III. TRADE POLICIES AND PRACTICES BY MEASURE

(1) INTRODUCTION

1. Since its previous Trade Policy Review in 2006, Malaysia has continued to liberalize its trade and trade-related policies, mainly unilaterally, notwithstanding the global economic crisis that erupted in 2008. Nonetheless, trade and trade-related policy instruments, applied both at the border and internally, remain integral parts of Malaysia's broad development policy. This is more evident in certain sectors, including automobile manufacturing, and in government procurement.

2. The tariff is the main border measure affecting imports. The simple average applied MFN tariff was 7.4% in 2009; about 60% of tariff lines were duty free. Around one fifth of tariff lines were unbound, and the simple average bound MFN rate was roughly double the applied rate, leaving considerable scope for the authorities to employ protective measures, such as raising tariffs within the bound levels. Although the authorities have raised tariffs in only a few cases, these involve tariff rate quotas, which Malaysia has started applying to several tariff lines since 1 April 2008.[1] Patterns of MFN tariff dispersion and escalation have changed little since 2006. Malaysia grants preferential access to imports from Japan, China, the Republic of Korea, Pakistan, and other ASEAN countries under preferential bilateral/regional free-trade agreements.

3. Apart from import prohibitions, implemented, *inter alia,* for national security, religious, and environmental reasons, various non-tariff border measures are also used as instruments of Malaysia's trade and industrial policy. A considerable portion of Malaysia's tariff lines are subject to import licensing, most of which is non-automatic. While automatic licensing is intended for data collection, the authorities maintain that non-automatic licences are mainly for sanitary and phytosanitary reasons (for agriculture); non-automatic licensing is also intended to regulate the flow of imports and to promote selected strategic industries identified for certain socio-economic objectives. During the period under review, Malaysia initiated a variety of anti-dumping actions against 10 Members; in the same period, 13 Members took anti-dumping actions against Malaysian products. Malaysia has introduced a Safeguards Act 2006 and Safeguards Regulations 2007.

4. Import duty exemptions or drawbacks are provided for intermediate goods used in the production of exports so that the import duties do not feed through to become implicit taxes on exports. The exemptions or drawbacks greatly reduce, or eliminate, the implicit export taxes, but they tend to increase the complexity of the border taxation. Rebates of internal sales taxes are also used to ensure that exported goods are not taxed twice (in both Malaysia and importing country).

5. Explicit export taxes and export promotion measures also continue to play an important role in Malaysia's industrial policy. Export taxes and/or export licence requirements, which are applied to certain goods (such as timber), have the effect of discouraging the export of those products and reducing their domestic prices, thereby assisting downstream processing of the products concerned. Export promotion measures include export processing zones, concessionary credits, insurance, and guarantees, as well as government-sponsored promotion and marketing assistance.

6. Tax incentives have long been an important instrument of Malaysia's industrial policy. Direct and indirect tax incentives apply, *inter alia,* to investments in the manufacturing, agriculture, tourism and approved services sectors, R&D, training, and environmental protection activities. No estimates of total tax revenue forgone as a result of these incentives have been made available. Experience in other countries suggests that tax incentives are rarely cost-effective. The publication of estimates of

[1] The authorities maintain that these tariff rates are within Malaysia's commitments under the Uruguay Round.

tax revenues forgone as well as studies evaluating the cost effectiveness of incentives would improve fiscal transparency in Malaysia and contribute to a more effective tax policy.

7. Standards and standardization activities are among Malaysia's priorities for achieving developed-nation status by 2020. Malaysia aims to align Malaysian standards with international standards; in 2008, some 58% of Malaysian standards were aligned, up from 51% in 2005.

8. Preferential government procurement procedures continue to be used as an instrument of industrial policy to favour locally owned businesses; international tenders are invited only if goods and services are not available locally. Malaysia is not a party to the WTO Agreement on Government Procurement.

9. Government-linked companies (GLCs) continue to play an important role in the Malaysian economy through their involvement in the provision of essential services, such as transport, energy, telecommunications, and financial services. The Government aims to improve productivity of GLCs. As in the case of government procurement, GLCs are encouraged to purchase from locally owned businesses.

10. Recent initiatives taken by the Government in regard to corporate governance include a revision to the Malaysian Code on Corporate Governance, which entered into force on 1 October 2007.

11. Malaysia does not have a comprehensive competition law; however, it is in the process of drafting such a law.

12. Since 2006, the Government has further strengthened its intellectual property regime. It has also made further efforts to improve enforcement, such as the establishment of IP courts, although problems of piracy and counterfeiting seem to remain.

(2) MEASURES DIRECTLY AFFECTING IMPORTS

(i) Customs procedures, trade facilitation, customs valuation, and rules of origin

(a) Customs procedures and trade facilitation

13. Since 2006, there have been no major changes in the registration requirements for imports into Malaysia. Under customs laws importers are generally required to file a declaration with Customs; additional declarations are required for the purpose of post clearance audit for goods valued over RM 20,000. No fees are imposed for customs procedures by the Royal Malaysian Customs (RMC).

14. The RMC administers Malaysia's customs-related laws including the Customs Act 1967. Malaysia has been party to the World Customs Organization Revised Convention on the Simplification and Harmonization of Customs Procedure (Revised Kyoto Convention) since 30 June 2008.

15. Malaysia has continued to shift customs clearance from clearance-based controls to post-clearance audit controls; it has also been adopting measures to coordinate the activities of the various agencies involved in border controls. Customs clearance has been fully computerized since 2007, i.e. submission of declaration, assessment, payment, and customs release are done electronically. The authorities are developing an internet portal for the RMC. The Customs Intelligence Centre, established in August 2003, collects data on seizures by the Enforcement Division of RMC.

16. In 2007, cargo clearance (i.e. shipment arrival to release) took on average 3.2 days for sea cargo and 0.8 days for air cargo (latest available data provided by the RMC); customs formalities (e.g. registration, inspection and collection of duties) took 13 hours for sea cargo and 30 minutes for air cargo. For importers registered as Customs Golden Clients (CGCs)[2], the average time from the declaration to the release of goods is reduced to 15 minutes.

17. The Government introduced Customs Rulings on Classification and Valuation on 1 April 2007. The authorities consider that implementation of the rulings has helped the business community to deal with goods clearance by informing them in advance on the tariff classification and valuation system, expected duty, and permit requirements.

18. In the Doha Development Agenda negotiations, Malaysia supports the establishment of an Agreement on Trade Facilitation. The authorities consider it important that new obligations are not additional burdens or too onerous for implementation, and that multilateral rules should ensure faster and more efficient clearance of goods, reduction in the cost of doing business, and improved transparency and predictability in international trade.

(b) Customs valuation

19. Since its previous Review, there has been no change in the basic framework of Malaysia's customs valuation system. Under the current Customs (Rules of Valuation) Regulation[3], imports are valued on the c.i.f. value, which is taken to be the transaction value of the imports.

20. Malaysia introduced the Customs Verification Initiative (CVI) in November 2007; this is part of the RMC Risk Management Programme to identify declarations of potentially high-risk consignments, using systematic and automated tools in the Customs Information System. By the end of 2008, CVI had been implemented nationwide. Clause 11 of the Customs (Rules of Valuation) Regulation 1999 empowers the Minister of Finance to determine the minimum value of goods; the authorities state that this has never been applied.

21. The Customs (Values of Imported Completely Built-up motor vehicles (New)) Order 2006 gives the Minister of Finance power to fix the value of imported CBU cars, as deemed appropriate, in accordance with Section 12 of the Customs Act 1967, with a view to tackling under-declaration. Importers of CBU cars must submit information including the transaction value of the goods, to the Valuation Section of Customs Headquarters. A committee comprising officers from the Ministry of Finance review all documents and prices submitted before recommending the value to the Minister for approval.

(c) Appeals

22. The Government established a Customs Appeal Tribunal on 1 June 2007 to improve the appeals system. Complaints against decisions taken by Customs may be made to the Director General of Customs, in accordance with the Customs Act 1967. Further appeals may be lodged with the Minister of Finance (only concerning forfeited goods), the Customs Appeal Tribunal, and with the High Court. In 2008, there were 23 appeals to Director General of Customs and the Minister of Finance (27 appeals in 2007), 11 appeals to the Customs Appeal Tribunal (zero in 2007), and one appeal to the High Court.

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[2] The CGC system, which was introduced in September 2004, for companies with records of high legal, regulatory, and security compliance, offers approved companies simplified and expedited clearance, drawback, and refund claims through self-accounting, and deferred duty payment.

[3] The Customs (Rules of Valuation) Regulation 1999, which has been in force since 1 January 2000.

(ii) Tariffs

23. Malaysia extends at least MFN treatment to all of its trading partners while providing tariff preferences to China (under the ASEAN–China FTA), Japan (under the Malaysia–Japan FTA and ASEAN–Japan Comprehensive Economic Partnership (CEP)), Pakistan (under the Malaysia–Pakistan FTA), the Republic of Korea (under the ASEAN–Korea FTA), and other ASEAN countries (under the ASEAN Common Effective Preferential Tariff (CEPT)).[4] The simple average applied MFN tariff rate was approximately 7.4% in 2009, compared with 8.1% in 2005; the simple average bound rate was 15.6% (Tables III.1 and AIII.1). Malaysia reviews its tariff rates annually, mainly during the process of formulating its national Budget: the authorities seek feedback from industry associations during the review. Tariff rates are also reviewed during multilateral, regional, and bilateral trade negotiations.

