

II. INSTITUTIONAL DIMENSIONS OF TRADE POLICY MAKING

(1) Overview

1. While retaining its constitutional authority for external trade policy, the Federal Parliament has delegated the administration of trade and trade-related policy instruments to the Executive Branch of Government. The Government has considerable discretionary authority in the implementation of Acts of Parliament dealing with trade and investment instruments.

2. Policy objectives of the Government are published in Malaysia's long- and medium-term plans, which are formulated in the Prime Minister's Department following consultations with other Ministries, advisory bodies and the private sector. Annual policy objectives are outlined in the budget and tabled in Parliament by the Minister of Finance. Although the realization of policy objectives is monitored on a regular basis by the Prime Minister's Department and the Ministries concerned, the contribution of specific trade and trade-related policy instruments to the achievement of these objectives is not reported in the long- and medium-term plans.

3. In view of the fact that the WTO Agreements and related commitments cover Malaysia's largest trading partners, these Agreements play a pivotal role in the formulation of trade and trade-related policies. Nevertheless, regional arrangements, notably those involving the Association of South East Asian Nations (ASEAN) and the APEC forum, are also important.¹ Indeed, Malaysia coordinates its policies on WTO matters with other ASEAN members. At the same time, however, it endeavours to ensure that its participation in regional trade arrangements is consistent with the main principles underlying the WTO Agreements. This includes not only notifying the WTO of ASEAN trade preferences under the Enabling Clause,² but, more importantly, implementing some of the tariff cuts agreed with its ASEAN partners on an MFN basis (Chapter III(2)(ii)). In addition to regional arrangements, Malaysia has concluded several types of bilateral agreements usually in areas beyond the purview of existing WTO rules. Such agreements include investment guarantee agreements, which, among other things, protect investors from expropriation without adequate compensation, and tax treaties, which provide relief for international double taxation.

¹ASEAN's founding members were Indonesia, Malaysia, the Philippines, Singapore, and Thailand; Brunei Darussalam joined as the sixth member in 1984, Viet Nam joined as the seventh in July 1995. Laos and Myanmar joined in July 1997, while the process of admitting Cambodia continues. Malaysia holds the rotating Chair of the ASEAN Economic Ministers' Meeting during 1997. The APEC forum encompasses Australia, Brunei, Canada, Chile, China, Chinese Taipei, Hong Kong China, Indonesia, Japan, Republic of Korea, Malaysia, Mexico, New Zealand, Papua New Guinea, the Philippines, Singapore, Thailand, and the United States. Canada will host the APEC meeting in 1997, Malaysia will do so in 1998.

²GATT documents L/7111, 30 October 1992; L/7111/Add.1, 16 July 1993; L/7307, 29 October 1993; L/7491, 27 June 1994; L/7546, 2 November 1994; L/7546/Add.1, 3 November 1994; and WT/COM/TD/3, 11 August 1995 (Table AII.2).

(2) Internal Trade Policy making

(i) Institutional structure

4. Malaysia, a former British colony, became independent in 1957.³ It is a federation of 13 States and two federal territories, Labuan and Kuala Lumpur.⁴ Malaysia is a parliamentary democracy and is ruled as a constitutional monarchy.⁵ Islam is the official religion, but the multi-racial population practices various religions, generally according to its ethnic origins. The main ethnic groups of the 1995 total population of 18 million are indigenous Malay "Bumiputra" (57.6 per cent), Chinese (26.2 per cent), Indian (7.3 per cent), other Malaysian citizens (5.8 per cent) and non-Malaysian citizens (6.3 per cent).

5. Legislative authority is divided between the Federation and the States. The Federal Parliament is competent to enact laws on issues enumerated in the Federal List (List I), while the States have exclusive authority on subjects included in the States' List (List II). Matters falling under the joint competence of both Federal and State authorities are specified in List III. Any matters not enumerated in any of the lists are the prerogative of the States. Trade policy issues, including commerce, industry, finance, industry, shipping, navigation and fisheries, communications and transport, and federal works and power, are in the Federal List. By contrast, all issues related to land use, including mining and forestry, are within the competence of the States.⁶

6. Federal legislative authority rests with the bicameral Parliament, which consists of the Dewan Negara (Senate) and the Dewan Rakyat (House of Representatives). The Senate comprises 69 members, 26 of whom are elected by the Legislative Assemblies of the 13 States, two from the Federal Territory of Kuala Lumpur and one from the Federal Territory of Labuan; the remaining members are nominated by the King from among distinguished citizens.⁷ The House of Representatives contains 193 seats. Representatives are directly elected and hold office for five years, although the House may be dissolved earlier by the King upon the advice of the Prime Minister.

³The eleven States of Malaya became independent on 31 August 1957. The Federation of Malaysia was established on 16 September 1963, through a union of the independent States of Malaya, Singapore and the former British colonies of Sarawak and Sabah. Singapore left the Federation in 1965.

⁴The 13 States are Johor Darul Takzim, Kedah Darul Aman, Kelantan Darul Naim, Melaka, Negeri Sembilan Darul Khusus, Pahang Darul Makmur, Perak Darul Ridzuan, Perlis Indera Kayangan, Pulau Pinang, Sabah, Sarawak, Selangor Darul Ehsan and Terengganu Darul Iman.

⁵The King is elected to the throne for a five-year term by, and from among, the hereditary rulers of the nine States in the Federation that have Sultans at their head. The King normally acts upon the advice of the Government, headed by the Prime Minister. On his own authority he may perform certain functions such as withholding consent to a request for the dissolution of Parliament, or convening a meeting of the Conference of Rulers concerned with the privileges, honours and positions of the rulers. He also appoints members of the Cabinet, judges of the Supreme and of the High Courts and other state dignitaries.

