

CRS Report for Congress

The Proposed U.S.-Malaysia Free Trade Agreement

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The Proposed U.S.-Malaysia Free Trade Agreement

Summary

This report addresses the proposed U.S.-Malaysia free trade agreement (FTA). It provides a brief overview of the Malaysian economy, a review of U.S. interests in the proposed agreement, an examination of possible issues likely to arise during the negotiations, a comparison of tariff rates between the two countries, legislative procedures, and an appendix with a brief chronology and trade data — including U.S. exports and imports to Malaysia by sector and exports to Malaysia by state.

The U.S. Trade Representative, on March 8, 2006, announced the Administration's intent to negotiate a free trade agreement with Malaysia. Since June 2006, six rounds of negotiations (alternating between the two countries) have been held. The sixth round was held in Kuala Lumpur on January 14-17, 2008. Despite missing the March 31, 2007 deadline in order for Congress to consider the proposed FTA before the Administration's Trade Promotion Authority expired on July 1, 2007, both the United States and Malaysia remain committed to a successful completion of the negotiations.

The proposed U.S.-Malaysia FTA is of interest to Congress because (1) it requires congressional approval; (2) it continues the trend toward greater trade liberalization and globalization; (3) it may include controversial provisions; and (4) it would affect certain trade flows that would, in turn, affect U.S. businesses or farmers, particularly import-competing industries and those exporting to Malaysia.

Intellectual property rights protection, protection of Malaysia's automotive industry, limits on foreign ownership of banks in Malaysia, and the duration of patent rights of pharmaceuticals are among the key outstanding issues. However, there is general agreement that the main "sticking point" is Malaysia's New Economic Policy and its preferential treatment for bumiputera-owned companies.

On a most favored nation basis, Malaysia's average tariff rate is 8.1% — higher than the 4.9% of the United States. Under an FTA, exporters in each country would face the same tariff rates — most of which to be phased out over time — and greater access to each nation's domestic market.

Areas of particular interest to U.S. exporters include a reduction of Malaysian barriers to exports of automobiles and certain agricultural products, stricter enforcement of intellectual property rights, and broader access to Malaysia's service sectors such as financial services, government procurement, telecommunications, and professional services.

In 2006, the United States was Malaysia's largest trading partner, while Malaysia was the United States's tenth largest trading partner. The United States was Malaysia's top export market and its second largest supplier of imports in 2006.

This report will be updated periodically.

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Key Recent Developments

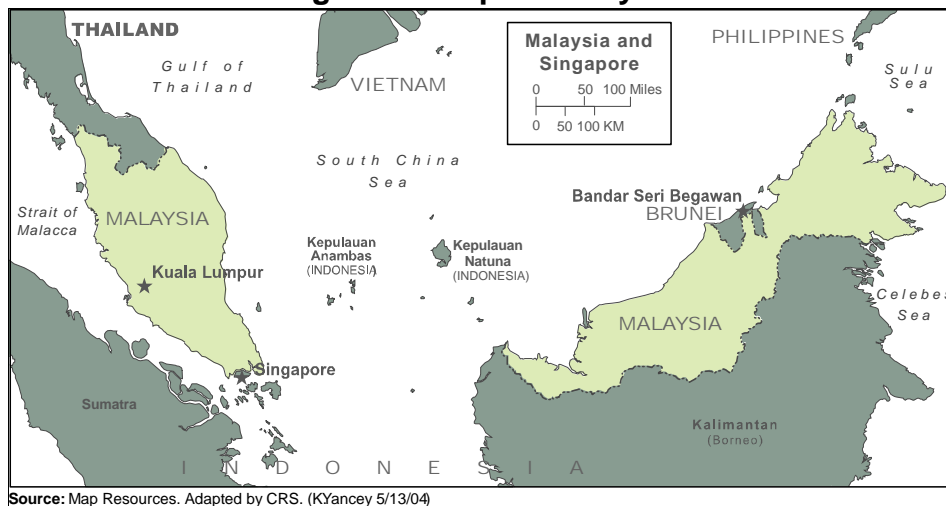
- January 14, 2008. Sixth Round of talks held in Kuala Lumpur.
- August 28, 2007. U.S. Deputy Trade Representative Karan Bhatia states that negotiations with Malaysia on free trade agreement (FTA) could be completed in 2008.
- April 13, 2007. Informal round of talks held in Washington, DC; both sides indicate some progress made on key issues.
- March 12, 2007. Twelve Members of Congress write U.S. Trade Representative Susan Schwab expressing concern that existing and proposed free trade agreements, including the one being negotiated with Malaysia, undermine U.S. commitments to the Doha principles, and “strip away flexibilities to which countries are entitled under TRIPS.”¹
- March 7, 2007. Prime Minister Abdullah meets with the Malaysian Cabinet to discuss status of negotiations and agree upon acceptable terms for the remaining 58 issues of the free trade agreement. No public announcement of the outcome of the meeting is released, possibly indicating difficulties in arriving at a consensus.
- February 5-9, 2007. Fifth round of talks held in Kota Kinabula, Malaysia; reported 58 issues remain to be resolved; no date set for next round of talks.
- January 31, 2007. House Foreign Affairs Committee Chairman Tom Lantos sends letter to USTR Schwab requesting suspension of FTA negotiations until Malaysia renounces energy development deal with Iran.
- January 8-12, 2007. Fourth round of talks held in San Francisco result in modest progress.

¹ “TRIPS” refers to the Trade-Related Aspects of Intellectual Property Agreement of the World Trade Organization. TRIPS applies to all WTO members, including Malaysia and the United States.

Introduction²

On March 8, 2006, the U.S. Trade Representative (USTR) announced and notified Congress of the Administration's intent to negotiate a free trade agreement (FTA) with Malaysia. The goal of the proposed FTA is to remove tariffs and non-tariff barriers and expand trade between the two nations. The first round of negotiations was held June 12-16, 2006, in Malaysia with at least five rounds anticipated. The two countries announced that they were seeking to complete the talks by March 31, 2007, in order to send the proposed implementing legislation to Congress in the spring of 2007 and have Congress consider it before the Bush Administration's Trade Promotion Authority (TPA) expired on July 1, 2007, but they later indicated that they would not rush into concluding the FTA just to meet the deadline.³ The sixth round of talks were held in Kuala Lumpur on January 14-17, 2008.

Figure 1. Map of Malaysia



Source: Map Resources. Adapted by CRS. (KYancey 5/13/04)

An FTA with Malaysia would be the third FTA negotiation by the United States with a Southeast Asian nation, following the U.S.-Singapore FTA that came into effect on January 1, 2004, and a proposed U.S.-Thailand FTA whose negotiations are currently stalled. The United States also has an FTA with Australia and is negotiating an FTA with South Korea. On May 10, 2004, the United States and Malaysia signed a Trade and Investment Framework Agreement.⁴

² The author would like to thank Dick Nanto, who conceived of and wrote earlier versions of this report.

³ U.S. Trade Representative. "United States, Malaysia Announce Intention to Negotiate Free Trade Agreement." USTR Press Release, March 8, 2006. "U.S., Malaysia Launch FTA Talks, Seek to Complete Pact by End of Year." *International Trade Reporter*, Vol. 23, No. 10, March 9, 2006. P. 344. "Malaysia, US Agree Not to Rush Into Signing FTA." *Financial Times Information*, Thai Press Reports. August 25, 2006.

⁴ Office of the U.S. Trade Representative. "United States and Malaysia Sign Trade and Investment Framework Agreement." (continued...)

The proposed FTA is expected to be comprehensive and similar to that signed with Singapore. It would include a phasing out of tariffs on merchandise imports from each country, further opening of both nation's service sectors, and greater freedom for U.S. investment in the rapidly industrializing Malaysian economy. U.S. companies are particularly interested in greater market access in the automotive, financial services, government procurement, and agricultural sectors and in improving protection of intellectual property rights in Malaysia. Malaysia has highlighted that the FTA would provide preferential access to ASEAN nations for U.S. foreign direct investment in Malaysia.

The proposed U.S.-Malaysia FTA is of interest to Congress because (1) it requires congressional approval; (2) it would continue the trend toward greater trade liberalization and globalization; (3) it may include controversial provisions; and (4) it would affect certain trade flows that would, in turn, affect U.S. businesses or farmers, particularly import-competing industries and those exporting to Malaysia.

Among the initial responses to the USTR's FTA announcement were a statement by Senator Max Baucus welcoming the agreement, and statements by Representatives Jim Kolbe and Dan Burton hailing the launch of the negotiations.⁵ The National Association of Manufacturers indicated that it has been a leading advocate of an FTA with Malaysia,⁶ and a U.S.-Malaysia Free Trade Agreement (FTA) Business Coalition was organized on March 8, 2006.⁷

Malaysia

Area: 127,316 sq. mi. (slightly larger than New Mexico)

Capital: Kuala Lumpur

Population: 26.6 million (2006)

Ethnic groups: Malay 50.8%, Chinese 23.8%, Indigenous 10.9%, Indian 7.1%

Religions: Islam (60.4%), Buddhism (19.2%), Christianity (9.1%)

Government: Federal parliamentary democracy with a constitutional monarch. After becoming independent in 1957, Malaya, Sabah, Sarawak, and Singapore formed Malaysia in 1963. Singapore became an independent country in 1965.

Prime Minister: Abdullah bin Ahmad Badawi

Currency: 3.26 Ringgit = \$1 (subject to market fluctuations)

Trade: The United States is Malaysia's largest trading partner. Malaysia is the 10th largest U.S. trading partner.

⁴ (...continued)

Investment Framework Agreement." Press Release. May 10, 2004.

⁵ Office of Senator Max Baucus. *Baucus Welcomes Launch of U.S.-Malaysia Free Trade Talks*, Press Release, March 8, 2006. Office of Congressman Jim Kolbe. *Kolbe Hails Free Trade Negotiations with Malaysia*, Press Release, March 9, 2006. Office of Congressman Dan Burton. *Vice-Chairman Burton Comments on the Launch of the United States-Malaysia Free Trade Agreement*, March 7, 2006.

⁶ National Association of Manufacturers. Testimony of Christopher Wenk before the Trade Policy Staff Committee, Office of the U.S. Trade Representative, on "Proposed United States-Malaysia Free Trade Agreement," May 3, 2006.

⁷ The web page for the U.S.-Malaysia Free Trade Agreement (FTA) Business Coalition is [<http://www.us-asean.org/US-Malaysia%20FTA/index.asp>]. The Secretariat for the US-Malaysia Free Trade Agreement Business Coalition is the US-ASEAN Business Council.

Objections to the proposed FTA have come from some Malaysian and U.S. labor unions, farmers, fishermen and academics.⁸

The pending expiration of Trade Promotion Authority (TPA) in the United States on July 1, 2007, had placed some pressure on the Bush Administration to conclude negotiations of this proposed FTA. TPA grants to the President the authority to enter into certain trade agreements, and to have their implementing bills considered under expedited legislative procedures.⁹ TPA also required that Congress be notified of the intent to sign an agreement 90 days prior to the actual signing. Therefore, the FTA would have to have been finalized before April 2, 2007, in order to be considered under the TPA provisions.

FTA negotiations, however, took longer than initially anticipated. At the launch of the first round of talks on March 8, 2006, then-U.S. Trade Representative Rob Portman indicated that he thought the negotiations could be completed “within a year.”¹⁰ Nearly two years have passed since that meeting, with no clear sense of when the remaining issues will be resolved.

This report provides a brief overview of Malaysia and its bilateral trade relations with the United States, a survey of possible support and opposition to the FTA, an examination of possible issues likely to arise during the negotiations, a comparison of tariff rates between the two countries, and legislative activity with policy options. It also includes a brief chronology and import and export data, including U.S. exports to Malaysia by sector and exports to Malaysia by state.

The Malaysian Economy

Malaysia is a rapidly industrializing country, a member of the Association of Southeast Asian Nations (ASEAN), and a nation with a population of 26.6 million people, the majority of whom are Muslims. Malaysia’s government is a federal parliamentary democracy with a constitutional monarch.

Malaysia’s GDP and average per capita income make it a market considerably larger than most of the countries that have recently negotiated free trade agreements with the United States. At official exchange rates, the per capita income in 2006 was

⁸ The website, “FTA Malaysia,” [<http://www.ftamalaysia.org/>] is a nexus for information provided by groups, organizations and individuals opposed to the U.S.-Malaysia FTA.

⁹ For more details on TPA, see CRS Report RL33743, *Trade Promotion Authority (TPA): Issues, Options, and Prospects for Renewal*, by J. F. Hornbeck and William H. Cooper.

