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Agenda Item V.2

Report Of The Individual Action Plan (IAP) Peer Review Session Of Malaysia

Purpose: Information
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Seoul, Korea
3-4 March 2005

REPORT OF MALAYSIA'S INDIVIDUAL ACTION PLAN (IAP)
PEER REVIEW

The IAP Peer Review Session of Malaysia was held on March 2, 2005 in Seoul, republic of Korea. Delegates from Australia; Brunei; Canada; Chile; Hong Kong, China; Indonesia; Japan; Korea; Malaysia; Mexico; New Zealand; Papua New Guinea; Peru; Philippines; Singapore; Chinese Taipei; Thailand, and the United States were present. The APEC Secretariat, ASEAN Secretariat and ABAC were also present.

The Review Team for Malaysia was comprised of:

Moderator:	Mr. Doug Chester Deputy Secretary Department of Foreign Affairs and Trade APEC Senior Official of Australia
Discussant:	Ms. Jenny Yip Assistant Director-General (Regional Cooperation) Trade and Industry Department The Government of the Hong Kong Special Administrative Region
Expert:	Mr. William A. Dymond Senior Executive Fellow Centre for Trade Policy and Law Carleton University, Ottawa Canada
APEC Secretariat:	Mr. Soonthorn Chaiyindeepum Director (Program) APEC Secretariat

This report contains the following Annexes:
Annex 1 - Moderator's Wrap-up Remarks
Annex 2 - Discussant's Remarks
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IAP Peer Review – Malaysia

Moderator's Wrap-up Remarks

Thank you all for your participation in this morning's IAP Peer Review for Malaysia.

In particular, I would like to thank our expert from Canada, Dr Dymond, our Discussant from Hong Kong China, Madam Carol Yip, Mr Soonthorn Chaindeepum from the APEC Secretariat and the Malaysia team for their contribution to what has been a very informative peer review session.

Malaysia has made impressive progress in its implementation of the Bogor Goals and compliance with the Shanghai Declaration and Accord.

Reflecting its deep engagement in the regional and global economies, Malaysia has the world's fourth highest ratio of trade to GDP. Its trade regime is characterised by low average tariffs, modest inter-industry tariff dispersion and limited incidence of non-tariff barriers. This liberal and open attitude has allowed for significant industrial and economic development whilst maintaining social and political stability.

The Malaysian economy has grown strongly over the last four years and Malaysia has strengthened its financial institutions. Future growth will require further reforms and the development of a more entrepreneurial and competitive business environment. Such measures would reinforce the benefits to Malaysia of the improvements it has made in transparency and the liberalisation of its foreign investment regime.

Efforts to move Malaysian industry up the production chain and to bolster the services sector can build on its strong record of structural adjustment. However, there is scope to do more including by further opening markets for goods, services and investment and developing a modern competition regime.

Malaysia is fully compliant with its WTO commitments and is pursuing a busy schedule of FTAs, through ASEAN and independently. To the extent that these are high quality FTAs that lead to liberalisation of trade and investment, they will contribute to Malaysia's progress towards the Bogor Goals.

The medium term economic outlook for Malaysia is very positive with continued high rates of GDP growth combined with low unemployment, rising levels of foreign investment and a strong reform program. Continued innovation and effective implementation of these reforms will be crucial.

<u>Discussant's Commentary on Malaysia's 2004 IAP</u>

(Seoul, Republic of Korea, 8:00 a.m., 2 March 2005)

Introduction

1.. Good morning, Doug, Mr Dymond, Mr Jayasiri and my fellow APEC colleagues.

2.. Nearly three years since the first enhanced peer review session in SOM III 2002, we are at the beginning of the last day of the episode. This gives a special meaning to this peer review session in demonstrating our good work at this very last day.

3.. Malaysia being a developing member of APEC is one of the 20 largest trading entities. In general, we are satisfied with its progress of liberalization and are particularly pleased to note the numerous improvements of Malaysia’s trade regime like in the Services sector. I look forward to Malaysia sustaining the momentum for trade liberalization and facilitation in order to meet the Bogor Goals by 2020.

General Issues

4. On the multilateral front, I note that Malaysia is implementing earnestly its commitments under the Uruguay Round. I am also glad to learn that Malaysia has recently tabled its initial services offer in the context of the WTO negotiations. The determination to ensure full compliance with WTO obligations speaks well for Malaysia's concrete support to the multilateral trading system.

5. On the regional front, APEC is Malaysia's largest trading partner by regional grouping. Malaysia indicates in the study report that it anticipates concluding and implementing in the next five years new regional trade agreements with six other APEC members as well as India. I also understand that Malaysia will soon have RTA/FTAs with 12 other APEC members. It would be helpful for Malaysia to let members have some concrete examples that the RTA/FTAs have contributed to the progress towards the Bogor Goals.

6. Regarding specific IAP chapters, as Mr Dymond has compiled a very succinct Study Report, I think it should suffice for me to highlight just a few areas.

<u>Malaysia's Individual Action Plan</u>

Tariffs

7. I commend Malaysia for the efforts over the years in improving its tariff regime, including reduction of applied tariffs and reduction in the use of non ad valorem duties. Its average bound and applied tariffs are fairly low among developing economies. However, the applied tariffs in certain sectors like transport equipment; metals; mineral products; leather, rubber and footwear are quite high. Besides, there are also significant gaps between bound and applied tariffs, which reduces predictability of applied tariffs. The maintenance of two different tariff classification systems for intra-ASEAN and other trade may also cause inconvenience to traders.

8. In this connection, we encourage Malaysia to keep up with efforts in improving its tariff regime. Apart from active participation in multilateral tariff negotiations with a view to bringing down bound tariffs and increasing tariff binding, continued unilateral efforts in reducing applied tariffs, simplifying the tariff regime, and improving its transparency and predictability will be equally important.

Non-tariff Measures

9. On NTMs, Malaysia maintains some import licensing requirements for the protection of strategic and infant industries from import competition. I believe that further liberalization in Malaysia's NTMs regime will bring significant benefits to not only Malaysia itself but also the global trade.

Services

10. On trade in **Services**, I note that services trade constitutes a very important part of Malaysia's economy, accounting for over half of its GDP. Progressive liberalization of trade in services will no doubt contribute to the continuous economic development of Malaysia. In this connection, I highly appreciate Malaysia's subscription to the principle of progressive liberalization within the context of its overall development strategy.

11. I am pleased to note that Malaysia has been committed to gradual and progressive liberalization of its services sectors, notably the financial services sector, for which it

launched the Financial Sector Masterplan in 2001 as a blueprint for the development of an effective, competitive, resilient and dynamic financial sector in the next 10 years.

12. Nevertheless, I note with concern that the restrictions which are being applied almost horizontally to the establishment of commercial presence, the main mode of delivery for most services, remain in place for most services sectors, with commercial presence being generally confined to joint ventures and subject to foreign shareholding caps. I would encourage Malaysia to accelerate its pace of liberalization in this regard, so as to further contribute to the Bogor goal.

13. To add further impetus to the ongoing WTO services negotiations, we would encourage Malaysia to consider improving its GATS commitments in terms of coverage and substance. In particular, Malaysia is invited to consider binding its autonomous liberalisation for various service sectors in the current round of services negotiations.

Investment

14. Malaysia generally maintains a liberal and transparent investment regime, and has complied with the WTO Agreement on Trade-Related Investment Measures. I am glad to know, in particular, that the former local content requirements in the automotive industry were phased out in 2003 and equity requirements have been relaxed. I also note that 100% foreign equity is allowed for the manufacturing sector. I would therefore encourage Malaysia to keep its equity requirements under constant review with a view to eliminating them altogether eventually.

Intellectual Property Rights

15. On intellectual property, Malaysia has made a continuous effort to enhance its legal and administrative regime for the protection of IPRs, including measures initiated to prepare for the accession to the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. We also note the efforts and achievements on the enforcement front which demonstrate Malaysia's determination to protect IPRs.

Competition Policy

16. I note that Malaysia is formulating a fair trade policy and law to tackle anti-competitive behaviour such as collusion, price fixing, market allocation and the abuse of market power. The new Fair Trade Practices Policy is expected to be finalised by this year. It is all the more important to devise a policy that suits the particular situations and meets the particular needs of the Malaysian economy. I look forward to hearing more updated information on the new policy and law as and when available.

Government Procurement

17. On government procurement, I am pleased to see Malaysia's launching of an electronic procurement system in 2000 and its continuous improvement. This is a significant move towards a more efficient and transparent government procurement process.

18. Malaysia's government procurement policy is formulated in tandem with its national development policy. In this connection, Malaysia intends to maintain the mandatory requirement for all government agencies to procure supplies and services from local sources, and international tenders will only be invited if goods and services are not available locally. I encourage Malaysia to take into account the substantial economic benefits of international tendering, when its government procurement policy is reviewed next time. As a party to the WTO GPA, I would also encourage Malaysia to consider joining the WTO Committee on Government Procurement as an observer. .

Dispute Mediation

19. I commend that Malaysia, as a Member of the WTO, has adhered to the Dispute Settlement Mechanism for resolving trade disputes with fellow Member governments. The Mechanism has helped minimise the detrimental effects of unresolved trade conflicts and enhanced certainty in the conduct of international trade.

Trade Facilitation

20. We are pleased that the Mid-Term Review in 2004 concludes that Malaysia is in good progress on implementing the Trade Facilitation Action Plan. Malaysia has implemented all the items selected from the Trade Facilitation Menu of Concrete

Actions and Measures, with some 70% already completed. We would be grateful for an update on the latest progress since the last report and new initiatives adopted.

21. Now, let's look at some of the trade facilitation actions reported in Malaysia's IAP.

Customs Procedures

22. Since 1996, Malaysia has made marked improvements in simplifying and harmonizing customs procedures. Information on classification rulings has been made available on the Customs website since 1998. Malaysia has also set up "Express Handling Units" at all its major international airports for the release of express consignments on a 24-hour basis.

Standards and Conformance

23. I am encouraged to note Malaysia's commitment in using international standards as a basis for national and local standards, whenever applicable. In particular, Malaysia has completed alignment of standards in both the priority and additional areas under the APEC SCSC voluntary alignment plan. I encourage Malaysia to continue its endeavors in aligning both national and local standards with international standards wherever possible and preferably with a planned timeframe.

Mobility of Business People

24. While not stated in the Expert's report, we note that Malaysia will actively consider making a formal announcement of commitment to API implementation in the coming AELM. Indeed, Malaysia has achieved much progress in the area, including the development of a standard for security of travel document using the smart passport technology by introducing the biometric passport.

Closing Remarks

25. To sum up, I believe that the facts and figures regarding Malaysia's development in the past years speak well for itself. Malaysia achieved an average growth of 8.8% annual growth in trade from 1994 to 2003. The total trade in 2004 was 22.9% higher than the previous year. The figures speak well what Mr Dymond mentioned about Malaysia's flair for policy innovation.

26. Looking into one's past certainly sheds light on the future path. This is exactly where the beauty of the IAP Peer Review lies. Malaysia's developments so far have pointed to one clear direction - it is important for Malaysia to continue with its liberalisation efforts. I strongly recommend my Malaysian friends to keep up with the momentum in trade and investment liberalization while addressing its socio-economic realities.

27. Thank you.

Malaysia Peer Review 2005

W.A. Dymond
Centre for Trade Policy and Law
Carleton University/University of Ottawa
Ottawa

1

Ways and Means

- Visit to Malaysia December 2004
- Warm welcome: well-informed Malaysian interlocutors
- Excellent support from APEC staff member

2

Major Findings

- Political and social stability
- Equity and balance
- Measured ambition
- Challenges and opportunities

3

Malaysia and APEC

- High credit for implementation of Bogor goals, Shanghai Declaration and Accord
- Trade and economic policies conform to broadening APEC vision
- Commendable policy innovation worthy of emulation by other APEC economies

4

National Objectives

- Sustained political and social stability, balanced economic growth among regions and ethnic groups and eradication of poverty

- Development and integration of local entrepreneurs into national and global economies

Economic Performance

- Prudent fiscal management, sound monetary policies
- Low inflationary growth
- Embrace of structural adjustment
- Foundation for sustainable economic development

Trade and Investment

- Trade and investment make a major contribution to Malaysian goal of developed country status by 2020

- Core strategies: single Asean market, full APEC participation, bilateral and regional trade agreements, WTO negotiations

7

Challenges

- Rapid changes in the global economic environment
- Rise of China and India
- Increasing disaggregation and segmentation of global production
- Economic policies focused upon national production and protectionism obsolete

8

Responses

- Structural adjustment to move up the value chain
- Development of knowledge-based economy
- Regional and global competitiveness in areas of Malaysian comparative advantage

Best Practices

- High levels of import protection in certain sectors
- Overcomplicated tariff structure
- Efficacy of export tariffs to achieve public policy goals
- Modern competition policy to contribute to sustainable rates of growth

Opportunities

- Regional and Bilateral Agreements
- Examine integration of auto sectors to achieve economies of scale and specialization
- Upgrade investment guarantee agreements to modern standards

11

Malaysian Policy Flair

- Well-established reputation for standards to foster export industries
- Development of a ‘halal’ food hub for Muslim consumers globally
- Measurement tools to develop knowledge-based economy adds rigour to innovative policy making

12

Support from the Top

Prime Minister and Minister of Finance Badawi stated that

" … there must be a transformation in the way [Malaysia does] things… outdated work systems ... need to be revamped and a positive culture ... to position Malaysia to be at par with developed countries."

Conclusion

- Development policies emphasize resilience and equity
– Political and social stability, eschewing abrupt changes in policy direction, serve Malaysia well
– Policy innovation to generate solutions to remnants of old development models and enable the achievement of full potential

2005/SOM1/022anx4

APEC IAP PEER REVIEW

MALAYSIA

2 March 2005
Seoul, Korea

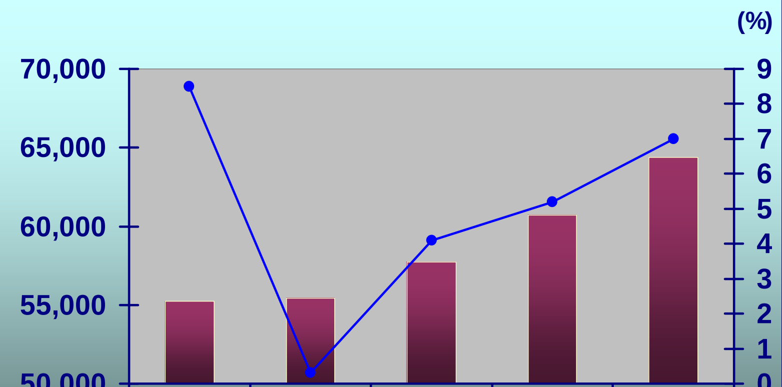
KEY ECONOMIC INDICATORS

Indicators / Year	2003	2004[1]
GDP	5.3%	7%
Per Capita Income	US$ 4,141	US$ 4,236
Inflation	1.2%	1.4%
Population	25.1 mil	25.6 mil
Labour Force	10.6 mil	10.9 mil
Unemployment	3.6%	3.5%

Note: 1-estimate

KEY ECONOMIC INDICATORS

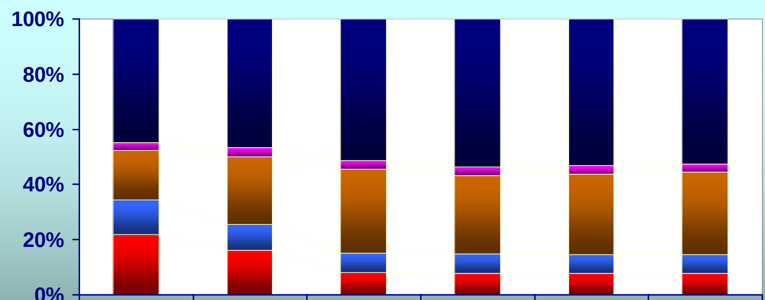
GDP Growth



	2000	2001	2002	2003	2004
GDP (US$ mil)	55,252	55,432	57,713	60,713	64,357
GDP Growth (%)	8.5	0.3	4.1	5.2	7

KEY ECONOMIC INDICATORS

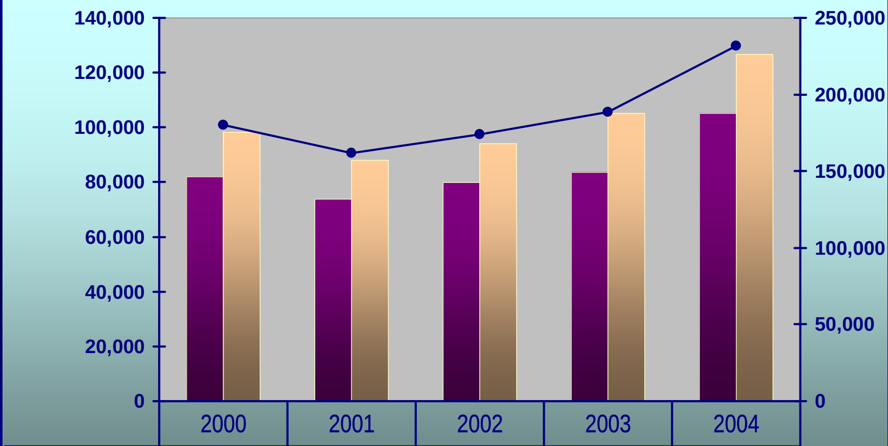
Structure of Production, 1980-2004 (% of GDP)



	1980	1990	2000	2002	2003	2004
Services	43.1	46.8	54.0	57.0	56.4	55.9
Construction	2.7	3.5	3.3	3.3	3.2	3.1
Manufacturing	17.2	24.6	32.0	30.1	30.9	32.1
Mining	12.1	9.4	7.3	7.2	7.2	7.2
Agriculture	21.0	16.3	8.6	8.4	8.4	8.2

MALAYSIA'S TRADE

- Total Trade, 2000 – 2004 (US$ mil)



	2000	2001	2002	2003	2004
Import	81,963	73,745	79,761	83,617	105,171
Export	98,229	87,969	94,061	104,969	126,506
Total Trade	180,192	161,714	173,822	188,586	231,676

MALAYSIA TRADE WITH APEC, 2004

5 key APEC trading partners

APEC Members	Total Trade (US$ mil)	Shares (%)
United States	38,929.9	16.8
Singapore	30,687.6	13.2
Japan	29,538.3	12.7
RP China	18,795.3	8.1
Thailand	11,827.9	5.1
Trade (APEC)	*183,740.5*	*79.3*
Malaysia's Overall Trade	*231,676.3*	*100*

ECONOMIC POLICIES AND STRATEGIES

Domestic

- Strengthening resilience through appropriate policies and measures;
- Strengthening financial and corporate sectors;
- Progressively liberalising services sectors; and
- Improving delivery of public services.

ECONOMIC POLICIES AND STRATEGIES

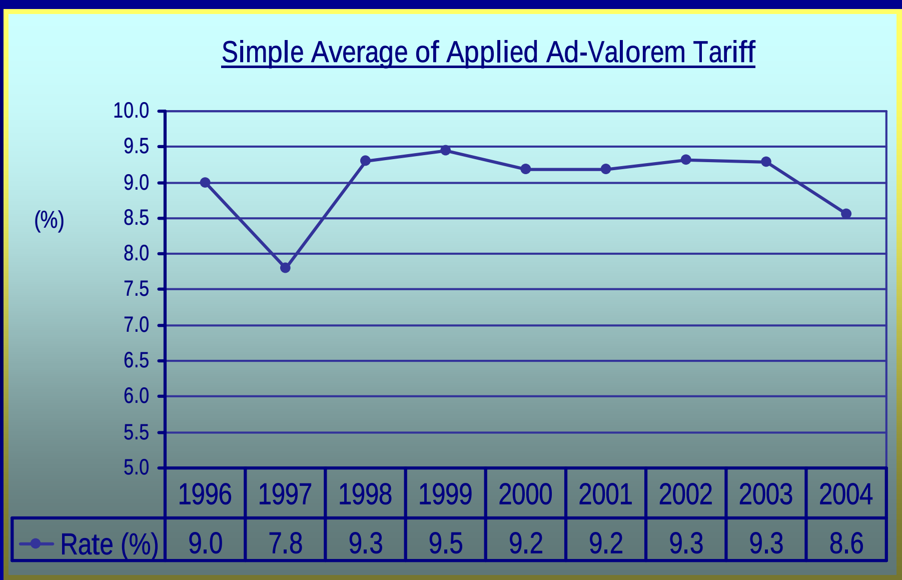
External

- Multilateral : WTO
  - to ensure that trade is conducted under fair predictable and transparent rules.
  - to seek market access under the DDA and other trade negotiations.
- Regional
  - ASEAN, APEC, OIC and others.

ECONOMIC POLICIES AND STRATEGIES

- FTAs/RTAs
  - Bilateral CEP / FTAs : Japan, US, India, Australia, New Zealand and Pakistan.
  - Regional CEP / FTAs through ASEAN: China, Japan, India, Korea, Australia and New Zealand.

TARIFFS



	1996	1997	1998	1999	2000	2001	2002	2003	2004
Rate (%)	9.0	7.8	9.3	9.5	9.2	9.2	9.3	9.3	8.6

TRADE LIBERALISATION

- Tariffs : simple average applied ad-valorem tariff for 2004 is 8.56%.
- 57.95% of duty free tariff lines for 2004.
- Increase in percentage of tariff lines that do not exceed 20% tariff level : 83.58% (2003) – 85.51% (2004).

TRADE FACILITATION

- Establishment of Customs Portal.
- Development of smart passport technology.
- Developing a National Broadband Plan.
- Malaysian Cabinet Committee on National Competitiveness to enhance government delivery system.

INVESTMENT LIBERALISATION AND FACILITATION

- 100% foreign equity allowed in manufacturing and manufacturing-related services.
- Liberal policy in employment of expatriates.
- Improvement in government delivery system:
  - fast track mechanism for license approval; and
  - "hand-hold" and assist investors in obtaining necessary approvals.
- No restrictions on transfer of funds related to FDI.

FUTURE DIRECTION

- Committed to trade and investment liberalisation taking into account Malaysia's socio-economic objectives.
- Ninth Malaysia Plan : 2006 – 2010
- Industrial Master Plan 3 : 2006 – 2015
- Capital Market Master Plan
- Financial Sector Master Plan

THANK YOU

Written Questions Received During the IAP Peer Review Session on 2 March 2005

1. Tariffs/Non-Tariff measures by Australia

Malaysia maintains non-tariff barriers to automotive trade such as discretionary taxes on imported vehicles, import quotas, local content requirements, import licensing requirements and policies that support the national car companies (Proton and Perodua), such as the 50% reduction in excise duties and import duty reductions on imported components.

Response:

Malaysia maintains non-tariff barriers to automotive trade such as discretionary taxes on imported vehicles, import quotas, local content requirements, import licensing requirements and policies that support the national car companies (Proton and Perodua), such as the 50% reduction in excise duties and import duty reductions on imported components.

Does Malaysia intend to abolish many of its non-tariff barriers in the future?

Response:

Malaysia will adopt policies and measures which are necessary for national development and to fulfil socio-economic objectives. For details of liberalisation measures, please see response to Question 9A and Q12 of the IAP Study Report.

2. Standards and Conformance (Chapter 5) by Korea

Based on Malaysia's Individual Action Plan, the Malaysian standards and technical regulations will conform to international standards even more in 2005 with a 50% rate of conformance in 2004.

Korea would like to know what specific actions Malaysia has taken in order to make standards in medical devices conform to the international standards.

Response:

In year 2004, Department of Standards Malaysia (DSM) has established an Industry Standard Committee for developing Malaysian Standards in Medical Devices. The development of standards in this sector is still at the early stage. Practices of adopting International standards wherever appropriate as recommended in ISO/IEC Guide 21 will be applied.

3. Investment (Chapter 4) by Korea

A total investment exceeding USD 2,000,000 guarantees 5 expatriates to be employed and with a lesser amount, only two are allowed to work in Malaysia. Korea’s SMEs need Korean engineers and managers but are facing problems due to the above-mentioned restrictions. If

Malaysia has plans to ameliorate this restriction in number of expatriate personnel, please enlighten us in this matter.

Response:

The guidelines on employment of expatriate posts in the manufacturing sector has been further liberalised effective 17 June 2003. The new guidelines on the employment of the expatriate personnel allows for automatic approval of expatriate posts for companies in the manufacturing sector as follows:

(a) Companies with foreign paid-up capital of US$2 million and above will be allowed up to ten (10) expatriate posts, including five (5) key posts. Key posts can be filled permanently by foreigners and non key posts (time posts) will be granted up to a maximum of 10 years for executives, and 5 years for non-executives.

(b) Companies with foreign paid-up capital of more than US$200,000 but less than US$2 million will be allowed up to five (5) expatriate posts, including at least one (1) key post. Period of time posts will be granted up to a maximum of 10 years for executives, and 5 years for non-executives.

Request for expatriate posts over and above the guidelines can be considered based on the merits of each case.

Companies with foreign paid-up capital of less than US$200,000 will be considered for both key posts and time posts as follows:

- Key posts can be considered where foreign paid-up capital is at least RM500,000.
- Time posts can be considered for up to 10 years for executive posts, and 5 years for non-executive posts.
- The number of key posts and time posts allowed depends on the merits of each case.

4. Services by Australia

Financial Services

Could Malaysia clarify the timetable for further reforms and under the Financial Sector and Capital Markets Masterplans?

Response:

The Financial Sector Masterplan (FSMP), launched in 2001, sets out the recommendations to be implemented over 10 years in three phases. While measures to increase domestic capacity have been implemented in the first phase, these measures will continue to be strengthened during the second and third phases to enhance the effectiveness of the financial sector in meeting the requirements of the economy, enhance domestic competition and strengthen the infrastructure for consumer protection. This will collectively ensure that the financial sector is able to adjust and respond positively to competition arising from greater deregulation and liberalisation.

Malaysia is now advancing into the second phase of the FSMP, where the policy of gradually deregulating and liberalising the financial sector will be complemented with the objectives of bringing increasing benefits to the overall economy. In the second phase, BNM will accord greater operational flexibility to foreign banks operating in Malaysia so that they can better serve the needs of the economy. This will include the ability to establish new branches and enhance their ATM network.

As stated in the FSMP, the policy on foreign participation will be reviewed in Phase 3, where consideration will be given to introducing new foreign competition in the financial sector.

The underlying rationale in the Capital Market Masterplan (CMP) is that Malaysia will progressively liberalise the service sectors taking into account the readiness of the sector and in line with the socio-economic objectives of the overall national policy.

Accordingly, the implementation of the Masterplan is divided into 3 distinct phases:
- Phase 1: Strengthen domestic capacity, and develop strategic and nascent sectors (2001-2003).
- Phase 2*:* Further strengthen key sectors and gradually liberalise market access (2004 -2005).
- Phase 3: Further expansion and strengthening of market processes and infrastructure towards becoming a fully developed capital market, and enhancing international positioning in areas of comparative and competitive advantage (2006-2010).

Capital Market Masterplan recommendations relating to foreign liberalisation are as follow:-
- Recommendation 22: Breadth of listings in the Malaysian equity market will be gradually widened to include listings of foreign companies. Phase 2 (2004-5)
- Recommendation 85: Foreign equity participation in domestic stockbroking companies will be liberalised in stages beginning from 2003. Phase 2 (2004-5)
- Recommendation 101: Foreign ownership requirements will be liberalised to allow foreign majority ownership of unit trust management companies from 2003. Phase 2 (2004-5)

In accordance with this, the 2005 Budget announced these liberalisation measures to be carried out:-
1. Five foreign stockbroking companies will be allowed to operate in Malaysia. In doing so they may also:-
   - own 100% equity;
   - undertake the same range of activities as a non-universal broker and operate from a single location; and
   - purchase 100% in an existing non-universal broker which has complied with the consolidation policy.