⁶Land use in the Federal Territories of Kuala Lumpur and Labuan falls under the prerogative of the Federal Parliament.

⁷Distinguished citizens are persons who, in the opinion of the King, have rendered distinguished public service or have achieved distinction in the professions, commerce, industry, agriculture, cultural activities or social service, or are representative of racial minorities or are capable of representing the interests of aborigines.

7. While most bills may originate in either the House of Representatives or the Senate, those involving taxation (including customs duties) or expenditure must stem from the House of Representatives. However, those that have passed the House of Representatives must be considered by the Senate, although they become law (upon the King's assent) irrespective of whether they are approved by the Senate. Subsidiary legislation (e.g. regulations, orders, rules, proclamations and notifications) may be made under any Act, Enactment or Ordinance.⁸ By virtue of their authority, Parliament and the State Assemblies may confer their legislative power, mainly in matters of detail that require flexibility, to a person or body. The execution of most trade policy instruments is delegated to various Ministers and statutory authorities (Table AII.1). Subsidiary legislation can be amended or revoked by the authority that has made it.

8. The Cabinet of Ministers of the Malaysian Federation, headed by the Prime Minister, formulates trade and investment policy objectives and measures, initiates legislation and exercises executive functions. The annual budget, which is tabled in Parliament by the Minister of Finance, assesses economic performance during the previous year and presents the Government's legislative agenda related to budget and finance. The Ministries involved in the implementation of Malaysia's merchandise trade policies have not changed since the 1993 Review. The Ministry of International Trade and Industry (MITI) is the central authority charged with the planning and implementation of Malaysia's international trade and industrial policies, while the Ministry of Finance is the final arbiter in the Executive Branch on taxes, including tariffs, and various investment incentives. In addition to MITI, the Ministries of Agriculture and Health are the main bodies involved in import licensing (Chapter III(2)(iii)). Market access conditions for trade in services are generally administered by specific ministries and statutory bodies. Intellectual property rights are under the purview of the Ministry of Domestic Trade and Consumer Affairs (Table II.1).

9. A number of inter-ministerial committees cover specific policy areas. The National Committee on Multilateral Trade Issues under the Ministry of International Trade and Industry advises the Government on its obligations under, and on implementation of, the WTO Agreements (Chapter III(4)).⁹ The Foreign Investment Committee (FIC) is a high-level inter-agency committee with representatives from the key economic ministries and agencies.¹⁰ The Committee's policy-making activities focus on areas that are not covered by the Industrial Coordination Act 1975 (Chapter III(4)(ii)), or the Banking and Financial Act (Chapter IV(4)(ii)). The role of the FIC, under its Guidelines established in 1974, is to regulate the acquisition of assets of 15 per cent or more of the voting power in Malaysian

⁸Acts enacted by the Malaysian Federation between 1946 and 1957 are called Ordinances. Laws made by State Legislative Assemblies are called Enactments, except in Sarawak where laws are called Ordinances.

⁹The National Committee on Multilateral Trade Issues has assumed some of the functions previously performed by the Coordinating Committee on Trade and Investment Policy. The Coordinating Committee was an inter-Ministerial committee of senior officials chaired by the Secretary-General of the Ministry of Trade and Industry (GATT, 1993 p. 33). The Coordinating Committee discussed those issues and developments overseas having an impact on Malaysia's foreign trade and investment promotion and formulated appropriate strategies and policy responses. The Coordinating Committee has not met since 1993.

¹⁰The Foreign Investment Committee is chaired by the Director-General of the Economic Planning Unit in the Prime Minister's Department. Other members of the Committee are the Secretary-General of the Ministry of Finance, the Governor of the Central Bank, the Secretary-General of the Ministry of International Trade and Industry, the Chairman of the Malaysian Industrial Development Authority, Director-General of the Implementation and Coordination Unit, the Secretary-General of the Ministry of Domestic Trade and Consumer Affairs, the Secretary-General of the Ministry of Entrepreneurial Development, and the Registrar of Companies.

companies, control and take-over of companies by foreign interests, and mergers and other acquisitions of assets exceeding RM 5 million, whether by Malaysian or foreign interests.

Table II.1

Main trade-related functions of selected ministries and government agencies/statutory authorities, 1997

Ministry, agency, committee	Trade-related functions
Ministry of International Trade and Industry	Planning and implementation of foreign trade and industrial policies
Ministry of Foreign Affairs	Promotion of Malaysia's interests abroad, including the interest of Malaysians travelling or residing overseas
Economic Planning Unit, Prime Minister's Department	Formulation of strategies and programmes for development planning, privatization policy and monitoring the realization of the New Development Policy
Ministry of Finance	Formulation of monetary and fiscal policy, implementation of the budget including import and export tariffs, prohibitions and licensing
Central Bank of Malaysia	Implementation of monetary policy under the Ministry of Finance; banking and insurance supervision, including exchange control policy
Securities Commission	Monitoring and regulation of developments in the securities market
Ministry of Domestic Trade and Consumer Affairs	Facilitation of domestic trade, protection of consumers and formulation and implementation of policies for the protection of intellectual property rights
Malaysian Industrial Development Authority (MIDA)	Implementation and promotion of investment policies
Ministry of Agriculture	Formulation and implementation of agricultural (except forestry and tree crops) and fishery policies
Ministry of Primary Industries	Formulation and implementation of Malaysia's primary sector policies (forestry, tree crops, rubber, mining) including research and development, production, processing, marketing, and deliberation of international commodities issues
Ministry of Energy, Telecommunications and Post	Formulation and implementation of energy, telecommunications and post policies. The Ministry is also responsible for the formulation of a "convergence" law dealing with telecommunications, audiovisual and computer services.
Ministry of Transport	Formulation and implementation of road, maritime and air transport policies
Ministry of Culture Arts and Tourism	Formulation of tourism policies, implementation of these policies is shared with the Malaysia Tourism Promotion Board.

