

An hourglass-shaped graphic with a globe inside. The top bulb is dark blue, and the bottom bulb is light blue. The globe is centered in the narrow neck of the hourglass. The text is centered within the hourglass.

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February 2, 2009

Congressional Research Service

Report RL33445

*The Proposed U.S.-Malaysia Free Trade Agreement*

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January 25, 2008

**Abstract.** This report addresses the proposed U.S.-Malaysia free trade agreement (FTA). It provides an overview of the Malaysian economy, a review of U.S. interests in the proposed agreement, an examination of possible issues likely to arise during the negotiations, a comparison of tariff rates between the two countries, legislative procedures, and an appendix with a brief chronology and trade data - including U.S. exports and imports to Malaysia by sector and exports to Malaysia by state.

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# The Proposed U.S.-Malaysia Free Trade Agreement

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January 26, 2009

<http://wikileaks.org/wiki/CRS-RL33445>

Congressional Research Service

7-5700

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RL33445

**CRS Report for Congress**

*Prepared for Members and Committees of Congress*

## Summary

This report addresses the proposed U.S.-Malaysia free trade agreement (FTA). It provides an overview of the current status of the negotiations, a review of the 2008 talks, an examination of leading issues that have arisen during the negotiations, a review of U.S. interests in the proposed agreement, a summary of the potential effects of a FTA on bilateral trade, and an overview of the legislative procedures to be followed if the proposed FTA is presented to Congress for approval.

The proposed U.S.-Malaysia FTA is of interest to Congress because (1) it requires congressional approval; (2) it would continue the past trend toward greater trade liberalization and globalization; (3) it may include controversial provisions; and (4) it could affect trade flows for certain sensitive goods and industries in the United States.

Since the U.S. Trade Representative announced on March 8, 2006, the Bush Administration's intent to negotiate a free trade agreement with Malaysia, eight rounds of negotiations have been held. A proposed ninth round of talks scheduled for November 2008 were postponed until after President Barack Obama's inauguration once it became apparent that several outstanding issues remained unresolved. Since the postponement, Malaysia has suspended the bilateral negotiations, possibly in response to U.S. support for Israel's military operations in Gaza.

Efforts in 2008 to complete the FTA negotiations by the end of the Bush Administration were unsuccessful. There is general agreement that one major "sticking point" is Malaysia's government procurement policies, which give preferential treatment for certain types of Malaysian-owned companies. Other key outstanding provisions of the possible FTA as of the end of 2008 were intellectual property rights protection, protection of Malaysia's agricultural and automotive industry, and trade in services.

Areas of particular interest to U.S. exporters include a reduction of Malaysian trade barriers to automobiles and certain agricultural products, provisions for the enforcement of intellectual property rights, and broader access to Malaysia's service sectors such as financial services, telecommunications, and professional services.

Both nations could potentially see economic benefits from the proposed FTA, but there will be both winners and losers in both nations, as well as in other nations not part of the bilateral agreement. Overall bilateral trade flows would probably rise, possibly at the expense of some domestic and foreign manufacturers and their workers. In 2007, the United States was Malaysia's largest trading partner, while Malaysia was the United States' tenth largest trading partner. The United States was Malaysia's top export market and its second largest supplier of imports in 2007.

In addition, the United States may also accrue some political benefits from the proposed FTA. An FTA with Malaysia would strengthen U.S. ties with a moderate, democratic Muslim nation. It would also support U.S. efforts to be viewed as more engaged in Southeast Asia.

This report will be updated as circumstances warrant.

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## Overview of the Current Status of Negotiations

On March 8, 2006, then U.S. Trade Representative (USTR) Rob Portman announced and notified Congress of the Administration's intent to negotiate a free trade agreement (FTA) with Malaysia.<sup>1</sup> At the time, then USTR Portman indicated that he thought the negotiations could be completed "within a year."<sup>2</sup>

The first round of negotiations was held June 12-16, 2006, in Malaysia with at least five rounds anticipated. Since then, eight separate rounds of talks have been held. A proposed ninth round of talks were postponed until after President Barack Obama's inauguration. If and when the negotiations are completed, the proposed FTA will have to be submitted to Congress for consideration if it is to go into effect.<sup>3</sup>

Consented efforts to complete the negotiations of the free trade agreement (FTA) before the end of the Bush Administration were unsuccessful as talks foundered on a number of key issues. These include Malaysia's government procurement policies (which give preferential treatment to *bumiputera*-owned companies),<sup>4</sup> market access for U.S. companies into Malaysia's services sectors (in particular, financial services), provisions for intellectual property rights (IPR) protection, and market access for U.S. exports of automobiles and agricultural crops. During a media roundtable discussion in December 2008, U.S. Ambassador to Malaysia James Keith indicated that there were 23 trading issues still to be resolved in the negotiations.<sup>5</sup>

The FTA negotiations continued to be a controversial topic in Malaysia in 2008. An ad-hoc meeting of senior government officials reconfirmed its support for continuing FTA negotiations on certain topics, including government procurement, competition policy, intellectual property rights, and labor conditions.<sup>6</sup> However, some issues – such as rice imports – remained off the table. In addition, the financial crisis in the United States apparently raised some concerns in Malaysia about discussions over opening up Malaysia's financial markets to U.S. companies. Also, various interest groups in Malaysia – including an organization representing Malaysia's small and medium-sized enterprises (SMEs) – reiterated their call for the Malaysian government to terminate the FTA negotiations, claiming that the proposed agreement would do irreparable harm to thousands of Malaysia's SMEs.<sup>7</sup> In November 2008, Tony Pua of Parti Tindakan Demokratik (Democratic Action Party, or DAP), a major opposition party, suggested the government prepare a "white paper" outlining the details of the FTA negotiations to be presented

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<sup>1</sup> Office of the United States Trade Representative, "United States, Malaysia Announce Intention to Negotiate Free Trade Agreement," press release, March 8, 2006.

<sup>2</sup> "Remarks by United States Trade Representative Rob Portman and Malaysian Minister for Trade Rafidah Aziz at the Launch of U.S.—Malaysia Free Trade Negotiations," March 8, 2007, see U.S. Trade Representative webpage—[http://www.ustr.gov/assets/Document\\_Library/Transcripts/2006/March/asset\\_upload\\_file287\\_9147.pdf](http://www.ustr.gov/assets/Document_Library/Transcripts/2006/March/asset_upload_file287_9147.pdf)—for transcript.

<sup>3</sup> Supporters of the U.S. boycott and the suspension of the FTA talks include some members of Malaysia's parliament, the Malaysian Bar Council, and the Malaysian Alliance of NGOs Against Oppression of Palestinians.

<sup>4</sup> *Bumiputera* (also *bumiputra*), is a Malay term (From Sanskrit, *bhumiputra*, "sons of the earth") referring to ethnic Malays as well as other indigenous ethnic groups, such as the Orang Asli in Peninsular Malaysia and the tribal peoples in Sabah and Sarawak. Malaysia's ethnic Chinese and Indian population are not considered *bumiputera*.

<sup>5</sup> "US Hopes to Conclude MUSFTA Talks Very Soon," *Nanyang Daily*, December 15, 2008.

<sup>6</sup> Jane Ritikos, "Malaysia Moving Forward in FTA Talks with US," *The Star*, October 2, 2008.

<sup>7</sup> Mohamad Idris, "Malaysia-US FTA—Stop Negotiations Immediately," *Malaysiakini*, July 15, 2008.

to Malaysia's parliament to assure that the negotiation team was abiding by the agreed government policies.<sup>8</sup>

The future status of the proposed FTA were further complicated by Israel's military operation in Gaza.<sup>9</sup> After Israel launched "Operation Cast Lead" on December 27, 2008, various political figures and interest groups in Malaysia called for a boycott of U.S. products and the suspension of the FTA talks to protest U.S. support for Israel's military operations in Gaza. On January 12, 2009, Malaysia's Minister of International Trade and Industry, Muhyiddin Yassin, said that FTA talks with the United States were temporarily being stopped until the ministry received further instructions from Malaysia's Cabinet.<sup>10</sup> Minister Muhyiddin<sup>11</sup> added that Malaysia would not be hasty to conclude the FTA negotiations at a time when the United States was supporting "Israel's cruelty to Palestinian people."<sup>12</sup>

There have been some indications from the Obama Administration about its intentions regarding the U.S.-Malaysia FTA negotiations. Following the U.S. presidential elections, Minister Muhyiddin stated that the Malaysian government had been informed by representatives of the incoming Obama Administration that negotiations would recommence sometime after the inauguration.<sup>13</sup> There have also been signals from President Obama that workers rights and environmental issues will play a more prominent role in trade negotiations during his Administration. In his announcement to nominate Ron Kirk as U.S. Trade Representative, then President-Elect Obama stated, "As a leader, negotiator, and principled proponent of trade, Ron will help make sure that any agreements I sign as President protect the rights of all workers, promote the interests of all Americans, and preserve the planet we all share."<sup>14</sup>

## Review of 2008 Negotiations

At one time, there were to be three rounds of talks in 2008, to be held in January, July and November, respectively. In the end, only two rounds of talks were held (in January and July as planned), but the third round of talks were postponed at the request of the United States.

Following the failure to complete FTA negotiations in 2007, there was a perception in Malaysia that the Bush Administration did not see relations with Malaysia or the conclusion of FTA negotiations as a priority. During a press interview in December 2007, Ambassador Keith was asked if the failure of U.S. Secretary of State Condoleezza Rice to attend ASEAN meetings, as well as the "low-level delegation" sent by the United States to Malaysia's 50<sup>th</sup> National Day celebrations, was an indication that Malaysia had "moved down the list of priorities for the U.S.

<sup>8</sup> "MITI Opened to Proposal for a White Paper on US-Malaysia FTA," *Bernama*, November 19, 2008.

<sup>9</sup> For more information on Israel's military operations in Gaza, see CRS Report R40101, *Israel and Hamas: Conflict in Gaza (2008-2009)*, coordinated by Jim Zanotti

<sup>10</sup> "PM to Muhyiddin: Explain Statement on Suspension of FTA Talks with US," *The Malaysian Insider*, January 13, 2009.

<sup>11</sup> In Malaysian culture, a person is often referred to in formal situations not by their surname, but by one of their given names. This report will follow this convention.

<sup>12</sup> "Rundingan FTA Dengan AS Dihentikan Sementara," *Utusan (in Malay)*, January 12, 2009; translation provided by U.S. Embassy in Kuala Lumpur.

<sup>13</sup> "FTA Talks between Malaysia and US to Resume in January 2009," *The Star*, November 27, 2008.

<sup>14</sup> The Office of the President-Elect, "More Members of the Economic Team," press release, December 19, 2008.

State Department.”<sup>15</sup> Ambassador Keith reassured the press of the U.S. commitment to the region and to Malaysia, pointing to the passage on September 17, 2007 of House Resolution 518 commemorating Malaysia’s 50<sup>th</sup> anniversary as evidence.

