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TRADE POLICY REVIEW

MALAYSIA

MINUTES OF MEETING

Addendum

Written Responses to Questions

The following communication was received on 23 January 1998 from the Mission of Malaysia responding to written questions raised during the TPRB Meeting of Malaysia.

MACROECONOMIC STRATEGY TO ADDRESS CURRENT ECONOMIC SETBACK

1. The current economic difficulties faced by Malaysia are mainly attributed to the massive shifts in capital flow and the use of massive funds to attack its currency that is perceived to be out of alignment. It is apparent that the recent speculative activities have been excessive and the depreciation of the Malaysian Ringgit have gone beyond levels that should reflect fundamentals.
2. In Malaysia's view, the risks associated with such flows can be minimized if the country's external payments current account and reserve position is kept at equilibrium or better still in surplus. This, has necessitated a policy response that would help improve the level of national savings and keep the level of investment at a prudent level with the view to building up external reserves and reducing external liabilities.
3. We believe we can achieve high growth with lower rates of investment if there are increases in productivity. In this regard, greater priorities will be accorded to more productive investments particularly, those which can generate higher rates of return in terms of foreign exchange earnings, while discouraging less productive investments in the non-tradeable sector. This is why the 1998 Budget has provided incentives to encourage increases in export as well as reinvestment for purpose of raising productivity and competitiveness.
4. The private sector has been investing more than it can save since 1990. It has been building up its external and domestic debts to finance investments. This has adversely affected the country's balance sheet.

5. Hence, there is a need to increase savings by reducing wastage and unnecessary expenditure. There are already too many investments in some segments of the construction sector at this point of time. This has led to higher imports and a larger amount of domestic output being consumed locally when it could have been exported.

6. To address this, higher import duties have been imposed on materials and machinery used by the construction sector. This measure should also encourage the use of locally produced materials as well as reconditioned and refurbished machinery.

7. Through savings from unnecessary wastage and expenditure as well as the savings generated through the 2 percentage reduction in corporate tax provided by the Government in the 1998 Budget, the private sector should be able to finance a large proportion of its investment through internally generated funds. This will help to reduce its exposure to risks associated with exchange and interest rate movements.

8. There is also the need to reduce the level of domestic loan growth for prudential reasons, as the present level of growth is high when we compare to GDP growth. Reducing credits will be a critical ingredient of Malaysia's macroeconomic adjustment. The banking institutions are now working with the Central Bank to lower the level of loan growth to a manageable level (15 per cent) by the end of the next year. Loans for productive investments, especially those in expanding the export capacity of the economy and increasing productivity will not be affected. In restraining credit growth, a wide range of instruments will be used without over reliance on one instrument.

9. To minimize the impact of government expenditure on domestic demand, Malaysia will continue to exercise a high degree of financial prudence. This is seen in the surplus recorded by the Government in its overall financial position since 1993. The Government is budgeting for a budgetary surplus of RM 3 million in 1998.

10. Given the strong investment confidence in the real economy, we are confident in the real economy, that the 8 per cent growth we have projected for this year and a maximum of 7 per cent for next year will be achievable.

11. If our private sector exercised greater prudence and undertakes strategic adjustments to minimize their expenditure to risks associated volatility in the financial markets as well as to strengthen their competitive position we should be able to overcome the short-term difficulties caused by turbulence in the financial markets.

12. While the fundamentals of the economy remain strong, the Government will continue to monitor closely the impact of the ongoing volatility in the financial markets. If additional measures are needed to strengthen further the resilience of the economy, in the light of the changing situation, this will be done.

1998 Budget Measures

Several delegations particularly New Zealand, Canada, Japan, Australia, the European Communities and the United States raised issues on:

- Tariff increases on certain products.
- Consistency of the measures vis-à-vis WTO obligations.
- The time-frame for reviewing or removing such measures.
- Clarification on licensing for heavy machinery.
- Steps to promote use of local goods and services.
- Incentives provided under the 1998 Budget.

