

IV. TRADE POLICIES BY SECTOR

(1) INTRODUCTION

1. During the period under review, Malaysia has been adopting measures specified under various plans, such as the Ninth Malaysia Plan (2006-10) and the Third Industrial Master Plan (2006-20), with a view to guiding the country towards global competitiveness and becoming a higher-value added and knowledge-based economy. Malaysia aims to increase the share of the services sector to GDP to 60% by 2020, in an effort to establish a knowledge-based economy less reliant on manufactured exports.

2. Malaysia has a generally liberal trade regime for agricultural products, with an average applied MFN tariff at 2.8% (WTO definition) in 2009, although some non-*ad valorem* tariffs tend to conceal relatively high rates. In addition, import licensing applies to some agricultural products, and rice may only be imported by BERNAS. As a monopsony buyer of rice, BERNAS has the market power to negotiate lower prices with its suppliers. Malaysia began to apply tariff-rate quotas on agricultural products in 2008. Import tariffs are zero for mineral resources and oil and gas, which are not subject to any import licensing requirements. Export taxes, however, apply to some mineral products, and to crude oil and condensate.

3. Malaysia's manufacturing sector is relatively open to trade and foreign investment; the average tariff for manufacturing products was 8.7% in 2009, and 100% foreign equity participation is generally allowed. However, a notable exception is the automotive sector, which has long been sheltered from foreign competition by both tariff and non-tariff measures. Although the sector has been successful in taking a large share of the domestic market, its exports are modest, indicating a lack of external competitiveness. In October 2009, following a review of Malaysia's National Automotive Policy, the MITI announced liberalization measures; the Government intends to encourage investment, promote exports, and enhance the competitiveness of Malaysia's cars in the global market. Nonetheless, it seems the sector continues to be protected; in particular, in response to an economic downturn after the global crisis, rebates are given for buyers replacing vehicles over ten years old with national brands.

4. The services sector has been the largest contributor to GDP. Compared with manufacturing (with the notable exception of automobiles), services has been relatively closed to international competition, with FDI restrictions comprising the major obstacles. However, the Government has recently been relaxing or removing foreign investment restrictions in services, although more measures are needed to promote competition.

(2) AGRICULTURE

5. The development of agriculture is guided mainly by the Ninth Malaysia Plan (9MP) and the Third National Agricultural Policy (1998-2010) (NAP3). The main objective under the 9MP is to revitalize agriculture to be "the third pillar of economic growth", via a New Agriculture Programme (2005-10), which aims to promote more large-scale commercial farming and increase value-added production. The NAP3, on the other hand, aims to raise productivity and improve the competitiveness of the sector, by deepening linkages with other sectors of the economy and creating new sources of growth. Food security is also an important policy objective; Malaysia's self-sufficiency ratio for major agricultural products was largely stable during the review period (Table IV.1).

6. The legislative and institutional framework of the agriculture sector has remained largely unchanged since the previous Review (Table AII.1). The sector is regulated mainly by the Ministry of Agriculture and Agro-Based Industry (responsible for the agri-food sector including crops,

livestock, and fisheries), the Ministry of Plantation Industries and Commodities (responsible for the overall development of the plantation and the commodities subsectors including pepper, coca, palm oil, rubber, timber, and tobacco), and the Ministry of Rural and Regional Development (responsible for raising the income level of rural residents).¹ Special committees, comprising representatives from relevant ministries, including the Economic Planning Unit (EPU), have been set up at the ministerial level to ensure coordination within these ministries.

Table IV.1
Self-sufficiency ratio in major food commodities, 2005-08

	2005	2006	2007 ^a	2008 ^b
Crops				
Rice	72.00	68.60	72.23	73.00
Vegetables	74.00	89.00	89.00	76.00
Fruits	117.00	107.00	105.00	104.00
Livestock				
Beef	21.15	21.78	24.88	25.90
Mutton	8.60	8.99	8.75	9.15
Pork	96.82	96.87	96.90	96.60
Poultry	124.74	124.94	121.39	125.58
Poultry eggs	108.70	109.06	111.38	114.20
Milk	4.59	4.59	4.69	4.80
Food fish	91.00	90.00	92.90	95.20

a Provisional.

b Estimates.

Source: Data provided by the authorities.

7. During the period under review, labour productivity in agriculture, together with forestry and fisheries, has been improving, although it remains substantially lower than the national average. The sector's contribution to GDP increased from 8.4% in 2005 to 10.2% in 2008, while its share of total employment fell from 12.9% to 12.0% (Table I.2). However, a labour shortage continues to force the sector to rely on foreign labour, which accounts for around 20% of total agriculture employment. The sector also faces challenges such as increasing food imports, greater competition in export markets, and the small size of farms (which inhibits mechanization and the attainment of scale economies).

8. The Government maintains price supports, and grants subsidies to inputs through government service programmes to promote the development of agriculture (Table IV.2). Among these support programmes, the financing of a minimum price for rice has persistently been the biggest outlay (or one of the biggest), although in 2008 it was surpassed by support allocated on drainage and irrigation facilities (Box IV.1). In addition, Malaysia maintains retail price controls on: sugar, some milk products (e.g. sweetened condensed milk), wheat flour, cooking oil, some vegetables, and chicken (Chapter III). Soft loans are available in the form of: 3F (Fund for Food), small and medium industries fund, and various other schemes, such as the oil palm replanting scheme and the paddy credit scheme.²

¹ Other related ministries are the Ministry of Health for food safety, the Ministry of Domestic Trade, Co-operatives and Consumerism for food prices, and the Ministry of Natural Resources for the environment.

² Other schemes are the agriculture entrepreneur scheme for graduates, the *bumiputera* community trade and industry scheme, the food production credit scheme, and the agro-youth scheme.

Table IV.2
Overview of domestic agricultural support measures, 2004, 2007, and 2008
(RM million)

Type of measures	Description	Value (RM million)		
		2004	2007	2008
Drainage and irrigation facilities	General services that benefit rural and smallholding farmers	56.7	171.7	562.0
Research and development	General services provided for most crops and agricultural programmes	59.2	60.0	101.3
Marketing services	General services provided for marketing of produce of smallholders	29.9	77.0	83.2
Extension services	General services that benefit rural and smallholding farmers, including pesticide inspection services and transfer of information and results of R&D to producers	4.7	3.8	4.36
Price support and guaranteed minimum price	Guaranteed minimum price and paddy price subsidy provided to paddy farmers in the context of poverty reduction and uplift of the socio-economic well-being of paddy farmers	476.6	444.0	448.0
Fertilizer subsidy	Aimed at increasing productivity and encouraging good agricultural practices amongst smallholders	186.7	261.7	270.8

Source: Information provided by the authorities.

9. Malaysia has an overall liberal trade regime on agricultural products although the authorities consider the increasing food imports to be a challenge. Its tariffs on agricultural imports are generally low, averaging at 2.8% (WTO definition) in 2009 (Table III.1). Nevertheless, some non-*ad valorem* tariffs, particularly in agriculture, tend to conceal relatively high rates (Chapter III).³ The authorities state that Malaysia continues to maintain non-*ad valorem* duties (with high AVEs) for agricultural products to protect farmers or for public health reasons (alcoholic beverages and tobacco). The Government is currently reviewing its use of non-*ad valorem* duties in line with the Doha negotiations.

10. A wide range of agricultural products are subject to import licensing and SPS measures; these include rice, round cabbages, unroasted coffee beans, palm oil, and milk and sugar.⁴ Licences are issued by the Ministry of Agriculture and Agro-based Industry, or the Ministry of International Trade and Industry (MITI), depending on the product. As before, rice is imported only by BERNAS (Box IV.1).

11. Malaysia began to apply tariff-rate quotas on 18 tariff lines at the HS 9-digit level from April 2008, covering poultry products, pork products, fresh milk, and cabbage (Table AIV.1).⁵ Quotas are allocated on a first come, first served basis, and some quotas were overfilled while others were not taken up. The authorities state that TRQs are applied to allow a "reasonable" time for the industry to restructure, and are in line with Malaysia's commitments under the WTO.

12. Malaysia has not applied the special safeguard provisions under the WTO Agreement on Agriculture.⁶ Malaysia also notified that it has had no export subsidy programmes during the period

³ Some 6.1% of all agriculture tariff lines are subject to non-*ad valorem* tariffs. Three tariff lines (at HS 9-digit level) have AVEs higher than 1,000%, covering some banana products and some tobacco refuse (HS080300200, HS080300400, and HS240130000). The average duty for agricultural products, including all AVEs, is 18.1%; excluding these three lines, it is 7.2%.

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

⁵ Prior to April 2008, the authorities state that no TRQ had been enforced although Malaysia has the right to implement TRQ on 73 lines at HS 9-digit level under its Uruguay Round commitments.

