

# WORLD TRADE ORGANIZATION

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Trade Policy Review Body  
3 and 5 December 2001

## TRADE POLICY REVIEW

MALAYSIA

Minutes of Meeting

Addendum

*Chairperson: H.E. Mr. Pekka Huhtaniemi (Finland)*

This document contains the advance written questions and replies provided by the Malaysian delegation to these questions and to other questions raised during the meeting.



**JAPAN**

**Questions on the Report by the Secretariat (WT/TPR/S/92)**

**I. Economic Environment; (4) Outlook; Investment; (p. 14, para. 36; p. 44, para. 61)**

**Question**

1. *From the viewpoint of strengthening international competitiveness, does Malaysia have any intention to further strengthen its trade and investment regime, such as taking further liberalization measures? In particular, by decision from the Goods Council, such regulations as the local-content requirement on motor vehicles are to be completely abolished at the end of 2003. Does Malaysia intend to accelerate plans for the abolishing of such regulations?*

**Answer**

Further trade and investment liberalization measures will continue to be taken. On local-content requirements, the Local Material Content Policy as well as 11 products in the automobile sector will be phased-out on 1 January 2002 in advance of the December 2003 deadline.

**(p. 23, paras. 45, 47 and 48)**

**Question**

2. *Foreign equity ownership is limited to 30%, except for certain manufacturing industries, such as those with higher levels of exports and those dealing with high-technology. Although Malaysia has relaxed its restriction on foreign equity ownership, this is only a temporary measure. Japan requests Malaysia to convert this temporary deregulation of foreign investment restriction into a permanent one, and thus to abolish the export requirement. Moreover, Japan requests Malaysia to deregulate the same 30% foreign equity restriction applied to the services industry.*

**Answer**

Malaysia limits foreign equity ownership to 30% in areas where its own human resources have both the necessary technological and managerial skills to operate and manage those particular industries or sectors. This is to encourage and build-up local equity in areas/industries which Malaysians are capable of managing. Malaysia exercises flexibility on foreign equity. Where there is need to encourage investment in a particular high technology or specialist management industry, Malaysia has and will relax its restrictions on foreign equity ownership. This includes the services sector, under the appropriate circumstances.

**Question**

3. *Malaysia's domestic laws and regulations often change quite suddenly, without prior notice. In addition, such laws and regulations are often unclear. Japan hopes that Malaysia can create and maintain a stable investment environment in the near future.*

**Answer**

It is not true that Malaysia's domestic laws and regulations often change suddenly and without prior notice. All laws and regulations are created or amended based on need to improve legislative clarity, besides reducing bureaucracy and increasing investors' confidence. When laws need to be created,

amended or revoked, any person/sector/industry which is to be affected is made aware of the nature and purpose of the said amendments.

**II. Trade Policy Regime: Framework and Objectives; (5) Trade Agreements and Arrangements; Tariffs; (p. 18, para. 18)**

**Question**

4. *The Secretariat's Report states that Malaysia maintained a low level of tariff bindings, i.e. that is bound 65 per cent of its tariff lines in 1995. Would it be possible for Malaysia to increase its binding level in the near future?*

**Answer**

Negotiations on market access for non agricultural products are expected to commence next year. Malaysia will be considering the further liberalization of our tariff regime in the context of these negotiations.

**III. Trade Policies and Practices by Measure; (1) Introduction; Tariffs; (p. 25, para. 2)**

**Question**

5. *Malaysia's average applied MFN tariff increased to 9.2 per cent in 2000, up from 8.1 per cent in 1997. This rise in tariff protection is said to be due to: i) a relatively low level of tariff bindings and ii) the relatively wide gaps between bound and applied rates. Would it be possible for Malaysia to address this situation with a view to ensuring the more predictability in its tariff system?*

**Answer**

The Doha Ministerial Meeting agreed on a programme of work for non agricultural products. It is expected that these issues will be addressed in the context of such negotiations.

**(2) Measures Directly Affecting Imports; Customs procedures; (p. 27, para. 14)**

**Question**

6. *The Malaysian authorities indicate that the duration for customs clearance for cargo varies considerably, ranging from just three hours up to two working days, even if all the documentary requirements have been met. Can Malaysia explain what is the reason for such a time lag in customs clearance?*

**Answer**

The customs clearance of different types of cargo requires different set of formalities in accordance with the procedural or legislative requirements taking into account health and safety interests. In the clearance of such cargo, the Health Authority, the Quarantine Department and the Electrical Inspectorate are involved.

**Import prohibitions; (p. 33, para. 41)****Question**

7. *The Report states that a temporary ban has been imposed on rice imports of a similar grade to rice produced by domestic farmers. We would appreciate receiving more information on this temporary measure.*

**Answer**

The temporary ban on importation of similar grade rice produced by domestic farmers was to reduce the high stock of unsold paddy in the mills nationwide. Rice farmers fall in the hardcore poverty income groups. Importation of other grades continue to be allowed.

**Export taxes; (p. 46, para. 70)****Question**

8. *Many tariff lines, including agriculture, forestry and fishery products are subject to export duties, and the overall average of the ad valorem export duties increased from 7.8% in 1997 to the current 11.7%. As no commitment to bind or reduce export taxes exists, we are concerned by such export duties as they can have a negative effect on the balance of rights and obligations between importing and exporting countries.*

*Regarding the phrase that timber (log and sawn) produced in and exported from Sabah is exempt from payment of any export duties provided royalties have been paid, we have been informed that Sabah and Sarawak impose higher royalties on logs for export than those for domestic processing, thereby providing a preferential status to domestic processing. Such a discriminative royalty system could be considered as an export duty. Please comment on this.*

**Answer**

It is important to appreciate that the issue of timber had featured prominently, particularly in relation to sustainable forest management. This is particularly evident in Sabah and Sarawak which have been given wide publicity by the media and NGOs. Invariably, the government would have to impose specific policy measures to attain the objective of sustainable forest management as well as providing the necessary revenue for development purposes. It is important to recognize that such measures would need to be viewed from an appropriate perspective.

**Export restrictions; (p. 47, paras 75 and 76)****Question**

9. *In addition to the export prohibitions based on the "Customs (Prohibition of Exports) Order 1998", export prohibitions on all logs, except for small size wood have been implemented in the Malay Peninsula since 1985. In the State of Sabah, an annual export quota of two million cubic meters has been imposed since November 1996. The State of Sarawak also has been implementing export quotas in order to set aside a certain amount of logs produced in its territory for the purpose of domestic processing. Could Malaysia explain the consistency of these measures with Article XI of GATT 1994?*

**Answer**

These measures are taken to address the concerns from many quarters including NGOs and some developed countries on the need for environmental protection to prevent over logging. They are to ensure sustainable forest management.

**Export finance, insurance and guarantees; (p. 50, paras. 86-89)**

**Questions**

*10. Please explain the scheme for export finance, insurance and guarantees on agriculture, forestry and fishery products? What volume of finance is granted to such schemes?*

**Answer**

The Export Credit Refinancing (ECR) is a scheme to promote the export of manufactured and agricultural products as well as selected primary commodities by providing the exporters with access to credit facilities at competitive rates. However, unprocessed agriculture and fishery products are not covered by the ECR scheme. There are two types of facilities available, namely the pre-shipment and post-shipment ECR.

**Intellectual property rights; (p. 60, para. 119)**

**Question**

*11. Japan understands that, as Malaysia's transition period regarding the TRIPS Agreement expired on 1<sup>st</sup> January 2000, Malaysia had, by that period, fully implemented the TRIPS Agreement as a result of making or amending all related laws and regulations including those of para. 119. Is this understanding correct? If Malaysia has not yet completed its process of making or amending laws and regulations for the implementation of the TRIPS Agreement, please indicate the schedule for such amendments.*

**Answer**

Malaysia has amended all relevant intellectual property legislation and enacted two new legislation i.e. Geographical Indications Act and Layout Design of Integrated Circuits Act to bring its IP Legislation in conformity with the TRIPs Agreement. The plant varieties legislation will be tabled in Parliament next year.

**Question**

*12. Although Malaysia is to have a legislative review in the TRIPS Council in November, it has not yet made notification of its laws and regulations pursuant to the para. 2, Article 63, of the TRIPS Agreement. Japan requests Malaysia to notify its laws and regulations, as referred in para. 119, as soon as possible.*

**Answer**

Malaysia notified TRIPS-related Laws and Regulations on 31 October 2001. Its legislation was reviewed by the TRIPS Council on 27 November 2001.

**(p. 60, para. 120)**

**Question**

13. *Please provide the figures of the past every 3 year regarding the results of having prohibited infringement products at the border.*

**Answer**

The amendments to the Trade Marks Act 1976 and Copyright Act 1987 incorporating provisions for border measures came into force only on 1 August 2001. Hence, no historical records are yet available.

**(p. 60, para. 121)**

**Question**

14. *According to the Report, Malaysia intends to join the Patent Cooperation Treaty. Please explain the schedule for its accession process.*

**Answer**

Malaysia intends to join the Patent Cooperation Treaty possibly by next year. The legislative process to ratify the treaty will take the form of an amendment to the Patents Act. This requires approval from Parliament. As such, the process will take several months to be completed. Upon approval, Malaysia will deposit the PCT Instrument with WIPO.

**(p. 62, paras 127-129)**

**Question**

15. *It is reported that foreign well-known trademarks are often used by a third party not having the owner's consent for its use. Please explain the current situation for the protection of foreign well-known trademarks, and what measures Malaysia takes?*

**Answer**

The Trade Marks Act 1976 has been amended to enable the proprietor of a well-known trade mark to prevent third parties from using the trade mark without the proprietor's consent even though the proprietor does not carry on business or does not have any goodwill in Malaysia. It also prohibits the registration of well-known trade marks for goods and services of a person who is not the proprietor of the trade marks.

**(p. 63, para. 132)**

**Question**

*According to the Report, under the Geographical Indications Act 2000, protection is applicable to such selected goods as wine, agricultural products and handicrafts. In this regard:*

16. *Please indicate which other products this Act covers to those already mentioned? Please provide a comprehensive list.*

**Answer**

Under Malaysia's Geographical Indications Act 2000, the goods covered include any natural or agricultural product or any product of handicraft or industry.

**Question**

*17. To which products does this Act provide the same protection as that described in Article 22 of the TRIPS Agreement? To all products?*

**Answer**

For all products mentioned above, these are given the same protection as stated in Article 22 of the TRIPS Agreement.

**Question**

*18. To which products does this Act provide the same level of protection as that described in Article 23 of the TRIPS Agreement? To wines and spirits only?*

**Answer**

Only to wines and spirits.

**(p. 63, para. 134)**

**Question**

*19. According to the Report, trade secrets are protected against unauthorised use and disclosure under "common law". Does this "common law" refer to judicial precedents? If so, please indicate some specific cases. If there exists some specific written laws through which such protection is ensured, please indicate them.*

**Answer**

As a general rule, the law on trade secrets is under the purview of common law and equity. This is to say that if a person is entrusted with trade secrets, he has no right to use or disclose that information for his own benefit at any time or in any way. A party which has been aggrieved by the unauthorized use or disclosure of another party may petition the court for damages, injunction, account of profit or any other remedies the court found fit or proper. In a common law rule system, judicial precedence play an important role in the protection of trade secret. Some specific cases include Sulaiman bin Mohd Hassan and Ors v Securities Commission (2001); Scott & Anor v Scott (1911-1913) and Schmidt Scientific Sdn. Bhd. v Ong Han Suan (1997).

**(p. 64, para. 139)**

**Question**

*According to the Report, the right to fix the rate of royalty payments for licensing intellectual property rights in Malaysia is classified as a private right. In this regard, please clarify the following points.*

*In the case of patents, copyrights or trade secrets:*



20. *Is the period of a licensing contract limited? If so, please indicate the laws or regulations which prescribe this;*

**Answer**

In any contract entered into in Malaysia between two contracting parties, the period of a licensing contract is to be determined by the parties involved. The Contracts Act 1950 does not limit the period of such contracts.

**Question**

21. *Is a deadline to pay a royalty fee set out by law? If so, please indicate such laws or regulations which prescribe this;*

**Answer**

The terms on royalty fee and other conditions on the contract under the I.P. regime are to be determined by the contracting parties, that is between the right holder and the user. Under normal circumstances, the time period for a user to pay a royalty fee should be expressly provided for in the contract. The Contract Act does not prescribe a specific time but a reasonable time limit should be provided for in the contract.