Source: Information provided by the Malaysian authorities.

10. Although a variety of ministries is involved in the formulation of policies towards foreign investment, all investment policies relating to manufacturing projects are implemented by the Malaysian Industrial Development Authority (MIDA). MIDA serves as a one-stop investment approval agency for practically all domestic and foreign-owned investments in the manufacturing sector¹¹; and it is responsible for the granting of a broad range of incentives (Chapter III(4)). MIDA can also propose to grant tariff protection to what are considered to be "deserving infant industries". However, the Ministry of Finance remains the final arbiter on these measures.

¹¹Only some small-scale investments are excluded (Chapter III(4)(ii)).

11. Malaysia has no formal competition policy.¹² Nevertheless, the abuse of dominant market position is addressed by a number of other policy instruments, such as price controls for some products administered by the Ministry of Domestic Trade and Consumer Affairs, and maximum prices for telecommunications services administered by the Ministry of Energy, Telecommunications and Post (Chapter III(4)).

12. As in many other WTO Members, statutes provide a margin of discretion to the Executive Branch of Government. The Malaysian authorities have implemented trade policy statutes with a concern for the trade-off between economic growth and distribution of income and assets. Such concerns may be specified in the implementing regulations, while in other cases they are taken into account in the implementation of policies and regulations on the basis of general principles formulated in the development plans (Annex II.1). The discretion of the Government in implementing trade policy statutes is, in principle, limited by the right of appeal to the judicial system. In practice, however, the decisions of the relevant Ministers are, according to the authorities, invariably final.¹³

(ii) Trade policy objectives

13. In view of Malaysia's racial and cultural diversity, the overriding developmental policy objective of the Malaysian Government has been economic growth balanced with social equity, elimination of poverty and restructuring of society. A deliberate policy of the Government with emphasis on manufacturing based export-led growth, driven by the private sector resulted in the rapid expansion of export-oriented manufacturing activities. Two other major policy objectives are acceleration of total factor productivity growth, and a reduction of the balance-of-payments deficit. Trade and investment policies are designed with these objectives in mind (Annex II.1).

14. Various tax and non-tax incentives are offered to companies whose activities are thought to contribute to the realization of the Government's objectives. Incentives are offered upon application, to companies that fulfil the criteria established. In some instances, however, companies may choose to forgo such incentives if that enables them to secure a relaxation of certain requirements normally attached to certain activities. Some such relaxation may be possible where the Government feels that those requirements could be unduly detrimental to economic growth. The Prime Minister has reportedly suggested that preferences for Bumiputra may be relaxed, given full employment in the Malaysian economy and the need to promote optimal use of resources, domestic and foreign.¹⁴

(iii) Advisory and review processes

15. The private business sector, as well as semi-independent research institutes such as the Malaysian Institute of Economic Research (MIER), various universities and the Institute of Strategic and

¹²A draft competition legislation has been prepared. It is under revision by the Ministry of Domestic Trade and Consumer Affairs following comments from government agencies, the private sector and non-government organizations.

¹³Discretion is conferred on the Minister to act justifiably and in good faith in carrying out the purpose of the Act. The administrative decision of a Minister may be brought before the Court through the use of prerogative writs e.g. mandamus, certiorari, and injunction. The courts may review administrative decisions in a supervisory capacity, i.e. their role is restricted to seeing that the decision-maker acts within and according to law.

Thus far, there have not been any appealed cases on any trade policy statutes.

¹⁴Financial Times, 23 May 1997 "Mahathir hints ethnic rules may be eased".

International Studies (ISIS) Malaysia are invited to contribute to the preparation of policy initiatives. Most ministries have also developed sector-specific consultation procedures (Chapter IV). The Ministry of Domestic Trade and Consumer Affairs has established a number of semi-public and public sector advisory and review bodies dealing with protection for intellectual property rights (Chapter III(4)). Consultation between the public and private sectors facilitates the formulation of import, export and investment policies, and fosters high-level government support for trade policy promotion of foreign investment in Malaysia, and investment abroad by Malaysian companies.

(a) Economy-wide consultation and review bodies

16. The Malaysian Business Council (MBC) was established in 1991 to facilitate the process of consultation between policy makers, civil servants, and corporate leaders. The terms of reference of the MBC include examination of domestic and international economic and business developments; discussion of different issues and problems; examination and development of practical options and strategies; providing feedback on policy issues and developments with regard to industrialization; removal of misunderstandings and roadblocks to cooperation between public and private sectors; and generation of consensus on national economic strategies.