¹⁰ “Remarks by United States Trade Representative Rob Portman and Malaysian Minister for Trade Rafidah Aziz at the Launch of U.S. — Malaysia Free Trade Negotiations,” March 8, 2007, see U.S. Trade Representative webpage — [http://www.ustr.gov/assets/Document_Library/Transcripts/2006/March/asset_upload_file287_9147.pdf] — for transcript.

\$5,353, but its purchasing power parity was estimated at \$11,607.¹¹ As such, Malaysia is a mid-size market more in the range of Australia and South Korea.

Table 1. Selected Indicators for the Malaysian Economy

	2005	2006	2007 (proj.)
Real GDP Growth	5.2%	5.9%	6.0%
Nominal GDP (\$ billion)	130.770	148.940	161.843
Nominal GDP per Capita	\$4,763	\$5,383	\$5,740
Inflation Rate - CPI	3.0%	3.6%	1.8%
Inflation Rate - PPI	6.8%	6.7%	3.5%
Unemployment Rate	3.5%	3.5%	3.4%
Exports (\$ billion)	140.950	160.555	178.215
Imports (\$ billion)	114.603	130.989	149.352

Source: *Malaysian Economy*, Ministry of Finance, March and December 2007.

According to Malaysia's Ministry of Finance, the United States is its largest trading partner and largest foreign investor. According to U.S. trade figures, Malaysia was the tenth largest trading partner of the United States in 2006. The United States exported more to Malaysia in 2006 than it did to Israel, Ireland, or India and three times as much as it sold to Russia. In 2006, U.S. investment in Malaysia totaled \$675 million — the fourth greatest source of foreign investment in Malaysia, after Japan, the Netherlands, and Australia.¹²

Interests, Benefits and Potential Opposition

Malaysia plays into U.S. interests through its economy and trade; its role in countering radical Islamic organizations; the example it sets as a democratic secular Muslim state; its position as a member of ASEAN, Asia Pacific Economic Cooperation (APEC), and other multilateral fora; its shared interest in dealing with a rising China; and the common goal of securing a safe shipping channel through the Strait of Malacca.¹³

¹¹ Purchasing power parity estimates of per capita GDP attempt to revalue official GDP figures by comparing the relative costs of a select group of goods in each nation and then recalculating per capita GDP to reflect the relative purchasing power in each nation.

¹² Source: Malaysia Industrial Development Authority [<http://www.mida.gov.my/>].

¹³ For more information on U.S.-Malaysia relations, see CRS Report RL33878, *Malaysia: Political, Security, Economic, and Trade Issues Considered*, by Bruce Vaughn and Michael F. Martin.

The proposed FTA also is part of the Bush Administration's strategy to press for regional and bilateral trade initiatives in order to "ignite a new era of global economic growth through free markets and free trade." This is a component of the U.S. national security strategy.¹⁴ It also is in accord with the Enterprise for ASEAN Initiative, a trade initiative of the Bush Administration in which the United States has offered the prospect of FTAs with members of ASEAN committed to economic reforms and openness. In a broader sense, a U.S.-Malaysia FTA would be a step toward realization of APEC's "Bogor Vision," under which the United States and APEC's other 21 members are working toward "free and open trade in the Pacific." At the 2006 APEC meetings, the United States proposed that APEC consider forming a Free Trade Area of the Asia Pacific that would accomplish this goal.¹⁵ With the Doha Round of multilateral trade talks under the World Trade Organization (WTO) encountering problems, some see FTAs as a plausible alternative.

When announcing the proposed negotiations, the USTR listed four major goals associated with a U.S.-Malaysia FTA. These were: (1) to create new opportunities for U.S. manufacturers, farmers, and service providers; (2) to strengthen U.S. competitiveness and generate high-paying jobs; (3) to strengthen U.S. economic partnerships in the region; and (4) to advance broader U.S. strategic goals.¹⁶ Other benefits mentioned for the proposed FTA include (5) to cement a vibrant U.S.-Malaysia economic relationship; (6) to increase U.S. exports; (7) to diversify U.S. exports; (8) to increase investment; (9) to increase the sharing of knowledge and know-how between U.S. companies and Malaysian companies; (10) to enhance economic growth and job creation; and (11) to lower costs and create more competitive companies.¹⁷

In Malaysia, the Ministry of International Trade and Industry — headed by Hon. Dato' Seri Rafidah Aziz — is leading the negotiations. The Ministry lists as its FTA objectives to: (1) seek better market access for Malaysian goods and services; (2) further facilitate and promote bilateral trade and investment flows as well as economic development; (3) enhance the competitiveness of Malaysian producers and exporters through collaboration; and (4) build capacity in specific targeted areas thorough technical cooperation. The Ministry also views the proposed FTA as comprehensive and covering liberalization of the goods and services sector; trade and investment promotion and facilitation activities; investment protection; economic and technical cooperation programs; and having appropriate flexibility to facilitate

¹⁴ The White House. National Security Strategy of the United States. March 2006, part VI.

¹⁵ See CRS Report RL31038, *Asia Pacific Economic Cooperation (APEC), Free Trade, and the 2007 Meetings in Sydney, Australia*, by Michael F. Martin.

¹⁶ Office of the United States Trade Representative. Free Trade Agreement: U.S.-Malaysia. Trade Facts, March 2006.

¹⁷ Remarks by Ambassador Karan K. Bhatia, Deputy U.S. Trade Representative, Press Conference on the U.S.-Malaysia Free Trade Agreement, Kuala Lumpur, Malaysia, March 17, 2006.

development objectives.¹⁸ The Ministry also noted that it would seek “flexibility and longer phase-in periods for sensitive sectors.”¹⁹

A U.S.-Malaysia FTA also would keep the U.S. economy linked to the dynamic economies of Southeast Asia. Malaysia already has FTAs with Indonesia, Brunei, Singapore, the Philippines, and Vietnam under the ASEAN free trade area, and ASEAN is nearing completion of an FTA with India. It has FTAs with South Korea and Pakistan, an economic partnership agreement with Japan covering most goods trade, a partial FTA with China, is negotiating FTAs with Australia and New Zealand, and is discussing an FTA with India. On April 19, 2007, Chile and Malaysia announced they would start negotiations on the establishment of a bilateral FTA in June, with the first round of talks held in Kuala Lumpur.²⁰

The USTR has also indicated that via the proposed FTA, the U.S. government is hoping to further build the broader relations with a country that has been on the “forefront of Asia’s economic transformation and is a leader in the region and beyond.” The USTR hopes that this FTA will strengthen U.S. cooperation with Malaysia in multilateral and regional fora, reinforce a strong U.S.-ASEAN relationship, and advance U.S. commercial and strategic interests in Asia.²¹

As a moderate, democratic Muslim nation, Malaysia plays a strategic role in U.S. foreign policy. In 2005, Malaysia’s Prime Minister Abdullah bin Ahmad Badawi urged Muslims around the world to guard against extremism and improve ties with the West while promoting his nation’s moderate version of Islam.²² The U.S. government hopes that the proposed FTA will reinforce the shared interests of the United States and Malaysia, promote common values, and facilitate cooperation in counterterrorism, defense, counter-narcotics, education, and in other areas.²³ Malaysia (along with Singapore, Thailand and Indonesia) also plays a key role in protecting vital maritime shipping lanes in the Strait of Malacca from pirates and terrorism.

In the United States, opposition to the proposed FTA has emerged from labor unions and environmental protection organizations, as well as “anti-globalization” groups. In Malaysia, voices opposing the FTA have arisen from labor unions,

¹⁸ Malaysia. Ministry of Trade and Industry. Malaysia-US Free Trade Agreement. Media Release. May 3, 2006.

¹⁹ Malaysia. Ministry of Trade and Industry. “Joint Announcement To Launch Negotiations For A Malaysia United States Free Trade Agreement, 8 March 2006, Washington D.C.” Media Release, March 13, 2006.

²⁰ “Chile and Malaysia to Start FTA Talks,” *Prensa Latina*, April 19, 2007.

²¹ Weisel, Barbara. Opening Remarks, Public Hearing, U.S.-Malaysia FTA, Washington, DC, May 3, 2006.

²² “Malaysia PM Abdullah Warns Muslims Against Extremism.” Voice of America. January 27, 2005. See also CRS Report RL31672, *Terrorism in Southeast Asia*, by Bruce Vaughn (Coordinator), Emma Chanlett-Avery, Thomas Lum, Mark Manyin, and Larry Niksch.

²³ Weisel, Barbara. Opening Remarks, May 3, 2006. Op. cit.

farmers, fishermen and other groups, as well as from opposition political parties. In some cases, opponents to a U.S.-Malaysia FTA from both nations have formed coalitions.²⁴

With respect to labor interests, the AFL-CIO opposes additional FTAs unless they contain meaningful protections for workers' rights and environmental standards. Its position is that the Bush Administration has launched or concluded bilateral free trade agreements that include no enforceable protections for core workers' rights, and move "backwards from previous accords on workers' rights, and contain many of the same flawed rules that have worsened our trade deficit" under the North American Free Trade Agreement (NAFTA).²⁵ Labor organizations also are interested in ensuring that labor laws in the bilateral trading partner country are brought up to International Labor Organization (ILO) standards and that a dispute settlement or enforcement mechanism is included in agreements that would preclude partner countries from reversing labor gains or weakening labor laws following congressional approval and implementation of their respective FTAs.²⁶

Labor conditions in Malaysia have been the subject of some international criticism. According to Malaysian law, workers are afforded a variety of rights and most workers have the right to engage in trade union activity. However, according to the latest U.S. State Department country report on Malaysia, only 9.5% of the labor force was represented by trade unions.²⁷ In addition, Malaysian trade union officials report extended delays of up to four years in obtaining legal recognition of their union. A specific area of international concern has been the working conditions of Malaysia's estimated 2.5 million immigrant workers — most from Indonesia — who reportedly face abuse and exploitation by employers and recruitment agencies.²⁸

There has also been organized opposition to a U.S.-Malaysia FTA from Malaysians. On January 11, 2007, an anti-FTA campaign in northern Malaysia resulted in petitions with over 20,000 farmer and fishermen signatures being

²⁴ The AFL-CIO and the Malaysian Trades Unions Congress signed a joint declaration regarding a U.S.-Malaysia FTA on January 22, 2007, in Kuala Lumpur, stating that any agreement "must result in broadly shared benefits to working people and communities, not simply extend and enforce corporate power and privilege." For more details, see "U.S. Unions Oppose Free Trade with Malaysia," by Anil Netto, Inter Press Service News Agency, January 22, 2007.

²⁵ AFL-CIO. Issue Brief: The Bush Record on Shipping Jobs Overseas. August 2004. See also: Testimony of Thea M. Lee, Policy Director, American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), before the House of Representatives Committee on Ways and Means, Hearing on the Implementation of the United States-Bahrain Free Trade Agreement, September 29, 2005.

²⁶ See, for example, Testimony of Thea M. Lee, Policy Director, AFL-CIO, before the Subcommittee on International Trade of the Senate Committee on Finance in a Hearing on the Implementation of the United States-Oman Free Trade Agreement, March 6, 2006.

²⁷ U.S. Department of State. Bureau of Democracy, Human Rights, and Labor. *Country Reports on Human Rights Practices — 2006, Malaysia*. March 6, 2007.

²⁸ For more information on the condition of immigrant workers in Malaysia, see Human Rights Watch report on Malaysia at [<http://hrw.org/doc/?t=asia&c=malays>].

submitted to Malaysia's Prime Minister Abdullah and Malaysia's Ministry of International Trade and Industry. The petitions state that the proposed FTA would harm Malaysia's rice farmers and fishing industry.²⁹ In October 2006, a coalition of opposition parties, workers, and small businesses in Malaysia called for the cessation of negotiations with the United States until a study of the economic and social impact of the proposed FTA was conducted.³⁰

Opposition to an FTA also may arise from various special interest groups. For example, Public Citizen, a nonprofit consumer advocacy organization in the United States, maintains that the FTA with Central America is "based on the same failed neoliberal NAFTA model, which has caused the 'race to the bottom' in labor and environmental standards and promotes privatization and deregulation of key public services."³¹ In Malaysia, people concerned about the cost of pharmaceutical drugs, especially treatment for HIV/AIDS, are opposed to possible provisions in the FTA that they believe will raise the cost of prescription drugs in Malaysia.³²

Another possible issue could be Malaysia's relations with Israel. Malaysia currently does not have diplomatic relations with Israel and requires export licenses for all goods sent to Israel. U.S. law currently contains several provisions designed to undermine official boycotts and trade embargoes aimed at Israel.³³

In recent congressional consideration of FTAs, opposition concerns have been addressed either in the implementing legislation or by securing various commitments in writing from the Administration. For example, in congressional consideration of the Dominican Republic-Central America-United States Free Trade Agreement (DR-CAFTA), the Bush Administration assuaged opposition from labor, sugar, and textile interests by promising certain actions to ameliorate adverse effects of the proposed FTA. In a letter, the Administration promised to allocate \$40 million of FY2006 foreign operations appropriations for "labor and environmental enforcement capacity building assistance," and to continue to request this level of funding in budgets for fiscal years 2007 through 2009. The Administration also stated that it would not allow the DR-CAFTA to interfere with the operation of the sugar program through FY2007 as the program is defined in the Farm Security and Rural Investment Act of 2002. For the textile and apparel industry, promises were made related to rules of

²⁹ "20,000 Fishermen, Farmers Protest Against FTA," by Fauwaz Abdul Aziz, *Malaysiakini*, January 10, 2007.