Response

- Malaysia is mindful of her international obligations and commitments especially those under the WTO.
- The tariff increases and other measures introduced in the Budget are consistent with Malaysia's rights and obligations under the WTO. For example, tariff increases for the various products are within the bound rates. One-third of the items are excluded from the offer list. The tariff increases do not apply to automotive components.
- The measures in place are temporary.
- Prior approval from MITI is only applicable to a small number of heavy machinery. The automatic licensing is for monitoring purposes to ensure existing machinery that are left idle are utilized. It is intended to optimise the use of such machinery to save on foreign exchange.
- Since the requirement was put in place all applications made have been processed and approved.
- Local sourcing is not made mandatory. Given the current economic problems, the private sector and the public sector have been urged to buy products available locally. To enhance awareness a "Made in Malaysia Exhibition" would be held to promote products and services made in Malaysia. Information such as directories would be compiled and disseminated by trade associations and relevant government agencies. The local suppliers are required to be competitive in their offerings.
- The incentives to promote exports are in accordance with Malaysia's rights and obligations under the WTO.
- The incentives introduced are within the parameters of existing WTO disciplines and the phasing-out of export subsidies would be undertaken within the time-frame stipulated in the WTO Agreement.

Regional Arrangements
(ASEAN, AFTA, APEC)

On AFTA, questions by Hong Kong, New Zealand, Japan, Australia touched on:

- Changes to tariffs.
- Trade diversion effects of AFTA.
- WTO consistency of AFTA and related notification.

Response

- Changes of specific duties, to *ad valorem* are gradually being undertaken by ASEAN member countries. MFN rates will also be gradually reduced.
- Do not envisage trade diversion effects of AFTA as a large part of ASEAN's trade is with non-ASEAN partners.
- Notification already made in the Committee on Trade and Development. As notified under the Enabling Clause AFTA is not a trade restrictive arrangement.

EC enquired on Malaysia's "down-payment" under APEC.

Response

- Details outlined in Malaysia's IAP submitted in Vancouver.

MALAYSIA'S INDIVIDUAL ACTION PLAN HIGHLIGHTS

Tariffs/NTMs: Malaysia is committed to the trade liberalization initiatives under the multilateral trading system and in the context of liberalization under AFTA. Malaysia has a liberal tariff regime, with an average nominal tariff of 7.8 per cent and average trade-weighted average of 4.1 per cent. Since 1994, Malaysia has reduced tariffs on more than 5,000 items. Close to 50 per cent of tariff lines have zero duty, while approximately 60 per cent of tariff items have duties of below 20 per cent. A study is on-going on about 250 products with high tariff levels for eventual reduction. Malaysia will also reduce tariffs on information technology products to zero by the year 2000 as part of Information Technology Agreement. Malaysia will also participate in APEC's Early Voluntary Sectoral Liberalization exercise, where feasible. In the area of Non-Tariff Measures, there is on-going review and study of NTMs for their possible relaxation or abolishment. In the 1998 Budget, tariffs on 60 items representing leather goods and selected apparel items will be reduced.

Services: The services regime is relatively open, with market access allowed in many service sectors. Malaysia made a number of market access commitments under GATS, including additional commitments to liberalize the financial sector. Malaysia will allow higher foreign investment in domestic broking firms, permit non-Malaysian owned offshore companies in Labuan to undertake portfolio investment in Malaysia and further facilitate the delivery of financial services. Commitments in business, professional, telecommunications and other hospitality services were also made.

Investment: Malaysia maintains a relatively open investment regime, with liberal foreign equity ownership policies and minimal restrictions on key managerial positions. Malaysia intends to continue with these policies. Additional measures to enhance the transparency of its investment regime, promote on-going dialogue with the private sector and review existing investment regulations in light of the APEC non-binding investment principles will also be undertaken.

Malaysia welcomes investment in the Multimedia Super Corridor (MSC). Companies with MSC status are entitled to operate tax-free for up to ten years or receive a 100 per cent Investment Tax Allowance. In addition, such companies are exempted from equity requirements and unrestricted and unlimited employment of local and foreign knowledge workers by MSC companies will be permitted.