17. As in other countries, producers are organized in various Chambers of Commerce. The National Chamber of Commerce and Industry of Malaysia is a federation of the Associated Chinese Chambers of Commerce and Industry of Malaysia, the Malay Chambers of Commerce and Industry of Malaysia and the Malaysian Associated Indian Chambers of Commerce and Industry of Malaysia. In addition manufacturers are represented by the Federation of Malaysian Manufacturers. The Malaysian International Chamber of Commerce and Industry represents the various international Chambers of Commerce in Malaysia. The Chambers of Commerce and Industry express their interests and opinions regarding various policies and policy options in submissions to the Government. Representatives of the Chambers of Commerce pointed out that Malaysia's import liberalization ahead of its WTO commitments forced Malaysian companies to improve their efficiency to maintain market share. More detailed comments are made in memoranda of the Federation of Malaysian Manufacturers to the annual Dialogue with the Ministry of International Trade and Industry (Chapter IV(3)).

18. By contrast, Malaysia does not appear to have a strong organization representing consumer interests. Although consumer interests are protected through price controls and labelling requirements for some products, there is no law preventing domestic producers from otherwise taking advantage of a dominant position on the domestic market through collusive behaviour. In the absence of a specific competition policy, liberalization of imports of goods and services is the main instrument to counter such collusion. However, consumer interests do not appear to be represented in decisions regarding the imposition of trade barriers.

19. Both the ISIS Malaysia and MIER are non-profit institutions established under the Companies Act. The two Institutes serve as bridges between the Government, the private sector and universities. They are partly funded by the Government, private sector contributions and paid consultancy activities. ISIS's role is to conduct objective and independent policy research in the areas of defence, security and foreign affairs, national and international economic affairs, policies for national building, science, technology and industry. MIER conducts independent, problem-oriented research on economic and financial issues and provides advice on macroeconomic management, development and future economic perspectives. Research assessing the impact of various policy measures used by the Government appears to be conducted primarily in response to specific requests from the Malaysian authorities.

(b) Topic-specific consultation and review bodies

20. Various consultation and review bodies exist under the purview of Ministries with sector-specific responsibilities. The large number of committees and consultation procedures facilitates close links between the public and the private sector. In some cases, such a consultative process allows for the efficient, non-discriminatory development of standards (Chapter III(4)(iv)). On the other hand, trade policies developed in consultation with the private sector have in some cases benefited selected Malaysian companies, as in the case of Proton, Malaysia's "national car" producer, developed under a deliberate policy-driven strategy of enhancing indigenous capabilities and industrialization (Chapter IV(3)(iii)).

21. The specialized nature of many of the consultation committees at the sectoral ministry level has also allowed these committees to develop strong international linkages. Such links are complementary to Malaysia's formal external policy making in the WTO as well as to regional and bilateral arrangements.

(3) External Trade Policy making

22. Like most other WTO members, Malaysia formulates trade policies not just on a multilateral basis, but also on both regional and bilateral bases. While the WTO Agreements are central to the formulation of trade policies, Malaysia also participates actively in regional groupings such as ASEAN and other regional arrangements including APEC. At the same time, however, Malaysia attempts to ensure that its adherence to such arrangements is consistent with the main principles underlying WTO Agreements. The Malaysian Government also regards ASEAN and other groupings as a means of formulating concerted responses by like-minded countries to trade policy discussions and disputes within the WTO and new issues (such as investment, environmental and labour standards) raised by other WTO Members.¹⁵ By contrast, bilateral arrangements are intended primarily to address those measures impeding access to foreign markets that are felt to be particularly important to the two parties concerned but fall beyond the scope of existing multilateral or regional agreements.

23. The growing trend towards regional (and bilateral) arrangements begs the question as to whether such arrangements are indeed consistent with the principles that underlie the WTO Agreements and, in particular, the balance between trade (and investment) creation and diversion. It would appear that, at least as far as Malaysia's participation in ASEAN is concerned, the diversionary effects have not outweighed the trade creation effects between ASEAN and non-ASEAN members. This may be partly due to the fact that, since 1993, tariff preferences granted within the ASEAN Free Trade Area (AFTA) are formulated as rates of duty instead of a preferential margin in relation to MFN tariffs.¹⁶ Recent cuts in MFN rates, allowable under ASEAN procedures have thus substantially reduced the differences between these and AFTA tariffs.¹⁷

¹⁵Government of Malaysia (1996a), p. 8.

¹⁶Under the ASEAN Preferential Trading Agreement concluded in 1977 and valid until the end of 1992, tariff preferences were expressed as a preferential margin of 25-50 per cent below MFN tariffs. (GATT (1991), pp. 74-76).

¹⁷The Common External Preferential Tariff (CEPT) Agreement allows member States to reduce their tariffs to 0-5 per cent on an MFN basis while enjoying concessions from other ASEAN member States (ASEAN Secretariat (1993), p. 8).

24. The Malaysian authorities emphasize that Malaysia has always supported open regionalism and often voiced concern over inward-looking and discriminatory regional trading blocks. They also maintain that regional groupings should be the building blocks of multilateralism.

(i) Multilateral arrangements

(a) WTO

25. Malaysia ratified the WTO Agreements on 6 September 1994 and became a founding member of the WTO on 1 January 1995. Since then it has become a party to the Interim Agreement on Financial Services reached in 1995, the Information Technology Agreement, and the 1997 Agreement on Telecommunications Services. It does not subscribe to any of the four plurilateral WTO Agreements.¹⁸ Malaysia's WTO Schedule XXXIX extends its tariff bindings from less than 1 per cent to 65 per cent of all tariff lines (Chapter III(2)), of which roughly two thirds pertain to manufactured goods. It has also made extensive commitments under the GATS (Chapter IV(4)). As a developing country, however, Malaysia has invoked its rights to delay the implementation of the Customs Valuation Agreement and the TRIPS Agreement.¹⁹ It has notified a number of measures under the TRIMs Agreement (Chapter III(2)). Selected notifications, as circulated to WTO members on 30 June 1997, are listed in Table AII.2.

