

### III. TRADE POLICIES AND PRACTICES BY MEASURE

#### (1) Overview

1. Trade and trade-related policy instruments are major features of the Malaysian Government's pro-active industrial policy. These instruments may be used at the border, as in the case of tariffs, quantitative restrictions, non-automatic licensing procedures and anti-dumping actions. Alternatively, they may be applied internally, through incentives, standards, laws and regulations as well as preferential government procurement practices. All these measures can entail elements of direct or indirect government assistance to domestic producers of goods and services, or to investors. Tariffs and non-tariff border measures provide assistance by tending to raise prices of competing imports, thereby protecting domestic producers from foreign competitors. While some internal measures, including preferential government procurement practices used to further social or economic objectives, also enable domestic or other favoured suppliers to charge higher prices, others, such as those in the form of incentives, permit domestic producers to charge lower prices, while maintaining profitability. Again, internal measures shelter domestic producers from foreign competitors. Consequently, both border and internal measures constitute potential distortions to competition.

2. Border measures directly affecting imported goods have been liberalized substantially since the first review of Malaysia's trade policies in 1993 (Table III.1). As part of Malaysia's WTO commitments under the Uruguay Round, the coverage of tariff bindings increased from under 1 per cent to almost two thirds of tariff lines. At the same time, the average applied MFN tariff rate has declined from 15.2 per cent in 1993 to 10.2 per cent (8.1 per cent if *ad valorem* equivalents of specific and mixed duties are excluded) in 1997.<sup>1</sup> Furthermore, whereas only 13 per cent of tariff lines were exempt from import duty in 1993, more than half of all lines are currently duty free. While potential and actual tariff protection has declined overall, tariff dispersion has widened substantially as duties on raw materials and intermediate imports have fallen faster than those on fully processed products, thus possibly accentuating distortions to domestic resource allocation (section (2)(ii)).

3. Import licensing affects less than a quarter of tariff lines, except in the wood sector; licences are generally granted within three days, according to the authorities (section (2)(iii)). Since the entry into force of an anti-dumping and countervailing law in 1993, just two anti-dumping cases have been investigated resulting in countermeasures (section (2)(iv)). Malaysia does not have any laws, regulations or administrative procedures relating to safeguard measures<sup>2</sup>.

4. Export promotion measures and export levies are also an integral part of Malaysia's industrial policy. Exports are encouraged by, among other things, exemptions/drawbacks for both import duties and other indirect taxes, incentives, and government-sponsored trade information initiatives (section (3)). Such promotional measures are designed to create export awareness; however, they also help to offset export disincentives arising from measures such as import duties on inputs used in goods for export and "cascading" sales taxes, which, unlike a VAT, tend to discriminate against exports. At the same time, taxes and licensing arrangements are applied to certain exports, thus tending to discourage the export of the goods affected and reducing their domestic prices (section (3)(ii)). Although this constitutes

---

<sup>1</sup>The average for 1993 does not include estimates of the *ad valorem* equivalents (AVEs) of either specific, mixed or alternative duties. The 1997 figures include such estimates for 315 of the 523 tariff lines subject to these duties.

<sup>2</sup>WTO document G/SG/1/MYS/1, 17 November 1995; and Table AII.3.

an indirect subsidy to domestic users of such goods, the aim, according to the authorities, is to assist the development of downstream industries which provide value-added content.<sup>3</sup>

5. Non-border measures may also involve elements of government assistance; like tariff and non-tariff border measures, which directly affect imports and exports, they can have a significant impact on trade in goods. Non-border measures are particularly important obstacles to the cross-border provision of services, however. While services may be embodied in goods, the provision of services is more likely to require producers of services to be located close to consumers. Consequently, restrictions on foreign direct investment (FDI) tend to impede the establishment of foreign firms providing these services.

6. Among the main non-border, or internal, measures used to influence trade in goods and services are regulations and licensing requirements, which are designed to encourage or discourage certain types of activity (section (4)(i)), and incentives, mainly in the form of tax relief, which are aimed at encouraging, *inter alia*, investment and technological progress (section (4)(ii)). These measures appear to apply to domestic and foreign investors alike. The Malaysian authorities are reviewing the use of incentives with a view to making them more selective by, among other things, encouraging automation in labour-intensive industries (to alleviate the shortage of low-skilled labour), training of employees and technological development.

7. In line with its commitments under the TRIPS Agreement, and given its desire to encourage the inflow of capital, particularly in the form of intellectual property, the Malaysian Government provides protection for patents, copyrights and trademarks. New legislation covering industrial designs is due to come into force, and new or amended Acts are to be introduced in other fields of intellectual property (section (4)(iii)).

8. Trade in goods and services may be affected not just by government policies designed to influence private behaviour, but also by the Government undertaking certain activities itself (section (4)(v)). Procurement practices seemingly favour domestic suppliers of goods and services; Malaysia is not a party to the WTO's Plurilateral Agreement on Government Procurement. The Government also affects procurement and supply of goods and services through state ownership of enterprises.

9. Notwithstanding the privatization of many state-owned enterprises in recent years, and the resulting diminished role of the Government in business decisions, the absence of competition laws (section (4)(vi)) may lead to distortion of trade and production patterns through inability to act against anti-competitive practices. As a consequence, higher prices may prevail, including for inputs. While freedom to raise prices for certain essential products is somewhat limited by the existence of price controls, these controls constitute a further potential distortion to competition in markets that could otherwise be competitive.

10. Malaysia's exporters too face tariff and non-tariff border measures applied by its trade partners. Some of these measures, notably anti-dumping and countervailing actions, arise from allegations that some forms of government assistance, particularly subsidies/incentives or a lack of competition in Malaysia's domestic market, confer an "unfair" advantage on Malaysia's exporters, enabling them to sell their products abroad at unduly low prices (possibly as a consequence of cross-subsidization).

---

<sup>3</sup>Although the main rationale behind export duties/taxes is to encourage down-stream processing, some export taxes and levies, including those on logs, also appear to be justified on the grounds that they take into account the social costs associated with the environmental damage caused by the production/harvesting of specific products, such as trees. However, as the environment damage is the consequence of the production of the timber rather than its export, production levies would be a more efficient way of correcting the environmental externality than export duties.

Table III.1

## Structure of Malaysia's MFN and AFTA tariffs, selected years

(Per cent of total number of tariff lines unless otherwise indicated)

Indicator	MFN tariffs				AFTA tariffs <sup>a</sup>	
	Excluding estimates of AVEs for specific duties			Including AVE estimates for some specific duties <sup>b</sup>		
	1988	1993 <sup>c</sup>	1997	1997	1997	2003
<u>Tariffs:</u>						
Number of tariff lines <sup>d</sup>	12,183	11,875	10,372	10,372	10,372	10,372
Bound tariff lines	0.8	0.8	65.4 <sup>f</sup>	65.4 <sup>f</sup>	n.a.	n.a.
Duty-free tariff lines	10.3	13.4	57.6	57.6	59.1	59.2
Specific and mixed tariffs	22.2	12.0	5.0	5.0	4.8	2.2
Tariffs with no <i>ad valorem</i> equivalent (AVE)	7.4	5.9	1.5	0.5	0.5	0.5
Simple average applied rate (per cent)	17.5	15.2	8.1	10.2	6.9	3.5
Tariff range (per cent)	0-207.5	0-140.0	0-200	0-1772	0-1772	0-1772
Import-weighted average <sup>g</sup> (per cent)	15.5	11.9	9.9	12.1	9.2	3.5
Domestic tariff peaks <sup>h</sup> (per cent)	0.8	2.2	15.8	2.4	7.2	0.9
International tariff peaks <sup>i</sup> (per cent)	51.3	49.1	25.9	27.1	11.6	0.8
Overall standard deviation (percentage points)	16.0	13.1	13.9	41.5	33.9	31.6
<u>Non-tariff barriers:</u>						
Percentage of tariff lines subject to non-automatic licensing (1995) <sup>j</sup>	...	...	17.0	17.0	...	...

n.a. Not applicable.

... Not available.

a No AVEs are calculated directly for AFTA rates expressed as specific, mixed or alternative duties. However, some products on the General Exclusion List were expressed as a margin of preference over specific MFN duties for which AVEs were available. For these products as well as for "sensitive" and "highly sensitive" unprocessed raw materials which are not yet included in the AFTA schedules, AVE estimates were included.

b Estimates of *ad valorem* equivalents of 96 specific duties, 157 mixed duties and 62 alternative duties were provided by the Malaysian authorities to the WTO Secretariat (Section (2)(ii)(a)).

c Tariff averages exclude a small number of lines with rates above 105 per cent.

d Excluding HS Chapters 98 and 99.

e AFTA preferences are analyzed on the basis of the MFN tariff schedule and therefore contain by definition the same number of tariff lines; in practice, a slightly different classification is used to administer tariff preferences (Customs Duties Order (Common Effective Preferential Tariff) 1995 and Customs Duties Order (Common Effective Preferential Tariff)(Amendment) 1997 follow a different classification as compared to Customs Duties Order 1996 as amended by Customs Duties (Amendment) (No.3) Order 1996).

f According to the 1995 Harmonized System of tariff classification. The change to the 1996 Harmonized System classification on balance aggregated some bound lines, while some unbound lines were split. As a result, under the 1996 HS tariff classification 58.9 lines are bound. The actual imports for which tariff lines are bound remain generally unchanged.

g Using APEC 1995 import weights, excluding Brunei and the Philippines, while 1994 data are used for Australia.

h Tariffs higher than three times the simple average.

i Tariffs above 15 per cent.

j Based on the 1995 tariff nomenclature. Since 1995, import licensing for some cigarettes and ephedrine have been added while such licensing for diamond and diamond jewellery has been abolished.

Source: Calculated by the WTO Secretariat and UNCTAD from data provided by the Malaysian authorities to the WTO Secretariat; and Comtrade data.

(2) Measures Directly Affecting Imports(i) Registration, customs valuation and procedures

11. Foreign trade as such is not subject to a specific permit or registration requirement in Malaysia. However, importers (and exporters) of certain products that are subject to import and export licensing are required to register with the licence issuing agency (Table III.2). The authorities state that these requirements are merely used for monitoring purposes.

**Table III.2**  
**Import and export registration requirements in Malaysia, 1997**

Product	Activity	Requirement
Palm oil, palm kernel, palm kernel cake, palm fatty acid and palm oil planting material.	Import and export	Under the Palm Oil Industry (Licensing) Regulations, 1979 the applicant for the import and export of these products must forward two supporting letters from the suppliers as well as the buyers in the application to the Palm Oil Registration and Licensing Authority (PORLA). An annual fee of RM 100 is payable for the licence.
Natural rubber	Export	Under the Rubber Shipping and Packing Control Act 1949, exporters are required to be registered with the Malaysian Rubber Exchange and Licensing Board (MRELB). An annual fee of RM 200 is payable for such registration. Further, under the Rubber Export Registration Act 1966, the exported rubber is to be covered by a certificate issued by the MRELB.
Pepper	Export	Under the Pepper Marketing Regulations 1971 an annual licence is required to buy and store for the purpose of sale more than 650 kg. of pepper. The annual licence fee is RM 10. In addition exports are subject to preshipment inspection which involves a grading test. The costs of the grading tests are one Ringgit per hundred kg.
Pineapple	Export	Under the Pineapple Industry Act 1957 (revised 1990) exporters are required to register with the Pineapple Board.
Timber	Export	Exports are required to be registered with the Malaysian Timber Industry Board.

Source: Information provided by the Malaysian authorities.

12. Malaysia uses the Brussels Definition of Value to define customs value.<sup>4</sup> As a developing country, it has invoked the right to delay the implementation of the WTO Agreement on the Implementation of Article VII of GATT 1994 (Customs Valuation) for a period of five years (Table AII.2). Nonetheless, ASEAN members decided in 1995 at the Seventh AFTA Council Meeting in Brunei Darussalam to aim to accelerate the timetable for implementation of the WTO Agreement in this regard to 1997.<sup>5</sup>

13. Exporters and importers may submit and claim their merchandise themselves or appoint an agent to act on their behalf. In accordance with Section 90 of the Customs Act 1967 such agents must be approved by the Customs Department. All applications must be made in writing to the respective Director of Customs of the State where such activity is intended with relevant documents such as

<sup>4</sup>Section 2 of the Customs Act defines the relevant price "...which an importer would give for the goods on a purchase in the open market if the goods were delivered to him at the place of payment of duty and if freight, insurance, commission and all other costs, charges and expenses (except any customs duties) incidental to the purchase and delivery at such place had been paid."

<sup>5</sup>ASEAN Secretariat (1995) p. 22.

incorporation of company, etc. Applications from non-citizens to act as agents need prior approval from the Foreign Investment Committee before any consideration by the Customs Department; however, those with a share allocation of less than RM 50,000.00 are exempted.

14. A survey by the Central Bank of Malaysia found the level of satisfaction with the Customs Department the lowest of all public services provided. The main point of concern cited was slow clearance of goods. Whereas clearance in Singapore takes on average a day, 42 per cent of respondents claimed that it took two days or more in Malaysia (Table III.3). Other complaints raised were too much bureaucratic red tape, inconsistency in coding classification by the Customs Department and a shortage of experienced officers.<sup>6</sup>

**Table III.3**  
Clearance time by the Customs Department

Clearance time	Less than 4 hours	4-8 hours	8-24 hours	2-3 days	More than 3 days
Percentage of respondents	19	18	21	30	12

Source: Bank Negara Malaysia (1997), *Survey of Manufacturing Companies 1996*, Economics Department, Kuala Lumpur (mimeo), p. 65.

## (ii) Tariffs

15. The customs tariff is the main border instrument influencing import flows. Malaysia does not use tariff quotas or variable import levies. MFN treatment is offered to all countries (including those that are not WTO Members), while ASEAN countries receive tariff preferences.<sup>7</sup> Almost two thirds of Malaysia's import tariffs are bound in its WTO schedule as compared to less than 1 per cent prior to the conclusion of the Uruguay Round (Table III.1). Judging from the simple average of applied MFN tariff rates (excluding *ad valorem* equivalents of specific rates and specific components of mixed and alternative duties), overall average nominal tariff protection dropped from 15.2 per cent to 8.1 per cent.<sup>8</sup>

<sup>6</sup>Bank Negara Malaysia (1997), p. xii.

<sup>7</sup>A limited number of tariff preferences for imports from Australia and New Zealand still exist but are expected to be phased out as of 1 January 1998 (section (c)).

<sup>8</sup>Although the drop is much less marked according to the import-weighted tariff average, the latter can be a misleading indicator of overall tariff protection. While the simple (unweighted) arithmetic average of the tariff rates is not entirely a satisfactory indicator of tariff protection either, because it takes no account of the relative importance of various imported products, a major drawback of using either a country's own import-weighted tariff average involves the fact that it tends to assign a small weight to the highly protected products, with no weight at all being given to a prohibitive tariff, thus tending to underestimate the degree of protection. In addition, use of variable import weights can result in spurious movements in weighted averages over time as the weights themselves would tend to be inversely related to a country's tariff rates.

As a pragmatic compromise, therefore, constant import-share-weighted averages are used to remove the possibility of spurious movements in weighted averages. Moreover, instead of Malaysia's own import weights, the shares of overall APEC import values in 1995 are used to mitigate the downward bias inherent in Malaysia's own import weights (APEC 1995 data are used excluding Brunei and the Philippines while 1994 data are used for Australia). Needless to say, it is unlikely that the composition of Malaysia's imports in the absence of tariffs (or NTBs) would resemble the average for APEC (which also reflects trade distortions). Furthermore, although use of APEC import weights to some extent avoids the downward bias inherent in Malaysia's own import weights, some bias remains in so far as the levels and structure of APEC countries' tariffs are similar. Thus, even weighted  
(continued...)

## (a) Forms of tariffs

16. The Malaysian customs tariff nomenclature is based on the Harmonized System (HS). Following a substantial revision of its HS nomenclature in 1996, and minor revisions as of 1 January 1997, the tariff schedule contains 10,372 lines at the 9-digit level.<sup>9</sup> *Ad valorem* rates are the most common, with 95.0 per cent of all lines currently subject to such duties compared to 88 per cent in 1993. The present schedule includes 149 specific, 244 mixed and 127 alternative duties as compared to, respectively, 222 specific and 1,166 mixed and alternative duties in 1993.<sup>10</sup> Current estimates of *ad valorem* equivalents (AVEs) for some of these duties were provided by the Malaysian authorities to the WTO Secretariat. The simple average of the AVEs for 96 specific duties was 145.5 per cent, that for 157 mixed duties 67.1 per cent and that for 62 alternative duties 45.1 per cent. These duties were thus well above the average of all *ad valorem* duties, which was 8.1 per cent in 1997. Specific, mixed and alternative duties are still important features of Malaysia's tariff schedule, particularly as far as certain agricultural products, prepared food beverages and tobacco are concerned (Box III.1). However, the Malaysian authorities have indicated that they are taking steps to replace specific duties with *ad valorem* duties.

**Box III.1: The impact of specific duties compared to *ad valorem* duties**

In general a variety of tariff forms exist. The major forms are:

*Ad valorem* tariff: calculated as a percentage of the value of goods cleared through customs.

Specific duty: expressed as a fixed monetary amount per physical unit or per unit of weight of an imported product.

Mixed duty: contains elements of both *ad valorem* and specific duties.

Alternative duty: involves either an *ad valorem* or a specific duty.

Tariff quota: tariff rate applicable to a quota of imports, with a higher rate charged on imports in excess of the quota; the quota and tariff may be defined in terms of quantity or value.

Specific and mixed duties are intrinsically more opaque than *ad valorem* tariffs, and may conceal high *ad valorem* equivalents (AVEs). In addition, imports of cheaper products are taxed relatively more heavily by specific duties, thereby encouraging domestic firms to produce less expensive goods for which the level of protection against imports is greater and biasing the import structure in favour of more expensive goods (which may or may not be of higher quality). Specific duties also counteract the relative price effects of exchange rate changes. In so far as increased international competition results in declining prices for traded goods, the use of specific duties will tend to increase real tariff protection in the future. On the other hand, specific duties are relatively simple to administer and avoid problems relating to customs valuation. They may also reduce pressure to resort to anti-dumping or countervailing (AD/CV) measures for protection both because cheaper goods are taxed more heavily and because the revenue raised is unaffected by drops in prices for whatever reason.

<sup>8</sup>(...continued)

tariff averages based on overall APEC imports, which are also reported in Table III.1, need to be interpreted cautiously.

<sup>9</sup>As published in His Majesty's Government Gazette, 11 January 1996, and amended on 25 October 1996. The 1996 changes were notified to the WTO in October 1996 as a concordance between the proposed HS tariff items and existing HS tariff items listed in its Schedule XXXIX. Furthermore, since the inception of the Common External Preferential Tariffs in January 1992, ASEAN countries are also harmonizing tariff lines and consolidating several tariff lines in the process. Malaysia will implement a simplified ASEAN Harmonized Tariff Nomenclature consisting of about 7,000-8,000 tariff lines by the year 2000.

<sup>10</sup>The 1993 Trade Policy Review noted that Malaysia was in the process of converting specific duties to *ad valorem* duties (GATT, 1993), p. 58.

17. While Malaysia does not currently apply any tariff quotas, it has included such measures in its WTO Schedule XXXIX for selected agricultural products for which quantitative restrictions were tariffed in accordance with the WTO Agreement on Agriculture (Table AIII.2).

(b) Tariff levels and dispersion

18. Judging from the proportion of duty-free tariff lines, tariff protection in Malaysia has declined markedly since 1993. Whereas only 13 per cent of tariff lines were exempt from duty in 1993, now more than half of all tariff lines are duty free. Furthermore, the number of tariff lines has been reduced substantially, thereby reducing the scope for variation in tariff rates as well as the complexity of Malaysia's tariff schedule (Table III.1).