Table III.1
Malaysia's tariff structure, 2005 and 2009
(Per cent)

		MFN 2005	MFN 2009	Final bound[a]
1.	Bound tariff lines (% of all tariff lines)	..	..	80.6
2.	Simple average applied rate	8.1	7.4	15.6
	Agricultural products (HS01-24)	3.2	2.7	11.2
	Industrial products (HS25-97)	8.7	8.0	16.5
	WTO agricultural products	3.2	2.8	11.0
	WTO non-agricultural products	8.7	7.9	16.5
	Textiles and clothing	12.5	12.2	20.4
	ISIC 1 – Agriculture, hunting, fishing	0.4	0.7	7.1
	ISIC 2 – Mining	0.8	0.8	8.1
	ISIC 3 – Manufacturing	9.6	8.7	16.2
	Manufacturing excluding food processing	10.3	9.4	16.7
	First stage of processing	0.9	1.1	7.8
	Semi-processed products	9.0	8.7	16.9
	Fully processed products	10.4	9.1	16.3
3.	Tariff quotas (% of all tariff lines)	..	0.2	..
4.	Domestic tariff "peaks" (% of all tariff lines)[b]	13.9	11.7	0.4
5.	International tariff "peaks" (% of all tariff lines)[c]	23.4	22.2	45.2
6.	Overall standard deviation of tariff rates	12.6	11.5	12.3
7.	Coefficient of variation of tariff rates	1.6	1.6	0.8
8.	Duty-free tariff lines (% of all tariff lines)	57.8	60.3	5.7
9.	Non-*ad valorem* tariffs (% of all tariff lines)	0.7	0.8	4.7
10.	Non-*ad valorem* tariffs with no AVEs (% of all tariff lines)	0.7	0.8	4.7
11.	Nuisance applied rates (% of all tariff lines)[d]	0.2	0.1	0.5

.. Not available.

a Implementation of the U.R. was achieved in 2005. Calculations for final bound rates are taken from the CTS database.
b Domestic tariff peaks are defined as those exceeding three times the overall simple average applied rate.
c International tariff peaks are defined as those exceeding 15%.
d Nuisance rates are those greater than zero, but less than or equal to 2%.

Note: Calculations exclude in-quota rates and specific rates, and include the *ad valorem* part of alternate and compound rates. The 2005 tariff schedule is based on HS02 nomenclature, consisting of 10,581 tariff lines; 2009 tariff schedule is based on HS07 nomenclature, consisting of 10,389 tariff lines.

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

[4] No exact data regarding the value of imports subject to MFN applied tariff rates, or preferential tariff rates were provided by the authorities. Malaysia's imports from other ASEAN countries, Japan, Pakistan, China, and Korea, with which it has FTAs, accounted for about 55% of total imports in 2008 (the share only serves as a proxy for the share of imports subject to preferential tariff rates).

(a) Forms of tariffs

24. Malaysia's tariff classification systems, for preferential and MFN tariffs, are aligned to the Harmonized System at 9-digit level; preferential tariffs for intra-ASEAN trade remain under the AHTN classification system. The current Malaysian customs nomenclature (for MFN duties) is based on the 2007 Harmonized System (HS). The Malaysian tariff comprises 10,389 lines at the 9-digit level. Almost all rates (99.2%) are *ad valorem*; the remainder are specific, compound, or alternate duties. Malaysia has no plans to convert all of its non-*ad valorem* duties to *ad valorem* duties[5]; it continues to maintain non-*ad valorem* duties for agricultural products to protect small and rural farmers. Given that these duties conceal relatively high AVEs, the level of applied tariff protection could be considerably higher than the simple average of all *ad valorem* rates of 7.4% in 2009.[6] In 2009, 32 of the top 50 tariffs entailed non-*ad valorem* rates.

25. Regular reviews of the tariff structure and tariff rates are held through dialogues between the authorities and the business community. The Special Advisory Committee on Tariffs (SACT), under MITI, receives and considers applications for tariff review, which may then be announced in the annual Budget.

(b) Tariff bindings

26. There has been little change in Malaysia's tariff bindings since its previous Review; about 20% of Malaysia's tariff lines are unbound.[7] The relatively high proportion of unbound lines creates a degree of unpredictability as there is significant scope for the authorities to raise tariffs.[8] The authorities maintain that they will consider increasing the binding coverage substantially in the Doha round of negotiations.

27. Malaysia's final overall bound rate (i.e. for 2005) was 15.6%. The average bound rate was 11.0% for agricultural products (WTO definition) and 16.5% for non-agricultural products.[9]

(c) Applied MFN tariff levels

28. Since its previous Trade Policy Review, Malaysia has eliminated and reduced applied MFN tariffs on a range of products partly in accordance with its WTO commitments, but mainly

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[5] The authorities state that they do not plan to convert specific duties applied to alcoholic beverages into *ad valorem* duties.

[6] In view of transparency, the authorities provided *ad valorem* equivalents (AVEs) for 46 out of 80 non-*ad valorem* tariff lines; AVEs for 73 tariff lines are based on import data for 2003-05, and those for 7 lines on data for 2005-07. AVEs were not provided for alcoholic beverages, possibly indicating the prohibitive nature of tariff rates for these products. If the AVEs provided are included, the simple average MFN applied tariff rate becomes 9.1% (7.4% excluding AVEs), and the simple average MFN applied rate becomes 18.1% for agricultural products (WTO definition) (2.8% excluding AVEs) and 7.9% for non-agricultural products (also 7.9% excluding AVEs). Three tariff lines have AVEs exceeding 1,000%; they involve bananas and tobacco refuse. The simple average of AVEs provided is 392%.

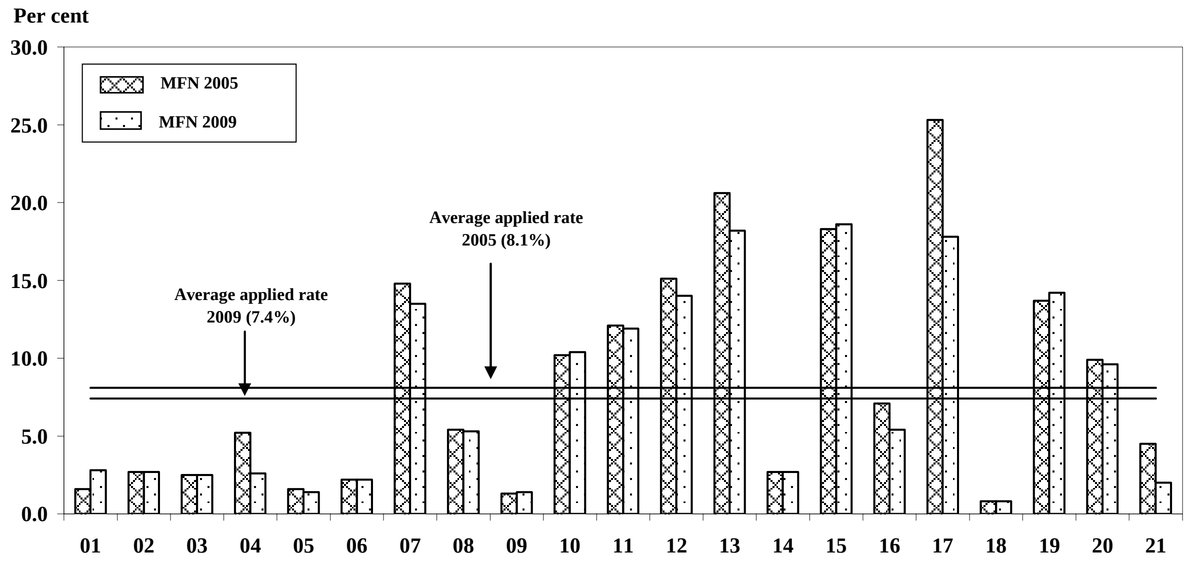
[7] Following its participation in the Information Technology Agreement (ITA), Malaysia reduced and bound at duty-free levels its import duties on a number of products (WTO document WT/Let/176, 19 September 1997). Malaysia revised its schedule of tariff bindings to reflect the Second Amendment to the Harmonized System Nomenclature (HS96); the revised schedule was made effective on 6 September 2005. WTO document WT/Let/498, 11 October 2005.

[8] The authorities maintain that unbound tariffs give them some space to raise tariffs, but this has rarely been done.

[9] The average bound rate was 11.2% for agriculture (HS 01-24) and 16.5% for industrial products (HS 25-97).

unilaterally.[10] These products include some dairy products, prepared/preserved fish, preparations of fruits/vegetables/nuts, mineral and chemical fertilizers, plastics and articles thereof, glass and glassware, electrical ignition and starting equipment, electric apparatus for switching/protecting electrical circuits, electric heating apparatus, and motor vehicles. Malaysia's 2009 Budget included the elimination of import duties on several food items (including vermicelli, biscuits, some fruit juices, and canned sweet corn), and the reduction of import duties on selected consumer durables including blenders, rice cookers, microwave ovens, and electric kettles. The current average applied MFN tariff (7.4%) is around half the average bound rate (15.6%); the resulting gap provides ample scope for the authorities to raise applied tariff rates. The only tariff-rate increases adopted since 2005 concern tariff-rate quotas introduced in 2008 (section (e) below). Nonetheless, as applied MFN tariff rates have fallen since 2005, there has been a widening of the gap between bound and applied MFN rates, largely owing to unilateral tariff cuts (Chart III.1).

Chart III.1
Simple average applied MFN rates, by HS section, 2005 and 2009



01 Live animals & products
02 Vegetable products
03 Fats & oils
04 Prepared food, etc.
05 Mineral products
06 Chemicals & products
07 Plastic & rubber
08 Hides & skins
09 Wood & articles
10 Pulp, paper, etc.
11 Textiles & articles
12 Footwear, headgear
13 Articles of stones
14 Precious stones, etc.
15 Base metals and products
16 Machinery
17 Transport equipment
18 Precision instrument
19 Arms & ammunition
20 Miscellaneous manuf.
21 Works of art, etc.

Note: Calculations exclude specific rates and include the *ad valorem* part of alternate and compound rates. Averages for 2005 are based on HS02 nomenclature, and for 2009 on HS07.