**Question**

22. *Is the renewal or extension of a licensing contract prohibited? If so, please indicate the laws or regulations which prescribe this.*

**Answer**

The terms and conditions of any binding contract between the parties should be determined and agreed upon by them and it is up to the parties whether or not to renew or extend a licensing contract. The general provision of the Contracts Act 1950 does not prohibit renewal or extension except as agreed upon by the parties in the contract.

**Question**

23. *In the case of trade secrets, one additional point needs clarification: is there an obligation to disclose such secrets after expiration of the contract? If so, please indicate the laws or regulations which prescribe this.*

**Answer**

In any binding contract, a disclosure of a trade secret after the expiration of the contract would depend largely on the terms and conditions of that contract. If the contract provides expressly that no party should disclose any secret, then the party that discloses such trade secrets after expiration of the contract, would be subjected to a breach of contract.

**State-owned enterprises; (p. 64, para. 140)**

**Question**

24. *Japan notes that the development of the privatization programme in Malaysia has been on the slow down since the economic crises in Asia and, as a result, the Government raised its capital share*

*of some state-owned enterprises. Please provide Malaysia's view on the privatization process in the future.*

**Answer**

Privatization has played a vital part in strengthening the role of the private sector in Malaysia's economic development. It has contributed to the accelerated growth of the economy as well as helped in the restructuring objective of the New Economic Policy. The increased number of projects privatized significantly reduced the Government's financial and administrative burden, thus enabling the Government to allocate more resources to the critical sectors of the economy. However, due to the financial crisis, the privatization programme has slowed down primarily because of the weak financial position of the private sector thus affecting its ability to mobilize financial resources from banking and financial institutions. Looking forward, the implementation of the privatization programme will be further accelerated in order to enhance efficiency and productivity.

**Competition policies; (p. 66, paras. 145-147)**

**Question**

25. *Japan notes that Malaysia is preparing a comprehensive competition law. Please explain the current situation of preparations, as well as the perspective for a legislation process.*

**Answer**

The Ministry of Domestic Trade and Consumer Affairs is preparing a policy position and a draft law on competition. The elements and parameters being considered by a Steering Committee on Competition Policy include abuse of dominant position of market power, restrictive business practices (RBP's) merger and acquisition and competition law authority.

**IV. Trade Policy by Sector; (4) Manufacturing; Automobiles; (pp. 74-75, para. 26)**

**Question**

*Concerning the "import licensing" mentioned in this para., Japan would like to clarify the following:*

26. *What criteria does the Malaysian authority use when issuing "import licencing"?*

**Answer**

Import of motor vehicles in completely knocked-down form (CKD) is subject to import licensing. The import licence will be issued only to the motor vehicle assembler. For completely built-up unit (CBU), import licences are given to the assemblers based on requirements.

**Question**

27. *Is there any limitation in the number of "import licence" issued?*

**Answer**

Same response as in Q.26.

**Question**

28. *If an importer detains an "import licence", can that importer always obtain permission to import the products described in this para.? If not, in which situation can permission not to be obtained?*

**Answer**

Same response as in Q.26.

**Question**

29. *Does the Malaysian Government restrain the amount of imports for each subject product?*

**Answer**

Same responses as in Q.26.

**Questions on the Report by the Government (WT/TPR/G/92)****Question**

30. *According to the Financial Sector Masterplan, published in March 2001, (referred to in para. 48-49 of the Government Report), Bank Negara intends to implement a gradual deregulation and liberalization of the financial sector.*

*In this regard, even after domestic financial institutions are consolidated into ten groups (as referred to in para. 44 of the Government Report), couldn't this be still considered as over-banking, in light of the economic size of Malaysia?*

**Answer**

The merger programme to consolidate the domestic banking sector in Malaysia into ten banking groups was initiated to ensure that the domestic players are strong and well capitalized in order to be able to compete more effectively and efficiently in a more globalized and liberalized environment.

As to whether the banking sector remains over-banked after the mergers into ten banking groups, this will be left for the market to determine. There could well be more mergers and further consolidation a few years down the road, if market forces dictate. Bank Negara Malaysia (BNM), on its part, will not stand in the way of any further consolidation and market forces to make additional adjustments.

**Question**

*As the last stage of the gradual deregulation, will the full-banking licenses be liberalized to foreign financial institutions by 2007? Depending on the financial condition of the domestic banking institutions, could this liberalization be delayed?*

**Answer**

The pre-requisites for granting of new banking licences have been clearly stated in the Financial Sector Masterplan (FSMP). Once the domestic banking institutions have built greater capacity and capability to compete, greater liberalization measures will be introduced progressively, beginning with

leveling the playing field between domestic banks and incumbent foreign banks. New foreign competition may be introduced subsequently if certain safeguards are met.

#### **Question**

*31. There has been word among some market participants that Bank Negara's measures are not entirely transparent. In particular, the Bank's instructions with regard to introducing, and subsequently modifying, the selective exchange control measures (referred to in paras 51-53 of the Government Report) have been so obscure that it has been considered as a cause of market confusion. When implementing further liberalization, therefore, the administration of the financial sector should be more transparent and less discretionary, in order to gain trust from the markets.*

#### **Answer**

The introduction of the selective exchange control measures on 1 September 1998 was critical in restoring stability in the financial markets and the economy. The controls were implemented pragmatically, and once stability was achieved, major modifications were made to liberalise the measures (please refer to Annexes in the BNM Annual Report 1998-2000). All these measures have been implemented in a transparent manner, with instant dissemination of information being made and released through the press, circulars to the banking institutions and postings at the Bank Negara Malaysia website. Bank Negara Malaysia also regularly meets with investors (domestic and foreign), manufacturers and other private sector bodies to explain the measures as well as to obtain their feedback.

In liberalizing selective exchange control measures, Malaysia has adopted a consultative approach by conducting discussions with all the relevant parties. The progressive liberalization of these measures took into account the views of investors.

#### **Question**

*Although what is stated in para. 54 may be understandable in general terms, we would like to ask Malaysia to seek liberalization as a matter of principle.*

#### **Answer**

Currently, there is freedom of movement of cross-border capital flows. Both foreign direct investment (FDI) and portfolio flows can enter and leave Malaysia freely. The only requirement is the filling up of statistical forms. Overseas investments and loans from abroad are only subject to approval based on transparent prudential criteria.

Under such a liberal economic environment, market volatility and uncertainty demand caution and proper sequencing of liberalisation measures to maximise the net benefits to our economy. Our experience in dealing with uncertainties is that policy prescriptions cannot be rigid and inflexible. They have to adapt to changing conditions, as long as the longer-term objectives of facilitating cross-border flows are not undermined.

Malaysia believes that exchange controls should not be a substitute for sound macroeconomic policies. Nevertheless, the Malaysian experience has shown that selective and carefully designed exchange controls, when used to complement conventional macroeconomic policies, can contribute to economic stability.

## Question

32. *As mentioned in para. 53(e), Malaysia has maintained a fixed exchange rate system that is pegged to the U.S. dollar. However, in view of the lessons gained from the past currency crisis, the fixed exchange rate system would not be sustainable forever, and some exit policies (e.g. the transition into a floating exchange system) might be eventually necessary. In this connection, it goes without saying that, if the foreign exchange system is to be changed, the authorities should try to avoid causing any confusion in the market. What is Malaysia's view on this point?*

## Answer

1. Historically, most developing countries that have instituted "soft" forms of fixed exchange rate regimes have not been successful and were forced to exit, many in crisis environments. However, it should be highlighted that in most cases, the currency pegs became unsustainable because they were not supported by economic fundamentals and because of other inconsistent policies. These countries usually had high inflation, fiscal and current account deficits and inadequate international reserves. These factors are not present in the case of Malaysia.

2. The issue is not the exchange rate regime but that macroeconomic fundamentals must be present to support the regime. In Malaysia, sound macroeconomic policies have supported the sustainability of the peg. These strong economic fundamentals are:

- Low inflation, which is expected to remain in the near term;
- Continuous surpluses in the current account;
- A comfortable level of international reserves;
- Low external indebtedness; and
- A banking sector that is resilient and well-capitalized.

3. Furthermore, the Malaysian economy has been flexible and resilient enough to deliver the necessary internal adjustments in the face of external shocks.

It is useful to emphasise the point made by Jeffrey Frankel (1999) that no single currency regime is right for all countries or at all times. This is also the consensus by the multilateral institutions such as the International Monetary Fund and the regional fora, including the APEC and ASEM. Under current circumstances, the stability accorded by the ringgit peg to the US dollar continues to benefit businesses, providing a conducive environment by offering a degree of certainty in conducting their day-to-day operations, while conferring efficiency gains in the form of lower transactions and hedging costs. We are confident that the ringgit peg is sustainable as long as it is consistent with the fundamentals of the Malaysian economy. To this end, BNM remains vigilant to economic developments, domestic and international, and will take appropriate measures to ensure the peg remains sustainable.

## Question

33. *It is said that the Malaysian Government considers the Islamic financial institutions to be very important and the Financial Sector Masterplan has the aim of Islamic financial institutions occupying as much as a 20% share, in terms of the total asset and total lending in the country. In this respect, is it correct in understanding that Malaysia will not discriminate against any conventional financial institutions when achieving such a goal?*

**Answer**

Yes, there is freedom of choice to consumers in deciding to use conventional or Islamic banking facilities. BNM only provides an environment that will facilitate the enhancement of efficiency of both Islamic and conventional banking.

Malaysia implements a dual banking system where the conventional and Islamic banking systems operate in parallel. Malaysia believes that by having a dual banking system, it would provide better and more efficient financial services to its multi-racial and multi-religious population. Recognizing the potential of the Islamic financial system, the FSMP outlined the vision, objectives and recommendations to enhance and further develop the Islamic banking and takaful industry.

Furthermore, the conventional and Islamic financial institutions have their respective roles to play in ensuring that the objectives laid down in the FSMP are achieved. The implementation of the Malaysian dual banking system has proven that both conventional and Islamic financial institutions could co-exist and operate in a commercially viable manner.

**Question**

*What is the Malaysian Government's view on the role of both the conventional financial institutions and Islamic financial institutions, and how does it consider that these two different financial institutions co-exist and operate in a commercially viable manner?*

**Answer**

Both conventional financial institutions and Islamic financial institutions would play a complementary role in supporting the overall financing needs of the Malaysian economy. In addition to the two specialized Islamic banks, 47 conventional banking institutions actually participate in the Islamic Banking Scheme and provide a whole range of Islamic banking products. The overall objective for co-existence of conventional and Islamic financial institutions is to ensure that the financial system is effective in supporting the needs of the economy, that is able to provide a broad range of products and services to meet the needs of the customers who are becoming increasingly demanding and sophisticated.

**Question**

*Also, what would be the demarcation between government-owned financial institutions and private financial institutions in the field of lending to small and medium-sized enterprises or financing for infrastructure development?*

**Answer**

The role of private banking institutions in providing financing to selected sectors of the economy, such as the small- and medium-sized enterprises and for infrastructure development, will continue to remain crucial. However, while ensuring that these sectors have access to adequate financing, it is equally important that such provision of financing is consistent with the objective of developing an efficient banking sector. Therefore, in line with the FSMP, mechanisms will be put in place to minimize distortions on the efficient functioning of the provision of financing by the banking sector to these sectors. This will include, amongst others, enhancing the role of the Credit Guarantee Corporation in an expanded guarantee system, undertaking measures to enhance the capabilities, efficiency and effectiveness of the development financial institutions, and encouraging the

development of the bond market to provide borrowers with an alternative source of long-term financing.

Therefore, there will not be any clear demarcation between government financial institutions and private banking institutions in extending loans to these sectors as both types of institutions will complement each other in supporting the financing needs of these two sectors.

