II. POLICY REGIME: FRAMEWORK AND OBJECTIVES

(1) INTRODUCTION

1. Malaysia's overall economic policy objectives shifted during the review period towards developing, *inter alia*, services; consequently its trade objectives also changed to reflect the Government's efforts to promote services and reduce reliance on manufactured exports. Other major trade objectives include: improving market access for goods and services, promoting the global competitiveness of Malaysian exports, expanding and diversifying trade with existing partners, and exploring new markets.

2. To achieve these objectives, the Government has unilaterally liberalized its services sector and lowered its applied MFN tariffs (Chapter III(2)(ii)). Malaysia continues to consider the WTO a priority in realizing its trade objectives. Although WTO Agreements play a pivotal role in the formulation of Malaysia's trade and trade-related policies, Malaysia also considers regional arrangements, notably those involving the Association of South East Asian Nations (ASEAN), and various bilateral agreements, to be important. ASEAN, of which Malaysia is a member, has RTAs with Australia, China, India, Japan, Korea, and New Zealand. Two bilateral FTAs with Japan and Pakistan entered into force in 2006 and 2008, and one with New Zealand signed in October 2009 and expected to be implemented in 2010. Malaysia is also negotiating bilateral FTAs with Australia, Chile, India, and the United States.

3. The Government continues to encourage FDI, and has been relaxing foreign investment restrictions in services. Since April 2009, 100% foreign equity has been allowed in 27 services subsectors, and foreign investment restrictions in some financial services relaxed. Also, in June 2009, the Government announced the deregulation of the Foreign Investment Committee (FIC) guidelines on the acquisition of interests, mergers, and takeovers; this included in particular the repeal of its *bumiputera* (ethnic Malay) participation requirement.

(2) GENERAL CONSTITUTIONAL AND LEGAL FRAMEWORK

4. Since Malaysia's previous Review in 2006, its constitutional and legal framework has remained largely unchanged.[1] Malaysia has a single-structured judicial system consisting of the superior courts and the subordinate courts. The superior courts have jurisdiction to determine the validity of any law made by parliament or by a state legislature. In January 2009, a Judicial Appointment Commission (JAC) was established, to improve transparency in the process of nomination and appointment of judges.

5. Under the Constitution, federal parliament has the power to legislate matters relating to treaties or international agreements. Treaties or international agreements (including WTO Agreements) are not implemented automatically; appropriate national legislation is required to give the treaty force of law domestically.

[1] Under the Constitution, Malaysia is a federation of 13 states and the 3 federal territories of Labuan, Kuala Lumpur, and Putrajava. It is a parliamentary democracy with a constitutional monarchy. Executive power is vested in the Cabinet led by the Prime Minister. Legislative authority is divided between the federation and the states. The federal parliament has legislative authority on trade policy issues such as finance, commerce, industry, shipping, communications, and transport. Each state has its own constitution, a council of state or cabinet with executive authority, and a legislature dealing with matters not reserved for the federal parliament. Land issues, particularly land use, mining, and forestry are reserved for state legislatures. Malaysia is a multi-racial society (population of 28.31 million as at July 2009), comprising Malays, Chinese, Indians, and other ethnic groups.

(3) DEVELOPMENT AND ADMINISTRATION OF TRADE POLICY

(i) Main trade laws

6. Malaysia's major trade-related laws include legislation on customs procedures, company registration, investment, and sectoral regulations (Table AII.1). Several pieces of legislation have been amended since 2005, and some new ones have been promulgated.[2] For example, the Capital Markets and Services Act 2007 entered into force in 2007 to simplify licensing procedures and reduce administrative and compliance costs of capital market intermediaries (Chapter IV(6)(ii)(d)).

7. For the purpose of enhancing transparency and disseminating regulatory information, the Government is considering an official one-stop website for laws and regulations.

(ii) Agencies involved in trade policy implementation, and transparency

8. While there has been some restructuring of trade-related ministries in Malaysia (Chart II.1), the Ministry of International Trade and Industry (MITI) remains the central authority in charge of the planning and implementation of Malaysia's international trade and industrial policies (Table AII.2).[3]

9. The authorities state that, when formulating policies, the Government has an established mechanism to consult with relevant advisory and review bodies. Representatives from business associations, universities, and NGOs are members of various task forces and committees chaired by ministries. The Government also organizes discussions, dialogues, meetings, seminars, and workshops to seek public and private sector views to ensure that policies are business friendly. Foreign representatives, especially from business/industry, are usually included in these consultations. The authorities consider feedback from relevant bodies important in formulating policies.