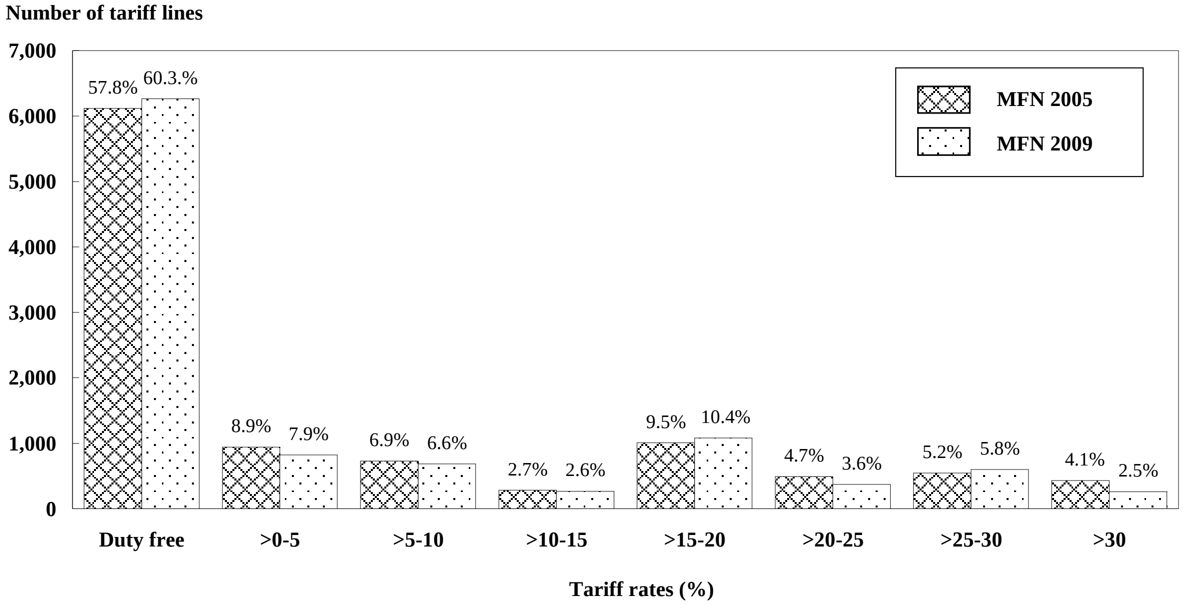
Source: WTO Secretariat calculations, based on data provided by the Malaysian authorities.

[10] Reduction and elimination of tariff rates indicated in the annual Budget is effective in Malaysia's tariff schedule when the Budget is tabled in the Parliament. For example, the reductions and eliminations indicated in the Budget 2009 were effective on the day the Budget was tabled in the Parliament (29 August 2008). The tariff schedule will remain unchanged until the next amendment (including the tabling of the next annual Budget).

(d) MFN tariff dispersion and escalation

29. The dispersion of MFN tariff rates has been largely unchanged since 2005, judging from the coefficient of variation; a larger dispersion can entail higher economic costs due to distortions, for example, between the prices of substitutes, administrative complexity of the tariffs, and more opportunity for tariff evasion through product misclassification. There are 19 different *ad valorem* rates, ranging from 0% to 90%, 20 specific rates, 4 alternate rates, and 9 compound rates. As a proportion of all tariffs, "domestic tariff peaks" decreased slightly. The proportion of tariffs exceeding 15% also decreased slightly, from 23.4% in 2005 to 22.2% in 2009. About 60% of tariff lines are duty free, compared with 57.8% in 2005 (Chart III.2).

Chart III.2
Distribution of MFN tariff rates, 2005 and 2009



Note: **Percentages denote the share of total lines. Calculations exclude specific rates and include the *ad valorem* part of alternate and compound rates. Figures for 2005 are based on HS02 nomenclature, and for 2009 on HS07. Totals do not add to 100% due to the exclusion of specific rates, representing 0.3% and 0.4%, respectively, for 2005 and 2009.**

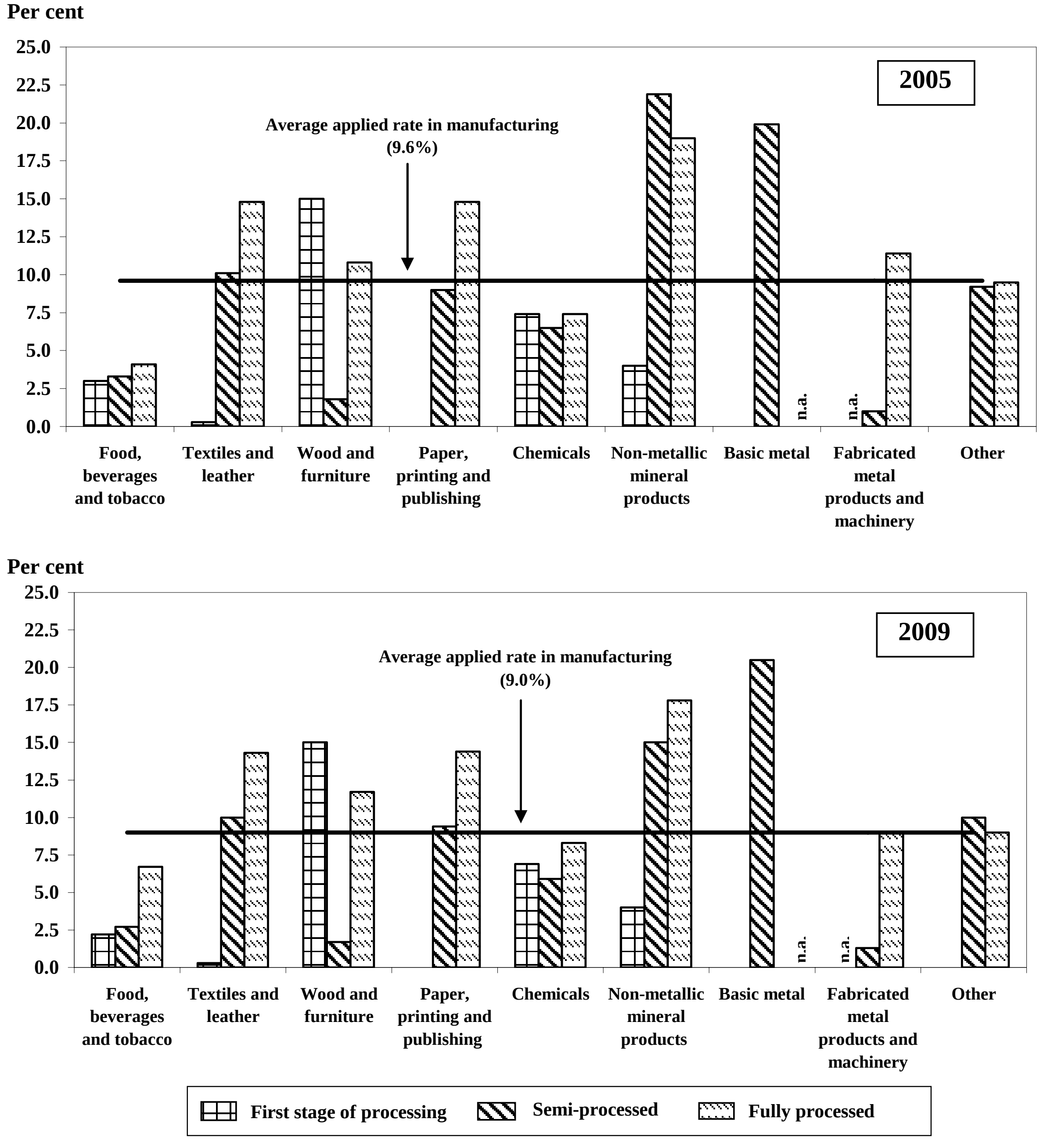
Source **: WTO Secretariat calculations, based on data provided by the Malaysian authorities.**

30. The pattern of tariff escalation has changed little since 2005, except for non-metallic mineral products, for which the average applied tariff for fully processed goods is now higher than for semi-processed goods (Chart III.3). Malaysia's tariff protection is generally lower for raw materials and increases depending on the category and value-added content.

(e) Tariff quotas

31. Since 1 April 2008, Malaysia has applied tariff-rate quotas (TRQs) on 18 products to meet the requests of domestic small producers. As a result, these items, whose tariff rates used to range from 0% to 5%, are now subject to in-quota rates ranging from 0% to 25% and out-of-quota rates ranging from 20% to 90%. The authorities maintain that they had suspended the implementation of TRQs, which was part of Malaysia's tariff concessions during the Uruguay Round, until March 2008.

Chart III.3
MFN tariff escalation by 2-digit ISIC industry, 2005 and 2009



n.a. Not applicable.

Note: Calculations exclude specific rates and include the *ad valorem* part of alternate and compound rates. Averages for 2005 are based on HS02 nomenclature, and for 2009 on HS07.

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

(f) Tariff exemptions, concessions, and drawbacks

32. Since its previous Review, there have been no changes in Malaysia's scheme of exemptions from import duties, which are available subject to certain conditions, for raw materials and components used in the manufacture of goods for export, and for machinery and equipment not available in Malaysia but used directly in the manufacturing process.[11] Duty exemption is granted to local as well as foreign-owned manufacturing companies. With regard to goods of ASEAN origin, tariff reduction/elimination (tariff concession) amendments have been conducted annually.[12]

33. There have been no changes in Malaysia's duty drawback and refund scheme during the review period. Under Section 93 of the Customs Act 1967, duty drawbacks of up to 90% of the customs duties paid on imports that are re-exported, are provided subject to certain conditions. The RMC provides concessional tariff rates on a wide range of goods in line with Malaysia's commitments to ASEAN and bilateral FTA partners. Data provided by the authorities indicate that revenue forgone for import duties and sales tax in 2007 totalled RM 1.88 billion.

(g) Tariff preferences

34. Malaysia has five different sets of preferential rates of tariff, for China, Japan, the Republic of Korea, Pakistan, and other ASEAN countries. The simple average rates under all five preferential arrangements are lower than the simple average MFN rate, although the averages vary widely among the arrangements and among product groups. Preferential rates under the ASEAN CEPT are significantly lower than the other rates (Table III.2).