On December 30, 2007, U.S. Assistant Trade Representative Barbara Weisel confirmed that “the U.S. continues to seek to conclude the agreement by this summer, which we believe is achievable...”<sup>16</sup> Weisel also said that the Bush Administration would seek an “appropriate vehicle” to obtain congressional approval of the proposed FTA once the negotiations were completed.<sup>17</sup>

## The Seventh Round of Talks

On January 14, 2008, Malaysia and the United States began their seventh round of formal negotiations in Kuala Lumpur over the terms of a possible U.S.-Malaysia Free Trade Agreement. In a statement to the press on the day the talks began, U.S. embassy spokeswoman Kathryn Taylor said the United States was seeking “real, demonstrable progress” during the seventh round of talks, but also pointed out that “there is no deadline” for completing the agreement.<sup>18</sup> However, in an interview with the press that same day, Ambassador Keith stated he was hoping that the negotiations would be completed by the middle of 2008.<sup>19</sup>

Assessments of the outcome of the seventh round of talks were mixed. A news story from China reported that four key issues were discussed during the talks—investment, trade in goods and services, intellectual property rights, and “legal issues.”<sup>20</sup> According to *Xinhua*, the United States was “hopeful of concluding its free trade agreement with Malaysia by this summer ...”<sup>21</sup>

Malaysia’s official news agency, *Bernama*, provided a similar positive assessment of the seventh round of talks, quoting Assistant USTR Weisel, “We have largely reached the goal set for the week. The two sides have moved significantly on a wide range of issues ... progress we made this week is encouraging.”<sup>22</sup> The *New Straits Times* of Malaysia published a similar story on the talks on January 18, 2008, referring to the progress that had been made and possibility of concluding the negotiations by summer.<sup>23</sup>

Press accounts of the status of the FTA talks turned less optimistic a few days later. On January 24, 2008, *Bernama* printed two separate stories on the FTA negotiations. The first article reported that then Minister of International Trade and Industry Rafidah Abdul Aziz saw no need for a deadline for concluding the trade talks.<sup>24</sup> The second article stated that Ambassador Keith had indicated that if the FTA with Malaysia were not completed by the end of July, the United States

<sup>15</sup> Oorrjitham, op cit.

<sup>16</sup> Rupa Damodaran, Malaysia-US FTA Talks to Resume on January 14,” *Business Times*, December 30, 2007.

<sup>17</sup> Ibid.

<sup>18</sup> “After 1-year Hiatus, Malaysia and US Resume FTA Talks,” *The Times of India*, January 14, 2008.

<sup>19</sup> Kevin Tan, “US Hopeful of FTA with M’sia by Mid-year,” *The Edge Daily*, January 24, 2008.

<sup>20</sup> “U.S., Malaysia Make Progress in Trade Talks,” *Xinhua*, January 18, 2008.

<sup>21</sup> Ibid.

<sup>22</sup> “US Aims to Conclude FTA by Summer, Insists on Government Procurement,” *Bernama*, January 17, 2008.

<sup>23</sup> Anna Maria Samsuddin, “US, Malaysia Make Progress in Trade Talks: Weisel,” *New Strait Times*, January 18, 2008.

<sup>24</sup> “No Need for Deadline to Conclude Malaysia-US FTA, Says Rafidah,” *Bernama*, January 24, 2008.



would focus its attention on other FTA agreements.<sup>25</sup> Ambassador Keith was quoted as saying, “We will turn our attention to seal the pacts with South Korea and Columbia before the end of the Bush Administration. There will be no hard feelings.”<sup>26</sup>

Another negative sign about the status of the negotiations was the lack of a decision on the date and place to hold the next round of talks. The United States stated that there was agreement on “the next steps”—communicating on a full set of issues still to be resolved and setting the dates for the next round of talks.<sup>27</sup> However, Minister Rafidah reportedly said on the status of the negotiations, “Whatever issues that can be cleared first, they have cleared. We don’t have to meet again.”<sup>28</sup>

## The Eighth Round of Talks

The eighth round of negotiations were held in Washington, DC on July 14 – 18, 2008. Heading the Malaysian delegation was the Secretary General of the Minister of International Trade and Industry (MITI), Abdul Rahman Mamat. The chief negotiator for the U.S. government was Assistant USTR Weisel. The negotiations focused on the topics of six working groups addressing trade in agricultural goods, trade in services, investment, IPR, sanitary and phytosanitary (SPS) measures, and legal provisions.

Political events in both nations overshadowed the negotiations. The upcoming U.S. presidential elections and the resulting change in administration influenced the talks, as did the the poor showing of the ruling Barisan Nasional (BN) in Malaysia’s general elections of March 8, 2008.<sup>29</sup> In addition, the uncertain status of the proposed U.S. FTAs with Colombia and South Korea may have had an impact on the talks. While the Bush Administration has expressed a desire to conclude the negotiations prior to the end of its term, the Malaysian government had indicated that it saw no need to rush to conclude the talks in 2008.

For the United States, the key issue for the July 2008 talks was greater foreign access to Malaysian government procurement contracts. According to Malaysia, while the topics of competition policy, environment, labor, and financial services could be discussed, any agreement reached on these topics would be non-binding.<sup>30</sup> Other areas under discussion were market access for U.S. agricultural exports and service providers. Prior to the meetings, the newly-appointed Minister of International Trade and Industry, Muhyiddin Yassin, stated that Malaysia would not compromise in “several sensitive areas, such as agriculture.”<sup>31</sup> Malaysia has specifically excluded rice from consideration in the FTA negotiations.

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<sup>25</sup> “US to Sign FTA with Other Countries if Talks with Malaysia Fail,” *Bernama*, January 24, 2008.

<sup>26</sup> *Ibid.*

<sup>27</sup> “US Aims to Conclude FTA by Summer, Insists on Government Procurement,” *Bernama*, January 17, 2008.

<sup>28</sup> “No Need for Deadline to Conclude Malaysia-US FTA, Says Rafidah,” *Bernama*, January 24, 2008.

<sup>29</sup> For more information on Malaysia’s general elections of 2008, see CRS Report RL33878, *U.S.-Malaysia Relations: Implications of the 2008 Elections*, by Michael F. Martin.

<sup>30</sup> Mohd Arshi Mat daud, “9<sup>th</sup> Round of Malaysia-US FTA Talks in November, Says Muhyiddin,” *Bernama*, July 24, 2008.

<sup>31</sup> “Free Trade Pact with US: No Compromise in Sensitive Areas,” *The Malaysian Insider*, May 26, 2008.

There were indications of some progress during the eighth round of negotiations. In a press statement following the talks, MITI indicated that the two nations were “exploring possibilities of business collaboration and capacity-building in the services sector within the framework of the Malaysia-U.S. FTA.”<sup>32</sup> Assistant USTR Weisel said that the United States hoped that Malaysia’s proposed reforms of its government procurement process may help advance FTA negotiations on the issue.<sup>33</sup> U.S. hopes received some encouragement in October 2008, when Minister Muhyiddin announced that Malaysia’s Cabinet had indicated its willingness to move government procurement from the list of “no talk” issues to one where non-binding discussions would be allowed.<sup>34</sup>

The Malaysian Institute of Economic Research (MIER) observed after the July 2008 negotiations that the United States had adopted a “pragmatic approach,” possibly due to its problems with its proposed FTAs with South Korea and Thailand. MIER Executive Director Mohamed Ariff Abdul Kareem indicated, however, that the U.S. tendency to use its FTA with Singapore<sup>35</sup> as a model in other negotiations is causing problems in its talks with Malaysia.<sup>36</sup>

## **The Postponement of the Ninth Round of Talks**

Plans to hold the ninth round of negotiations in late 2008 were postponed following the U.S. presidential elections. In July 2008, Minister Muhyiddin announced that the ninth round would be held in Kuala Lumpur in November 2008.<sup>37</sup> However, on November 7, 2008, Deputy Prime Minister Najib Razak said, “Malaysia was not able to conclude the FTA with the present U.S. administration,” and that Malaysia will have to wait to see the policies of the new Obama Administration.<sup>38</sup> On November 26, 2008, Minister Muhyiddin told an audience of Malaysian manufacturers that he had been told by the U.S. government that it wanted to postpone further negotiations on the FTA until after the Obama Administration was in place.<sup>39</sup> On December 15, 2008, U.S. Ambassador Keith, stated that the United States was interested in concluding the FTA negotiations “as early as possible in the new administration.”<sup>40</sup>

## **Israel’s Military Operations in Gaza and the FTA Talks**

As a predominantly Muslim nation, Malaysia has a long history of support for what it sees as the Palestinian peoples’ struggle for freedom from Israeli oppression. The day after Israel began Operation Cast Lead, Malaysia’s Prime Minister Abdullah Ahmad Badawi said in an official statement, “Malaysia deplores the disproportionate use of military power by Israel against the people of Gaza.”<sup>41</sup> The following day, the Ministry of Foreign Affairs (MoFA) issued a statement

<sup>32</sup> Rupa Damodaran, “Some Compromise in Malaysia-U.S. Trade Talks?,” *Business Times*, July 22, 2008.

<sup>33</sup> Ibid.

<sup>34</sup> “KL to Discuss Procurement in US FTA Talks,” *Malaysian Insider*, October 1, 2008.

<sup>35</sup> For more information in the U.S. FTA with Singapore, see CRS Report RL34315, *The U.S.-Singapore Free Trade Agreement: Effects After Three Years*, by Dick K. Nanto

<sup>36</sup> “US Adopts Pragmatic Approach in FTA Talks: MIER,” *Bernama*, July 22, 2008.

<sup>37</sup> Mohd Arshi Mat Daud, “9<sup>th</sup> Round of Malaysia-US FTA Talks in November,” *Bernama*, July 24, 2008.

<sup>38</sup> Hamidah Atan, “PM Hopes to See Fairer Trade Ties with US,” *New Strait Times*, November 7, 2008.

<sup>39</sup> “US Wants to Hold Back FTA Talks with Malaysia for a While,” *Bernama*, November 26, 2008.

<sup>40</sup> “US Keen to Conclude FTA with Malaysia,” *Bernama*, December 15, 2008.

<sup>41</sup> “PM Condemns ‘Disproportionate’ Israeli Military Action,” *Malaysiakini*, December 29, 2008.

that Malaysia “strongly condemns” Israel’s military actions in Gaza asserting that “there is no excuse for the disproportionate, indiscriminate and excessive use of force in Gaza...”<sup>42</sup>

In the weeks following, popular opposition in Malaysia to Israel’s military operations in Gaza grew and its focus spread to include the United States. Calls for a boycott of U.S. goods and services emerged from various sources within Malaysia, including former Prime Minister Mahathir Mohamad, members of parliament, political parties and public interest groups.<sup>43</sup> Specific U.S. boycott targets include Coca Cola, KFC, McDonalds, and Starbucks. There are also anti-boycott voices in Malaysia who claim that the boycott will hurt Malaysian-owned businesses and workers more than the parent U.S. companies.

On January 10, 2009, the Malaysian Bar Council urged a “review” of the FTA negotiations with the United States to protest what was seen as U.S. support for “Israeli atrocities against Palestinians.”<sup>44</sup> Other groups also called for the suspension of FTA talks. Two days later, Minister Muhyiddin stated that the Ministry of International Trade and Industry (MITI) was suspending the FTA negotiations until it received orders and guidance from Malaysia’s Cabinet.<sup>45</sup> There were indications that MITI’s decision was at least partially in response to the events in Gaza. The next day, Prime Minister Badawi requested that Minister Muhyiddin formally brief the Cabinet of the decision to suspend the FTA talks.<sup>46</sup> On January 15, 2009, Minister Muhyiddin indicated that the FTA negotiations had been postponed at the request of the United States until after the presidential inauguration. He also said in regards to the proposed boycott of U.S. products, “If there are any Malaysians who want to take such an action, it is their right. As for the government, we have not taken any decision on the matter.”<sup>47</sup>

## Key Issues

Over the last three years, several issues have emerged as difficult topics in the negotiations. The main topics still to be resolved include intellectual property rights (IPR) protection, market access for U.S. automobiles and agricultural goods in Malaysia, trade in services, and government procurement policies.

## Intellectual Property Rights

An issue of interest to many U.S. exporters, and in particular software and pharmaceutical companies, is Malaysian IPR regulations and enforcement. Malaysia has recently tightened its laws on and stepped up enforcement of protection of intellectual property, but problems still

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<sup>42</sup> "Malaysia Condemns Israel's Air Strikes in Gaza," *Bernama*, December 29, 2008.

<sup>43</sup> "Gaza Prompts Boycott in Malaysia," *BBC News*, January 9, 2009.

<sup>44</sup> "Review FTA Negotiations with United States," *Bernama*, January 10, 2009.

<sup>45</sup> "Rundingan FTA Dengan AS Dihentikan Sementara," *Utusan (in Malay)*, January 12, 2009; translation provided by U.S. Embassy in Kuala Lumpur.