⁶ WTO documents G/AG/N/MYS/21, 19 November 2008 and G/AG/N/MYS/23, 20 March 2009.

under review.⁷ However, export restrictions apply: crude palm oil, rubber, pepper, and some timber products are subject to export taxes, and exports of logging products from Peninsular Malaysia continue to be banned (Chapter III).

Box IV.1: Rice

Rice is considered as a "strategic" sector in Malaysia, and the Government aims to maintain a self-sufficiency level for rice. In 2008, the self-sufficiency ratio was 73%.

Rice is subject to a guaranteed minimum price (GMP) and a paddy price subsidy, to encourage paddy cultivation. Under the GMP scheme, BERNAS undertakes to buy paddy from farmers at not less than the GMP if the market price is lower than the GMP; currently the GMP is RM 75 per 100 kg for both long and medium grains. Under the paddy price subsidy programme, the Government makes fixed payments (currently RM 24.81 per 100 kg) to farmers for the paddy they sell to any commercial rice mill; this subsidy is in addition to the price received for the paddy. The Government also adopts a price control for certain types of rice consumed by the lower income population: i.e. lower grade rice has price ceilings. For ST15 (lower grade), the price is fixed at RM 1.65/kg for Peninsular Malaysia and RM 1.80/kg for Sabah and Sarawak; for SST5 (lower grade) and SST10 (lower grade), the price ceilings are RM 2.60/kg and RM 2.40/kg, respectively.

BERNAS, a private enterprise involved in state trading, performs certain social obligations on behalf of the Government on rice. For example, as a buyer of last resort for paddy farmers, BERNAS is obliged to purchase paddy from paddy farmers at the GMP if the market price is below the GMP. BERNAS also maintains the national rice stockpile on behalf of the Government. In addition, BERNAS has the exclusive right to import rice until 2011 with an option for a further five-year extension. When importing rice, according to the authorities, BERNAS implements a transparent purchasing system with open tendering procedure. BERNAS does not regulate the retail prices for rice; these are regulated by the Control of Paddy & Rice Section under the Ministry of Agriculture and Agro-based Industry. However, as the only authorized importer of rice (a monopsony buyer), BERNAS tends to have the market power to negotiate lower prices with its suppliers.

Source: Information provided by the authorities.

(3) MINING AND QUARRYING

13. In Malaysia, mineral products (apart from crude oil and gas) are the property of the states. The main laws and regulations governing the sector include the Mineral Development Act 1994 (effective 1998), the State Mineral Enactments, and the State Quarry Rules.⁸ At the federal level, mining is regulated mainly by the Ministry of Natural Resources and Environment, through its Minerals and Geosciences Department. State governments are responsible, *inter alia*, for issuing mineral licences and mining leases. Private (domestic and foreign) companies can obtain licences or leases to engage in exploration or mining of mineral products; requirements are the same for domestic and foreign invested enterprises.

14. In 2008, growth in the mining and quarrying sector was negative (-0.8%) (Table I.2). The development of the sector is guided mainly by the Second National Mineral Policy (NMP2) launched in January 2009, aimed at ensuring the sustainable development and optimum use of minerals in an

⁷ WTO documents G/AG/N/MYS/20, 14 November 2008 and G/AG/N/MYS/24, 31 March 2009.

⁸ The Mineral Development Act provides the framework for the inspection and regulation of mineral exploration and mining operations. The State Mineral Enactments have been adopted by all states except Perlis and Sabah. States that adopted the Enactment also developed their own State Mineral Regulations to set out detailed procedures for mineral exploration and mining operations. Sabah, Kelantan, Selangor, Terengganu, Pahang, and Negeri Sembilan also regulate quarry activities under State Quarry Rules.

environmentally sound and responsible manner. A major policy objective is to raise earnings from natural resources by increasing the degree of domestic processing. Hence, the Government has been providing incentives to set up mineral processing plants; corporate income tax may be fully exempted for ten years, and import tariffs and sales tax are exempted on all raw materials, machinery, equipment, and components imported for domestic processing. Although Malaysia abolished export taxes on most mineral products in the early 1990s and in 2003, it still applies export taxes at 5% on 12 tariff lines at the HS 8-digit level.⁹ These export taxes may act as implicit subsidies to downstream processing (Chapter III).

15. Foreign equity participation of up to 100% is permitted in the extraction, mining or processing of mineral ores. When approving these projects, the Government considers: the investment level, technology, and risk involved; availability of Malaysian expertise; and the value-added level. Companies must also obtain approval from state governments (e.g. for exploration rights).

(4) OIL AND GAS

16. Malaysia's crude oil and gas deposits are owned entirely by Petroliaam Nasional Berhad (Petronas), a corporation wholly owned by the Government. Under the Petroleum Development Act 1974, Petronas has exclusive rights of ownership, exploration, and production of petroleum, and is responsible for the planning, investment, and regulation of all upstream activities. Petronas is also the biggest contributor to the government budget, accounting for 39.3% of the federal government's revenues in 2008, up from 36.4% in 2007.¹⁰

17. In addition to Petronas, other upstream petroleum and gas companies in general are substantial sources of government revenue in Malaysia, mainly because they pay a higher tax rate. Under the Petroleum Income Tax Act 1967, upstream petroleum and gas companies are subject to 38% tax on income from the sale of crude oil and natural gas extracted from Malaysia, or from the sale of a type of petroleum spirit. Further, an export duty of 10% applies to crude oil and condensate, but not to natural gas. Income derived from downstream petroleum activities, such as the refining of petroleum or the processing of petroleum products, are taxed at the rate of statutory 25%.

18. Malaysia has gradually reduced (and mostly eliminated) import tariffs on petroleum and gas and they are not subject to any import licensing requirements.¹¹ However, foreign investment in the upstream petroleum and gas industry is accepted only in the form of production-sharing contracts (PSCs), between foreign investors and Petronas; in financial year 2008, 4 PSCs were signed, and a total of 67 PSCs were in operation (as at 31 March 2008). Foreign investment in the downstream petroleum and gas industries, on the other hand, is not restricted: up to 100% foreign equity participation is allowed.

19. As Petronas is the regulator of upstream activities in both oil and gas, companies wishing to participate in the upstream sector must obtain licences from Petronas. Downstream petroleum industry activities are regulated by the Ministry of Domestic Trade, Co-operatives and Consumerism (MDTCC), and the Ministry of International Trade and Industry (MITI). MDTCC issues licences for

⁹ Export duties on unroasted iron pyrites, silica sands and quartz sands; and potash and soda feldspar, were abolished in 2003. However, 12 lines at the HS 8-digit level are subject to 5% export duty.

¹⁰ Reportedly, the Government is to seek more funds from Petronas in 2009, due to its increased spending resulting from the fiscal stimulus package (*Financial Times*, "Petronas profits hit by increase in payments to state", 25 June 2009).

¹¹ Malaysia has been gradually eliminating import tariffs on oil and gas since 1994. In 2009, for oil imports, three tariff lines at the HS 9-digit level have duties at 5%: 270900900, 271011100, and 271019200.

the marketing, storage, and distribution of petroleum and certain petrochemical products, and MITI issues licences for the processing and refining of petroleum and the manufacture of petrochemical products. Downstream activities of the gas industry, on the other hand, are regulated by the Energy Commission under the Ministry of Energy, Green Technology and Water.

(5) MANUFACTURING

(i) Overview

20. Manufacturing in Malaysia is relatively open to both trade and foreign investment, with the notable exception of automotive products. The share of manufacturing in Malaysia's international trade continued to fall during the period under review, from 74.5% in 2005 to 54.2% in 2008 of total exports, and from 79% to 65.3% of total imports (Tables AI.1 and AI.2). Major manufactured exports and imports are machinery and transport equipment, in particular office machines and telecommunication equipment.

21. Sectoral objectives are specified under various plans including the Ninth Malaysia Plan 2006-2010 (9MP), and the Third Industrial Master Plan (IMP3). The 9MP emphasizes the application of high technology and the production of higher value-added products. The IMP3 specifically lists 12 subsectors for further development, covering, *inter alia*: electrical and electronic products, transport equipment, and petrochemicals.¹²

22. The Government continues to improve the investment environment in manufacturing, and both border and internal measures are used as part of Malaysia's industrial development policy. Malaysia's import duties are mostly *ad valorem*, although a few specific duties are imposed.¹³ In 2009, 53.5% of tariff lines for manufacturing imports (ISIC Rev 2) were duty free, and the average tariff for manufacturing products was lowered from 9.6% in 2005 to 8.7%. The Government encourages manufacturers to obtain raw materials as well as machinery and equipment locally. However, raw materials, components, and machinery and equipment that are not available locally may be imported duty free. In addition, some manufactured goods are subject to non-automatic import licensing (Chapter III): these include some motor vehicles and motorcycles, batik sarong, and some steel flat product.¹⁴

23. The Government continues to promote exports of manufactured products through, *inter alia*, income tax exemptions. If the value of exports of a manufacturing company increases by at least 50% (from the previous year), 30% of its increased net export income may be exempted from income tax. If a manufacturing company succeeds in penetrating new markets, 50% of its increased net export income may be exempted; if it wins the Export Excellence Award (Merchandise Category) by MITI, 100% of increased export value may be exempted.¹⁵ In addition, manufacturing exports have been facilitated by, *inter alia*, exemptions and drawbacks for import duties, simplified customs procedures,

¹² MITI online information, *Third Industrial Master Plan - Highlights of IMP3*. Viewed at: <http://www.miti.gov.my> [04.11.2008]. Other manufacturing subsectors are: medical devices, machinery and equipment, textiles and apparel, metals, and resource-based industries such as pharmaceuticals, wood-based industries, palm oil-based industries, and food processing.