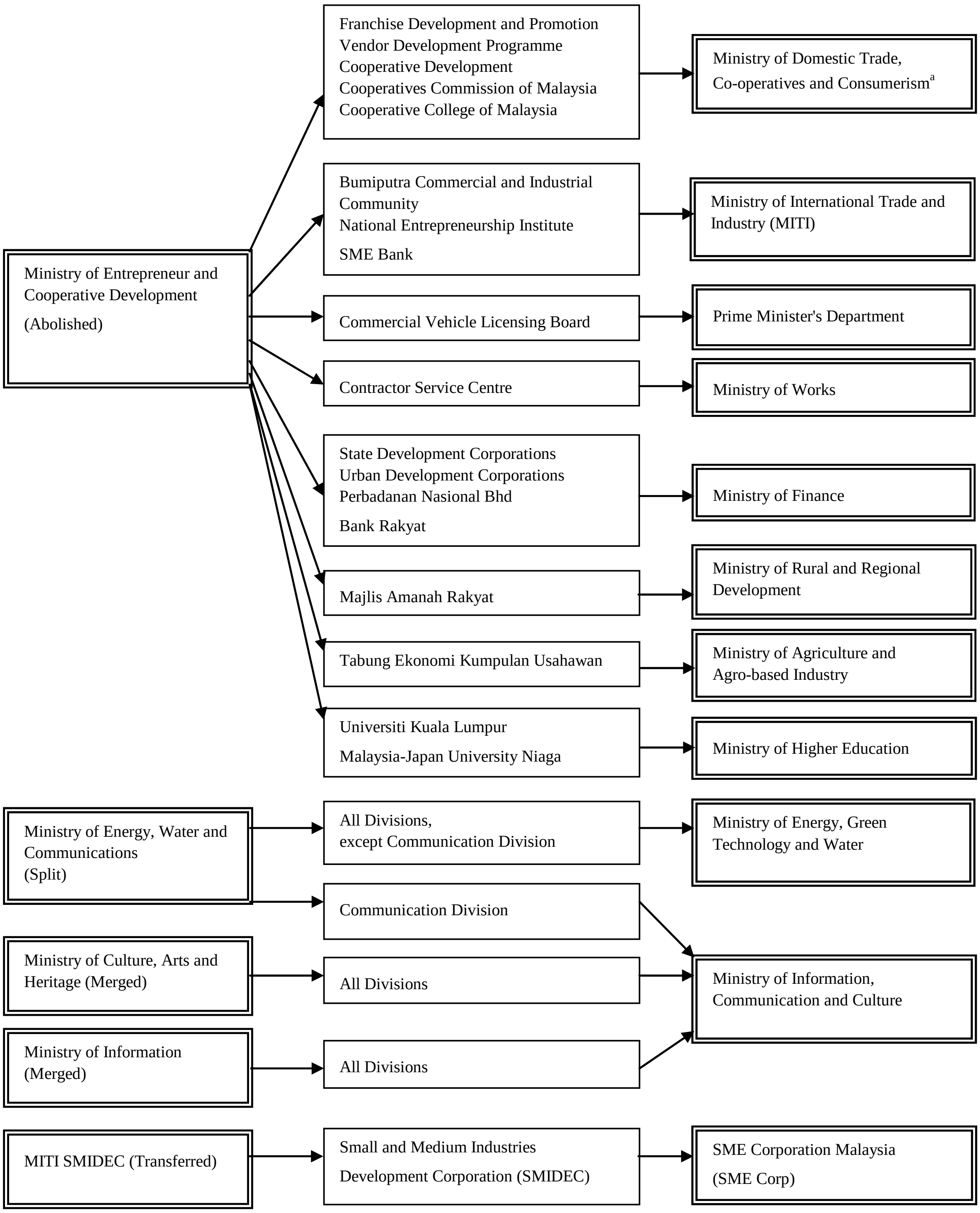
10. To improve transparency, the Prime Minister established a Special Taskforce to Facilitate Business (PEMUDAH) on 7 February 2007. Comprising high level representatives from both public and private sectors, PEMUDAH aims to improve the business environment by enhancing public services. Major measures include: setting up one-stop centres to facilitate application for business licences and registration of property; accelerating the approval procedures to employ expatriates and skilled workers; and promoting the use of information and communications technology (e-government). According to the authorities, business operating costs were reduced: the time taken to register property was shortened from 144 days to 41 days via online valuation, and to 61 days manually.[4]