## **EUROPEAN UNION**

### **I. Economic Environment; (2) Main Policy Developments; (i) Macroeconomic policies; (a) Monetary and exchange rate policies**

#### **Question**

*1. (paras 11, 12) In terms of macro-economic policies with a trade angle, Malaysia's use of capital controls in the period after the East Asia crisis is perhaps the most significant. The report gives quite a lot of emphasis to the use of capital controls. It would have been interesting to receive more information as to whether the policy was successful or justified: comments from the media and from economists on the policy have varied widely: some hailing its wisdom, others the risks attached.*

#### **Answer**

In analyzing the use of exchange controls, it is important to understand how the measures affect transactions, and the specific conditions under which controls were introduced. In the Malaysian case, the selective exchange controls were adopted as part of a comprehensive macroeconomic package to address emerging risks, restore stability as well as promote economic recovery. Policy initiatives would only yield the desired results in a stable environment. As intended, the selective exchange controls and the fixed exchange rate were successful in stabilizing the domestic financial conditions and facilitated the resumption of economic activities. The measures also reduced vulnerability of the Malaysian economy to speculative attack against its currency by ensuring that the ringgit is no longer available for currency traders in offshore markets. The stability accorded by selective exchange controls not only brought about an earlier economic recovery, but has contained the adverse effects of the crisis on growth, employment, poverty levels and social conditions.

Success of the measures can be seen from restoration of exchange rate stability. With stable foreign exchange markets, Malaysia was able to lower interest rates. This consequently facilitated the acceleration of reforms in the financial sector, and restoration of domestic and foreign investor confidence. With the imposition of the controls, Malaysia had been able to lower its interest rates back to the pre-crisis level from its peak level within 3. The exchange controls had also given greater autonomy to monetary policy to maintain a low interest rate regime despite rising US interest rates. Unlike other crisis-affected economies, Malaysia was able to engineer a smooth downward adjustment in interest rates, thereby providing greater certainty and stability for business undertakings. The low interest rates were crucial in facilitating the effectiveness of fiscal expansion in the recovery policy package.

Initial negative perceptions and reactions to the exchange controls were reversed once there were greater understanding and appreciation of the controls and its objectives. For example, the removal from the Morgan Stanley International (MSCI) index was temporary and reinstatement took place in May 2000.

As the selective exchange controls were designed in a way that FDI is not affected by the new changes, the multinational companies continued with their long-term investment in the country. FDI which amounted to US\$2.7 billion in 1998, increased significantly to US\$3.9 billion in 1999 and stabilized at that level in 2000. The value of applications received for manufacturing investment from foreign investors also increased significantly to US\$7.8 billion in 2000 (1999: US\$2.4 billion), while approvals increased to US\$5.2 billion (1999: US\$3.2 billion).

For a small open economy such as Malaysia, the exchange rate is a very important price. Large fluctuations in the exchange rate can have serious consequences on the performance of the economy, especially when trade accounts for about 200% of Malaysia's GNP. In this regard, the stability accorded by the measures had provided a conducive environment for businesses by offering a degree of certainty in conducting their day-to-day operations.

### **III. Trade Policies and Practices by Measure; (1) Introduction**

#### **Question**

2. *(para. 3) The report places emphasis on the possibility that membership of regional trade agreements gives rise to trade diversion and notes this may be detrimental to Malaysia's trade partners. It does not mention that trade diversion may also be detrimental to Malaysia. Perhaps just as important, it does not appear to present any evidence on the issue. We would therefore like to know if Malaysia has considered the possibility that the widening gap between average applied and preferential tariff rates has increased the potential for trade diversion? Does Malaysia have any plans to avoid the detrimental effect of trade diversion in the future?*

#### **Answer**

The gaps between the preferential rates and the current applied rates are not very wide. Statistics do not show trade diversion or that it has been detrimental to Malaysia's trading partners.

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

#### **Question**

3. *(para 15) The report states that Malaysia's legislation on customs valuation has a provision for minimum import values. No extension of the implementation period of the WTO Agreement on Customs valuation having been granted to Malaysia beyond 1 January 2000, clarifications as to the compatibility of this legislation with Malaysia's WTO commitments therefore would be very much appreciated.*

#### **Answer**

Although the Malaysian Customs legislation provides for a minimum import values, to date such provision has never been applied. Malaysia remains committed to the Customs Valuation Agreement.

#### **Question**

4. *Would the Malaysian Government agree that, in the field of customs release and clearance, although Malaysia has made impressive strides in recent years, there is still scope for improvement and further simplification? Does Malaysia have any plans to streamline these procedures further, and if so in what specific areas?*



**Answer**

To improve customs clearance procedures, the Customs Department is undertaking the simplification and modernization of customs procedures including enhancement of customs information system, electronic data interchange and improved risk management techniques.

**(ii) Tariffs**

**Question**

5. *(paras 18-24) Malaysia's reliance on tariffs as a source of tax revenue (5,8%) looks high for a relatively advanced economy. What plans does Malaysia have to reduce its dependence on tariffs as a source of tax revenue, and more generally to reduce the levels of tariff bindings?*

**Answer**

Tariffs would not be a major source of tax revenue as Malaysia is focusing more on sales tax and service tax as its source of tax revenue. Reduction in tariff bindings will be dealt with appropriately in the context of negotiations on market access for non-agricultural products.

**Question**

6. *Could Malaysia please explain why tariffs have risen on alcoholic beverages but on other selected food products tariffs have been eliminated?*

**Answer**

The increase in tariffs on alcoholic beverages are based on health and moral grounds.

**(iv) Import prohibitions, restrictions, and licensing; (b) Import approval and licensing**

**Question**

7. *(para. 42) It seems like Malaysia has increasingly resorted to import licensing as a means of monitoring imports. Would Malaysia agree that this could possibly act as a barrier to trade?*

**Answer**

Import licences are meant for regulating and monitoring inflow of goods to Malaysia. Licences are required to ensure adherence of rules, standards and regulation pertaining to health, security and safety and the orderly development of industry. Import licences are issued by competent authorities or lead agencies, which are in charge of its implementation. The Government from time to time, reviews the licensing requirement in line with Malaysia's objective of facilitating trade.

**Question**

8. *Table III.3 is listing different product groups subject to import licensing and the competent authorities in charge of its implementation. It remains unclear, however, which exactly are the product groups subject to discretionary licensing and which exactly are the criteria for the issuance of such licences, beyond those permitted by the WTO Agreement on import licensing procedures. We would be grateful for some further clarifications in this respect.*

**Answer**

Same response as in Q.7.

**(vi) Government procurement**

**Question**

9. (para. 50) *Malaysian authorities have indicated that Malaysia has yet to attain the level of economic development that would enable it to be a party to the GPA agreement. Has Malaysia set itself any specific target level of economic development upon which Malaysia will re-examine prospects of becoming an observer to or a member of the GPA? Does Malaysia not think that it owes it to its taxpayers and voters to ensure that public purchasing is done in the most cost effective manner, i.e. through open and competitive procedures according to the GPA?*

**Answer**

Government Procurement is a strategic policy instrument in pursuance of Malaysia's socio-economic and development objectives. Hence Malaysia will not be a member of the GPA until it has achieved these objectives. Malaysia has adopted its procurement practices on the principles of transparency, public accountability, value for money, open and fair competition based on national policies, modeled UNCITRAL Model Law. Thus, public purchasing is done in the most cost-effective manner through open and competitive procedures as set out in the Treasury's Instructions and Treasury circular letters. Clearly one does not have to be a member of the GPA to follow open and competitive procurement procedures.

**Question**

10. (para. 51) *The para. informs about Malaysia's government procurement procedures. We would be grateful to receive further clarifications as follows: How does Malaysia guarantee the transparency of its procurement procedures? At what point in the future does Malaysia foresee a revision of the Acts<sup>1</sup> covering government procurement? Could Malaysia provide more information about the "Treasury Instructions" and "Treasury Circulars Letters" that "clarify and improve certain policies, rules and regulations"? How frequently are these Treasury documents published? Although the report states that federal procurement regulations generally apply to procurement by various levels of government, "with concurrence of the Ministry of Finance, local government authorities and statutory bodies are allowed flexibility in adopting and adapting financial regulations". Can Malaysia please indicate how this "flexibility" is interpreted, and whether it is done so in a transparent manner?*

**Answer**

Malaysia's procurement procedures are transparent. The Treasury Instructions (TI) detail financial and accounting procedures and encompass the regulations that need to be adhered to in managing Government funds for various uses, including procurement. It is available to the public, and can be purchased.

Treasury circular letters are issued periodically to clarify policies, rules and regulations. The Treasury Circular letters can be accessed by the public through the Malaysian Treasury's homepage at <http://www.treasury.gov.my>.

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<sup>1</sup> The Financial Procedure Act 1957 (last revised in 1973) and the Government Contracts Act 1949 (last revised in 1972).

Regarding the flexibility given to statutory bodies, local authorities and Non-Financial Public Enterprises (NFPEs) in adopting federal procurement regulations, these Statutory Bodies are formed under different Acts of Law and NFPEs are established under the Company's Act and as such, are answerable to their respective Boards of Directors. They will have their internal procedures for the management of the funds used for procurement which are derived from their own sources. However, if the funds come from the federal government, they will have to follow federal procurement procedures.

### **Question**

*11. (para. 54) What kind of joint ventures (in terms of level of Bumiputera or local participation) must be formed for foreign companies to carry out works? Are the joint venture requirements set out in law and/or in the tender notices? Does the form of joint venture affect the awarding of the contract?*

### **Answer**

For works contracts, foreign companies are requested to form joint venture with local companies. The level of Bumiputera or local participation in the joint venture will be highlighted in the tender notices or tender documents. If the form of joint venture is in accordance with the tender requirements, then it will not affect the awarding of contract.

### **Question**

*12. (para. 56) Two committees (Technical and Financial) pre-evaluate and submit tenders to the Government Procurement Boards according to pre-determined criteria and weightage for evaluation. Could Malaysia please inform how it ensures the transparency of these criteria and their weightage? Are they made public with the tender notice? In cases when tenders are international (when goods are not locally available), do Malaysian law/authorities grant equal treatment among foreign companies, regardless of origin? If yes, is equal treatment set out in Malaysian procurement law? If no, is there a set basis for preferential treatment among foreign suppliers?*

### **Answer**

Pre-determined criteria and weightage for evaluation is a critical element in tenders. All criteria are highlighted in the tender document. The public may obtain a copy of the tender document at the tendering agency's offices when tender notices are published in the newspapers or posted on the internet.

International tenders are evaluated on an equal treatment basis regardless of country of origin, as set out in Treasury circulars.

## **(3) Measures Directly Affecting Exports; (vi) Export finance, insurance, and guarantees**

### **Question**

*13. (para. 87) According to the statement made in the report, the current ECR (Export Credit Refinancing) scheme provides for a yearly interest rate of 3,5%, which is 0,46% lower than the Banker's Acceptance Rate. However, the authorities do not consider this to be an export subsidy. We would welcome it if the Government could give any justification for this assessment.*

**Answer**

The interest rate of the ECR facility is based on the average bankers' acceptance (BA) rate of ten major banks in Malaysia. While the BA rate tends to change frequently, the ECR rate will be adjusted only if the spread between the BA rate and the ECR rate changes significantly. Currently, the ECR rate is 3.5%, marginally above the average BA rate of 10 major banks which is 3.38%. As the ECR rate could be slightly below or above the BA rate, the Government does not consider this to be an export subsidy.

**(4) Measures Affecting Production and Trade; (ii) Taxation and tax measures; (a) Direct taxation**

**Question**

14. (para. 98) *The report refers to some exceptions from the national treatment in the field of tax incentives. We would like to receive any complementary information on approvals of foreign-owned companies incorporated in Malaysia for the provident fund scheme, which was not available upon the drafting of the report. In addition, annuities purchased from foreign-owned life insurance companies are excluded from personal tax exemptions compared to domestic products. Could Malaysia please indicate, for both cases, why national treatment is still absent?*

**Answer**

Private provident fund scheme - Presently, there are 93 foreign-owned companies incorporated in Malaysia which have been given approval to operate their own provident fund schemes. The issue of national treatment does not arise.

Annuity scheme - an annuity scheme is a very new investment product to both the Malaysian public and Malaysian life insurers. Therefore, the tax incentive is a very important element to promote the development of this product.

**(iv) Standards and other technical requirements**

**Question**

15. (para. 109) *The report states that "In addition to national and international standards, various kinds of standards exist and are used in Malaysia. For example, standards established by selected bodies such as the ASTM, API, NFPA, ASME, and SAE are used in certain sectors". Could Malaysia please inform if any European standards exist and are used in Malaysia and whether, when using the afore mentioned American standards, equivalent European standards, if such exist, can be used.*

**Answer**

For regulated products the decision to accept a particular standard is either specified in the applicable regulation or is determined by the regulatory authority. In the latter case, there is a possibility of the acceptance of equivalent European standards and this is determined by the authority responsible. In the voluntary sector the use of European standards is common and is based on market considerations.