Standards: Malaysia has published a total of 2,416 standards to date. It will continue to align Malaysian standards to international standards. Higher priority will be assigned to alignment of standards in areas identified as priority in APEC. Participation in standardization and accreditation bodies will be enhanced.

Malaysia has established mutual recognition arrangements (MRAs) with several economies and welcomes further developments in these areas. It will participate in the APEC MRA on Conformity Assessment of Electrical/Electronic Products and MRAs on laboratory accreditation and accreditation of quality system certification bodies.

Customs: Malaysia will accelerate the process of harmonization with the WTO Valuation Agreement. It is also upgrading its public dissemination information facilities such as creating Malaysian Customs Internet Homepage and introducing an Electronic Board displaying customs-related information.

Intellectual Property Rights: Malaysia will fully implement its WTO TRIPS obligations by 1999, a year ahead of schedule. Amendments to the Patents, Trade Marks and Copyright Acts and the enactment of the Performers' and Designs of Integrated Circuits laws are expected by 1998.

Competition Policy: Malaysia encourages healthy competition in the market place and fair play of market forces of supply and demand. The competitive environment will continue to be enhanced

through liberalization, deregulation and privatization. It will undertake studies on the need and implications of a competition law and the holding of seminars/dialogues with the private sector in this area will be undertaken.

Government Procurement: Policies, procedures and practices will be reviewed from time to time in line with the process of progressive liberalization. Malaysia's procurement policies are based on the principles of public accountability, transparency, value for money and fair competition. Malaysia will also participate in the discussions of the WTO Working Group on Transparency in Government Procurement.

Deregulation: Malaysia has reduced substantially government involvement in business and promoted private sector initiatives in economic development. To promote efficiency, a major programme on privatization was undertaken. To date, 416 projects have been privatized. Further deregulation will be undertaken.

Dispute Mediation: Malaysia has in place dispute settlement procedures for trade and investment disputes between governments, between private parties and government and between private parties themselves. Malaysia has signed 75 Investment Guarantee Agreements which has procedures for settlement of disputes and is a party to the Convention on the Settlement of Investment Disputes (Washington Convention) and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention). Malaysia also adheres to the WTO dispute settlement procedures.

Business Mobility: Malaysia has visa-free arrangements with 14 of the other 17 APEC economies. Review of visa arrangements and further liberalization of visa requirements on a reciprocal basis will be undertaken.

Implementation of the Uruguay Round: Malaysia ratified the WTO Agreement on 6 September 1994. Malaysia has undertaken and will continue with actions to implement its Uruguay Round commitments in the area of tariffs, services, TRIPS and TRIMs.

Malaysia's participation in WTO Agreements and Undertakings, including notifications and timetables for compliance

Canada raised this issue.

Response

- As outlined in the Government of Malaysia's report WT/TPR/G/31, Malaysia has already submitted various notifications according to specific deadlines and time-frame and initiated actions to modify existing legislations and policies as well as introduce new legislations.

Import Regime

Tariff Reform

EC enquired on prospects of Malaysia reducing tariff escalation and increasing the coverage of tariff bindings as well as whether high specific tariffs for alcoholic beverages are applied on assumption that all imported bottles were of 0.75 litres in size.

Hong Kong enquired if duties for textiles would be reduced.

Response

- On the possibility of reducing tariffs on textiles, tariff escalation and expanding the coverage of tariff bindings, Malaysia will continue to pursue tariff liberalization.
- Import duties on spirituous beverages are based on either the actual volume or alcoholic strength of the contents. As such, the observation by the EC is not true.
- Current duties for textiles are between 0-30 per cent which are considered low compared to those in other developing countries.

Canada and Brazil enquired on tariff protection for infant industries.

Response

- The request for tariff protection is made by the company or industry supported by proper analysis and data. The case is normally examined in consultation with the industry. The SACT considers the request on a case-by-case basis and takes fully into account the interest and concerns of both producers and consumers as well as Malaysia's tariff commitments under the WTO and ASEAN. Tariff protection is only accorded temporarily between 3 to 5 years only. The general attitude of SACT is to promote competition and not protection *per se*. In the review period, the products which enjoyed tariff protection include corrugating medium testliner/craftliner paper, polypropylene filament yarn. PVC floor covering, buffed tyres, titanium dioxide pigments, high density and low density polyethylene resins with duties around 15 per cent to 30 per cent.