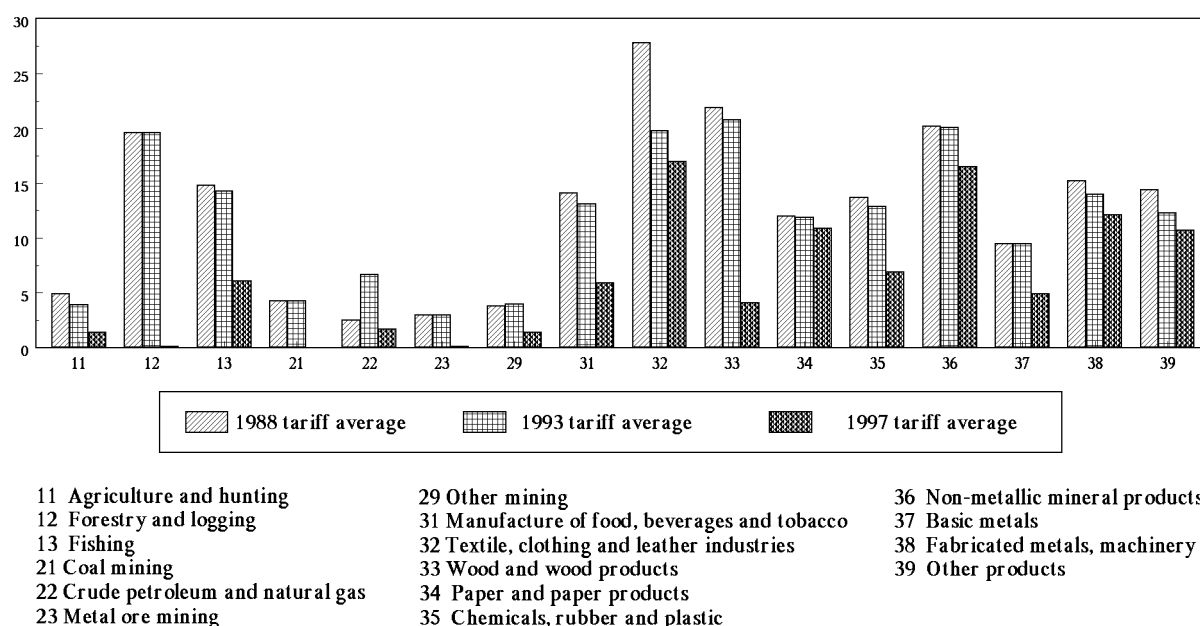
Tariff dispersion

19. Textiles, clothing, leather products, and non-metallic mineral products are the product groups currently most protected by *ad valorem* tariffs (Chart III.1). If *ad valorem* equivalents of specific, mixed and alternative duties are included, tariffs for food, beverages and tobacco products are also well above average (Table AIII.1). By contrast, among the least protected products are chemicals and chemical products, mineral products, wood and wood products, precious stones and precision instruments.

Chart III.1

Average MFN tariffs by ISIC group, 1988, 1993 and 1997<sup>a</sup>

(Per cent)



<sup>a</sup> Excluding estimates of AVEs for specific components of mixed and alternative duties.

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

20. The overall standard deviation (SD) indicates little change in the dispersion of tariff rates between 1993 and 1997. By contrast, as a proportion of all tariffs, "domestic tariff peaks" (that is, those tariffs exceeding three times the simple overall average rate) increased sevenfold during the same period

(Table III.1). Although the proportion of tariffs exceeding 15 per cent has nearly halved since 1993, such "international tariff peaks" still account for more than one quarter of all tariffs. The magnitudes of these indicators of tariff dispersion suggest that potentially high degrees of distortion still remain within many broad sub-groups of similar, and thus highly substitutable, products. As far as Malaysia is concerned, a lower level of tariff protection has not necessarily resulted in a less distorting tariff schedule.

### Tariff escalation

21. The simple average of applied MFN tariffs (taking into account those specific duties for which estimates of AVEs were available), is currently more than double that on semi-finished goods, as tariffs on the latter declined faster than those on fully processed products. This is a considerably larger discrepancy than in 1993 (Table III.4). Likewise, average tariffs on semi-finished manufactured goods are more than double those on raw materials (including agricultural products). Such tariff escalation means, generally, that the level of effective protection in Malaysia increases as goods undergo further processing. Tariff escalation will continue, albeit at a somewhat lower level, as tariff preferences under the Asean Free Trade Area (AFTA) Agreement are phased in. Once AFTA tariffs are fully implemented in 2003 (for all products other than items included on the permanent exclusion list and "sensitive" unprocessed agricultural products), tariffs for semi-processed products will be lower than those for raw materials. This suggests that sectors producing semi-processed products might be subject to negative effective rates of protection by that time.

**Table III.4**  
Simple MFN and AFTA tariff averages by stage of processing, selected years

Indicator	MFN tariffs				AFTA tariffs <sup>a</sup>	
	Excluding estimates of AVEs for specific duties			Including AVE estimates for some specific duties <sup>b</sup>		
	1988	1993	1997	1997	1997	2003
Raw materials	14.6	14.3	1.0	2.8	2.0	1.8
Agricultural products	16.9	16.5	0.6	2.9	2.1	2.0
Mining products	3.6	3.8	1.0	1.0	0.3	0.2
Manufactured products	5.9	5.8	3.2	3.2	2.1	0.9
Semi-processed products	18.3	15.3	7.0	7.4	4.9	1.9
Fully processed products	18.1	15.4	11.9	15.4	10.4	5.3

a No AVEs are calculated for AFTA rates expressed as specific, mixed or alternative duties. However, some products on the General Exclusion List were expressed as a margin of preference over specific MFN duties for which AVEs were available. For these products as well as for "sensitive" and "highly sensitive" unprocessed raw materials which are not yet included in the AFTA schedules, estimates for AVEs were included.

b Estimates of *ad valorem* equivalents of 96 specific duties, 157 mixed duties and 62 alternative duties were provided by the Malaysian authorities to the WTO Secretariat (section (2)(ii)(a)).

Source: Calculated by the WTO Secretariat from data provided by the Malaysian authorities and from Comtrade data.



### Tariff reform

22. Import and export duties are reviewed annually as changes are proposed in the federal budget.<sup>11</sup> In the implementation of the Uruguay Round market access commitments, tariffs on 36 tariff lines were reduced in the 1996 budget.<sup>12</sup> The same budget also contained several hundreds of unilateral tariff reductions. The 1997 budget included 64 import duty and one export duty reductions and 26 import duty increases.<sup>13</sup>

23. Malaysia has bound almost two thirds of its tariff lines in its WTO Schedule. Bindings are most widespread for agriculture, food, and textile and clothing products. Applied rates are generally well below bound rates, thus giving Malaysia significant freedom to unilaterally increase its import tariffs (Chart III.2). For 1997 tariffs, 5,628 tariff bindings could be directly compared to applied rates as both were expressed as *ad valorem* tariffs. In the case of these rates, the average bound rate was 15.8 per cent as compared to an average applied rate of 9.6 per cent. For agriculture, for which 872 tariffs were expressed as *ad valorem* duties (in Malaysia's WTO Schedule and in its applied rates), the average bound rate was 12.8 per cent as compared to an average applied rate of 4.5 per cent. Comparable bound and applied tariff rates for industrial products were on average 16.4 per cent and 10.5 per cent, respectively. At this stage, applied rates for only 98 tariff lines currently exceed final bound rates agreed under the Uruguay Round.

24. Malaysia has agreed to further tariff cuts as part of the Information Technology Agreement (ITA) (Chapter II(3)). Applied tariffs on the 237 tariff lines of Malaysia's tariff schedule subject to the Agreement already declined from 11.1 per cent in 1988, to 7.6 per cent in 1993 and 4.4 per cent in 1997. Under the ITA, average bound tariff rates will come down from 7.5 per cent in 1997 to 2.2 per cent in 2000, 1.1 per cent in 2003 and zero in 2005.<sup>14</sup> In the context of its participation in the ongoing GSTP Negotiations, Malaysia submitted in April 1997 a package involving 15 tariff lines to the Second Round of GSTP Negotiations.

---

<sup>11</sup>The main rules and principles of the customs system are laid down in the Customs Act, 1967. Customs matters are managed by Customs and Excise Department, headed by the Chief Officer of Customs. According to Article 11 of the Customs Act, the Minister of Finance, by order published in the Official Gazette, has the authority to "fix customs duties to be levied on any goods imported or exported from Malaysia". Such ministerial orders are subject to confirmation by Parliament.

<sup>12</sup>The small number of tariff lines to be reduced in this budget reflects the previous unilateral tariff reductions. According to the authorities, tariffs on a total of 3,426 items were reduced under the implementation of the Uruguay Round market access agreements.

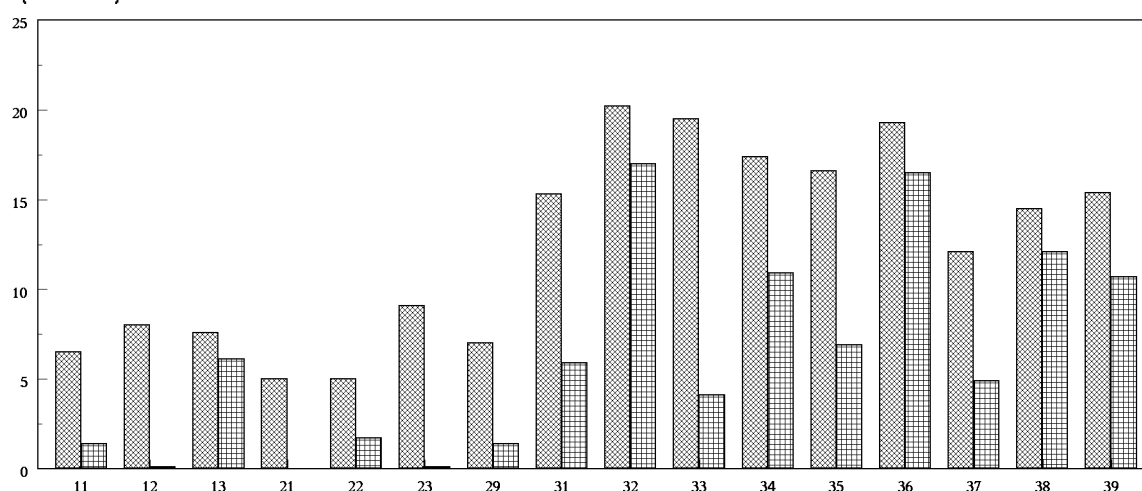
<sup>13</sup>Government of Malaysia (1996).

<sup>14</sup>Calculated from Malaysia's tariff schedules and WTO (1997).

**Chart III.2**  
**Average MFN and bound tariffs, by ISIC group, 1997**

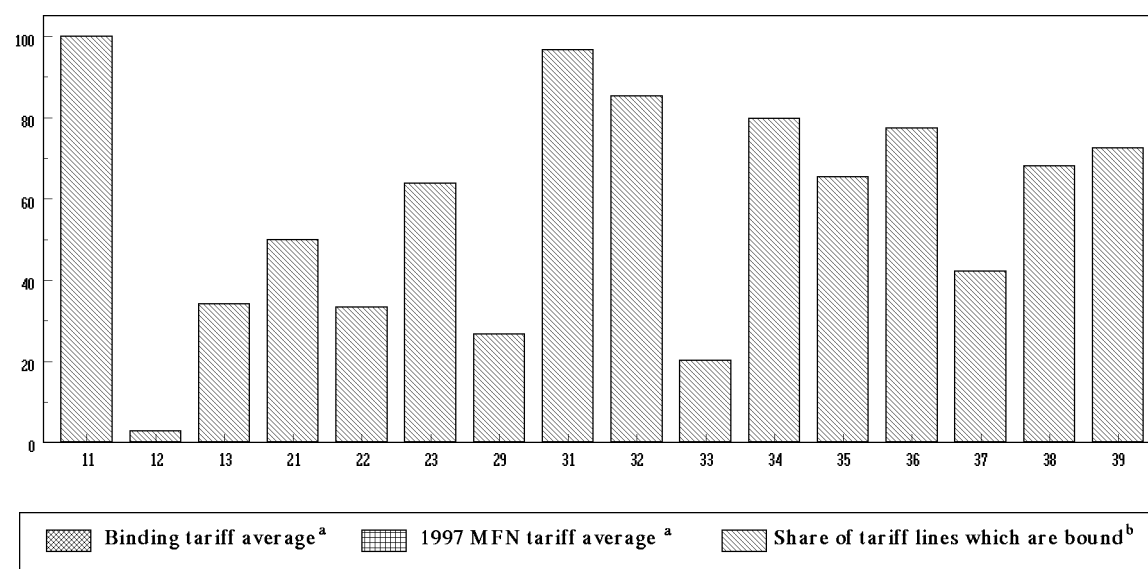
Average MFN tariff, by ISIC group, 1997

(Per cent)



Share of tariff lines that are bound, by ISIC group, 1997

(Per cent)



Binding tariff average<sup>a</sup>

1997 MFN tariff average<sup>a</sup>

Share of tariff lines which are bound<sup>b</sup>

11 Agriculture and hunting

12 Forestry and logging

13 Fishing

21 Coal mining

22 Crude petroleum and natural gas

23 Metal ore mining

29 Other mining

31 Manufacture of food, beverages and tobacco

32 Textile, clothing and leather industries

33 Wood and wood products

34 Paper and paper products

35 Chemicals, rubber and plastic

36 Non-metallic mineral products

37 Basic metals

38 Fabricated metals, machinery

39 Other products

a Lines which are expressed as ad-valorem duties in both Malaysia's WTO Schedule and in its applied tariffs.

b Including lines for which bindings are expressed as specific, mixed or alternative duties.

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

25. Tariff protection for "deserving infant industries" may also originate from applications by existing and potential manufacturers to the Malaysian Industrial Development Authority (MIDA) (Chapter II(2)(i)).<sup>15</sup> A Special Advisory Committee on Tariffs (SACT) within the MIDA then evaluates the application and forwards its recommendations to the Minister of Finance and the Minister of International Trade and Industry for their approval.<sup>16</sup> Changes to the tariff structure are gazetted and take effect from a specified date. Following this procedure, import tariffs have been increased on six items since 1 January 1993 (Table III.5)

**Table III.5**  
**Products granted tariff protection upon recommendation by the Special Advisory Committee on Tariffs, 1993-96**

Year	Product	Rate of import duty
1993	Corrugated medium, testliner/kraftliner paper	20 per cent in 1994, reduced to 15 per cent in 1996.
1993	Polypropylene multifilament yarn	15 per cent under a newly created tariff code 5402.69.100.
1993	PVC floor covering	30 per cent <i>ad valorem</i> or RM1.00 per metre effective 6 May 1993.
1993	High density polyethylene resin (HDPE) and low density resin (LDPE)	30 per cent effective 9 December 1993.
1994	Titanium dioxide pigments	15 per cent effective 22 December 1994.
1994	Buffer tyres	30 per cent or RM2.50 per kg. effective 22 February 1994.

Source: Data provided by the Malaysian authorities.

(c) Tariff preferences

26. Malaysia grants tariff preferences to imports from ASEAN, as part of the ASEAN Free Trade Area (AFTA) Agreement, as well as to Australia and New Zealand, under bilateral agreements signed in 1958 and 1961, respectively. Preferences under AFTA are being gradually phased in, while preferences for imports from Australia and New Zealand are being phased out (Chapter II(3)(iii)).<sup>17</sup>

27. Over time, the number of tariff lines subject to AFTA preferences will be increased and the tariffs applied to these lines reduced. The simple average of AFTA tariff in 1997 was calculated by

<sup>15</sup>Malaysian Industrial Development Authority (1996), p. 17.

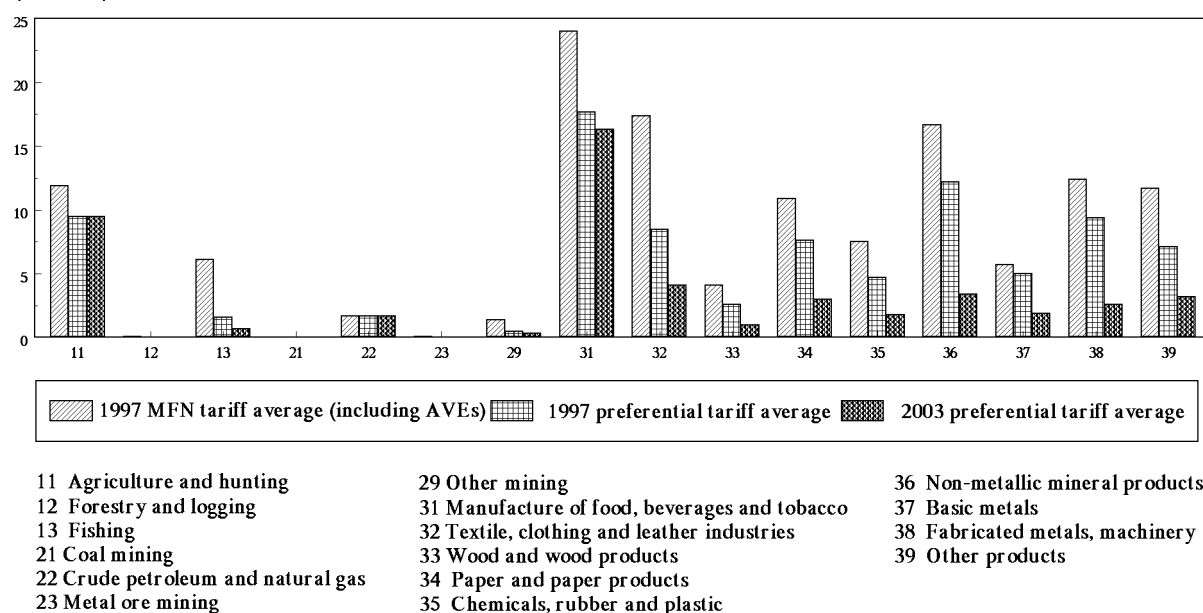
<sup>16</sup>The SACT originated from the Advisory Board, established under the Tariff Advisory Board Act, 1963. The Board was dissolved in 1970 and its functions were transferred to MIDA. The SACT function is now provided under the MIDA (Incorporation) Act, 1965.

<sup>17</sup>AFTA tariffs are expected to affect almost all Malaysia's trade with its ASEAN partners (products covered by Malaysia's notification under Article IX, permanent exclusions, of the ASEAN Agreement on the Common Effective Preferential Tariff (CEPT) Scheme include sugar, beverages, spirits, vinegar, arms and ammunitions). Intra-ASEAN trade accounted in 1995 for 27.2 per cent of Malaysia's exports and 17.4 per cent of its imports (Chapter I(4)). The Bilateral Trade Agreement with Australia was renegotiated in 1996 and preferential tariff treatment accorded by both parties will be phased out by 1 January 1998. The Bilateral Trade Agreement with New Zealand is under review and preferential tariff treatment is expected to be phased out effectively 1 January 1998 (Chapter II(3)(iii)).

the Secretariat as 6.9 per cent, as compared the average applied MFN tariff of 10.2 per cent.<sup>18</sup> Tariff preferences are particularly important for plastics, rubber, leather, straw, paper, cotton, textiles, clothing and metal products (Chart III.3 and Table AIII.1). By 2003, all AFTA tariffs will be reduced to between zero and 5 per cent, except for those products contained in the permanent exclusion list and "sensitive" unprocessed agricultural products. In the case of the latter, it is envisaged that AFTA tariffs will decline to between zero and 5 per cent by 2010. The beginning of the phase-in of these reductions is between 2001 and 2003. MFN rates will apply until such time as these products are phased in to the CEPT.

**Chart III.3**  
**Average preferential tariffs by ISIC group, 1997 and 2003<sup>a</sup>**

(Per cent)



<sup>a</sup> Including estimates of AVEs for specific components of mixed and alternative duties.

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

28. If MFN tariffs remain unchanged and AFTA tariffs do indeed come down by 2003 as envisaged, the average difference between MFN and AFTA tariffs will double from 3.3 to almost 6.7 percentage points (Table III.1). It would be surprising if such an increase in the average margin of preference did not result in significant diversion of trade from Malaysia's non-AFTA trading partners to AFTA members, some of whose exporters are less efficient than those of non-members. On the other hand, if Malaysia were to extend lower AFTA tariffs to non-members on a MFN basis, the outcome would obviously be a considerable drop in its import tariffs over the next six years without any such trade diversion as far as Malaysia is concerned. The authorities note that intra-ASEAN trade is likely to

<sup>18</sup>According to the authorities, the average Malaysian AFTA tariff for 1997 is 4.04 per cent and will be reduced to 2.58 per cent in 2000 and 1.97 per cent in 2003. (For sensitive agricultural products, the last year for phasing in is 2010 and the final rates are 0-5 per cent.) The WTO Secretariat's estimates are based on the 9-digit HS nomenclature used for Malaysia's MFN Schedule and includes MFN tariffs (on their *ad valorem* equivalents in the case of specific, mixed or alternative duties) for lines which are as yet not covered by an AFTA reduction schedule. Therefore, MFN duties are used for some lines which are covered by Malaysia's commitment to reduce tariffs to a maximum of 5 per cent by 2003.

remain below 30 per cent of total trade as 56.26 per cent of Malaysia's AFTA commitments are set at MFN levels. They expect the level of trade diversion to be insignificant as Malaysia will continue to rely on non-ASEAN sources for imports.

29. Products are regarded to be of ASEAN origin if at least 40 per cent of their contents originate in one or more of the ASEAN member states. ASEAN member countries have agreed that "substantial transformation" may be used as an additional criterion in determining product origin for ASEAN textile and clothing products.<sup>19</sup> The objective of the change in the rules of origin is to increase intra-ASEAN trade in textiles and textile products as well as to make ASEAN textile products more competitive in the global market.<sup>20</sup> Products produced under the ASEAN Industrial Complementation (AICO) scheme will receive the "final 2003" CEPT rate ranging from zero to 5 per cent immediately upon approval of the arrangement (Chapter II(3)(ii)(a)).

