaysia's tariff structure, 2009 and 2013

(%, unless otherwise indicated)

	MFN applied		Final bound[a]
	2009	2013	
Bound tariff lines (% of all tariff lines)	..	..	80.6
Simple average rate	7.4	5.6	15.6
Agricultural products (HS01-24)	2.7	2.5	11.2
Industrial products (HS25-97)	8.0	6.2	16.5
WTO agricultural products	2.8	2.9	11.0
WTO non-agricultural products	7.9	6.0	16.5
Duty-free tariff lines (% of all tariff lines)	60.3	64.6	5.7
Simple average rate of dutiable lines only	18.6	15.9	16.6
Tariff quotas (% of all tariff lines)	0.2	0.2	..
Non-*ad valorem* tariffs (% of all tariff lines)	0.8	0.9	4.7
Domestic tariff "peaks" (% of all tariff lines)[b]	11.8	16.8	..
International tariff "peaks" (% of all tariff lines)[c]	22.2	16.8	..
Overall standard deviation of tariff rates	11.7	9.5	..
Coefficient of variation of tariff rates	1.6	1.7	..
Nuisance applied rates (% of all tariff lines)[d]	0.1	0.1	0.5
Total number of tariff lines	10,389	9,417	6,273
Ad valorem rates	4,045	3,255	5,628

[11] This number largely reflects a reduction of 513 tariff lines under HS Chapter 44 (wood).

[12] The tariff analysis follows the Secretariat's practice of including out-of-quota duties for tariff quotas (i.e. excluding the in-quota rate) and the *ad valorem* part of compound- and alternate-type duties when official *ad valorem* equivalents are unavailable. As out-of-quota rates are much higher than in-quota rates, this is likely to overstate tariff protection where no out-of-quota imports occur. However, using the *ad valorem* component of Malaysia's alternate and compound tariffs (the former applied under the "whichever is the highest" rate principle) will slightly understate tariff protection when the alternate specific rate is operative.

[13] WTO definition of industrial products covers all non-agricultural products, i.e. products not covered by the WTO Agreement on Agriculture. WTO agricultural products include all processed and unprocessed agricultural commodities (HS Chapters 1 to 24, less fish and fish products, plus some additional HS items).

	MFN applied		Final bound[a]
	2009	2013	
Duty free	6,264	6,079	360
Specific rates	39	41	89
Compound rates	36	40	164
Alternate rates	5	2	32

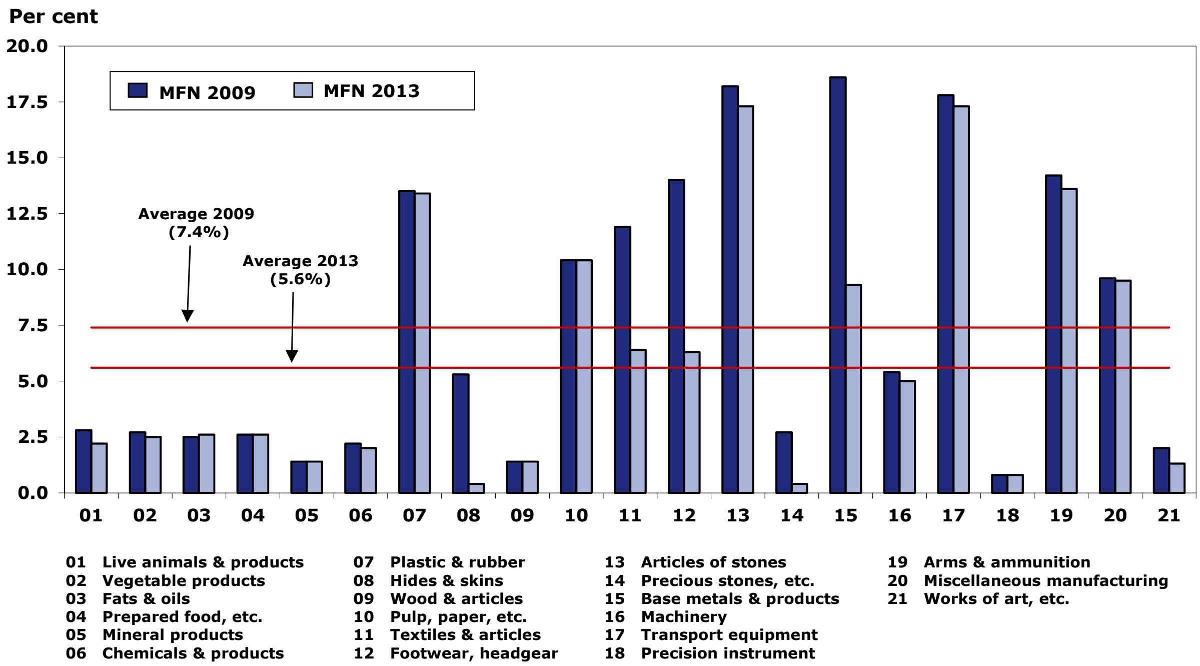
.. Not available.

a Implementation of the U.R. was achieved in 2005. Calculations for final bound rates are taken from the CTS database. The final bound schedule is based on HS02 nomenclature and consists of 7,799 tariff lines, of which 6,273 are bound (including partially bound rates). Calculations are based on the 6,273 bound lines only.
b Domestic tariff peaks are defined as those exceeding three times the overall average applied rate.
c International tariff peaks are defined as those exceeding 15%.
d Nuissance rates are those greater than zero, but less than or equal to 2%.

Note: Calculations exclude in-quota and specific rates and include the *ad valorem* part of compound and alternate rates. The 2009 tariff is based on HS02 nomenclature, and 2013 tariff on HS12. Calculations for averages are based on national tariff line level (9-digit).

Source: WTO Secretariat calculations, based on data provided by the authorities of Malaysia.

Chart 3.1 Average applied MFN tariff rates, by HS section, 2009 and 2013

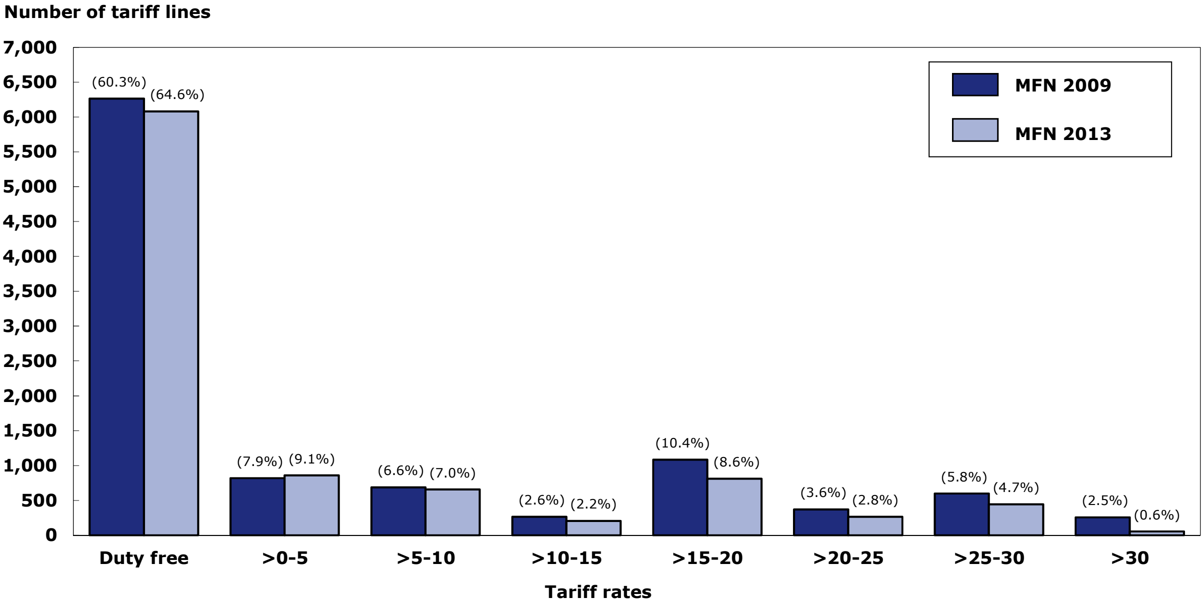


Note: Calculations exclude specific rates and include the *ad valorem* part of alternate and compound rates.

Source: WTO Secretariat calculations, based on data provided by the Malaysian authorities.

3.23. Over 99% of tariffs are *ad valorem* duties. The complexity of the tariff structure remains relatively unchanged since 2009; there are some 51 (52 in 2009) different rate bands, including duty-free rates (19 *ad valorem*, 19 specific, 11 compound, 2 alternate duties). Specific, compound, and alternate duties apply to 83 nine-digit HS12 tariff lines accounting for 0.4% (pineapples, alcoholic beverages, certain tobacco), 0.4% (tropical fruits, certain tobacco, alums, iron/steel scrap ingots), and 0.02% (creped/crinkled paper, automotive air conditioners) of total tariff lines. *Ad valorem* tariff rates still range from zero to 60% (glazed ceramic paving, hearth or wall tiles) for industrial products and 90% (round cabbage) for agricultural products. During the period under review, tariff reductions affected, *inter alia,* essential oils and perfumes (HS Chapter 33), leather articles (HS Chapter 42), clothing (HS Chapters 61, and 62), articles of iron and steel, and jewellery. More than 80% of rates are 10% or below (Chart 3.2, Table A3.1). Rates of over 30% now apply to 0.6% of tariff items. The Malaysian tariff could be further rationalized, for example, by reducing the number of rate bands.

Chart 3.2 Distribution of MFN tariff rates, 2009 and 2013



Note: Figures in parentheses denote the share of total lines. Calculations exclude specific rates and include the *ad valorem* part of alternate and compound rates. The 2009 and 2013 tariff schedules consist, respectively, of 10,389 and 9,417 tariff lines. Totals do not add to 100% due the exclusion of specific rates, representing 0.4% for both 2009 and 2013.

Source: WTO Secretariat calculations, based on data provided by the Malaysian authorities.

3.24. Non-*ad valorem* duties, which are maintained almost exclusively on agricultural products (79 of the 83 nine-digit HS tariff lines) to protect small and rural farmers, tend to conceal high tariff protection. The level of applied non-*ad valorem* tariff protection could be considerably higher than the level afforded by *ad valorem* rates. According to WTO Secretariat calculations, in 2013 the *ad valorem* equivalents (AVEs) of the specific part of specific compound and alternate duties ranged from 0.4% (clove cigarettes) to 1,439.2% (alcoholic beverages, tobacco refuse), and 29 AVEs exceeded the highest *ad valorem* rate (90%) of the customs tariff schedule[14]; these non-*ad valorem* duties form part of Malaysia's WTO tariff binding commitments.

3.2.2.2 MFN tariff dispersion and escalation

3.25. Following the adoption of the HS12 and unilateral tariff reductions undertaken during the period under review, tariff dispersion changed in a positive manner as international tariff peaks and standard deviation were reduced significantly (section 3.2.2.1, Table 3.1, and Chart 3.3).[15] On the other hand, the overall pattern of tariff escalation remains in general pronounced and changed little since 2010, except for textiles and leather, for which the average applied tariff for fully processed goods is now lower than for semi-processed goods (Chart 3.3); for wood and furniture, average tariff protection for first stage of processing and fully processed items remains more than ten times higher than for semi-processed products.

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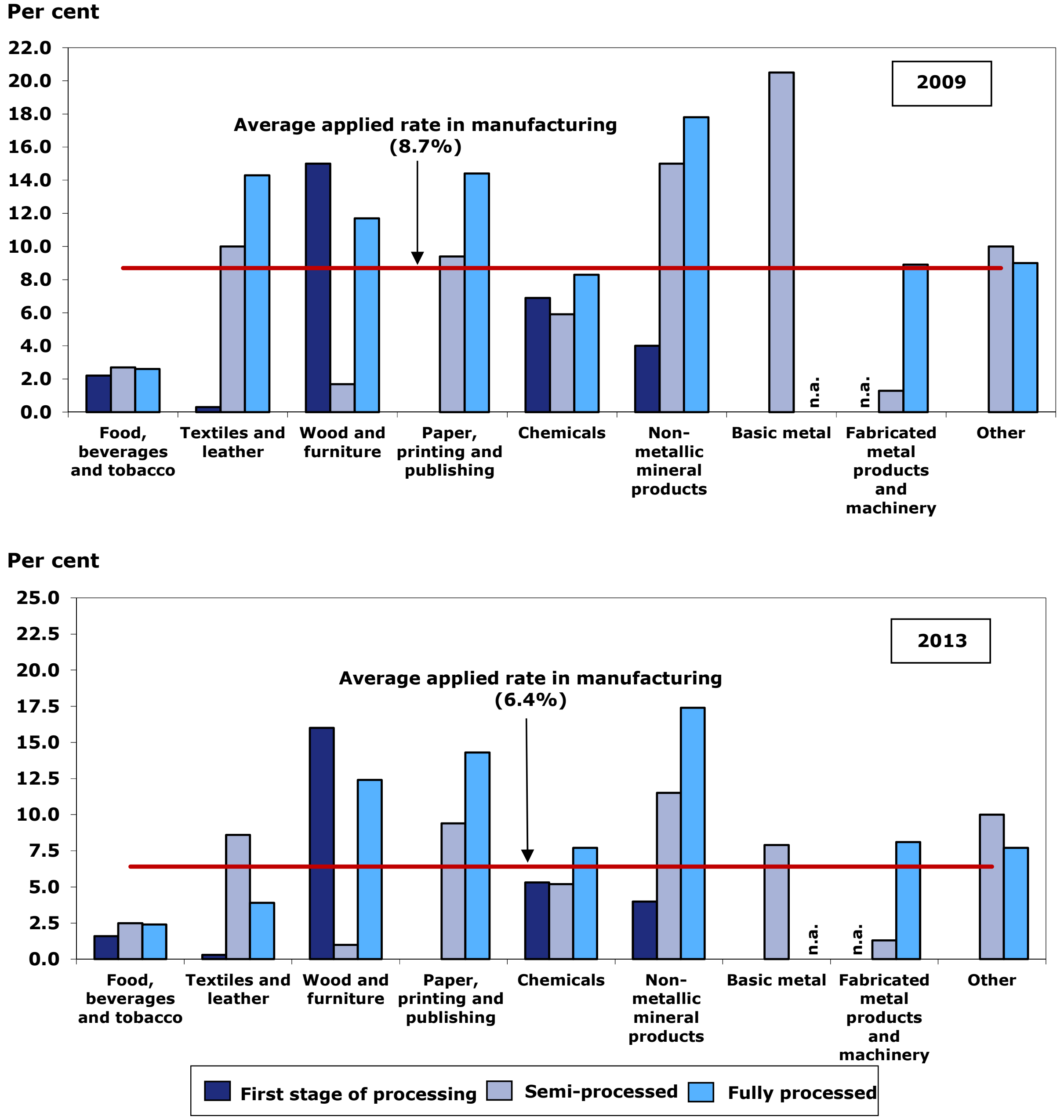
[14] AVEs were calculated on 70 of 83 nine-digit HS tariff lines subject to non-*ad valorem* rates. In all alternate duty cases the *ad valorem* component was higher than the specific duty part of the alternate rate. These calculations are based on the 2012 import value and volume supplied by the Malaysian authorities. When these AVEs are taken into consideration for the tariff analysis (in Table 3.1), the simple average MFN applied rate is 6.9%. In 2009, the simple average of AVEs for 46 out of 80 non-*ad valorem* tariff lines was 392%. Three tariff lines, for bananas and tobacco refuse, had AVEs exceeding 1,000% (WTO document WT/TPR/S/225/Rev.1, 15 February 2010).

[15] The magnitude of the welfare loss associated with the imposition of tariffs is not only a function of the mean tariff, but also depends on the relative magnitudes of tariffs across different products and sectors. The higher the dispersion, the larger the distortionary effects of tariffs. Two indicators of the degree of dispersion are tariff "spikes" or peaks, and the standard deviation of tariffs from their mean. A large number of peaks implies a highly differentiated tariff structure, whereas a small number points to a more uniform or "flat" tariff structure. The higher the standard deviation, the larger the distortions in the patterns of domestic production and consumption caused by tariffs (OECD, 1999).

Chart 3.3 MFN tariff escalation by two-digit ISIC industry, 2009 and 2013



n.a. Not applicable.

Note: Calculations exclude in-quota and specific rates and include the *ad valorem* part of alternate and compound rates. The 2009 tariff is based on HS02 nomenclature, and the 2013 tariff on HS12.

Source: WTO Secretariat calculations, based on data provided by the Malaysian authorities.

3.2.2.3 Tariff rate quotas

3.26. In response to requests by domestic small producers, Malaysia continued to maintain tariff-rate quotas (TRQs) for 20 (18 HS07 items until 2011) HS12 tariff lines in 2013, including live swine and poultry, poultry and pork meat, liquid milk and cream, and round cabbage. In-quota rates ranged from zero (round cabbages) to 25% (pork), and out-of-quota rates from 20% to 90% (round cabbages) (section 4.2.3).[16] In 2011, a large proportion of these quotas were unfilled, and there were no imports of live swine and chicken/duck eggs for hatching, apparently due to lack of demand. The sole items for which imports exceeded the quota volume were day-old poultry,

[16] WTO document WT/TPR/S/225/Rev.1, 15 February 2010; EIU (2012a); and USTR (2012a).

pork/poultry meat, and poultry cuts and offal. These TRQs form part of the 73 HS96 nine-digit level lines contained in Section 1 B of Malaysia's Schedule XXXIX but are not entirely comparable with current tariff lines (at HS07 or HS12) due to the nomenclature changes since then. Nevertheless, out-of-quota rates seem in line with WTO commitments and the actual quota volumes appear higher than those contained in the Schedule. Malaysia's latest WTO notification in relation to TRQs dates back to May 2005 and covers calendar years 1997 and 1998.[17] The authorities indicated that WTO TRQs notifications are pending due to the HS transposition exercise, which affects data collection; Malaysia will update these notifications once the transposition of binding commitments from HS96 to HS02 and HS07 is finalized (section 3.2.2.4). Prior to TRQ re-activation (as from April 2008), the applied MFN tariff rate for these products is claimed to have been zero. Quotas are allocated on a first-come-first-served basis to importers.

3.2.2.4 Tariff bindings

3.27. It is not possible to accurately compare Malaysia's bound tariff rates with its applied tariff rates as the respective tariff schedules are in different nomenclatures; bound tariffs are in HS02 and applied tariffs are in HS12. The transposition of tariff commitments has not yet been finalized.

3.28. According to the WTO's Tariff Profile calculations, on a six-digit HS02 average basis, 84.3% of all tariff lines, covering all agricultural tariff lines and 81.9% of industrial tariff lines (WTO definitions), are bound. Under CTS calculations, based on the national tariff nomenclature nine-digit HS02, 80.6% of all tariff lines were bound.[18] The final overall bound rate (i.e. for 2005) was 15.6% (CTS calculations) or 23% (Tariff Profile).[19] The average bound rate was 11.0% (CTS) or 66.8% (Tariff Profile) for agricultural products (WTO definition) and 16.5% (CTS) or 14.9% (Tariff Profile) for non-agricultural products. Implementation of these commitments was achieved in 2005. Following the unilateral tariff reductions during the review period (section 3.2.2.1), the overall gap between the simple average MFN applied tariff rate and the simple average bound tariff rate could have risen from 8.2 to 10 percentage points (CTS) or from 15.6 to 17.4 percentage points (Tariff Profile). The gap could be 8.1 (CTS) or 63.9 (Tariff Profile) percentage points for rates affecting agricultural items (WTO definition), and 10.5 (CTS) or 8.9 (Tariff Profile) percentage points for industrial items. This gap and the relatively high proportion of unbound lines continue to provide ample scope for the authorities to raise applied tariffs, thus allowing for a potentially high degree of unpredictability over tariff barriers facing imports in Malaysia's market; no such increases appear to have occurred during the period under review.

3.29. Since 1 January 2007, Malaysia has benefited from collective waivers for the introduction of HS07 changes in its Schedule XXXIX of tariff concessions.[20] Malaysia submitted the transposition of its commitments to HS02 and HS07 in August 2013; in November 2013, the verification process was still under way. In addition, as from January 2012 Malaysia has benefited from a collective waiver for the introduction of HS12 changes in its Schedule of tariff concessions[21]; as of November 2013, Malaysia was in the process of completing this transposition exercise and will notify the outcome to the WTO in the course of 2014.

3.2.2.5 Duty concessions/exemptions

3.30. The application of import duty and sales tax relief through duty and tax concessions and exemptions has not changed since the last Review of Malaysia. They cover raw materials and components used in the manufacture of goods for export, and for machinery and equipment not available in Malaysia but used directly in the manufacturing process.[22] Full exemptions from sales tax and excise duties are granted to locally purchased machinery/equipment. Duty exemptions are granted to local as well as foreign-owned manufacturing companies. According to the authorities,

[17] WTO document G/AG/N/MYS/12, 4 May 2005.
[18] WTO Statistics database. Viewed at: http://stat.wto.org/TariffProfile/WSDBTariffPFView.aspx?Language=E&Country=MY; and WTO document WT/TPR/S/225/Rev.1, 15 February 2010.
[19] The reason for such a gap between CTS and Tariff Profile calculations is that the latter include AVEs.
[20] WTO document WT/L/833, 5 December 2011; and WT/L/874, 14 December 2012.
[21] WTO document WT/L/834, 5 December 2011; and WT/L/875, 14 December 2012.
[22] Duty exemptions and concessions are contained in: Customs Duties (Exemption) Order 1998; Excise Duties (Exemption) Order 1997; and Sales Tax (Exemption) Order 1980 (viewed at: http://www.pytheas.net/docs/malaysia/CustomsAct1967.pdf).

the revenue forgone from import duty and sales tax relief was US$1.3 billion in 2012 (equivalent to 13% of total tariff revenue) compared with US$1.5 billion (15.7% of total tariff revenue) in 2011.

3.2.2.6 Tariff preferences

3.31. Following unilateral MFN tariff reductions (section 3.2.2.1), and despite efforts to expand bilateral and regional free-trade agreements during the review period, the gap between Malaysia's simple average applied MFN tariff rate and the average preferential rate on imports from preferential or FTA trading partners was reduced (Table 3.2). The simple average rates under virtually all preferential arrangements remain lower than the simple average MFN rate, although the averages vary widely among the arrangements and among product groups.[23] Similar nomenclature-related technical difficulties to those encountered in tariff bindings (section 3.2.2.4) affected the Secretariat's appraisal of preferential tariff treatment for imports from China, Japan, Korea (Rep. of), Pakistan, New Zealand, and other ASEAN countries (HS07); only the ATIGA and MAFTA (section 2.4.2) preferences were available in an accurately comparable nomenclature (HS12).

Table 3.2 Summary analysis of the Malaysian preferential tariff, 2013

(%)

	Preferential lines[a] (% of all tariff lines)	Duty-free lines (% of all tariff lines)	Overall average	WTO agriculture	WTO non-agriculture	Textiles	Clothing	Leather, rubber, footwear & travel goods	Transport equipment
MFN		64.6	5.6	2.9	6.0	8.9	0.2	11.4	17.6
ATIGA[b]	33.9	98.0	0.3	0.3	0.3	0.1	0.0	0.0	0.0
MAFTA[c]	34.0	96.0	0.6	1.2	0.5	0.0	0.0	0.4	3.1
MNZFTA[d]	34.2	94.1	0.4	0.7	0.4	0.0	0.0	0.1	1.2
MPCEPA[e]	25.5	79.5	3.4	0.8	3.8	3.1	0.1	4.7	12.0
MCFTA[f]	33.7	90.6	1.3	1.1	1.3	0.2	0.0	5.4	8.7
MICECA[g]	26.5	75.7	3.3	1.3	3.6	3.5	0.1	6.8	15.1

a The number of preferential lines corresponds only to tariff lines that are lower than the corresponding MFN applied.
b ASEAN Trade in Goods Agreement.
c Malaysia-Australia Free Trade Agreement.
d Malaysia-New Zealand Free Trade Agreement.
e Malaysia-Pakistan Closer Economic Partnership Agreement.
f Malaysia-Chile Free Trade Agreement.
g Malaysia-India Comprehensive Economic Co-operation Agreement (as of September 2013).

Note: Calculations are based on national tariff line level (nine-digit); excluding in-quota rates and specific rates and including the *ad valorem* part of alternate and compound rates. Preferential agreements cited are those received from the authorities. MNZFTA, MPCEPA, MCFTA, and MICECA original data were provided in HS07 nomenclature and changed by the Secretariat into HS12 for calculation purposes.

Source: WTO Secretariat calculations, based on data provided by the authorities of Malaysia.

3.2.3 Import licensing, restrictions, and prohibitions

3.2.3.1 Licensing

3.32. No major changes have been made to Malaysia's import licensing regime, which affects about a quarter of Malaysia's tariff lines. Since 2010, 55 tariff lines (e.g. sugar, saccharin, ractopamine, multicolour copy machines, automatic cassette/cartridge loaders) have been

[23] At the time of the previous TPR of Malaysia the MPCEPA's simple average preferential rate (based on HS07) was 6.7% (WTO document WT/TPR/S/225/Rev.1, Table III.2, 15 February 2010).

removed, and 28 tariff lines (e.g. agricultural products, timber products, tyres, aluminium products, CITES items) added to those subject to import licensing requirements. As of March 2013, imports subject to licences were classified depending on the local destination of the merchandise: goods destined to the entire territory (8 major product categories including motor vehicles, ships derricks and cranes, certain substances, certain medicaments, medicine-making machines); goods destined to the territory except for specified free zones (20 product categories including sugar, rice milling machines, unmanufactured tobacco, chemicals, optical disc mastering/replicating machines, used tyres/brakes/batteries, tractors, motorcycles, chassis for motor vehicles, motorcyclist's helmets, and all goods from Israel); and goods destined to the territory except for specified free zones and certain states (Labuan, Langkawi, and Tioman) (14 product categories including wheat/meslin flours, and iron/steel/aluminium products).[24] Furthermore, imports of 60 product categories (including live/edible animals/fish/birds, plants, pork products, milk, pasta, ice cream, animal feeding, fertilizers of animal origin, paddy rice, coffee, cabbage, natural honey, numerous food products, logs/wood in the rough from all countries except Indonesia, wood, plywood, raw hides and skins, leather, arms and ammunition, explosives, pesticides) were subject to permit or approval and inspection (often depending on the Malaysian State of destination) by different government or non-governmental agencies.[25] According to the authorities this approval/permit requirement is to ensure the fulfilment of international commitments, as well as for national security, public health and safety, and monitoring purposes.

3.33. Automatic licensing is for data collection and monitoring purposes; all automatic licences can be obtained online through the national single window system (section 3.2.1.1). Most of Malaysia's import licensing remains non-automatic and licensing is mainly intended to regulate the flow of imports and to promote import-sensitive strategic industries selected for achieving certain socio-economic objectives.[26] To reduce the reliance of domestic industry on imports, heavy machinery for the construction sector is granted import approval only if not available locally[27]; from January 2010 to June 2013, 8,424 approvals were granted, while 1,960 applications were rejected. Several government agencies are involved in granting licences.[28]

3.34. Malaysia submits regular Replies to the Questionnaire on Import Licensing Procedures to the WTO Committee on Import Licensing; its latest updating notification was on 7 October 2011.[29]

3.2.3.2 Quotas

3.35. According to its 2011 WTO notification, Malaysia uses non-automatic licensing to ensure the orderly importation of round cabbages and un-roasted coffee beans, and to provide temporary protection to local growers of these products.[30] The authorities indicated that import licences for

[24] Customs (Prohibition of Imports) Order 2012 (P.U. (A) 490), 31 December 2012, notified in WTO document G/LIC/N/1/MYS/2, 11 April 2013.

[25] Customs (Prohibition of Imports) Order 2012 (P.U. (A) 490), 31 December 2012, notified in WTO document G/LIC/N/1/MYS/2, 11 April 2013.

[26] These items/activities include sugar, wheat flours, unmanufactured tobacco, chemicals, used tyres, passenger and commercial vehicles and motorcycles, certain iron and steel items, and rice milling machinery (sections 4.2 and 4.6). According to Malaysia's WTO notifications since its last TPR, 14 nine-digit HS items (used pneumatic tyres and flat-rolled products of other alloy steel of a width of 600 mm or more of silicon-electrical steel) were added to the items subject to non-automatic import licensing requirements for public safety and import monitoring purposes (WTO documents G/LIC/N/2/MYS/4, 19 April 2010; G/LIC/N/3/MYS/7, 10 October 2011; and G/LIC/N/2/MYS/5, 3 July 2012).

[27] EIU (2012a).

[28] They include: the Ministry of International Trade and Industry; the Ministry of Energy, Green Technology and Water; the RMCD; the Ministry of Agriculture and Agro-based Industry; the Federal Agricultural Marketing Authority (FAMA); the Department of Agriculture; the Department of Veterinary Services; the Pesticides Board of Malaysia; the Fisheries Development Authority of Malaysia, and Department of Fisheries Malaysia; the Drug Control Authority; and the Malaysian Communications and Multimedia Commission.

[29] WTO document G/LIC/N/3/MYS/7, 10 October 2011.

[30] The amount of round cabbages and coffee beans that may be imported are specified in the import licences. Importers are required to apply for a licence for each import. Prior to applying for import licences for these products, importers need to secure a quota granted on monthly basis for cabbages and on a yearly basis for coffee beans. Quotas are valid for two years. The quota volume in the case of coffee beans is usually determined by the capacity of the processing plant while in the case of cabbages it is determined by the ability of the applicant to purchase (WTO documents G/LIC/N3/MYS/4, 17 October 2008, and G/LIC/N/3/MYS/7, 10 October 2011). During the period under review Malaysia's annual green coffee production ranged from 1 million (2010) to 1.45 million (2012) 60 kgs bags (Index Mundi online information. Viewed at:

both products relate to TRQ implementation (section 3.2.2.3), and no such quotas were applied on coffee beans during the period under review.

3.36. The potentially restrictive import licensing system of "approved permits" (AP) governing the importation and distribution of foreign-built or assembled cars, trucks, and motorcycles, which forms part of the National Automotive Policy (NAP), is to be terminated in 2015 for open APs, and 2020 for franchise APs (section 4.6).[31] The AP system is allegedly administered in a non-transparent manner and operates as a *de facto* import quota by restricting the total number of imported vehicles in a given year. Under open APs, the quantity allocated is based on the open AP audit performance in the previous year. For franchise APs, allocation is based on the performance of imports and annual imports proposed by APs holders. According to the authorities, since 2007 quotas administered via APs have exceeded the 10% of total industry production from the previous year, due to the lack of restrictions on imports from ASEAN countries.

3.2.3.3 Prohibitions

3.37. During the period under review, Malaysia prohibited imports of a number of products from certain countries on religious, security, health, and environmental health and safety grounds (section 3.2.5).[32] In March 2013, imports of 13 major product categories were prohibited, including certain animal feed, tyres (new, retreaded), poisonous chemicals and minerals, substances under the Montreal Protocol, and logs and wood in the rough from Indonesia.[33]

3.2.4 Contingency measures

3.38. No changes have been made to the Countervailing and Anti-Dumping Duties Act 1993 or the Countervailing and Anti-Dumping Duties Regulations 1994 since 2006. During the period under review, overall Malaysia's recourse to anti-dumping action dropped markedly. While no case was initiated from 2007 to 2011[34], in 2012 Malaysia launched three investigations involving steel wire rod (China, Chinese Taipei, Indonesia, Korea (Rep. of), Turkey), biaxially oriented polypropylene film (China, Chinese Taipei, Indonesia, Thailand, Viet Nam), and hot-rolled coils (Chinese Taipei).[35] As of end June 2013, anti-dumping measures in the form of duties were in force on two products, i.e. newsprint (Canada, Indonesia, Korea (Rep. of), Philippines, United States) and polyethylene terephthalate (Thailand); all these measures have been in place since 2003 (one since 2005), and were extended in 2009 (one in 2011). Malaysia has never taken countervailing measures. Since its last Trade Policy Review, Malaysia has submitted semi-annual reports on anti-dumping and countervailing actions to the relevant WTO Committees.

3.39. The Safeguards Act of 2006 was amended in mid-2012 to fulfil Malaysia's commitments in bilateral or regional FTAs, and entered into force on 1 September 2013. The Safeguards Regulations 2007 remain unchanged since the last TPR of Malaysia. Malaysia published the Safeguards (Agreement On Trade In Goods Of The Framework Agreement On Comprehensive Economic Co-Operation Between The Association Of Southeast Asian Nations And China (Safeguard Measure)) Regulations 2013, which entered in force on 2 September 2013. Malaysia initiated its first ever safeguards investigation relating to imports of hot-rolled coils on 1 May 2011; the investigation was terminated without further action on 22 August 2011.[36]

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http://www.indexmundi.com/agriculture/?country=my&commodity=green-coffee&graph=production); in 2011 unroasted coffee beans imports attained 9,644,172 kg.

[31] More information on the Aps system is available in WT/TPR/S/225/Rev.1, 15 February 2010.

[32] Customs (Prohibition of Imports) Order 2012 (P.U. (A) 490), 31 December 2012, notified in WTO document G/LIC/N/1/MYS/2, 11 April 2013.

[33] Customs (Prohibition of Imports) Order 2012 (P.U. (A) 490), 31 December 2012, notified in WTO document G/LIC/N/1/MYS/2, 11 April 2013.

[34] With 48 cases initiated between 1995 and 2012 (end June), Malaysia was the world's 16th major user of anti-dumping measures (WTO online information. Viewed at: http://www.wto.org/english/tratop_e/adp_e/AD_InitiationsByRepMem.pdf [22 February 2013]).

[35] WTO documents G/ADP/N/230/MYS, 26 September 2012; G/ADP/N/237/MYS, 31 January 2013; and G/ADP/N/244/MYS, 24 September 2013.

[36] WTO documents G/SG/N/9/MYS/1, 7 September 2011, and G/SG/N/6/MYS/1/Corr.1, 14 October 2011.

3.2.5 Standards and other technical requirements

3.2.5.1 Standards, testing, and certification

3.40. The improvement and development of standards are among Malaysia's priorities for achieving high-income-nation status by 2020.[37] The 2004 National Standards and Strategy Action Plan, continues to serve as a guideline to enhance Malaysia's standardization activities until 2020.

3.41. During the review period, the institutional setting in this area remained virtually unchanged. The Department of Standards Malaysia (Standards Malaysia, DSM) under the Ministry of Science, Technology and Innovation functions as Malaysia's national standardization and accreditation body. SIRIM Berhad, a wholly state-owned company, is the national standards development agency under the provisions of the Standards of Malaysia Act; it is the national organization of standardization and quality and serves as the Government's catalyst for industrial research and development. Nevertheless, following the amendment of the Standards of Malaysia Act 1996 (Act 549) (in force since 15 April 2012), Standards Malaysia is empowered to appoint multiple standards development agencies (SDAS), besides SIRIM Berhad, in order to expedite the development of Malaysian Standards (MS). The Malaysian Standards and Accreditation Council is the advisory body established under the Act to advise the Minister of Science, Technology and Innovation on matters relating to standards and accreditation. Malaysia participates in the activities of the International Organization for Standardization (ISO) and the International Electrotechnical Commission (IEC).[38]

3.2.5.1.1 Malaysian standards

3.42. Malaysian standards (MS) are voluntary unless referred to in legislation (including specific technical regulations). At end 2012 the major product categories of the 6,381 MS (5,444 in 2008) in place were chemicals and materials (707), information technology, communications and multimedia (687), power generation, transmission and distribution of energy (569), food and food products (463), and electrical and electronics equipment and accessories (426).[39] At end December 2012, 416 or 6.5% (3.2% at end 2008) of all MS were compulsory.[40] A number of foreign standards and international standards are referred to in Malaysia's technical regulations. MSs are implemented in product certification, quality management systems, and environmental management systems certification; they are reviewed every five years or whenever required to keep current with the latest technological developments.[41]

3.43. The Government aims to align Malaysian standards with international standards. As of December 2012, 59.8% (58.1% in 2008) of MS were aligned with international standards, and 57.51% were identical (Table 3.3); the highest levels of alignment were in information and communication technology (ICT), power-generating, and electrical and electronic equipment.[42]

[37] WTO document WT/TPR/M/225/Add.1, 19 March 2010; and EIU (2012a).

[38] Malaysia participates in the Council, Technical Management Board, and various technical committees and sub-committees of the ISO, and various technical committees and sub-committees of the IEC.

[39] Standards Malaysia online information, "Malaysian Standards (MS) Status as of Minister approval on 13 December 2012". Viewed at: http://www.standardsmalaysia.gov.my/documents/10179/90020/Status%20of%20MS%20as%20of%20Minister%20Approval%2013%20December%202013.pdf [14 March 2013].

[40] Goods subject to technical regulations include palm oil, certain vegetables and flowers, certain chemicals and materials, materials related to building and civil engineering, iron and steel, electrotechnical engineering, mechanical engineering, information technology, petroleum and gas, road vehicles, goods related to fire safety and prevention, and medical devices.

[41] U.S. Department of Commerce/U.S. Commercial Service (2012).

[42] Standards Malaysia online information, "Malaysian Standards (MS) Status as of Minister approval on 13 December 2012". Viewed at: http://www.standardsmalaysia.gov.my/documents/10179/90020/Status%20of%20MS%20as%20of%20Minister%20Approval%2013%20December%202013.pdf [14 March 2013]; and EIU (2012a).

Table 3.3 Malaysian standards aligned to international standards, 2008 and 2012

Description	2008			2012 (to November)		
	Total MS (A)	IDT (B)	MOD (C)	Total MS developed (A)	Aligned MS IDT (B)	Aligned MS MOD (C)
Agriculture	571	121	6	191	45	0
Chemicals and materials	708	331	50	707	241	3
Consumer interests (especially cross-sectoral standards such as product safety and product recall)	..	..	..	1	1	0
Buildings, construction, and civil engineering	263	61	4	357	54	2
Power generation, transmission, and distribution of energy	770	590	28	569	379	42
Mechanical engineering	294	127	5	339	209	4
Information technology, communications, and multimedia	643	591	3	687	619	0
Petroleum and gas	205	105	2	239	80	4
Halal standards	4	0	0	12	0	0
Plastics and plastics products	365	180	13	365	186	12
Packaging and logistics	96	55	0	123	52	0
Road vehicles	173	88	12	243	138	3
Fire safety and prevention	86	28	2	90	28	2
Rubber and rubber products	194	104	19	163	93	6
Organizational management	71	31	1	10	6	0
Metallic materials and semi-finished products	103	39	12	289	190	12
Textiles and apparels	255	57	0	309	204	4
Medical devices and facilities for healthcare	166	156	1	368	314	5
Electrical and electronic equipment and accessories	93	28	0	426	358	25
Tourism, exhibition, and hospitality services	6	6	0	13	10	0
Food, food products, and food safety	49	15	2	463	140	15
Occupational safety and health	149	127	4	220	163	4
Quality management and quality assurance	122	114	2	99	97	0
Environmental management	58	40	0	98	63	3
Total	**5,444**	**2,994**	**166**	**6,381**	**3,670**	**146**
% of alignment to international standards (B+C/A)	**58.04**			**59.80**		
% identical to international standards (B/A)	**54.99**			**57.51**		

.. Not available.

Note: IDT = identical; MOD = modified.

Source: Information provided by the Malaysian authorities.

3.2.5.1.2 Halal certification

3.44. Malaysia has been successful in developing halal certification, reflecting the Government's aim to make the country a hub for halal food products. In 2011 the authorities introduced the world's first halal pharmaceuticals standards.[43] All meat, processed meat products, poultry, and egg products, domestically produced or imported, must receive halal certification from the Department of Islamic Development Malaysia (JAKIM) or any foreign halal certification body recognized by JAKIM prior to importation and distribution in Malaysia.

3.45. The slaughtering of animals (other than swine) and production of animal-based products (other than swine) for export to Malaysia must be conducted according to halal requirements. The Department of Veterinary Services (DVS), in collaboration with other relevant agencies, such as JAKIM and the Ministry of Health, inspects slaughterhouses and processing plants overseas periodically, to ensure compliance with Malaysia's halal import requirements. Inspection is usually

[43] EIU (2012a).

once a year or every two years, but depends on the risk involved in the particular country. JAKIM recognizes the qualified Islamic organization in the exporting country/economy for monitoring the halal process in the slaughterhouse and issuing halal certificates for products exported to Malaysia. Malaysia has no mutual recognition arrangements with foreign standards-setting bodies on standardization and inspection for halal certification. A Malaysian Protocol for Halal Meat and Poultry Production was implemented from August 2011. Since then, concerns have been raised about the protocol, on several occasions, by Argentina, Brazil, the United States, and the European Union, in the WTO Committee on Technical Barriers to Trade.[44]

3.2.5.1.3 Accreditation and quality management standards

3.46. There have been no changes in Malaysia's system of conformity assessment since its previous Review. Standards Malaysia operates as the sole national accreditation body. The DSM provides accreditation services to certification bodies, inspection bodies, and testing and calibration laboratories. Its accreditation system is claimed to be in accordance with the international standard MS ISO/IEC 17011 to ensure that the accreditation services provided are impartial, non-discriminatory, and credible.[45] Accreditation of laboratories is carried out under the Laboratory Accreditation Scheme of Malaysia (SAMM).[46] To encourage more conformity assessment bodies to support Standards Malaysia's accreditation schemes, the Government offers tax incentives in the form of tax deductions for the costs incurred, such as the assessment fee, the annual fee, and the fee imposed by Standards Malaysia. The tax deduction is applicable for all programmes operated under its various accreditation schemes.[47] At end 2012, a total of 472 (405 in 2008) laboratories had been accredited.

3.47. SIRIM QAS International Sdn. Bhd, a subsidiary of SIRIM Berhad, is the leading certification, inspection, and testing body in Malaysia, and provides marks for a variety of certifications. Permission to use the SIRIM Quality Mark on products or services is given to manufacturers and companies whose products and services consistently conform to the relevant MS guidelines.[48] To ensure compliance with the requirements of the mark, SIRIM undertakes periodic product testing, makes both regular and unannounced visits to manufacturers, and regularly checks their quality controls and procedures.

3.2.5.1.4 International cooperation

3.48. Malaysia participates in voluntary mutual recognition arrangements under: the Asia Pacific Laboratory Accreditation Cooperation and International Laboratory Accreditation Cooperation (APLAC/ILAC) MRA for testing and calibration; and the Pacific Accreditation Cooperation and the International Accreditation Forum Multilateral Recognition Agreement (PAC/IAF MLA) for the quality management system (QMS) and the environmental management system (EMS) and product certification (PC). It also participates in the ASEAN Electrical and Electronic Equipment MRA as well as the ASEAN MRA on Pharmaceutical Inspection, and as a member of PIC/S (Pharmaceutical Inspection Cooperation Scheme). Malaysia has been involved in the development of international standards through its participation in bodies such as the ISO and IEC. It has also obtained full adherent status in the OECD Mutual Acceptance of Data (MAD) in March 2013 for its Good Laboratory Practice (GLP) Compliance Programme.

3.2.5.1.5 Transparency

3.49. Criteria for adopting standards are determined by the relevant "standard development committees". These committees are established on the basis of four main stakeholder categories (producer interest, regulatory authority, user interest, general interest) and report to the

[44] WTO document G/TBT/GEN/74/Rev.9, 17 October 2011; and G/TBT/33, 27 February 2013.

[45] Standards Malaysia online information. Viewed at: http://www.standardsmalaysia.gov.my/accreditation-overview.

[46] Other Standards Malaysia accreditation schemes are: the Accreditation of Certification Bodies Scheme (The ACB Scheme); Malaysia Inspection Bodies Accreditation Scheme (MIBAS); and the Good Laboratory Practice Compliance Programme (GLP CP), which is in line with the OECD Principles of GLP (Standards Malaysia online information. Viewed at: http://www.standardsmalaysia.gov.my/schemes-programmes).

[47] Standards Malaysia online information. Viewed at: http://www.standardsmalaysia.gov.my/tax-benefits.

[48] For a full list of SIRIM quality marks see: http://www.sirim-qas.com.my/certlist2.asp; see also U.S. Department of Commerce/U.S. Commercial Service, 2012.

Malaysian National Standards Committee (MyNSC) and Malaysian Electrotechnical Committee (MyENC). Standards Malaysia is the secretariat for the committees. The national standardization system uses a consensus process to develop new standards, allowing all stakeholders to provide inputs into the development process.[49] Foreign interests are considered in the adoption of new or revised standards through the "public comment" procedures on any draft standards made publicly available on the websites of Standards Malaysia and SIRIM Berhad. A list of existing MS can be viewed online (www.msonline.gov.my).

3.50. Between 2009 and 2012, Malaysia made 17 notifications under the WTO Agreement on Technical Barriers to Trade; the majority were under Article 2.9 of the Agreement (15). In more than half of these cases (9) the submission allowed for a comment period of 60 days or more, while in 7 cases the period was not specified, had lapsed or was stated as non-applicable.[50]

3.2.5.2 Sanitary and phytosanitary regulations

3.51. The regulatory framework under which SPS measures are implemented has remained largely unchanged since Malaysia's previous Review.[51] A new Malaysian Quarantine and Inspection Services Act (Act 728), passed in August 2011 and effective 1 January 2012, covers the provision of integrated services relating to quarantine, inspection, and enforcement at entry points.[52] As at November 2013, Act 728 had not been notified to the WTO SPS Committee, as it was in the process of amendment.

3.52. The Ministry of Agriculture and Agro-based Industry (MOA) is responsible for matters relating to plants, animals, and fisheries; its Department of Agriculture (DOA), Department of Veterinary Services (DVS), and Department of Fisheries (DOF) are responsible for matters relating to plants, animals and animal products, and fisheries, respectively. The Ministry of Health (MOH) is responsible for food safety matters. The Malaysian Quarantine and Inspection Services (MAQIS), which was created to enforce Act 728 and operates as a one-stop centre, provides the following services at entry points: quarantine stations and quarantine premises; certification for import and export of plants, animals, carcasses, fish, agricultural produce, soils and microorganism; and inspection of and enforcement relating to food and for matters connected to it. In 2013, MAQIS adopted regulations on: registration of importers, exporters and agents; quarantine and inspection; fees and charges; and permits, licences, and certification. The authorities indicated that MAQIS was notified to the WTO under the import licensing notification requirements in October 2013; the notification was yet to be issued and circulated.