³⁰ "Malaysians Concerned Over Possible Free Trade Agreement with US," by Joseph Masiliamany, *AsiaNews*, October 10, 2006.

³¹ Public Citizen. *Global Trade Watch*. CAFTA: Part of the FTAA Puzzle. [<http://www.citizen.org/trade/cafta>]

³² "People with HIV/AIDS Hold Anti-FTA Protest," by Soon Li Tsin, *Malaysiakini*, January 11, 2007; "US FTA: Will We Lose Out, Too?" by Jacqueline Ann Surin, *The Sun*, January 11, 2007.

³³ See CRS Report RS22424, *Arab League Boycott of Israel*, by Martin A. Weiss.

origin, stricter customs enforcement with respect to Mexican inputs used in DR-CAFTA textile and apparel products, and actions to increase use of U.S. fabric.³⁴

FTAs and Tariff Rates

FTAs negotiated by the United States usually provide for tariff free trade between the two countries with a phase-in period for sensitive sectors. With Malaysia, some trade already is free. Both the United States and Malaysia participate in the Information Technology Agreement³⁵ (ITA) under which tariffs on semiconductors and other information technology products are bound at zero. The majority of current U.S. exports to Malaysia are covered by this agreement. Semiconductors and parts for computers alone account for more than half of U.S. exports to Malaysia. Therefore, tariffs are not a barrier to most U.S. products currently sold to Malaysia. An FTA, however, would open markets artificially restricted by tariff and non-tariff barriers. Many of the more competitive U.S. exports face relatively high duties in Malaysia. These include products such as motor vehicles and parts, off-road dumpers, polyethylene, motorcycles, and adhesives.³⁶

Measuring the degree of protection provided by tariff barriers is a complicated process, since each country has thousands of products each with a tariff rate that depends on the category of exporter. Average rates, therefore, will differ depending on how they are calculated. The two types of averages most often cited are the most favored nation (MFN) rates and the average applied rates.

Average MFN Tariff Rates

The MFN rates apply to most countries and all members of the World Trade Organization. U.S. exporters face these rates unless they have been reduced by a special arrangement, such as the Generalized System of Preferences³⁷ or the Information Technology Agreement. The average MFN rates are simple averages of all tariff lines. On an MFN basis, Malaysia's average tariff rate at 8.1% is higher than the 4.9% of the United States. Under an FTA, if each country reduces its tariff rates to zero, U.S. exporters would stand to gain more than their Malaysian counterparts, since Malaysian rates are considerably higher than those in the United States. **Table 2** shows the average and range of U.S. and Malaysian MFN tariff rates

³⁴ See CRS Report RL31870, *The Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR)*, by J. F. Hornbeck.

³⁵ See World Trade Organization discussion of the Information Technology Agreement at [http://www.wto.org/English/tratop_e/inftec_e/inftec_e.htm].

³⁶ Wenk, Christopher. Testimony on the Proposed United States-Malaysia Free Trade Agreement For the Trade Policy Staff Committee, Office of the U.S. Trade Representative. May 3, 2006.

³⁷ Malaysia does not qualify for GSP treatment.

by major commodity category as classified under the Harmonized System.³⁸ Both the United States and Malaysia have peaks in tariff rates on certain products.

Malaysia and the United States each protects its agricultural sector. Although Malaysia's average MFN tariff rate for agricultural products at 3.2% is lower than the 9.7% of the United States, Malaysia maintains high rates on items of interest to U.S. agriculture. The Malaysian tariff rate for grains averages 15.2% and rice is at 40%, oranges and apples at 15% to 20%, and wheat flour at 96%. Prepared food is subject to tariffs of 5% to 30%. Beef enters the country at 15%, but pork faces a 139% tariff and ham 168%. The tariff is 25% on yogurt, 10 to 25% on chocolate products, and 20% on baby food. For the United States, the upper range for agricultural products is a 350% tariff on imports of tobacco products that exceed the import quota. Tobacco products within the quota face a 12.1% tariff rate. In recent years, the tobacco quota has not been filled, so the 350% rate has not been applied.

Table 2. Average and Range of Malaysian and U.S. Most Favored Nation Tariff Rates

	Malaysia's Tariff Rates (2006)			U.S. Tariff Rates (2004)		
	No. of Lines	Average (%)	Range (%)	No. of lines	Average (%)	Range (%)
Total	10,581	8.1	0-60	10,304	4.9	0-350
Agricultural products	1,202	3.2	0-40	1,611	9.7	0-350
Live animals and products thereof	142	0.8	0-20	140	4.2	0-100
Dairy products	40	6.1	0-25	166	26.1	0-284
Coffee and tea, cocoa, sugar, etc.	209	4.1	0-25	314	11.6	0-159
Cut flowers and plants	46	0.0	0-0	60	1.5	0-6.8
Fruit and vegetables	302	3.9	0-30	437	6.3	0-132
Grains	21	15.2	0-40	21	1.5	0-11
Oils seeds, fats, oil and their products	197	2.0	0-20	92	6.0	0-164
Beverages and spirits	81	6.4	0-30	100	6.1	0-107
Tobacco	19	5.0	5-5	47	56.4	0-350
Other agricultural products, n.e.s.	145	1.3	0-25	234	1.9	0-62
Non-agricultural products (excl. petrol.)	9,349	8.7	0-60	8,665	4.0	0-58

³⁸ Based on the most current World Trade Organization Trade Policy Reviews for Malaysia and the United States.

	Malaysia's Tariff Rates (2006)			U.S. Tariff Rates (2004)		
	No. of Lines	Average (%)	Range (%)	No. of lines	Average (%)	Range (%)
Fish and fishery products	188	3.2	0-20	193	2.0	0-35
Mineral products, precious stones, etc.	416	10.4	0-60	530	3.3	0-38
Metals	1,061	17.5	0-50	1,011	1.9	0-26
Chemicals and photographic supplies	1,481	5.1	0-50	1,834	3.7	0-6
Leather, rubber, footwear, travel goods	397	13.1	0-40	389	6.9	0-58
Wood, pulp, paper and furniture	2,370	2.5	0-40	508	0.7	0-14
Textiles and clothing	1,176	12.6	0-30	1,651	9.0	0-38
Transport equipment	461	25.8	0-50	228	2.6	0-25
Non-electric machinery	735	6.3	0-35	853	1.3	0-10
Electric machinery	438	9.5	0-50	558	2.1	0-15
Non-agric products, n.e.s.	626	6.3	0-50	910	3.0	0-39
Petroleum	30	0.5	0-5	28	2.2	0-7
By sector^a						
-Agriculture and fisheries	1,655	0.4	0-40	492	5.7	0-350
-Mining	124	1.0	0-30	121	0.4	0-10
-Manufacturing	8,801	9.6	0-60	9,690	4.9	0-350
-excluding food processing	7,904	10.2	0-60			
By stage of processing						
First stage of processing	2,054	0.9	0-40	964	3.7	0-350
Semi-processed products	3,482	9	0-60	3,392	4.3	0-159
Fully-processed products	5,045	10.4	0-60	5,948	5.4	0-350

Source: World Trade Organization calculations, based on data provided by the Malaysian and U.S. authorities. See *Trade Policy Review — Report by Malaysia*, WT/TPR/G/156, December 12, 2005, and *Trade Policy Review — Report by the United States*, WT/TPR/S/160, February 15, 2006.

Note: Calculations exclude specific rates and include the *ad valorem* part of alternate and compound rates. The tariff is based on HS02 nomenclature. The number of lines refers to the number of individual lines in the list of tariffs for each country.

a. International Standard Industrial (Rev.2) classification. Electricity, gas, and water are excluded.

The chances that an FTA would generate a surge in agricultural imports from Malaysia seems small. In 2006, for example, Malaysia exported to the world a total of \$113 million in milk, \$136 million in sugar, and \$240 million in tobacco

products.³⁹ Malaysia does not have a significant sugar industry, a politically sensitive industry in the United States.

In non-agricultural products (excluding petroleum), Malaysia's average MFN tariff rate is 8.7% as compared with 4.0% in the United States. The ranges of tariff rates are similar. In Malaysian sectors where the government is fostering the growth of industry, however, the rates are particularly high. For transport equipment, the average Malaysia tariff of 25.6% is nearly ten times the U.S. rate of 2.6%. For non-electrical machinery, a sector in which both countries currently export to each other, the Malaysia tariff rate at 9.5% is four times the U.S. rate of 2.1%. Similarly, in electrical machinery the Malaysia rate of 6.3% is double the U.S. rate of 3.0%. The Malaysian rate, however, can reach 35% for some items. Most industrial machinery enters Malaysia at 5% to 30%. Boilers and engines enter at 5%, but air conditioners and refrigerators enter at 30%.

Average Applied Tariff Rates

Applied average tariff rates are derived by dividing the amount of customs duties collected by the value of imports. Average applied tariff rates are frequently used indicators of a nation's actual level of tariff protection. These rates may be somewhat lower than the MFN rates because items with high rates might not be imported at all (so no tariffs are paid) and because a nation may have special trade arrangements with other nations under which the partners pay lower or no tariffs on their exports. They can also be higher if importers buy expensive items (such as machinery or automobiles) subject to higher tariff rates.

For Malaysia, the average applied tariff rate of 8.4% is more than twice the U.S. average rate of 3.7%.⁴⁰ For all industrial goods, the applied rate is 9.1% in Malaysia as compared with 3.7% in the United States. **Table 3** shows Malaysian applied tariff rates for selected industrial sectors.

³⁹ Data from Global Trade Atlas.

⁴⁰ Office of the United States Trade Representative. "Free Trade Agreement: U.S. and Malaysia, Economic and Strategic Benefits." Power Point presentation. March 8, 2006. [http://www.ustr.gov/assets/Document_Library/Fact_Sheets/2006/asset_upload_file802_9121.pdf]

Table 3. U.S. and Malaysian Average Applied Tariffs Rates for Industrial Goods

Industrial Category	Malaysia	United States
All Industrial Goods	9.1%	3.7%
Wood, pulp, paper, and furniture	10.9%	0.7%
Textiles and clothing	13.5%	9.6%
Leather, rubber, footwear, and travel goods	14.0%	4.3%
Metals	9.3%	2.1%
Chemicals and photographic supplies	3.6%	3.4%
Transport equipment	18.5%	3.2%
Non-electric machinery	3.7%	1.2%
Electric machinery	6.7%	1.9%
Mineral products and precious stones	8.8%	2.0%
Manufactured articles not specified	5.1%	2.5%
Fish and fish products	2.4%	1.1%

Source: U.S. Trade Representative. "Free Trade Agreement: U.S. and Malaysia, Economic and Strategic Benefits," March 8, 2006.

Key Issues

Free trade agreements reduce artificial barriers to trade and investment and, thereby, change existing parameters that generate opportunities for making profits or exerting market power. In addition to eliminating tariffs on both sides, FTAs often eliminate or reduce import quotas and other non-tariff barriers to trade. They also usually provide access to services, open markets for investment, contain provisions strengthening protection of intellectual property, address certain types of government regulations and practices, provide for a dispute settlement process, and can touch on issues such as business visas, competition policy, and a variety of policies or practices that affect economic activity. FTAs create gainers and losers as border barriers and government strictures are lessened. In general, the ones who gain tend to be exporters, investors, and consumers, while those who lose tend to be companies and workers in import competing industries. For import-sensitive sectors, the length of phase-out periods for existing protective measures can be a focus of dispute.