(d) Tariff concessions

30. Under Article 14 of the Customs Act, the Minister of Finance may exempt any class of goods or persons from the payment of a customs duty or any prescribed fee or charge. A partial exemption is granted upon request for import duties in excess of 3 per cent on raw materials and components imported for the manufacture of consumer goods for the domestic markets, provided that these goods are used directly in the manufacturing process and are not produced locally or substitutable for locally produced goods.<sup>21</sup> A full exemption of import duties may be considered for raw materials and components which are used to manufacture a good whose importation is duty free. Furthermore, imports of all multi-media equipment for use in the Multi-media Super Corridor are duty free.

31. Exemptions from payment of customs duty are also granted for imported machinery and equipment that is directly used in the manufacturing process for the start of a new factory or the expansion of an existing one, provided no such machinery or equipment is produced in Malaysia. Effective 26 October 1996, import duty and sales tax exemptions on spare parts and consumable products used in the manufacturing sector were withdrawn, except for spare parts which are imported within one year of the date of commissioning of a plant for new/expansion/diversification projects. Applications for such exemptions are reviewed by MIDA, which assesses the merits of the project (section (4)(ii)).<sup>22</sup> During 1993-96, MIDA received 8,755 applications for exemption of import duties for machinery and equipment, for which a total of RM 1.45 billion in duty exemptions was approved. During the same period, a total of 10,516 applications for duty concessions for raw materials and components were received; no estimates of forgone tax revenue were available for these duty concessions.

32. Federal and State Government Departments are exempted from paying customs duties (and taxes) on imported items, other than passenger cars, provided that these items are for the sole purpose

---

<sup>19</sup>WTO (1995), p. 42.

<sup>20</sup>Ministry of Finance (1996), p. 52.

<sup>21</sup>Imports of such goods with tariffs less than three per cent are generally not considered for duty exemption although such a concession may be granted if the goods are imported by a "Bumiputra" company.

<sup>22</sup>Bank Negara Malaysia (1997a), p. xiii.

of government use, cannot be sold or written off except with the relevant authority concerned<sup>23</sup>, and procurement is made under the budgetary means of the department concerned (section (4)(v)). Claims for exemption must be made through the Customs authority at the point of entry into Malaysia.

(e) Tariff revenue

33. In 1995 and 1996, import duties collected amounted to RM 5.6 billion and RM 6.2 billion, respectively.<sup>24</sup> Collected import duties on completely built-up cars increased particularly rapidly from RM 520 million in 1995 to RM 838 million in 1996 (Table AIII.3). Revenue from import duties contributes a stable 11.5 per cent of federal revenue (Chapter I).<sup>25</sup> However, protection of domestic manufacturers and, to a lesser extent, agricultural producers rather than revenue collection, appears to be the main motivation for the imposition of import duties (Chapter IV(2) and (3)). Protection through import tariffs is, in any case, preferable to quantitative restrictions, as the associated "rents" accrue to the government budget instead of to private agents.

(iii) Import prohibitions and import licensing

34. Goods whose entry into Malaysia is prohibited or subject to licensing are listed in the Customs Act 1967, Customs (Prohibition of Imports) Order 1988 (Table AIII.4). Products subject to discretionary import licensing include: agricultural products other than fish; chemical and photographic supplies; transport equipment; electric machinery; mineral products, precious stones and metals; and manufactured articles n.e.s.<sup>26</sup> Import prohibitions and licensing are used to restrict or monitor entry into Malaysia of goods, on national security, environmental and social grounds, or to enforce quantitative restrictions (QRs).

(a) Outstanding prohibitions and licensing requirements

35. Goods subject to absolute import prohibitions are listed in the First Schedule of the Customs Prohibition of Imports Order 1988. The lists include, *inter alia*, items prohibited on religious and environmental grounds.<sup>27</sup> Imports of certain publications are also prohibited.<sup>28</sup> Conditionally prohibited

---

<sup>23</sup>The approval of the Federal Minister of Finance is given in the case of federal property and the Chief Minister in the case of state property. Where and when necessary, such powers have been delegated.

<sup>24</sup>In 1996 collected import duties represented 4 per cent of merchandise imports. Duty exemptions for imports which are used in export processing (section (3)(iv)). The large quantities and values of imports for export processing significantly reduce the ratio of collected import duties over merchandise imports.

<sup>25</sup>Import duties were budgeted to be 11.3 per cent of Federal revenue in 1997, as compared to 11.4 per cent in 1993 and 11.7 per cent in 1996 (Government of Malaysia (1992, 1995 and 1996a)). The share of import duties to total indirect taxation is expected to decline further from 29.6 per cent in 1995 to 23.7 per cent in 2000. The declining share is partly due to lower tariffs as a result of the AFTA Agreement as well as other international agreements. (Government of Malaysia (1996b), p. 195).

<sup>26</sup>APEC (1996), p. B1.

<sup>27</sup>Prohibited goods are: articles bearing the imprint or reproduction of any currency note, bank note or coin; emblems and devices for which there might be a reasonable presumption that they will be used in a manner prejudicial to or incompatible with peace, welfare or good order in Malaysia; indecent or obscene articles; cloth bearing the imprint or reproduction of any verses of the Koran; daggers and flick knives; certain broadcast  
(continued...)

imports are listed in the Second, Third and Fourth Schedules of the Customs Order 1988. Those in the Third Schedule are aimed at "affording protection of a temporary nature to local manufacturers". In this case, import licences are issued by the Ministry of International Trade and Industry (MITI). By contrast, those goods listed in the Second Schedule are prohibited on security and environmental grounds, except if an import licence has been issued by the relevant authority involved in the administration of security or environmental measures; products listed in the Fourth Schedule require additional approval to allow importation, such as a health permit or security approval and inspection (Table AIII.4). As noted in Malaysia's 1993 Review, it is not clear why some of the items included in the Fourth Schedule are not included in the Third.<sup>29</sup> For example, milk and milk products are in general included in the Fourth Schedule (to be licensed by the Director General of Veterinary Services), while some tariff lines containing liquid milk (0401.10.900; 0401.20.900; and 0401.30.190) are listed in the Third Schedule (to be licensed by the Ministry of International Trade and Industry).

36. Around 17.0 per cent of Malaysia's tariff lines are currently subject to import licensing (Table III.1). The product coverage of import licensing has remained unchanged since the 1993 Review. Licensing requirements were most pervasive in the cases of forestry and logging, agricultural and mining products, transportation equipment, notably automobiles, and negligible or non-existent for several broad categories of products (Chart III.4).

37. Import licensing requirements are used both as substitutes for, and complements for, tariffs in Malaysia. For instance, whereas licensing requirements are especially pervasive for forestry and logging, tariffs on these products are relatively low (Chart III.4). By contrast, import licensing and tariffs overlap to provide high degrees of protection for certain sectors, such as transportation equipment, notably automobiles.<sup>30</sup> However, declines in tariff levels do not appear to have been accompanied by increases in the coverage of import licensing.

---

<sup>27</sup>(...continued)

receivers; certain liquors containing lead; sodium arsenite; all genus of Piranha fish; turtle eggs; cocoa pods, rambutan, pulasan, longan and namam fruits produced in the Philippines and Indonesia; pens, pencils and other articles resembling syringes; certain poisonous chemicals; and all goods originating from Haiti. (Customs Act 1967, Customs (Prohibition of Imports) order 1988 (P.U.(A)408/1987), First Schedule).

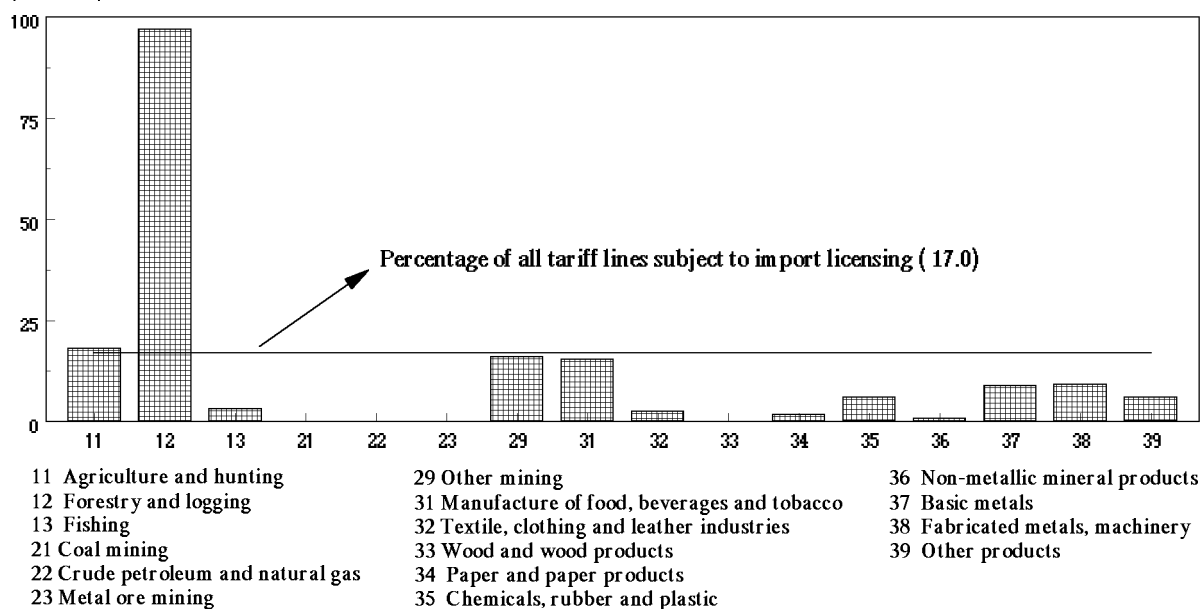
<sup>28</sup>The Printing Presses and Publications Act 1984 allows the Minister of Home Affairs to refuse the importation into Malaysia or withhold delivery or return to sender thereof outside Malaysia of any publication. According to the authorities this Act has only been invoked in clear-cut cases which are prejudicial to morality and has, in any event, not been invoked since 1 January 1993, other than to ban imports of publications from Singapore which do not have a publication permit for sales in Malaysia. Publications delivered through the Internet do not require a publications permit.

<sup>29</sup>GATT (1993), p. 85.

<sup>30</sup>The use of a tariff in addition to a quantitative restriction enables the Government to obtain some of the quota rent that would otherwise accrue to foreign exporters or domestic importers of the goods concerned.

Chart III. 4  
Import licensing, by ISIC group, 1995

(Per cent)



Note: Based on the 1995 tariff nomenclature. Since 1995 import licensing for some cigarettes and ephedrine have been added while such licensing for diamonds and diamond jewellery sets has been abolished.

Source: WTO Secretariat calculations based on data provided by UNCTAD.

(b) Allocation of import licences

Automatic and non-automatic licences

38. Import licences are enforced by the Customs Department, but allocated by a variety of other Ministries and Agencies "automatically" or "non-automatically" depending on the licence (Table AIII.4). A substantial share of import licences allocated by the Ministry of International Trade and Industry are "automatic"; automatic licensing is implemented for monitoring and data collection purposes. However, import licences required for billets of iron and steel, bars and rods, non-electric cables and other items are classified as "non-automatic". "Automatic" licences allocated by the Ministry of International Trade and Industry are normally granted within three days to applicants who fulfil the published requirements. All applications for non-automatic licensing are approved, provided they conform with criteria set by the authorities. These relate mainly to compliance with public safety, environmental considerations, quarantine standards, sanitary and phytosanitary (SPS) regulations and human safety.

39. Import licences for telecommunications equipment are administered by Jabatan Telekom Malaysia (JTM), a regulatory authority. The Customer's Charter of JTM notes that all import licences will be processed within four days and the applications for type approval will be processed within 45 days (Chapter IV(4)(iii)).<sup>31</sup>

<sup>31</sup>Jabatan Telekom Malaysia (1996), p. 7.



Eligibility for licences

40. Limits exist on imports of round cabbages and coffee beans.<sup>32</sup> The average quantity of round cabbages for which licences are issued is 2,500 tonnes (Table III.6). For coffee beans, the figure depends on the production capacity of domestic manufacturing and processing companies (Chapter IV(2)).<sup>33</sup>

**Table III.6**  
**Allocation of import licences for products subject to tariff quota**

Product	Allocation to importers	Period for which licences are valid
Products for which the country allocation is subject to an import protocol based on SPS measures: - Live chicken, eggs, meat and products; - Milk and milk products; - Swine and swine meat	Department of Veterinary Services under the Ministry of Agriculture	One month effective from the date issued
Cabbage (round)	Access to quota is given to importers with Approved Permits issued by the Federal Agricultural Marketing Authority (FAMA). The selection and award of the Approved Permits is by a special committee under the Ministry of Agriculture Malaysia	One month from the date of issue
Coffee not roasted	Access to quota is given to importers with Approved Permits issued by FAMA. An applicant for an Approved Permit must own a coffee powder factory and must be involved in coffee powder manufacturing	For three months dependent on the amount processed in the preceding three months
Wheat	Imports are subject to import licences issued by the Ministry of International Trade and Industry	Three months effective from the date of issue
Sugar	Imports are subject to import licences issued by the Ministry of International Trade and Industry	Three months effective from the date of issue
Unmanufactured tobacco, tobacco refuse	Ministry of Primary Industries	

Source: WTO document G/AG/N/MYS/1, 1 June 1995.

41. Importation of raw sugar is also subject to quotas, with import licences being granted only to sugar millers and refiners. There are two long-term contracts for the importation of raw sugar negotiated by MITI on behalf of the Malaysian private sector: a contract with Fiji covering the period 1995-97, which allows for the importation of 90,000 tonnes per annum, and a contract with Australia covering the same period for importation of 300,000 tonnes per annum. These contracts, cover approximately 40 per cent of domestic sugar consumption.

42. Import licences for completely knocked-down (CKD) motor vehicles are allocated only to motor vehicle assemblers. Licences for imports of completely built-up (CBU) units are mainly allocated to franchise holders (Chapter IV(3)(iii)).

<sup>32</sup>The authorities indicate that a licensing procedure is implemented to enable Malaysia to administer its WTO minimum market access obligations.

<sup>33</sup>Prior to the implementation of Malaysia's WTO commitments, phytosanitary certificates were not issued for chicken (whole and in parts), pork, liquid milk, ducks and hens eggs. The denial of phytosanitary certificates had the effect of an import prohibition. Malaysia's WTO Schedule XXXIX includes tariff quotas for these products. However, applied tariffs are substantially lower than in-quota tariffs listed in the Schedule (section (2)(iii)).

(iv) Anti-dumping and countervailing legislation and measures

43. The only noteworthy non-tariff border measures other than import licensing are anti-dumping and countervailing actions. Malaysia revised its anti-dumping and countervailing legislation when it adopted the Countervailing and Anti-Dumping Duties Act 1993. The latter replaced the Customs (Dumping and Subsidies) Act of 1959, which had never been applied. The 1993 Act authorizes the Minister of International Trade and Industry to make such regulations as may be necessary or expedient to give full effect to the provisions of the Act.<sup>34</sup> The Act and related Regulations came into force on 15 July 1993 and 28 April 1994, respectively.<sup>35</sup> As in many other countries, the Act and Regulations define specific time frames for investigations and require the authorities to publish their decisions (Annex III.1).

44. Malaysia's anti-dumping and countervailing duties legislation and regulations were reviewed in the WTO Committees on Anti-Dumping Practices and on Subsidies and Countervailing Measures in December 1995. As part of this review process Malaysia responded to questions from other WTO Members, some of whom asserted that Malaysia's legislation and regulations do not fully and accurately reflect the requirements of the WTO Agreements on Anti-Dumping Practices and on Subsidies and Countervailing Measures. For example, Members noted that the legislation and/or regulations<sup>36</sup>:

- do not fully reflect WTO provisions regarding standing;
- appear to authorize the acceptance of undertakings prior to the date of an affirmative preliminary determination;
- do not include a variety of WTO requirements regarding dumping calculation methodology, e.g., rules regarding treatment of start-up costs, exchange rate fluctuations, and comparison methodology;
- do not include provisions regarding non-actionable subsidies;
- do not fully incorporate WTO provisions regarding *de minimis* dumping margins and negligible import volumes;
- do not provide for new shipper reviews; and
- contain anti-circumvention provisions.<sup>37</sup>

45. In response, the Malaysian authorities recalled that the existing legislation and regulations were adopted before the WTO Agreement entered into force. As a result, they do not reflect all relevant WTO provisions or in some cases may be inconsistent with WTO requirements. The Malaysian

---

<sup>34</sup>Countervailing and Anti-Dumping Act 1993, Article 50.

<sup>35</sup>The Countervailing and Anti-Dumping Act 1993 and the Countervailing and Anti-Dumping Duties Regulations 1994 have been notified to the WTO Committee on Anti-Dumping Practices and the Committee on Subsidies and Countervailing Measures (WTO documents G/ADP/N/1/MYS/1 and G/SCM/1/MYS/1, 5 April 1995). The Malaysian authorities have responded in writing to questions from its trading partners (WTO documents G/ADP/W/304 and G/SCM/W/312, 18 March 1996 and Corr. 1, 11 June 1996).

<sup>36</sup>WTO documents G/ADP/W/304 and G/SCM/W/312, 18 March 1996.

<sup>37</sup>The Countervailing and Anti-dumping Duties Act 1993 provides a legal basis for assessing the effects of subsidized and dumped merchandise or both on the domestic industry (Section 35). Furthermore, the Act authorizes the Government to take measures to prevent circumvention of the application of countervailing and anti-dumping duties as may be prescribed (Section 37); however, these measures are not incorporated in the implementing regulations and, according to the authorities, therefore cannot be used.

authorities informed the Committees that they are in the process of reviewing the legislation and regulations to ensure conformity with WTO requirements; in the interim, Malaysia is applying the relevant WTO provisions administratively.<sup>38</sup> As of September 1997, however, no amendments to the current legislation have been tabled in Parliament and no revisions to the implementing regulations have been published or notified to the WTO (Table AII.2).

46. Further, pending this domestic review, anti-dumping investigations are being conducted on the basis of the current legislation. In a final determination on 16 March 1996, Malaysia imposed anti-dumping duties on imports of PVC floor covering in rolls imported from the Republic of Korea and Thailand. At the same time, a petition concerning allegedly dumped imports of the same products from Singapore was rejected. In a preliminary determination on 19 November 1996, anti-dumping duties were imposed on self-copy paper imported from the European Union and Indonesia. The measures on PVC floor covering rolls were based on constructed values, while those on self-copy paper were based on the home-market value (Table III.7).

**Table III.7**  
**Anti-dumping and countervailing investigations and measures taken by Malaysia, 1 January 1990-31 December 1996**

Country of origin	Product	Initiation date	Provisional measures date and dumping margin	Definitive duty date and dumping margin	Trade volume	Dumped imports as % of domestic consumption	Share of exports of the country of origin investigated	Basis of determination
Thailand	PVC floor covering	22.06.95	10.09.95 191%	16.03.96 58-114%	1.7 m. kg.	9.8%	38.5%	Constructed value, facts available
Korea, Rep. of	PVC floor covering	22.06.95	19.09.95 38%	16.03.96 69%	0.9 m. kg.	5.4%	20.2%	Constructed value, facts available
Singapore	PVC floor covering	22.06.95	Negative determination	NFD	0.03 m. kg.	0.1%	...	Constructed value, facts available
European Union	Self-copy paper	22.08.96	19.11.96 9-26%	NFDY	5,530 mt	15.0%	49.0% 4 firms	Home market value and facts available
Indonesia	Self-copy paper	22.08.96	19.11.96 23-39%	NFDY	867 mt	2.0%	35.0% 1 firm	Home market value and facts available

... Not available.

NFD No final determination will be made.

NFDY The final determination has not yet been made.

Source: WTO documents G/ADP/N/16/MYS, 22 October 1996 and Suppl. 1, 29 October 1996; and G/ADP/N/22/MYS, 10 June 1997.

47. Notwithstanding the fact that anti-dumping duties have been imposed in only two instances, their impact may be far-reaching. Even if anti-dumping and countervailing measures legislation is,

<sup>38</sup>The WTO Agreements do not have any legal status in Malaysia nor do they enjoy any force of law *per se* (Chapter II(2)). In order for the Agreements to be enforceable, Parliament has to promulgate implementing legislation, to such an extent that they will not contradict any of the provisions of the WTO Agreements. In the event of any inconsistencies that may arise between the provision of WTO Agreements and domestic legislation, the provisions of the domestic legislation will prevail. (Malaysia's response to a question from Hong Kong, WTO document documents G/ADP/W/304 and G/SCM/W/312, 18 March 1996).

as claimed by the authorities, administered in a manner compatible with WTO rules, the mere threat of such countermeasures may well have a "chilling effect" on some exporters, who react by raising their supplies and/or curtailing supplies. Moreover, an increasing number of companies may fulfil the requirements of the injury test if and when the growth rate slows down from its recent performance of 8 to 9 per cent per year. Furthermore, two of the four outstanding duties, and three of five conducted investigations, are directed at Malaysia's AFTA partners who receive tariff preferences in Malaysia (Chapter III(2)(ii)).

