Order Code RL33445

CRS Report for Congress

The Proposed U.S.-Malaysia Free Trade Agreement

Updated January 10, 2007

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Summary

This report addresses the proposed U.S.-Malaysia free trade agreement (FTA). It provides a brief 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 to Malaysia by sector and exports to Malaysia by state.

The U.S. Trade Representative, on March 8, 2006, announced the Administration's intent to negotiate a free trade agreement with Malaysia. The goal of the proposed FTA is to remove tariffs and non-tariff barriers and expand trade between the two nations. Beginning in June 2006, five rounds of negotiations (alternating between the two countries) were scheduled. The negotiating goal is to complete the talks by early 2007 in order to send the proposed implementing legislation to Congress in the spring of 2007 and have Congress consider it before the Administration's Trade Promotion Authority expires on July 1, 2007.

The proposed U.S.-Malaysia FTA is of interest to Congress because (1) it requires congressional approval under expedited legislative procedures; (2) it continues the 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.

Malaysia is a rapidly industrializing country with a gross domestic product of $131 billion and a majority Muslim population of 25.6 million people. It is a democratic secular Muslim state; a member of ASEAN, Asia Pacific Economic Cooperation, and other multilateral fora, and shares an interest with the United States in dealing with a rising China and in securing a safe shipping channel through the Strait of Malacca. Malaysia is not a member of the Arab League.

On a most favored nation basis, Malaysia's average tariff rate is 8.1% — nearly twice the 4.9% of the United States. Under an FTA, exporters in each country would face the same tariff rates and a more level playing field for U.S. businesses shipping merchandise to Malaysia.

Areas of particular interest to U.S. exporters include a reduction of Malaysian barriers to exports of automobiles (Malaysia protects its automobile industry with tariffs of 30% on fully assembled vehicles and excise taxes ranging from 80% to 200%), certain agricultural products, stricter enforcement of intellectual property rights, and broader access in sectors such as financial services, government procurement, telecommunications, and professional services.

Malaysia is the tenth largest trading partner of the United States with U.S. exports of $10.4 billion and imports of $33.7 billion for a U.S. bilateral deficit of $23.3 billion in 2005. The United States is Malaysia's top export market and second to Japan for Malaysia's imports. This report will be updated periodically.

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Recent Developments

- December 27, 2006. The Administration reported that it was 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.

- The fourth round of negotiations is scheduled for January 2007 in San Francisco.

- September 18, 2006. The third round of negotiations in Malaysia was postponed to October 30 because of a change in the lead Malaysian negotiator.

- Government procurement restrictions that reserve a certain share for ethnic Malays reportedly are emerging as a major sticking point in the negotiations.

- July 17-21, 2006. The second round of negotiations was held. Twenty-two negotiating groups met in Washington and discussed issues and draft texts.

Introduction

On March 8, 2006, the U.S. Trade Representative announced and notified Congress of the Administration's intent to negotiate a free trade agreement (FTA) with Malaysia. The goal of the proposed FTA is to remove tariffs and non-tariff barriers and expand trade between the two nations. The first round of negotiations was held June 12-16, 2006, in Malaysia with at least five rounds anticipated. The two countries announced that they are seeking to complete the talks by early 2007 in order to send the proposed implementing legislation to Congress in the spring of 2007 and have Congress consider it before the administration's Trade Promotion Authority expires on July 1, 2007, but they later indicated that they would not rush into concluding the FTA just to meet the deadline.[1] This would be the third FTA

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[1] U.S. Trade Representative. United States, Malaysia Announce Intention to Negotiate Free Trade Agreement. USTR Press Release, March 8, 2006. U.S., Malaysia Launch FTA Talks, Seek to Complete Pact by End of Year. *International Trade Reporter*, Vol. 23, No. 10, (continued...)

negotiation 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 now are stalled. The United States is 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.[2]

The proposed FTA is expected to be comprehensive and similar to that signed with Singapore. It would include a phasing out of tariffs on imports from each country, further opening of service sectors, and greater freedom for Americans to invest in the rapidly industrializing Malaysian economy. U.S. industries are particularly interested in greater market access in the automotive, financial services, government procurement, and agricultural sectors and in improving protection of intellectual property rights in Malaysia.

The proposed U.S.-Malaysia FTA is of interest to Congress because (1) it requires congressional approval under expedited legislative procedures; (2) it would continue the 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.

Some of the initial response to the USTR's FTA announcement included a statement by Senator Max Baucus welcoming the agreement but urging the negotiators to address Malaysia's continued ban on bone-in beef and statements by Representatives Jim Kolbe and Dan Burton hailing the launch of the negotiations.[3] The

Malaysia

Area: 127,316 sq. mi., slightly larger than New Mexico.
Capital: Kuala Lumpur
Population: 25.6 million.
Annual Economic Growth Rate: 5.3% in 2005
Ethnic groups: Malay 50.8%, Chinese 23.8%, Indigenous 10.9%, Indian 7.1%
Religions: Islam (60.4%), Buddhism (19.2%), Christianity (9.1%)
Government: Federal parliamentary democracy with a constitutional monarch. After becoming independent in 1957, Malaya, Sabah, Sarawak, and Singapore formed Malaysia in 1963. Singapore became an independent country in 1965.
Prime Minister: Abdullah bin Ahmad Badawi
GDP per capita: $5,083 in 2005
Currency: 3.6 Ringgit = $1. Peg to the dollar removed in 2005 and replaced with a managed float.
Trade: The United States is Malaysia's largest trading partner. Malaysia is the tenth largest U.S. trading partner.

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[1] (...continued)
March 9, 2006. P. 344. Malaysia, US Agree Not to Rush Into Signing FTA. Financial Times Information, Thai Press Reports. August 25, 2006.

[2] Office of the U.S. Trade Representative. United States and Malaysia Sign Trade and Investment Framework Agreement. Press Release. May 10, 2004.

[3] 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
(continued...)

National Association of Manufacturers indicated that it has been a leading advocate of an FTA with Malaysia, and a U.S.-Malaysia Free Trade Agreement (FTA) Business Coalition was organized on March 8, 2006.[4] Objections to the proposed FTA have come from some groups in Malaysia and from U.S. labor and anti-globalization interests.[5]

The expiration of Trade Promotion Authority (TPA) in the United States on July 1, 2007, places a tight deadline on the negotiation of this proposed FTA. TPA requires that Congress be notified of its intent to sign an agreement 90 days prior to the actual signing. Therefore, the FTA would have to be finalized before April 2, 2007 unless the TPA authority is extended. FTA negotiations, however, can take longer than initially anticipated. For example, the United States and Thailand agreed on October 19, 2003 to begin negotiations on an FTA. Currently, the negotiations are in abeyance, and the new Thai government has shown little interest in restarting them. The two sides are still wide apart on a number of sensitive issues.[6] Negotiations for the U.S.-Singapore Free Trade Agreement were launched under the Clinton Administration in December 2000 with the hope of signing the agreement within a few months. The agreement was signed by President Bush nearly three years later on September 4, 2003.

This report provides a brief overview of Malaysia, a review of U.S. interests, an examination of possible issues likely to arise during the negotiations, a comparison of tariff rates between the two countries, and legislative activity with policy options. It also includes a brief chronology and import and export data, including U.S. exports to Malaysia by sector and exports to Malaysia by state.

