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Malaysia's Free Trade Agreements (FTAs)

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MALAYSIA'S FREE TRADE AGREEMENTS (FTAs)

INTRODUCTION

Malaysia continues to accord high priority to the rule-based multilateral trading system under the World Trade Organisation (WTO).

Regional and bilateral trading arrangements are allowed by the WTO provided that tariffs are eliminated substantially on all trade, that all parties to the agreement must eliminate duties according to mutually agreed rules and time frames and, it must not be more trade restrictive to non-members of the FTA concerned.

To this end, Malaysia has concluded and signed two bilateral FTAs with the following countries:

- Japan; and
- Pakistan.

At the regional level, Malaysia and its ASEAN partners have established the ASEAN Free Trade Area (AFTA). ASEAN has also concluded FTAs with China, Japan and Korea

WHO SHOULD USE THIS BOOK

This is a useful guide for Exporters, Businessmen, Service Providers, Investors and Public Officials.

HOW TO USE THIS BOOK

The book is divided into sections to facilitate the reader and frequently asked questions are included in each section that provides simple answers to each query.

Section 1: General Information



: FTA in General

1. What is an FTA?

FTA is an agreement made between two or more countries under which countries involved are given preferential market access.

2. What is the basic component of an FTA?

FTAs have traditionally been confined to trade in goods. However, after the establishment of the WTO, trade in services and other areas such as investment, intellectual property protection, competition policy, and cooperation measures have been included.

3. What is Early Harvest Programme (EHP)?

The EHP is a mini fast track prelude to the FTA under negotiation. It exempts some products from tariffs before the FTA is completed. Either countries or parties can increase market access for each other on items of significant commercial interests.

The EHP has provided duty free access to a substantial number of products within specific time. The list of products shall be agreed during bilateral negotiation. Apart from this, a large number of products will be exportable by both countries at Margin of Preference in relation to MFN duty rate. By doing this, either countries or parties can enjoy concessionary duty rate in comparison to exports of same products from other countries.

4. Which Agreement has been commenced under EHP?

Malaysian companies can enjoy the EHP through two agreements that is one under bilateral trade agreement and the other is under regional trade agreement. The implementation of the ASEAN6-China (trade in goods) commenced in January 2004.



: Malaysia's Involvement in FTAs

1. How many FTAs have Malaysia signed and with whom?

To date, Malaysia has signed and is implementing two bilateral FTAs and four regional FTAs. The bilateral FTAs signed are with Japan (MJEPA) and Pakistan (MPCEPA). Together with its ASEAN partners, Malaysia are parties to the ASEAN Free Trade Area (AFTA), ASEAN-Japan Close Economic Partnership Agreement (AJCEP), ASEAN Korea Free Trade Agreement (AKFTA) and the ASEAN-China Free Trade Agreement (ACFTA).

2. Where can I obtain the legal texts of the respective FTAs?

The complete text of all FTAs is available on the FTA website maintained by the Ministry of International Trade and Industry (MITI) at www.miti.gov.my.

3. What are the upcoming FTAs?

Malaysia is currently negotiating bilateral FTAs with Australia, Chile, India, New Zealand and the United States of America. As part of ASEAN, Malaysia is currently negotiating an FTA with Australia-New Zealand, India and the European Union.



1. What are the benefits to Malaysian based exporters?

Exporters in Malaysia will benefit from FTAs through preferential treatment and market access. Exporters will also enjoy cost savings from elimination or reduction of customs duties and from mutual recognition agreements, trade facilitating customs procedures and removal of onerous regulations. For service providers, FTAs provide improved market access for various commercial and professional services from Malaysia. FTAs also provide for easier entry for businessmen as well as more predictable terms for investment in the FTA partner country.

2. Would FTAs bring about increased competition?

Yes. The tariff liberalization implemented by Malaysia would facilitate imports from our FTA partners. These imports may also be inputs for manufacturers in Malaysia thus contributing to enhancing competitiveness of Malaysian exports.

Section 2: Trade in Goods



: Preferential Tariff

1. What are Preferential Tariffs?

Preferential tariffs are customs duties imposed on incoming goods from an FTA partner which is set at zero or at a lower tariff than that imposed on other countries. The elimination/reduction exercise does not cover internal taxes such as GST or excise duties.