Trade Facilitation

Rules of Origin

Japan enquired whether Malaysia has rules of origin on non-preferential trade and how a products' country of origin is determined.

Response

- As per Malaysia's notification to WTO, we do not have any non-preferential rules of origin.
- Rely on accompanying documentary evidence via declaration in Customs form.

Canada enquired what measures had been taken by Malaysian Customs to facilitate trade

Response

- Trade facilitating measures taken include:
 - legislative amendments;
 - establishment of inland clearance;
 - inspection of goods at importer's premise;
 - release of goods based on documentary evidence with minimal physical examination where possible.

Import Licensing

Several delegations, particularly Japan, Hong Kong, EC and the United States enquired on Malaysia's import licensing mechanism.

Japan enquired on import licensing applied to Haiti.

Response

- Non-automatic licensing is only confined to a small number of products. It is not the intention to restrict trade but to pursue socio-economic development objectives. For example, the licensing mechanism applied to the automotive sector is to promote development of the domestic industry which in turn acts as a catalyst for development of other local industrial sub-sectors such as components manufacturing.
- The Secretariat reported that licensing requirements were most pervasive in certain products and that 17 per cent of Malaysia's tariff lines are currently subjected to licensing. To put things in perspective, about 60 per cent of the total number of items subject to licensing are related to timber, the reason for which is for conservation, sustainable forest management and ensuring quality.
- Licensing is usually applied for monitoring purposes or in compliance with public safety, protection of plant and animal health and national security requirements. Only in limited

cases are licensing applied to promote the development of the local industry. From time to time, the Government reviews the licensing requirements in line with Malaysia's liberalization and trade facilitation efforts.

- The import licensing applied to Haiti was introduced to enforce the UN Resolution in 1993. Following the Security Council's Resolution 944 the sanction against Haiti was terminated on 29 September 1994. As such, the measure is no longer applied by Malaysia.

Anti-Dumping

Questions raised by Brazil, New Zealand and European Commission pertaining to:

- Timetable for bringing Malaysia's anti-dumping legislation in accordance with WTO rules.
- Hong Kong claimed Malaysia frequently resorted to anti-dumping action.
- EC raised the issue on individual calculation of dumping margin.

Response

- The amendments to the existing Countervailing and Anti-dumping Legislations are being finalized and will be tabled in Parliament at its next sitting.
- Meanwhile, Malaysian AD authorities are applying the WTO provisions administratively. We have officially indicated this to the Committee on Anti-Dumping.
- On Hong Kong's claim that Malaysia has frequently resorted to AD action is not true. Only three cases were initiated since 1995. Malaysia's Anti-Dumping Legislation only came into effect in 1994. There were no cases between 1990-1994, as the legislations were not in place yet. (In contrast, there were 370 WTO cases initiated by 21 WTO members in the same period.)

Standards and SPS

Several specific questions on standards have been forwarded by Canada, Australia and Hong Kong, while one on SPS by Japan. The answers to the questions are as follows:

- Policy formulation on environment and standardization is the responsibility of the Ministry of Science, Technology and Environment with inputs from various agencies and private sector bodies.
- The time-frame for harmonization of the 20 priority products identified by ASEAN is by the year 2000. These products can be categorized into electrical and electronic products and/or components and rubber products. Examples include air-conditioners, refrigerators, parts of TV and Radio, rubber gloves and condoms.
- There are four manuals for the regularization of production and utilization of animal vaccines. These include : the Manual of ASEAN Criteria for Accreditation of Animal Vaccine Testing Laboratories and the Manual of ASEAN Standards for Annual Vaccines.