<sup>46</sup> "PM to Muhyiddin: Explain Statement on Suspension of FTA Talks with US," *The Malaysian Insider*, January 13, 2009.

<sup>47</sup> "US Postponed US-Malaysia FTA Talks," *Bernama*, January 15, 2009.

remain. The Business Software Alliance (BSA) estimated 59% of the software in Malaysia in 2007 was pirated, resulting in industry losses of \$311 million.<sup>48</sup>

Malaysia has remained on the Special 301 Watch List since October 2001 as part of an effort by the USTR to monitor Malaysia's efforts to improve its IPR regime. In its *2008 Special 301 Report*, the USTR stated that "Malaysia continued to show a strong commitment to strengthening IPR protection and enforcement this past year, but still needs to make further IPR improvements."<sup>49</sup> IPR enforcement improvements during 2007 included the creation of a specialized IPR court, which began hearing cases in 2007. The USTR also stated that it would be "pressing IPR issues through the ongoing U.S.-Malaysia Free Trade Agreement negotiations."<sup>50</sup>

With regard to IPR protection for pharmaceuticals, Malaysia is concerned about the U.S. preference for "TRIPs plus" provisions in the U.S.-Malaysia FTA.<sup>51</sup> The United States reportedly would like tighter restrictions on the use of compulsory licensing (CL)<sup>52</sup> and wishes to include data exclusivity provisions in the FTA.<sup>53</sup>

Malaysia is reluctant to accept terms that would undermine its ability to utilize the CL provisions of TRIPs for drugs deemed necessary to prevent the spread of an epidemic or avoid a national health emergency. Opposition has appeared in Malaysia among people concerned about the treatment of HIV/AIDS. They claim that a U.S.-Malaysia FTA would more than likely patent anti-retroviral AIDS drugs for five years, "making [them] far too costly for them [HIV/AIDS patients] to buy."<sup>54</sup> Others believe that stricter enforcement of drug patents could discourage pharmaceutical companies from introducing new anti-retroviral drugs in Malaysia.<sup>55</sup> Malaysia has used the CL provisions of TRIPs to provide low-cost anti-retroviral drugs to HIV/AIDS patients in Malaysia.

## Automobiles and Agricultural Goods

Malaysia has a growing automobile industry. For many years, the Malaysian government has promoted the development of a domestic automobile industry as a sign of its emergence as a modern industrial nation. Its automobile manufacturers, such as Proton and Perodua, market their vehicles in over 40 countries around the world, and its motorcycle manufacturer, Modenas, is a popular brand in Argentina, Greece, Iran, Singapore, Malta, Mauritius, Turkey, and Vietnam.

<sup>48</sup> Business Software Alliance, *Fifth Annual BSA and IDC Global Software Piracy Study*, Washington, D.C., June 19, 2008.

<sup>49</sup> Office of the U. S. Trade Representative, *2008 Special 301 Report*, Washington, D.C., April 25, 2008, p. 42, [http://www.ustr.gov/assets/Document\\_Library/Reports\\_Publications/2008/2008\\_Special\\_301\\_Report/asset\\_upload\\_file\\_553\\_14869.pdf](http://www.ustr.gov/assets/Document_Library/Reports_Publications/2008/2008_Special_301_Report/asset_upload_file_553_14869.pdf).

<sup>50</sup> Ibid.

<sup>51</sup> TRIPs refers to the 1995 Agreement on Trade-Related Aspects of Intellectual Property Rights. For more information on TRIPs, TRIPs plus, and FTAs, see CRS Report RL34292, *Intellectual Property Rights and International Trade*, by Shayerah Ilias and Ian F. Fergusson.

<sup>52</sup> For more on the CL provisions of TRIPs, see CRS Report RL33750, *The WTO, Intellectual Property Rights, and the Access to Medicines Controversy*, by Ian F. Fergusson.

<sup>53</sup> For an explanation of data exclusivity and its inclusion in FTAs, see CRS Report RL33288, *Proprietary Rights in Pharmaceutical Innovation: Issues at the Intersection of Patents and Marketing Exclusivities*, by John R. Thomas.

<sup>54</sup> Soon Li Tsin, "People with HIV/AIDS Hold Anti-FTA Protest," *Malaysiakini*, January 11, 2007.

<sup>55</sup> Dass, Maria J. Groups Worried Over FTA with US. *Sun2Surf*, September 11, 2006.

Malaysia's automobile components and parts industry is also quite successful on the world market.

Malaysia has long protected its automobile manufacturing industry from foreign competition using high tariffs and non-tariff trade barriers. Government policies also distinguish between national cars (i.e., made by domestic producers, such as Proton and Perodua) and non-national cars, which include most vehicles manufactured in Malaysia by non-Malaysian owned firms. The firms making national cars, for example, receive 50% rebates on their excise taxes. *Bumiputera* also are favored in receiving permits to import or distribute motor vehicles.

The government has, however, begun to dismantle some of its protections in order to meet its commitments to the WTO and the ASEAN Free Trade Agreement. In January 2004, the government completely eliminated local content requirements that were inconsistent with its obligations under the WTO, but government policies (particularly its excise taxes on automobiles) continue to block open trade in the automotive sector. Malaysia imposes 30% tariffs on assembled vehicles from outside the ASEAN region and up to 10% on completely knocked-down vehicle kits. Excise taxes on both assembled vehicles and kits are 80-200% on automobiles, 55-160% on multipurpose vehicles, and 20-50% on motorcycles.<sup>56</sup>

During negotiations, Malaysia is likely to raise the issue of U.S. measures protecting its domestic automobile industry. For example, the United States currently maintains a special 25% tariff on imports of pickup trucks. At a May 2006 Trade Policy Staff Committee hearing, a representative of the U.S. Automotive Trade Policy Council (ATPC), which represents the U.S. big three automakers, said the Council supports the proposed FTA and sees it as an opportunity to break into a market that has historically protected domestic producers and discriminated against foreign manufacturers.<sup>57</sup>

From the outset of the negotiations, Malaysia has stated that rice was considered "strategic crop" and would not be included in the FTA and that tariffs on other agricultural goods (such as poultry) would not be lowered in order to protect its "farmers, planter, and fishermen." On November 13, 2008, Minister of Agriculture and Agro-based Industry Mustapa Mohamad said that Malaysia was "steadfast" in its decision to designate rice as a "strategic crop" that would not be included in any FTA with the United States. Malaysia has also expressed concerns about U.S. SPS regulations, which have been criticized by several nations as forming a non-tariff trade barrier.<sup>58</sup> The United States reportedly continues to press Malaysia to remove or reduce its restrictions on the trade of agricultural goods.

Trade in agricultural goods was reportedly discussed during the July 2008 talks, including SPS measures.

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<sup>56</sup> U.S. Trade Representative. *2007 National Trade Estimate Report on Foreign Trade Barriers*, April 7, 2007. Section on Malaysia.

<sup>57</sup> A copy of the ATPC's testimony is available online at [http://www.us-asean.org/US-Malaysia%20FTA/Automotive\\_Trade\\_Policy\\_Council.pdf](http://www.us-asean.org/US-Malaysia%20FTA/Automotive_Trade_Policy_Council.pdf)

<sup>58</sup> For more information on foreign objections to U.S. SPS regulations, see CRS Report RL33472, *Sanitary and Phytosanitary (SPS) Concerns in Agricultural Trade*, by Geoffrey S. Becker.

## Trade in Services

Financial services also appear to be a difficult issue to resolve in the negotiations. Malaysia limits foreign ownership to 30% of commercial banks and 49% of investment banks. Foreign commercial banks also are allowed to open new branches only if they also add other branches as directed by Bank Negara, Malaysia's central bank. Malaysia maintains a 51% cap on foreign ownership of insurance companies already established in Malaysia prior to 1998 as well as a foreign ownership limit of 30% for new entrants seeking access. Malaysia has not enforced the 51% cap except in cases of companies who seek the right to establish branches.<sup>59</sup>

In the lead-up to the launch of the FTA negotiations, Malaysia reportedly attempted to keep financial services out of the negotiations completely, but the country did agree to include such services in the FTA talks. Malaysia, however, has lifted requirements that foreign banks obtain 50% of their credit from local banks, has allowed them to seek any amount of ringgit (the domestic currency) credit without approval, has allowed the ringgit exchange value to float rather than be strictly pegged to the dollar, and allowed foreign banks to open four additional branches in 2006.<sup>60</sup> However, the recent financial crisis in the United States has reignited concerns in Malaysia about the risks associated with greater foreign participation in its financial sector.

In telecommunications, foreign companies are allowed to acquire up to a 30% equity stake in existing fixed line operations. Value-added telecommunications service suppliers likewise are limited to 30% foreign equity. These restrictions arguably benefit the government-controlled firm, Telekom Malaysia.<sup>61</sup>

Licensed professionals, such as lawyers and architects, also are restricted in Malaysia. Foreign lawyers may not practice Malaysian law nor affiliate with local firms. Foreign law firms may take an operating stake of up to 30% in a local law firm. A foreign architectural firm may operate in Malaysia only as a joint venture participant in a specific project, and foreign architects may not be licensed in Malaysia. Foreign engineers may be licensed only for specific projects. Foreign accounting firms must work through Malaysian affiliates.<sup>62</sup>

In services, the United States has used the *negative list* approach in determining which sectors are excluded from the agreement.<sup>63</sup> Malaysia prefers to use a *positive list* approach in which service sectors are excluded unless listed in the agreement.

## Government Procurement

Malaysia is not a signatory of the WTO Government Procurement Agreement. As part of its "New Economic Program," Malaysia seeks to raise the participation of *bumiputera* in the economy. Foreign companies, in many cases, are required to take on a local partner before their

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<sup>59</sup> U.S. to Face Difficulties on Financial Services in Malaysia FTA Talks, *Inside U.S. Trade*, March 10, 2006.

<sup>60</sup> U.S. Trade Representative. *2007 National Trade Estimate Report on Foreign Trade Barriers*, March 31, 2007. Section on Malaysia.

<sup>61</sup> *Ibid.*

<sup>62</sup> *Ibid.*

<sup>63</sup> The negative list of sectors closed to foreign investment, for example, may include airports, social insurance, or other sectors that are run by governments or have special security requirements.

bids are considered. The awarding process for procurement contracts also is considered to be non-transparent.<sup>64</sup>

After the second round of negotiations in July 2006, it became apparent that Malaysian government procurement restrictions that reserve a certain share of Malaysian business for *bumiputera* were emerging as a major sticking point in the negotiations. Malaysian negotiators reportedly had not been authorized by the Malaysian Cabinet to agree to an opening of the government procurement market.<sup>65</sup>

In addition, there is strong interest in segments of the Malaysian business community to obtain preferential access to the U.S. government procurement process.<sup>66</sup> Tan Sri Yong, president of the Federation of Malaysian Manufacturers (FMM), commented, "At the moment, Malaysian companies cannot access the American government procurement, which is 65 times larger than ours. This means our furniture and computers cannot be supplied to the U.S. government."<sup>67</sup>

The United States has apparently offered limited access to its government procurement – the opportunity to bid on approximately \$250 billion in contracts – to keep the comparative value of market access proportional. The Malaysia government procurement market has an estimated value of approximately \$20 billion.

The government procurement issue was apparently not a major topic of negotiations during the two rounds of talks held in 2008. Following the January 2008 round of negotiations, U.S. Assistant Trade Representative Weisel reported that the government procurement was not discussed because the Malaysian government was reviewing its position.<sup>68</sup>

## Interests, Benefits and Potential Opposition

The proposed U.S.-Malaysia FTA is of interest to Congress because: (1) it requires congressional approval; (2) it would continue the past trend toward greater trade liberalization and globalization; (3) it may include controversial provisions; and (4) it would affect certain trade flows that would, in turn, affect U.S. businesses or farmers, particularly import-competing industries and those exporting to Malaysia.