Table III.2
Summary analysis of the Malaysian preferential tariff, 2009
(Per cent)

	Preferential lines[a] (% of all tariff lines)	Duty-free lines (% of all tariff lines)	Overall average	WTO agriculture	Grains	WTO non-agriculture	Leather, rubber, footwear & travel goods	Textiles & clothing	Transport equipment
MFN		60.3	7.4	2.8	14.0	7.9	13.0	12.2	18.1
CEPT[b]	38.2	85.3	0.7	0.7	14.0	0.7	0.9	0.1	1.3
ASEAN-China	32.9	68.7	2.9	0.6	14.0	3.2	4.5	4.4	12.6
ASEAN-Korea	30.0	81.6	3.2	1.2	14.0	3.4	6.4	1.2	16.3
MJEPA[c]	34.7	76.7	3.1	1.5	14.0	3.2	6.2	0.6	10.0
CEPA[d]	10.6	63.4	6.7	1.6	14.0	7.3	9.8	11.2	16.3

a The number of preferential lines includes only lines on which the rate is lower than the corresponding MFN applied rate.
b Common Effective Preferential Tariff.
c Malaysia-Japan Economic Partnership Agreement.
d Malaysia-Pakistan Closer Economic Partnership Agreement.

Note: Calculations of averages exclude in-quota rates and specific rates, and include the *ad valorem* part of alternate and compound rates.

Source: WTO Secretariat calculations, based on information provided by the Malaysian authorities and on Malaysian Customs online information. Viewed at: http://tariff.customs.gov.my/ [08.10.2009].

[11] Tariff exemptions and concessions are contained in: Customs Duties (Exemption) Order 1998; Customs Duties (Goods of ASEAN Countries Origin) (Common Effective Preferential Tariff) (Exemption) Order 2002, applicable to Cambodia, Lao PDR, Viet Nam, and Myanmar only; Excise Duties (Exemption) Order 1997; and Sales Tax (Exemption) Order 1980.

[12] The amendments are reflected in the revisions of the Customs Duties (Goods of ASEAN Countries Origin) (ASEAN Harmonised Tariff Nomenclature and Common Effective Preferential Tariff) Order 2007.

(h) Rules of origin

35. Malaysia has no national law governing rules of origin for imports; it does not maintain any non-preferential rules of origin. Malaysia maintains preferential rules of origin in respect of the ASEAN CEPT, ASEAN–China FTA, ASEAN–Korea FTA, Malaysia–Japan FTA, and Malaysia–Pakistan FTA.

(iii) Import licensing, restrictions, and prohibitions

36. Data provided by the authorities indicate that about a quarter of Malaysia's tariff lines (principally with regard to animal and vegetable products, wood, machinery, vehicles and transport equipment, and arms) are subject to import licensing, most of which is non-automatic. Automatic licensing is intended for data collection. The authorities maintain that non-automatic licences are mainly for sanitary and phytosanitary reasons (for those concerning agriculture). Non-automatic licensing is also intended to regulate the flow of imports and to promote selected strategic industries (such as passenger and commercial vehicles and motorcycles) that have been identified to achieve certain socio-economic objectives; imports of CFCs are regulated in accordance with Malaysia's obligations under the Montreal Protocol.[13]

37. According to the authorities, Malaysia removed import licensing requirements for 48 tariff lines covering machinery and equipment, and electrical and electronic products in 2008.[14] On 29 August 2008, it was decided in the 2009 Budget that import licence requirements on port cranes (such as gantry cranes, hydraulic loading cranes, and crawler cranes) and heavy machinery (such as bulldozers and road rollers) were to be abolished; and imports of steel and iron products were to be liberalized with a view to overcoming increases in price of these products (Customs (Prohibition of Exports) (Amendment) (No. 3) Order 2008, 12 May 2008).

38. As a part of the National Automotive Policy (NAP), in order to import foreign-built or assembled cars, trucks, and motorcycles and distribute them locally, a company must obtain import licences ("approved permits" (APs)) issued by MITI; the company must submit to MITI an importation plan and must have a franchise agreement to distribute these vehicles locally in order to obtain APs. In October 2009, after reviewing the NAP, the Government announced that the AP system is to be terminated in 2015 (for open APs), and 2020 (for franchise APs) (Chapter IV(5)(ii)).

39. Malaysia maintains quantitative restrictions on imports of certain products including firearms and ammunition, bullet-proof vests, and shrimp broodstock[15]; the current AP system applied to imports of motor vehicles can act as a quota restricting the number of cars that can be imported in a given year. The authorities emphasize that the AP system is used for monitoring purposes.

40. During the period under Review, Malaysia restricted or prohibited imports of a number of products from certain countries on health and safety grounds. The products include poultry products and live birds (suspicion of avian flu), beef and animal products (BSE), milk (foot and mouth disease as well as melamine), and live horses (equine flu) (section (4)(iv)).

[13] WTO document G/LIC/N/3/MYS/4, 17 October 2008.

[14] Four categories of items remain subject to various levels of import restriction, as stipulated in the Customs (Prohibition of Imports) Order 2008; these are: (1) items subject to general import prohibition owing to religious, security, health, and environmental reasons; (2) items requiring import licences mainly for health, sanitary, security, environmental protection or intellectual property reasons; (3) items requiring temporary import restrictions to protect domestic industries; and (4) items that may be imported only after meeting specific criteria.

[15] WTO document G/LIC/N3/MYS/4, 17 October 2008.

(iv) Contingency measures

41. The Safeguards Act of 2006 and Safeguards Regulations 2007 entered into force on 22 November 2007; under the Act, the government shall impose safeguard measures where a product is being imported in such increased quantities and under such conditions as to cause or threaten to cause serious prejudice to a domestic industry. The authorities consider that the legislation is in line with the WTO Agreement on Safeguards, and provides transparent provisions for the Investigating Authority to carry out investigations. To date, Malaysia has not notified to the WTO any safeguard investigations or measures pursuant to the new legislation.

42. There have been no changes to the Countervailing and Anti-Dumping Duties Act 1993 or the Countervailing and Anti-Dumping Duties Regulations 1994 since 2006. Between January 2006 and June 2009, Malaysia imposed a variety of anti-dumping actions against 10 Members; in the same period, 13 Members took anti-dumping actions against Malaysian products (Table III.3). Malaysia did not impose any countervailing measures during this period.

Table III.3
Summary of anti-dumping actions, 2006-09 (June)

WTO Member	Product	Final measure
Action by Malaysia		17
Australia	Corrugating medium paper	0
Canada	Newsprint[a]	1
China	Bicycle	1
Chinese Taipei	Maleic anhydride; polyethylene terephthalate (PET); corrugating medium paper	2
European Union	Self-copy paper[a]; corrugating medium paper	1
Hong Kong, China	Bicycle	1
Indonesia	Maleic anhydride; polyethylene terephthalate (PET); self-copy paper in rolls; newsprint[a]; self-copy paper[a]; corrugating medium paper	5
Japan	Corrugating medium paper	0
Republic of Korea	Newsprint[a]; maleic anhydride; polyethylene terephtalate (PET); corrugating medium paper	3
Philippines	Newsprint[a]; corrugating medium paper	1
Thailand	Polyethylene terephtalate (PET); corrugating medium paper	1
United States	Newsprint[a]	1
Action against Malaysia		30
Argentina	Spokes & nipples for bicycle and motorcycles	1
Australia	Mobile garbage bins	1
China	Acrylic esters; ethanolamine	2
Egypt	Porcelain and ceramics tableware	1
European Union	Polyethylene terephtalate, tube and pipe fitting of iron and steel; polyester staple fibre	2
India	Hot rolled steel products[b]; digital versatile disc-R[b]; plain medium-density fibre board[b]; carbon black[b]; partially oriented yarn; fully oriented yarn; nylon filament yarn, polyvinyl chloride; pre-sensitized positive offset aluminium plates; CD-R; cathode ray colour picture tubes; thermal sensitive paper	9
Indonesia	Hot rolled plate[b]; hot rolled coil[b]; calcium carbide; uncoated wood-free printing and writing paper	2
Republic of Korea	Polyester filament drawn textured yarn, particle board	2

Table III.3 (cont'd)

WTO Member	Product	Final measure
New Zealand	Certain bound stationery, diaries, galvanized steel wires	3
Pakistan	Polyester filament yarn; soap noodles	1
South Africa	Stainless steel sinks[b]	0
Turkey	Woven fabrics of synthetic filament yarn, vulcanized rubber thread and cord; textured yarn of polyester, polyethylene terepthalate	4
United States	Stainless steel butt welded pipe fitting, polyethylene retail carrier bags	2

a Sunset review.
b Under investigation.

Source: Data provided by the Malaysian authorities.

(v) State trading

43. Malaysia's only state-trading enterprise, within the meaning of Article XVII:4(a) of GATT 1994, remains Padiberas Nasional Berhad (BERNAS). BERNAS has the sole right to import rice until 2011, with an option of a five-year extension; it also performs social obligations on behalf of the Government, such as maintaining a rice stockpile, purchasing paddy from farmers, and acting as a buyer of last resort for paddy farmers.

(vi) Other measures

44. The authorities state that there has been no significant change in Malaysia's policy on countertrade since 2005; countertrade deals amounted to RM 3 billion between 2002 and 2007. The authorities indicate that Malaysia does not have preshipment inspection requirements, and there have been no changes to its temporary import procedures since 2006.

(3) MEASURES DIRECTLY AFFECTING EXPORTS

(i) Procedures

45. There have been no major changes to export procedures in Malaysia since 2006. All goods for export must be declared on Customs Form No. 2. Palm oil and selected palm products, natural rubber, pepper, pineapple, cocoa, and selected timber are subject to export licensing.