3.2.5.2.1 Food standards

3.53. During the period under review, several amendments relating to food additives, heavy metal contaminants and microorganism and its toxins were made to the Food Regulations 1985.[53] Amendments regarding storage temperature of frozen food and a schedule on compoundable offences were also made to the Food Hygiene Regulations 2009. According to the authorities, these amendments were based on risk analysis, taking into consideration local situations including the national food consumption patterns and international standards such as those set under the Codex Alimentarius. Under the Food Hygiene Regulations 2009, it is mandatory for food manufacturing facilities and food premises to implement a food safety assurance system. Malaysia developed and maintains various certification schemes including the Good Manufacturing Practices (GMP) Certification Scheme and the Hazard Analysis and Critical Control Points (HACCP) Certification Scheme, which facilitate food trade as HACCP and GMP have become increasingly a requirement by importing countries. So far, no MOUs on food safety and quality have been signed with trading partners.

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[49] U.S. Department of Commerce/U.S. Commercial Service (2012).

[50] WTO documents G/TBT/28, 5 February 2010; G/TBT/29, 8 March 2011; G/TBT/31, 2 March 2012; and, G/TBT/33, 27 February 2013.

[51] More information on the regulatory framework in this area is available in WTO document WT/TPR/M/225/Add.1, 19 March 2010.

[52] The Act was viewed at: http://www.maqis.gov.my/c/document_library/get_file?uuid=0ceba49e-f212-41b9-882a-66aa06c74b45&groupId=29274.

[53] More specifically, these amendments included: the regulation on flavouring substances and its related schedule as well as the table on mycological contaminant and maximum permitted proportion of metal contaminants, arsenic, lead, tin, mercury, and cadmium in specified foods. The Food Act 1983, its related regulations and amendments, viewed at: http://fsq.moh.gov.my.

3.2.5.2.2 Biosafety

3.54. Malaysia's 2007 Biosafety Act entered into force on 1 December 2009, upon expiry of a grace period of two years. This enabled the stakeholders to understand its requirements by, *inter alia,* carrying out capacity-building activities.[54] It requires the National Biosafety Board (NBB) to evaluate and approve living modified organisms (LMOs) before release onto the market for food, feed, or processing.[55] This applies to any genetically modified organisms (GMOs) that may be found in corn and soybeans imports. A Genetic Modification Advisory Committee (GMAC) provides expert advice to the NBB on application. The NBB is to complete applications within 180 days, taking into account the decision-making process provided in the domestic legislation, including risk assessment, consultation with relevant Government agencies, mandatory consultation with public and stakeholders, before a product is approved. Information regarding regulatory matters of LMOs are publicly available online from Malaysia Biosafety Clearing House.[56] As of November 2013, the NBB had approved 11 events for food, feed, and processing; the authorities indicated that all the applications were approved within the stipulated time and several seminars were organized to guide industries as well as technology developers on the issue. No genetically modified seed for planting is approved for import or for confined trials. Biotechnology-related activities benefit from tax and non-tax incentives (section 3.4.1.3 and 3.4.2.1.1).

3.2.5.2.3 Risk analysis

3.55. Malaysia acknowledges the importance of risk analysis as the basis for all food safety management actions, development of food safety standards, and managing risks associated with food hazards.[57] Risk analysis is intended to complement the numerous food safety initiatives currently being implemented. Malaysia has integrated the principles and processes of risk analysis into its food safety control system, uses it to provide scientific evidence in negotiating access for its food to other countries. Risk analysis is applied in the development of food safety standards provided under the Food Act 1983 and its regulations, as well as in response to food safety emergency/crises that results from emerging hazards or breakdowns in control systems.

3.56. During the period under review, Malaysia applied temporary suspensions on imports of animal and animal products due to diseases such as Bovine Spongiform Encephalopathy, Highly Pathogenic Avian Influenza, and Foot-and-Mouth Disease reported in the exporting countries concerned.

3.2.5.2.4 Transparency

3.57. Between January 2010 and July 2013, six notifications (two regular notifications and four addenda/corrigenda), were submitted under the WTO Agreement on Sanitary and Phytosanitary Measures (the SPS Agreement). In the context of the WTO Committee on Sanitary and Phytosanitary Measures, between 2011 and 2012 Members raised concerns about Malaysia's import restrictions on plant and plant products (Brazil, Japan) and pork and pork products (Canada, EU, United States). In response to comments received from WTO Members, and other considerations in the context of the Committee, the Department of Fisheries Malaysia amended the detailed conditions on importation of live fish (2011), and the Health Certification Requirement for Import Live Ornamental Fish (2011, 2012) into Malaysia.[58]

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[54] The 2007 Biosafety Act forms part of Malaysia's responsibilities as a signatory to the Cartagena Protocol on Biosafety to the Convention on Biological Diversity of the United Nations (Latifah et al., 2011, pp. 12418-12424; and Letchumanan, 2011).

[55] An LMO is a GMO that is still alive, such as a fresh fruit or vegetable or a seed that has been modified using recombinant DNA (University of Colorado online information. Viewed at: http://www.colorado.edu/chemistry/bioinfo/GeneticallyModifiesOrganisms.htm; and USDA, 2012a and 2012b).

[56] Viewed at: http://www.biosafety.nre.gov.my/.

[57] FAO Conference Room Document 6, "Application of Risk Analysis in Food Control: Challenges and Benefits Risk Analysis in Malaysia", FAO/WHO Regional Conference on Food Safety for Asia and the Pacific, Seremban (Malaysia), 24-27 May 2004. Viewed at: http://www.fao.org/docrep/MEETING/006/AD699E.HTM [14 March 2013].

[58] WTO documents G/SPS/N/MYS/20/Add.2, 1 June 2011; G/SPS/N/MYS/26/Add.1, 1 June 2011; and G/SPS/N/MYS/26/Add.2, 14 August 2012.

3.2.5.3 Labelling and packaging requirements

3.58. Several changes relating to agricultural and food produce and GMOs/LMOs were made in this area during the review period. Several amendments were made to the Food Regulations 1985 related to labelling and packaging. These amendments involved: the labelling of food and food ingredients obtained through modern biotechnology; the labelling of food which may cause hypersensitivity (inclusion of definition for "sugars", inclusion of Nutrient Reference Value (NRV) for "choline"); prohibition of feeding bottles containing Bisphenol A; and regulations on ceramic ware. The August 2008 Grading, Packaging and Labelling of Agricultural Produce Regulations, effective 1 January 2011 are intended to improve the quality of agricultural produce; they cover imports and exports at the wholesale and retail level. They are expected to enhance fair practices through: the use of standardized international benchmarks; the dissemination of information between traders; the facilitation of traceability of fresh produce along the supply chain; the prevention of discrimination between WTO Members when identical or similar conditions prevail; the reduction of restrictions to international trade.

3.59. MOH regulations containing mandatory labelling requirements (including the origin of the modified gene)[59] for food and food ingredients obtained through modern biotechnology (GMOs/LMOs) were issued on 8 July 2010 through amendments to the Food Regulations under the Food Act 1983. A two-year grace period was given (until 8 July 2012) before enforcement but the grace period was extended until 8 July 2014, on request from the industries. This extension period was given to provide sufficient time for industries to comply with the regulations. Only those events that have been approved by the National Biosafety Board, Ministry of Natural Resources and Environment (NRE) are permitted. Guidelines on Labelling of Foods and Food Ingredients obtained through Modern Biotechnology, which outlined the labelling requirements, threshold level, and list of foods exempted from labelling, are available from the MOH.[60] The labelling requirement will not apply to meat reared on feed containing GMOs.

3.2.6 Government procurement

3.60. Government procurement remains a vital aspect of Malaysia's financial management, as public expenditure consumes a considerable amount of allocations. Between 2009 and 2011, the size of the government procurement market, as per Department of Statistics (DOS) Malaysia data and in terms of government final consumption expenditure (including emoluments), rose from RM 93 billion to about RM 115 billion, while its share to GDP remained at 13%.[61] On the other hand, according to the Treasury, procurement expenditure by the public sector (federal, state, local, statutory bodies level) rose from RM 97.7 billion (2009) to almost RM 99 billion (2012); federal government expenditure for supplies, services, and development continued to account for the largest part (82.9% in 2012) of total procurement in Malaysia.[62] These estimates do not include procurement of goods, services, and works by government-linked companies (see below, section 3.4.3).

3.61. During the period under review government procurement continued to be used as a tool for achieving socioeconomic and development objectives aimed, *inter alia,* at encouraging greater participation of the *bumiputera* (native Malays) in the economy, transfer of technology to local industries, reducing the outflow of foreign exchange, creating opportunities for local service-oriented companies, and enhancing export capabilities. The Government is also committed to venture into Government green procurement (GGP) as one of the mechanisms to minimize the impact on the environment, but there is no such policy, regulation, or legal framework so far.[63] In line with good governance practices, government procurement should be conducted in compliance with the principles of public accountability, transparent, best value for money, open and fair

[59] It seems that the rationale for the origin requirement is to ensure imported products also comply with Halal standards (section 3.2.5.1.2) (USDA, 2012a).

[60] Viewed at: http://fsq.moh.gov.my.

[61] According to a 2012 study, government procurement expenditure exceeds 25% of GDP. Government final consumption expenditure consists of expenditure, including imputed expenditure, incurred by general government on both individual consumption goods and services and collective consumption services (Department of Statistics, 2012a; and Adham and Siwar, 2012a).

[62] Malaysian authorities' estimates, based on Ministry of Finance (2011 and 2012), Annex tables 4.4, 4.6, 4.10, 4.11, and 4.12.

[63] Adham and Siwar (2012b).

competition, and fair dealing.[64] Efforts to reduce corrupt practices in government procurement have been undertaken since February 2009 and December 2010.[65] On 18 July 2012, Malaysia became an observer to the WTO Government Procurement Agreement; the authorities are of the view that Malaysia has yet to attain the level of economic development that would enable it to benefit from this Agreement prior to becoming a party. In the meantime as an observer, Malaysia expects to acquire a better understanding of the WTO GPA text and learn from the experience of other observers and signatories.

3.62. The Financial Procedure Act 1957, remains Malaysia's main legal instrument for financial matters including government procurement. The Ministry of Finance has main responsibility for government procurement. Any individual, company and corporate body intending to participate in government procurement of supplies and services must register with the Ministry of Finance Malaysia, and for works, under the single contractor registration (SSPK) scheme as from 15 October 2012 they must register with the Construction Industry Development Board Malaysia (CIDB) an agency under the Ministry of Works Malaysia that coordinates all contractors registration under CIDB and Pusat Khidmat Kontraktor (PKK).[66] Sales to the Government require a local agent and/or a joint-venture partner, usually a *bumiputera.*

3.63. Supplies, goods, services, and works tenders below specified thresholds may be considered by the procurement boards in each federal government ministry; the thresholds for procurement boards are RM 50 million for supplies, goods, and services tenders (previously RM 30 million) and RM 100 million for works (such as construction or engineering services) (RM 50 million).[67] Tenders in excess of these values must be referred to the Ministry of Finance, which has the main responsibility for government procurement, for final decision.

3.64. Open tendering is mandatory for procurement of supplies, services, and works above RM 500,000.[68] Ministries and agencies are allowed to purchase supplies and services up to RM 50,000 directly from any known suppliers of goods or services deemed to be consistently supplying goods or services at acceptable quality and reasonable price. Suppliers do not need to be registered in relation to such purchases. The authorities indicated that open competition involving quotations by a minimum of five suppliers applies to procurement values within the range of RM 50,000 to RM 500,000. Some of the largest infrastructure and other projects appear to be sole-sourced through closed negotiations rather than open tenders[69]; the authorities indicated that a negotiated tender or single-source contract is an exception to the Government Procurement Regulations subject to Ministry of Finance approval, based on strict criteria, i.e. security, uniformity, urgency and sole-sourcing. Due to Malaysia's decentralized public procurement system, no data on annual purchases by procurement method and origin (domestic, foreign) since 2010 were available from the authorities.

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[64] Under the Tenth Malaysia Plan 2011-2015, the Government is dedicated to a number of initiatives: (i) to implement value management-analysis and life-cycle cost evaluation for procurement of projects costing RM 50 million (US$14.2 million) and more to optimize costs without compromising performance; (ii) to procure centrally common items such as office supplies, information communications technology (ICT), and selected services, to achieve savings across Government; (iii) to strengthen common procurement standards and policies; and (iv) to expedite the procurement processes in accordance with the procurement standards, by giving autonomy to the ministries and government agencies (Adham and Siwar, 2012b).

[65] A four-point approach to reducing corruption in government procurement has involved: increasing the number and decreasing the size of government procurement contracts subject to open tenders; introducing the Transparency International "Integrity Pact" concept to be signed by all vendors that they understand bidding rules and anti-corruption laws prior to engaging in contract negotiations; issuing rules against Ministerial "referral letters" recommending specific contractors for government contracts; and fully implementing the new Whistleblower Act (U.S. Department of Commerce/U.S. Commercial Service, 2012; *The 2013 Budget Speech*. Viewed at: http://www.pmo.gov.my/dokumenattached/bajet2013/SPEECH_BUDGET_2013_28092012_E.pdf [5 March 2013]; Adham and Siwar, 2012b; Treasury Instruction Letter, 28 February 2009; and Treasury Circular Letter (TCL) 10/2010, 16 December 2010.

[66] Adham and Siwar (2012b); and Treasury Circular Letter 6/2012.

[67] While the Ministry of Finance is responsible for the formulation of rules and procedures on government procurement at the central level, in practice, the Ministry has delegated powers to respective agencies to do their own procurement with a view to enhancing transparency and improving delivery of services. Each Ministry has its own procurement board, which has the authority to approve supplies and services up to the stated thresholds.

[68] Two methods of tendering (i.e. open and restricted) are used in Malaysia's government procurement. All open tenders are advertised in local newspapers. Restricted tenders are used to address specific problems, such as security, or due to a limited number of registered companies.

[69] U.S. Department of Commerce/U.S. Commercial Service (2012).

3.65. Generally, international tenders are invited only when domestic goods and services are not available.[70] In domestic tenders, preferences are provided for *bumiputera* suppliers and other domestic suppliers. The margin of preference for *bumiputera* supplies remains unchanged. For supplies and services contracts between RM 100,000 and RM 15 million, *bumiputera* suppliers receive a margin of preference between 2.5% and 10%; the margin is inversely proportional to value. Furthermore, preferential treatment is given to *bumiputera* manufacturers for locally produced goods; the margin is up to 10% for contracts valued below RM 10 million and up to 3% for contracts valued above RM 10 million. No preferences are provided for purchases exceeding RM 15 million. Procurement policies for government-linked companies (GLCs, section 3.4.3) are similar to those of ministries and other government bodies; GLCs are encouraged to procure from local sources with a view to supporting local and national economic development.[71] Nevertheless, GLCs procurement practices are governed by their respective act and they are under the purview of their respective board of directors. Thus, GLCs are not governed by the public sector's government procurement rules and regulations.

3.66. Malaysia's countertrade policy, Policy and Guideline on Offset Programmes in Government Procurement, was revised in 2010 to cover non-defence procurement, and published on 18 March 2011.[72] The policy is aimed at enhancing the country's industrial, technological, and overall economic capability by further increasing national competitiveness and supporting its high-income-society agenda. The policy is applicable to all government procurement of supplies, services, and works worth more than RM 50 million. In achieving its goal, the offset instruments are leveraged by the government to further support the national aspiration to develop Malaysia as a sustainable high-end industrial and technological base. Based on the policy, the offset programmes are to be aligned with Malaysia's macroeconomic framework plans such as Vision 2020, the Five-Year Development Plans, Industrial Master Plan, the New Economic Model, the National Policy on Science, Technology and Innovation, and other related government policies and documents. Malaysia is currently implementing defence and non-defence offset programmes in the aerospace, rail, automotive, and energy sectors. Based on the 100% offset obligations, Malaysia currently is handling more than RM 20 billion worth of offset credit generated from various offset programmes.

3.67. The Government continues to implement its ePerolehan (eP) electronic procurement system comprising seven modules[73]: supplier registration, central contract, direct purchase, quotation, tender, e-Bidding, and ministerial contract. Suppliers can use ePerolehan to electronically receive, manage and process orders and payments from government agencies. More than 100,000 suppliers were registered with ePerolehan at end 2011, though only about 29,000 were transacting at that time. In the first four months of 2012, government agencies fulfilled nearly 418,114 acquisitions through the system. All of the 2,600 procurement centres of the various government agencies had (at least partially) implemented the system. The system has cut the procurement process from about six months to 20-30 days. The enhancement of the e-Bidding Module in the eP systems that adopted the concept of a real-time reverse auction also leads to greater cost saving, faster procurement processing, and faster payment.[74] In 2012, the Government estimated savings of up to 15% from the total procurement deals through e-bidding, but generated RM 26 million (US$8.8 million) or 17% of savings. These savings derived from reductions in prices of goods, processing costs, and better inventory management. In 2012, the eP reached RM 15.485 billion (US$5.3 billion) in transaction values (above the original target of RM 15 billion). In 2012, there were 111,324 (66,595 in 2000) registered suppliers.

3.68. Progress has been made in improving transparency in government procurement in line with relevant Asia Pacific Economic Cooperation (APEC standards) but efforts to increase transparency

[70] When considering bids on major items, there appears to be a government preference for companies with a local presence. The Multimedia Development Corporation (MDC) has publicly announced that bids from firms investing in the Multimedia Super Corridor will receive priority consideration when the government awards major contracts associated with development of the corridor (i.e. flagship applications) (U.S. Department of Commerce/U.S. Commercial Service, 2012; EIU, 2012a; and USTR, 2012a).

[71] The "Red Book", published in April 2006, contains procurement guidelines and best practices. GLCs are also required to follow "procurement best practices", including cost minimization, disclosure, building long-term relationships with suppliers, and helping to develop local suppliers.

[72] Previously, the countertrade/offset requirements were applied only to defence/security-related procurement.

[73] Viewed at: http://home.eperolehan.gov.my.

[74] Adham and Siwar (2012b).

and accountability could intensify as procurement reform is an important goal.[75] Open tenders must be advertised in local dailies, websites of procuring agencies, and online. In April 2010, the government launched the MyProcurement portal, a central government procurement information centre replacing the MyGovernment portal.[76] MyProcurement portal information centre is now the main platform allowing public access to information related to the government procurement regime including rules and regulations, tender advertisements, and results of recent tenders of each Ministry, while the eP portal is the gateway to electronic procurement. By 2012, more than 5,000 contracts were listed on the MyProcurement portal, citing information on advertised and awarded tenders (including dates), values of the contracts, and winners of the tenders. The authorities indicated that data on the share of contracts (number, value) dealt with under the MyProcurement portal since 2010 are publicly available; nevertheless, access to this site was not available during the drafting of this report. In 2009, the Prime Minister established the Performance Management and Delivery Unit (PEMANDU) to, *inter alia,* address concerns about transparency and competitive bidding in government procurement.[77]

3.69. At the international level, Malaysia is involved in discussing government procurement issues, particularly in terms of improving procurement processes and initiatives to improve transparency and integrity. Malaysia is, *inter alia,* a member of the Government Procurement Experts Group (GPEG) under the Asia Pacific Economic Cooperation (APEC), and the Procurement Working Group under the United Nations Commission on International Trade Law (UNICITRAL).

3.2.7 State trading

3.70. According to the authorities, Malaysia's only state-trading enterprise, within the meaning of Article XVII:4(a) of GATT 1994, remains Padiberas Nasional Berhad (BERNAS). BERNAS, a private entity, has the sole right to import rice, and in March 2011 its monopoly was extended until 10 January 2021[78]; it also performs social obligations on behalf of the Government, such as maintaining a rice stockpile, purchasing paddy from farmers, and acting as a buyer of last resort for paddy farmers (section 4.2.5).[79] According to the Department of Statistics of Malaysia, in 2012 BERNAS's rice imports (HS10.06) of more than one million tonnes totalled US$605.8 million and originated mainly in Viet Nam (69.2% of the value), Thailand (12.5%), and Pakistan (11.5%). Malaysia's WTO notifications on BERNAS and its trading activities were submitted in August 1995 (1 notification), July 2010 (9 notifications), and September 2013; the latest notified statistical information dates back to 2012.[80]

3.3 Measures Directly Affecting Exports

3.3.1 Procedures

3.71. There have been no major changes to export procedures in Malaysia since 2010. Export declarations can be made by the owner, exporter, consignor or an agent authorized by the owner or exporter and approved by Customs. All goods for export must be declared on Customs Form No. 2. Documentation and other procedures are electronic. Since November 2011, Malaysia has operated self-certification of certificates of origin (COOs) on a pilot-project basis, as a means to further reduce cost and time for utilizing preferential tariffs under certain FTAs (selected ASEAN states, Australia, New Zealand) (section 3.2.2.6). MITI undertakes continuous outreach in this area, in particular the Pocket Talk, which provides a platform for government-to-business engagement to encourage companies to use trade preferences, provide information on the various

[75] Adham and Siwar (2012b).

[76] Viewed at: http://myprocurement.treasury.gov.my; and U.S. Department of Commerce/U.S. Commercial Service (2012).

[77] Viewed at: http://www.pemandu.gov.my/.

[78] *The Borneo Post,* "Bernas rice import monopoly extended by more 10 years", 7 May 2012. Viewed at: http://www.theborneopost.com/2012/05/07/bernas-rice-import-monopoly-extended-by-more-10-years/#ixzz2LuWyNZjc [25 February 2013].

[79] More information about BERNAS commercial and non-commercial activities is also available in WTO document WT/TPR/M/225/Add.1, 19 March 2010.

[80] WTO documents G/STR/N/1/MYS, 15 August 1995; G/STR/N/2/MYS, G/STR/N/3/MYS, G/STR/N/4/MYS, G/STR/N/5/MYS, G/STR/N/6/MYS, G/STR/N/7/MYS, G/STR/N/8/MYS, G/STR/N/9/MYS, and G/STR/N/10/MYS, 7 July 2010; and G/STR/N/11/MYS, G/STR/N/12/MYS, G/STR/N/13/MYS, and G/STR/N/14/MYS, 2 September 2013.

ROOs, and hand-hold and walk through the processes and procedures for COO application.[81] According to the World Bank/IFC, in 2012 exporting a standard container of goods required 5 documents, took 11 days, and cost US$435.[82]

3.72. Export proceeds must be repatriated to Malaysia in full as per the sales contract, within six months from the date of export. They may be received in foreign currencies (except for the currency of Israel) or in ringgit from an external account, and may be retained in foreign currency accounts with banks in Malaysia or at overseas branches of Malaysian-owned banks.[83] Permission (*ex ante*) is required for residents to retain export proceeds in foreign currency accounts in international Islamic banks or offshore banks.

3.3.2 Export prohibitions, restrictions, and licensing

3.73. The Customs (Prohibition of Exports) Order 2012 (effective March 2013) sets out current export prohibitions, restrictions, and licensing requirements.[84] As from 2011, exports of certain subsidized essential items subject to export permit or approval have been prohibited (below and section 3.4.4.2). As of March 2013, exports of two product categories (poisonous chemicals/minerals, natural sands) are prohibited. Exports of 25 product categories (including rubber budwood/seeds for sowing or planting, palm living tissues/fruits/seeds/pollens/oil/fats, pineapple, sugar, minerals/ores/sands, bricks, cement, chemicals, naphtha, several wood products, and all goods to Israel) are subject to export licensing requirements with licences issued by several public agencies (MITI, Ministry of Plantation Industries and Commodities, Ministry of Natural Resources and Environment, Ministry of Health) or public sector agencies (Malaysian Palm Oil Board, Malaysian Pineapples Industries Board, Malaysian Timber Industry Board). Exports of 39 product categories (including live/dead animals/fish/plants, raw hides and skin, wool, leather, milk and milk-based products, yeast, meat products, pasta, ice cream, soups, animal feeding preparations, fertilizers of animal origin, paddy rice, rice flour, vegetables, coconuts, coffee, sugar cane, wheat flour, toxic wastes, pesticides, diesel fuel, petrol, liquefied petroleum gas, rubber and rubber products and gloves) are subject to permit or approval and inspection by different government agencies.[85]

3.74. The Strategic Trade Act 2010 (STA), which was passed to meet Malaysia's obligations in relation to the United Nations Security Council Resolution 1540, provides for control over the export, transhipment, transit, and brokering of strategic items, including arms and related materials, and other activities that may facilitate the design, development, and production of weapons of mass destruction (WMD) and their delivery systems.[86]

3.3.3 Export duties and taxes

3.75. Export duties mainly of 5%, 10%, and 15% (f.o.b. basis) affect 482 nine-digit level items (2013) relating to the principal commodities out of a total of 9,425 or 9,417 tariff lines (515 out of 10,389 tariff lines in 2009); one item is subject to *ad valorem* duty of 20% (palm nuts and kernels), and 10 lines (9 in 2009) are subject to specific rates (rubber tree, oil and rubber tree seeds, rattans). Products subject to export taxes include timber, live animals, ash and residues, crude petroleum, precious metals, nickel, copper, and ferrous waste and scrap. To help exporters to ship out more palm oil under competitive terms and cut into record stocks of 2.56 million tonnes in 2012,[87] as from 1 January 2013 a new Crude Palm Oil Export Duty Structure, based on the prevailing f.o.b price, cut drastically duties from 23%; a zero rate is

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[81] This platform is also a business–to-government engagement and provides opportunity for companies to raise concerns on any challenges faced, which MITI will take into consideration as issues to be highlighted and addressed during the review process of the various FTAs and RTAs. The Pocket Talks are frequently held throughout Malaysia and open to participation from any interested companies.

[82] World Bank (2013b).

[83] EIU (2012a).

[84] Customs (Prohibition of Exports) Order 2012 (P.U. (A) 491), 31 December 2012.

[85] Wheat flour and certain fuels are also subject to price controls and government subsidies (section 3.4.2.2 and 3.4.4.2).

[86] PricewaterhouseCooper online information. Viewed at: http://www.pwccustoms.com/home/eng/wms_my.html.

[87] *The Malaysian Insider*, "Malaysia sets January crude palm oil export tax at zero per cent", 17 December 2012. Viewed at: http://www.themalaysianinsider.com/business/article/malaysia-sets-january-crude-palm-oil-export-tax-at-zero-per-cent/.

applied when the price is below RM 2,250/tonne, and 9 rates ranging from 4.5% (RM 2,250-2,400 per tonne) to 8.5% (above RM 3,450 /tonne) increase by 0.5 percentage points in line with RM 150 per tonne price bands. Processed palm oil, such as neutralized, bleached, and deodorized palm olein, has been fully exempt since 2001. According to the authorities, the main objective of these taxes is to promote the use of locally produced commodities in domestic downstream industries as well as to conserve the environment; export taxes on timber allow them to better manage sustainable development of the Malaysian forest. However, such taxes tend to increase the domestic supply of the products concerned, and as a consequence, their domestic prices tend to be lower than would otherwise be the case. Thus, export taxes assist domestic downstream processing. In 2012 (the latest year for which data were made available), Malaysia's revenue from export duties amounted to RM 1.968 billion, down from RM 2.296 billion in 2007.

3.3.4 Duty and tax concessions

3.76. There have been no changes to Malaysia's customs duty and sales tax drawback schemes during the review period. Raw materials and components used for manufacture of goods for export are exempt from customs duties (section 3.2.2.5), and the drawback scheme provides refunds. The formula for the calculation of drawbacks varies from product to product and depends on the type of industries.[88] No data on the amounts refunded or the value of exports (by product category) that benefited from drawback were available from the authorities.

3.3.5 Export subsidies

3.77. According to the authorities, Malaysia grants no direct export subsidies or tax concessions to exporters, and incentives (for example, the tax incentive of double deduction for export promotion) are given to encourage companies to seek new export markets (section 3.3.8).[89]

3.78. Support is available in the form of statutory income tax exemption, based on the value of increased exports. A manufacturing company or a company engaged in the production of fresh and dried fruits, fresh and dried flowers, ornamental plants, and ornamental fish may benefit from a tax exemption on its statutory income equivalent to 10% of the value of its increased exports.[90] In manufacturing, companies are also eligible for tax exemption on statutory income, equivalent to 10% or 15% of the value of increased exports, provided that the goods exported attain at least 30% or 50% value-added, respectively. Under the National Automotive Policy (NAP) (section 4.6), for the period 2010-14 companies in the automotive industry qualify for tax exemptions on statutory income equivalent to 30% or 50% of the value of increased exports, provided that the goods exported attain at least 30% or 50% value-added respectively. To further encourage the export of Malaysian goods, locally owned manufacturing companies with Malaysian equity of at least 60% are eligible for tax exemption on statutory income equivalent to 30% of the value of increased exports, provided that the company achieves a significant increase in exports; this rate is raised to 50% in case the company succeeds in penetrating new markets, and to full tax exemption if it achieves the highest increase in export in its category. No information on the main beneficiaries of each of these incentives or estimates of forgone tax revenue relating to their implementation since 2010 was available from the authorities.

3.79. Exemption of statutory income tax equivalent to 50% of the value of increased export is given to companies in selected services sectors, i.e. legal, accounting, architecture, marketing, business consultancy, construction management, building management, office services, healthcare, education, plantation, management, publishing, information and communication technology, engineering, printing, and local franchise.[91]

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[88] The authorities indicated that for "straight forward cases" (one input to one output/ratio 1:1), the formula is: quantity of finished products exported divided by the quantity of imported raw materials multiplied by the duties/taxes paid. In the case of "many inputs (raw materials) to one output (finished products)", the formula is adding all individual calculations for "straight forward cases" for each input used to obtain the entire product.

[89] WTO document WT/TPR/M/225/Add.1, 19 March 2010.

[90] MIDA online information, "Invest in Malaysia". Viewed at: http://www.mida.gov.my/env3/index.php?page=manufacturing-sector-2 and http://www.mida.gov.my/env3/index.php?page=agricultural-sector.

[91] MATRADE online information. Viewed at: http://www.matrade.gov.my/en/malaysian-exporters/services-for-exporters/exporters-development/exports-assistance/tax-relief/498-services-sectors.

3.3.6 Free zones and other measures

3.80. Malaysia has 18 free industrial zones (FIZs)[92], only for manufacturing activities, and 17 free commercial zones (FCZs)[93]; these were established to facilitate operations of export-oriented companies. No federal or main coordinating body oversees the development of the FIZs. To qualify for location in a FIZ, a company must export at least 80% of its output; its raw materials/components are mainly imported, even though the Government encourages the use of local raw materials/components. If a FIZ company has obtained approval from MITI to reduce its export performance requirement to 60%, it may also apply to the Customs to be allowed to export 60% instead of 80% of its output. Effective 1 January 2011, FIZ companies benefit from import duty exemptions if they achieve 40% of local content value; when the local content value does not reach 40%, consideration may be given if the FIZ/LMW companies can prove that the non-originating raw material to the end products produced had undergone substantive transformation process through a set mechanism.[94] Any goods, from overseas or within Malaysia, and services of any description, except those prohibited by law, may be brought into, produced or provided in the zones without payment of any tariffs, excises, sales or service taxes. Domestic and foreign enterprises located in the zones are eligible for tax exemptions on income from promoted activities (section 3.4.1.3).[95] Malaysia also allows exporters to a licensed manufacturing warehouse (LMW), which offers the same benefits as operating within a FIZ while offering greater freedom of location. As of September 2013 2,110 companies were operating in LMWs, 20 in FIZs, and 15 in FCZs. No data indicating the activities of firms established in FIZs/FCZs/LMWs, the jobs created within the zones, the forgone tax revenue due to the FIZs/FCZs/LMWs incentives, or the value of exports of and imports from these zones as a percentage of total exports and imports were available from the authorities.

3.3.7 Export finance, insurance, and guarantees

3.81. Export finance schemes (facilities) are made available via Malaysian commercial and/or developmental financial institutions (FIs). Export-Import Bank of Malaysia Berhad a developmental FIs wholly owned by Ministry of Finance Inc. (section 3.4.2) promotes the development of cross-border transactions through provision of loan/financing facilities (at commercial rates) and insurance coverage to Malaysian businesses. The rates fixed to any lending are subject to credit assessment and mainly charged at cost of fund plus an added spread. The range of spread reflects the bank's assumed risk. Exim Bank also provides commercial banks with coverage for losses against loans to exporters and suppliers. It also continues to provide various schemes including the Export Credit Refinancing (ECR) Scheme, and offers insurance against non-payment by buyers arising from commercial and political risks. The Bank's total assets were RM 7.3 billion on 31 December 2012, a 16% growth over the previous year. Net loans and financing grew by 62% with RM 3.2 billion compared to RM 1.9 billion in 2011. Total disbursement more than doubled, from RM 1.2 billion to a total of RM3.1 billion. Under Malaysia's Palm Oil Credit and Payments Arrangement (POCPA) scheme for palm oil and its products, government to government MOUs and central bank to central bank agreements set out the following terms: long-term contract between supplier and buyer, repayment period up to two years, and interest based on three-month LIBOR determined on a quarterly basis.

3.3.8 Export promotion

3.82. The Malaysian External Trade Development Corporation (MATRADE), an agency under the MITI, continues to focus on facilitating export promotion activities of the local business sector through international trade fairs, trade missions, specialized marketing missions, and

[92] These are located in Penang (2), Malacca (5), Selangor (4), Perak (2), Johor (4), and Sarawak (1). See MIDA online information, "Invest in Malaysia". Viewed at: http://www.mida.gov.my/env3/index.php?page=industrial-land; and EIU (2012a).

[93] FCZs are normally located near the country's ports due to the nature of the activities, which can include bulk breaking, repackaging of products that are imported or sourced from companies in the FIZs. They are in Northport, Southport, Westport, Butterworth, Bayan Lepas, Kuala Lumpur International Airport, Rantau Panjang, Pengkalan Kubor, Johor Port, Tanjung Pelepas, Stulang Laut, Plentong, Bukit Kayu Hitam, Kapar, Seberang Perai, Penang, and Pulau Layang-Layang (MIDA online information, "Invest in Malaysia". Viewed at: http://www.mida.gov.my/env3/index.php?page=industrial-land; and Chai and Im, 2009).

[94] MIDA online information, "Invest in Malaysia". Viewed at: http://www.mida.gov.my/env3/index.php?page=industrial-land.

[95] Viewed at: www.mida.gov.my, Promoted Activities and Products.

business-matching programmes.[96] A Market Development Grant (MDG) scheme has provided up to a maximum of RM 100,000 per company per year in the form of reimbursable grants, subject to yearly review, and the availability of funding assists small and medium-sized enterprises (SMEs), cooperatives, and trade & industry associations/chambers of commerce in undertaking export promotion activities. Companies with government (federal or state government) equity and government-linked companies (GLCs) (section 3.4.3) are excluded from these benefits.[97] However, under the 10th Malaysian Plan (2011-2015), the maximum grant for each company is now limited to RM 300,000. For 2013, the budget allocated for MDG was RM 30 million; the main beneficiaries are SMEs involved in export promotion activities for products and services. Tax incentives such as double deduction for promotion of exports, tax exemption, investment tax allowance, capital allowance and special incentives are granted under the Promotion of Investment Act 1986 (PIA), and encourage greater export promotion activities overseas.[98] No information on the main beneficiaries of these incentives or estimates of forgone tax revenue relating to their implementation was available from the authorities.

3.4 Measures Affecting Production and Trade

3.4.1 Taxation and tax incentives

3.83. Total taxes as a share of GDP remain relatively low (16.2% in 2012, Table 1.1). Malaysia relies increasingly on direct taxes for 77.1% (2012) of tax revenues. Although the corporate and personal income taxes provide almost half of tax revenue, the petroleum income tax remains a major contributor, accounting for about 22.4% of total tax revenue in 2012 (Table 3.4). Excise duties remain the main, though slightly declining, indirect tax component, followed by the sales tax. As a result of, *inter alia*, import duty reductions (section 3.2.2.1), customs duties contributed a lower share to total tax revenues in 2012 than in 2009. The share of export taxes also declined from peak in 2010.

Table 3.4 Structure of direct and indirect tax revenue, 2009-12

	2009	2010	2011	2012
Total tax revenue (RM million)	106,504.41	109,515.19	134,884.83	151,643.09
Total tax revenue[a] (US$ million)	**30,217.45**	**33,999.31**	**44,080.01**	**49,094.50**
	(% of total)			
Direct taxes	**73.6**	**72.1**	**75.8**	**77.1**
Companies income tax	28.4	33.1	34.8	33.8
Petroleum income tax	25.6	17.1	20.6	22.4
Individuals income tax	14.6	16.3	15.0	15.2
Stamp duties	3.1	3.8	3.7	3.7
Other	1.9	1.9	1.8	2.1
Indirect taxes	**26.4**	**27.9**	**24.2**	**22.9**
Export duties	1.1	1.7	1.5	1.3
Import duties	2.0	1.8	1.5	1.5
Excise duty	9.5	10.7	8.5	8.0
Sales tax	8.1	7.5	6.4	6.3
Service tax	3.1	3.6	3.7	3.7
Other	2.7	2.6	2.6	2.1

a The annual average exchange rate in Table 1.1 "Selected macroeconomic indicators, 2009-12" was used.

Source: Information provided by the Malaysian authorities.

96 MATRADE online information. Viewed at: http://www.matrade.gov.my/en/for-malaysian-exporters.

97 MATRADE online information, "Guidelines for Market Development Grant (MDG) 2013". Viewed at: http://www.matrade.gov.my/en/malaysia-exporters-section/116-market-development-grant-mdg/2690-guidelines-for-market-development-grant-mdg-2013.

98 MATRADE online information, "Export Assistance". Viewed at: http://www.matrade.gov.my/en/malaysian-exporters/services-for-exporters/exporters-development/exports-assistance.

3.4.1.1 Indirect taxes

3.84. Since 2010, there has been no major change to the sales tax, which is levied mainly at 5% and 10% on both local products and imported items (except those that are to be re-exported).[99] Food preparations (HS 2106.90.490) other than alcoholic and non-alcoholic compound preparations (other than those of heading No. 33.02) used for making beverages are subject to a sales tax rate of 20%. Sales tax is RM 0.5862 per litre for petrol, and RM 0.1964 per litre for diesel fuel.

3.85. In addition to the sales tax, excise duties apply to tobacco, beer and liquor, motor vehicles, playing cards, and mah-jong tiles. The excise duty on cigarettes was increased in October 2010 and September 2013. Excise duty rates range as follows: 75%-105% for motorcars; 65%-105% for four-wheel drive vehicles; 10%-30% for motorcycles; 15% plus RM 0.10 per litre to 15% plus RM 42.50 per 100% vol per litre for "intoxicating" liquor;[100] 10% for playing cards and mah-jong tiles; and, 20% plus RM 0.25 per stick for cigarettes. Excise duty rates are the same for locally produced and imported goods. According to the authorities, in general, excise duty rates are higher than import duty for vehicles, cigarettes, and alcoholic beverages, except in some cases such as where the import duty is higher than excise duty. Individual taxi owners (since 2012) and car-rental operators (since 2002) are exempt from excise duties on the purchase of locally produced "national cars" while tour operators benefit from a 50% reduction for purchases of locally assembled four-wheel-drive cars. The authorities indicated that the measure is partly aimed at reducing the cost of car rentals to tourists and to spur tourism activity (section 4.7.6).

3.86. A service tax of 6% (up from 5% before 1 January 2011) applies to the value of certain services sold or provided by prescribed establishments throughout Malaysia (except on the islands of Labuan, Langkawi and Tioman, and in free zones (section 3.3.6)).[101] Prescribed services include most services provided by insurance companies, telecommunications companies, broadcasting entities (paid satellite-TV broadcasts as from January 2011), courier-service companies, advertising firms, hotels restaurants, private hospitals/clinics, car-park operators, motor-vehicle service/repair centres, professionals (lawyers, engineers, architects, surveyors, and consultants), and credit card service annual fees.

3.87. Following 2010 and 2011 plans, in October 2013 it was decided to replace the present system of the separate sales and service taxes with a single goods and services (value-added) tax (GST) to be implemented in April 2015(section 1.4.2.1).[102] GST will not be imposed on basic food items such as rice, sugar, salt, flour, cooking oil, lentils, herbs and spices, salted fish, cencalok, budu and belacan; on piped water supply, and the first 200 units of electricity per month for domestic consumers; and on services provided by the Government, such as the issuance of passports, licences, health services, and school education. Transportation services (bus, train, LRT, taxi, ferry, boat, highway toll), education and health services, are exempted from GST; and the sale, purchase and rental of residential properties as well as selected financial services will be exempt. Upon implementation of GST, the Government is to provide various forms of tax assistance (e.g. corporate/personal income tax rate reductions) and non-tax assistance to households, individual taxpayers, and businesses to, *inter alia*, avoid increased prices of goods and services; a GST Monitoring Committee is to be established and chaired by the Second Minister of Finance with members from government agencies as well as representatives from industries and NGOs.

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[99] The 5% rate applies to fruits, certain foods, and certain building materials, alcoholic beverages, and cigarettes and other tobacco products. The 10% rate applies on other types of goods. Items exempt from sales tax include mobile libraries and clinics; computers; mobile phones; books, newspapers and other reading materials; and necessities such as certain essential food items and building materials (Malaysian Investment Development Authority online information, "Costs of Doing Business". Viewed at: http://www.mida.gov.my/env3/index.php?page=taxation; and EIU, 2012a).

[100] The term intoxicating liquor refers to any alcohol or any more than 2% of proof spirit (or 1.14% volume per litre), which is fit or intended to be or which can by any means be converted for use as beverage.

[101] Malaysian Investment Development Authority online information, "Costs of Doing Business". Viewed at: http://www.mida.gov.my/env3/index.php?page=taxation; and EIU (2012a).

[102] WTO document WT/TPR/S/225/Rev.1, 15 February 2010; and the *2014 Budget Speech* introducing the Supply Bill (2014), "Strengthening economic resilience, accelerating transformation and fulfilling promises", 25 October 2013. Viewed at: http://www.fmm.org.my/upload/speech.pdf.

3.4.1.2 Direct taxes

3.88. During the period under review, the corporate tax rate remained unchanged at 25%. The corporate tax system is a "single-tier" system, under which the tax on profits of companies is final (i.e. dividends distributed to shareholders are exempt from tax). Companies with paid-up capital of up to RM 2.5 million are subject to a corporate income tax of 20% on taxable income up to RM 500,000, with the excess taxed at 25%. The tax on income from upstream petroleum activities (petroleum income tax) applies at a rate of 38%. Insurance companies are taxed at 8% on investment income generated from life funds, and 25% on the income of general funds and shareholders' funds (including surpluses actually transferred from the life funds to shareholders' funds). According to the authorities, Malaysia's corporate tax rate still compares favourably with neighbouring competitors, except for Singapore and Hong Kong, China. Nevertheless, the wide range of incentives (section on 3.4.1.3) often reduce the effective tax rate below 25% and make the total corporate tax burden comparable to that in neighbouring countries.[103] For residents, the personal tax burden compares favourably with that in neighbouring countries. As from the assessment year 2010, individuals with taxable income exceeding RM 100,000 a year pay 26% (27% in assessment year 2009) on the portion of income exceeding RM 100,000; as from 2013, tax rates on all chargeable annual income bands of up to RM 50,000 have been reduced by 1 percentage point.

3.4.1.3 Tax incentives

3.89. Malaysia's wide-ranging tax incentives remain unchanged since its last TPR. Direct tax incentives grant partial or total relief from income tax for a specified period, while indirect tax incentives are in the form of exemptions from import duty, sales tax, and excise duty (sections 3.2.2.5, 3.3.5, and 3.3.6). The former continue to be implemented mainly through the pioneer status and the investment tax allowance (ITA) schemes. Incentives depend on factors such as the level of local company ownership, value-added, and level of technology as measured by a managerial, technical and supervisory (MTS) index, and/or export performance requirements, but also on the level of skill development and R&D involved (sections 3.3.5 and 3.4.2.1.1).[104]

3.90. "Pioneer status" is available to any company in any agricultural, manufacturing, hotel, tourism, or other industrial or commercial sector that participates in a promoted activity or form of production mentioned in the Promotion of Investment Act 1986.[105] In 2011 and 2012, pioneer status was granted to 434 company projects involving investments of RM 32.9 billion. The ITA, an alternative to pioneer status for companies participating in a promoted activity or form of production, offer higher deductions for certain types of investments in less-developed areas, including Sabah, Sarawak, and the Eastern Corridor of peninsular Malaysia, and to strategic projects in other regions.[106] The latest list of activities benefiting from pioneer status and ITA incentives became effective as of 2 March 2012.[107] The Government granted ITAs to 50 projects involving investments of RM 11.8 billion in 2011 and 2012. Eligibility criteria for small-scale

[103] EIU (2012a).

[104] MIDA online information, "Invest in Malaysia". Viewed at: http://www.mida.gov.my/env3/index.php?page=incentives-for-investment; PricewaterhouseCoopers (2012); and EIU (2012a).

[105] Pioneer status limits tax liability to just 30% of the company's statutory income—hence, an effective tax rate of less than 10%—for five years (though certain promoted activities qualify for up to 15 years). The exemption period starts from the company's "production day" (i.e. the day its production level reaches 30% of its capacity). In addition, dividends to shareholders are tax exempt if they are paid out of tax-exempt income (EIU, 2012a; and MIDA online information, "Invest in Malaysia". Viewed at: http://www.mida.gov.my/env3/index.php?page=incentives-for-investment).

[106] The ITA grants a tax deduction equivalent to 60% of qualifying capital expenditure incurred within five years (up to ten years by exemption) from the approval date. The company may use the allowance to offset up to 70% of statutory income in the year of assessment; it can carry forward any unused balance to subsequent years. Dividends paid to shareholders out of tax-exempt income are tax free. Once all planned capital expenditures have been incurred, companies granted the ITA may give up the incentive before its expiry in order to qualify for other incentives, such as income abatement for exports (section 3.3.5) (EIU, 2012a; and MIDA online information, "Invest in Malaysia". Viewed at: http://www.mida.gov.my/env3/index.php?page=incentives-for-investment).

[107] MIDA online information. Viewed at: http://www.mida.gov.my/env3/uploads/images/invest/invest-pdf/APP1_02032012.pdf.

manufacturing companies to qualify for pioneer status or ITA were tightened in 2012.[108] Generally, neither pioneer status nor ITAs are granted to companies that previously enjoyed these incentives for similar products or activities. However, exceptions are made for certain promoted sectors and areas, such as R&D and projects in the less-developed areas of the country. No information on the main beneficiaries, the forgone tax revenue or the output, jobs, or exports resulting from the operation of the schemes discussed in this paragraph was available from the authorities.