   Five leading global fund managers will be allowed to operate in Malaysia.
   - 5 new licenses to be issued to enable leading global fund managers to establish operations in Malaysia; and
   - The foreign fund managers will be allowed to own 100% equity and will be allowed to participate in the institutional segment of the Malaysian fund management industry.

2. Foreign equity ownership restrictions in futures broking companies were removed.

3. The limit on the number of foreign dealer's representatives employed by stockbroking companies abolished.

4. Foreign participants will be allowed to own 100% equity in venture capital and venture capital management corporations.

5. Listing by foreign incorporated companies on Bursa Malaysia. The Securities Commission announced in September 2003 that foreign incorporated companies with -

   i) substantial operations abroad and controlled/owned by Malaysians;
   ii) substantial operations in Malaysia and controlled/owned by Malaysians; or
   iii) substantial operations in Malaysia and controlled/owned by foreigners.

   may seek listing on the Bursa Malaysia subject to the approval of relevant regulatory authorities.

The liberalisation of other areas will be reviewed from time to time, taking into account the development in the capital market.

Accounting Services

Australian notes that the Malaysian Accountants Act is under review. What timeframe is proposed for completion of the review?

Response:

The process of reviewing the Accountants Act is currently being undertaken by a Task Force under the Malaysian Institute of Accountants (MIA). Any proposed amendments to the Act would then have to go through the Accountant General's Office and the Minister of Finance for approval before being tabled at the Parliament. At this point of time, it is difficult to assess the timeframe for the whole process.

Has Malaysia negotiated any reciprocal agreements with professional accounting bodies in Australia?

Response:

No. This is because Malaysia had under the Accountants Act 1967, autonomously/unilaterally recognised the Institute of Chartered Accountants in Australia and CPA Australia as recognised professional bodies for the purpose of admission into MIA. Based on the concept of reciprocity it would be a good idea for the Australian Government to encourage its professional Accountancy bodies to recognise Malaysian qualifications.

If so, are these likely to be affected by changes to the Accountants Act?

Response:

One of the items currently being considered under the Task Force on Amendments of the Accountants Act is for the additional powers to review all the recognised qualifications under the Act. As members of the International Federation of Accountants (IFAC), MIA adheres to various IFAC's standards on education and admission of professional accountants. To effectively do this it needs the power to review all the qualifications concerned and make the necessary recommendations to the Minister.

To what extent do accounting standards in Malaysia align with International Financial Reporting Standards?

Response:

The Financial Reporting Standards in Malaysia are virtually International Financial Reporting Standards (IFRS). The name change from Malaysian Accounting Standards Board (MASB) Standards to Financial Reporting Standards (FRS) beginning 1 January 2005 is meant to reflect that.

Since the 1970's, the accounting standards in Malaysia had been IAS compliant. When the MASB was established in March 1997, the Board maintained the philosophy of convergence with the IASs and continued its pursuit to converge with IFRSs. All FRSs in Malaysia are and will be IFRS compliant and virtually IFRS. Where there are no international financial reporting standards to address specific matters unique to Malaysia, the MASB is responsible for formulating financial reporting standards to address those issues. So far, MASB had developed and issued 3 accounting standards to cater for insurance industry and property development activities in Malaysia.

5. General questions by ABAC

In you own assessment, how far along is Malaysia in moving towards the Bogor Goals?

Response:

The Bogor Goals are indicative deadlines. Malaysia has in fact undertaken autonomous liberalisation at a faster pace for many of the goods and services sectors. Malaysia has also targeted for developed country status by 2020. Malaysia is implementing the appropriate domestic policies and if the external sector is favourable, then the targets could be achieved before 2020.

How has APEC specifically made a difference to Malaysia's tariff reductions, if at all?

Response:

APEC as a capacity building forum assists Malaysia in confidence building and preparedness to undertake autonomous liberalisation.

Could you comment on Malaysia´s FTA strategy?

Response:

Malaysia undertakes a cost and benefits analysis to assess the advantages in engaging in a FTA with a potential partner. FTAs are used as a complementary channel to the WTO to seek better market access. FTAs are also used to build expertise and foster greater industrial collaboration.

2005/SOM1/022anx6

IAP STUDY REPORT OF MALAYSIA 2004

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February 2005

CONTENTS

IAP Peer Review Process Malaysia
SOM 01/2004T

Introduction and Summary of Findings

1. This report is based upon the Malaysia's 1996 and 2004 IAPs, the APEC Leaders' Declarations of 1994 and 2001, including the Shanghai Accord, the responses to the questionnaire and responses to the issues raised by certain economies, information collected during the field visit December 15-17, 2005 and independent sources. In a number of areas where there was insufficient time for detailed exploration of the issues, the report summarizes the information provided in the Malaysian responses.

2. I wish to convey my warm thanks to the Malaysian authorities for their kind collaboration during the visit and the comprehensive replies to the questionnaire and to the issues raised by other economies. The efficient assistance of the APEC professional staff member in all phases in the preparation of this report is gratefully acknowledged.

3. The major findings of this report are:
    - Malaysia's fulfillment of the APEC goals flows from its national objectives of sustained political and social stability, balanced economic growth among regions and ethnic groups and the eradication of poverty.
    - In line with national development policies, Malaysia gives high priority to promoting the development and integration of local entrepreneurs into the national and global economies.
    - Malaysia's economic performance nurtured by prudent fiscal management and sound monetary policies has achieved the enviable state of sustained, low inflationary growth. Its readiness to embrace the challenge of structural adjustment creates the foundation for sustainable broad based economic development.
    - Malaysian policy makers have demonstrated considerable flair for policy innovation, for example, in employing its well-established reputation for the setting and enforcement of standards to foster export industries. The development of measurement tools, for example, regarding the knowledge-based economy adds rigour and ambition to innovation policy making.
    - Openness to international trade and investment continue to make a major contribution to the rapid progress made by Malaysia towards achieving its goal of developed country status by the year 2020.
    - Malaysia and its ASEAN partners are pressing ahead towards achieving a single market by 2020. In addition, Malaysia's full participation in APEC, the pursuit of bilateral and regional trade and investment agreements, implementation of its World Trade Organization commitments and constructive participation in the Doha Development Round are key parts of Malaysia's strategy.

- Malaysia is fully aware of the challenges to its future growth posed by rapid changes in the global economic environment and the need to reflect these changes in its macro economic and sectoral economic strategy and policy initiatives.
- Particular attention will need to be devoted to structural adjustments to facilitate the movement of Malaysian industry up the value chain, to foster the development of the knowledge based economy and to meet the challenges regional and global competition in areas of Malaysian comparative advantage.
- High levels of import protection in certain sectors, notably the automotive and steel sectors, and an overcomplicated tariff structure require attention. The efficacy of export tariffs to achieve public policy goals would benefit from a review.
- The upgrading of investment guarantee agreements either separately or within the context of regional trade agreements to conform to modern standards would contribute to Malaysia's attractiveness to foreign investors. The experience of other countries suggests that such upgrading can be accomplished in a manner compatible with Malaysia's interests and policies and social and political stability.
- The evolution of a modern competition policy attuned to the circumstances created by rapidly integrating regional and global economy will help Malaysia continue to achieve sustainable rates of growth.

4. Malaysia deserves high credit for its implementation of the Bogor goals and those set out in Shanghai declaration and Accord. Its trade and economic policies pursued since 2001 conform to the objective of broadening the APEC vision. In some areas, for example, the mobility of personnel, Malaysia has displayed commendable policy innovation and developed models worthy of emulation by other APEC economies.

Economic Performance

5. Over the last four years, Malaysia achieved steady, non-inflationary economic growth. In 2003, the Malaysian economy grew over five percent, with seven percent projected in 2004. Malaysia anticipates economic growth in 2005 to moderate slightly to the six percent range consistent with somewhat slower world economic growth. Private consumption and increasing private investment are expected to fuel domestic economic performance while monetary policy will continue to support through low and stable interest rates. Both inflation and unemployment rates are firmly under control with the former at less than two percent and the latter at under four percent. With stronger growth in the economy, per capita national income is expected to increase to USD 4,236 in 2004 (RM16,098) while purchasing power parity (PPP), higher at USD10,163. These results place Malaysia in the upper range of developing APEC economies and testify to the agility of the Malaysian economy and the supportive economic policies of the government.

6. Economic growth is broad based across all sectors, led by manufacturing, which expanded by 10.5 percent in 2004. Several sectors have succeeded in moving up the

value chain from assembly and packaging into full turnkey and testing solutions. Following the pattern of other economies, which have adjusted to rapid economic change, several sectors have been locating labour intensive operations to lower cost countries.

7. The services sector accounting for close to 60 percent of GDP has continued its strong growth especially in financial services, information and communication technology and the revival of tourism, which was severely affected by security threats and the SARs crisis in 2003. There has been steady expansion in key internationally traded services, including transport, telecommunications, tourism and financial services. The Malaysian government attaches strategic importance to new growth areas in supply chain management such as operational headquarters, regional distribution centres as well as shared information technology services. Education, tourism, Islamic finance, health, transport, information technology and manufacturing related services are also priority sectors for the government.

8. The agriculture sector is less integrated into the regional and global economy compared with other sectors of the economy due to increasing value-added downstream activities. Policies to stimulate agriculture as the third engine of economic growth, especially food production are paying off in higher output of fruit and vegetables arising from the expansion of cultivated land by both private and public sectors. All livestock producers are benefiting from rising domestic and export demand. The fishing sector is benefiting from modernization and enhanced surveillance of foreign fishing activity in Malaysian waters.

9. Echoing the focus on the new economy found in the Shanghai Declaration and Accord, Malaysia attaches high importance to the transformation to a knowledge-based economy. In an index to measure its progress, Malaysia ranks seventeenth globally but is ahead of all other developing countries. Under its Knowledge-Based Master Plan in 2002, the government has focused upon human resources development, infrastructure, incentives and science and technology.

10. International trade plays a key role in the Malaysian economy. Total external trade is double the size of its GDP. Globally, Malaysia is the 17th largest trading country. Malaysia's major trading partners are APEC economies with the United States, Singapore, Japan and China accounting for over half of total trade. Malaysia has enjoyed a favourable balance of trade in goods for 85 consecutive months since November 1997[1] and the result for 2003 was the highest surplus ever achieved. Trade in services is in deficit.

11. The structure of Malaysian trade has remained relatively unchanged over the last few years. Trade with the key regional groupings in 2003 is APEC (79.7%), ASEAN (24.5%), NAFTA (18.6%) and EU (12.3%). Trade with key Malaysian partners in ASEAN has remained relatively unchanged.

[1] As at November 2004

12. Manufactured goods account for more than 80 percent of total exports. The higher export demand for manufactured goods is fuelled by economic expansion in China, solid recovery in the United States, Malaysia's largest export market, and the resumption of growth in Japan. The export of electrical and electronic goods accounts for 53 percent of total exports. In the first seven months of 2004, these exports grew by 21 percent over 2003. The government anticipates that strong global demand for personal computers, higher end flash and digital signal processing chips in consumer electronics and digital electronics in the automotive sector will sustain the continued expansion of this industry. Exports of mining commodities and agricultural products have benefited from rising global prices for petroleum products, palm oils and rubber. Malaysia is also a significant importer with imports concentrated in intermediate manufactures and capital goods reflecting strong performance in the production of finished goods, the petroleum and transportation sectors.

13. Malaysia attracts significant inflows of foreign investment as a result of its political stability, solid infrastructure, predictable business climate and an increasingly skilled work force. A pro business climate, fostered by a privatization program, proficiency in English and aggressive promotion of Malaysia as an investment destination in major capital exporting countries through the Malaysian Industrial Development Authority should ensure that Malaysia will remain an attractive for foreign investors.

14. Like all APEC economies, Malaysia will need to meet significant challenges if economic growth is to be sustained. One challenge is the rise of China and India, several times greater in size and potential and constituting alternate poles of development capable of dwarfing economies reliant on low cost production models. The other is the increasing disaggregation and segmentation of global production and investment which render economic policies focused upon national production and protectionism obsolete. While Malaysia has gradually freed itself of the import substitution model, remaining elements in certain sectors of the economy will impede Malaysia from taking full advantages of the opportunities of globalization.

15. The Malaysian government recognizes these challenges. In his Budget Speech 2005, Prime Minister and Minister of Finance Badawi stated that " … there must be a transformation in the way [Malaysia does] things… The outdated work systems and legislation need to be revamped and a positive culture inculcated to improve competitiveness and position Malaysia to be at par with developed countries."

Trade and Investment Policies

16. Malaysia's trade and investment policy has adjusted to the deepening integration of its economy into the regional and global economy. While fully committed to the rules based system of the WTO and the Doha Development Round, Malaysia views regional and bilateral agreements as providing complementary opportunities to achieve faster and deeper trade liberalization. Malaysia sees itself as an export base within the ASEAN group as it evolves towards a single market providing for the free flow of goods, services and labour by the year 2020. Many of the sectors identified as

priority candidates for accelerated integration are powerful performers in the Malaysia's domestic and export economy, notably agricultural products, electronics and rubber products.[2] In the automotive sector, Malaysia cut tariffs on January 1, 2005, from as high as 190 percent to 20 percent on imports from other ASEAN countries.

17. Within the broader APEC, Malaysia concluded a Trade and Investment Framework Agreement with the United States in 2004, which could lead to a free trade agreement.[3] Malaysia is negotiating an Economic partnership Agreement with Japan, which covers trade liberalization and facilitation and could lead to a comprehensive free trade agreement over the next ten years. Malaysia is also exploring free trade agreements with China, Korea, Australia and New Zealand, which could evolve into ASEAN wide instruments. Outside the APEC, Malaysia is giving consideration to the possibility of an agreement with India. In each case, Malaysia is determined to ensure conformity of these arrangements with the provisions of the WTO. Malaysia regards such agreements as a stepping to multilateral trade liberalization. Malaysia's objectives in such arrangements are to ensure that its exporters are not disadvantaged through the proliferation of free trade agreements and other preferential arrangements, achieve better market access, cooperate in promoting trade, investment and industrial development and building capacity in specific targeted areas.

18. The practice of Malaysia trade and broader economic policy involves a high degree of transparency and consultation. Major policy initiatives are preceded by extensive consultations with affected sectors and other stakeholders. There are processes for continuing review of established policies and avenues exist for groups in society to seek changes. For example, with respect to import tariffs, there is a special advisory committee where producers and consumers can make representations. In addition, annual consultations on the budget provide a vehicle for requests to changes in tariff levels to be considered. Information on the Malaysian tariff is available on both the APEC and WTO websites.

Issue Areas

Import Tariffs

19. The tariff is the principal device employed by Malaysia to protect domestic industry from import competition. Malaysian progress in reducing tariff levels, interrupted by the circumstances arising out of the 1997-98 financial crisis, has resumed. In 2004, the simple average of applied tariffs fell to 8.56 percent from 9.29 percent in 2003 while the weighted average of applied tariffs fell to 2.64 percent from 2.89 percent The number of tariff lines with rates exceeding 20 percent has continued to decline. The number of lines with specific duties has continued to diminish increasing the transparency of the Malaysian tariff structure. The simple average of bound tariffs

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[2] The other sectors are air travel, automotive, fisheries, healthcare, tourism, e-commerce, textiles and apparel, and wood-based goods.

[3] IMF survey June 2004, p.169. interview with Trade Minister Aziz.

which amount to 62 percent of all tariffs was 15.5 percent. Currently, Malaysia has two tariff classification systems, one for intra-ASEAN trade and the Harmonized System for trade with other countries common up to the 6-digit level.

20. The government undertakes regular reviews of the tariff structure and tariff rates through annual and ad-hoc dialogues with major industry players and the business community. The Special Advisory Committee on Tariffs (SACT) receives and considers application for tariff review. Tariff rates are reviewed and announced throughout the year and in the annual budget.

<u>Tariff Rate Quotas</u>

21. Malaysia has 73 lines with tariff rate quotas (TRQs) concentrated in agricultural area with ex quota duties raging from 15 percent to 160 percent. The application of the TRQs has been temporarily suspended.

<u>Export Tariffs</u>

22. Malaysia applies export duties to a range of primary and agricultural products including logs, crude oil and certain palm oil products. The range of duties is from five percent on livestock to 10-30 percent on palm oil. The purpose of these duties is to discourage the export of raw materials and encourage the development of value-added products. The revenues support research and development and export promotion. As its economy integrates further into regional and global economies, Malaysia may well find more efficient instruments to assure supply and encourage investment flows.

<u>Issues for Consideration</u>

23. Malaysia's steady progress in reducing tariff levels is consistent with its policy of promoting the integration of its goods producing sectors into global and regional economies. A range of complementary industrial policy and regional integration initiatives reinforces the positive impact of lower tariffs. In its continuing adjustment of tariff policy, Malaysia may wish to give attention to a series of reforms including those set out below that would contribute to the further strengthening of the goods sector through fostering its regional and global integration in manner consistent with the objective of promoting appropriate trade policies as agreed in the Shanghai Accord.

24. In terms of general tariff policy, the divergence between bound tariff and applied tariff levels and the high proportion of unbound tariff lines imparts a degree of unpredictability to the tariff protection, which domestic industry and importers may expect. This unpredictability is somewhat mitigated by the regional commitments undertaken by Malaysia. Further opportunities to increase the number of bound lines will arise in regional and bilateral free trade initiatives under consideration and in the current Doha round of multilateral trade negotiations. Beyond such opportunities

which may require considerable time to materialize, Malaysia may wish to consider unilateral initiatives, for example, through sectoral undertakings between the government and importing sectors to give greater certainty to its applied tariff levels with a view to facilitating long term planning and domestic and foreign investment.

25. The maintenance of two tariff classification systems would appear to add unnecessary complexity to import transactions at a time when regional and global trade patterns are increasingly integrated. Malaysia’s intention to revert to one system is a welcome development. Malaysia has 10, 589 lines in its harmonized system, a level equivalent to that of the United States whose imports are ten fold greater. The intention of Malaysia to reduce the number of lines through continuing simplification and streamlining of import procedures will bring important efficiency benefits.

26. Three sectors warrant discussion in this report, each of which plays an important role in economic performance: electrical and electronic, steel and automotive.

27. The electronics and electrical sector is an outstanding success story. The sector has enjoyed relatively modest levels of tariff protection. It has expanded rapidly and become a principal driver of Malaysian growth. While liberal access to foreign markets especially the US market is essential, the openness of the Malaysian electronic market has provided a strong competitive stimulus to the development of a global player in this industry of the future.

28. The steel sector attracts relatively high duties and until recently, a "non-objection" letter from Malaysian producers was required as a condition of import. While global over capacity in the steel industry affects Malaysian producers as much as those in other countries, the level of protection accorded to such a basic product ratchets through the competitive structure of the entire Malaysian goods producing economy and weakens its performance in both domestic and export markets. A thorough review of the Malaysian steel industry in terms of its long term strength and vulnerabilities matched with the import protection now accorded could well point the way to a tariff structure which better meet the needs of producers and consumers of steel.

29. The auto sector also attracts high duties reflecting a strategic choice made by Malaysia in the 1960s to make this sector a major contributor to its economic development. From the assembly of completely knocked-down (CKD) vehicles, the industry shifted into the manufacture of motor vehicles and component parts. The establishment of national automotive projects such as Proton in 1983 stimulated domestic component production, skill development and the upgrading of technological and engineering capability in the industry. The Malaysian automotive industry today is an important driver of industrial development and generator of inter-industry linkages as it brings together various components and parts, many of which

are produced by suppliers in other industries such as plastic, electronic, steel, rubber, and textiles.[4]

30. Notwithstanding the rapid development of the auto sector, it has much distance to travel before reaching global competitiveness. One indicator of the progress yet to be made is excess capacity in the sector of the lack of competitiveness to allow this capacity to be deployed to supply export markets. Major liberalization initiatives undertaken by the Malaysian government should make an important contribution to the competitive development of the sector. These initiatives include abolishment of local content requirements and price control mechanisms; reduced import duties on CKD vehicles and on components and parts. The Malaysian government is committed to further tariff reductions on vehicles to 0-5 percent 2008; the total elimination of import duties by 2010. Further the government supports the integration of ASEAN automotive industry under the 11 priority sector initiative. (see paragraph 16)

31. Malaysia may wish to consider a more aggressive strategy for the sector in the context of prospective trade arrangements with Japan and Korea both of which have well established world class automotive sectors. One approach would be to incorporate special provisions on the automotive sector within a free trade agreement. Such provisions could be modeled upon the Canada-United States Automotive Agreement of 1965, which created bilateral free trade in vehicles and original equipment parts. Prior to the agreement, the highly protected Canadian automotive sector lacked economies of scale and demonstrated major inefficiencies compared to its US counterpart. Vehicle prices were considerably higher in Canada and Canadian automotive workers were paid considerably less than in the United States. The agreement, which entered into full effect without a phase-in period, resulted in a major rationalization of production and investment on an integrated North American basis. To ensure that the benefits of this arrangement were fairly spread between the two countries, participating companies were required to produce in Canada one vehicle for each vehicle imported and to achieve valued added targets for their Canadian facilities. While aspects of the arrangement were found not compliant with the WTO, its main features remain intact and contribute to the growth and competitiveness of the Canadian automotive industry.

<u>Non tariff Measures</u>

32. The most significant non tariff measure applied by Malaysia for protective purposes is import licensing requirements to protect strategic and infant industries from import competition. Other industrial products subject to discretionary import licensing include a range of telecommunication and chemical products. Agricultural products subject to discretionary import licensing include rice and rice and rice products.

33. Certain import prohibitions and import permit requirements exist for public moral, the safety of plant, animal and human life and the fulfillment of international obligations

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[4] More information on the progress of the industry and on the liberalization measures discussed in paragraph 27 below is provided in the questionnaire response

such as sanctions applied by the United Nations Security Council. Export permit requirements are used in limited circumstances for essentially the same reasons.

34. A few products are subject to export prohibitions, restraints and licensing requirements to prevent in some cases the over rapid exploitation of depletable resources and in other cases to ensure adequate supplies for domestic use.

35. Malaysia's anti-dumping and countervailing regime is fully compliant with WTO rules. The application of such measures is transparent as information on investigations and decisions are available through the Ministry of International Trade and Industry's website (miti.gov.my) and national printer's website (lawnet.com.my). All interested parties and the governments of the alleged countries are given copies of the findings of the investigation. Malaysian exporters are affected by anti-dumping and countervailing duty measures applied by other countries. The government is vigilant in ensuring that such measures are applied in conformity with the WTO rules.

Services General Comments

36. Malaysia subscribes to the principle of progressive liberalization within the context of its overall development strategy. Although Malaysia has no immediate plans to liberalize current restrictions on foreign service providers, it is participating in the services negotiations of the Doha Development Round.

Financial Services

37. Consistent with Malaysian policy of greater market orientation and international integration, Malaysia has taken a number of steps to liberalize the financial services sector since the entry into force of the WTO financial services agreement. These include the issuance of three new Islamic banking licenses, the removal of the 50 percent limit on credit facilities available to non-resident companies from foreign owned Malaysian banks and permission for locally incorporated foreign banks to offer full-range, transactional internet banking services. Further steps to level the playing field between domestic banks and the locally incorporated foreign banks and to foster integration will be introduced in the future.

38. Malaysia has substantially improved transparency in the regulation of the sector through stakeholder consultation, regular review policies and regulations taking into account any post-implementation feedback from the industry to ensure their continued relevance, effectiveness and practicality in light of changing conditions. Examples of new policies, which were developed in consultation with the industry, are the New Liquidity Framework, Best Practices on the Management of Credit Risk, Guidelines on Internet Banking, Guidelines on Dynamic Solvency Testing and Risk-Based Capital Framework.

39. Since the financial crisis in 1998, Bank Negara Malaysia has moved towards a market-driven approach in regulating and supervising banking institutions,

complemented by efforts to promote greater reliance on market discipline and initiatives to strengthen the consumer protection framework. Additional information on the evolvement of the legal, prudential and regulatory framework can be found in Bank Negara Malaysia's Annual Reports in sections on Management of the Banking Sector and the Progress of the Financial Sector Masterplan (FSMP), accessible at bnm.gov.my

40. Malaysia has been developing laws and regulations to foster the development of an Islamic banking system for over two decades as an integral component of the domestic banking system, operating in parallel with the conventional system. The approach involves the creation of the key components comprising the Islamic banking industry, Islamic financial markets, the Islamic insurance or "takaful" market, and fund management industry. In implementing the strategies, four areas of development have been identified namely, institutional and product development, regulatory and prudential framework, Shariah and legal framework, and consumer education and awareness. In 2004, the Central Bank offered up to three licences for foreign Islamic financial institutions to operate in Malaysia. The conventional banks offering Islamic financial products and services are moving towards a more sustainable institutional platform that can assimilate developments in the Islamic financial regulatory infrastructure over the longer term. This institutional structure takes the form of an "Islamic subsidiary" within the banking groups.

41. An advisory Council at the Central Bank is the sole authority and reference on all Shariah matters pertaining to Islamic banking and finance. A Law Review Committee was set up in 2003 to undertake a holistic legal review with a view to assimilating Shariah principles and removing impediments to the unhindered and efficient functioning of the Islamic banking and financial system.

42. A rate of return framework was formulated in 2001 to provide a standard methodology for deriving the rate of return for depositors to enhance the level of transparency. The Bank Negara imposed separate prudential requirements on the conventional banks with Islamic banking windows, which include: dedicated minimum capital as Islamic banking fund; maintain minimum core capital ratio and risk-weight capital ratio; separate disclosure of Islamic banking operations in the Notes to Account of principal financial statements and revised and updated disclosure in financial statements.

43. Malaysia has taken a number of steps to liberalize rules respecting foreign participation in the equity markets. These measures include up to five new licenses for foreign stockbrokers and the same number for foreign global fund managers. In both cases, 100 percent of the equity may be foreign owned. Additionally, foreign participants will be allowed to 100 percent equity in future brokers, future fund managers and future trading advisors through the issue of new licenses or the purchase of equity in existing operations. Foreign participants will be allowed to own 100 percent equity in venture capital and venture management corporations. Restrictions on the employment of foreign dealers by domestic stockbrokers have

been lifted. These measures are described in a press release of the Malaysian Securities Council dated September 21, 2004, available at sc.com.wy.

44. No new licenses are being granted for the conduct of direct insurance in view of the continuing consolidation of the industry. Malaysia's WTO commitments provide for six new licenses to be issued for the life reinsurance, one of which has been issued and seven licenses for the non-life reinsurance business all of which have been issued. However, following the voluntary closure of several general reinsurers of their operations in Malaysia, new applications for general reinsurance licenses may be considered. In the future, a limited number of new licenses in specialized lines of business will be considered for new players with innovative value propositions.

45. Following Malaysia's commitment to issue new licenses to carry on professional life reinsurance business in Malaysia, only one foreign professional life reinsurer submitted an application for a license. Currently, there are two professional life reinsurers operating in Malaysia, one of which was licensed pursuant to Malaysia's commitment under the WTO. There are no national treatment limitations on the issuance of professional reinsurance licenses other than the foreign equity limit of 49% for the establishment of joint ventures. After June 30, 2005, applications to carry on professional reinsurance business in Malaysia will continue to be considered based on the availability of reinsurance licenses in line with Malaysia's commitment under the WTO.