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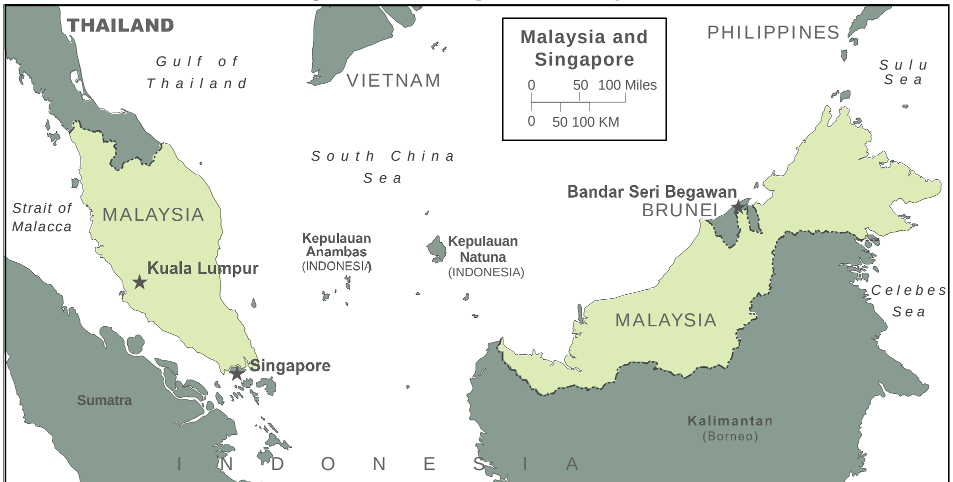
[3] (...continued)
Trade Negotiations with Malaysia, Press Release, March 9, 2006. Office of Congressman Dan Burton. Vice-Chairman Burton Comments on the Launch of the United States-Malaysia Free Trade Agreement, March 7, 2006.

[4] 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. The Secretariat for the US-Malaysia Free Trade Agreement Business Coalition is the US-ASEAN Business Council. The coalition is co-chaired by American International Group, Cargill, Citigroup, Discovery Communications, Federal Express, General Electric, Intel, and Oracle. Its members include 3M; AdvaMed, AeA (American Electronics Association); Agilent; American Standard Companies; AT&T; Bankers Association for Finance and Trade; Barbour, Griffith and Rogers; LLC; Boeing; BrooksBowerAsia, LLC; Caterpillar; Chubb; Cisco Systems; Distilled Spirits Council; IBM; International Association of Drilling Contractors; Johnson & Johnson; Nathan Associates; Principal International; Samuels International; TDRS; Time Warner; United Parcel Service; and United Technologies Corporation.

[5] Heong, Chee Yoke. "Malaysians Question US Free-trade deal." *Asia Times* (Online edition) April 27, 2006.

[6] CRS Report RL32314, *U.S.-Thailand Free Trade Agreement Negotiations*, by Raymond J. Ahearn and Wayne M. Morrison.

Figure 1. Map of Malaysia



Source: Map Resources. Adapted by CRS. (KYancey 5/13/04)

The Malaysian Economy

Malaysia is a rapidly industrializing country, a member of the Association of Southeast Asian Nations (ASEAN), and a nation with a majority Muslim population of 25.6 million people. Malaysia's government is a federal parliamentary democracy with a constitutional monarch.

Table 1. Selected Indicators for the Malaysian Economy

	2000	2001	2002	2003	2004	2005
Growth in Real GDP (% per year)	8.9	0.3	4.4	5.5	7.2	5.2
Nominal GDP ($billion)	90	88	95	104	118	131
Nominal GDP per Capita ($)	3,927	3,740	3,974	4,256	4,759	5,159
Inflation Rate (% change in CPI)	1.6	1.4	1.8	1.1	1.4	3.0
Exports ($Million)	98,430	87,981	94,343	104,729	126,642	141,781
Imports ($Million)	77,602	69,598	75,365	79,002	99,149	108,390
Trade Balance	20,827	18,383	18,978	25,727	27,493	33,391

Source: Global Insight, Malaysia Interim Annual Forecast, April 7, 2006.

Malaysia's $131 billion economy and $5,083 per capita GDP make it a market considerably larger than most of the countries that have recently negotiated free trade agreements with the United States (particularly Singapore, Bahrain, Oman, Morocco, and countries of central America). It is a mid-size market more in the range of Australia and South Korea. In 2005, Malaysia was the tenth largest trading partner of the United States with $44.1 billion in two-way trade. This included $10.4 billion in U.S. goods exported to Malaysia and $33.7 billion in imports from that country.

The United States exported more to Malaysia than it did to Israel, Ireland, or India and three times as much as it sold to Russia. Malaysia is the top U.S. market for exports of integrated circuits with $4.7 billion sent there in 2005. California and Texas each export nearly $2 billion worth of electronics and other high-technology goods to Malaysia each year. Malaysia also is a large purchaser of machinery, optical/medical instruments, and aircraft.[7] In 2005, U.S. businesses invested $1.4 billion (up from $0.3 billion in 2004) in the Malaysian economy.[8] For Malaysia, the United States is its largest trading partner and largest foreign investor.

Interests, Benefits and Potential Opposition

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

The proposed FTA also is 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." This is a component of the U.S. national security strategy.[9] It also is in accord with the Enterprise for ASEAN Initiative, a trade initiative of the Bush Administration in which the United States has offered the prospect of FTAs with members of ASEAN committed to economic reforms and openness. In a broader sense, a U.S.-Malaysia 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.[10] With the Doha Round of multilateral trade talks under the World Trade Organization (WTO) stalled, some see FTAs as a fallback position should the WTO talks fail.

When announcing the proposed negotiations, the U.S. Trade Representative 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

[7] World Trade Atlas using Department of Commerce data for 2005.

[8] Bernma. Increase in U.S. Investments in M'sia Reflects Growing Confidence. BizNewsDatabank, February 28, 2006. [http://www.biznewsdb.com]

[9] The White House. National Security Strategy of the United States. March 2006, part VI.

[10] See CRS Report RL31038, *Asia Pacific Economic Cooperation (APEC), Free Trade, and the 2006 Meetings in Hanoi, Vietnam* by Michael F. Martin.

goals.[11] Other benefits mentioned for the proposed FTA include (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 American companies and Malaysian companies; (10) to enhance economic growth and job creation; and (11) to lower costs and create more competitive companies.[12]

A U.S.-Malaysia FTA also would keep the U.S. economy linked to the dynamic economies of Southeast Asia. Malaysia already has FTAs with Indonesia, Brunei, Singapore, the Philippines, and Vietnam under the ASEAN free trade area. It has FTAs with South Korea and Pakistan, an economic partnership agreement with Japan covering most goods trade, a partial FTA with China, is negotiating FTAs with Australia and New Zealand, and is discussing an FTA with India. The USTR has also indicated that with the proposed FTA, the U.S. government is hoping to further build the trading relationship with Malaysia as well as broader bilateral 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 hopes that this FTA will 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.[13]

As a moderate, democratic Muslim nation, Malaysia plays a strategic role in U.S. foreign policy. In 2005, Malaysian Prime Minister Abdullah Badawi urged Muslims around the world to guard against extremism and improve ties with the West while promoting his nation's moderate version of Islam.[14] The U.S. government hopes that the proposed FTA will reinforce the shared interests of the United States and Malaysia, promote common values, and facilitate cooperation in counter-terrorism, defense, counter-narcotics, education, and in other areas.[15] Malaysia (along with Singapore, Thailand and Indonesia) also 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 previous FTAs often has revolved around so-called "blue and green" (labor and the environment) issues. Anti-globalization forces also have come into play as well as efforts to protect import-sensitive industries in

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[11] Office of the United States Trade Representative. Free Trade Agreement: U.S.-Malaysia. Trade Facts, March 2006.