[2] For example, the Exchange Control Act was amended in 2005 to address illegal foreign exchange trading. The amendment of the Insurance Act (in 2005) was to specify the licensing procedure for financial advisory business. Also in 2005, the Malaysia Deposit Insurance Corporation Act (MDIC) was issued, under which an explicit depositors' insurance system was established to replace the implicit government guarantee for depositors. To incorporate changes under the MDIC Act, the Banking and Financial Institutions Act and the Islamic Banking Act were both amended; their last amendments were in July 2007.

[3] In April 2009, there was a cabinet reshuffle following the appointment of Malaysia's new Prime Minister. The number of ministries was reduced from 27 to 25.

[4] Malaysia's improved national competitiveness was reflected in the World Bank's Doing Business Report, where, out of 181 countries, Malaysia's ranking changed from 25th in 2007 to 20th in 2008 (World Bank, 2009).

Chart II.1
Major government restructure, 2009



a Ministry of Domestic Trade and Consumer Affairs was renamed as the Ministry of Domestic Trade, Co-operatives and Consumerism in June 2009.

Source : Information provided by the authorities.

11. Policy evaluation is undertaken by the Economic Planning Unit (EPU) in the Prime Minister's Department.[5] The EPU also commissions specific bodies, such as the World Bank, to undertake studies. Various government agencies may study the effectiveness of policies; for example, the Malaysian Productivity Centre (MPC) publishes an annual productivity report analysing Malaysia's performance. Nonetheless, no agencies are providing cost-benefit analysis of government policies, indicating room for further improvement in transparency.

(4) TRADE POLICY OBJECTIVES

12. Malaysia's trade policies are intended to: improve market access for goods and services; promote the global competitiveness of its exports; expand and diversify trade with existing trade partners; and explore new markets. Since its previous Review, Malaysia has introduced a notable change in its trade objectives: to promote services and reduce reliance on manufactured exports. To achieve these objectives, Malaysia has unilaterally liberalized its services sector and lowered its applied MFN tariffs. The Government continues to consider the WTO a priority in realizing these objectives, as the multilateral trading system provides for predictability and transparency in establishing trade rules and has a mechanism for trade disputes. The authorities state that Malaysia will continue to push for greater market access, while recognizing the need to achieve national objectives.

13. Sectoral policy objectives are specified under, *inter alia*, Malaysia's five-year plans. The EPU plays a key role in the planning process: in consultation with other ministries, advisory bodies, and the private sector, it issued the Ninth Malaysia Plan covering 2006-10 in March 2006, setting out detailed sectoral objectives (Chapter IV).

(5) TRADE AGREEMENTS AND ARRANGEMENTS

14. Malaysia continues to pursue trade liberalization through the WTO, as well as regional and bilateral trading agreements, which it considers as complementary to the multilateral liberalization approach.[6]

(i) WTO

(a) Participation

15. Malaysia participates actively in the WTO and is strongly committed to the multilateral trading system, although it is not party to the two plurilateral WTO Agreements.[7] It eliminated all its tariffs under the Information Technology Agreement (ITA) in 2005. Malaysia considers a successful Doha Round crucial to safeguarding the multilateral trading system and expanding trade opportunities in both goods and services.

16. In the interest of transparency, Malaysia makes regular notifications to the WTO (Table AII.3). Since its previous Review, Malaysia has had no trade disputes with any WTO trade partners for which solutions have been sought in the WTO framework.

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[5] The Government declared that it is committed to improving transparency and fighting corruption. In April 2008, the Prime Minister announced that the Anti-Corruption Agency (ACA) became fully independent.

[6] MITI online information: "Malaysia and FTA-Introduction". Viewed at: http://www.miti.gov.my [28.07.2009].

[7] The authorities do not consider Malaysia mature enough in terms of economic development to enable it to benefit from the WTO Agreement on Government Procurement.

(b) Trade negotiations

17. Malaysia views the WTO negotiations an opportunity for it to seek better market access for its goods and services. Regarding the current negotiations under the Doha Development Agenda, the authorities consider that Malaysia's concerns have been addressed in the December 2008 modalities.