Among the initial responses to the USTR's 2006 FTA announcement were a statement by Senator Max Baucus welcoming the agreement, and statements by Representatives Jim Kolbe and Dan Burton hailing the launch of the negotiations.<sup>69</sup> The National Association of Manufacturers

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<sup>64</sup> Ibid.

<sup>65</sup> Government Procurement Emerging as Major Problem in U.S.-Malaysia FTA. *Inside US Trade*, September 1, 2006.

<sup>66</sup> Malaysia's computer manufacturers – including facilities owned by U.S. companies – are apparently particularly interested in access to the U.S. government procurement market.

<sup>67</sup> Rupa Damodaran, "Manufacturers: US FTA Talks Could be Faster," *New Strait Times*, December 17, 2007.

<sup>68</sup> Kevin Tan, "Procurement Left Out in FTA Talks," *The Edge Daily*, January 18, 2008.

<sup>69</sup> Office of Senator Max Baucus. *Baucus Welcomes Launch of U.S.-Malaysia Free Trade Talks*, Press Release, March 8, 2006. Office of Congressman Jim Kolbe. *Kolbe Hails Free Trade Negotiations with Malaysia*, Press Release, March 9, 2006. Office of Congressman Dan Burton. *Vice-Chairman Burton Comments on the Launch of the United States-Malaysia Free Trade Agreement*, March 7, 2006.

indicated that it has been a leading advocate of an FTA with Malaysia,<sup>70</sup> and a U.S.-Malaysia Free Trade Agreement (FTA) Business Coalition was organized on March 8, 2006.<sup>71</sup> Objections to the proposed FTA have come from some Malaysian and U.S. labor unions, farmers, fishermen and academics.<sup>72</sup>

Malaysia plays into U.S. interests through its economy and trade; its role in countering radical Islamic organizations; the example it sets as a democratic secular Muslim state; its position as a member of ASEAN, Asia Pacific Economic Cooperation (APEC), and other multilateral fora; its shared interest in dealing with a rising China; and the common goal of securing a safe shipping channel through the Strait of Malacca.<sup>73</sup>

A U.S.-Malaysia FTA was part of the Bush Administration's strategy to press for regional and bilateral trade initiatives in order to "ignite a new era of global economic growth through free markets and free trade."<sup>74</sup> In a broader sense, the proposed FTA would be a step toward realization of APEC's "Bogor Vision," under which the United States and APEC's other 21 members are working toward "free and open trade in the Pacific." At the 2006 APEC meetings, the United States proposed that APEC consider forming a Free Trade Area of the Asia Pacific that would accomplish this goal.<sup>75</sup> With the Doha Round of multilateral trade talks under the World Trade Organization (WTO) encountering problems, some see FTAs as a plausible alternative.

When announcing the proposed negotiations, the USTR listed four major goals associated with a U.S.-Malaysia FTA. These were: (1) to create new opportunities for U.S. manufacturers, farmers, and service providers; (2) to strengthen U.S. competitiveness and generate high-paying jobs; (3) to strengthen U.S. economic partnerships in the region; and (4) to advance broader U.S. strategic goals.<sup>76</sup> Other benefits mentioned for the proposed FTA included: (5) to cement a vibrant U.S.-Malaysia economic relationship; (6) to increase U.S. exports; (7) to diversify U.S. exports; (8) to increase investment; (9) to increase the sharing of knowledge and know-how between U.S. companies and Malaysian companies; (10) to enhance economic growth and job creation; and (11) to lower costs and create more competitive companies.<sup>77</sup>

In Malaysia, the Ministry of International Trade and is leading the negotiations. The Ministry lists as its FTA objectives to: (1) seek better market access for Malaysian goods and services; (2) further facilitate and promote bilateral trade and investment flows as well as economic development; (3) enhance the competitiveness of Malaysian producers and exporters through

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<sup>70</sup> National Association of Manufacturers. Testimony of Christopher Wenk before the Trade Policy Staff Committee, Office of the U.S. Trade Representative, on "Proposed United States-Malaysia Free Trade Agreement," May 3, 2006.

<sup>71</sup> The web page for the U.S.-Malaysia Free Trade Agreement (FTA) Business Coalition is <http://www.us-asean.org/US-Malaysia%20FTA/index.asp>. The Secretariat for the US-Malaysia Free Trade Agreement Business Coalition is the US-ASEAN Business Council.

<sup>72</sup> The website, "FTA Malaysia," <http://www.ftamalaysia.org/> is a nexus for information provided by groups, organizations and individuals opposed to the U.S.-Malaysia FTA.

<sup>73</sup> For more information on U.S.-Malaysia relations, see CRS Report RL33878, *U.S.-Malaysia Relations: Implications of the 2008 Elections*, by Michael F. Martin.

<sup>74</sup> The White House. National Security Strategy of the United States. March 2006, part VI.

<sup>75</sup> See CRS Report RL31038, *Asia Pacific Economic Cooperation (APEC) and the 2007 Meetings in Sydney, Australia*, by Michael F. Martin.

<sup>76</sup> Office of the United States Trade Representative. Free Trade Agreement: U.S.-Malaysia. Trade Facts, March 2006.

<sup>77</sup> Remarks by Ambassador Karan K. Bhatia, Deputy U.S. Trade Representative, Press Conference on the U.S.-Malaysia Free Trade Agreement, Kuala Lumpur, Malaysia, March 17, 2006.



collaboration; and (4) build capacity in specific targeted areas through technical cooperation. The Ministry also views the proposed FTA as comprehensive and covering liberalization of the goods and services sector; trade and investment promotion and facilitation activities; investment protection; economic and technical cooperation programs; and having appropriate flexibility to facilitate development objectives.<sup>78</sup> The Ministry also noted that it would seek “flexibility and longer phase-in periods for sensitive sectors.”<sup>79</sup>

Several Malaysian industries have been generally supportive of the proposed FTA, principally because they believe that they will benefit from greater access to the U.S. market. Among these industries are clothing and textiles, ceramics, lumber, rubber and consumer electronics. In addition, Malaysia hopes the FTA will increase inward foreign direct investment (FDI) from the United States and other nations because of Malaysia’s improved access to the U.S. market.

A U.S.-Malaysia FTA would also improve U.S. access to the economies of Southeast Asia. Malaysia already has FTAs with Indonesia, Brunei, Singapore, the Philippines, and Vietnam under the ASEAN free trade area, and ASEAN is nearing completion of an FTA with India. It has FTAs with South Korea and Pakistan, an economic partnership agreement with Japan covering most goods trade, a partial FTA with China, and it is negotiating FTAs with Australia and New Zealand, and discussing an FTA with India. On April 19, 2007, Chile and Malaysia announced they would start negotiations on the establishment of a bilateral FTA in June, with the first round of talks held in Kuala Lumpur.<sup>80</sup>

When announcing the initiation of FTA negotiations, the USTR indicated that via the proposed FTA, the U.S. government is hoping to further build the broader relations with a country that has been on the “forefront of Asia’s economic transformation and is a leader in the region and beyond.” The USTR hoped that this FTA would strengthen U.S. cooperation with Malaysia in multilateral and regional fora, reinforce a strong U.S.-ASEAN relationship, and advance U.S. commercial and strategic interests in Asia.<sup>81</sup>

As a moderate, democratic Muslim nation, Malaysia plays a strategic role in U.S. foreign policy. In 2005, Prime Minister Abdullah urged Muslims around the world to guard against extremism and improve ties with the West while promoting his nation’s moderate version of Islam.<sup>82</sup> The Bush Administration also hoped that the proposed FTA would reinforce the shared interests of the United States and Malaysia, promote common values, and facilitate cooperation in counterterrorism, defense, counter-narcotics, education, and in other areas.<sup>83</sup> Malaysia (along with Indonesia, Singapore, and Thailand) plays a key role in protecting vital maritime shipping lanes in the Strait of Malacca from pirates and terrorism.

In the United States, opposition to the proposed FTA has emerged from labor unions and environmental protection organizations, as well as “anti-globalization” groups. In Malaysia,

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<sup>78</sup> Malaysia. Ministry of Trade and Industry. Malaysia-US Free Trade Agreement. Media Release. May 3, 2006.

<sup>79</sup> Malaysia. Ministry of Trade and Industry. “Joint Announcement To Launch Negotiations For A Malaysia United States Free Trade Agreement, 8 March 2006, Washington D.C.” Media Release, March 13, 2006.

<sup>80</sup> “Chile and Malaysia to Start FTA Talks,” *Prensa Latina*, April 19, 2007.

<sup>81</sup> Weisel, Barbara. Opening Remarks, Public Hearing, U.S.-Malaysia FTA, Washington, DC, May 3, 2006.

<sup>82</sup> “Malaysia PM Abdullah Warns Muslims Against Extremism.” Voice of America. January 27, 2005. See also CRS Report RL31672, *Terrorism in Southeast Asia*, coordinated by Bruce Vaughn.

<sup>83</sup> Weisel, Barbara. Opening Remarks, May 3, 2006. Op. cit.

voices opposing the FTA have arisen from labor unions, farmers, fishermen and other groups, as well as from opposition political parties. In some cases, opponents to a U.S.-Malaysia FTA from both nations have formed coalitions.<sup>84</sup>

With respect to labor interests, the AFL-CIO opposes additional FTAs unless they contain meaningful protections for workers' rights and environmental standards. Its position is that the Bush Administration launched or concluded bilateral free trade agreements that include no enforceable protections for core workers' rights, and move "backwards from previous accords on workers' rights, and contain many of the same flawed rules that have worsened our trade deficit" under the North American Free Trade Agreement (NAFTA).<sup>85</sup> Labor organizations also are interested in ensuring that labor laws in the bilateral trading partner country are brought up to International Labor Organization (ILO) standards and that a dispute settlement or enforcement mechanism is included in agreements that would preclude partner countries from reversing labor gains or weakening labor laws following congressional approval and implementation of their respective FTAs.<sup>86</sup> During the presidential campaign, Barack Obama expressed some support for the labor unions' concerns about the labor provisions of the negotiated FTAs with Colombia and South Korea.

Labor conditions in Malaysia have been the subject of some international criticism. According to Malaysian law, workers are afforded a variety of rights and most workers have the right to engage in trade union activity. However, according to the latest U.S. State Department country report on Malaysia, only 9.5% of the labor force was represented by trade unions.<sup>87</sup> In addition, Malaysian trade union officials report extended delays of up to four years in obtaining legal recognition of their union. A specific area of international concern has been the working conditions of Malaysia's estimated 2.5 million immigrant workers—most from Indonesia—who reportedly face abuse and exploitation by employers and recruitment agencies.<sup>88</sup>

There has also been organized opposition to a U.S.-Malaysia FTA from Malaysians. On January 11, 2007, an anti-FTA campaign in northern Malaysia resulted in petitions with over 20,000 farmer and fishermen signatures being submitted to Malaysia's Prime Minister Abdullah and Malaysia's Ministry of International Trade and Industry. The petitions state that the proposed FTA would harm Malaysia's rice farmers and fishing industry.<sup>89</sup> In October 2006, a coalition of opposition parties, workers, and small businesses in Malaysia called for the cessation of

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<sup>84</sup> The AFL-CIO and the Malaysian Trades Unions Congress signed a joint declaration regarding a U.S.-Malaysia FTA on January 22, 2007, in Kuala Lumpur, stating that any agreement "must result in broadly shared benefits to working people and communities, not simply extend and enforce corporate power and privilege." For more details, see "U.S. Unions Oppose Free Trade with Malaysia," by Anil Netto, Inter Press Service News Agency, January 22, 2007.

<sup>85</sup> AFL-CIO. Issue Brief: The Bush Record on Shipping Jobs Overseas. August 2004. See also: Testimony of Thea M. Lee, Policy Director, American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), before the House of Representatives Committee on Ways and Means, Hearing on the Implementation of the United States-Bahrain Free Trade Agreement, September 29, 2005.