[12] 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.

[13] Weisel, Barbara. Opening Remarks, Public Hearing, U.S.-Malaysia FTA, Washington, DC, May 3, 2006.

[14] "Malaysia PM Abdullah Warns Muslims Against Extremism." Voice of America. January 27, 2005. See also CRS Report RL31672, *Terrorism in Southeast Asia*, by Bruce Vaughn (Coordinator), Emma Chanlett-Avery, Thomas Lum, Mark Manyin, and Larry Niksch.

[15] Weisel, Barbara. Opening Remarks, May 3, 2006. Op cit.

each country from import competition. Specific situations unique to Malaysia also may appear as the negotiations progress. With the U.S.-Singapore FTA, for example, market access for chewing gum, business visas, and capital controls generated considerable controversy.

With respect to labor interests, the AFL-CIO opposes additional FTAs in general. Its position is that the Bush Administration has launched or concluded bilateral free trade agreements that include no enforceable protections for core workers' rights, 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).[16] 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.[17] As for labor conditions in Malaysia, most workers have the right to engage in trade union activity. As of September 2004, 9% of the labor force was represented by the 617 trade unions.[18]

Opposition to an FTA also may arise from other interests. For example, Public Citizen, a nonprofit consumer advocacy organization, states 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." [19]

Another possible issue could be Malaysia's relations with Israel. Although Malaysia is not a member of the League of Arab States, it shares much of the anti-Zionist ideology of the League countries and currently does not have diplomatic relations with Israel. In 2005, Israel reported imports from Malaysia of $41 million and exports of $130 million.

In recent congressional consideration of 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-

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[16] 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.

[17] 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.

[18] U.S. Department of State. Bureau of Democracy, Human Rights, and Labor. *Country Reports on Human Rights Practices — 2005, Malaysia*. March 8, 2006.

[19] Public Citizen. Global Trade Watch. CAFTA: Part of the FTAA Puzzle. [http://www.citizen.org/trade/cafta]

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 fiscal 2006 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 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 interests, 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.[20]

In Malaysia, the Ministry of Trade and Industry headed by Hon. Dato' Seri Rafidah Azizis 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 collaboration; and (4) build capacity in specific targeted areas thorough 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.[21] The Ministry also noted that it would seek "flexibility and longer phase-in periods for sensitive sectors."[22]

Most of the recent FTAs negotiated by the United States have been with relatively small countries with governments that wield considerable power over domestic opposition. Those governments have been able to push the agreements through despite resistance by import competing industries or other local interests. In the case of Thailand, however, opposition forces have stalled the negotiations through street protests organized by a coalition of Thai groups representing AIDS patients, consumers, farmers, health activists, and human rights organizations. The most controversial issues reportedly have been liberalization of the agricultural sector and intellectual property rights — particularly with respect to pharmaceuticals. AIDS and other patients claim that stricter enforcement of patents on drugs would make their treatments prohibitively expensive compared with use of currently available generics or copies of patented drugs.[23] The same issues could be raised in Malaysia.

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[20] See CRS Report RL31870, *The Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR)*, by J. F. Hornbeck.

[21] Malaysia. Ministry of Trade and Industry. Malaysia-US Free Trade Agreement. Media Release. May 3, 2006.

[22] 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.

[23] Phanayanggoor, Preeyanat. "NESAC Urges Caution over US FTA Talks," *Bangkok Post*, April 17, 2006.

Tariff Rates

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 free. Both the United States and Malaysia participate in the Information Technology Agreement[24] (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. Therefore, tariffs are not a barrier to most U.S. products currently sold 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.[25]

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[26] or 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 nearly twice the 4.9% of the United States. Under an FTA, if each country reduces its tariff rates to zero, U.S. exporters would stand to gain more than their Malaysian counterparts, since Malaysian rates are considerably higher than those in the United States.

U.S. exporters shipping non-information technology products to Malaysia pay MFN tariff rates if the products originate in the United States. As noted above, on an MFN basis, Malaysia's average tariff rate is 8.1% while that of the United States is 4.9%. **Table 2** shows the average and range of U.S. and Malaysian MFN tariff rates by major commodity category as classified under the Harmonized System. Both the United States and Malaysia have peaks in tariff rates on certain products.

Both Malaysia and the United States protect their agricultural sector. Although Malaysia's average MFN tariff rate for agricultural products at 3.2% is lower than the

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[24] See World Trade Organization discussion of the Information Technology Agreement at [http://www.wto.org/English/tratop_e/inftec_e/inftec_e.htm].

[25] 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.

[26] Malaysia does not qualify for GSP treatment.

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 2. Average and Range of Malaysian and U.S. Most Favored Nation Tariff Rates

	Malaysia's Tariff Rates (2005)			U.S. Tariff Rates (2004)		
	No. of Lines	Average (%)	Range (%)	No. of lines	Average (%)	Range (%)
Total	10,581	8.1	0-60	10,304	4.9	0-350
Agricultural products	1,202	3.2	0-40	1,611	9.7	0-350
Live animals and products thereof	142	0.8	0-20	140	4.2	0-100
Dairy products	40	6.1	0-25	166	26.1	0-284
Coffee and tea, cocoa, sugar, etc.	209	4.1	0-25	314	11.6	0-159
Cut flowers and plants	46	0.0	0-0	60	1.5	0-6.8
Fruit and vegetables	302	3.9	0-30	437	6.3	0-132
Grains	21	15.2	0-40	21	1.5	0-11
Oils seeds, fats, oil and their products	197	2.0	0-20	92	6.0	0-164
Beverages and spirits	81	6.4	0-30	100	6.1	0-107
Tobacco	19	5.0	5-5	47	56.4	0-350
Other agricultural products, n.e.s.	145	1.3	0-25	234	1.9	0-62
Non-agricultural products (excl. petrol.)	9,349	8.7	0-60	8,665	4.0	0-58
Fish and fishery products	188	3.2	0-20	193	2.0	0-35
Mineral products, precious stones, etc.	416	10.4	0-60	530	3.3	0-38
Metals	1,061	17.5	0-50	1,011	1.9	0-26
Chemicals and photographic supplies	1,481	5.1	0-50	1,834	3.7	0-6
Leather, rubber, footwear, travel goods	397	13.1	0-40	389	6.9	0-58
Wood, pulp, paper and furniture	2,370	2.5	0-40	508	0.7	0-14

	Malaysia's Tariff Rates (2005)			**U.S. Tariff Rates (2004)**		
	No. of Lines	**Average (%)**	**Range (%)**	**No. of lines**	**Average (%)**	**Range (%)**
Textiles and clothing	1,176	12.6	0-30	1,651	9.0	0-38
Transport equipment	461	25.8	0-50	228	2.6	0-25
Non-electric machinery	735	6.3	0-35	853	1.3	0-10
Electric machinery	438	9.5	0-50	558	2.1	0-15
Non-agric products, n.e.s.	626	6.3	0-50	910	3.0	0-39
Petroleum	30	0.5	0-5	28	2.2	0-7
By sector[a]						
-Agriculture and fisheries	1,655	0.4	0-40	492	5.7	0-350
-Mining	124	1.0	0-30	121	0.4	0-10
-Manufacturing	8,801	9.6	0-60	9,690	4.9	0-350
-excluding food processing	7,904	10.2	0-60			
By stage of processing						
First stage of processing	2,054	0.9	0-40	964	3.7	0-350
Semi-processed products	3,482	9	0-60	3,392	4.3	0-159
Fully-processed products	5,045	10.4	0-60	5,948	5.4	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/160, February 15, 2006.