- Malaysia's standards will be aligned to international standards or relevant parts of them, which are developed and agreed to on a multilateral basis.
- The consultative mechanism between the Ministry of International Trade and Industry and SIRIM Berhad.
- There are no private sector standards development bodies in Malaysia. The responsibility for the appointment of the Standards-Writing Organizations (SWOs) rests with SIRIM Berhad.
- SIRIM is a certification body while the Department of Standards, is an accrediting body. For ISO 9,000 certificates, a few companies have sought clarifications on SIRIM Berhad's status as the accredited ISO 9000 certification body, while none have done so as regards the ISO 14,000 certificates
- Malaysia participates in ISO/TC 207 Sub-Committees 1, 2, 3, 4, 5 and 6. Malaysian firms are also a part of the Malaysian delegation to ISO/TC 207.
- Out of 109 laboratories accredited by the Department of Standards Malaysia, one is a foreign calibration laboratory. Regular surveillance assessments are conducted twice in three years on all accredited laboratories during the validity period of accreditation.
- The Malaysian Standards and Accreditation Council comprise a Chair and his Deputy, a representative of SIRIM, five representatives from relevant Government Ministries and not more than seven representatives from the private sector and NGOs experienced in or having special knowledge in matters related to the Council.
- the MOU between DSM and the Joint Accreditation System of Australia and New Zealand is not equivalent to mutual recognition agreements. It is a co-operative arrangement whereby the parties exchange policy and quality system documents and procedure documents and share experiences.
- On the question of Malaysia's experience with regard to environmental requirements, including labelling:
- Malaysia cannot accept any attempt to link trade with non-trade issues such as certification and labelling as a condition to timber trade. Certification and labelling of timber products involve the usage of a set of criteria and indicators to evaluate the extent of sustainable forest management practices. The criteria and indicators differ from one country to another to suit the different geographical and local conditions. In many instances, third party initiatives particularly in temperate countries have been advanced without adequate understanding of the actual situation in tropical countries. Furthermore, there is a great deal of differing perceptions and interpretations regarding the issue of sustainability.
- The formulation of criteria and indicators for sustainable forest management for a country is best understood by local experts.
- The National Committee on Sustainable Forest Management oversees the implementation of the Malaysian criteria and indicators (MC & I) based on ITTO

guidelines. We are also in the process of establishing the National Timber Certification Council to undertake the verification exercise involved in the labelling and certification process.

SPS

The Acts to be amended include the Animal Ordinance 1953, the Fisheries Act (amendment) 1993 and the Fisheries Development Board of Malaysia Act.

Securities

- Japan and Hong Kong had raised questions on the following:
 - commercial presence of branch of foreign incorporated security companies;
 - representative office of foreign brokerage to be incorporated under Malaysian Law;
 - foreign equity participation for foreign stockbroking, companies.

Answer

- (i) There are no plans currently to allow branches of foreign stockbroking companies to become member companies of the Exchange.
- (ii) Representatives offices of foreign stockbroking companies licensed as investment advisers are required to be locally incorporated under the Companies Act 1965. All corporations licensed under the Securities Industry Act 1983 to carry out the activities specified therein are required to be incorporated in Malaysia. We do not consider this to be an over strict regulation.
- (iii) Under our present legislative framework, the commitment to allow 49 per cent foreign equity by the year 2000 would not need to be implemented in the legislation.

International Tourism

Japan had asked about foreign equity participation in tourism services and the licensing requirement for tour operator, travel agency and tourist guides.

Answer

- Licences for tour operators, travel agency and tourist guides can be obtained from the Malaysian Tourism Promotion Board. We do not consider the licensing requirement for the above service providers to be market access restrictions. The licensing requirement is necessary for monitoring to ensure that quality services are provided and for data collection purposes.
- On joint venture and foreign equity participation, we wish to inform that there are no plans to change the existing policy.

Financial Services - Insurance

Japan and Hong Kong had raised issues relating to foreign equity and new licence.