3.91. In addition to these schemes, the Government may award more favourable tax relief on a case-by-case basis (Customised Incentive Scheme) to strategic projects of national importance, e.g. heavy capital investment, and high-tech projects.[109] This relief includes up to 100% exemption for 10 to 15 years. No information on the main beneficiaries, the tax expenditure or benefits resulting from the operation of this incentive was available from the authorities. In 2013, activities benefiting from customized tax incentive schemes (pioneer, ITA or other) included food production and distribution, specialized machinery and equipment, automotive, aviation and aerospace, biotechnology, energy conservation, environmental protection (green incentives), R&D, Islamic finance, commodity trading (as from 2011 under the Global Incentive for Trading(GIFT)), shipping, regional business operations, and tourism.[110] Applications for part of non-tax incentives (section 3.4.2), pioneer status, and ITA are dealt with by the Malaysian Investment Development Authority (MIDA); claims for tax incentives such as double deductions, reinvestment allowance, and accelerated capital allowance, go to the Inland Revenue Board of Malaysia. Malaysia is to consider preparing tax expenditure reports but this would require MIDA to undertake a prior cost-benefit analysis on a project-by-project basis.

3.92. Malaysia notified its pioneer status and investment tax allowance programmes to the WTO Committee on Subsidies and Countervailing Measures in 1995, 2009, and 2011.[111] No expiry date was indicated for the notified schemes.

3.4.2 Financial assistance

3.93. The Malaysian economy remains one of the most highly subsidized in the region and the world. In 2013, almost RM 47 billion were allocated for various types of subsidies, incentives, and assistance, including subsidies for petroleum products (53% of the amount), food, health, agriculture and fisheries, utilities, tolls, as well as welfare and education.[112] In addition to wide-ranging tax incentives (sections 3.3.5, 3.3.6 and 3.4.1.3) the Government continues to provide non-tax support in the form of funding assistance (e.g. soft loans) and subsidies to support the implementation of different policy objectives; some are directed to majority Malaysian-owned firms. No appraisal of the cost-effectiveness of this type of support has been undertaken so far.

[108] Qualifying companies are defined as having shareholder funds of less than RM 500,000 and at least 60% local equity. They must be active in one of the many promoted sectors. Moreover, their value-added and MTS ratios must be at least 25% (since March 2012, previously 15%) and 20% respectively, or they must contribute to rural development (EIU, 2012a; and MIDA online information, "Invest in Malaysia". Viewed at: http://www.mida.gov.my/env3/index.php?page=incentives-for-investment).

[109] The projects considered for these incentives are those that are technology intensive, capital intensive, knowledge- and skills-driven, and capable of generating significant linkages and contributing to development of manufacturing-support services, such as R&D, procurement, marketing, and distribution. More information on these tax incentives is available in EIU (2012a); and PricewaterhouseCoopers (2012).

[110] MIDA online information, "Invest in Malaysia". Viewed at: http://www.mida.gov.my/env3/index.php?page=manufacturing-sector-2 and http://www.mida.gov.my/env3/index.php?page=agricultural-sector.

[111] WTO document G/SCM/N/220/MYS, 14 October 2011.

[112] Opening Presentation by D.S. Idris Jala, Minister in Prime Minister's Department. Viewed at: http://www.slideshare.net/kzamandarus/malaysian-subsidy-2010-report. The *2014 Budget Speech* introducing the Supply Bill (2014), "Strengthening economic resilience, accelerating transformation and fulfilling promises", 25 October 2013. Viewed at: http://www.fmm.org.my/upload/speech.pdf.

3.4.2.1 Funding and other financial measures

3.4.2.1.1 Technology and R&D

3.94. Malaysia is banking on technology, either home-grown or imported, to help realize added economic value from its natural resources.[113] In addition to tax incentives, the Government provides various funds for high-tech companies to draw on; the two most prominent are the RM 800 million Science Fund (for scientists and experts conducting fundamental research) and the RM 1.2 billion Fund for Industry, to help companies to bring technology to the market.[114] Customized training and R&D grants are available for the automotive industry (section 4.6). As from July 2012 the Government has introduced the RM 1 billion Domestic Investment Strategic Fund under the Customised Incentive Scheme (section 3.4.1.3) to leverage outsourcing activities and acquisition of technology by at least 60% Malaysian-owned companies in certain priority sectors (e.g., aerospace, medical devices, pharmaceuticals, advanced electronics, machinery and equipment, renewable energy, and related services).[115] Furthermore, under the Strategic Investment Fund (since 2001) and the High Impact Project Fund (since 2006), between 2010 and 2013 a total of RM 1.86 billion (0.6% of GDP, 2.6% of manufacturing output, 1.1% of manufacturing exports) was disbursed in the form of grants and RM 1.35 billion in the form of soft loans. SMEs (section 3.3.5 and 3.4.1.3, and below) undertaking R&D activities receive some special funding allocations for seed capital if they are at least 51% Malaysian owned; these companies may obtain up to 70% funding for their R&D activities via the Multimedia Super Corridor Malaysia (MSC) Research and Development Grant Scheme. Between 2010 and 2012, Malaysia's Gross Expenditures for R&D (GERD) were estimated to have increased from US$2.6 billion (0.64% of GDP) to US$3.3 billion (0.70%).[116] In 2013, the Government planned to allocate RM 600 million to five research universities to conduct high-impact research in strategic fields such as nanotechnology, automotives, biotechnology, and aerospace.[117]

3.95. To boost the production and use of green-technology-based products, the fund for the 2010 Green Technology Financing Scheme (GTFS) was further increased to RM 2 billion (originally RM 1.5 billion) and its application period was extended for another three years ending 31 December 2015.[118] The Fund enables companies that are producers and users of green technology to obtain soft loans, with the Government subsidizing 2% of the interest rate and providing a guarantee of 60% on the amount of financing. By September 2012, approximately RM 840 million had been approved to 69 local companies.

3.4.2.1.2 SMEs

3.96. SMEs constitute 97.3% of total business establishments in Malaysia (98.5% under their 2013 definition)[119]; the majority of SMEs are in the services sector (90%), followed by manufacturing (5.9%), agriculture (1%), and mining and quarrying (0.1%). In line with SME Masterplan 2012 objectives, a comprehensive action plan comprising 32 initiatives has been developed to overcome the challenges faced by SMEs in six focus areas (innovation and technology adoption, human capital development, access to financing, market access, legal and regulatory environment, and infrastructure).[120] The SME Masterplan, considered as the "game

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[113] Batelle (2011).

[114] EIU (2012a).

[115] *The 2013 Budget Speech*. Viewed at: http://www.pmo.gov.my/dokumenattached/bajet2013/SPEECH_BUDGET_2013_28092012_E.pdf [5 March 2013].

[116] In GERD terms, as of 2012 Malaysia ranked 33rd in the Top 40 Global R&D spending countries, higher than Indonesia but below Japan, Korea (Rep. of), India, Chinese Taipei, and Singapore (Batelle, 2011).

[117] *The 2013 Budget Speech*. Viewed at: http://www.pmo.gov.my/dokumenattached/bajet2013/SPEECH_BUDGET_2013_28092012_E.pdf [5 March 2013].

[118] *The 2013 Budget Speech*. Viewed at: http://www.pmo.gov.my/dokumenattached/bajet2013/SPEECH_BUDGET_2013_28092012_E.pdf [5 March 2013].

[119] The *2014 Budget Speech* introducing the Supply Bill (2014), "Strengthening economic resilience, accelerating transformation and fulfilling promises", 25 October 2013. Viewed at: http://www.fmm.org.my/upload/speech.pdf.

[120] A wide range of businesses, differing in dynamism, technical advancement, and risk attitude make up the SME sector. According to Malaysia's SME Masterplan 2012-2020, SME labour productivity in Malaysia is low relative to productivity levels in the south-east Asian region and in more advanced countries; there are

changer", is aimed, *inter alia,* at raising productivity and intensifying re-entry of SMEs into the formal sector ("formalization"). It is expected to raise the SMEs' GDP contribution from 32% (2012) to 40% by 2020, and their share of employment and exports to 62% (59% in 2010) and 25% (19% in 2010) respectively.

3.97. The Central Bank has provided funding through the Fund for Small and Medium Industries (since 2000) and New Entrepreneur Fund (since 2001) to financial institutions, at the concessionary rate of 1.5% p.a.; these funds are then channelled to SMEs as soft loans at rates ranging from 4% to 6%. In addition, the Central Bank has operated the Micro Enterprise Fund (since 2008) to assist micro enterprises with viable businesses to obtain financing from the participating financial institutions (section 4.7.2.5). For 2013, under the three Central Bank funds, a total of 139 programmes were planned and implemented in certain focus areas (access to financing, human capital development, infrastructure, innovation, technology adoption, market access); they targeted around 431,500 SMEs across all sectors with a financial commitment totalling RM 9.9 billion. In March 2009, the Government introduced an RM 10 billion fund under the Working Capital Guarantee Scheme for SMEs to facilitate access to working capital; the scheme guarantees up to a maximum of RM 2.5 million to qualified companies.[121] An RM 1 billion fund was to be provided in 2013 under the SME Development Scheme to facilitate SMEs' access to financing to further develop their businesses. To develop high-impact halal products for export, in 2013 the SME Bank with the cooperation of the Islamic Development Bank (IDB) was to provide RM 200 million to the Halal Industry Fund to finance the working capital of participating SMEs. SME Bank loans are available at interest rates (or profit margins for Islamic products) ranging from 3.75% to 7.5% depending on the source of funds.[122]

3.98. The 2014 Budget provides for an allocation of RM 120 million for an integrated package to increase SME innovation and productivity.[123] The package will provide financing for mechanization and automation as well as upgrading capacity of SMEs. In addition, the Government provides various assistance and incentives under the Green Lane Policy programme for financing, tax incentives, and procurement, including: interest rate subsidy of 2% or a maximum of RM 200,000 per year; stamp duty exemption for loan agreements under the soft loan incentive scheme; tax deduction on expenses incurred for obtaining 1-InnoCERT certification; government procurement incentives, encompassing approved manufacturers status company registration without site visit as well as bonus marks given in technical evaluation; and priority incentives to participate in procurement by Ministry of Finance Incorporated (section 3.4.3) companies. These incentives were extended until 31 December 2017.

3.4.2.2 Other subsidies

3.99. Malaysia continues to support agriculture in order to enhance the national income, ensure food security, improve productivity in the food sector, and stabilize prices of essential food items (sections 3.4.4.2, and 4.2.4). In 2013, an RM 5.8 billion (RM 2.3 billion in 2012) budgetary outlay was to cover, *inter alia,* agricultural development programmes, including high-technology applications in fruit and vegetable production, increase the supply of high-quality seedlings, price stabilization, oil palm replanting, strengthening of paddy granaries, establishment of fish markets, and encouraging fish landings.[124] Rice, sugar (until 26 October 2013), and cooking oil prices are subsidized. According to Malaysia's latest WTO notification (of June 2009), in 2007 total support to agriculture consisted of measures exempt from reduction commitments and amounted to

also disparities between rural- and urban-based firms (OECD, 2013b, "Chapter 2: Malaysia"; and National SME Development Council, 2012).

[121] *The 2013 Budget Speech*. Viewed at: http://www.pmo.gov.my/dokumenattached/bajet2013/SPEECH_BUDGET_2013_28092012_E.pdf [5 March 2013].

[122] SME Bank online information. Viewed at: http://www.smebank.com.my/medium-sized-businesses.

[123] The *2014 Budget Speech* introducing the Supply Bill (2014), "Strengthening economic resilience, accelerating transformation and fulfilling promises", 25 October 2013. Viewed at: http://www.fmm.org.my/upload/speech.pdf.

[124] *The 2013 Budget Speech*. Viewed at: http://www.pmo.gov.my/dokumenattached/bajet2013/SPEECH_BUDGET_2013_28092012_E.pdf [5 March 2013]; and *The Star,* "Economic Report 2012/2013: Subsidies to hit RM42.4b in 2012, decline in 2013", 28 September 2012. Viewed at: http://biz.thestar.com.my/news/story.asp?file=/2012/9/28/business/20120928164242&sec=business [5 March 2013].

RM 1 billion. Of this, 74.3% related to Green Box assistance mainly in the form of income support to paddy farmers and general services, while the rest involved the fertilizer subsidy scheme for paddy farmers.[125]

3.100. Energy subsidies remain in place for all consumers despite reduction/rationalization efforts undertaken in July 2010 and 2011 when rising oil and gas prices made the subsidy burden "unsustainable" (sections 3.4.4.2 and 4.5). Subsidies for liquefied petroleum gas, diesel, and gasoline rose from RM 9.6 billion in 2010 to RM 20.4 billion in 2011, RM 24.7 billion in 2012, and RM 20 billion in 2013. The subsidized gas price for the power sector allows the electricity tariffs to remain at favourable rates; by end 2012 PETRONAS had extended about RM 183.2 billion in gas subsidy to both the power and non-power sectors. In addition the Government controls the amount of rising fuels cost that can be passed through to power consumers. While intended to help poor households, fuel and energy subsidies tend to be especially badly targeted, in part because they indirectly subsidize automobile and other purchases that are affordable only by better-off households; they are also detrimental to government efforts to improve environmental quality and to promote greener growth.[126]

3.101. In 2010, Malaysia began a rationalization effort to reform its subsidies regime through a phased five-year reduction of subsidies on gasoline, cooking gas, electricity, and road tolls, that was projected to save a cumulative total of US$33 billion.[127] However, only minor reductions in diesel-fuel subsidies and an increase in electricity tariffs and the price of natural gas for the power sector entered into force in 2011. The initiative lost momentum in 2012 as the Government "changed its focus to mitigating the rising cost of living" issues. As a result, in 2012, Malaysia raised subsidies expenditure by 17% to RM 42.4 billion (4.5% of GDP, Table 1.1), compared with RM 36.3 billion (4.1% of GDP) in 2011, due to higher provision of fuel subsidies, the biggest burden.[128] In 2013, total allocation for subsidies amounted to RM 35.2 billion. Such subsidies have also encouraged over-consumption of both fuel and sugar, together with substantial smuggling activities, and has led to shortages; it seems that subsidized diesel, sugar, and rice are illegally exported.[129] Subsidy rationalization resumed with a petrol subsidy reduction of RM 0.20 per litre, effective 3 September 2013, and the elimination of the subsidy on sugar effective 26 October 2013. To ensure a targeted subsidy system, the Government envisages gradually restructuring the subsidy programme; a portion of the savings from the restructuring would be distributed in the form of direct cash assistance, while the other half will be used to finance development projects.[130]

[125] WTO document G/AG/N/MYS/25, 10 August 2009.

[126] OECD (2013b).

[127] The effort included measures to improve the targeting of remaining subsidies on poorer households, including cash rebates to motorcycle and small-car owners. The Government had targeted a drop in the subsidy burden to RM 23.7 billion (14.6% of the GDP) in 2011 (OECD, 2013b; EIU, 2012a; and *The Wall Street Journal,* "Malaysia Raises Power Prices", 30 May 2011. Viewed at: http://online.wsj.com/article/SB10001424052702303745304576355100982022960.html).

[128] Nearly half of the total subsidies-related budgetary outlays for fiscal year 2010/11 (RM 15.9 billion) was spent on fuel subsidies, and another RM 1.6 billion in cooking-oil subsidies. The remainder went to subsidize other foods and utilities and for social assistance (*The Star,* "Economic Report 2012/2013: Subsidies to hit RM42.4b in 2012, decline in 2013", 28 September 2012. Viewed at: http://biz.thestar.com.my/news/story.asp?file=/2012/9/28/business/20120928164242&sec=business [5 March 2013]; and EIU, 2012a).

[129] It seems that Malaysian fishermen often abandon fishing to sell fuel intended for their boats to their counterparts in countries like Thailand and Indonesia, which do not offer similar subsidies. According to Domestic Trade, Cooperatives and Consumerism Minister, Ismail Sabri Yaakob, in 2010 businesses eligible for subsidized sugar often over-ordered and sold illegally sell their surplus to industries that are not targeted for subsidy. Such schemes can sometimes make it difficult for consumers to locate and purchase commodities (*Malaysiakini,* "Subsidies to eventually be lifted – slowly", 17 June 2010. Viewed at: http://www.malaysiakini.com/news/134768; and OECD, 2012b, "Structural Policy Country Note: Medium-term Policy Challenges: Malaysia"). See also the *2014 Budget Speech* introducing the Supply Bill (2014), "Strengthening economic resilience, accelerating transformation and fulfilling promises", 25 October 2013. Viewed at: http://www.fmm.org.my/upload/speech.pdf.

[130] The *2014 Budget Speech* introducing the Supply Bill (2014), "Strengthening economic resilience, accelerating transformation and fulfilling promises", 25 October 2013. Viewed at: http://www.fmm.org.my/upload/speech.pdf.

3.4.3 Government-linked companies[131]

3.102. Although it has gradually reduced its direct participation in enterprises through past divestment and privatization efforts, Malaysia retains large industrial and commercial holdings at federal and state level, either directly through the Ministry of Finance Inc. (the division of the Ministry of Finance overseeing investments) or indirectly through several fully state-owned entities in the form of government-linked corporations (GLCs), government-linked investment companies (GLICs), and statutory bodies.[132]

3.103. GLCs and their controlling shareholders, the seven GLICs[133], remain a significant part of the Malaysian economy as they have been used to spearhead infrastructure and industrial projects, and constitute the main actors in oil and gas, key strategic utilities, and services including electricity, telecommunications, postal services, airlines, airports, public transport, water and sewerage, banking and financial services.[134] GLCs employ an estimated 5% of the workforce, and accounted for approximately 36% and 54%, respectively, of the market capitalization of Bursa Malaysia[135] and the benchmark Kuala Lumpur Composite Index. In April 2012, there were 33 non-financial public enterprises (NFPEs), of which 8 are listed on the Bursa Malaysia, and the Government operated more than 200 industrial estates through its 13 state economic development corporations (SEDCs).[136] The three largest NFPEs are PETRONAS (petroleum), Tenaga Nasional (electricity) and Telekom Malaysia (telecommunications), which together generated around two thirds of the estimated aggregate NFPE revenues of RM 307.4 billion in 2011. Another 30 GLCs listed on the Bursa Malaysia are either financial public enterprises or companies controlled through GLICs; they are involved in, *inter alia*, automotive, tractors, and building activities.[137] The Ministry of Finance Inc. had partial or full ownership in 95 companies. No data on the production and trading (domestic sales, imports, exports) activities of all GLCs/SOEs since 2010 were provided by the authorities.

3.104. Procurement policies for GLCs and other SOEs seem to be similar to those of ministries and other government bodies although they are not governed by the same rules (section 3.2.6). Procurement from local sources, including *bumiputera* suppliers is encouraged, with a view to supporting national economic development (section 2.3[138] and section 3.2.6[139]). In 2011, GLCs gave *bumiputera* companies RM 81.6 billion (out of RM 159.3 billion) of procurement contracts, through an allegedly merit-based selection process.[140] As from 1 January 2012, the date of entry

[131] No information or comments were provided by the authorities on this section.

[132] Presentation of the Malaysia Competition Commission on State Owned Enterprises and Competitive Neutrality at the OECD Global Forum on Competition, Session III, Paris, 16-17 February 2012. Viewed at: http://www.oecd.org/countries/malaysia/49771569.pdf; and EIU (2012a).

[133] GLCs are controlled by GLICs such as Khazanah Nasional (the Government's sovereign wealth fund), Permodalan Nasional or the Employees Provident Fund (EPF), holds control. Khazanah owns stakes in companies competing in many of the country's major industries, and the Prime Minister chairs its Board of Directors (EIU, 2012a; and U.S. Department of Commerce/U.S. Commercial Service, 2012).

[134] State-owned entities own sizeable stakes in the financial sector, including in the two largest domestic commercial banks: Malayan Banking (Maybank) and CIMB Bank. The Government has traditionally used this control to, *inter alia,* help fund political programmes and to grant loans in exchange of favours, though these practices have become less common with improvements in corporate governance (section 3.4.5) (Putrajaya Committee on GLC High Performance online information. Viewed at: http://www.pcg.gov.my/FAQ.asp; U.S. Department of Commerce/U.S. Commercial Service, 2012; and EIU (2012a).

[135] GLCs in which the Government holds a controlling stake represented 5% of all companies listed on Bursa Malaysia in April 2012. Only a minority portion of stock is available for trading for some of the largest publicly listed companies (EIU, 2012a; and U.S. Department of Commerce/U.S. Commercial Service, 2012).

[136] SEDCs often offer incentive packages to investors, and several have set up manufacturing enterprises, sometimes jointly with the federal government and sometimes with private (including foreign) investors (EIU, 2012a).

[137] They are: Affin; Avenue Capital Resources; Boustead Holdings; CIMB Bank; CIMB Group (formerly Bumiputra-Commerce Holdings); Guthrie Ropel; Island & Peninsular; Kinta Kellas; Malayan Banking; Malaysia Building Society; Malaysia National Reinsurance; Malaysian Industrial Development Finance; NCB Holdings; PLUS Expressways; MNI Holdings; Petaling Garden; Pharmaniaga; Proton; RHB Bank; Sime UEP; Time DotCom; Time Engineering; Tractors Malaysia; UEM Builders; UEM World; and UMW Holdings (EIU, 2012a).

[138] In 2010, several initiatives were launched by the Prime Minister aimed at transforming the country, including the New Economic Model (NEM) (March 2010), the Government Economic Transformation Programme (ETP), and the 10th Malaysia Plan (the Government's development programme for 2011).

[139] SOEs seem to let politicians grant contracts or concessions to favoured entities (EIU, 2012a; and USTR, 2012a).

[140] Putrajaya Committee on GLC High Performance (2012).

in force of the 2010 Competition Act (section 3.4.4.1), all commercial activities, regardless of ownership and status (i.e. including those carried out by GLCs and other SOEs) have been under the same provisions.

3.105. During the period under review, Malaysia pursued its GLC Transformation Program (2005-15) aimed at turning GLCs into stronger and more resilient and competitive companies and into "regional champions", without directly privatizing them. The programme, now in its final phase, covers the larger GLC firms (termed as G-20).[141] The Government would, *inter alia,* like to see these companies gradually dispose of their non-core assets and increase collaboration with the private sector.[142] In its April 2012 review of the process, the Putrajaya Committee on GLC High Performance noted that the G-20 companies at that time were on a robust growth trajectory while making further inroads in regional markets. Several GLCs were well on their way to become regional players and even leaders, such as Axiata Group Berhad, Malayan Banking Berhad, CIMB Group Holdings Berhad and Sime Darby Berhad; whose foreign assets (as a percentage of total assets) grew from 13% to 26% over the same period.[143] During financial years 2004 to 2011, G-20 foreign sales (as a percentage of total sales) grew from 26% to 33%. G-20 GLCs employed almost 360,000 employees and were a net creator of 16,210 jobs in 2011. The liberalization of some sectors in Malaysia, the move towards free-trade agreements, and the entry into force of the 2010 Competition Act intensified competition challenges for GLCs.

3.106. In the context of the 2010 NEM reforms and the 10th Malaysia Plan, in July 2011 the Government showed an increasing interest in restarting its privatization efforts without giving specific targets. It listed 33 GLCs as ready for divestment; the plan would be to reduce its stakes in some of these companies, list a few others, and sell the rest.[144] These divestment efforts would affect, *inter alia,* state companies such as CTRM Aero Composites, Nine Bio, Inno Bio Ventures, Penang Port, the loss-making Malaysia Airlines, and Proton, the troubled car-maker (section 4.6). Despite discussions on possible strategic partnerships in recent years, none has led to actual deals yet, as divestment or reform appear to remain contentious in certain areas (e.g. healthcare services). The privatization programme stipulates that *bumiputeras* should take up at least 30% of equity of a privatized entity, and foreign participation is limited to 25% of share capital, though the Government may grant waivers. As a prelude or an alternative to privatization, some government agencies have been corporatized. The Malaysian Industrial Development Authority, now renamed Malaysian Investment Development Authority, was corporatized in October 2011, and the corporatization of Radio Televisyen Malaysia (RTM, the state broadcaster) was planned for the second half of 2012.

3.4.4 Competition and consumer protection policy

3.4.4.1 Competition policy

3.107. Since the previous TPR of Malaysia, the legal and institutional framework governing competition policy has changed significantly in line with ASEAN commitments (section 2.4.2). Malaysia's first comprehensive Competition Act was passed on 6 May 2010 and entered into force on 1 January 2012, giving businesses a sufficient grace period to comply with the law.[145] The 2010 Competition Act set two types of prohibition but does not address the issue of a merger

[141] In 2012, there were 17 GLCs in G-20 due to various mergers, de-mergers, and corporate exercises: Affin Holdings Berhad, BIMB Holdings Berhad, Boustead Holdings Berhad, Bumiputra-Commerce Holdings Berhad, Chemical Company of Malaysia Berhad, Malayan Banking Berhad, Malaysian Airline System Berhad, Malaysia Airports Holdings Berhad, Malaysian Building Society Berhad, Malaysian Resources Corporation Berhad, Pos Malaysia & Services Holdings Berhad, Proton Holdings Berhad, Sime Darby Berhad, Telekom Malaysia Berhad, TM International Berhad, Tenaga Nasional Berhad, TH Plantations Berhad, UEM World Berhad, and UMW Holdings Berhad (Putrajaya Committee on GLC High Performance online information. Viewed at: http://www.pcg.gov.my/; and Putrajaya Committee on GLC High Performance, 2012).

[142] EIU (2012a).

[143] G-20 employ 147,230 employees in 40 countries, with 1,509 branch offices in ASEAN alone.

[144] According to the Economic Planning Unit (EPU), the authorities privatized 513 entities (though this includes an unspecified number of public private partnership projects) over 1983-2010 (but just ten in 2010). More than 113,000 jobs were transferred to the private sector over this period. Of the companies or projects privatized during this period, construction accounted for 16.6%, followed by manufacturing (13.6%), and transport, storage and communications (13.1%) (U.S. Department of Commerce/U.S. Commercial Service, 2012; and EIU, 2012a).

[145] EIU (2012a).

control regime.[146] One prohibition affects anti-competitive agreements between enterprises that operate in the same sector through price fixing, market sharing, limiting or controlling market access, and bid rigging arrangements; and the other covers abuse of a dominant position by an enterprise in any market for goods or services.[147] Guidelines on market definition, on anti-competitive agreements, and on complaints procedures were issued in May and July 2012.[148] The 2010 Act covers all commercial activity (including of GLCs (section 3.4.3)), except for a number of anti-competitive practices, agreements or activities (e.g. energy[149] and communications), both within and outside Malaysia that have an effect on competition in any market within the country.[150] In certain sectors, competition is regulated via control over prices and entry conditions (section 3.4.4.2), such as permits and licences (state-owned Padiberas Nasional, for example, holds a monopoly on rice imports (sections 3.2.7, and 4.2.5)) mostly to advance social goals, such as the affirmative-action programmes benefiting *bumiputeras*, rather than to enhance competition. The 2010 Act is expected to be extended to cover all controlled sectors, though a specific timetable had not been announced in April 2012.[151] Furthermore, the Industrial Co-ordination Act 1975 (ICA) (sections 1.4.2.3 and 2.5.1), which requires manufacturing companies with shareholders' funds of RM 2.5 million and above or engaging 75 or more full-time paid employees to apply for a manufacturing licence for MITI approval,[152] could, if necessary, ensure new investors that there will be no excessive investments in the same area; some manufacturing activities within the purview of other ministries such as milling of oil palm fresh fruits into crude palm oil, production and processing of raw natural rubber, and milling of paddy into rice are exempt from ICA requirements. According to the authorities, Malaysia is not ready for a competitive neutrality

[146] According to data provider Bloomberg (United States), the total value of Malaysia's announced merger-and-acquisition (M&A) deals, both locally and abroad, reached US$12.1 billion in the first half of 2011. According to the PricewaterhouseCoopers (United States) consultancy, M&A deals had jumped to US$36 billion in 2010, from US$13.3 billion in 2009. The main drivers of local M&A activity in the first half of 2011 were the finance, construction, and property sectors (EIU, 2012a; Malaysia Competition Commission, 2011; and U.S. Department of Commerce/U.S. Commercial Service, 2012).

[147] Under the 2010 Act, dominant position is defined as a situation where one or more enterprises possess significant market power to adjust prices or outputs or trading terms, without effective constraint from competitors or potential competitors. There is no clear threshold for each competition area but mere explanation of "unfair" acts. Exemptions for horizontal and vertical agreement might be granted on a case-by-case basis by the Commission, provided that the total benefits exceed the negative effects. As it stands, the Government seems to remain quite accommodating of market dominance; in general, the MyCC will consider a market share above 60% as indicative that an enterprise is dominant. Given its active participation in business and its desire to nurture infant industries, it provides protection from competition to specific enterprises through government procurement (section 3.4.3) and trade licensing (EIU, 2012a).

[148] See http://www.mycc.gov.my/guideline.asp.

[149] The authorities consider that since the state-owned PETRONAS must compete with well-established oil companies, it should be granted blanket approval authority in distributing and marketing fuel. Similarly, restrictions on foreign bank branches have protected local commercial banks, though these privileges are slowly being eroded as Malaysia opens its financial sector (section 4.7) (EIU, 2012a).

[150] More specifically, it applies to and covers all kinds of "goods", which includes all kinds of products, buildings, and other structures, vessels and vehicles, utilities like provision of clean water and sewerage, minerals, trees and crops, as well as animals including fish. Activities not covered by the Competition Act 2010 include: activities involving an exercise of governmental authority; activities carried out pursuant to the principle of solidarity; and purchases of goods or services not intended for resale or "re-supply". Furthermore, the 2010 Act does not apply to commercial activities that are regulated by the Communications and Multimedia Act 1998 and the Energy Commission Act 2001. Other exclusions are: agreements or conduct that complies with the law; collective bargaining or collective agreement between employers and trade unions on behalf of employees; and services of general economic interest, which cover public utilities, or have the character of a revenue-producing monopoly (Malaysia Competition Commission, 2011; and EIU, 2012a).

[151] According to the authorities while Malaysia endeavours to enforce the competition policy and law regime effectively, other policy considerations may also be taken into consideration, depending on the circumstances, for the efficient functioning of the economy and socio policy goals. In this regard, the concept of competitive neutrality has not been fully recognized in Malaysia, and there are no plans to include it in the policy framework of the competition policy (EIU, 2012a).

[152] An existing manufacturing company (formerly exempted) is required to apply for regularization, i.e. a manufacturing licence once it reaches this licensing threshold.

principle.[153] According to the OECD, evidence suggests that open competition in Malaysia remains elusive.[154]

3.108. Since 1 April 2011, responsibility for competition policy has been with Malaysia Competition Commission (MyCC), an independent enforcement body under the Ministry of Domestic Trade, Cooperatives and Consumerism (MDTCC), established under the Competition Act 2010. In 2012 and 2013, the MyCC's focus remained on advocacy and capacity building; over this period a total of 63 advocacy programmes for various government bodies and business associations were organized and completed. The MyCC, is empowered to conduct a review into any market in determining whether there are distortions to the competitive process; its findings and recommendations are published.[155] Individuals may file complaints with the MyCC to request an investigation. Violations are punishable by fines, as well as imprisonment; the maximum penalty is 10% of the worldwide turnover of an enterprise over the period of infringement. The 2010 Act also established a Competition Appeal Tribunal with exclusive jurisdiction to hear all appeals and to review any decision by the MyCC.

3.109. Since its establishment, MyCC has conducted two public consultations covering the domestic broiler market and the proposed Block Exemption Order (BEO) for liner shipping agreements. The MyCC issued a decision against the Cameron Highlands Floriculturist Association (CHFA) for price-fixing on 6 December 2012. On 6 September 2013 a proposed decision was under consideration on Malaysia Airlines System Berhad, and AirAsia Berhad for entering into a market-sharing agreement within Malaysia. On 1 November 2013, the MyCC issued its Proposed Decision on Megasteel Steel Sdn Bhd (Megasteel) for abuse of dominant position; a financial penalty amounting RM 4.5 million was proposed.[156] On 20 September 2013 it issued proposed interim measures against the Pan-Malaysia Lorry Owners Association, its members and related lorry enterprises on a probable infringement for agreeing to fix an increase of transportation charges by 15%.[157]

3.110. Some bilateral/regional free-trade agreements, such as the Japan-Malaysia Economic Partnership Agreement, the ASEAN-Australia New Zealand Free Trade Agreement, the Malaysia-New Zealand FTA, and the Malaysia-Australia FTA, include provisions on competition (section 2.4.2). At the regional level, Malaysia is a signatory to the declaration on the 2007 ASEAN Economic Community (AEC) Blueprint which, *inter alia*, is aimed at introducing comprehensive competition laws in all ASEAN member countries by 2015, on a best endeavour basis, and to establishing a network of authorities among member countries for discussion and coordination on competition policies. Malaysia also participates in the ASEAN Experts Group on Competition (AEGC), which aims to develop capacity and a forum for discussion on competition policies in the ASEAN region.

3.4.4.2 Price and supply controls

3.111. Price and supply controls remain in place. During the review period, the legal framework was updated with the Price Control and Anti-Profiteering Act 2011, in force from 1 April 2011, replacing the Price Control Act 1946.[158] Under the 2011 Act, an important step prior to the possible

[153] Competitive neutrality means that state-owned and private businesses compete on a level playing field. This is essential to use resources effectively within the economy and thus achieve growth and development (OECD, 2012a; and Malaysia Competition Commission presentation on State Owned Enterprises and Competitive Neutrality at the OECD Global Forum on Competition, Session III, Paris, 16-17 February 2012. Viewed at: http://www.oecd.org/countries/malaysia/49771569.pdf).

[154] The OECD study indicates the following case in point. Some industry players have alleged that the Government's "adoption" of some *bumiputera* pharmaceutical companies has resulted in the adopted companies being given five-year contracts to exclusively provide specific medication to the Health Ministry. These companies, which do not have to participate in an open tender for the product, also negotiate directly on price with the ministry (OECD, 2013b, "Chapter 2: Malaysia").

[155] Malaysia Competition Commission (2011).

[156] Malaysia Competition Commission Press Release, 1 November 2013. Viewed at: http://www.mycc.gov.my/news.asp?page=pressRelease_view&newsid=1356.

[157] Malaysia Competition Commission Press Release, 20 September 2013 . Viewed at: http://www.mycc.gov.my/news.asp?page=pressRelease_view&newsid=1286.

[158] Ministry of Domestic Trade, Cooperatives and Consumerism online information. Viewed at: http://www.kpdnkk.gov.my/en/barang-harga-terkawal; and Laws of Malaysia, "Price Control and Anti-Profiteering Act 2011", 24 January 2011. Viewed at: http://www.kpdnkk.gov.my/kpdnkk-theme/images/pdf/723_PRICECONTROLANDANTI-PROFITEERINGACT2011.pdf.

introduction of GST (section 1.4.2.1), the MDTCC enforces price controls by setting maximum, minimum or fixed prices for manufacturing, producing, wholesaling or retailing of any essential goods and services. Currently, five goods (petrol (RON 95), diesel, liquefied petroleum gas (LPG), cooking oil, and wheat flour) are under administrative control under the Control of Supplies Act 1961; these items are subsidized and subject to ceiling prices set by the Government. In addition, sugar and face masks are subject to maximum wholesale and retail prices set under the Price Control and Anti-Profiteering Act 2011.[159] Furthermore, under the 2011 Act, the 2000 Festive Season Price Controlled scheme requires producers to provide an adequate supply of essential food items up to a ceiling price during six specified festive seasons. Price ceilings appear to differ on occasion, depending on the origin of goods and/or the states/areas/districts.[160] The price of rice is controlled by law and is administered by the Ministry of Agriculture and Agro-Based Industry under the Rice (Grade and Price Control) Order 1992 (revised in 2008). Failure to comply (first time) with price control requirements (either by selling or purchasing) is subject to a penalty of up to RM 100,000 and/or three years of imprisonment for individuals, or RM 500,000 for corporates.[161]

3.112. Under the Control of Supplies Act 1961 (last revised in 1973), which prohibits the purchase, sale or barter of any controlled article without written permission, the MDTCC controls the supply of 22 items including sugar,[162] milk, rice, chicken, prepared or preserved fish, wheat flour, cooking oil, salt, cement, mild steel round bars, fertilizers, pesticides, rubber wood, face masks, and virtually all types of fuel (e.g. petrol, diesel, kerosene, LPG).[163] The MDTCC ended licensing rules for trade in chicken meat, cement, and mild steel round bars on 15 July 2010.[164] Under the 1961 Act, government subsidies have applied to six controlled goods (sugar (until late October 2013),[165] general purpose wheat flour, cooking oil, diesel, petrol RON 95, liquefied natural gas) (section 3.4.2.2). Under the Control of Supplies (Prohibition on Export) Regulations 2011, as from 15 March 2011 the exportation of four of these items (i.e. wheat flour, diesel, petrol RON 95, LPG) has been prohibited unless written permission is granted by the Controller of Supplies; exports of sugar and cooking oil are also prohibited unless an export licence is delivered by MITI for the former or the Malaysian Palm Oil Board (MPOB) under the Malaysian Palm Oil Board (Licensing) Regulations 2005 for the latter.[166] Despite plans for a gradual subsidies reduction for 2010-12 (section 3.4.2.2), it is estimated that RM 32.8 billion, or 18.2% of operating expenditure, was spent on subsidies in fiscal year 2010/11, rising sharply from RM 23.1 billion in the previous fiscal year. An estimated RM 33.2 billion was budgeted for fiscal year 2011/12.[167] The biggest burden is subsidies on fuel prices (section 3.4.2.2), which are among the lowest in Asia.

[159] The price of sugar is still controlled at RM 2.84/kg (retail).

[160] Between August 2011 and June 2012, the 25 controlled goods declared during festive seasons included butter, cheese, margarine, bottled drinks, raw meat, eggs, fruits, several vegetables, pepper, chilies, rice, and corn flour. Under the festive price controlled scheme implemented for 15 days from 12 to 26 August 2012, price ceilings were mainly for Kuala Lumpur and Putrajaya while certain states (including Sabah and Sarawak) would have different levels. For certain food items, the ceiling prices were set exclusively for imported products (groundnuts, onion, garlic, potatoes) while the ceiling prices for imported beef set at RM 22 (Sarawak only) and RM 21 for Indian beef buffalo were lower than for local beef (RM 24). (*The Malaysian Insider,* "Price controls for 20 items ahead of Aidilfitri", 2 August 2012. Viewed at: http://www.themalaysianinsider.com/malaysia/article/price-controls-for-20-items-ahead-of-aidilfitri; EIU, 2012a; and Ministry of Domestic Trade, Co-operatives and Consumerism online information, "Festive Seasons Price Controlled Scheme Enforcement". Viewed at: http://www.kpdnkk.gov.my/penguatkuasaan-skim-kawalan-harga-musim-perayaan).

[161] Laws of Malaysia, Price Control and Anti–Profiteering Act 2011, 24 January 2011. Viewed at: http://www.kpdnkk.gov.my/kpdnkk-theme/images/pdf/723_PRICECONTROLANDANTI-PROFITEERINGACT2011.pdf.

[162] Malaysia is import dependent for its domestic needs. The consistent supply of sugar is ensured through a commercial long-term contract (LTC). Raw sugar is imported under the LTC and processed into refined sugar for domestic consumption.

[163] Ministry of Domestic Trade, Co-operatives and Consumerism online information, "List of controlled goods". Viewed at: http://www.kpdnkk.gov.my/en/senarai-barang-barang-kawalan.

[164] EIU (2012a).

[165] The sugar subsidy of RM 0.34 was abolished as of 26 October 2013 (the *2014 Budget Speech* introducing the Supply Bill (2014), "Strengthening economic resilience, accelerating transformation and fulfilling promises", 25 October 2013. Viewed at: http://www.fmm.org.my/upload/speech.pdf).

[166] Ministry of Domestic Trade, Co–operatives and Consumerism list of government subsidies on controlled goods. Viewed at: http://www.kpdnkk.gov.my/en/barang-barang-kawalan-bersubsidi; and the 2011 Control of Supplies (Prohibition of Exports) Regulations list. Viewed at: http://www.kpdnkk.gov.my/en/barang-barang-kawalan-yang-dilarang-eksport.

[167] Only minor reductions in diesel-fuel subsidies entered into force in July 2011; no other cuts had been announced by April 2012 (EIU, 2012a).

Nearly half of the total for 2010/11 (RM 15.9 billion) was spent on fuel subsidies and another RM 1.6 billion on cooking-oil subsidies.

3.4.4.3 Consumer protection

3.113. Malaysia's consumer protection framework has been changed since its previous TPR. In addition to the Consumer Protection Act 1999 (last amended in 2010), Malaysia has a number of laws to regulate the activities of enterprises and protect consumer interests (section 3.4.4.2).[168] The Act's latest amendments expanded its provisions, introduced the unfair contract terms, and established the Committee on Advertisements. A long-awaited Personal Data Protection Act 2010, in force as from June 2012, regulates the collection, possession, processing, and use of personal data, and ensures that there are adequate measures for the security, privacy, and handling of personal information.[169] Other regulatory changes comprised: the Consumer Protection (Credit Sales) Regulations 2012 (from 1 October 2012) ensuring that the credit facility provider transparently discloses all important information to consumers before the transaction happens; Guidelines to Prevent False or Misleading Advertisement; and Guidelines on Consumer Redress, ensuring that both the consumer and businesses understand their rights and responsibilities in claiming and implementing redress. The MDTCC continues to administer most of these laws, and, *inter alia,* provide programmes on consumers' education and a channel for consumers to file claims for compensation on bad quality products and services via the Tribunal for Consumer Claims. Under the purview of MDTCC, this tribunal deals with consumer claims for damages of not more than RM 25,000 against sellers, manufacturers or suppliers of goods and services.[170]

3.114. A "Buy Malaysia Campaign" was re-launched in 2009 aimed at changing the perception of domestic brand items that are on par with international standards but retailed at reasonable prices; it is still ongoing.[171] This campaign, which is also run by the MDTCC and costs RM 10 million each year (since 2009), also serves to stimulate economic growth by increasing consumption of Malaysian-made products. No measurement of the positive impact for domestic product penetration in the local market since 2010 was available from the authorities. The definition for Malaysian brand items for the purpose of this campaign is "all products or services offered by companies owned by Malaysians who also own the brands". The campaign involves the organization of Buy Malaysian Products Expositions and awareness campaigns through the mass and social media; a total of 19 expositions were organized during 2010-12.

3.4.5 Corporate governance

3.115. Since its previous TPR, Malaysia, a regional leader in corporate governance (CG), has made substantial progress in further improving its legal and regulatory framework in this area.[172] A five-year Corporate Governance Blueprint, launched by the Securities Commission Malaysia (SC) on 8 July 2011, provided the action plan for raising CG standards by strengthening self and market

[168] Other laws on consumer rights include the Trade Descriptions Act 1972, the Control of Supplies Act 1983, the Food Act 1983, and the Direct Sales Act 1993 (EIU, 2012a).

[169] EIU (2012a).

[170] Ministry of Domestic Trade, Co-operatives and Consumerism online information. Viewed at: http://www.kpdnkk.gov.my/en/pengguna/ttpm/pengenalan.

[171] Ministry of Domestic Trade, Co-operatives and Consumerism online information. Viewed at: http://www.kpdnkk.gov.my/en/kempen-beli-barangan-malaysia.

[172] According to the 2012 World Bank Corporate Governance Report on Observance of Standards and Codes (ROSC), its overall scores are higher than the average scores of countries within the Asian region. In each of the six main areas of corporate governance policy framework, Malaysia's score surpassed the average for Indonesia, India, Thailand, the Philippines, and Viet Nam. Out of the six OECD Principles for Corporate Governance examined in the 2012 report, Malaysia scored highest in term of equitable treatment of stakeholders, enforcement and institutional framework, as well as disclosure and transparency. The report also confirms that Malaysia has achieved high levels of compliance in a number of key areas, both fundamental and more sophisticated, like the prohibition of insider trading and implementation of high-quality accounting standards (Securities Commission Malaysia Press Release, "World Bank recognises Malaysia as a regional leader in corporate governance", 26 February 2013; *The Star*, "World Bank calls Malaysia a regional leader in corporate governance, but there's more to be done", 2 March 2013. Viewed at: http://biz.thestar.com.my/news/story.asp?file=/2013/3/2/business/12780123; and MoneyCompass online information, "World Bank recognises Malaysia as a regional leader in corporate governance". Viewed at: http://moneycompass.com.my/en/world-bank-recognises-malaysia-as-a-regional-leader-in-corporate-governance/).

discipline and promoting greater internalization of the culture of good governance.[173] The Blueprint focuses on six connected themes of the corporate governance ecosystem: shareholder rights; the roles of institutional investors; boards; gatekeepers and influencers; disclosure and transparency; as well as public and private enforcement. Following the CG Blueprint, a Malaysian Code on Corporate Governance 2012 (MCCG 2012) entered into force on 31 December 2012 superseding the 2007 Code. It sets out broad principles and specific recommendations on structures and processes that companies should adopt in making good corporate governance an integral part of their business dealings and culture.[174] The MCCG 2012 focuses on strengthening board structure and composition, recognizing the role of directors as active and responsible fiduciaries. Main principles included roles and responsibilities of leaders, moving towards sustainability, protecting company and social ethical standards, fostering independence, and commitments.[175] Several key recommendations of the MCCG 2012 will be implemented through the Bursa Malaysia Listing Requirements while others require changes to the legislation. Listed companies are expected to report on their compliance with the MCCG 2012 principles and recommendations in their annual reports. As in the case of the 2007 Code, GLCs are expected to abide by the Code, as well as GLC-specific guidelines for best practices issued by the Putrajaya Committee on GLC High Performance (section 3.4.3). At present the monitoring of CG disclosure statements is limited.