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.

The threat of an FTA generating a surge in agricultural imports from Malaysia seems small, since the country currently exports few agricultural products either to the world or to the United States. In 2004, for example, Malaysia exported to the world a total of $106 million in dairy products, $88 million in sugar, and $225 million in tobacco products.[27] Malaysia does not have a significant sugar industry, a politically sensitive industry in the United States.

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. In transport equipment, in particular, the average Malaysia tariff of 25.6% is nearly ten times the U.S. rate of 2.6%. In non-electrical machinery, a sector in which both countries currently export

[27] United Nations Trade Database (SITC Rev.3) accessed via the U.S. Department of Commerce's Trade Policy Information System.

to each other, the Malaysia tariff rate at 9.5% is four times the U.S. rate of 2.1%. Similarly, in electrical machinery the Malaysia rate of 6.3% is double the U.S. rate of 3.0%. The Malaysian rate, however, can reach 35% for some items. Most industrial machinery enters Malaysia at 5% to 30%. Boilers and engines enter at 5%, but air conditioners and refrigerators enter at 30%.

Average Applied Tariff Rates

Applied average tariff rates are derived by dividing the amount of customs duties collected by the value of imports. These rates are somewhat lower than the MFN rates because items with high rates might not be imported at all (so no tariffs are paid) and because Malaysia is part of the ASEAN FTA and also has FTAs with other nations. The FTA partners pay lower or no tariffs on their exports to Malaysia. This lowers Malaysia's average applied tariff rate. Still, average applied tariff rates are good indicators of the level of tariff protection and may be useful for American multinational corporations with subsidiaries located in various countries of the world. For Malaysia, the average applied tariff rate of 8.4% is more than twice the U.S. average rate of 3.7%.[28] For all industrial goods, the applied rate is 9.1% in Malaysia as compared with 3.7% in the United States. **Table 3** shows Malaysian applied tariff rates by industrial sector.

Table 3. U.S. and Malaysian Average Applied Tariffs on Industrial Goods
(Percent)

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
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.

[28] 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]

Possible Issues

Free trade agreements reduce artificial barriers to trade and investment and, thereby, change existing parameters that generate opportunities for making profits or exerting market power. In addition to eliminating tariffs on both sides, FTAs usually also 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 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 create gainers and losers as border barriers and government strictures are lessened. In general, the ones who gain tend to be exporters, investors, and consumers, while those who lose tend to be in import competing industries and those opposed to greater economic activity in specific areas. For import-sensitive sectors, the length of phase-out periods for existing protective measures can be a focus of dispute.

The U.S. Trade Representative and U.S. business interests have identified certain specific issues related to the potential U.S.-Malaysia FTA that are likely to require attention in the negotiations. These include intellectual property rights, automobiles, services, government procurement, and capital controls. Other issues may arise as the negotiations progress.

Intellectual Property Rights

An issue of interest to U.S. exporters is Malaysian enforcement of intellectual property rights (IPR). Malaysia has recently tightened its laws on and stepped up enforcement of protection of intellectual property, but problems still remain. The International Intellectual Property Association (IIPA) estimated 2004 industry losses in Malaysia due to piracy at $188 million. IIPA estimated 2004 piracy rates at 63% for business software, 52% for music, and 50% for movies.

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 *2006 Special 301 Report*, the USTR stated that Malaysia has made some significant improvements in IPR protection and enforcement but still has some serious deficiencies. IPR enforcement improvements during 2005 included conducting raids against pirate optical disc production facilities, seizing pirate goods and machinery used to produce pirate materials, arresting IPR infringers, and revoking or declining to renew licenses for pirate optical disc facilities. The USTR also stated that trademark counterfeiting, including those of pharmaceuticals, is rampant in Malaysia and that these issues are to be addressed in the FTA negotiations.[29]

Opposition to the FTA negotiations has appeared in Malaysia among interests related to the treatment of AIDS. The concern reportedly is that the FTA may involve patent and data exclusivity issues that could affect access to "affordable"

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[29] See U.S. Trade Representative. *2006 Special 301 Report*, April 28, 2006.

anti-retroviral AIDS drugs. In their view, since the government now imports generic versions of such drugs from India, stricter enforcement of drug patents could discourage pharmaceutical companies from introducing new anti-retroviral drugs in Malaysia.[30]

Automobiles

Malaysia has a booming automobile industry. 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, 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. Ethnic Malays (not Malaysians of Chinese or other ethnic origin) 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 10-50% on motorcycles.[31]

The United States currently maintains a special 25% tariff on imports of pickup trucks. Malaysia is likely to raise this issue during negotiations on access in the automotive sector. In a May 2006 hearing, a representative of the U.S. Automotive Trade Policy Council (representing 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.[32]

Services

Financial services also could be a difficult issue to resolve in the upcoming 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

[30] Dass, Maria J. Groups Worried Over FTA with US. Sun2Surf.com, Malaysia. September 11, 2006.

[31] U.S. Trade Representative. *2006 National Trade Estimate Report on Foreign Trade Barriers*, March 31, 2006. Section on Malaysia.

[32] "Administration Hears Industry Input on Priorities for Malaysia FTA," *Washington Trade Daily* (Online edition), May 5, 2006.

ownership limit of 30% for new entrants seeking access. Apparently Malaysia has not actually enforced the 51% cap except in cases of companies who seek the right to establish branches.[33] In the lead-up to the launch of the FTA negotiations, Malaysia reportedly attempted to keep financial services, a sensitive sector for the nation, 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 (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.[34]

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.[35]

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.[36]

In services, the United States has used the *negative list* approach in determining which sectors are excluded from the agreement. The FTA covers all service sectors unless explicitly listed in the agreement. 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. Other countries often opt for a *positive list* approach in which service sectors are excluded unless listed in the agreement.

Government Procurement

Malaysia also is not a signatory of the WTO Government Procurement Agreement. As part of its program to raise the participation of *bumiputera* (ethnic Malays) in the economy, foreign companies, in most cases, are required to take on a local partner before their bids are considered. The awarding process for procurement contracts also is considered to be non-transparent.[37]

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[33] U.S. to Face Difficulties on Financial Services in Malaysia FTA Talks, *Inside U.S. Trade*, March 10, 2006.

[34] U.S. Trade Representative. *2006 National Trade Estimate Report on Foreign Trade Barriers*, March 31, 2006. Section on Malaysia.