Answer

- Malaysia has made an offer of an aggregate foreign shareholding not exceeding 30 per cent in insurance companies transacting direct insurance business. This offer reflects the National Development Policy of the Government.
- However, Malaysia has relaxed this 30 per cent limit to 51 per cent at the recently concluded WTO Financial Services Negotiation with respect to foreign branches operating in Malaysia which is required to incorporate locally by 30 June 1998. This concession is also given to the existing foreign shareholders of locally incorporated insurance companies who were the original owners of these companies.
- No new licenses to conduct direct insurance business have been issued to foreign as well as local investors since 1981. The policy was adopted for the purpose of consolidating the insurance industry which is highly fragmented. Since current measures are directed at consolidation of the industry and existing insurers are encouraged to merge to form larger units with broader capital and asset base to remain competitive and financially viable, no new direct insurance licences would be issued in the near future. However, new licences are available for offshore insurance business in the Labuan International Offshore Financial Centre.

Financial Services - Banking

Issues relating to foreign equity, local incorporation of banks, new licence and expatriate specialist was raised by the delegation of Japan.

Answer

- All of the 13 foreign bank branches have complied with the legal requirement for local incorporation. The rationale of this requirement is to ensure that the capital of foreign banks is committed in Malaysia in order to support their operations here. The present policy is that there will be no new licences issued.
- Malaysia has made a commitment to allow entry through equity participation only by foreign banks in Malaysian-owned or controlled commercial banks and merchant banks, and the aggregate foreign shareholding shall not exceed 30 per cent. This limit of 30 per cent on foreign equity reflects the National Development Policy of the Government and Malaysia has no intention to raise the limit.
- Malaysia views that the existing number of banking institutions (35 commercial banks, 9 finance companies and 12 merchant banks) is adequate to serve the banking needs of the country. The focus of the policy is to consolidate the banking industry and to develop a core of strong domestic banking institutions that would be able to withstand competition and avail of the opportunities to venture into the regional international markets.
- At the recently concluded WTO financial services negotiations, Malaysia made a commitment to allow employment of five specialists or experts for each institution in areas relating to: trade financing; corporate finance; treasury management; and information

technology. This is a relaxation from an earlier commitment where employment of specialists or experts are permitted subject to market test and eligibility criteria.

Canada had commented on differential treatment between services and the manufacturing sector. The liberal regime in the Multimedia Super Corridor (MSC) and possible extension to other service sectors was also raised.

Answer

- The manufacturing sector is relatively more matured and has a longer history. The services sector is still underdeveloped. However, we wish to draw the attention of members that within the services sector one could observe a high-level of foreign participation and presence.
- With respect to the MSC, there is no immediate plan to extend the liberal regime in the MSC to other services sector. In the future there may be a possibility of review being undertaken.

Competition Policy

Questions on competition policy have been raised by the second discussant Mr. Knut Brunjes, the United States and Japan.

As regards the draft Competition Act, the Ministry of Domestic Trade and Consumer Affairs is currently examining the feasibility of a Competition Act. The Ministry has initiated discussing with relevant government agencies as well as private sector, industry associations, including consumer associations, with a view to seeking their reactions.

On the subject of price controls for certain 'basic' and 'strategic' goods, import licensing applicable to the items are to ensure adequate supply and price stability of such strategic and essential items. The items are not subject to an import ban and essential goods which are imported will be subject to the same price as domestically produced goods. We do not regard the import licensing as being inconsistent with the Agreement on Import Licensing Procedures. Prices are controlled administratively whilst supplies are administered under the control of Supplies Act 1961. The cost structure and profit margin associated with the product is usually analyzed before a product is subjected to price control.

Response to Comments made by Discussant II (Knut Brunjes)

Trade Policy and Practices by Measure

Measures Directly Affecting Imports and Exports

Competition Legalisation: Scope of the Draft Competition Law and Chances of its Enactment

The Ministry of Domestic Trade and Consumer Affairs (MDTCA), the Ministry entrusted with formulating competition policy and law for Malaysia, is currently continuing research into the various facets of competition legislation and experiences in other countries, to identify both the strong points and weaknesses of such a law. Our analysis of the needs for and implications of having a binding competition legislation for Malaysia has and will continue to take into account the extent to which domestic policies can be pursued to enhance competitiveness of domestic industries and still meet national socio-economic objectives. Another area we are giving much consideration to is the extent to which multilateral rules could limit the scope of control that might otherwise be exercised over the activities of investment regimes to domestic conditions.