<sup>86</sup> See, for example, Testimony of Thea M. Lee, Policy Director, AFL-CIO, before the Subcommittee on International Trade of the Senate Committee on Finance in a Hearing on the Implementation of the United States-Oman Free Trade Agreement, March 6, 2006.

<sup>87</sup> U.S. Department of State. Bureau of Democracy, Human Rights, and Labor. *Country Reports on Human Rights Practices—2007, Malaysia*. March 11, 2008.

<sup>88</sup> For more information on the condition of immigrant workers in Malaysia, see Human Rights Watch report on Malaysia at <http://hrw.org/doc/?t=asia&c=malays>.

<sup>89</sup> "20,000 Fishermen, Farmers Protest Against FTA," by Fauwaz Abdul Aziz, Malaysiakini, January 10, 2007.

negotiations with the United States until a study of the economic and social impact of the proposed FTA was conducted.<sup>90</sup>

Opposition to an FTA also may arise from various special interest groups. For example, Public Citizen, a nonprofit consumer advocacy organization in the United States, maintains that the FTA with Central America is “based on the same failed neoliberal NAFTA model, which has caused the ‘race to the bottom’ in labor and environmental standards and promotes privatization and deregulation of key public services.”<sup>91</sup> In Malaysia, people concerned about the cost of pharmaceutical drugs, especially treatment for HIV/AIDS, are opposed to possible provisions in the FTA that they believe will raise the cost of prescription drugs in Malaysia.<sup>92</sup>

Another possible issue complicating the negotiations could be U.S. relations with Israel. Malaysia currently does not have diplomatic relations with Israel and requires export licenses for all goods sent to Israel. U.S. law currently contains several provisions designed to undermine official boycotts and trade embargoes aimed at Israel.<sup>93</sup> As previously mentioned, U.S. support for Israel’s military operations in Gaza have given rise to a boycott of U.S. products and calls to suspend the FTA negotiations.

During recent congressional consideration of other proposed FTAs, opposition concerns have been addressed either in the implementing legislation or by securing various commitments in writing from the Administration. For example, in congressional consideration of the Dominican Republic-Central America-United States Free Trade Agreement (DR-CAFTA), the Bush Administration assuaged opposition from labor, sugar, and textile interests by promising certain actions to ameliorate adverse effects of the proposed FTA. In a letter, the Administration promised to allocate \$40 million of FY2006 foreign operations appropriations for “labor and environmental enforcement capacity building assistance,” and to continue to request this level of funding in budgets for fiscal years 2007 through 2009. The Bush Administration also stated that it would not allow the DR-CAFTA to interfere with the operation of the sugar program through FY2007 as the program is defined in the Farm Security and Rural Investment Act of 2002. For the textile and apparel industry, promises were made related to rules of origin, stricter customs enforcement with respect to Mexican inputs used in DR-CAFTA textile and apparel products, and actions to increase use of U.S. fabric.<sup>94</sup>

## The Potential Effects of a U.S.-Malaysia FTA

The usual goal of free trade agreements is to reduce barriers to trade and investment. In addition to eliminating or reducing tariffs on both sides, FTAs often eliminate or reduce import quotas and other non-tariff barriers to trade. They also usually provide access to services, open markets for investment, contain provisions strengthening protection of intellectual property, address certain

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<sup>90</sup> “Malaysians Concerned Over Possible Free Trade Agreement with US,” by Joseph Masiliamany, AsiaNews, October 10, 2006.

<sup>91</sup> Public Citizen. Global Trade Watch. CAFTA: Part of the FTAA Puzzle. <http://www.citizen.org/trade/cafta>

<sup>92</sup> “People with HIV/AIDS Hold Anti-FTA Protest,” by Soon Li Tsin, Malaysiakini, January 11, 2007; “US FTA: Will We Lose Out, Too?” by Jacqueline Ann Surin, *The Sun*, January 11, 2007.

<sup>93</sup> See CRS Report RL33961, *Arab League Boycott of Israel*, by Martin A. Weiss.

<sup>94</sup> See CRS Report RL31870, *The Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR)*, by J. F. Hornbeck.

types of government regulations and practices, provide for a dispute settlement process, and can touch on issues such as business visas, competition policy, and a variety of policies or practices that affect economic activity.

FTAs also create winners and losers. In general, the ones who gain from FTAs tend to be exporters, investors, and consumers, while those who lose tend to be companies and workers in import-competing industries. In addition, non-party countries could the FTA can be affected by the terms of the agreement, as trade is created or diverted between nations.<sup>95</sup>

An FTA with Malaysia would be the third FTA negotiation by the United States with a Southeast Asian nation, following the U.S.-Singapore FTA that came into effect on January 1, 2004, and a proposed U.S.-Thailand FTA whose negotiations are currently stalled. The United States also has an FTA with Australia and is negotiating an FTA with South Korea. On May 10, 2004, the United States and Malaysia signed a Trade and Investment Framework Agreement.<sup>96</sup>

Past FTAs negotiated by the United States usually provide for tariff free trade between the two countries with a phase-in period for sensitive sectors. With Malaysia, some trade already is tariff free. Both the United States and Malaysia participate in the Information Technology Agreement<sup>97</sup> (ITA) under which tariffs on semiconductors and other information technology products are bound at zero. The majority of current U.S. exports to Malaysia are covered by this agreement. Semiconductors and parts for computers alone account for more than half of U.S. exports to Malaysia. An FTA, however, would open markets artificially restricted by tariff and non-tariff barriers. Many of the more competitive U.S. exports face relatively high duties in Malaysia. These include products such as motor vehicles and parts, off-road dumpers, polyethylene, motorcycles, and adhesives.<sup>98</sup> For more information on the relative tariff rates of the two nations, see **Appendix C**.

The potential impact of an FTA depends on various other factors, including the relative size of the two nations, the amount and nature of their bilateral trade flows, the size of bilateral FDI in each nation, as well as existing trade relations with other nations. Below is a summary of key aspects of these factors.

## The Malaysian Economy

**Table 1** provides a summary of Malaysia's key economic indicators. Malaysia has been one of the fastest growing economies in the world over the last few years. Early in 2008, Malaysia experienced a sharp rise in inflation, but the inflationary pressures subsided as the impact of the U.S. and E.U. economic slowdown affected Malaysia's exports. Malaysia's GDP and average per capita income make it a market considerably larger than most of the countries that have recently

<sup>95</sup> For a more general discussion of the potential trade effects of FTAs, see CRS Report RL31356, *Free Trade Agreements: Impact on U.S. Trade and Implications for U.S. Trade Policy*, by William H. Cooper.

<sup>96</sup> Office of the U.S. Trade Representative. "United States and Malaysia Sign Trade and Investment Framework Agreement." Press Release. May 10, 2004.

<sup>97</sup> See World Trade Organization discussion of the Information Technology Agreement at [http://www.wto.org/English/tratop\\_e/inftec\\_e/inftec\\_e.htm](http://www.wto.org/English/tratop_e/inftec_e/inftec_e.htm).

<sup>98</sup> Wenk, Christopher. Testimony on the Proposed United States-Malaysia Free Trade Agreement For the Trade Policy Staff Committee, Office of the U.S. Trade Representative. May 3, 2006.

negotiated free trade agreements with the United States. At official exchange rates, the per capita income in 2007 was \$6,724, but its purchasing power parity was estimated by the World Bank at \$13,570 – higher than Argentina, Chile, and Mexico.<sup>99</sup>

**Table I. Selected Indicators for the Malaysian Economy**

	2007	2008 (est.)	2009 (proj.)
Real GDP Growth	6.3%	6.3%	6.0%
Nominal GDP (\$ billion)	186.7	223.7	209.9
Per Capita Income	\$6,724	\$7,898	\$7,308
Inflation Rate - CPI	2.0%	5.5%	N.A.
Inflation Rate - PPI	6.7%	10.4%	N.A.
Unemployment Rate	3.2%	3.5%	3.2%
Exports (\$ billion)	176.0	206.6	179.5
Imports (\$ billion)	146.9	170.5	155.2

**Source:** *Malaysian Economy*, Ministry of Finance, December 2008.

According to Malaysia's Ministry of Finance, the United States is its largest trading partner and largest foreign investor. According to U.S. trade figures, Malaysia was the tenth largest trading partner of the United States in 2007. The United States exported more to Malaysia in the first 11 months of 2008 than it did to Colombia or Peru, two other nations with pending FTAs with the United States. For the first 10 months of 2008, U.S. investment in Malaysia totaled \$1.8 billion—the second greatest source of foreign investment in Malaysia, after Australia.<sup>100</sup>

## Bilateral Trade Flows

FTAs usually have several distinct effects on trade flows. They tend to divert export and import trade toward the countries involved, but they also can create more trade overall by lowering tariffs and other trade barriers. FTAs also can cause a substitution effect as imports are substituted for domestic production. In that case, import-competing industries may suffer and may request assistance to adjust to increased competition from imports.

## Merchandise Trade

. shows U.S. exports to, imports from, and the balance of merchandise trade with Malaysia from 2000 to 2007, according to the U.S. Department of Commerce and Malaysia's Department of Statistics. According to the United States, U.S. exports to Malaysia remained steady at about \$10 billion per year from 2000 to 2005, but rose to over \$12.5 billion in 2006 and then declined to \$11.7 billion in 2007. U.S. imports from Malaysia grew from 2001 to 2006, but then declined in

<sup>99</sup> Purchasing power parity estimates of per capita GDP attempt to revalue official GDP figures by comparing the relative costs of a select group of goods in each nation and then recalculating per capita GDP to reflect the relative purchasing power in each nation.

<sup>100</sup> Source: Malaysia Industrial Development Authority <http://www.mida.gov.my/>. Figure includes approved projects.

2007. From 2001 to 2006, the U.S. bilateral trade deficit with Malaysia widened by 63.5%, but narrowed by 10.7% in 2007.

**Table 2. U.S. Trade with Malaysia, 2000 to 2007**

(Billion U.S. Dollars)

Year	U.S. Data			Malaysian Data		
	U.S. Exports	Malaysian Imports	Trade Balance	Malaysian Exports	U.S. Imports	Trade Balance
2000	10.957	25.568	-14.611	20.155	13.648	6.507
2001	9.358	22.340	-12.982	17.808	11.800	6.008
2002	10.344	24.009	-13.665	18.816	13.079	5.737
2003	10.914	25.440	-14.526	17.791	12.195	5.596
2004	10.922	28.179	-17.257	23.564	15.239	8.325
2005	10.461	33.685	-23.224	27.743	14.768	12.975
2006	12.544	36.533	-23.989	30.187	16.422	13.765
2007	11.680	32.629	-20.949	27.513	15.927	11.586

**Source:** U.S. Department of Commerce and Malaysia Department of Statistics via World Trade Atlas

According to Malaysia, its exports to the United States rose from just over \$20 billion in 2000 to about \$30 billion in 2006—an increase of nearly 50%—and then slipped to \$27.5 billion in 2007. Over the same time period, Malaysia’s imports from the United States rose 20% from \$13.6 billion in 2000 to \$16.4 billion in 2006 and then declined by nearly \$500 million in 2007. Malaysia’s resulting trade surplus with the United States was \$6.5 billion in 2000 and \$11.6 billion in 2006—roughly \$8-\$10 billion less than the U.S. figures. For more detailed information on U.S. trade with Malaysia, see Appendices D, E and F.

As shown in **Table 3.**, the United States is Malaysia’s top export market, according to Malaysian export data. Singapore is second, Japan is third, and China is fourth. Over the last three years, the portion of Malaysia’s exports going to the United States has declined from 19.7% to 15.6%. China’s share over the same period rose from 6.6% to 8.8%.

**Table 3. Malaysia’s Merchandise Exports by Top Five Trading Partners**

(Billion U.S. Dollars)

Partner	2005	2006	2007
World Total	140.979	160.845	176.311
United States	27.743	30.187	27.513
Singapore	22.009	24.757	25.786
Japan	13.181	14.249	16.099
China	9.303	11.735	15.461
Thailand	7.585	8.506	8.735

**Source:** Department of Statistics, Malaysia via Global Trade Atlas

As shown in **Table 4.**, Japan has been and remains Malaysia's top source of imports, while the United States has slid from second to fourth since 2005. Over the last two years, both China and Singapore overtook the United States as a supplier of imported goods for Malaysia, with China edging close to Japan.