26. Malaysia was a party to the first dispute raised under the WTO provisions when Singapore requested consultations concerning the prohibition of imports of polyethylene and polypropylene in January 1995.²⁰ The outcome was a mutually agreed solution with Malaysia converting the relevant non-automatic licensing requirement to automatic licensing (Chapter III(2)(iii)). On 28 February 1996, Malaysia joined the consultations requested by Hong Kong concerning the restrictions on imports of textile and clothing products administered by Turkey. Although the consultation period has expired, no panel has been requested. Malaysia had also requested consultations and the establishment of a panel concerning a U.S. import prohibition of certain shrimp and shrimp products.²¹ A panel was established on 25 February 1997 and its procedures were ongoing as at 30 September 1997 (Table AII.3).

27. The Malaysian authorities considered the Singapore Ministerial Meeting in December 1996 basically as a review forum to evaluate the progress or otherwise of implementation of the various Uruguay Round Agreements. In Malaysia's statement in Singapore, the Minister of International Trade and Industry emphasized that service sectors should be liberalized to a degree commensurate with the level of economic development. Malaysia rejected any link between labour standards and trade actions. The Minister stated that work in the WTO on multilateral investment rules, as well as competition policies and laws, could be supported provided it did not lead to a negotiating process. Further, she

¹⁸The Agreement on Trade in Civil Aircraft, the Agreement on Government Procurement, the International Dairy Agreement and the International Bovine Meat Agreement.

¹⁹WTO documents WT/Let/1, 27 June 1995; revision 1, 2 March 1995 and revision 2, 22 May 1995.

²⁰WTO (1996), p. 101.

²¹WTO (1997), pp. 94-95.

mentioned that the WTO had the responsibility to assist the least developed countries so that they could also benefit from the work programme of the Organization.²²

(b) Other multilateral arrangements

28. Malaysia became a party to the Convention on the Settlement of Investment Disputes between States and Nationals of other States (Washington Convention) on 8 August 1966 and enacted the Convention on the Settlement of Investment Disputes Act 1966 (Act 392) (Rev. 1989) to give it effect. It therefore recognizes the International Centre for the Settlement of Investment Disputes (ICSID) as the administrative body to provide the facilities for conciliation and arbitration of investment disputes. Under the Convention, parties to a dispute apply the Conciliation Rules or Arbitration Rules, unless otherwise agreed.

(ii) Regional arrangements

29. Malaysia participates in the Association of South-East Asian Nations (ASEAN), the Asia-Pacific Economic Cooperation (APEC) forum and the East Asian Economic Caucus (EAEC) as well as in several other groupings with prominent trade objectives.²³ The EAEC functions as a consultative group within APEC. Malaysia also participates in the second round of negotiations on the Global System of Trade Preferences (GSTP), and has submitted an offer covering tariff reduction on 15 tariff lines to these negotiations (Chapter III(2)(ii)).

(a) Developments in ASEAN

30. Malaysia is one of the founding members of the Association of South-East Asian Nations (ASEAN) formed in 1967. Within ASEAN, Malaysia participates in initiatives applied to all member States, cross-border initiatives with selected trading partners or groups of trading partners (the growth triangles or regions), and initiatives dealing with relations between ASEAN and non-Member countries.²⁴ The People's Democratic Republic of Laos and Myanmar became members of ASEAN on 23 July 1997 and have participated in all ASEAN activities since then. On accession to ASEAN, Cambodia is expected to do likewise.

Recent initiatives applicable to all ASEAN countries

31. In January 1992 the ASEAN countries agreed to establish the ASEAN Free Trade Area (AFTA) to promote trade and investment in the region. In January 1993 the Common Effective Preferential Tariff (CEPT) emerged as the mechanism for implementation. Member States agreed to the effective tariff reductions on products originating from ASEAN member States over 15 years.

²²Statement by the Honourable Dato' Sero Rafidah Aziz, Minister of International Trade and Industry, WTO Document WT/MIN(96)/ST/64, 11 December 1996.

²³The Organization of Islamic Countries, the Commonwealth, the Non-Aligned Movement, and Group of 15.

²⁴ASEAN's dialogue partners are Australia, Canada, the European Union, India, Japan, the Republic of Korea, New Zealand and the United States. In addition the trade ministers from ASEAN and the Closer Economic Relations (CER) Agreement between Australia and New Zealand, agreed to meet annually since their first joint meeting in September 1995, (Lloyd, 1996, pp. 178-193).

32. The 1995 ASEAN Summit formalized new initiatives that would accelerate the completion of AFTA by 2003, instead of 2008, and expand ASEAN economic cooperation to the fields of services and intellectual property.²⁵ The AFTA product coverage was also expanded to include unprocessed agricultural products. In addition, it is envisaged that all products in the Temporary Exclusion List (TEL) will be transferred to the Inclusion List (IL) in five equal annual instalments of 20 per cent, with the first instalment in January 1996 and the last in 2000.²⁶ Although the CEPT Agreement calls for the elimination of non-tariff barriers within five years after engagement of concessions, the eight AFTA Council Members decided that Members should aim to eliminate these barriers no later than 2003.²⁷

33. The Framework Agreement on Services focuses on seven priority areas: financial services, tourism, telecommunications, construction services, business services, air services and maritime services. It was expected that the first package of commitments covering tourism, and maritime and air transport services would be concluded by the 29th ASEAN Economic Ministers Meeting in October 1997. The new arrangement is expected to start in 1998.