**(vi) Intellectual property rights**

**Question**

16. *Could Malaysia please indicate whether or not its legislation grants a defined period of time for the protection of undisclosed information. If so, we would be grateful for the time span.*

17. *We also interested in receiving a definition of undisclosed information in Malaysia's legislation.*

**Answer**

Generally, the protection of undisclosed information in Malaysia is laid down under the rules of common laws and equity. Any natural person or legal entity may not disclose trade secrets in his or its possession in a manner that is contrary to honest practise in trade. A commercial or industrial activity shall be considered secret if, due to its nature, it is not known, it draws its commercial value from its confidentiality, reasonable measure have been taken to maintain its confidentiality, or it is not easily accessible to an ordinary person having skill in the art. Disclosure shall include making use of information, tests or other secret information presented to the competent authorities in order to obtain a marketing authorization necessary for pharmaceuticals and agricultural products containing new chemical material provided that a tangible effort was furnished to obtain such products.

**Question**

18. *In addition, we would appreciate it if Malaysia could explain how its legislation defines data submitted to governments or governmental agencies.*

**Answer**

Data submitted to governments or governmental agencies which is considered as undisclosed information will get protection of undisclosed information as laid down under the rules of common law and equity and Official Secrets Act 1972.

**IV. Trade Policies by Sector; (4) MANUFACTURING; (iv) Key subsectors; (a) Automobiles and their parts**

**Question**

19. *(para. 26) The report notes the use of local content agreements and high tariffs to protect the vehicle industry and argues that its poor export performance may indicate "a certain lack of external competitiveness". The very high levels of protection (tariffs 42% to 300%) in themselves seem to strongly suggest a very poor level of competitiveness. We would be grateful if Malaysia could elaborate on any possible plans to reduce the levels of protection in the country's vehicle industry. One might think of, for example, lowering tariffs to increase the level of competitiveness.*

**Answer**

Malaysia is currently reviewing its automotive policy with a view to inject gradual competition into the industry. The review among others include the tariff structure.

Pursuant to the extension granted by the Goods Council, Malaysia will phase-out local content policy in two stages. In stage one, Local Material Content Policy and 11 items in the Mandatory Deleted

Items (MDI) list will be abolished effective 1.1.2002. The remaining 19 items in the MDI list will be phased-out on 31.12.2003.

### Question

20. (para. 28) *We note that Malaysia is to phase out current local-content requirements on automobiles by 31 December 2001. This target being very close, we would be grateful to receive some information about Malaysia's intentions as to the elimination of these measures. Does Malaysia agree that given the current market shares of the local manufacturer (79% of the total automobile market and 93% of the passenger car market) a further extension of these measures would be difficult to justify?*

### Answer

Same responses as in Q.19

### (5) Services; (iii) Financial services; (a) Overview

21. (para 45) *What is the content of the Capital Market Masterplan, which aims at further deregulation and liberalization? We would in particular like to know if it does include the removal of foreign equity ceilings in brokerage firms, of restrictions on foreign portfolio investment in domestic companies and on IPOs to Malaysian investors?*

### Answer

Under the Capital Market MasterPlan (CMP)<sup>2</sup>, the issue of deregulation and liberalization is placed under strategic initiatives number 4 - to develop a strong and competitive environment for intermediation services. Specifically, strategic initiative 4.4 states that the Securities Commission (SC) would adopt a pragmatic programme for liberalization, supported by appropriate safeguards. This is in tandem with the general national stance on deregulation and liberalization whereby the emphasis is on both the need for continued commitment to liberalization, but with careful consideration of the socio-economic aspects of globalization. The liberalization strategy under CMP entails:

- A co-ordinated programme for liberalization across all sectors in the capital market to ensure an orderly and harmonized transition process;
- Strengthening-including facilitating the formation of strategic partnerships and the use of electronic means to enhance the efficiency, reach and cost-effectiveness of capital market services-to be implemented immediately; and
- Ensuring that the implementation and sequencing of liberalisation measures are supported by the appropriate safeguards for maintaining investor protection and market integrity.

In terms of the implementation of the CMP, it should be noted that recommendations pertaining to liberalization would be implemented in Phase 2 (2004-2005). As indicated in the CMP, appropriate preparatory measures must precede the facilitation of greater competition within the domestic market, so as to enhance the resilience of market participants and reduce the severity of economic displacement arising from a sharp increase in competitive pressures. Such a strategy is also meant to provide a certain amount of time and opportunity for the relevant market participants to prepare and respond to the challenges posed by a more open market access.

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<sup>2</sup> The CMP is available at the Securities Commission's homepage at <http://www.sc.com.my>

#### Foreign equity participation in domestic stockbroking companies

Recommendation 85 of the CMP states that foreign equity participation in domestic stockbroking companies will be liberalized in stages beginning from 2003. Malaysia currently allows up to 49% foreign ownership in domestic stockbroking companies. In the intermediate term, the formation of strategic alliances with suitable foreign intermediaries within these parameters is encouraged by the Government and the SC, as this will enable Malaysian-owned stockbroking institutions to more firmly strengthen their domestic position, while upgrading the level of domestic skills through technical agreements with the foreign partner. The CMP further clarify that in 2003, towards the end of Phase 1 of the Masterplan, a limited number of majority foreign-owned stockbroking institutions will be allowed to operate in the Malaysian capital market, through the purchase of existing licensed stockbroking companies and subject to other conditions as may be determined by the SC.

In Phase 2 of the CMP, covering 2004-2005, the SC will allow further liberalization of foreign equity participation limits in the stockbroking industry. However, any liberalization, including an acceleration of this process, will be undertaken after a careful assessment of market readiness.

#### Restrictions on foreign portfolio investment in domestic companies

The overall regulation of foreign ownership and control of the country's major economic activities is under the jurisdiction of the Foreign Investment Committee (FIC), Economic Planning Unit of the Prime Minister's Department. In regulating the acquisition of certain assets or interests, mergers and take-overs of companies and businesses in Malaysia, the FIC implemented guidelines that are generally applicable to:

- Any proposed acquisition by foreign interests of any substantial fixed assets in Malaysia;
- Any proposed acquisition of assets or any interests, merger and take-over of companies and businesses in Malaysia by any means, which will result in ownership or control passing to foreign interests;
- Any proposed acquisition of 15% or more of the voting power by any one foreign interest or associated group, or by foreign interests in the aggregate of 30% or more of the voting power of a Malaysian company and business;
- Control of Malaysian companies and businesses through any form of joint-venture agreement, management agreement, and technical assistance agreement or other arrangements;
- Any merger or take-over of any company or business in Malaysia whether by Malaysian or foreign interests;
- Any other proposed acquisition of assets or interests exceeding in value of RM5 million whether by Malaysian or foreign interests.

Any proposal that falls within the above criteria must be submitted to the FIC for its approval. In addition to the FIC regulations, the regulators in the financial services sector impose its own restrictions in relation to foreign participation in the business entities that operates within the financial services sector. In this context, the banking and insurance industry falls within the jurisdiction of the Central Bank-Bank Negara Malaysia.

As for the capital market, apart from the equity participation in stockbroking firms, the CMP recommends other steps towards reducing the restrictions on foreign portfolio investment in domestic companies that are intermediaries in the capital market, specifically relating to the venture capital industry, derivatives market and investment management industry.

Under recommendation 32, SC is of the opinion that foreign ownership restrictions placed on venture capital companies should be liberalized to allow for foreign equity participation of up to 100%. However, where the management company has foreign equity participation of 70% or greater, the funds managed should only be subscribed by non-residents. This recommendation is to be implemented in Phase 1 (2001-2003)

In the derivatives market, equity ownership requirements of futures broking firms will be liberalized to allow foreign majority ownership by 2003 as indicated under recommendation 57 of the CMP.

Under recommendation 100 of the CMP, restrictions on the management of funds by foreign fund management companies will be liberalized. At present, only joint venture foreign fund management companies are allowed to manage locally-sourced institutional funds (including Employee Provident Fund (EPF)<sup>3</sup> funds) while wholly foreign-owned foreign fund management companies are only allowed to manage foreign-sourced funds. In view of the need for the pace of development to be further increased, the SC will further liberalise the *Guidelines on the Establishment of Foreign Fund Management Companies* to allow all foreign fund management companies - whether joint ventures or wholly foreign-owned - to source funds from the EPF, subject to the eligibility requirements of the EPF, beginning from 2002. As a move to develop the domestic investment management industry, the mandates given to foreign-owned investment managers will include a condition that both local and regional mandates be managed within Malaysia.

As for unit trust management companies, recommendation 101 states that foreign ownership requirements will be liberalized to allow foreign majority of unit trust management companies from 2003. At present, the unit trust industry - the retail segment of the investment management sector - is subjected to a 30% restriction on foreign ownership. In view of this, the SC will implement a programme for the gradual liberalization of the industry. As a first step, there will be a review of foreign ownership restrictions placed on investment management companies operating collective investment schemes such as unit trust funds. This will be done with a view to liberalizing the foreign equity ownership limits in such companies from 2003, contingent on an assessment of market readiness by the SC.

### IPOs

Under the Securities Commission Act 1993, the SC is the single regulator for all fund raising activities in Malaysia, whereby it is the approving and the registering authority for prospectus in respect of all securities other than securities issued by unlisted recreational clubs. Proposal for IPOs therefore must be submitted to the SC for its approval. Under recommendation 22 of the CMP, the breath of listings in the Malaysian equity market will be gradually widened to include listings of foreign companies. The process of allowing foreign listings on the Kuala Lumpur Stock Exchange (KLSE) will be implemented over three stages, with an assessment of market readiness and impact at each point before proceeding to the next stage.

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<sup>3</sup> The Employees Provident Fund (EPF) is a national social security organisation operating through a provident fund in Malaysia. The EPF is a scheme which provides retirement benefits for members through management of their savings in an efficient and reliable manner. The EPF also provides a convenient framework for employers to meet their statutory and moral obligations to their employees. <http://www.kwsp.gov.my/>



The SC will allow qualified Malaysian-owned foreign-based companies to seek a primary listing on the KLSE in Phase 1. In relation to this, the SC will revise its *Guidelines for Public Offerings of Securities of Foreign-Based Companies on KLSE*. The SC will also work with industry in formulating appropriate strategies to attract the listings of qualified Malaysian-based foreign-owned companies.

**(b) Banking**

**Question**

22. (para. 52) *What kind of anti-trust regulations are contemplated? Would they include the granting of new banking licences to foster the contestability of the market?*

**Answer**

The anti-trust regulations will describe the process by which abuses are defined and dealt with by the Government. Such regulation will address monopolistic behaviours of banking institutions and complement the overall initiatives to be taken towards developing a comprehensive consumer protection framework. These regulations will be developed over the medium term as banking institutions begin to specialize and gain strength and dominance.

The pre-requisites for granting of new banking licences have been clearly stated in the FSMP. Once the domestic banking institutions have built greater capacity and capability to compete, greater liberalization measures will be introduced progressively, beginning with leveling the playing field between domestic banks and incumbent foreign banks. New foreign competition may be introduced subsequently if certain safeguards are met.

**(c) Insurance**

**Question**

23. (paras 59, 60) *Would Malaysia agree that there is a contradiction between the fight against unfair trade practices, including monopolies, and mandatory cessions? Does the Government have any plan to reduce further the level of mandatory cessions?*

**Answer**

Under the FSMP, measures will be undertaken to phase out the voluntary cessions to Malaysian National Reinsurance Berhad (MNRB). This will be achieved through periodic reviews of the voluntary cession agreement under which the cession to MNRB are made, with a view to progressively reducing the level of cessions.

**(iv) Telecommunications; (a) Structural change in the telecommunications sector**

**Question**

24. (para. 64) *Could Malaysia please indicate how have prices evolved in the period and what are the plans to further increase the penetration rate?*

**Answer**

Malaysia's tariffs for fixed line market is price-capped by the Government in-line with Government's policy objective to provide affordable services to the people. We are planning to institute cost-based/market determined pricing in the near future.

In the mobile market, pricing is market-based.

**Question**

25. (para. 65) *Please describe how was the authority to provide back-bone infrastructure in the Multimedia Super Corridor granted?*

**Answer**

The Government decided to get the MSC off the ground the soonest possible. Thus, it was logical to ward the responsibility to provide services to Telekom Malaysia Berhad, which had the necessary capacity financial, network and international connections.