46. A foreign professional reinsurer operating in Malaysia as a branch is required to maintain a lower amount of surplus of assets over liabilities than the equivalent paid-up capital required of a local professional reinsurer since it is licensed based on the consideration of the financial strength of its parent company. There are no immediate plans to align the requirements.

47. Malaysia is committed to progressive liberalization as evidenced by its WTO commitments to allow original foreign owners of direct insurers to hold up to 51% of equity of insurers (from 30%), under certain conditions. More recently, Malaysia also relaxed its policy on branching by foreign-owned insurers with foreign shareholding not exceeding 51% to allow such insurers to open not more than two branch offices in a year (which was not provided for under Malaysia's schedule of commitments). Further liberalization will be considered after the implementation of capacity building measures under the Financial Sector Masterplan which are aimed at strengthening the foundation for a more competitive insurance market. These include building domestic capabilities to support performance improvement and strengthening consumer protection infrastructure

Distribution Services

48. In October 2004, new Guidelines on Foreign Participation in the Distributive Trade Services were issued. They include all existing and current policies and decisions made by the Government in relation to the distributive trade sector and cover

wholesalers, retailers, franchise practitioners, direct sellers, product manufacturers and suppliers who channel their goods into the domestic market and also commission agents. Foreign involvement in the distributive trade services is to be based on the contribution of the sector to the Malaysian economy that is significant direct investment, transfer of technology, expertise and modern management.

Construction Services

49. Under the ASEAN Framework Agreement on Services (AFAS), ASEAN service providers are allowed to undertake construction work in Malaysia through the incorporation of company with Malaysian individuals or corporations where ASEAN equity shall not exceed 49%. Under Malaysia's WTO commitments, foreign service providers are allowed to take up equity to the maximum of 30%. In the Doha Round, Malaysia intends to submit an offer allowing foreign contractors to participate in foreign funded projects.

Industrial Waste Services

50. Malaysia does not agree with the contention of business groups that provision and maintenance of industrial waste facilities is inadequate. The Environmental Quality Act, 1974, and its regulations provide the legal framework for the handling of toxic waste and based on the principle of ‘cradle-to-grave’ management. An off-site integrated hazardous waste treatment facility, undertaken by Kualiti Alam Sdn.Bhd., sited at Bukit Nanas, treats all industrial waste providing transport, solidification, incineration, physical-chemical treatment and landfill. The price range for such services is comparable to those in other countries such as Denmark, Indonesia, Thailand and Hong Kong.

Transportation

Air transport

51. Malaysia’s international air policy reflects the principal trends in global deregulation of international air transport of passengers and cargo. It has negotiated either ‘open skies’ or liberalized agreements with its major markets. By removing outmoded restrictions on traffic rights, tariffs and charter operations, these agreements make an important contribution to the essential policy infrastructure accompanying the integration of the Malaysian economy into the global economy. Like other countries, Malaysia is finding that the maintenance of restrictions devised many years ago, for example, prior government approval of airline tariffs, are yielding before commercial realties which mandate a country of origin system. One issue which Malaysia may wish to examine is the economic benefits to the Malaysia travelers and cargo shippers that accrue from maintaining the requirement that generally airlines designated to offer services by majority owned by the nationals of the designating country.

Maritime Transport

52. Malaysian ports have also recorded a significant increase in the number of ship calls from 24,000 in 1993 to 55,000 in 2003 or a 129% increase. Malaysian container volume has reached 10.2 million TEU in 2003. The growth has enabled two Malaysian ports,Port Klang and Tanjung Pelepas to be amongst the top 20 container ports in the year 2003. Malaysian port development will continue to focus on improving capacity, upgrading equipment and facilities as well as enhancing the efficiency and productivity of port and port related services. In terms of capacity, further efforts will be made to improve the efficiency and productivity of ports and ancillary services through continuous multi-skill training programmes, modernization, increase automation and computerization to upgrade management process and procedures. The Government plans to establish a single agency to ensure that port operators comply with the terms and conditions of the licenses issued. In addition, the authority will facilitate an orderly and integrated development of ports and port related services based on their respective strengths, uniqueness, and specialization, especially in terms of hinterland coverage, expertise and facilities to handle certain types of traffic.

Road Transport

53. Malaysia is undertaking the necessary steps in order to be a signatory to the 1958 and 1998 Agreement under the World Forum for Harmonization of Vehicle Regulations (Working Party 29) United Nation Economic Commission for Europe (UN/ECE) by year 2005.

Elimination of Paper Documents for international trade

54. Export procedures are already free of paper documents and the abolition of this requirement for imports is being undertaken in steps. To expedite the development of a paperless environment, the Government plans to develop a common e-platform to link all parties involved in the entire trade facilitation supply chain. This platform will enable the trading community to transact as well as to share, exchange and access trade related information and services via the internet. It is envisaged that the common platform will be the source of all trade-related information such as information on air and sea transportation, freight insurance and financing options required by traders to support their trading activities. It will also be a trade facilitation centre where traders can expect to submit information and documents to various authorities for processing and approval in a single application through a single entry point.

<u>Telecommunications and Energy</u>

55. See Malaysia's responses to questions 21 and 26.

<u>Paperless Trading</u>

56. Malaysia warrants high praise for the comprehensive approach adopted to address security issues arising from paperless trading. The National ICT Security and Emergency Response Centre (NISER), created to deal with security issues has undertaken a variety of measures including incident response handling support for users, computer forensic and technology assessment services. NISER is an active participant in international efforts mounted to deal with security issues, promotes security awareness programs through surveys and seminars and supporting university programs. A panel of experts has been created to analyse Malaysia's infrastructure and identified a number of key initiatives to address security needs. The full details of this impressive range of programmes are described in the response to the questionnaire.

57. Malaysia has also grasped the challenges and opportunities posed by e-commerce with a series of legislation to deal with such issues as computer crimes, copyright issues and the regulation of the converging communications and multi-media industry. Recognizing the dynamic environment of e-commerce, Malaysia conducted a legal review of its legislative infrastructure that resulted in preparation of new legislation to address legal certainty requirements for e-commerce transactions, to facilitate e-communications between the government and the public and to protect personal data.

<u>Business Services: Accounting Law and Architecture</u>

58. Malaysia recognizes the need to modernize its legislation and practice respecting the recognition of foreign practitioners. The Accountants Act is under review; the principle of recognizing foreign qualifications is to be based on reciprocity. In this respect Malaysia notes that it has recently concluded a Framework Agreement with the Indonesian Institute of Accounting which is intended to lead to freer movement of accounting professionals between the two countries. Regarding legal services Malaysia is considering liberalization but has announced no timetable to this end. Regarding architects, some important changes have already occurred through permitting foreign architects to hold equity in enterprises engaged in architectural services engineering and surveying. The professional association is active in various international bodies and has adopted an agreement allowing foreign architects to collaborate with host country architects.

<u>Investment</u>

59. Malaysia generally encourages foreign investment in the form of acquisitions, mergers and takeovers. Approval is required for investment, which exceed certain levels of voting rights, values or result in the ownership or control passing to a foreign interest. There is generally free mobility of capital connected to foreign direct and portfolio capital investments.

60. Equity requirements have been liberalized so that only 30 percent of Bumiputera equity is necessary, except for the manufacturing sector, where 100% foreign equity

is permitted. The remaining equity may be held by either local or foreign investors replacing a regulation limiting foreign participation to 30 percent of the equity. In certain strategic sectors, for example, energy, broadcasting and defense, the 30 percent limitation remains. In the health sector, under Malaysia's GATS schedule, commercial presence of a foreign investor in private hospital services must be through a joint-venture and foreign equity participation is limited to 30 percent.

61. Malaysia has liberalized the foreign exchange control measures imposed in 1998 with the exception of certain rules to prevent the internationalization of the ringgit. There also rules imposed for prudential reasons that complement the macroeconomic policies of the government.

62. The government has decided to consolidate its shareholdings through the Ministry of Finance (MoF) of listed companies into one designated investment holding vehicle, which is Khazanah Nasional Berhad (Khazanah). Khazanah is expected to drive changes of Government Linked Companies (GLCs), increase shareholder value and synergize potential exit strategies. The consolidation of these investments result in the non-listed companies and the more socio-economic holdings held by MoF and the more commercial holdings held by Khazanah. The consolidation of these investments has no implications for Malaysia's trade and investment partners as only the shareholders are different. Malaysia considers that the consolidation will help promote investment cooperation among the GLCs to achieve sustainable growth, maintain resilience and increase competitiveness.

63. Malaysia is party to 71 investment guarantee agreements, many of which are more than 10 years old, including those which large capital exporters such the US and certain European countries. Malaysia may wish to consider updating these agreements to conform to the new standards of investment protection and dispute settlement in the models currently in wide use. To the extent that high standards of protection are important factors in foreign investment decisions, modernized agreements could enhance the attractiveness of Malaysia as an investment destination. Based on the experience of other countries, there should be ample opportunity to shape new model investment provisions to conform to Malaysian needs and priorities in the negotiation new bilateral agreements as well in the investment guarantee provisions in regional and bilateral agreements currently under consideration.

Standards and Conformity

64. Malaysia is fully committed to international standard setting through its membership in the ISO, IEC, the WTO and the principal standard organizations such as the Codex Alimentarius. Considerable progress has been made towards the alignment of Malaysian standards to international standards; in1996, 30 percent of Malaysian standards were aligned internationally, a level which increased to 50 percent in 2004. Malaysian standard setting committees choose international standards as the first option in revising standards and creating new ones. About 80 percent of the

approximately 350 new standards adopted annually aligned internationally. Malaysia is active in negotiating mutual recognition agreements with several APEC economies based upon the guidelines established by the governing international bodies in order to ensure transparency and ready acceptance.

65. Standards development occurs with the full collaboration of the private sector. The national standards system consists of a National Standards Committee which is responsible for overall policy and oversight of the national system, and an extensive network of 20 sectoral committees which in turn have established more than 200 technical committees. Under the national standards system, several private sector bodies have also been appointed as standards writing organizations. These organizations manage standards writing for selected sectors. Examples include the Cement & Concrete Association (C&CA), Malaysian Plastics Manufacturers Association (MPMA), The Electrical and Electronic Association of Malaysia (TEEAM), Malaysian Cable Manufacturers Association (MCMA).. Beginning in 2004, incentives such as partial sponsorships and tax deduction will be offered to the private sector companies participating actively in international standardization activities. The results of standard stetting are fully transparent through user friendly websites.

66. Several awareness programmes are also being actively conducted with specific industry associations. Amongst them are: workshops, seminars and dialogues with the specific industry associations and professional bodies; participation at expositions conducted by the specific industry associations and trade-related Government agencies; publication of simple booklets and brochures of relevance to the industry needs; and hosting regional and international technical meetings.

67. Malaysian expertise in the efficient administration of internationally accepted standards provides a strong competitive advantage for the development of a ‘halal’ food hub for Muslim consumers globally. This competitive advantage derives from several sources: world wide recognition for the *JAKIM halal* logo due to its stringent verification and certification systems; the already sizeable domestic halal industry, strengthened by linkages between multinational companies and small and medium enterprises; and the availability of skilled human resources and processing technology. The linking of internationally recognized standards with a strong production base aimed to export markets is a textbook example of the contribution which the adoption of such standards can make to international trade expansion.[5]

<u>Government Procurement</u>

68. Malaysia's government procurement policy are consistent with Malaysian national policy of nation building. Malaysia is not a member of the WTO Agreement on Government Procurement and intends to maintain the requirement that all government agencies to procure supplies and services from local sources.

[5] The 2004/2005 Economic Report published by the Ministry of Finance contains a description of this programme. p.36.

International tenders will only be invited if there are no locally produced supplies or services available. In circumstances where local contractors do not have the expertise and capability, agencies may call for a tender on a joint venture basis between local and foreign contractors to encourage the transfer of technology. In the case where projects are funded by foreign sources, tenders will be called and processed as stipulated by the respective sources.

69. Malaysia has always aimed to achieve a high standard of transparency in its procurement policies and practices; efforts to improve transparency and increase competition in government procurement have been a continuous exercise. Malaysia subscribes to the elements agreed upon in the Non-Binding Principles (NBPs) and to the APEC Transparency Standards with the objective of improving its procurement regime. All agencies are required to procure through open tenders for all supplies, services and works above RM200,000. The recent announcement by the Government to further improve the open tender system is to enhance transparency and achieve best value for money. Through the open tender system, the Government will benefit from wider participation of bidders. As government procurement is used as a tool to achieve socio-economic objectives, certain tenders will continue to be limited to specified groups based on certain threshold values.

70. The Government encourages GLCs to follow Government policies on procurement as far as possible. All GLCs (where the Government has majority control of ownership) have Government representatives on the Board of Directors and the Audit Committee to ensure adherence to best practices and the Code of Ethics for Directors.

71. In 2000, the Government introduced an electronic procurement (eP) system, an internet-based on-line system which is designed to encourage competition among contractors and to expedite the procurement processes. The development of the eP system also aims to reduce bidding costs and make the process more efficient and transparent. This system is in the second phase of implementation. In 2004, the Treasury launched its quotation and tendering modules in 14 selected ministries on a pilot basis.

Customs Issues

72. Malaysian law allows for the establishment of free trade zones and Licensed Manufacturing Warehouses (LMWs) on a non-discriminatory basis between domestic and foreign companies. The import of raw materials and components used in the manufacture of goods for export are not subjected to any customs duties unless introduced into Malaysian customs territory. These zones have benefited particularly multinational companies and investors in producing products for the global market.

73. Malaysia Customs deploys a variety of combat smuggling methods focusing upon high risk goods and high risk companies. Post Audit clearance, scanning devices, drug detection and investment in ICT tools are among the devices used. Malaysia has temporary importation facilities and has acceded to the Convention on Temporary

Admission of goods (ATA Convention). The Customs Act provides the right of, and procedures for, appeals. A web based data module/system, which provides search facilities based on description and tariff is available to all customs officers and clients via Customs website. Malaysian Customs have implemented the 'selectivity release system', auto release system, advance ruling and the use of high technology applications such as the use of X-Ray machines at entry points. Malaysian Customs have also developed an Integrity Action Plan including training and seminars for staff and clients.

Intellectual Property Rights

74. Malaysian legislation conforms to the WTO Agreement on Trade Related Intellectual Property (TRIPs). Enforcement flows from a robust series of measures. During the last 5 years, the Malaysian enforcement agencies organized under The Copyright Task Force conducted 116,195 raids resulting in 32,485 cases relating to copyright infringement and the seizure of goods worth RM 257.96 million. The formation of the Anti-Counterfeit Task Force has also helped to build a closer networking among trade mark owners, government agencies and the Ministry of Domestic Trade and Consumer Affairs. Between 2002 and October 2004 the Ministry succeeded in seizing counterfeit goods worth RM92.7 million in 10,213 cases.

75. Malaysia has initiated measures to accede to both WIPO Copyright and the Performance Phonograms treaties through drafting amendments to the 1987 Copyright Act. Civil and criminal measures are incorporated in this act. Control of optical media production is provided in the 2000 Optical Disc Act.

76. There is no direct relationship between the Biosafety bill and intellectual property. The purpose of the bill is to regulate the release, the importation and contained use of living modified organisms and the release of the products of such organisms in accordance with the precautionary principle and ethical, religious and cultural norms. They also include the objective of sustainable development and the protection of human, plant and animal health as well as biological diversity.

77. Malaysia protects information submitted in connection with approvals for the marketing of pharmaceutical or agricultural chemical products under the Official Secrets Act and is considering the possibility of adapting the data exclusivity system

78. Malaysia is planning to provide on-line filing and on-line search facilities to the public by early 2005, subject to passage of the Electronic Government Act by Parliament. The online filing and online search system for intellectual property will cover Trade Mark Filing and Patent Filing. These systems will be accessible through the internet and payment will be made using e-payment facilities such as paying through master card or visa online for both corporate and personal credit cards, or it can also be debited directly from the user's account from either personal or corporate accounts.

79. The Intellectual Property Corporation of Malaysia provides services similar to an IPR Service center and is considering participating in the APEC IPR Service Centre.

Competition Policy

80. Malaysia does not currently have a comprehensive competition law but recognizies that a competition policy is an essential component of modern policy infrastructure in the global economy. The Eighth Malaysia Development Plan states that, "...a fair trade policy and law will be formulated to prevent anti competitive behaviour such as collusion, cartel price fixing, market allocation and the abuse of market power…"[6] Among the provisions under study are controls on the abuse of dominant market position, cartels and restrictive business practices, the establishment of an Office of Fair Trade in the medium term to conduct further research and the Fair Trade Practices Commission in the long term to implement the Fair Trade Practices Act.

81. The work involves intensive research on the experience of other countries including Japan, Thailand and Indonesia and consultation with the UNCTAD. The work is to be completed by the end of 2005.. The Ministry of Domestic Trade and Consumer Affairs has embarked on a competition advocacy program since 2003 to consult government agencies and the private sector on the need for such a policy. The government recognizes that extensive discussions within the public sector and consultations with the private sector are necessary to create the basis for a comprehensive and well functioning competition policy.

82. A preliminary study conducted in 2003 on "Restrictive Business Practices and their Effects on Malaysia's Competitive Dynamics" suggested evidence of exclusive dealing, tied selling and other restrictive business practices in certain sectors. Further research is necessary to assess the extent of prevalence of these practices within the Malaysia economy.

83. Although there is no national competition policy, Malaysia does have important legislation to address competition issues in the communications and multimedia, and energy sectors. The Communications and Multimedia Act 1998, prohibits "any conduct which has the purpose of substantially lessening competition in a communications market." The Malaysian Communications and Multimedia Commission (MCMC) has issued several guidelines which clarify the meaning of "substantial lessening of competition." In addition, collusive agreements to fix rate, share market, boycott suppliers or competitors are specifically prohibited as well as per se product or service tie-in arrangements. The Commission is empowered to instruct the offender to cease conduct and implement remedial measures. The Commission may also seek to obtain an interim or interlocutory injunction against the offender and the permission of the Public Prosecutor to prosecute the offender in the Sessions Court.

[6] (Chapter 16 p. 32):

84. The Energy Commission Act 2001 provides for the Energy Commission to "promote and safeguard competition and fair and efficient market conduct or, 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."

85. The Consumer Protection Act 1999 contains useful elements of competition policy by prohibiting practices unfair to the consumers; unfair means for businesses to gain a competitive advantage over its rival; the making of false or misleading representation with respect to the sale of goods and services. It also contains provisions relating to safety standard of goods, implied guarantees with respect to goods and services and product liability; and established the Consumer Claims Tribunal in 1999 to hear and determine disputes relating to any violation of the consumer's right referred by the Act. Consumers are also protected through the Trade Description Act 1972 which prohibits misdescription of goods provided in the course of trade and false or misleading indications as to the price of goods.

Deregulation

86. Malaysia has complied with the WTO Trade-Related Investment Measures (TRIMs) agreement. Local content requirements are no longer imposed on applications for investment incentives. As noted in paragraph 30 the local content policy for the automotive industry was phased-out at the end of 2003.

Implementation of WTO obligations and Rules of Origin

87. Malaysia is in full compliance with its obligations under the WTO.

Dispute Mediation

88. Malaysia participated in the WTO dispute settlement on the United States measures on the import of shrimp and shrimp products. In addition to its WTO rights and obligations respecting dispute settlement, Malaysia is also a party to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (Washington Convention) in 1966. Malaysia also acceded to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) in 1985. The Regional Centre for Arbitration Kuala Lumpur (RCAKL) provides facilities for dispute settlement. In relation to anti-dumping and countervailing cases, the aggrieved party can refer the matter to High Court in Malaysia for judicial review. This is provided under Section 34A of the Countervailing and Anti-Dumping Duties Act 1993.

Mobility of Business People

89. Malaysia combines the policy objective of continuous skills development of its work force with a transparent and well structured approach to the employment of foreign

expatriate personnel intended to improvement the investment environment and the transfer of technology and skills. In 2003, Malaysia introduced significant liberalization of the rules governing the employment of such personnel. These rules which are summarized on the website of the Malaysian Industrial Development Authority (mida.gov.my) link the entry and status of expatriates to the size of foreign companies measured paid up capital.

90. The Immigration Department Employer Application System (IDEAS) enables employers to apply for foreign workers for the category of housemaids and labourers. Under this system, there is no necessity for members of the public to appear personally at the Immigration Department either for submission of a new application or for the renewal of visa or work passes for the following year. All applications can be submitted on line through imi.gov.my.

91. Malaysia exchanges information on the regulatory visa regime through diplomatic notes describing visa rules and regulations; dialogues on immigration issues (including immigration rules, regulations and policy) with private sector i.e. Taipei Investors Association in Malaysia (TIAM) and The Japanese Chamber of Trade and Industry (JACTIM). The Immigration Department's website noted above provides details on visa regulations and requirement for every country. Ministry of Home Affairs' portal to be launched in the near future will provide Question & Answer Column on immigration matters.

Conclusion

92. Malaysia's development policies address the socio-economic realities of the country emphasizing resilience and promoting equity to ensure unity and social stability. These policies are enabling Malaysia to meet the challenges of sustainable economic development in an environment of rapidly changing rules of global trade, resources flows and competition arising from globalization, liberalization and the convergence of ICT. The national priorities of developing human resources, fostering a knowledge-based economy, developing new sources of growth and improving the public sector delivery system are well attuned to these challenges. Placing political and social stability as the overriding national goal for managing diversity and ensuring balance and harmony, eschewing abrupt changes in policy direction, showing patience and resilience in difficult times will continue to serve Malaysia well.

93. Malaysia has an enviable flair for policy innovation, which should generate solutions to remnants of old models of development and enable the achievement of its full potential consistent with the broad goals and policy directions set out in the Bogor and Shanghai Declarations and the Shanghai Accord.

Annex 1

Malaysia's IAP Peer Review Team

Moderator:	Mr. Doug Chester Deputy Secretary Department of Foreign Affairs and Trade APEC Senior Official of Australia
Discussant:	Mr. Raymond Young Director-General of Trade and Industry APEC Senior Official of Hong Kong, China
Expert:	Mr. William A. Dymond Senior Executive Fellow Centre for Trade Policy and Law Carleton University, Ottawa Canada
APEC Secretariat:	Mr. Soonthorn Chaiyindeepum Director (Program) APEC Secretariat

Annex 2

Malaysia’s Responses to Written Questions and Comments by Member Economies and Expert

GENERAL QUESTIONS

1. ***Please describe briefly with relevant statistics the highlights of Malaysia's economic performance since 2000, anticipated developments in the medium to long term and policy initiatives related specifically to the promotion of trade and investment.***

The overall performance of the economy since 2000 period was commendable. The GDP expanded at an average rate of 4.2 per cent per annum during 2001-04. Growth was led by the services sector as well as the strong recovery in the industrial production and exports since 2002. Strong domestic demand has added to the growth momentum as private consumption rose briskly and the decline in private investment has been reversed. Monetary policy continued to remain accommodative and fiscal consolidation is proceeding. Indicators of financial and corporate sector soundness continued to improve, while further liberalisation of foreign exchange transactions and additional steps to improve the delivery of public services and governance have contributed to a more conducive environment for private investment.

CPI inflation and core CPI inflation have remained subdued, below 1.5 per cent in 2004. Unemployment remained low at 3.5 per cent in 2004. Per capita GNP grew at an average rate of 4.9 per cent from USD3,520 in 2000 to USD4,269 in 2004 while per capita GNP in purchasing power parity rose to USD10,731.

The external position remained favourable. The trade and current account surpluses continued to remain large. FDI inflows as well as portfolio inflows have risen steadily. International reserves have grown to reach USD60.9 billion at mid-November 2004, covering about 7.5 months of retained imports and 5.6 times short-term external debt. Market sentiment has been positive and sovereign bond spreads remain low.

Economic Outlook

The near term outlook remains generally favourable despite an expected moderate slowdown in growth in line with global trends. Real GDP growth is projected to remain robust at about 6.0 percent in 2005. Inflation is projected to rise but still remain low, because of continued excess capacity and limited pass-through from higher commodity and oil prices. Reflecting robust business and consumer confidence, private domestic demand is expected to remain strong, while export growth would moderate in line with softening global demand.

In the medium-term, Malaysia will continue with the following policy initiatives:

i. Pursuing sound economic management with fiscal prudence;
ii. Increasing competitiveness through productivity enhancement, raising the quality of workforce and greater application of knowledge;
iii. Strengthening resilience through sound economic fundamentals and strong financial and corporate sectors;
iv. Stimulating private domestic investment as well as attracting quality FDI to boost growth and raise the productive capacity of the economy;
v. Implementing measures to further stimulate the selected services industries including education, tourism, Islamic finance, health, transport, and ICT-related and manufacturing-related services;
vi. Developing new sources of growth in selected manufacturing activities in marine, defense, aerospace and biotechnology industries as well as the higher value-added electrical and electronics industries;
vii. Generating new investment and commercial opportunities in agriculture, particularly in food and biotechnology-related activities to expand the product base and export capacity of the sector;
viii. Developing the capability of local enterprises to market their products internationally and participate in the global supply chain;
ix. Enhancing industrial skills training to meet market demand as well as improve education programmes to increase employability of human resource;
x. Implement a more effective innovation system; and
xi. Improving the delivery system of the Government to create a pro-business environment.

2. ***Which sectors of the Malaysian economy are the most integrated into the APEC economies and global economy? Which sectors are least integrated? What policy initiatives has the Malaysian government adopted to foster or hinder integration?***

In terms of sectors the manufacturing sector, which accounts for 30 per cent of GDP in 2003, is the most integrated with the global economy. Manufacturing exports account for 80 per cent of exports in 2003, with the electrical and electronics sector accounting for 53 per cent. As a result of the government’s effort to promote industrial development since the early 1960’s a large number of MNCs have established their operations in Malaysia. The MNCs which are mainly foreign-owned have wide industrial network and linkages, including sources of supply and markets.

The agriculture sector, which accounts for 9 per cent of GDP in 2003, is the least integrated. To promote the development of this sector emphasis is focused on generating new investment in agriculture, particularly in food and biotechnology-related activities to expand the product base and export capacity of the sector.

As for the services sectors, which accounts for 57 per cent of GDP(2003), efforts to further stimulate growth in the services sector will focus on selected services industries such as education, tourism, Islamic finance, health, transport, and ICT-related and manufacturing-related services. In addition, measures to further liberalise the services sector will be undertaken as part of the commitments under ASEAN Framework Agreement on Services (AFAS) and GATS.

Policy initiatives undertaken to foster integration include:

i. Enhancing the development of domestic capability, through technology development and upgrading;
ii. promoting overseas investments, including outsourcing of selected activities abroad and procurement of parts and components from abroad through linkages and complementation;
iii. enhancing economic integration on a bilateral and regional basis, for example through the free trade arrangements within ASEAN and trading partners such as China and Japan;
iv. participation in initiatives undertaken within ASEAN for trade in goods, investment and services, under the framework of ASEAN Free Trade Area (AFTA), ASEAN Investment Area (AIA) and AFAS; and
v. acceleration of economic integration in ASEAN with emphasis on the integration of 11 Priority Sectors, that is, wood-based products, automotives, rubber-based products, fisheries, textiles and apparels, electronics, agro-based products, e-ASEAN, health care, air travel and tourism. Measures for integration include:
   - elimination of tariffs on 85 per cent of the products in the priority sectors by 2007, with some flexibilities,
   - liberalisation of the services sectors (e-ASEAN, health care, air travel and tourism) by 2010, and
   - strengthening cooperation to facilitate trade and investment flows by adopting clear time lines in areas relating to removal of non-tariff barriers, harmonisation of standards and customs cooperation.