34. The Framework Agreement on Intellectual Property, signed in 1995, enhances ASEAN administration, legislation and enforcement of intellectual property rights and explores the possibility of setting up ASEAN patent and trademark systems (Chapter III(4)(iii)).

35. Following the phasing out of the ASEAN Industrial Joint Venture (AIJV) and the Brand-to-Brand Complementation Schemes (BBC), ASEAN has introduced a new scheme called the ASEAN Industrial Cooperation Scheme (AICO) effective from 1 November 1996. The new arrangement is a cooperative arrangement consisting of a minimum of two participating companies from different ASEAN countries. The output of the participating companies will enjoy a preferential tariff rate in the range of 0-5 per cent. Participating companies are required to be incorporated in an ASEAN member, have a minimum national equity stake of 30 per cent, and undertake resource sharing/pooling and/or industrial cooperation activities.²⁸

Cross-border initiatives

36. Malaysia is located at the geographical centre of the ASEAN grouping of countries, sharing land borders with Brunei Darussalaam, Indonesia, and Thailand, and linked to Singapore by causeway. During 1994 and 1995 it accounted for around a quarter of all intra-ASEAN trade, second only to Singapore which accounted for almost half of intra-ASEAN trade.²⁹ Malaysia is engaged in three ASEAN initiatives to facilitate cross-border trade and investment flows; the Indonesia-Malaysia-Singapore Growth

²⁵Viet Nam joined ASEAN in 1995 and was granted a ten-year transition period starting 1 January 1996. Upon joining the Association, Laos and Myanmar also received a ten-year transition period starting 1 January 1998.

²⁶The TEL contains products exempted from the extension of tariff preferences under the CEPT scheme; the IL currently covers about 85 per cent of the value of intra-ASEAN trade.

²⁷ASEAN Secretariat (1995) pp. 21-22.

²⁸Equity waiver criteria for Malaysia are available for participating companies with linkages to small and medium-sized enterprises, companies involved in high technology, especially in new and emerging technologies, and research and development companies.

²⁹Ministry of International Trade and Industry (1996b), p. 129.

Triangle (IMS-GT); the Indonesia-Malaysia-Thailand Growth Triangle and the Brunei-Indonesia-Malaysia-Philippines-East ASEAN Growth Area (BIMP-EAGA). All three are intended to capitalize on the geographical proximity and complementary strengths of contiguous sub-regions within ASEAN with a view to increasing cross-border trade and investment flows. By building on natural sub-regional synergies, it is hoped that the pace of intra-ASEAN economic cooperation and integration can be accelerated and its scope expanded. While a number of projects are already underway in the IMT-GT, a development strategy is being formulated for the BIMP-EAGA under the supervision of the Asian Development Bank.³⁰

37. On 17 December 1994, Indonesia, Malaysia and Singapore signed a Memorandum of Understanding (MOU) to formalize the cooperation framework between Singapore, Indonesia's Riau Province, the Malaysian State of Johor and any other area which might be designated by the Parties. Since then, the member areas have been expanded to include six other provinces in Indonesia (West Sumatra, South Sumatra, Bengkulu, Jambi, Lampung and West Kalimantan) and three more Malaysian States (Melaka, Negeri Sembilan and Patang). The MOU provides a framework for bilateral and trilateral co-operation in the development, expansion and integration of various sectors including trade, transport and communications, tourism, shipping, agriculture, forestry, industrial infrastructure and manufacturing. The three countries also agreed to encourage human resource development and to facilitate and promote the expeditious and smooth flow of goods and services, investments and people within the IMS-GT. However, the IMS-GT is private-sector led and market-driven. The roles of the three countries involved are to support, encourage and facilitate bilateral and trilateral private-sector collaboration efforts.³¹

(b) Asia-Pacific Economic Cooperation (APEC) Forum

38. The Bogor Declaration (November 1994) committed the Asia-Pacific Economic Cooperation (APEC) to implement free and open trade and investment in the region, while affording flexibility to member economies to implement their commitments to trade liberalization. It was agreed that the pace of implementation would take into account the differing levels of economic development among APEC economies, with the industrialized economies achieving the goal of free and open trade and investment no later than 2010, and developing economies no later than 2020.³² The Declaration articulated the three main pillars of work within the APEC fora: trade facilitation, trade liberalization, and economic and technical cooperation.³³

39. The APEC Osaka summit meeting in November 1995 resulted in the adoption of an Action Agenda setting out the framework for future APEC activities together with a set of principles and specific actions to implement the Bogor Declaration. The Osaka meeting also resulted in the announcement of specific "down-payments" of initial actions including measures that further liberalize and facilitate foreign trade and investment. The Osaka Initial Actions focused on steps to harmonize customs forms, adopt common product-safety standards, deregulate, reduce tariffs and eliminate other specific trade

³⁰Ministry of International Trade and Industry (1996b), p. 143.

³¹WTO (1996), p. 25.

³²WTO(1995), p. 24.

³³WTO (1996), p. 24.

impediments.³⁴ The meeting further identified ten general principles to guide trade and investment facilitation and liberalization within APEC: comprehensiveness, WTO-consistency, comparability, non-discrimination, transparency, standstill, simultaneous start, continuous process with differential time tables, flexibility, and cooperation.