**Question**

26. (para. 66) *Please inform if the types of services presented in Table IV.9 are defined in the law? We would also like to know if apart from the distinction made in para. 70, this table is the basis for categories of licences?*

**Answer**

The services presented in Table IV.9 are based on types of services. However, a new structure based on the categories in para 70 namely NFP, NSP, ASP and CASP has been adopted under the CMA 1998.

The licensing regime under the CMA is based on network and application services rather than telecommunications and broadcasting. Licences are granted to four categories of service providers: network facilities providers (NFPs), network services providers (NSPs) application services providers (ASPs), and content application services providers (CASPs). The Minister for Energy, Communications and Multimedia has discretion in granting licences, determining policies and issuing regulations, while the CMC advises the Minister and enforces policies and regulations. Since 1997, no new licences have been issued for basic and mobile telephony services.

**(b) Policy objective and regulating authority**

**Question**

27. (para 68) *We note that the CMC is responsible for encouraging competition and ensuring an "orderly and efficient development of telecommunications services". Could Malaysia please further elaborate on this?*

**Answer**

Under the new licensing regime, a more light-handed approach has been adopted especially with the introduction of the concept of class licensing. Such licensing structure is expected to lead to a more orderly development of the telecommunications services as well as to encourage the development of more competitive market environment particularly for the provisioning of applications services.

**(c) Licences and their conditions****Question**

28. (para. 70) *We understand that while a Communications authority has been created, the Ministry retains some regulatory powers (in particular issuance of licences). How is independence of decision achieved for those regulatory powers when one of the operators is still government owned? In the same para., it is indicated that no new licence has been issued since 1997 for basic and mobile services. We would be interested to know if this is because the Ministry does not want to grant more licences? And if so, what is the rationale? Also, for other services (such as internet services, satellite services) is there any restriction on the number of suppliers?*

**Answer**

Though one of the operators is still Government owned, this has not in any way affected the independence of the Ministry when addressing issues of licensing. This is because all licences issued carry similar terms and conditions.

It should be clarified that it is only for Network Facilities that no new licences were issued. This is due to the fact that there is an excess capacity for the core network facilities and the market for mobile services is highly competitive. However, 42 new licences for the provisioning of applications services were issued in 2001.

For Internet Services, since it falls under class licensing, there is no restriction as to the number of service providers. As for direct-to-home satellite broadcast, the current restriction applies. Kindly refer to CMC's website at [www.cmc.gov.my](http://www.cmc.gov.my) for further details on number of service providers under the ASP class.

**Question**

29. (para. 71) *The report states that "An individual licence is subject to a higher degree of regulatory control than a class licence". Can Malaysia please explain what that higher level of control mean? Second, why are foreign companies prevented to get a class licence (and how is a foreign company defined for that purpose)? And third, what is the procedure to get a license (duration, modalities, result of the procedure)?*

**Answer**

The above conditions apply to all individual licences. However, in the case of class licences, which are mainly in respect of value added services, the Minister may permit foreign individuals or foreign companies to be registered as class licensees. Generally this will be for a good cause or public interest. [Regulation 23(2). Communications and Multimedia Regulations (Licensing) 2000].

Generally both the individual and class licensees are subject to the Communications and Multimedia Act and all the regulations made there under. Licence conditions imposed on individual licence are more elaborate. In comparison class licences only need to be registered.

Foreign individuals who are not permanent members and foreign companies may be allowed to register for class licences for a good cause or if it is in the public interest.

The procedure for application is provided in the Communications and Multimedia Regulations (Licensing) 2000. Generally applications must be made on prescribed form and contain information that is specified. All applications must be submitted to the Malaysia Communications and Multimedia

Commission (MCMC). The MCMC may request to additional information whilst processing the applications. The MCMC then makes a recommendation to the Minister (Minister of Energy, Communication and Multimedia) together with recommendations on special or additional licence conditions. The Minister may agree or disagree with the recommendations of MCMC. If the Minister refuses to grant the licence, the applicant will be told the reason for the refusal.

The definition of foreign company is as in the Companies Act 1965.

**Question**

30. *(para. 72) We are interested to learn about the rationale for authorities to find that the actual number of mobile suppliers is adequate?*

**Answer**

Malaysia decided on the number of mobile suppliers based on comparative analysis between countries basing on similarities in socio-economic factors.

**Question**

31. *(para. 73) Could Malaysia give more detailed information regarding the conditions under which foreign ownership is allowed to exceed 30%? When does Malaysia expect the domestic restructuring process to lead to further liberalization of the current foreign equity limit?*

**Answer**

Any increase in the equity position above our WTO commitment is dependent on factors contributing to our national interest.

Malaysia is working towards progressive liberalization to allow for the local suppliers to gain enough capacity to face competition from global multinationals.

**Question**

32. *(para. 74) Please explain why the price-cap still applies to fixed line telephony?*

**Answer**

The price-cap on fixed line telephony is to satisfy the government policy objective to provide affordable services to Malaysians, especially the remote (rural) communities.

**Question**

33. *(para. 75) Could Malaysia please provide information about how and where "universal services" defined, how the "the cost of providing universal service" has been computed, and where this computation can be consulted?*

**Answer**

"Universal Services" is as stipulated under section 202(1) of the Communications and Multimedia Act Malaysia 1998 (Act 588). It is to promote the widespread availability and usage of network/applications services by the installation of network facilities and the provisioning of these facilities to the rural areas, underserved areas and underserved groups within the community.

**Additional questions on the telecommunication sector:**

33. *We would be grateful if Malaysia indicates whether there are any provisions to ensure that the major supplier, Telekom Malaysia Berhad does not abuse its dominating market position? In particular, are there any safeguards against cross-subsidisation and potential abuse of information it gets from other suppliers? And are there any rules on interconnection?*

**Answer**

Telekom Malaysia Berhad, just as other licensees is subject to the competition guidelines.

The Communications and Multimedia Act provides for the elimination of cross-subsidies [Section 198(b)].

So far there have not been reported incidences on the abuse of information.

**Question**

34. *Please also inform how numbers and rights of way are managed.*

**Answer**

The Malaysian Communications and Multimedia Commission (MCMC) is vested with the powers to control, plan, administer, manage and assign the Numbering Plan and Electronic Addressing of Network and Application Services as per the Communications and Multimedia Act 1998 (CMA), Sect. 179-181.

On the ROW, the CMA spells out the rights of Network Facilities Providers and also safeguards public rights and safety as per Sect. 214-230.

The CMA may be viewed at: [www.cmc.gov.my](http://www.cmc.gov.my), the official site of the MCMC.

**(v) Transport; (a) Air transport**

**Question**

35. *(para. 80) Could Malaysia please indicate if foreign enterprises are allowed to administer or operate airports, or provide navigation and air traffic services? What other auxiliary services can they operate for their own benefit, and under what conditions?*

**Answer**

The Government of Malaysia currently does not permit foreign enterprise to administer or operate airports, or provide navigation and air services.

**(b) Maritime transport**

36. *(para. 83) We would appreciate it to receive some clarifications on taxation. Is income of a shipping company derived from the operations of Malaysian ships (registered as such under the Merchant Shipping Ordinance 1952, amended) exempted from tax? If so, is such incentive granted to residents only? To which extent can additional deduction be made for of freight charges incurred by a shipper in Malaysia and paid to a Malaysian incorporated shipping company for transportation on board a Malaysian ship?*

**Answer**

Tax exemption for income from shipping business. Statutory income of a shipping enterprise, from the business of transporting of passengers, mail, livestock or goods by sea-going Malaysian ships is tax exempt. In this respect the term "Malaysian Merchant Ships" means seagoing ship registered as such under the Merchant Shipping Ordinance 1952 other than a ferry, barge, tug boat, supply vessel, crew boat, lighter, dredger, fishing boat or other similar vessels. Any dividend paid out of such and exempt account is also exempted from tax. There is no special additional deduction available for transporting on a Malaysian ship.

**Additional Questions on behalf of the European Union**

**II. Trade Policy Developments; (1) Overview**

**Question**

37. (para. 11) *The report states that Malaysia's took measures to transform the manufacturing sector into "a broad-based and internationally competitive sector". This encompasses moving along the value chain from assembly-based towards higher value-added activities. Could Malaysia please elaborate on its positive and negative experiences and lessons in its policies to create export growth through higher value added manufacturing activities. What has been the role of Malaysia's tariff structure - and in particular tariff escalation - in this?*

**Answer**

Tariff escalation has not been a policy tool in developing higher value-added activities. The measures taken to enhance competitiveness of the manufacturing sector are:

- promoting and targeting FDI into selected sectors;
- creating a more conducive business environment through upgrading infrastructure and streamlining administrative procedure;
- enhancing domestic capability in marketing;
- training and retraining of work force;
- development and application of advanced technology.

**2. ASEAN**

**Question**

38. *Under the AIA arrangement, ASEAN countries are committed to immediately grant national treatment to ASEAN investors and open up their industries for investment with some exceptions. The exceptions are contained in the Temporary Exclusion List (TEL) and Sensitive List (SL) for the AIA. We would be grateful if Malaysia could indicate which are Malaysia's exceptions, if any, under both the TEL and the SL for the AIA.*

**Answer**

Fishery - 30% equity.

Deep sea fishing - licensed to local investors only.

Exceptions on national treatment are corporate equity ownership, licensing requirements, ownership of land and property, government procurement, flow of personnel, privatization projects, soft loans and grants.

### **III. Sectoral Policies; (6) Measures on investment**

#### **Question**

39. (para. 55) *Malaysia's stated policy is to "maintain a liberal investment regime which is characterised by liberal foreign equity ownership policies...". Regarding the services sector, restrictions apply on FDI necessarily for establishment of commercial presence in essential sectors of the economy, such as energy, finance, telecommunications and transportation. We would like to ask Malaysia to explain which measures are envisaged by the Government for further opening the services sector.*

#### **Answer**

Malaysia is committed to a gradual and progressive liberalization of the services sector, commensurate with its development needs.

### **NORWAY**

#### **Question**

1. *In the report from the secretariat it is stated that the Government has taken steps or announced plans to restructure the corporate and financial sectors and started a long-standing privatization programme and labour market reforms. Would the Malaysia authorities please provide further information about the reform, especially in the labour sector?*

#### **Answer**

Recognizing the need to strengthen the corporate sector, Malaysia's corporate and financial restructuring efforts continued to make real progress, despite the weak economic environment. To date, the merger programme for the banking sector has been successfully completed with 52 out of 54 banking institutions consolidated into ten banking groups and 98% of the total assets of the domestic banking sector rationalised and consolidated.

As at 30 September 2001, Danaharta has acquired total loan rights amounted to RM48.08 billion involving 2,943 accounts in its portfolio. Out of the total, RM20.13 billion are NPLs acquired from financial institutions at an average discount of 55% to their loan rights acquire (LRA) value. Recovery actions have been initiated on RM40.05 billion (gross value of RM42.02 billion) or 83% of the total portfolio of which the expected recovery rate for these NPLs is 57%. A bulk of the remaining NPLs will be restructured by the end of this year. Up to 30 September 2001, Danaharta has distributed on an accumulated basis RM7 billion in cash and 36.6 million units of securities at par value to financial institutions. Since inception, Danamodal has injected RM7.59 billion to recapitalize 10 financial institutions. As at end-October 2001, capital injection by Danamodal remained at RM3.7 billion.

As at end-October 2001, the Corporate Debt Restructuring Committee (CDRC) has resolved 36 cases amounting to RM28.2 billion. At the same time, there are 26 outstanding cases with total debts of RM28.2 billion with the CDRC of which 6 are previously resolved cases but currently being revised and 6 cases being restructured by Danaharta.

In the first half of the year, the reform of the corporate sector was affected by the economic slowdown, which resulted in weak market conditions and difficulties in asset disposal. Hence, in order to ensure corporate restructuring exercises remained on track, the Government had to step in to facilitate this process as well as to ensure that restructuring schemes were credible, workable and not detrimental to future stability. This was evident with a number of large companies undertaking rigorous restructuring exercises, in terms of management and ownership structure, disposal of non-core business and assets. Furthermore, fears of corporate restructuring exercises derailing after 11 September attacks were unfounded as major corporations continued to make further inroads in their restructuring exercises. As at 30 November 2001, CDRC has successfully completed a debt restructuring scheme for Sistem Transit Aliran Ringan Sdn Bhd ("STAR") and Projek Usahasama Transit Ringan Automatik Sdn. Bhd. ("PUTRA") and their lenders involving debts outstanding of approximately RM5.5 billion. The successful resolution of the debt restructuring scheme is estimated to reduce the level of NPLs in the banking system by RM2.9 billion or 0.7% on a net 6-month basis (excluding loans extended by offshore banks, development finance institutions and other non-bank institutions).