46. Export proceeds must be repatriated to Malaysia in full as per the sales contract within six months from the date of export. Residents of Malaysia require permission (*ex ante*) to offset export proceeds against other payables due to non-residents, or to receive export proceeds later than six months from date of export. Since 2005, residents have been allowed to retain any amount of foreign currency export receipts maintained with licensed onshore banks. Permission (*ex ante*) is required for residents to retain export proceeds in foreign currency accounts in international Islamic banks or offshore banks.

47. Malaysia does not have minimum export price regulations.

(ii) Export taxes, charges, and levies

48. The number of lines subject to Malaysia's export taxes has remained largely unchanged since its previous Review. In 2009, out of 10,389 tariff lines at the 9-digit level, 515 lines were subject to export duties; most of the rates are *ad valorem*, ranging from 5% to 20% (except for nine lines, which

are subject to specific rates).[16] Products subject to export taxes include timber, live animals, ash and residues, precious metals, copper, and ferrous waste and scrap. According to the authorities, the main objective of these taxes is to promote the use of locally produced commodities in domestic downstream industries as well as to conserve the environment. The authorities are of the view that export taxes on timber allow them to better manage sustainable development of Malaysian forest. However, such taxes tend to increase the domestic supply of the products concerned, and as a consequence, their domestic prices tend to be lower than would otherwise be the case; thus, export taxes assist domestic downstream processing of the products concerned. In 2007 (the latest year for which data were made available), Malaysia's revenue from export duties amounted to RM 2,296 billion, up from RM 1,133 billion in 2001.

(iii) Tariff and tax concessions

49. Exemptions or drawbacks on import duties are provided for intermediate inputs for exports. If these import tariffs on intermediate goods used in the production of exports are not offset they become implicit taxes on exports.[17] Thus, drawbacks are used to reduce or eliminate these implicit export taxes, although they tend to be intricate and increase the complexity of the border taxation. Similarly, rebates of internal taxes (e.g. sales tax) are used to ensure that exported goods are not subject to double taxation (in Malaysia and importing countries).

50. Malaysia's system of tariff and tax concessions for exports has not changed during the review period. Tariff drawbacks and sales tax rebates are granted in respect of imports of raw materials and components used for the manufacture of approved products for export. Imported goods re-exported within 12 months of the day import tariffs were paid are granted a drawback of up to 100%, subject to conditions stipulated in the Customs Act 1967.

(iv) Free-trade zones and other measures

51. Malaysia has 16 free industrial zones (FIZs)[18] and 17 free commercial zones[19]; these were established to facilitate operations of export-oriented companies. The authorities state that no data are compiled on the value of exports and imports from these zones as a percentage of total exports and imports. Any goods, from overseas or within Malaysia, and services of any description, except those prohibited by law, may be brought into, produced or provided in the zones without payment of any tariffs, excises, sales or service taxes. Enterprises located in the zones are eligible for tax exemptions on income from promoted activities.

52. Since 2006, there have been no changes to Malaysia's temporary admission schemes, such as licensed manufacturing warehouses.

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[16] Most lines are subject to duty rates between 5% and 15%. Only one item is subject to *ad valorem* duty of 20%. In 2006, 512 lines out of 10,580 tariff lines (based on the 2002 Harmonized System (HS)) were subject to export taxes.

[17] In the absence of drawbacks, it has been estimated (from 2001 data) that Malaysia's tariff was equivalent to an average export tax of 3.6% (Tokarick, 2006).

[18] These are located in Sungai Way, Hulu Kelang, Kinta Jelapang II, Perai, Bayan Lepas, Sama Jaya, Telok Panglima Garang, Baru Berendam, Tanjung Kling, Johor Port, Pringgit, Damansara, Rantau Panjang, Kuching, Pulau Indah, and Tg. Pelepas.

[19] These are located in Northport, Southport, Westport, Butterworth, Bayan Lepas, Kuala Lumpur International Airport, Rantau Panjang, Pengkalan Kubor, Johor Port, Tanjung Pelepas, Stulang Laut, Plentong, Bukit Kayu Hitam, Kapar, Seberang Perai, Penang, and Pulau Layang-Layang.

(v) Export prohibitions, restrictions, and licensing

53. The Customs (Prohibition of Exports) Order 2008 sets out current export prohibitions, restrictions, or licensing requirements.[20] Under the Order, prohibited exports include arms and related materials of all types, turtle eggs, and rattan from Peninsular Malaysia. Revisions to the export licensing requirements since Malaysia's previous Review include: introducing export controls on toxic and/or hazardous wastes products, in line with the Regulation under the purview of the Environmental Quality Department (Customs (Prohibition of Exports) Order 2006, 21 December 2006); introducing export controls on beta-agonist used as an ingredient in animal feed (Customs (Prohibition of Exports) Order 2007, 31 May 2007); transfer of the issuing authority for export permits for mineral products from the Ministry of International Trade and Industry (MITI) to the Ministry of Natural Resources and Environment (Customs (Prohibition of Exports) (Amendment) (No. 2) Order 2007, 10 September 2007); amendments in line with the changes in Customs Duties Order 2007 (Customs (Prohibition of Exports) Order 2008, 31 March 2008); and transfer of the issuing authority for export licences for oil and fats of palm oils from the MITI to the Malaysia Palm Oil Board (Customs (Prohibition of Exports) (Amendment) (No. 2) Order 2008, 29 April 2008).

54. The authorities are not aware of any export quotas or voluntary export restraints.

(vi) Export subsidies

55. The authorities state that Malaysia has no direct export subsidies or tax concessions to exporters.

(vii) Export finance, insurance, and guarantees

56. Export finance schemes are offered by commercial banks and the Export-Import Bank of Malaysia (Exim Bank) at commercial rates, subject to credit valuation. The Exim Bank also continues to provide various schemes including the Export Credit Refinancing Scheme[21]; and offers insurance against non-payment by buyers arising from commercial and political risks.[22] Under Malaysia's Palm Oil Credit and Payments Arrangement (POCPA) scheme for palm oil and its products, government to government MOUs and central bank to central bank agreements set out the following terms: long-term contract between supplier and buyer, repayment period up to two years, and interest based on three-month LIBOR.

(viii) Export promotion

57. The Malaysian External Trade Development Corporation (MATRADE), an agency under the MITI, continues to focus on facilitating the export promotion activities of the local business sector through trade fairs, trade missions, and business-matching programmes. Manufacturing subsectors of particular interest currently include: electrical and electronics; chemicals and chemical products; processed food; rubber-based products; wood-based products; palm-oil-based products; furniture; pharmaceuticals; and herbal products. Services subsectors of interest include education, healthcare, construction, professional services, ICT, and franchise operations.

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[20] Goods subject to export licensing include animals and animal products, fish, dairy products, rubber, palm oil products, pineapples, vegetables, rice, cocoa, minerals and ores, cement clinkers, Portland cement, metal wastes, some chemicals, cinematographic films, roofing tiles, timber, plywood veneer chips, waste paper, textiles, military clothing and equipment, bricks, tin ingot, sugar, and iron and steel.

[21] See EXIM Bank online information. Viewed at: http://www.exim.com.my/ecr.asp [06.08.2009].

[22] The former Malaysian Export Credit Insurance Berhad (MECIB), which had provided export credit insurance, was merged with the Exim Bank on 30 December 2005.

(4) MEASURES AFFECTING PRODUCTION AND TRADE

(i) Legal framework for businesses

58. The Companies Act 1965 was amended in 2007 to, *inter alia*, facilitate the electronic filing of documents; an electronic lodgement (e-Lodgement) service was introduced to allow the incorporation of a company to be conducted online.[23] Apart from this amendment, there has been no significant change since 2006 (in the Companies Act 1965) in the registration requirements for companies, domestic and foreign, seeking to establish in Malaysia.

(ii) Taxation and tax incentives

59. Total tax revenue in Malaysia amounted to about 15% of GDP in 2008. Direct taxes accounted for 72.8% and indirect taxes 27.2% (compared with 66.4% and 33.6%, respectively, in 2005) (Table III.4). Revenue from petroleum income tax is one of the major contributors, accounting for about 21% of total tax revenue in 2008. Import tariffs accounted for 2.3% of total tax revenue, while export taxes accounted for 2.5% (compared with 4.2% and 2.6%, respectively, in 2005). The authorities state that no estimates are compiled on total tax revenue forgone as a result of tax incentives.

Table III.4
Structure of direct and indirect tax revenue, 2005-08

	2005	2006	2007	2008
Total tax revenue (US$ million)	21,281.2	23,616.6	27,684.7	33,844.1
		(Per cent of total)		
Direct taxes	66.4	71.1	72.9	72.8
Companies income tax	32.7	30.6	33.8	33.4
Petroleum income tax	18.1	23.9	21.5	21.4
Individuals income tax	10.7	11.8	12.3	13.3
Stamp duties	3.1	2.9	3.6	3.1
Other	1.8	2.0	1.8	1.5
Indirect taxes	33.6	28.9	27.1	27.2
Exports duties	2.6	2.7	2.4	2.5
Import duties	4.2	3.1	2.5	2.3
Excise duties	10.7	9.9	9.4	9.5
Sales tax	9.6	7.5	7.0	7.4
Service tax	3.2	3.1	3.2	3.0
Other	3.3	2.6	2.5	2.6

Source: Data from the Accountant General's Department of Malaysia, in Bank Negara Malaysia (2009), *Monthly Statistical Bulletin,* June.