40. The Manila Action Plan for APEC (MAPA) 1996 comprises Individual Action Plans (IAPs), Collective Action Plans (CAPs) and joint activities in various APEC fora. The action plans are based on the ten principles set out in the Osaka Action Agenda and the goals formulated in the Bogor Declaration. Observers note progress in defining Bogor goals in tariff reductions to specific targets, though the definition of targets and time schedules for the removal of non-tariff barriers are less clear. Regarding services, the same observers note a commitment to collective APEC action to support WTO negotiations on professional services and telecommunications and to adopt, within the Bogor time-frame, a set of principles for the development of open markets for energy services and telecommunications.³⁵ Malaysia's Individual Action Plan focused on the process of its continued trade liberalization and the implementation of its WTO commitments.

(c) Other regional groupings

41. In 1993, the ASEAN Ministers operationalized the East Asia Economic Caucus as a loose consultative group within the APEC forum. The Malaysian authorities consider the People's Republic of China, Japan and the Republic of Korea as prospective member countries of the Caucus.³⁶ Further, Malaysia is also a member of the Organization of the Islamic Conference (OIC),³⁷ the Global System of Trade Preferences (GSTP), the Commonwealth, the Non-Aligned Movement, and the Group of 15.

(iii) Bilateral trade and investment arrangements, by trading partner

42. Malaysia has signed 47 bilateral trade agreements, 54 bilateral investment guarantee agreements, 27 bilateral payments agreements and 48 Avoidance of Double Taxation Agreements (Tables AII.4, AII.5, AII.6 and AII.7). The Arbitration Act 1952 provides for resolution of disputes.³⁸ In addition, Malaysia receives trade preferences on a bilateral basis from a number of trading partners under the GSP.³⁹ Export restrictions administered under the WTO Agreement on Textiles and Clothing as well as SPS import restrictions in selected markets are also administered on a bilateral basis. Trade preferences administered under bilateral trade agreements with Australia and New Zealand are expected to be phased out by 1 January 1998 (Chapter III(2)(ii)).

³⁴APEC Economic Leaders' Meeting (1995).

³⁵Pacific Economic Cooperation Council (PECC), Philippines Institute for Development Studies (PIDS) and the Asia Foundation (1996), p. 11.

³⁶Government of Malaysia (1996b), pp. 664-665.

³⁷The OIC established the Islamic Corporation for Insurance of Investment and Export Credit (ICIEC) in July 1995, so as to provide the impetus to increasing intra-OIC trade. Further, the OIC agreed to the establishment of a mutual recognition arrangement on standards for products from member States (Ministry of International Trade and Industry Malaysia (1996b), p. 118).

³⁸APEC (1996), p. 9.

³⁹As of 30 September 1997, Malaysia received GSP preferences from Australia, Canada, Czech Republic, the European Union, Hungary, Japan, New Zealand, Norway, Poland, Russia, Slovakia, and Switzerland.

43. Malaysia's large number of bilateral trade, investment, payment and tax agreements are a reflection of a very active bilateral trade policy, which is complemented by public-sector support for Malaysian companies investing abroad. Although recent initiatives have contributed to rapidly growing trade and investment relations with, among others, China and South Africa, relations with the European Union, the United States and Japan are still the most significant. The EU, US and Japan are all dialogue partners of ASEAN.

(a) European Union

44. Malaysia has investment guarantee agreements with most individual EU member States (namely Austria, Belgium, Denmark, Finland, France, Germany, Italy, Luxembourg, Netherlands, Spain, Sweden, and the United Kingdom). Further, Malaysia has a bilateral trade agreement with Germany. No bilateral payments arrangements/agreements exist with any EU member State. With the United Kingdom (as with the United States), Malaysia is party to a reciprocal arrangement for the protection of sound recordings, broadcasts and published editions through the Copyright (Application to Other Countries) Regulation 1990 (Chapter III(4)(iii)).

45. The main trade issues that have arisen between the European Union and Malaysia concern the use of anti-dumping measures by the European Union against Malaysian exports, and preferential access of Malaysian exports to the European market under the GSP Scheme. As of 1 February 1997, there were six EU anti-dumping measures and investigations outstanding and one ongoing against Malaysian exports. By contrast, Malaysia had taken one anti-dumping measure against European exports (Chapter III(2)(iv)). Malaysia had also expressed concern that "The intention of the EU to link the GSP scheme to conditionalities such as labour standards and environment, from 1 January 1998 is contrary to the principles of non-discrimination and non-reciprocity that underpin the GSP".⁴⁰ Furthermore, the Malaysian authorities are concerned that "local authorities in a number of EU member states, including Belgium, Germany, the Netherlands and the United Kingdom, continue to restrict the use of tropical timber for construction purposes".⁴¹

(b) United States

46. A bilateral investment guarantee agreement between Malaysia and the United States, dating back to 1959, was revised in 1965 (Table AII.5). There is a limited agreement to avoid international double taxation (Table AII.7). A bilateral agreement concerning the transboundary movement of hazardous wastes from Malaysia to the United States was signed on 10 March 1996.⁴² In the area of intellectual property rights, there is a reciprocal arrangement for the protection of sound recordings, broadcasts and published editions administered through Malaysia's Copyright (Application to Other Countries) Regulation 1990 (Chapter III(4)(iii)). In Malaysia, over one third of all patents registered during 1986-96, and over 20 per cent of trade marks registered during 1992-96, are owned by U.S. firms, the largest foreign country of ownership of such intellectual property rights (Chapter III(4)(iii)).

47. The United States has one countervailing duty measure outstanding against exports of extruded rubber thread from Malaysia. Furthermore, Malaysia is also party to an ongoing dispute with the

⁴⁰Ministry of International Trade and Industry (1996b), p. 108.