¹³ Non-*ad valorem* duties apply to 55 lines at the HS 9-digit level for manufacturing imports.

¹⁴ WTO document G/LIC/N/3/MYS/4, 17 October 2008.

¹⁵ The exemption is not granted if the company receives any incentives (except for deduction for promotion of exports) under the Promotion of Investment Act 1986, the Reinvestment Allowance, and Allowance for Increased Exports or Deduction for Cost on Acquisition of a Foreign Owned Company (MATRADE online information. Viewed at: http://www.matrade.gov.my/cms/content.jsp?id=com.tms.cms.article.Article_6c9d2a10-7f000010-290f290f-73c76693 [11.10.2009]).

concessionary credits, and insurance and guarantees (Chapter III). For example, free industrial zones and licensed manufacturing warehouses provide minimum customs formalities for export-oriented industries. Moreover, the Government has been encouraging the establishment of international procurement centres (IPCs) to make Malaysia a major distribution centre in the region.

24. However, Malaysia maintains certain export restrictions: a number of manufactured goods are subject to export licensing and export taxes, with a view to discouraging their exportation (Chapter III).¹⁶ Reduced exports may divert some supply of these inputs to the domestic market, leading to downward pressure on domestic prices and thus acting as an implicit subsidy for the domestic processing industries (Chapter III).

25. The Government continues to welcome foreign investment, and 100% foreign equity participation is allowed in the manufacturing sector. Export requirements in foreign investment have been removed.¹⁷ Equity holdings in all manufacturing projects were fully liberalized in June 2003; although equity and export conditions imposed on companies registered prior to 17 June 2003 are to be maintained, companies can apply for the removal of these restrictions.

26. Malaysia is also trying to reduce business costs by, *inter alia*, lowering corporate income tax from 28% in 2006 to 25% in 2009, and adopting an automatic approval system for manufacturing licences. Under the Industrial Coordination Act 1975 (ICA), manufacturing companies with shareholders' funds of RM 2.5 million and above, or employing 75 or more full-time paid employees, must apply for manufacturing licences from MITI. A licence is valid throughout the lifespan of the company. From 1 December 2008, these licences are issued automatically, with a processing time of two days. However, automatic approval does not apply to, *inter alia*: projects with implications for security, safety, health, environment, and religion, where "evaluation" is still required.¹⁸ The Government also established the Special Task Force to Facilitate Business (PEMUDAH) in February 2007, to improve the business environment and transparency (Chapter II).

27. Companies with shareholders' funds below the RM 2.5 million threshold (e.g. SMEs) are exempted from obtaining manufacturing licences. Also, given Malaysia's small labour force, the Government no longer promotes labour-intensive manufacturing operations: if a new manufacturing project has a capital investment/employee ratio below RM 55,000, it is considered labour intensive and does not qualify for a manufacturing licence.¹⁹ The authorities consider that MITI, through its Malaysian Industrial Development Authority (MIDA) and SME Corporation Malaysia, facilitates companies (with or without manufacturing licenses) by, for example, "handholding" these companies until their projects are implemented.

¹⁶ For 2009, export duties apply to 62 tariff lines at the HS 9-digit level, mainly covering basic metal products.

¹⁷ From 1998, for investment in new and expansion or diversification projects, foreign investors could hold 100% of the equity irrespective of the level of exports, apart from a few exceptions (this relaxation did not apply to specific activities and products that Malaysian companies were able to produce, including: paper packaging, plastic packaging, plastic injection moulded components, metal stamping and metal fabrication, wire harness, printing and steel service centres). These exceptions were removed in 2003, when foreign investors were allowed to hold 100% of the equity in all investments in new projects, and in expansion or diversification projects by existing companies.

¹⁸ Automatic approval also does not apply to: projects proposed to be located in Sabah and Sarawak; activities subject to Environmental Impact Assessment (EIA) approval from the Department of the Environment; and projects requiring approval under the Petroleum Development Act 1974, the Ministry of Health, or the Atomic Energy Licensing Board.

¹⁹ Exemptions include: if the value added is 20% or more; if the project falls within the List of Promoted Activities and Products; if the company is high-tech; if the company is located in the promoted areas; and if the managerial, technical, and supervisory (MTS) index is 15% or more.

(ii) Automobiles

28. Malaysia's car market has long been sheltered from foreign competition by both tariff and non-tariff measures, and has been dominated by its national cars. Proton and Perodua jointly accounted for 62.4% of vehicles sold in 2008 (75.2% in 2004 and 58.5% in 2005). Arguably, these measures have resulted in the sector's lack of international competitiveness, as total exports of motor vehicles accounted for only 5% of total industry volume. However, the authorities maintain that Malaysia's automotive sector has been successful in taking a large share of the domestic market.

29. Malaysia's National Automotive Policy, introduced in March 2006, aims to build a competitive automotive sector in Malaysia and promote exports of automotive products. To achieve these objectives, the Government lowered border protection for the automobile industry: in March 2006, import duties were lowered to 30% for complete built-up (CBU) vehicles (from 35-50%), and remained at 10% for complete knocked-down (CKD) vehicles. Lower duties apply to imports from ASEAN countries, and under Malaysia's bilateral agreements with Japan and Pakistan (Table AIV.2).²⁰ The Government welcomes foreign investment in the automobile section, and 100% foreign equity is allowed.

30. Further, in October 2009, after reviewing the NAP, MITI announced liberalization measures of the automotive sector.²¹ As of 1 January 2010, the freeze on issuance of new manufacturing licenses are lifted on, *inter alia*, luxury passenger vehicles with engine capacity of 1.8 litres and above, with prices not less than RM 150,000, and hybrid and electric vehicles. There are no equity conditions imposed on these licenses. The Government particularly wishes to find a strategic partner for Proton, with a view to enhancing its competitiveness in a global market. To encourage exports, the Government increased income tax exemptions: if the exports of an automotive company increased by at least 30%, 30% (from previously 10%) of the increased export income may be exempted from income tax; if the exports increased by at least 50%, 50% (from 15%) of the increased export income may be exempted from income tax. Also, Malaysia is to gradually phase out its approval permits (AP) system. The AP system, like import licensing, was designed to provide *bumiputera* companies easy access into the automobile distribution and services sector²², and for the purpose of data collection and monitoring. This system is to be terminated in 2015 (for open APs), and 2020 (for franchise APs).

31. Nevertheless, the national car industry remains protected. For example, at the time of Malaysia's previous Review, excise tax rebates were accorded only to domestic manufacturers; it was not clear to the Secretariat whether they have been revised.²³ Malaysia also started to apply a Vehicle Type Approval (VTA) process from January 2009, with a view to preventing the import and sale of

²⁰ Automobiles from ASEAN countries, and European, Japanese, and U.S.-made cars produced in ASEAN countries with a minimum 40% local content, are subject to the ASEAN Common Effective Tariff (CEPT) rate of 5%, and are to be exempted from import duties in 2010. Import duties are zero for CKDs from ASEAN countries. Under the MJEPA, duty rates for CBUs and CKDs from Japan are 30% and 0, respectively. Tariffs on imported cars above 2,000cc from Japan are expected to be eliminated by 2011; this offers some space for Proton and Perodua, as both mainly manufacture cars below 2,000cc. The MJEPA also covers economic and technical cooperation to improve capacity building in the automotive sector in Malaysia. The authorities hope that, through assistance from Japanese experts in the field of testing, training, and cooperation, the international competitiveness of Malaysian automotive industry can be enhanced. Duty rates for CBUs and CKDs from Pakistan remain at 30% and 10%, respectively.

²¹ MITI online information. Viewed at: http://www.miti.gov.my/cms/content.jsp?id=com.tms.cms.article.Article_9971dce0-c0a81573-3edb3edb-686eb8ad [02.11.2009].

²² The authorities regard this as a measure to achieve Malaysia's socio-economic objectives.

²³ WTO (2006).