The USTR has identified certain specific issues related to the potential U.S.-Malaysia FTA that are likely to require attention in the negotiations. These include intellectual property rights, automobiles, services, government procurement, and capital controls. Other issues may arise as the negotiations progress.

Intellectual Property Rights

An issue of interest to U.S. exporters is Malaysian enforcement of intellectual property rights (IPR). Malaysia has recently tightened its laws on and stepped up enforcement of protection of intellectual property, but problems still remain. The Business Software Alliance (BSA) estimated 60% of the software in Malaysia is pirated, resulting in industry losses in 2006 of \$289 million.⁴¹

Malaysia has remained on the Special 301 Watch List since October 2001 as part of an effort by the USTR to monitor Malaysia's efforts to improve its IPR regime. In its *2007 Special 301 Report*, the USTR stated that "Malaysia showed a solid commitment to strengthening IPR protection and enforcement this past year, but still has some serious deficiencies that need attention."⁴² IPR enforcement improvements during 2006 included conducting raids against pirate optical disc production facilities, seizing pirate goods and machinery used to produce pirate materials, arresting IPR infringers, and revoking or declining to renew licenses for pirate optical disc facilities. The USTR also stated that it would be "pressing IPR issues through the ongoing U.S.-Malaysia Free Trade Agreement negotiations."⁴³

Opposition to the FTA negotiations has appeared in Malaysia among people concerned about the treatment of HIV/AIDS. They claim that a U.S.-Malaysia FTA would more than likely patent anti-retroviral AIDS drugs for five years, "making [them] far too costly for them [HIV/AIDS patients] to buy."⁴⁴ Others believe that stricter enforcement of drug patents could discourage pharmaceutical companies from introducing new anti-retroviral drugs in Malaysia.⁴⁵

Automobiles

Malaysia has a booming automobile industry. Its automobile manufacturers, such as Proton and Perodua, market their vehicles in over 40 countries around the world, and its motorcycle manufacturer, Modenas, is a popular brand in Argentina, Greece, Iran, Singapore, Malta, Mauritius, Turkey, and Vietnam. Malaysia's automobile components and parts industry is also quite successful on the world market.

Malaysia has long protected its automobile manufacturing industry from foreign competition using high tariffs and non-tariff trade barriers. Government policies also distinguish between national cars (i.e., made by domestic producers, such as Proton and Perodua) and non-national cars, which include most vehicles manufactured in

⁴¹ "Malaysia's Software Piracy Still at 60 Percent, Says BSA," *Bernama*, May 15, 2007.

⁴² U.S. Trade Representative. *2007 Special 301 Report*, page 33.

⁴³ *Ibid.*

⁴⁴ "People with HIV/AIDS Hold Anti-FTA Protest," by Soon Li Tsin, *Malaysiakini*, January 11, 2007.

⁴⁵ Dass, Maria J. Groups Worried Over FTA with US. *Sun2Surf.com*, Malaysia. September 11, 2006.

Malaysia by non-Malaysian owned firms. The firms making national cars, for example, receive 50% rebates on their excise taxes. Ethnic Malays (not Malaysians of Chinese or other ethnic origin) also are favored in receiving permits to import or distribute motor vehicles.

The government has, however, begun to dismantle some of its protections in order to meet its commitments to the WTO and the ASEAN Free Trade Agreement. In January 2004, the government completely eliminated local content requirements that were inconsistent with its obligations under the WTO, but government policies (particularly its excise taxes on automobiles) continue to block open trade in the automotive sector. Malaysia imposes 30% tariffs on assembled vehicles from outside the ASEAN region and up to 10% on completely knocked-down vehicle kits. Excise taxes on both assembled vehicles and kits are 80-200% on automobiles, 55-160% on multipurpose vehicles, and 20-50% on motorcycles.⁴⁶

During negotiations, Malaysia is likely to raise the issue of U.S. measures protecting its domestic automobile industry. For example, the United States currently maintains a special 25% tariff on imports of pickup trucks. In a May 2006 hearing, a representative of the U.S. Automotive Trade Policy Council (representing the U.S. big three automakers) said the Council supports the proposed FTA and sees it as an opportunity to break into a market that has historically protected domestic producers and discriminated against foreign manufacturers.⁴⁷

Services

Financial services also appear to be a difficult issue to resolve in the negotiations. Malaysia limits foreign ownership to 30% of commercial banks and 49% of investment banks. Foreign commercial banks also are allowed to open new branches only if they also add other branches as directed by Bank Negara, Malaysia's central bank. Malaysia maintains a 51% cap on foreign ownership of insurance companies already established in Malaysia prior to 1998 as well as a foreign ownership limit of 30% for new entrants seeking access. Apparently Malaysia has not enforced the 51% cap except in cases of companies who seek the right to establish branches.⁴⁸

In the lead-up to the launch of the FTA negotiations, Malaysia reportedly attempted to keep financial services, a sensitive sector for the nation, out of the negotiations completely, but the country did agree to include such services in the FTA talks. Malaysia, however, has lifted requirements that foreign banks obtain 50% of their credit from local banks, has allowed them to seek any amount of ringgit (domestic currency) credit without approval, has allowed the ringgit exchange value

⁴⁶ U.S. Trade Representative. *2007 National Trade Estimate Report on Foreign Trade Barriers*, April 7, 2007. Section on Malaysia.

⁴⁷ "Administration Hears Industry Input on Priorities for Malaysia FTA," *Washington Trade Daily* (Online edition), May 5, 2006.

⁴⁸ U.S. to Face Difficulties on Financial Services in Malaysia FTA Talks, *Inside U.S. Trade*, March 10, 2006.

to float rather than be strictly pegged to the dollar, and allowed foreign banks to open four additional branches in 2006.⁴⁹

In telecommunications, foreign companies are allowed to acquire up to a 30% equity stake in existing fixed line operations. Value-added telecommunications service suppliers likewise are limited to 30% foreign equity. These restrictions arguably benefit the government-controlled firm, Telekom Malaysia.⁵⁰

Licensed professionals, such as lawyers and architects, also are restricted in Malaysia. Foreign lawyers may not practice Malaysian law nor affiliate with local firms. Foreign law firms may take an operating stake of up to 30% in a local law firm. A foreign architectural firm may operate in Malaysia only as a joint venture participant in a specific project, and foreign architects may not be licensed in Malaysia. Foreign engineers may be licensed only for specific projects. Foreign accounting firms must work through Malaysian affiliates.⁵¹

In services, the United States has used the *negative list* approach in determining which sectors are excluded from the agreement.⁵² However, Malaysia prefers to use a *positive list* approach in which service sectors are excluded unless listed in the agreement.

Government Procurement

Malaysia is not a signatory of the WTO Government Procurement Agreement. As part of its “New Economic Program,” Malaysia seeks to raise the participation of *bumiputera* (ethnic Malays) in the economy. Foreign companies, in many cases, are required to take on a local partner before their bids are considered. The awarding process for procurement contracts also is considered to be non-transparent.⁵³

After the second round of negotiations in July 2006, it became apparent that Malaysian government procurement restrictions that reserve a certain share of Malaysian business for ethnic Malays were emerging as a major sticking point in the negotiations. Malaysian negotiators reportedly had not been authorized by the Malaysian Cabinet to agree to an opening of the government procurement market.⁵⁴

⁴⁹ U.S. Trade Representative. *2007 National Trade Estimate Report on Foreign Trade Barriers*, March 31, 2007. Section on Malaysia.

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

⁵² The negative list of sectors closed to foreign investment, for example, may include airports, social insurance, or other sectors that are run by governments or have special security requirements.

⁵³ *Ibid.*

⁵⁴ Government Procurement Emerging as Major Problem in U.S.-Malaysia FTA. *Inside US Trade*, September 1, 2006.

In addition, there is strong interest in segments of the Malaysian business community to obtain preferential access to the U.S. government procurement process. Tan Sri Yong, president of the Federation of Malaysian Manufacturers (FMM), commented, "At the moment, Malaysian companies cannot access the American government procurement, which is 65 times larger than ours. This means our furniture and computers cannot be supplied to the U.S. government."⁵⁵

Capital Controls

Malaysia has lifted most of the controls on capital it imposed during the 1997-98 Asian financial crisis. The purpose of the controls was to keep capital, particularly funds invested in securities or in businesses, from being taken out of the country (or converted to dollars) during the crisis. Concern remains, however, with respect to a future crisis and whether a U.S. investor would be able to repatriate capital. Both the U.S.-Singapore and U.S.-Chile FTAs have provisions that address this issue primarily by allowing an investor who is harmed by such controls to sue for damages.

Trade Flows

FTAs usually have several distinct effects on trade flows. They tend to divert export and import trade toward the countries involved, but they also can create more trade overall by lowering tariffs and other trade barriers. For example, the North American Free Trade Agreement (NAFTA) has led some U.S. importers to use suppliers in Mexico rather than buying from Asia, and some manufacturers from Asia have relocated to Mexico to take advantage there of tariff-free access to the North American market. At the same time, the existence of a barrier-free North American market has tended to generate business efficiencies as companies gain from economies of large-scale production and distribution. This has tended to create more trade overall.⁵⁶ FTAs also can cause a substitution effect as imports are substituted for domestic production. In that case, import-competing industries may suffer and may request assistance to adjust to increased competition from imports.

Merchandise Trade

Table 4 shows U.S. exports to, imports from, and the balance of merchandise trade with Malaysia from 2000 to 2006, according to the U.S. Department of Commerce and Malaysia's Department of Statistics. According to the United States, U.S. exports to Malaysia remained steady at about \$10 billion per year from 2000 to 2005, but rose to over \$12.5 billion in 2006. U.S. imports from Malaysia grew by nearly 43% over the same period. This has caused the U.S. figure for the trade deficit with Malaysia to rise from \$14 billion in 2000 to nearly \$24 billion so far in 2006.

⁵⁵ Rupa Damodaran, "Manufacturers: US FTA Talks Could be Faster," *New Strait Times*, December 17, 2007.

⁵⁶ For further information, see CRS Report RL31356, *Free Trade Agreements: Impact on U.S. Trade and Implications for U.S. Trade Policy*, by William H. Cooper.

Table 4. U.S. Trade with Malaysia, 2000 to 2006
(Billion U.S. Dollars)

Year	U.S. Data			Malaysian Data		
	U.S. Exports	Malay Imports	Trade Balance	Malay Exports	U.S. Imports	Trade Balance
2000	10.957	25.568	-14.611	20.155	13.648	6.507
2001	9.358	22.340	-12.982	17.808	11.800	6.008
2002	10.344	24.009	-13.665	18.816	13.079	5.737
2003	10.914	25.440	-14.526	17.791	12.195	5.596
2004	10.922	28.179	-17.257	23.564	15.239	8.325
2005	10.461	33.685	-23.224	27.743	14.768	12.975
2006	12.550	36.532	-23.982	30.187	16.422	13.765

Source: U.S. Department of Commerce and Malaysia Department of Statistics via Global Trade Atlas

According to Malaysia, its exports to the United States rose from just over \$20 billion in 2000 to about \$30 billion in 2006 — an increase of nearly 50%. Over the same time period, Malaysia's imports from the United States rose 20% from under \$14 billion in 2000 to over \$16 billion in 2006. Malaysia's resulting trade surplus with the United States was \$6.5 billion in 2000 and \$13.8 billion in 2006 — roughly \$8-\$10 billion less than the U.S. figures.

As shown in **Table 5**, the United States is Malaysia's top export market, according to Malaysian export data. Singapore is second, Japan is third, and China is fourth. The United States is a steady market for Malaysia. In 2004, 18.7% of Malaysia's exports went to the United States. In 2006, once again 18.7% of its exports were shipped to the United States.

Table 5. Malaysia's Merchandise Exports by Top 10 Trading Partners
(Billion U.S. Dollars)

Partner	2004	2005	2006
World Total	125.857	140.979	160.845
United States	23.564	27.743	30.187
Singapore	18.968	22.009	24.757
Japan	12.714	13.181	14.249
China	8.384	9.303	11.734
Thailand	6.027	7.585	8.506
Hong Kong	7.433	8.241	7.951
Netherlands	4.099	4.609	5.853
South Korea	4.404	4.737	5.809
India	2.995	3.955	5.132
Australia	4.142	4.765	4.556

Source: Department of Statistics, Malaysia via Global Trade Atlas

As shown in **Table 6**, Japan is Malaysia's top source of imports, while the United States is second — with China and Singapore competing for third. In addition, whereas Malaysia's imports from Japan and the United States have experienced uneven growth over the last three years, imports from Singapore and China have risen rapidly. As a result, both China and Singapore are poised to overtake the United States as Malaysia's second largest supplier of imported goods.