3. Please discuss the impact upon Malaysian trade and investment patterns of a) its regional trade agreements and b) the impact of regional trade agreements entered into by Malaysian partners to which Malaysia is not a party. Which new regional trade agreements does Malaysia anticipate concluding and implementing over the next five years?

Malaysia views the regional trade agreements as complementing its initiatives in promoting investment and trade. Currently, Malaysia’s key regional trade agreements comprise the ASEAN Free Trade Area and the ASEAN Investment Area Agreement. Malaysia has also signed the ASEAN-China Agreement on Trade in Goods, whereby the first tranche of tariff reduction/elimination will start on 1 July 2005.

The structure of Malaysian trade has remained relatively unchanged over the last few years. Trade with the key regional groupings in 2003 is APEC (79.7%), ASEAN (24.5%), NAFTA (18.6%) and EU (12.3%).

Trade with key Malaysian partners in ASEAN has remained relatively unchanged as illustrated:

	Share of total trade (%)	
	2003	2002
ASEAN	24.5	24.6
Singapore	14	14.7
Thailand	4.5	4.1

The ASEAN Investment Area Agreement aims to increase intra-ASEAN investment and FDI into ASEAN through joint promotion and awareness, investment facilitation, and liberalisation programmes. The objective is to promote economic integration of ASEAN and to jointly promote ASEAN as an attractive region for FDI in the light of competition from other regions and countries.

Hence, despite decline in global FDI flows in 2003 and competition from China in attracting FDI, ASEAN recorded an increase in FDI by 46 per cent from US$13.7 billion in 2002 to US$20.3 billion in 2003. Intra-ASEAN investments constituted 16% of FDI inflows into the region for the period 2001-2003. Malaysian companies are among the most active investors in the region.

New regional trade agreements which Malaysia anticipate concluding and implementing within the next five years include agreements with China, Japan, India, Korea, US, Australia and New Zealand.

4. What progress has Malaysia made towards the application of the APEC trade facilitation Principles and Menu of Actions and Measures specifying their benefits and beneficiaries?

The APEC Trade Facilitation Principles are incorporated into the work processes of departments and agencies involved in business and trade facilitation. Implementation of these principles is reflected in various APEC documents including the related IAP chapters and the Trade Facilitation Menu of Actions and Measures.

The Annual MITI Dialogue which is chaired by the Minister of International Trade and Industry provides the opportunity for corporate leaders and industry association to highlight issues and suggestions for improving trade facilitation in the country. Over the years the issues highlighted by the private sector have declined. In addition, the Cabinet Committee on National Competitiveness chaired by the Honorable Prime Minister ensures that problems related to trade and investment are addressed effectively. Key ministries have also undertaken industry consultations to further enhance the business environment in order to promote trade and investment facilitation.

5. ***Please identify the measures taken and planned with respect to the transparency provisions adopted by APEC.***

Customs

The Malaysian Customs have published several guidebooks on Customs Procedures to be distributed to the public especially to Custom's clients. Malaysian Customs also has its own website at www.customs.gov.my which contains information on the Customs organisational structure, procedures and guidelines.

These guidebooks and website are being updated regularly to provide the latest information on the procedures involved. A toll-free number is also provided: 1-800-88-8855. At the same time, greater media publicity on Customs activities is provided through the main national newspapers.

Malaysian Customs has also established the Customs-Private Sector Consultative Panel (CCP) which meets twice a year at the Headquarters level. Consultative panels are also being established at state levels which would hold meetings on a regular basis; apart from having the 'Meet the Client's Day' for two days in a month.

At the national level, annual consultation between private sectors and relevant government agencies including the Customs Department are also held to discuss trade-related issues.

Immigration

The Immigration Department is in its final phase of publishing the Immigration Act 1959/63, Regulations and Orders in its website to enable relevant parties to access the information pertaining to immigration regulations.

Investment

To enhance transparency, information on Malaysia's policies, procedures, incentives and facilities for investments in the manufacturing and related services sector are publicised through brochures and the websites of the Ministry of International Trade & Industry (MITI) (www.miti.gov.my) and the Malaysian Industrial Development Authority (MIDA) (www.mida.gov.my) - the government agency responsible for promoting investments in Malaysia.

To facilitate investment, MIDA's website is also linked to other websites - relevant Ministries/Agencies, foreign Chambers of Commerce/Industry Associations in Malaysia, regional and international organisations such as ASEAN, APEC, ASEM and WAIPA.

The published information and websites are regularly updated to provide investors with timely and accurate information on investment in Malaysia.

In addition, investment seminars, public-private sector policy dialogues, and meetings with investors and industry associations are held regularly to provide information and updates on Malaysia's investment regime and to clarify investment issues. These consultations also provide feedback on policy issues, which are used in the formulation of investment policies by the government.

Standards

The Malaysian standards and conformity system are in line and consistent with the transparency provisions adopted by APEC. Measures which have been taken and planned include:

i. Websites on standards and accreditation:
   - Information on standards and conformance and the relevant linkages, available on http://www.dsm.gov.my and http://www.sirim.my;
   - The list of regulatory contact points, available on http://www.dsm.gov.my;
   - Information on standards & conformance, including a listing of Malaysian Standards, available on http://www.dsm.gov.my and http://www.sirim.my; and
   - The list of accredited certification bodies and laboratories, available on http://www.dsm.gov. my;

ii. Website on standards and accreditation has been improved to be more user friendly; and

iii. Plans to make Malaysian Standards available electronically are in progress.

Intellectual Property Rights

Laws, regulations and rulings related to intellectual property rights are stated in specific Acts. The information is also available at the Intellectual Property Corporation of Malaysia (IPCM) website: www.mipc.gov.my and are updated regularly.

IPCM has set up a centralised mechanism for enquiries/complaints through its website: www.mipc.gov.my and at the IPCM service counter

Measures proposed for adoption are published after approval from the Cabinet and Parliament.

IPCM is currently providing services similar to an IPR Service Center.

Any interested person can make a search on registered trademark and patent at the IPCM's Public Search Room subject to prescribed fee and time.

Registration process and application forms on Trademark, Industrial Design, Patent and Geographical Indication can be obtained from IPCM's website or at the service counter at any IPCM office.

Examiner's Manual Guidelines on Trademark, Industrial Design and Patent can be purchased from IPCM office.

TARIFFS

6. Malaysia appears to operate two separate tariff classification systems, one for WTO members and one for intra-Asean trade. What are the costs and benefits of operating two systems and the impact on Malaysian trade and investment patterns with Asean countries, APEC economies and WTO members?

Malaysia will eventually operate one tariff classification system, that is, at the 8 digits level (ASEAN Harmonised Tariff Nomenclature) for both intra and extra ASEAN trade.

7. The Malaysian harmonised system has 10,589 tariff lines at the 9 digit level approximating the number of tariff lines maintained by the United States whose imports are more than 10 times greater. Has Malaysia given consideration to simplifying its tariff and substantially reducing the number of lines?

Malaysia is in the process of simplifying and reducing its tariff line through industry consultation, the AHTN Review Committee and the AHTN Technical Committee.

However, in certain sectors the large numbers of tariff lines are unavoidable due to the complexity of the industries.

8. What mechanism exists to support regular review of the tariff structure and tariff rates? Are there procedures by which the private sector may request a review?

The mechanisms in place to undertake regular review of the tariff structure and tariff rates are:

i) Dialogues:
- annual and ad-hoc dialogues with major industry players and the business community.

ii) Special Advisory Committee on Tariffs (SACT)
- application or requests on tariff review from the private sector and business community are channeled through the Special Advisory Committee on Tariffs.

iii) Annual National Budget
- tariff rates are reviewed and announced in the annual budget.

9. ***What is the purpose of Malaysia's export duties? Please describe the product sectors to which such duties apply and the range of rates. Does Malaysia have plans to eliminate these duties, and if so over what time frame?***

The purpose of Malaysia's export duties is to discourage the export of raw materials and to encourage downstream activities in the country.

Such duties apply to the fishery and livestock sectors. The export of cockles (mollusks) is subject to 5% export duties. For livestock industry, a 5% export duty is levied on:

i. Live cattles
ii. Buffaloes
iii. Goats
iv. Wildlife animals and birds

Export duties are levied due to the fact that Malaysia's level of self-sufficiency is still very low and production is meant for domestic consumption. The export of wildlife animals is discouraged for conservation purposes.

Export duties are also imposed to fund Research & Development, and promotion activities for commodities in downstream and upstream industries and preservation of the environment. Currently export duties on logs are 15 per cent and for crude palm oil ranges from 10% to 30% based on tonnage.

9.a. ABAC recommends that Malaysia make a greater effort to continue unilateral reductions in tariffs on steel products, automobiles, and auto parts, in accordance with the other ASEAN member countries. (ABAC)

Malaysia has liberalised its tariff structure on steel products under the commitment of AFTA. However, as for imports from non-ASEAN countries, Malaysia continues to undertake consultation with domestic iron and steel industry in an effort to review the current policy on steel products. The policy review includes proposals on the reductions in tariff structure, import duty exemption on selected sectors and requirement of import permits.

Malaysian automotive industry has been undergoing progressive liberalisation, in line with regional and international commitments:

- Abolishment of local content requirement since 1 January 2004.
- Allowing multi-sourcing of CKD parts and component since 1988.
- Abolishment of price control mechanism since 1.1.2003.
- Issuance of new manufacturing license since 16 December 2002 .

In addition, the following measures were undertaken under AFTA:

- Pre-emptive measures to reduce CKD import duties beginning 1.1.2004;
- Import duty of components and parts has been liberalised since 1.1.2004 with lowering of import duty to 0% - 5%;

- Import duty on CKD and CBU will be reduced to 20% beginning 1.1.2005;
- commitment for further reduction in import duty of automotive vehicles to 0%-5% by 1.1.2008;
- total elimination of import duties by 1.1.2010;
- committed to the integration of ASEAN automotive industry under the 11 priority sector initiative; and
- granting of 0% import duty for approved AICO projects since September 2004.

Malaysia also grants preferential treatment to FTA partners.

9.b We commend Malaysia for maintaining fairly low bound and applied tariffs (simple average of 14.50% and 8.56% respectively) among developing economies. We also appreciate Malaysia's active participation in the Doha Round negotiations and encourage Malaysia to take the opportunity to further reduce its tariffs, particularly in respect of products like transport equipment and textiles and clothing. (Hong Kong, China)

Review of tariffs is an on-going process taking into account developments in the various sectors.

9.c We notice that Malaysia adjusts its applied tariffs on a yearly basis, and as a result Malaysia's simple average applied tariffs range from 7.8% (1997) to 9.45% (1999) during 1996 to 2004, and the figure for 2004 is 8.56%. In this regard, we encourage Malaysia to try to keep the applied tariffs at the lowest possible level to facilitate trade. (Hong Kong, China)

Applied tariffs are adjusted annually during the Budget review process based on the overall policy framework with regard to tariffs.

9.d For transparency sake, we suggest Malaysia to consider compiling and providing breakdown figures regarding bound tariff and preferential tariff in the Tariff Summary Table of next year's IAP. (Hong Kong, China)

Malaysia takes note of the suggestion.

NON-TARIFF MEASURES

10. To what extent has Malaysia reduced its NTMs since 1996? Please identify and describe any new NTMs? How significant are the changes taken by Malaysia with respect to NTMs in the context of achieving the Bogor Goals?

Malaysia has abolished all NTMs that are not consistent with the WTO. Only WTO-consistent NTMs are maintained, e.g. those for statistical and monitoring purposes.

11. ***Does Malaysia have any plans to reduce discretionary import licensing imposed to develop certain important infant and strategic industries?***

    Malaysia does not have any discretionary import licensing. Import permit/licence is in place for monitoring purpose and statistical purposes. The import permit/licence requirement would be reviewed from time to time if there is a need.

12. ***In the auto sector, Malaysia imposes both discretionary licensing and relatively high tariffs on imports. Could Malaysia please provide a progress report on the enhancement of the regional competitiveness of its auto sector attributed to such measures and the development of forward and backward linkages? Has Malaysia attracted signficiant foreign investment into the sector?***

1. Import licensing:
- Import license is not issued on discretionary basis:
  - For completely built-up (CBU) vehicles import licenses are issued to franchise holders only.
  - For manufacturers and assemblers, the licenses are issued freely without any quantity restriction on imported completely knocked down (CKD) vehicles.

2. Other Measures:
- Liberalisation measures include:
  - Abolishment of local content requirement since 1 January 2004.
  - Allowing multi-sourcing of CKD parts and component since 1988.
  - Abolishment of price control mechanism since 1.1.2003.
  - Issuance of new manufacturing licence since 16 December 2002 .
- Further liberalisation under AFTA:
  - Voluntarily Pre-emptive measures to reduce CKD import duties beginning 1.1.2004;
  - Import duty of components and parts has been liberalised since 1.1.2004 with lowering of import duty to 0% - 5%.
  - reduction of import duty of CKD and CBU to 20% beginning 1.1.2005;
  - commitment for further reduction in import duty of automotive vehicles to 0%-5% by 1.1.2008;
  - total elimination of import duties by 1.1.2010;
  - committed to the integration of ASEAN automotive industry under the 11 priority sector initiative; and
  - granting of 0% import duty for approved AICO projects since September 2004.
- Granting of preferential treatment to FTA partners.

3. Development of forward and backward linkages:

- Prior to the 1960's automobiles were imported into Malaysia as Completely Built-Up (CBU) Units. There were no assembly plants, and the component and parts industry was developed to cater for requirements in the replacement market.
- In the 1960s, the Malaysian government targeted the automotive industry as a key sector for industrial development, mainly to create employment opportunities and attract foreign investments. This resulted in the establishment of a local completely knocked-down (CKD) assembly industry. Most of the parts, components and accessories for the automotive assembly industry were imported.
- From assembly operations in the 1960's and 70's, the industry shifted into the manufacture of motor vehicles and component parts in the mid-1980's, concomitant with the development of the heavy and engineering-related industries in Malaysia.
- The setting up of the National Car Project, Proton in 1983 signalled Malaysia's transition from a motor vehicle assembler into an integrated car manufacturer and boosted the development of the auxiliary and supporting industries by creating opportunities for growth in the manufacturing of component parts and accessories. Subsequently the establishment of Perodua (second national car project), MODENAS (national motorcycle project) and Malaysia Truck and Bus Sdn. Bhd, (commercial vehicle project) saw an increase in the development of the auxiliary and supporting industries.
- The establishment of these national automotive projects not only enhanced utilisation of local components but also contributed to skill development and the upgrading of technological and engineering capability in the industry. This in turn attracted new car manufacturers to set up their manufacturing bases in Malaysia to penetrate the ASEAN markets paving the way for the development of engineering and supporting services required to support the nation's industrialisation programme.
- Proton has undergone a number of technological phases; from assembling to stamping/dies maintenance, engine assembly, jigs and dies manufacturing, engine component casting and machining, and currently it is fully involved in R&D, product design and engineering. Today, Proton has transformed itself from a CKD assembler to an integrated car manufacturer. The acquisition of Lotus Technology UK was undertaken to strengthen its R&D capabilities while the launch of Proton Waja with locally designed platform in 2000 was a technological breakthrough and the development of its own CamPro engine (together with Lotus Technology) marks a milestone in the development of the automotive industry in Malaysia. Today Proton has its own R&D center with more than 300 engineers.
- Prior to the establishment of assembly activities, automotive parts and accessories were produced as replacement items for imported vehicles. To accelerate the development of local automotive components and parts manufacturing, the government introduced various programmes and policies, such as Mandatory Deleted Items (MDI) Programme in 1980, Local Material Contact Programme (LMCP) in 1992, Net Selling Price (NSP) Approval and the Vendor Development Programme.
- Today there are more than 350 manufacturers of automotive component parts producing more than 4,000 component parts. About 70% of these manufacturers

supply to the original equipment market. Local content levels achieved so far ranges from 30% to 60% for non-national vehicles and about 85% for national vehicles. More than 70% of these component manufacturers are Malaysian-owned with foreign technical collaborations.

- The growth of the local automotive industry also generated greater demand for precision parts and components and led to the establishment of the die-cast components companies, electrical & electronics companies, machining companies providing specialised services such as milling, turning or EDM operations, plating/surface treatment and heat treatment companies to service the automotive and automotive component industry.
- As the automotive industry developed, the Government introduced various measures to increase the competitiveness of the local industry and make Malaysia a regional hub for production and distribution of motor vehicles. In 2002, the LMCP was phased out while with effect from 1 January 2004, the MDI and NSP mechanisms were discontinued. At the same time, approval for new projects for all categories of vehicles were allowed in order to attract inflows of investments into the automotive industry and import duties on CKD and CBU vehicles were reduced.
- These measures saw the entry of new players into the automotive industry. In addition, international automotive manufacturers established/expanded their production bases and/or marketing and distribution centres in Malaysia. In 2002 DaimlerChrysler and BMW AG made Malaysia their marketing and distribution centres for the Asia Pacific region. In 2003, Audi, which had left the marketing and distribution of its products to local agents, established similar operations in Malaysia. There was also an emergence of new makes and models in Malaysia with international automotive manufacturers, such as General Motors, returning to achieve a significant presence.
- The Malaysian automotive industry today is an important driver of industrial development, provider of technological capability and generator of inter-industry linkages as it brings together various components and parts, many of which are produced by suppliers in other industries such as plastic, electronic, steel, rubber, textile, etc. The industry has been a catalyst in the rapid growth of the manufacturing sector and has developed significantly over a span of about two decades and is now moving into the realm of R&D.

APPROVED INVESTMENTS IN THE AUTOMOTIVE SECTOR,
1995 TO OCTOBER 2004

Year	No. of Projects	Domestic Investment (RM million)	Foreign Investment (RM million)	Total Investment (RM million)
1995	59	953.4	461.3	1,414.7
1996	46	850.5	332.8	1,183.3

1997	48	745.3	281.4	1,026.7
1998	57	1,170.7	503.1	1,673.8
1999	39	381.5	230.7	612.2
2000	46	399.8	273.1	627.9
2001	48	628.2	498.9	1,127.1
2002	42	461.1	133.1	594.2
2003	75	2,932.4	219.9	3,152.3
2004 (Jan – Oct.)	76	736.8	167.0	903.8

13. ***Malaysia has 73 tariff lines with tariff rate quotas (trqs). Could Malaysia please indicate the specific products and the in-quota rate for each product over the last three years? Please indicate any plans to expand the quotas.***

    Malaysia has temporarily suspended the application of TRQs for all the 73 products.

14. ***With respect to Malaysia's anti-dumping and contervailing duty regime, where can exporters and importers locate details of the pertinent legislation and regulation. Is there computer access to such information as well as to the decisions of the Malaysian authorities on anti-dumping and contervailing duty cases and the corresponding statements of reasons for such decisions?***

    Any interested party can purchase Malaysia's legislations from the national printer, that is, Percetakan Nasional Malaysia Bhd. Decisions of the Investigating Authority will be published in national gazette. Members can access the legislations and gazettes through the national printer's website (www.lawnet.com.my). The Investigating Authority will also publish the decisions in MITI's website. The non-confidential report will be placed in the public file in the Trade Practices Division, MITI and MITI's library. Confidential matters and decisions are filed in a separate report which is sent only to the parties involved. Legislation on anti-dumping and countervailing duty are:

    - COUNTERVAILING AND ANTI-DUMPING DUTIES ACT 1993 (ACT 504)
      Amendments made in 1998 – [P.U.(A) 1046/1998]
    - COUNTERVAILING AND ANTI-DUMPING DUTIES REGULATIONS 1994 [P.U. (A) 233/94]
      Amendments made in 1999 – [P.U. (A) 488/1999]

15. ***By contrast what has been the recent exposure of Malaysian exports to anti-dumping and contervailing duty cases brought by APEC members and the WTO members generally?***

    Malaysian exports imposed with anti-dumping duties in 2004 were:

    - USA (1 product: Polyethylene Retail Carrier Bags)
    - People's Republic of China (1 product: Ethanolamine)

- Republic of Indonesia (2 products: Calcium Carbide & Uncoated Woodfree Printing and Writing Paper)
- Turkey (1 product: Vulcanised Rubber Thread and Cord)
- New Zealand (1 product: Galvanised Steel Wire)

15.a ABAC requests that Malaysia abolish the requirement of the "non-objection letter," which local steel producers issue for foreign-owned enterprises on the occasion of acquiring import permits for steel products. (ABAC)

Malaysia has abolished the requirement of the "non-objection letter" on imports for steel products. Local steel producers are required to furnish information regarding the grade and specification of steel products which are available in their production schedule.

15.b In case of bids with TELECOM MALAYSIA, PETRONAS and TENAGA NASIONAL, recognition as a Bumiputra company is necessary to participate in bidding, Malaysia is urged to repel such restrictions against foreign or non-Bumiputra companies for the sake of promoting fair trade. (ABAC)

Malaysia will continue to implement policies which are necessary to achieve the socio-economic objectives as underlined in the overall development policies.

15.c ABAC strongly encourages Malaysia to ensure transparency and predictability of quantitative restrictions on imports by clearly and specifically stipulating the quota system. (ABAC)

Procedures for imports are transparent and are continuously updated and reviewed.

15.d We note that Malaysia maintains several non-tariff barriers, including import licensing requirements for motor vehicles, local content requirements for locally manufactured vehicles and prohibitive distribution arrangements. These, combined with tariffs on imported motor vehicles of between 70 and 200 per cent make the Malaysian automotive industry on of the most protected in the region. We note that Malaysia has measures in place to modify and amend legislation and policies to bring them into conformity with the improved trading rules under the Uruguay Round agreement, including phasing out of local content measures tied to incentives over 5 years. (Australia)

In line with regional and international commitments, the opening of the automotive sector will be done through progressive liberalisation. This is to ensure the orderly development of the industry. To enhance the competitiveness of Malaysian automotive industry the following measures were undertaken:

1. Import licensing

Import license for CBU vehicles is issued to franchise holders only.

For manufacturers and assemblers, the import licence is issued freely without any quantity restriction on imported CKD. This is to encourage domestic production which brings benefits to the country as compared to CBU imports.

2. Other Measures

- Liberalisation measures include:
  - Abolishment of local content requirement since 1 January 2004.
  - Allowing multi-sourcing of CKD parts and component since 1988.
  - Abolishment of price control mechanism since 1.1.2003.
  - Issuance of new manufacturing license since 16 December 2003 announcement.
- Further liberalisation under AFTA includes:

  - Voluntarily Pre-emptive measures to reduce CKD import duties beginning 1.1.2004;
  - reduction of import duties on CKD and CBU to 20% beginning 1.1.2005;
  - commitment to further reduce import duty of automotive vehicles to 0%-5% by 1.1.2008;
  - total elimination of import duties by 1.1.2010;
  - committed to the integration of ASEAN automotive industry under the 11 priority sector initiative;
  - granting of 0% import duty for approved AICO projects since September 2004.
- Granting of preferential treatment to FTA partners.

3. Distribution Arrangement

- In distribution, 70% local and 30% foreign equity requirement is to meet the socio-economic objective of the country.

15.e We encourage Malaysia to try to set out "Further Improvements Planned" for its NTMs, especially in respect of discretionary import licensing. Provision of further information on Malaysia's position in 1996 and cumulative improvements is also encouraged. (Hong Kong, China)

Malaysia takes note of the suggestion.

15.f The IAP states "non-tariff measures are applied for sanitary and phytosanitary reasons." Please describe how these SPS rules are harmonised with CODEX. If they are not harmonised with CODEX, please describe Malaysia's plans for such harmonisation. (USA)

Sanitary and phytosanitary measures include requirements relating to "disease free", compliance of food safety and for some countries the halal aspects as well. The food standards agreed upon by Codex Alimentarius Commission are embedded in Malaysia's food safety requirements when exporting or importing products.

15.g The IAP states that the "Animal Ordinance of 1953 is "consistent with universally accepted standards." Is it consistent with CODEX guidelines that were developed in the 1990's? (USA)

The Animals Ordinance 1953 primarily regulates activities with regard to control and eradication of disease, animal conservation, animal welfare, export/import control and enforcement. It contains provisions for the formulation of regulations and rules which can directly or indirectly regulate the certification of livestock farms based on compliance to good animal husbandry practices (GAHP), biosecurity and disease control measures. It also allows for the certification of meat processing plants based on compliance to good manufacturing practices (GMP), quality assurance program (QAP) and HACCP. Livestock-based products are subject to Codex guidelines to ensure food safety.

SERVICES

16. What processes does Malaysia have to improve their services statistical export/import data? What plans does Malaysia have to liberalise foreign investment regulations relating to services? What plans are in place to liberalise specific service sectors such as legal services, engineering – where professional associations might be reluctant to admit foreign members?

Services Statistical Export/Import Data
The annual survey questionnaire, which gathers data on the selected services sector, does incorporate questions on the export of services performed by the establishment. The questionnaire, which conducts the quarterly survey on foreign transactions, also collects data on import and export of services. Since, the response to the questions is fairly weak, the Department of Statistics (DOS) uses the data on the import and export of services compiled by the Central Bank, which is gathered through the cash system for the compilation of the balance of payments data.

Liberalisation Foreign Investment Regulations Relating to Services
Malaysia will progressively liberalise the service sectors taking into account the readiness of the sector and in line with the socio-economic objectives of the overall national policy. In addition to what is committed under GATS, various services sectors have also been autonomously liberalised.

Equity requirements were liberalised whereby only a minimum of 30% Bumiputera equity is imposed, unless exemption is granted. The remaining equity shareholding can be held either by local interests, foreign interests or by both subject to the respective ministries guidelines. Previously, foreign ownership was restricted to a maximum of 30 percent equity participation.

However, for strategic sectors with national interests such as water and energy supply, broadcasting, defense and security, the participation of foreign interests is limited to 30%.

Legal Services
In relation to the liberalisation of the sectors under legal services, due consideration will be given in line with the current commitment under GATS.

Accountancy, Auditing and Bookkeeping Services
Under GATS, Malaysia's current commitments for the Accountancy, Auditing and Bookkeeping Services sector under Mode 3 is for foreign services providers to have a partnership/joint venture with Malaysian partners with no more than thirty percent (30%) foreign equity ownership.

Presently, the existence of foreign firms is by virtue of the arrangement between firms and their respective international affiliations. Malaysian Institute of Accountants (MIA) currently has thirty (30) foreign members who possess the qualifications recognised under the Accountants Act 1967 in its enrolment. In respect of export, some MIA member firms have been known to have successfully exported their accountancy-related services.

MIA had, in March 2004, launched a strategy booklet in response to challenges and opportunities in the sector. This includes recommendations in the areas of education, training and R&D, capability and capacity building, global recognition, promotion of export and safeguard measures.

The strategy booklet also outlined a timeframe for progressive liberalisation of accountancy services, with the aim of achieving full liberalisation by 2020.

Architectural Services
In respect of architectural services, Malaysia is actively participating in the APEC Architect project which has the objective of facilitating mobility of architects through mutual recognition of skills and qualifications among participating APEC economies.

17. ***Which sectors has Malaysia liberalised since 1996 for foreign service providers. How does this liberalisation compare with the Bogor goals of free and open trade and investment? Please provide statistics to indicate how liberalisation has affected foreign traded services.***

Malaysia will progressively liberalise the service sectors taking into account the readiness of the sector and in line with the socio-economic objectives of the overall national policy. In addition to what is committed under GATS, various services sectors have also been autonomously liberalised.