3.116. During the review period, other changes involved the amendment in 2010 of the Capital Markets and Services Act 2007 to empower the SC to act against directors of listed companies who cause wrongful loss to their company, and against any person who misleads the public through falsely preparing or auditing the financial statements of companies.[176] An Audit Oversight Board was established, and became operational on 1 April 2010, to provide effective oversight of auditors of public-interest entities. In 2011, the Securities Industry Dispute Resolution Center (SIDREC) was established to facilitate the resolution of small claims by investors. Malaysia also committed to full convergence with the International Financial Reporting Standards (IFRS) by January 2012; as a result, the financial statements of the SC and SIDREC have been prepared in accordance with IFRS. The Companies (Amendment) Act 2007, which entered into force on 15 August 2007, remains unchanged and seems to lack clarity on a range of issues. According to the 2012 World Bank Corporate Governance Report on Observance of Standards and Codes, maintaining investor confidence will require reform to continue in areas such as protection of smaller shareholders; disclosure of beneficial ownership and other non-financial information; strengthening of auditor independence and effectiveness of market intermediaries; reviewing the role of government-linked investment companies and other institutional investors and owners, and maintaining the credibility and effectiveness of the SC.[177]

3.4.6 Intellectual property rights

3.117. Malaysia remains committed to protecting and enforcing intellectual property rights (IPR) and to pursuing necessary legislative and regulatory improvements, and has made important progress with respect to the protection and enforcement of IPR over the past few years, in line with its 2007 National Intellectual Property Policy (NIPP).[178] During the review period, Malaysia passed significant amendments to its patent, industrial designs, copyright, and trademark laws (sections 3.4.6.1 and 3.4.6.2). It also expanded its IP commitments by becoming a party to the WIPO Copyright Treaty, and Performances and Phonograms Treaty, both in effect from 27 December 2012; Malaysia is a signatory to 8 of the 25 treaties administered by WIPO.[179] The TRIPS Council reviewed Malaysia's IPR legislation in November 2001.[180]

[173] Securities Commission Malaysia online information. Viewed at: http://www.sc.com.my/main.asp?pageid=1088&menuid=332&newsid=&linkid=&type=S.

[174] Corporate Governance Blueprint 2011 online information. Viewed at: http://www.sc.com.my/main.asp?pageid=1087&menuid=&newsid=&linkid=&type=; and Securities Commission Malaysia (2011b and 2012).

[175] Securities Commission Malaysia (2012).

[176] Securities Commission Malaysia (2011b).

[177] *The Star*, "World Bank calls Malaysia a regional leader in corporate governance, but there's more to be done", 2 March 2013. Viewed at: http://biz.thestar.com.my/news/story.asp?file=/2013/3/2/business/12780123.

[178] More information about the NIPP is available in WTO document WT/TPR/S/225/Rev.1, 15 February 2010.

[179] Malaysia is also a signatory of the Berne Convention, the Nice Agreement, the Paris Convention, the Patent Cooperation Treaty, the Vienna Agreement, and the WIPO Convention (WIPO online information. Viewed

3.118. Malaysia, a signatory to the ASEAN Framework Agreement on Intellectual Property Co-operation, participates in the ASEAN Working Group on Intellectual Property Cooperation (AWGIPC), in which it was agreed to replace the ASEAN Regional Trade Mark Filing System with the Madrid Protocol for the International Registration of Marks by 2015. Malaysia also took part in launching the 2009 ASEAN Patent Examination Co-operation (ASPEC) programme to allow applicants from participating countries to obtain corresponding patents faster and more efficiently.[181] Under ASEAN's IPR Action Plan 2011-2015, which comprises 28 initiatives under 5 strategic goals, at the 40th AWGIPC Meeting in March 2013, Malaysia committed itself to be the Country Champion for six initiatives: reducing the average turnaround time (from filing to registration) for the registration of trade marks without objections/opposition to 6 months by 2015; effectively using the copyright system by 2015; establishing collective management societies in ASEAN member states by 2015; protecting geographical indications (GIs); enhancing the capability of SMEs in the ASEAN member states to generate and fully utilize intellectual property (section 3.4.6.2); and capacity building for patent examiners.[182] The Trans-Pacific Partnership negotiations (section 2.4.2), in which Malaysia is actively involved, aim, *inter alia,* at a high-level Intellectual Property chapter, which would extend copyright protection, impose high-level enforcement standards, and deal with pharmaceuticals and access to medicines.[183] Malaysia cooperates, *inter alia*, with the WIPO, ASEAN IP Offices, IP Australia, the European Patent Office (EPO), Japan Patent Office (JPO), Korean Intellectual Property Office (KIPO), the UK Patent Office (UKPO), the United States Patent and Trademark Offices (USPTO), and other intellectual property offices.

3.119. The Intellectual Property Corporation of Malaysia (MyIPO) remains the principal agency responsible for IPR policy development and administration. MyIPO handles industrial property protection as well as copyrights. It examines and registers industrial property protection, provides advisory services, stores and publishes information and statistical data, and provides training programmes. MyIPO has reduced the pendency period for patents (from 38 months in 2010 to 26 months in 2011) and trade marks (from 18 months to 12 months in 2011).[184]

3.4.6.1 Industrial property

3.120. Since 2002, Malaysia has provided incentives for domestic companies to register their industrial property rights. In computing income tax resident companies may deduct the following expenses: costs to acquire patents, designs, models, plans, trade marks or brands, and other similar rights from foreigners.[185] In tax assessment years 2010-14, SMEs are also allowed to deduct the registration costs of patents and trade marks.

3.4.6.1.1 Patent and utility models

3.121. Patent protection under the Patent Act of 1983 (last amended in 2006) is for 20 years from the date of filing. Both product and process patents may be granted. A utility innovation (i.e. utility model), an exclusive right granted for a "minor" invention, which does not have to satisfy the test of inventiveness as required for a patent, is protected for ten years (renewable for two further five-year consecutive terms) from the date of filing, subject to use. The latest amendment to the Patent Regulations (in force 15 February 2011) involved changes to simplify the registration process through an expedited examination procedure for patent and encouraging the use of online registration and online documentation processing. As of November 2013, the 1983 Act was under amendment procedures. As at June 2013, Malaysia had granted 49,042 patents and utility innovations, of which 46,578 were granted to foreign nationals. Patent filings by residents increased particularly in the area of semiconductor inventions, illustrating Malaysia's high level of integration in global ICT value chains.[186] Malaysia also files patents and utility innovations abroad;

at: http://www.wipo.int/treaties/en/ShowResults.jsp?country_id=124C&start_year=ANY&end_year=ANY&search_what=C&treaty_all=ALL).

[180] WTO document IP/C/M/34, 20 December 2001.

[181] MyIPO online information. Viewed at: http://www.myipo.gov.my/web/guest/paten-aspec.

[182] MyIPO (2011).

[183] Abraham and Toh (2012).

[184] MyIPO (2011).

[185] EIU (2012a).

[186] WTO (2012)

158 patents and utility innovations were granted (in Brunei Darussalam, Singapore, the Philippines, Thailand, and Viet Nam) from 2006 to 2010.

3.122. Malaysia's compulsory licensing provisions, which are applied to patents, layout designs of integrated circuits, and copyrights and related rights, remain unchanged. Malaysia has not accepted the Protocol amending the TRIPS Agreement to permit use of the Paragraph 6 System, nor has it notified implementing legislation for transposing these flexibilities into national law to the TRIPS Council. Compulsory licensing may be granted under Section 49 of the Patents Act 1983 if registration has not been acted upon within three years. A licence may be obtained on an earlier patent if a new patent cannot be worked without it, particularly if the later invention constitutes an important technical advance.[187] The Malaysian Government may expropriate a registered patent. No compulsory licences or rights of government have been granted since 2005. However, in June 2012, the MOH enquired about the status of the Kaletra patent from MyIPO, but there have been no requests for compulsory licences for this or any other HIV medication.

3.123. Parallel imports are allowed into Malaysia under the Patents Act 1983. The potential for parallel imports diminishes sole distributors' exclusive rights to distribute patented products in Malaysia. However, they may take action against the contracting parties under the common law regime for loss of revenue. There are no provisions restricting parallel imports that relate to copyrights and trade marks in any laws or regulations.[188]

3.4.6.1.2 Trade marks

3.124. The Trademark Act 1976 (last amendment in 2002) protects trade marks on goods and services for ten years upon registration, renewable indefinitely for ten–year periods. The Trademarks (Amendment) Regulations 2011, which entered into effect on 15 February 2011, introduced the expedited examination of an application within four months of the date of filing, and reduced the fees for online filing.[189] A Trademarks Bill 2010, which is to include provisions of the Madrid Protocol, was still under review by the Attorney General's Chamber, at draft stage, in September 2013. Once passed, the definition of trade marks will be extended to cover non-traditional trademarks such as sounds, smells, tastes, and shapes. The Trade Descriptions Act 1972 was replaced by the Trade Descriptions Act 2011 (effective 1 November 2011); as the Trademarks Act 1976 contains no penal provisions, the new Trade Descriptions Act enables a registered trade mark owner to enforce the Act's provisions against any infringement, and the validity period of a trade description order was reduced from five years to one year. As at June 2013, Malaysia had registered 409,955 trade marks, 188,603 of which belonged to foreign right holders.[190]

3.4.6.1.3 Geographical indications

3.125. Under the Geographical Indications Act (amended 2001) and Geographical Indications Regulation 2001 (amendment 2013), geographical indications (GIs) are granted protection regardless whether they are registered. A registered geographical indication is given ten years of protection from the date of filling and is renewable for further periods of ten years.[191] In the case of registered geographical indications, only producers carrying on their activity in the geographical area specified in the Register have the right to use a registered geographical indication in the course of trade, even where the true origin of the goods is indicated or the geographical indication is used in translation accompanied by expressions such as "kind", "style", "imitation". The scope of protection does not differ between GIs for wines and spirits, and those registered for other products. The amendment to the Geographical Indications Regulations entered into force on 15 July 2013, and involved, *inter alia*, the introduction of a new GI 1 Form with details of products

[187] EIU (2012a).

[188] Nevertheless, according to a 2010 Court ruling it seems that although Malaysian laws do not expressly forbid parallel importation, only the registered proprietor of a mark in Malaysia has the right to import, sell or otherwise advertise for sale, goods that bear the registered mark unless it can be proven that the source of the parallel goods that bear the registered mark has a connection or association with the registered proprietor in Malaysia (*Mirandah,* "Parallel Import Law Clarified", 10 November 2011. Viewed at: http://www.mirandah.com/en/pressroom/articles-list/item/320-parallel-import-law-clarified.html [12 June 2013]).

[189] Abraham and Toh (2012).

[190] MyIPO online data. Viewed at: http://www.myipo.gov.my/web/guest/cap-statistik.

[191] MyIPO online data. Viewed at: http://www.myipo.gov.my/web/guest/geo-umum.

specification, qualification and registration of GI agents, as well as provisions relating to renewal and restoration of GI registration. In November 2013, Malaysia had registered 22 GIs, of which 5 belonged to foreign products.[192]

3.4.6.1.4 Plant variety protection

3.126. Under the Protection of New Plant Variety (PNPV) Act 2004 (effective and unchanged since 20 October 2008) and the Protection of New Plant Varieties Regulations 2008, IPR protection of new plant varieties is granted via a registration approval, based on the validation of plant characteristics that distinguish it from other varieties.[193] For a plant variety that is new, distinct, uniform, and stable, the term of protection is 20 years or 25 years (for trees and vines/perennial plant) from the filing date of the application. For a plant variety that is bred or discovered and developed by a local community or indigenous people, protection of 15 years from the date of application may be granted if it is new, distinct, and identifiable. In 2005, Malaysia initiated the procedure for and still considers becoming a member of the International Union for the Protection of New Varieties of Plants (UPOV); one of the prerequisites to joint is to have a law that conforms to the UPOV Convention.[194] Recently Malaysia's Plant Variety Board decided to review the PNPV Act 2004 in order to improve the effectiveness of its implementation, address stakeholder concerns, and move towards international harmonization.

3.4.6.1.5 Industrial designs and layout designs of integrated circuits (topographies)

3.127. Protection has been updated under the Industrial Designs Act 1996 (amended 2013, in force from 1 July 2013), and the Industrial Designs (Amendment) Regulations (amended 2012, in force from 15 February 2012).[195] The amendment to the Act raised the standard of novelty to worldwide level; extended the maximum period of registration (i.e. protection) from 15 years to 25 years[196]; replaced the *Government Gazette* with an *Intellectual Property Official Journal*; classified industrial design registrations as personal property, capable of being assigned, transmitted, and be used as a security interest transaction; and introduced a six-month time limit for recording any assignment, transmission, other operation of law or security interest transaction. The amendments to the Regulations brought minor changes in paper requirements for registration, registration fees, and procedures, and for the Registrar. Under the Layout-designs of Integrated Circuits Act 2000 a layout-design of an integrated circuit remains protected for 10 years from the date the layout-design is first commercially exploited in Malaysia or elsewhere, and the protection lapses 15 years after the date the layout-design is created, notwithstanding the commercial exploitation.[197] In June 2013, Malaysia had registered 17,986 industrial designs, of which 10,989 belonged to foreign right holders.[198] Malaysia also protects its industrial designs abroad; in 2010, it had 370 industrial design registrations in 5 ASEAN countries (Brunei Darussalam, the Philippines, Singapore, Thailand, and Viet Nam).[199]

[192] The domestic protected products included Bario rice, Borneo virgin coconut oil, Buah Limau Bali Sungai Gedung (a type of fruit), Kuih Lidah Kampung Berundong Papar (a type of snack), Langkawi cheese, Sabah seaweed, Sabah tea, Sarawak dabai (a fruit), Sarawak litsea (a plant), Sarawak pepper, Sarawak layered cake, Sarawak sour eggplant, two types of Sarawak rice, Tambunan ginger, and Tenom coffee. The foreign products included: Cognac (France), Parmigiano Reggiano (Italy), Pisco (Peru), and Scotch whisky (UK) (MyIPO online data. Viewed at: http://www.myipo.gov.my/web/guest/geo-statistik).

[193] Plant Variety Protection Malaysia online information. Viewed at: http://pvpbkkt.doa.gov.my/; *Mirandah,* "The Malaysian New Plant Varieties Act 2004 - A comparative perspective", 24 November 2008. Viewed at: http://www.mirandah.com/categories/item/166-the-malaysian-new-plant-varieties-act-2004-a-comparative-perspective.html [13 June 2013]; and "Guide To Plant Varieties Protection In The Asean Region", 2 November 2010. Viewed at: http://www.mirandah.com/en/categories/item/109-guide-to-plant-varieties-protection-in-the-asean-region.html [13 June 2013].

[194] According to UPOV's comments, a number of provisions of Malaysia's PNPV Act 2004 are not in line with the UPOV 1991 law (UPOV document C(Extr.)/22/2, 2 February 2005. Viewed at: http://www.upov.org/edocs/mdocs/upov/en/c_extr/22/c_extr_22_2.pdf; and UPOV Publication No. 437(EN), 5 January 2013. Viewed at: http://www.upov.int/export/sites/upov/about/en/pdf/pub437.pdf [11 June 2013]).

[195] MyIPO online information. Viewed at: http://www.myipo.gov.my/web/guest/reka-akta; and Cheah (2013).

[196] Malaysia seems now on par with the maximum registration period for the EU design registrations, and in contrast with Indonesian, Thai, Philippine, and Singaporean maximum protection terms (Cheah, 2013).

[197] Layout-Designs of Integrated Circuits Act 2000 Act 601. Viewed at: http://www.wipo.int/wipolex/en/text.jsp?file_id=128848#P118_10616; and MyIPO online information. Viewed at: http://www.myipo.gov.my/web/guest/susun-umum.

[198] MyIPO online data. Viewed at: http://www.myipo.gov.my/web/guest/reka-statistik.

[199] MyIPO (2010).

3.4.6.1.6 Trade secrets[200]

3.128. Malaysian law in this area remains based on English law and there is no formal registration process for trade secrets or confidential information. A breach of confidence is generally actionable in the courts provided the following three conditions are met: the information is confidential; the information is disclosed in circumstances importing confidentiality; and there must be actual or anticipated unauthorized use or disclosure.[201] Government officials are bound under the Official Secrets Act 1972, and MyIPO does not have any information on cases involving trade secrets protection. As from 1 March 2011 the MOH has provided data protection for pharmaceuticals containing new chemical entities (NCE), for periods of five years and three years for second indication.[202] Protection is provided against unfair commercial use, as well as unauthorized disclosure of test or other data generated to obtain marketing approval of pharmaceutical products containing NCEs. Protection is granted on the same date as in the country of origin.

3.4.6.2 Copyright and related rights

3.129. Although copyright protection remains automatic (i.e. no registration) and works are protected immediately upon creation and fulfilment of certain conditions in the Copyright Act (original or derivative work, reduced to material form, author a qualified person in Malaysia), on 1 June 2012 Malaysia introduced a new Copyright Voluntary Notification system, where copyright owners may deposit their copyright work together with statutory declaration to be recorded in the Copyright Register. Extract from the Register serves as *prima facie* evidence. Photographs are protected under artistic work. The period of protection for literary, musical or artistic works is the life of the author plus 50 years.

3.130. During the period under review, copyright protection legislation was modernized and strengthened to, *inter alia,* bring it into line with undertakings under the WIPO Copyright Treaty and WIPO Performances & Phonograms Treaty (section 3.4.6). The Copyright (Amendment) Act 2012, in force as from 1 March 2012, introduced statutory damages (from RM 25,000 (around US$8,100) to RM 500,000, brought the act up to date with technological changes, introduced more stringent rules for internet service providers to combat online piracy (such as illegal file sharing), and strengthened anti-camcorder legislation (to combat the illegal recording of films in cinemas).[203] Despite all these significant developments, there seem to be grounds for regulatory improvements in certain areas, including coverage of access controls, temporary copy protection, statutory damages, civil damages/innocent infringer, service provider liability, and term of protection, as well as considering, *inter alia*, the adoption of provisions imposing landlord liability and mandatory minimum jail sentences for piracy and/or sentencing guidelines to ensure imposition of deterrent sentencing.[204] Under the Copyright (Voluntary Notification) Regulations 2012, which provides more tangible protection, as from 1 June 2012 copyright owners have been able to voluntarily notify and deposit a copy of the work eligible for copyright with MyIPO.[205]

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[200] Trade secrets, which could be anything from a design, process, *modus operandi*, formula or even a tool, are generally held as confidential information that affords business outfits a competitive edge over their likely rivals; in contrast to patents, which expire after some years, trade secrets do not expire with time (*Mirandah* online information. Viewed at: http://www.mirandah.com/privacy-and-trade-secrets.html).

[201] Article 39 of the TRIPS Agreement requires the protection of undisclosed information of commercial value and of certain data submitted to governments or government agencies. See http://www.wto.org/english/docs_e/legal_e/27-trips_04d_e.htm#7; and Malaysian Intellectual Property Association online information. Viewed at: http://www.mipa.org.my/confidential-information.html.

[202] The second indication for a registered pharmaceutical product means a single or cluster of therapeutic indications applied subsequent to the first indication(s) approved at the point of registration of the said product and contains reports of new clinical investigations other than bioavailability studies. Directive No. 2 Year 2011 issued under regulation 29 of the Control of Drugs and Cosmetics Regulations 1984.

[203] The new Sections 36A and 36B of the 2012 Act: ensure copyright protection for computer programs (whatever may be the mode or form of their expression) and compilations of data constituting intellectual creations; extend the exclusive rights of authors to distribution, rental, and communication of the works to the public (subject to certain limitations); and provide legal remedies against the circumvention of technological measures used by authors to prevent the removal or altering of information (Henry Goh online information, "Malaysia Commits to Fuller Copyright Protection". Viewed at: http://www.henrygoh.com/malaysia-law-practice-malaysia-commits-to-fuller-copyright-protection.html; and EIU, 2012a).

[204] International Intellectual Property Alliance (2013).

[205] Henry Goh online information, "Voluntary Notification of Copyright". Viewed at: http://www.henrygoh.com/malaysia-law-practice-6.html [14 June 2013]; and MyIPO online information. Viewed at: http://www.myipo.gov.my/web/guest/hakcipta-umum.

Malaysia plans to update its Optical Disc Act to strengthen licensing requirements of CD and DVD manufacturers, though by November 2013 no draft amendments had been made public.[206]

3.131. Fines and penalties remain unchanged since 2003 as they are considered an effective deterrent. Those for making, selling, hiring, distributing, possessing (other than for domestic use) or importing any infringing works are RM 20,000 per infringing work for a first offence and to RM 40,000 per infringing work for subsequent offences.[207] Fines for making or possessing any equipment used or intended to be used for the purposes of making infringing copies or works are RM 40,000 for a first offence and up to RM 80,000 for subsequent offences. Offenders can be arrested without a warrant, and the term of imprisonment for circumventing any effective technological measures pertaining to rights-management information is five years for a first offence and ten years for subsequent offences.

3.4.6.3 Enforcement

3.132. Malaysia takes a proactive approach to enforcement. During the period under review, it improved its effective protection of IPR as the MDTCC enhanced the enforcement regime, which included active cooperation with rights holders on matters of IPR enforcement, on-going training of prosecutors for specialized IPR courts, and the re-establishment of the Special Anti-Piracy Task Force (SAPTF) in the fourth quarter of 2013.[208] Nevertheless issues remain, including the relatively widespread availability of pirated and counterfeit products, high rates of piracy over the Internet, and continued problems with book piracy.[209] The MDTCC plans to take action in cooperation with book publishers in Malaysia to outline an effective solution against book piracy especially the existing enforcement barriers; in addition, the SATPF is expected to contribute to the fight against book and digital piracy.

3.133. Customs officers have an *ex officio* duty under the Act to detain or suspend the release of goods that are deemed to be infringing IPRs on copyrights and trade marks on the basis of *prima facie* evidence. Nevertheless, concerns remain regarding border enforcement, in particular with respect to transhipment as Malaysia is considered as one of the significant East Asian departure points for counterfeit goods.[210] No information on transhipment of counterfeit goods (main categories of seized import/export items and values/origin concerned) and action taken so far was available from the authorities.

3.134. The MDTCC has investigated pirated software in various organizations in Malaysia, the only ASEAN member with an official (2,145-person) enforcement squad to investigate complaints from private businesses.[211] Actions taken against domestic producers and distributors include warning letters, inspections, charging offenders in courts, seizures, arrests, sealing facilities, and working with management/owner to suspend tenancy. Between 2009 and 2012, the overall number of raids and inspections dropped, particularly in 2011 when action in night markets declined considerably (Table 3.5) as local authorities committed themselves to running the inspection and refuse licences for selling infringing items as night markets fall under their respective jurisdiction. Nevertheless, action intensified strongly in eateries and computer shops. During the same period, the value of seized copyright-infringing goods dropped by almost 50%, while that of counterfeit goods grew four-fold. These involved copyright-infringing seizures CD/DVD/Blu-ray for film, music, and computer and entertainment software, as well as three counterfeit categories: food/health

[206] According to industry groups, Malaysia remains a source for pirated compact discs (CDs) and digital video discs (DVDs). In recent years, trade organizations from the United States and the EU have repeatedly asked for amendments to the Optical Disc Act to ensure that the inspection authority covers all locations where optical media production may occur and to include as offences such acts as tampering with source-identification codes and burning of recordable discs (EIU, 2012a; and International Intellectual Property Alliance, 2013).

[207] For example, if the offender is found guilty of possessing one MP3 infringing an album carrying 1,000 songs, the amount of penalty will be calculated for each infringing work, i.e. 1,000 songs x RM 20,000 (EIU, 2012a)

[208] In recognition of its efforts with respect to IPR protection and enforcement, in particular the Copyright (Amendment) Act 2012 (section 3.4.6.2), Malaysia was removed from the U.S. Trade Representative Special 301 Watch List of IPR offenders in April 2012; Malaysia was listed in 1989 and 1990, as well as for the entire period 2000-11 (Knowledge Ecology International online information, "The USTR Special 301 Reports, 1989 to 2012". Viewed at: http://keionline.org/ustr/special301 [14 June 2013]).

[209] USTR (2013); and International Intellectual Property Alliance (2013).

[210] USTR (2012b); and U.N. Office on Drugs and Crime (2013).

[211] EIU (2012a).

(cosmetics, liquor, drugs, etc.); safety (electrical, communications, vehicle spare parts); and others (clothing, watches, stationeries, etc.).

Table 3.5 Raids and inspections related to copyright infringement, 2009-12

Premises raided/inspected	2009	2010	2011	2012
Night markets	70,325	48,121	23,098	33,414
Eateries	7,385	7,395	4,620	8,392
Traders on five footways	6,891	5,743	8,259	7,861
Lobby stalls at shopping complex	5,043	6,902	2,868	7,518
Sale/rental optical disc shops	4,923	8,222	4,374	9,359
Optical disc manufacturers	126	144	154	237
Stores/distribution centres	10,173	10,590	1,318	2,926
Computer shops	680	1,826	1,687	4,059
Others	7,379	3,220	3,439	18,027
Total	**112,925**	**92,163**	**49,817**	**91,793**
Seizures under the Copyright Act, and Trade Description Act, 2005-07	(RM million)			
Copyright infringement	33.53	22.43	16.48	16.91
Counterfeit goods	3.57	13.78	12.74	14.54

Source: Information provided by the Malaysian authorities.

3.135. On 20 October 2011, the MDTCC launched a voluntary Basket of Brands (BOB) scheme to protect companies against the sale of counterfeit goods.[212] Under this scheme trade mark right-holders receive more proactive protection efforts in exchange for a commitment to testify in any resulting prosecutions. As of September 2013, there were 29 brand owners of 212 brands from a broad spectrum of industries, including global clothing, sportswear, liquor, car parts, and pharmaceutical brands; 7 were local brands and 205 international. They are given priority to follow up and verify the seizures of counterfeit goods. The BOB scheme also aims to enhance the awareness of university students by encouraging them to become anti-piracy friends and intermediaries between institutions of higher learning and the MDTCC, through providing information, comments, and suggestions for curbing piracy and counterfeiting.

3.136. Software and optical-disc piracy have been the main focus of enforcement actions in recent years. Nevertheless, despite a May 2006 deadline for businesses to validate their software or risk enforcement raids, 78% (2011) of computer users admitted using pirated software.[213] The rate of software piracy was estimated at 55% in 2011, down by 1 percentage point from 2010 and below the average software-piracy rate of 60% for the Asia/Pacific region. However, losses due to software piracy totalled an estimated US$657 million in 2011, up from US$606 million in 2010. In 2011, Malaysia ranked 26th in the world for the number of connections by peers participating in the unauthorized file sharing of select ESA member titles on public P2P networks.[214] MDTCC through its Enforcement Division worked closely with the right holders to examine and raid licensed optical-disc-replicating factories engaged in the production of infringing DVDs containing movies and entertainment software files, seizing thousands of infringing DVDs. Over 430,000 pirate DVDs, burned and replicated, and close to 20,000 counterfeit Blu-ray Discs, were seized in 2011.[215] Investigations were carried out in corporations and around 70 were taken to court in 2011 (40 in 2010). From 2006 to 2011 there have been 63 interdictions on illegal camcording.

3.137. The Intellectual Property (IP) Court, established on 17 July 2007, was to comprise 15 session courts located in all states; however, by April 2012 courts had been established only in 3 states (Kuala Lumpur, Penang, and Johor), and over 175 cases were still pending at end-2011.[216] On 11 March 2010, the MDTCC reactivated and expanded the jurisdiction of the

[212] Abraham and Toh (2012); and USTR (2012a).

[213] During the so-called Sikap Tulen campaign, an unspecified amount of hardware, and around RM 8.2 million worth of unlicensed software was seized from 70 companies in 2011 (Business Software Alliance, 2012; Business Software Alliance Press Release, "BSA Report finds 78 percent of computer users in Malaysia admit they pirate software", 15 May 2012. Viewed at: http://portal.bsa.org/globalpiracy2011/downloads/press/pr_malaysia_en.pdf; and EIU, 2012a).

[214] International Intellectual Property Alliance (2012).

[215] International Intellectual Property Alliance (2012).

[216] EIU (2012a).

Copyright Tribunal, which was introduced in 1999 and ceased in 2003 as no case had been recorded since its establishment, in order to offer the users and copyright owners an alternative platform, with simpler, cheaper, and faster procedures, rather than the strict procedures of the IP court; the Copyright (Copyright Tribunal) Regulations 2012, setting its operating procedures, entered in force on 1 September 2012 but no case has been filed so far.[217]

[217] UNESCO online information. Viewed at: http://portal.unesco.org/culture/en/ev.php-URL_ID=40730&URL_DO=DO_TOPIC&URL_SECTION=201.html; and Copyright (Copyright Tribunal) Regulations 2012 (P.U.[A]212/2012), 28 June 2012. Viewed at: http://www.myipo.gov.my/documents/10192/105238/pua_20120713_COPYRIGHT.pdf.

4 TRADE POLICIES BY SECTOR

4.1 Introduction

4.1. During the period under review, Malaysia maintained its dualistic approach to protection of goods. Relatively low agricultural protection contrasts with higher levels of protection in manufacturing, although the latter was increasingly subject to RTA-driven trade liberalization during the review period. While most sectoral policies remained relatively unchanged, emphasis was placed on refocusing agricultural and energy policies and implementing new measures in the automotive sector. Malaysia has continued to pursue autonomous services sector liberalization and has undertaken a major reform of financial services legislation.

4.2. The contribution of agriculture (including forestry and fisheries) remains at around one tenth of GDP. Continuous adoption of new technologies has enhanced its total factor productivity (TFP) growth while the self-sufficiency ratio for major agricultural products remained largely stable during the review period. The Government's new agricultural policy supports the development of the agri-food industry with emphasis on, *inter alia*, promoting biotechnology as well as high value agriculture as a driver of future growth. Malaysia's trade regime for agriculture remains relatively liberal with generally low MFN applied tariffs averaging 2.9% (WTO definition) in 2013. However, non-*ad valorem* tariff rates maintained almost exclusively on certain agricultural products continue to allow for higher tariff protection (AVEs are as high as 1,439.2%). Tariff-rate quotas remain in place. The Government also implements measures to support the domestic processing of certain agricultural products (e.g. through non-automatic export licensing and export duties) as well as to promote exports (e.g. through tax exemptions on statutory income from exports); export duties on crude palm oil were reduced considerably to improve export competitiveness and reduce domestic stocks. Malaysia continues to provide increasing amounts of product-specific support (i.e. price support to paddy rice) and general support (e.g. fertilizer subsidies, and soft loans) mainly focused on rice-related activities. Rice, a strategic crop for which the authorities revised their approach by ensuring availability, accessibility, and affordability rather than self-sufficiency, remains the sole item subject to the import monopoly of the firm Padiberas Nasional Berhad (BERNAS), in addition to non-automatic import/export licensing, and price and supply controls. Fish production targets have been largely exceeded despite the use of precautionary measures, such as the limitation on licences issued; a fisheries input control regime and certain resource enhancement and environmental sustainability measures are in place. Domestic support for fisheries has included additional diesel fuel subsidies (until end-May 2011 for trawlers above 70 GRT).

4.3. The contribution of mining (including fuels) and quarrying to GDP dropped slightly to 10.4% in 2012. Mining products remain subject to relatively high tariff protection ranging from zero to 50% (portland cement), export licensing, and export taxes, thereby assisting downstream processing.

4.4. During the period under review, efforts have been made to reduce Malaysia's dependence on oil and gas and to cope with rising energy demand by increasing the share of other sources including those generated from renewable sources in the total primary energy supply. However in spite of these efforts, the contribution of renewable energy remains negligible. Some action was also taken to improve energy efficiency. Energy subsidization for all consumers remains a major and long-standing fiscal, budgetary, developmental, environmental, and thereby political issue. A 2010 Subsidy Rationalization Programme was re-activated in 2013. State involvement in the oil, gas and electricity sectors persists with government-linked company PETRONAS remaining the biggest contributor to the government budget. It allows, *inter alia,* for subsidization of power generators through a government-imposed low natural gas price, a pass-through element that is intended to benefit the end users. Furthermore, electricity tariffs differ depending on the category of user and their consumption, thus allowing for cross-subsidization among different consumer groups; for example, average tariffs for commercial and agricultural activities are higher than those charged to industrial and residential consumers.

4.5. Whereas manufacturing's share of GDP has decreased slightly since 2010, its share of employment remains relatively stable. Manufacturing ranks 3rd behind construction and services in terms of TFP growth. Manufacturing, with the notable exception of the automotive industry, remains relatively open to trade and foreign investment. Since 2009, Malaysia's average applied MFN tariff on imports of industrial products has dropped from 8% to 6.2% (2013), which is more than two times higher than the average tariff affecting agricultural products (WTO definition), due to nomenclature changes. Preferential treatment for locally produced goods in government procurement contracts continues to support ethnic Malay (*bumiputera)* manufacturers. Exports of manufactured products are assisted through, *inter alia*, tax exemptions on statutory income from exports (enhanced for majority Malay-owned firms and automotive), as well as export licensing and export taxes on principal commodities. Several tax and non-tax incentives support, *inter alia,* R&D and SME activities. The automotive sector remains protected by an average applied MFN tariff of 17.3%, the highest of all HS sections, although tariffs on imports from ASEAN member countries were reduced to zero in 2010. Non-tariff measures such as the gazetted price system and the import licensing system of "approved permits" remain in place. In addition, an array of tax measures (high excise duties affecting disproportionately large vehicles and enhanced tax exemptions on statutory income from exports) and non-tax measures (soft loans and grants) within the framework of the National Automotive Policy continue to be in use.

4.6. The Malaysian services sector continues to be very dynamic, with annual growth averaging 5.9% over the review period. In 2012, the sector accounted for just over 50% of GDP and employment, and attracted the largest share of approved investments. The Government has continued to autonomously liberalize foreign equity restrictions in a swathe of services sectors; in 2012, it commenced implementation of partial or complete lifting of foreign equity restrictions in 17 services subsectors, under 6 sectors: professional services; communications services; distribution services; educational services; environmental services; and health related and social services. Most of these subsectors have been earmarked by the Government as National Key Economic Areas, which are considered to have the greatest potential for generating economic growth in the economy. Malaysia has undertaken services commitments in almost all of the RTAs to which it is a party; and coverage goes well beyond Malaysia's commitments under the GATS.

4.7. Over the review period Malaysia has undertaken comprehensive modernization and streamlining of its financial services legislation. New laws have removed the caps on foreign direct investment in the banking and insurance sectors. Instead, the issuing of insurance and banking licences is now based on prudential and the "best interest of Malaysia" criteria. Malaysia is seeking to promote itself as a centre for Islamic finance, health care, and education services, as well as a transportation hub for both air transport and shipping. It is promoting these sectors through liberalization efforts and various incentives. Government participation in certain services sector remains significant. For example, the Government is a majority shareholder in Telekom Malaysia, which has 95% of the fixed-lined telecommunications market; Malaysia Airports Holdings Berhad, a government-linked company (GLC) manages all but one of the country's airports; the Malaysia International Shipping Company (MISC), also a GLC, accounts for 10% of Malaysia's total seaborne trade (dry and liquid bulk), and government-owned development financial institutions (DFIs) account for 5.6% of the financial system's total assets (and around 10% of the banking system's total assets).

4.2 Agriculture and livestock

4.2.1 Features

4.8. The contribution of agriculture (including forestry and fisheries) to GDP ranged from 9.2% in 2009 to 11.8% in 2011, while its share in total employment dropped steadily from 11.9% to 11.1% (Table 1.2). According to the Malaysia Productivity Corporation, the sector recorded average TFP growth of 0.37% during 2008-12, while labour productivity shrunk by an average of 0.14% and capital grew by 2.3%.[1] Continuous adoption of new technologies such as biotechnology, better farm management, better agronomic practices, integrated farming, and farm mechanization through the implementation of Entry Point Projects (EPPs) (section 4.2.2) has enhanced TFP growth in the sector. In 2012, the sector had the second-lowest labour productivity rate in the economy (after construction). Between 2008 and 2011, farmland increased from

[1] Following a period of steadily rising labour productivity (by an overall 20.9% in 2009-11) due to the implementation of EPPs (section 4.2.2), the sector registered negative labour productivity growth of 13.9% in 2012, from RM 38,510 in 2011 to RM 33,172 in 2012, as a result of lower output and prices in the plantation industry, particularly for oil palm fruit (seemingly due to bearish market sentiments resulting from the unresolved Euro-zone financial crisis that led to poor demand for oils and fats), coupled with the sharp rise (of 17.1%) in employment as a result of the lifting of the freeze on the intake of foreign workers, which accounts for around 20% (10.8% in 2011) of total agriculture employment (Malaysia Productivity Corporation, 2013b; and Department of Statistics, 2012d).

6.8 million ha, to 7.1 million ha; nevertheless, due to the process of urbanization, farmland for rubber (8.7% of total agriculture output in 2012), coconut, and fruits declined by 18.9%, 2.7%, and 9.1% respectively.[2]

4.9. In 2012, Malaysia was the world's second-largest oil palm fruit and palm oil producer (after Indonesia). Production of crude palm oil, the country's leading agricultural export (12.5% of total exports in 2012), contributed 35.7% (37% in 2011) to total agricultural value-added/output in 2012.[3] Other agricultural products including paddy rice, fruits, vegetables, coconut, tobacco, tea, flowers, pepper, cocoa, and pineapple contribution of 18.2% to GDP, and livestock 11.7%. During the period under review, the sector's trade balance remained positive (RM 33.5 billion in 2012). Government-linked companies (section 3.4.3) like Boustead Holdings BHD and Sime Darby BHD (42.9% of total sector's assets) remain major stakeholders in agriculture and plantations.[4]

4.2.2 Government policy

4.10. The ten-year National Agro-Food Policy 2011-2020, which replaced the Third National Agricultural Policy (1998-2010), supports the development of the agri-food industry[5], focused on the paddy rice and rice industry, fisheries, livestock, vegetables, and fruits, as well as agri-tourism.[6] The policy aims at ensuring sufficient and safe food supply, making agri-food a viable and sustainable industry, and increasing the income of agricultural entrepreneurs. It is expected to further enhance value added in the agri-food sector, the food supply chain, and the education of skilled labour. Food security remains an important objective under the policy, although no self-sufficiency targets are set. The self-sufficiency ratio for major agricultural products remained largely stable during the review period, while an increase of self-sufficiency in fruit production is possibly due to the use of higher quality plant strains and biotechnological investments (Table 4.1). Under the 10th Malaysia Plan (2011-2015) (section 2.3), the authorities revised their approach by ensuring the availability, accessibility, and affordability of food, particularly rice, to the general public, rather than through self-sufficiency targets set in previous plans.[7]

Table 4.1 Self-sufficiency ratios, 2009-12

(%)

	2009	2010	2011	2012
Crops				
Rice	70.4	71.4	73.0	73.5
Vegetables	39.2	41.2	58.0	53.3
Fruits	64.7	65.8	60.1	60.5
Livestock				
Beef	27.0	28.6	29.5	30.1
Mutton	10.3	10.6	11.5	12.6
Poultry	122.2	127.9	131.4	131.4
Pork	96.9	101.7	99.3	99.2
Poultry eggs	114.7	115.4	130.6	131.6
Milk	4.9	4.9	5.1	5.2
Fish	100.1	101.7	123.7	134.2

Source: Data provided by the Malaysian authorities.

[2] Department of Statistics (2012d).
[3] UNSD Comtrade database; and Malaysia Productivity Corporation (2013b).
[4] Menon and Ng (2013).
[5] The agri-food system refers to a combination of institutions, activities, and enterprises that collectively develop and deliver material inputs to the farming sector, produce primary commodities, and subsequently handle, process, transport, market, and distribute food and other agri-based products to consumers (Caiazza and Tiziana, 2012).
[6] Ministry Agriculture and Agro-based Industry online presentation, "National Agrofood Policy (NAP) 2011-2020", February 2012. Viewed at: http://www.akademisains.gov.my/download/workshop/obesity/paper8.pdf; *New Straits Times,* "National Agrofood Policy launched", 14 January 2012. Viewed at: http://www.nst.com.my/top-news/national-agrofood-policy-launched-1.32237; Ministry of Agriculture and Agro-Based Industry (2011).
[7] USDA Foreign Agricultural Service (2013).

4.11. Under the 2010 Economic Transformation Program (ETP)[8] the main goal of the Agriculture National Key Economic Areas (NKEAs) is also to shift the industry from an agriculture-centred focus towards agri-business.[9] Its transformation strategy covers four key themes: capitalizing on competitive advantages; tapping premium markets; aligning food security objectives with increasing GNI; and participation in the regional agriculture value chain. Under the ETP, a number of EPPs have been identified as the high impact industries that can drive the growth of the agriculture sector. These include 9 EPPs under the Palm Oil and Rubber NKEA and 16 under the Agriculture NKEA (herbs, food crops, livestock, and fisheries).[10]

4.12. Strong governmental support has been provided through R&D as well as extension and marketing services to help transform the rural and poverty-afflicted agriculture sector into one that is modern, market-oriented, and commercially viable, yielding high returns (sections 4.2.3 and 4.2.4). The sector's institutional framework has remained unchanged during the period of review. It comprises the Ministry of Agriculture and Agro-Based Industry (for crops, livestock, and fisheries), the Ministry of Plantation Industries and Commodities (for plantations and commodity subsectors such as pepper, cocoa, palm, oil, rubber, timber, and tobacco) and the Ministry of Rural and Regional Development (charged with increasing rural incomes). Special committees, comprising representatives from relevant ministries, including the Economic Planning Unit (EPU), ensure coordination between these ministries.

4.13. Malaysia continues to promote biotechnology as another driver of future growth (section 4.2.4 and 4.5). Since 2005, BiotechCorp, an agency under the purview of Ministry of Science, Technology and Innovation (MOSTI), owned by the Minister of Finance Incorporated (section 3.4.3) and Federal Lands Commissioner, and governed by the Biotechnology Implementation Council, has implemented the objectives of the National Biotechnology Policy, and has acted to identify value propositions in both R&D and commerce and to support these ventures via financial assistance and developmental services.[11] BiotechCorp's key mandates are to: act as a one-stop-centre; nurture and accelerate growth of Malaysian biotechnology companies; actively promote foreign direct investments in biotechnology; and create conducive environment for biotechnology.

4.2.3 Border measures

4.14. Malaysia continues to maintain a relatively liberal trade regime for agricultural products. Its generally low MFN applied tariffs on agricultural imports averaged 2.9% (WTO definition) in 2012/13, compared with 2.8% in 2009 (Tables 3.1 and A3.1). This minor increase is due to the tariff nomenclature change (section 3.2.2) that grouped (i.e., reduced) the number of duty-free lines for certain items (e.g. sugar and confectionery and dairy products). Non-*ad valorem* tariff rates maintained almost exclusively on agricultural products (79 out of 83 nine-digit HS tariff lines) continue to allow for higher tariff protection (AVEs are as high as 1,439.2%) mainly for alcoholic beverages, tobacco articles, refuse, and certain edible fruits (section 3.2.2.1). Malaysia continued to apply tariff-rate quotas, apparently to allow a "reasonable" time for the development of the industry.[12] Some quotas were filled while others were not taken up (section 3.2.2.3, Table A4.1). The peak *ad valorem* rate of 90% remains in place on round cabbage, which is also subject to tariff-rate quotas (TRQs) (zero in-quota rate), and non-automatic import licensing requirements (sections 3.2.2.3 and 3.2.3.1). In 2011, the TRQ for this item was filled at almost 92% (Table A4.1).

4.15. A wide range of agricultural products are subject to import licensing and SPS measures (e.g. livestock products). Halal certification requirements have been in place since the previous TPR, and mandatory labelling of food and food ingredients obtained through modern biotechnology, which were gazetted on 8 July 2010, will be implemented from 8 July 2014 (sections 3.2.3.1, 3.2.5.1, 3.2.5.3, and 4.2.4); these requirements apply to both domestic and imported products. Rice is the sole item still subject to the exclusive import rights of the state-

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[8] The Economic Transformation Program is an initiative to turn Malaysia into a high income economy by the year of 2020 (section 2.3). It is managed by the Performance Management and Delivery Unit (PEMANDU), an agency under the Prime Minister Department of Malaysia.

[9] PM Department/Performance Management and Delivery Unit (2012a); and PM Department/Performance Management and Delivery Unit (2012b), "Chapter 15: Agriculture".

[10] Malaysia Productivity Corporation (2013b).

[11] BiotechCorp online information. Viewed at: http://www.biotechcorp.com.my/.

[12] WTO document WT/TPR/S/225/Rev.1, 15 February 2010.

trading firm Padiberas Nasional Berhad (BERNAS), which practically limits rice imports to 30% of Malaysia's domestic rice consumption depending on domestic supply and demand (section 3.2.7 and 4.2.5). During the period under review, no special safeguard provisions were applied under the WTO Agreement on Agriculture.[13]

4.16. Malaysia continues to support domestic processing and promote the export of certain agricultural products.[14] Numerous agricultural commodities remain subject to non-automatic export licensing and export duties (sections 3.3.2 and 3.3.3). Processed palm oil is fully exempt from export duties, while crude palm oil is subject to various levels of export duties scaled on market price thresholds. As of 2013, export duties on crude palm oil were cut considerably to improve its export competitiveness and reduce domestic stocks. Exporters of fresh and dried fruits, fresh and dried flowers, and ornamental plants receive a tax exemption on their statutory income equivalent to 10% of the value of increased exports (section 3.3.5).

4.2.4 Domestic support

4.17. During the period under review, Malaysia continued to provide increasing amounts of product-specific and general support to agriculture; the former in the form of increased price support to paddy rice, and the latter through, *inter alia,* rising fertilizer subsidies, and soft loans (sections 3.4.2.2 and 4.2.5, Table 4.2).[15] In 2011, price support remained the largest part of support expenditure, followed by the fertilizer subsidy. Spending on drainage and irrigation facilities has dropped since 2009. In 2013, RM 5.8 billion (RM 2.3 billion in 2012)[16] of budgetary outlays were given to the Ministry of Agriculture and Agro- Based Industry to cover, *inter alia,* agricultural development programmes (section 3.4.2.2).[17] Of this amount, RM 2.2 billion went to assist farmers in reducing production costs as: subsidies and incentives for paddy rice production, including subsidies on the paddy rice price to farmers (RM 480 million) and paddy fertilizers (RM 465 million); incentives to increase the paddy yield (RM 80 million) and paddy production (RM 563 million); and subsidies on the consumer price of rice (RM 528 million) and high-quality paddy rice seeds (RM 85 million). In addition, Malaysia maintains retail price and supply controls, *inter alia,* on: sugar, wheat flour, and cooking oil, (section 3.4.4.2). Retail prices of rice, wheat flour, and cooking oil are subsidized. To, *inter alia*, address the excessive sugar intake by consumers (i.e. for health reasons), the Government reduced the subsidy on sugar by RM 0.20 per kg, effective 29 September 2012, and abolished it on 26 October 2013, although it is still subject to price controls (section 3.4.4.2); sugar subsidized at RM 0.34 per kg involved an expenditure of RM 478 million in 2012. To maintain the increasing price differential and consumption quota on cooking oil, the Government provided an allocation of RM 1.5 billion to stabilize the prices of cooking oil in the market in 2013.