**Table 4. Malaysia's Merchandise Imports by Top Five Trading Partners**  
(Billion U.S. Dollars)

Partner	2005	2006	2007
World Total	114.626	131.223	147.065
Japan	16.634	17.347	19.096
China	13.177	15.896	18.919
Singapore	13.425	15.338	16.879
United States	14.768	16.422	15.927
Taiwan	6.331	7.161	8.354

**Source:** Department of Statistics, Malaysia via Global Trade Atlas

In Asia, Malaysia already has FTAs with Japan and Singapore and is negotiating FTAs with Australia, India, New Zealand, and Pakistan. Meanwhile, China has signed an FTA with ASEAN, to which Malaysia is a member, which includes a trade in services agreement that went into force as of July 2007. The proposed FTA with the United States would place U.S. exporters on similar footing as exporters from China, Japan, and Singapore—Malaysia's other leading trading partners.

## Trade in Services

According to current U.S. data, Malaysia is not and has not been a major services trading partner for the United States (see **Table 5.**). Total services trade with Malaysia amounted to less than \$2 billion per year from 2000 to 2004, and just climbed above \$2 billion in 2005. When compared to the total value of U.S. services trade, Malaysia's relatively small role in overall services trade becomes apparent. Even at its peak, Malaysia represented less than half a percent of the U.S. services export market and provided less than a third of a percent of the U.S. services imports.

Despite the relatively small current volume of services trade with Malaysia, several U.S. service sectors—including telecommunications, financial services, and insurance providers—have expressed strong interest in obtaining improved access to Malaysia's domestic market.

**Table 5. U.S. Services Trade with Malaysia and the World**  
(Billion U.S. Dollars)

		2000	2001	2002	2003	2004	2005	2006	2007
Malaysia	Exports	1.118	1.193	1.167	1.218	1.187	1.438	1.623	1.890
	Imports	0.387	0.525	0.493	0.514	0.611	0.721	0.840	1.020
World	Exports	284.027	272.814	279.561	290.217	336.332	368.496	415.321	479.980
	Imports	207.392	204.074	209.048	221.938	258.147	279.486	313.865	341.126

		2000	2001	2002	2003	2004	2005	2006	2007
Malaysia's Share	Exports	0.394%	0.437%	0.417%	0.420%	0.353%	0.390%	0.391%	0.394%
	Imports	0.187%	0.257%	0.236%	0.232%	0.237%	0.258%	0.268%	0.299%

Source: U.S. Bureau of Economic Analysis

The United States already is Malaysia's top export market for merchandise goods. A U.S.-Malaysia FTA would likely reinforce this relationship. Similarly, the discussed FTA would offer better access to U.S. services providers to Malaysia's domestic market.

## U.S. Investment in Malaysia

According to the U.S. Bureau of Economic Analysis, U.S. companies by 2007 had invested over \$15 billion in Malaysia (see **Table 6.** ). About 38% of U.S. investments in Malaysia was in the manufacturing sector, with investments in computer and electronic equipment manufacturing facilities accounting for over three-quarters of the manufacturing investments. Also within manufacturing investments, U.S. companies have shown a growing interest in chemical manufacturing operations in Malaysia.

**Table 6. U.S. Foreign Direct Investment in Malaysia, 2000-2007**

(Million U.S. Dollars)

Year	TOTAL	Manufacturing - Total	Manufacturing - Computers and Electronic Equipment	Manufacturing - Chemical
2000	7,910	5,028	4,385	250
2001	7,489	5,006	4,322	203
2002	7,101	3,060	2,370	195
2003	7,057	3,213	2,404	255
2004	8,909	4,075	2,801	720
2005	11,097	4,670	3,316	791
2006	12,557	4,581	3,130	839
2007	15,699	5,933	4,451	889

Source: U.S. Bureau of Economic Analysis.

According to the Malaysian Industrial Development Authority (MIDA), U.S. companies obtained approval for 33 manufacturing projects worth \$878 million in 2007 and 19 projects worth \$1.8 billion in the first 10 months of 2008. MIDA reported that most of the U.S. investment has been in the electronic equipment industry and the chemical industry, indicating a continued focus of U.S. investors in those two sectors.

## Issues for the 111<sup>th</sup> Congress

When the talks began, the USTR's goal was to have the U.S.-Malaysia FTA implementing bill considered by Congress under "fast track" expedited procedures of the Bipartisan Trade

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Promotion Authority (TPA) Act of 2002 (P.L. 107-210).<sup>101</sup> However, the statute requires the President to notify Congress of his intention to enter into the agreement at least 90 calendar days before entering into the trade agreement. Since the President's Trade Promotion Authority expired on July 1, 2007, and the President did not notify the Congress by the April 2, 2007 deadline, the U.S.-Malaysia FTA became ineligible to be considered under the 2002 TPA.

As a result, there are several possible scenarios under which a proposed FTA with Malaysia might be considered by Congress. First, if Congress were to extend, renew or revise Trade Promotion Authority, then the U.S.-Malaysia FTA might be considered under the provisions of a new TPA law. Second, Congress could choose to pass legislation providing temporary or limited TPA for the proposed U.S.-Malaysia FTA. This approach was used when Congress considered the Uruguay Round Agreements. Third, Congress could consider the proposed U.S.-Malaysia FTA without TPA, as it did with the U.S.-Jordan FTA. However, consideration of the proposed FTA with Malaysia without TPA would potentially allow Congress to amend the implementing bill in ways that could modify the terms of the trade agreement.

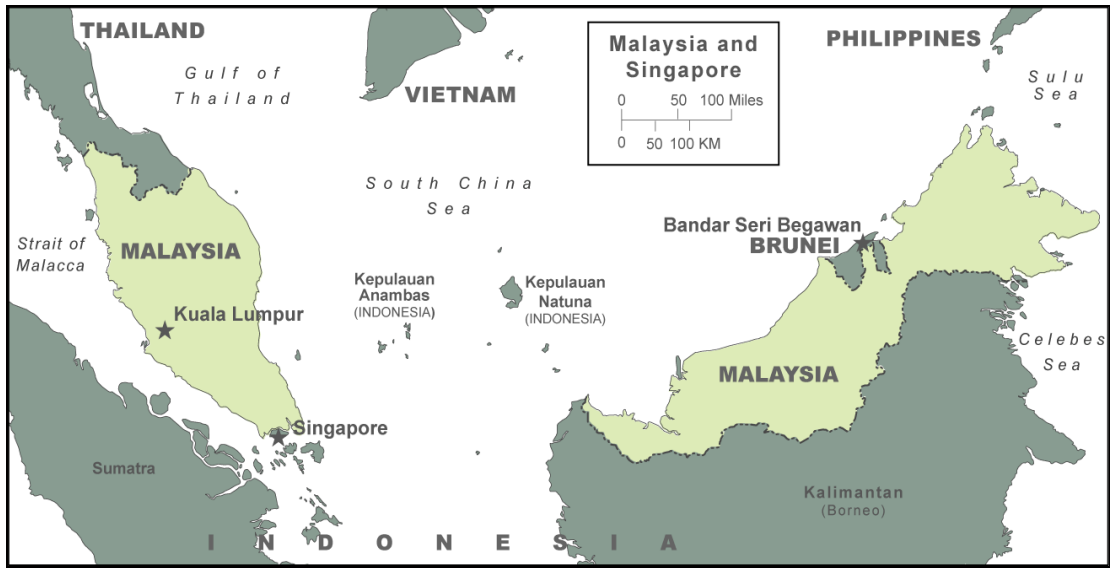
In the meantime, while negotiations with Malaysia on the proposed FTA are incomplete, the legislative policy options include consultations with the Executive Branch, holding oversight hearings on pertinent U.S. trade policy and relations with Malaysia and other nations, and working with interest groups that either support or oppose the proposed agreement. P.L. 107-210 (Section 2104) provides for close consultations with the Executive Branch during and following the negotiations. Such consultations could lead to changes in the draft agreement before it is signed.

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<sup>101</sup> For more detailed information about trade promotion authority, see CRS Report RL33743, *Trade Promotion Authority (TPA): Issues, Options, and Prospects for Renewal*, by J. F. Hornbeck and William H. Cooper.

## Appendix A. Map of Malaysia



Source: Map Resources. Adapted by CRS.

<http://wikileaks.org/wiki/CRS-RL33445>

## Appendix B. Chronology<sup>102</sup>

### 2008

**July 14-18** Eighth Round of Talks held in Washington, DC

**January 14** Seventh Round of Talks held in Kuala Lumpur, Malaysia

### 2007

**April 13** Informal Sixth Round of Talks held in Washington, DC.

**March 7** Malaysian Cabinet meet to discuss 58 outstanding issues in the FTA negotiations.

**February 5** Fifth Round of Talks begin in Kota Kinabalu, Sabah, Malaysia.

**January 8** Fourth Round of Talks begin in San Francisco.

### 2006

**December 27** The Administration reports that it is not likely to ask Congress to substantially change U.S. import laws (trade remedies laws) due to negotiations on a free trade agreement with Malaysia.

**October 30** Third Round of Talks commences in Malaysia. Government procurement is a major point of contention.

**September 18** Third Round of Talks scheduled for September are postponed to October 30.

**July 17-21** The Second Round of Talks is held. Twenty-two negotiating groups met and discussed issues and draft texts.

**June 12-14** The First Round of the Malaysia-US FTA Talks are held in Malaysia.

**May 3** The interagency Trade Policy Staff Committee convenes a public hearing to seek public comment to assist the USTR in amplifying and clarifying negotiating objectives for the proposed U.S.-Malaysia FTA and to provide advice on how specific goods and services and other matters should be treated under the proposed agreement. The U.S. International Trade Commission began hearings on the proposed U.S. Malaysia FTA.

**April 4** The U.S. Trade Representative sends a letter to the Committee on Ways and Means transmitting a report on the intent to initiate negotiations for a free trade agreement between the United States and Malaysia.

**March 31** The Trade Policy Staff Committee gives notice that the U.S. Trade Representative and the Department of Labor are initiating a review of the impact of a proposed free trade agreement between the United States and Malaysia on U.S. employment, including labor markets.

**March 30** The U.S. International Trade Commission announces that it instituted (as of March 24) investigation [Nos. TA-131-33 and TA-2104-22] entitled *U.S.-Malaysia Free Trade Agreement: Advice Concerning the Probable Economic Effect of Providing Duty-Free Treatment for Imports*. The request for the investigation was received from the USTR on March 17, 2006.

**March 8** The U.S. Trade Representative announces and notifies Congress of the Bush Administration's intent to negotiate a free trade agreement between the United States and Malaysia.

<sup>102</sup> This chronology is based on various news reports, press releases, and notifications.

## Appendix C. A Comparison of U.S. and Malaysian Tariff Rates

Measuring the degree of protection provided by tariff barriers is a complicated process, since each country has thousands of products each with a tariff rate that depends on the category of exporter. Average rates, therefore, will differ depending on how they are calculated. The two types of averages most often cited are the most favored nation (MFN) rates and the average applied rates.

### Average MFN Tariff Rates

The MFN rates apply to most countries and all members of the World Trade Organization. U.S. exporters face these rates unless they have been reduced by a special arrangement, such as the Generalized System of Preferences<sup>103</sup> or the Information Technology Agreement. The average MFN rates are simple averages of all tariff lines. On an MFN basis, Malaysia's average tariff rate at 8.1% is higher than the 4.8% of the United States. shows the average and range of U.S. and Malaysian MFN tariff rates by major commodity category as classified under the Harmonized System.<sup>104</sup> Both the United States and Malaysia have peaks in tariff rates on certain products.