Legal Services

With regard to legal services, Malaysia has taken initial steps to liberalise this sector by making its Specific Commitments under the General Agreement on Trade and Services (GATS). Under this specific commitment, foreign lawyers could practice as consultants in Labuan Island, offering services covering advisory and consultancy services relating only to home country laws, international law and offshore corporation laws of Malaysia for offshore clients.

Manufacturing Related Sectors
The Foreign Investment Committee (FIC) has liberalised its rules on foreign equity ownership on companies that have manufacturing companies license issued by MITI, those with MSC status as well as the one that have been granted the status of International Procurement Centre, Operational Headquarters, Representative Office, Regional Office and Labuan offshore company.

Accountancy Services Sector
Prior to 1996, the accountancy services sector had already recognised a few foreign qualifications by virtue of Section 14(1)(b) and Part II of the First Schedule of the Accountants Act 1967.

Under the Accountants Act 1967[7], Malaysia had unilaterally recognised several foreign professional qualifications for the purposes of qualifying as a member of MIA.

Moving forward, the governing Council of MIA had decided that any future recognition of foreign qualifications shall be based on the principle of mutual recognition.

Construction Sector
Under ASEAN Framework Agreement on Services (AFAS), ASEAN services providers are allowed to undertake construction work in Malaysia through the incorporation of company with Malaysian individuals or corporations where ASEAN equity shall not exceed 49%.

Under the Uruguay Round of WTO, foreign services providers are allowed to take up equity to the maximum of 30%. While under the Doha Development Agenda of WTO, Malaysia will submit a tentative offer allowing foreign contractors to participate in foreign funded projects.

17.a We note that Malaysia has not yet filed returns of IAPs on a number of services sectors, including those significant ones such as communication services, transport services, etc. We would like to urge Malaysia to file the outstanding returns as soon as possible. (Hong Kong, China)

Malaysia takes note of the suggestion.

INDUSTRIAL WASTE SERVICES

[7] Section 14(1)(b) and First Schedule, Part II

18. ***The provision and maintenance of industrial waste facilities is inadequate according to business groups. Issues have been identified in connection. Could Malaysia please provide information on its policies in this area specifically with regard to with long term waste handling and high costs?***

There are adequate provisions and policies to address the issue of hazardous waste management. The Environmental Quality Act 1974 and specific regulations made under this Act provide the legal framework for the handling of toxic waste and based on the principle of 'cradle-to-grave' management. An off-site integrated hazardous waste treatment facility, undertaken by Kualiti Alam Sdn.Bhd., sited at Bukit Nanas, treats all industrial wastes. It is a private enterprise set up with a high cost of investment and is a modern facility. It provides services such as transport, solidification, incineration, physical-chemical treatment and landfill, the costs of which are determined by the facility itself. The price range for such services is comparable to those in other countries such as Denmark, Indonesia, Thailand and Hong Kong.

PAPERLESS TRADING

19. ***Malaysia reported that it had established the National Information and Communications Technology Security and Emergency Response Centre to address ICT security issues. Could Malaysia please describe the progress made in the adoption of the ICT as well as any infrastructure improvement(s) that have been made to date?***

SECURITY INITIATIVES
The National ICT Security and Emergency Response Centre (NISER) was established to address ICT security issues. Measures undertaken include:

- Incident Response Handling
  NISER through MyCERT (Malaysia Computer Emergency Response Team) has been providing support in responding to Malaysian internet users on computer security incidents.
- Computer Forensic
  Through its Computer Forensics Lab, NISER provides evidence analysis on digital information, primarily those involving Internet related crimes, information extraction, recovery and analysis to various agencies and organisations. Its forensics team also provides data recovery services for ICT systems.
- Technology Assessment
  NISER provides services on product security evaluation and also consultancy in evaluation criteria to selected government agencies and industries. NISER is currently setting up the Information Assurance Lab for this purpose.
- Security Management
  NISER is actively involved in:
  1) promoting the usage of information security standards developed by various standard bodies such as ISO/IEC and IETF;

2) implementing Information Security Management System with Standards and Industrial Research Institute of Malaysia (SIRIM Berhad) (ISO 17799 and BS7799-2);
3) developing ICT Security standards which is developed by ISO/IEC JTC1 SC27 (Information Security); and
4) developing Business Continuity Standard in Malaysia.

- Acculturation and Training
  NISER has been actively promoting ICT awareness programmes together with relevant parties by:
  1) conducting information security training, survey and seminars;
  2) assisting universities in setting up information security graduate programmes;
  3) collaborating with world class certification programmes such as SANS Institute, USA and ISC2; and
  4) participating as speakers for local and international conferences.

At international level, NISER has been involved in the following:

- Asia Pacific Computer Emergency Response Team (APCERT)
  Malaysia through NISER is one of the co-founders of APCERT which was established in the year 2002. The objective of the establishment is to enhance Asia-Pacific regional and international cooperation on information security. This collaboration also allows members to jointly develop measures in dealing with large-scale or regional network security incidents.

- Forum of Incident Response and Security teams (FIRST)
  NISER has been accepted as a member of FIRST, based in the USA. FIRST consists of teams from a wide variety of organisations including educational, commercial, vendor, government and military. FIRST is cooperatively handling computer security incidents and promoting incident prevention programs.

- Head of Malaysian Delegation on the development of Information Security Standard
  NISER has been selected as the head of Malaysian delegation in ISO/IEC JTC1 SC27 (Information Security) working group meeting.

In the adoption of ICT for the country, NISER has made strategic initiatives that are currently in progress with the main objective of securing Malaysia's critical national infostructure:

- National Infostructure Protection Agenda (NIPA) Proposal
  NISER has established Panel of Experts that consists of members who have the expertise in the area of information security in which the panel later developed the NIPA Proposal. The objectives of NIPA Proposal are to provide an analysis on the current and emerging threats to Malaysia's Critical National Infostructure (CNI) and Critical Infrastructure (CI) as well as to identify the core information security issues and provides a set of recommendations to address these issues.

This agenda has proposed 7 initiatives pertaining to the area of ICT security and has been developed by a panel of experts in the same related area. Those initiatives are:

(1) National Coordination Initiative;
(2) National Information Security Awareness & Competency Development;
(3) National Business Continuity Management;
(4) National Information Assurance;
(5) Cyber Defence;
(6) Information Security-Related Laws and Enforcement; and
(7) National Research & Development for Information Security.

- <u>"Anti-Spam Framework of Best Practices and Technical Guidelines" Document</u>
  NISER has established a working committee, Anti-Spam Framework of Best Practices and Technical Guidelines in July 2004 with the objective of providing a framework that can be made as a reference for the Malaysian Internet community against email spamming. Members of the Working Committee include Government Agencies, Internet Service providers, Internet Data Centres, Anti-Virus Solution Providers, Anti-Spam Solution Providers and Email Marketing organisations.

  The document is ready and the next actions to be executed are:
  - Solicitation of feedbacks from the public and the industry
  - Publication of document on NISER's website
  - Implementation of anti-spam awareness campaign
  - Distribution of document to public libraries and institutions of higher learning
  - Review of impacts of the document within 24 months after its release

INITIATIVES TO INCREASE UPTAKE OF ICT

Malaysia has implemented various initiatives to increase the uptake of ICT, including:

- The Universal Service Provision (USP) initiative where the Government and the Regulator, MCMC have implemented provisioning of services to un-served and under-served areas both through government and also industry financing;
- Implementation of projects to connect rural schools and establishment of rural Internet Centres for the benefit of rural school children and communities; and
- Other initiatives undertaken towards creating an Information Society, include e-government, smart card, tele-health and smart schools. For more details refer to Flagship Applications at www.mdc.com.my.

Infrastructure improvements

Information and Network Security Information Sharing Forum

Establishes a platform for sharing and exchanging of information on issues pertaining to ensuring information security and the integrity and reliability of the network

Members include:

- Internet Access Service Providers (IASPs)

- The ICT Security Division of Malaysian Administrative Modernisation and Management
- Planning Unit (MAMPU) - responsible for the e-security of the public sector
- National ICT Security and Emergency Response Centre (NISER)
- The Malaysian Technical Standards Forum

Benefits of an ISF:

- Incorporate a structured and effective communication channel
- Implementing faster incident handling and corrective action
- Foster closer relationship and cooperation between all relevant stakeholders
- Increase awareness on security incidents
- Sharing of expert advise and experiences

20. Please describe the changes being made to Malaysia's legal framework in order to keep up with the increasingly complex technical nature of e-transactions.

Legislations to facilitate e-commerce include:

- The Computer Crimes Act 1997 – To protect business, government and individual from offences related to the misuse of computers;
- The Copyright (amendment) Act 1997 – To protect intellectual property rights of companies investing in the IT and multimedia environment;
- The Telemedicine Act 1997 – To regulate and control the practice of telemedicine using audio, video and data communications
- The Digital Signature Act 1997 - To regulate the legal recognition and authentication of digital signature and licensing of certification authorities;
- The Communications and Multimedia Act 1998 – To regulate and facilitate the development of the converging communications and multimedia industry;
- The Communications and Multimedia Commission Act 1998 – To establish a single independent authority to supervise all regulatory aspects of the communications and multimedia industry;

To address the dynamic e-environment, Malaysia has conducted a comprehensive law review and as a result is proposing three additional pieces of legislations to the existing laws to complete a comprehensive legal framework for e-commerce. These three additional pieces of legislations are aimed at building trust and confidence in e-commerce by providing the necessary legal certainty needed in e-transactions and addressing privacy and confidentiality of information. These legislations are:

- <u>The Electronic Commerce Bill</u> – To provide the necessary legal certainty needed by all forms of online commercial transactions that are undertaken by companies, individuals or the Government;
- <u>The Electronic Government Activities Bill</u> – To facilitate electronic dealings by the Government with the public. The Bill is designed to provide the necessary legal framework for each Ministry/agencies to become "e-enabled" without the need for further amendments to their legislations;

- The Personal Data Protection Bill – To protect an individual's personal information whereby a set of personal data principles is provided on the collection, holding, processing and usage of personal information.

TELECOMMUNICATIONS

21. What progress has Malaysia made in implementing the objectives of the Cancun declaration and implementing WTO agreements in this sector?

Malaysia has autonomously and unilaterally enhanced its communications regulatory framework and simplified the licensing categories as per the Communications and Multimedia Act 1998.

21.a Australia seeks clarification about Malaysia's investment restrictions for foreign service suppliers. Are investments that exceed the 30% equity cap in Malaysian corporations allowed? If so, what is the approval process for such investments? (Australia)

Malaysia welcomes and encourages foreign direct investment, especially where they assist in building capacity and contribute to the development of the Malaysian industry and economy. In this respect, in many parts of the communications sector, Malaysia has autonomously liberalised the foreign equity rules to allow as much as 61% foreign ownership. However these approvals are considered on a case by case basis based on the value proposition of the foreign investment and contribution to the Malaysian economy, as well as the contribution towards building capacity of the industry.

The approval process for the foreign equity goes through the Foreign investment Committee and the Minister for Communications and the Malaysian Communications and Multimedia Commission (as the regulator for the sector) are also to be kept informed.

TRANSPORTATION

22. Has Malaysia implemented the eight steps set out in the Auckland challenge for more competitive air transport services?

It is more appropriate to use the term "options /recommendations" rather than "steps" as the term "options" has been agreed in the Air Services Working Group (ASG).

Status of Implementation of the 8 Options
Option 1: Air Carrier Ownership and Control
Most of Malaysia's current bilateral Air Services Agreements have a provision requiring airlines designated by a country to be substantially owned and effectively controlled by the country designating the airline (s) or by its nationals. However,

under special circumstances, due to the particular nature of the airline / state, for example the airlines of the Scandinavian countries and the United Arab Emirates, or the case of Hong Kong and Macau, Malaysia accepts some modifications to this requirement.

Malaysia's current policy requires that airlines be substantially owned and effectively controlled by Malaysian interests before they qualify to be designated to utilise Malaysia's traffic rights under the bilateral air services agreements.

Options 2: Tariffs
Most of Malaysia's current bilateral Air Services Agreements have a provision requiring that any international tariff on scheduled services be approved by the aeronautical authorities of both Contracting Parties. However, there are some exceptions, for example the Malaysia / USA and the Malaysia / New Zealand `Open Skies' agreements which have a `mutual disapproval clause' and the Malaysia / Germany and Malaysia / Australia Air Services Agreements which have a liberal tariffs arrangement.

Despite the seeming rigidity of the general provision requiring that any international tariff be approved by both Contracting Parties, the current international practice has in reality essentially become a flexible `country of origin' regime given the growing complexity and behemoth nature of international tariff application and implementation.

Option 3: Doing Business Matters
With the current exception of ground handling services for which the right to self-handle is granted only to US and New Zealand carriers under the `Open Skies' bilateral agreements, Malaysia has essentially no restrictions or material impediments on the `doing business' matters e.g. currency conversion and remittance of earnings, employment of non-national personnel, sale and marketing of air services products and access to computer reservation which are already enshrined in many bilateral Air Services Agreements.

Option 4: Air Freight
Malaysia has currently a liberal policy on air freight with many of its bilateral Air Services Agreements catering to freight services based on market demand.

Option 5: Multiple Airline Designation
Malaysia currently observes a multiple airlines designation policy.

Option 6: Charter Services
Malaysia currently practises a liberal policy with regard to charter operations.

Option 7: Airlines' Co-operative Arrangement
Malaysia endorses and encourages the inclusion of cooperative arrangements (e.g. code sharing and other commercial arrangements) in Air Services Agreements to give

Malaysian and foreign airlines greater freedom to make commercial decisions. These agreements are, however, subject to approval by the Government.

Option 8 : Market Access
Malaysia has a liberal and flexible policy with regard to market access for passengers and freight on a reciprocal basis.

Malaysia does practise liberal/open sky policy with some of the member economies of APEC as follows:

1.	Australia	Liberal Arrangement
2.	China	Liberal Arrangement
3.	Hong Kong, China	`Open' 3rd / 4th Freedom Arrangement
4.	Indonesia	Liberal Arrangement
5.	New Zealand	`Open Skies' Arrangement
6.	Chinese Taipei	`Open Skies' Arrangement
7.	Thailand	`Open Skies' Arrangement
8.	Usa	`Open Skies' Arrangement
9.	Vietnam	Liberal Arrangement

23. What progress is Malaysia making in developing an efficient, safe and competitive operating environment for maritime transport?

Funds would be allocated to further upgrade Malaysian ports in tandem with the country's economic objective and the fact that the Malaysian container volume has reached 10.2 million TEU in 2003. The growth has enabled two Malaysian ports that are Port Klang and Tanjung Pelepas to be amongst the top 20 container port in the year 2003.

Malaysian ports development will continue to focus on improving capacity, upgrading equipment and facilities as well as enhancing the efficiency and productivity of port and port related services.

In terms of capacity, an integrated approach to develop a comprehensive range of inland – related support facilities and services was adopted. Further efforts will be made to improve the efficiency and productivity of ports and ancillary services through continuous multi-skill training programme, modernisation, increase automation and computerisation to upgrade management process and procedures.

The Malaysia Government will also establish a single port authority which, inter alia, will perform regulatory function to ensure that port operators meet with the performance standards stipulated as well as comply with the terms and conditions of the licenses issued. In addition, the authority will facilitate an orderly and integrated development of ports and port related services based on their respective strengths, uniqueness, and specialisation, especially in terms of hinterland coverage, expertise and facilities to handle certain types of traffic as well as to take into consideration environmental aspects.

Malaysian ports have also recorded a significant increase in the number of ship calls from 24,000 in 1993 to 55,000 in 2003 or a 129% increase.

Malaysia has successfully implemented the ISPS Code whereby all port facilities, except for 2, have achieved compliant status. As far as ships are concerned, majority have complied and actions are being taken by the rest.

24. Has Malaysia completed the Road Transportation Harmonization Project?

Malaysia is undertaking the necessary steps in order to be a signatory to the 1958 and 1998 Agreement under the World Forum for Harmonisation of Vehicle Regulations (Working Party 29) United Nation Economic Commission for Europe (UN/ECE) by year 2005.

25. What steps has Malaysia taken to eliminate the requirement for paper documents relevant to international trade and transport by 2005?

The Royal Customs Malaysia at the national level has implemented the paperless requirement for export procedures. Paperless import will be implemented in phases.

Malaysia is actively participating in ASEAN to implement the Single Window which eliminates the use of paper documents.

Most of the Malaysian ports have already taken the necessary steps to invest in computerisation and link with the electronic data interchange (EDI) system as well as computer integrated networks, thus facilitating ports to manage the entire logistics chain, and reduce paper documents in international trade.

Permits/licenses and other trade documents at the moment are still very much paper-based. The various agencies involved in the issuance of these documents are at different stages of developing their respective electronic systems. MITI which issues about 70 per cent of permits in the country, is at the forefront of the implementation of e-permits. MITI implemented its Approved Permits Online System to transmit approved textile permits to the Customs Information System since October 2002. Currently, import permits for motor vehicles are submitted electronically to the Customs and Transport Departments. In 2005, MITI is expected to implement electronic submission and processing of permits for a number of other products under its supervision.

The logistics sector is also actively deploying ICT in their operations. ICT is widely used in major ports and airports such as the Kuala Lumpur International Airport (KLIA), Senai International Airport, Bayan Lepas Airport, Port Klang, Port of

Tanjung Pelepas and Northport for vessel and port clearance, free zone declaration control, shipment and cargo tracking as well as billing and delivery order. Port Klang and KLIA have started to move towards the implementation of a near paperless environment. At Port Klang, customs declarations for non-dutiable and non-prohibited items are fully electronically processed.

To expedite the development of a paperless environment, the Government has plans for the establishment of a common e-platform for trade. This common e-platform will link all parties involved in the entire trade facilitation supply chain and it will enable the trading community to transact as well as to share, exchange and access trade related information and services via the internet. It is envisaged that the common platform will be the source of all trade-related information such as information on air and sea transportation, freight insurance and financing options required by traders to support their trading activities. It will also be a trade facilitation centre where traders can expect to submit information and documents to various authorities for processing and approval in a single application through a single entry point.

The study on the development of a common e-platform for trade is expected to be commissioned in 2005.

ENERGY

26. ***Please describe the progress made by Malaysia in developing and building upon the non-binding principles endorsed by APEC Energy ministers at the Sydney meeting in 1996.***

Principle 1: Emphasise the need to ensure energy issues are addressed in a manner which gives full consideration to harmonization of economic development, security and environmental factors.

This principle has already been covered in the Three Principal Objectives under Malaysia Energy Policy 1979 as follows:

i. Supply Objective
To ensure the provision of adequate, secure & cost-effective energy supply through sustainable development of indigenous energy resources, both non-renewable and renewable sources, using least-cost options & diversification of supply sources both from within and outside the country.

ii. Utilisation Objective
To promote the efficient utilisation of energy and the elimination of wasteful and non-productive patterns of energy consumption.

iii) Environmental Objective

To minimise negative impacts of energy production, transportation, conversion, utilisation and consumption on the environment)

Principle 2: Pursue policies for enhancing the efficient production, distribution and consumption of energy.

Initiatives for energy development will focus on efficient production, distribution and consumption of energy.

Principle 3: Pursue open energy markets for achieving rational energy consumption, energy security and environmental objectives, recommending action in the appropriate forum of APEC to remove impediments to the achievement of these ends.

The electricity sector in Malaysia has adopted a "Managed Market" where TNB will remain as a vertically integrated entity with Generation, Transmission and Distribution components to:

- Reduces system security risk
- Supports national and social obligations
- Maintains scale and capability base

Principle 4: Recognise that measures to facilitate the rational consumption of energy might involve a mix of market based and regulatory policies, with the relative components of the mix being a matter for the judgment of individual economies.

Principle 5: Consider reducing energy subsidies progressively and promote implementation of pricing practices, which reflect the economic cost of supplying and using energy across the full energy cycle, having regard to environmental costs.

Government of Malaysia will review gas price for electricity sector (power generation) in 2005.

Principle 6: The regular exchange of experience on the various policies being used by member economies to achieve more rational energy consumption.

There is still a lot to learn from the various policies from member economies to reduce energy consumption. However, Malaysia has introduced some energy efficiency and conservation programme (e.g. LEO (Low Energy Office) Building, EE (Energy Efficiency) in buildings, energy audit) as a start in this direction.

Principle 7: Ensure that a least cost approach to the provision of energy services is considered.

Least cost approach is one of the criteria to the provision of energy services.

Principle 8: Promote the adoption of policies to facilitate the transfer of efficient and environmentally sound energy technologies on a commercial and non-discriminatory basis.

Would welcome any efficient and environmentally sound technology to be used if available on an affordable and non-discriminatory basis

Principle 9: Encourage the establishment of arrangements for the development of human resource skills relevant to the application and operation of improved technology.

Several technical skills development centre have been established to enhance HRD, including training in the application of new technology.

Principle 10: Enhance energy information and management programs to assist more rational energy decision-making.

Pusat Tenaga Malaysia was established to gather and analyse energy data in Malaysia to help Government in energy decision-making.

Principle 11: Encourage energy research, development and demonstration to pave the way for cost effective application of new, more efficient and environmentally sound energy technologies.

Established the Malaysia Electricity Supply Industry Trust Account where one of the objectives is to promote and fund R&D in electricity sector. Petronas & Tenaga Nasional Berhad has also set-up their R&D centre for their R&D activities. Some public universities also conduct R&D in energy sector particularly in renewable energy & energy efficiency.

Principle 12: Promote capital flows through the progressive removal of impediments to the funding of the transfer and adoption of more energy efficient and environmentally sound technologies and infrastructure.

There are no impediments to the funding of the transfer and adoption of more energy efficient and environmentally sound technologies and infrastructure in Malaysia.

Principle 13: Promote cost effective measures which improve the efficiency with which energy is used but reduce greenhouse gases as part of a suggested regional response to greenhouse gas reductions.

Energy efficiency is promoted through efficiency and conservation programmes such as LEO Building, EE in buildings and energy audit. In term of green house gases emission, the reduction in the use of energy due to energy efficiency programmes introduced will in turn reduce the use of fossil fuels which will further reduce the emission of green house gases.

Principle 14: Cooperate, to the extent consistent with each economy's development needs, in the joint implementation of projects to reduce greenhouse gas emissions consistent with the Climate Change Convention.

Under the joint implementation of projects to reduce the green house gases, Article 12 of the Kyoto Protocol clearly defines the Clean Development Mechanism (CDM). For the implementation of CDM, as a Party to the Kyoto Protocol, Malaysia has set up the institutional framework for the processing of CDM projects proposal which include the setting up of Designated National Authority (DNA) and the National Committee on CDM (NCCDM). To date, the DNA had received 11 Project Idea Notes for CDM project proposal of which 3 had been given conditional approval. NCCDM has also formulated the National CDM Criteria which give focus on the transfer of technology and the criteria which will help in satisfying the country's sustainable development goals.

BUSINESS SERVICES

27. Please detail any reforms being implemented to the Companies Act and to the Malaysian Institute of Accountants (MIA). What steps have been taken to recognise foreign qualifications?

a) Proposed reforms to the Malaysian Institute of Accountants (MIA)
MIA recently established a taskforce comprising the MIA's President, Vice-President, the former Accountant-General of Malaysia and a Council Member from the academia. The Taskforce to review and propose amendments to the Accountants Act, 1967 will:

- review and identify provisions within the Accountants Act 1967 that require amendments;
- identify national and international developments affecting the accountancy profession that require amendments to the Accountants Act 1967, including standards and pronouncements issued by the International Federation of Accountants (IFAC); and
- propose amendments to the Accountants Act 1967 arising from national and international developments affecting the accountancy profession.

The Taskforce has also identified long terms projects which include reviewing the admission criteria for recognition as professional accountants in Malaysia in view of national and international developments.

b) Recognition of Foreign Qualifications

Under the Accountants Act 1967[8], Malaysia had unilaterally recognised several foreign professional qualifications for the purposes of qualifying as a member of MIA.

The governing Council of MIA had decided that any future recognition of foreign qualifications shall be based on the principle of mutual recognition.

An important milestone on this approach is the execution of a Framework Agreement on Mutual Recognition Agreement with the Indonesian Institute of Accountants ('IAI') in Yogjakarta on 14 December 2004. The Agreement sets out the implementation steps and action plans to be observed and acted upon in order to achieve the ultimate aim of freer movement of practicing accountants between Malaysia and Indonesia in the near future.

28. To what extent has Malaysia reduced barriers in order to allow foreign lawyers to practice law in Malaysia? To what extent has Malaysia reduced obstacles to allowing foreign architects to practicing in Malaysia?

Foreign Lawyers
Malaysia has taken steps towards liberalising the legal services sector. The policy change on this matter is currently being considered, and will be finalised in due course.

Architects
In respect of architectural services, the Architects Act 1967 had been amended in December 2002 which allows foreign architects to hold equity in a multi-disciplinary body corporate practice providing architectural, engineering and/or quantity surveying services.

The professional organisation is also actively participating at various fora of the International Union of Architects (UIA) and has adopted the Policy on Practice in Host Nations of the UIA Accord which allows foreign architects to work in collaboration with architects in the host country.

(Note: The UIA Accord refers to the International Union of Architects Accord on recommended International Standards of Professionalism in Architectural Practice)

28.a To be admitted in Malaysia, lawyers must be Malaysian citizens or permanent residents and pass a Malay language exam unless exempted. Foreign lawyers are permitted to provide legal advisory services in foreign law and offshore corporations' law of Malaysia through GATS Modes 1 and 2. However, foreign law firms cannot establish operations in Malaysia except in the Federal Territory of Labuan to provide limited legal services to other offshore corporations established in Labuan. The Attorney-General may issue a Special Admission Certificate to practise as a legal practitioner in Malaysia in limited circumstances

[8] Section 14(1)(b) and First Schedule, Part II

and for a specified period. Australia requests that foreign lawyers be permitted to establish a commercial presence in West Malaysia to provide advisory services in foreign law either on their own account or in commercial association with Malaysian admitted lawyers. (Australia)

The requirements for "qualified persons" are not necessarily applicable for foreign lawyers and are meant to cover Malaysian citizens or permanent residents who wants to practise in Malaysia. The requirements for admission for foreign lawyers are as provided in Section 28A of the Legal Profession Act 1976.

Measures to liberalise the legal services sectors are being considered.

28.b Australia encourages the examination of further improvements on the restrictions to trade in professional services. We would like to draw attention to the importance of reducing barriers in the professional services sector such as:

- ***long-term residency requirements before being able to practice a profession in a host country,***
- ***limited areas of practice (such as in the legal field only being able to provide advice as a "consultant" or in relation to the country in which they are qualified) or***
- ***the restrictions on any repatriation of profits etc.***
  (Australia)

Improvements on restrictions to trade in professional services would be undertaken in line with the principle of progressive liberalisation and taking into account the level of development and readiness of the sectors concerned.

FINANCE SERVICES

29. Please provide information with regard to steps taken since 1996 to liberalise financial services in Malaysia. Please provide detailed information with respect to the steps taken by Malaysia to improve transparency in its financial services sector. How has the legal, prudential and regulatory framework changed since 1998? Has it evolved sufficiently enough to meet the challenges of increasingly complex financial instruments?