[35] Ibid.

[36] Ibid.

[37] Ibid.

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 ethnic Malays 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.[38]

Capital Controls

Malaysia has lifted most of the controls on capital it imposed during the 1997-98 Asian financial crisis. The purpose of the controls was to keep capital, particularly funds invested in securities or in businesses from being taken out of the country (or converted to dollars) during the crisis. Concern remains, however, about a future crisis and whether a U.S. investor would be able to repatriate capital. Both the U.S.-Singapore and U.S.-Chile FTAs had provisions that addressed this issue primarily by allowing an investor who is harmed by such controls to sue for damages.

Trade Flows

Table 4 shows U.S. exports to, imports from, and the balance of merchandise trade with Malaysia from 1999 to 2005. U.S. exports to Malaysia have remained steady at about $10 billion per year. U.S. imports, however, have grown by more than 50% since 1999. This has caused the U.S. trade deficit with Malaysia to nearly double from $12 billion in 1999 to $23 billion in 2005. Since the proposed FTA would lower Malaysia's higher trade barriers, it may result in relatively more gains by U.S. exporters and a lower bilateral trade deficit (although the overall U.S. trade deficit may not change).

Table 4. U.S. Trade with Malaysia, 1999 to 2005
(Million Dollars)

Year	U.S. Exports	U.S. Imports	U.S. Balance
1999	9,060.00	21,424.31	-12,364.31
2000	10,957.48	25,568.20	-14,610.72
2001	9,357.69	22,340.35	-12,982.66
2002	10,343.65	24,008.94	-13,665.29
2003	10,914.06	25,440.20	-14,526.14
2004	10,921.72	28,178.87	-17,257.15
2005	10,460.83	33,685.16	-23,224.33

Source: Data from U.S. Department of Commerce

[38] Government Procurement Emerging as Major Problem in U.S.-Malaysia FTA. *Inside US Trade,* September 1, 2006.

The United States is Malaysia's top export market. As shown in **Table 5**, according to Malaysian export data, out of a total of $140.9 billion exported in 2005, Malaysia sold $27.7 billion to the United States ($28.2 billion by U.S. figures), $22.0 billion to Singapore, and $13.2 billion to Japan. Malaysian exports to China have been rising rapidly and reached $9.3 billion in 2005.

Table 5. Malaysia's Merchandise Exports by Major Trading Partner (Million Dollars)

Partner	2000	2001	2002	2003	2004	2005
World Total	98,135	87,923	93,961	104,575	126,341	140,870
United States	20,159	17,816	19,520	20,504	23,748	27,763
Singapore	18,046	14,913	15,929	16,444	18,994	22,010
Japan	12,834	11,711	10,449	11,186	12,777	13,181
China	3,028	3,821	5,265	6,787	8,460	9,303
Hong Kong	4,435	4,026	5,337	6,769	7,549	8,241
Thailand	3,549	3,360	3,971	4,607	6,041	7,585
Korea	3,280	2,936	3,122	3,041	4,431	4,737
Australia	2,424	2,052	2,134	2,612	4,149	4,766
Taiwan	3,734	3,189	3,491	3,770	4,148	5,193*
Netherlands	4,110	4,060	3,457	3,424	4,147	4,609
Indonesia	1,706	1,563	1,790	2,128	3,073	3,322
India	1,924	1,577	1,765	2,537	3,003	3,955
United Kingdom	3,044	2,310	2,191	2,328	2,776	2,501

Source: United Nations Harmonized System trade data accessed via the U.S. Department of Commerce's Trade Policy Information System.
Note: Exports are on an f.a.s. basis (no shipping costs or insurance).
*From Taiwan's data.

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 the economic inefficiencies (trade barriers) they eliminate. For example, North American Free Trade Agreement (NAFTA) has tended to divert some trade from Asia to North America. Certain U.S. importers have turned to suppliers in Mexico rather than buying from Asia, and some manufacturers from Asia have relocated to Mexico to take advantage there of tariff-free access to the North American market. At the same time, the existence of a barrier-free North American market has tended to generate business efficiencies as companies gain from economies of large-scale production and distribution. This has tended to create more trade overall.[39] FTAs also can cause a substitution effect as imports are substituted for domestic production. In that case, import-competing industries may suffer and may require assistance to adjust to increased competition from imports.

The United States already is Malaysia's top export market. A U.S.-Malaysia FTA would likely reinforce this relationship. The United States, however, already has low tariff rates for Malaysia exports, so eliminating U.S. tariffs may have little effect on sales of Malaysian products. Singapore is Malaysia's second largest export market. Singapore already is virtually a free-trade state, and any remaining barriers are being reduced under the ASEAN FTA. The proposed U.S. Malaysia FTA would work to even the playing field between the United States and Singapore (and other nations with FTAs with Malaysia) in trade with Malaysia.

As shown in **Table 6**, Japan is Malaysia's top source of imports, while the United States is second and Singapore is third, and China is rising rapidly. Malaysia already has an FTA with Singapore and is negotiating one with Japan. The proposed FTA with the United States would place U.S. exporters on the same footing as exporters from Singapore, Japan, and other nations that have FTAs with Malaysia.

Table 6. Malaysia's Merchandise Imports by Major Trading Partner (Million Dollars)

Partner	2000	2001	2002	2003	2004	2005
World	81,290	73,079	78,674	82,444	104,280	114,411
Japan	17,240	14,211	14,185	14,221	16,773	16,634
United States	13,637	11,839	13,068	12,840	15,263	14,789
Singapore	11,762	9,292	9,539	9,774	11,703	13,425
China	3,242	3,804	6,139	7,271	10,339	13,177
Thailand	3,154	2,927	3,153	3,814	5,789	6,045
Taiwan	4,608	4,193	4,445	4,124	5,698	4,154*
Korea	3,663	2,948	4,208	4,554	5,225	5,706
Germany	2,442	2,743	2,944	3,857	4,697	5,088
Indonesia	2,269	2,241	2,548	2,941	4,194	4,375
Hong Kong	2,252	1,892	2,323	2,239	2,847	2,852
Philippines	1,990	1,839	2,620	3,107	2,819	3,219
Australia	1,593	1,564	1,425	1,265	1,788	2,157
United Kingdom	1,600	1,808	1,569	1,577	1,745	1,722
France	1,354	1,143	1,122	1,206	1,460	1,495
India	723	772	643	671	1,289	1,100

Source: United Nations Harmonized System trade data accessed via the U.S. Department of Commerce's Trade Policy Information System. *From Taiwan's data.

[39] For further information, see CRS Report RL31356, *Free Trade Agreements: Impact on U.S. Trade and Implications for U.S. Trade Policy*, by William H. Cooper.