"sub-standard" vehicles, as well as parts and components, in Malaysia.²⁴ In accordance with the revised NAP, imports of used commercial vehicles, which are currently allowed, are to be prohibited from 2016, and imports of used parts and components will be prohibited from 2011.

32. Further, some protective measures were adopted in the wake of the global crisis, to promote the development of national cars: under Malaysia's temporary auto-scraping scheme, the Government rebates RM 5,000 for consumers replacing a car aged more than ten years with a national brand vehicle (Proton and Perodua) in 2009.²⁵ According to the authorities, part of the rebate is financed by Proton and Perodua.

(6) SERVICES

(i) Overview

33. During the period under review, the services sector has been the main driving force of Malaysia's economic growth, growing at 7.2% in 2008 (Table I.2). In 2008, services accounted for 45.3% of GDP and 52.0% of total employment, indicating that labour productivity in the sector is considerably lower than in the economy on average. However, a World Bank study found that the sector has been catching up with Korea and Chinese Taipei in terms of productivity, and has contributed significantly to employment: it has accounted for more than 85% of the increase in jobs since 1996.²⁶ Trade in services recorded its first surplus in 2007, and remained in surplus in 2008.²⁷

34. Sectoral policy objectives are defined in the Ninth Malaysia Plan 2006-2010 (9MP), and the Third Industrial Master Plan (IMP3). Under the 9MP, the growth of services is expected to continue, and some subsectors, including finance and insurance, are expected to grow even faster.²⁸ The IMP3 specifically identified eight subsectors for further development: business and professional services, ICT services, logistics, distribution, construction, education and training, healthcare, and tourism services. Malaysia aims to increase the share of the services sector in GDP from around half to 60% by 2020 in an effort to establish a knowledge-based economy that would be less reliant on manufactured exports.

35. In comparison with manufacturing (with exception of automobiles), services activities have been relatively closed to international competition, with FDI restrictions being major obstacles. To increase productivity, and thus competitiveness in services, the authorities have been progressively liberalizing foreign investment in the sector. On 22 April 2009, the Government announced the elimination, with immediate effect, of foreign equity restrictions on 27 services subsectors; in the areas of health and social services, tourism, transport, business services, and computer and related services.²⁹ A week later, restrictions were relaxed on foreign investment in financial services (Chapter II(6)). These liberalization initiatives have been complemented with a support programme for the domestic services industry; a services sector capacity development fund of RM 100 million (US\$28 million) has been established under the First Economic Stimulus Package.

²⁴ The authorities expect this process to enhance safety.

²⁵ MIER (2009).

²⁶ World Bank (2008).

²⁷ Trade in services amounted to RM 201.8 billion in 2008, an increase of 1.3% from 2007. In 2008, Malaysia was the 30th leading exporter and importer of services.

²⁸ Other subsectors expected to grow faster are real estate and business services, wholesale and retail trade, hotels and restaurants services.

²⁹ Prime Minister Office online information. Viewed at: http://www.pmo.gov.my/?menu=news&page=1729&news_id=39&news_cat=4 [12.10.2009].

36. The approval procedure for foreign investment has also been simplified. Until June 2009, foreign acquisitions, mergers, and takeovers of Malaysian companies had to be approved by the Foreign Investment Committee (FIC). However, on 30 June, the Government announced the deregulation of the FIC guidelines, including the repeal of FIC's *bumiputera* participation requirement. Thus, the FIC no longer processes any acquisitions, mergers or takeovers; nor does it impose any equity conditions, although the equity conditions imposed by sector-specific regulators continue to apply. Equity restrictions are no longer imposed on sectors not considered "strategic"; strategic sectors, nonetheless, will not be liberalized (Chapter II(6)). The Government also set up a private equity fund, Ekuiti Nasional Berhad (EKUINAS) to promote investment in sectors with growth potential (notably in services).

37. As in the previous Review, government-linked companies (GLCs) continue to play an important role in financial, transport, and telecommunication services. The Government has placed some GLCs into the GLC Transformation Programme to increase their efficiency and competitiveness (Chapter III(4)(vi)).

38. To facilitate investment in the services sector, a Malaysian Services Development Council was established in January 2007, and a Cabinet Committee on the Liberalization of the Services Sector was set up in February 2009. Furthermore, in September 2009, a National Committee for Approval of Investments in the Services Sector was established under the Malaysian Industrial Development Authority (MIDA). It serves as a focal point to receive and process applications for investment (excluding, *inter alia*, financial services, air transport, and utilities).³⁰

39. Malaysia has made GATS-plus commitments in some services sectors in its regional and bilateral trade agreements (Chapter II(5)). In its GATS schedule, Malaysia made commitments in 7 out of 12 sectors.³¹ Malaysia continues to participate actively in the Doha Round negotiations, to ensure a successful outcome that takes into account the capability of domestic service providers (Chapter II(5)(i)). Malaysia submitted its conditional initial offer and revised offer on services in 2004 and 2005, respectively.³²

(ii) Financial services

(a) Overview

40. During the period under review, the financial services sector has been developing rapidly, growing at 7.7% in 2008 (Table I.2). As in the previous Review, banking remains the largest manager of financial assets (Table IV.3). The Central Bank, Bank Negara Malaysia (BNM), is the regulator of financial institutions including banks, money-broking business, and insurance companies. Applications to provide banking and insurance services must be approved by the BNM. The Securities Commission (SC) regulates Malaysia's capital market. The authorities state that Malaysia's financial system remained stable during the global economic downturn.³³

³⁰ Other exceptions are the economic development corridors, the Multimedia Super Corridor, Bionexus status companies, and distributive trade.

³¹ WTO document GATS/SC/52, 15 April 1994. The seven sectors are: professional services, communications services, construction and related services, financial services, health-related social services, tourism and travel-related services, and transport services. Malaysia did not make any commitments in distribution, education, environmental services, nor in recreational, cultural and sporting services.

³² WTO documents TN/S/O/MYS, 31 January 2005, and TN/S/O/MYS/Rev.1, 31 January 2006.

³³ The authorities point out that measures adopted by the Government and the Central Bank helped to preserve confidence and overall stability in the financial system. The impact of the global crisis on the domestic

Table IV.3
Share in total assets of the financial system, by institution, 2005-08
(RM billion and per cent)

	2005	2006	2007	2008
Total (RM billion)	1,908.5	2,091.2	2,475.9	2,579.6
	<i>Share in total assets (per cent)</i>			
Banking system	67.1	67.7	66.7	65.1
Bank Negara Malaysia	15.5	15.4	17.2	13.4
Commercial banks ^a	44.1	45.5	42.4	42.2
Investment banks	3.8	3.2	3.8	2.3
Finance companies ^a	1.4	n.a.	n.a.	n.a.
Islamic banks	2.3	3.5	3.3	7.2
Non-bank financial intermediaries	32.9	32.3	33.3	34.9
Provident, pension, and insurance funds	22.2	22.4	21.2	22.1
Employees Provident Fund	13.8	13.9	12.9	13.4
Other provident & pension funds	3.0	3.0	3.1	3.2
Life insurance funds	4.4	4.3	4.4	4.6
General insurance funds	1.0	1.2	0.9	0.9
Development financial institutions	5.2	5.5	5.2	5.6
Other financial intermediaries	5.5	4.5	6.9	7.3

n.a. Not applicable.

a Figures for commercial banks after 2006 include assets of finance companies.

Source: Bank Negara Malaysia (2006), *Annual Report 2005*; Bank Negara Malaysia (2006) and (2007), *Financial Stability and Payment Systems Reports 2006 and 2007*; and Bank Negara Malaysia (2009), *Annual Report 2008*.

41. Although financial services are still protected from foreign investment, protection has been relaxed; the Government has been liberalizing the sector in accordance with the capacity of domestic service providers to cope with the changing environment. In April 2009, the BNM announced a liberalization package for the conventional and Islamic financial sectors. Foreign equity limits were increased from 49% to 70% for domestic Islamic banks (provided they maintain paid-up capital of at least US\$1 billion), investment banks, insurance companies, and *takaful* (Islamic insurance) operators. Foreign equity above 70% is considered on a case-by-case basis for insurance companies, if deemed able to facilitate the consolidation and rationalization of the insurance industry. More licences for financial service providers are to be issued and operational flexibilities given to locally incorporated foreign banks, insurance companies, and *takaful* operators.

(b) Banking

42. The authorities consider Malaysia's financial system able to meet the financial needs of the economy, even under a more adverse scenario of economic contraction.³⁴ Although Malaysia's banking sector was not insulated from the global financial crisis, its risk-weighted capital ratio (RWCR) was at 12.7% at end 2008, well above the minimum requirement (8%) (Table IV.4). In 2008, the banking system remained the largest provider of financing for the economy, with bank loans accounting for 42% of total loans. With an excess capital position of RM 38.8 billion, banking sector profits grew by 8.3%, to RM 19.2 billion (before tax) in 2008.³⁵ The net non-performing loan ratio in the banking sector also continues to decline, from 4.8% in 2006 to 2.2% in 2008. However, the

financial sector remained well contained due to limited exposure to the affected assets and affected institutions linked to the financial crisis.