Steps taken since 1996 to liberalise financial services in Malaysia:

1. In addition to the yearly IAP updates on financial services, please refer to the section on financial sector liberalisation of the "External Relations" chapter of the Bank Negara Malaysia 2003 Annual Report which can be accessed at www.bnm.gov.my.
2. For detailed information on liberalisation in relation to the capital market, please refer to the yearly IAP updates submitted wef 1996.
3. Relevant information may also be found on the website of the Securities Commission(SC) (www.sc.com), in particular, the following press releases:

- 16 December 1996 and 3 July 2000 (foreign fund managers, as reflected in IAPs);
- 13 September 2004 (foreign brokers, foreign fund managers, futures broking industry, venture capital industry, foreign dealer representatives - not yet reflected in IAPs, as noted in paragraph 4).

4. Recent liberalisation measures as set out in SC's press release of 13 September 2004 as follows:

   (a) <u>Foreign stockbrokers</u>
   The SC will issue up to five new licences to enable major foreign stockbrokers to establish operations in Malaysia. These foreign stockbrokers may own 100% equity. They will be allowed to undertake the same range of activities as non-Universal Brokers (non-UBs) and operate from a single location.

   The five foreign stockbrokers may, if they so choose, purchase 100% equity in an existing non-UB which has complied with the consolidation policy.

   (b) <u>Foreign fund managers</u>
   The SC will issue up to five new licences to enable leading global fund managers to establish operations in Malaysia. These foreign fund managers will be allowed to own 100% equity and will be allowed to participate in the institutional segment of the Malaysian fund management industry.

   (c) <u>Futures broking industry</u>
   Foreign participants will be allowed to own 100% equity in futures brokers, futures fund managers and futures trading advisers through the issuance of new licences or the purchase of equity in existing operations.

   (d) <u>Venture capital industry</u>
   Foreign participants will be allowed to own 100% equity in venture capital and venture capital management corporations.

   (e) <u>Foreign dealer representatives</u>
   Restrictions on the employment of foreign dealers by domestic stockbrokers are lifted.

Steps taken by Malaysia to improve transparency in its financial service sector:

- Stakeholder consultation would be carried out to obtain views on important regulations. Feedback from this consultation process will be considered in finalising the proposed regulations;
- Examples of new policies which were developed in consultation with the industry are the New Liquidity Framework, Best Practices on the Management of Credit Risk, Guidelines on Internet Banking, Guidelines on Dynamic Solvency Testing and Risk-Based Capital Framework;

- Introduction of policies which affect the general public will also be announced and explained to the public through press announcements;
- In addition, policies and regulations are regularly reviewed, taking into account any post-implementation feedback from the industry to ensure their continued relevance, effectiveness and practicality in light of changing conditions;
- The public can channel their enquiries on matters which are under the Bank's purview through various media including the internet;
- General and specific enquiries from the public can also be forwarded to the Corporate Communications Department of Bank Negara Malaysia, which will request the appropriate departments to respond to the issues raised;

How has the legal, prudential and regulatory framework changed since 1998? Has it evolved sufficiently enough to meet the challenges of increasingly complex financial instruments?

Banking
Since the financial crisis in 1998, Bank Negara Malaysia has moved towards a market-driven approach in regulating and supervising banking institutions. This is complemented by efforts to promote greater reliance on market discipline and initiatives to strengthen the consumer protection framework. Additional information on the evolvement of the legal, prudential and regulatory framework can be found in Bank Negara Malaysia's Annual Reports in sections on Management of the Banking Sector and the Progress of the Financial Sector Masterplan (FSMP), accessible at www.bnm.gov.my.

Insurance
The supervisory powers of the Bank were substantially strengthened with the coming into force of the Insurance Act on 1 January 1997. The comprehensive review of the insurance legislation brought about a more flexible regulatory framework that enabled the Bank to respond more effectively and quickly to changes in the insurance industry. This is achieved through a broad legislative framework that is supported by more detailed regulations, specifications, guidelines and codes of good practice that are revised and updated regularly. At the same time, the Act also substantially strengthened the supervisory powers of the Bank with respect to defaulting insurers as well as its examination and investigation powers (see boxed article on "Philosophy Behind the Insurance Act 1996" published in the Insurance Annual Report 1996, which is also accessible at www.bnm.gov.my).

Since the implementation of the Act, the Bank has updated several regulations, guidelines and circulars to deal more effectively with emerging risks in the insurance industry and reflect developments in international best practices and market conditions.

The Bank has also moved towards risk-based supervision approach. Through regular reviews of the insurers' risk management practices, emerging or potential problems can be detected and appropriate corrective measures can be taken in a timely manner.

The Bank is currently finalising the detailed structure of a risk-based capital framework which will further strengthen the financial resilience of insurers.

Capital Market
The legal, prudential and regulatory framework for the capital market is set out in securities laws and regulations issued under those laws, rules of the exchanges, clearing houses and the central depository as well as guidelines and practice notes issued by the Securities Commission. Detailed information in relation to the various measures taken to improve transparency in the capital market as well as changes to the legal, prudential and regulatory framework since 1998 are found on the websites of the exchange (www.bursamalaysia.com) and the Securities Commission, (www.sc.com).

30. ***Please describe Malaysia's experience in developing an Islamic banking system since 1998, as well as key challenges and obstacles. Does the same legal, prudential and regulatory framework that applies to Western-style financial institutions apply to Islamic financial institutions?***

The Malaysian experience in developing the Islamic banking system stretched over two decades, beginning in 1983 when the first Islamic bank was established. In 1999, following a merger and acquisition of two domestic banks in Malaysia, the second Islamic bank was established in 1999.

In March 2001, Bank Negara Malaysia launched the FSMP which outlines the 10-year road map and strategies to further develop the Islamic banking and Islamic insurance industry in a more systematic and orderly manner.

The strategy adopted by Malaysia has been to develop a comprehensive Islamic banking system as an integral component of the domestic banking system, operating in parallel with the conventional system. The approach involves the creation of the key components comprising the Islamic banking industry, Islamic financial markets, the Islamic insurance or takaful market, and fund management industry.

In implementing the strategies, four areas of development have been identified namely, institutional and product development, regulatory and prudential framework, Shariah and legal framework, and consumer education and awareness.

Institutional and product development
The Bank has brought forward the liberalisation of the Islamic banking market process to 2004 by offering up to three licences for foreign Islamic financial institutions to operate in Malaysia.

The conventional banks offering Islamic financial products and services are moving towards a more sustainable institutional platform that can assimilate developments in the Islamic financial regulatory infrastructure over the longer term. This institutional structure takes the form of an "Islamic subsidiary" within the banking groups.

For transparency and clarity in the product approval process, Guidelines on New Product Approval Requirements for Islamic Banking Institutions were issued in 2003.

Regulatory and prudential framework
Among the measures undertaken include the introduction of a rate of return framework and a separate financial disclosure for the Islamic banks.

Shariah and legal framework
A Shariah Advisory Council has been established in 2003 by Bank Negara Malaysia under the Central Bank Act 1958 as the sole authority to advise on Islamic banking issues with the objective of ensuring uniformity in Islamic law compliance at the industry level.

The Government has allowed exemption on stamp duty if there is discrepancy in the tax treatment of Shariah compliant financing agreement vis-à-vis that of conventional loan documentation.

Human Capital Development and consumer education
An Islamic Banking and Finance Institute Malaysia (IBFIM) was established in 2001 as an industry-owned research and training institute.

The Islamic banking industry organiSed annual expositions on Islamic banking and biennial programmes on consumer education. Each year, conferences, seminars and exhibitions were held to promote greater awareness and enhance the effectiveness in disseminating information on Islamic banking and finance. Beginning 2003, Consumer Education Programme booklets on Islamic banking products were produced for the public.

Does the same legal, prudential and regulatory framework that applies to Western-style financial institutions apply to Islamic financial institutions?

Legal
The Islamic banks are regulated under the Islamic Banking Act 1983. The Act provides Bank Negara Malaysia with powers to supervise and regulate Islamic banks, similar to the case of other licensed banks. With regard to conventional banks providing Islamic banking services, amendments were made to section 124 of the Banking and Financial Institutions Act 1989 to allow the banks to carry out Islamic banking business.

Considering the differences between contractual agreements in Islamic banking and conventional banking, the High Court of Malaya in 2003 dedicated a special High

Court to preside on litigated cases over matters relating to Islamic banking and finance.

As part of the effort to harmonise the Shariah issues pertaining to Islamic banking and Islamic insurance, the Central Bank Act 1958 was amended in 2003 to provide for the establishment of a Shariah Advisory Council at the Central Bank as the sole authority and reference on all Shariah matters pertaining to Islamic banking and finance.

A Law Review Committee was set up in 2003 to undertake a holistic legal review by reviewing the domestic legislations to assimilate the Shariah principles with the aim of removing any impediments to ensure the unhindered and efficient functioning of the Islamic banking and financial system.

Prudential and regulatory
Given that the rate of returns in Islamic banking is directly influenced by the performance of the Islamic banking institutions in managing its assets efficiently, an effective rate of return framework was formulated in 2001 to provide a standard methodology for deriving the rate of return for depositors to enhance the level of transparency and ensuring that depositors would receive fair returns on their investment.

To enhance further the policy of funds segregation, Bank Negara Malaysia has imposed separate prudential requirements on the conventional banks with Islamic banking windows:

- dedicated minimum capital as Islamic banking fund;
- maintain minimum core capital ratio and risk-weight capital ratio;
- separate disclosure of Islamic banking operations in the Notes to Account of principal financial statements (GP8-i); and
- revised and updated disclosure in financial statements (GP8)

Malaysia is one of the founding members of the Islamic Financial Services Board (IFSB). To date, the IFSB has 15 full members, five associate members and 40 observer members. The IFSB, established in 2002, where Malaysia is the secretariat, is an international prudential standard-setting body to promulgate the international regulatory and supervisory standards for Islamic financial institutions. In this regard, the IFSB is in the final stages of developing the prudential standards on the capital adequacy, risk management framework and corporate governance.

31. Does Malaysia have plans to liberalise the opportunities available to foreign banks not particularly respecting the opening of new branches (including ATMs) and internet banking?

It should be noted that Malaysia has undertaken significant liberalisation measures to allow the issuance of up to three new Islamic banking licences to qualified foreign players. With this measure, Bank Negara Malaysia has brought forward the liberalisation of the Islamic banking sector.

On branching, the locally-incorporated foreign banks have been allowed to offer full-range, transactional internet banking services since 1 January 2002, which is a liberalisation of the branching policy for foreign-owned banks. This is in line with our commitment in moving towards greater market orientation and international integration. As stated in the FSMP, the move towards levelling the playing field between domestic banks and the locally incorporated foreign banks and allowing greater international assimilation will be introduced in Phase II and Phase III respectively.

32 What percentages of loans held by banks have a high probability of non-payment? What techniques are used to assess or classify these loans? What risk management techniques (e.g. VAR or Stress Test) are being used by banks to properly manage various risks? Can current information processing systems keep up with the increasing complexity of financial transactions as defined by the "risk border"?

The issues raised are prudential in nature. The APEC IAP peer review is not an appropriate forum to discuss such issues.

33. Does Malaysia expect that the consolidation of insurance industry, when completed, will permit the issue of new licenses?

The consolidation of the insurance industry is an ongoing process which is market-driven. As competitive pressures intensify, the insurance industry is envisaged to continue to consolidate further.

In the third phase of the FSMP, a limited number of new licences in specialised lines of business will be considered for new players with innovative value propositions.

33.a It is noted from the IAP that the maximum permissible shareholding in a licensed institution is 10% for individuals as prescribed under the Banking and Financial Institutions Act 1989. In Malaysia's GATS schedule of specific commitments, the relevant limitation that has been inscribed for commercial banks and merchant banks is "Shareholding by a single person individually or jointly with related persons is limited to a maximum of 20 per cent." Would Malaysia clarify the discrepancy on the different ceilings applicable to individual shareholding in commercial banks and merchant banks as set out in its IAP and GATS Schedule? Besides, we would appreciate it if Malaysia could briefly introduce its existing regulatory regime in the banking sector, in particular as compared to its specific commitments made in the GATS context. (Hong Kong, China)

- The maximum permissible shareholding in a licensed institution is 10% for individuals and 20% in case of persons other than an individual, as prescribed under section 46 of the Banking and Financial Institutions Act (BAFIA) 1989.

- As specified in Malaysia's schedule of specific commitments, the limitation that a maximum 20% shareholding by a single person individually or jointly with related persons is made in reference to the equity participation by persons other than an individual (including foreign banks, which fall under the definition of “person”) in Malaysian-owned banks and, therefore, is consistent with provisions under BAFIA 1989.

- Since the conclusion of the last round of financial services negotiations at the WTO, Malaysia has undertaken significant liberalisation measures, including issuing three new Islamic banking licences to qualified foreign players and removing the 50% limit on credit facilities that could be obtained by non-resident controlled companies from foreign-owned banks in Malaysia. In addition, the locally-incorporated foreign banks have been allowed to offer full-range, transactional internet banking services since 1 January 2002, which is a liberalisation of the branching policy for foreign-owned banks.

- Detailed updates on further liberalisation undertaken vis-a-vis Malaysia's GATS commitments can be referred to in the section on "Financial Sector Liberalisation" of the "External Relations" chapter of Bank Negara Malaysia's 2003 Annual Report.

33.b It is noted from the IAP that among the six new licences for life reinsurance business that are available to be issued up to 30 June 2005, only one has been issued so far, contrary to the full issuance of the seven available new licences for non-life reinsurance business. Would Malaysia please provide information on why only one new licence has been issued for life reinsurance business so far? Are there any national treatment limitations in the issuance of such licences, other than the foreign equity limitation inscribed in its GATS schedule? Would Malaysia also share with us what the arrangements on the issuance of licences for both life and non-life reinsurance businesses will be after 30 June 2005? (Hong Kong, China)

- Following Malaysia’s commitment to issue new licences to carry on professional life reinsurance business in Malaysia, only one foreign professional life reinsurer submitted an application for a licence. Currently, there are two professional life reinsurers operating in Malaysia, one of which was licensed pursuant to Malaysia’s commitment under the WTO.

- There are no national treatment limitations on the issuance of professional reinsurance licences other than the foreign equity limit of 49% for the establishment of joint ventures.

- After 30 June 2005, applications to carry on professional reinsurance business in Malaysia will continue to be considered based on the availability of reinsurance licences in line with Malaysia’s commitment under the WTO.

33.c It seems that the minimum paid-up capital for foreign professional reinsurers is less than the local professional reinsurers. We would like to know whether Malaysia would take steps to align both requirements. (Hong Kong, China)

- A foreign professional reinsurer operating in Malaysia as a branch is required to maintain a lower amount of surplus of assets over liabilities than the equivalent paid-up capital required of a local professional reinsurer in view that it is licensed based on the consideration of the financial strength of its parent company. There are no immediate plans to align the requirements.

33.d Foreign-owned insurers with foreign shareholding not exceeding 51% are allowed to open not more than two branch offices in one year. We would like to know whether such limitation would be removed. (Hong Kong, China)

- Malaysia remained committed to progressive liberalisation as evidenced by its substantial improvement at the WTO to allow original foreign owners of direct insurers to hold up to 51% of equity of insurers (from 30%), under certain conditions.

- More recently, Malaysia also relaxed its policy on branching by foreign-owned insurers with foreign shareholding not exceeding 51% to allow such insurers to open not more than two branch offices in a year (not allowed under Malaysia's schedule of commitments).

- Further liberalization will be considered after the implementation of capacity building measures under the Financial Sector Masterplan which are aimed at strengthening the foundation for a more competitive insurance market. These include building domestic capabilities to support performance improvement and strengthening consumer protection infrastructure

33.e The voluntary reinsurance cessions by all licensed insurers to Malaysian National Reinsurance Berhad were reduced to 5% for general reinsurance business. Is there any plan to lower (mandatory) reinsurance cession to the national reinsurance company? (Hong Kong, China)

In line with the Financial Sector Masterplan, the voluntary cessions arrangement to Malaysian National Reinsurance Berhad, the national reinsurer, will be progressively reduced.

33.f It appears that there are limits of foreign participation in local insurance companies of 51% (pre-existing) and 30% (new). We would like to know whether Malaysia would remove these participation limits. (Hong Kong, China)

- Malaysia remained committed to progressive liberalisation as evidenced by its substantial improvement at the WTO to allow original foreign owners of direct insurers to hold up to 51% of equity of insurers (from 30%), under certain conditions.

- More recently, Malaysia also relaxed its policy on branching by foreign-owned insurers with foreign shareholding not exceeding 51% to allow such insurers to open not more than two branch offices in a year (not allowed under Malaysia's schedule of commitments).

- Further liberalization will be considered after the implementation of capacity building measures under the financial sector masterplan which are aimed at strengthening the foundation for a more competitive insurance market. these include building domestic capabilities to support performance improvement and strengthening consumer protection infrastructure.

DISTRIBUTION SERVICES

34. Is there any further plan in order to improve the regulatory framework in these services? Is there any further plan to increase the foreign participation in the wholesale and retail business, as well as to change the minimum capital required for those businesses?

In October 2004, the government approved the new Guidelines on Foreign Participation in the Distributive Trade Services. The new guidelines are an improved version of the 1995 guidelines. The new guidelines include all existing and current policies and decisions made by the Government in relation to the distributive trade sector. The guidelines includes coverage of wholesalers, retailers, franchise practitioners, direct sellers, product manufacturers and suppliers who channel their goods into the domestic market and also commission agents.

Foreign involvement in the distributive trade services would be based on contribution to the Malaysian economy that is, companies with big direct investment, transfer of technologies and experts and with modern management.

INVESTMENT

35. Please provide information with respect to steps taken to liberalize capital inflows and capital outflows from Malaysia since 1996. Are capital controls still in place?

To date, all the selective exchange control measures implemented in 1998 have been liberalised, except the rules on the transfer of ringgit between External Accounts (Ringgit accounts maintained with banks in Malaysia where the beneficiaries of the funds are non-residents), which was aimed at preventing the internationalisation of the ringgit.

Malaysia's rules on foreign exchange are implemented for prudential reasons aimed at maintaining financial stability. These rules complement the overall macroeconomic policies and are implemented in a transparent and pragmatic manner. The rules are under regular review and modifications are made to be consistent with the changing environment.

There is generally free mobility of inward and outward movement of funds relating to:

- Foreign direct investment;
- Portfolio capital investments;
- Repatriation of rental income from property investment, dividends, interest, fees and commissions; and
- All current account transactions.

Settlements in ringgit to non-residents are allowed for sale and purchase of ringgit assets, salaries, wages, commission, interest or dividend. Settlements for international payments continue to be in any foreign currency except for currencies of Israel, Serbia and Montenegro.

There is no restriction for non-residents to open external accounts. Ringgit funds in the external account are freely convertible. Transfer of funds between external accounts is allowed as long as such ringgit funds are used for permitted purposes.

For specific liberalisation measures undertaken, please refer to Annexes in Bank Negara Malaysia's Annual Reports 1997-2003 on the foreign exchange administration policy and the Box on "Exchange Control Measures as a Policy Option" in the Annual Report 1998. In addition, reference can be made to the White Box on liberalisation and simplification of foreign exchange administration rules in the Bank's 2003 Annual Report.

36. Could Malaysia please report on its efforts to liberalise its policy on foreign equity participation in the manufacturing and services sectors? Could Malaysia please describe any measures that restrict foreign investment, review the changes in these measures since 1996 and outline any new plans to liberalise these restrictions?

Equity holdings in all manufacturing projects have been fully liberalised effective from 17 June 2003. Foreign investors can now hold 100 per cent equity in all investments in new projects as well as investments in expansion/diversification projects, irrespective of the level of exports.

A liberal equity policy is also adopted for the manufacturing related services sector and regional services establishments. Companies involved in Operational Headquarters, Regional Distribution Centres, International Procurement Centres, R&D, regional and representative offices are allowed to be wholly-owned by foreign interests.

Equity requirements for the service sectors were liberalised whereby only a minimum of 30% Bumiputera equity is imposed, unless exemption has been granted by the Government. The remaining equity shareholding can be held either by local interests, foreign interests or by both subject to the respective ministries guidelines. Previously, foreign ownership was restricted to a maximum of 30 percent equity participation.

However, for strategic sectors with national interests such as water and energy supply, broadcasting, defense and security, the participation of foreign interests is limited to 30%.

37. ***The World bank/ICSID reports as of November 2004 that Malaysia is party to 42 bilateral investment treaties (BITs). Is this correct? Does Malaysia anticipate negotiating additional BITs in the near to medium term and including the provisions of such treaties within regional trade agreements?***

As at 6 December 2004, Malaysia has signed 71 bilateral investment treaties (BITs). Malaysia will continue to negotiate BITs with interested parties and would also be prepared to include BITs provisions within regional trade agreements.

38. ***Malaysia has decided to consolidate all investments previously held under the Minister of Finance, Inc. into the Government Investment arm, Khazanah Nasional Bhd. What are the implications of this, if any, for Malaysia's trade and investment partners?***

The government has decided to consolidate the MoF's shareholdings of listed companies into one designated investment holding vehicle, which is Khazanah Nasional Berhad (Khazanah). Khazanah is expected to drive changes of Government Linked Companies (GLCs), increase shareholder value and synergise potential exit strategies. The consolidation of these investments will better delineate the role of MoF and Khazanah, whereby the non-listed companies and the more socio-economic holdings are held by MoF and the more commercial holdings are held by Khazanah.

The consolidation of these investments will have no implication to Malaysia's trade and investment partners as only the shareholders are different. The trade and investment policies will remain the same. In fact, it will help promote investment cooperation among the GLCs to go global for the nation to achieve sustainable growth, maintain resilience and increase competitiveness.

39. ***Referring to recent liberalisation in the FIC rules relating to manufacturing and capital markets, what plans does Malaysia have to liberalise other areas?***

Liberalisation of the other areas will be reviewed from time to time, taking into account the development in the respective areas.

39.a Malaysia is requested to repeal restrictions on foreign-invested enterprises by enabling establishment of fully foreign-owned, non-manufacturing enterprises

such as trading companies, so that they can contribute to the export interests of the Malaysian economy. (ABAC)

Equity requirements were liberalised whereby only a minimum of 30% Bumiputera equity is imposed, unless exemption has been granted by the Government. The remaining equity shareholding can be held either by local interests, foreign interests or by both subject to the respective ministries guidelines. Previously, foreign ownership was restricted to a maximum of 30 percent equity participation.

However, for strategic sectors with national interests such as water and energy supply, broadcasting, defense and security, the participation of foreign interests is limited to 30%.

39.b ABAC encourages Malaysia to abolish performance requirements regarding employment regulation, and especially restrictions on so-called "white-collar" positions. (ABAC)

Such requirements are necessary for socio-economic objectives as outlined in Malaysia's development plans. Nevertheless, flexibility can be granted to employers who require personnel with specialised skills.

39.c Malaysia should allow business entities to hold foreign currency exceeding the amount currently regulated by the EXCHANGE CONTROL ACT (ECA 1953). The limit for foreign currency holdings is now set at US$5million, which is barely sufficient to settle business transactions for either sales or purchases. (ABAC)

The limits referred to have been relaxed. Currently, the overnight limit of foreign currency accounts to retain export proceeds is between US$30 million and US$100 million.

There is no overnight limit imposed on foreign currency accounts for the retention of foreign currency receivables other than export proceeds with licensed banks in Malaysia. The previous limit of US$0.5 million has been removed since April 2004.

39.d In 2001, Bank Negara announced a 10-year plan for strengthening the financial sector which blocks competition from new foreign banks until after 2007. Also foreign participation in commercial banking is limited to 30 percent of equity in any single institution. Could Malaysia update us on its present rationalisation of the banking sector and its continuing plans to liberalise foreign participation in the financial sector? (Australia)

Steps taken since 1996 to liberalise financial services in Malaysia:

- Please refer to the White Box on the FSMP in Bank Negara Malaysia's Annual Report 2003.
- In addition to the yearly IAP updates on financial services, please refer to the section on financial sector liberalisation of the "External Relations" chapter of the

Bank Negara Malaysia 2003 Annual Report which can be accessed at www.bnm.gov.my.

- It should be noted that Malaysia has undertaken a significant liberalisation measure to allow the issuance of up to three new Islamic banking licences to qualified foreign players. With this measure, Bank Negara Malaysia has brought forward the liberalisation of the Islamic banking sector.
- On branching, the locally-incorporated foreign banks have been allowed to offer full-range, transactional internet banking services since 1 January 2002, which is a liberalisation of the branching policy for foreign-owned banks. This is in line with Malaysia's commitment to move towards greater market orientation and international integration. As stated in the FSMP, the move towards levelling the playing field between domestic banks and the locally incorporated foreign banks and allowing greater international assimilation will be introduced in Phase II and Phase III respectively.

Capital Market

1. For detailed information on liberalisation in relation to the capital market, please refer to the yearly IAP updates submitted in 1996.

2. Relevant information may also be found on the website of the Securities Commission (www.sc.com), in particular, the following press releases:
   - 16 December 1996 and 3 July 2000 (foreign fund managers, as reflected in IAPs);
   - 13 September 2004 (foreign brokers, foreign fund managers, futures broking industry, venture capital industry, foreign dealer representatives).

3. Recent liberalisation measures as set out in SC's press release of 13 September 2004 are:

   (a) Foreign stockbrokers
   The SC will issue up to five new licences to enable major foreign stockbrokers to establish operations in Malaysia. These foreign stockbrokers may own 100% equity. They will be allowed to undertake the same range of activities as non-Universal Brokers (non-UBs) and operate from a single location.
   The five foreign stockbrokers may, if they so choose, purchase 100% equity in an existing non-UB which has complied with the consolidation policy.

   (b) Foreign fund managers
   The SC will issue up to five new licences to enable leading global fund managers to establish operations in Malaysia. These foreign fund managers will be allowed to own 100% equity and will be allowed to participate in the institutional segment of the Malaysian fund management industry.

   (c) Futures broking industry

Foreign participants will be allowed to own 100% equity in futures brokers, futures fund managers and futures trading advisers through the issuance of new licences or the purchase of equity in existing operations.

(d) Venture capital industry
Foreign participants will be allowed to own 100% equity in venture capital and venture capital management corporations.

(e) Foreign dealer representatives
Restrictions on the employment of foreign dealers by domestic stockbrokers are lifted.

Steps taken by Malaysia to improve transparency in its financial services sector:

Financial Services

Stakeholder consultation to obtain views on important regulations will be carried out. Feedback from this consultation process will be considered in finalising the proposed regulations.
Examples of new policies which were developed in consultation with the industry are the New Liquidity Framework, Best Practices on the Management of Credit Risk, Guidelines on Internet Banking, Guidelines on Dynamic Solvency Testing and Risk-based Capital Framework.
Introduction of policies which affect the general public will also be announced and explained to the public through press announcements.
In addition, policies and regulations are regularly reviewed, taking into account any post-implementation feedback from the industry to ensure their continued relevance, effectiveness and practicality in light of changing conditions.
The public can channel their enquiries on matters which are under the Bank's purview through various media including the internet.
General and specific enquiries from the public can also be forwarded to the Corporate Communications Department of Bank Negara Malaysia, which will request the appropriate departments to respond to the issues raised.

STANDARDS AND CONFORMANCE

40. What measures does Malaysia have to reduce business compliance costs? What is Malaysia's position in accepting the use of equivalent standards of health and quality of export/import products? What progress is Malaysia making on the negotiation of mutual recognition agreements with trade partners?