(v) Other measures

(a) State trading

48. The only state-trading enterprise within the meaning of Article XVII:4(a) of GATT 1994, the National Paddy and Rice Board, was corporatized on 7 July 1994. Following this corporatization, the Board was dissolved and all its regulatory functions and activities were transferred to the Ministry of Agriculture. Its commercial activities, on the other hand, were taken over by the *Padiberas Nasional Berhad* (BERNAS), a new company registered under the Companies Act 1965.<sup>39</sup> BERNAS was then partly privatized in 1995 through a sale of equity. The commercial activities of BERNAS include paddy procurement, rice-milling and rice-trading. BERNAS operates strictly as a business concern except for the arrangement to carry out certain non-commercial activities on behalf of the Government, namely the management of the national rice stockpile, the disbursement of the paddy subsidy payments and the procurement of paddy from farmers. In consideration of its agreement to perform the above non-commercial activities on behalf of the Government, BERNAS has been given the exclusive right to import rice into Malaysia for a period of 15 years following the signing of the agreement in 1996 (Chapter IV(2)).

(b) Local-content requirements and the vendor programme

49. Under Article 5.1 of the WTO Agreement on Trade-Related Investment Measures, Malaysia notified the Committee on Trade-Related Investment Measures on 31 March 1995 that "Malaysia has no local content laws or regulations. However, the Government encourages the use of local materials in the manufacturing sector and the use of local content is taken into account in the granting of investment incentives provided by the Government".<sup>40</sup> In particular, there is a local-content programme for motor vehicles which is encouraged through administrative measures (Chapter IV(3)(iii)(b)).

50. The Malaysian authorities' intent is to promote the establishment of backward linkages with a view to developing supporting and ancillary industries and thus strengthen the manufacturing sector. This is addressed through the Industrial Linkage Programme (ILP) under the Small and Medium Industrial Development Corporation (SMIDEC) and the Vendor Development Programmes under the Ministry of Entrepreneur Development (MED). The objective of the programmes is to develop Malaysian small and medium-sized enterprises (SMEs) as manufacturers and suppliers of components required by large industries and multinational corporations. Although these programmes do not require the use of local materials and services, they nevertheless promote the use of such intermediate inputs through financial, technical and other related assistance.

---

<sup>39</sup>The corporatization of the National Paddy and Rice Board was carried out under the country's privatization programme with the objective of reducing the Government's involvement in commercial activities (section (4)(iii)).

<sup>40</sup>WTO document G/TRIMS/N/1/MYS/1, 12 April 1995.

51. The ILP is a cluster-based industrial development programme in tandem with the Second Industrial Master Plan (IMP). The ILP serves two important objectives, i.e. deepening and diversifying the country's industrial base towards high value-added activities and reducing the country's dependence on imports of intermediate products and inputs, thus, improving the balance-of-payment position. To be eligible to participate in the ILP, the linkage companies must be incorporated under the Companies Act 1965, with paid-up capital of not less than RM 250,000, and at least 70 per cent of the equity must be Malaysian of which 60 per cent must be directly held by the linkage companies. The Vendor Programme is targeted at the development of backward linkages in selected sectors.<sup>41</sup> Qualifying conditions are, among others, registration under the Companies Act and with the Vendor Unit of the MED, having paid-up capital of between RM 100,000 and RM 2.5 million, a minimum equity shareholding by Malaysians of 70 per cent, and having skilled workers with relevant experience.<sup>42</sup> In 1997, 75 companies participated in the programme in 14 sectors.<sup>43</sup> In the context of their privatization, former state-owned companies have been required to undertake vendor programmes to facilitate backward linkages to other Malaysian companies (Table III.8).

**Table III.8**  
Vendor programmes undertaken by selected privatized companies, 1991-95

Company	Contract value (RM million)	Programme
Perusahaan Otomobil Nasional Berhad	569.06	Component Scheme Promotion
Telekom Malaysia Berhad	452.62	Entrepreneurs Development Programme Credible Supplier <sup>a</sup>
Tenaga Nasional Berhad	337.11	Entrepreneurs Development Programme Umbrella Scheme Credible Contractor <sup>b</sup> Strategic Joint-venture
Indah Water Konsortium Sdn. Berhad	6.27	Construction of Treatment Plant and Pumping Station Sewerage System and Pumping Station Network

a Credible supplier refers to the outsourcing of components to suppliers which have a sound track record.

b Credible contractor refers to contractors engaged in carrying out works/services, such as the construction of sub-stations.

Source: Government of Malaysia (1996), *Seventh Development Plan*, Kuala Lumpur, p. 211.

### (3) Measures Directly Affecting Exports

#### (i) Registration, customs valuation and conversion of export receipt requirements

52. Exporters of palm oil, palm kernel, palm fatty acid, palm oil planting material, natural rubber, pepper, pineapple and timber are subject to an export registration requirement (Table III.2). Export

<sup>41</sup>The automotive sector, electrical and electronics, plastics, rubber-based, wood-based, telecommunications, film-production, ceramics, shipbuilding and export in general.

<sup>42</sup>Other requirements include being "receptive to advisory, guidance and consultancy services" as well as having 3-5 years projections on cashflows, asset acquisitions, technology upgrading and management.

<sup>43</sup>The sectors are electrical and electronics, furniture (wood), automotive, telecommunication, building equipment, shipbuilding and repair, film production, ceramics, engineering, trade and export, motorcycles, food, textiles, and services.

prices for crude petroleum, palm oil, and palm kernel are determined by market forces. However, the Customs Department will compute a "gazetted price" for the purpose of export duty determination.<sup>44</sup>

53. Prior to 1 December 1994, exporters were required to convert all proceeds into Malaysian Ringgit as soon as they were received, or in any case not later than six months from the date of shipment. Since then, exporters have been permitted to retain a portion of their export proceeds in foreign currency accounts in Malaysia. The overnight limits on balances in these accounts are based on the average monthly export proceeds of the exporting firms: firms with average monthly export earnings of less than RM 5 million have an overnight limit of US\$1 million; those with average monthly export earnings between RM 5 and RM 10 million have an overnight limit of US\$3 million; firms with larger average monthly export earnings have an overnight limit of US\$5 million. On 15 November 1996, the maximum limit was raised to US\$10 million for exporters with average monthly export earnings above RM 20 million (Chapter IV(4)(ii)).

(ii) Export prohibitions and licensing requirements

54. Export licensing requirements are listed in three schedules issued in the Customs (Prohibition of Exports) Order 1988. Prohibited exports, listed in the First Schedule, are turtle eggs, rattan from Peninsular Malaysia (except rattan classified under tariff lines 1401.20.910 and 14.20.920) and some exports to Haiti (petroleum and petroleum products as well as arms and related materials). The Second Schedule lists goods which may not be exported to some destinations, while the Third Schedule lists goods which may be exported in a prescribed manner (Table AIII.5). Changes since the 1993 Review include a lifting of all prohibitions on trade with South Africa.<sup>45</sup> The Malaysian authorities acknowledge in their APEC Individual Action Plan that textiles and clothing, and wood, pulp, paper and furniture remain subject to discretionary export licensing.<sup>46</sup>

55. Any company can apply for an export licence and licences are issued free of charge. Exporters are required to submit an export declaration form for MITI's endorsement; endorsement documents are, with the following exceptions, regarded as export licences. Export licences for textile and clothing products to countries that apply import quotas under the WTO Agreement on Textiles and Clothing are issued only up to the limit allowed by the importing country (Chapter IV(3)(ii)). Export of sand

---

<sup>44</sup>US\$ denominated export prices (f.o.b) of the various types of Malaysian crude petroleum are supplied by PETRONAS to the Customs Department every two weeks. These prices are converted into Malaysian Ringgit using the current exchange rate. The results are gazetted every fortnight as fixed values for customs valuation for the various types of crude petroleum. The volume of crude palm oil exports and its total value are reported by the Malaysian Palm Oil Growers Council to the Customs Department on a monthly basis. From these data the average price per tonne is derived and gazetted as the fixed value for crude palm oil for customs valuation purposes. Data on the volume of processed palm oil and its value are collected by the Customs Department and used to calculate an average monthly price per tonne. This price is gazetted as the fixed price for customs valuation for the following month. The average price of palm kernel is calculated by the Customs Department on the basis of data supplied by the Palm Oil Registration and Licensing Authority (PORLA). A transport cost of RM 37 per tonne is added to the average ex-mill price to arrive at the average price per tonne ex-port. The average price per tonne ex-port is then multiplied by a factor of 100/80. The result is gazetted as the price fixed for palm kernel for the following month.

<sup>45</sup>The Federal Government also announced a ban on the export of round logs from Sabah from 1 January 1993, which reportedly deprived Sabah of nearly one-half of its budgeted income for 1993. The ban was rescinded in May of the same year. Europa Publications Limited (1996), p. 2,065.

<sup>46</sup>APEC (1996), p. B1.

is subject to export licensing, but no such licences are issued in view of a "shortage" of sand for the construction business. Exports of refined white sugar, wheat flour, rice, bread, chicken, steel bars, ordinary Portland cement, and petroleum products are used to enforce domestic price controls on these products (section III(4)(vi)).

(iii) Export duties and other levies<sup>47</sup>

56. Out of 10,372 tariff lines, 324 are subject to export duties, of which 17 are specific and 307 are *ad valorem*.<sup>48</sup> Specific export duties on selected palm oil products are levied at rates that vary directly with the value per tonne of the exported products (Table III.9). The overall average of the *ad valorem* export duties is 7.8 per cent. Products subject to export duties include selected agricultural, fishery and resource based products (Box III.2). The Minister of Finance temporarily exempted processed palm oil from export duties from 1 November 1996 to 31 October 1997. Seventy-five tariff lines are subject to both import and export duties. Of these, two lines were subject to specific import duties and *ad valorem* export duties.<sup>49</sup> Four tariff lines covering palm oil products are subject to 5 per cent *ad valorem* import duties and specific export duties (Chapter IV(2)(iii)). The remaining 69 tariff lines are subject to an average import duty of 13.8 per cent and an average export duty of 5.4 per cent. Products subject to both import and export duties include selected fish products, birds' eggs, avocados and tropical fruits.

**Table III.9**  
Export duties on Malaysian palm oil, 1997

Per unit value	Export duty
On the first RM 650.00 per tonne	Nil
On the next RM 50.00 per tonne	10 per cent
On the next RM 50.00 per tonne	15 per cent
On the next RM 50.00 per tonne	20 per cent
On the next RM 50.00 per tonne	25 per cent
On the balance	30 per cent

Note: As applied to tariff lines 1511.10.000, 1511.90.990, 1516.20.130, 1516.20.149, 1517.90.524, 1517.90.529, 1518.00.231 and 1518.00.239.

Source: Government of Malaysia (1996), 'Appendix "E" Palm Oil', *His Majesty's Government Gazette*, Vol. 40, No. 1, p. 769.

<sup>47</sup>Insofar as import duties are levied on raw materials and intermediate inputs used in the production of goods subject to export duties, those exported goods are taxed twice.

<sup>48</sup>As published in His Majesty's Government Gazette, 11 January 1996 and amended on 25 October 1996. The tariff lines with specific export duties are 060290100 (RM 0.30 each); 060290200 (RM 0.15 each); 060290300 (RM 2.19 per metre); 120799100 (RM 82.67 per tonne); 120999190 (RM 22.05 per kg.); 140120100 (RM 2,700.00 per tonne); 140120910 (RM 1,000.00 per tonne); 140120920 (RM 1,000.00 per tonne); 140120990 (RM 2,700.00 per tonne); 151110000 (Table III.7); 151190990 (Table III.7); 151620130 (Table III.7); 151620149 (Table III.7); 151790524 (Table III.7); 151790529 (Table III.7); 151800231 (Table III.7); and 151800239 (Table III.7).

<sup>49</sup>Tariff line 7204.50.000 (remelting scrap ingots) is subject to an import tariff of 5 per cent and RM 49.21 per tonne as well as an export duty of 10 per cent. Tariff line 0805.90.000 (citrus fruit, fresh or dried other than mandarins, lemons or grapefruit) is subject to an import duty of 5 per cent and RM 648 per tonne as well as an export duty of 5 per cent.

**Box III.2: The incidence of export taxes**

The extent to which incidence of an export tax falls on the domestic producer or the foreign consumer depends on the demand conditions facing the product in the world market. If a country is "small" in the sense that the international demand for the country's exports of the taxed good is perfectly elastic, the country has no market power and is a price taker in the world market. Consequently, reduced export volumes as a result of the tax will not affect the world price - the country represents such a small share of world supply that it cannot influence international prices. In this case, domestic producers of the taxed export must bear the full incidence of the tax since they are unable to pass the tax forward onto foreign consumers through higher world prices.

On the other hand, if the world demand for the export is highly inelastic, the country may be able to influence its terms of trade and be to some extent a price setter on the world market. If such a "large" country is a sufficiently dominant supplier in world terms, reducing its export volume by taxation could raise world prices so much that export receipts increase rather than decrease. In this case, the domestic producers of the taxed export do not bear the full incidence of the tax since they are able to pass a share of the tax forward onto foreign consumers through higher world prices.

Although essentially an empirical question, the experience of countries that have tried export taxes indicates that terms of trade gains are difficult to capture. This is especially so in the longer term, when the world demand for exports is likely to be elastic due to greater product and country substitution. Thus, efforts to extract greater export returns through taxing exports often fail and run the risk, in practice, of severely penalising the exporting industry, as well as the economy in general, by encouraging inefficient domestic processing of the taxed commodity.

57. Rubber produced in Malaysia is subject to a cess of RM 3.84 per kg. to finance research and development by the Malaysian Rubber Research and Development Board and a cess of RM 9.92 per kg. to finance rubber replanting activities. Both cesses are collected at the point of export by the Customs Department. Exports of timber, veneer and timber products are subject to export levies and cesses which vary by product and between Peninsular Malaysia, Sabah and Sarawak.

#### Revenue

58. Revenue from export duties increased from RM 843 million in 1995 to RM 1,058 million in 1996. The bulk of this was derived from crude petroleum, revenue on which increased from RM 743 million to RM 1,013 million. From 1995 to 1996, revenue from processed palm oil dropped from RM 66 million to RM 6.4 million as export duties on these products were suspended. In contrast to import duties (section (2)(iii)(e)), the contribution of export duties to the federal revenues has declined substantially from 3.4 per cent of total revenue budgeted for 1993 to 1.6 per cent in 1996 and 1.7 per cent budgeted for 1997. In the absence of the increase in export duties on crude petroleum, total export duties would have declined to 1.2 per cent of federal revenues in 1997.<sup>50</sup> Although revenue considerations are important in sectors such as crude petroleum, export taxes are mainly used to promote down-stream industrial activities.

59. As of 1996, export cesses were more important from a revenue perspective than regular non-crude petroleum export duties. A total of RM 105.7 million was collected in 1996, mainly from a rubber replanting cess and a rubber research cess.

<sup>50</sup>Government of Malaysia (1992, 1995 and 1996a).



(iv) Duty and tax concessions

## (a) Duty drawback for exports

60. A drawback is provided for import duty paid on raw materials and packaging of finished goods as well as waste or refuse resulting from the manufacture of such goods which are subsequently exported.<sup>51</sup> The amounts refunded were RM 91 million in 1993, RM 71.5 million in 1994, RM 99.0 million in 1995 and RM 157 million in 1996. The main beneficiaries are foreign-owned export-oriented companies producing, electronics, electrical products and textiles and clothing.

## (b) Export-processing zones

61. Amendments to the Free Zones Act 1990 were made in 1993 and 1995 to incorporate several terms used in the Customs Act 1967. Several new areas were designated as free zones for commercial activity. Amendments made in 1996 were mainly to exclude retail trade from zones designated for commercial activity, except with the approval of the Minister. Factories located in zones designated for manufacturing activity need such approval to acquire goods used directly in the manufacture of other goods meant for retail trade or other activity. Imported goods meant for the principal customs area may undergo processing, repacking etc. in the zones and need no longer be in their original packings. Administrative procedures covering licensed manufacturing warehouses were amended, *inter alia*, to cover farming out and subcontracting. The Act and implementing regulations do not exempt companies located in the zones from environmental or any other standards applicable to economic activity outside the zones. As of 31 December 1996, there were 14 Free Industrial Zones, 8 Commercial Zones, and 1,887 Licensed Manufacturing Warehouses. Production in the zones has a higher import content (57 per cent) than that outside the zones (34 per cent).<sup>52</sup> This high import content appears to be the result of the concentration of electronics firms (52 per cent of total firms in the free zones) which tend to obtain most of their inputs from affiliated or parent companies outside Malaysia.<sup>53</sup> Since 1990, the share of exports from export processing zones in total merchandise exports has gradually increased from 21 per cent to roughly 27 per cent (Table III.10).

**Table III.10**  
**Exports from EPZs, 1990-96**  
(RM billion and per cent)

	1990	1991	1992	1993	1994	1995	1996
Exports from EPZs (RM billion)	16.3	19.9	21.7	25.7	32.3	45.8	50.0
Exports from EPZs as a share of total merchandise exports (per cent)	21.0	21.6	21.5	21.7	21.7	25.5	26.7

Source: Data provided by the Malaysian authorities and Ministry of Finance (1996), *Economic Report 1996/97*, Kuala Lumpur.

<sup>51</sup>Section 99 of the Customs Act, Section 19 of the Excise Act and Section 29 of the Sales Tax Act. Further drawback of duty paid on goods imported and subsequently exported, subject to certain conditions, is provided (Section 93 of the Customs Act and Section 29 of the Sales Tax Act) as is a drawback of duty paid on goods which have suffered damage or deterioration and destroyed (Section 95 of the Customs Act) and selected other cases, for example, drawback on duty/deposits paid by tourists on personal items when leaving the country or trade samples imported by commercial travellers is available (Section 96 of the Customs Act).

<sup>52</sup>Import content is measured as the value imports of raw materials and intermediate inputs as a share of the value of output (Bank Negara Malaysia, 1997a, p. 30).

<sup>53</sup>Bank Negara Malaysia (1997a), p. 32.

(c) Other tax concessions for exports

62. An abatement Incentive for Export previously granted to resident manufacturing exporters was terminated as of 1 January 1994. Whereas the amount of the abatement on the statutory income had equalled 50 per cent of the ratio of export sales to total sales up to the end of 1992, the rate was subsequently reduced to 25 per cent prior to its termination.

63. Manufacturers in Sabah and Sarawak that export rattan and wood-based products (excluding sawn timber and veneer) continue to be eligible for a double deduction on freight charges incurred. In addition, they enjoy full exemption from import duty on raw materials or components used in the manufacture of all rattan and wood-based products (section (4)(ii)).

(v) Export finance and insurance

(a) Export credits

64. Under the Export Credit Refinancing (ECR) Scheme, working capital is provided to direct and indirect exporters (the latter being domestic suppliers of inputs to final exporters). A "negative list" notes that some products are ineligible for this loan scheme.<sup>54</sup> Access to the ECR scheme is subject to the exporter obtaining an ECR loan with any commercial bank, with a minimum of RM 10,000 and a maximum of RM 30 million per exporter. The maximum period of financing for all eligible products is four months for preshipment and six months for post-shipment.<sup>55</sup> For a preshipment order-based method the maximum eligible amount is 80 per cent of the value of the export order, while for a preshipment certificate of performance method, the maximum is 70 per cent of the value of eligible exports during the preceding 12 months. For a post-shipment ECR loan the eligible amount is 100 per cent of the invoice value. The Central Bank (Bank Negara Malaysia) has revised the interest rates on these ECR loans several times to narrow the difference with other trade finance products, especially the Banker's Acceptance Rate. As a consequence, the difference narrowed from over one percentage point in July 1995 to 0.43 of a percentage point in May 1996. The rates are being further reviewed to ensure consistency with market rates. The authorities do not consider this instrument to be a subsidy and therefore have no intention of phasing it out.<sup>56</sup>

65. The Export-Import Bank of Malaysia Berhad was established in August 1995 with the objectives of financing and promoting international trade and facilitating the export of goods and services by means of export credit, financing of capital investment, and provision of business information and services.<sup>57</sup> Any Malaysian exporting company or foreign buyer of Malaysian goods and services is eligible for financing subject to a minimum 30 per cent Malaysian content of the exported goods or services.<sup>58</sup>

---

<sup>54</sup>The negative list comprises mineral products, leather products, raw hides and skins, wood products, textile and textile articles, precious stones, natural and cultured stones, base metals and articles of base metal, and all items under work of art, collectors' pieces and antiques.