Legislative Requirements

Free trade agreements normally are considered by Congress under expedited procedures. These provisions are contained in the act providing Trade Promotion Authority to the President (P.L. 107-210) and other trade laws. The requirements include the following:[40]

- before entering into any agreement, the President is required to consult with certain Congressional bodies and to submit a report on the possible effect of the agreement on U.S. trade remedy laws; at least 90 calendar days before entering into a trade agreement, the President must notify Congress of the intent to enter into the agreement.[41]

- at least 90 calendar days before entering into the trade agreement, the President must notify the revenue committees of possible changes to U.S. trade remedy laws (report submitted on December 27, 2006);[42] no later than 30 days after the President notifies Congress of the intention to enter into a trade agreement, private sector advisors must submit their reports on the agreement;

- within 60 days of entering into a trade agreement, the President must submit to Congress a description of changes to existing laws; not later than 90 days after the President enters into an agreement, the International Trade Commission must submit a report assessing the likely impact of the agreement;[43]

- after entering into an agreement, the President is required to submit to Congress the final legal text of the agreement[44] together with a draft of the implementing bill, a statement of any administrative action proposed to implement the agreement, and sundry supporting information; since the implementing bill is not amendable, the relevant committees in Congress hold hearings and "mock" mark-

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[40] For detail, see CRS Report RL32011, *Trade Agreements: Procedure for Congressional Approval and Implementation*, by Vladimir N. Pregelj.

[41] Since the President's Trade Promotion Authority expires on July 1, 2007, the President arguably must notify the Congress of his intent to enter into an FTA with Malaysia before April 2, 2007 (unless the Trade Promotion Authority is extended).

[42] U.S. Trade Representative. Report on Proposals Advanced in Negotiations on a Free Trade Agreement with Malaysia That May Require Amendments to United States Trade Remedies Laws. December 27, 2006.

[43] On March 24, 2006, the U.S. International Trade Commission announced that it was instituting investigations (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.

[44] After negotiations are complete, the "legal scrubbing" of the text usually takes a certain amount of time before the final legal text is submitted to Congress.

ups on the draft bill for changes reflecting congressional concerns regarding the agreement and the final language of the legislation to be transmitted to Congress formally for legislative action;

- if a committee to which the bill has been referred has not reported it within 45 days after its introduction, such committee is automatically discharged from its further consideration, and the bill is placed on the appropriate calendar; in both houses, floor debate on the bill is limited to 20 hours; and

- the vote by simple majority on final passage of the bill must be taken on or before the 15^{th} day after the bill has been reported.

Policy Options

Until the negotiations with Malaysia on the proposed FTA are complete, 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. Public Law 107-210 (Section 2104) provides for close consultations with the Executive Branch during and following the negotiations (as noted above). Such consultations may lead to changes in the draft agreement before it is signed.

Once the draft treaty is negotiated and the Executive provides Congress with draft implementing legislation, the House Ways and Means and Senate Finance Committees may hold mock markup hearings on the draft implementing legislation and, if approved, may include non-binding amendments. The White House may consider adding such amendments to the final version of the implementing bill.

In the FTA with Central America and the Dominican Republic, for example, the House Ways and Means Committee voted to approve the draft legislation but also added a non-binding amendment requiring the Administration to report on activities conducted by countries in question to build capacity on labor issues and to monitor the effects of the FTA on U.S. service industries. The final implementing bill included such reporting requirements.[45]

The U.S.-Singapore FTA contained an Integrated Sourcing Initiative [Article 3.2(1-2)] that allowed certain information technology and medical products to be treated as being of Singapore origin under specific conditions even if they were manufactured in neighboring Indonesian areas. Critics of the initiative as originally drafted pointed out, however, that the provision potentially could have been used by exporters from other nations, such as China, by shipping their goods through Singapore. In response to this concern, some draft language was deleted from the

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[45] See CRS Report RL31870, *The Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR)*, by J. F. Hornbeck.

agreement. The implementing legislation also established the need for congressional approval for the expansion of the list of products covered under the Initiative.[46]

Congress also may choose not to approve the FTA implementing legislation. Congress also may consider the proposed agreement in conjunction with other FTAs and the Doha Round of trade negotiations under the WTO — now stalled but which may be restarted. The U.S. Trade Representative seems confident that all negotiations can go forward concurrently, but in April 2006, House Ways and Means Committee Chairman Bill Thomas reportedly called on the Bush Administration to take its focus off the Doha trade negotiations and instead focus its energies on completing ongoing bilateral FTAs.[47]

Legislation

109th Congress

H.Con.Res. 380 (Schiff) **S.Con.Res. 87** (Biden). A concurrent resolution expressing the sense of Congress that U.S. intellectual property rights must be protected globally. Introduced April 5, 2006.

[46] See CRS Report RL31789, *The U.S.-Singapore Free Trade Agreement*, by Dick K. Nanto.

[47] "Thomas Urges USTR to Shift From Lagging Doha Round to Completing FTAs." *Inside U.S. Trade*, April 7, 2006.

Appendix A. Chronology[48]

2006

December 27 The Administration reported that it was 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 negotiations commenced in Malaysia. Government procurement was a major point of contention.

September 18 Third round of negotiations scheduled for September were postponed to October 30.

July 17-21 The second round of negotiations were held. Twenty-two negotiating groups met and discussed issues and draft texts.

June 12-14 The First Round of the Malaysia-US FTA talks held in Malaysia.

May 3 The interagency Trade Policy Staff Committee convened 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 sent 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 gave 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 announced that it had 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 announced and notified Congress of the Bush Administration's intent to negotiate a free trade agreement between the United States and Malaysia.

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[48] This chronology is based on various news reports, press releases, and notifications.

Appendix B. U.S. Exports of Merchandise to Malaysia by Two-Digit Harmonized System Codes

(Million U.S. Dollars)

HS	Description	2003	2004	2005
	Total Exports to Malaysia	10,914.06	10,921.22	10,450.92
01	Live Animals	3.77	0.61	2.26
02	Meat	4.33	2.15	3.35
03	Fish and Seafood	1.52	2.97	3.05
04	Dairy, Eggs, Honey, etc	2.34	24.13	33.48
05	Other of Animal Origin	0.27	0.08	0.17
06	Live Trees and Plants	0.01	0.01	0.00
07	Vegetables	3.77	3.91	5.51
08	Edible Fruit and Nuts	88.24	105.48	117.62
09	Spices, Coffee and Tea	0.33	0.54	0.80
10	Cereals	39.64	15.61	29.80
11	Milling; Malt; Starch	1.36	1.96	1.52
12	Misc Grain, Seed, Fruit	46.13	61.41	26.24
13	Lac; Vegetable Sap, Extrct	1.74	1.76	2.08
14	Other Vegetable	0.01	0.02	0.00
15	Fats and Oils	1.58	2.04	1.66
16	Prepared Meat, Fish, etc	0.61	0.33	1.04
17	Sugars	6.24	6.68	7.23
18	Cocoa	3.36	3.35	4.93
19	Baking Related	3.52	4.34	5.22
20	Preserved Food	18.13	23.58	23.15
21	Miscellaneous Food	75.84	41.30	46.68
22	Beverages	3.30	5.09	4.04
23	Food Waste; Animal Feed	33.93	33.75	37.24
24	Tobacco	29.15	35.16	27.90
25	Salt; Sulfur; Earth, Stone	8.90	8.53	4.46
26	Ores, Slag, Ash	1.07	3.78	3.99
27	Mineral Fuel, Oil Etc	24.05	28.54	30.29
28	Inorg Chem; Rare Earth metals	54.83	48.98	61.95
29	Organic Chemicals	161.27	147.82	113.10
30	Pharmaceutical Products	29.25	24.99	29.93
31	Fertilizers	17.00	6.60	5.96