Malaysia and the United States each protects its agricultural sector. Although Malaysia's average MFN tariff rate for agricultural products at 3.2% is lower than the 9.7% of the United States, Malaysia maintains high rates on items of interest to U.S. agriculture. The Malaysian tariff rate for grains averages 15.2% and rice is at 40%, oranges and apples at 15% to 20%, and wheat flour at 96%. Prepared food is subject to tariffs of 5% to 30%. Beef enters the country at 15%, but pork faces a 139% tariff and ham 168%. The tariff is 25% on yogurt, 10 to 25% on chocolate products, and 20% on baby food. For the United States, the upper range for agricultural products is a 350% tariff on imports of tobacco products that exceed the import quota. Tobacco products within the quota face a 12.1% tariff rate. In recent years, the tobacco quota has not been filled, so the 350% rate has not been applied.

**Table C-1. Average and Range of Malaysian and U.S. Most Favored Nation Tariff Rates**

	Malaysia's Tariff Rates (2006)			U.S. Tariff Rates (2004)		
	No. of Lines	Average (%)	Range (%)	No. of lines	Average (%)	Range (%)
<b>Total</b>	10,581	8.1	0-60	10,253	4.8	0-350
<b>Agricultural products</b>	1,202	3.2	0-40	1,595	8.9	0-350
Live animals and products thereof	142	0.8	0-20	139	4.2	0-100
Dairy products	40	6.1	0-25	166	21.4	0-177.2
Coffee and tea, cocoa, sugar, etc.	209	4.1	0-25	315	9.7	0-90.7

<sup>103</sup> Malaysia does not qualify for GSP treatment.

<sup>104</sup> Based on the most current World Trade Organization Trade Policy Reviews for Malaysia and the United States.

	Malaysia's Tariff Rates (2006)			U.S. Tariff Rates (2004)		
	No. of Lines	Average (%)	Range (%)	No. of lines	Average (%)	Range (%)
Cut flowers and plants	46	0.0	0-0	57	1.7	0-6.8
Fruit and vegetables	302	3.9	0-30	439	6.3	0-131.8
Grains	21	15.2	0-40	21	1.6	0-11.2
Oils seeds, fats, oil and their products	197	2.0	0-20	95	6.3	0-163.8
Beverages and spirits	81	6.4	0-30	100	4.8	0-151.8
Tobacco	19	5.0	5-5	47	56.0	0-350
Other agricultural products, n.e.s.	145	1.3	0-25	216	2.0	0-35
<b>Non-agricultural products (excl. petrol.)</b>	<b>9,349</b>	<b>8.7</b>	<b>0-60</b>	<b>8,658</b>	<b>4.0</b>	<b>0-63.9</b>
Fish and fishery products	188	3.2	0-20	201	2.0	0-35
Mineral products, precious stones, etc.	416	10.4	0-60	540	3.5	0-38
Metals	1,061	17.5	0-50	1,015	1.9	0-23.8
Chemicals and photographic supplies	1,481	5.1	0-50	1,833	3.7	0-6.5
Leather, rubber, footwear, travel goods	397	13.1	0-40	397	7.3	0-63.9
Wood, pulp, paper and furniture	2,370	2.5	0-40	526	0.7	0-14
Textiles and clothing	1,176	12.6	0-30	1,659	9.1	0-42.1
Transport equipment	461	25.8	0-50	242	2.5	0-25
Non-electric machinery	735	6.3	0-35	790	1.4	0-9.9
Electric machinery	438	9.5	0-50	529	2.2	0-15
Non-agric products, n.e.s.	626	6.3	0-50	888	3.0	0-35.8
<b>Petroleum</b>	<b>30</b>	<b>0.5</b>	<b>0-5</b>	<b>28</b>	<b>2.2</b>	<b>0-7</b>
<b>By sector<sup>a</sup></b>						
-Agriculture and fisheries	1,655	0.4	0-40	488	5.5	0-350
-Mining	124	1.0	0-30	116	0.3	0-10.5
-Manufacturing	8,801	9.6	0-60	9,648	4.8	0-350
-excluding food processing	7,904	10.2	0-60			
<b>By stage of processing</b>						
First stage of processing	2,054	0.9	0-40	959	3.7	0-350
Semi-processed products	3,482	9	0-60	3,418	4.2	0-83.8
Fully-processed products	5,045	10.4	0-60	5,876	5.3	0-350

**Source:** World Trade Organization calculations, based on data provided by the Malaysian and U.S. authorities. See *Trade Policy Review—Report by Malaysia*, WT/TPR/G/156, December 12, 2005, and *Trade Policy Review—Report by the United States*, WT/TPR/S/200, June 9 & 11, 2008.

**Note:** Calculations exclude specific rates and include the *ad valorem* part of alternate and compound rates. The tariff is based on HS02 nomenclature. The number of lines refers to the number of individual lines in the list of tariffs for each country.

- a. International Standard Industrial (Rev.2) classification. Electricity, gas, and water are excluded.

In non-agricultural products (excluding petroleum), Malaysia’s average MFN tariff rate is 8.7% as compared with 4.0% in the United States. The ranges of tariff rates are similar. In Malaysian sectors where the government is fostering the growth of industry, however, the rates are particularly high. For transport equipment, the average Malaysia tariff of 25.6% is more than ten times the U.S. rate of 2.5%. For non-electrical machinery, a sector in which both countries currently export to each other, the Malaysia tariff rate at 6.3% is over four times the U.S. rate of 1.4%. Similarly, in electrical machinery the Malaysia rate of 9.2% is much higher the U.S. rate of 2.2%.

## Average Applied Tariff Rates

Applied average tariff rates are derived by dividing the amount of customs duties collected by the value of imports. Average applied tariff rates are frequently used indicators of a nation’s actual level of tariff protection. These rates may be somewhat lower than the MFN rates because items with high rates might not be imported at all (so no tariffs are paid) and because a nation may have special trade arrangements with other nations under which the partners pay lower or no tariffs on their exports. They can also be higher if importers buy expensive items (such as machinery or automobiles) subject to higher tariff rates.

For Malaysia, the average applied tariff rate of 8.4% in 2006 was more than twice the U.S. average rate of 3.7%.<sup>105</sup> For all industrial goods, the applied rate is 9.1% in Malaysia as compared with 3.7% in the United States . shows Malaysian applied tariff rates for selected industrial sectors.

**Table C-2. U.S. and Malaysian Average Applied Tariffs Rates for Industrial Goods - 2006**

Industrial Category	Malaysia	United States
All Industrial Goods	9.1%	3.7%
Wood, pulp, paper, and furniture	10.9%	0.7%
Textiles and clothing	13.5%	9.6%
Leather, rubber, footwear, and travel goods	14.0%	4.3%
Metals	9.3%	2.1%
Chemicals and photographic supplies	3.6%	3.4%
Transport equipment	18.5%	3.2%
Non-electric machinery	3.7%	1.2%
Electric machinery	6.7%	1.9%

<sup>105</sup> Office of the United States Trade Representative. “Free Trade Agreement: U.S. and Malaysia, Economic and Strategic Benefits.” Power Point presentation. March 8, 2006. [http://www.ustr.gov/assets/Document\\_Library/Fact\\_Sheets/2006/asset\\_upload\\_file802\\_9121.pdf](http://www.ustr.gov/assets/Document_Library/Fact_Sheets/2006/asset_upload_file802_9121.pdf)

<b>Industrial Category</b>	<b>Malaysia</b>	<b>United States</b>
Mineral products and precious stones	8.8%	2.0%
Manufactured articles not specified	5.1%	2.5%
Fish and fish products	2.4%	1.1%

**Source:** U.S. Trade Representative. "Free Trade Agreement: U.S. and Malaysia, Economic and Strategic Benefits," March 8, 2006.

## Appendix D. U.S. Merchandise Exports to Malaysia by Two-Digit Harmonized System Codes, 2005-2007

(US\$ Million; FAS value)

	Description	2005	2006	2007
	Total Exports to Malaysia	10,450.9	12,550.1	11,680.2
01	Live Animals	2.3	2.4	3.6
02	Meat	3.3	2.0	3.8
03	Fish and Seafood	3.0	6.0	8.6
04	Dairy, Eggs, Honey, etc	33.5	48.7	96.4
05	Other of Animal Origin	0.2	0.3	0.5
06	Live Trees and Plants	0.0	0.0	0.0
07	Vegetables	5.5	6.2	7.3
08	Edible Fruit and Nuts	117.6	94.3	57.4
09	Spices, Coffee and Tea	0.8	0.8	0.4
10	Cereals	29.8	23.5	76.3
11	Milling; Malt; Starch	1.5	1.6	2.2
12	Misc Grain, Seed, Fruit	26.2	58.8	119.5
13	Lac; Vegetable Sap, Extract	2.1	1.9	3.5
14	Other Vegetable	0.0	0.0	0.1
15	Fats and Oils	1.7	2.6	2.1
16	Prepared Meat, Fish, etc	1.0	0.8	1.7
17	Sugars	7.2	9.6	13.1
18	Cocoa	4.9	3.3	3.7
19	Baking Related	5.2	4.5	4.9
20	Preserved Food	23.2	24.3	32.6
21	Miscellaneous Food	46.7	48.8	52.6
22	Beverages	4.0	5.8	8.5
23	Food Waste; Animal Feed	37.2	39.2	45.5
24	Tobacco	27.9	21.1	14.3
25	Salt; Sulfur; Earth, Stone	4.5	8.7	8.1
26	Ores, Slag, Ash	4.0	5.0	5.0
27	Mineral Fuel, Oil Etc	30.3	42.6	55.3
28	Inorg Chem; Rare Earth mt	61.9	73.5	77.5
29	Organic Chemicals	113.1	107.0	121.2
30	Pharmaceutical Products	29.9	39.4	31.8
31	Fertilizers	6.0	5.5	8.9

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32	Tanning, Dye, Paint, Putty	20.3	17.2	19.8
33	Perfumery, Cosmetic, etc	29.7	37.0	41.2
34	Soap, Wax, Etc; Dental Prep	27.7	32.6	30.3
35	Albumins; Mod Starch; Glue	8.0	10.7	15.5
36	Explosives	3.6	3.7	6.4
37	Photographic/Cinematography	4.6	4.2	8.3
38	Misc. Chemical Products	76.8	73.8	115.2
39	Plastic	222.2	208.4	230.6
40	Rubber	34.1	45.4	43.0
41	Hides and Skins	0.1	0.1	0.3
42	Leather Art; Saddlery; Bags	2.6	3.0	3.8
43	Furskin+ Artificial Fur	0.0	0.0	0.1
44	Wood	30.1	29.7	33.0
45	Cork	0.1	0.0	0.0
46	Straw, Esparto	0.0	0.0	0.0
47	Woodpulp, Etc.	26.4	28.1	34.9
48	Paper, Paperboard	71.7	67.5	83.8
49	Book+ Newspaper; Manuscript	20.1	18.3	21.0
50	Silk; Silk Yarn, Fabric	0.3	0.5	0.1
51	Animal Hair+ Yarn, Fabric	0.0	0.0	0.0
52	Cotton+ Yarn, Fabric	5.4	8.5	10.2
53	Other Vegetable Textile Fiber	0.0	0.0	0.0
54	Manmade Filament, Fabric	4.0	2.8	4.8
55	Manmade Staple Fibers	2.5	2.9	2.3
56	Wadding, Felt, Twine, Rope	14.7	7.0	8.2
57	Textile Floor Coverings	0.2	0.5	0.5
58	Special Woven Fabric, Etc	0.5	1.0	1.5
59	Impregnated Text Fabrics	3.9	2.9	3.3
60	Knit, Crocheted Fabrics	0.3	0.1	0.2
61	Knit Apparel	0.8	0.3	1.3
62	Woven Apparel	2.4	1.4	2.2
63	Misc Textile Articles	7.0	9.6	9.1
64	Footwear	0.8	0.7	0.7
65	Headgear	0.3	0.3	0.2
66	Umbrella, Walking-sticks, Etc	0.0	0.0	0.0
67	Artificial Flowers, Feathers	0.0	0.0	0.1
68	Stone, Plaster, Cement, Etc	11.7	16.4	16.0
69	Ceramic Products	9.5	4.3	11.3