18. As a member of the Cairns Group, Malaysia participates in the agriculture negotiations with a view to substantially reducing all market distortions in the global market, including eliminating agricultural subsidies and lowering tariffs. Malaysia considers that flexibility should be given to developing and least developed Members in pursuing developmental goals, such as poverty reduction and rural employment.

19. On NAMA, as a major exporter of manufactured goods, Malaysia's aims are to improve market access and enhance competitiveness for products of interest to it, by lowering/eliminating tariff and non-tariff barriers.

20. Since April 2009, Malaysia has been unilaterally liberalizing its services sectors. The Government intends to improve its offers in areas where domestic services suppliers are ready to compete with foreign suppliers. Malaysia considers that an agreement on emergency safeguard measures in GATS could mitigate the impact of liberalization on domestic services suppliers. The Government also considers that negotiations on domestic regulations must be completed to ensure there is no disguised restriction to trade in services.

(ii) Regional agreements

21. Since its previous Review, Malaysia has intensified its efforts in regional and bilateral trading arrangements to complement its pursuit of market access in the WTO. The authorities maintain that, being a small and open economy, Malaysia seeks all possibilities to promote its economic growth; this includes arrangements that provide mutual benefits among signatories, are consistent with WTO rules, and allow for sufficient flexibility to address specific sectoral and development concerns.

(a) Asia Pacific Economic Cooperation (APEC)

22. Malaysia has substantial trade with APEC members (Tables AI.3 and AI.4). It participates in the APEC forum and supports its open regionalism goals.[8] In 2007, APEC members formulated an Investment Facilitation Action Plan (IFAP) for 2008-10, to enhance the investment climate and emphasize capacity building to narrow the economic gaps among members. In accordance with the IFAP, Malaysia is adopting measures to enhance the transparency and predictability of its trade and investment regime.[9] Malaysia, like other APEC members, also submits an annual Individual Action Plan (IAP); its latest IAP plan was submitted in 2008, with its peer Review in 2009.

[8] To achieve Bogor Goals, Trade Facilitation Action Plan (TFAP) II set a target to reduce trade transaction costs by 5% across the APEC region from 2007 to 2010, *inter alia*, by establishing an APEC single window, facilitating travel in a secure environment, and protecting data privacy. Before this, the target under Trade Facilitation Action Plan (TFAP) I was to reduce trade transaction costs by 5% across the APEC region from 2002 to 2006.

[9] Further, in 2008, the APEC's Committee on Trade and Investment (CTI) began its study of a possible Free Trade Agreement for Asia Pacific (FTAAP). The authorities state that this study is still in its initial stage.

(b) Association of Southeast Asian Nations (ASEAN)

23. Malaysia is a founding member of ASEAN. Trade with other ASEAN members accounted for around 25% of Malaysia's total trade in 2008. The ASEAN Economic Ministers agreed to realize an ASEAN Economic Community (AEC) by 2015; i.e. to establish a single market and production base in the ASEAN region, with free flow of goods, services, and skilled labour, as well as freer flow of capital.[10]

24. The ASEAN Free Trade Area (AFTA) aims at eliminating import barriers on all products within the region for free flow of goods. Tariff elimination is undertaken through the Common Effective Preferential Tariff (CEPT) Scheme. Malaysia, as one of the ASEAN-6, has committed to eliminate tariffs on 99.4% of its tariff lines by 1 January 2010.[11] Malaysia's average tariff under the AFTA was 0.95% in 2008, down from 1.04% in 2007.[12] The basic principle for granting origin status to a product is 40% regional/local-content threshold. Free flow of goods also requires the removal of non-tariff barriers (NTBs) and the adoption of trade facilitation measures. Removal of all NTBs by 2010 is required for ASEAN-5, including Malaysia.[13] Trade facilitation measures involve harmonizing product standards and technical regulations, and establishing mutual recognition of tests and certificates.[14]

25. Free flow of trade in services is one of the catalysts in realizing the AEC. Restrictions on trade in services for four priority sectors (air transport, e-ASEAN, healthcare, and tourism) are to be removed by 2010, for logistics by 2013. ASEAN members are also negotiating mutual recognition agreements (MRAs), and have signed MRAs on architectural, accountancy, and engineering services, dental practitioners, medical practitioners, nursing services, and surveying qualifications.[15] On investment, an ASEAN Comprehensive Investment Agreement (ACIA) was signed in February 2009. The ACIA streamlines the existing ASEAN investment agreements, with a view to attracting more foreign investment into ASEAN and increasing intra-ASEAN investment. The authorities consider that the ACIA complements Malaysia's efforts to attract FDI and helps to promote Malaysian outward investment into the ASEAN region.