³⁴ BNM (2008), p. 38.

³⁵ BNM (2008), p. 3.

growth of net interest income was lower in 2009 than in 2007, at 8% (compared with 10.8%), due partly to the narrowing interest rate spreads reflecting greater competition.³⁶

Table IV.4
Performance of the Malaysian banking system, 2006-08
(Per cent)

Financial year ending	2006	2007	2008 ^a
Risk weighted capital ratio	13.5	13.2	12.7
Core capital ratio	10.7	10.2	10.6
Return on assets	1.3	1.5	1.5
Return on equity	16.2	19.7	18.5
Liquid assets to total assets	8.0	9.4	10.2
Liquid assets to short-term liabilities	10.3	11.9	12.9
Net NPL ratio (3 months) ^b	4.8	3.2	2.2
Duration weighted net position to capital base	7.5	4.4	4.4
Net open positions in FX to capital base	4.7	4.9	4.6
Net open positions in equities to capital base	2.6	2.5	0.9

a Preliminary.

b Net NPL ratio = (NPL - interest in suspense - specific provisions)/(gross loans - interest in suspense - specific provisions).

Source: Bank Negara Malaysia (2009), *Financial Stability and Payment Systems Report 2008*, p. 29.

43. Against the background of the global crisis, the Government is adopting precautionary measures to protect consumers, providing a full guarantee for bank deposits. The Malaysia Deposit Insurance Corporation (MDIC), established in September 2005, provides explicit protection for eligible deposits of member institutions through Malaysia's deposit insurance system. On 16 October 2008, its coverage was raised from RM 60,000 per depositor per member institution to full guarantee on all ringgit and foreign currency deposits with commercial, Islamic, and investment banks, as well as deposit-taking financial institutions regulated by the BNM. This full guarantee is to be provided until December 2010.

44. Banking services are provided by commercial banks, investment banks, and Islamic banks (Table AIV.3). The development of investment banks started after the introduction of the framework for investment banks in 2006, through the transformation of merchant banks, stock-broking companies, discount houses, and universal brokers; thus investment banks can engage in stock broking business. The sector is regulated under the Banking and Financial Institutions Act 1989, and the Islamic Banking Act 1983 (for Islamic banks). BNM has overall supervisory and regulatory responsibility for banks, except investment banks, which are jointly regulated by the BNM and the SC. Banking licences are granted by the Minister of Finance, upon recommendations by the BNM.

45. In line with the objective of developing a diversified and efficient financial services sector, under the Financial Sector Master Plan (FSMP), in April 2009, Malaysia announced measures to relax foreign investment restrictions in financial services to allow for greater foreign participation (Table IV.5).³⁷ All foreign banks must be locally incorporated to operate in Malaysia. Locally incorporated foreign commercial banks were given more operational flexibilities: they are allowed to open up to ten microfinance branches from 2009 and up to four new branches in 2010.

³⁶ BNM (2009), p. 18.

³⁷ These measures include the issuance of up to two new commercial banking licences and two new Islamic banking licences in 2009 to foreign interests, as well as three new commercial banking licences in 2011 to foreign banks that can offer "significant value propositions" to Malaysia.

Table IV.5
Foreign equity restrictions in financial institutions, 2009

Sector	Foreign equity restrictions (aggregate maximum percentage permitted per institution)
Conventional banking	
Commercial banks	30%
Locally incorporated foreign banks	100%
Investment banks/Merchant banks	70% (increased from 30% in 2005 and from 49% in 2009)
Islamic banks	
Foreign Islamic banks	100%
International Islamic banks	100%
Domestic Islamic banks	49%. Flexibility to increase to 70% is given to existing Islamic banks wishing to increase operation scale by entering into strategic partnerships with foreign players (must maintain a paid-up capital of at least US\$1 billion).
Insurers	
Insurance companies	70% (increased from 30% in 2006 and from 49% or 51% in 2009). A higher limit is considered on a case-by-case basis.
Takaful	
Islamic insurers (<i>takaful</i> operators)	70% (increased from 30% in 2005 and from 49% in 2009)
International <i>takaful</i> operators	100%
Islamic reinsurers (<i>retakaful</i> operators)	100%

Source: Information provided by the authorities.

46. Banks are subject to the BNM's prudential requirements, which are generally in line with international practices.³⁸ The requirements are generally the same for domestic and foreign-owned banks.³⁹ Since its previous Review, Malaysia has revised the risk-weighted capital adequacy framework (RWCAF) to bring it into line with Basel II.

Offshore banking

47. The Labuan International Business and Financial Centre (IBFC), Malaysia's only international financial centre, was set up in 1990 with a view to strengthening the financial services sector in Malaysia. Under the Offshore Banking Act 1990, offshore financial services are regulated by the Labuan Offshore Financial Services Authority (LOFSA), which is in charge of, *inter alia*, the incorporation and registration of companies in Labuan. There are no foreign-ownership restrictions for offshore banks in the IBFC. Offshore companies and financial institutions in Labuan benefit from, *inter alia*, tax and non-tax incentives. For example, under the Labuan Offshore Business Activities Tax Act 1990, offshore companies and financial institutions may choose to pay tax at a rate of 3% of its net profits or a fixed amount of RM 20,000, instead of a statutory corporate income tax at 25%. This policy was revised in 2008, and offshore companies may choose to be taxed at the statutory rate of 25% and benefit from Malaysia's tax treaties. Malaysia has recently announced more liberalization measures to provide a more flexible business environment for offshore financial institutions: from 2010, offshore banking institutions meeting certain criteria may have a physical presence onshore.

Islamic banking

48. Malaysia aims to establish itself as an international centre for Islamic banking. In August 2006, the Government launched the Malaysia International Islamic Financial Centre (MIIFC)

³⁸ APEC online information. Viewed at: http://www.apec-iap.org/document/MAS_2008_IAP.htm. [20.03.2009].

³⁹ However, the minimum capital requirements are RM 2 billion for domestic banks, and RM 300 million for foreign-owned banks. The authorities state that the requirement of RM 300 million is for a single foreign bank, and the requirement of RM 2 billion is for a domestic banking group.

initiative to further strengthen Malaysia's position as a centre in international Islamic finance, through, *inter alia*, tax incentives and relaxation of foreign investment restrictions. More liberalization measures were adopted in April 2009, when the Government announced that up to 70% foreign equity (up from 49%) is allowed for existing Islamic banks wishing to increase their operations by entering into strategic partnerships with foreign players. These banks must maintain a paid-up capital of at least US\$1 billion. Foreign Islamic banks (including subsidiaries of locally incorporated foreign banks), and international Islamic banks can have foreign equity up to 100%.

(c) Insurance

49. Total premium income of the insurance sector grew at 8.1% in 2008, and reached RM 31.4 billion, with life premiums representing two thirds of the total.⁴⁰ Despite its rapid growth, there is room to increase insurance density and penetration in Malaysia. Insurance expenditure in 2008 was US\$345.4 per capita (US\$225.9 on life and US\$119.5 on non-life insurance), placing Malaysia 46th in the world; the penetration rate was 4.3% (2.8% for life and 1.5% for non-life insurance), putting Malaysia 33rd worldwide.⁴¹

50. The insurance sector is regulated by the BNM under the Insurance Act 1996, together with BNM guidelines and circulars.⁴² Insurance companies must obtain licences from the Ministry of Finance, upon recommendations from the BNM. BNM is in charge of issuing licences for insurance broking business. Licences are not required for insurance agents; instead, agents must register with relevant industry associations, namely the Life Insurance Association of Malaysia for life insurance agents, and the General Insurance Association of Malaysia for general insurance agents. Direct insurers are not allowed to offer both life and general insurance businesses. However, this does not apply to an insurer who carried out both types of business before the Insurance Act 1996 was enacted. Insurers are not allowed to operate any activities not connected with, or for the purpose of, insurance business, unless approved by the BNM. Nonetheless, they are allowed to link-up with commercial banks to distribute or market insurance products under "bancassurance" arrangements.

51. Foreign participation is significant in Malaysia's insurance industry. In 2008, 20 of the 49 insurance companies in Malaysia were foreign owned, accounting for 71% and 41% of total life and general premiums, respectively (Table AIV.4). At end 2008, foreign shares accounted for 45%, 64%, and 61% of total equity, assets, and premiums in the insurance sector.