Regarding labour market reforms, Malaysia continues to implement measures to increase labour productivity including productivity-linked wage system, flexible hours and minimum wage system in selected sectors of the economy.

### Question

2. *Could Malaysia explain in which areas they have special concerns about transparency in government procurement? Is it technical capacity problems in implementing an agreement or are there other special concerns we should be aware of?*

*The question is without prejudice to any other possible questions Norway may raise in our general statement during the Trade Policy Review of Malaysia.*

### Answer

Transparency is one of our government procurement principles and it is entrenched in our rules and regulations. However, becoming a signatory to an agreement on transparency is an entirely different matter. Malaysia has consistently voiced its concern in the Working Group on Transparency in Government Procurement and we do not intend to repeat all our concerns. Suffice to say that in Malaysia government procurement is also used as a tool to achieve socio-economic developmental objectives. Any such agreement should therefore enable the continuance of programmes to achieve these objectives. Additionally, the scope of the agreement should not be too broad that its obligations too onerous and burdensome to follow.

## **HONG KONG, CHINA**

### **Customs valuation; (WT/TPR/S/92, p. 27, para. 15)**

### Question

1. *It is mentioned that Malaysia's legislation has a provision for minimum import values, though it has never been invoked. We would be interested to know under what conditions this provision will be invoked.*



**Answer**

Please refer to answer in Q.3 of the EU reply.

**Competition policy; (WT/TPR/S/92, p. 66. para. 145)**

**Question**

2. *It is noted that guidelines were introduced to regulate competition in the telecommunications sector. In this regard, we would be interested to have more information on such guidelines, and to know whether similar guidelines are also provided for in other sectors.*

**Answer**

In the telecommunications sector, the introduction of the pro-competitive Communications and Multimedia Act 1998 (CMA) has further enhanced the competitiveness of the industry.

The CMA has provisions which promote competition in the market place:

- The Application Service Provider licensing has opened up competition in the down stream market where entry is not restricted. Here only a class license is required whereby it is akin to a pre-approved license.
- There are no foreign equity restrictions applicable for Applications Service Provider License. However, there are equity restrictions for the other licenses i.e. Network Facility Provider, Network Service Provider and Content Applications Service Provider. Intending participants have to set-up company in Malaysia.
- Last-Mile service facility provider is also open for new entrants.

The competition issue is well explained in the CMA (Part IV) and the Competition Guideline which is accessible in the Malaysian Communications and Multimedia Commission web-site at : [www.cmc.gov.my](http://www.cmc.gov.my).

**Telecommunications; (WT/TPR/S/92, p. 90, para. 73)**

**Question**

3. *It is noted that foreign equity participation in network facilities provider business is in general capped at 30%, and higher foreign participation may be allowed on a case-by-case basis. We would like to know under what conditions equity level will be allowed to exceed 30%.*

**Answer**

In general, foreign equity above 30% is allowed in cases where foreign participation will result in net benefits to the country.

## CANADA

### **III. Trade Policies and Practises by Measure; (1) Introduction; (para. 2)**

#### **Question**

1. *According to para. 2, 33% of tariff lines are not bound, and for those lines that are subject to bindings, bound rates often considerably exceed applied rates. To improve predictability and stability for Malaysian importers and foreign country exporters, are you considering binding more tariff lines and reducing the gap between bound and applied rates?*

#### **Answer**

Malaysia's level of binding was 1% prior to the Uruguay Round negotiations. This was increased to 65%, a significant increase by any standards. Ceiling bindings have been allowed in tariff negotiations as a way of encouraging greater scope of bindings which provides greater predictability and yet provide flexibility for countries to increase tariffs. In the case of Malaysia, the gap between applied rates and bound have declined because of Malaysia's unilateral reductions since the Uruguay Round. Malaysia will consider further bindings in the Doha work programme taking into account the overall outcome of negotiations.

### **IV. Trade Policy by Sector; (5) Services; (ii) Policy objectives for the sector; (para. 39)**

#### **Question**

2. *According to para. 39, the Government of Malaysia envisages liberalization under the framework of the GATS in accordance with prevailing domestic fundamentals and the ability of the sector to accommodate changes without impinging on the orderly development of the sector. Please comment on whether you intend to seek significant liberalization in the telecommunications services sector as part of on-going GATS negotiations.*

#### **Answer**

Malaysia has already instituted measures towards a more competitive ICT industry. Firstly, our Communications and Multimedia Act 1998 has imputed provisions for a substantial pro-competitive environment in the industry, including deregulation. Malaysia has already opened up to 30% foreign equity holding for basic services. This would progressively be liberalised further.

### **(iii) Financial services; (para. 50)**

#### **Question**

3. *Restrictions on the opening of new branches and the installation of automatic teller machines have been impeding the progression of foreign-owned banks in the retail banking sector. Are you considering lifting these restrictions to increase competition and allow foreign banks to offer the same level of services to retail customers?*

#### **Answer**

Once the domestic banking institutions have built greater capacity and capability to compete, greater liberalization measures will be introduced progressively, beginning with the leveling of the playing field between domestic banks and incumbent foreign banks in Phase II of the Financial Sector Masterplan (FSMP). This will begin with the removal of some of the restrictions on the existing

foreign-owned banks, including consideration to allow incumbent foreign banks to set up shared ATM network. These steps will be implemented gradually subject to achievement of specified milestones.

**(iv) Telecommunications; (para. 65)**

**Question**

4. *According to para. 65, the Malaysian telecommunications sector is characterized by dominant market players; for example, Telekom Malaysia Berhad which holds 95% of the fixed line market, and Telekom Malaysia which has a de facto monopoly to provide back-bone infrastructure in the Multimedia Super Corridor. Do you plan to ensure that an asymmetric regulatory system is established to deal with dominant carriers? If yes, please explain.*

**Answer**

Most countries which started off with the Government as the sole provider of telecommunications services are now facing similar situations. We are now promoting new entrants into the last mile sector, which has the potential to reduce this monopolistic situation.

We are also aggressively implementing fair inter-connection arrangements to facilitate the other operators to enter the fixed line market.

Nevertheless, the subscriber volume and rate of growth is far higher in the mobile market where there are 5 players and Telekom Malaysia is not the biggest player in that market.

In the Multimedia Super Corridor, Telekom Malaysia was given the monopoly position to ensure that there was speedy implementation of networks because Malaysia needed to get the MSC project off the ground quickly and orderly, whilst maintaining the quality of network. Thus, Telekom Malaysia was given the mandate to do that due to their technical and financial capacity.

Now that the basic infrastructure is in place, the Government is now planning to allow the other Malaysian operators to enter this market too and rest assured, a pro-competitive environment will reign in the MSC too.

**(iv) Telecommunications; (para. 67)**

**Question**

5. *According to para. 67, a Multimedia Super Corridor is being established with a view to making Malaysia a major global centre for communications and multimedia information services. A footnote referenced to para. 67 states that within the Corridor, investors are eligible to duty-free imports of multimedia equipment, income tax exemption, and investment tax allowance up to ten years; 100% foreign ownership is allowed, fast-track processing of visa for foreign professionals apply, and there are no restrictions on the number of professionals that can be employed per company. Please explain what licensing requirements would-be investors are subject to as part of this initiative.*

**Answer**

There are no licensing requirements to set-up operations in the MSC. But, if services are provided to customers, then the normal licensing requirements apply. Please refer to the Malaysian Communications and Multimedia Commission web-site for information on licensing matters: [www.cmc.gov.my](http://www.cmc.gov.my)

**(iv) Telecommunications; (para. 72)**

**Question**

6. *According to para. 72, no individual licenses have been issued since 1997 for fixed line and mobile service providers because authorities consider the current number of providers as adequate. Please clarify the procedure and criteria on which this decision is based.*

**Answer**

Please refer to response to Q.3 of Hong Kong, China.

**(iv) Telecommunications; (para. 73)**

7. *According to para. 73, foreign equity participation beyond 30% may be permitted on a case-by-case basis. Please explain the procedure used for evaluating each case.*

**Answer**

Please refer to response to Q.3 of Hong Kong, China.

**(iv) Telecommunications; (para. 76)**

**Question**

8. *According to para 76, Malaysia has not fully adopted the reference paper. Please elaborate on which rules are not yet in place to prevent major suppliers from engaging in or continuing anti-competitive practices, as per para. 1 of the reference paper.*

**Answer**

This issue is still being examined.

**(v) Transport; (b) Maritime transport; (para. 81)**

**Question**

9. *Para. 81 states that Malaysia has been promoting Port Klang as a hub and cargo transshipment centre by expanding its capacity and designating it as a "free commercial zone". Please clarify what is meant by "free commercial zone".*

Free Commercial Zone is a designated area that enables goods to be imported duty free for purpose of re-export. In the context of the Port Klang free commercial zone, it enables value added activities that are meant for re-export to be carried out in the zone duty free.

**(b) Maritime transport; (para. 82)**

**Question**

*Para. 82 states that "seven federal ports and eight state ports in Malaysia are supervised by ten authorities". We understand that Kuantan Port and Teluk Ewa Jetty in Langkawi were privatized in 1998. Are there plans to privatize other federal ports? If yes, which ones?*

**Answer**

The terminal operations at Kemaman Port is currently in the final stages of privatization.

**AUSTRALIA**

**Automotive Sector**

**Question**

1. *In the wake of the 1997-98 Asian financial crisis, Malaysia increased MFN tariffs on automobiles and automotive products, including increasing duties on some completely built up (CBU) automobiles by up to 300%.*

a) *Does Malaysia intend to take steps in the near future to reduce its MFN tariffs on these products to the levels that were maintained previously during the pre-crisis period. If so, when will these tariff reductions be put into effect?*

**Answer**

Malaysia is currently reviewing its automotive policy with a view to inject gradual competition into the industry. The review among others includes tariff structure of CEPT, MFN tariff and the import licencing system.

**Question**

b) *Will Malaysia reduce its MFN tariffs in line with the anticipated reduction in CEPT tariffs that is due under AFTA in 2005?*

**Answer**

Same response as in Q.1 (a)

**Question**

2. *Malaysia maintains a licensing system which limits the number of imported CBU vehicles. Does Malaysia intend to increase the number of licenses granted for the importation of CBU automobiles?*

**Answer**

Same response as in Q.1 (a)

***Ad valorem tariffs***

**Question**

*Malaysia maintains a number of mixed and compound duties through its tariff schedule, especially in the chemicals and metals sectors. As part of its development strategy, Malaysia is moving production up the value added chain, but these types of tariffs generally support low value added producers. The use of ad valorem tariffs would assist in sending the right price signals to producers and would achieve Malaysia's policy objectives.*

3. *Is Malaysia considering application of ad valorem tariffs only in its tariff schedule?*

**Answer**

Compound duties are not in line with Malaysia's industrial development strategy to encourage higher value added industries. In this context, the Government has already taken action to convert the compound duties to *ad valorem* duties. This is clearly shown in the secretariat report that compound rate has been reduced from 4.5% in 1997 to 0.7% in 2001.

**Halal Meat**

**Question**

4. *Australia is interested in obtaining detailed information on Malaysia's Halal meat requirements, including specific details of the applicable legislation (act, section, etc.) and regulations, and any other requirements or preconditions.*

a) *What are the existing requirements and conditions?*

**Answer**

The requirements and conditions for halal food are based on established Islamic Law. These requirements and conditions are described under the "General Guidelines on the Slaughtering of Animals and the Preparation and Handling of Halal Food" prepared by the Department of Islamic Development, Malaysia. The determination of and the confidence in the Halal status of food is a religious issue. Establishments requesting accreditation for Malaysia Halal meat are subject to inspection and verification. This is stipulated in the guidelines.

**Question**

b) *Are these existing requirements and conditions the same for all suppliers of Halal meat?*

**Answer**

Yes.

**Question**

c) *If different requirements exist for some suppliers, what is the basis for the application of those different requirements? What conditions must be fulfilled by those suppliers in order to become subject to the different requirements?*

**Answer**

Not applicable.