4.18. Under the 2014 Budget, the Government is to allocate RM 2.4 billion for subsidies and incentives, including subsidies for fertilizers, seeds, price of paddy and rice, as well as incentives

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[13] WTO documents G/AG/N/MYS/28, 28 March 2012 and G/AG/N/MYS/27, 16 March 2010.

[14] Malaysia indicated that no export subsidy programmes subject to reduction commitments were in place in 2010 and 2011 (WTO documents G/AG/N/MYS/29, 28 March 2012 and G/AG/N/MYS/26, 16 March 2010).

[15] Soft loans are available in the form of: 3F (Fund for Food), small and medium industries fund, and various other schemes. Loan facilities are also given to livestock breeders through Agro Bank with an allocation of RM 55 million, allowing them to make a loan of up to RM 300,000 without a guarantor (*New Straits Times,* "National Agrofood Policy launched", 14 January 2012. Viewed at: http://www.nst.com.my/top-news/national-agrofood-policy-launched-1.32237; and WTO document WT/TPR/S/225/Rev.1, 15 February 2010).

[16] In 2012, a total of RM 2.3 billion was spent on subsidies (RM 1.5 billion) and incentives (RM 854 million) to help farmers, fishermen, and livestock entrepreneurs to achieve food self-sufficiency and improve productivity in the food sector as well as stabilize prices of essential food items (*The Star,* "Economic Report 2012/2013: Subsidies to hit RM42.4b in 2012, decline in 2013", 28 September 2012. Viewed at: http://biz.thestar.com.my/news/story.asp?file=/2012/9/28/business/20120928164242&sec=business [5 March 2013]).

[17] *The 2013 Budget Speech*. Viewed at: http://www.pmo.gov.my/dokumenattached/bajet2013/SPEECH_BUDGET_2013_28092012_E.pdf [5 March 2013]; and *The Star,* "Economic Report 2012/2013: Subsidies to hit RM42.4b in 2012, decline in 2013", 28 September 2012. Viewed at: http://biz.thestar.com.my/news/story.asp?file=/2012/9/28/business/20120928164242&sec=business [5 March 2013].

for higher production of paddy and fish landing[18]; in addition, RM 243 million is to be allocated for the rubber, palm oil, and cocoa replanting programme and forest plantation programme. To increase productivity as well as to promote agriculture produce with high demand, RM 634 million is to be allocated under the NKEA initiative for projects including paddy and fish cage farming, seaweed and birds' nest, high-value herbs, vegetables, and fruits for the export market. Under a Bioeconomy Community Development programme, idle land will be developed through the application of biotechnology as well as for contract farming to increase the value-added of the agri-based industry and income of farmers.[19] In addition to existing BioNexus Status tax and non-tax incentives,[20] the Government will also provide R&D incentives for viable projects, which will be assessed by BiotechCorp from 1 January 2014 to 31 December 2018 (section 4.2.2): tax deduction for companies that invest to acquire technology platform in bio-based industry; exemption on import duty on R&D equipment for companies that invest in pilot plants for the purpose of pre-commercialization in Malaysia; and a special incentive to companies to partially cover the operational cost for human capital development for the Centre of Excellence for R&D.

Table 4.2 Overview of domestic agricultural support measures, 2009-11

(RM million)

Type of measures	Description	Value		
		2009	2010	2011
Drainage and irrigation facilities	General services that benefit rural and smallholding farmers	722.17	399.01	363.51
Research and development	General services provided for most crops and agricultural programmes	13.54	14.57	19.24
Marketing services	General services provided for marketing of produce of smallholders	16.15	6.35	0.8
Extension services	General services that benefit rural and smallholding farmers, including pesticide inspection services and transfer of information and results of R&D to producers	6.56	12.94	1.09
Price support and guaranteed minimum price	Guaranteed minimum price and paddy price subsidy provided to paddy farmers in the context of poverty reduction and uplift of the socio-economic wellbeing of paddy farmers	448	448	480
Fertilizer subsidy	Aimed at increasing productivity and encouraging good agricultural practices amongst smallholders	275.06	275.06	409.06

Source: Information provided by the Malaysian authorities.

4.2.5 Rice

4.19. A strategic crop, rice has always been accorded special border treatment and domestic support. Malaysia considers that as the staple food for the entire population, an acceptable level of self-sufficiency of not less than 70% for rice has to be maintained (2011-2020) (Table 4.1) and reviewed accordingly.[21] This policy ensures that the country is not too dependent on external sources and that consumers are protected from drastic price surges in the world market. Between 2008 and 2011, paddy production rose 12.2% (2.66 million tonnes); in 2011, Malaysia was ASEAN's 8th paddy producer.[22] Under the NKEA initiatives, BERNAS (sections 3.2.7 and 4.2.2) has been given new responsibilities to support the development of new paddy fields in East Malaysia and integration of small farms into large-scale farming in Peninsular Malaysia. For 2010 and 2011 BERNAS purchased 12.7% of national production and its domestic sales covered 56.4%

[18] The *2014 Budget Speech* introducing the Supply Bill (2014), "Strengthening economic resilience, accelerating transformation and fulfilling promises", 25 October 2013. Viewed at: http://www.fmm.org.my/upload/speech.pdf.

[19] The *2014 Budget Speech* introducing the Supply Bill (2014), "Strengthening economic resilience, accelerating transformation and fulfilling promises", 25 October 2013. Viewed at: http://www.fmm.org.my/upload/speech.pdf.

[20] This status, awarded to qualified companies undertaking value-added biotechnology and/or life sciences activities, confers fiscal incentives, grants, and other guarantees. Apart from the overall benefits and support, BioNexus companies are assured a list of privileges as stipulated in the BioNexus Bill of Guarantees (BiotechCorp online information. Viewed at: http://www.biotechcorp.com.my/bionexus-new/).

[21] Chee-Wan and Meng-Chang (2012).

[22] Department of Statistics (2012a).

of national consumption in volume terms; its annual imports averaged 995,000 tonnes (2010-12).[23]

4.20. Rice remains subject to a relatively high but apparently non-applicable tariff rate of 40% (except for broken rice for animal feed, which is subject to a 15% rate), as imports are duty free until 2015, as well as non-automatic import/export licensing and BERNAS' state-trading operations (sections 3.2.3.1, 3.2.7, and 3.3.2). In 2013, six types of subsidies and incentives were in place: Paddy production Incentive (RM 563 million); Price of Rice Subsidy (RM 528 million); Paddy Price Subsidy (RM 480 million), Paddy Fertilizer Subsidy (RM 465 million), Certified Paddy Seed Incentive (RM 85 million), and Yield Increment Incentive (RM 80 million).[24] Under the guaranteed minimum price (GMP) scheme, BERNAS undertakes to buy paddy rice from farmers at not less than the GMP if the market price is lower than the GMP. Currently the GMP is RM 750 per tonne (same as in 2009) for both long and medium grains. Under the paddy rice price subsidy programme, the Government makes payments (currently RM 248.10 per tonne (same as in 2009)) to farmers for the paddy rice they sell to any commercial rice mill. This subsidy, the major component of overall agricultural support expenditure (Table 4.2, sections 3.4.2.2 and 4.2.4), is in addition to the price received for the paddy. The Government also maintains price and supply controls for certain types of rice consumed by the lower income population, i.e. lower grade rice has price ceilings (section 3.4.4.2). BERNAS also maintains the national rice stockpile on behalf of the Government at 292,000 tonnes. BERNAS's exclusive right to import rice was extended until 2021, and as a monopsony buyer, it tends to have the market power to negotiate lower prices with its suppliers. When importing rice, according to the authorities, BERNAS implements a transparent purchasing system with open tendering procedures. BERNAS does not regulate the retail prices for rice; these are regulated by the Control of Paddy & Rice Section under the Ministry of Agriculture and Agro-based Industry.

4.3 Fisheries

4.21. Malaysia remains a major producer of fish products although fish production peaked in 2010 and declined in 2011 (to 1.37 million tonnes fish landings, 122,219 tonnes fresh water aquaculture, 404,289 tonnes marine aquaculture). In 2012, the fisheries subsector contributed 14.2% to total agricultural value-added/output.[25] Its capture production was 17th in the world and 11th in Asia in 2010; it also ranked 16th in the world and 11th in Asia for aquaculture production.[26] Malaysia's apparent consumption, of 53.3 kg of fish products per capita in 2009, was 2.9 times the world average, and higher than that of any developed country except Japan.[27] As a result, in 2012, Malaysia imported about US$219 million more fisheries products than it exported.[28] The number of fishing vessels increased from 49,756 vessels in 2010 to 54,235 vessels in 2012; according to the authorities the main reason for this apparent increase was the registration of traditional outboard-powered fishing boats, under their "regularization" exercise, which sought to gather better information on fisheries to better assist stakeholders' decision-making. Among these vessels over half (2010) were licensed to fish with drift/gill nets. The trawlers, which are offshore vessels of 70 GRT and above, and operate beyond 5 nautical miles off the coast, are the most efficient vessels, taking up to 50.3% of the catch, followed by the purse seiners (25.2%), and vessels operating drift/gill nets (13.19%).[29]

4.22. Under Malaysia's National Agricultural Policy 1998-2010, fish production targets were set at 1.93 million tonnes for 2010, with 900,000 tonnes coming from coastal fisheries, 430,000 tonnes from the offshore sector, and 600,000 tonnes from the aquaculture industry. The estimated optimal yield of 900,000 tonnes from coastal waters has been largely exceeded.[30] Under the National Agro-Food Policy 2011-2020, strategies to modernize and transform capture fisheries

[23] WTO document G/STR/N/11/MYS, G/STR/N/12/MYS G/STR/N/13/MYS, G/STR/N/14/MYS, 2 September 2013.
[24] Ministry of Finance (2013).
[25] Malaysia Productivity Corporation (2013b).
[26] Department of Statistics, Malaysia (2012d).
[27] FAO Statistics. Viewed at: ftp://ftp.fao.org/FI/STAT/summary/FBS_bycontinent.pdf [18 January 2012].
[28] UNSD Comtrade database.
[29] FAO Fishery and Aquaculture Country Profiles. Viewed at: http://www.fao.org/fishery/facp/MYS/en#CountrySector-OrgsInvolved.
[30] FAO Fishery and Aquaculture Country Profiles. Viewed at: http://www.fao.org/fishery/facp/MYS/en#CountrySector-OrgsInvolved.

include: the strengthening of infrastructure; the restructuring of its activities; and the institutional coordination of the functions of the Department of Fisheries (DOF) and the Fisheries Development Authority of Malaysia.[31] The contribution from coastal fisheries is expected to be reduced from 71% in 2010 to 65% by 2020, the remainder being covered by deep-sea fishing. The development of coastal fisheries will be largely guided by sustainable fisheries principles, including through the use of environmentally-friendly fishing gear, Ecosystem Approach to Fisheries Management, establishment of artificial reefs, fisheries refugia, and other conservation measures. Contribution from the deep-sea fisheries is expected to be increased from 29% in 2010 to 35% by 2020.

4.23. Policies are targeted at maintaining the maximum sustainable yield. The measures to control fishing include constant monitoring of the resource situation, direct limitation of fishing, and a direct limitation on the issuance of new or additional fishing licences for fishing in coastal waters to ensure that there is no overexploitation. It appears that fishing licences are only issued to local fishing vessels. Malaysia implements an input control regime consisting of measures such as the zoning system, limit of fishing vessels, vessels tonnage, type of fishing gear and engine capacity. Currently, the Government has not set up individual transferable quotas (ITQs) or total allowable catch (TAC) schemes due to the complexity of the multi-specie and multi-gear fisheries in Malaysia. In 2011, the DOF's legal section processed a total of 615 arrest cases (842 in 2010) for various offences under the Fisheries Act 1985. Since 2012, Malaysia has rejected four applications by IUU foreign fishing vessels to land their catches in Malaysian ports, consistent with its commitment under the 2007 Regional Plan of Action (RPOA) to Promote Responsible Fishing Practices Including to Combating Illegal, Unreported and Unregulated Fishing in the Region (IUU).[32]

4.24. Malaysia implements a resource enhancement programme through the establishment of artificial reefs and public water bodies restocking programme (2.5 million juveniles in 2010, increased to 6.24 million in 2011). To promote sustainable and good aquaculture practice, Malaysia has applied an Aquaculture Certification Scheme since 1999. Malaysia requires an environmental impact assessment (EIA) for aquaculture projects involving areas of 50 acres and more located in environmentally sensitive areas (e.g. mangrove areas). A series of programmes to raise awareness have been conducted for the implementation of the Code of Conduct for Responsible Fisheries (CCRF) among fisheries managers and stakeholders. Malaysia is preparing a National Ecosystem Approach to Fisheries Management (EAFM) Framework. Furthermore, it maintains a National Plan of Action (NPOA) for IUU and is in the process of reviewing the NPOA Sharks and NPOA Fishing Capacity.

4.25. Under the Fisheries Act 1985, fishing licences are only issued to local fishing vessels; thus far, there has been no foreign investment in offshore and coastal fishing in Malaysia. Under the same Act, fishing in Malaysian waters by foreign fishing vessel is subject to international fishery agreements between the governments of Malaysia and the country concerned. Fishing permits for foreign vessels may be issued by the Department of Fisheries under the terms of "access agreements" signed between Malaysia and the respective foreign governments.[33] So far, Malaysia has not entered into any international fishery agreements.

4.26. Fish and fish products are subject to tariffs ranging from zero to 20% (Table A3.1). Ornamental fish receive a corporate tax allowance of 10% of the increase in their export value (section 3.3.5). All of Malaysia's SPS notifications during 2010-13 (July) concerned fish (2 live fish, 4 ornamental fish) (section 3.2.5.2.5). Malaysia provides domestic support for its fisheries sector. Until 31 May 2011, trawlers above 70 GRT were able to buy diesel at RM 1.25 (US$0.41), compared with the already subsidized RM 1.80 payable after that date (section 4.5.1); it seems that the subsidy remains in place for other fishing vessels.[34]

[31] Ministry of Agriculture and Agro-Based Industry (2011).

[32] The RPOA is a joint initiative between the governments of Australia and Indonesia to combat IUU fishing activities; it was endorsed by Australia, Brunei Darussalam, Cambodia, Indonesia, Japan, Malaysia, Papua New Guinea, China, the Philippines, Singapore, Thailand, and Viet Nam (RPOA online information. Viewed at: http://www.rpoa.sec.kkp.go.id/).

[33] FAO online information, "Corporate Document Repository: Malaysia Table A: Limits of territorial seas, fishing zones and exclusive economic zones". Viewed at: http://www.fao.org/docrep/v9982e/v9982e2m.htm.

[34] Under this scheme the Government has subsidized 25,000 to 28,000 litres of diesel equivalent to RM 31,250 (US$10,271) and RM 35,000 (US$11,503) respectively, for each vessel every month, and vessels could use up to an average of 14 million litres of diesel every month (Fisheries Subsidies Blog online

4.4 Mining and quarrying

4.27. Between 2008 and 2012, the contribution of mining (including fuels (section on 4.5.1))[35] and quarrying to GDP dropped from 11.4% to 10.4% due to world prices volatility, while its share in total employment remained relatively stable at 0.3%-0.4% (Table 1.2). According to the Malaysia Productivity Corporation, TFP declined by 14.9% during the same period, partly due to the sharp increase in commodity prices, while capital and labour productivity improved by 6.7% and 5.5% respectively.[36] In 2012, the sector's labour productivity was the highest in the economy, *inter alia*, owing to its relatively high capital intensity.[37] Malaysia is endowed with over 33 different mineral types. In 2011, gold, iron, coal, and tin contributed 10.3%, 25.8%, 6.9%, and 3.7% of the mining gross output (in value terms) respectively; other metal ore mining, including bauxite, silica, ilmenite, and other non-ferrous metals, accounted for 2.4%, while non-metallic minerals including silica, kaolin, mica, and feldspar accounted for 50.9%.[38] Despite the continuing good global demand and high prices for most metals and minerals in recent years the industry remains sluggish.[39] Malaysia is among the world's top ten producers for refined tin and mined tin, with rare earths being a by-product.[40]

4.28. The sector's development remains guided mainly by the 2009 Second National Mineral Policy (NMP2), aimed at ensuring the sustainable development and optimum use of minerals in an environmentally sound and responsible manner.[41] Its main laws and regulations also remain unchanged, and include the Mineral Development Act 1994 (effective 1998), the State Mineral Enactments, and the State Quarry Rules. Mineral products (apart from crude oil and gas section 4.5.1) are the property of the federal states. At the federal level, mining is regulated mainly by the Ministry of Natural Resources and Environment, through its Minerals and Geosciences Department. State governments are responsible, *inter alia*, for issuing mineral licences and mining leases. Private (domestic and foreign) companies may obtain licences or leases to engage in exploration or mining of mineral products. The number of approvals granted on applications for exploration licences, prospecting licences, mining leases and their renewals has grown; between 2010 and 2011, 307 approvals were granted.[42] As a consequence, there was an increase in new exploration and mining activity as well as capacity expansion in the industry during the period under review. Mine and quarry operators are required to pay value-based royalties to the State in which their operation is located. Their level depends on the mineral commodity and on the assessment of each of the individual states.[43] In general, the royalty rate on all metallic minerals is 5%, while the rates for non-metallic minerals (rock material) range from US$0.3 to US$1.16 per cubic meter. Royalty rates for non-metallic minerals may be higher for exports; for example, in the State of Johor, royalties on rock material for export are four times higher than those for domestically used material. Iron ore and raw gold account for the largest part of revenue from royalties.

4.29. Mining products remain subject to relatively high tariff protection ranging from zero to 50% (portland cement), export licensing, and a 5% export tax (12 nine-digit items, slag ash and residues) all of which may act as an implicit subsidy to downstream processing (Table A3.1, sections 3.3.2 and 3.3.3). Like other sectors of the economy, mining benefits from general tax incentives such as those under the pioneer status, double deduction tax incentives, investment tax allowance, and reinvestment allowance schemes (sections 3.4.1 and 3.4.5).[44]

information. Viewed at: http://fisheriessubsidies.blogspot.ch/search/label/Malaysia); and *Borneo Post,* "Trawler operators still enjoying subsidy for diesel", 8 June 2011. Viewed at: http://www.theborneopost.com/2011/06/08/trawler-operators-still-enjoying-subsidy-for-diesel/).

[35] According to the authorities, mining (excluding fuel) and quarrying accounted for about 0.2% of the GDP.

[36] The authorities indicated that the sharp increase in prices of mining commodities stimulated substantial growth in new investment in capital and labour inputs. Long lead-times between investment in new capacity in mining and the associated output response can lead to short-term TFP movements that are unrelated to underlying efficiency.

[37] Malaysia Productivity Corporation (2013b).

[38] Department of Statistics (2012c).

[39] Malaysiaminerals.com online information. Viewed at: http://malaysianminerals.com/overview.html.

[40] Malaysiaminerals.com online information. Viewed at: http://malaysianminerals.com/overview.html.

[41] WTO document WT/TPR/S/225/Rev.1, 15 February 2010.

[42] Malaysiaminerals.com online information. Viewed at: http://malaysianminerals.com/overview.html.

[43] U.S. Department of the Interior/U.S. Geological Survey (2013).

[44] Malaysiaminerals.com online information. Viewed at: http://malaysianminerals.com/fiscal-regimes.html.

4.30. Foreign equity participation of up to 100% is permitted in the extraction, mining, and processing of mineral ores. In 2012, mining (99% in oil and gas (section 4.5.1)) was among the leading subsectors with high levels of approved investments, of which 64% were foreign.[45] When approving these projects, the Government considers the investment level, technology, and risk involved; availability of Malaysian expertise; and the value-added level. The same criteria apply to domestic investors.

4.31. In February 2013, a foreign-invested plant processed the first rare-earths products of non-Malaysian origin.[46]

4.5 Energy

4.32. Malaysia's energy production remains based around oil and natural gas, and the sector is still a major contributor to the economy, particularly with respect to exports of hydrocarbons (section 4.5.1). In 2011, Malaysia's energy supply and demand per head was among the highest in the Association of South-East Asian Nations (ASEAN) countries. Between 2008 and 2011, its primary energy supply increased more than four times faster than demand (15.6% versus 3.5%).[47] The share of natural gas in the primary energy supply rose while that of crude oil dropped; in 2011, the primary energy supply mix (in toe terms) consisted of natural gas (45.1%), crude oil (31.1%), coal and coke (18.6%), petroleum products (2.8%), and hydropower (2.3%).[48] During the same period, energy demand increased in virtually all sectors except for manufacturing where it dropped steadily due to lower demand of natural gas. In 2011, energy demand was led by transport (39.3%), followed by manufacturing (27.8%), residential and commercial (16.1%), and agriculture (2.1%).

4.33. According to the 2010 New Energy Policy Study under the 10th Malaysia Plan 2011-2015 (section 2.3), energy supply would continue to be strengthened by creating a more competitive market and gradually reducing the energy subsidy.[49] The policy envisages: rationalizing energy pricing gradually to match market prices; more strategic development of energy supply by diversifying energy resources (including renewable energy resources and nuclear energy); accelerating the implementation of energy efficiency initiatives; improving governance to support the transition to market pricing; and ensuring policy implementation based on an integrated, scheduled approach to achieve security of energy supply. The Energy Commission of Malaysia under the Ministry of Energy, Green Technology and Water is responsible for regulating the electricity supply and piped gas supply industries in Peninsular Malaysia and Sabah.

4.34. Malaysia's depleted natural gas and oil reserves and increasing demand for energy, have shifted the focus on renewable energy from an "option" to an "immediate and high priority energy solution", although the Government has intended to expand into renewable energy sources since 2001.[50] Nevertheless, the contribution of renewable energy to the national grid has so far been negligible.[51] Malaysia's 2009 Renewable Energy (RE) policy aims at: increasing RE contribution in the national power-generation mix; facilitating the growth of the RE industry; ensuring reasonable RE generation costs; conserving the environment for future generations; and enhancing awareness of the role and importance of RE.[52] This policy set a target for RE to attain an installed capacity of 985 MW (2,080 MW in 2020) covering 6% (11% in 2020) of the power mix by 2015. Under the 2010 New Energy Policy Study, emphasis was to be placed on the use of renewable energy and increasing energy efficiency through the introduction of a feed-in tariff (FiT) for RE-based power, and a Renewable Energy Fund, set in December 2011 and financed by 1% charge on all users, except for those consuming less than 300 kilowatt-hours (kWh) or RM 77.00

[45] MIDA (2012).
[46] The plant receives and processes Australian raw resources (Lynas Ltd. online information. Viewed at: http://www.lynascorp.com/Pages/advanced-materials-plant-kuantan-malaysia.aspx).
[47] EIU (2012b).
[48] Malaysia Energy Information Hub online information. Viewed at: http://meih.st.gov.my.
[49] Speech by the Prime Minister in the Dewan Rakyat, "Tenth Malaysia Plan 2011-2015", 10 June 2010. Viewed at: http://www.pmo.gov.my/dokumenattached/speech/files/RMK10_Speech.pdf.
[50] Green Prospect Asia online information, "Malaysia's renewable energy outlook", 29 September 2012. Viewed at: http://greenprospectsasia.com/content/malaysia%E2%80%99s-renewable-energy-outlook.
[51] EIU (2012b).
[52] Presentation by B.A. Malek, "Renewable Energy (RE) Policy & Action Plan", 14 May 2010. Viewed at: http://web.utm.my/era/images/ERA/national%20renewable%20energy%20policy%20mosti.pdf.

in a month, to encourage the implementation of renewable energy projects.[53] Relevant guidelines, standards, and laws were introduced to ensure the efficient use of energy, and to reduce greenhouse gas emissions.[54] A 2011 Renewable Energy Act allows private producers of electricity generated using RE to feed power into the national grid, and establishes FiT rates for fixed periods.[55] A Sustainable Energy Development Authority (SEDA) was established in September 2011 to, *inter alia,* make recommendations on policies, laws, and actions, and to promote and implement RE and sustainable energy actions, including the FiT system.[56]

4.35. In addition to pioneer status, investment tax allowance, and duty and tax incentives for machinery/consumables imports until 2015 (sections 3.2.2.5 and 3.4.1.3), RE activities benefit from a sales tax exemption for purchases of locally made machinery, materials, and consumables.[57] At end-September 2013, SEDA had approved 2,589 RE projects representing a capacity of 520.48 MW to be delivered mainly by solar photovoltaic (PV) installations (40%), biomass (32%), small hydro (23%), and biogas (5%).[58] Total energy output from PV installations is insignificant in terms of its contribution to Malaysia's energy mix at present. The bulk of biomass comes from palm oil plantations (kernels, biogas) and is currently being used as an alternative source of fuel in cement factories and as the main fuel source for a small number of biomass power plants. The burning of household rubbish to generate electricity has been a feature of the alternative-energy sector for a number of years, owing to the declining number of landfill sites; this source accounted for power generating capacity of 5.5 MW supplied to the national grid in 2009, and capacity is expected to increase gradually in 2013-20.[59] At present there are no wind farms and no plans to harness this form of renewable energy on a large scale. The only nuclear reactor is a research reactor with a capacity of 1 MW that is owned and operated by a government body, the Malaysian Nuclear Agency. Despite safety concerns raised by the Fukushima disaster in Japan in March 2011, a nuclear power plant is to be built and to begin operations by 2025.[60]

4.36. A 2009 Energy Efficiency Improvement Programme (MIEEEIP) run by the Government in cooperation with the United Nations Development Programme (UNDP) yielded encouraging results. It led to energy efficiency improvements of up to 28% in 48 factories (representing 7% of total

[53] A FiT is a mechanism that would allow electricity produced from [indigenous] domestic renewable energy resources to be sold to power utilities at a fixed premium price and for specific duration. Malaysia details the price ranges for different technologies, project sizes, and applications. The FiT scheme also includes bonus FiT that can be obtained for certain applications and a "degression rate" to gradually reduce the level of the FiT based on expectations of reduced costs. However, this scheme is managed based on the maximum annual capacity (presentation by B.A. Malek, "Renewable Energy (RE) Policy & Action Plan", 14 May 2010. Viewed at: http://web.utm.my/era/images/ERA/national%20renewable%20energy%20policy%20mosti.pdf; Speech by the Prime Minister in the Dewan Rakyat, "Tenth Malaysia Plan 2011-2015", 10 June 2010. Viewed at: http://www.pmo.gov.my/dokumenattached/speech/files/RMK10_Speech.pdf; Tenaga Nasional Berhad Press Release, "TNB Clarifies 1% Additional Charge For Renewable Energy Fund", 2 May 2013. Viewed at: http://www.tnb.com.my/announcement/2013/05/tnb-clarifies-1-additional-charge-for-renewable-energy-fund.html; and Green Prospect Asia online information, "Malaysia's renewable energy outlook", 29 September 2012. Viewed at: http://greenprospectsasia.com/content/malaysia%E2%80%99s-renewable-energy-outlook).

[54] These include the Feed-in Approval and Feed-in Tariff Rate Rules 2011, Technical and Operational Requirements Rules 2011, the REPPA Rules 2011, the Criteria for Renewable Resources Regulations 2011, the Allocation from Electricity Tariffs Order 2011, the Recovery of Moneys by Distribution Licensee Rules 2011, and the Administrative Fees Rules 2011 (presentation by Wei-nee Chen, "Renewable Energy Status in Malaysia", SEDA, 4 December 2012. Viewed at: http://www.mida.gov.my/env3/uploads/events/Sabah04122012/SEDA.pdf).

[55] The FiT system obliges distribution licensees (DLs, such as Tenaga Nasional Berhad (section 4.5.2)) to buy from the renewable energy power producers (feed-in approval holders (FIAHs) the electricity produced from renewable resources, and sets the FiT rate. The DLs pay for renewable energy supplied to the electricity grid for a specific duration. For example, for solar photovoltaic (PV) the duration is 21 years. The FiT for solar PV power is around RM 1.25/kwh (US$0.40/kwh) (EIU, 2012b).

[56] Sustainable Energy Development Authority Act 2011, 23 May 2011. Viewed at: http://seda.gov.my/go-home.php?omaneg=00010100000001010101000100001000000000000000000000&s=147.

[57] Green Prospect Asia online information, "Malaysia's renewable energy outlook", 29 September 2012. Viewed at: http://greenprospectsasia.com/content/malaysia%E2%80%99s-renewable-energy-outlook.

[58] Presentation by SEDA, "Renewable Energy Development and Feed-in Tariff (FiT) implementation in Malaysia", 16 May 2012. Viewed at: http://eeas.europa.eu/delegations/malaysia/documents/press_corner/all_news/2012/160512_fp7seda_en.pdf.

[59] EIU (2012b).

[60] EIU (2012b).

energy usage in the industrial sector) through no-cost or low-cost measures.[61] Various energy efficiency (EE) programmes and initiatives were undertaken, such as the Government leading by example initiatives (reduction of energy consumption), the Promotion of EE appliances, the Promotion of co-generation, and the SAVE (Sustainability Achieved via Energy efficiency) Programme. Work for an Energy Efficiency and Conservation Bill was under way in mid-2013 and was unlikely to be passed in 2014 due to concerns that the law does not leave any gaps (e.g. transport sector).[62] In May 3013, regulatory changes made under the Electricity Amendment Regulations 2013, to the Electricity Supply Act 1990, set minimum energy performance standards for efficient use of electricity by refrigerators, domestic fans, televisions, air conditioners, and incandescent lamps.[63] A National Energy Efficiency Master Plan setting out a strategy for addressing energy security, global warming, and climate change issues was expected to be announced in 2013.

4.37. Energy subsidization, intended as a mechanism to keep energy affordable, remains a major and long-standing fiscal, budget, developmental, environmental, and thereby political issue in Malaysia (sections 3.4.2.2, 3.4.4.2, 4.5.1, and 4.5.2).[64] In addition to the opportunity cost of investing resource revenues in productive capital, subsidized prices of petrol, diesel, and natural gas play an important role in distorting resource allocation by encouraging inefficient energy consumption.[65] According to the International Energy Agency, spending on energy subsidies was estimated at 2.6% of GDP and 11.2% of the Government's operating expenditure in 2011 (Table 4.3).[66] Between 2009 and 2011, spending rose 44.5%, due to increased support on petrol prices, which are among the lowest in Asia (and the world).[67] Subsidy reform forms part of the 2009 New Economic Model and the 10th Malaysia Plan 2011-2015 (section 2.3). A May 2010 Subsidy Rationalization Programme (SRP), involving a phased five-year reduction of subsidies on gasoline, cooking gas, electricity, and road tolls, and projected to save a cumulative total of US$33 billion, achieved little as the Government "changed its focus to cost of living" issues in March 2012; it was reactivated in September 2013 (section 3.4.4.2).[68]

Table 4.3 Energy subsidies, 2009-11

	2009	2010	2011
Subsidies as share of GDP (%)	..	..	**2.60**
Average subsidization rate (%)	..	..	18.4
Subsidy (US$/person)	..	..	253.3
Annual subsidy cost (US$ billion)			
Oil	1.58	3.89	5.35
LNG	1.68	0.97	0.89
Coal	0	0	0
Electricity	1.71	0.81	0.94
Total	**4.97**	**5.67**	**7.18**

.. Not available.

Note: The IEA figures are based on a methodology called the "price-gap approach," which compares average end-user prices paid by consumers with reference prices for the cost of supply.

Source: International Institute for Sustainable Development (2013), *A Citizens Guide to Energy Subsidies in Malaysia, 2013*, May. Viewed at: http://www.iisd.org/gsi/sites/default/files/ffs_malaysia_czguide.pdf; and International Energy Agency Subsidies Database. Viewed at: http://www.iea.org/subsidy/index.html.

[61] Speech by the Minister of Energy, Green Technology & Water at the Conference on Energy Efficiency and Conservation, 19 July 2012. Viewed at: http://www.kettha.gov.my/en/content/fmm-conference-energy-efficiency-and-conservation-2012-%E2%80%9Cee-c-competitive-edge-manufacturers%E2%80%9D.

[62] Green Prospect Asia online information, "Delay likely for Malaysia's energy efficiency law", 11 October 2012. Viewed at: http://www.greenprospectsasia.com/content/delay-likely-malaysias-energy-efficiency-law#sthash.9bFFPLBD.dpuf.

[63] Electricity Amendment Regulations 2013. Viewed at: http://www.st.gov.my/v4/images/stories/about_us/20130503_P_U__A_151-PERATURAN_-_PERATURAN_ELEKTRIK_PINDAAN_2013.pdf.

[64] For more information about the impact of energy subsidization, see International Institute for Sustainable Development (2013).

[65] Gil Sander et al. (2013).

[66] International Institute for Sustainable Development (2013).

[67] EIU (2012a).

[68] OECD (2013b); and EIU (2012a).

4.5.1 Hydrocarbons

4.38. Malaysia is Asia Pacific's 4th largest crude oil producer (2011, world's 29th) and the world's 3rd largest exporter of liquefied natural gas (2010, 10% of world market supply). Taken together, their share in the value of total exports rose from 14.8% in 2009 to 20.3% in 2012.[69] Malaysia used to be a net exporter of oil, but became a net importer in 2011 owing, *inter alia,* to distortions in the domestic energy market, where demand for petroleum products has been growing faster than production. Nevertheless, Malaysia continues to supply oil to India, Australia, Thailand, Japan, Korea (Rep. of), and Singapore.[70] Between 2009 and 2011, crude oil and condensates production dropped by 13.5% to about 208 million barrels while reserves increased 6.2% to 5.9 billion barrels.[71] During the same period, natural gas production rose 8% to 69.8 million toes, and reserves by 2.3% to 87.988 trillion standard cubic feet. Domestic consumption of petroleum products declined by 0.9% to 23.9 trillion toes, while consumption of natural gas rose by 8.9 trillion toes from 2009 to 2011. Around 20% of the natural gas, the main fuel used in electricity generation, used in peninsular Malaysia is imported from Indonesia. Recently improved labour productivity in mining (section 4.4) was, *inter alia*, due to a combination of the higher production of natural gas and crude oil, discovery of new oil fields, revival of matured oil fields, continual technological improvement, skills enhancement, as well as increase in scale and character of capital inputs, specifically in the extraction process of oil.[72]

4.39. Policy in the hydrocarbons sector (another NKEA subject to an EPP) (section 4.2.2), is focused on enhancing output from existing oil and natural gas fields and advancing exploration in deep-water areas in line with the 1980 National Depletion Policy.[73] Tax and investment incentives introduced in 2010 aimed to promote oil and natural gas exploration and development. Their target is to increase aggregate production capacity by 5% per year up to 2020 to meet domestic demand growth and to sustain crude oil and LNG exports to overseas markets. Malaysia also aims to become a regional oil storage and trading hub, taking advantage of its strategic location in the centre of the Asia-Pacific region.

4.40. Malaysia's crude oil and gas deposits are owned entirely by Petroliam Nasional Berhad (PETRONAS), a corporation wholly owned by the Government (section 3.4.3). Under the Petroleum Development Act 1974, PETRONAS has exclusive rights of ownership, exploration, and production of petroleum, and is responsible for the planning, investment, and regulation of all upstream activities. To some extent PETRONAS appears to act as an oil fund from the point of view of macroeconomic management.[74] PETRONAS retains some export earnings overseas and has made significant direct investments domestically in downstream industries as well as in production abroad.[75] This has reduced the flow of foreign exchange into the economy (thus reducing exchange rate pressures), supported downstream diversification, and built assets to provide for future generations. As production expanded, the share of oil receipts in total fiscal revenues declined, and transfers to the budget were less volatile than oil rents. As of 2012, the book value of PETRONAS equity corresponded to 36% of GDP. PETRONAS remains the biggest contributor to the government budget (dividend payouts, oil royalties, and taxes), accounting for about 40% of the Federal Government's revenues or RM 207.2 billion in 2012, up from 39.3% in 2008. It has proposed to cap dividend payouts to the Government at 30% of its net profit so as to reinvest remaining profits in global oil gas exploration amid declining domestic supplies.[76]

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[69] Organization of the Petroleum Exporting Countries (2012); U.S. Energy Information Administration. Viewed at: http://www.eia.gov/countries/cab.cfm?fips=MY; UNSD Comtrade database; and CIA World FactBook online information. Viewed at: https://www.cia.gov/library/publications/the-world-factbook/geos/my.html.

[70] EIU (2012b).

[71] Malaysia Energy Information Hub online information. Viewed at: http://meih.st.gov.my.

[72] Malaysia Productivity Corporation (2013b).

[73] U.S. Energy Information Administration online information. Viewed at: http://www.eia.gov/countries/cab.cfm?fips=MY.

[74] Gil Sander et al. (2013).

[75] PETRONAS's significant investment in production/manufacturing (downstream activities only) outside of Malaysia is mainly through its South African subsidiary Engen Ltd. PETRONAS also has smaller blending/bottling/production plants in Brazil, Italy, China, Belgium, the Philippines, and Viet Nam.

[76] PETRONAS net profit declined by 17.2% to RM 49.4 billion in 2012 from previous year (*The Edge* online information, "No caps on Petronas dividends?", 22 May 2013. Viewed at: http://www.theedgemalaysia.com/features/239511-no-cap-on-petronas-dividends.html). Between 2010 and 31 December 2012, major PETRONAS investments abroad were the acquisition of Progress Energy Resource

4.41. Several other domestic and foreign firms are involved in upstream operations in Malaysia.[77] PETRONAS remains the regulator of upstream activities in both oil and gas. Companies wishing to participate in the upstream sector are subject to production-sharing contracts (PSCs) or risk service contracts (RSCs) with PETRONAS. For PSCs, a minimum equity participation of 15% of PETRONAS' subsidiary, PETRONAS Carigali Sdn Bhd, is required. In financial year 2012, 9 PCSs and 2 RSCs were signed, and a total of 95 PSCs and 3 RSCs were in operation. Foreign investment in the downstream petroleum and gas industries is not restricted: up to 100% foreign equity participation is allowed.

4.42. Downstream petroleum industry activities are regulated by the Ministry of Domestic Trade, Co-operatives and Consumerism (MDTCC), and the Ministry of International Trade and Industry (MITI). The MDTCC issues permits to commence or continue any business of marketing or distributing of petroleum or petrochemical products, and MITI issues licences for the processing and refining of petroleum and the manufacture of petrochemical products. Downstream activities of the gas industry, on the other hand, are regulated by the Energy Commission (section 4.5).

4.43. In addition to PETRONAS, other upstream petroleum and gas companies remain substantial sources of government revenue in Malaysia, mainly because they pay a higher tax rate than other economic operators (section 3.4.1.2 and above). Under the Petroleum Income Tax Act 1967, upstream petroleum and gas companies are subject to 38% tax on income from the sale of crude oil and natural gas extracted from Malaysia, or from the sale of a type of petroleum spirit. A royalty rate of 10% is charged on oil production. Income derived from downstream petroleum activities, such as the refining of petroleum or the processing of petroleum products, is taxed at the statutory rate of 25%.

4.44. Import tariffs on petroleum oils range from zero to 5%.[78] An export duty of 10% remains on crude oil and condensate, but not on natural gas (section 3.3.3). Exports of petrol, diesel, and liquefied petroleum gas are subject to approval as they are subsidized and subject to ceiling prices (sections 3.3.2 and 3.4.4.2).

4.45. Despite intended reform and price rationalization plans, Malaysia's fuel subsidization system continues to keep domestic prices among the lowest in Asia (sections 3.4.2.2, 3.4.4.2 and 4.5, Table 4.4).[79] Prices have been set for petrol (RON92 and subsequently RON95), diesel, and liquefied petroleum gas since 1983, through an automatic pricing mechanism (APM). Although the price of RON97 has been allowed to float since September 2009, the prices of RON95, diesel, and LPG have barely changed since 2009, meaning that price fluctuations have not been passed through to the consumer. The APM maintains a low retail price for petroleum products by ensuring that the difference between the retail price and actual market price is covered by the exemption from sales tax and subsidies.[80] In 2012, it was estimated that 28% of the retail price of petrol RON95, 32% of diesel, and 51% of LPG was covered by subsidies (Table 4.4); a reduction of the petrol subsidy by RM 0.20 per litre took place on 3 September 2013. Furthermore, the transportation sector, public buses, trucks, passenger ferries and boats, and certain type of fishing

Corp and North Montney Shale Gas Project in Canada, Gladstone LNG Project in Australia, and upstream activities in Iraq, Egypt, and Turkmenistan.

[77] These major oil and gas companies include BHP Billiton Petroleum (Sabah) Corporation, Conoco Asia Pacific Sdn Bhd, ExxonMobil Exploration And Production Malaysia Inc, Hess Oil & Gas Sdn Bhd, Inpex Offshore North West Sabah Ltd, Lundin Malaysia B.V., MDC Oil & Gas (SK 320) Ltd 12, Murphy Peninsular Malaysia Oil Co. Ltd., Murphy Sabah Oil Co. Ltd., Murphy Sarawak Oil Co. Ltd., Newfield Peninsula Malaysia Inc., Newfield Sarawak Malaysia Inc., Nippon Oil Exploration (Malaysia) Ltd, Petrofac (Malaysia PM-304) Limited, Petroliam Nasional Berhad, Shell Malaysia, Talisman Malaysia Ltd, and Total E&P Malaysia.

[78] Three tariff lines at the HS nine-digit level are charged the 5% duty: 270900900 (crude oils from bituminous minerals), 271012100 (petroleum oils partly refined), and 271019200 (medium oils and preparations).

[79] Malaysia's end-user gas prices are the second lowest in south-east Asia, behind Brunei Darussalam (Institute for Sustainable Development, 2013).

[80] To calculate the fuel price, the product cost, operational cost, oil company margin, station operator margin, and sales tax are added up to make the actual price. Then, the sales tax and subsidy are deducted from this to obtain the retail price. The APM takes into consideration six components in the pricing mechanism through which it constructs the retail price of fuel: the reference product cost of petroleum products (Mean of Platts Singapore (MOPS)); the "Alpha" difference between the MOPS price and purchase price of Malaysian oil companies; the operational costs covering transport and marketing costs of petroleum products; the petrol station operators' margin; and the sales tax and subsidy (International Institute for Sustainable Development, 2013).

vessels benefit from additional diesel price subsidization, and electricity generators are additionally subsidized through a centrally imposed low gas price (sections 4.3 and 4.5.2). Additional fuel subsidies seem to be subject to a quota-allocation system.

Table 4.4 Fuel price subsidies and comparison, 2012

	LPG[a] (RM/14 kg tank)	Petrol RON95 (RM/litre)	Diesel (RM/litre)
Actual price	47.57	2.74	2.80
Consumer price	26.60	1.90	1.80
Subsidy	20.97	0.84	1.00
Subsidy (%)	**51**	**28**	**32**
Price differences across neighbouring countries, December 2012			
Thailand	2.80	4.90	3.12
Singapore	7.94	5.66	4.30
Indonesia	2.06	3.04	3.52
Malaysia	**1.90**	**1.90**	**1.80**
Brunei Darussalam	-	1.50	0.90

a Liquefied petroleum gas.

Source: Ministry of Domestic Trade, Cooperatives & Consumerism; International Institute for Sustainable Development (2013), *A Citizens Guide to Energy Subsidies in Malaysia 2013*, May. Viewed at: http://www.iisd.org/gsi/sites/default/files/ffs_malaysia_czguide.pdf; International Energy Agency Subsidies Database. Viewed at: http://www.iea.org/subsidy/index.html; and data provided by the Malaysian authorities.

4.46. Subsidies in their current form are not efficient as they seem to benefit mainly middle and high-income groups, as well as foreigners and businesses.[81] They have also encouraged over-consumption of fuel and substantial smuggling activities (section 3.2.1.1 and 3.4.2.2). Losses due to smuggling are estimated at RM 10 million (US$3.1 million) a year for LPG alone, and each successful diesel smuggling attempt at 40,000 litres.[82] Subsidized fuels are also illegally traded within Malaysia, as subsidized petroleum products intended for consumers are diverted to the industrial sector. This occurs in spite of a "nano-tagging" system introduced in 2006 for marking the subsidized petrol and diesel to ensure it is not used by industries. Between 2011 and 2013 (July), there were 1,097 cases relating to subsidized petroleum products involving the seizure of diesel oil worth a total of RM 16.5 million.

4.47. LNG is primarily transported by Malaysia International Shipping Corporation (MISC), which owns and operates 27 LNG tankers, one of the largest LNG tanker fleets in the world by volume carried. MISC is 62% owned by PETRONAS.[83]

4.5.2 Electricity

4.48. Electricity generation comes principally from natural gas (52.7%, 2012), coal (38.9%) and hydro (7.3%).[84] The sector is dominated by a range of independent power producers (IPPs), which contribute around 40% of national electricity supply, and three government-linked companies (GLCs) (section 3.4.3): Tenaga Nasional Berhad (TNB), which oversees Peninsular Malaysia; Sarawak Energy Berhad (SEB), in charge of Sarawak; and Sabah Electricity Sdn. Bhd (SESB), which is responsible for Sabah and Labuan. In 2011, the highest consumer was the industry sector (43.8%), followed by commercial (34.3%), residential (21.4%), transport (0.2%), and agriculture (0.3%). As of 2011, foreign equity in power generation was allowed up to 49% while for transmission, only the main domestic utilities companies are allowed to own. This reflects the Government's intention to increase the competitiveness in the generation segment while the transmission segment involves national security matters. For electricity distribution, foreign equity is generally allowed only up to a 30% stake in a designated franchise.

[81] OECD (2012b).
[82] International Institute for Sustainable Development (2013).
[83] EIA online information, "Malaysia". Viewed at: http://www.eia.gov/countries/cab.cfm?fips=MY [14.06.2013].
[84] PM Department/Economic Planning Unit (2012); and International Institute for Sustainable Development (2013).