52. Despite the significant share of foreign players, Malaysia still has restrictions on foreign participation in the insurance sector.⁴³ Foreign professional reinsurers are allowed to operate as branches in Malaysia; other insurers must be incorporated in Malaysia. However, the Government has been relaxing these restrictions, with a view to, *inter alia*, further strengthening the competitiveness of the insurance sector. From April 2009, foreign equity limits were increased from 49% to 70% for insurance companies. Foreign equity beyond 70% is considered on a case-by-case basis for players deemed able to facilitate the consolidation and rationalization of the insurance

⁴⁰ Swiss Re (2009).

⁴¹ Swiss Re (2009). According to the authorities, Malaysia ranked 2nd in ASEAN in terms of the insurance penetration rate; the ASEAN average rate was 3%.

⁴² The Insurance Act and its Regulations were amended in 2005 to set out a legislative licensing framework for financial advisers in Malaysia. As a new category of insurance intermediary, financial advisers provide advice to consumers on various financial products including insurance.

⁴³ As specified under Malaysia's Schedule of Specific Commitments in GATS, cross-border solicitation and advertising of direct insurance is not allowed in Malaysia. The Insurance Act 1996 also prohibits an insurance agent, broker or financial adviser from acting on behalf of or negotiating a contract of insurance with an insurance company not licensed in Malaysia.

industry. In addition, greater operational flexibilities were given to locally incorporated foreign insurance companies; for example, they may now establish branches nationwide without restriction.⁴⁴

53. Since its previous Review, Malaysia has also been reforming its prudential requirements for insurance business.⁴⁵ In particular, a risk-based capital (RBC) framework replaced a solvency regime from 2009. Under the solvency regime, minimum solvency margins were set at RM 50 million for direct insurance companies and locally incorporated professional reinsurers, and RM 10 million for branches of foreign professional reinsurers. Under the RBC framework, an insurance company is required to compute its capital-adequacy ratio based on a prescribed formula. This company-specific ratio is then used by the BNM as the basis for its supervision. The authorities state that a similar framework is being developed for *takaful* operators.

54. Other prudential requirements include minimum paid-up capital or surplus of assets over liabilities of: RM 100 million for direct insurance companies (locally or foreign owned), and locally incorporated professional general reinsurers; RM 50 million for locally incorporated professional life reinsurers; and RM 20 million "working funds" for foreign-incorporated professional reinsurers (life and general). Insurance brokers and adjusters must maintain paid-up capital unimpaired by losses of RM 500,000 and RM 150,000, respectively.⁴⁶

55. In addition, premium controls remain for fire and motor insurance business: the minimum level of premiums proposed by insurers must be approved by the BNM. As outlined in the FSMP, measures are to be taken to progressively deregulate the pricing of fire and motor insurance products, although there is no specific timetable.

Offshore insurance

56. Offshore insurance activities are supervised by the Labuan Offshore Financial Services Authority (LOFSA), and are regulated under the Offshore Insurance Act 1990. As part of the liberalization programme for financial services announced in April 2009, qualified offshore insurance companies licensed by LOFSA will be allowed to have a physical presence onshore from 2011.

Takaful insurance

57. In addition to conventional insurance, Malaysia also offers *takaful* insurance, or Islamic insurance. *Takaful* operators are regulated under the Takaful Act 1984 and other relevant guidelines and circulars issued by the BNM. *Takaful* operators must obtain licences from the Ministry of Finance upon recommendation from the BNM. They must be locally incorporated, with a minimum paid-up capital of RM 100 million. In addition, they must be a member of the Malaysian Takaful Association.

58. Following the liberalization measures announced in April 2009, the foreign equity limit in a *takaful* operator was raised from 49% to 70%, and wholly foreign ownership was allowed for

⁴⁴ They are also allowed to enter into "bancassurance" arrangements with banking institutions.

⁴⁵ From 2009, a "launch-and-file" system replaced a 30-day prior notification system for new insurance products from 2009. Under the new system, insurers meeting certain risk-management requirements are allowed to launch new insurance products immediately upon submission of required information to the BNM. However, the 30-day prior notification requirements still apply to products that are completely new to the Malaysian market, as a prudential measure.

⁴⁶ APEC online information. Viewed at: http://www.apec-iap.org/document/MAS_2008_IAP.htm. [20.03.2009].

retakaful (Islamic reinsurance) operators.⁴⁷ At the same time, the Government announced the issuance of two new family *takaful* licences in 2009, to companies deemed to offer "significant value propositions" to the *takaful* insurance sector. Also, as for insurance companies, *takaful* operators are allowed to link-up with commercial banks to distribute or market *takaful* products under "bancatakaful" arrangements.

59. To promote the development of *takaful* business, full income tax exemptions are given to international *takaful* operators: *takaful* operators offering *takaful* business in international currencies, if they set up international currency business units (ICBU), may have full exemption in income tax for ten years, between 2007 and 2016.

(d) Securities

60. The capital market in Malaysia includes equity and bond markets.⁴⁸ According to the authorities, Malaysia's capital market was able to withstand the global financial crisis due to the structural reforms undertaken over the last decade.⁴⁹

61. Malaysia's capital market is regulated by the Securities Commission (SC), a statutory body reporting to the Minister of Finance, through the Capital Markets and Services Act 2007, the Securities Commission Act 1993, and the Securities Industry (Central Depository) Act 1991. The SC regulates corporate bond issues and all matters relating to securities, futures contracts, and unit trust schemes. It also regulates the listing of such securities on Bursa Malaysia, as well as matters relating to take-overs and mergers.⁵⁰ When the Capital Markets and Services Act (CMSA) 2007 entered into force, a key measure was the introduction of a single licensing regime to reduce administrative and compliance costs of capital market intermediaries. Capital market intermediaries may now hold one capital markets and services licence instead of multiple licences.

62. The development of the capital market, including reform measures, was specified in various plans, in particular the Ten-Year Capital Market Master Plan (CMP), aimed at building a fully developed capital market between 2006 and 2010.⁵¹ Under the CMP, Malaysia opened its securities market to foreign suppliers in 2004, when five licences were issued to 100% foreign-owned fund management companies, and five to 100% foreign-owned stock-broking companies. Malaysia also removed equity restrictions on future broking, venture capital, and investment advisory companies.

63. Since then, Malaysia has been encouraging foreign investment in the securities sector. Tax incentives are provided to attract foreign issuance, listing, and investment.⁵² Foreign companies were

⁴⁷ A *retakaful* operator may be registered either as a locally incorporated entity with minimum paid-up capital of RM 100 million, or a branch with minimum net working funds of RM 20 million.

⁴⁸ Malaysia's bond market has been developing fast: from 1997 to 2008 it expanded four fold, and has become the third largest in Asia in terms of percentage to GDP. At end 2008, corporate bonds outstanding reached RM 282.5 billion, up by 7% from 2007, and *sukuk* (Islamic bonds) comprised 56% of total corporate bonds (up from 46% in 2005). Foreign investment in Malaysia's bond market increased, from RM 11.6 billion in 2004 to RM 43.2 billion in November 2008 (Securities Commission, 2009).

⁴⁹ Securities Commission (2009).

⁵⁰ Bursa Malaysia was previously known as the Kuala Lumpur Stock Exchange. It became a public listed company in 2005.

⁵¹ Securities Commission online information, *Capital Market Masterplan Malaysia*. Viewed at: <http://www.sc.com.my/eng/html/cmp/cmpmainpage.html> [24.11.2008].

⁵² Interest or profit paid to foreign investors on ringgit-denominated *sukuk* or debentures (apart from convertible loan stock), if approved by the SC, is exempt from income tax. In addition, profit paid to any person on non-ringgit denominated *sukuk* (excluding convertible loan stock), if originated in Malaysia and approved by the SC, is also exempt from income tax.

allowed to be listed in Malaysia in 2006, and more liberalization measures were announced in 2008, to streamline the listing requirements for foreign and domestic companies. The authorities consider that Malaysia has a competitive market for IPOs with low direct listing costs and fast regulatory turnaround time for approvals.⁵³

64. The Government adopted further liberalization measures in 2009: a new framework for listing and equity fund-raising launched in May, became effective on 3 August 2009. The new framework is intended to make Bursa Malaysia a more attractive platform for Malaysian and foreign companies. Bursa Malaysia's Main Board and Second Board were merged into a single board – the Main Market. The Bursa Malaysia MESDAQ (a NASDAQ-like SMEs board), was separated into an alternative market – the ACE Market – open to companies of all sizes and from all economic sectors. Foreign companies can seek primary listing on both the Main Market and the ACE Market (although their secondary listing on the ACE Market is not allowed). In June 2009, restrictions on a company's share of foreign ownership were relaxed: from 70% to 100% for fund management companies providing wholesale services; and from 49% to 70% for unit trust management companies providing retail services, and for stock-broking companies.