**Question**

d) *Have these requirements and conditions been made publicly available? Would Malaysia consider publication of a booklet that outlines all necessary requirements and conditions for Halal meat certification?*

**Answer**

The "General Guidelines on the Slaughtering of Animals and the Preparation and Handling of Halal Food" is available.

**Professional services/Legal services**

**Question**

*The liberalization of the professional services sector will add stimulus to Malaysia's aim to develop a knowledge-based economy (k-economy). A framework that provides for transnational professional services and service suppliers will benefit trade and investment.*

5. *Will Malaysia consider opening further its markets to professional services provided by foreign entities/individuals?*

**Answer**

This will be considered in the current negotiations and any opening up of the market will be based on the competitiveness of the domestic service providers.

**Question**

6. *Will Malaysia permit foreign lawyers and law firms to practice foreign law in mainland Malaysia; enter into commercial association with Malaysia's lawyers and law firms; and establish a direct presence in Malaysia?*

*These changes would enable foreign lawyers to provide services to local and international clients on their home/third country and international law, but not host country (Malaysian) law, except in association with duly admitted Malaysian practitioners.*

*The "limited licensing" regulatory system for legal services promoted in the context of GATS (S/CSS/W/67/Suppl.1/Rev.1) may be a regulatory model that could be considered by Malaysia.*

*(Note: Foreign providers of legal services are currently permitted more liberal access in Labuan only. However, the majority of foreign commercial interest remains focused on mainland Malaysia.)*

**Answer**

According to Malaysia's current specific commitments on legal services, foreign lawyers and law firms are allowed to practice only in the Federal Territory of Labuan, covering advisory and consultancy services relating only to home country laws, international law and offshore corporation laws of Malaysia. Malaysia's future commitments on legal services will be determined subject to the outcome of the ongoing services negotiations.

**Question**

7. *Will Malaysia broaden recognition of legal qualifications from foreign Law schools and Universities? For example, at present, qualifications from only 14 of 28 Australian University Law Schools are recognized in Malaysia.*

**Answer**

Malaysia will follow established procedures in the recognition of legal qualification from foreign law schools.

**UNITED STATES**

**Summary Observations; (3) Trade and Trade-Related Policies, Practices and Measures; (para. 8)**

**Question**

1. *The Secretariat's Report notes that there are several barriers to trade and investment that still constitute potentially important distortions to competition and thus potential impediments to Malaysia's long-term development. What is the Government of Malaysia doing to increase competition?*

**Answer**

The Government recognizes the importance of competition and continuously reviews its policies and measures aimed at enhancing competition at all levels of society.

**(Para. 9)**

**Question**

2. *The Secretariat's Report notes that as a consequence of "temporary" increases in rates in 1998, the average applied MFN tariff increased from 8.1% in 1997 to 9.2% in 2000. This rise in tariff protection was facilitated by the fact that one third of tariff lines are not bound and, even for those lines that are subject to bindings, bound rates often considerably exceed applied rates. This lack of bindings, together with the gap between bound and applied rates, can impart a degree of unpredictability to Malaysia's tariff. Furthermore, the multiplicity of applied rates contributes to the complexity of the tariff. What is the Government of Malaysia doing to increase the predictability of its tariffs?*

**Answer**

Please refer to response to Q.1 of Canada.

**(4) Sectoral Issues; (para. 19)**

**Question**

3. *The Secretariat's Report notes that insofar as barriers to commercial presence restrict competition in the provision of services, they tend to impair efficiency in the sector, so that the prices paid for these services, both by businesses and households, are higher than would be the case in a more competitive market. The resulting higher costs of doing business could hamper the competitiveness of all firms in Malaysia that require essential services (such as energy, finance, telecommunications, and transportation) as inputs in their production and delivery of goods and services. What is the Government of Malaysia doing to reduce these barriers to the provision of services?*



**Answer**

The liberalization of these services sector will be further undertaken in the context of the current services negotiations.

**I. Economic Environment; (1) Overview; (para. 8)****Question**

4. *The Secretariat's Report notes that the Government has taken steps or announced plans to restructure the corporate and financial sectors. What is the current status of the Government of Malaysia's restructuring efforts?*

**Answer**

Same response as in Norway Q.1

**(2) Main Policy Developments; (i) Macroeconomic policies; (ii) structural policies; (c) Privatization; (para. 26)****Question**

5. *The Secretariat's Report notes that The Government has had a privatization program since 1983, although the onset of the Asian crisis has slowed its progress. Indeed the Government has bought back stakes in several companies, sometimes at prices considerably above those prevailing in the market. Thus, state-owned enterprises continue to play an important role in the Malaysian economy, especially in the petroleum, electricity, transportation, telecommunications, and postal sectors. What is the Government of Malaysia planning to do to speed up the privatization process?*

**Answer**

Please refer to response to Q.24 of Japan.

**(4) Outlook****Question**

6. *The Secretariat's Report notes that there are several long-standing barriers to trade, and particularly to foreign investment, that still constitute potentially important impediments to Malaysia's sustained recovery from the crisis. A more liberal trade and investment regime could also contribute greatly not just to a sustained economic recovery, but also to Malaysia's long-term economic development. What is Malaysia doing to address this?*

**Answer**

Malaysia's trade and investment regime is relatively liberal. Malaysia is committed to providing a conducive environment for trade and investment. In this context, Malaysia would continuously review its policies to this end.

**II. Trade Policies Regime: Framework and Objectives; (3) Development and Administration of Trade Policy; (i) Administrative framework; (para. 11)**

**Question**

7. *The Secretariat's Report notes that the Malaysian Industrial Development Authority (MIDA), provides tax and non-tax incentives to "deserving infant industries". Can you please provide further details on what qualifies an industry as a "deserving infant industry"? In addition, could you please describe the tax and non-tax incentives that are provided to these industries?*

**Answer**

The existing direct and indirect tax incentives offered are as follows:

- Pioneer Status (PS)
- Investment Tax Allowance (ITA)
- Reinvestment Incentive (RA)
- Industrial Linkage Programme (ILP)
- Accelerated Capital Allowance (ACA)
- Infrastructure Allowance
- Industrial Building Allowance (IBA)
- High-tech incentives
- Incentives for strategic projects
- Incentives for multimedia super corridor
- Export incentives
- Training incentives
- Research and development incentives
- Incentives for information technology
- Import duty and sales tax exemptions

These tax incentives are applicable to both foreign and domestic investors, with the exception of the PS for small-scale companies and ILP incentives.

**(4) Trade Policy Objectives; (para. 16)**

**Question**

8. *The Secretariat's Report notes that tax and non-tax incentives are being offered to companies who contribute to the Government's objectives. What types of incentives are being offered? Are only specific companies or industries eligible for these incentives? If so, what are those companies or industries? How are these objectives defined, and what are they aimed at achieving?*

**Answer**

Same response as in US Q.7

**(5) Trade Agreements and Arrangements; (i) Multilateral agreements; WTO; (para. 19)**

**Question**

9. *The Secretariat's Report notes that Malaysia is committed to phasing out its export subsidies in the manufacturing sector over eight years in order to bring them in conformity with its WTO*

*agreements. Please explain what measures have been taken to date to “phase out” export subsidies in the manufacturing sector?*

**Answer**

No new additional export incentive was introduced since 2000. Currently, the Government is in the process of reviewing the existing export incentives to be consistent with WTO rules.

**III. Trade Policies and Practices by Measures; (2) Measures Directly Affecting Imports; (ii) Tariffs; (e) Tariff levels; (para. 24)**

**Question**

*10. The Secretariat’s Report notes that Malaysia has raised tariff rates on automobiles, construction equipment, and certain appliances. What was the basis for this decision? Are the increased rates within Malaysia’s WTO bindings? When does Malaysia intend to lower these rates?*

**Answer**

The tariff increases were consistent with Malaysia’s obligation under the WTO. Tariffs are constantly reviewed and will be progressively liberalized when circumstances allow.

**(iv) Import prohibitions, restrictions and licensing; (b) Import approval and licensing; (para. 43)**

**Question**

*11. The Secretariat’s Report notes that Malaysia maintains non-automatic licensing on approximately 27.3 % of all tariff lines. Licensing requirements for the importation of goods are considered NTMs and, as such, must be justified in order to be maintained. There is no WTO justification for maintaining discretionary licensing to regulate the flow of imports to promote strategic industries. What is Malaysia’s doing to reduce and eliminate its extensive discretionary licensing system?*

**Answer**

See responses to EU Q.7 and Q.8

**(vi) Government Procurement; (para. 50)**

**Question**

*12. The Secretariat’s Report notes that Malaysia is not a party to the WTO Agreement on Government Procurement. Foreign firms consistently call for enhanced transparency in the government’s procurement decision-making process. Short of signing on to the GPA, what measures is the GOM considering to improve transparency in the procurement process?*

**Answer**

Transparency is one of the principles in government procurement and it is highlighted in the relevant procurement rules and regulations. To further enhance transparency in the procurement process, electronic procurement is being implemented in stages.

Additionally, Treasury Circular letters are issued periodically to further clarify new policies and procedures. These circular letters can be accessed by the public through the Malaysia Treasury's homepage at <http://www.treasury.gov.my>.

**(viii) Local-content requirements and the vendor program; (para. 46)**

**Question**

*13. The Secretariat's Report notes that both Industrial Linkage Programme (ILP) and the Vendor Development Program promote domestic industry through financial, technical and other related assistance. Please provide further details of the types and the extent of financial and other related assistance these government agencies provide.*

**Answer**

Details of these programmes provided by the Small and Medium Industries Development Corporation are available at <http://www.smidec.gov.my>.

**(3) Measures Directly Affecting Exports; (iv) Duty and tax concessions; (c) Export Processing Zones; (para. 82)**

**Question**

*14. Are there any special employee benefits offered to companies which locate in free zones (such as reduction in social security payments, reduction or financing of employee training etc...)? If there are benefits that are paid to the company for employment or employee purposes, are those benefits the same for both small-and medium sized companies as well as larger companies?*

**Answer**

No special employee benefits are offered to companies in free zones. There are also no differences in benefits between small and big companies.

**(vii) Export promotion and marketing assistance; (para. 90)**

**Question**

*15. The Secretariat's Report notes that the Government provides assistance programs that include tax incentives, financial assistance and institutional support for export marketing and promotion activities. Please describe what the tax incentives are? Please describe what the financial assistance consists of?*

**Answer**

The full list of incentives can be obtained from the website of the Malaysian Industrial Development Authority (MIDA) <http://www.mida.gov.my>.

**(4) Measures Affecting Production and Trade; (ii) Taxation and tax measures; (a) Direct taxation; (para. 97)**

**Question**

16. *The Secretariat's Report notes that the Government of Malaysia has no direct export subsidies; however, there are particular tax incentive programs that target sectors such as: Pioneer Status, Investment Tax Allowance (ITA), Reinvestment Allowance (RA), and Accelerated Capital Allowance (ACA). Please explain what type of incentives are provided, what the eligibility criteria is, and whether these programs are limited to specific sectors (if so, which ones)? Do you have plans to "phase out" export incentive programs such as: Double Deductions, Exemption for the Value of Increased Exports, Industrial Building Allowance, and Exemption for Shipping Operations. Could you provide detailed information for each program listed above?*

**Answer**

These incentives are provided to all sectors. All incentive programmes are regularly reviewed for their effectiveness and compliance with WTO. The full list of incentives can be obtained from the website of the Malaysian Industrial Development Authority (MIDA) <http://www.mida.gov.my>.

**(b) Indirect taxation; (para. 99)**

**Question**

17. *The Secretariat's Report notes that "national cars" excise duties are half of what the normal rates levied on cars that are either imported or domestically assembled. Is this indirect taxation under a certain program? If so, can you explain this program in greater detail? Are there any other sectors this incentive program applies to?*

**Answer**

Exemption of excise tax is given to any company which fulfils among others, the following conditions:

- having integrated manufacturing facilities
- carrying out R&D activities
- providing extensive linkage to the local industry
- promoting Malaysian brand name
- having majority Malaysian equity

**(vi) Intellectual Property Rights; (para. 119)**

**Question**

18. *The U.S. has recognized Malaysia's efforts with regard to stemming the piracy of optical media, primarily through the passage and implementation of the Optical Disk Act this past year. However, we continue to carefully scrutinize progress toward full implementation of the Act's provisions. Can the Government of Malaysia provide an update on implementation?*

**Answer**

The Optical Disc Act 2000 came into force effective 15 September 2001 and the manufacturers involved in the business were given a 6 month period (till 15 March 2001) to comply with the licence

requirements. The Ministry adopts a strict policy of not entertaining any more applications following that date.