Malaysia approaches this issue of reducing costs of compliance due to differing standards through a number of related initiatives:

i. Efforts are being continuously made to align Malaysian standards to international standards. The alignment of standards is undertaken to facilitate recognition of conformity assessment. In 1996, 39 % of Malaysian Standards were aligned and this has increased to 50% in 2004. All the standards committees have adopted a policy of adopting international standards as the first option for new standards and revisions.
ii. Malaysia is a signatory to regional and international MRAs. These includes the ASEAN EE MRA [for electrical & electronic products], APLAC MRA [for testing and calibration] and PAC MRA [for QMS]) at the regional level and the ILAC MRA [for testing and calibration], IAF MRA [for QMS], and CIPM MRA (measurement standards) at the international level. Malaysia is also a member of the IEC CB scheme. This facilitates the acceptance of test reports for regulatory purposes. It also reduces business costs by eliminating repeated testing.
iii. Malaysia also participates in the APEC Food MRA, APEC EE MRA: Part I, and currently is in the process of applying for participation in Part II of the APEC EE MRA.
iv. The Malaysian electrical and electronic regulator, the Energy Commission, recognises the IEC CB certificates in the approval process for electrical products.
v. The main Malaysian conformity assessment body, SIRIM QAS Sdn Bhd, has established mutual appointments to carry out inspections on each others behalf with other similar bodies such as those in Canada, Japan and China to reduce costs for businesses.

For agricultural products, we conform to the following internationally recognised standards:

i. International Plant Protection Convention (IPPC) for plant health
ii. International Animal Health Organization (OIE) for animal health
iii. Codex Alimentarius Commission for food and processed products

41. Could Malaysia please provide details with respect to any plans to enhance active participation in standardisation activities by the private sector?

In order to enhance participation of the private sector in standardisation activities at the international level, the Government, on 24 July 2004 has agreed to give incentives such as partial sponsorships and tax deduction to the private sector who are participating actively in international standardisation activities. Tax deduction to the private sector will be implemented in 2005.

At the national level, the private sector is in fact participating very actively in standardisation activities since the early 1970s until present. The national standards system consists of a National Standards Committee which is responsible for overall policy and oversight of the national system, and an extensive network of 20 sectoral committees which in turn have established more than 200 technical committees. The private sector participates at all levels including the policy level. There is a requirement that all standards committees represent a balance of interests and private sector is always invited to send representatives to the committees. Under the national standards system, several private sector bodies have also been appointed as standards writing organisations. These organisations manage standards writing for selected sectors. Examples include the Cement & Concrete Association (C&CA), Malaysian Plastics Manufacturers Association (MPMA), The Electrical and Electronic Association of Malaysia (TEEAM), Malaysian Cable Manufacturers Association (MCMA) and etc.

Several awareness programme are also being actively conducted with specific industry associations. Amongst them are:

- workshops, seminars and dialogues with the specific industry associations and professional bodies;
- participation at expositions conducted by the specific industry associations and trade-related Government agencies;
- publication of simple booklets and brochures of relevance to the industry needs; and
- hosting regional and international technical meetings to enhance appreciation of the importance of standardisation activities.

41.a We congratulate Malaysia on their success in aligning 50% of all Malaysian Standards with relevant international standards. We would like to know whether Malaysia has any plan to align the remaining 50% Malaysian standards with international standards. (Hong Kong, China)

For the remaining 50% of the Malaysian Standards, alignment will be carried out, wherever possible. In revising and reviewing existing standards as well as in developing new standards, adoption and adaptation of international standards will be respectively, the first and second option that will be taken. Indigenous standards will be developed only when the two options are not possible. Currently approximately 80% of newly developed standards are aligned.

No numerical targets for alignment have been fixed as needs for standards are continously changing. Alignment is however expected to increase through the active programme of new standards development. Currently more than 350 new standards are developed per year.

41.b Malaysia is promoting the adoption of Malaysian Standards as mandatory standards to protect the safety and health of consumers and the environment. We would like to know the percentage of these Malaysian Standards which have been aligned with international standards and whether there is any plan with timeframe to align the remaining standards. (Hong Kong, China)

As at December 2004, twenty one per cent of total mandatory Malaysian Standards have been aligned with International Standards and most of which are in the electronic and electrical sector. At present, there is no specific plan and time frame for the alignment of the remaining standards. The alignment exercise is an on going process wherever necessary and appropriate.

CUSTOMS PROCEDURES

42. Malaysia has a number of domestic Free Trade Zones (FTZs), for which the policy is overseen by the Malaysian Customs Department. What is the current set of policies and how do they affect Malaysia's trade and investment partners? The Malaysian media reports continuing challenges with combating smuggling, including the smuggling of price-controlled products. What plans does Malaysia have for implementing effective border protection of trade?

Free Zones are established under the Free Zones Act 1990. There are 2 types of zones , namely:

a) free industrial zones; and
b) free commercial zones

Under the FTZs and the related Licensed Manufacturing Warehouses (LMWs), imports of raw materials and components used in the manufacture of goods for export by companies located in the FTZs/LMWs are not subjected to any customs duties.

Goods manufactured or brought into free zones and subsequently brought into Customs territory are subject to the relevant domestic duties. The establishment of free zones does not discriminate foreign and domestic industries.

FTZs have helped companies located in these zones to reduce their costs of manufactured products. The FTZs are established to facilitate export-oriented companies which export all or almost all their products. This has benefited foreign-owned companies, particularly multinational companies and investors in producing products to compete in the global market.

In combating smuggling, Malaysia Customs implement various measures such as:

- Application of risk assessment i.e. focusing on high risk goods and high risk companies.
- Post Audit clearance.
- Application of ICT:
    - Use of high tech tools e.g. scanning machine.
    - Drug detection device.
    - Enhancement of computer system.

43. What steps has Malaysia taken towards the provision of temporary importation facilities and Clear Appeals Provisions? Please discuss steps being taken to

computerise classification procedures at time of entry as well as what is being done to implement "integrity" in Customs operations.

Malaysia has the provision of temporary importation facilities in our Customs Act under Section 97. Malaysia has acceded to the Convention on Temporary Admission of goods (ATA Convention) since 1988 and the implementation is an on-going process.

Provisions pertaining to appeals are clearly prescribed in the Customs Act as follows;

a) Section 13(B) – concerning duty paid under protest, classification or valuation of goods is referred to the D-G for his decision.
b) Section 143 – may appeal to the minister on decision made by D-G.
c) Section 143A – may appeal to the court on valuation of imported goods.

A web based data module/system which provides search facilities based on description and tariff is available to all customs officers and clients via Customs website.

On the implementation of 'integrity' in customs procedures; Malaysian Customs have implemented the 'selectivity release system', auto release system, advance ruling and the use of high technology applications such as the use of X-Ray machines at the entry points. Malaysia has also established the Customs and private sector Integrity Action Committee which meets twice a year to discuss issues regarding integrity on both parties. Malaysian Customs have also developed the Integrity Action Plan which have been published and distributed to all staff members apart from the code of conduct for the staff and Code of Ethics for Forwarding Agents. From time-to-time, courses and seminars on Integrity for all staff members and Customs client's are conducted.

At the administrative level, Malaysian Customs encourage dialogue and roundtable discussions at HQ level with those parties aggrieved by the decision of regional offices.

43.a Malaysia should simplify and reduce documentation procedures for imports and exports to avoid frequent and complicated requirements on customs clearance, and should make them more transparent. (ABAC)

This is an on going process. The import process has been awarded the MS ISO9001 2000 standard.

43.b Malaysia should ensure the establishment of concerted and united operational procedures for customs clearance and enhance the understanding of customs officers regarding interpretation of laws and rules, tariff classifications, speed of procedures, and EDI of customs procedures.(ABAC)

There are extensive training programs for our officers as an on going process. The training cover general and specific programs, such as courses on ethics, classification and valuation.

43.d Malaysia is requested to harmonise its HS code with established international standards and to accelerate the harmonisation process of the customs valuation system with the WTO Valuation Agreement to avoid situations whereby different tariff rates are applied to the same parts if used in different types of machinery. (ABAC)

Malaysia has harmonised its HS code and valuation system with the WTO Valuation Agreement.

43.e What processes are in place to enforce breaches of the Code of Customs Ethics and Conduct? (Australia)

The processes to avoid or remedy breaches of Code of Conduct are as follows:

1. Counseling by heads of departments;
2. Counseling by appointed and trained counselors;
3. Counseling by counselors in PSD (Public Service Department);
4. Disciplinary Action to officers concerned or Termination of Service in Public Interest; and
5. Disciplinary Action to supervisors for failure to act on any breach of code of conduct.

44.f The Customs Intelligence Center has been set up to coordinate information intelligence, compiled both from foreign and domestic sources. We are interested to know how the center could help collate and analyse intelligence. (Hong Kong, China)

The Customs Intelligence Center (CIC) was introduced in the first quarter of 2004. As CIC has been newly set up, many of its infrastructure such as computer systems and networking systems has not been in place yet as planned by the management due to budget constraints.

Currently, all information collected by the CIC is being done through computer system as well as manually. The main source of information comes from Royal Malaysian Customs' Computer Information system (SMK) that collects all import and export declaration information. Analysis is then done through the Decision Support System (DSS) in order to assist the process of Selectivity, Profiling and Targeting especially for the front line officers and the PAC team.

Other information gathering activities such as analysis and dissemination of information are still being done manually and through the stand-alone computer systems. The Royal Malaysian Customs has in plan to benchmark with other competent Customs Administration in the area of Customs Intelligence.

GOVERNMENT PROCUREMENT

44. How do Malaysia's Government Linked Companies (GLCs) fit within the framework of government procurement policies? The Malaysian Government has announced a move toward a system of open tenders for government contracts. What progress has been made in this direction?

Government Linked Companies (GLCs) are established under the Companies Act with their own Memorandum and Articles (M&A). The final authority lies with the Board of Directors of respective GLCs. The Government encourages on GLCs to follow Government policies as far as possible.

All GLCs have representatives from the Ministry of Finance to sit on the Board of Directors and as a member of the Audit Committee as part of a check and balance mechanism to ensure best practices and adherence to the Code of Ethics for Directors in all GLCs. This is also to ensure GLCs uphold public accountability and good corporate governance.

All agencies are required to procure through open tenders for all supplies, services and works above RM200,000. The recent announcement by the Government to further improve the open tender system is to enhance transparency and achieve best value for money. Through the open tender system, the Government will benefit from wider participation of bidders.

As government procurement is used as a tool to achieve socio-economic objectives, certain tenders will continue to be limited to specified groups based on certain threshold values.

45. The APEC Food System chapter notes that government procurement is not applicable in the food sector. Does this mean the Malaysia's policies on government procurement do not apply to the food products purchased for government use, for example the military?

The procurement of food products, like any other products, by Government agencies and institutions are required to follow the Government procurement policies and procedures.

46. Please provide details about improvements made since 1996 by Malaysia to improve transparency and increase competition with respect to government procurement. To what extent have foreigner suppliers been allowed to bid for government contracts?

Malaysia has always strived to achieve a high standard of transparency in its procurement and therefore efforts to improve transparency and increase competition in government procurement have been a continuous exercise. Malaysia subscribes to the elements agreed upon in the Non-Binding Principles (NBPs) and to the APEC Transparency Standards with the objective of improving its procurement regime.

Through the concept of 'let managers manage', the Ministry of Finance has delegated powers to respective agencies to do their own procurement and to eliminate unnecessary bureaucracy in order to enhance transparency. Even though the powers to procure have been delegated to respective agencies, the Ministry of Finance still formulates rules and procedures on Government procurement at the central level, which must be followed by all agencies.

To ensure transparency in procurement activities, tenders have to be widely advertised in local dailies, agencies' websites and also in the Malaysian Civil Service Link (MCSL). The advertisement must state clearly the type of supplies or services required by the tender, the name and address of the agency which invites the tender, the address where tender documents can be collected and the closing date of the tender submission. The government agency must make available a desk copy of the tender document for prospective bidders to view.

Information such as specification and the terms and condition of a contract must be stated in the tender document so that all bidders are well-informed of agencies' requirement. All tenders have to undergo an evaluation process prior to any perusal by the tender boards. Evaluation is normally done by two separate committees i.e. Technical Evaluation Committee and Commercial Evaluation Committee, based on the criteria set in the tender documents.

Tender awards are also done through a committee i.e. the Agency Procurement Board comprising of at least 3 persons and their decisions must be unanimous. To ensure check and balance each tender board must be represented by either an official from the Ministry of Finance or from any department with the relevant expertise. The Minister of Finance appoints all Federal Government Procurement Boards and the Chief Ministers of the respective states appoint the State Government Procurement Boards. The chairperson is usually a Head of Department or a Controlling Officer who under the Financial Procedure Act 1957 is empowered to manage the annual allocation given to a particular Ministry or Department. Minutes of each tender board proceeding must be prepared.

Currently two (2) Agency Procurement Boards have been established in all federal ministries i.e. Agency Procurement Board A and Agency Procurement Board B. The Agency Procurement Board A is empowered to decide on tenders up to RM30 million for supplies and services, and up to RM50 million for works. The representative from the Ministry of Finance is the permanent member of the Agency Procurement Board A and his presence is mandatory to validate the decision of the Board. This requirement is mainly to ensure that all procurement principles, policies, rules and regulations and procedures are strictly adhered to. The Agency Procurement Board B is empowered to decide on all tenders below RM20 million and the presence of a representative from the Ministry of Finance is not required.

Tenders above the values of RM30 million for supplies and services and RM50 million for works for Government Ministries/Departments and tenders above RM100 million for statutory bodies and Government companies must be forwarded to the Ministry of Finance for final decision. Any decisions of the Agency Procurement Boards, which are not unanimous, irrespective of value, must be forwarded to the Ministry of Finance for final decision.

As a management control mechanism, each agency has its own Internal Audit Division/Unit to do auditing on financial management and performance compliance. Based on their findings, the auditors will also provide advice to the controlling officers on the proper rules and regulations. Internal audit reports also include any weaknesses and breach of procurement rules and those responsible are required to explain their actions and remedial action taken. Through Treasury Circular No. 9/2004 the role of internal audit has been further highlighted.

A Monitoring and Control Division was established at the Ministry of Finance to monitor adherence to laws, rules and regulations pertaining to financial management including on areas involving government procurement. Special Task Forces will also be formed to investigate any complaints on impropriety in procurement exercises.

In year 2000, the Government introduced an electronic procurement (eP) system, an internet-based on-line system which is designed to encourage competition among contractors and to expedite the procurement processes. The development of the eP system also has the objective of reducing bidding costs and make the process more efficient and transparent. This system is in the second phase of implementation. In 2004, the Treasury launched its quotation and tendering modules in 14 selected ministries on a pilot basis.

Currently, another e-tendering system for tender of works is being considered and is still at a conceptual stage.

The most recent initiative by the Government to further improve transparency in Government procurement is the introduction of the National Integrity Plan (PIN).

Malaysia will continue with its policy on the mandatory requirement for all government agencies to procure supplies and services from local sources. International tenders will only be invited if there are no locally produced supplies or services available. For specific works, if local contractors do not have the expertise and capability, tenders may be called on a joint venture basis between local and foreign contractors to encourage the transfer of technology. In the case where projects are funded by foreign sources, tenders will be called and processed as stipulated by the respective sources.

46.a ABAC recommends that Malaysia further enhance the transparency and accountability of its government procurement by improving implementation

mechanisms concerning local content requirements regarding vendor lists of building materials and ensuring national treatment, including entry of new enterprises into the market. Not all but many governmental public construction programs limit bidding to domestic entities. ABAC also recommends that Malaysia moderate restrictions regarding the requirements of subcontracting Bumiputra-affiliated entities in projects based on bidding contracts, including contracts with Bumiputra companies, whereby almost all governmental bidding must be made via Bumiputra companies. (ABAC)

ABAC recommendations are noted. Government procurement policies are formulated in tandem with Malaysia's national policy as government procurement is used as a tool for nation building and to achieve its socio-economic agenda.

46.b The Malaysian Government has in place as part of their Government Procurement guidelines explicit measures that provide a level of preferential treatment for local suppliers, local content requirements and small businesses. However, we note an absence of specific criteria and/or thresholds governing these measures in the IAP. (Australia)

Treasury Circular Letter 7/2002 states that in Government procurement agencies are required to procure locally produced goods and services regardless of the procurement value. International tenders will only be invited if there are no locally produced supplies or services available and subject to prior approval from the Ministry of International Trade and Industry.

The procurement of locally produced supplies has been further enforced with a List of Local Building Materials issued by IKRAM QA Services Sdn. Bhd. and a List of Local Products for Government procurement of supplies issued by SIRIM QA Services Sdn. Bhd. All government agencies are required to ensure all tender specifications for supplies are based on Malaysian Standards (MS) if available, or other recognised international standards.

For works contracts, classifications of contractors are based on threshold values. Works contractors may participate in works tenders based on their eligibility.

46.c We note that "Malaysia will continue with its policy on the mandatory requirement for all government agencies to procure supplies and services from local sources. International tenders will only be invited if goods and services are not available locally." We encourage Malaysia to take into account the usually substantial economic benefits of international tendering, when its GP policy is reviewed next time. (Hong Kong, China)

The recommendation is noted. Malaysia will continue with its policies and current practices and will review its Government Procurement policies when the National Development Policy are being reviewed as Government Procurement policies are formulated in tandem with the National Development Policy.

46.d Malaysia uses government procurement as a tool to achieve social and economic objectives and has a mandatory requirement for all government agencies to procure supplies and services from local sources. International tenders are only invited for high value purchases where there is no locally made product available. As development progresses, does Malaysia have a framework for increasing tender possibilities for foreign suppliers? (USA)

As Government Procurement policies are formulated in tandem with the National Development Policy, Government procurement policies will be reviewed when the National Development Policies are being reviewed.

46.e Is there a timeline for Malaysia to increase tender possibilities for foreign suppliers? (USA)

As Government Procurement policies are formulated in tandem with the National Development Policy, Government procurement policies will be reviewed when the National Development Policies are being reviewed.

46.f Please describe how the preferences for local suppliers are applied. (USA)

Price preferential margins for locally made products against foreign-made products based on certain threshold values under the Treasury Instruction 169.2(a) were used prior to June 2002. However, since the current policy of the Malaysian Government is to procure locally produced goods and services and international tenders will only be invited if there are no locally produced supplies or services, the issue of applying preferential margin to local suppliers does not arise.

46.g How do foreign suppliers know when they are eligible to participate in a tender? (USA)

All international tenders are widely advertised in the local dailies, agencies' website and the Malaysian Civil Service Link (MCSL) and relevant Embassies and High Commissions are informed. As long as the foreign suppliers are qualified and fulfill all the requirements stated in the tender advertisement, they are eligible to participate in a tender.

46.h In Malaysia's "eProcurement" Suppliers Registration module, 10,700 out of 49,043 suppliers have been eProcurement-enabled. What are Malaysia's plans for allowing foreign suppliers to register in the module? (USA)

Foreign suppliers are allowed to register in the eProcurement Suppliers Registration module as long as they form a company incorporated in Malaysia through the

Companies Commission of Malaysia and follow the terms and conditions stipulated by the Ministry of Finance.

INTELLECTUAL PROPERTY RIGHTS

47. Malaysia has introduced a number of measures to strengthen the legal framework for the protection of intellectual property rights. What steps are the Malaysian authorities taking to ensure continuing enforcement of existing measures?

The Government is committed in its effort to provide for sufficient IP protection in the country. The Ministry of Domestic Trade and Consumer Affairs has undertaken various steps to combat copyright piracy. Among them are:

i. continue the Anti-Piracy Special Task Force operations and the Anti-Counterfeit Task Force;
ii. co-operation with the Chemistry Department in setting up the forensic centre to identify the source of illegal production of CD/VCD;
iii. provision of rewards for informers;
iv. strengthen the legal provision and amendments to the Copyright Act 1987 in 2003 which include power of arrest without warrant and imposing stiffer penalties;
v. implementation of affixing Original Labels beginning 15 January 2003 to differentiate between original and pirated products;
vi. co-operation with airport/port authorities as well as courier companies in detecting exports of illegal CD/VCD; and
vii. strictly enforce the ban on the sale of optical discs in open premises and night markets.

48. What steps has Malaysia taken to implement the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs) agreement? Has Malaysia provided on-line filing and on-line search facilities to the public yet? How would this mechanism function?

- Malaysian legislations are in conformity with the TRIPs Agreement.
- Malaysia was taken off the list of countries to be reviewed in September 2002.
- On 1 July 2004, the Protection of New Plant Varieties Act 2004 was gazetted.
- Intellectual Property Corporation of Malaysia is planning to provide on-line filing and on-line search facilities to the public by early 2005 subject to the e-Transaction Bill being passed by the Parliament.
- The online filing and online search system for intellectual property will cover Trade Mark Filing and Patent Filing. These systems will be accessible through the internet and payment will be made using e-payment facilities such as paying through master card or visa online for both corporate and personal credit cards or it can also be debited directly from the user’s account from either personal or corporate accounts.

49. Please describe the enforcement mechanisms in place in Malaysia to protect against the infringement of intellectual property rights.

Malaysia is serious in its efforts to eradicate infringement of intellectual property rights and has undertaken stringent and continuous efforts to stop the menace. Two Task Forces were formed to ensure a continuous program and action plan to curb copyright piracy and product counterfeiting, namely Special Copyright Task Force (formed on 1 April 1999) and the Anti Counterfeit Task Force (formed on 18 March 2002). These Taskforces enable relevant enforcement agencies to invoke every legislature and the entire enforcement machinery available to contain copyright piracy and products counterfeiting at all levels of distribution. During the last 5 years, the Malaysian enforcement agencies synergised under The Copyright Task Force relentlessly conducted raids on various entities involved in piracy and up to November 2004, 116,195 raids have been conducted resulting in 32,485 cases relating to copyright infringement and seizing goods worth RM 257.96 million.

The formation of the Anti-Counterfeit Task Force has also helped to build a closer networking among trade mark owners, government agencies and the Ministry of Domestic Trade and Consumer Affairs. Between 2002 and October 2004 the Ministry succeeded in seizing counterfeit goods worth RM92.7 million in 10,213 cases.

The operations under the Special Force Unit were supported by prosecution team specifically set up to handle piracy cases.

The Government has intensified intelligence and surveillances activities to trace sources of illegal CD/VCD productions and counterfeited products and has worked closely with the relevant industry in its enforcement activities.

49.a IPR protection in Malaysia is not sufficient, such that 8 out of 10 DVDs/CDs sold in Malaysia are illegally copied. Thus, ABAC strongly requests that Malaysia build effective measures to counter IPR infringement, including prevention of illegally copied products from China and its neighboring countries, establishment of a patent system, improvement of enforcement mechanisms, public notification regarding correct IPR information, and participation in international agreements regarding IPR. (ABAC)

1. Effective measures to counter IPR infringement, including prevention of illegally copied products from China and its neighboring countries and improvement of enforcement mechanism include:

- The intellectual property laws in Malaysia have made available statutory provisions for owners of intellectual property to initiate actions against persons who infringe their rights and seek remedies that are available. Therefore owners of copyrighted works should take advantage of these provisions for action against such infringement instead of relying totally on the government’s action. It is yet to be seen if any such action based on the said provisions has been taken by copyright owners.

- The Ministry of Domestic Trade and Consumer Affairs have acted on all complains made by both copyright and trade mark owners. Intellectual property owners must continue to provide leads and work closely with the government to succeed in the fight against IPR infringements.

2. The Malaysian Patent System.
The protection of patent is governed by the Malaysian Patents Act 1983 enforced on 1 October 1986.

3. Public notification regarding correct IPR information
The Intellectual Property Corporation of Malaysia undertakes continuous nationwide IP awareness campaign together with local universities, college and other collecting societies related to IP for researchers, entrepreneurs, teachers, students, journalists and the general public.

4. Participation in international agreements regarding IPR
Malaysia became a Signatory to the WIPO Convention on 1 January 1989, the Paris Convention on 1 January 1989, the Berne Convention on 1 October 1990 and the WTO Trade Related Aspect of Intellectual Property Agreement (TRIPS) in 1995 and also participates in IP working group under APEC and ASEAN.

49.b Malaysia is encouraged to participate in the APEC IPR Service Center scheme and to establish a Center or Centers at the earliest convenience. (ABAC)

Intellectual Property Corporation of Malaysia is currently providing services similar to an IPR Service Center and looking into the possibility of participating in the APEC IPR Service Center.

49.c ABAC asks for Malaysia’s adoption and ratification of the WIPO Digital Treaties (i.e., the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT)), and for the enactment of strong laws and enforcement mechanisms to control optical media production to complement civil and criminal measures. (ABAC)

Action has been initiated to accede to both WCT and WPPT by way of amendments to the Copyright Act 1987 which is still in the drafting stage.

Provisions on civil and criminal measures on Copyright are provided under the Malaysian Copyright Acts 1987 and the Trade Descriptions Act 1972 and control of optical media production is provided in the Optical Disc Act 2000.

49.d The Malaysian Government’s efforts to increase awareness and promote registration of IPR among small businesses continue. Measures include hosting

awareness programmes, key business/industry expos and providing a Government sponsored guide relating to registration procedures. (Australia)

The Intellectual Property Corporation of Malaysia undertakes continuous nationwide IP awareness campaign together with local universities, college and other collecting societies related to IP for researchers, entrepreneurs, teachers, students, journalists and the general public.

49.e Article 39.3 of the TRIPs Agreement obliges members, when requiring (as a condition of approving the marketing of pharmaceutical or agricultural chemical products) the submission of undisclosed test or other data, to protect such data against unfair commercial use and disclosure. Please explain how Malaysia complies with this provision. (USA)

Malaysia protects the Undisclosed Information under the Official Secrets Act 1972. The Act will not allow any disclosure, which includes making use of information, test or other secret information presented to the competent authorities in order to obtain market authorisation.

Currently the relevant ministries are studying the possibility of adopting the data exclusivity system.

49.f TRIPs Article 41 requires member states to enact enforcement procedures to permit effective action against any act of infringement of intellectual property rights, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements. Please describe any recent laws, rules, decrees that Malaysia has promulgated to comply with this article. (USA)

The Government in its effort to curb piracy has amended the Copyright Act 1987 where a minimum fine of RM2,000.00 to RM20, 000.00 for each infringing copy or 5 years imprisonment or both may be imposed.

In addition to this, the amendment was also made to facilitate for more effective enforcement. This amendment provided the officer with power to arrest without warrant. Since the enforcement date on 2 October 2003 till 13/12/2004, 623 offenders have been arrested without warrant and remanded between two and five days for the purpose of investigations and subsequently all were charged under the Act.

49.g Please let us know when Malaysia plans to accede and fully implement the WIPO Copyright Treaty, and the WIPO Performance Phonograms Treaty. (USA)

Measures have been initiated to accede to both WCT and WPPT by way of amendments to the Copyright Act 1987 which is still in the drafting stage.

Provisions on civil and criminal measures on Copyright are incorporated in the Malaysian Copyright Acts 1987 and the Trade Descriptions Act 1972. Control of optical media production is provided for in the Optical Disc Act 2000.

49.h The IAP makes reference to a Biosafety Bill. Please clarify the relationship to IPR and TRIPS. (USA)

There is no direct relationship with IPR. The Biosafety Bill is only for precautionary approach for the control of Living Modified Organisms (LMOs) or products of such organism.

The purposes of the Bill are to regulate the release, importation, exportation and contained use of living modified organisms, and the release of products of such organisms, in accordance with the precautionary approach, and ethical, religious and cultural norms, and to ensure sustainable development, in order to protect human, plant and animal health, the environment and biological diversity and for matters connected therewith.