Given that the benefits of introducing a competition law are being carefully weighed to accommodate the development needs of the nation and to ensure that such a law is not used to the unfair benefit of any international body of developed country, no target date has yet been set for the tabling of this law in Parliament.

Government Procurement

Questions on Government Procurement were forwarded by Hong Kong, Canada, Japan and the European Communities.

Response

- Malaysia does not see the need to accede to the GPA. Our participation in the Working Group on Transparency in Government Procurement is without prejudice to the outcome of the discussions in the Working Group. We view this as an educational process.
- Tender awards can also be challenged and is also open to foreign suppliers.
- The periodic review of procurement regulations as regards state-owned firms is undertaken by the Ministry of Finance and is based on the review of government quality in state-owned firms, with the objective of enhancing the competitiveness of the government procurement system.
- All supplies not available locally are opened to international call for tenders.
- Although there exists the provision for the application of a preferential margin of 2.5 per cent to bids from ASEAN members, it has not been fully utilized.
- Although foreigners do not have recourse to Malaysia's bid challenge system, there are sufficient checks and balances in the form of bodies such as the Public Complaints Bureau and the Anti-Corruption Agency to which any supplier local or foreign can have recourse to, at all stages of the procurement process.
- Although the government procurement policy is aimed at enhancing socio-economic development, it is relatively open and provides adequate opportunities to foreign suppliers. There are, however, plans to undertake periodic reviews as regards the economic efficiency of such programmes.

TRIPS

Questions related to TRIPS have been raised by the second discussant, Mr. Knut Brunjes, the United States and the European Communities.

- The amendments and the enactments of new legislation are at an advanced stage. Full implementation of TRIPS obligation is expected by 1999.
- The chances of existing legislation include new laws on 'neighbouring rights', 'industrial designs', 'layout designs of integrated circuits' and 'plant varieties'. The Malaysian Industrial Design Law was passed by Parliament in June 1997 and is expected to come into force in early 1998.

- Since the implementation of the Copyright Act, over the last 10 years, there were 5,100 cases resolved and goods confiscated valued at 32.4 million ringgit.
- On the question of meaningful sentences judges from the Attorney General's Department are undergoing training courses, both at the national and international levels.
- Enforcement officers, including, those at the border continue to receive training on IPR matters.

Investment

- European Communities enquired on need for conditions such as higher levels of domestic content imposed by MIDA before approval for investment application is granted.

Response

- Such measures are needed to achieve certain objectives of industrialization such as localization, industrial linkages and SMI development, transfer of technology and developing self-sufficiency as well as meeting socio-economic objectives.

TRIMS

Japan wanted to know our plans for phasing our local content requirement applicable to the automotive sector.

Response

- Within the specific time-frame of 5 years commencing 1 January 1995.

Issue/Concern (Brazil)

- How granting of tax incentives (direct/indirect taxes/sales and excise taxes, customs duties for manufacturing sector), are administered under the rules of the Subsidies Agreement.

Response

- The various incentives are generally widely available and deemed non-specific in the context of the Agreement on Subsidies. The incentives scheme is an area which would be reviewed in the context of implementation of the Second Industrial Master Plan and in the context of Malaysia's international obligations and commitments.

Subsidies/Incentives

Issue/Concern

Phasing out of export subsidies

Raised by Japan

Response

- Request Japan to check WTO Secretariat pertaining to Malaysia's notification.

Export taxes

Concern of the European Communities on the appropriateness of export taxes for environmental protection.

Response

- Under the Federal Constitution, forestry is a state matter. All matters relating to forestry except for export (for Peninsular Malaysia only) and import, comes under the jurisdiction of the individual states. As such, the Federal Government has to institute an export levy to fund activities solely for forest activities and environmental protection. As a consequence and as a matter of administrative convenience, export levies are collected by the Federal Government at the export point and not a production point. In addition, because of the peculiar nature of production and given the limited capacity in terms of manpower, it is more efficient and effective to levy duty at the export point rather than the production point. As previously mentioned, the export levy is collected by the Federal Government for three main reasons, viz:
 - (i) To ensure sustainable forest management;
 - (ii) to encourage more downstream activities; and
 - (iii) for R & D.