The Act requires all manufacturers of optical discs to be licensed. All manufacturers have to use the SID (Source Identification Code) allocated by the Ministry. The Act required the SID Code to be marked on their machine moulds six months from the date the licences are issued.

The licence holders are also required to submit monthly reports on the following:

- Consumption of raw materials;
- Quantity of production; and
- Names and Addresses of the copyright owners who had given their consent.

The Ministry continues to monitor the factories regularly to ensure the manufacturers comply with the provisions of the Act.

**(vii) Role of state-owned enterprises and privatization; (para. 140)**

**Question**

*19. On what basis do NFPE's provide financing to manufacturing companies? What criteria must be met to receive the funds from NFPE's? What is the criteria that the government uses to purchase shares in private industries such as PETRONAS?*

**Answer**

NFPEs do not provide financing to private companies. NFPEs, however, invest or take up equity participation in companies.

**IV. Trade Policies by Sector; (2) Agriculture; (ii) Policy Objectives for the Sector; (para. 7)**

**Question**

*20. The Secretariat's Report notes that the National Agricultural Policy (NAP3) places emphasis on "aim to further improve ... Malaysia's agriculture sector". Can you provide more information with regards to this policy? What type of measures are used to "Raise productivity and thereby improve sectors competitiveness"? How does the policy intend to improve the agriculture sector?*

**Answer**

Details on NAP3 can be accessed from the Ministry of Agriculture's website at <http://www.agrolink.moa.gov.my>. Measures to improve productivity include:

- R&D, planting quality seeds, improve post-harvest handling.
- Training and upgrading of training institutions and improving modules of training.
- Encouraging small farmers to merge and operate along the lines of estatization.
- For small farmers only, developing food production parks so that infrastructure facilities can be shared by many more farmers thus optimising resources available.
- Developing guidelines for Good Agricultural, Animal Husbandry and Aquaculture practices.
- Crop, animal and Aquaculture Health Protection (SPS issues).
- Mechanisation and modernization of farming methods.

**(4) Manufacturing; (iii) Main policy instruments for the sector; (para. 21)**

**Question**

21. *The U.S. applauds Malaysia's decision in January 2001 to extend for three years the investment incentive providing for 100 percent foreign equity in manufacturing concerns. Is the GOM considering new, pro-investment measures?*

**Answer**

Same response as in Q.6

**(iv) Key subsectors; (a) Automobiles and their parts; (para 24)**

**Question**

22. *Does Malaysia recognize that potentially large growth in the ASEAN sector is currently hampered by GOM's restrictive import policies? Members agreed this year to an extension of certain local content requirements under TRIMS. What steps will Malaysia take to address high tariffs and excise taxes on autos, parts and motorcycles to encourage investment in the sector?*

**Answer**

Malaysia is currently reviewing its automotive policy with a view to inject gradual competition into the industry. The review among others includes tariff.

Malaysia recently reduced import duty on motorcycles ranging from 80-120% to 60%.

**(5) Services; (iii) Financial services; (b) Banking; (para. 48)**

**Question**

23. *Granting operating rights to foreign banks in Malaysia would increase the pool of capital available to domestic investors, boosting the economy's chances for a rapid recovery from the current downturn. Will the GOM consider opening the banking sector and grant licenses to foreign banks before the indicated liberalization of the sector in 2007?*

**Answer**

At present, there is a very high foreign presence in the Malaysian banking sector. 14 out of 27 commercial banks in Malaysia are fully foreign-owned, controlling about 25% of the market. In addition, foreigners also hold equities in the domestic-controlled commercial banks.

Liberalization of the banking sector will be undertaken progressively, taking into account the needs of the economy and ensuring that liberalization will not lead to financial instability. The pre-requisites for granting of new banking licences have been clearly stated in the Financial Sector Masterplan (FSMP). Once the domestic banking institutions have built greater capacity and capability to compete, greater liberalization measures will be introduced progressively. New foreign competition may be introduced in Phase III if certain safeguards are met. In the meantime, foreigners are welcome to participate in the domestic banks through strategic alliance and joint-venture, subject to the foreign equity limit of 30%.

## INDIA

### Question

1. *In para. 22 of the Overview, the Secretariat Report has indicated that "the recent sharp slowdown in the US economy and Japan's further weakening, pose major challenges for Malaysia's trade and investment outlook and thus to Malaysia's short and medium-term prospects". In its view, this raises a question "whether Malaysia's economic policy has perhaps over-emphasised exports at the expense of domestic demand (i.e. national saving is excessive), making it too dependent on foreign markets (and a narrow range of products, namely electronics)".*

*We would request the delegation of Malaysia to comment on these Secretariat observations. We would also be interested to know of the details of any strategy being formulated to deal with the impact of the US economic slow down and downturn in the global economy in general.*

### Answer

As an open economy with trade accounting for more than 200% of GDP, the Malaysian economy has been affected by the growing difficulties in the external sector, particularly the worsening economic situation in the US, Japan and Euro region. The manufacturing sector is more broad-based and Malaysia does not depend solely on electronics to drive growth. In the recent Budget 2002, steps will be taken to further enhance the agriculture sector as the third source of growth. In addition, the economy will increasingly progress towards knowledge-based activities (ICT, Biotechnology, Banking, Insurance, etc.) as the new sources of growth. Therefore, emphasis will be made to generate domestic demand-led activities.

To counter the effects of the global economic slowdown, the following strategies are being adopted:

- (i) strengthening Malaysia's economic growth through increased domestic expenditure, enhancing the role of the private sector and increasing competitiveness, and
- (ii) diversifying sources of growth through trade and domestic industrial activities without reducing the role of FDI as well as ensuring the combined expansion of Malaysia's exports.

### Question

2. *Para. 6 of the Overview informs the Members of the setting up of a National Economic Action Council (NEAC) in January 1998 as a consultative body to the Malaysian Cabinet.*

*We would like to know the composition of the body as well as its terms of reference.*

### Answer

Please refer to NEAC website for details <[www.neac.gov.my](http://www.neac.gov.my)>

### Question

3. *As both the Secretariat and Government Reports note, the Malaysian Government has been able to successfully recover from the Asian financial crisis of 1998 in a remarkably short period of time and the Malaysian economy is on the path to greater prosperity. We would request the delegation of Malaysia to share with us their experience from the crisis and their long-term plan in meeting such crisis situations in the future.*



## **Answer**

Malaysia recovered from the Asian financial crisis to register two years of strong growth in 1999 and 2000. Malaysia has been able to recover from the crisis in a remarkably short period of time by adopting economic recovery strategies summarized below:

- relaxation of the tight fiscal policy and provide fiscal stimulus
- easing monetary policy
- undertaking the financial and corporate sector restructuring
- introducing selective exchange control measures to restore stability in the financial markets
- pegging the ringgit exchange rate to the US dollar

These strategies have been proven to be effective.

Malaysia will constantly monitor and assess developments in the external sector and their impact on the economy. Further measures premised on promoting growth through strengthening resilience and enhancing competitiveness will be put in place to contain and minimise any adverse spillover effects on the economy.

## **KOREA**

### **III. Trade Policies and Practices By Measure; (3) Measures Directly Affecting Exports; (iii) Export prohibitions, restrictions, and licensing**

#### **Question**

1. *As para. 78 (p. 48) of the Secretariat's Report points out, in 2001, export licensing requirements were pervasive in the cases of forestry products, animals and animal products, etc. Please explain why the export licensing is required for these products, in particular forestry products export.*

#### **Answer**

Export licensing for forestry products is required for data collection and for monitoring purposes, given the sensitivity of forest in environment protection and sustainable forest management. In the case of animal and animal products export licensing is required for data collection, monitoring and trace-back purposes related to SPS requirements.

### **IV. Trade Policies By Sector; (5) Services; (iv) Telecommunications**

#### **Question**

2. *As para. 65 (p. 87) of the Secretariat's Report points out, as of June 1, 2001, foreign ownership equity in telecommunications companies ranged from 21% to 52%. In the meantime, as para. 76 (p. 90) points out, Malaysia's commitments guarantee market access and national treatment for specific basic telecommunications services involving up to 30% equity of existing public telecommunications operators. Please explain to us the development of voluntary liberalization in Malaysia's telecommunications sector since the entrance into effect of the Basic Telecommunications Agreement.*

**Answer**

Please refer to response to Q.3 of Hong Kong, China.

**Question**

3. *As footnote No. 73 in para. 65 (p. 87) of the Secretariat's Report points out, the degree of foreign equity participation in Telecom Malaysia is difficult to ascertain since the shares are floated. Please present to us the degree of foreign equity participation as of any recent specific date.*

**Answer**

It is estimated that about 15% - 20% of interest in Telekom Malaysia Berhad is held by foreigners.

**Question**

4. *As para. 67 (p. 88) of the Secretariat's Report points out, a new Communication and Multimedia Commission (CMC) was established with the objective of emphasizing the convergence of telecommunications, broadcasting, and information technology. Please let us know who is in charge of appointing the chairman of the CMC, and how the appropriation for the CMC is provided. In addition, please let us know whether the government owns equity for any telecommunications operator equities, and also please present the degree of government equity participation.*

**Answer**

The Minister of Energy, Communications and Multimedia appoints the Chairman of the Commission.

Apart from the initial launching grant provided by the government, the Commission obtains its funds through licensing fees.

The Government holds about 67% of the total equity of Telekom Malaysia Berhad.

**Question**

5. *Concerning para. 71 (pp. 89-90) of the Secretariat's Report, please explain how the Company Act 1965 defines a foreign company which is excluded from individual and/or class licence grants.*

**Answer**

The term "foreign company" is defined under the Companies Act 1965 as a company, corporation, society, association or other body incorporated outside Malaysia.

It also includes an unincorporated society, association or other body which under the law of its place of origin may sue or be sued or hold property in the name of the secretary or other officer of the body or association duly appointed for that purpose and which does not have its head office or principal place of business in Malaysia.

**Question**

6. *Malaysia requires import licence for steel products. Please explain to us whether Malaysian Government has any plan to let this import licence for steel products applied to more transparently?*

**Answer**

The application process of import licences for steel products in Malaysia is transparent and all importers have been notified of the requirements.

7. *Malaysia's tariff rate to vehicles is very high as much as 140% to 300%. Does Malaysian Government have any plan to reduce the rate in the near future?*

**Answer**

Malaysia is currently reviewing its automotive policy with a view to inject gradual competition into the industry. The review among others includes tariff structure.

**Question**

8. *Malaysia limits the number of alien workers to be employed when it permits FDI in the manufacturing sector. Does Malaysian Government have any plan to increase the number of alien workers to be employed by a manufacturing company?*

**Answer**

Applications for alien workers will be considered on a case by case basis.

**Additional Questions from Korea**

**III. Trade Policies and Practices by Measure; (3) Measures Directly Affecting Exports; (viii) Competition policy and regulatory issues**

**Question**

1. *As para. 145 (p. 66) of the Secretariat's Report points out, Malaysia does not have any comprehensive competition law. Does Malaysia believe the current regulatory acts can work as adequate substitute for comprehensive competition law? Does Malaysia have any plan for establishing a comprehensive competition law and authority?*

**Answer**

Malaysia has several regulatory acts in place to govern that addresses anti-competitive issues. To improve on this, a competition law is also being considered.

**Question**

*Para. 146 (p. 66) of the Secretariat's Report indicates that Malaysia will consider the possibility of entering into bilateral agreements on competition policy actions, depending on the merits of each case. Is it possible to enter into and implement bilateral agreements with other countries without competition law or authority?*

**Answer**

The statement is inaccurate. At the moment, Malaysia has not considered this possibility.

**Question**

*As para. 146 (p. 66) of the Secretariat's Report points out, price controls are used in Malaysia on a number of products. In many cases, price control can have anti-competitive effects. Regulatory reform against anti-competitive regulations is one of the core elements in competition policy. Please explain to us whether the Malaysian government has any plans to change or reform price control schemes to build a more competition-friendly business environment.*

**Answer**

In Malaysia, price controls have worked well in maintaining the inflation rates at below 5%. Price controls are also administered only for essential items and have so far not given rise to anti-competitive effects. The Price Control Act 1946 is under review and will incorporate elements of transparency, industry/market participation and the Government's involvement is expected to be minimal.

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