Table 6. Malaysia's Merchandise Imports by Top 10 Trading Partners

(Billion U.S. Dollars)

Partner	2004	2005	2006
World Total	105.297	114.626	131.223
Japan	16.775	16.634	17.347
United States	15.239	14.768	16.421
China	10.340	13.177	15.896
Singapore	11.706	13.424	15.338
Thailand	5.789	6.045	7.171
Taiwan	5.670	6.331	7.161
South Korea	5.228	5.706	7.071
Germany	4.700	5.088	5.753
Indonesia	4.194	4.375	4.954
Hong Kong	2.859	2.852	3.454

In Asia, Malaysia already has FTAs with Japan and Singapore and is negotiating FTAs with Australia, India, New Zealand, and Pakistan. Meanwhile, China has signed an FTA with ASEAN, to which Malaysia is a member, which includes a trade in services agreement that went into force as of July 2007. The proposed FTA with the United States would place U.S. exporters on similar footing as exporters from China, Japan, and Singapore — Malaysia's other leading trading partners.

Trade in Services

According to current U.S. data, Malaysia is not a major services trading partner for the United States (see **Table 7**). Total services trade with Malaysia amounted to less than \$2 billion per year from 2000 to 2004, and just climbed above \$2 billion in 2005. When compared to the total value of U.S. services trade, Malaysia's relatively small role in overall services trade becomes apparent. Even at its peak, Malaysia represented less than half a percent of the U.S. services export market and provided barely a quarter of a percent of the U.S. services imports.

Despite the relatively small current volume of services trade with Malaysia, several U.S. service sectors — including telecommunications, financial services, and insurance providers — have expressed strong interest in obtaining improved access to Malaysia's domestic market.

Table 7. U.S. Services Trade with Malaysia and the World
(Billion U.S. Dollars)

		2000	2001	2002	2003	2004	2005
Malaysia	Exports	1.118	1.193	1.167	1.214	1.195	1.373
	Imports	0.387	0.525	0.493	0.514	0.622	0.708
World	Exports	284.028	272.814	279.561	289.102	328.000	360.489
	Imports	207.392	204.074	209.048	221.849	257.235	280.563
Malaysia's Share	Exports	0.393%	0.437%	0.417%	0.420%	0.364%	0.381%
	Imports	0.186%	0.257%	0.236%	0.232%	0.242%	0.252%

Source: U.S. Bureau of Economic Analysis

The United States already is Malaysia's top export market for merchandise goods. A U.S.-Malaysia FTA would likely reinforce this relationship. Similarly, the discussed FTA would offer better access to U.S. services providers to Malaysia's domestic market.

U.S. Investment in Malaysia

According to the U.S. Bureau of Economic Analysis, U.S. companies by 2006 had invested over \$12 billion in Malaysia (see **Table 8**). About 38% of U.S. investments in Malaysia were in the manufacturing sector, with investments in computer and electronic equipment manufacturing facilities accounting for over two-thirds of the manufacturing investments. Outside of manufacturing investments, U.S. companies also were also investing in mining facilities in Malaysia, with a notable increase of over \$760 million in 2006.

Table 8. U.S. Foreign Direct Investment in Malaysia, 2000-2005
(Million U.S. Dollars)

Year	TOTAL	Manufacturing - Total	Manufacturing - Computers & Electronic Equipment	Manufacturing - Chemical	Mining
2000	7,910	5,028	4,385	250	N.A.
2001	7,489	5,006	4,322	203	N.A.
2002	7,101	3,060	2,370	195	562
2003	7,057	3,213	2,404	255	514
2004	8,096	3,593	2,471	460	461
2005	9,993	4,166	2,977	498	1,493
2006	12,450	4,787	3,282	754	2,255

Source: U.S. Bureau of Economic Analysis.

According to the Malaysian Industrial Development Authority (MIDA), U.S. companies obtained approval for 43 projects worth \$1.360 billion in 2005 and 38 projects worth \$675 million in 2006. MIDA reported that most of the U.S.

investment over the last two years was in the electronic equipment industry and the chemical industry, indicating a continued focus of U.S. investors in those two sectors.

Outcomes from Bilateral Negotiations in 2007

At the start of FTA negotiations, the United States and Malaysia indicated that the process would require five rounds of talks. In 2007, the fourth, fifth, and an informal rounds were completed in January, February, and April, respectively. However, although the rounds were completed, the negotiations were not. As a result, the proposed FTA was not completed in time for consideration under TPA procedures.

Because of the relative importance of the agreement for Malaysia, the Malaysian government appears to be cautious in its consideration of the terms of the agreement, and has repeatedly stated its intent to ensure that any agreement would protect the people of Malaysia and its economic future. On March 7, 2007, Prime Minister Abdullah reiterated this stance on the FTA talks, saying, “I would like to ensure that the nation’s interests will always be safeguarded and would not be sacrificed in any way.”⁵⁷

Fourth Round Talks. The United States and Malaysia held their fourth round of bilateral negotiations regarding the FTA in San Francisco from January 8 to 12, 2007. After the conclusion of the talks, the chief U.S. negotiator, Assistant Trade Representative for Asia and the Pacific Barbara Weisel, indicated that she expected a fifth and final round of talks would be held in early February in Malaysia, thereby completing the negotiations before the March 2007 deadline.⁵⁸

However, Minister Rafidah had a less optimistic appraisal of the negotiation’s progress and the prospects of finishing the FTA in time for the Bush Administration’s March 31, 2007 deadline. In a press interview on January 18, 2007, Minister Rafidah said, “I doubt it very much because July is only a few months away and we are not negotiating every week. This is a serious broad-based discussion. I am not very optimistic.”⁵⁹

For the U.S. delegation, the key issues for the San Francisco talks were IPR protection in Malaysia, Malaysia’s “New Development Policy” that gives preferential employment and contract treatment to ethnic Malays, market access for key U.S. merchandise exports, and liberalization of key service sectors. For Malaysia, the chief issues were safeguards against a surge in U.S. imports and market access in the

⁵⁷ “PM: Government Will Always Safeguard Nation’s Interest in FTA Negotiations,” *Bernama* (Malaysia), March 7, 2007.

⁵⁸ “U.S., Malaysia in Bay Area Talks over Trade Pact,” by David Armstrong, *San Francisco Chronicle*, January 12, 2007. The dates for the fifth round of talks — February 5-9, 2007 — were set soon after her interview.

⁵⁹ “Rafidah: Malaysia-US FTA Talks Unlikely to be Completed by July 2007,” *FTA Malaysia*, January 18, 2007.

United States. In a letter to a member of the Malaysian parliament, Minister Rafidah stated that Malaysia was seeking improved U.S. market access for 600 products (including textiles, clothing, chemicals and chemical products, rubber goods, wood products, ceramics, iron, steel, and electrical and electronic products) by the reduction or removal of U.S. tariffs.⁶⁰

Market access for U.S. merchandise exports continued to be a persistent issue in the 2007 negotiations. During the third round of talks, there was an exchange of initial offers for agricultural access that one U.S. official termed “a solid basis for continued negotiations.”⁶¹ However, according to Malaysia’s Agricultural Minister, Tan Sri Muhyiddin Yassin, rice and tobacco are on Malaysia’s exclusion list in its negotiations, indicating Malaysia’s desire to keep its trade barriers against these two agricultural imports. The minister reported said, “Whatever happens, if rice is the cause for the FTA not to be signed, then let it be because the government will not compromise on anything that can affect the interests of our farmers.”⁶² Besides agricultural goods, there were unresolved issues regarding trade in textiles and automobiles.

Another continuing issue in 2007 was finding a common approach to negotiating market access for services. The United States wanted to use a “negative approach” under which all service sectors would be covered by the FTA unless explicitly excluded from the agreement. Malaysia preferred to base the talks on a “positive approach” where only those sectors explicitly mentioned in the agreement are covered by the FTA. Observers indicated that Malaysia is particularly concerned about the impact of U.S. access to Malaysia’s financial services market.

Regarding Malaysia’s “New Development Policy,” there was little apparent flexibility from Malaysia in 2007. According to Minister Rafidah, Malaysia was “standing firm” on this issue, and “it is an area where [Malaysia] could not compromise and this is known by the U.S. side.”⁶³ However, U.S. Assistant Trade Representative Weisel indicated that while the United States recognizes that Malaysia will not completely eliminate its preference policy, it still believes that there are ways of opening some key sectors — such as telecommunications, financial services, express delivery, computers, and energy distribution — to U.S. companies.⁶⁴

Fifth Round Talks. Conditions for the fifth round of talks were complicated at the end of January 2007 with the news of a \$16 billion energy development deal

⁶⁰ “Malaysia Lists 600 Products in Negotiations for the US Market Access,” *Bernama* (Malaysia), March 20, 2007.

⁶¹ “US Sees ‘Real Interest’ in Free Trade Deals with Malaysia, South Korea,” *Agence France Presse*, January 9, 2007.

⁶² “Tobacco, Rice Excluded in FTA Negotiations with the US,” by Mergawati Zulfakar, *The Star*, January 15, 2007.

⁶³ “Rafidah: Malaysia-US FTA Talks Unlikely to be Completed by July 2007,” *FTA Malaysia*, January 18, 2007.

⁶⁴ “U.S.-Malaysia Trade Deal Possible by March: USTR,” by Doug Palmer, *New York Times*, January 12, 2007.

between Malaysia's SKS Group and the National Iranian Oil Company that would develop Iranian gas fields and build liquefied natural gas plants.⁶⁵ During a House Committee on Foreign Affairs Hearing on January 31, 2007, Chairman Tom Lantos called the deal "abhorrent," and sent a letter to U.S. Trade Representative Susan Schwab requesting the suspension of negotiations on the proposed FTA until Malaysia renounced the deal with Iran.⁶⁶ U.S. Trade Representative Schwab indicated that she intended to continue the negotiations with Malaysia.⁶⁷

Malaysia sharply rejected the call to revoke the energy deal with Iran. Minister Rafidah reportedly said that the United States has no right to block Malaysia trading with any country, even after the conclusion of the proposed FTA.⁶⁸ Prime Minister Abdullah also was firm on the issue, "We reject the pressure being inflicted upon us.... Do not bring any political matters into trade."

The fifth round of negotiations began on February 5, 2007, in Kota Kinabula, Malaysia, and were concluded on February 9, 2007. According to one report, there was an agreement to take contentious issues "off the table" during the talks, and discuss those issues at the ministerial level.⁶⁹ These issues supposedly included government procurement, Malaysia's New Economic Policy, and the import of rice and tobacco into Malaysia.

Following the fifth round of talks, U.S. Assistant Trade Representative Weisel told reporters, "While progress was made in a number of areas, there were a few key areas where unfortunately only limited progress was made."⁷⁰ While U.S. Assistant Trade Representative Weisel indicated that an FTA was still "achievable," she also stated that no dates had been set for future negotiations.

On Malaysia's side, Minister Rafidah indicated that there were 58 outstanding issues in the FTA negotiations, including Malaysia's distributive trade guidelines.⁷¹ The guidelines set paid-up capital and *bumiputera* equity participation minimums for joint ventures in Malaysia. Intellectual property rights protection in Malaysia also was on the list of 58 outstanding issues. Various press reports have indicated that protection of Malaysia's automotive industry, limits on foreign ownership of banks in Malaysia, and the duration of patent rights of pharmaceuticals are also among the 58 issues. However, there was general agreement that the main "sticking point" was

⁶⁵ "Malaysia Stands by Iranian Gas Deal," *BBC News*, February 2, 2007.

⁶⁶ "Remarks by Congressman Tom Lantos, Chairman, House Committee on Foreign Affairs, at Hearing, 'Understanding the Iran Crisis,'" January 31, 2007.

⁶⁷ Reported in *Washington Trade Daily*, February 5, 2007.

⁶⁸ "Malaysia Defends State Despite U.S. Threat to Halt FTA Talks," *Bernama - Malaysian National News Agency*, February 2, 2007

⁶⁹ "Malaysia, US Take Contentious Issues 'Off the Table.'" *Business Times* (Malaysia), February 9, 2007.

⁷⁰ "Malaysia, US Free Trade Talks Bog Down," *Agence France Presse*, February 9, 2007.

⁷¹ "Rafidah: Distributive Trade Guidelines an Issue with the US," by Kevin Tan, *The Edge Daily* (Malaysia), February 12, 2007.

Malaysia's New Economic Policy and its preferential treatment for bumiputera-owned companies.