⁴¹Ministry of International Trade and Industry (1996b), p. 108.

⁴²The Bureau of National Affairs (1996) International Environmental Reporter, July, pp. 59-60.

United States concerning exports of shrimp and shrimp products (Table AII.3); and has objected (jointly with its ASEAN partners) to the change applied as of 1 July 1996 in the U.S. rules of origin applied to imports of textiles and clothing. The United States withdrew GSP trade preferences for Malaysia as of 1 January 1997.

(c) Japan

48. A Malaysia-Japan bilateral trade agreement was signed on 10 May 1980 and a Double Taxation Agreement on 30 January 1970. In spite of significant Japanese investment in Malaysia, however, there is no bilateral agreement between Malaysia and Japan covering investment protection. Nor has Japan any anti-dumping or countervailing measures outstanding against Malaysia's exports. Japan grants GSP preferences to imports from Malaysia and contributes to the ASEAN-Japan Development Fund (Chapter III(4)(ii)).

Annex AII.1 Planning in the Executive Branch

Malaysia maintains both long-term development plans, setting broad objectives for the more distant future, and medium- and short-term plans that tend to be more specific in both objectives and policy instruments. The Malaysian authorities have indicated their long-term, 25-year, objectives in "Vision 2020". The Vision envisages Malaysia as a united, developed nation by the year 2020 with a competitive, dynamic, robust and resilient economy. At the same time, however, great emphasis is placed on sustainable development, and on the evolution of an economically just and equitable, democratic, liberal, caring, moral and ethical society.⁴³ To ensure Malaysia's future competitiveness in global markets, the Government seeks to encourage productivity improvement through a strategic shift to capital- and technology-intensive production processes; to reduce its role in the economy through the continuing privatization of publicly-owned companies and assets; and to maintain healthy fiscal and monetary management.

The Second Outline Perspective Plan (OPP2) (1991-2000), follows the first OPP (1971-1990) in which the New Economic Policy (NEP) was formulated. Under the NEP, various preferences were enacted to favour selected segments of society, particularly the indigenous Bumiputra population, with the view of reducing economic inequality among ethnic groups, thus promoting racial harmony. Such preferences were modified during the Second Outline Perspective Plan (OPP2) under the National Development Policy (NDP), moving towards more general economic and social objectives.⁴⁴ Under the NDP, preferences for indigenous Malaysians are targeted at "Bumiputra with potential, commitment and good track records" and "groups within the Bumiputra community who are new in business and do not have the necessary track record".⁴⁵ A range of tax and non-tax incentives is also provided to the business sector, irrespective of ethnicity; the expansion of public amenities and social services in rural and urban areas alike is available to all residents.

The Seventh Malaysia Plan (SMP) covers the centre period of the National Agricultural Policy⁴⁶ and the second half of the OPP2. The National Agricultural Policy stresses the role of market forces and research and development in the agricultural sector (Chapter IV(2)). The SMP stresses the acceleration of total factor productivity growth as a major policy objective (Chapter I(1)). Total factor productivity growth is to be fostered by large-scale production, labour-saving techniques including automation, enhancement of labour quality, efficient management and expansion of infrastructure; the development of high-value-added activities is encouraged including, in the farm sector, horticulture and aquaculture; integration with the global economy is to be promoted through trade and investment and greater backward and forward linkages of the external sector. Price stability and the current account

⁴³Government of Malaysia (1996c), The Way Forward - Vision 2020, Kuala Lumpur, posted on the Internet.

⁴⁴"While the NDP maintains the basic strategies of the NEP, its new dimensions will be to: (a) shift the focus of the anti-poverty strategy towards eradication of hard-core poverty while at the same time reducing relative poverty; (b) focus on employment and the rapid development of an active Bumiputra Commercial and Industrial Community (BCIC) as a more effective strategy to increase the meaningful participation of Bumiputra in the modern sectors of the economy; (c) rely more on the private sector to be involved in the restructuring objective by creating greater opportunities for its growth; and (d) focus on human resource development as a fundamental requirement for achieving the objectives of growth and distribution." (Government of Malaysia, 1991, p. 4).

⁴⁵Government of Malaysia (1991), p. 17.

⁴⁶The National Agricultural Policy (1992-2010) stresses the role of market forces in agricultural development in this context imports have been liberalized to reduce inflationary pressures.

deficit are identified as indicators of the resource constraint to the realization of these objectives. To alleviate the savings-investment gap and the balance-of-payments constraint, domestic savings are to be encouraged through the further development of a dynamic and innovative capital market (Chapter IV(5)(ii)).

The SMP coincides with the first half of the Second Industrial Master Plan (IMP2). While the First Industrial Master Plan emphasized resource-based and labour-intensive industrialization, IMP2 emphasizes the development of human capital, capital-intensive, high-technology and knowledge-based industries.

Another major innovation of the Second Industrial Master Plan (IMP2) is its emphasis on the development of clusters of activities, as compared to the previous emphasis on selected sectors. IMP2 emphasises "moving beyond a focus on manufacturing operations to include R&D and design capability, development of integrated supporting industries, packaging, distribution and marketing activities".⁴⁷ IMP2 is implemented on the basis of a "rolling plan" approach which stresses the importance of the continuous processes of planning, implementation and review, conducted in active participation with the private sector as represented on advisory and review bodies (Chapter II(2)(iii)).

⁴⁷Ministry of International Trade and Industry Malaysia (1996a), p. 10.