4.49. TNB, the single largest electricity company in Malaysia and the largest power company in south-east Asia, is a government linked company (GLC) "private company" wholly owned by the Government. Its share of total generation capacity in Peninsular Malaysia is 32% (via fully owned TNB plants) and another 22% (through TNB participation in IPP plant), and it retains a monopoly over power transmission and distribution services.[85] Nevertheless, IPPs have been able to sign rigid power purchase agreements (PPAs) with their respective GLCs since 1994, enabling them to monopolize local transmission and distribution systems within certain restricted areas.[86] The first generation IPPs (gas based) hold 21-year concessions that will end in 2015-2016; the concession of second and third generation IPPs will be expiring in the period 2020 to 2033, and the new plant-up capacities will be selected via a competitive bidding process.[87] Similar to PPA practices elsewhere in the world, and under past power-industry privatization policies, TNB is obliged to pay a capacity payment of more than RM 4 billion (US$1.3 billion) a year to nine IPPs, irrespective of the level of power demand. Under the PPA system, fuel cost can be passed through to the end user; nevertheless, costs of gas shortages are borne by the Government and PETRONAS.[88]

4.50. Electricity generators are subsidized through a Government regulated low gas price, to keep production costs low and ensuring affordable electricity tariffs to end users. This measure has allegedly created inefficient IPPs with bloated cost structures.[89] As of 1 June 2011 PETRONAS was required to sell gas to electricity generators at a controlled price of RM 13.70 (previously RM 10.70 or US$3)) per million metric British thermal units (mmbtu). As a result, in 2011, PETRONAS lost an estimated RM 20.1 billion (US$6.4 billion) or 2.3% of GDP in forgone revenues by subsidizing the gas (part of which is imported, section 4.5.1) used by for the power (TNB, IPPs) and non-power sectors.[90] According to a research report by Maybank (October 2012), Gas Malaysia, the monopoly retail arm that acts as the final seller of gas to manufacturers, agreed on a plan with PETRONAS of a two-tiered pricing mechanism, with one tier based on the existing price for gas sourced within Peninsular Malaysia, and another, higher price, based on the additional gas sourced through the imported LNG.[91] SESB also receives substantial diesel and fuel oil subsidies from the Government to lower the cost of electricity generation; these amounted to RM 538.1 million (US$164.3 million) in 2012.

4.51. Electricity tariffs remain subsidized. Their budgetary cost dropped by an overall 45% over 2009-11 (section 4.5, Table 4.3). Tariffs vary depending on the consumption level, voltage (low, medium, high), and consumer category (e.g. residential, commercial, industrial, mining, agriculture) thus allowing for cross-subsidization among user groups.[92] TNB's tariffs, applicable in Peninsular Malaysia only, were last revised on 1 June 2011. The SESB and SEB have their own tariff structure, effective since 15 July 2011 and 1 April 2007 respectively. The tariff rates increase progressively in line with rising consumption, depending on the consumer group. FiT tariffs for electricity from RE sources have been in place since December 2011 (section 4.5) and are higher than the conventional tariffs.[93] Industrial consumers whose total annual electricity bills represent 5% or more of their total annual operational costs are entitled to lower rates under a Special Industry Tariff (SIT) regime. The Government is looking at ways to gradually phase-out the SIT.[94] According to the Energy Commission's estimates, in 2011 the average selling price of electricity by TNB was up to 32% higher for commercial and agricultural users (RM 0.3819/kWh and RM 0.3724/kWh, respectively) than for industry (RM 0.2894/kWh). The same applies to SESB and

[85] TNB online information. Viewed at: http://www.tnb.com.my/about-tnb/history.html.

[86] Institute for Sustainable Development (2013).

[87] The first generation IPPs were signed in 1993 and 1994; second generation IPPs were signed around 1998–01, while third generation IPPs refer to those from 2002 onwards.

[88] For example, a prolonged gas shortage caused by maintenance activities at PETRONAS meant that between January 2010 and October 2011, TNB had to burn oil and distillates at a cost of RM 3.1 billion (US$1 billion); the Government paid TNB RM 2.02 billion (US$648 million) in compensation, half of which came from PETRONAS (International Institute for Sustainable Development, 2013).

[89] It seems that IPPs generate power at about RM 0.59 (US$0.19) per kilowatt hour (kWh), which is more than residential consumers pay in Singapore (RM 0.52; US$0.17) where electricity is sold at the market price, without any subsidies, and with transmission and distribution costs included (International Institute for Sustainable Development, 2013).

[90] Gil Sander et al. (2013).

[91] Gil Sander et al. (2013).

[92] Energy Commission (2013).

[93] The FiT rates for all renewable resources (except for small hydropower) are to decrease according to their respective annual degression rates at the start of each new calendar year from 2013 onwards, reflecting the maturity and the existing cost reduction potential of all renewable resources (except for small hydropower).

[94] Energy Commission (2013).

SEB, whose commercial and residential consumers cross-subsidize the lower electricity tariffs for industrial activities. Malaysia's average selling prices are the 4th lowest in the region, after Indonesia, Korea (Rep. of), and Chinese Taipei. Average selling prices seem to cover own-generation and purchased-power costs.[95] Malaysia's forthcoming energy policy will focus on market-based energy pricing; this will mean higher electricity prices that will reflect the real cost of supply, and possibly the emergence of new players in the energy supply chain by 2015.[96]

4.52. Since 2008, the Government has provided a RM 20 (US$6.4) subsidy on monthly electricity bills for all TNB customers.[97] Furthermore, TNB gives its "privileged customers" (including public schools and institutions of higher learning, places of worship, and welfare homes) a 10% discount on their electricity bills, which it recovers by tariff rebalancing (i.e. cross-subsidization). This concession cost TNB RM 7.8 million (US$2.5 million) in 2012, and is due to be extended to institutions that are partly funded by the Government.

4.6 Manufacturing

4.53. With the notable exception of automotive products, manufacturing remains relatively open to both trade and foreign investment (section 4.6.1). Its share of GDP remained relatively stable, at around 24% (Table 1.2); its share in employment grew steadily from 27.6% (2009) to 28.9% (2012). Manufacturing ranks 3rd behind construction and services in terms of TFP growth; during 2008-12 TFP, labour, and capital productivity growth averaged 1.41%, 0.12%, and 0.99%, respectively.[98] In 2013, labour productivity growth of 3% and output growth of 5% was expected in the manufacturing sector as industries were expected to make a shift towards more capital-intensive and advanced-technology operations. The share of manufacturing in total exports and imports peaked in 2009 (69.6% and 75.1% respectively) then gradually dropped to 61.6% and 67.9% in 2012. Office machines and telecommunications equipment remain the main manufactured exports and imports.[99] Malaysia ranks top in the world in terms of the ratio of high-technology exports to total exports.[100] In 2011, the main activities contributing to the value-added of the sector were, *inter alia,* manufacture of radio, television, and communication equipment and apparatus (17.2%), chemicals and chemical products (11.2%), and motor vehicles and transport equipment (10.6%), a mostly domestic-oriented activity (section 4.6.1).[101] Government-linked companies (section 3.4.3) like Pharmaniaga Bhd, Chemical Company of Malaysia, and CCM Duopharma Biotech Bhd (18.1% of total assets) remain major stakeholders in chemical manufacturing while others are involved in automotive activities (section 4.6.1).[102]

4.54. Trade in global value chains (GVCs) is the fastest growing part of international trade, and a critical driver of productivity, growth, and employment.[103] Malaysia seeks to gradually restructure the foundation and the drivers of growth, in order to occupy a higher position in the global value chain by shifting from low-end manufacturing toward activities that better leverage its strengths and natural advantages (e.g. agriculture, agri-based industries, and biotechnology) to take advantage of its fertile bio-resources.[104] Recognizing that there are opportunities to strengthen the industry on either end of the value chain, the Government has identified the need to enhance the electrical and electronics (E&E) industry competencies in conceptualization, design, product segmentation, marketing, sales, and distribution. In 2010, the domestic value added in Malaysia's exports, which is indicative of the value added gains for a country from exports, was at 58%. It is

[95] Energy Commission (2013).

[96] Green Prospects Asia online information, "Malaysia's new energy policy emphasises market-based energy pricing", 26 September 2012. Viewed at: http://www.greenprospectsasia.com/content/malaysias-new-energy-policy-emphasises-market-based-energy-pricing#sthash.IFaupTOk.dpuf.

[97] International Institute for Sustainable Development (2013).

[98] Electrical and electronic products, and wood and wood products registered high labour productivity growth due to initiatives to address labour shortages by measures including switching to labour-saving designs and equipment, and introducing management measures leading towards leaner organizations (Malaysia Productivity Corporation, 2013b).

[99] UNSD Comtrade database.

[100] OECD (2013a).

[101] Department of Statistics (2012b).

[102] Menon and Ng (2013).

[103] Asian International Economists Network online information, "Global Value Chains, Trade Policy and Asia", 22 May 2013. Viewed at: http://aienetwork.org/blog/36/global_value_chains_trade_policy_and_asia.

[104] Area Development online information, "Malaysia - Moving Forward Up the Global Value Chain", December 2008. Viewed at: http://www.areadevelopment.com/InternationalLocationReports/dec08/Malaysia-high-value-growth-028.shtml.

estimated to have increased by 2.37 percentage points during 1995-2010, compared to the declining performance of China (minus 21 percentage points), Korea (Rep. of) (minus 17 percentage points), and India (minus 12 percentage points).[105] Malaysia's GVC participation rate (i.e. the share of exports that is part of a multi-stage trade process) was 68%, ranking it 7th in the world's top exporting economies.

4.55. The Third Industrial Master Plan 2006-2020 (IMP3) aims at achieving long-term global competitiveness through the transformation and innovation of the manufacturing and services sectors. Twelve manufacturing activities are targeted for further development and promotion so as to grow at 5.6% annually and contribute 28.5% to GDP by 2020.[106] The 10th Malaysia Plan (2011-15) and the New Economic Model (NEM) stress human-capital development and improvements in innovation capacity (section 2.3).

4.56. Since 2009, Malaysia's average applied MFN tariff on imports of industrial products has dropped from 8% to 6.2% (Table 3.1) due to tariff nomenclature transposition changes, and import duties remain mostly *ad valorem*[107]*;* tariff protection ranges from zero to 60% (Table A3.1). Average MFN tariff protection dropped considerably in textiles, clothing and footwear, and base metals and articles thereof. In 2013, 57.7% (53.5% in 2009) of tariff lines for manufacturing imports (ISIC Rev 2, excluding food processing) were duty free. Manufacturers are encouraged to obtain raw materials as well as machinery and equipment locally; those not available locally may be imported duty free (section 3.2.2.5). Sensitive items, including certain motor vehicles and motorcycles, and flat steel products remain subject to non-automatic import licensing (section 3.2.3.1). In government procurement contracts, preferential treatment is given to *bumiputera* manufacturers for locally produced goods (section 3.2.6). The Government continues to promote exports of manufactured products through, *inter alia,* tax exemptions on statutory income equivalent to 10%, 15%, 30% or 50% of the increased export income depending, *inter alia*, on the activity, value-added and/or ownership, as well as drawbacks (sections 3.3.4 and 3.3.5). Several tax and non-tax incentives support, *inter alia,* R&D and SME activities (sections 3.4.1.3 and 3.4.2). Export licensing and export taxes on principal commodities (agricultural, industrial) continue to divert supply of these inputs to the domestic market, leading to downward pressure on domestic prices and thus acting as an implicit subsidy for the domestic processing industries (sections 3.3.2 and 3.3.3).

4.6.1 Automotive industry

4.57. During the period under review, Malaysian automobile producers continued to be sheltered from foreign competition by both tariff and non-tariff measures, and benefited from domestic support measures allowing the market to be dominated by locally made cars. In 2012, Malaysia was the world's 23rd largest car producer, just behind Italy and Poland, and the third largest producer and automotive market in ASEAN.[108] The industry consists of 11 motor vehicle manufacturers, 9 motorcycle manufacturers and more than 800 parts and components manufacturers. In 2012, the Malaysian firms Perodua and Proton dominated the domestic market, although with relatively reduced shares of 30.1% and 22.5%, respectively; in 2008 they jointly accounted for 62.4% of vehicles sold. Among the foreign companies operating in Malaysia, Toyota (16.8%) outperformed its two other major non-national peers (Nissan (5.8%), Honda (5.6%)). Other foreign car manufacturers (e.g. Volkswagen (a newcomer, see below), Hyundai-Inokom, Mitsubishi, Isuzu, and Suzuki) shared the remaining 19.2% of the market.[109] Domestic production/assembly of motor vehicles was 567,715 units in 2010, 533,515 units in 2011,

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[105] Factors that influence the share of domestic value added in exports include the size of the economy, the composition of exports and position in GVCs, and the economic structure and export model of the country (UNCTAD, 2013a; and Banga, 2013).

[106] These are: electrical and electronics, medical devices, textiles and apparel, machinery and equipment, metals, transport equipment, petrochemicals, pharmaceuticals, wood-based, rubber-based, oil palm-based, and food processing activities (MITI online information, "Third Industrial Master Plan (IMP3)". Viewed at: http://www.miti.gov.my/cms/content.jsp?id=com.tms.cms.section.Section_8ab58e8f-7f000010-72f772f7-dbf00272).

[107] Non-*ad valorem* specific duties apply to 55 lines at the HS 9-digit level for manufacturing imports.

[108] International Organisation of Motor Vehicle Manufacturers online information. Viewed at: http://oica.net/category/production-statistics/; and Malaysia Automotive Institute (2013).

[109] Malaysia Automotive Institute (2013); and WTO document WT/TPR/S/225/Rev.1, 15 February 2010.

and 569,620 units in 2012, of which 89.5% (2012) were passenger cars.[110] The local content of "national cars" of all ranges seems to average between 50%-90% (Proton) and 35-80% (Perodua), while the percentage of local content in domestically assembled foreign cars of all ranges is 35-65%.[111] In 2012, vehicle imports (HS87) were five times lower than exports; motor cars (HS8703) and parts (HS8708) represented 41.2% and 28.9% of the industry's imports in 2012 respectively, while their export shares were 13.1% and 48%.[112] Major export markets for cars and/or parts are Thailand and Indonesia, and main suppliers Japan, Thailand, and Germany. Automotive firms are the biggest R&D spenders in Malaysia, although their spending is considered low for them to compete with foreign counterparts.[113] Despite the sale of Khazanah Nasional's 42.7% shares of Proton to the Malaysian DRB-HICOM conglomerate with extensive ties to government entities and the country's largest vehicle distributor in 2012, GLCs remain directly or indirectly involved in automotive activities[114], including the highly concentrated distribution market.[115] According to the authorities, there is minimal involvement of several GLCs in automotive activities, and Proton and Perodua are majority-owned by the private sector.

4.58. Malaysia's 2006 National Automotive Policy (NAP), which was reviewed in 2009, aims at *inter alia*: ensuring the development, long-term competitiveness, and capability of the domestic automotive industry as a result of market liberalization; creating a conducive environment to attract new investment and expand existing opportunities; enhancing the competitiveness of the "national car" manufacturers through strategic partnerships; developing high-value-added manufacturing activities in niche areas; and enhancing *bumiputera* participation.[116] Foreign investment is welcome and 100% foreign equity is allowed. The NAP seems to distinguish between "national" cars, (i.e. meeting the relevant mandatory qualifying requirements) and "non-national" cars, which include vehicles assembled in Malaysia by foreign companies.[117] Under the NAP 2009, contract assembly (of "non-national" cars") is allowed to use existing excess capacity on condition that the models do not compete directly with "national" vehicles. New border and domestic support measures (see below) became effective from 1 January 2010 under the 2009 NAP review, which is claimed to have taken into consideration Malaysia's commitments under both WTO and ASEAN. Under the NAP 2013 review, the main objective is to improve implementation of measures outlined in the NAP 2006 and 2009 as well as to meet the latest global challenges and requirements. NAP 2013 is also aimed at turning Malaysia into a hub for energy-efficient vehicle (EEV) production through strategic FDI and DDI, in line with the aspiration of becoming a regional leader in the green automotive industry. No more information on the 2013 NAP review was available with the authorities by November 2013.

4.59. The industry continues to benefit from the various tax and non-tax incentives available to other economic activities (section 4.6). As from January 2010, a freeze was lifted on new manufacturing licences for luxury passenger vehicles (engine capacity of 1,800 cc and above) and on-the-road price not less than RM 150,000; hybrid and electric vehicles; pickup trucks;

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[110] Malaysia Automotive Association online data. Viewed at: http://www.maa.org.my/info_summary.htm.

[111] DE International (2012).

[112] UNSD Comtrade database.

[113] OECD (2013a), "Malaysia: innovation profile".

[114] Attempts in recent years to sell (parts of) Proton to foreign investors have floundered. Khazanah Nasional, has a substantial stake in CIMB Group, one of the largest shareholders of DRB HICOM. The Government also maintains an investment position in UMW Holdings, which is another significant investor in Proton. The Government also maintains an investment position in UMW Holdings which is a significant shareholder in Perodua (38% of shares). Honda Malaysia Sdn. Bhd. is a joint venture between Honda Motor Co. Ltd. of Japan (51%), DRB-HICOM Berhad (34%), and Oriental Holdings Berhad (15%). BMW Malaysia Sdn. Bhd is a joint venture with Sime Darby Group, a GLC involved in agriculture activities too (section 4.2.1). Mercedes-Benz Malaysia has a joint assembly operation with DRB-HICOM. Volkswagen has also been offering CKD and CBU models through its domestic partner DRB-HICOM (Malaysian Investment Development Authority, 2012; Khazanah Nasional online information. Viewed at: http://www.khazanah.com/portfolio.htm#com4; Perodua online information. Viewed at: http://www.perodua.com.my/corporate/company; Menon and Ng, 2013; EIU, 2012a; and DRB-Himcom, 2012).

[115] The distribution market of CBUs (completely built-up units) is dominated by a few big local companies: the GLC Sime Darby (section 4.2.1), DRB-HICOM, Naza Motor Trading, and Cycle & Carriage Bintang Bhd. National car manufacturers appoint one or more companies to act as a distributor for them, while foreign carmakers choose different means to distribute their automobiles (DE International, 2012).

[116] Ministry of International Trade and Industry Media Release, "Review of National Automotive Policy", 28 October 2009. Viewed at: http://www.maa.org.my/pdf/MEDIA_RELEASE_NAP_Media_281009.pdf.

[117] USTR (2013).

commercial vehicles; and motorcycles with engine capacity of 200 cc and above.[118] However, the freeze was maintained on manufacturing licences for reconditioning and reassembling activities.[119] To improve the competitiveness of parts and component manufacturers and to enhance their contribution to the automotive industry and economy, the Automotive Development Fund (ADF) and Industrial Adjustment Fund (IAF) continued to provide them with soft loans/grants.[120] No information on the terms of concessional loans and grants, or their allocation (by beneficiary) or the budgetary cost of ADF and IAF support since 2010 was available from the authorities. As from 2012, individual taxi operators (1 Malaysia People's Taxis programme) and car-rental companies are, *inter alia,* exempt from excise duties and benefit from soft loans for the purchase of locally produced "national cars" (section 3.4.1.1 and 4.7.6), while tour operators benefit from 50% reduction on excise duties for locally assembled four-wheel-drive vehicles; no information on the budgetary cost of this measure was available from the authorities.[121] Fuel subsidies (section 4.5.1) still favour the use of private vehicles rather than public transport. The gradual introduction of a Vehicle End of Life Policy, which was called off under NAP 2009, is under consideration under NAP 2013; vehicles above 15 years old could have to undergo mandatory inspection during road tax renewal.

4.60. During the period under review the automotive sector benefited from average applied MFN tariff protection of 17.3% (Table A3.1) the highest of all HS sections. Tariffs ranged from zero to 50%. The tariff regime prioritizes local assembly, as much higher duties are charged on completely built up vehicles (30%) and completely knocked down vehicles (10%). Under ATIGA (section 2.4.2.1) tariff protection for the industry was reduced to zero as of May 2010. High excise duty rates ranging from 60% to 105%, and a 10% sales tax affect both CBUs and CKDs, except for commercial vehicles, for which excise duties are nil (section 3.4.1). The tax structure ensures that small and medium-sized cars (mostly locally produced) are taxed less than larger vehicles (mostly imported).[122] A gazetted price system remains in place to assist Customs to determine the dutiable value of new CBU automobiles (under NAP 2006) and used (under the NAP 2009, since 1 June 2010) (section 3.2.1.2).[123] This system seems to be used to raise the price of imported vehicles so that it is substantially higher than that of domestically produced autos.[124] The restrictive and allegedly non-transparent import licensing system of "approved permits" (AP) is to be terminated on 31 December 2015 for open APs for used vehicles, and 31 December 2020 for franchise Aps, although there are concerns about whether these new deadlines will be met (section 3.2.3).[125] The termination of APs is to provide a clear roadmap and an interim period for

[118] This change led, *inter alia,* to the signing of an agreement for local vehicle assembly and distribution of CKD and CBU models between Volkswagen and DRB-HICOM in December 2010. The production roll-out at DRB-HICOM Automotive Complex started in November 2011, cars were planned to be available in 2012. In collaboration with DRB-HICOM, Volkswagen aims to increase its 1% share (in 2011) of the Malaysian passenger car market 10-fold (DE International, 2012).

[119] DE International (2012).

[120] On 16 December 2009, Malaysia's fiscal stimulus package set aside US$56 million for the ADF (*Kuala Lumpur Post*, 10 October 2012. Viewed at: http://www.kualalumpurpost.net/cost-of-living-in-malaysia/; and Ministry of International Trade and Industry Media Release, "Review of National Automotive Policy", 28 October 2009. Viewed at: http://www.maa.org.my/pdf/MEDIA_RELEASE_NAP_Media_281009.pdf).

[121] National News Agency online information, "Courteous taxi drivers will lure more tourists to visit Malaysia", 18 July 2013. Viewed at: http://www.bernama.com.my/bernama/v7/wn/newsworld.php?id=964476; and PM Office online information, "Taxi Permit Recipients to get RM5,000 grant to buy proton exora", 24 March 2013. Viewed at: http://www.pmo.gov.my/index.php?menu=newslist&news_id=11236&news_cat=13&cl=1&page=1731&sort_year=&sort_month=.

[122] Istituto nazionale per il Commercio Estero (2012).

[123] According to the authorities these measures are to pave the way for a more competitive automotive industry for domestic, regional, and global markets. They consider that the gazetted price system is not a non-tariff barrier (NTB) but a measure to assist the Customs Department to determine value of any dutiable vehicle for the purpose of payment of levies and customs duties.

[124] Ministry of International Trade and Industry Media Release, "Review of National Automotive Policy", 28 October 2009. Viewed at: http://www.maa.org.my/pdf/MEDIA_RELEASE_NAP_Media_281009.pdf; and USTR (2013).

[125] Franchise APs are given out for free to franchise holders of car brands registered with MITI. Open APs (commercial, passenger, and motorcycles) are sold to parallel importers at RM 10,000 apiece to import cars of any brand. The total number of APs issued each year is capped at 10% of the number of locally assembled cars in the preceding year. Sixty per cent of APs are given to *bumiputera* Open AP holders while the remaining 40% are given to 'qualified' franchise holders, the majority of which are *bumiputera*-owned. The previous NAP called for the phase-out of the AP policy in 2010; however the 2009 revision extended the AP policy to 2020 (LLD online information, "Malaysia's Open-AP System Likely To Remain Beyond 2015", 9 July 2013. Viewed at: http://www.livelifedrive.com/malaysia/news/view/3876/malaysias-open-ap-system-

AP holders to diversify and venture into other businesses. As from June 2011, imports of used parts/components have been prohibited, and imports of used commercial vehicles are to be prohibited from 2016 onwards in line with the NAP 2009, to ensure consumer safety and environmental protection.[126] A vehicle type-approval (VTA) process has prevented the import and sale of "sub-standard" vehicles, parts, and components since January 2009. The tax exemption on statutory income for manufacturers in the automotive industry was enhanced in 2010: from 10% to 30% of the value of increased exports provided the vehicles and parts/components attain at least 30% value added; and from 15% to 50% of the value of increased exports provided that the goods attain at least 50% value added.[127]

4.7 Services

4.7.1 Introduction

4.61. The Malaysian services sector remains a very dynamic segment of the economy, with annual growth averaging 5.9% over 2009-12. It accounted for 50.4% of GDP in 2012 and 53.5% of employment (Table 1.2). Malaysia's objective is for services' GDP contribution to increase to 65% by 2020.[128] The services sector attracted the biggest share of approved investments into the economy in 2012, amounting to RM 117.6 billion; nearly 90% of these investments were from domestic sources.[129] FDI into the services sector has been most heavily concentrated in the finance and insurance subsectors (Chart 1.3). Malaysia's trade in services was in surplus in 2009, but thereafter has posted a steadily increasing deficit (Table 1.3).

4.62. Over the review period, the Government continued to autonomously liberalize foreign equity restrictions in a swathe of services sectors, considering this to be one of the major reform efforts that will drive economic competitiveness and attract FDI. In 2012, the Government commenced implementation of partial or complete lifting of foreign equity restrictions in 17 services subsectors under six sectors (professional services; communications services; distribution services; educational services; environmental services; and health related and social services), and formalized the market-access status quo in accountancy services where full foreign equity participation was already permitted (Box 4.1). This initiative follows an autonomous liberalization effort announced in 2009, which was reported on in Malaysia's previous Review. Various sectors have been liberalized since 2009 and new foreign equity thresholds have been imposed or are soon to be implemented (Table A4.2). The Malaysia Services Development Council (MSDC) is charged with monitoring the implementation of services liberalization. The MSDC is chaired by the Minister of International Trade and Industry and comprises representatives from the relevant government ministries, PEMUDAH, PEMANDU, and the private sector.

Box 4.1 Services liberalization, 2010-13

1. Professional services

Accounting (including audit) and taxation services: formalization of 100% foreign equity participation (see section 4.5.7.1).

Legal services: a new Legal Profession (Amendment) Act 2012 has been gazetted but has yet to enter into operation. It will replace a prohibition on foreign ownership of law firms and on the practice of law by foreign lawyers with the possibility for: foreign law firms to enter into international partnerships; foreign law firms to establish in Malaysia; and foreign lawyers to be employed by Malaysian law firms. Licences granted may be subject to conditions as determined by the Bar Council (see section 4.7.7.2).

likely-to-remain-beyond-2015; Ministry of International Trade and Industry Media Release, "Review of National Automotive Policy", 28 October 2009. Viewed at: http://www.maa.org.my/pdf/MEDIA_RELEASE_NAP_Media_281009.pdf; and Istituto nazionale per il Commercio Estero, 2012).

[126] WTO document WT/TPR/S/225/Rev.1, 15 February 2010.

[127] Ministry of International Trade and Industry Media Release, "Review of National Automotive Policy", 28 October 2009. Viewed at: http://www.maa.org.my/pdf/MEDIA_RELEASE_NAP_Media_281009.pdf.

[128] MITI online information. Viewed at: http://myservices.miti.gov.my/web/guest/home.

[129] MITI (2013).

Architectural services: architectural services will be autonomously liberalized once the Architects Act 1967 has been amended. With the amendments, 100% foreign ownership of architectural firms will be permitted (up from 30% under the 1967 Act), and citizenship and residency requirements will be relaxed (see section 4.7.7.3).
Engineering Services: engineering services will be autonomously liberalized once the the Registration of Engineers Act, 1967 has been amended. With the amendments, 100% foreign ownership of engineering firms will be permitted (up from 30% under the 1967 Act), and citizenship and residency requirements will be relaxed (see section 4.7.7.4).
Quantity Surveying Services: quantity surveying services will be autonomously liberalized once the Registration of quantity surveyor's Act 1967 has been amended. With the amendments, 100% foreign ownership of quantity surveying practices will be permitted (up from 30% under the 1967 Act), and citizenship requirements will be relaxed (see section 4.7.7.5).
2. Communication services
Since November 2012, 100% foreign equity participation has been allowed for courier services. Previously foreign equity caps for this subsector were unspecified. FDI was dealt with on a case-by-case basis with 100% foreign equity generally being allowed. With respect to telecommunication services, 100% foreign equity participation is permitted for application service providers (up from 40%) and 70% for network service providers and network facilities providers (up from 30%). Provision of all of these services is subject to licensing requirements and other requirements combined in the Communications and Multimedia Act 1998 (section 4.7.3).
3. Distribution services
Since 2012, Malaysia has allowed 100% foreign ownership of department and speciality stores. Department stores must reserve at least 30% of their shelf space for goods made by *bumiputera*-owned SMEs.
4. Educational services
Since 2012, 100% foreign ownership of private universities has been permitted (up from 51% previously) and is subject to two conditions: that it applies only to private higher educational institutions with university status; and that the institution must attract at least 30% of international students within five years of commencing operations. Up until 2015, foreign private higher educational institutions intending to set up private universities in Malaysia must be in the top 100 in international rankings. 100% foreign ownership of skills training centres has been permitted since 2012. International schools have also been permitted to 100% foreign ownership since 2012 (up from 20%). Since 2012, 100% foreign ownership has been permitted in vocational and technical secondary schools and vocational and technical secondary schools for students with special needs. These schools were new categories introduced under the autonomous commitment.
5. Environmental services
Since January 2012, 100% foreign equity has been allowed in the provision of incineration services. Information was not available on the previous foreign ownership threshold applied or on any other conditions imposed.
6. Health-related and social services
Since 2012, 100% foreign ownership of dental and medical specialist clinics established in Malaysia has been permitted. Previously, foreign ownership of dental and medical specialist clinics was not allowed. Foreign dental and medical specialists may apply to practice in Malaysia, through their employer, to the Malaysian Dental Council or the Malaysian Medical Council, respectively. They also must be credentialed and registered as a specialist with the National Specialist Register. Foreign dental and medical specialists may only work in private hospitals.

Source: MIDA online information. Viewed at: http://www.mida.gov.my/env3/uploads/Publications_pdf/Malaysia_InvestmentinTheServicesSector/2012; USTR online information. Viewed at: http://www.ustr.gov/sites/default/files/2013%20NTE.pdf; and information provided by the Malaysian authorities.

4.63. The Government's current policy objectives for the services sector are included in the 10th Malaysia Plan (2011-2015) (see Chapter 2). It emphasizes the need to press ahead with services liberalization both autonomously and through bilateral, regional, and multilateral trade negotiations. It foresees a changing role for the Government in the provision of public services in the country: from building and operating public services to purchasing them from the private sector. It also sets out the Government's intention to review policies and regulations inhibiting services liberalization (such as foreign equity limits and restrictions on employment of foreign labour), requirements for commercial presence, composition of boards of directors, and residency for expatriates. Twelve National Key Economic Areas (NKEAs) are designated under the Plan which are the sectors/geographical area considered to have the greatest potential for generating economic growth. Seven of these NKEAs are services sectors: financial services; wholesale and retail trade; tourism; education services; business services; communication contents and infrastructure; and private healthcare. These NKEAs have been allocated specific targets and concrete actions.

4.64. In 2012, the Government embarked on a study to formulate a Services Sector Blueprint, which will serve as an input into the 11th Malaysia Plan (2015 to 2020). According to the authorities, the Blueprint will be aimed at transforming the services sector and accelerating its growth. Focus will be given to developing more knowledge-intensive and higher-value-added sectors through reforms to targeted services sectors and the acceleration of internationalization of services providers. An action plan to implement the Blueprint is also being prepared. In 2012, the Government also commissioned a study on domestic regulations for the services sector, covering healthcare travel, private higher education, technical and vocational education and training, and environmental services. As at October 2013 the study had yet to be finalized. However, the authorities indicated that its main objective is to streamline regulatory regimes in the four areas and to identify possible improvements.

4.65. Malaysia has undertaken services commitments in almost all of the RTAs to which it is a party.[130] In all cases, services commitments are scheduled following a positive list approach. Since 2010, four new RTAs incorporating services commitments have entered into force (ASEAN-Australia-New Zealand, Malaysia-India, Malaysia-Australia, and Malaysia-New Zealand). At the ASEAN level a new round of services negotiations was completed and entered into force in 2010; the 8th Package of Commitments under the ASEAN Framework Agreement on Services (AFAS). Additionally, a Protocol to implement the Fifth Package of Commitments on Financial Services under the AFAS was adopted in 2011.[131] The coverage of services sectors under the RTAs goes well beyond the GATS coverage (Table 4.5).

Table 4.5 Services commitments in Malaysia's trade agreements, 2013

Service sector	WTO	ASEAN				Malaysia bilateral FTAs				
	GATS	AFAS	ASEAN-Korea	ASEAN-China	ASEAN-AUS/NZ	Japan	Pakistan	New Zealand	India	Australia
Business services	■	■	■	■	■	■	■	■	■	■
Communication services	■	■	■	■	■	■	■	■	■	■
Construction and related engineering services	■	■	■	■	■	■	■	■	■	■
Distribution services		■	■				■		■	
Education services		■	■	■	■	■	■	■	■	■
Environmental services		■						■	■	■
Financial services	■	■	■	■	■	■	■	■		■
Health related and social services	■	■	■	■	■	■	■	■	■	■
Tourism and travel related services	■	■	■	■	■	■	■	■	■	■
Recreational cultural and sporting services	■	■	■	■	■	■	■	■	■	■

[130] The RTAs that do not include services commitments are ASEAN's RTAs with India and Japan, and Malaysia's RTA with Chile.

[131] ASEAN online information. Viewed at: http://www.asean.org/communities/asean-economic-community/item/protocol-to-implement-the-eighth-package-of-commitments-under-the-asean-framework-agreement-on-services.

Service sector	WTO	ASEAN				Malaysia bilateral FTAs				
	GATS	AFAS	ASEAN-Korea	ASEAN-China	ASEAN-AUS/NZ	Japan	Pakistan	New Zealand	India	Australia
Transport services	■	■	■	■	■	■	■	■	■	■
Other services	■	■	■	■	■	■	■	■	■	■

Source: WTO document GATS/SC/52, 15 April 1994; and WTO RTA database (http://rtais.wto.org).

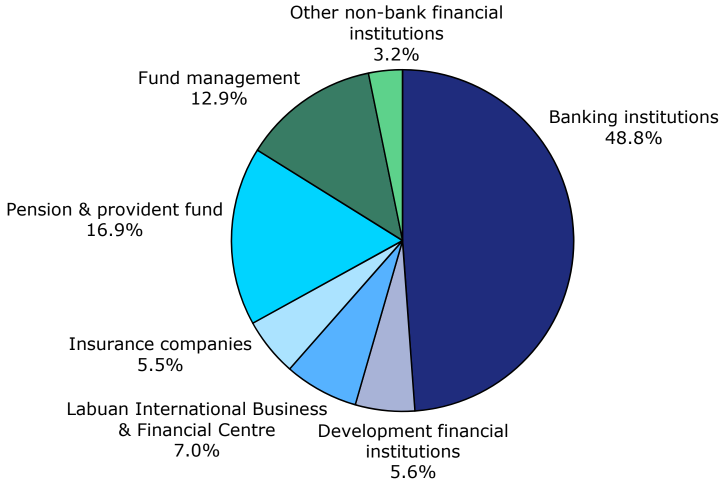
4.66. Since 2010, there have been changes to Malaysia's financial services legislation (see Table A4.3 and section 4.5.2 below). The consumption of certain services is subject to a 6% services tax (section 3.4.1.1); this will be replaced by the GST upon its introduction in 2015.

4.7.2 Financial Services

4.7.2.1 Introduction

4.67. The Malaysian financial services sector provides a series of banking, insurance, asset-management, and capital-market services. The sector's total assets exceeded 400% of GDP at end 2012. In asset terms, the sector is dominated by banking institutions (Chart 4.1).

Chart 4.1 Structure of the financial sector, by asset share, 2012



Source: Data provided by the Malaysian authorities.

4.68. As reported by the IMF, the Malaysian financial sector has weathered the global financial crisis well; banking institutions are well capitalized, merger activity has resulted in strengthened banks and other financial sector institutions, and financial services supervisory regimes are well developed and highly compliant with international standards.[132] In 2012, finance and insurance contributed 7.5% to GDP (current prices). The sector as a whole has witnessed strong growth since 2010, with year-on-year growth ranging from 4.4% to 8.2% of GDP (Table 1.2). Nevertheless, Malaysia's central bank, the Bank Negara Malaysia (BNM) is conscious of the need to manage what it perceives as the main potential risks to financial stability: ensuring that household debt levels are sustainable (household debt reached 80.5% of GDP at end 2012) and managing the risks of contagion as the Malaysian financial services sector becomes more regionally and internationally integrated. In this regard, the BNM has implemented a number of pre-emptive measures to avoid such problems from materializing.[133]

[132] IMF (2013c).

[133] To tackle possible problems relating to household debt, BNM has created a credit information registry allowing banks to assess the credit-worthiness of borrowers; it has developed a targeted financial education programme for new and young borrowers; and a debt resolution and counselling mechanism to facilitate the orderly management of potential financial problems among households. Additionally, bank supervisory

4.69. BNM is responsible for supervising commercial and Islamic banking institutions, the major development financial institutions (DFIs), insurance companies, and takaful (Islamic) operators. The Securities Commission (SC) supervises and regulates capital market intermediaries, which are fund management companies, broker-dealers, and the securities and derivatives market. For investment banks, the entities are supervised and regulated by the BNM and the SC. The Labuan International Business and Financial Centre is supervised by the Labuan Financial Services Authority (LFSA).

4.70. Over the review period, there has been a comprehensive modernization and streamlining of Malaysia's onshore and offshore financial services legislation, affecting both the banking and insurance sectors. Two new laws entered into force in June 2013: the Financial Services Act (FSA) 2013, and the Islamic Financial Services Act (IFSA) 2013.[134] Additionally, the Central Bank of Malaysia Act of 2009 was amended in 2013 as part of the broader review of financial sector legislation completed during the year. The FSA, IFSA, and Central Bank of Malaysia Act are intended to provide a more uniform framework for financial sector regulation and give the BNM the necessary powers to act effectively in a more complex financial landscape.[135] Key features of the new legislation include: greater clarity and transparency in the implementation and administration of the law; a focus on Sharia compliance and governance in the Islamic financial sector; provisions for differentiated regulatory requirements that reflect the nature of financial intermediation activities and their risks to the overall financial system; provisions to regulate financial holding companies and non-regulated entities; strengthened business conduct and consumer protection requirements; as well as strengthened provisions for effective and early enforcement and supervisory intervention. As legislated in the FSA and IFSA, policy on investment in the financial sector (encompassing the banking, insurance, and takaful sectors) is based on prudential and the best interest of Malaysia criteria. Under the FSA and IFSA, the factors to be considered in determining whether an application is in the best interest of Malaysia are: (a) the effect of the investment on the level and nature of economic activity in Malaysia, including the effect on productivity, efficiency, and quality of financial services; (b) the contribution towards enhancing international trade and investment linkages between Malaysia and other countries; (c) the effect of the investment on the stability of the financial system, including on contact and behaviour that could pose a risk to the financial system; and (d) the degree and significance of participation of Malaysians in the financial sector.[136] The enactment of the FSA and IFSA also gave effect to a set of foreign exchange liberalization measures, announced in March 2013, which aim to enhance the competitiveness of the economy and further develop the domestic financial market (see section 1.4.1). The Labuan Financial Services and Securities Act and the Labuan Islamic Financial Services and Services Act were enacted in 2010 (see below).

4.71. A new Malaysia Deposit Insurance Corporation Act was enacted in 2011, replacing legislation from 2005. The previous law provided for compulsory deposit insurance for all deposit-taking banks through the Malaysia Deposit Insurance Corporation (PIDM). The new law provides for a wider financial safety net that includes a takaful and insurance benefit protection system and provides the Minister of Finance with powers to extend protection coverage beyond the scope of normal protection for deposits as well as takaful and insurance benefits, for the purpose of safeguarding the stability of the financial system. At the time of Malaysia's previous Review, and as part of the pre-emptive measures taken in response to the global financial crisis, the PIDM provided for temporary additional depositor protection over and above the explicit limit of RM 60,000 per depositor per member institution to a full guarantee for eligible bank deposits until December 2010.[137] With the lapse of the temporary full guarantee and improved market conditions, deposit insurance coverage was set at RM 250,000 per depositor per member institution, effective 1 January 2011. The IMF has noted that while the deposit insurance framework largely conforms to best international practice, reserves are only sufficient for pay-outs

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assessments have made bank underwriting and risk management practices more robust. In order to detect nascent financial sector risks, the BNM is participating in collaborative initiatives with other supervisory institutions in the region. For more information, see BNM (2013a).

[134] The laws that were repealed were: the Banking and Financial Institutions Act (1989); the Islamic Banking Act 1983; the Insurance Act 1996; the Takaful Act 1984; the Payment Systems Act 2003; and the Exchange Control Act 1953.

[135] BNM (2013b).

[136] FSA (Schedule 5, Part 1), and IFSA (Schedule 5, Part 1). Viewed at: http://www.bnm.gov.my/index.php?ch=en_legislation&lang=en.

[137] For more information on coverage, see PIDM online information. Viewed at: http://www.pidm.gov.my/About-Deposit-Insurance/Coverage.aspx.

to smaller banks. It has recommended that a back-up funding agreement with the Ministry of Finance should be put in place.[138] However, the authorities noted that the maximum RM 250,000 limit provides for 99% of depositors to be protected in full.[139]

4.72. Malaysia was assessed to have demonstrated a high level of compliance with the Basel Core Principles (BCP) for Effective Supervision, by the IMF and World Bank under its Financial Sector Assessment Programme in 2013; it was "compliant" or "highly compliant" with all 25 BCPs. It was reported that the BNM had set prudent and appropriate minimum capital adequacy requirements for banks; although it was suggested that the scope of capital requirements should be widened to include financial holding companies.[140] The authorities noted that their compendium of prudential requirements and guidance is consistent with international standards and aligned with international regulatory reform initiatives. Its coverage includes risk management, governance, and internal controls.

4.73. The Government's policies to further strengthen the financial sector are set out in the Financial Sector Blueprint 2011-2020 and the Capital Market Master plan 2 (2011-2020), both of which were outlined in the 10th Malaysia Plan.[141] The overarching aim for the financial services sector, as reflected in each of these strategies, is for the sector to have a greater role in facilitating and catalysing Malaysia's transformation into a high value-added, high-income economy by 2020.

4.74. The Financial Sector Blueprint 2011-20 foresees the financial sector as a key driver of economic growth, with its growth being anchored in that of the real economy. It envisages a more competitive, dynamic, inclusive, and integrated financial system, offering a more diverse range of products and services to cater for the requirements of businesses operating in more integrated regional and global markets as well as to meet the needs of a more knowledge- and innovation-intensive domestic economy, and those of higher income customers at the retail level. Under the Blueprint there are nine focus areas: (i) effective intermediation for a high-value-added and high-income economy; (ii) developing deep and dynamic financial markets; (iii) financial inclusion for greater shared prosperity; (iv) strengthening regional and international financial integration; (v) internationalization of Islamic finance; (vi) regulatory and supervisory regime to safeguard the stability of the financial system; (vii) electronic payments for greater economic efficiency; (viii) empowering consumers; and (ix) talent development to support a more dynamic financial sector. The Blueprint states that policies on foreign investment in the sector (through the issuance of new licences or the acquisition of significant equity interests in Malaysian financial institutions) will be guided by two considerations: prudential criteria, and whether the investment is in the best interest of Malaysia. These criteria are also codified in the FSA and IFSA. Factors to be taken into account in determining the best interests of Malaysia are: (a) the effect of the foreign investment on economic activity in Malaysia, having particular regard to the contribution of the foreign investment in promoting and catalysing new high value-added economic activities, addressing demand for financial services in areas where there are gaps; providing high-skilled employment opportunities; and contributing to the productivity, efficiency and quality of financial services; (b) the extent to which the foreign investor will contribute to enhancing international trade and investment linkages between Malaysia and other parts of the world; (c) the contribution towards the internationalization of Islamic finance and support for Malaysia's evolution as an international hub for Islamic finance; (d) the impact the investment will have on financial stability; and (e) the degree and significance of Malaysian participation in domestic financial institutions. It considers that the continued presence of strong and well-managed domestic banking groups that mobilize more than a 50% share of resident deposits is important for the growth and development of the sector. The Blueprint sets out 69 recommendations and over 200 initiatives to be implemented progressively by 2020.

4.75. The Capital Market Master Plan 2 (CMP2) was formulated with the theme of "Growth with Governance", and focuses on expanding the role of the capital market to invigorate national economic growth while addressing concerns about the efficacy of markets in the aftermath of the

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[138] IMF (2013c).

[139] MIDC Press Release, "New Deposit Insurance Limit at RM 250,000". Viewed at: http://www.pidm.gov.my/PIDM-in-the-Media/Press-Releases/New-Deposit-Insurance-Limit-At-RM250,000.aspx.

[140] IMF (2013a).

[141] Under the 10th Malaysia Plan, financial services is designated as an NKEA, with three main targets: to develop a new financial sector blueprint, to develop a new capital market master plan and to enhance Malaysia's position in Islamic finance (PM Department, 2010).

global financial crisis. The CMP2 strategies focus on creating an environment conducive for the growth of the private sector and the financing of entrepreneurial and innovative economic activities. Emphasis is also placed on ensuring Malaysia's capital market is well-regulated, with participants strengthening their professional standards. Prominence is given to social and environmental issues, so that investment can be harnessed through the capital market to connect communities and businesses that deliver sustainable value creation.[142]

4.7.2.2 Onshore banking

4.76. As reported in Malaysia's previous Review, banking services are provided by commercial banks, investment banks and Islamic banks. All banking licences are granted by the Minister of Finance, based upon recommendations made by BNM. As articulated in the Financial Blueprint and legislated in the FSA and IFSA, licences granted to foreign-owned banks are subject to prudential and best interest of Malaysia criteria. These criteria entered into effect upon the entry into force of the FSA and IFSA on 30 June 2013.

4.77. All banking institutions must be locally incorporated in Malaysia. The requirement also applies to Islamic Banks, with the exception of International Islamic banks (which may be established either as a locally incorporated company or a branch). Locally incorporated foreign-owned commercial banks are allowed to own up to eight branches and ten microfinance branches. The authorities highlighted that as articulated in the Financial Sector Blueprint, greater flexibility will be accorded to onshore financial institutions to establish new delivery channels, while promoting greater financial inclusion and wider adoption of electronic payments.

4.78. As at August 2013, the total assets of the banking sector were RM 2,043 billion. The sector is dominated by Malaysian-owned institutions, which accounted for 78.6% of the total value of banking assets in the same year (Table 4.6). Six new licences have been granted to foreign banks since 2009.