(iii) Telecommunications

65. There has been no significant change in telecom-related legislation since the previous Review of Malaysia in 2006. The main legislation on telecommunications services comprises: the Communication and Multimedia Act 1998; the Communications and Multimedia Commission Act 1998; and the Digital Signature Act 1997. The sector is regulated by the Ministry of Information, Communication and Culture (MICC), and the Communications and the Multimedia Commission.

66. Malaysia's fixed-line market continues to be dominated by Telekom Malaysia Berhad (TM), a government-linked company, accounting for 98% of the market. TM separated its fixed-line and mobile phone business into two companies in 2008, and no longer provides mobile phone services. Malaysia currently has four mobile phone operators.

67. Telecom services suppliers must obtain a licence from the Minister of Information, Communication and Culture; licence conditions are the same for local and foreign service suppliers. The company must be incorporated in Malaysia, with minimum paid-up capital of RM 500,000. Malaysia's GATS commitments specified that foreign participation of up to 30% is allowed in telecommunications services, although in practice participation of up to 49% may be allowed.⁵⁴

68. Competition in telecommunications (particularly in fixed-line services) is limited.⁵⁵ However, the authorities consider that competition was introduced in the fixed-line sector in early 1990s, when five additional licences were issued in line with the National Telecommunication Policy to encourage competition.

69. Retail prices for fixed-line services are regulated by the Government through the Communications and Multimedia (Rates) Rules 2002. Under the rules, maximum prices are set, below which companies are free to set their tariffs; these ceilings have not been changed since 2002. The tariffs for fixed-line telecom services have been declining over the past few years, particularly for

⁵³ Four out of 977 companies listed on Bursa Malaysia in 2008 were foreign.

⁵⁴ Higher equity participation is allowed for "individual network service provider licenses", and "class application service provider licenses".

⁵⁵ The efficiency of the telecom sector is affected by, *inter alia*, the equity cap on foreign investment, the requirement that companies must have a *bumiputera* equity participation of 30%, and the uncertainty and lengthy procedure for obtaining a licence.

long-distance and international calls. Retail rates for mobile phone services are not regulated, and have also been declining. The Government regulates access and interconnection between all service providers. "Call back service" is prohibited. On the issue of cross-subsidization, the Communications and Multimedia Act 1998 stated that rate setting should be based on costs, and cross-subsidies in general should be eliminated. This principle, however, applies only to rates not regulated by the Government.

(iv) Transport

(a) Air transport services

70. The aviation sector is regulated by the Department of Civil Aviation (DCA) under the Ministry of Transport (MOT), in accordance with the Civil Aviation Act 1969.⁵⁶ The MOT formulates plans and reviews policies relating to air services; it intends to expand Malaysia's international air services network through negotiations, and ensures the planning, building, and maintenance of airports in line with specified standards. The DCA is responsible for granting licences to, *inter alia*, aviation personnel, air service providers, airport operators, and maintenance suppliers. Licensing requirements are based on International Civil Aviation Organization (ICAO) Annexes, the Civil Aviation Act 1969, and the Civil Aviation Regulations 1996.⁵⁷

71. Malaysia Airlines (MAS), a government-linked company, and AirAsia, a private company, are Malaysia's main carriers, accounting for 51.4% and 48.6% of total domestic air traffic volume (for passengers) in 2007.⁵⁸ MAS and AirAsia also provide 45.3% and 16.3% of international aviation services in Malaysia; the rest is provided by 76 foreign airlines. The Government is the majority shareholder of MAS (69%), while foreign investors hold 1.88%. According to the authorities, the Government does not provide any privileges to the MAS, such as subsidies, government guarantees, exclusive route access, ground handling monopoly or captive markets. It is not clear whether civil servants travelling by air must use MAS.

72. As in many other services sectors, the Government has been adopting measures to liberalize the civil aviation industry. On 30 June 2009, the Government announced the deregulation of the FIC guidelines; limitations on foreign equity will now be decided by the regulator of the industry.⁵⁹

73. International civil aviation is governed by bilateral air services agreements (ASAs); Malaysia has signed bilateral ASAs with 86 partners.⁶⁰ Based on the traffic rights specified in the respective ASA, airlines decide their own capacity (frequency and aircraft type), subject to approval by the authorities.⁶¹ Fares for international routes are also set in accordance with the bilateral ASAs. Depending on the ASA, fares may need to be approved by either government (single approval) or both governments (double approval). Most of Malaysia's ASAs are moving towards dual disapproval,

⁵⁶ Other legislation for the sector includes: Carriage by Air Act 1974, Civil Aviation Offences Act 1984, Airport and Aviation Services (Operating Company) Act 1991, International Interest in Mobile Equipment (Aircraft) Act 2006, and Civil Aviation Regulations 1996.

⁵⁷ The authorities state that the MOT and DCA try to ensure that all existing rules and regulations in air transport are implemented in accordance with the ICAO guidelines.

⁵⁸ Air transport services for passengers are provided by six Malaysian carriers: Malaysia Airlines (MAS), AirAsia, AirAsia X, FireFly, Berjaya Air, and MASWings.

⁵⁹ Previously, maximum foreign ownership of domestic airline companies was set at 30%.

⁶⁰ Ministry of Transport online information. Viewed at: http://www.mot.gov.my/index.php?option=com_content&task=view&id=236&Itemid=137 [25.11.2008].

⁶¹ Code sharing and other commercial arrangements are also set between airlines under bilateral ASAs; some ASAs do not require approval from the authorities. Malaysia's MOT is in charge of approving these arrangements for both domestic and international aviation.

whereby fares are effective unless both governments disapprove. Fares for domestic routes are set by airline companies; the Ministry will only intervene if the fares are considered predatory to other airlines operating the same route.

74. Malaysia has seven international airports.⁶² Airport access and related services, as well as facilities are regulated by MOT and the DCA. Slot coordination is managed by a joint committee headed by MAS and comprising national airlines, the DCA, ground handlers, and the airport operator. Malaysia's airport charges are among the cheapest in the region (Table AIV.5). The authorities state that the Government provides no subsidies for airport charges; they are regulated by the Civil Aviation Regulations 1996, and any increase must be approved by the Government.

75. Aircraft repair and maintenance services are provided by authorized MRO companies (maintenance, repair, and overhaul). There are no restrictions on the sale or marketing of air transport services and use of computer reservation systems in the aviation industry.

(b) Maritime transport

76. The authorities consider maritime transport to be a strategic sector; more than 90% of Malaysia's international trade is transported by sea. Maritime transport grew steadily during the period under review, although there was a downturn in terms of total cargo handled in 2008.

77. The Ministry of Transport, through its Maritime Division, is in charge of the overall development of the maritime sector, including the formulation of policies. The Marine Department under the MOT is responsible for enforcing rules and regulations relating to the standards and safety of ships.⁶³

78. Malaysia has only one government-linked shipping company, the Malaysian International Shipping Corporation (MISC); 65% of MISC's shares are held by PETRONAS, 8.92% by the Employees Provident Fund, and 3.29% by state governments. The MISC accounted for 12% of Malaysia's total seaborne trade; the combined share of all domestic shipping lines was 17%. The authorities consider that this small proportion is because maritime transport in Malaysia is open to international competition. Apart from cabotage, traders are free to choose domestic or international shipping lines.

79. With a view to, *inter alia*, reducing freight payments to non-national shipping lines, the Government has been emphasizing greater self-sufficiency in shipping services. Tax incentives, mainly in the form of tax exemptions on income derived from international shipping operations, are granted to Malaysian-flagged vessels.⁶⁴ Persons working on Malaysian-flagged vessels are also exempted from income tax.⁶⁵ Accelerated depreciation on ships is allowed with an annual capital allowance of 20%. The Industrial Development Bank (IDB) provides loans at lower interest rates to owners, builders, and repairers of ships in Malaysia, although some shipowners argue that the higher cost of local construction largely negates the interest rate benefit.

⁶² Kuala Lumpur International Airport (KLIA), Penang, Langkawi, Johor, Subang, Kota Kinabalu, and Kuching.

⁶³ It appears the Ministry does not require notification of international liner conferences contracts.

⁶⁴ Under the Merchant Shipping Ordinance 1952, a vessel must have at least 51% Malaysia equity to fly the national flag. The Merchant Shipping Amendment Act 1997 further requires that, for a ship to fly the national flag: the vessel owner must be incorporated in and have an office in Malaysia; the ship manager must be a Malaysian citizen or corporation; the company must have paid-up share capital of 10% of the value of the ship, or RM 1 million, whichever is higher; and tankers or bulk ships must be less than 15 years old, and other ships less than 20 years old.

⁶⁵ Aviation enterprises and their employees do not benefit from similar income tax exemptions.