2. Will my product enjoy preferential tariff under the FTA when imported into the FTA partner country?

Prior to applying for FTA concessions, companies are advised to check their product HS Code with the Customs Department. Companies should also check whether their product is included in the Inclusion List of Malaysia and the importing ASEAN country with Federation of Malaysian Manufacturers (FMM) or Ministry of International Trade and Industry (MITI). To qualify for preferential treatment, your product must also qualify as an originating good.

3. What is the tariff elimination/reduction schedule?

The tariff elimination/reduction schedule indicates the rates at which duties on goods are being eliminated. Under Malaysia's FTAs, the schedule should include the HS Code, description of the product, the base rate applied at the date the FTA comes into force, and the schedule of elimination/reduction by year.

4. How to check the product HS Code?

Product classification is normally in accordance with the Harmonized Commodity Description and Ceiling System (HS). The related agency in determining HS Code is the Royal Malaysian Customs Department.

Under Malaysia's FTAs, goods are classified under digit level. The first two digits are known as the 'chapter', the first four digits as the 'heading' and the first fifth and sixth digits are 'subheadings'. The seventh and eighth digits consist of further detailed tariff nomenclature breakdown.

The chapters are organized according to materials or to degree of processing, for instance:

● Live animals	Chapter 01
● Rubber and articles thereof	Chapter 40
● Wood and articles thereof	Chapter 44
● Paper pulp	Chapter 47
● Paper	Chapter 48
● Books	Chapter 49
● Wool yarn and woollen fabrics	Chapter 51
● Cotton yarn and cotton fabrics	Chapter 52

Within each chapter, there are several headings. Within chapter 01, there are several headings, namely:

● Live horses, asses, mules and hinnies
● Live bovine animals
● Live swine
● Live sheep and goats

Within each heading, goods are categorized into subheadings, as follows:

0101.10.00	for purebreeding animals
0101.90	for others

Within each subheading, there are several subheadings, such as:

0101.90.10	Horses
0101.90.20	Asses

4. **How to check whether the product is covered under the tariff elimination/reduction schedule?**

Exporters must check whether the goods are included under the tariff reduction schedule of our FTA partner. First determine the ...-digit code number of your product. Scan through the tariff schedule of the FTA partner to see whether your product is listed for elimination or reduction.

The tariff schedules for each of Malaysia's FTA can be obtained from Ministry of International Trade and Industry (MITI) website on FTAs www.miti.gov.my.

B

: Rules of Origin (RoO)

1. **What are Rules of Origin (RoO)?**

Rules of Origin are the criteria used to determine the country in which the good has been produced or manufactured. It is the basis used for international trade purposes. RoO is needed to “determine the origin of products eligible for the preferential tariff concession”.

2. **What are Originating Goods?**

Originating Goods are goods that meet the conditions for preferential market access. All other goods are called non-originating goods.

3. **How does a product be determined of its origin?**

A product is deemed as originating from a particular country based on two criteria:

- it contains no materials or processing from outside country, i.e., the products is “wholly obtained”; or
- “sufficient working or processing” or substantial transformation has taken place.

4. **What are “wholly obtained goods”?**

Wholly obtained goods are generally goods that meet the following criterion:

- live animals born and raised in that country;
- animals obtained by hunting, trapping, fishing, gathering or capturing in that country;
- products obtained from live animals;

- plants and plant products harvested, picked or gathered in that country;
- products of sea-fishing and other products taken from the sea outside a country;
- goods obtained or produced on board factory ships;
- products taken from the sea-bed or subsoil beneath the sea-bed outside a country;
- minerals and other naturally occurring substances;
- scrap and waste derived from manufacturing or processing operations or from consumption in that country and fit only for disposal or for the recovery of raw materials; and
- goods obtained or produced in that country solely from products referred to above.

5. What are the measurements used in determining that a product has undergone substantial transformation (ST)?

Substantial Transformation (ST) can be measured through:

- Value Added (VA)/test of origin method
 - defines the degree of transformation required in terms of:
 - minimum percentage of value that must come from the originating country; or
 - maximum amount of value that come from the use of imported parts and materials;

The general rule is for their product to satisfy that at least 40 per cent (either local content of individual countries or ASEAN cumulative content whichever applies)

Formula used in determining product satisfaction of the 40 per cent rule is:

$$\text{Q.V.C.} = \frac{\text{F.O.B.} - \text{V.N.M.}}{\text{F.O.B.}} \times 100$$

Q.V.C. – Qualifying Value Content

F.O.B. – Free on Board Value

V.N.M. – Value of Non-Originating Materials

- Change in Tariff Classification (CTC)
 - ST occurred if a good obtained is classified in a different tariff classification than that of its non-originating inputs used in the process.