Table 4.6 Banking institutions, 2009, 2011, and 2013

Institution type	2009		2011		2013 (as at October)	
	Number	Assets (RM million)	Number	Assets (RM million)	Number	Assets (RM million)
Commercial banks	22	1,139,726	23	1,386,980	27	1,566,312
(of which: foreign)	(13)	273,480	(17)	(353,323)	19	385,809
Islamic banks	17	224,938	16	326,841	16	413,475
(of which: foreign)	(6)	34,695	(6)	(42,768)	6	51,870
International Islamic banks	3	..	5	..	5	..
(of which: foreign)	(3)		(5)		(5)	
Investment banks	15	61,542	15	68,042	12	62,947
(of which: foreign)	(0)		(0)		(0)	
Total	**54**	**1,426,206**	**54**	**1,781,863**	**55**	**2,042,735**

.. Not available.

Note: Foreign Islamic banks are foreign-owned banks that carry on ringgit and non-ringgit Islamic banking business, whereas International Islamic banks are foreign-owned banks that conduct Islamic banking business in currencies other than the ringgit.

Source: IMF (2013). Viewed at: http://www.imf.org/external/pubs/ft/scr/2013/cr1352.pdf; and information provided by the Malaysian authorities.

4.79. According to the authorities, in 2011, Malaysia was the world's third largest market for Islamic banking assets, with Malaysian Islamic banks accounting for 12% of global Islamic banking assets. As at October 2013 Malaysian Islamic banking was conducted through 16 Islamic banks (of which 6 were foreign owned), and 5 International Islamic banks. Commercial and investment banks are permitted to operate an Islamic banking window; 3 commercial banks and 7 investment banks have done so (end 2012).

4.80. Broad recommendations are contained in the Financial Sector Blueprint to support the growth of Islamic finance domestically while supporting Malaysia's objective of becoming a global

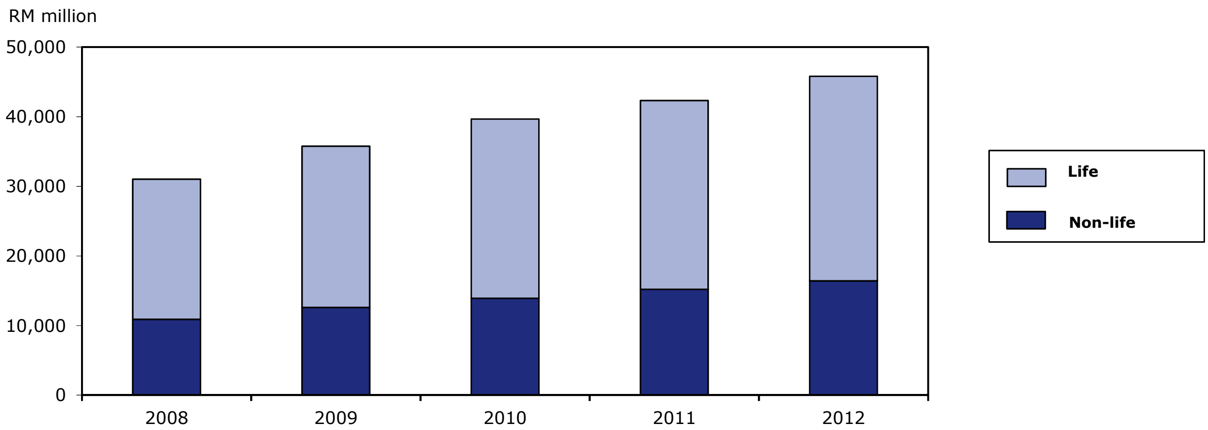
[142] Securities Commission Malaysia (2011a).

Islamic finance hub. Malaysia is seeking to establish itself as a global centre for Islamic finance through liberal market access for foreign and international Islamic banks, a stronger regulatory framework through the 2013 IFSA, and through various tax and non-tax incentives. For example, foreign Islamic banks are eligible for a stamp duty exemption (until 2016) on Islamic banking instruments conducted in foreign currency, and an income tax exemption until 2016. Non-tax incentives include no restrictions on the employment of expatriates and border facilitation for these expatriates and their families. Support through tax breaks and grants are also given to developing human talent in the area of Islamic finance.[143]

4.7.2.3 Onshore insurance

4.81. The insurance industry grew rapidly over the review period. In 2012, the value of total insurance premiums in Malaysia was RM 45.8 billion, up from RM 31 billion in 2008. Life insurance premiums continue to account for around two thirds of the total (Chart 4.2). Per capita insurance expenditure in 2012 was US$514.2, placing Malaysia 38th in the world (up from 46th in 2008).[144] In 2012, the onshore insurance sector accounted for 5.5% of the total assets of the financial sector.

Chart 4.2 Insurance: total premium volume, 2008-12



Note: Data are based on financial year, i.e. 2008 covers 1 April 2008 to 31 March 2009.

Source: Swiss Re (2013), *World Insurance in 2012*. Viewed at: http://media.swissre.com/documents/sigma3_2013_en.pdf.

4.82. Insurance companies and takaful operators are now governed by the FSA and IFSA, both of which entered into force on 30 June 2013 (see above). The new laws provide greater transparency and detail on the criteria for market entry, including with respect to prudential requirements. With the coming into force of the FSA and IFSA, life and general businesses of insurers, and family and general business of takaful operators must be carried out under separate entities. The FSA and IFSA provide for a five year transition period to allow for an orderly segregation of businesses by existing composite insurers and takaful operators. Takaful operators must to ensure their aims and operations are Sharia compliant at all times, and when there is a conflict between shareholders' and takaful participants' interests, the Board of the company must give priority to the latter.

4.83. To operate in Malaysia, insurance companies must obtain a licence from the Ministry of Finance, which are granted upon recommendation from the BNM. According to the IMF, no direct conventional insurance licence has been granted since the 1970s.[145] The authorities explained that this is due to continued efforts to promote consolidation and rationalization, particularly within the fragmented general insurance industry, so to create strong general insurers with sufficient capacity and scale to contribute meaningfully to the broader economy. They further noted that, while no new licences have been granted, foreign participation in the insurance industry remains high (see below). New reinsurance, takaful, and retakaful licences have been issued from time to time

[143] For more information, see MIDA online information. Viewed at: http://www.mida.gov.my/env3/uploads/IncentivesCompilation/MIFC/2013/AppVI.pdf.
[144] Swiss Re (2013).
[145] IMF (2013c).

since the mid-1990s in order to meet specific objectives such as to spur the development of the takaful industry and Malaysia's position as an international Islamic financial hub.

4.84. The issuance of new licences in the insurance and takaful industry, like in the banking sector, is guided by prudential criteria and the best interest of Malaysia criteria (as per the FSA and IFSA). All foreign insurance companies must be incorporated in Malaysia. However flexibility is accorded to foreign professional reinsurers, retakaful operators, and international takaful operators to operate through a branch office in Malaysia. With the entry into force of the FSA and IFSA, life and general businesses of insurers, and family and general business of takaful operators must be carried out under separate entities. The FSA and IFSA provide for a five-year transition period to allow for an orderly segregation of businesses by existing composite insurers and takaful operators.

4.85. There is significant foreign presence in the Malaysian insurance sector, due to merger and acquisition activity. The number of composite and general insurers decreased from 33 in 2008 to 23 at end 2012. In the takaful sector, four new joint-venture family takaful operators commenced operations between 2010 and 2012, increasing the number operating in Malaysia to 12 at end 2012, up from 8 in 2009 (Table 4.7).

Table 4.7 Insurance companies, 2012

	Number	Assets (RM million)
Direct insurance companies	**32**	**198,776**
Life	9	91,274
(of which foreign)	*(4)*	*(75,343)*
General	18	23,076
(of which foreign)	*(9)*	*(1,988)*
Life and general	5	84,426
(of which foreign)	*(3)*	*(66,598)*
Reinsurance companies	**7**	**7,146**
Life	1	369
(of which foreign)	*(0)*	*(0)*
General	5	2,636
(of which foreign)	*(3)*	*(1,966)*
Life and general	1	1,988
(of which foreign)	*(1)*	*(1,988)*
Islamic (takaful) insurance companies	**12**	**20,400**
Islamic insurers (takaful operators)	12	20,400
(of which foreign)	*(3)*	*(350)*
International takaful operators	0	0
(of which foreign)	*(0)*	*(0)*
Islamic (takaful) reinsurance companies	**4**	**..**
Islamic reinsurance (retakaful operators)	4	..
(of which foreign)	2	..

.. Not available.

Source: Information provided by BNM.

4.7.2.4 Labuan (offshore) banking and insurance

4.86. The Labuan International Business and Finance Centre (LIBFC) is regulated and supervised by the Labuan Financial Services Authority (LFSA): banking and insurance services are among the various permitted international economic activities. All activities are carried out only in foreign currencies and predominantly with non-residents. Two new laws entered into force in 2010, replacing previous legislation: the Labuan Financial Services and Securities Act and the Labuan Islamic Financial Services and Securities Act.[146] According to the authorities, the intention of these new laws is to bring the LIBFC's regulatory and supervisory standards up to par with international standards.

[146] These laws may be viewed at: http://www.lfsa.gov.my/legislation.

4.87. In 2012, the value of the Labuan banking sector's total assets was over RM 126 billion, and that of insurance was RM 13.9 billion (Table 4.8).

Table 4.8 Offshore banking and services, 2012

Institution type	Number	Assets (RM million)
Commercial banks:	59	134,341
(of which: conventional)	(37)	(126,983)
(of which: Islamic)	(6)	(7,358)
Investment banks	16	1,809
Insurance companies	203	13,947

Source: Information provided by LFSA.

4.88. Companies established in the LIBFC may opt to pay either a corporate tax rate of 3% or RM 20,000. They are also exempt from withholding tax, stamp duties, and indirect taxes. Non-Malaysian employees working in a managerial capacity in a Labuan entity are granted a 50% tax exemption on gross employment income.[147]

4.7.2.5 Development finance institutions

4.89. Malaysia also has 13 development financial institutions (DFIs), which are either owned or controlled by the Government. In 2012, DFIs made up 5.6% of the financial sector's total assets (Chart 4.1). The 2002 Development Finance Institutions Act (DFIA) authorizes the BNM to regulate and supervise six DFIs under the standards applicable to commercial banks.[148] The other DFIs are supervised by ministries or government agencies.[149] Three of the six DFIs under the BNM's purview accept retail deposits, have a large branch network, and account for 25.6% of the total number of deposit accounts in the banking system.[150]

4.90. The DFIs were established to develop and promote key sectors considered important to the development objectives of the country. These sectors include agriculture, small and medium-sized enterprises (SMEs), infrastructure, maritime, export-oriented sectors, capital-intensive sectors, and high-technology industries.[151] As explained by the authorities, DFIs complement the banking system by providing financing to the underserved segment. Whilst DFIs lend at market rates for financing under their own funds, they also provide financing at favourable rates to targeted groups, particularly entrepreneurs. The special schemes include: Entrepreneur Development Fund Scheme; the Special Fund for Tourism; the Fund for Food; the Micro-economic Stimulus Package; the Paddy Credit Scheme; the Maritime Fund; the Creative Industry Fund; the Loan for Taxi Owners scheme; and the Rural Economic Financing Scheme. In December 2012, BNM strengthened the requirements on DFI financial reporting and disclosures, in order to improve the transparency of their performance.[152] Since 2010, it has also issued guidelines to DFIs relating to anti-money-laundering and prudential limits and standards.[153]

4.91. In 2012, total lending by all DFIs amounted to RM 119 billion. Around 70% of loans were for consumption credit or related to the property sector. Loans directed to agriculture, forestry and fisheries totalled RM 7.1 billion; to manufacturing RM 5.7 billion; and to transport, storage and communication RM 5.4 billion.[154]

[147] For more information, see MIDA online information. Viewed at: http://www.mida.gov.my/env3/uploads/IncentivesCompilation/LFSA/2013/AppV.pdf.

[148] BNM-supervised DFIs are: Bank Pembangunan Malaysia Berhad; Bank Perusahaan Kecil & Sederhana Malaysia Berhad (SME Bank); Export-Import Bank of Malaysia Berhad (EXIM Bank); Bank Kerjasama Rakyat Malaysia Berhad; Bank Simpanan Nasional; and Bank Pertanian Malaysia Berhad (Agrobank).

[149] Ministry-supervised DFIs are: Malaysian Industrial Development Finance Berhad; Credit Guarantee Corporation Berhad; Lembaga Tabung Haji; Sabah Development Bank Berhad; Sabah Credit Corporation; Borneo Development Corp. (Sabah) Sdn Bhd; and Borneo Development Corp. (Sarawak) Sdn Bhd.

[150] IMF (2013c).

[151] BNM online information, "Development Financial Institutions". Viewed at: http://www.bnm.gov.my/index.php?ch=fs_mfs&pg=fs_mfs_dfi&lang=en.

[152] BNM (2013b).

[153] Guidelines viewed at: http://www.bnm.gov.my/index.php?ch=en_reference&pg=en_reference_index&ac=584#dfi.

[154] BNM (2013b).

4.7.3 Telecommunications

4.92. There were no changes to Malaysia's telecommunications legislation during the review period (Table A4.3). The sector is regulated by the Communications and Multimedia Commission (CMC), an agency under the responsibility of the Ministry of Communications and Multimedia Malaysia (MCMM). There have been no changes to subsidiary legislation since 2010. Regulatory developments since 2010 include the introduction of new formats for mobile numbers and an agreement between Malaysia and Singapore on reduced mobile roaming prices by all operators in both countries.[155]

4.93. In 2011, investment in telecommunications in Malaysia reached nearly RM 5.6 billion, which according to the ITU, exceeds the world average. The ITU also notes that the ratio of telecommunications revenues to GDP in Malaysia is among the highest in the world, suggesting that the telecommunications sector has made a major contribution to economic growth. Overall, Malaysia ranked 51st out of 161 countries in 2011 in the ITU Information and Communication Technology (ICT) Price Basket, which tracks and compares the affordability of ICT services around the world. It ranked 59th out of 157 countries in the ITU ICT Development Index, which ranks country performance with respect to ICT infrastructure and uptake.[156] Information was not available about price changes in the telecommunications sector since 2010.

4.94. The Malaysian Government still maintains a strong presence in the telecommunications sector. It is the majority shareholder of Telekom Malaysia, the former government division for telecommunication services. Telekom Malaysia was privatized in 1987 and sold off its mobile division in 2008; this is now a separate GLC called Axiata.[157] The fixed-line sector continues to be dominated by Telekom Malaysia, with a market share of 95%. TIME dotcom Berhad (TIME), which is 100% owned by the Government, provides wholesale bandwidth and operates the Cross Peninsular Cable System.[158] Information was not available on the number of fixed and mobile telephone providers in Malaysia, the respective market share of each of these providers or foreign investment in these companies.

4.95. Malaysia's mobile telecommunications sector continued to grow rapidly over the review period: with mobile subscriptions increasing from 107.9 per 100 inhabitants in 2009 to 140.9 per 100 inhabitants in 2012. Subscriptions to pre-paid phones account for around three quarters of total mobile subscriptions. Fixed-line telephone subscriptions have slightly declined (Table 4.9).[159] According to the CMC, as at October 2013, 62% of households were subscribed to a broadband network, mainly through mobile devices. Number portability is allowed for mobile phone subscribers (but not fixed-line subscribers). In December 2012, the Communications and Multimedia Commission allocated the necessary mobile spectrum for 4G services to eight companies.

Table 4.9 Selected telecommunication indicators, 2009-12

	2009	2010	2011	2012
Fixed telephone subscriptions (million)	4.5	4.6	4.5	4.6
Fixed telephone subscriptions per 100 inhabitants	16.2	16.2	15.7	15.7
Mobile cellular subscriptions (million)	30.1	33.9	36.7	41.3
Mobile subscriptions per 100 inhabitants	107.9	119.2	127.0	140.9

Source: ITU statistics. Viewed at: http://www.itu.int/en/ITU-D/Statistics/Pages/stat/default.aspx.

4.96. Depending on the kind of services they provide, telecommunications companies must obtain one of three types of licence in order to operate in Malaysia: (a) Network Facilities Provider Licence (NFP); (b) Network Service Provider Licence (NSP); or (c) Applications Service Provider Licence (ASP) (Table 4.10). Furthermore, within each of these licence categories, two types of licence are granted: "individual licences" are granted for certain activities where there is a high need for

155 MCMC (2012).
156 ITU (2013).
157 Telekom Malaysia (2013).
158 TIME dotCom Berhad online information, "Corporate information". Viewed at: http://www.time.com.my/aboutus/corporateoverview.asp.
159 EIU (2013b); and MIDA online information, "Malaysia Investment in the Services Sector". Viewed at: http://myservices.miti.gov.my/web/guest/mida.

regulatory control, and "class licences" are granted where lighter regulation is needed. Foreign-owned companies must be incorporated in Malaysia in order to provide any licensed activity. The authorities indicated that licences are generally approved if applicants can meet all the licensing conditions, provide a sound business plan and be in line with national policy objectives and interests. Reasons for the denial of a licence application are only given to the applicants upon request.

Table 4.10 Telecommunications licensing regime, 2013

Licensing category	Individual licence	Class licence
Network Facilities Provider For owners/providers of network facilities infrastructure	Earth stations; fixed links and cables; radio communications transmitters and links; satellite hubs; satellite control stations; space stations; submarine cable landing centres; and towers, poles ducts, and pits used in conjunction with other network facilities	Niche or limited purpose network facilities
Network Service Provider Providers of the basic connectivity and bandwidth, enabling connectivity between different networks	Bandwidth services; broadcasting distribution services; cellular mobile services; access applications services; space services; switching services; and gateway services	Niche customer access; niche connection services
Application Service Provider Provision of services to end-users, such as voice services, data services, and internet access.	n.a.	PSTN telephony; public cellular services; IP telephony; public payphone services; public switched data services; audiotext hosting services provided on an opt-in basis; directory services; internet access services; and messaging services

n.a. Not applicable.

Source: MIDA Information and Communication Technology. Viewed at: http://www.mida.gov.my/env3/uploads/Publications_pdf/Malaysia_InvestmentinTheServicesSector/2012/06%20ICT.pdf.

4.97. In 2012, foreign equity thresholds for licence holders were increased as part of a broader autonomous services liberalization package (see Section 4.5.1). For NSPs and NFPs it was increased from 30% to 70%, and for ASPs from 49% to 100% (see also Table A4.2).[160] As a result of autonomous liberalization measures, Malaysia's applied regime for telecommunications services, is significantly more open than its commitments undertaken under the GATS and its RTAs.[161]

4.98. As noted in Malaysia's previous Review, retail prices for fixed line services are regulated by the Government through the Communications and Multimedia (Rates) Rules 2002. Under the rules, maximum prices are set below which companies are free to set their tariffs; these ceilings have not been changed since 2002. Retail rates for mobile phones are not regulated.

4.99. Malaysia's Universal Service Provision programme is regulated under the Communication and Multimedia Act (CMA) 1998. Its objective is to provide collective and individual access to basic telephony and internet access throughout the country. The USP Fund was established under Section 204 of the CMA into which telecommunications operators contribute a percentage of their revenue. The fund is used to construct telecommunications facilities.

[160] MITI online information. Viewed at: http://myservices.miti.gov.my/web/guest/communication.

[161] For a summary of Malaysia's mode 3 FDI restrictions under the GATS and RTAs for telecommunications services, see: http://www.mida.gov.my/env3/uploads/Publications_pdf/Malaysia_InvestmentinTheServicesSector/2012/06%20ICT.pdf.

4.100. The authorities reported that, in general there are no incentives made available to the telecommunications companies.

4.7.4 Air Transport

4.7.4.1 Institutional and regulatory structure

4.101. The MOT formulates plans and reviews policies relating to air services and is responsible for granting licences to aviation personnel, air service providers, airport operators, and maintenance suppliers. The Department of Civil Aviation (DCA) under the Ministry of Transport (MOT) regulates the aviation sector. It is responsible for providing air traffic services, enforcing airport standards, planning and supervising the development of air traffic control systems, and airport facilities.[162] There have been no changes to the laws governing the air transport sector since Malaysia's previous Review (Table A4.3).

4.102. Malaysia has three main strategies for the air transport sector: to develop a network of modern airports that meet international standards; to promote an open skies aviation policy; and to develop Kuala Lumpur International Airport (KLIA) as a hub for passenger and cargo transport. As announced in the 2014 Budget Speech, the Government intends to formulate a national aviation policy that would outline measures to strengthen the industry.

4.7.4.2 Airports and ground handling services

4.103. Malaysia has 6 international airports and 16 airports serving domestic flights. All airports are owned by the Federal Government. Malaysia Aiports Holdings Berhad, a GLC, manages all but the Senai International Airport. The Senai International Airport is managed by Senai Airports Terminal Services Sdn Bhd, a private, Malaysian-owned company, under a concession agreement with the Federal Government.

4.104. In 2012, air passenger traffic reached 68.5 million, of which 52.2% was domestic, and 47.8% international.[163] Information was not available on the volume and value of exports transported by air. KLIA is Malaysia's main airport, accounting for 58.2% of total passenger transport and 75.4% of total cargo transport.

4.105. The government has made significant infrastructural investments, mainly to facilitate low-cost air transportation. These investments include a new low cost carrier terminal (LCCT) at KLIA to handle more capacity and the construction of another LCCT site in the Kuala Lumpur area.[164] Additionally, the Government announced its intention to upgrade air traffic control systems at KLIA and Subang airports and to upgrade the facilities in several others.[165] Various incentives are offered to encourage new airlines to provide services to Malaysia, and to encourage existing airlines to expand the services offered and provide services to new routes. These include incentive payments relating to passenger volumes and free landing and office rental for a fixed period.

4.106. Foreign participation is not permitted in the ground-handling market in Malaysia.

4.7.4.3 Airlines and air services agreements

4.107. Malaysia has eight domestically licensed providers of scheduled air services (Table 4.11). The industry regulator is responsible for setting foreign equity ceilings for domestic airline companies: these are now set by the Ministry of Transport and the threshold rate is 49%.

4.108. Cabotage is restricted to domestically licenced air carriers through the non-inclusion of cabotage rights in ASAs. Malaysia's main carriers for domestic air passenger transport services,

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[162] CAPA online information. Viewed at: http://centreforaviation.com/profiles/countries/malaysia.

[163] MITI (2013).

[164] ADBI online information, "ASEAN Open Skies and the Implications for Airport Development Strategy in Malaysia". Viewed at: http://www.adbi.org/working-paper/2008/11/04/2736.asean.open.skies.airport.development.strategy.malaysia/open.skies.in.asean/.

[165] PM Department (2010); and the *2014 Budget Speech* introducing the Supply Bill (2014), "Strengthening economic resilience, accelerating transformation and fulfilling promises", 25 October 2013. Viewed at: http://www.fmm.org.my/upload/speech.pdf.

Malaysia Airlines (MAS), a government-linked company, and AirAsia, a private company, are accounted for 30.2% and 53.7% of total domestic air traffic volume in 2012 (Table 4.11).

Table 4.11 Domestic market share of Malaysian carriers (passenger transport), 2010-12

(%)

	2010	2011	2012
Malaysia Airlines (MAS)	34.1	29.0	30.2
AirAsia	50.2	50.8	53.7
Firefly	5.4	10.1	6.1
Berjaya Air	0.2	0.2	0.2
Maswings	9.2	9.3	9.1
Other airlines	0.8	0.6	0.6

Source: Information provided by the Malaysian authorities.

4.109. MAS and Air Asia also provide 25.8% and 26.1% of international aviation services in Malaysia; the rest is provided by 58 foreign airlines. The Government is the majority shareholder of MAS (69.8%), while foreign investors hold 3.53%.[166] According to authorities, the Government does not provide any privileges to MAS, such as subsidies, government guarantees, exclusive route access, a ground handling monopoly or captive markets.

4.110. Market access in the air transport services sector is governed by Malaysia's bilateral air services arrangements and regional arrangements within the context of ASEAN. As at October 2013, Malaysia had 99 bilateral air services arrangements (ASAs) in force (including 13 arrangements applied on a provisional basis). Of these, 5 have entered into force since January 2010, with Azerbaijan, Ecuador, Ethiopia, Tunisia, and Turkmenistan.

4.111. During the review period, ASEAN members agreed to gradually open up their aviation markets for unlimited air passenger services to all cities with international airports within the region (Table 4.12). These agreements are seen as a significant step towards open skies among ASEAN members in line with the region's objective of an ASEAN Economic Community by 2015. In November 2010, ASEAN members concluded the ASEAN-China Air Transport Agreement, which entered into force in August 2011. ASEAN is currently negotiating an ASA with the Republic of Korea.

Table 4.12 ASEAN ASAs, 2013

Agreement	Entry into force for Malaysia	Description
ASEAN Multilateral Agreement on Air Services (MAAS)	15.12.2009	Designation of carriers based on either substantial ownership and effective control (SOEC) or principal place of business and effective control (PPOBEC) is subject to acceptance by ASEAN members. Multiple designation applies. Covers unlimited capacities and exercise of 3rd, 4th, and 5th freedom traffic rights for air passenger services among ASEAN capital cities.
ASEAN Multilateral Agreement on the Full Liberalization of Passenger Air Services (MAFLPAS)	24.05.2011	Builds on the MAAS to allow designated carriers of ASEAN members to provide air passenger services from international airports in one territory to cities with international airports in another territory within the ASEAN region, with full 3rd, 4th and 5th freedom traffic rights.
ASEAN Multilateral Agreement on the Full Liberalization of Air Freight Services (MAFLAS)	15.12.2009	Similar to the MAAS and MAFLPAS except that the MAFLAFS cover the 3rd, 4th and 5th freedom traffic rights for air freight services among ASEAN cities with international airports.

[166] Khaznah Nasional Bhd. (a GLC) holds 69.37% of MAS' shares and 0.51% are held by other Government agencies and institutions (information current as at August 2013).

Agreement	Entry into force for Malaysia	Description
ASEAN-China Air Transport Agreement (AC-ATA)	09.08.2011	Allows designated carriers of ASEAN members to provide air services from any city with an international airport in its territory to any city with an international airport in the territory of China and vice versa with 3rd and 4th freedom traffic rights. Discussions are on-going to expand the agreement to include 5th freedom traffic rights.

Source: WTO document WT/TPR/S/267/Rev.1, 18 October 2012.

4.7.4.4 Sales, reservation, marketing, repair, and maintenance services

4.112. There are no restrictions on the sale or marketing of air transport services and use of computer reservation systems in the aviation industry.[167]

4.113. Aircraft repair and maintenance services are provided by authorized MRO companies (maintenance, repair, and overhaul). The authorities confirmed that there are no equity restrictions in place on establishment of foreign MRO companies in Malaysia, and various foreign-owned companies are present in the Malaysian market. Domestically licensed airlines are not required to undertake repair and maintenance within Malaysia.

4.7.5 Maritime Transport

4.7.5.1 Legal and institutional framework

4.114. There have been no changes to the institutions responsible for maritime transport in Malaysia since 2010. The Ministry of Transport has overall responsibility for the sector, and its Marine Division is in charge of policy formulation. The MOT's Marine Department is charged with issues relating to maritime safety.[168] There have been no changes to maritime-related legislation over the review period (Table A4.2). However, it was noted in the Prime Minister's 2014 Budget Speech that regulations and laws would be reviewed as part of a broader effort to develop a more efficient logistics sector. At the same time the Prime Minister announced the allocation of RM 3 billion in soft loans to be provided under a Maritime Development Fund, which will be managed through the Bank Pembangunan Malaysia (a DFI (see above)). The Fund will provide financing to support the development of the shipping industry, shipyard construction, oil and gas, and maritime-related support activities.[169]

4.7.5.2 Shipping

4.115. Malaysia has two main commercial ship registries: Malaysian Ship Registry and the Malaysian International Ship Registry.

4.116. For vessels to be registered under the Malaysian Ship Registry the owner must be a Malaysian citizen or corporation; a majority shareholding (51%) must be held by Malaysians; the vessel owner must be incorporated in and have an office in Malaysia; and the ship manager must be a Malaysian citizen or corporation.[170] As at October 2013, 5,172 ships were registered, representing 10.9 million gross tonnes (GT). This included 219 oil tankers (2.2 million GT); 494 general cargo vessels (575,876 GT); 16 bulk vessels (279,991 GT), and 28 container vessels (186,739 GT). Malaysia has one government-linked shipping company, the Malaysian

[167] WTO document WT/TPR/S/225/Rev.1, 15 February 2010.
[168] Its functions are: ensuring the safe navigation of merchant vessels; providing services to merchant vessels (such as ship inspection, certification, registration, and licensing); providing services to ships navigating in Malaysian waters and ports; and supervising the examinations of seafarers. For more information, see Marine Department online information. Viewed at: http://www.marine.gov.my.
[169] The *2014 Budget Speech* introducing the Supply Bill (2014), "Strengthening economic resilience, accelerating transformation and fulfilling promises", 25 October 2013. Viewed at: http://www.fmm.org.my/upload/speech.pdf.
[170] These requirements are set out in the Merchant Shipping Ordinance 1952 and the Merchant Shipping Amendment Act 1997. Additionally the company must have paid-up capital of 10% of the value of the ship, or RM 1 million, whichever is higher, and tankers or bulk ships must be less than 15 years old, and other ships less than 20 years old.

International Shipping Corporation (MISC), registered under the Malaysian Ship Registry. MISC transports dry and liquid bulk[171]; it accounts for 10% of Malaysia's total seaborne trade. Various tax exemptions apply: the income of a shipping company which is derived from the operation of sea-going ships registered under the Malaysian Ship Registry is 100% exempt from income tax; employees working on board Malaysian ships are exempt from paying personal income tax; and income received by non-residents from the rental of ISO containers to Malaysian shipping companies is also income tax exempt.[172]

4.117. The Malaysian International Ship Registry (MISR) is for ships owned by foreign citizens. The registry entered into operation in 2006 and is located in the offshore jurisdiction of Labuan.[173] Ship owners must be companies incorporated in Malaysia (100% foreign ownership is permitted) and must have appointed a Malaysian ship manager.[174] Ships must be under a certain age (15 years for tankers and bulk carriers and 20 years for all other ships) and have a minimum weight of 1,600 GT. In October 2013, 22 vessels were this registry, representing 138,178 GT. There have been no notable increases or decreases in registrations since 2010. MISR-registered vessels may undertake domestic trade. Information was not available on fiscal and non-fiscal benefits available to ships registered under the MISR.

4.118. Malaysia's cabotage policy is delineated in the Merchant Shipping Ordinance (1952), Part IIB. Foreign vessels are only allowed to participate in domestic shipping under an exemption mechanism when it is proved that there is no Malaysian vessel available or suitable to perform the job. The Malaysia Shipowners' Association has been appointed to confirm the availability of Malaysian vessels before the MOT issues the licence. The transhipment of containers by foreign vessels has been permitted on certain routes (a) between Penang and Port Klang; (b) Port Klang and Port of Pasir Gudang; (c) Port of Klang and Port of Tanjung Pelepas to Port of Sepangar, Port of Bintulu and Port of Kuching; (d) Port Klang and Tanjung Pelepas Port; and (e) Port of Penang and Tanjung Pelepas Port**.**

4.119. International maritime transport is open to competition: traders are free to choose domestic or internationally registered shipping lines. There is no requirement for government cargos to be shipped on Malaysian vessels. Information was not available on the volume and value of Malaysia's exports transported by ship.

4.7.5.3 Ports

4.120. All of Malaysia's main commercial terminals are owned and regulated by federal/state statutory corporations. Port operations have been extensively contracted out to the private sector, with the exception of Sarawak's three ports (which are owned and operated by state statutory corporations) (Table A4.4). There have been no new concession agreements for the operation of Malaysia's ports granted since 2010. Maximum foreign ownership in port operators is 49%.

4.121. Since 2011, the Government has allowed private companies to own and develop terminals for specialized cargo, such as oil and gas. Approval is required from the respective state government to lease the land and from the federal government for project approval.

4.122. Port Klang is Malaysia's main port and is situated close to the capital, Kuala Lumpur. Tanjung Pelepas Port is the second biggest port and is located at the intersection of the east-west international trade lines, close to Singapore.

4.123. Malaysia has become one of the world's major shipping hubs; container port throughput in 2012 was 20.8 million TEUs, putting Malaysia in a similar league to the United Arab Emirates (16.8 million TEUs in 2011); the Republic of Korea (20.8 million TEUs); and Hong Kong, China (24.4 million TEUs).[175] This is largely due to the rapid development of Malaysia's Tanjung Pelepas

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[171] According to UNCTAD, MISC is no longer is involved in container transportation (UNCTAD online information. Viewed at: http://unctad.org/en/pages/PublicationWebflyer.aspx?publicationid=380).

[172] ISO containers are standard-sized containers used for intermodal freight transport.

[173] Labuan Financial Services Authority online information. Viewed at: http://www.lfsa.gov.my/malaysian-international-shipping-registry-misr.

[174] The ship manager must be a Malaysian citizen resident in Malaysia or a company incorporated in Malaysia with its principal place of business there.

[175] UNCTAD (2012).

Port since its inauguration in 2000. It has the country's largest container terminal and mainly functions as a transhipment hub, hosting the operations of major global shipping companies such as Maersk and Evergreen. Work is currently under way to increase the berthing capacity of both Port Klang and the Port of Tanjung Pelepas.[176]

4.124. Malaysia is ranked 5th out of 159 countries in UNCTAD's 2012 Liner Shipping Connectivity Index (up from 12th place in 2004). This UNCTAD index considers how well connected countries are to global shipping networks.[177]

4.125. There has been no further liberalization of maritime transport and related services since 2009, when maritime agency services and vessel salvage and refloating services were opened up to 100% foreign equity participation (Table A4.1). The authorities confirmed that full foreign equity participation is now allowed for maritime transport-related services as listed in Table A4.4, with the exception of maritime cargo handling services.

4.7.5.4 Maritime transport-related commitments made under the GATS and RTAs

4.126. Malaysia has made maritime transport-related commitments under the GATS and most RTAs to which it is signatory. However, the scope and coverage of commitments varies widely among agreements (Table A4.5).

4.127. Scheduled limitations on market access through commercial presence (mode 3) generally specify that such services may only be provided through a representative office, regional office or locally incorporated joint-venture corporation (JVC) with Malaysian individuals or Malaysian-controlled corporations. JVCs are generally either subject to maximum thresholds for foreign equity participation or minimum *bumiputera* shareholding requirements. For example, with respect to the provision of international maritime transportation services through mode 3, maximum foreign equity participation in JVCs ranges from 30% to 51%, depending on the agreement.[178] For maritime agency services and vessel salvage services, several agreements contain a 30% *bumiputera* shareholding requirement.

4.128. Malaysia has made "additional commitments" under its GATS and RTA schedules to make various port services available to international maritime transport suppliers on reasonable and non-discriminatory terms and conditions.[179]

4.7.6 Tourism

4.129. There have been no changes to legislation governing the tourism sector since Malaysia's previous Review (Table A4.2), or to its responsible institutions, which are the Ministry of Tourism and Culture, and Tourism Malaysia.[180]

4.130. In 2012, Malaysia recorded 25.03 million tourist arrivals and received RM 60.6 billion in tourist receipts. The vast majority of tourist arrivals are from Singapore and other Asian countries

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[176] The expansion of two existing berths at Port Klang (Westport) will increase the Port's capacity from 14.5 million TEUs to 16 million TEUs by 2014. The development of two new berths at the Port of Tanjung Pelepas will increase the port's capacity from 8 million TEUs to 10.5 million TEUs upon completion of the works in 2014.

[177] The index is computed based on five maritime transport sector components: number of ships, their container-carrying capacity, maximum vessel size, number of services, and number of companies that deploy container ships in a country's ports (see UNCTAD online information. Viewed at: http://data.worldbank.org/indicator/IS.SHP.GCNW.XQ).

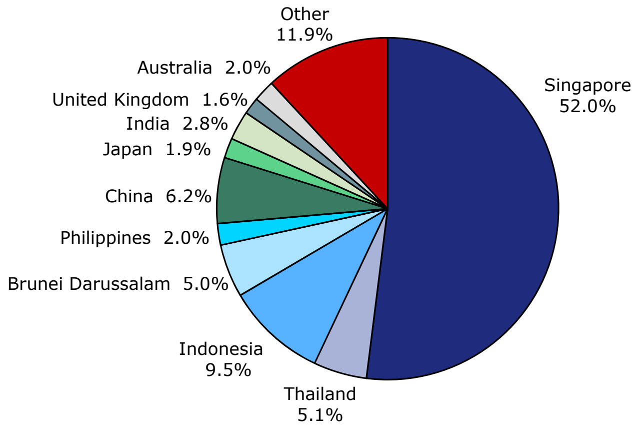
[178] The foreign equity ceiling is 30% under the GATS, ASEAN-Australia-New-Zealand RTA, Malaysia-Japan FTA, and Malaysia-Pakistan FTA; 40% under the ASEAN-China RTA; 49% under the ASEAN-Korea, Malaysia-New Zealand, and Malaysia-India RTAs; and 51% under the AFAS and the Malaysia-Australia FTA.

[179] These port services are: (a) pilotage; towing and tug assistance; (b) provisioning, fuelling, and watering; (4) garbage collection and ballast waste disposal; (c) port captains' services; (d) navigational aids; (e) shore-based operational services essential to ship operations, including communications, water, and electrical supplies; (f) emergency repair facilities; and (9) anchorage, berth, and berthing services.

[180] The Ministry of Tourism and Culture is the main policy formulating and implementing agency for overall development of the sector. Tourism Malaysia, a statutory body under the Ministry of Tourism and Culture, is responsible for promoting tourism and making Malaysia an outstanding tourism destination.

(Chart 4.3). The high-growth markets (over the period 2011-12) have been Bangladesh, China, Iraq, Japan, Kazakhstan, Laos, Nepal, Philippines, the Kingdom of Saudi Arabia, and Viet Nam.

Chart 4.3 Tourist arrivals, 2012



Source: Data provided by Tourism Malaysia.

4.131. Tourism is one of the selected areas for promotion under the 10th Malaysia Plan (10MP) (2011-15) (see section 2), as it is a major generator of employment and source of foreign exchange. In this regard, five concrete initiatives have been identified: development of affordable luxury; family fun; events, entertainment, spa, and sports; business tourism; and nature adventure. By 2011, Malaysia had already reached the 10MP's targets to increase employment in the sector to 2 million jobs, as well as to be within the world's top 10 countries in terms of global tourism receipts. Promotion and marketing efforts are being focused on attracting high-spending tourists, especially from the Russian Federation, India, China, and the Middle East.

4.132. Notable new policy developments over the review period have been increased efforts by the Government to promote medical tourism through institutional strengthening and tax breaks; the introduction of new tax incentives for new four and five star hotels, as well as measures to encourage cruise shipping, through the removal of cabotage restrictions on foreign cruise ships.[181] As announced in the 2014 Budget Speech, RM 2 billion will be provided to a Special Tourism Infrastructure Fund. The fund will provide soft loans to finance the cost of building infrastructure such as hotels, resorts, and theme parks, as well as for the purchase and replacement of equipment related to the tourism sector. This fund will be managed by Bank Pembangunan Malaysia (a DFI) with loan interest rates ranging from 4-6%, with the Government providing a 2% subsidy.

4.133. There has been no further autonomous liberalization of the tourism services since 2009, when full foreign equity participation in certain large-scale or high-end tourism services was allowed, as well as in travel agencies and tour operators' services for inbound travel (Table A4.2). No foreign investment is permitted in travel agencies for outbound travel or for hotel and restaurant services for budget hotels; 49% foreign equity is permitted for convention and exhibition centres with a seating capacity below 5,000; hotel and restaurant services for two and three star hotels; food serving services (for services in budget, two and three star hotels); and beverage serving services for consumption on the premises (for services in budget, two and three star hotels). Malaysia has been making increased efforts to promote medical tourism. Its objective is to develop a niche market of quality but cost-effective medical care. In 2009, the Ministry of Health established the Malaysia Healthcare Travel Council (MHTC) to promote the Malaysian healthcare industry globally; to work with public and private sector players so that medical tourists may have a seamless experience; and to develop programmes and strategies for medical tourism in Malaysia, together with other stakeholders. It also acts as a one-stop-centre for matters relating

[181] In March 2012, non-Malaysian ships were exempted from the provisions of subsection 65KA(1) of the Merchant Shipping Ordinance 1952 in respect of cruise services from any port or place in Malaysia to another port or place in Malaysia (MOT online information. Viewed at: www.mot.gov.my/en/Sectoral/Pages/Maritime.aspx).

to healthcare travel.[182] Medical providers in Malaysia wishing to become members of the MHTC must be evaluated by a selection committee to ensure the quality of service. As at October 2013, there were 72 members of the MHTC. Other measures to support the healthcare travel industry have included: (a) income tax exemptions for the construction/renovation of private hospitals as well as on the value of increased exports of healthcare services (see Table 4.13); (b) the lifting of foreign equity limits in private hospitals, medical specialist clinics and dental specialist clinics in 2012 (Table A4.2); and (c) measures to facilitate the employment of foreign medical professionals and dentists and to encourage Malaysian medical specialists to return to Malaysia.[183] Efforts to promote medical tourism seem to have borne fruit, as the number of tourist arrivals for the primary purpose of seeking health treatment nearly doubled between 2010 and 2011.[184]

4.134. Information was not available on GLCs involved in the tourism sector. A wide variety of tax exemptions are available for various tourism-related activities (Table 4.13). The authorities indicated that revenue forgone figures are not published.

Table 4.13 Fiscal incentives for hotels and tourism projects, 2013

Scheme	Eligibility	Incentives offered
Pioneer Status	Companies undertaking new investments in 1-5 star hotels	Five-year partial exemption from income tax payments. Requirement to pay tax on only 30% of statutory income, commencing from day of production. Possibility to carry forward unabsorbed capital allowances and accumulated losses
Investment Tax Allowance (ITA)	Companies undertaking new investments in 1-5 star hotels	Alternative to Pioneer Status. Allowance of 60% on the qualifying capital expenditure incurred within five years from date of expenditure. Companies may offset this allowance against 70% of statutory income in the first year of assessment. Carry forward of unutilized allowances
Enhanced incentives for undertaking new investment in hotel and tourism projects	Companies undertaking new investments in 4 & 5 star hotels in Sabah and Sarawak (applications up to 12/2013 only)	Pioneer Status with income tax exemption of 100% for 5 years. Possibility to carry forward unabsorbed capital allowances and accumulated losses; or ITA of 100% on qualifying capital expenditure incurred within 5 years. The allowance can be offset against 100% of statutory income in year. Carry forward of unutilized allowances
Incentives for reinvestments in hotels and tourism projects	Companies that reinvest in expanding/ modernizing 1-5 star hotels	Pioneer Status with income tax exemption of 70% for 5-years. Possibility to carry forward unabsorbed capital allowances and accumulated losses; or ITA of 60% on qualifying capital expenditure incurred within 5-years. The allowance can be offset against 70% of statutory income each year. Carry forward of unutilized allowances
Incentive for healthcare travel	Investment in construction of new private hospitals or expansion/ renovation of existing ones. Hospitals must be MOH-licensed and MHTC-registered (applications up to 12/2014 only)	ITA of 100% on qualifying capital expenditure within 5 years. The allowance can be offset against 100% of statutory income each year. Carry forward of unutilized allowances
Healthcare travel: double deduction for accreditation expenses	Private hospitals incurring expenses in obtaining domestic/ international accreditation	Double deduction on expenses incurred in obtaining domestic or internationally recognized accreditation. The accreditation body must be MOF-approved

[182] The MHTC reports to an advisory committee chaired by both the Minister of Health and the Minister in the Prime Minister's Department which heads the Economic Planning Unit. The advisory committee comprises representatives from the public and private sectors involved in healthcare travel (for more information, see Malaysia Healthcare Travel Council. Viewed at: http://www.mhtc.org.my).

[183] All foreign medical specialists must first be registered with the relevant medical regulatory authorities such as the Malaysian Medical Council and the National Specialist Registry (NSR) before they can apply for appointment to practice in Malaysian healthcare facilities.

[184] Malaysia received 392,956 medical tourists in 2010 and 583,296 in 2011, representing an increase of 48%.

Scheme	Eligibility	Incentives offered
Incentives for the luxury yacht industry	Companies constructing luxury yachts	Pioneer status with income tax exemption of 70% for 5 years. Unabsorbed capital allowances and accumulated losses may be carried forward
	Companies carrying out repair and maintenance services for luxury yachts in Langkawi	Income tax exemption of 100% for 5 years
	Companies providing luxury yacht charter services	Income tax exemption of 100% for 5 years
Double deduction on overseas promotion and trade fairs	Hotels and tour operators	Double deduction on qualifying expenditure incurred for various promotional activities overseas and for participation in approved international trade fairs in Malaysia
Tax exemption for tour operators	Tour operators licenced by Ministry of Tourism and Culture	Tour operators who bring in at least 750 foreign tourists in groups in a year are exempt from income tax related to the income derived from operating such tours Tour operators organizing domestic tour packages within Malaysia involving the participation of least 1,500 local tourists per year are exempt from income tax related to the income derived from operating such tours
Tax exemption for organizing/ promoting international conferences and trade exhibitions	Companies promoting/ organizing international conferences in Malaysia	Tax exemption on income earned from bringing at least 500 foreign participants into the country (applies to local companies promoting conferences only). Tax exemption for income earned from organizing approved international trade exhibitions, whereby the organizers bring in at least 500 foreign visitors per year (applies to both local and foreign companies)
Deduction on cultural performances	Companies promoting and managing musical/cultural groups and sponsoring approved cultural performances	Single deduction for expenditure. Ceiling for deductions for local performances is RM 500,000 per year. Ceiling for deductions for foreign performances is RM 200,000 per year
Incentive for car rental operators	Car rental operators and tour operators	Car rental operators may receive a full excise duty exemption on purchase of national cars. Tour operators are eligible for a 50% excise duty exemption on locally assembled four-wheel-drive vehicles
Tax exemptions on the value of increased exports	Healthcare services offered to foreign clients[a]	Tax exemption of 100% on the value of increased exports subject to 70% of the income for each year of assessment

a Foreign clients are defined as: (a) a non-Malaysian citizen that participates in the "Malaysia My Second Home" programme and his/her dependants; (b) a non-Malaysian citizen holding a Malaysian student pass and his/her dependents; (c) a non-Malaysian citizen holding a Malaysian work permit and his/her dependents; or (d) a Malaysian citizen who is non-resident and his/her dependents.