HS	Description	2003	2004	2005
32	Tanning, Dye, Paint, Putty	14.75	16.84	20.29
33	Perfumery, Cosmetics, etc	37.65	32.21	29.73
34	Soap, Wax, etc; Dental Prep	21.82	25.56	27.74
35	Albumins; Mod Starch; Glue	7.65	9.20	8.03
36	Explosives	5.70	5.94	3.57
37	Photographic/Cinematography	3.98	3.20	4.55
38	Misc. Chemical Products	60.92	67.02	76.79
39	Plastic	187.62	217.22	222.21
40	Rubber	16.26	16.04	34.11
41	Hides and Skins	0.03	0.15	0.11
42	Leather Art; Saddlery; Bags	1.64	1.92	2.55
43	Furskin+ Artificial Fur	0.01	0.00	0.00
44	Wood	30.46	38.80	30.13
45	Cork	0.09	0.05	0.11
46	Straw, Esparto	0.06	0.16	0.00
47	Woodpulp, Etc.	21.33	24.95	26.39
48	Paper, Paperboard	74.05	63.43	71.67
49	Book+ Newspaper; Manuscript	16.19	15.94	20.11
50	Silk; Silk Yarn, Fabric	0.15	0.45	0.32
51	Animal Hair+ Yarn, Fabrc	0.07	0.03	0.01
52	Cotton+ Yarn, Fabric	5.74	7.20	5.41
53	Other Veg Textile Fiber	0.05	0.01	0.01
54	Manmade Filament, Fabric	2.81	3.92	4.00
55	Manmade Staple Fibers	4.71	3.27	2.47
56	Wadding, Felt, Twine, Rope	8.72	9.90	14.73
57	Textile Floor Coverings	0.79	0.62	0.17
58	Spcl Woven Fabric, Etc	0.73	1.17	0.50
59	Impregnated Text Fabrics	4.21	3.27	3.86
60	Knit, Crocheted Fabrics	0.26	0.18	0.27
61	Knit Apparel	0.22	0.64	0.81
62	Woven Apparel	0.93	1.67	2.38
63	Misc Textile Articles	3.84	3.41	6.97
64	Footwear	0.50	0.44	0.81
65	Headgear	0.15	0.09	0.33
66	Umbrella, Walk-sticks, Etc	0.01	0.00	0.00

HS	Description	2003	2004	2005
67	Artif Flowers, Feathers	0.00	0.00	0.00
68	Stone, Plaster, Cement, Etc	3.82	6.32	11.65
69	Ceramic Products	9.76	11.67	9.54
70	Glass and Glassware	25.36	25.04	27.00
71	Precious Stones, Metals	25.64	37.22	37.08
72	Iron and Steel	80.40	96.20	121.28
73	Iron/steel Products	20.50	28.79	28.00
74	Copper+ Articles Thereof	19.71	29.76	27.39
75	Nickel+ Articles Thereof	1.14	3.23	3.02
76	Aluminum	34.21	44.65	43.46
78	Lead	1.27	3.01	4.43
79	Zinc+ Articles Thereof	0.23	0.13	0.56
80	Tin + Articles Thereof	2.83	0.67	0.05
81	Other Base Metals, Etc.	3.61	6.40	7.84
82	Tool, Cutlery, of Base Metals	19.12	19.64	22.48
83	Misc Art of Base Metal	42.13	29.04	8.57
84	Machinery	1,288.33	1,376.21	1,744.84
85	Electrical Machinery	7,156.14	6,501.82	5,985.67
86	Railway; Trf Sign eq	8.44	8.18	5.48
87	Vehicles, Not Railway	19.79	12.21	15.76
88	Aircraft, Spacecraft	229.48	580.89	255.76
89	Ships and Boats	0.48	0.64	10.52
90	Optic, Not 8544; Medical Instr	492.06	637.54	567.78
91	Clocks and Watches	0.59	1.00	1.27
92	Musical Instruments	0.93	0.77	1.20
93	Arms and Ammunition	3.41	1.11	1.25
94	Furniture and Bedding	6.64	11.04	29.79
95	Toys and Sports Equipment	12.91	15.27	19.25
96	Miscellaneous Manufactures	4.54	3.40	2.53
97	Art and Antiques	0.21	0.14	0.17
98	Special Other	200.77	208.76	201.45

Source of data: U.S. Dept. of Commerce, Bureau of Census.

Appendix C. U.S. Imports of Merchandise from Malaysia by Two-Digit Harmonized System Codes

(Million U.S. dollars, customs values)

HS	Description	2003	2004	2005
	Total Imports from Malaysia	25,440.20	28,178.87	33,703.16
01	Live Animals	0.21	0.15	0.15
02	Meat	0.00	0.00	0.00
03	Fish and Seafood	14.59	119.03	124.08
04	Dairy, Eggs, Honey, etc	5.84	0.69	0.77
05	Other of Animal Origin	0.06	0.06	0.05
06	Live Trees and Plants	0.37	0.49	0.61
07	Vegetables	0.02	0.20	0.28
08	Edible Fruit and Nuts	0.03	0.02	0.03
09	Spices, Coffee and Tea	4.00	1.36	1.69
10	Cereals	0.02	0.05	0.04
11	Milling; Malt; Starch	0.05	0.09	0.12
12	Misc Grain, Seed, Fruit	0.02	0.05	0.14
13	Lac; Vegetable Sap, Extract	0.02	0.04	0.14
14	Other Vegetable	0.18	0.02	0.05
15	Fats and Oils	188.21	263.23	319.93
16	Prepared Meat, Fish, etc	10.40	26.35	17.64
17	Sugars	0.24	0.28	0.94
18	Cocoa	89.90	110.04	112.26
19	Baking Related	7.95	8.15	9.68
20	Preserved Food	8.28	8.44	7.77
21	Miscellaneous Food	3.06	5.07	8.95
22	Beverages	3.36	1.87	3.59
23	Food Waste; Animal Feed	0.05	0.60	0.55
24	Tobacco	1.78	1.78	0.93
25	Salt; Sulfur; Earth, Stone	0.19	0.16	0.10
26	Ores, Slag, Ash	7.15	5.36	8.99
27	Mineral Fuel, Oil Etc	327.04	573.69	507.04
28	Inorg Chem; Rare Earth mt	3.72	4.33	14.07
29	Organic Chemicals	106.98	100.59	96.54
30	Pharmaceutical Products	1.45	1.71	1.09
31	Fertilizers	11.19	4.70	12.26