- Specified process of manufacture:
 - defines certain manufacturing or processing operations that a product must undergo in the exporting country to confer origin (positive test); or
 - Specifying manufacturing / processing procedures that do not confer origin (negative test).

- Combination of the above.



: Certificate of Origin (CoO)

1. What is Certificate of Origin (CoO)?

Certificate of Origin certifies the country of origin of a particular product. Its main function is to enable the importer of other countries to take advantage of the preferential tariff rate of duty from the country of origin, e.g. Malaysia. It is also used to satisfy trade requirements such as supporting letters of credit. CoO is also used as supporting documents for the issue of certification by another Chamber.

2. What are the types of forms used when applying for CoO?

Application for CoO can be made by using specific forms designed for every FTAs.

- Form MPFTA for Malaysia-Pakistan FTA;
- Form XX for Malaysia-Japan;
- Form E for ASEAN-China; and
- Form Ak for ASEAN-Korea.;

For exports to ASEAN countries, exporters can choose to use either CEPT Form D or ACFTA Form E or Form AKFTA. However, it is advisable to use Form D, unless using Form E or Form AKFTA could render more benefits.

3. Where can companies forward their Application for CoO to?

MITI is the sole issuance authority of the CoO. However, companies can obtain the forms from FMM and its branches.

Prior to CoO approval, Pre-exportation verification to determine the origin of a product is required. Result of the verification is valid for two years.

4. How can a company claim for preferential tariff treatment?

A company can claim for preferential tariff treatment by:

- Present the CoO to Customs Authority of the importing party;
- If there is reasonable doubt, Customs authority of the importing party may request issuing authority of the exporting party to conduct retroactive check;
- If not satisfied, the Customs Authority may conduct verification visits to the manufacturer's premise in exporting country.



: Other Important Things to Know

1. What are Sanitary and Phytosanitary (SPS) Measures?

Sanitary and Phytosanitary (SPS) refer to any of the laws, rules, standards, and procedures that governments employ to protect humans, other animals, and plants from diseases, pests, toxins, and other contaminants. Exporters are required to adhere to the rules and regulations on products they are exporting concerning SPS of the FTA partner country or their products will be rejected entry. SPS rules and regulations may vary from country to country.

FTAs can ensure that each country's food safety and animal and plant health laws and regulations are transparent, scientifically defensible, and fair.

2. What are Technical Barriers to Trade (TBT)?

Technical regulations and standards are important to ensure environmental protection, safety, national security to consumer information. Exporters are obligated to adhere to the respective rules and regulations of the importing FTA partner country. These may vary from country to country. Technical Regulations and Standards can become a barrier to trade.

To help reduce costs to Malaysia exporters and remove barriers to the movement of goods to FTA partner country, Malaysia has negotiated mutual recognition agreements (MRA) on conformity assessment in all our FTAs.

3. What are Mutual Recognition Agreements?

A Mutual Recognition Agreement (MRA) is an agreement between the FTA partners to recognise, or accept each other's conformity assessment results e.g. test reports, certificates and inspection results, thereby not requiring them to undergo similar tests and certification in the importing country. This will save time and eliminate the cost of duplicative procedures.

Section 3: Investment

One major benefit from Malaysia's FTAs is that Malaysian investors will be able to enjoy a more transparent and predictable investment regime. Investors enjoy fair and equitable treatment and enhanced investment protection and security with regards to their investments as well as avenue for dispute settlement. Investors will be allowed to transfer profits, capital gains, dividends, royalties, interests, earnings and remuneration freely and without delay in any freely usable currency. FTA partners are not permitted to expropriate or nationalize each other's investments unless for lawful and public purpose and with due compensation. The investor has the right to seek recourse under the dispute settlement mechanism of the agreement.

Section 4: Trade in Services

Under Malaysia's FTAs, Malaysian service providers have market access in the following sectors among others:

- professional services;
- communication;
- construction;
- distribution;
- education;
- environment;
- financial services;
- health related and social services;
- tourism and travel related services; and
- transport.

FTA parties are required to ensure enhanced transparency on laws, regulations and other relevant measures affecting bilateral trade in services. FTA partners are required to provide recognition of the education and experience obtained, requirements met, or licences or certifications granted of a service provider for the purposes of the fulfilling the standards or criteria set for the authorisation, licensing or certification of service suppliers. FTA partners shall not apply restrictions on international transfers and payments for current transactions relating to trade in services.

For further clarifications, please contact:

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