Source: MIDA online information. Viewed at: http://www.mida.gov.my/env3/index.php?page=tourism-industry.

4.7.7 Professional services

4.7.7.1 Accounting (including audit) and taxation services

4.135. Over the review period, there have been no changes to legislation governing the accountancy sector (Accountants Act, 1967), or to the governing regulatory body (the Malaysian Institute of Accountants (MIA)).[185] All firms must be established either as sole proprietorships or partnerships. Foreign practitioners are permitted to establish an accounting entity in Malaysia with

[185] The Accountants Act, 1967. Viewed at: http://www.mia.org.my/handbook/act/.

100% foreign ownership. All accountants, auditors, and tax agents must be registered with the MIA before they apply for a licence from the Ministry of Finance. To be eligible for registration, applicants must be citizens or permanent residents. Qualification and work experience requirements apply equally to domestic and foreign accountants, auditors, and tax agents, and are set out in Part IV of the Accountants Act.

4.7.7.2 Legal services

4.136. The Legal Profession (Amendment) Act 2012, was gazetted in September 2012, but has yet to enter into operation, pending the finalization of the Legal Profession (Licensing of International Partnerships and Qualified Foreign Law Firms and Registration of Foreign Lawyers) Rules 2013 and the Guidance Note for Applicants, which are being formulated by the Attorney General's Chambers and the Bar Council. Under previous legislation, there was a 100% Malaysian equity ownership requirement for law firms. Additionally, foreign legal service suppliers were not allowed to practice in Malaysia, except in the Federal Territory of Labuan (and only with respect to advisory and consulting services relating to home-country laws, international law, and offshore corporation laws of Malaysia). The 2012 Act allows for the establishment of international partnerships; qualified foreign law firms as well as the employment of foreign lawyers by Malaysian law firms. Applications for licences to undertake these activities are made to the Bar Council, which will seek a recommendation of a newly established Selection Committee. The Bar Council has the discretion to accept or refuse applications as it sees fit. Licences granted may be subject to conditions (which may be modified after the licence is granted) and will set out the permitted areas of practice. A foreign law firm may not be part of more than one international partnership in Malaysia at any one time, and the permissible equity and voting rights of the foreign law firm in the international partnership are to be determined by the Selection Committee.

4.7.7.3 Architectural services

4.137. Architectural services will be autonomously liberalized once the Architects Act 1967 has been amended. With the amendments, 100% ownership of architectural firms will be permitted. As at October 2013 there was no concrete timeframe for the enactment of new legislation. Under the 1967 Act, architectural consultancy practices may take the form of sole proprietorships or partnerships. Foreigners may hold a maximum of 30% foreign equity in such a practice. To be registered as professional architects, individuals must be citizens or permanent residents of Malaysia, have obtained the required qualifications and practical experience, and be a member of the Malaysian Institute of Architects.[186] It is foreseen that the amended act will relax citizenship and residency requirements for architects. Foreign architects (who are not citizens or permanent residents of Malaysia) may only be registered as temporary architects when they are a consultant to a project either wholly owned by a foreign government, or implemented under a bilateral arrangement. With respect to cross-border supply of architectural services, foreign architectural firms may enter into joint ventures with local firms on specific projects, with the approval of the Board of Architects, which is responsible for the enforcement of the 1967 Act.

4.7.7.4 Engineering services

4.138. Engineering services will be autonomously liberalized once the the Registration of Engineers Act, 1967 has been amended. With the amendments, foreign practitioners will be allowed 100% ownership of engineering consultancy practices (the current foreign ownership threshold is 30%). As at October 2013, there was no concrete timeframe for the enactment of new legislation. To apply for registration as a Professional Engineer a graduate engineer must be a Malaysian citizen or permanent resident, have three years of experience and passed the Professional Assessment Examination. Foreign engineers may have their qualifications recognized in Malaysia via the Washington Accord.[187] It is foreseen that residency and citizenship requirements for registered professional engineers will be relaxed with amendments to the 1967 Act. The governing regulatory body for the subsector is the Board of Engineers.

[186] According to the authorities, foreign trained architects who graduate from programmes that are not in the Malaysian Institute of Architects' list of recognized architecture programmes may apply for an exemption from certain examination requirements.

[187] For more information on the Washington Accord, see http://www.washingtonaccord.org.

4.7.7.5 Quantity surveying services

4.139. Quantity surveying services will be autonomously liberalized once the the Registration of Quantity Surveyor's Act, 1967 has been amended. With the amendments, foreign practitioners will be allowed 100% ownership of engineering consultancy practices (the current foreign ownership threshold is 30%). As at October 2013, there was no concrete timeframe for the enactment of new legislation. Under the Quantity Surveyors Act (1967), firms must be established as a corporation, sole proprietorship or partnership. The Act specifies that quantity surveyors must be registered with the Board of Quantity Surveyors Malaysia, and have successfully graduated from an accredited course, passed a test of professional competence, and undertaken the necessary work experience. Only Malaysian citizens may be registered with the Board, although it is envisaged that with the new act this citizenship clause will be removed. Currently, foreign quantity surveyors may apply to the Board for temporary registration.

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5 APPENDIX TABLES

Table A2. 1 WTO notifications, 1 January 2010 to 31 October 2013

Agreement	Requirement/content	Periodicity	WTO document and date (latest document if recurrent)
Agreement on Agriculture			
Articles 10 & 18.2	Tables ES:1 and ES:2 - Export subsidies	Annual	G/AG/N/MYS/29, 28 March 2012 G/AG/N/MYA/26, 16 March 2010
Articles 5.7 and 18.2	Table MA.5 – Special safeguard	Annual	G/AG/N/MYS/28, 27 March 2012 G/AG/N/MYA/27, 16 March 2010
Agreement on Implementation of Article VI of the GATT 1994 (Anti-dumping)			
Article 16.4	Semi-annual reports of anti-dumping actions (taken within the preceding six months)	Semi-annual	G/ADP/N/244/MYS, 24 September 2013 G/ADP/N/237/MYS, 21 January 2013 G/ADP/N/230/MYS, 26 September 2012 G/ADP/N/223/MYS, 14 March 2012 G/ADP/N/216/MYS, 23 September 2011 G/ADP/N/209/MYS, 18 April 2011 G/ADP/N/202/MYS, 8 September 2010 G/ADP/N/195/MYS, 15 February 2010
General Agreement on Tariffs and Trade 1994			
Enabling clause - GSP	Notification of regional trade agreement	Ad hoc	WT/COMTD/N/37, 12 September 2011 WT/COMTD/N/35, 23 August 2010
Agreement Implementation of Article XXIV:7(a) of the GATT 1994 (Free-trade areas)			
Article XXIV of the GATT 1994	Customs unions and free-trade areas	Ad hoc	WT/REG340/N/1, 13 May 2013 WT/REG330/N/1, 13 February 2013 WT/REG287/N/1, 8 July 2010 WT/REG284/N/1, 9 April 2010
Understanding on the Interpretation of Article XVII of the GATT 1994 (State trading)			
Article XVII:4(a)	State-trading activities	Annual	G/STR/N/11/MYS; G/STR/N/12/MYS; G/STR/N/13/MYS; G/STR/N/14/MYS, 2 September 2013 G/STR/N/2/MYS; G/STR/N/3/MYS; G/STR/N/4/MYS; G/STR/N/5/MYS; G/STR/N/6/MYS; G/STR/N/7/MYS; G/STR/N/8/MYS; G/STR/N/9/MYS; G/STR/N/10/MYS, 7 July 2010
General Agreement on Trade in Services			
Article V:7(a)	Free-trade agreements	Ad hoc	S/C/N/695, 13 May 2013 S/C/N/599, 12 September 2011 S/C/N/559, 8 July 2010 S/C/N/545, 9 April 2010

Agreement	Requirement/content	Periodicity	WTO document and date (latest document if recurrent)
Agreement on Import Licensing Procedures			
Article 1.4(a) and/or 8.2(b)	Laws and regulations	Once, then changes	G/LIC/N/1/MYS/2, 11 April 2013 G/LIC/N/1/MYS/1, 7 September 2011
Articles 5.1, 5.2, 5.3	Notification of an automatic import licensing programme	Ad hoc	G/LIC/N/2/MYS/5, 3 July 2012 G/LIC/N/2/MYS/4, 19 April 2010
Article 7.3	Replies to questionnaire on import licensing procedures	Annual	G/LIC/N/3/MYS/7, 10 October 2011 G/LIC/N/3/MYS/6,28 April 2011 G/LIC/N/3/MYS/5, 26 January 2010
Agreement on Rules of Origin			
Annex II	Preferential rules of origin	Ad hoc	G/RO/N/91, 9 April 2013
Agreement on Safeguards			
Article 12.1(a)	Initiation of investigations	Ad hoc	G/SG/N/6/MYS/1, 9 May 2011
Decision of the Committee on Safeguards	Termination	Ad hoc	G/SG/N/9/MYS/1, 7 September 2011
Agreement on the Application of Sanitary and Phytosanitary Measures			
Article 7 and Annex B	Laws, regulations and emergency measures	Ad hoc	G/SPS/N/MYS/26, 7 January 2011 G/SPS/N/MYS/25, 13 August 2010 G/SPS/N/MYS/20, 6 July 2009
Agreement on Subsidies and Countervailing Measures			
Article 25.1	Article XVI:1 of the GATT 1994 and Article 25 of the SCM Agreement	Full notification every three years; annual updating	G/SCM/N/259/Add.1, 18 October 2013 G/SCM/N/220/MYS, 14 October 2011
Agreement on Technical Barriers to Trade			
Articles 2.9, 2.10, 5.6, and 5.7	Proposed and adopted technical regulations	Ad hoc	**2013:** G/TBT/N/MYS/33-36 **2012:** G/TBT/N/MYS/28-32 G/TBT/N/MYS/27/Rev.1, 2 May 2012 **2011:** G/TBT/N/MYS/18-27 **2010:** G/TBT/N/MYS/15/Rev.1, 19 October 2010 G/TBT/N/MYS/17, 20 August 2010
Agreement on Trade-Related Aspects of Intellectual Property Rights			
Article 63.2	Laws and regulations	Once, then changes	IP/N/1/MYS/D/2, 6 August 2013 IP/N/1/MYS/D/3, 6 August 2013 IP/N/1/MYS/G/3, 6 August 2013 IP/N/1/MYS/2, 2 August 2013
Article 69	Contact points	Once, then changes	IP/N/3/MYS/1, 1 August 2013

Source: WTO Secretariat.

Table A3. 1 Malaysia's tariff summary, 2009 and 2013

	2009				2013			
	Number of lines	Average (%)	Range (%)	Duty free (%)	Number of lines	Average (%)	Range (%)	Duty free (%)
Total	**10,389**	**7.4**	**0-90**	**60.3**	**9,417**	**5.6**	**0-90**	**64.6**
HS 01-24	1,307	2.7	0-90	72.2	1,526	2.5	0-90	74.6
HS 25-97	9,082	8.0	0-60	58.6	7,891	6.2	0-60	62.6
By WTO category								
WTO agricultural products	1,192	2.8	0-90	70.9	1,255	2.9	0-90	70.9
Animals and products thereof	142	3.1	0-50	88.0	176	2.5	0-50	89.8
Dairy products	46	3.7	0-50	84.8	38	4.5	0-50	81.6
Fruit, vegetables, and plants	345	2.1	0-90	73.6	346	2.0	0-90	73.1
Coffee and tea	29	6.2	0-15	41.4	29	6.2	0-15	41.4
Cereals and preparations	144	6.2	0-50	59.0	161	6.3	0-50	60.9
Oils seeds, fats, oil, and their products	201	2.1	0-20	64.2	213	2.2	0-20	63.4
Sugars and confectionary	31	1.6	0-15	87.1	22	2.3	0-15	81.8
Beverages, spirits, and tobacco	102	3.7	0-20	35.3	110	3.7	0-20	34.5
Cotton	5	0.0	0	100.0	5	0.0	0	100.0
Other agricultural products, n.e.s.	148	0.9	0-25	58.9	155	0.8	0-25	91.6
WTO non-agricultural products	9,197	7.9	0-60	58.8	8,162	6.0	0-60	63.6
Fish and fishery products	192	1.6	0-20	80.7	349	1.0	0-20	88.5
Minerals and metals	1,463	15.4	0-60	39.0	1,235	8.7	0-60	44.0
Chemicals and photographic supplies	1,341	4.8	0-50	70.5	1,261	4.4	0-50	73.0
Wood, pulp, paper, and furniture	2,380	2.5	0-40	86.1	1,824	2.7	0-40	84.6
Textiles	894	11.4	0-30	21.7	810	8.9	0-30	30.9
Clothing	236	15.4	0-20	19.9	248	0.2	0-20	98.8
Leather, rubber, footwear, and travel goods	391	13.0	0-40	40.7	319	11.4	0-40	48.6
Non-electric machinery	770	5.8	0-35	67.0	709	5.0	0-35	69.4
Electric machinery	429	6.1	0-30	63.9	380	6.2	0-30	62.6
Transport equipment	451	18.1	0-50	23.3	410	17.6	0-50	22.9
Non-agricultural products, n.e.s.	619	5.8	0-50	60.7	584	5.7	0-50	63.2
Petroleum	30	0.5	0-5	90.0	32	0.5	0-5	90.6
By ISIC sector								
ISIC 1 - Agriculture, hunting and fishing	1,637	0.7	0-90	94.3	1,305	1.1	0-90	92.0
ISIC 2 - Mining	119	0.8	0-30	90.8	116	0.9	0-30	90.5
ISIC 3 - Manufacturing	8,632	8.7	0-60	53.4	7,995	6.4	0-60	59.7
Manufacturing excluding food processing	7,698	9.4	0-60	51.4	6,936	7.0	0-60	57.7
ISIC 4 - Electrical energy	1	0.0	0	100.0	1	0.0	0	100.0
By stage of processing								
First stage of processing	2,041	1.1	0-90	92.8	1,695	1.3	0-90	91.5

	2009				2013			
	Number of lines	Average (%)	Range (%)	Duty free (%)	Number of lines	Average (%)	Range (%)	Duty free (%)
Semi-processed products	3,445	8.7	0-50	57.2	3,118	5.6	0-50	60.9
Fully processed products	4,903	9.7	0-60	49.0	4,604	7.2	0-60	57.1
By HS section								
01 Live animals and products	325	2.8	0-50	85.8	478	2.2	0-50	88.9
02 Vegetable products	354	2.7	0-90	73.4	399	2.5	0-90	75.0
03 Fats and oils	166	2.5	0-20	59.0	171	2.6	0-20	58.5
04 Prepared food, beverages and tobacco	462	2.6	0-20	66.5	478	2.6	0-20	65.9
05 Mineral products	203	1.4	0-50	87.7	202	1.4	0-50	87.6
06 Chemicals and products thereof	1,083	2.2	0-50	84.9	1,025	2.0	0-50	86.6
07 Plastics, rubber, and articles thereof	655	13.5	0-40	29.0	563	13.4	0-40	28.6
08 Raw hides and skins, leather, and its products	99	5.3	0-25	63.6	82	0.4	0-10	96.3
09 Wood and articles of wood	2,024	1.4	0-40	92.9	1,511	1.4	0-40	91.9
10 Pulp of wood, paper and paperboard	333	10.4	0-30	37.2	294	10.4	0-25	38.8
11 Textiles and textile articles	1,075	11.9	0-30	22.4	1,025	6.4	0-30	48.5
12 Footwear, headgear, etc.	84	14.0	0-30	31.0	71	6.3	0-30	60.6
13 Articles of stone, plaster, cement	204	18.2	0-60	24.0	188	17.3	0-60	26.1
14 Precious stones and metals, pearls	62	2.7	0-20	67.7	58	0.4	0-10	93.1
15 Base metals and articles thereof	1,020	18.6	0-50	29.3	823	9.3	0-30	32.9
16 Machinery, electrical equipment, etc.	1,257	5.4	0-35	68.3	1,140	5.0	0-35	69.3
17 Transport equipment	463	17.8	0-50	24.0	422	17.3	0-50	23.7
18 Precision equipment	266	0.8	0-35	91.4	244	0.8	0-35	92.2
19 Arms and ammunition	26	14.2	0-30	7.7	22	13.6	0-30	9.1
20 Miscellaneous manufactured articles	218	9.6	0-50	40.4	213	9.5	0-50	44.6
21 Works of art, etc.	10	2.0	0-5	60.0	8	1.3	0-5	75.0

Note: Calculations exclude in-quota and specific rates and include the *ad valorem* part of compound and alternate rates. The 2009 tariff is based on HS02 nomenclature; the 2013 tariff is based on HS12. Calculations for averages are based on national tariff line level (9-digit).

Source: WTO Secretariat calculations, based on data provided by the Malaysian authorities.

Table A4. 1 Quota utilization for TRQ products, 2011

HS code	Description	Unit	In-quota tariff	Out-of-quota tariff	Quota volume	Import volume[a]	Import origin
0103.91.000	Live swine, weighing less than 50 kg	Unit	15	20		-	
0103.92.000	Live swine, weighing 50 kg or more	Unit	15	20		-	
0105.11.900	Day-old chicks of the species *gallus domesticus* weighing not more than 185 g other	Unit	10	20	2,674,722	3,410,122	Australia, France, Germany, Netherlands, United Kingdom, United States
0105.94.190	Fowl of species *gallus domesticus* weighing not more than 2,000 g	Unit	10	20	2,111,102	4,446	Netherlands
0203.11.000	Meat of swine – carcasses and half-carcasses, frozen	Tonne	25	50	1,908	290,539	China, Viet Nam
0203.21.000	Meat of swine – carcasses and half-carcasses, fresh or chilled	Tonne	25	50	1864	304	Germany
0207.11.000	Of fowl of species *gallus dimesticus* – not cut in pieces, fresh or chilled	Tonne	20	40	10,252	1,753	Netherlands
0207.12.000	Of fowl of species *gallus dimesticus* – not cut in pieces, frozen	Tonne	20	40	10,151	406164	Brazil, Thailand
0207.13.000	Of fowl of the species *gallus domesticus* – cuts and offal, fresh or chilled	Tonne	20	40	10,151	55,812	Germany, Thailand
0207.14.000	Of fowl of the species *gallus domesticus* – cuts and offal, frozen	Tonne	20	40	18,909	34,674,373	China, Denmark, Germany, Netherlands, United States
0401.10.110	Milk and cream, not concentrated nor containing added sugar or other sweetening matter, of a fat content, by weight, not exceeding 1%, liquid	Litre	20	50	1,728,140	421,782	Australia; Austria; France; Germany; Hong Kong, China; Ireland, Netherlands, New Zealand, United Kingdom, United States
0401.20.110	Milk and cream, not concentrated nor containing added sugar or other sweetening matter, of a fat content, by weight, exceeding 1% but not exceeding 6%, liquid	Litre	20	50	4,784,420	811,795	Australia, Indonesia, New Zealand, Thailand
0401.30.110	Milk and cream, not concentrated nor containing added sugar or other sweetening matter, of a fat content, by weight, exceeding 6%, liquid	Litre	20	50	2,030,100	1,372,473	Australia, Ireland, New Zealand, Singapore
0407.00.111	Chicken eggs in shell for hatching	Unit	10	50		-	
0407.00.112	Duck eggs in shell for hatching	Unit	10	50		-	

HS code	Description	Unit	In-quota tariff	Out-of-quota tariff	Quota volume	Import volume[a]	Import origin
0407.00.910	Chicken eggs in shell, preserved or cooked-other	Unit	10	50	80,577,850	2,710	Australia, Germany, Netherlands
0407.00.920	Duck eggs in shell, preserved or cooked-other	Unit	10	50	81,077,850	240	China
0704.90.110	Round cabbages	Tonne	Nil	90	47,675	43,366.73	China, Indonesia, Netherlands, Thailand

a Provisional data.

Source: Information provided by the Malaysian authorities.

Table A4. 2 Services liberalization, 2009-13

Services subsector	Market opening (date announced)	New foreign ownership ceiling (date of implementation)	Previous foreign ownership ceiling
BUSINESS SERVICES			
Professional Services			
• Accounting (including audit) and taxation	2011	100% (2012)	None
• Legal services	2011	Foreign equity ceiling not yet decided (not yet implemented)	Foreign ownership not previously allowed
• Architectural services	2011	100% (not yet implemented)	30%
• Engineering services	2011	100% (not yet implemented)	30%
• Quantity surveying services	2011	100% (not yet implemented)	30%
Computer and Related Services			
• Consultancy services related to the installation of computer hardware	2008	100% (2009)	None
• Software implementation services - systems and software consulting services; systems analysis services; systems design services; programming services and systems maintenance services	2008	100% (2009)	None
• Data processing services - input preparation services; data processing and tabulation services; time sharing services and other data processing services	2008	100% (2009)	None
• Database services	2008	100% (2009)	None
• Maintenance and repair services of computers	2008	100% (2009)	None
• Other services - data preparation services; training services; data recovery services; and development of creative content	2008	100% (2009)	None
Rental/Leasing Services without Operators			
• Rental/leasing services of ships that excludes cabotage and offshore trades	2009	100% (2009)	30%
• Rental of cargo vessels without crew (bareboat charter) for international shipping	2009	100% (2009)	30%
Other business services			
• Regional distribution centres	2009	100% (2009)	None
• International procurement centres	2009	100% (2009)	None
• Technical testing and analysis services - composition and purity testing and analysis services, testing and analysis services of physical properties, testing and analysis of integrated mechanical and electrical system and technical inspection services	2009	100% (2009)	70%
• Management consulting services - general, financial (excluding business tax), marketing, human resources, production and public relations services	2009	100% (2009)	49%

Services subsector	Market opening (date announced)	New foreign ownership ceiling (date of implementation)	Previous foreign ownership ceiling
COMMUNICATION SERVICES			
Courier services			
• Courier services	2011	100% (2012)	n.a.
Telecommunications services			
• Telecommunications licenses for application service providers (ASPs)	2011	100% (2012)	40%
• Telecommunications licences for network service providers (NSPs) and Network Facilities providers (NFPs)	2011	70% (2012)	30%
DISTRIBUTION SERVICES			
• Departmental and speciality stores	2011	100% (2012)	70%
EDUCATIONAL SERVICES			
• Technical and vocational schools	2011	100% (2012)	n.a.
• Technical and vocational schools for students with special needs	2011	100% (2012)	n.a.
• Skills training centres	2011	100% (2012)	..
• International schools	2011	100% (2012)	20%
• Private universities	2011	100% (2012)	51%
ENVIRONMENTAL SERVICES			
• Incineration services	2011	100% (2012)	..
HEALTH-RELATED AND SOCIAL SERVICES			
• All veterinary services	2009	100% (2009)	Foreign ownership not previously allowed
• Welfare services delivered through residential institutions to the aged and handicapped	2009	100% (2009)	Foreign ownership not previously allowed
• Welfare services developed through residential institutions to children	2009	100% (2009)	Foreign ownership not previously allowed
• Child day-care services including day-care services for the handicapped	2009	100% (2009)	Foreign ownership not previously allowed
• Vocational rehabilitation services for handicapped	2009	100% (2009)	Foreign ownership not previously allowed
• Private hospitals	2011	100% (2012)	30%
• Medical specialist clinics	2011	100% (2012)	Foreign ownership not previously allowed
• Dental specialist clinics	2011	100% (2012)	Foreign ownership not previously allowed
TOURISM SERVICES			
• Theme park	2009	100% (2009)	49%
• Convention and exhibition centre (seating capacity of above 5,000)	2009	100% (2009)	49%
• Travel agencies and tour operators services (for inbound travel)	2009	100% (2009)	49%
• Hotel and restaurant services (for 4 and 5 star hotels)	2009	100% (2009)	49%

Services subsector	Market opening (date announced)	New foreign ownership ceiling (date of implementation)	Previous foreign ownership ceiling
• Food serving services (for services provided in 4 and 5 star hotels)	2009	100% (2009)	49%
• Beverage serving services for consumption on the premises (for services provided in 4 and 5 star hotels)	2009	100% (2009)	49%
SPORTING AND OTHER RECREATIONAL SERVICES			
• Sporting services (sports event promotion and organization services)	2009	100% (2009)	None
TRANSPORT SERVICES			
• Class C freight transportation (Private carrier licence in order to transport own goods)[a]	2009	100% (2009)	None
Supporting and auxiliary transport services			
• Maritime agency services	2009	100% (2009)	30%
• Vessel salvage and re-floating services	2009	100% (2009)	30%

n.a. Not applicable.
.. Not available.

a. Relates to road transportation.

Source: MITI online information. Viewed at: http://myservices.miti.gov.my/web/guest/autonomous;jsessionid=283CB21AA7AAC1E8A27A8C5913AAE31B; and information provided by the Malaysian authorities.

Table A4. 3 Legislation governing services sectors, 2013

Sector	Legislation
Banking and insurance	Development Finance Institutions Act, 2002
	Labuan Financial Services and Securities Act, 2010
	Labuan Islamic Financial Services Act, 2010
	Malaysia Deposit Insurance Corporation Act, 2011
	Islamic Financial Services Act, 2013
	Financial Services Act, 2013
Telecommunications	Communications and Multimedia Act, 1988
	Communications and Multimedia Commission Act, 1988
Maritime transport	Carriage of Goods by Sea Act, 1950
	Merchant Shipping Ordinance, 1952
	Penang Port Commission Act, 1955
	Sarawak Port Authorities Ordinance, 1961
	Port Authorities Act, 1963
	Sabah Port Authority Enactment Act, 1967
	Bintulu Port Authority Act, 1981
	Ports (Privatisation) Act, 1990
Air transport	Civil Aviation Act, 1969 (and Civil Aviation Regulations 1996)
	Carriage by Air Act, 1974
	Aviation Offenses Act, 1984
	Airport and Aviation Services (Operating Company) Act, 1991
	International Interest in Mobile Equipment (Aircraft) Act, 2006
Tourism	Tourism Industry Act, 1992 (latest amendment 1998)
	Malaysia Tourism Promotion Board, 1992
	Tourist Vehicles Licensing Act, 1999

Source: Various government sources.

Table A4. 4 Federal and state ports: volume of traffic, ownership, and operation, 2013

	Regulator	Operator(s)	Operator: foreign equity participation (%)	Arrivals of ocean-going vessels (2012)	
				Number	'000 GRT
Federally-owned ports					
Klang Port	Port Klang Authority	Northport (Malaysia) Berhad Westports Malaysia Sdn Bhd.	30% 30%	15,279	384,436
Tanjung Pelepas Port	Johor Port Authority	Port of Tg Pelepas Sdn. Bhd.	30%	4,728	40,328
Penang Port	Penang Port Commission	Penang Port Sdn Bhd	0%	3,962	66,941
Johor Port	Johor Port Authority	Johor Port Bhd	0%	3,678	30,286
Kuantan Port	Kuantan Port Authority	Kuantan Port Consortium Sdn Bhd	40%	2,059	44,469
Kemaman Port	Kemaman Port Authority	Konsortium Pelabuhan Kemaman Sdn Bhd	0%	564	5,723
Bintulu Port	Bintulu Port Authority	Bintulu Port Sdn Bdh	0%	2,806	63,987
Port of Tanjung Bruas	Malacca Port Authority	Syarikat perkhidmatan Pelabuhan Gabungan Sdn Bhd (until 31 October 2013)	0%	71	384
State-owned ports					
Sabah					
Sepanggar Port; Tawau Port; Lahad Datu Port; Sandakan Port; Kunak Port; Kudat Port	Sabah Ports Authority	Sabah Ports Sdn Bhd	0%	4,791	37,997
Sarawak					
Kutching Port	Kutching Port Authority	Kutching Port Authority	0%	736	10,337
Rejang Port	Rejang Port Authority	Rejang Port Authority	0%	281	3,611
Miri Port	Miri Port Authority	Miri Port Authority	0%	371	6,134

Source: Maritime Institute of Malaysia online information. Viewed at: www.mima.gov.my/mima/web-links/malaysian-ports; Department of Statistics (2012), *Statistics Yearbook Malaysia 2011*, September. Viewed at http://www.statistics.gov.my/portal/download_Buku_Tahunan/files/BKKP/2011/Buku_Tahunan_Perangkaan_Malaysia_2011[Laporan_Lengkap].pdf; Ministry of Transport (2013), Table 3.7, *Statistics Book 201*, Kuala Lumpur; and information provided by the Malaysian authorities.

Table A4. 5 Maritime transport commitments under the GATS and FTAs: market access, modes 1-3

	GATS	AFAS	ASEAN-Korea	ASEAN-China	ASEAN-Aus-NZ	Mal-Jap	Mal-Pak	Mal-NZ	Mal-India	Mal-Aus
	■ - full commitment/no restriction; ◘ - partial commitment; □ - unbound/no commitment; U* - unbound as not technically feasible									
International maritime transportation services[a]	M1 ■ M2 ■ M3 ◘	M1 ■ M2 ■ M3 ◘	M1 ■ M2 ■ M3 ◘	M1 ■ M2 ■ M3 ◘	M1 ■ M2 ■ M3 ◘	M1 ■ M2 ■ M3 ◘	M1 ■ M2 ■ M3 ◘	M1 ■ M2 ■ M3 ◘	M1 ■ M2 ■ M3 ◘	M1 ■ M2 ■ M3 ◘
Maritime agency services	M1 ■ M2 ■ M3 ◘	-	M1 ■ M2 ■ M3 ◘	M1 ■ M2 ■ M3 ■	M1 ■ M2 ■ M3 ◘	M1 ■ M2 ■ M3 ◘	M1 ■ M2 ■ M3 ◘	M1 ■ M2 ■ M3 ◘	M1 ■ M2 ■ M3 ■	M1 ■ M2 ■ M3 ■
Maritime cargo handling services	-	M1 ■ M2 ■ M3 ◘	-	-	-	-	-	M1 ■ M2 ■ M3 ◘	-	-
Cargo vessel rental with crew (international shipping)	-	M1 ■ M2 ■ M3 ■	M1 ■ M2 ■ M3 ◘	M1 ■ M2 ■ M3 ■	-	M1 ■ M2 ■ M3 □	M1 ■ M2 ■ M3 ◘	-	-	-
Cargo vessel rental without crew (international shipping)	-	-	M1 ■ M2 ■ M3 ◘	M1 ■ M2 ■ M3 ■	-	M1 ■ M2 ■ M3 □	-	-	M1 ■ M2 ■ M3 ■	-
Maintenance and repair services	-	M1 U* M2 ■ M3 ◘	M1 U* M2 ■ M3 ◘		-	-	M1 U* M2 ■ M3 ◘	-	M1 ■ M2 ■ M3 ◘	-
Vessel salvage and refloating services	M1 ■ M2 ■ M3 ◘	M1 ■ M2 ■ M3 ■	M1 ■ M2 ■ M3 ◘	M1 ■ M2 ■ M3 ■	M1 ■ M2 ■ M3 ◘	M1 ■ M2 ■ M3 ◘	M1 ■ M2 ■ M3 ◘	M1 ■ M2 ■ M3 ◘	M1 ■ M2 ■ M3 ■	M1 ■ M2 ■ M3 ■
Classification societies[b]	-	M1 ■ M2 ■ M3 ◘	-	-	-	-	-	M1 □ M2 ■ M3 ◘	-	-
Maritime freight forwarding services	-	M1 ■ M2 ■ M3 ◘	M1 ■ M2 ■ M3 ◘	M1 ■ M2 ■ M3 ◘	-	-	-	-	M1 ■ M2 ■ M3 ◘	-

a Commitments exclude cabotage. Under some agreements government cargos are also excluded.
b Classification societies are entities that establish technical standards for the construction and operation of ships and offshore structure, and undertake survey to ensure compliance.

Note: Mal-Jap (Malaysia-Japan RTA); Mal-Pak (Malaysia-Pakistan RTA); Mal-NZ (Malaysia-New Zealand RTA); Mal-India (Malaysia-India RTA); Mal-Aus (Malaysia-Australia RTA).

Source: WTO document GATS/SC/52, 15 April 1994; and WTO RTA database. Viewed at:http://rtais.wto.org.

WORLD TRADE ORGANIZATION

G/SCM/N/253/VNM

25 September 2015

(15-4975)

Page: 1/10

Committee on Subsidies and Countervailing Measures

Original: English

SUBSIDIES

NEW AND FULL NOTIFICATION PURSUANT TO ARTICLE XVI:1 OF THE GATT 1994
AND ARTICLE 25 OF THE AGREEMENT ON SUBSIDIES
AND COUNTERVAILING MEASURES

VIET NAM

The following communication, dated 22 September 2015, is being circulated at the request of the Delegation of Viet Nam.

NOTIFICATION PERIOD: 2011-2013

1 PREFERENTIAL IMPORT TARIFF RATES

1. Title of the program

Preferential import tariffs granted for enterprises investing in regions or sectors entitled to investment incentives.

2. Objective of the program

To encourage enterprises to invest in regions or sectors which need to be invested for development.

3. Legal background and authority for the program

a. Legal background

- Import and Export Tariffs Law 2005;
- Decree No.87/2010/ND-CP dated 13 August 2010 guiding the implementation of several articles of the Import and Export Tariffs Law.

b. Authority

The Ministry of Finance

4. Form of the subsidy

Import tariff incentives

5. To whom and how the subsidy is provided

a. To whom the subsidy is provided

Projects in sectors eligible for import tariff incentives which are listed in Annex 1 to the Decree No. 87/2010/ND-CP or in regions eligible for import tariff incentives which are listed in the Decree No.124/2008/ND-CP dated 11 December 2008 and the Decree No. 53/2010/ND-CP dated 19 May2010.

b. How the subsidy is provided

Import tariff incentives contingent upon investment-encouraged areas and sectors are set forth in Clauses 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16 of Article 12 of the Decree No. 87/2010/ND-CP as follows:

i. Goods imported to create fixed assets of investment projects in sectors entitled to import duty preferences listed in the Appendix I to this Decree or in regions entitled to import duty incentives, and investment projects funded with official development assistance (ODA) which are exempted from import duty, include:

- Equipment and machinery;
- Special-use means of transport included in technological lines which cannot be domestically manufactured yet; worker-transporting vehicles including cars of 24 seats or more and waterway crafts;
- Components, details, knocked down parts, spare parts, fittings, molds and accessories accompanying machinery, equipment and special-use means of transport described at Points a and b of this Clause for assembly into complete units;

- Materials and supplies which cannot be domestically produced yet, to be used for manufacturing equipment and machinery included in technological lines or for manufacturing components, details, knocked down parts, spare parts, fittings, molds and accessories accompanying equipment and machinery stated at Point a of this Clause for assembly into complete units;
- Building materials which cannot be domestically produced yet.

ii. Plant varieties and animal breeds permitted to be imported for the implementation of investment projects in the sectors of agriculture, forestry and fishery.

iii. Exemption from import duty for imports specified in the Clauses 6 and 7 of the Article 8 of the Decree No. 87/2010/ND-CP is also applied to projects with expanded scale and renewed or replaced technology.

iv. Duty exemption upon the first-time importation is applied to imported equipment and devices listed in the Appendix II to this Decree to create fixed assets of projects entitled to import duty incentives and investment projects funded with official development assistance (ODA) capital on hotels, office buildings, apartments for lease, housing, trade and technical service centres, department stores, golf courses, tourist resorts, sports facilities, recreation and entertainment centres, medical examination and treatment, training, cultural, financial, banking, insurance, audit, and consultancy services.

Projects with goods enjoying import duty exemption upon first-time importation specified in this Clause are not entitled to duty exemption provided in other clauses of this Article.

v. Duty exemption is applied to goods imported in service of petroleum activities including:

- Equipment and machinery; special-use means of transport necessary for petroleum activities; worker-transporting vehicles, including cars of 24 or more seats and waterway crafts, including components, details, knocked down parts, spare parts, fittings, molds and accessories accompanying the aforesaid equipment, machinery, special-use means of transport or worker-transporting vehicles for assembly into complete units or for use;
- Supplies necessary for petroleum activities which cannot be domestically produced yet;
- Medical equipment and devices and first-aid medicines for use on drilling platforms and floating works which are certified by the Ministry of Health;
- Office equipment and facilities for petroleum activities;
- Other goods temporarily imported for re-export for petroleum activities.

vi. Shipbuilding establishments are exempt from export duty on exported seagoing vessels, and from import duty on machinery and equipment imported to create their fixed assets; means of transport included in technological lines imported to create fixed assets; and raw materials, supplies and semi-finished products to serve shipbuilding activities, which cannot be domestically produced yet.

vii. Materials and supplies imported to directly serve the production of software products, which cannot be domestically produced yet, are exempted from import duty.

viii. Goods imported for direct use in scientific research and technological development, including machinery, equipment, spare parts, supplies and means of transport which cannot be domestically produced yet, technologies which cannot be domestically produced yet; scientific documents, books and newspapers and journals and electronic sources on science and technology are exempted from import duty.

ix. Materials, supplies and accessories which cannot be domestically produced yet and are imported for production activities of investment projects in sectors which investment is specially encouraged promulgated in Appendix I to this Decree or in regions with extremely difficult socio-economic conditions (excluding projects to manufacture and assemble automobiles, motorcycles, air conditions, electric heaters, refrigerators, washing machines, electric fans, dish washers, disc players, audio systems, electric irons, water kettles, hair dryers, hand dryers and other articles as decided by the Prime Minister) are exempted from import duty for 5 (five) years after the date of starting manufacture.

x. Goods produced, processed, recycled and assembled in non-tariff zones without using imported raw materials and accessories are exempted from import duty when they are imported into the domestic market; in case of using imported raw materials and accessories, these goods are only subject to import duty calculated based on imported raw materials and accessories constituting these goods when they are imported into the domestic market.

xi. Machinery, equipment and means of transport (excluding under 24-seat cars and cars designed for passenger-cum-cargo transport equivalent to under 24-seat cars) temporarily imported for re-export by foreign contractors for the execution of ODA-funded projects in Vietnam are exempted from import duty upon their temporary import and exempted from export duty upon their re-export.

6. Subsidy per unit

Specific statistics data are not available.

7. Duration of the subsidy

From 2011 to 2013.

8. Statistic data permitting an assessment of the trade effects of the subsidy

Unfeasible.

2 INCENTIVES ON CORPORATE INCOME TAX

1. Title of the program

Incentives on corporate income tax rates for enterprises operating in regions or sectors entitled to incentives.

2. Objective of the program

To encourage enterprises to invest in regions or sectors which need for development.

3. Legal background and authority for the program

a. Legal background

Law on Corporate Income Tax No.14/2008/QH12 and guideline documents.

b. Authority

Ministry of Finance.

4. Form of the subsidy

Preferential corporate income tax rates.

5. To whom and how the subsidy is provided

a. To whom the subsidy is provided

- Enterprises established under Viet Nam's laws;
- Enterprises established under foreign laws (hereinafter referred to as foreign enterprise) with or without permanent residence entities in Viet Nam;
- Organisations established under the Law on Cooperatives;
- Non-productive entities established under Viet Nam's laws;
- Productive entities.

b. How the subsidy is provided (From 2011 to the end of 2013)

- Preferential tax rate of 10% in 15 years, tax exemption in 4 years, and 50% reduction of the tax amount payable in 9 succeeding years are applied to: (i) newly-established enterprise from a project carried out in the regions with especially difficult socio-economic conditions, economic zones, and high-technology parks; (ii) newly-established enterprises from a project in the sectors including high technology as prescribed by laws; scientific research and technology development; water plants, power plants, and water supply and drainage system; bridges, roads, and railroads; airports, seaports, and river ports; terminals, train stations, and other particularly important infrastructure decided by the Prime Minister; and software production.

For newly-established enterprises from a project in the above sectors with large scale, high technology or need of investment attraction, duration of applying preferential tax may be prolonged but the total time of applying preferential tax of 10% does not excess 30 years. The Prime Minister will decide the extension of applying preferential tax of 10% as described in this Law based on the proposal of the Minister of Finance.

- Corporate tax rate of 10% is applied to revenues of enterprises in the sectors of education and training, vocational training, healthcare, culture, sports and environment (hereinafter referred to as socialized sector) for the whole operation duration. Tax exemption in 4 years and 50% reduction of the tax amount payable in the next 5 years are applied to newly-established enterprises in the socialized sector operating in a region which is not in the list of regions with difficult and especially difficult socio-economic conditions.

- Preferential tax rate of 20% in 10 years, tax exemption in 2 years, and 50% reduction of the tax amount payable in the next 4 years are applied to newly-established enterprises from a project operating in a region with difficult socio-economic conditions.
- Preferential tax rate of 20% is applied to agricultural services cooperatives, people credit funds and micro-finance organizations for the whole operation time.

For agricultural services cooperatives, people credit funds and micro-finance organizations is entitled to the corporate tax rate of 20% after expiring the period of applying the corporate tax rate of 10% as described in the Article 15.1.a of the Decree No.124/2008/ND-CP.

The micro-finance organization as described in this Article is the entity established and operated under the Law on Credit organizations.

6. Subsidy per unit

Specific statistics data are not available.

7. Duration of the subsidy

From 2011 to 2013.

8. Statistic data permitting an assessment of the trade effects of the subsidy

Unfeasible.

3 INCENTIVES ON NON-AGRICULTURAL LAND USE TAX

1. Title of the program

Exemption and reduction of non-agricultural land use tax for a project in a sector and region entitled to investment incentives under investment laws.

2. Objective of the program

To encourage enterprise to invest in the sectors and regions which need for development.

3. Legal background and authority for the program

a. Legal background

- Law on Non-agricultural land use tax No.48/2010/QH12 effective from 01 January 2012;
- Decree No.53/2011/ND-CP dated 01 July 2011 of the Government.

b. Authority

Ministry of Finance.

4. Form of the subsidy

Preferential non-agricultural land use tax.

5. To whom and how the subsidy is provided

a. To whom the subsidy is provided

Projects in the sectors entitled to investment incentives; and projects in the regions entitled to investment incentives in the list attached with the Decree No.108/2006/ND-CP of the Government promulgating details and providing guidelines to implement some articles of the Investment Law.

b. How the subsidy is provided

Incentives on non-agricultural land use tax are regulated in the Article 9 and 10 of the Law on Non-agricultural land use tax No.48/2010/QH12 effective from 01 January 2012 as below:

- Exemption from non-agricultural land use tax for projects in the sectors which investment is especially encouraged; projects in the regions with especially difficult socio-economic conditions; and projects in the sectors which investment is encouraged operating in the regions with difficult socio-economic conditions;
- 50% reduction of tax amount payable for projects in sectors which investment is encouraged; and projects in the regions with difficult socio-economic conditions;
- Projects in the sectors and regions eligible for investment incentives are promulgated in the list attached with the Decree No.108/2006/ND-CP of the Government regulating details and providing guidelines to implement some articles of the Law on Investment.

6. Subsidy per unit

Specific statistics data are not available.

7. Duration of the subsidy

From 2012 to 2013.

8. Statistic data permitting an assessment of the trade effects of the subsidy

Unfeasible.

4 CREDIT PROGRAM FOR TRADERS DOING BUSINESS IN DISADVANTAGED REGIONS

1. Title of the program

Credit program for traders doing business in disadvantaged regions.

2. Objective of the program

The Bank for Social Policies lends money to traders doing business in disadvantaged regions (mountains, islands and ethnic minority areas) to meet the investment needs. The program is implemented in order to stimulate investment and prevent economic slowdown in the context of the economy is facing difficulties.

3. Legal background and authority for the program

a. Legal background

- Decision No.92/2009/QD-TTg dated 8 July 2009 of the Prime Minister on credits for traders doing business in disadvantaged regions;
- Decision No.1049/QD-TTg dated 26 June 2014 of the Prime Minister promulgating the list of administrative units in the disadvantaged regions.

b. Authority

- Ministry of Finance;

- The Bank for Social Policies.

4. Form of the subsidy

Direct support (in the form of loans).

5. To whom and how the subsidy is provided

a. To whom the subsidy is provided

Traders doing business in the commune, ward or town specified in the List attached to Decision No.1049/QD-TTg dated 26 June 2014 of the Prime Minister promulgating the List of administrative units in the disadvantaged regions.

b. How the subsidy is provided

- For individual traders who do not open bookkeeping and pay presumptive taxes in accordance with the law: the maximum loan is VND 30 million;
- For individual traders who open bookkeeping and declare tax payment in accordance with the law: the maximum loan is VND 100 million;
- For traders who are economical organizations legally established: the maximum loan is VND 500 million.

6. Subsidy per unit

Specific statistics data are not available.

7. Duration of the subsidy

From 2011 to 2013.

8. Statistic data permitting an assessment of the trade effects of the subsidy

Unfeasible.

5 CREDIT PROGRAM FOR HOUSEHOLDS MANUFACTURING OR DOING BUSINESS IN DISADVATAGED REGIONS

1. Title of the program

Credit program for households manufacturing or doing business in disadvantaged regions.

2. Objective of the program

The Bank for Social Policies lends money to households manufacturing or doing business in disadvantaged regions (mountains, islands and ethnic minority areas) in order to develop production and business, contributing to the implementation of the agriculture and rural development program and equally economic growth across all regions of the country.

3. Legal background and authority for the program

   a. Legal background

   - Decision No. 31/2007/QD-TTg dated 5 March 2007 of the Prime Minister on credits for households manufacturing or doing business in disadvantaged regions;
   - Decision No. 1049/QD-TTg dated 26 June 2014 of the Prime Minister promulgating the List of administrative units in the disadvantaged regions.

   b. Authority

   - Ministry of Finance;
   - The Bank for Social Policies.

4. Form of the subsidy

Direct support (in the form of loans).

5. To whom and how the subsidy is provided

   a. To whom the subsidy is provided

   Households as promulgated in the Civil Code (including households doing farm business) not in the kinds of poor households. These households have production or do business in disadvantaged regions in sectors that are not prohibited by law.

   b. How the subsidy is provided

   - Procurement of materials, equipment, facilities for production; crops and livestock; repair and building of factories, building and improvement of fields and farms; demands for environment sanitation; payment of labour and services for production;
   - Capital contribution to projects or plans on production and business cooperation;
   - Assistance to partly resolve the demands for housing, lighting and training of skilled labours that are closely related to projects or plans on production and business.

6. Subsidy per unit

Specific statistics data are not available.

7. Duration of the subsidy

From 2011 to 2013.

8. Statistic data permitting an assessment of the trade effects of the subsidy

Unfeasible.