<sup>55</sup>WTO document G/SCM/N3/MYS, 12 July 1995.

<sup>56</sup>WTO document G/SCM/Q2/MYS/9, 27 January 1997.

<sup>57</sup>Ministry of Finance (1996), p. 194.

<sup>58</sup>However, the Bank's requirement on Malaysian material content may vary on a case-by-case basis, depending on the nature of the exports of the project.

Malaysian companies may apply directly to the Exim Bank, while foreign buyers may apply through their Malaysian supplier. Loan rates are set at the cost of funds plus a margin for loans denominated in Malaysian Ringgit. Loans in other currencies are set at either the London Interbank Offered Rate (LIBOR) or the Singapore Interbank Offered Rate (SIBOR) plus a margin. Only one buyer credit was granted in 1995, rising to nine in 1996, compared to four supplier credits in 1995 rising to eight in 1996.

(b) Export insurance

66. Export insurance is provided through the state-owned Malaysian Export Credit Insurance Berhad (MECIB). Exports to Asian countries account for about half of all insured exports (Table AIII.6). The face value of insured exports peaked in 1992 at over RM 2.8 billion. Since then it has declined and stabilized at around RM 1 billion during the period 1994-96. In 1995 and 1996, Asian countries accounted for one half or more of the exports insured. Manufactures were the main products covered.

67. In addition, for income tax purposes a double deduction is allowed for export insurance premiums paid by Malaysian exporters to MECIB. This double deduction is designed as an incentive to Malaysia's exporters to penetrate non-traditional markets.<sup>59</sup> In 1995, export credit insurance premiums amounting to RM 70.3 million qualified for this deduction.<sup>60</sup>

(vi) Export promotion and marketing assistance

68. Direct and indirect government assistance is provided for export marketing and promotion. Direct assistance is provided mainly by the state-owned Malaysia External Trade Development Corporation (MATRADE) while indirect assistance is in the form of a tax incentive.<sup>61</sup> As regards direct assistance, the activities of MATRADE have recently focused on promoting exports of resource-based products and, in view of the general policy concern over balance-of-payments deficits (Chapter II(2)(ii)), promotional activities will be focused on countries with which Malaysia had trade deficits. The role of General Trading Companies will include the sourcing from overseas of raw materials not available in Malaysia for use by small and medium-sized enterprises (SMEs). Between 1 January 1996 and 1 May 1997, Memoranda of Understanding (MOU) were signed with trade and business organizations from Argentina, Canada, Ecuador, Egypt, Hungary, Mexico, Peru and Turkey. MATRADE also has a network of 25 overseas-posted Trade Commissions and plans to widen this network with another seven offices. The Executive Information System was developed in 1995 and enhanced in 1996; it provides information on Malaysia's external trade statistics, Malaysian exporters, overseas importers, country factsheets, business contacts, and trade fairs. As of December 1996, MATRADE had 993 subscribing members of which almost 60 per cent are small and medium-sized enterprises. The majority of the members are in the food, rubber and wood-based sectors; they are mainly located in Kuala Lumpur, Penang, Perak and Johor.

---

<sup>59</sup>The double deduction of export credit insurance premiums is provided under Income Tax (Deduction of Premium of Export Credit Insurance) Rule 1985 made under Section 154 of the Income Tax Act 1967. The double deduction of export credit insurance premium was made effective on year of assessment 1986. There is no expiry date provided therein. (WTO document G/SCM/N3/MYS, 12 July 1995).

<sup>60</sup>WTO document G/SCM/Q2/MYS/9, 27 January 1997.

<sup>61</sup>Export promotion for investment abroad is covered under investment incentives (section (4)(ii)).

69. As regards indirect assistance, all companies resident in Malaysia are eligible for a double deduction for income tax purposes of expenses incurred in the promotion of exports.<sup>62</sup> The Ministry of Finance is the final authority responsible for this measure, while the Inland Revenue Board is responsible for the administration and processing of the applications. According to the authorities, the incentive, which is regarded as an indirect subsidy, has no distorting effect on trade.<sup>63</sup>

70. Under the GSP (Chapter II(3)(iii)), Malaysia's exports also enjoy privileged access to several of its major markets, notably the EU, Norway, Switzerland, Australia, Canada, Japan, New Zealand, Bulgaria, the Czech Republic, Slovakia, Hungary, Poland and the Russian Federation. The United States "graduated" Malaysia from its GSP programme as of 1 January 1997 (Chapter II(3)(iii)).<sup>64</sup> Malaysian exports under GSP represented approximately 12.5 per cent of the total.<sup>65</sup> In 1996, machinery and transport equipment as well as electrical and electronic products were the main product groups benefiting from GSP preferences in major export markets (Table AIII.7).

71. Malaysia's authorities are aware that its trading partners have taken anti-dumping and countervailing actions against Malaysia's exports. The largest number of anti-dumping measures has been taken by the European Union. Countervailing measures have been taken by Brazil and the United States. Processed agricultural products, such as rubber thread, and a range of manufactured products have been targeted (Table III.11).

72. Income earned abroad and remitted to Malaysia by resident companies is exempt from income tax, in line with accepted international practice.<sup>66</sup> Income from Malaysia's investment abroad increased from RM 1.3 billion in 1992 to RM 6.6 billion in 1996.<sup>67</sup> While the Malaysian Government apparently encourages overseas investment in order to overcome market access barriers and utilize Malaysia's raw materials, parts and/or components, to supply inputs required by Malaysia's industry and to contribute to South-South Cooperation, the Secretariat was unable to identify any specific incentives in this regard.

---

<sup>62</sup>This facility is offered under Section 41 of the Promotion of Investments Act 1986 and Income Tax (Promotion of Exports) Rules 1986, made under Section 41(3) of the same Act. Qualifying expenditure includes overseas advertising; supply of free samples abroad; export market research; preparation of tenders for the supply of goods overseas; exhibits and/or participation in trade or industrial exhibitions held outside Malaysia; supply of technical information abroad; public relation services to promote exports; fares in respect of travel overseas; accommodation and subsistence expenses incurred during overseas travel, subject to RM 200 per day; and cost of maintaining sales offices overseas for the promotion of exports. (WTO document G/SCM/N/3/MYS, 12 July 1995).

<sup>63</sup>WTO document G/SCM/Q2/MYS/9, 27 January 1997.

<sup>64</sup>WTO (1997).

<sup>65</sup>Ministry of International Trade and Industry (1996b), p. 36.

<sup>66</sup>The exemption does not apply to business income from banking, insurance, and sea and air transport.

<sup>67</sup>Bank Negara Malaysia (1997), p. 226.

**Table III.11**  
**Anti-dumping and countervailing duty actions taken against Malaysian exports**

Importing country	Subject merchandise	Case type (AD/CVD)	Range of duties (%)
European Union	Colour television receivers	AD	2.3-23.4
European Union	Microwave ovens	AD	29.0
European Union	Bicycles	AD	23.1-39.4
European Union	Microdisks 3.5"	AD	12.8-46.4
European Union	Polyester textured yarn	AD	16.4-32.5
European Union	Ring binders	AD	10.5
United States	Extruded rubber thread	AD and CVD	1.9-10.7 (AD) 3.3 (CVD)
Singapore	Steel reinforcement bars and rods	AD	S\$54 per tonne
Brazil	Desiccated coconut	CVD	196.5
Brazil	Extruded rubber thread	CVD	15.9
New Zealand	Lead acid battery	AD	15.0
Australia	Edible vegetable oil	AD	A\$0.08-A\$2.20 per bottle

Source: Information provided by the Malaysian authorities.

(4) Internal Measures

(i) Registration and licensing of companies and professionals

73. All companies, domestic and foreign alike, seeking to establish themselves in Malaysia must apply to the Registrar of Companies for registration. Furthermore, in accordance with the Industrial Co-ordination Act 1975 (ICA), both domestic and foreign manufacturing companies are required to obtain a manufacturing licence, unless shareholders' funds of less than RM 2.5 million or fewer than 75 full-time employees are involved. If the project entails a capital-labour ratio of less than RM 55,000, such a licence may be denied unless value-added exceeds 30 per cent, or the Managerial, Technical and Supervisory (MTS) Index is more than 15 per cent, or the project involves activities or products listed as promoted activities and products of high technology, or the project is located in a designated less-developed region.

74. Licence applications for investment in the manufacturing, agriculture and mining sectors are submitted to the Malaysian Industrial Development Authority (MIDA) for evaluation by the relevant industrial division. An evaluation report is prepared, and then tabled during the weekly meeting of the Government Action Committee on Industries. Recommendations are made to the Licensing Officer at the Ministry of International Trade and Industry (MITI). The maximum period necessary to obtain a licence is four to six weeks. All manufacturing companies licensed under the ICA also require approval from the Licensing Officer for any technology transfer agreement concluded with a foreign company or partner (section (4)(iii)).

75. The licensing process is designed to ensure that investments are "consistent with the national and social objectives of the country". Except in special circumstances, licensing is also used to promote a minimum of 30 per cent Bumiputra participation in, and ownership of, manufacturing companies (Chapter II, Annex II.1).<sup>68</sup> The Licensing Officer may prescribe conditions which he/she deems to

<sup>68</sup>Where companies are partly foreign-owned, the balance of equity must be taken up by Bumiputra Malaysians if the foreign share is 70 per cent or more. If the foreign equity share is less than 70 per cent, a minimum of 30 per cent equity must be reserved for Bumiputra Malaysians. In the event that the equity reserved for Bumiputra  
(continued...)

be expedient and necessary, such as, equity structure and employment structure as well as distributorship and quality standards. Applicants for manufacturing licences can appeal a refusal to issue a licence to the Minister of International Trade and Industry within 45 days from the date on which the decision was communicated.

76. No manufacturing sector is closed to foreign investment. Nevertheless, there are guidelines for foreign equity participation in the manufacturing sector, which are often tied to export performance. These guidelines are enforced through the licensing process. For example, projects may be fully foreign-owned if they involve exportation of more than 80 per cent of output. The extraction or mining and processing of mineral ores is also eligible for 100 per cent foreign ownership, depending on the level of investment, technology applied and availability of local expertise. These guidelines do not apply to manufacturing companies with shareholders' funds of less than RM 2.5 million or less than 75 full-time employees, which are not subject to any manufacturing licensing requirement. Foreign equity ownership is restricted to as little as 30 per cent, where less than 20 per cent of production is exported.<sup>69</sup> Foreign equity ownership of up to 100 per cent may be allowed for projects involving the manufacture of high technology products or priority products for the domestic market as determined by the Government from time to time.

77. Similarly, services companies require licences from the respective Ministries or agencies responsible for the sector (Table II.1) prior to their establishment. The specific conditions attached to establishment vary by sector, but generally involve a limit of 30 per cent foreign ownership as listed in the horizontal commitments made in Malaysia's GATS Schedule. Exceptions to this maximum share of foreign ownership are made for export-oriented investments, as, for example, in the cases of regional headquarters, the offshore banking sector on the island of Labuan, and investments in the Multi-media Super Corridor (Box III.3).

78. A condition which is particularly important for the establishment of services companies, is the employment of foreign professionals. In some sectors, such as financial services (Chapter IV(4)(ii)), the number of foreign professionals that foreign-owned companies are allowed to employ is stipulated by the regulating authorities; in the manufacturing sector, the number is mainly based on the amount of paid-up capital. Regarding employment by Malaysian companies or employment in export-oriented services, the Malaysian Government adopts a liberal policy on the employment of expatriates and foreign professionals<sup>70</sup>, although these expatriates and professionals are required to apply for the relevant work

---

<sup>68</sup>(...continued)

Malaysians is not taken up, MITI will allocate part of the balance to non-Bumiputra Malaysians. For joint-venture projects with foreigners initiated by non-Bumiputra Malaysians where 70 per cent or more of the equity is held by foreigners, the balance of the equity will be allocated to the non-Bumiputra Malaysians. If less than 70 per cent of the equity is held by foreigners, 30 per cent will be allocated to the non-Bumiputra Malaysians and the balance will be reserved for Bumiputra Malaysians. Under special circumstances, non-Bumiputra Malaysians may be permitted to take up the entire balance of the equity as decided by MITI.

<sup>69</sup>For projects involving the export of between 51 and 79 per cent of production, foreign equity ownership of up to 79 per cent may be allowed, depending on such criteria as the level of technology, spin-off effects, size of investment, location, value added and the utilization of raw materials and components. For projects involving the export of between 20 and 50 per cent of production, foreign equity ownership of between 30 and 51 per cent is allowed, depending on criteria similar to those mentioned above.

<sup>70</sup>Issues pertaining to foreign labour and expatriates are under regular review by the Cabinet Committee on Foreign Workers.

permits with the Malaysian Immigration Authorities before entering Malaysia. For companies located in the Multi-media Super Corridor, there is no restriction on the employment of foreign professionals. As in many other WTO Members, support by a future employer greatly facilitates the granting of a work permit to a prospective foreign worker.

**Box III.3: Malaysia's Multi-media Super Corridor**

The authorities consider information technology as a "strategic" sector which warrants targeted regulations and significant public investment. The Multi-media Super Corridor (MSC) is expected to provide the catalyst for information technology development in Malaysia by demonstrating the effectiveness of multimedia and creating supply and demand for multimedia. The project aims to attract Malaysian and international multi-media companies with high technology to locate their operations in the MSC, thus making the country a regional centre to channel their services to other countries in the region. The Corridor is 50 kilometres long and 15 kilometres wide stretching from Kuala Lumpur City Centre in the north to the new Kuala Lumpur International Airport at Sepang in the South. The MSC further includes a new administrative capital Putrajaya. The development of the MSC will be supported by a set of enabling laws to encourage electronic commerce and other multimedia initiatives. These laws will aim to provide a comprehensive framework of "cyberlaws" covering copyright, digital signature, computer crime, telemedicine and electronic government. Within the Corridor, investors are eligible for duty-free imports of multimedia equipment, income tax exemption and investment tax allowance up to ten years, 100 per cent foreign ownership is allowed, fast-track processing of visas for foreign professionals apply, and there are no restrictions on the number of foreign professionals to be employed per company. Moreover, there will be no censorship of information delivered through the Internet.

Development of seven multimedia applications in the Corridor receive priority: electronic government, smart schools, telemedicine, multi-purpose cards, research-and-development clusters, borderless marketing and a worldwide manufacturing web.

The total investment required in the MSC is estimated to be approximately RM 50 billion over 20 years. To facilitate development in the MSC, the Multi-Media Development Corporation was established in 1996. Telekom Malaysia Berhad is the provider of the backbone fibre-optic telecommunications infrastructure in the MSC.

79. Foreign or Malaysian professionals who wish to provide services are, under Malaysian law, required in most cases to be registered with the relevant Malaysian bodies. Only selected foreign degrees and registrations from some foreign institutions are recognized by the registering bodies (Chapter IV(4)(vi)).

80. A liberal policy towards the allocation of work permits for foreign workers has undoubtedly made an important contribution to the development of Malaysia's manufacturing sector as such workers constitute approximately 10 per cent of the work force<sup>71</sup>, with the share varying by manufacturing sub-sector (Chapter IV(3)).<sup>72</sup> Estimates suggest that, in 1991, immigrants further made up 30 per cent of total employment in agriculture and forestry, 70 per cent in construction and 10 per cent in other

---

<sup>71</sup>The total number of both legal and illegal foreign workers is estimated to be almost two million (Government of Malaysia (1996a)). Foreign workers who are employed are required to register; upon registration they are not allowed to change employer and are required to leave the country when their work permits expire.

<sup>72</sup>Bank Negara Malaysia (1997a).

non-government services sectors, thus making an important contribution to the development of these sectors (Chapter IV(2) and (4)).<sup>73</sup>

81. However, in view of "the negative effects that it will have in the long-run and the social problems that may arise", the authorities consider the dependence on foreign, particularly unskilled, labour to be excessive. In order to reduce dependence on labour, only manufacturing projects with Capital Investment Per Employee (CIPE) of more than RM 55,000 will be approved for manufacturing licence with the exception of those projects located in the Eastern Corridor of Peninsular Malaysia, Sabah and Sarawak. Industries are encouraged to automate and move towards higher value-added activities with emphasis on enhancing productivity. Furthermore, the Malaysian Government in its 1996 budget doubled (with two exceptions) its existing levies on unskilled and semi-skilled foreign workers.<sup>74</sup> (Domestic helpers and unskilled agricultural workers were exempted from this increase.) At the same time, it imposed a freeze on the recruitment of foreign unskilled workers (other than maids from Indonesia, Philippines and Cambodia).

(ii) Incentives<sup>75</sup>

82. One of the most striking features of Malaysia's industrial policy is the pervasiveness of various incentives, particularly tax incentives, aimed at the manufacturing, agriculture and tourism sectors. These incentives are contained in the Promotion of Investments Act 1986, Income Tax Act 1967, Customs Act 1967, Sales Tax Act 1972, and the Excise Act 1976. As implied by the nature of the foregoing legislative acts, incentives are embodied not only in direct taxes, primarily income taxes, but also in indirect taxes, that is, sales and excise taxes as well as customs duties. In addition, government-sponsored loans are available to practically all small and medium-sized enterprises.<sup>76</sup> These incentives are, with one notable exception concerning sales taxes on cars (Chapter IV(3)(iii)), granted on a non-discriminatory basis to domestically and foreign-owned companies.

83. The Ministry of International Trade and Industry plays a key role in the administration of these incentives. All applicants for tax incentives applied to manufacturing firms, as well as those applied to some agricultural activities are lodged through the Malaysian Industrial Development Authority.

---

<sup>73</sup>The World Bank (1995). This source also reports estimates that in 1991 the share of immigrants in total manufacturing employment was as low as 3 per cent. This estimate is substantially lower than the estimates of 11 per cent for 1996 reported by the Bank Negara Malaysia (1997a). Such an increase might, however have occurred in the face of rapid growth in Malaysia and substantial wage differences between Malaysia and the country of origin.

<sup>74</sup>These levies vary according to the skills of the workers and the sector in which they are employed. For the manufacturing and construction sectors, the annual levy on unskilled foreign workers was increased from RM 420 to RM 840 and for semi-skilled workers it was increased from RM 600 to RM 1,200. (Government of Malaysia, 1995). Unskilled workers in the agricultural sector are subject to an annual levy of RM 420. On the other hand, rebates are allowed for those workers, including professionals, that are subject to income tax.

<sup>75</sup>These incentives are described in more detail in Malaysian Industrial Development Authority (1996).

<sup>76</sup>The main criteria to qualify for government-sponsored loans for small and medium-sized enterprises is that less than 75 people are employed full-time and that shareholder funds are less than RM 2.5 million. To qualify for tax incentives shareholder funds must be less than RM 500,000. Other criteria deal with aspects of sole proprietor and partnerships.



Although under the purview of MITI, MIDA recommends directly to MITI and the Ministry of Finance on all issues related to the approval of applications for investment and other incentives.

(a) Direct tax incentives

84. Among the main tax incentives are Pioneer Status, Investment Tax Allowance (ITA) and Reinvestment Allowance (RA). Whereas Pioneer Status entails a production incentive, both the ITA and the RA are incentives for investment. These three incentives are mutually exclusive. Foreign-owned firms are, by and large, accorded national treatment in respect of eligibility for these tax incentives. As a consequence, foreign-owned firms accounted for more than two-thirds of the value of investment qualifying for Pioneer Status and the Investment Tax Allowance during the period 1992-1996 (Table III.12).