60. Since 2006, there has been no change to the retail sales tax, which is levied at rates of 5% to 15% and applies equally to domestically produced goods and imports. The authorities are planning to introduce a broad-based VAT-type tax (goods and service tax (GST)). Corporate tax has been reduced by one percentage point per year from 2007; the current rate is 25%. In addition, in 2008,

[23] See SSM online information for details. Viewed at: http://www.ssm.com.my/en/services_eLodgement.php [07.08.2009].

the corporate tax system was restructured to a "single-tier" system, under which tax on profits of companies is final (i.e. dividends distributed to shareholders are exempt from tax).[24]

61. Direct tax incentives grant partial or total relief from income tax for a specified period, while indirect tax incentives are in the form of exemptions from import duty, sales tax, and excise duty. Changes in Malaysia's tax incentives since 2006 include: provision of double deduction on remuneration expenses incurred by employers that employ certain "retrenched" workers (as a part of the Second Stimulus Package, announced in March 2009); accelerated capital allowance to all businesses on expenses incurred on plant and machinery between 10 March 2009 and 31 December 2010; and accelerated capital allowance on expenses incurred on renovation and refurbishment of business premises between 10 March 2009 and 31 December 2010.[25] Malaysia also provides tax incentives for the development of five designated regions[26]; each of these has established its own authorities to approve incentives.[27] Between 30 August 2008 and 31 December 2010, import duties and sales taxes will not be levied on certain electrical and electronic equipment imported by approved importers, and a sales tax exemption is accorded on the purchase of certain electrical and electronic consumer goods (e.g. refrigerator, air conditioner, lightings, fan, and television) manufactured domestically, approved by the Energy Commission. It was not clear to the Secretariat whether Malaysia still maintains excise tax rebates accorded to domestic automobile manufacturers (Chapter IV(5)(ii)).

(iii) Standards and other technical requirements

62. The Department of Standards Malaysia (Standards Malaysia) continues to function as Malaysia's national standardization and accreditation body. SIRIM Berhad, a wholly state-owned company, remains the sole national standards development agency under the provisions of the Standards of Malaysia Act. The Malaysian Standards and Accreditation Council is the advisory body, established under the Act to advise the Minister of Science, Technology and Innovation on matters relating to standards and accreditation. Malaysia participates in the activities of the International Organization for Standardization (ISO) and the International Electrotechnical Commission (IEC).[28]

63. Malaysian standards are voluntary unless referred to in specific technical regulations. At end 2008, about 3.2% (173 out of 5,444) of Malaysian standards were compulsory.[29] The authorities state

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[24] Previously, dividend income was taxed at the rates applicable to each shareholder. The dividend received by a shareholder was net of corporate tax; if the shareholder's applicable income tax rate was lower than the corporate tax rate, he/she was able to claim a tax credit or refund for the difference. Similar provisions applied to a shareholder that was a company.

[25] See WTO (2006) for other tax incentives.

[26] Currently there are five such designated regions: Iskandar Development Region (IDR), Northern Corridor Economic Region (NCER), East Coast Economic Region (ECER), Sarawak Corridor of Renewable Energy (SCORE), and Sabah Development Corridor (SDC).

[27] For details see: http://www.irda.com.my (Iskandar Malaysia); http://www.ncer.com.my (Northern Corridor Implementation Authority (NCIA)); http://www.ecerdc.com (The East Coast Economic Region); http://www.sarawakscore.com.my (Sarawak Corridor of Renewable Energy); and http://www.sdc.gov.my (Sabah Development Corridor) [06.08.2009].

[28] Malaysia participates in the Council, Technical Management Board, and various technical committees and sub-committees of the ISO and various technical committees and sub-committees of the IEC System for Conformity Testing and Certification of Electrical and Electronic Components, and Explosive Atmosphere Schemes (IECEX Schemes).

[29] Goods subject to technical regulations include palm oil, certain vegetables and flowers, certain chemicals and materials, materials related to building and civil engineering, electrotechnical engineering, mechanical engineering, information technology, petroleum and gas, road vehicles, goods related to fire safety and prevention, and iron and steel. In November 2008, technical regulations were imposed on iron and steel,

that a number of foreign standards and international standards are referred to in Malaysia's technical regulations; the exact number of such standards is not available. The National Standards and Strategy Action Plan, published in 2004, continues to serve as a guideline to enhance Malaysia's standardization activities until 2020.[30]

(a) Development of standards

64. The authorities state that a basis for Malaysian national standards is the adoption of international standards. Criteria for adoption of standards are determined by the relevant "standard development committees"; the views of interested parties, including industry, government agencies, and consumers are considered. Foreign interests are considered in the adoption of new or revised standards through the "public comment" procedures on any draft standards made publicly available on the websites of Standards Malaysia and SIRIM Berhad. Certain tax deductions are accorded for expenditure incurred by private companies when participating in international standardization activities.[31]

65. Some 58.1% of Malaysian standards were aligned with international standards in 2008, up from 51% in 2005 (Table III.5). This increase may reflect the authorities' stance that, when developing or revising standards, adoption of international standards is the primary option. Malaysia has been actively involved in the development of international standards through its participation in bodies such as the ISO and IEC.

Table III.5
Malaysian standards aligned to international standards, 2005 and 2008

		2005			2008 (to November)		
			Aligned MS			Aligned MS	
		Total MS	IDT	MOD	Total MS	IDT	MOD
1	Food & agriculture	478	81	3	571	121	6
2	Chemicals	505	198	25	708	331	50
3	Organizational management	..	..	..	71	31	1
4	Civil engineering & construction	217	23	4	263	61	4
5	Power generation, transmission and distribution of electrical energy	..	..	..	770	590	28
6	Mechanical engineering	198	79	1	294	127	5
7	Information technology	522	480	1	643	591	3
8	Petroleum & gas	136	49	2	205	105	2
9	Halal	3	0	0	4	0	0
10	Plastics	279	134	12	365	180	13
11	Packaging	71	40	0	96	55	0
12	Road vehicles	86	18	7	173	88	12
13	Fire safety & fire protection	65	14	1	86	28	2
14	Rubber	138	75	11	194	104	19
15	Iron & steel	73	29	8	103	39	12
16	Textiles	197	0	0	255	57	0

Table III.5 (cont'd)

covering 57 tariff lines, with a view to ensuring safety and to prevent "deceptive practices", when import licensing requirements on these products were eliminated.

[30] Standards Malaysia online information. Viewed at: http://www.standardsmalaysia.gov.my/v2/index.php?option=com_content&task=view&id=93&Itemid=209 [04.08.2009].

[31] Standards Malaysia online information. Viewed at: http://www.standardsmalaysia.gov.my/v2/index.php?option=com_content&task=view&id=79&Itemid=103 [06.08.2009].

		2005			2008 (to November)		
			Aligned MS			Aligned MS	
		Total MS	IDT	MOD	Total MS	IDT	MOD
17	Medical devices	0	0	0	166	156	1
18	Electrical equipment & accessories	..	..	..	93	28	0
19	Food & food product	..	..	..	49	15	2
20	Tourism, exhibition & hospitality services	..	..	..	6	6	0
21	Occupational health & safety	77	72	0	149	127	4
22	Quality management & quality assurance	98	94	2	122	114	2
23	Environment management	19	15	0	58	40	0

.. Not available.

Note: IDT = Identical; MOD = Modified.

Source: Data provided by the Department of Standards Malaysia.

(b) Conformity assessment

66. There have been no changes in Malaysia's system of conformity assessment since its previous Review. Standards Malaysia is the sole authority in Malaysia responsible for the accreditation of organizations involved in conformity assessment on behalf of the Government. The accreditation of laboratories is carried out under the Laboratory Accreditation Scheme of Malaysia (SAMM). At end 2008, a total of 405 laboratories had been accredited, based on the international standard ISO/IEC 17025:2005, and five based on ISO 15189:2007.

(c) Halal certification

67. Malaysia intends to play a leading role in the development of halal certification; there have been no changes in halal-related policies during the review period. All meat, processed meat products, poultry, eggs and egg products, domestically produced or imports, must receive halal certification from the Department of Islamic Development Malaysia (JAKIM) to be distributed in Malaysia. The certificate is issued on the joint recommendation of the Malaysian Department of Veterinary Services (DVS) and JAKIM following an on-site inspection.

68. The slaughtering of animals and production of livestock-based products (other than swine) for export to Malaysia must be conducted according to halal specifications. The DVS, together with other relevant agencies, such as JAKIM and the Ministry of Health, inspects slaughterhouses and processing plants overseas periodically, to ensure that they meet Malaysia's halal requirements. Inspection is usually once a year or once in two years, but varies depending on the risk involved in the particular country. With regard to inspection of slaughterhouses outside Malaysia, JAKIM accredits the Islamic organization in the exporting country/economy. Once accredited by JAKIM, the Islamic organization monitors the halal process in the slaughterhouse and produces halal certificates for export to Malaysia. Malaysia had no mutual recognition arrangements with foreign standardization bodies on standardization and inspection for halal certification.

(d) Overview of international agreements and arrangements

69. Malaysia participates in voluntary mutual recognition arrangements under: the Asia Pacific Laboratory Accreditation Cooperation and International Laboratory Accreditation Cooperation (APLAC/ILAC) MRA for testing and calibration; and Pacific Accreditation Cooperation and the International Accreditation Forum Multi-Lateral Agreement (PAC/IAF MLA) for the quality management system (QMS) and the environmental management system (EMS) programme. It also

participates in the ASEAN Electrical and Electronic MRA as well as ASEAN MRA on Pharmaceutical Inspection.

(iv) Sanitary and phytosanitary regulations

70. The regulatory framework under which SPS measures are implemented has remained largely unchanged since Malaysia's previous Review; the relevant laws and regulations include the Plant Quarantine Act 1976, the Plant Quarantine Regulations 1981, the Animal Act 1953 (Revised 2006)[32], the Fisheries Act 1985, the Food Act 1983, and Food Regulations 1985.

71. Under the Food Act 1983, two new regulations were adopted in 2009, to help Malaysian exports to comply with EU requirements on aquaculture-sourced products: the Food Hygiene Regulations 2009, which stipulates hygiene requirements for food premises, food handlers, and equipment during preparation, storage and transportation of food, and the Food (Issuance of health certificate for export of fish and fish products to the European Union) Regulations 2009, which establishes requirements for fish exports from Malaysia to the European Communities. The Food Regulations 1985 were also amended in 2009 to require ice processing factories to be licensed by the Ministry of Health.[33] Under the Fisheries Act 1985, Fisheries (Quality control of Fish for Export to the European Union) Regulations were introduced in 2009.