On March 7, 2007, Minister Rafidah updated Malaysia's cabinet on the progress of the FTA negotiations, and requested their input on the remaining 58 unresolved issues.⁷² During the press announcement about the cabinet briefing, Minister Rafidah reiterated that Malaysia was not bound by any timetable to conclude the FTA negotiations, and that 19 ministries were actively involved in the talks. Sources indicate that the cabinet briefing went longer than expected, and that they were unable to resolve the 58 issues during the meeting. One minister reportedly stated that there was a decision to hold another set of discussions among the cabinet at an unknown future date.

On the U.S. side, ex-Ambassador Christopher LaFleur expressed confidence that the two nations would be able to conclude negotiations before the March 31, 2007 deadline during a lecture given at the Universiti Putra Malaysia in Kuala Lumpur on March 1, 2007.⁷³ However, Ambassador LaFleur also stated in a press briefing that the "window of opportunity" was closing.⁷⁴

Since the conclusion of the fifth round of talks, interested parties in Malaysia — both supporting and opposing the FTA — have continued to push their views on the issue, perhaps contributing to the difficulty for the cabinet to conclude their discussions. The Federation of Malaysian Manufacturers (FMM), a supporter of the FTA, have argued that the agreement will stimulate Malaysia's clothing and textile industries, doubling exports to the United States and creating an estimated 200,000 jobs.⁷⁵ The FMM also maintains that the FTA will draw U.S. factories to relocate to Malaysia to take advantage of preferential market access into ASEAN, China, and Japan via Malaysia's FTAs. In addition, the FTA will lower U.S. import tariffs on Malaysian-made footwear (up to 48%), tableware (up to 25%), and clothing (up to 28%).

On March 16, 2007, the Malaysian Textile Manufacturers Association (MTMA) called for the "timely conclusion" of the FTA negotiations.⁷⁶ According to the MTMA, the FTA "will help to sustain the textile and apparel industry in Malaysia which ... employs over 80,000 workers." MTMA president Datuk Y. H. Tan was quoted as saying, "The U.S. market is our most important market and therefore the FTA is critical to the maintenance and survival of the Malaysian textile and apparel industry."

⁷² "Rafidah to Update Cabinet on Malaysia-US FTA Talks on Wednesday," *The Edge Daily* (Malaysia), March 5, 2007.

⁷³ US Official Confident of Malaysia-US FTA Coming Through," *Daily Express* (Malaysia), March 1, 2007.

⁷⁴ *Washington Trade Daily*, February 28, 2007.

⁷⁵ "Access to US\$ 250 Billion Market for Malaysia via FTA, Says FMM," *Bernama* (Malaysia), March 12, 2007.

⁷⁶ "U.S.-Malaysia FTA to Help Textile Industry, Says Association," *Bernama* (Malaysia), March 16, 2007.

On the opposite side of the FTA debate, the Malaysian Organisation of Pharmaceutical Industries (Mopi) are concerned that U.S. companies will be able to obtain virtual monopolies for drugs even when the exclusive patent rights have ended, if Malaysia accepts the terms proposed by the United States.⁷⁷ At issue are the timing of the patent rights protection, patent renewal for modified drugs, and the duration of data exclusivity of drug testing. Mopi argues that U.S. pharmaceutical companies will manipulate these factors to extend their monopoly rights beyond the standard 20 years, thereby blocking the introduction of generic drugs.

On the issue of Malaysia's preferential treatment of *bumiputera* companies, the FMM president Datuk Yong Poh Kon drew parallels between Malaysia's policy and the U.S. policy of providing preferential treatment to small businesses when awarding government contracts.⁷⁸ According to Yong, U.S. negotiators are "prepared to work within a framework of preferences for the *bumiputera* community."

The impact of the FTA on Malaysia's farmers also continued to raise concerns in 2007. One Malaysian commentator maintained that U.S. rice farmers "were so heavily subsidised that they are able to sell at 25 per cent below production cost which means U.S. rice could flood our market and force ... 116,000 padi farmers out of work."⁷⁹ Another commentator wrote, "Even if our padi farmers are protected under the Agreement, what about other sub-sectors, such as poultry farming? We have the example of Mexico, which lowered tariffs under the North American Free Trade Agreement and consequently opened the floodgates to subsidised corn from the U.S. It impoverished at least three million of Mexico's 10 million farmers."⁸⁰

On March 14, 2007, 31 Malaysians released a memorandum to the Malaysian Cabinet ministers entitled, "People's Protest Against FTA," listing their objections to the proposed U.S.-Malaysia free trade agreement.⁸¹ Among their objections were:

- The FTA will have "a dire impact on the sovereignty of the country;"
- The [Malaysian] government "will lose its ability to maintain many key present policies and make new policies;"
- The FTA will "hamper our country's development," and eliminate jobs; and
- Consumers will "have to suffer higher prices of medicines."

⁷⁷ "Too Big a Price to Pay for FTA," letter to the editor by Jimmy Piong, *New Strait Times* (Malaysia), March 1, 2007.

⁷⁸ "Why an FTA with the USA is Good for Malaysia," letter to the editor by Datuk Yong Poh Kon, president of the FMM, *The Edge Daily* (Malaysia), March 12, 2007.

⁷⁹ "Out of the Cage: FTA Must Promote Fair, Not Free Trade," by Khairy Jamaluddin, *New Strait Times* (Malaysia), March 9, 2007.

⁸⁰ "FTA with the US: To Sign or Not to Sign?" by Chandra Muzaffar, *Sun2Surf* (Malaysia), March 8, 2007.

⁸¹ Full text of the memorandum is available at [<http://www.ftamalaysia.org/article.php?aid=159>].

The authors maintained that Malaysia's trade and economic relations with the United States will be better without the FTA. They also pointed to the deterioration of Singapore's trade deficit with the United States since that bilateral FTA came into force as proof of the potential harmful effects of the proposed U.S.-Malaysia FTA.

On March 12, 2007, 12 Members of Congress⁸² wrote a letter to U.S. Trade Representative Schwab stating their concern that the terms of existing and proposed free trade agreements "appear to undermine" the U.S. commitment to the Doha Declaration's reaffirmation of the right of WTO members to use the provisions of the TRIPS agreement providing flexibility to protect the public health. More specifically, the letter points to FTA provisions on data exclusivity, patent extensions, compulsory licensing and consumer safeguards that could be used by pharmaceutical companies to extend their patent protection beyond the customary 20 year limit and/or block the introduction of less expensive generic drugs into the market. In closing their letter, the Members of Congress wrote, "Protecting innovation is important, but the intellectual property provisions in current FTAs extend pharmaceutical monopolies without sufficient regard to consumer access and public health."

No formal announcement of the outcome of the meeting of the Malaysian Cabinet was ever made. On March 23, 2007, the USTR's office announced that the United States and Malaysia had agreed to "take a pause" in the trade negotiations.⁸³ According to the USTR statement, reaching an agreement on the FTA before the end of the month was no longer possible. As a result, both parties had agreed to a short break in the talks, and planned for "consultations" to continue in mid-April.

Informal Talks in April 2007. On April 3, 2007, Minister Rafidah reported that Malaysia and the United States would hold another round of *informal* talks in Washington, DC, "within the next 10 days."⁸⁴ The actual talks began on April 13. Prior to the start of the talks, Minister Rafidah stated, "U.S. Trade Representative Susan Schwab and I have agreed that we will take our time. We want to discuss it properly and we should not be concerned about any deadline."⁸⁵

Little was reported about the outcome of the April talks immediately after their completion. Sources indicated that there was some progress, including a possible compromise on the issue of data exclusivity for U.S. pharmaceuticals. Minister Rafidah did report that Malaysia would abolish tariffs on 114 products over a five-year period after the FTA is signed.⁸⁶ Minister Rafidah also stated in response to

⁸² Representative Henry Waxman, Representative Jim McDermott, Representative Tom Allen, Representative Lloyd Doggett, Representative Janice Schakowsky, Representative Pete Stark, Representative Diana DeGette, Representative Chris Van Hollen, Representative Barbara Lee, Representative Earl Blumenauer, Representative John Lewis, and Representative Rahm Emanuel.

⁸³ "US, Malaysia Pause FTA Negotiations," *Washington Trade Daily*, March 26, 2007.

⁸⁴ "Malaysia-US FTA Talks to Continue," *Bernama*, April 3, 2007.

⁸⁵ "Report: Malaysia, U.S. Won't Rush FTA," *Associated Press*, April 12, 2007.

⁸⁶ "Malaysia-US FTA at Technical Stage, Says Rafidah," *Bernama*, May 8, 2007.

questions from the Malaysian Senate, Dewan Negara, that the negotiations had reached “the technical stage.”⁸⁷

However, the reported progress was apparently insufficient to complete the negotiations before TPA expired on July 1, 2007. On July 16, 2007, Minister Rafidah reported that talks were “ongoing, but in smaller groups and not big delegations as before.”⁸⁸ According to the minister, the two parties had “agreed on some areas and there are also areas that need further discussions.”⁸⁹ On July 17, 2007, when asked about the special status for bumiputeras, Deputy Prime Minister Datuk Seri Najib Tun Razak responded that “domestic policies will be outside the ambit of the FTA.”⁹⁰ He also reiterated Malaysia’s statement that it was not tied to any deadline for completing the FTA negotiations.

On the same day Minister Rafidah made her statement, U.S. Assistant Trade Representative Weisel provided a different assessment of the status of the negotiations. According to U.S. Assistant Trade Representative Weisel, about 17 or 18 of the FTA chapters had “bits and pieces of business left to be concluded.”⁹¹ She also indicated that both the United States and Malaysia were looking to conclude the negotiations by the middle of 2008.

The prospect of completing the FTA talks in 2008 was reiterated by then Deputy U.S. Trade Representative Karan Bhatia on August 28, 2007. In an interview with Reuters, Deputy USTR Bhatia said, “It is our hope that we’ll actually be in a position to conclude it [the U.S.-Malaysia FTA negotiations] next year.”⁹² He also indicated that he would be discussing the FTA with Malaysian officials when he traveled to Kuala Lumpur for Malaysia’s 50th anniversary of its independence on August 31, 2007.

In September 2007, the new U.S. Ambassador to Malaysia, James Keith, told reporters that “it’s important that we continue discussions. The FTA is an opportunity for the U.S. and Malaysia to partner.”⁹³ It was also reported that U.S. trade officials had indicated that the new target for the conclusion of the negotiations was July 2008. However, on November 14, 2007, US-ASEAN Business Council president

⁸⁷ Ibid.

⁸⁸ “Malaysia-US FTA Negotiations Still Ongoing, Say Rafidah,” by Saraswathi Muniappan, *Bernama*, July 16, 2007.

⁸⁹ Ibid.

⁹⁰ “Malaysia-US FTA Talks Nothing to do with Malaysia’s Domestic Policies,” *Bernama*, July 17, 2007.

⁹¹ Malaysia-US FTA Talks Expected to Conclude by June 2008,” *Bernama*, July 16, 2007.

⁹² “U.S., Malaysia Could Strike Trade Deal Next Year - USTR,” by Doug Palmer, *Reuters*, August 28, 2007.

⁹³ “US-Malaysia FTA to Conclude in 2008?” *FTA Malaysia*, September 19, 2007.

Matthew P. Daley predicted that the formal conclusion of the FTA would likely be deferred until after the U.S. November 2008 elections.⁹⁴

Negotiations in 2008

Following the failure to complete FTA negotiations in 2007, there was a perception in Malaysia that the Bush Administration did not see relations with Malaysia or the conclusion of FTA negotiations as a priority. During a press interview in December 2007, Ambassador Keith was asked if the failure of U.S. Secretary of State Condoleezza Rice to attend ASEAN meetings, as well as the “low-level delegation” sent by the United States to Malaysia’s 50th National Day celebrations, was an indication that Malaysia had “moved down the list of priorities for the U.S. State Department.”⁹⁵ Ambassador Keith reassured the press of the U.S. commitment to the region and to Malaysia, pointing to the passage on September 17, 2007 of House Resolution 518 commemorating Malaysia’s 50th anniversary as evidence.