26. ASEAN also has RTAs with other partners, covering goods, services, and investment (Table AII.4).

(iii) Bilateral agreements

27. The authorities maintain that, while intra-ASEAN trade remains the core of ASEAN members' trade policies, Malaysia also pursues bilateral FTAs to enhance its comparative advantage,

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[10] ASEAN online information. Viewed at: http://www.aseansec.org/21083.pdf [02.11.2009].

[11] ASEAN-6 are Malaysia, Brunei, Indonesia, Philippines, Singapore, and Thailand. For 89 lines in the General Exception List covering mainly alcoholic beverages and arms and ammunition, their duties are not to be lowered.

[12] Based on the Malaysian tariff schedule (at HS 9-digit), Malaysia's average tariff under the AFTA was 0.8% in 2009.

[13] ASEAN-5 are Malaysia, Brunei, Indonesia, Singapore, and Thailand.

[14] Trade facilitation also involves creating an ASEAN Single Window to process trade documents electronically at national and regional levels. The Single Window integrates national single windows of member countries; however, the authorities indicated that its operation has been delayed. ASEAN-6 countries are required to establish their national single windows by 2008, and ASEAN-4 by 2012. Malaysia's single window started operation on 1 January 2009.

[15] *MITI Weekly Bulletin*, 3 July 2008. Viewed at: http://www.miti.gov.my/cms/documentstoragecom.tms.cms.document.Document_38a101f7-c0a81573-5d8c5d8c-bca26c91/MITI%20 WEEKLY%20BULLETIN%20(Vol.%202)%2003%20July%202008.pdf [26.02.2009].

which is different from other ASEAN members. Thus, when Malaysia negotiates bilateral FTAs, expanding and facilitating trade is a priority, and rules-of-origin must be liberal and simple.

28. Malaysia has concluded three bilateral free-trade agreements (with Japan, New Zealand, and Pakistan), and is negotiating others (with Australia, Chile, India, and the United States) (Table AII.4).[16] Its objectives in negotiating FTAs are to: seek better market access and enhance the competitiveness of its exports; further facilitate and promote trade, investment, and economic development; and improve capacity building in specific areas through technical cooperation. To achieve these objectives, its FTAs are not confined to market-opening measures for goods and services; rather, they include investment, trade facilitation, intellectual property rights (IPR), and other areas, such as competition policy, standards, and conformity assessment.

(a) Malaysia-Japan Economic Partnership Agreement

29. In 2008, 10.8% of Malaysia's merchandise exports and 12.5% of its imports were with Japan (Tables AI.3 and AI.4). The Malaysia-Japan Economic Partnership Agreement (MJEPA) entered into force on 13 July 2006. Under the MJEPA, a free-trade area was established and Malaysia committed to eliminate duty rates on 10,469 tariff lines (98.9%) by 2016.[17] Thus, Malaysia's average applied tariff rate was lowered from 7.7% before the entry into force of the MJEPA to 3.1% in 2009, and is to be reduced to 0.1% by 2016. Under the MJEPA, preferential rules of origin apply if products are fully produced or obtained in Japan, or if they are produced with non-originating materials meeting product specific rules.

30. Malaysia's commitments on trade in services went beyond its GATS commitments. The MJEPA covers all four modes of supply, and includes communication services, financial services, tourism and travel-related services, and transport services.[18] The MJEPA also covers economic and technical cooperation to improve capacity building, particularly in Malaysia's automotive sector.[19] The authorities consider that by exposing Malaysia's automotive sector to Japan's Best Practices, through assistance from experts in the field of testing, training, and cooperation in automotive information, the competitiveness of the Malaysian automotive industry will be enhanced.[20]

(b) Malaysia-Pakistan Closer Economic Partnership Agreement

31. In 2008, 0.86% of Malaysia's exports were to Pakistan, and 0.08% of its imports were from Pakistan. The Malaysia-Pakistan Closer Economic Partnership Agreement (MPCEPA) entered into force on 1 January 2008. For trade in goods, both countries agreed to lower tariffs gradually and are to renegotiate further tariff concessions in 2012. In 2009, Malaysia's average applied tariff on goods imported from Pakistan was 6.5%; 64.9% of the tariff lines were duty free.[21] Preferential rules of origin apply if: products are fully produced or obtained in Pakistan; at least 40% of the f.o.b. value of the product is produced or obtained or finally processed in Pakistan; or the tariff heading of the

[16] Malaysia's two bilateral FTAs with Japan and Pakistan are operational and consideration of these FTAs by the relevant WTO Committees was completed in 2009 pursuant to the Transparency Mechanism for RTAs (WTO documents WT/REG216/M/1, 4 May 2009; WT/REG265/M/1, 29 September 2009; and WT/COMTD/RTA/M/3, 21 October 2009).