80. Malaysia has been liberalizing its maritime sector; as of April 2009, 100% foreign equity is allowed in some maritime services.⁶⁶ Otherwise, maximum foreign ownership is 70% in Malaysian shipping companies, and 49% in ports. The Government also adopted measures to partially liberalize cabotage; previously, domestic routes were reserved for Malaysian registered vessels, although foreign-flagged vessels were allowed to tranship containers between the Malaysian ports of Penang and Port Klang, and between Penang, Johor, and Port Klang without obtaining domestic shipping licence. As of 3 June 2009, the Government allows foreign-flagged vessels to tranship containers between the ports of Sepangar, Bintulu, and Kuching, and the ports of Klang and Tanjung Pelepas.

81. To date, Malaysia has signed bilateral shipping arrangements with 12 countries, and has ratified 18 international conventions.

(v) Tourism

82. Malaysia's tourism sector continues to be a significant source of export earnings. It is one of the promoted services sectors under the Third Industrial Master Plan 2006-2020. In particular, the National Tourism Policy (2004-10) aims to develop the tourism industry into one of the country's main sources of income.⁶⁷

83. The Ministry of Tourism is the main policy formulating and implementing agency for overall development of the sector. Tourism Malaysia, a statutory body under the Ministry of Tourism, is responsible for promoting tourism and making Malaysia an outstanding tourist destination. The Tourism Industry Act 1992 (amended in 1998) provides for the licensing and regulation of tourism enterprises. Under the Act, tour operators, travel agencies, and tourism training tutors must obtain licences from the Ministry of Tourism. Hotels and restaurants are licensed by local authorities. Licensing requirements are the same for domestic and foreign applicants.

84. Malaysia has been adopting measures to further promote the tourism industry, *inter alia*, by removing or reducing foreign equity restrictions, providing tax incentives, and offering loans at low interest rates. From April 2009, 100% foreign equity is allowed in: theme parks, convention and exhibition centres (seating capacity above 5,000); travel agencies and tour operators (for inbound travel only); and hotel and restaurant services (for 4 and 5 star hotels). Tax incentives have been granted to enterprises engaged in "priority sectors", including hotel accommodation and other tourist projects, and the development of "wellness" zones in Port Dickson, Negery Sembilan.⁶⁸

(vi) Professional services

85. Malaysia's professional services sector, as one of the sectors identified for further growth in the IMP3, has been relatively closed to foreign competition by comparison with other sectors of the economy. The Government has been reviewing the domestic laws and regulations in an effort to further liberalize this sector. The ASEAN Free Trade Area offers more market openings within the region, enabling Malaysian professionals to be more involved in professional services in neighbouring

⁶⁶ In particular, 100% foreign equity is allowed in: class C freight transportation (for private carrier licence to transport own goods), maritime agency services, and vessel salvage and refloating services.

⁶⁷ In 2008, international tourist arrivals grew by 5.1% to 22.05 million, surpassing the target of 21.5 million specified under the NTP. In terms of tourism receipts, Malaysia received RM 49.6 billion, an increase of 7.6% from 2007. Tourism revenue accounted for 6.7% of GDP in 2008.

⁶⁸ Ministry of Tourism online information. Viewed at: <http://www.motour.gov.my/index.php/english/tax.html> [01.12.2008]. The development of wellness zones are to fulfil the Government's plan to make Malaysia a health centre in the region; the incentives are provided to attract more operators and investors from the medical and health industry.

countries. A number of MRAs have been signed to facilitate the freer mobility of professional service providers within the region.⁶⁹

(a) Legal services

86. Malaysia is currently undertaking a study of its legal services framework with a view to further liberalizing the sector. The practice of Malaysian law is restricted to Malaysian citizens or permanent residents who have served an apprenticeship with a Malaysian lawyer, are competent in Bahasa Malaysia (an official language), and have been admitted to the Malaysian Bar pursuant to the Legal Professional Act 1976. Under Malaysia's GATS commitments, foreign lawyers can practise in Malaysia only through a corporation incorporated in Labuan, and are restricted to advisory and consultancy services relating to home country laws, international law, and offshore corporation laws of Malaysia.⁷⁰ No "GATS plus" commitment in legal services has been made in Malaysia's bilateral and regional FTAs.

87. Under exceptional circumstances, a foreign lawyer may apply for a special admission certificate from the Attorney General. The certificate, approved on a case-by-case basis, allows the foreign lawyer to practise as a solicitor in Peninsular Malaysia for a specified duration, subject to periodic renewal. No such certificates have been issued.

(b) Accounting and taxation services

88. Accounting services in Malaysia are regulated by the Malaysian Institute of Accountants (MIA), under the Ministry of Finance; it reports to the Accountant General Office. Accountants, local or foreign, wishing to provide auditing and taxation services in Malaysia must first register with the MIA. Foreign accountants need to have an address in Malaysia, as well as recognized qualifications. Once registered, the accountant must apply for a Practising Certificate from the MIA to set up a public practice, before applying for a licence from the Ministry of Finance for certain types of services such as audit, liquidation, and tax.

89. Under Malaysia's GATS commitments, foreign accounting firms may provide accounting and taxation services in Malaysia, but only through a locally registered partnership with Malaysian accountants or Malaysian accounting firms, and the aggregate foreign shares must not exceed 30%.⁷¹ There have been no changes to foreign participation restrictions during the review period, although the Government is considering increasing foreign equity participation in accounting and taxation services under the Doha Round negotiations. Two MRAs on accounting qualifications have entered into effect since 2006: between MIA and the Indonesia Institute of Accountants (in 2006), and between MIA and the Chartered Practising Accountants of Australia (in 2007). The MRAs allowed more mobility between accountants from the signatory countries, although registration or membership with the home body is still required, and applicants must demonstrate their competency in the business and taxation laws of the host countries.

(c) Engineering services

90. Under the Registration of Engineers Act 1967, the Board of Engineers is the only regulator for engineering services in Malaysia. Foreign engineering firms must form joint ventures in a specific

⁶⁹ ASEAN MRAs on Engineering Services (signed on 9 December 2005), on Nursing Services (8 December 2006), and on Architectural Services (19 November 2007), on Medical Practitioners (25 August 2008), and on Dental Practitioners (25 August 2008); and ASEAN Framework MRAs on Surveying Qualifications (19 November 2007), and on Accounting Services (25 August 2008).

⁷⁰ WTO document GATS/SC/52, 15 April 1994.

⁷¹ WTO document GATS/SC/52, 15 April 1994.

project, and obtain approval from the Board, before they can operate in Malaysia. Up to 30% foreign equity is allowed in a company providing multi-disciplinary practices. Only foreign professionals participating as temporary engineers are allowed on a job-to-job basis.

(d) Architectural services

91. Architectural services are regulated by the Architects Act 1967, and the Board of Architects is the only regulating body. The Board has been participating in ASEAN and APEC with a view to realizing freer movement of architectural service providers within the region. Foreign architects may be temporarily registered to practise in Malaysia if they are consultants to a project wholly financed by the foreign government or implemented under a bilateral arrangement between governments. Foreign architects may hold up to 30% shares in a multi-disciplinary consultancy firm providing architectural, engineering, and/or quantity surveying services in Malaysia. Foreign architects and foreign architectural firms have been providing design services in Malaysia; they are required to collaborate through joint ventures with Malaysian architects.

(vii) Distribution services

92. The Ministry of Domestic Trade, Co-operatives and Consumerism (MDTCC) regulates distribution services in Malaysia. Its Committee on Distributive Trade considers applications from foreigners intending to undertake distribution services in Malaysia.⁷² All applications involving foreign investment, including opening of new branches, relocation, expansion of existing branches/outlets, and buying over/taking over of outlets of other operators, require approval from the Committee on Distributive Trade. All applicants must also obtain approval from the Committee before purchasing any land, premises or assets to operate distribution services.

93. Companies must be locally incorporated, with 30% of equity reserved for *bumiputera*. Minimum capital investment requirements vary according to the type of distribution service: i.e. RM 50 million for hypermarkets, RM 20 million for department stores, RM 25 million for superstores, RM 5 million for direct selling, and RM 1 million for each specialty outlet.⁷³

94. An equity restriction of 30% applies to foreign investors in direct selling business.⁷⁴ Department stores, supermarkets, and shopping malls must reserve 30% of the shelf space for products made by Malaysian SMEs. These restrictions and reservations are currently under review by the Government.

⁷² The Committee comprises members from regulatory agencies such as the ministries of Finance, International Trade and Industry, Home Affairs, Housing and Local Government, Agriculture and Agro Based Industry, Rural and Regional Development, the Economic Planning Unit, and the Federal Territory Ministry. The MDTCC serves as the secretariat to the Committee.

⁷³ APEC online information. Viewed at: http://www.apec-iap.org/document/MAS_2008_IAP.htm. [20.03.2009].

⁷⁴ Pyramid selling is prohibited; only single-level marketing, multilevel marketing, and mail order are permitted.

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