72. The Ministry of Agriculture and Agro-based Industry (MOA) is responsible for matters relating to plants, livestock, and fisheries; its Department of Agriculture (DOA), Department of Veterinary Services (DVS), and Department of Fisheries (DOF) are responsible for matters relating to plants, livestock products, and fisheries, respectively. The Ministry of Health (MOH) is responsible for food safety matters. On 1 August 2008, the Malaysian Quarantine and Inspection Services (MAQIS) was established as a one-stop centre for quarantine and inspection regarding imports and exports of agricultural products. The objectives of the MAQIS include: to act as a single body to conduct all inspection and quarantine matters at all national borders; to facilitate exports of agricultural products, and to improve the delivery of inspection and quarantine services.

73. During the period under review, Malaysia made 11 SPS notifications related to seven SPS regulations.[34]

74. During the period under review, Malaysia restricted imports of livestock products due to diseases reported in the respective exporting countries (Table III.6).

[32] The previous Animal Ordinance 1953 was revised in 2006 to become the Animal Act 1953 (Revised 2006).

[33] Food Regulations (Amendment) 2009.

[34] These notifications are: G/SPS/N/MYS/16/Add.1, 17 March 2006; G/SPS/N/MYS/19, 3 April 2008; G/SPS/N/MYS/19/Add.1, 9 June 2008; G/SPS/N/MYS/19/Add.2, 25 August 2009; G/SPS/N/MYS/20, 6 July 2009; G/SPS/N/MYS/20/Add.1, 14 September 2009; G/SPS/N/MYS/20/Corr.1, 31 August 2009; G/SPS/N/MYS/21, 25 August 2009; G/SPS/N/MYS/22, 25 August 2009; G/SPS/N/MYS/23, 25 August 2009; and G/SPS/N/MYS/24, 13 October 2009.

Table III.6
Import restrictions on agricultural products, 2005-08

Year	Countries/economies affected	Diseases and substances	Products affected
2005	Cambodia; China; Hong Kong, China; Indonesia; Japan; Lao PDR; Thailand; Turkey; Viet Nam	HPAI	Poultry products, live birds
	EU; United States	BSE	Beef, animal products
	India	FMD	Milk
2006	Cambodia; Indonesia; Japan; Lao PDR; Viet Nam	HPAI	Poultry products, live birds
	EU; Japan; United States	BSE	Beef , animal products
	India	FMD	Milk
2007	Cambodia; India; Indonesia; Japan; Lao PDR; Thailand; Viet Nam	HPAI	Poultry products, live birds
	EU; Japan	BSE	Beef, animal products
	India	FMD	Milk
	Australia; Japan	Equine influenza	Live horses
2008	Thailand	HPAI	Live birds
	Cambodia; Hong Kong, China; India; Indonesia; Japan; Lao PDR; Viet Nam	HPAI	Poultry products, live birds
	EU; Japan	BSE	Beef, animal products
	India; Iran; Syria	FMD	Milk and milk products
	Japan	Equine influenza	Live horses
	China	Melamine	Milk products

Source: Data provided by the Malaysian authorities.

(v) Government procurement

75. Malaysia's government procurement continues to be used as an instrument to support national objectives, such as encouraging greater participation of the *bumiputera* in the economy, transfer of technology to local industries, reducing the outflow of foreign exchange, creating opportunities for local service-oriented companies, and enhancing export capabilities. The margin of preference that *bumiputera* supplies receive has not been changed during the review period.[35] Malaysia is not a party to the WTO Agreement on Government Procurement; the authorities are of the view that Malaysia has yet to attain the level of economic development that would enable it to benefit from this Agreement. In 2008, Malaysia's government procurement amounted to about 11.9% of GDP (11.4% in 2005) (Table III.7).

Table III.7
Government procurement in Malaysia, 2005-08
(RM million)

	2005	2006	2007	2008
Federal government supplies and services expenditure	17,984	20,923	23,622	25,900
Federal government development expenditure	30,534	35,807	40,564	46,258
State government development expenditure	4,347	4,895	6,136	7,595
Local government development expenditure	2,097	1,548	1,556	1,985
Statutory bodies development expenditure	4,513	6,485	6,235	6,068
Total	59,475	69,658	78,113	87,806

Source: The Malaysian authorities' estimates, based on the Ministry of Finance, *Economic Report 2008/2009*, Annex tables 4.4, 4.6, 4.10, 4.11, and 4.12.

[35] For supplies and services contracts between RM 100, 000 and RM 15 million, *bumiputera* suppliers receive a margin of preference between 2.5% and 10%; the margin is inversely proportional to value. Furthermore, preferential treatment is given to *bumiputera* manufacturers for locally produced goods; the margin is up to 10% for contracts valued below RM 10 million and up to 3% for contracts valued above RM 10 million. No preferences are provided for purchases exceeding RM 15 million.

76. The Financial Procedure Act 1957, remains Malaysia's main legal instrument for financial matters including government procurement. The Ministry of Finance has main responsibility for government procurement. All individuals, companies or corporate bodies intending to participate in government procurement of works, supplies and services are required to be registered with the Ministry of Finance.[36]

77. Supplies, goods, services, and works tenders below specified thresholds can be considered by the procurement boards in each federal government ministry.[37] Tenders in excess of these values must be referred to the Ministry of Finance for final decision. On 31 July 2008, in order to expedite procurement processes and accelerate decision-making, by delegating more power to agencies, the thresholds for procurement boards were raised to RM 50 million for supplies, goods, and services tenders (from RM 30 million) and RM 100 million for works (such as construction or engineering services) (from RM 50 million).

78. Open tendering is mandatory for procurement of supplies and services above RM 30 million, and works above RM 50 million.[38] Open tenders must be advertised in local dailies, websites of procuring agencies and also in the MyGovernment portal. The government agency must make available a desk copy of the tender document for prospective bidders to view. Ministries and agencies are allowed to purchase supplies and services up to RM 50,000 directly from any known suppliers of goods or services that are deemed to be consistently supplying goods or services at acceptable quality and reasonable price. Suppliers do not need to be registered in relation to such purchases.

(vi) Privatization and government-linked companies

79. The authorities state that most privatizations of public corporations took place in the 1980s and 1990s. Since 2005, 12 enterprises have been privatized (Table AIII.2). Rather than privatization, the Government appears to be more focused on improving the productivity of state-owned companies (or "government-linked companies" (GLCs)), which continue to play an important role in the economy. Currently, Malaysia has 34 GLCs[39]; since 2006, some have been subject to the GLC Transformation Program, which aims to make GLCs as competitive as non-GLC competitors in the Malaysian market. The March 2009 mid-term progress review of the programme indicated that the performance of 19 large GLCs improved in terms of earnings and shareholder returns, although some apparently underperformed relative to top regional competitors.[40]

[36] The Contractor Services Centre and Construction Industry Development Board are the registration authorities for the procurement of works.

[37] While the Ministry of Finance is responsible for the formulation of rules and procedures on government procurement at the central level, in practice, the Ministry has delegated powers to respective agencies to do their own procurement with a view to enhancing transparency and improving delivery of services; each Ministry has its own procurement board, which has the authority to approve supplies and services up to the stated thresholds.

[38] Two methods of tendering (i.e. open and restricted) are used in Malaysia's government procurement. All open tenders are advertised in local newspapers. Restricted tenders are employed to address specific problems, such as security, or due to a limited number of registered companies.

[39] Stakes in the 34 are held by Khazanah.

[40] The 19 GLCs are: Affin Holdings Berhad, BIMB Holdings Berhad, Boustead Holdings Berhad, Bumiputra-Commerce Holdings Berhad, Chemical Company of Malaysia Berhad, Malayan Banking Berhad, Malaysian Airline System Berhad, Malaysia Airports Holdings Berhad, Malaysian Building Society Berhad, Malaysian Resources Corporation Berhad, Pos Malaysia & Services Holdings Berhad, Proton Holdings Berhad, Sime Darby Berhad, Telekom Malaysia Berhad, TM International Berhad, Tenaga Nasional Berhad, TH Plantations Berhad, UEM World Berhad, and UMW Holdings Berhad.

80. Procurement policies for GLCs are similar to those of Ministries and other government bodies. GLCs are encouraged to procure from local sources with a view to supporting local and national economic development.[41]

(vii) Competition policy and regulatory issues

81. Malaysia does not yet have a comprehensive competition law, but the authorities recognize that competition policy is an essential part of modern policy infrastructure. The Ministry of Domestic Trade, Cooperatives and Consumerism (MDTCC) is responsible for formulating a competition policy for Malaysia.[42] Legislation on anti-competitive measures has been applied in energy as well as in communications and multimedia.[43] The authorities state that Malaysia is currently in the final process of drafting the Fair Trade Practices Bill (FTPB) and Fair Trade Commission Bill (FTCB), in accordance with an objective outlined in The Eighth Malaysia Plan (2001-05), which identified a need for a competition policy and law. The MDTCC has been holding public consultations with government agencies, industry and trade associations, consumer groups, and NGOs since 2007 to obtain feedback and inputs on issues pertaining to the bills.[44] It is not clear whether GLCs will be covered by the FTPB and FTCB.

82. Some bilateral/regional free-trade agreements, such as the Japan-Malaysia Economic Partnership Agreement, signed in December 2005, and the ASEAN-Australia New Zealand Free Trade Agreement, signed in February 2009, include provisions on competition. At the regional level, Malaysia is a signatory to the declaration on the ASEAN Economic Community (AEC) Blueprint, signed in 2007, with the aim of introducing comprehensive competition laws in all ASEAN member countries by 2015, on a best endeavour basis, and to establishing a network of authorities among member countries for discussion and coordination on competition policies. Malaysia also participates in the ASEAN Experts Group on Competition (AEGC), formed in 2007, which aims to develop capacity and a forum for discussion on competition policies in the ASEAN region.