[17] Both parties agreed to a final tariff cut in 2021 (WTO document, WT/REG216/2, 6 February 2009).

[18] It also covers computer-related services, construction and related engineering services, educational services, hospital services, other business services, and professional services.

[19] WTO document WT/REG216/M/1, 4 May 2009.

[20] WTO document WT/REG216/3, 14 April 2009.

[21] WTO document WT/COMTD/RTA/3/1, 30 June 2009.

product (most at the HS 4-digit level) changes. Several products, such as agriculture products, textiles, and machinery must meet product-specific rules to qualify for the preferential treatment.[22]

32. A Framework on Mutual Recognition Arrangement was signed to help suppliers of professional services move between the two countries. Malaysia and Pakistan agreed to mutually accept accreditation of educational institutions and academic programmes. They are to renegotiate market access in services within three years of entry into force of the MPCEPA.

(c) Malaysia-New Zealand FTA

33. In 2008, 0.5% of Malaysia's merchandise exports and 0.5% of its imports were with New Zealand. Growth in total bilateral trade increased by 14.7% in 2007 and 46.2% in 2008. The Malaysia-New Zealand Free Trade Agreement (MNZFTA) was signed on 26 October 2009, expected to be effective in 2010 after both countries complete their domestic procedures. The FTA complements the ASEAN-Australia-New Zealand FTA, aiming at further facilitating and enhancing trade in goods and services, and investment between the two countries. In particular, under the MNZFTA, Malaysia is to progressively eliminate import tariffs on 10,293 tariff lines by 2016. It is to apply country-specific quotas on 15 lines of agricultural products (including milk, eggs and live swine) from New Zealand. The amount of quota, however, is to increase annually: 3-5% per year for liquid milk, and 3% per year for eggs.[23]

(iv) Unilateral trade preferences

34. Malaysia receives GSP (Generalized System of Preferences) treatment from Belarus, the EU, Norway, Russian Federation, Switzerland, and Turkey.[24] The authorities state that no Malaysian exporter has used the GSTP (Global System of Trade Preferences) facility.

35. As a member of the Group of Developing Eight (D-8), Malaysia signed a Preferential Tariff Agreement (PTA) with the other seven members in May 2006 to gradually reduce tariffs and other barriers to trade on specific goods, to promote trade among members.[25] However, the PTA has not yet been implemented as it requires ratification from at least four member countries; currently, only Iran and Malaysia have ratified the agreement.

36. Malaysia signed a Framework Agreement on Trade Preferential System with members of the Organisation of the Islamic Conference (TPS-OIC) in 2004.[26] The TPS-OIC is to be effective when protocols on the preferential tariff scheme (PRETAS) and rules of origin (RoO) have been signed and ratified by at least ten participating countries. Seven OIC member states have signed and ratified the

[22] WTO notification WT/COMTD/N/24, 4 March 2008.

[23] MITI online information. Viewed at: http://www.miti.gov.my/cms/content.jsp?id=com.tms.cms.article.Article_995938b6-c0a81573-3edb3edb-3aac0f48 [28.10.2009].

[24] EU member states agreed to a revised GSP Scheme as of 1 January 2009. Under the revised programme, tariff rates were reduced by 3.5% for "sensitive products", exempted for "non-sensitive products", and suspended on all products of Chapter 93. For Malaysia, three sectors previously graduated (wood, consumer electronics, and plastics and rubber products) were reinstated into the GSP Scheme.

[25] The D-8 comprises eight Islamic countries: Bangladesh, Egypt, Indonesia, Iran, Malaysia, Nigeria, Pakistan, and Turkey.