**Table III.12**  
**Tax incentive indicators, 1992-96**

	1992	1993	1994 <sup>a</sup>	1995	1996
<b><u>Number of projects approved</u></b>					
Pioneer status	173	147	196	184	150
of which majority foreign owned firms <sup>b</sup>	(99)	(79)	(93)	(94)	(74)
Investment tax allowance	34	47	71	66	70
of which majority foreign owned firms <sup>b</sup>	(26)	(26)	(37)	(37)	(46)
Without tax incentives	667	492	600	648	562
of which majority foreign owned firms <sup>b</sup>	(300)	(223)	(302)	(272)	(254)
<b>Total</b>	<b>874</b>	<b>686</b>	<b>870</b>	<b>898</b>	<b>782</b>
of which majority foreign owned firms <sup>b</sup>	(425)	(328)	(432)	(403)	(374)
<b><u>Value of approved investment (RM billion)</u></b>					
Pioneer status	3.9	1.9	7.5	5.2	10.6
of which majority foreign owned firms <sup>b</sup>	(3.1)	(1.1)	(5.6)	(3.0)	(8.3)
Investment tax allowance	7.9	5.4	5.9	6.1	9.2
of which majority foreign owned firms <sup>b</sup>	(7.1)	(2.8)	(1.9)	(2.3)	(8.1)
Without tax incentives	15.9	6.5	9.5	9.6	14.5
of which majority foreign owned firms <sup>b</sup>	(6.6)	(2.0)	(3.4)	(3.3)	(7.0)
<b>Total</b>	<b>27.7</b>	<b>13.8</b>	<b>22.9</b>	<b>20.9</b>	<b>34.3</b>
of which majority foreign owned firms <sup>b</sup>	(16.8)	(5.9)	(10.9)	(8.6)	(20.4)
<b><u>Indicators of tax expenditure (RM million)</u></b>					
Tax revenue forgone due to reinvestment allowance granted during the previous year <sup>c</sup>	291.0	372.7	547.6	1,452.6	648.4
Double deduction for research expenditure	48.3	18.6	100.2	42.2	37.8

a In 1994 an industrial Adjustment Allowance of RM 1.99 million was approved for three projects.

b Wholly foreign-owned and majority foreign-owned companies.

c Refers to tax forgone due to reinvestment allowance granted to companies during the previous year only. As the reinvestment allowance could be used during a number of years total tax forgone will be substantially larger. Larger tax revenue forgone reflects an increase in applications due to a temporary change in regulations during 1994.

Source: Information provided by the Malaysian authorities.

85. A company granted Pioneer Status pays tax on only 30 per cent of its statutory income for a period of five years (15 per cent, if located in designated less-developed regions, namely the states of Sabah and Sarawak together with the "Eastern Corridor" of Peninsular Malaysia). In 1995 and

1996, Pioneer Status was granted to just over one fifth of all manufacturing projects approved by MIDA, down from almost one half of all approved projects in 1990 (Table III.12). The value of approved projects also declined. Interestingly, projects with Pioneer Status became more labour intensive. The fact that projects with Pioneer Status involved a smaller investment per employee than projects not qualifying for tax incentives suggests that incentives may have been directed inadvertently at labour-intensive projects. The minimal evaluation for small-scale projects might have contributed to this bias.

86. The ITA involves an allowance of 60 per cent (80 per cent in the case of a designated less-developed region) in respect of qualifying capital expenditure during a five-year period. The allowance can be offset against 70 per cent (85 per cent in the case of a designated region) of statutory income and any unused amounts carried forward (without interest) to subsequent years until the full amount of the allowance is exhausted. Although the ITA was granted to less than 10 per cent of all projects approved by MIDA during the 1992-96 period, the capital-intensive nature of the projects was such that they represented well over one quarter of the total value of approved investments (Table AIII.8).

87. The RA offers an allowance of 60 per cent of capital expenditures incurred by companies in expanding, modernizing or upgrading production facilities, or in diversifying into related activities. The allowance can be offset against 70 per cent (100 per cent in the case of a designated region) of statutory income and any unused amounts carried forward (without interest) to subsequent years until the full amount is used up.

88. High technology companies may be granted either Pioneer Status involving a five-year tax holiday or a 60 per cent ITA that can be fully offset against statutory income. "Strategic projects" qualify for either Pioneer Status with a ten year tax holiday or a 100 per cent ITA that can be fully offset against statutory income. Strategic projects are those involving heavy capital investment and high technology, and which can generate extensive linkages and have a significant impact on the Malaysian economy. An R&D company (i.e. a company which provides R&D services to its related companies or to any other company) is eligible to apply for an ITA of 100 per cent on qualifying capital expenditure incurred within ten years. A contract R&D company (i.e. a company which provides R&D services to companies other than its related companies) is eligible to apply for Pioneer Status with full income tax exemptions for five years or an ITA of 100 per cent on qualifying capital expenditure incurred within ten years. The ITA can be utilized to offset against 70 per cent of the statutory income. Among the other incentives for R&D are an Industrial Building Allowance (IBA) in the form of an initial allowance of 10 per cent and an annual allowance of 2 per cent for buildings used for purposes of approved R&D, and double deduction for R&D-related expenditure. Qualifying capital expenditure incurred by companies for establishing or upgrading technical or vocational training institutions are also eligible for the ITA of 100 per cent for a period of ten years and IBA in the form of an annual rate of 10 per cent. An IBA is also granted in respect of buildings used as warehouses for storing goods for export.

89. Expenses incurred by companies establishing or upgrading technical or vocational training institutions or for approved training are also eligible for the ITA, IBA or a double deduction. Moreover, an IBA is granted in respect of buildings used as warehouses for storing goods for export.<sup>77</sup> Furthermore, in a move to promote exports of services from Malaysia through the facilitation of a regional headquarters function, "approved operational headquarters" (OHQs) are subject to a statutory corporate tax rate of 10 per cent instead of the normal rate of 30 per cent (Chapter IV(4)).

---

<sup>77</sup>In addition some tax incentives are available for export insurance (section (3)).

90. Estimates of the total annual costs of these various tax incentives in terms of revenue forgone were not available. However, judging from information provided by the Malaysian authorities on a few of these incentives, large amounts of forgone tax revenues are involved. For example, during the two-year period 1995-1996, the Reinvestment Allowance alone cost the government an average annual amount of roughly RM 1 billion in forgone tax revenues. One might expect costs of similar magnitudes to be associated with the granting of Pioneer Status and the Investment tax Allowance. The annual cost associated with the double deduction for R&D-related expenditure was estimated to be around RM 40 million during the same two-year period.

**Box III.4: Evaluation of the effectiveness of incentives**

Incentives for investment and production are widespread in Malaysia, as in many other developing and developed economies. Their aim is to develop local industry and attract foreign investment - in which Malaysia has had considerable success. However, there are grounds for doubting the effectiveness of such incentives, based on evidence from other economies: indeed, in some instances the use of incentives may even be counterproductive.

In the first place, incentives are seldom among the main determinants of business decisions. The experience with evaluation of tax incentives in other countries suggests that the cost of an investment incentive to the Government (in terms of expenditure or tax revenue forgone) may exceed the investment generated. Their high cost is related to the difficulty in identifying incremental investment; that is, investment that would not have been undertaken without the incentive.

Tax cuts for foreign multinational enterprises (MNEs) that are taxed in their home countries purely on a residence basis (that is, which receive a full credit for taxes paid abroad) may have little or no effect on the incentive for those firms to invest in the country offering such relief. Such cuts would provide an effective incentive only insofar as MNEs are in an excess foreign credit position, taxes on repatriated income can be deferred, the MNE's home country exempts foreign-source income from domestic taxes, or "tax sparing" is allowed.

Secondly, to the extent that incentives do stimulate particular types of investment, they may result in a less efficient allocation of national resources than would be the case if the Government remains neutral and refrains from influencing private decisions. Any adverse effect of incentives on resource allocation would manifest itself as lower total factor productivity (TFP). In the case of investments, such as those in R&D, which are thought to yield social benefits (externalities) that are not adequately taken into account by private investors, it is usually extremely difficult to measure such externalities accurately, with the result that incentives may turn out to be excessive.

Thirdly, incentives are usually expensive for the Government, involving large losses in tax revenues. They tend to worsen the fiscal balance, thereby reducing national savings and showing up as a deterioration in the current account balance.

Lastly, use of incentives may provoke countermeasures by trading partners. Even where they do not contravene the WTO Agreement on Subsidies and Countervailing Measures, they may nevertheless be used by other countries as a justification for anti-dumping or countervailing actions. Alternatively, countries may react by adopting incentives of their own, thus resulting in a beggar-thy-neighbour situation. Such an "incentives race" is harmful to all countries concerned.

91. In view of the large amounts of tax revenues forgone as a result of such incentives, and doubts as to their effectiveness (Box III.4), the authorities indicated that they were reviewing the widespread use of incentives in order to make them more selective (by among other things, focusing them on the encouragement of automation in labour intensive industries and on technological development).

Curtailement of other income tax incentives would not only reduce the complexity of the income tax system and the scope for tax avoidance, but also facilitate a revenue-neutral reduction in Malaysia's statutory corporate tax rate, which is currently 30 per cent, 4 percentage points higher than the prevailing rate in neighbouring Singapore.<sup>78</sup>

(b) Indirect tax incentives

92. As regards indirect tax incentives, excise taxes levied on "national cars" are considerably lower than those applicable to other domestically assembled or imported cars (Chapter IV(3)(iii)).<sup>79</sup> In addition, machinery, equipment, components and materials used for R&D and training purposes are eligible for exemption from sales and excise taxes as well as from import duties. Similar exemptions, or drawbacks, are also allowed for machinery and equipment used directly in the manufacturing process as well as for components and materials that are used in the manufacture of goods for export (section (3)).

93. Indirect tax incentives in the form of exemptions or drawbacks are designed to address the inherent bias against exports of Malaysia's existing sales and excise taxes. Such exemptions or drawbacks could be reduced or eliminated if Malaysia followed in the steps of several other countries (including Canada, Japan, New Zealand and Singapore) which have recently introduced broad-based value-added taxes (VAT) that exempt exports in a manner consistent with the GATT.

(c) Non-tax incentives

94. The principal type of non-tax incentive is the Industrial Adjustment Allowance (IAA), an allowance of up to 100 per cent in respect of qualifying capital expenditure incurred by a manufacturing company undertaking industrial adjustment. In addition, the Industrial Adjustment Fund provides loans at concessionary rates to companies undertaking restructuring programmes. A RM 1,990,000 IAA was granted to three wholly Malaysian-owned textile companies in 1994.

95. Not only do small and medium-sized firms have privileged access to credit because banks are required to allocate a minimum share of total lending to such enterprises, they are also beneficiaries of government-sponsored credit. As all major banks well exceed the minimum lending requirement to small and medium-sized enterprises, no *de facto* preferences appear to arise from this requirement (Chapter IV(4)(ii)). As regards government-sponsored finance and assistance, the ASEAN-Japan Development Fund is the largest, with a total allocation of RM 588 million over less than ten years (Annex III.2). Under the Seventh Malaysia Plan (1996-2000) a total of RM 261 million has been allocated to implement technology acquisition, commercialization of research and development and technology development programmes for small and medium-sized enterprises.<sup>80</sup>

---

<sup>78</sup>A narrowing of the gap between corporate tax rates in Malaysia and Singapore would also reduce the incentive for multinational enterprises to exploit the difference in rates by shifting profits artificially to Singapore from Malaysia, thereby eroding corporate tax payments in the latter.

<sup>79</sup>In the case of the PROTON, for example, the reduction in excise tax is 50 per cent.

<sup>80</sup>Plans for The Commercialization of Research & Development Fund (CRDF) and the Technology Acquisition Fund (TAF) for SMEs are currently underway. The objectives, among others are to promote technological upgrading through the introduction and utilization of modern cost-efficient technology in the manufacturing and physical development of existing and new products/processes among the SMEs and raising the competitive level of the industrial sector, enabling them to compete globally.

(d) Investment protection

96. Protection of investments against expropriation through bilateral, regional or multilateral investment protection agreements reduces the risk of investing in Malaysia for foreign investors and thus promotes such investments. Moreover, Malaysia has accorded recognition to the International Centre for the Settlement of Investment Disputes by becoming a party to the Washington Convention on 8 August 1966 (Chapter II(3)(i)). As a Member of the ASEAN Free Trade Area (AFTA), Malaysia is a party to regional investment protection initiatives promoted in this forum (Chapter II(3)(ii)). Malaysia is also a party to 54 bilateral investment protection agreements (Table AII.5), 35 bilateral payment arrangements (Table AII.6) and 47 bilateral tax agreements (Table AII.7). Malaysia supports discussion in the WTO Working Group on Trade and Investment, provided it is of "an educative nature".

(iii) Intellectual property rights

(a) Overview

97. Intellectual property rights allow writers and inventors to safeguard returns on their investment, while trademarks (and geographical origins) additionally facilitate product recognition by consumers.<sup>81</sup> Protection for investments in the form of intellectual property is important because it encourages investments in, and trade in, such property. In Malaysia, investors are free to own almost any form of intellectual property, and protection for such property under Malaysian law is evolving in line with Malaysia's international commitments (section (b) below).

98. The Malaysian Government's objective of promoting investment and fostering total factor productivity growth as well as its emphasis on market-led economic development ensures that protection for intellectual property is a central feature of overall economic policy. All technology transfer agreements (ITAs) with foreign partners are monitored by MITI.<sup>82</sup> Monitoring of these agreements allows for early government "assistance" to firms negotiating with foreign partners (section (c) below).

99. The administration of property rights themselves is under the purview of the Ministry of Domestic Trade and Consumer Affairs, which is advised by selected advisory and review bodies (Table III.13).<sup>83</sup> The formulation of Malaysia's policy on intellectual property rights policy is further facilitated by its membership of various international property rights conventions.<sup>84</sup> Malaysia is also a party to the ASEAN Framework Agreement on Intellectual Property, and to reciprocal arrangements for the protection

---

<sup>81</sup>Protection of intellectual property rights (IPRs) may thus be regarded as akin to protection for physical investment.

<sup>82</sup>Technology transfer agreements are monitored to ensure that no "unjustifiable restrictions" or disadvantage to the local party is imposed, that the agreement is not prejudicial to the national interest and that payment of fees (if applicable) is commensurate with the level of technology transferred.

<sup>83</sup>Moreover, the Ministry of Home Affairs is involved in enforcement of the property rights. Customs officials, who are under the authority of the Ministry of Finance, may act against infringing imports upon official complaint from the owner of the intellectual property. However, customs officials do not usually enforce such rights against infringing imports on their own initiative.

<sup>84</sup>Malaysia is a member of WIPO, the Paris Convention and the Berne Convention, but not of the Rome Convention and the Treaty on Intellectual Property in Respect of Integrated Circuits.

of sound recordings, broadcasts and published editions with the United States and the United Kingdom (Chapter II(3)).<sup>85</sup>

**Table III.13**

**Semi-public and public-sector advisory and review bodies (intellectual property rights), 1997**

Body	Functions	Members
National Committee on Trade Related Aspects of Intellectual Property Rights	To advise the Government on its obligations under, and implementation of the TRIPS Agreement	Relevant government agencies, private sector representatives, academics, trade associations, intellectual property associations, intellectual property practitioners
Patent Boards established under the Malaysian Patent Act 1983	<ul style="list-style-type: none"> <li>- To issue certificates for utility holders;</li> <li>- to consider applications for compulsory licences;</li> <li>- to appoint examiners; and</li> <li>- to advise the Minister generally on matters pertaining to the Patents Act.</li> </ul>	Relevant government agencies, research institutes, institutions of higher learning, and other persons considered to be fit and proper by the Minister of Domestic Trade and Consumer Affairs.
Anti-Piracy and Product Counterfeiting Task Force	To deal with problems relating to infringing and counterfeiting activities	Representatives of government enforcement agencies, Attorney General's Chamber, Intellectual Property Department, Chambers of Commerce and intellectual property related industries
Copyright Tribunal established under the Malaysian Copyright Act 1987	To consider applications with respect to licensing schemes, entitlement to licences and proposed or expiring licences granted by licensing bodies as well as to issue licences to produce and publish in the national language a translation of a literary work	As appointed by the Minister of Domestic Trade and Consumer Affairs

Source: Information provided by the Malaysian authorities.

(b) Structure of intellectual property right protection

Copyright

100. Copyright in Malaysia generally subsists on creation and continues to subsist until 50 years after the death of the author (Copyright Act, 1987). It subsists if the author is a citizen, permanent resident of a corporate body established in Malaysia or any other Berne Convention country, and if the work is made or first published in Malaysia or any other Berne Convention country, or if, being a broadcast, the work is transmitted from Malaysia or any other Berne Convention country. Conforming to the Berne Convention, registration is not a prerequisite for the enforcement of copyright in Malaysia.<sup>86</sup> Computer software and compilation of data is protected as a literary work<sup>87</sup>, and the Act protects rental rights to all eligible works, sound recordings and broadcasts. However, performers are not currently

<sup>85</sup>These arrangements are based on the Copyright (Application To Other Countries) Regulation 1990.

<sup>86</sup>However, Section 42 of the Copyright Act, 1987 (Act 332) explicitly allows as admissible evidence an affidavit or statutory declaration stating that at the time specified therein, copyright subsisted in such work, that he or she is the owner of the work, and that an annexed copy is a true copy thereof.

<sup>87</sup>Section 13(2) of the Malaysian Copyright Act 1987 lists the exceptions to copyright protection for research, educational and other similar purposes.

protected. Moral rights, such as the right to prohibit alteration, are protected under copyright law. The Copyright Act does not prohibit parallel imports. Compulsory non-exclusive licenses for copyrighted works may be granted by the Copyright Tribunal.<sup>88</sup>

101. Penalties against infringement of a copyright may include fines and imprisonment. Of the 5,802 complaints received concerning copyright infringements during the period 1 December 1987 to 5 March 1997, over 4,500 led to legal cases. The total value of goods seized exceeded RM 22 million, while fines exceeded RM 1.2 million (Table AIII.9).

#### Patents

102. Patents are protected upon registration (Patent Act 1983). During the period October 1986 to December 1996, a total of 9,302 patents were registered, of which 212 (2.3 per cent) originated in Malaysia (Table AIII.10). Priority of registration is based on the first-to-file principle. The official fee for filing a request for the granting of a patent is RM 200. Patents are protected for 15 years from the date of being granted. Utility innovations are protected for five years from the date of granting and may be protected for two additional five-year terms. Utility innovations are also subject to annual renewal fees. Non-patentable inventions are listed in the Act.<sup>89</sup> No protection for plant varieties is available at present under Malaysia's patent legislation. Conditions for granting a compulsory licence are described in the Act.<sup>90</sup> The owner of a patent has the right to institute Court proceedings against any person who has infringed or is infringing the patent.

#### Trademarks

103. Trademarks are protected upon registration in Malaysia under the Trade Marks Act 1976.<sup>91</sup> For registration of a trademark, the applicant is required to fill in 12 copies of the application form with representations of the trademark attached to each. The fee is RM 30. If the application is launched through an agent, two additional forms and an additional fee of RM 10 is charged. Registration of a trademark is for an initial period of seven years and is renewable for subsequent periods of 14 years. Words and signs that may not be contained in a trademark are listed in the Act and the Regulations.<sup>92</sup>

---

<sup>88</sup>Compulsory licences may be granted on application only in respect of production and publication in national language of a literary work written in any other language. Royalties for such licences shall be determined by the Tribunal.

<sup>89</sup>Section 13 of the Malaysian Patent Act 1983 (Act 291), lists among others items, scientific theories, mathematical methods, plant and animal varieties other than man-made living micro-organisms or processes, business methods, surgery or therapy methods for the treatment of human or animal bodies.

<sup>90</sup>If a patent owner, without any legitimate reasons, fails to use a patented process, or does not produce a patented product, meet public demand, or charge a reasonable price within three years of being awarded a patent, the Patent Board may grant a compulsory licence to any applicant (Patents Act 1983 (Act 291), section 49). A compulsory licence may also be granted if an invention claimed in a patent cannot be worked in Malaysia without infringing a patent benefiting from an earlier priority date (Patents Act 1983 (Act 291), section 49A). When the application for a compulsory licence is filed, the Registrar shall notify the owner of the patent of the date the application is to be considered by the Board (Patents Act 1983 (Act 291), section 50).

<sup>91</sup>Although non-registered trademarks are not protected (Trade Marks Act 1976, Section 82(1)), passing-off goods or services as those of another person is not allowed under the Trade Descriptions Act 1972.

<sup>92</sup>Section 15 of the Trade Marks Act 1976 and Regulation 12 and 13 of the Trade Marks Regulations 1983.

There is no compulsory licence provision for trademarks.<sup>93</sup> During the period 1992-96 a total of 27,179 trademarks were registered in Malaysia, of which 6,554 were owned by Malaysian residents (Table AIII.11).

#### Trade descriptions

104. The Trade Descriptions Act 1972 allows for criminal proceedings against any person who, in the course of a trade or business, applies a false trade description to or in respect of any goods or supplier or offers to supply such goods. Under this Act, trade descriptions, such as those related to markings of food, and price descriptions are regulated. Although not explicitly mentioned in the Act, it might also provide authority to take action against the use of geographical indications which do not indicate the true origin of the product.<sup>94</sup> During the period 1 January 1973 to 8 March 1977, 11,000 complaints were received concerning infringements of this Act, over RM 55 million worth of goods were seized, and fines of almost RM 6 million were levied (Table AIII.12).