83. Price controls are used on a number of products. Under the Price Control Act 1946, coarse grain, white refined sugar, and fine grain white refined sugar have been declared by the MDTCC as goods subject to price control. Goods subject to administrative price controls include: general purpose wheat flour, cooking oil (pure and blended palm oil), white bread, petrol, diesel, and liquefied petroleum gas. Price controls on steel bar and billet, ordinary Portland cement, and chicken were eliminated in 2008. The price of rice is controlled by law and is administered by the Ministry of Agriculture under the Rice (Grade and Price Control) Order 1992.

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[41] The "Red Book", published in April 2006, contains procurement guidelines and best practices. GLCs are also required to follow "procurement best practices", including cost minimization, disclosure, building long-term relationships with suppliers, and helping to develop local suppliers.

[42] On 17 June 2009, the former Ministry of Domestic Trade and Consumer Affairs was renamed the Ministry of Domestic Trade, Cooperatives and Consumerism.

[43] The Malaysian Communications and Multimedia Commission (MCMC) is responsible for implementing the Communications and Multimedia Act 1998; the Act contains a general prohibition of any conduct that has the purpose of "substantially lessening competition" in a communication market (Sections 133-144). The Act also prohibits collusive agreements to fix rates, share market, or boycott suppliers or competitors. Thus far, MCMC has published the "Guidelines on Substantial Lessening of Competition" and "Guidelines on Dominant Position in a Communication Market". In the energy sector, the role of the Energy Commission, as defined by Energy Commission Act 2001, is to promote and safeguard competition and fair and efficient market conduct; and in the absence of a competitive market, to prevent the misuse of monopoly or market power in respect of the generation, production, transmission, distribution, and supply of electricity and the supply of gas through pipelines.

[44] Some working documents outlining the main objectives of the bills and their substantive prohibitions were presented during the consultations; these documents were not made available to the general public.

(viii) Corporate governance

84. Malaysia has made a further move towards a more disclosure-based regulatory regime since its previous Review. The Government's initiatives include: revision of the Malaysian Code on Corporate Governance, first issued in 2000 (the revised Code entered into force on 1 October 2007); and an amendment to the Companies Act 1965. GLCs are apparently expected to abide by the Code, as well as GLC-specific guidelines for best practices issued by the Putrajaya Committee on GLC High Performance (section (vi)).

85. The revision of the Code on Corporate Governance was intended to strengthen the roles and responsibilities of the boards of directors and audit committees, and ensure that they discharge their duties effectively.[45] Main changes included: a committee ("nominating committee") must be established in a company to nominate the right candidate to the board of directors based on candidates' merit[46]; in appointing independent non-executive directors[47], the nominating committee must also evaluate the candidates' ability to discharge the responsibilities or functions expected of them. Amendments were also made to the listing requirements of Bursa Malaysia Securities Berhad. The key amendments included: requiring all audit committee members to be non-executive directors; mandating the internal audit function in listed companies; requiring annual reports of listed companies to include information on the internal audit function; requiring the audit committee to review adequacy of competency of the internal audit function.

86. The Companies (Amendment) Act 2007, which amended the Companies Act 1965, entered into force on 15 August 2007. With regard to corporate governance, the amendment stipulates, *inter alia*, that a director of a company "shall at all times exercise his powers for a proper purpose and in good faith in the best interest of the company", and "shall exercise reasonable care, skill and diligence with the knowledge, skill and experience of a director having the same responsibilities". The amendment also stipulates certain requirements for a director when making business judgement", and certain protection to "whistle blowers".

(ix) Intellectual property rights

(a) Regulatory environment

87. The Intellectual Property Corporation of Malaysia (MyIPO) is the principal agency responsible for IPR policy development and administration. Changes to Malaysia's laws and regulations on intellectual property since its previous Review include an amendment to the Patents Act 1983, which entered into force on 16 August 2006. The amendment was intended to assure consistency with Malaysia's accession to the Patent Cooperation Treaty (PCT).[48] Other main IPR-related laws and regulations have remained largely unchanged.[49]

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[45] Malaysian Code on Corporate Governance (Revised 2007). Viewed at: http://www.sc.com.my/eng/html/cg/cg2007.pdf [06.07.2009].

[46] This includes skills, knowledge, expertise and experience, professionalism, and integrity.

[47] An independent director is a director that is "independent of management and free from any business or other relationship that could interfere with the exercise of independent judgement or the ability to act in the best interest of an applicant or a listed issuer".

[48] The authorities maintain that Malaysia's IPR laws have been in conformance with the international standards and the TRIPS Agreement since 2002.

[49] These include the Trade Mark Act 1976 and Trade Marks Regulations 1977, the Copyright Act 1987, the Industrial Design Act 1996 and the Industrial Designs Regulations 1999, the Layout Designs of Integrated Circuits Act 2999, and the Geographical Indications Act 2000. Unauthorized use and disclosure of trade secrets continue to be protected under common law.

88. There has been no change to Malaysia's compulsory licensing provisions, which are applied to patents, layout designs of integrated circuits, and copyrights and related rights. No compulsory licence or rights of government have been granted since 2005. One compulsory licence expired during the review period.[50]

89. Parallel imports are allowed into Malaysia under the Patents Act 1983. The potential for parallel imports diminishes sole distributors' exclusive rights to distribute patented products in Malaysia. However, they may take action against the contracting parties under common law regime for loss of revenue. There are no provisions on parallel imports that relate to copyrights and trade marks in any laws and regulations.

90. The authorities regard the National Intellectual Property Policy (NIPP), issued on 27 April 2007, as a guideline in enacting IPR laws and regulations and in implementing IP-related activities of government agencies, research institutions, academic institutes, NGOs, and the private sector. In accordance with the NIPP, the authorities aim to reduce examination time for patents and trade marks. "First office action" is expected to be conducted for patents within 37 months (currently 48 months), and for trade marks within 7 months (currently 10 months).

91. Malaysia is reviewing its intellectual property legislation in stages. Industrial design legislation is at the final stage of internal review, and is to be published for public consultation. Legislation on patents, trade mark, and copyright is at the stage of internal discussion by the Law Review Committee. While Malaysia does not provide protection for data submitted by pharmaceutical companies in support of drug registration, the Government intends to implement test-data protection in Malaysia; the exact mechanism for doing this has not been decided yet.

92. Malaysia's authorities recognize the mutual importance of ensuring effective competition policy and adequate IPR protection. In their view, IPR protection enhances economic efficiency and promotes competition as it strengthens the incentive for initial research and development, spurs incremental innovation, facilitates diffusion, and generates product market competition. On the other hand, monopoly derived from the protection of IPRs is not necessarily prohibited by competition laws; whether such efficiency-enhancing and competition-promoting effects outweigh any anti-competitive effects by restrictions contained in IPR agreements depends on the degree of market power of the IPR-holder.

93. The Patent Cooperation Treaty (PCT) has been in force in Malaysia since 16 August 2006, following Malaysia's accession. Malaysia became party to the Nice Agreement 1957 and Vienna Agreement 1985 (with a view to harmonizing trade mark registration procedures in accordance with international standards for classification of goods and services, as well as figurative elements) on 28 September 2007.

94. Malaysia participates in the ASEAN Working Group on Intellectual Property Cooperation (AWGIPC). It is signatory to the ASEAN Framework Agreement on Intellectual Property Cooperation. The AWGIPC has agreed to replace the ASEAN Regional Trade Mark Filing System with the Madrid Protocol for the International Registration of Marks by 2015. Malaysia cooperates, *inter alia*, with the World Intellectual Property Organization, ASEAN IP Offices, IP Australia, the European Patent Office (EPO), Japan Patent Office (JPO), Korean Intellectual Property Office (KIPO), the UK Patent Office (UKPO), the United States Patent and Trademark Offices (USPTO), and other intellectual property offices.

[50] This concerns a case where the Government used the "rights of Government" provision to exploit patented HIV/AIDS medicine on 1 November 2003 for a period of two years. This expired in November 2005.

(b) Enforcement

95. Malaysia took further steps to strengthen enforcement of intellectual rights, particularly in copyright and product counterfeiting, during the period under review. These efforts include: increased raids and inspections related to copyright infringement (Table III.8), and the establishment on 17 July 2007 of the Intellectual Property (IP) Court. The IP Court comprises 15 session courts located in all states. In addition, IP courts have also been established within high courts; one in Kuala Lumpur is already in operation and five in Selangor, Johor, Perak, Sabah, and Sarawak are in the process of being established. There have been no changes to penalties associated with IPR infringement in the Copyright Act 1987 during the review period.[51] Customs officers have an *ex-officio* duty under the Act to detain or suspend the release of goods that are deemed to be infringing IPRs (e.g. counterfeits) on the basis of prima facie evidence.

Table III.8
Raids and inspections related to copyright infringement, 2005-07

Premises raided/inspected	**2005**	**2006**	**2007**
Night markets	19,265	15,512	51,523
Eateries	4,421	3,764	4,627
Traders on five footways	3,411	4,769	5,066
Lobby stalls at shopping complex	3,494	4,826	3,612
Sale/rental optical disc shops	5,156	6,003	3,878
Optical disc manufacturers	383	118	49
Stores/distribution centres	133	476	408
Computer shops	395	1,097	865
Others	1,411	1,601	926
Total	38,069	38,166	70,863
Seizure of copyright infringing goods under Copyright Act, and counterfeit goods under Trade Description Act, 2005-2007		*(RM million)*	
Copyright infringement	128.2	214.5	59.0
Counterfeit goods	12.2	42.7	56.2

Source: Data provided by the Malaysian authorities.

[51] It was not clear to the Secretariat whether there have been any changes to penalties under other IPR-related laws and regulations.