[26] So far 20 countries have signed the Framework Agreement on TPS-OIC: Bangladesh, Cameroon, Egypt, Guinea, Iran, Jordan, Lebanon, Libya, Malaysia, Maldives, Morocco, Oman, Pakistan, Qatar, Senegal, Syria, Tunisia, Turkey, Uganda, and the United Arab Emirates.

PRETAS, and four have signed and ratified the RoO. Malaysia ratified the PRETAS in 2006, and the RoO in 2008.[27]

(v) Aid for trade

37. Malaysia provides Aid-for-trade assistance on both a bilateral and a regional basis (such as ASEAN and the OIC). According to the OECD, Malaysia also receives Aid-for-trade assistance.[28]

38. Under the ASEAN Integration System of Preferences (AISP), ASEAN-6, including Malaysia, has been offering unilateral import duty exemption to products of export interest to the ASEAN-4 since 2002. In particular, Malaysia has been granting duty exemptions on 82 tariff lines (HS 10-digit) from the Lao PDR, 95 from Myanmar, 180 from Cambodia, and 237 from Viet Nam. In addition, the Initiative for ASEAN Integration (IAI) is targeted at reducing the development gap among ASEAN members. Under the IAI work plan 2002-08, 203 projects and programmes were implemented; they have attracted total investment of US$191 million from ASEAN-6, of which, Malaysia contributed US$10.7 million.

39. In 2005, Malaysia initiated a Capacity Building Programme for the OIC countries, with a view to reducing poverty and promoting economic development by enhancing capacity building in human resource development, institutional, organizational and management skills, and the development of infrastructure. In March 2006, Malaysia approved RM 12.1 million for capacity building programmes for Bangladesh, Mauritania, and Sierra Leone.

40. The Economic Planning Unit (EPU), as the national focal point for all technical cooperation in Malaysia, oversees the activities of the Malaysian Technical Cooperation Programme (MTCP).[29] The MTCP offers courses to LDCs: from 2006 to 2008, eight MTCP training programmes dedicated to OIC countries were implemented, covering customs procedures, halal food standards, investment, and trade promotion. Malaysia has recently approved five new training programmes for 2009-11.

(6) FOREIGN INVESTMENT REGIME

41. FDI has been an important source of economic growth for Malaysia, bringing in capital investment, technology, and management knowledge.[30] Since the previous Review of Malaysia, and in particular since April 2009, the Government has been trying to encourage FDI by, *inter alia*, streamlining its regulatory framework, and removing or reducing equity and other restrictions on foreign investment. Emphasis has been given to the services sector, which is identified as a leading growth engine.

42. Malaysia's laws governing FDI do not provide general principles and rules for foreign participation in local businesses.[31] FDI in Malaysia is mainly regulated under the Promotion of

[27] MITI online information. Viewed at: http://www.miti.gov.my/cms/content.jsp?id=com.tms.cms.section.Section_55c20a92-c0a8156f-2af82af8-b3841ecc [26.02.2009].

[28] OECD online information. Viewed at: http://www.oecd.org/dataoecd/39/2/39876325.pdf [28.10.2009].

[29] MTCP online information. Viewed at: http://mtcp.epu.gov.my/about.htm [28.10.2009].

[30] See, for example, Mun et al. (2008). Based on data from 1970 to 2005, a 1 percentage increase in FDI could lead to real GDP growth increasing by 0.046%, and real GNI (Gross National Income) growth increasing by 0.045%.

[31] Arguably, this had allowed the Government maximum policy and regulatory space to screen and control FDI to suit the economic and industrial needs of the particular time (IISD, 2008).

Investments Act (PIA) 1986, and the Industrial Coordination Act (ICA) 1975.[32] The Malaysian Industrial Development Authority (MIDA), under MITI, is in charge of, *inter alia*, promoting foreign and local investment, and evaluating applications for tax incentives. As a one-stop centre, MIDA coordinates with relevant authorities on investment facilitation measures.

43. During the period under review, various measures were adopted to attract FDI.[33] More recently, restrictions on foreign investment in services have been removed or reduced (Malaysia already allowed 100% foreign equity in manufacturing (Chapter IV(5)). As of 22 April 2009, 100% foreign equity is allowed in 27 services subsectors, covering health and social services, tourism, transport, business services, and computer and related services. The Government also announced relaxation on foreign investment in financial services on 27 April 2009; foreign equity limits were increased from 49% to 70% for investment banks, insurance companies, and *takaful* (Islamic insurance) operators. A higher foreign equity limit beyond 70% is considered on a case-by-case basis for insurance companies. More operational flexibilities are also given to locally incorporated foreign banks, insurance companies, and *takaful* operators (Chapter IV(6)).