#### Confidential information

105. Confidential information is protected against unauthorized use and disclosure under common law. Confidential information includes industrial processes, business secrets, secret methods, and customer lists. There are no formalities or time limits applied to obtain such protection.<sup>95</sup>

#### Industrial Designs

106. Currently, the Industrial Design Registration Act of 1949 of the United Kingdom is applicable in Malaysia. A registered proprietor of industrial designs and models cannot recover damages if an infringer proves that at the date of infringement he or she was not aware of the registered design.<sup>96</sup>

107. A Malaysian Industrial Design Bill was passed by the Malaysian Parliament in 1996 and is expected to come into force in 1997. Once the Bill is in force, all activities relating to administration and registration of industrial designs will be undertaken in Malaysia. The Bill specifies the priority date of an application for registration as the filing date of the application; designs filed earlier abroad in a treaty or convention country will receive priority if filed in Malaysia within six months from such earlier date.<sup>97</sup> Under the Bill, registration of an industrial design will come into force on the filing

---

<sup>93</sup>However, there is a Registered User provision whereby the registered proprietor permits a person to use his or her trademark by way of agreement between the registered proprietor and the user (Trademarks Act 1976 (Act 175), Part IX).

<sup>94</sup>Observers have noted that the Malaysian Trade Marks Act 1976 also provides some protection for geographical indications (Ariff et al. 1996, p. 71).

<sup>95</sup>Hemnes et al. (1994), p. 5.

<sup>96</sup>Hemnes et al. (1994), p. 2.

<sup>97</sup>Industrial Design Bill 1996, Clause 17.



date for a period of five years and may be extended for two further consecutive five year terms.<sup>98</sup> Compulsory licences for industrial designs may be granted by decision of the Court.<sup>99</sup>

#### Forthcoming changes in IPR legislation

108. In order to fully implement the TRIPS Agreement, the Malaysian authorities intend to amend by 1998, the Patents Act, the Trade Marks Act and the Copyright Act, and also to enact a Performers' Act and a law to protect the layout designs of integrated circuits.<sup>100</sup> To address some of the issues related to intellectual property protection for multimedia investments, a "Convergence Act" covering broadcasting, telecommunications and computer services is under study at the Ministry of Energy, Telecommunications and Posts (Table AII.1). Malaysia's APEC Individual Action Plan acknowledges the long-term need to review and adapt intellectual property laws in line with global developments.

#### (c) Policies towards the transfer of protected intellectual property rights

109. The use of foreign-owned intellectual property plays an important role in Malaysia's economic development because it contributes to total factor productivity growth. Licences, fees and royalties paid to foreigners for the use of intellectual property are reflected in the balance of payments. As in the case of physical capital, inflows of intellectual property exceed outflows and thus international payments for the use of this property far exceed receipts.<sup>101</sup> Receipts increased dramatically in 1996 but are still below 10 per cent of payments (Table III.14).

**Table III.14**  
**International payments and receipts for use of intellectual property rights, 1991-96<sup>a</sup>**  
(MR million)

	1991	1992	1993	1994	1995	1996
Receipts	4.9	66.8	6.2	4.6	9.2	62.8
Payments	377.5	480.0	603.6	749.9	909.7	979.9
Balance	-372.6	-413.2	-597.4	-745.3	-900.5	-917.1

a Payments and receipts for authorized use of patents, copyrights, trademarks, industrial processes, franchises etc. and the use through licensing agreements of produced originals of prototypes (such as manuscripts and files).

Source: Bank Negara Malaysia, Cash Balance of Payments Reporting System.

110. The Ministry of International Trade and Industry monitors all technology transfer agreements (TTAs) with foreign partners. All manufacturing concerns licensed by MITI are required to obtain prior written approval from the Ministry before entering into technology transfer agreements with foreign

<sup>98</sup>Industrial Design Bill 1996, Clause 25.

<sup>99</sup>Compulsory licences may be granted on the ground that the design is not applied in Malaysia. However, no order which is inconsistent with any treaty, convention, arrangement or engagement with any country outside Malaysia shall be made by the Court.

<sup>100</sup>APEC (1996).

<sup>101</sup>A withholding tax of 10 per cent is levied on payments made to foreign suppliers of technology. Double Taxation Agreements may result in the reduction or elimination of such taxes (Table AII.7).

partners.<sup>102</sup> The agreements must define in detail the technological content and principal features of technology or process, anticipated production, quality and specification of products and particulars of technical assistance and the manner in which it is to be provided.<sup>103</sup> The Ministry monitors the duration of the agreements to ensure that they are sufficient to allow full absorption of technology, that provision is made for adequate training of the local company's personnel, and that there is sufficient provision for the continued use of patents covered by the agreement after its expiry.<sup>104</sup> Effective 3 September 1997, the Government has deregulated the processing of technology transfer agreements by granting automatic approval to technology agreements signed between 100 per cent foreign-owned companies and with royalty payments of less than 3 per cent of net sales.

111. During the period 1989-96 a total of 1,124 TTAs were approved by MITI, and during 1993-96, royalty payments were made under 467 agreements. Most royalty payments concerned the electric and electronics sector (Table III.15), which suggests that advanced technology was transferred mainly to this sector (Chapter IV(3)). For those agreements which expressed royalty payments as a percentage of the sales price, more than half of all payments were below 2 per cent.<sup>105</sup>

**Table III.15**  
Number of technology transfer agreements by rate of royalty payment, in selected industry groups, 1993-96

Industry group	Royalty less than 2%	Royalty 2%-4%	Royalty more than 4%	Lump sum + running royalty	Lump sum	Others	No payment	Cumulative total (1993-96)
Electrics and electronics	60	37	22	14	10	28	11	182
Chemical products	27	5	2	4	7	12	2	59
Transport equipment	21	8	1	21	8	3	1	63
Plastic products	12	4	1	5	1	3	0	26
Food products	9	2	1	2	0	0	1	15
Fabricated metal products	11	3	2	3	1	0	0	20
Others	45	29	2	10	5	6	5	102
<b>Total</b>	<b>185</b>	<b>88</b>	<b>31</b>	<b>59</b>	<b>32</b>	<b>52</b>	<b>20</b>	<b>467</b>

Source: Information provided by the Malaysian authorities.

<sup>102</sup>Such agreements may cover licence rights over specific processes, formulae or manufacturing technology, other knowledge and expertise for the establishment of a plant and the provision of various technical assistance and supporting services.

<sup>103</sup>Ministry of Finance (1995), p. 260.

<sup>104</sup>Ariff et al. (1996), p. 25.

<sup>105</sup>According to the Ministry of International Trade and Industry, the level of technology transferred can generally be considered low if this percentage is below 2 per cent and high if it is above 4 per cent (Ministry of International Trade and Industry (1996b), p.p. 241-242).

(iv) Standards and technical requirements

112. The procedures for the development of standards are established in the Standards of Malaysia Act 1996.<sup>106</sup> Under the Act, the Minister<sup>107</sup> appoints a Director General of the Department of Standards who shall "foster and promote standards and standardization of specifications as a means of advancing the national economy, benefiting the health, safety and welfare of the public, assisting and protecting consumers, promoting industrial efficiency and development, facilitating domestic and international trade and furthering international cooperation in relation to standards".<sup>108</sup> Further, under the Act a Malaysian Standards and Accreditation Council has been established to advise the Minister in respect of standardization policies, programmes, schemes, projects and activities. The Minister may, by notification in the Gazette, declare any specification to be a standard if he or she is satisfied that the affected people have had the opportunity to comment.

113. SIRIM Berhad (Standards and Industrial Research Institute of Malaysia) established in 1975 and incorporated in 1996, is the sole national agency appointed to coordinate the development of standards in Malaysia.<sup>109</sup> As such, SIRIM functions as an arm of Government as well as a development agency and a protector of consumer interests. It aims to ensure that Malaysian Standards take into consideration socio-economic factors, product capability and suitability to local conditions, while it conducts independent third party certification through inspection, testing and certification.<sup>110</sup>

114. In addition to issues covered by the Standards of Malaysia Act 1996, product standards are the basis for newly adopted technical regulations other than sanitary and phytosanitary measures applied to agricultural products (Chapter IV(2)). Packaging and labelling requirements are governed by the Food Act (1983) and the Food Regulation (1985) as well as the Price Control (Labelling by Manufacturers, Importers, Producers and Wholesalers) Order 1990.<sup>111</sup> Since the last Review, the Price Control Order has been amended to require the indication of Recommended Retail Price for powdered milk and cooking oil.

---

<sup>106</sup>The Standards of Malaysia Act 1996 received Royal Assent on 15 July 1996 and was Gazetted on 25 July 1996.

<sup>107</sup>The Department of Standards Malaysia is under the purview of the Minister of Science, Technology and the Environment.

<sup>108</sup>Standards of Malaysia Act 1996, Section 10(1).

<sup>109</sup>In specific areas, such as interconnections in the telecommunications sector, ministries appoint specific committees. For example, in 1994, the regulating authority in this sector (Jabatan Telekom Malaysia) established the Interconnection Steering Committee to set guidelines for the interconnection of basic and cellular services (Chapter IV(4)(iv)).

<sup>110</sup>SIRIM (1996), p. 2.

<sup>111</sup>Under the Food Act and Regulation every package containing food for sale, should not only include the designation and weight of the product, but also information on the manufacturer. In the case of imported food, the name and address of the manufacturer or packer is required, as well as the country of origin and the name of the importer. If the product contains beef, pork, edible fat, oil, alcohol, food additive, vitamins or certain minerals, the label must indicate the presence of these items. In the case of imported food products, the information has to be provided in Bahasa Malaysia or English.

Development of standards

115. Out of 2,416 Malaysian Standards currently in force, 521 (or 21.6 per cent) are based on ISO or IEC Standards. Between 1992 and 1996, 818 new standards were developed of which 63.7 per cent were based on ISO or IEC standards (Table III.16). Malaysian standards are aligned, as far as possible, with international standards, according to the authorities.

**Table III.16**  
**Indicators of standards development in Malaysia, 1992-96**

Indicator	1992	1993	1994	1995	1996
New Malaysian standards	121	150	168	213	166
Appointment of Standard Writing Organizations	0	0	2	1	2
Licences issued under the Product Certification Scheme	94	161	109	163	187
Certificates issued under the Quality System Registration Scheme	79	158	218	225	216

Source: Information provided by the Malaysian authorities.

116. Malaysia participates in ASEAN and APEC initiatives. Initiatives developed in these regional bodies aim to align existing national standards in their region with internationally developed standards. Under the ASEAN Consultative Committee on Standards and Quality (ACCSQ) programme, member countries have agreed to align standards for some electrical and electronic domestic appliances and rubber products within an agreed time-frame. Within APEC, Malaysia is developing an action plan to align its standards with international standards in selected priority areas; electrical and electronic appliances, food labelling, plastic and rubber products.

117. Since the inception of the WTO, and as of 1 September 1997, Malaysia has notified 27 standards to the Technical Barriers to Trade Committee (Table AIII.13). In 1995, Malaysia notified a labelling requirement for cigarettes to the WTO Committee on Technical Barriers to Trade.<sup>112</sup> During 1996, notifications on 19 draft Malaysian standards were made, covering taps, water meters, plastic containers, pipes and fittings, bitumens and other products. During January-July 1997, seven notifications concerning PVC pipes were received.

Developments in technical regulations since Malaysia's 1993 Trade Policy Review

118. In Malaysia, national standards are used as the basis for technical regulations. Since Malaysia's 1993 Review, Malaysian Standards Specification for Protective Helmets for Vehicle Users<sup>113</sup> and Portland Cement<sup>114</sup> have been made obligatory by the relevant regulatory bodies in order to ensure the safety and quality of the products concerned. The Code of Practice on Safety and Health at Work<sup>115</sup> is a

<sup>112</sup>WTO document G/TBT/Notif.95.175, 7 June 1995.

<sup>113</sup>Malaysian Standard 1:1996.

<sup>114</sup>Malaysian Standard 522:Pt.1-3:1985 (not yet enforced).

<sup>115</sup>Malaysian Standard MS 462:1994.

supplementary document of the existing Occupational Safety and Health Act 1994. Technical regulations are applied equally to domestically owned, foreign-owned and joint-venture firms.

### Conformity assessment

119. Any person or organization desiring to be accredited or registered as a conformity assessment organization, a laboratory for testing or calibration, a training organization for conformity assessment, or a person qualified to perform conformity assessment and related services may apply to the Director General of Standards.<sup>116</sup> Department of Standards Malaysia (DSM) accreditation is open to any applicant, local or foreign, who fulfils the accreditation conditions specified and published by the Department. Since 15 August 1990, and as at May 1997, 109 laboratories have been accredited for specific tests and or calibration, while nine such accreditations have been withdrawn.

120. A certification body is an impartial government or private legal entity which is allowed to operate a certification scheme in which interested parties are represented without a single interest dominating. Activities of a certification body may involve the granting of ISO 9000 certificates, product certification to manufacturers, and ISO 14000 certificates to firms, and the upgrading of ISO 9000 certificates for manufacturers of motor vehicles and auto-components. The current Accreditation of Certification Bodies (ACB) scheme of the Department of Standards offers accreditation only to quality system certification bodies on the basis of international accreditation criteria. The application fee in Malaysia is RM 5,000 and the annual fee is RM 5,000. Non-Malaysian applicants are subject to the same application and annual fees as well as to actual professional charges, costs of return flights, and accommodation arising from engaging overseas assessor(s). Appeal to an impartial and independent panel is available. SIRIM Berhad is the first organization in Malaysia to be accredited as an ISO 9000 certification body. As at 22 April 1997, over 1,000 companies have been certified under the ISO 9000 system and seven companies under the ISO 14000 system. The electrical, electronic and telecommunications sector was the largest user of both standards (Table III.17).

**Table III.17**  
**Certification of companies, by quality system and sector, April 1997**

Scheme and sector		Number of companies certified
<u>ISO 9000</u>	(Management standards)	1,059
	Food and agriculture	56
	Pharmaceutical	39
	Chemical	109
	Polymer and material	160
	Building and civil engineering	116
	Mechanical engineering	119
	Automotive industry	66
	Electrical and telecommunications	280
	Services	114
<u>ISO 14000</u>	(Environmental standards)	7
	Electrical appliances	2
	Electronic components	2
	Machinery equipment	1
	Depot operation	1
	Photographic equipment	1

Source: Information provided by the Malaysian authorities.

<sup>116</sup>Standards of Malaysia Act 1996, Section 16.

121. The ISO Quality Assessment Recognition (QAR) and International Accreditation Forum (IAF) establish a system for the accreditation of an ISO certification body. The Department of Standards has close links with its counterparts abroad through the International Accreditation Forum (IAF) and the Pacific Accreditation Cooperation (PAC). Malaysia has a memorandum of understanding with member countries of the Asia-Pacific Laboratory Cooperation (APLAC) and International Laboratory Accreditation Council (ILAC) to cooperate and work towards mutual recognition agreements. The Department of Standards Malaysia has a Memorandum of Understanding with the Joint Accreditation System of Australia and New Zealand (JAS-ANZ).

(v) Government procurement, state-owned enterprises and privatization

122. Government procurement preferences accorded to Malaysian firms constitute government assistance to these firms. Selected state-owned enterprises are required by public procurement regulations to follow similar practices. These preferences not only restrict competition among suppliers, thereby impairing economic efficiency, but also raise the cost to the Government and state-owned enterprises of procuring goods and services. The competitiveness of state-owned enterprises is, in turn, hampered insofar as they are forced by preferential procurement regulations to purchase their inputs from relatively high-cost local suppliers. On the other hand, the Malaysian authorities take the view that government procurement plays a vital role in national development and that since state-owned companies contribute substantially towards Malaysia's development, these companies need to be regulated in terms of procurement procedures. In this context they consider any incidental increase in costs as unavoidable. However, the Ministry of Finance will regularly review these procurement regulations to enable the procuring enterprises to improve their competitiveness.

123. In order to foster economic efficiency, however, some state-owned firms are allowed greater autonomy, including freedom from public procurement regulations, while others have been privatized. Privatization has made a significant contribution to economic growth and government revenue. Efficiency gains resulting from privatization of certain enterprises are indicative of the efficiency losses associated with previous government control over them.<sup>117</sup> Foreign investors are allowed to participate in the privatization exercise in the form of equity financing and provision of management expertise. As a matter of policy, foreign investors are allowed to participate up to a maximum of 25 per cent of the share capital of a privatized entity. In addition, they can also participate in privatized companies listed on the Kuala Lumpur Stock Exchange. This is to enable foreign companies with the necessary expertise and capital to provide the required input for projects involving new technology not available in Malaysia. Foreign participation is also encouraged in order to raise foreign capital required for large projects and to provide access to foreign markets and global linkages.

(a) Government procurement

124. The impact of government procurement regulations goes well beyond current government purchases of goods and services and public investment, as federal operating and development (investment) expenditure, which currently amounts to RM 58.2 billion, is well over 20 per cent of GDP.<sup>118</sup> Federal procurement regulations also apply to procurement by the 58 Statutory Bodies of the Federal Government

---

<sup>117</sup>In the case of Telekom Malaysia, for example, the return on assets and output per employee more than doubled following privatization (Chapter IV(4)(iii)).

<sup>118</sup>Ministry of Finance (1996).

and the three largest Non-Financial Public Enterprises, NFPEs, (Petronas, Tenaga Nasional and Telekom Malaysia Berhad).<sup>119</sup>

125. Among the objectives of federal procurement policies are to encourage use of local materials and components, reduce dependence on imports and diminish the balance-of-payments deficit. The scale of government expenditure suggests that procurement preferences may have a substantial short-term impact on the balance of payments. Such a policy would, however, attract resources from other more efficient uses, thus undermining the competitiveness of Malaysian firms in the long term. In practice, the Malaysian authorities allocate a substantial share of government procurement contracts to foreign suppliers (Table III.18). This policy contributes to the impressive performance of Malaysia's economy.

**Table III.18**  
**Overview of government procurement, 1991-97**

	1991	1992	1993	1994	1995	1996	1997 <sup>a</sup>
Federal government operating expenditure (RM billion)	28.3	32.1	32.2	25.1	36.6	41.8	41.4
Federal government development expenditure (RM billion)	9.6	9.7	10.1	11.3	14.1	14.9	16.8
Total Government contracts <sup>b</sup>	...	...	...	...	13.2	36.6	...
Government contracts awarded to foreign companies <sup>b</sup> (RM billion)	...	...	...	...	5.2	29.2	...

... Not available.

a Budget allocation.

b Including contracts for Statutory Authorities Petronas, Tenaga Nasional and Telekom.

Source: Data provided by the authorities and Ministry of Finance (1995 and 1996), *Economic Report 1995/96 and 1996/97*, Kuala Lumpur.

126. The Government Procurement Management Division (previously known as the Contract and Supply Management Division) of the Ministry of Finance is the central federal procurement agency. On an annual basis, this agency manages procurement amounting to RM 5.3 billion. In 1994, government procurement regulations were revised as part of a regular review, leading to the replacement of 151 Treasury Circular Letters by 34 new Treasury Circular Letters.<sup>120</sup> Contracts are divided into three categories, supplies, services and works. Each Ministry has its own procurement unit, but supplies and services contracts with a value above RM 7 million and works contracts with a value above RM 50 million are referred to the Ministry of Finance.

127. For supplies contracts, Malaysian Bumiputra companies receive a margin of preference of 2.5 to 10 per cent over a reference price. The margin of preference is inversely proportional to a value of not more than RM 15 million. Malaysian Bumiputra manufacturing companies also enjoy preferential treatment of 3 to 10 per cent, with the margin of preference being inversely related to the contract value up to RM 100 million. All supplies contracts with a value between RM 10,000 and RM 100,000, and works contracts up to RM 100,000 are reserved for Bumiputra suppliers. As a matter of planning

<sup>119</sup> Items procured by Petronas, Tenaga Nasional and Telekom with a value of RM 15 million or more must be referred to the Ministry of Finance.

<sup>120</sup> The Financial Procedure Act 1957, as amended in 1972, authorizes the Minister of Finance to manage, supervise, control and direct all federal financial matters.

for procurement of works contracts, at least 30 per cent of the annual value of works contracts is set aside for Bumiputra contractors. Contracts above these limits are open to competitive bidding. Competitive tenders not exceeding RM 10 million are open to 100 per cent Malaysian-owned companies. Tenders with a value ranging from RM 10 million to RM 25 million are open to locally incorporated joint ventures listed on the Kuala Lumpur Stock Exchange (KLSE) with foreign equity of less than 30 per cent. Tenders exceeding RM 25 million are extended to joint-venture companies listed on the KLSE with foreign equity up to 40 per cent. For the delivery of imported goods, five local multi-model transportation companies are requested to give a quotation for the delivery of imported goods, and agencies are required to select the company which tenders the best offer. Countertrade requirements are waived for international tenders.<sup>121</sup> Foreign export- or mixed-credit offers are considered in tender evaluations on the basis of value for money.

128. Open tenders are used to ensure openness, fairness and transparency. All tenders are to be announced in local daily newspapers unless a written exemption has been obtained earlier from the Ministry of Finance. Restricted tenders are used sparingly when the number of suppliers are limited. Direct negotiations are considered if there is only one supplier. All restricted tenders and directly negotiated contracts must be considered and approved by the Ministry of Finance.