70	Glass and Glassware	27.0	30.4	32.6
71	Precious Stones, Metals	37.1	48.9	57.6
72	Iron and Steel	121.3	211.8	411.7
73	Iron/steel Products	28.0	33.0	40.2
74	Copper+ Articles Thereof	27.4	30.0	29.6
75	Nickel+ Articles Thereof	3.0	4.0	7.1
76	Aluminum	43.5	43.4	66.2
78	Lead	4.4	3.0	0.1
79	Zinc+articles Thereof	0.6	1.8	2.2
80	Tin + Articles Thereof	0.1	6.8	2.4
81	Other Base Metals, etc.	7.8	17.0	22.3
82	Tools, Cutlery, of Base Metals	22.5	28.3	38.5
83	Misc Art of Base Metal	8.6	10.0	7.8
84	Machinery	1,744.8	1,687.3	1,709.5
85	Electrical Machinery	5,985.7	7,131.2	6,320.9
86	Railway; Trf Sign eq	5.5	3.4	3.4
87	Vehicles, Not Railway	15.8	13.7	17.1
88	Aircraft, Spacecraft	255.8	807.3	320.2
89	Ships and Boats	10.5	1.2	1.5
90	Optic, not 8544; Medical Instr	567.8	834.5	690.9
91	Clocks and Watches	1.3	0.9	1.2
92	Musical Instruments	1.2	1.9	1.5
93	Arms and Ammunition	1.3	2.2	4.8
94	Furniture and Bedding	29.8	13.7	10.7
95	Toys and Sports Equipment	19.2	19.6	17.4
96	Miscellaneous Manufactures	2.5	6.3	6.4
97	Art and Antiques	0.2	0.4	3.8
98	Special Other	201.4	231.2	226.7

Source of data: U.S. International Trade Commission.

## Appendix E. U.S. Merchandise Imports from Malaysia by Two-Digit Harmonized System Codes, 2005-2007

(U.S.\$ Millions, CIF values)

HS	Description	2005	2006	2007
	Total Imports from Malaysia	34,675.8	37,521.1	32,628.5
01	Live Animals	0.2	0.1	0.2
02	Meat	0.0	0.0	0.0
03	Fish and Seafood	130.2	152.5	142.3
04	Dairy, Eggs, Honey, etc	0.8	0.3	2.7
05	Other of Animal Origin	0.1	0.1	0.1
06	Live Trees and Plants	0.8	0.8	0.7
07	Vegetables	0.3	0.1	0.0
08	Edible Fruit and Nuts	0.0	0.0	0.0
09	Spices, Coffee and Tea	1.8	3.6	3.8
10	Cereals	0.0	0.1	0.0
11	Milling; Malt; Starch	0.2	0.0	0.1
12	Misc. Grain, Seed, Fruit	0.2	0.3	0.0
13	Lac; Vegetable Sap, Extract	0.2	0.3	0.3
14	Other Vegetable	0.0	0.0	0.0
15	Fats and Oils	343.3	458.0	679.4
16	Prepared Meat, Fish, etc	18.3	21.7	34.5
17	Sugars	1.1	0.7	1.2
18	Cocoa	117.6	113.8	121.4
19	Baking Related	11.1	11.5	11.7
20	Preserved Food	9.4	8.4	10.2
21	Miscellaneous Food	9.6	22.7	39.7
22	Beverages	4.2	6.7	3.2
23	Food Waste; Animal Feed	0.7	4.2	7.4
24	Tobacco	1.0	0.0	0.0
25	Salt; Sulfur; Earth, Stone	0.2	0.2	0.1
26	Ores, Slag, Ash	9.5	10.7	8.2
27	Mineral Fuel, Oil Etc	549.7	457.8	424.6
28	Inorg Chem; Rare Earth mt	14.6	3.7	8.1
29	Organic Chemicals	108.0	94.5	109.3
30	Pharmaceutical Products	1.1	2.8	3.3

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HS	Description	2005	2006	2007
31	Fertilizers	13.4	14.7	16.4
32	Tanning, Dye, Paint, Putty	17.7	14.7	13.1
33	Perfumery, Cosmetic, etc	3.9	4.5	5.6
34	Soap, Wax, Etc; Dental Prep	21.6	25.3	23.8
35	Albumins; Mod Starch; Glue	0.7	0.6	0.4
36	Explosives	0.0	0.0	0.0
37	Photographic/Cinematography	1.5	3.3	0.7
38	Misc. Chemical Products	184.7	218.1	304.7
39	Plastic	153.3	187.6	162.8
40	Rubber	728.8	866.0	839.2
41	Hides and Skins	0.1	0.3	0.4
42	Leather Art; Saddlery; Bags	5.5	12.0	11.1
43	Furskin+ Artificial Fur	0.0	0.0	0.0
44	Wood	402.0	433.5	339.9
45	Cork	0.0	0.0	0.1
46	Straw, Esparto	0.2	0.0	0.0
47	Woodpulp, Etc.	0.0	0.0	0.0
48	Paper, Paperboard	19.4	19.8	27.9
49	Book+ Newspaper; Manuscript	22.5	21.9	26.7
50	Silk; Silk Yarn, Fabric	0.0	0.0	0.0
51	Animal Hair+ Yarn, Fabric	0.6	0.3	0.4
52	Cotton+ Yarn, Fabric	13.1	11.9	3.5
53	Other Vegetable Textile Fiber	0.0	0.0	0.0
54	Manmade Filament, Fabric	18.0	18.4	19.0
55	Manmade Staple Fibers	3.2	11.0	7.4
56	Wadding, Felt, Twine, Rope	12.5	12.5	9.1
57	Textile Floor Coverings	0.1	0.2	0.0
58	Special Woven Fabric, Etc	2.2	3.3	1.3
59	Impregnated Text Fabrics	0.6	0.6	0.6
60	Knit, Crocheted Fabrics	0.0	0.1	0.2
61	Knit Apparel	462.2	459.2	447.2
62	Woven Apparel	274.7	283.4	255.6
63	Misc Textile Articles	8.3	6.0	6.3
64	Footwear	1.8	2.7	2.6
65	Headgear	3.5	3.1	2.4
66	Umbrella, Walking-sticks, Etc	0.0	0.0	0.0
67	Artificial Flowers, Feathers	0.0	0.0	0.0

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HS	Description	2005	2006	2007
68	Stone, Plaster, Cement, Etc	5.3	2.8	6.3
69	Ceramic Products	38.1	36.8	27.8
70	Glass and Glassware	6.8	9.8	9.7
71	Precious Stones, Metals	30.3	30.5	23.7
72	Iron and Steel	143.7	323.5	159.0
73	Iron/steel Products	88.2	123.8	123.2
74	Copper+ Articles Thereof	57.5	107.3	123.1
75	Nickel+ Articles Thereof	0.0	0.4	0.7
76	Aluminum	54.5	38.4	33.6
78	Lead	0.0	0.0	0.0
79	Zinc+articles Thereof	1.6	1.0	0.7
80	Tin + Articles Thereof	16.3	4.3	2.2
81	Other Base Metals, etc.	0.0	2.2	0.3
82	Tools, Cutlery, of Base Metals	5.7	5.1	8.1
83	Misc Art of Base Metal	23.0	22.5	25.1
84	Machinery	13,130.8	15,229.2	14,347.9
85	Electrical Machinery	15,050.6	14,927.4	10,940.7
86	Railway; Trf Sign eq	0.4	0.9	0.5
87	Vehicles, Not Railway	30.2	32.6	33.9
88	Aircraft, Spacecraft	21.2	27.8	37.1
89	Ships and Boats	20.7	30.3	19.5
90	Optic, not 8544; Medical Instr	630.8	781.9	957.8
91	Clocks and Watches	7.0	1.9	1.6
92	Musical Instruments	2.3	2.0	2.2
93	Arms and Ammunition	0.4	0.5	0.5
94	Furniture and Bedding	914.7	993.8	829.7
95	Toys and Sports Equipment	109.9	96.8	95.0
96	Miscellaneous Manufactures	26.1	26.4	19.5
97	Art and Antiques	0.2	0.5	0.3
98	Special Other	301.4	376.2	412.9
99	Other Special Impr Provisions	247.9	273.6	244.9

Source of data: U.S. International Trade Commission

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## Appendix F. U.S. Merchandise Exports by State to Malaysia, 2004-2006

(U.S. Dollars)

State	2005	2006	2007
U.S. Total	10,460,833,167	12,544,269,310	11,680,201,598
Alabama	24,435,439	32,055,731	40,770,615
Alaska	1,813,626	2,110,093	3,348,500
Arizona	778,629,396	807,955,375	539,240,114
Arkansas	12,036,780	12,353,817	18,627,221
California	1,943,023,872	2,512,950,444	2,206,103,264
Colorado	246,103,616	242,375,536	206,722,451
Connecticut	115,115,730	155,261,689	204,818,869
Delaware	12,072,472	12,631,167	12,246,911
District of Columbia	6,053,657	4,385,022	4,923,895
Florida	231,852,408	173,138,280	174,820,666
Georgia	84,644,356	63,846,193	110,886,796
Hawaii	7,930,844	8,729,921	15,738,207
Idaho	150,111,154	152,678,546	124,308,415
Illinois	233,327,516	321,290,525	335,160,263
Indiana	75,658,664	84,684,105	112,639,142
Iowa	34,433,982	36,166,670	42,070,562
Kansas	43,925,781	31,365,428	34,254,656
Kentucky	105,575,397	104,453,457	178,508,976
Louisiana	98,810,927	93,280,926	219,286,946
Maine	364,620,488	673,323,738	723,770,235
Maryland	20,553,856	21,151,523	25,459,669
Massachusetts	617,627,876	535,218,544	521,805,171
Michigan	77,665,312	61,516,319	69,402,444
Minnesota	185,472,723	188,188,446	185,374,766
Mississippi	7,761,611	9,551,863	13,308,966
Missouri	53,093,743	49,591,784	43,202,476
Montana	7,295,218	5,299,170	4,377,357
Nebraska	7,694,801	10,251,464	13,227,045
Nevada	36,542,586	67,638,870	37,579,984
New Hampshire	23,779,985	31,678,258	22,499,579
New Jersey	79,896,927	63,316,264	119,072,228

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State	2005	2006	2007
New Mexico	342,690,777	490,070,276	477,400,891
New York	239,245,648	261,717,799	322,290,703
North Carolina	182,575,269	141,852,400	108,657,728
North Dakota	1,042,341	835,254	2,240,582
Ohio	119,261,745	83,616,979	112,772,995
Oklahoma	16,758,186	14,238,542	20,995,371
Oregon	914,985,840	1,215,312,164	1,076,571,892
Pennsylvania	169,575,146	181,442,354	188,153,313
Puerto Rico	23,768,292	16,792,176	12,282,140
Rhode Island	15,174,078	10,424,503	7,425,644
South Carolina	71,623,429	67,769,659	85,415,229
South Dakota	6,527,987	4,783,698	4,821,835
Tennessee	128,517,281	165,627,371	164,562,019
Texas	1,755,450,547	1,952,913,193	1,734,022,474
Utah	152,665,498	175,923,709	159,118,224
Vermont	49,582,756	29,682,822	40,571,511
Virgin Islands	123,452,142	189,635,487	242,587,655
Virginia	120,041	6,680,464	40,347
Washington	86,315,944	57,529,454	66,446,859
West Virginia	213,893,793	757,660,121	333,733,049
Wisconsin	23,128,249	8,463,557	22,153,272
Wyoming	119,236,465	127,042,669	122,019,580
Unallocated	17,680,970	15,815,491	12,361,896

Source: World Trade Atlas.

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