44. Most notably, on 30 June 2009, the Government announced the liberalization of the Foreign Investment Committee (FIC) guidelines, including the repeal of FIC Guidelines on the acquisition of interests, mergers, and takeovers. The Guidelines had originally imposed *bumiputera* equity requirement, whereby *bumiputera* (ethnic Malays) had to hold a combined 30% stake in locally incorporated companies.[34] Following the repeal of the FIC guidelines, for newly listed companies, the *bumiputera* requirement is 12.5% (50% of the Securities Commission's 25% public spread requirement), and this can be further reduced if more shares are issued later. Also, foreign equity limits were raised from 49% to 70% for stock-broking firms and unit trust management companies, and from 70% to 100% for fund management companies providing wholesale services. In addition, there was some relaxations on the acquisition of property, as some property transactions involving foreign investment no longer require approval from the FIC. As part of the package, the Government set up a private equity fund, Ekuiti Nasional Berhad (EKUINAS) to promote investment in sectors with growth potential, and to ensure participation by *bumiputera*.[35]

45. Although considering FDI positive to economic development and growth, the Government insists that local participation needs to be maintained in some areas in order to promote domestic capabilities and capacities. In particular, sectors with "national interest" (i.e. sectors with an impact on national security and overall socio-economic wellbeing) are not to be liberalized. Even under the reform package launched on 30 June 2009, the repeal of FIC guidelines does not eliminate *bumiputera* participation requirements in banking and insurance, certain manufacturing sectors (such as fabrics and apparel of batik, and integrated Portland cement), agriculture, defence, energy, telecommunication, and water. Also, foreign investors are not allowed to acquire properties below a specified value: RM 500,000 for commercial properties and RM 250,000 (increased to RM 500,000 as of 1 January 2010) for residential properties.

46. Malaysian incorporated companies, whether locally or foreign owned, are eligible for tax incentives if they invest in promoted activities, with a view to improving the investment environment

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[32] The PIA was amended in March 2007 to incorporate incentives approved from 2001 to 2007 annual Budgets. The ICA is currently being amended.

[33] For example, in 2007, PEMUDAH was set up to improve transparency, and thus the business environment (section (3)(ii)). And as of 1 December 2008, manufacturing licences were issued automatically (with a few exceptions) to reduce businesses' operation costs (Chapter IV(5)(i)).

[34] *Bumiputera* refers to a Malay or other indigenous ethnic group in Malaysia.

[35] The Government provided an initial endowment of RM 500 million to EKUINAS, with a target of expanding EKUINAS to become a RM 10 billion fund.

(Chapter III). These tax incentives, mostly unchanged from the previous Review, are given to promote the development of targeted industries and activities, which are believed by the authorities to contribute to the future growth and development of the Malaysian economy. In addition, to encourage foreign investment, Malaysia has been signing bilateral investment-guarantee agreements (IGAs) to protect foreign investors, as well as double-taxation agreements (DTAs). IGAs are intended to protect foreign investors against non-commercial risks, such as nationalization and expropriation, to provide free transfers of profits, capital, and other fees, and to ensure settlement of investment disputes between private companies and Government under the Convention on the Settlement of Investment Disputes (ICSID).[36] So far, Malaysia has concluded IGAs with member states of ASEAN and the OIC, and 66 other countries.[37] At end-August 2009, Malaysia had DTAs with 70 economies (68 are comprehensive and 2 are restricted to international air and maritime transport business income only). The objectives of Malaysia's DTAs are, *inter alia*, to alleviate, if not remove, international double taxation of income, to make Malaysia's tax incentives fully effective (through "tax sparing"), to create a favourable climate for both inward and outward investments, and to prevent tax evasion and avoidance.

[36] Since 1966, Malaysia has been a member of the Convention on the Settlement of Investment Disputes (ICSID), which provides international conciliation or arbitration through the International Centre for Settlement of Investment Disputes located in Washington. The Kuala Lumpur Regional Centre for Arbitration, established in 1978 under the Asian-African Legal Consultative Committee (AALCC), provides a system for settling disputes in trade and investment within the Asia-Pacific region.

[37] For the list of countries with which Malaysia has signed IGAs, see MIDA online information. Viewed at: http://www.mida.gov.my [27.10.2008].