On December 30, 2007, U.S. Assistant Trade Representative Weisel confirmed that “the U.S. continues to seek to conclude the agreement by this summer, which we believe is achievable ...”⁹⁶ U.S. Assistant Trade Representative Weisel also said that the Bush Administration would seek an “appropriate vehicle” to obtain congressional approval of the proposed FTA once the negotiations were completed.⁹⁷

On January 14, 2008, Malaysia and the United States began their sixth round of formal negotiations in Kuala Lumpur over the terms of a possible U.S.-Malaysia Free Trade Agreement. In a statement to the press on the day the talks began, U.S. embassy spokeswoman Kathryn Taylor said the United States was seeking “real, demonstrable progress” during the sixth round of talks, but also pointed out that “there is no deadline” for completing the agreement.⁹⁸ However, in an interview with the press that same day, Ambassador Keith stated he was hoping that the negotiations would be completed by the middle of 2008.⁹⁹

Assessments of the outcome of the sixth round of talks have been mixed. A news story from China reported that four key issues were discussed during the talks — investment, trade in goods and services, intellectual property rights, and “legal

⁹⁴ Tamimi Omar, “US-Malaysia FTA Likely after Bush Administration,” *The Edge Daily*, November 14, 2007.

⁹⁵ Oorjitham, op cit.

⁹⁶ Rupa Damodaran, Malaysia-US FTA Talks to Resume on January 14,” *Business Times*, December 30, 2007.

⁹⁷ Ibid.

⁹⁸ “After 1-year Hiatus, Malaysia and US Resume FTA Talks,” *The Times of India*, January 14, 2008.

⁹⁹ Kevin Tan, “US Hopeful of FTA with M’sia by Mid-year,” *The Edge Daily*, January 24, 2008.

issues.”¹⁰⁰ According to *Xinhua*, the United States is “hopeful of concluding its free trade agreement with Malaysia by this summer...”¹⁰¹ Malaysia’s official news agency, *Bernama*, provided a similar positive assessment of the sixth round of talks, quoting U.S. Assistant Trade Representative Weisel, “We have largely reached the goal set for the week. The two sides have moved significantly on a wide range of issues...progress we made this week is encouraging.”¹⁰² The *New Strait Times* of Malaysia published a similar story on the sixth round of talks on January 18, 2008, referring to the progress that had been made and possibility of concluding the negotiations by summer.¹⁰³

Press accounts of the status of the FTA talks turned less optimistic a few days later. On January 24, 2008, *Bernama* printed two separate stories on the FTA negotiations. The first article reported that Malaysian International Trade and Industry Minister Rafidah Rafidah saw no need for a deadline for concluding the trade talks.¹⁰⁴ The second article stated that U.S. Ambassador Keith had indicated that if the FTA with Malaysia were not completed by the end of July, the United States would focus its attention on other FTA agreements.¹⁰⁵ Ambassador Keith was quoted as saying, “We will turn our attention to seal the pacts with South Korea and Columbia before the end of the Bush Administration. There will be no hard feelings.”¹⁰⁶

Another sign about the status of the negotiations was the lack of a decision on the date and place to hold the next round of talks. The United States stated that there was agreement on “the next steps” — communicating on a full set of issues still to be resolved and setting the dates for the next round of talks.¹⁰⁷ However, Minister Rafidah Rafidah reportedly said on the status of the negotiations, “Whatever issues that can be cleared first, they have cleared. We don’t have to meet again.”¹⁰⁸

¹⁰⁰ “U.S., Malaysia Make Progress in Trade Talks,” *Xinhua*, January 18, 2008.

¹⁰¹ *Ibid.*

¹⁰² “US Aims to Conclude FTA by Summer, Insists on Government Procurement,” *Bernama*, January 17, 2008.

¹⁰³ Anna Maria Samsuddin, “US, Malaysia Make Progress in Trade Talks: Weisel,” *New Strait Times*, January 18, 2008.

¹⁰⁴ “No Need for Deadline to Conclude Malaysia-US FTA, Says Rafidah,” *Bernama*, January 24, 2008.

¹⁰⁵ “US to Sign FTA with Other Countries if Talks with Malaysia Fail,” *Bernama*, January 24, 2008.

¹⁰⁶ *Ibid.*

¹⁰⁷ “US Aims to Conclude FTA by Summer, Insists on Government Procurement,” *Bernama*, January 17, 2008.

¹⁰⁸ “No Need for Deadline to Conclude Malaysia-US FTA, Says Rafidah,” *Bernama*, January 24, 2008.

Legislative Requirements

When the talks began, the USTR's goal was to have the U.S.-Malaysia FTA implementing bill considered by Congress under "fast track" expedited procedures of the Bipartisan Trade Promotion Authority (TPA) Act of 2002 (P.L. 107-210).¹⁰⁹ However, the statute requires the President to notify Congress of his intention to enter into the agreement at least 90 calendar days before entering into the trade agreement. Since the President's Trade Promotion Authority expired on July 1, 2007, and the President did not notify the Congress by the April 2, 2007 deadline, the U.S.-Malaysia FTA became ineligible to be considered under the 2002 TPA.

As a result, there are several possible scenarios under which a proposed FTA with Malaysia might be considered by Congress. First, if Congress were to extend, renew or revise Trade Promotion Authority beyond its expiration date, then the U.S.-Malaysia FTA might be considered under the provisions of a new TPA law. Second, Congress could choose to pass legislation providing temporary or limited TPA for the proposed U.S.-Malaysia FTA. This approach was used when Congress considered the Uruguay Round Agreements. Third, Congress could consider the proposed U.S.-Malaysia FTA without TPA, as it did with the U.S.-Jordan FTA. However, consideration of the proposed FTA with Malaysia without TPA would potentially allow Congress to amend the implementing bill in ways that could modify the terms of the trade agreement.

In the meantime, while negotiations with Malaysia on the proposed FTA are incomplete, the legislative policy options include consultations with the Executive Branch, holding oversight hearings on pertinent U.S. trade policy and relations with Malaysia and other nations, and working with interest groups that either support or oppose the proposed agreement. P.L. 107-210 (Section 2104) provides for close consultations with the Executive Branch during and following the negotiations. Such consultations could lead to changes in the draft agreement before it is signed.

Legislation

110th Congress

At the time this report was updated, there were no bills introduced directly related to a free trade agreement with Malaysia.

However, there is proposed legislation, **H.R. 294**, that would "prohibit the entry into any bilateral or regional trade agreement, and to prohibit negotiations to enter into any such agreement, for a period of 2 years." The bill was introduced by Representative Dale E. Kildee and co-sponsored by Representatives Walter B. Jones,

¹⁰⁹ For more detailed information about trade promotion authority, see CRS Report RL33743, *Trade Promotion Authority (TPA): Issues, Options, and Prospects for Renewal*, by J. F. Hornbeck and William Cooper.

Jr., Marcy Kaptur, and Michael H. Michaud. The bill was referred to the House Ways and Means Committee.

Also, **H.R. 3684** would limit the President's ability to reduce or alter U.S. import duties unless the President certified for Congress that the trading partner was providing "meaningful market access" for U.S. exports.

Appendix A. Chronology¹¹⁰

2008

January 14 Sixth Round of Talks held in Kuala Lumpur

2007

April 13 Informal Round of negotiations held in Washington, DC.

March 7 Malaysian Cabinet meet to discuss 58 outstanding issues in the FTA negotiations.

February 5 Fifth Round of negotiations begin in Kota Kinabalu, Sabah, Malaysia.

January 8 Fourth Round of negotiations begin in San Francisco.

2006

December 27 The Administration reported that it was not likely to ask Congress to substantially change U.S. import laws (trade remedies laws) due to negotiations on a free trade agreement with Malaysia.

October 30 Third Round of negotiations commenced in Malaysia. Government procurement was a major point of contention.

September 18 Third Round of negotiations scheduled for September were postponed to October 30.

July 17-21 The Second Round of negotiations were held. Twenty-two negotiating groups met and discussed issues and draft texts.

June 12-14 The First Round of the Malaysia-US FTA talks held in Malaysia.

May 3 The interagency Trade Policy Staff Committee convened a public hearing to seek public comment to assist the USTR in amplifying and clarifying negotiating objectives for the proposed U.S.-Malaysia FTA and to provide advice on how specific goods and services and other matters should be treated under the proposed agreement. The U.S. International Trade Commission began hearings on the proposed U.S. Malaysia FTA.

April 4 The U.S. Trade Representative sent a letter to the Committee on Ways and Means transmitting a report on the intent to initiate negotiations for a free trade agreement between the United States and Malaysia.

¹¹⁰ This chronology is based on various news reports, press releases, and notifications.

- March 31** The Trade Policy Staff Committee gave notice that the U.S. Trade Representative and the Department of Labor are initiating a review of the impact of a proposed free trade agreement between the United States and Malaysia on U.S. employment, including labor markets.
- March 30** The U.S. International Trade Commission announced that it had instituted (as of March 24) investigation [Nos. TA-131-33 and TA-2104-22] entitled U.S.-Malaysia Free Trade Agreement: Advice Concerning the Probable Economic Effect of Providing Duty-Free Treatment for Imports. The request for the investigation was received from the USTR on March 17, 2006.
- March 8** The U.S. Trade Representative announced and notified Congress of the Bush Administration's intent to negotiate a free trade agreement between the United States and Malaysia.

**Appendix B. U.S. Merchandise Exports to Malaysia
by Two-Digit Harmonized System Codes, 2004-2006**
(US\$ Million; FAS value)

	Description	2004	2005	2006
	Total Exports to Malaysia	10,896.8	10,450.9	12,550.1
01	Live Animals	0.6	2.3	2.4
02	Meat	2.1	3.3	2.0
03	Fish and Seafood	3.0	3.0	6.0
04	Dairy, Eggs, Honey, etc	24.7	33.5	48.7
05	Other of Animal Origin	0.1	0.2	0.3
06	Live Trees and Plants	0.0	0.0	0.0
07	Vegetables	3.9	5.5	6.2
08	Edible Fruit and Nuts	105.3	117.6	94.3
09	Spices, Coffee and Tea	0.5	0.8	0.8
10	Cereals	15.8	29.8	23.5
11	Milling; Malt; Starch	2.1	1.5	1.6
12	Misc Grain, Seed, Fruit	61.4	26.2	58.8
13	Lac; Vegetable Sap, Extract	1.8	2.1	1.9
14	Other Vegetable	0.0	0.0	0.0
15	Fats and Oils	2.0	1.7	2.6
16	Prepared Meat, Fish, etc	0.3	1.0	0.8
17	Sugars	6.7	7.2	9.6
18	Cocoa	3.4	4.9	3.3
19	Baking Related	4.3	5.2	4.5
20	Preserved Food	23.1	23.2	24.3
21	Miscellaneous Food	41.0	46.7	48.8
22	Beverages	5.1	4.0	5.8
23	Food Waste; Animal Feed	33.9	37.2	39.2
24	Tobacco	35.2	27.9	21.1
25	Salt; Sulfur; Earth, Stone	8.5	4.5	8.7
26	Ores, Slag, Ash	3.8	4.0	5.0
27	Mineral Fuel, Oil Etc	28.5	30.3	42.6
28	Inorg Chem; Rare Earth mt	48.9	61.9	73.5
29	Organic Chemicals	147.8	113.1	107.0
30	Pharmaceutical Products	25.0	29.9	39.4
31	Fertilizers	6.6	6.0	5.5
32	Tanning, Dye, Paint, Putty	16.8	20.3	17.2
33	Perfumery, Cosmetic, etc	32.2	29.7	37.0

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	Description	2004	2005	2006
34	Soap, Wax, Etc; Dental Prep	25.5	27.7	32.6
35	Albumins; Mod Starch; Glue	9.2	8.0	10.7
36	Explosives	5.9	3.6	3.7
37	Photographic/Cinematography	3.2	4.6	4.2
38	Misc. Chemical Products	67.0	76.8	73.8
39	Plastic	217.1	222.2	208.4
40	Rubber	16.0	34.1	45.4
41	Hides and Skins	0.2	0.1	0.1
42	Leather Art; Saddlery; Bags	1.9	2.6	3.0
43	Furskin+ Artificial Fur	0.0	0.0	0.0
44	Wood	39.0	30.1	29.7
45	Cork	0.1	0.1	0.0
46	Straw, Esparto	0.2	0.0	0.0
47	Woodpulp, Etc.	25.0	26.4	28.1
48	Paper, Paperboard	63.2	71.7	67.5
49	Book+ Newspaper; Manuscript	15.9	20.1	18.3
50	Silk; Silk Yarn, Fabric	0.4	0.3	0.5
51	Animal Hair+ Yarn, Fabric	0.0	0.0	0.0
52	Cotton+ Yarn, Fabric	7.2	5.4	8.5
53	Other Vegetable Textile Fiber	0.0	0.0	0.0
54	Manmade Filament, Fabric	3.9	4.0	2.8
55	Manmade Staple Fibers	3.3	2.5	2.9
56	Wadding, Felt, Twine, Rope	9.9	14.7	7.0
57	Textile Floor Coverings	0.6	0.2	0.5
58	Special Woven Fabric, Etc	1.2	0.5	1.0
59	Impregnated Text Fabrics	3.3	3.9	2.9
60	Knit, Crocheted Fabrics	0.2	0.3	0.1
61	Knit Apparel	0.6	0.8	0.3
62	Woven Apparel	1.7	2.4	1.4
63	Misc Textile Articles	3.4	7.0	9.6
64	Footwear	0.4	0.8	0.7
65	Headgear	0.1	0.3	0.3
66	Umbrella, Walking-sticks, Etc	0.0	0.0	0.0
67	Artificial Flowers, Feathers	0.0	0.0	0.0
68	Stone, Plaster, Cement, Etc	6.3	11.7	16.4
69	Ceramic Products	11.7	9.5	4.3
70	Glass and Glassware	25.0	27.0	30.4
71	Precious Stones, Metals	37.2	37.1	48.9