129. Treasury Circular Letter 15/1981, relating to State-level procurement, was repealed on 13 April 1995. Federal Tender Boards in States headed by State Development Officers have the authority to approve works contracts up to RM 5 million only. They are not empowered to decide on supplies contracts of any value or works contracts where decisions are non-unanimous. The authority for state government procurement matters rests with the 'state financial authority' who decides on procurement through procurement boards, and acts in accordance with the directions given to him by the Chief Minister of the State. Decisions made in the States are also to be in accordance with the federal rules and regulations pertaining to procurement.

130. In addition to these policies, there are also various informal policies to promote local content. On a case-by-case basis, the Government encourages NFPEs and private companies to make use of local components when undertaking their projects. The Government has announced that every international tender document must now ensure the active involvement of local companies, and the areas in which the local companies can be actively involved should be identified. An added measure is that civil engineering works must be awarded to local companies. All civil engineering works are to be procured locally. However, according to the authorities, the policy is not enforced strictly. Where local expertise is not available, procurement is still open to others. The state-owned oil company, Petronas, for example, requires contractors to procure inputs locally, but this policy appears to be subject to an unspecified preferential margin, and is only applied when local suppliers are able to provide the same quality as foreign suppliers.

131. Public tenders may be contested to the procuring authority if there is a suspicion that specifications for a particular tender are tailored to an individual brand or product; according to the authorities, such practices are strictly prohibited. Challenges have to be filed within 21 days of the tender advertisement, and if sustained lead to cancellation of the tender. So far two objections have been formally received and remedial action has been taken upon investigation.

---

<sup>121</sup>Since July 1992, countertrade has been taken into account in two cases, one with a Commonwealth of Independent States country and one with Italy, dealing with an aircraft contract.



## (b) Non-financial public enterprises and privatization

132. Investment by public agencies and NFPEs accounted for 17.7 per cent of GNP during 1991-95, down from 24.1 per cent during 1981-85, but slightly up from the 14.2 per cent during 1986-90. For the 1996-2000 period, an average of 11.5 per cent share in GNP is envisaged. From 1991 to 1995 out of a total public sector development (investment) expenditure of RM 142.8 billion, 27 per cent was made by the Federal Government, 9.7 per cent by State governments, 8.6 per cent by local and statutory authorities, and 54.7 per cent by NFPEs. While some of these investments earn a commercial rate of return, others are made on the basis of non-commercial criteria reflecting the Government's policy objectives formulated in its economic development plans (Annex II.1).<sup>122</sup> As a consequence of privatisation, the number of the main NFPEs declined from 42 in 1993 to 31 in 1996, although their revenue increased somewhat (Tables III.19 and AIII.14).<sup>123</sup>

**Table III.19**  
**Financial position of NFPEs, 1991-96**  
(RM million)

	1991	1992	1993	1994	1995	1996
Revenue	41,032	42,540	43,679	43,323	46,615	50,101
Operating expenditure	27,835	28,999	30,036	28,520	30,251	33,990
Current surplus/deficit	13,197	13,541	13,643	14,803	16,364	16,111
Development expenditure	11,156	16,147	19,458	16,196	15,222	18,654
Overall balance	2,041	-2,606	-5,815	-1,393	1,142	-2,543
Sources of financing						
Domestic financing	-3,602	-295	-868	-6,875	-11,094	-5,585
External borrowing	1,561	2,901	6,682	8,268	9,952	8,128

Source: Data provided by the Malaysian authorities.

133. Privatization of firms producing goods and services may include the transfer of management responsibility, assets or the right to the use of assets and personnel involved. Privatization is seen as important because it can contribute to economic efficiency, promote economic growth, reduce the Government's administrative and financial burden, increase government revenue and facilitate Bumiputra participation; foreign participation in privatization is expected to assist in promoting global international exposure for Malaysian entities.

<sup>122</sup>At the end of 1996 there were 528 government-controlled companies compared to 504 at the end of 1995. These companies were mainly engaged in providing services (157 companies), manufacturing (74 companies), investment holding (48 companies), plantations (30 companies), property development (37 companies), recreation and resorts (29 companies), transportation (29 companies), agriculture (17 companies), construction (17 companies), and other activities (58 companies). State-owned companies in manufacturing, investment holdings, finance, services and property development accounted for 83.8 per cent of investment by government-controlled companies. Ostensibly 323 out of the 481 government-controlled companies that submitted financial information were profitable.

<sup>123</sup>Non-Financial Public Enterprises (NFPEs) are public sector agencies undertaking the sale of industrial and commercial goods and services. They include statutory bodies, government-owned or government-controlled companies and agencies owned by statutory bodies. Ownership and control refer to a government or public-sector agency controlling more than 50 per cent of total equity. The numbers in the text refer to the NFPEs with minimal annual sales of at least RM 50 million.

134. Malaysia's privatization policies were set out in the Privatization Master Plan (PMP) published in 1991. Together with the PMP, the Government introduced the Privatization Action Plan (PAP) which is a two-year rolling plan to assist the annual implementation of the programme. The PAP is reviewed annually with a view to identifying measures to expedite the implementation of the programme and to determine the entities to be privatized in the following two-year period. At the end of 1995, there were 12 different methods of privatization in use, including sale of equity, sale of assets, lease of assets, management contract, build-operate-transfer, build-operate-own, build-operate, build-transfer, land development, management buy-out, joint ventures and asset swap.<sup>124</sup> As a general rule, the authorities seek to use the method which results in a maximum degree of private-sector involvement and a reasonable return to the Government. The Government provides various forms of support, including soft loans, tax incentives and other concessions, to selected projects which have a high social component. The privatization process is managed by the EPU in the Prime Minister's Department through the National Privatization Committee (Table II.1). Foreign consultants may participate in studies and provide advice on privatization.

135. Foreign companies may take shares in privatized companies up to a limit of 25 per cent, under certain circumstances.<sup>125</sup> Of the 42 entities which were privatized during 1993 to 1997, foreign interests held shares in five of 15 major companies for which records were available. Only in the case of Malaysian Airlines did the foreign share exceed 10 per cent.<sup>126</sup> At the end of 1995, a total of 24 privatized companies were listed on the KLSE with a total market value of RM 124.7 billion (22 per cent of total market capitalization). These listings made a major contribution to the turnover on this stock exchange. Foreigner investors are allowed to invest in the listed companies up to the prescribed limits (Chapter IV(4)(ii)).

---

<sup>124</sup>During the 1991-95 period, a total of 204 projects were privatized in all sectors of the economy, including infrastructure and government services. During this period 46 projects were privatized in the construction sector, of which 23 through sale of assets and 13 through build-operate-transfer modes. Overall, the sale of equity was the mode used in 94 (out of the total 204) projects, of which 27 were in the manufacturing sector, 13 in wholesale, retail trade and hotels and restaurants, and another 13 in finance, real estate and business services. However, privatization is an ongoing process with the number of privatized projects increasing from 25 in 1991, to 27 in 1992, to 40 in 1993, to 47 in 1994 and 65 in 1995. Approximately 55 were federal projects, the remaining were State projects. During this period the proceeds from sales of equity were RM 11.8 billion compared to revenue from sales of assets of RM 2.3 billion, and an additional capital expenditure of RM 51.6 billion was saved. A total of 43,000 public sector employees were transferred to the private sector. Selected data suggest that productivity improved significantly in the companies following their privatization (Government of Malaysia (1996a).

<sup>125</sup>Participation of foreign firms is permitted if their expertise is required and not locally available; foreign participation is required to promote exports; local capital is insufficient to absorb the share capital offered; and the nature of the business requires global linkages and international exposure. Foreign participation is not restricted to any particular sector, but is normally considered for projects involving advanced technology as well as projects requiring active research and development efforts.

<sup>126</sup>Of the 42 entities which were privatized during 1993 to 1996, records are available for the share of foreign equity in 15 major companies. The total sale value of these 15 companies was RM 8 billion. Non-Malaysian investors hold 24.09 per cent of the equity of Malaysian Airlines, privatized in 1994 at a total sale value of RM 3.1 billion by sale of equity; 0.49 per cent of Petronas Dagangan Sdn. Berhad privatized in 1994 through public listing at a value of RM 264.6 million; 6.29 per cent of Heavy Industries Corporation (HICOM), privatized in 1995 through a sale of equity of RM 1.7 billion; 1.8 per cent of Petronas Gas Berhad, privatized in 1995 at a public listing valued at RM 1.9 billion; 4.14 per cent of Perhak SEDC Subsidiaries, privatized in 1996 through sales of assets and sales of equity valued at RM 208 million.

136. Privatized companies are, in selected cases, obliged to assume socio-economic obligations. Examples are vendor development, marketing arrangements, training, technology transfer and research and development (section (2)(iv)). In this context, seven of the largest privatized companies allocated RM 119 million to training programmes in 1995, up from RM 79 million in 1993 and RM 90 million in 1994.<sup>127</sup> Privatization is thus used as an instrument to facilitate the transfer and development of technological and entrepreneurial skills.

137. In the absence of a comprehensive competition policy, the authorities established 11 regulatory authorities to maintain standards and protect consumer interests in terms of pricing, availability and quality of service as well as to ensure the healthy development of the industry. Regulatory authorities were established to cover electricity and gas supply, ports, airports, highways, posts, telecommunications, railways and sewerage (section (vi) below). However, the "regulatory authorities were not able to function effectively particularly due to the difficulty in operating within a rapidly changing technological environment".<sup>128</sup> The authorities have ensured that all privatized roads and highways have alternative routes, thus providing some competition to the privatized entities.

(vi) Competition policy and related issues

138. Malaysia's economic policies are aimed at creating an entrepreneurial climate in which companies are prepared to take on the challenges of trade liberalization. In this context, government intervention has been reduced and privatization has allowed for greater flexibility. However, greater freedom for private firms may also allow a small number of firms to establish a dominant market position in which not all benefits of liberalization are passed on to the consumer. The risk of a small number of firms resorting to anti-competitive practices may increase since the control on such behaviour is considered inadequate; for example, there are no controls on anti-competitive practices originating from the licensing of intellectual property. Furthermore, privatization of "natural monopolies" (e.g. the infrastructure field) may have increased the scope for private anti-competitive practices. A draft competition law has been prepared by the Ministry of Domestic Trade and Consumer Affairs and is under review following comments from other government organizations and the private sector.

Existing anti-trust policy instruments

139. At this stage, there is no comprehensive competition law or regulation, although sector- and product-specific regulations do exist. Import or export cartels are not necessarily illegal and no records exist of possible cartels. On the other hand, anti-competitive practices of privatized firms in the domestic market are to some extent controlled by regulatory authorities in charge of selected sectors (section (v)).

140. The Malaysian Code on Take-overs and Mergers 1987 has the force of law by virtue of existing provisions of the Securities Commission Act 1993 (Chapter IV(4)(ii)). However, it has limited legal

---

<sup>127</sup>Other examples include the vendor programmes undertaken by privatized companies. For example, Perusahaan Otomobil Nasional Berhad agreed to a RM 569.1 million Component Scheme Promotion; Telekom Malaysia Berhad agreed to a RM 452.6 million Entrepreneurs Development Programme and a Credible Supplier Scheme; Tenaga Nasional Berhad agreed to a RM 337.2 million Entrepreneurs Development Programme, an Umbrella Scheme, a Credible Contractor Scheme and a Strategic Joint-venture; Indah Water Konsortium Sdn. Berhad agreed to a RM 6.3 million Construction of Treatment Plant and Pumping Station Sewerage System and Pumping Station Network. (Government of Malaysia (1996b), p. 211)

<sup>128</sup>Government of Malaysia (1996b), p. 216.

enforceability; where there is a breach of the Code, the Securities Commission can merely issue a private reprimand, public censure, or temporarily or permanently deprive the person of exchange facilities.

141. Price controls, also used by Malaysia, may also prohibit producers from taking advantage of a dominant position on the domestic market through anti-competitive practices. Price controls for certain "basic" and "strategic" goods are intended to ensure reasonable prices as well as sufficient supply. Items currently subject to price controls are white refined sugar, wheat flour, rice (standard and premium), bread (standard loaf 250-1,000 g.), chicken, mild round steel bars, ordinary Portland cement, petroleum products (leaded and unleaded petrol, diesel and liquified petroleum gas). The price of rice is controlled by law and is administered by the Ministry of Agriculture under subsidiary legislation Rice (Grade and Price Control) Order 1992. Prices of the other items are administered by the Ministry of Domestic Trade and Consumer Affairs while their supplies are administered under the Control of Supplies Act 1961 (Table AII.1).<sup>129</sup> The price controls mentioned above generally apply to domestically produced goods. Imports are allowed only when a shortage occurs and are generally subject to the same price controls as domestically produced goods. Import and export licensing applies to most goods subject to price controls (sections (2)(iii) and (3)(ii)). The Government's aim is to stabilize the prices of these items as they are considered as essential for the lower income groups. Prices of some telecommunications services are also subject to maximum levels determined by Jabatan Telekom Malaysia, a regulatory authority under the purview of the Ministry of Energy, Telecommunications and Posts (Chapter IV(4)(iii)).

142. Sole rights to intellectual property are, in economic terms, a monopoly on the use of such property to generate a return on the investment involved in its creation. The WTO TRIPS Agreement recognizes that "some licensing practices or conditions pertaining to intellectual property rights which restrain competition may have adverse effects on trade and impede the transfer and dissemination of technology".<sup>130</sup> Issues relating to intellectual property are, with others, being addressed in the consideration of the enactment of a competition law, as mentioned above.

---

<sup>129</sup>The producers of these goods are required to refer any proposed price increases to the Ministry. The production and distribution of these items are subject to licensing under the Control of Supplies Act 1961. The licences are valid for a period not exceeding five years and are subject to payment of an annual fee of RM 50.00 for a manufacturer, RM 25.00 for a wholesaler and RM 10.00 for a retailer. Applications are rejected only if there is reason to believe that the place of business is not suitable. An appeal against the refusal to issue a licence may be made to the Minister, whose decision is final. A total of 911 applications were received and approved during the period 1 January 1997 to 19 April 1997.

<sup>130</sup>WTO Agreement on Trade-Related Intellectual Property Rights, Section 8: Control of Anti-competitive Practices in Contractual Licences, Article 40(1). Further Article 40(2) of this Agreement notes that "Nothing in this Agreement shall prevent Members from specifying in their legislation licensing practices or conditions that may in particular cases constitute an abuse of intellectual property rights having an adverse effect on competition in the relevant market".

### Annex III.1

#### Timeframes specified in Malaysia's Anti-dumping and Countervailing Measures Legislation and Regulations

Under Malaysia's anti-dumping and countervailing legislation, a request for an investigation may be submitted by "... a producer, producers or an association of producers of a like product on behalf of the domestic industry producing such product".<sup>131</sup> The Government is obliged to determine within 14 days upon receipt of the submission whether it is an adequate petition. On the basis of the information provided in the request, the Government may decide to launch an investigation if there is enough evidence to warrant it, and if such an investigation is in the public interest. In special circumstances the Government may initiate an investigation of its own accord.<sup>132</sup> Prior to initiation of a countervailing investigation, the Government must provide any interested foreign government with the opportunity for consultation. The Government must then publish its decision regarding whether to launch an investigation, and if it does decide to do so, the proposed time-limits for the investigation.

For the purpose of an investigation, a subsidy is defined as a direct or potentially direct transfer of funds or liabilities, forgone government revenue, government-provided goods and services other than general infrastructure or purchased goods, or any form of income or price support.<sup>133</sup> Dumping is assessed on the basis of a comparison with the sale of comparable merchandise in the domestic market of the exporting country during the six-month period preceding the investigation or any additional or alternative period the Malaysian Government deems relevant or necessary to permit a proper comparison. In the event that such sales do not permit a proper comparison, the Government may consider comparable merchandise exported to any third country or a constructed value.<sup>134</sup> A specific-company export price and normal value are calculated on a weighted average basis.

The investigation determines whether a subsidy has been provided or a dumping margin exist with respect to the merchandise in question, and, if so, whether injury is found to exist in any of the following ways: the domestic industry in Malaysia producing the like product is materially injured, or threatened with such injury, by reason of the merchandise in question; or the establishment of such industry in Malaysia is materially retarded by reason of the subject merchandise. The Government may prepare and distribute questionnaires to any party relevant to the investigation and all parties receiving a questionnaire are given 30 days to reply. Within 90 days (or, in special circumstances

---

<sup>131</sup>Identical text in the Countervailing and Anti-Dumping Act 1993 was used for the initiation of a countervailing duty investigation (Article 4(1)) (Article 20(1)).

<sup>132</sup>Countervailing and Anti-Dumping Act 1993, Sections 4(6) and 20(6).

<sup>133</sup>Government payments to a funding mechanism or entrusted to or directed through a private body in order to carry out any one or more of the listed functions is also considered a subsidy (Section 24(d) of the Countervailing and Anti-dumping Duties Regulations 1994).

<sup>134</sup>Among other things, a third country has to be selected on the basis that the merchandise to the third country is similar to that exported to Malaysia, the market structure and development is similar and the sales are conducted in the ordinary course of trade. A constructed value must be the sum of the costs of materials and other processing methods employed in similar merchandise, the amount of general expenses and an amount of profit.

120 days) from the publication of the initiation of the investigation, the Government is obliged to make a preliminary determination. If a mutually agreed solution is reached, the Government must publish a notice setting forth the terms of the mutually agreed solution. Up to 30 days prior to a final determination, a petitioner may request retroactive imposition of final duties. A final determination must be made within 120 days of the publication of the preliminary determination. During a period of 14 days from the notice of the final decision, it can be appealed to a tribunal established for this purpose. An administrative review must be conducted only after one year has elapsed from the date of publication of the decision.

## Annex III.2

### Funds targeted at small and medium-sized enterprises

Small and medium-sized companies specializing in technological advanced production are eligible for grants available under the Industrial Technical Assistance Facility (ITAF).<sup>135</sup> The facility consists of a Consultancy Service Scheme implemented by Bank Pembangunan Malaysia Berhad, which has a total allocation of RM 10 million and allows for a maximum grant of RM 40,000; a Product Development and Design Scheme implemented by SIRIM, which has a total allocation of RM 20 million and allows for a maximum grant of RM 250,000; a Quality and Productivity Improvement Scheme implemented by SIRIM, which allows for a total allocation of RM 15 million and a maximum grant of RM 250,000; and a Market Development programme implemented by MATRADE with a total allocation of RM 5 million and a maximum grant of RM 40,000. In 1993 a total of RM 3.8 million was allocated to 137 successful applicants, in 1994 RM 7.2 million to 291 applicants, in 1995 RM 8.5 million to 418 applicants and in 1996 RM 9.4 million to 392 applicants.

In 1993 a Soft Loan for Quality Enhancement was established to provide facilities to finance purchases of machinery and equipment for Bumiputra-owned small and medium-sized manufacturers in the furniture and food-based industries. In 1994 the scope was widened to cover the automotive, electrical and electronics, plastics, machinery, engineering, and textiles sectors. Under this scheme, 28 loans were approved in 1993, 30 in 1994, 50 in 1995 and 19 in 1996.

The Malaysian Industrial Development Finance (MIDF) agency manages the Scheme for Modernisation and Automation with the objective of encouraging small and medium-sized enterprises to use modern machinery and/or replace old machinery. The loans cover no more than 75 per cent of the cost of the machinery and equipment, and carry an interest rate of 4 per cent. Under the scheme 13 loans were approved in 1993 compared to 26 in 1994, 42 in 1995, and 39 in 1996. As at 31 August 1997, a total of RM 62.35 million had been allocated to the MIDF under the scheme.

143. The ASEAN-Japan Development Fund scheme is designed to promote the development of Malaysian-controlled small and medium-sized enterprises. The funds are provided by the Japanese Overseas Economic Cooperation Fund (OECF) and the Export-Import Bank of Japan (Eximbank) and are channelled through four Malaysian development finance institutions.<sup>136</sup> Loans of the OECF are somewhat smaller and targeted at less-capitalized firms, but do carry a lower interest rate than those financed by the Eximbank (6.5 per cent per annum compared to 7.75 per cent). Between 1988 and March 1997, a total of RM 588 million has been allocated from this facility to 450 applicants.

---

<sup>135</sup>Qualifying companies are required to; process production facilities or have access to facilities approved by the government; be involved in manufacturing or services or any related project under the government franchise scheme, be incorporated under the Companies Act 1965; have shareholders' funds of not more than RM 2.5 million; have at least 70 per cent of their equity held by Malaysian interests, and at least 51 per cent should be owned by other small and medium-sized enterprises, or individuals.

<sup>136</sup>Malaysian Development Finance Berhad, Bank Industry Malaysia Berhad, Bank Pembangunan Malaysia Berhad and Bank Pertanian Malaysia.