In short, they are collected to ensure that our forests are sustainably managed for environmental protection and R & D purpose. These policies are constantly reviewed to ensure the intended objectives are met.

Export licensing

Japan enquired on Malaysia's export restrictions on log exports.

Response

- For environmental conservation and promotion of sustainable forest management.

Basic Telecommunications

Japan and European Communities had asked regarding their intention to further improve our existing basic telecommunication commitment and the regulatory reference paper.

Response

- As members will note, negotiations had just been completed. As a matter of fact, quite a number have yet to sign the relevant Protocol. Malaysia had already signed the Protocol and in fact is looking forward for others, who have not done so to do the same. We are of the

view, it is premature to even talk of further commitments on our part in this area. We have made a very good contribution and let us together implement the just concluded agreement.

- On the issue of regulatory reference paper, which is an optional set of commitments which falls under Article XVIII of GATS, we wish to mention that in practice Malaysia will be guided by the essential elements contained in the regulatory reference paper.

Maritime Transport

Japan and Canada had shown interests on commercial presence, foreign equity participation in shipping agencies and utilization of locally owned ships. Japan commended Malaysia for the removal of double deduction for Malaysian ships effective 1 January 1997.

Response

- We wish to express our gratitude to Japan for their commendation. With respect to other issues and as members are aware, negotiations on maritime transport had to be deferred because of the difficulties faced by the certain members. We take note of the issues raised by the two delegations and will take it up at the appropriate time when the negotiations on maritime transport services resume.

Air Transport

Japan and Canada had shown interest and asked questions on air transport services.

Response

- As you are aware, this issue currently is outside the preview of WTO. This is an important sector in which we also have great interest. We look forward to working together with other members when the subject is discussed in the WTO.

Rules of Origin

(WT/TPR/S/31, p. 102, para. 22)

Hong Kong had raised two issues:

- Imports of fully processed textiles and clothing items for AFTA countries into Malaysia are created more favourable in that their tariffs are on average less than half the MFN rates, provided these products satisfy the relevant rules of origin. By 2003, this margin of preference may increase to 75 per cent if MFN tariffs are not reduced.
- Does Malaysia envisage trade diversion effects as a result of such preferential tariffs? How would Malaysia ensure that its MFN based commitments to other WTO Members are not prejudiced with the increasing number of preferential tariffs in AFTA countries?

Response

- The Margin of Preference was accorded under the Preferential Trading Arrangement (PTA) Scheme and the maximum MoP on the PTA products was 50 per cent. The PTA scheme now

replaced the CEPT Scheme under AFTA which will reduce the tariffs to 0-5 per cent by the year 2003.

- The preferential tariffs under the CEPT will not be detrimental to the trade interest of non-AFTA members or result in significant trade diversion. This is because the current import duty for textiles and apparel are already between 0 to 30 per cent. In fact out of 1,090 tariff lines, 16.8 per cent of the tariff lines are at zero duty, 45 per cent having 15-20 per cent having 15-20 per cent duty and 23.8 per cent at 30 per cent duty. Only 1.8 per cent have duties exceeding 30 per cent duty.

Standards (Conformity Assessment)

Canada requested Malaysia to indicate which ISO/IEC conformity assessment guides are used by Sirim or other government agencies, if any, when a positive assurance is required that products conform with technical regulations and standards?

Response

- Sirim Berhad has been using the following ISO/IEC conformity assessment guides:
 - ISO/IEC Guide 25, General requirements for the competence to calibration and testing laboratories;
 - ISO/IEC Guide 39, General requirements for the acceptance of inspection bodies.
 - ISO/IEC Guide 58, Calibration and testing laboratory accreditation systems - General requirements for operation and recognition.
 - ISO/IEC Guide 61, General requirements for assessment and accreditation of certification/registration bodies.
 - ISO/IEC Guide 62, General requirements for bodies operating assessment and certification/registration of quality systems.
 - ISO/IEC Guide 65, General requirements for bodies operating product certification systems.
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