	Description	2004	2005	2006
72	Iron and Steel	96.2	121.3	211.8
73	Iron/steel Products	28.8	28.0	33.0
74	Copper+ Articles Thereof	29.8	27.4	30.0
75	Nickel+ Articles Thereof	3.2	3.0	4.0
76	Aluminum	44.3	43.5	43.4
78	Lead	3.0	4.4	3.0
79	Zinc+articles Thereof	0.1	0.6	1.8
80	Tin + Articles Thereof	0.7	0.1	6.8
81	Other Base Metals, etc.	6.4	7.8	17.0
82	Tools, Cutlery, of Base Metals	20.9	22.5	28.3
83	Misc Art of Base Metal	29.0	8.6	10.0
84	Machinery	1,375.8	1,744.8	1,687.3
85	Electrical Machinery	6,477.4	5,985.7	7,131.2
86	Railway; Trf Sign eq	8.2	5.5	3.4
87	Vehicles, Not Railway	12.2	15.8	13.7
88	Aircraft, Spacecraft	580.7	255.8	807.3
89	Ships and Boats	0.6	10.5	1.2
90	Optic, not 8544; Medical Instr	637.6	567.8	834.5
91	Clocks and Watches	0.9	1.3	0.9
92	Musical Instruments	0.8	1.2	1.9
93	Arms and Ammunition	1.1	1.3	2.2
94	Furniture and Bedding	11.1	29.8	13.7
95	Toys and Sports Equipment	15.2	19.2	19.6
96	Miscellaneous Manufactures	3.4	2.5	6.3
97	Art and Antiques	0.1	0.2	0.4
98	Special Other	208.8	201.4	231.2

Source of data: U.S. International Trade Commission.

Appendix C. U.S. Merchandise Imports from Malaysia by Two-Digit Harmonized System Codes, 2004-2006

(U.S.\$ Millions, CIF values)

HS	Description	2004	2005	2006
	Total Imports from Malaysia	29,050.8	34,675.8	37,521.1
01	Live Animals	0.2	0.2	0.1
02	Meat	0.0	0.0	0.0
03	Fish and Seafood	123.8	130.2	152.5
04	Dairy, Eggs, Honey, etc	0.8	0.8	0.3
05	Other of Animal Origin	0.1	0.1	0.1
06	Live Trees and Plants	0.6	0.8	0.8
07	Vegetables	0.2	0.3	0.1
08	Edible Fruit and Nuts	0.0	0.0	0.0
09	Spices, Coffee and Tea	1.5	1.8	3.6
10	Cereals	0.1	0.0	0.1
11	Milling; Malt; Starch	0.1	0.2	0.0
12	Misc. Grain, Seed, Fruit	0.1	0.2	0.3
13	Lac; Vegetable Sap, Extract	0.0	0.2	0.3
14	Other Vegetable	0.0	0.0	0.0
15	Fats and Oils	283.7	343.3	458.0
16	Prepared Meat, Fish, etc	27.2	18.3	21.7
17	Sugars	0.3	1.1	0.7
18	Cocoa	115.7	117.6	113.8
19	Baking Related	9.3	11.1	11.5
20	Preserved Food	10.0	9.4	8.4
21	Miscellaneous Food	4.4	9.6	22.7
22	Beverages	2.3	4.2	6.7
23	Food Waste; Animal Feed	0.7	0.7	4.2
24	Tobacco	1.9	1.0	0.0
25	Salt; Sulfur; Earth, Stone	0.2	0.2	0.2
26	Ores, Slag, Ash	6.0	9.5	10.7
27	Mineral Fuel, Oil Etc	638.1	549.7	457.8
28	Inorg Chem; Rare Earth mt	4.8	14.6	3.7
29	Organic Chemicals	113.1	108.0	94.5
30	Pharmaceutical Products	1.8	1.1	2.8
31	Fertilizers	5.8	13.4	14.7
32	Tanning, Dye, Paint, Putty	8.6	17.7	14.7
33	Perfumery, Cosmetic, etc	4.4	3.9	4.5

HS	Description	2004	2005	2006
34	Soap, Wax, Etc; Dental Prep	19.0	21.6	25.3
35	Albumins; Mod Starch; Glue	1.0	0.7	0.6
36	Explosives	0.0	0.0	0.0
37	Photographic/Cinematography	6.6	1.5	3.3
38	Misc. Chemical Products	169.6	184.7	218.1
39	Plastic	104.9	153.3	187.6
40	Rubber	652.1	728.8	866.0
41	Hides and Skins	0.4	0.1	0.3
42	Leather Art; Saddlery; Bags	3.2	5.5	12.0
43	Furskin+ Artificial Fur	0.0	0.0	0.0
44	Wood	407.1	402.0	433.5
45	Cork	0.1	0.0	0.0
46	Straw, Esparto	0.2	0.2	0.0
47	Woodpulp, Etc.	0.0	0.0	0.0
48	Paper, Paperboard	13.0	19.4	19.8
49	Book+ Newspaper; Manuscript	18.2	22.5	21.9
50	Silk; Silk Yarn, Fabric	0.0	0.0	0.0
51	Animal Hair+ Yarn, Fabric	1.2	0.6	0.3
52	Cotton+ Yarn, Fabric	23.5	13.1	11.9
53	Other Vegetable Textile Fiber	0.0	0.0	0.0
54	Manmade Filament, Fabric	16.9	18.0	18.4
55	Manmade Staple Fibers	4.1	3.2	11.0
56	Wadding, Felt, Twine, Rope	14.4	12.5	12.5
57	Textile Floor Coverings	0.0	0.1	0.2
58	Special Woven Fabric, Etc	1.6	2.2	3.3
59	Impregnated Text Fabrics	0.3	0.6	0.6
60	Knit, Crocheted Fabrics	0.2	0.0	0.1
61	Knit Apparel	461.8	462.2	459.2
62	Woven Apparel	310.7	274.7	283.4
63	Misc Textile Articles	5.4	8.3	6.0
64	Footwear	1.8	1.8	2.7
65	Headgear	5.0	3.5	3.1
66	Umbrella, Walking-sticks, Etc	0.0	0.0	0.0
67	Artificial Flowers, Feathers	0.0	0.0	0.0
68	Stone, Plaster, Cement, Etc	3.7	5.3	2.8
69	Ceramic Products	42.0	38.1	36.8
70	Glass and Glassware	14.3	6.8	9.8
71	Precious Stones, Metals	24.0	30.3	30.5

HS	Description	2004	2005	2006
72	Iron and Steel	136.8	143.7	323.5
73	Iron/steel Products	82.2	88.2	123.8
74	Copper+ Articles Thereof	39.8	57.5	107.3
75	Nickel+ Articles Thereof	0.1	0.0	0.4
76	Aluminum	55.2	54.5	38.4
78	Lead	0.1	0.0	0.0
79	Zinc+articles Thereof	1.4	1.6	1.0
80	Tin + Articles Thereof	58.1	16.3	4.3
81	Other Base Metals, etc.	0.2	0.0	2.2
82	Tools, Cutlery, of Base Metals	5.3	5.7	5.1
83	Misc Art of Base Metal	19.3	23.0	22.5
84	Machinery	11,569.0	13,130.8	15,229.2
85	Electrical Machinery	11,324.3	15,050.6	14,927.4
86	Railway; Trf Sign eq	0.8	0.4	0.9
87	Vehicles, Not Railway	32.8	30.2	32.6
88	Aircraft, Spacecraft	16.4	21.2	27.8
89	Ships and Boats	18.6	20.7	30.3
90	Optic, not 8544; Medical Instr	562.4	630.8	781.9
91	Clocks and Watches	7.8	7.0	1.9
92	Musical Instruments	1.5	2.3	2.0
93	Arms and Ammunition	0.3	0.4	0.5
94	Furniture and Bedding	774.6	914.7	993.8
95	Toys and Sports Equipment	108.2	109.9	96.8
96	Miscellaneous Manufactures	21.7	26.1	26.4
97	Art and Antiques	0.1	0.2	0.5
98	Special Other	313.9	301.4	376.2
99	Other Special Impr Provisions	208.0	247.9	273.6

Source of data: U.S. International Trade Commission

Appendix D. U.S. Merchandise Exports by State to Malaysia, 2004-2006

(U.S. Dollars)

State	2004	2005	2006
U.S. Total	10,896,754,885	10,450,923,341	12,550,114,964
Alabama	27,160,270	24,425,479	32,055,731
Alaska	2,000,206	1,813,626	2,110,093
Arizona	744,014,007	778,635,471	807,939,654
Arkansas	15,263,079	12,050,640	12,353,817
California	2,002,388,800	1,942,191,137	2,513,952,947
Colorado	309,549,133	246,070,261	242,385,175
Connecticut	115,406,682	114,754,076	155,254,165
Delaware	8,580,453	12,072,472	12,631,167
District of Columbia	5,640,896	6,039,473	4,385,022
Florida	203,539,271	231,743,583	173,148,221
Georgia	85,386,931	84,660,541	63,860,742
Hawaii	96,903	7,930,844	8,729,921
Idaho	76,218,522	150,169,568	152,678,546
Illinois	261,480,753	233,014,823	321,274,991
Indiana	70,243,195	75,637,157	84,684,105
Iowa	31,229,324	34,417,553	36,166,670
Kansas	12,203,078	43,921,675	31,366,494
Kentucky	101,566,265	105,452,644	104,453,457
Louisiana	86,285,530	93,281,049	98,725,028
Maine	338,618,230	364,620,488	673,323,738
Maryland	21,166,814	20,541,456	21,148,459
Massachusetts	647,796,147	617,424,506	535,218,544
Michigan	107,150,107	76,433,815	61,516,319
Minnesota	125,381,273	185,478,087	188,188,446
Mississippi	6,050,965	7,761,611	9,551,863
Missouri	39,145,703	53,055,452	49,591,784
Montana	7,115,256	7,299,633	5,299,170
Nebraska	10,647,856	7,694,801	10,251,464
Nevada	20,619,915	36,558,369	67,638,870
New Hampshire	28,324,662	23,599,334	31,681,570

State	2004	2005	2006
New Jersey	68,544,266	79,902,011	63,340,489
New Mexico	224,757,438	342,690,777	490,070,276
New York	262,615,745	239,089,398	261,746,725
North Carolina	224,306,679	182,297,150	141,396,851
North Dakota	1,693,282	1,042,341	835,254
Ohio	95,680,748	119,244,964	83,616,979
Oklahoma	10,676,189	16,839,087	14,238,542
Oregon	496,119,486	914,641,433	1,215,184,557
Pennsylvania	169,800,898	169,153,558	181,489,006
Puerto Rico	12,850,147	23,768,292	16,792,176
Rhode Island	10,376,932	15,151,515	10,424,503
South Carolina	53,346,819	71,598,593	67,769,659
South Dakota	5,570,883	6,527,987	4,783,698
Tennessee	77,969,653	128,416,941	165,627,371
Texas	2,552,312,853	1,755,128,948	1,952,756,060
Utah	39,977,110	49,548,407	29,682,822
Vermont	102,461,173	123,452,142	189,630,719
Virgin Islands	0	120,041	6,680,464
Virginia	146,447,729	86,692,347	57,529,454
Washington	559,023,402	214,293,330	757,707,760
West Virginia	12,735,157	23,059,667	8,463,557
Wisconsin	77,893,113	119,143,320	127,042,669
Wyoming	12,875,861	17,680,970	15,815,491
Unallocated	168,449,096	152,690,498	175,923,709

Source: World Trade Atlas.