HS	Description	2003	2004	2005
32	Tanning, Dye, Paint, Putty	6.31	8.27	17.08
33	Perfumery, Cosmetic, etc	3.66	4.01	3.45
34	Soap, Wax, Etc; Dental Prep	22.90	16.56	18.92
35	Albumins; Mod Starch; Glue	0.75	0.95	0.70
36	Explosives	0.00	0.00	0.00
37	Photographic/Cinematography	6.88	6.44	1.48
38	Misc. Chemical Products	135.44	156.12	170.24
39	Plastic	104.86	93.28	138.90
40	Rubber	572.38	609.66	680.64
41	Hides and Skins	0.13	0.35	0.14
42	Leather Art; Saddlery; Bags	2.94	2.89	5.15
43	Furskin+ Artificial Fur	0.00	0.00	0.00
44	Wood	239.41	341.91	340.96
45	Cork	0.01	0.05	0.01
46	Straw, Esparto	0.01	0.16	0.17
47	Woodpulp, Etc.	2.17	0.00	0.00
48	Paper, Paperboard	10.39	12.02	17.53
49	Book+ Newspaper; Manuscript	18.67	16.93	20.95
50	Silk; Silk Yarn, Fabric	0.06	0.01	0.00
51	Animal Hair+ Yarn, Fabric	1.01	1.13	0.58
52	Cotton+ Yarn, Fabric	28.01	22.29	12.40
53	Other Vegetable Textile Fiber	0.01	0.01	0.01
54	Manmade Filament, Fabric	14.05	15.29	16.43
55	Manmade Staple Fibers	4.07	3.87	2.99
56	Wadding, Felt, Twine, Rope	10.57	13.06	11.66
57	Textile Floor Coverings	0.06	0.05	0.05
58	Special Woven Fabric, Etc	1.03	1.48	2.05
59	Impregnated Text Fabrics	0.19	0.31	0.53
60	Knit, Crocheted Fabrics	0.06	0.20	0.03
61	Knit Apparel	410.70	436.05	437.03
62	Woven Apparel	293.14	294.87	262.44
63	Misc Textile Articles	4.00	5.11	7.73
64	Footwear	1.75	1.66	1.68
65	Headgear	3.22	4.64	3.36
66	Umbrella, Walking-sticks, Etc	0.02	0.02	0.01

HS	Description	2003	2004	2005
67	Artificial Flowers, Feathers	0.07	0.03	0.01
68	Stone, Plaster, Cement, Etc	1.73	2.76	3.49
69	Ceramic Products	35.58	34.14	30.48
70	Glass and Glassware	13.50	12.67	5.92
71	Precious Stones, Metals	25.69	23.89	30.08
72	Iron and Steel	13.80	125.97	133.33
73	Iron/steel Products	47.53	74.15	80.38
74	Copper+ Articles Thereof	19.82	38.67	55.52
75	Nickel+ Articles Thereof	0.12	0.08	0.00
76	Aluminum	29.44	52.85	51.26
78	Lead	0.00	0.06	0.01
79	Zinc+articles Thereof	1.12	1.27	1.55
80	Tin + Articles Thereof	2.31	57.40	16.03
81	Other Base Metals, etc.	0.01	0.22	0.05
82	Tools, Cutlery, of Base Metals	3.95	4.98	5.34
83	Misc Art of Base Metal	17.34	17.97	21.24
84	Machinery	10,156.04	11,415.15	12,920.13
85	Electrical Machinery	10,697.95	11,093.11	14,793.85
86	Railway; Trf Sign eq	0.54	0.75	0.44
87	Vehicles, Not Railway	31.55	29.88	28.11
88	Aircraft, Spacecraft	12.55	16.09	20.69
89	Ships and Boats	10.26	17.79	19.78
90	Optic, not 8544; Medical Instr	392.81	552.51	619.15
91	Clocks and Watches	8.73	7.64	6.87
92	Musical Instruments	7.06	1.39	2.15
93	Arms and Ammunition	0.54	0.30	0.40
94	Furniture and Bedding	545.47	650.83	758.94
95	Toys and Sports Equipment	132.06	101.96	102.81
96	Miscellaneous Manufactures	21.20	20.14	24.35
97	Art and Antiques	0.52	0.10	0.19
98	Special Other	330.22	307.91	296.95
99	Other Special Impr Provisions	185.49	208.03	247.88

Source of data: U.S. Dept. of Commerce, Bureau of Census.

Appendix D. U.S. Merchandise Exports by State to Malaysia, 2003-2005

(U.S. Dollars)

Rank	State	2003	2004	2005
	Total U.S.	10,920,574,663	10,896,754,885	10,450,923,341
1	California	1,730,758,685	2,002,388,800	1,942,191,137
2	Texas	2,127,047,354	2,552,312,853	1,755,128,948
3	Oregon	515,299,782	496,119,486	914,641,433
4	Arizona	1,628,763,925	744,014,007	778,635,471
5	Massachusetts	928,232,829	647,796,147	617,424,506
6	Maine	236,716,271	338,618,230	364,620,488
7	New Mexico	224,860,480	224,757,438	342,690,777
8	Colorado	302,040,610	309,549,133	246,070,261
9	New York	201,889,857	262,615,745	239,089,398
10	Illinois	226,678,165	261,480,753	233,014,823
11	Florida	143,735,310	203,539,271	231,743,583
12	Washington	165,278,120	559,023,402	214,293,330
13	Minnesota	195,661,197	125,381,273	185,478,087
14	North Carolina	211,155,794	224,306,679	182,297,150
15	Pennsylvania	209,870,631	169,800,898	169,153,558
16	Idaho	77,635,319	76,218,522	150,169,568
17	Tennessee	129,354,258	77,969,653	128,416,941
18	Vermont	68,833,034	102,461,173	123,452,142
19	Ohio	75,585,106	95,680,748	119,244,964
20	Wisconsin	53,734,266	77,893,113	119,143,320
21	Connecticut	104,501,788	115,406,682	114,754,076
22	Kentucky	65,084,745	101,566,265	105,452,644
23	Louisiana	119,891,033	86,285,530	93,281,049
24	Virginia	280,125,685	146,447,729	86,692,347
25	Georgia	91,502,604	85,386,931	84,660,541
26	New Jersey	60,290,487	68,544,266	79,902,011
27	Michigan	112,887,901	107,150,107	76,433,815
28	Indiana	52,369,243	70,243,195	75,637,157
29	South Carolina	38,308,193	53,346,819	71,598,593
30	Missouri	25,298,732	39,145,703	53,055,452
31	Utah	26,610,409	39,977,110	49,548,407

Rank	State	2003	2004	2005
32	Kansas	8,779,586	12,203,078	43,921,675
33	Nevada	15,993,006	20,619,915	36,558,369
34	Iowa	27,872,266	31,229,324	34,417,553
35	Alabama	24,985,986	27,160,270	24,425,479
36	Puerto Rico	46,391,641	12,850,147	23,768,292
37	New Hampshire	33,345,119	28,324,662	23,599,334
38	West Virginia	6,774,756	12,735,157	23,059,667
39	Maryland	24,107,075	21,166,814	20,541,456
40	Wyoming	13,588,735	12,875,861	17,680,970
41	Oklahoma	6,508,633	10,676,189	16,839,087
42	Rhode Island	7,178,613	10,376,932	15,151,515
43	Delaware	6,590,544	8,580,453	12,072,472
44	Arkansas	12,862,331	15,263,079	12,050,640
45	Hawaii	63,545,131	96,903	7,930,844
46	Mississippi	4,652,427	6,050,965	7,761,611
47	Nebraska	8,874,843	10,647,856	7,694,801
48	Montana	1,030,993	7,115,256	7,299,633
49	South Dakota	1,621,493	5,570,883	6,527,987
50	District of Columbia	2,634,150	5,640,896	6,039,473
51	Alaska	978,623	2,000,206	1,813,626
52	North Dakota	567,446	1,693,282	1,042,341

Source: U.S. Department of Commerce through World Trade Atlas.