The Bill provides that:

i) Prior approval shall be obtained from the National Biosafety Board (the Board) for any manufacture, release into the market or any disposal of LMOs or products of such organism;
ii) Prior notification shall be given to the Board for any contained use activities involving LMOs;
iii) A risk assessment and a risk management report shall be submitted before any importation of LMOs;
iv) Any exportation of LMOs shall comply with the importer's country regulation before the activity can be allowed.

The National Biosafety Board is established to enforce and implement the Act.

The Bill is expected to be tabled in Parliament in 2005.

COMPETITION POLICY

50. Please review Malaysia's competition policy and/or laws and the relevant changes to its regime that have been made since Malaysia adopted the Eighth Malaysia Plan (2001-2005).

Currently Malaysia has no comprehensive policy on anti-competitive activities at the national level which cuts across all economic sectors. However, legislation on anti-competitive measures have been applied in two economic sectors, namely communications and multimedia sector, and energy sector.

The Communications and Multimedia Sector

1. As provided in section 133 of the Communications and Multimedia Act 1998, there is a general prohibition, which mentions of "any conduct which has the purpose of substantially lessening competition in a communications market". The Malaysian Communications and Multimedia Commission (MCMC) has issued several guidelines which clarify the meaning of "substantial lessening of competition" and also defines "dominant position"

2. In addition to the general prohibition under Section 133, collusive agreements to fix rate, share market, boycott suppliers or competitors are specifically prohibited as provided for in Section 135.

3. Further to this, Section 136 prohibits per se product or service tie-in arrangements in the communications market.

4. If there is any infringement of the prohibition, the Commission is empowered to instruct the offender to cease conduct and implement remedial measures. The Commission may also seek to obtain an interim or interlocutory injunction against the offender and the permission of the Public Prosecutor to prosecute the offender in the Sessions Court.

The Energy Sector

In contrast, provisions for the enforcement of competition policy in the energy sector are defined very broadly in the Energy Commission Act 2001. The Act provides that one of the functions of the Energy Commission is to "promote and safeguard competition and fair and efficient market conduct or, 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".

Consumer Protection Act 1999

Some of the more pertinent provisions of the Consumer Protection Act 1999 are as follows:

- prohibits certain practices that are unfair to the consumers;
- prohibits unfair means for businesses to gain a competitive advantage over its rival;
- prohibits the making of false or misleading representation with respect to the sale of goods and services;
- contains provisions relating to safety standard of goods, implied guarantees with respect to goods and services and product liability; and
- establishes the Consumer Claims Tribunal to hear and determine disputes relating to any violation of the consumer's right referred by the Act.

The Securities Industry

In this sector, the Securities Commission (SC) Act 1993, does not directly address competition issues. The SC examines and approves mergers and takeovers of listed companies to assess the viability, capability, suitability of a company and of the public interest before allowing such mergers and acquisitions. Although the rights of minority shareholders are protected with rules of fair conduct, the question of market structure which emerges from such actions are not considered.

Towards a National Policy

The need to introduce a national fair trade policy is acknowledged in the Eighth Malaysia Development Plan (Chapter 16 pp 32):
"…….a fair trade policy and law will be formulated to prevent anti competitive behaviour such as collusion, cartel price fixing, market allocation and the abuse of market power…"

Ministry of Domestic Trade and Consumer Affairs has embarked on a competition advocacy program since 2003 to educate government agencies and the private sector that a national policy on anti-competitive activities will bring about benefits to the nation. Exact details of the policy and law will be adopted only after discussions and consultations with the public sector and private sector are completed.

51. Malaysia reported that in 2003 a study on Restrictive Business Practices and their Effects on Malaysia's Competitive Dynamics were completed. What were the findings and recommendations of this report? Please describe the current measures being taken to implement a competition policy that would ensure sufficient levels of healthy competition across various industries.

The result of the study did not state the extent of prevalence of anti-competitive practices within the economy. However, there are evidences of exclusive dealing, tied selling and other restrictive business practices in certain sectors. The Ministry of Domestic Trade and Consumer Affairs needs to undertake further research to assess the extent of prevalence of the said practices within the Malaysia economy.

General policy framework

51.a We note Malaysia has recognised the need for a competition policy and that a Fair Trade Practices Policy is being formulated. Who is responsible for the formulation of this policy and which parties are being consulted? What are the key issues being considered? When is the FTPP expected to be completed? (Australia)

Competition institutions (including enforcement agencies)

- The Ministry of Domestic Trade and Consumer Affairs is in the process of formulating the Fair Trade Practices Policy following which the law would be drafted and tabled in Parliament. The Ministry intends to complete the formulation of the policy before the end of 2005. Intensive research on existing laws in various countries, both developed and developing have been done, which consultation with UNCTAD and other commissions such as Japan Fair Trade Commission, Trade Competition Commission of Thailand and Commission for the Supervisory of Business Competition (Indonesia) [KPPU] have also been carried out.

- MDTCA embarked on a competition advocacy program since 2003 with the aim of educating both public and private sector agencies on the benefits of such a policy. In-depths discussions were also held to assist Ministry officials further refine the policy. Private sector comprised associations representing the various industries and consumer groups. Several high level working groups within the public sector have been formed to discuss the impact of the policy on industries under the supervision of respective agencies. These advocacy programs are on-going.

- Among the substantive provisions being considered to be included in the proposed policy are on abuse of dominant market positions, cartels and restrictive trade practices.

Competition institutions (including enforcement agencies)

51.b What would be the role of the Fair Trade Unit? Which sectors would it be responsible for? Will it be independent of government? Will sectoral regulators continue to operate? (Australia)

The Fair Trade Unit is part of the Policy and Planning Division of the Ministry of Domestic Trade and Consumer Affairs. The unit is responsible for the formulation of the Fair Trade Practices Policy as well as the law. Among the main responsibilities of this unit include research on competition laws and policies of other countries and conducting advocacy programs. The proposed policy also recommends the setting up of the Office of Fair Trade in the medium term and the Fair Trade Practices Commission in the long-term. The former, which would be under the purview of the Ministry of Domestic Trade and Consumer Affairs would be the transition and expansion of the Unit and would be the interim agency to carry out further research on the policy whereas the latter would be the body entrusted to implement the Fair Trade Practices Act.

Measures to deal with horizontal restraints

51.c Does the draft FTPP propose measures to deal with horizontal agreements? If so, what are these? (Australia)

Still under consideration.

Measures to deal with vertical restraints

51.d Does the draft FTPP propose measures to deal with vertical agreements? If so, what are these? (Australia)

Still under consideration.

Measures to deal with abuse of dominant position

51.e Does the draft FTPP propose measures to deal with abuse of dominant position? If so, what are these? (Australia)

Yes, but the details are still being worked out.

Measures to deal with mergers and acquisitions

51.f We note that mergers and acquisitions in a number of sectors are regulated via individual pieces of legislation. Does the FTPP consider a consolidated merger regulation? If so, what criteria are proposed for assessing the approval of mergers? (Australia)

The policy proposes that post merger conduct of companies be regulated. Currently, only pre-merger dealings are regulated. However, the issue is stilb being researched.

51.g We would be interested in information on the formulation of the Fair Trade Practices Policy ("FTTP"), including:

- ***the procedures to be employed in formulating the FTTP;***
- ***the groups, both within and outside of the government, that will be consulted during the formulation process;***
- ***the time frame you envision for formulating the FTTP;***
- ***the major substantive provisions you envision the FTTP as including; and***
- ***information regarding the likely composition and powers of the Fair Trade Unit. (USA)***

- The Ministry of Domestic Trade and Consumer Affairs (MDTCA) is in the process of formulating the Fair Trade Practices Policy following which the law would be drafted and tabled in Parliament. The Ministry intends to complete the formulation of the policy before the end of 2005. Intensive research on existing laws in various countries, both developed and developing have been done, which consultation with UNCTAD and other commissions such as Japan Fair Trade Commission, Trade Competition Commission of Thailand and Commission for the Supervisory of Business Competition (Indonesia) [KPPU] have also been carried out.

- MDTCA embarked on a competition advocacy program since 2003 with the aim of educating both public and private sector agencies on the benefits of such a policy. In-depths discussions were also held to assist Ministry officials further refine the policy. Private sector comprised associations representing the various industries and consumer groups. Several high level working groups within the public sector have been formed to discuss the impact of the policy on industries under the supervision of respective agencies. These advocacy programs are on-going.

- Among the substantive provisions being considered to be included in the proposed policy are on abuse of dominant market positions, cartels and restrictive trade practices.

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51.h We note that Malaysia has sectoral-based competition regulations for the communication and multimedia sector and energy sector. We would be interested in hearing about key enforcement actions taken in these sectors in recent years, specifically to enforce Section 138 of the Communications and Multimedia Act 1998 and Section 14(1) (4) of the Energy Commission Act. Which agency deals with mergers and acquisitions in these sectors? What factors are considered in reviewing such mergers or acquisitions? Is the effect on competition one of the factors? (USA)

1. Enforcement actions under Competition Regulations

The Malaysian Communications and Multimedia Commission (MCMC) have been managing complaints regarding anti-competitive behaviours, which have been resolved via mediation and moral suasion.

Section 138 of the Communications and Multimedia Act (CMA) states that the Commission may publish guidelines which clarify how it will apply the test of "dominant position" to a licensee. In that respect the MCMC had conducted a study to assess dominant position in the communications markets and had issued Public Inquiry (PI) Paper for the public to comment. The PI Paper contained an explanation of the legislative context and analytical framework for an assessment of dominance, and details of the Commission's analysis and assessment of dominant position in seven key areas of the communications market (i.e. fixed line telephony access, mobile telephony, upstream network elements, interconnection, leased lines, broadband internet services, and broadcast transmission), based on market circumstances at that time. The PI Paper also outlined the Commission's proposals in regard to the establishment of market share presumptions to be used in future assessments of dominance.

Subsequently a Public Inquiry Report was published, which includes the public and operators opinions regarding dominant position. Based on the findings of the Report, on 22 December 2004 the Commission issued a Determination listing licensees that have been found to be in a dominant position in the communications markets specified.

The Determination can be viewed at the MCMC's website at www.mcmc.gov.my.

2. Mergers and Acquisition

The mergers and acquisition in the communications and multimedia sector is not subject to the Regulators approval. However, if a company is a public listed company, the Securities Commission will be the authority for approval of mergers and acquisition, though the focus will not be on competition.

51.i We would be interested in a brief summary of the "Guidelines on Dominant Position in Communication Market," particularly how dominance is determined. What has been the result of the public inquiry on assessment of dominance in the communications market? (USA)

1) Guideline on Dominant Position in a Communications Market

   The Guideline on Dominant Position in a Communications Market can be accessed at the MCMC's website at:
   http://www.mcmc.gov.my/facts_figures/codes_gl/guidelines/dp/dp.pdf.

2) Result of the public inquiry on assessment of dominance in the communications market

   The Public Inquiry Paper (PI) on assessment of dominance in communication markets resulted in the Commission determining the following licensees to be in a dominant position in the communications markets specified:

Licensee	*Communications Market*
Telekom Malaysia Berhad	Fixed Line Telephony Market

Telekom Malaysia Berhad Celcom (Malaysia) Berhad Celcom Transmission (M) Sdn Bhd TM Cellular Sdn Bhd Mobikom Sdn Bhd Maxis Broadband Sdn Bhd Maxis Mobile Services Sdn Bhd Maxis Mobile Sdn Bhd Maxis International Sdn Bhd Digi Telecommunications Sdn Bhd TTdotCom Sdn Bhd AtlasONE Sdn Bhd NasionCom Sdn Bhd Sacofa Sdn Bhd TH-NSTC Sdn Bhd Sacofa Sdn Bhd	Interconnection Market for wholesale call termination and origination in each licensee's respective networks
Telekom Malaysia Berhad	Analogue Leased Lines Market
TMNet Sdn Bhd Telekom Malaysia Berhad	Broadband Services Market
Telekom Malaysia Berhad	Analogue Broadcasting Transmission Market

The findings of a dominant position does not have any immediate impact on a licensee determined as such, except where that licensee engages in any conduct which has, or may have, the effect of substantially lessening competition in any communications market. In the event that such conduct does take place, the Commission will apply the provisions contained under Section 139 of the CMA to direct the said licensee to cease such a conduct and to implement appropriate remedies. The determination shall remain in force for a period of two years from the date of registration.

DEREGULATION/REGULATORY REVIEW

52. *Please discuss the process and progress of regulatory reform to eliminate distortions in the flows of trade and investment.*

Malaysia has complied with the WTO Trade-Related Investment Measures (TRIMs) agreement.

Local materials content requirements are no longer imposed on applications for investment incentives. The local materials content policy for the automotive industry has also been phased-out at the end of 2003.

52.a *We note that mergers and acquisitions in a number of sectors are regulated via individual pieces of legislation. Does the FTPP consider a consolidated merger*

regulation? If so, what criteria are proposed for assessing the approval of mergers? (Australia)

Min of Domestic Trade

IMPLEMENTATION OF WTO OBLIGATIONS AND RULES OF ORIGIN

53. ***Please describe the steps taken by Malaysia to conform to its obligations and government procedures to ensure WTO compatibility reviews of new policies and measures which affect international trade in goods and services.***

Since Malaysia's ratification of WTO Agreement on 6 September 1994 and through the implementation period, Malaysia has taken the necessary steps to ensure government procedures are in conformity to its WTO commitments and obligations. Following that, reviews are also undertaken through, inter alia:

- national consultation meetings;
- WTO trade policy reviews (TPR);
- active participation in WTO meetings; and
- notifications to the WTO on new laws and regulations affecting trade.

DISPUTE MEDIATION

54. ***Using recent examples please provide an overview of how Malaysia has settled trade and investment disputes with other economies.***

As a member of the WTO, Malaysia adheres to the dispute settlement procedures to settle trade disputes between governments in accordance with the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU). An example of settling a dispute through this mechanism was the case of "United States - Import Prohibition of Certain Shrimp and Shrimp Products - Recourse to Article 21.5 by Malaysia" in 2000.

Malaysia is also a party to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (Washington Convention) on 8 August 1966. By virtue of Articles 33 and 44 of the Washington Convention, the Conciliation Rules or Arbitration Rules of the International Centre for Settlement of Investment Disputes (ICSID) would be applicable. Recognition is accorded to ICSID to provide facilities for conciliation and arbitration of investment disputes.

Malaysia also acceded to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) on 5 November 1985. The Regional Centre for Arbitration Kuala Lumpur (RCAKL) provides facilities for dispute settlement.

In relation to anti-dumping and countervailing cases, the aggrieved party can refer the matter to High Court for judicial review. This is provided under our Act i.e. Section 34A of the Countervailing and Anti-Dumping Duties Act 1993 (ACT 504).

Any WTO member can request for consultations to settle their disputes under the Anti-Dumping Agreement (ADA). Refer Article 17 of the ADA.

54.a We understand that the information on the website www.lawnet.com.my is not available to the general public free of charge. We would like to know whether it will be open for free access in future. (Hong Kong, China)

The website www.lawnet.com.my is owned by Percetakan Nasional Malaysia Berhad (PNMB), which is an independent corporate body and operated by PNMB-LawNet, an Internet Division of PNMB. Since the website is run by a private company, the decision to provide their services on subscription basis or not is up to the company itself. Selected legislations currently available free of charge can be found at http://mcsl.mampu.gov.my/english/laws_acts.htm.

54.b We welcome information that Malaysia is conducting a review of its Arbitration Act of 1952; that your officials are currently studying the UNCITRAL Model Law for International Commercial Arbitration; and that your officials are considering the possibility of including a provision on independent review procedures for arbitral awards.

1. ***Please provide information on company executives with Malaysia's ADR system.***
2. ***Will interested persons and enterprises have an opportunity to participate in the review of the Arbitration Act of 1952? Will they and APEC economies have an opportunity to present views and comments? (USA)***

As part of the review process of the Arbitration Act 1952, consultations with interested persons have been carried out and taken into account in preparing the updated legislation. These include the relevant bodies in Malaysia which deal with alternative dispute resolution, such as the Bar Council and the Malaysian Institute of Arbitrators. Interested APEC economies may share their views and comments if they so wish.

MOBILITY OF BUSINESS PEOPLE

55. Please identify remaining initiatives necessary to achieve all objectives under the WTO with respect to the mobility of business people.

Advance Passenger Information (API) Systems

Malaysia conducted feasibility studies on Australia's API Systems in 2003 and attended the API System seminar in New Zealand in April 2004.

A study team has been formed to study Malaysia Airline's API Systems. Discussion and negotiation is in progress.

56. ***The new Immigration Department Employer Application System is a tool that could be useful to other economies. Could Malaysia please provide additional information on its structure and functioning?***

Function
Immigration Department Employer Application System (IDEAS) enables employers to apply for foreign workers for the category of housemaids and labourers. Under this system, there is no necessity for members of the public to appear personally at Immigration Department either for submission of new application or for renewal of Visa and Work Pass the following year. All applications can be submitted through http://www.imi.gov.my.

IDEAS serves to identify only qualified or registered companies applying for foreign workers or housemaids.

Records and data of foreign workers or housemaids are used for future economic plan in order to enhance the country's economic development.

Structure
To access the facilities, user (employer or registered agent) must obtain User ID and Password from the Immigration Department.

User can proceed with the following transactions:

Registered Agent	Registered Employer
Login	Login
Change password	Change password
Submit new application	Create sub-user
View employers' data	Request to register new foreign workers
View foreign maids' data	Submit request for visa and pass renewal
Submit new employers' data for registration	Submit request to update employer's data

All data of applications submitted by the user will be stored in the Immigration Department's database.

The Immigration Department will process the application. Within a month, employer or registered agent will appear at Immigration Department along with payment/personal bond and relevant documents required.

57. What are Malaysia's strategies for the exchange of information on the regulatory visa regime?

Exchange of information on the regulatory visa regime is undertaken via:

- Diplomatic Notes for any changes in visa rules and regulations.
- Conducting dialogues on immigration issues (including immigration rules, regulations and policy) with private sector i.e. Taipei Investors Association in Malaysia (TIAM) and The Japanese Chamber of Trade and Industry (JACTIM).
- Immigration Department's website provides details on visa regulations and requirement for every country. Ministry of Home Affairs' portal to be launched in the near future will provide Question & Answer Column on immigration matters.

57.a Malaysia is strongly encouraged to simplify and deregulate visa procedures, including elimination of requests for increases in capital investment at the time of applying for working visas. Requirements for having a certain number of domestic workers in managerial positions should be removed. (ABAC)

Immigration Department's client charter for processing Visa without Reference is 2 to 3 working days, while for Visa with Reference, the department takes one to two weeks. Malaysia revises visa procedures from time to time in order to facilitate the business community. Malaysia imposes visa requirements only for two APEC economies. Business people and expatriates that require visa are provided with Visa on Arrival facility and which is also extended to their dependents as well.

Requirements for domestic workers, including in managerial positions are necessary for socio-economic objectives as outlined in Malaysia's development plans. Nevertheless, flexibility can be granted to employers who require personnel with specialised skills or in cases where there is insufficient manpower.

57.b While it is understandable that local circumstances should be taken into consideration, deregulation is requested regarding employment regulations with reference to the Bumiputra policy. Malaysia should permit entry of a sufficient number of foreign experts in managerial and engineering positions to provide an adequate level of training to Malaysian workers and to enable flexible management of personnel. (ABAC)

Requirements for domestic workers, including in managerial and engineering positions are necessary for socio-economic objectives as outlined in Malaysia's development plans. Nevertheless, flexibility is granted to employers who require personnel with specialised skills or in cases where there is insufficient manpower.

57.c Malaysia is requested to establish stable mechanisms for acceptance of foreign workers in order to avoid confusion and anxiety among foreign-invested companies caused by frequent change of immigration policies.(ABAC)

Malaysia has a stable mechanism for acceptance of foreign workers in the country. The policy on foreign workers is decided by the Cabinet Committee on Foreign Workers. Malaysia's immigration policies are stable and guided by the Immigration Act 1959/63. Malaysia, however will continue to liberalise the immigration policies from time to time in order to facilitate and speed up the mobility of business people and expatriates.

57.d ABAC encourages Malaysia to introduce e-lodgement arrangements for temporary residency applications. (ABAC)

For temporary residency applications, Malaysia introduced IDEAS system to enable employers to apply for foreign workers as maids and labourers through the internet. Via the system, there is no necessity for members of the public to appear personally at Immigration Department either for submission of new application or for renewal of Visa and Work Pass the following year. All applications can be accessible through the department's website http://www.imi.gov.my.

Besides that, Malaysia introduced I-Visa project in China and India in early 2004. Through the system, registered travel agents can apply for visa through the internet. Applications can be made through the Immigration Department's website http://www.imi.gov.my.

57.e Australia greatly appreciates Malaysia's efforts in 2004 to improve its pre clearance time for the APEC Business Travel Card and notes its efforts to promote the card locally.

Australia notes the active consideration to Advance Passenger Information (API) system implementation by Malaysia and encourages Malaysia to make a formal announcement of commitment to API implementation at the Ministers' or Leaders' meetings in 2005.

Australia requests information on Malaysia's progress in implementing agreed Business Mobility Group (BMG) standards in respect of:

- ***travel document examination***
- ***travel document security***
- ***professional service***
- ***transparency.***

Regarding Business Temporary Residency, Australia requests that Malaysia provide information on arrangements to facilitate processing of intra company transferees in accordance with the agreed BMG 30 day visa application processing standard. Australia seeks information on consideration of extending work rights to

spouses of intra company transfer temporary residents, as agreed by the BMG. (Australia)

1. Travel document examination

IRIS Smart Reader Technology is used for detection of document fraud and to check the authenticity of the Malaysian Passports.

The Canadian Banknote reader System is used to check the authenticity of foreign passports. Malaysia is also using the TD System (provided by the National Criminal Intelligence Department of Holland) as a tool to check the security features of foreign passports.

2. Travel document security

The Malaysian Immigration Department improves travel document security by implementing travel documents using the smart passport technology by introducing the biometric passport with thumbprint feature in early 2004.

The issuance system is computerised and has been awarded the MS ISO 9002 version 2000.

3. Professional Service

Immigration Act 1959/63, Immigration Regulations and Orders and Passport Act 1966 are major guidelines for immigration officers in doing their tasks professionally. Besides that, Internal Immigration Circulations are circulated to all immigration officers.

Immigration Academy assumes an important role in conducting courses, seminars, exercises and assessment for immigration officers.

4. Transparency

Immigration Department is in its final stage of publishing the Immigration Act 1959/63, Regulations and Orders in its website in order to enable relevant parties to access information pertaining to immigration rules, regulations and procedures. Public is normally informed in advance of any amendment or new acts by press statements or newspapers.

Information on visa, passport, other immigration facilities, procedures and requirements are available at Immigration department's website: http://www.imi.gov.my.

5. Intra Company Transfers

Malaysia has implemented One Stop Agency since July 2004 which is under Ministry of Home Affairs to receive and process the applications of expatriate posts. The processing time is 14 days.

Currently, the Malaysian Government allows spouses of expatriates or intra company transfer temporary residents who have specialised skills working in Malaysia under their own merit. Their Dependent Pass will be converted to Employment Pass.

HEALTH SERVICES

58. It would be important for foreign investors to know if there is any specific limit on foreign investment in areas such as hospital services, medical services nursing services, allied health services and pharmacy services.

Currently under Malaysia's GATS on Private Hospital Services, commercial presence of a foreign investor must be through a joint-venture and foreign equity participation is limited to 30 percent.

Annex 3

IAP Peer Review: Malaysia
Program of an In-country Visit by Expert
14-18 December 2004

<u>14 December 2004</u>

09.25	Arrival of Dr William Dymond, Senior Executive Fellow, Center for Trade Policy and Law, Carleton University, Ottawa, Canada by flight **SQ 106** from Singapore Check-in at Hotel Renaissance Kuala Lumpur **Confirmation No. 18033371** Corner Off Jalan Sultan Ismail and Jalan Ampang P.O. Box 1335 50450 Kuala Lumpur Tel: +60-3-2162 2233 Fax: +60-3-2163 1122 Attn: Mr Jeff Tai (+60-3-2164 8877) http://www.renaissance-kul.com
13.30	Arrival of Mr Soonthorn Chaiyindeepum, Director (Program), APEC Secretariat and the coordinator for the IAP Peer Review of Malaysia by flight **SQ 110** from Singapore Check-in at Hotel Renaissance Kuala Lumpur **Confirmation No. 2776119**

<u>15 December 2004</u>

09.00	Arrive at the Ministry of International Trade and Industry (MITI) 5th Floor, Block 10, Government Offices Complex Jalan Duta, 50622 Kuala Lumpur Contact Person: Ms Harjit Kaur, Principal Assistant Director, Asia Pacific Economic Cooperation Division, MITI E-mail: harjit@miti.gov.my
09.30-12.30	Session I: Introduction of the IAP Peer Review Team - Welcome by MITI officials - Introduction of the expert - Briefing by MITI on the business arrangement for the In-country visit by expert Session II: Briefing by the expert on the study of the Malaysia's IAP
12.30-14.00	Lunch break

14.00-17.00	Session III: Questions and Answers on IAP Group I: Customs Policy Attending agencies: Customs Department, …

<u>16 December 2004</u>

09.00-12.30	Session III: Questions and Answers on IAP (continued) Group II: Policy on Services Attending agencies: ….
12.30-14.00	Lunch break
14.00-17.00	Session III: Questions and Answers on IAP (continued) Group III: Trade Policy and Facilitations Attending agencies: ….

<u>17 December 2004</u>

09.00-12.30	Session III: Questions and Answers on IAP (continued) Group III: Trade Policy and Facilitations Attending agencies: ….
12.30-14.00	Lunch break
14.45-17.00	Session IV: Discussion on the preparations of the Report and presentation in the IAP Peer Review Session Session V: Conclusions
21.45	Departure of Mr Soonthorn Chaiyindeepum by flight SQ 119 to Singapore

<u>18 December 2004</u>

08.15	Departure of Dr William Dymond by flight **SQ 103** to Singapore

Draft Agenda of the Meeting
Between Expert and Malaysian Officials
For the IAP Peer Review Study of Malaysia
Ministry of International Trade and Industry
Kuala Lumpur, Malaysia
15-17 December 2004

Session I	Introduction of the IAP Peer Review Team - Welcome by MITI officials - Introduction of the expert - Briefing by MITI on the business arrangement for the In-country visit by expert
Session II	Briefing by the expert on the study of the Malaysia's IAP
Session III	Questions and Answers based on a questionnaire received from other economies: **Grouping 1: Customs Policy** - General issues - Tariffs - Non-Tariff Measures - Paperless Trading - Standards and Conformance - Customs Procedures **Grouping 2: Policy on Services** - General issues - Services - Telecommunications - Transportation - Energy - Business Services - Financial Services - Investment **Grouping 3: Trade Policy and Facilitations** - General issues - Government Procurement - Paperless Trading - Intellectual Property Rights - Competition Policy - Deregulation/Regulatory Review - Implementation of WTO Obligations and Rules of Origin - Dispute Mediation - Mobility of Business Persons
Session IV	Discussion on the preparations of the Report and presentation in the IAP Peer Review Session to be held in the margins of SOM I in Seoul

next year.

Session V Conclusions

LIST OF ATTENDEES
QUESTIONS AND ANSWERS SESSION ON MALAYSIA'S IAP 2004
15-17 DECEMBER 2004
Ministry of International Trade and Industry, Kuala Lumpur, Malaysia

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