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# MALAYSIA
## RATE Country Summary

Agricultural Trade Environment (RATE) assessment conducted in the ASEAN region in 2012 by the Maximizing Agricultural Revenue through Knowledge, Enterprise Development, and Trade (MARKET) Project.

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# MALAYSIA

## Regional Agricultural Trade Environment (RATE) Assessment Country Summary

### USAID Maximizing Agricultural Revenue through Knowledge, Enterprise Development and Trade (MARKET) Project

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*On the cover*: An entrepreneurial family in Malaysia
Photo credits: Nathan Associates Inc.

# RATE COUNTRY SUMMARY—MALAYSIA

This Country Summary sets forth general findings from the Regional Agricultural Trade Environment (RATE) assessment conducted in Malaysia in July 2012. In addition to comprehensive desk research, assessors conducted a series of interviews across the country's agriculture sector, including with national and local government officials, producer associations, owners of small, medium, and large agriculture enterprises, trade service-providers, market workers, women's business groups, nongovernment organizations (NGOs), foreign investors, research institutes, international donors, the banking and lending community, and others. Interviews and observations, along with a validation workshop in October 2012, took place in and near Kuala Lumpur, Penang, and Kota Kinabalu in the Sabah Province. In all, the team consulted more than 100 stakeholders in Malaysia.

## What is RATE?

The Regional Agricultural Trade Environment (RATE) assessment is a tool designed to examine the agricultural trade enabling environments of countries in a particular region, with the objective of identifying a range of legal and institutional reforms that will help the region, and the individual countries, become more efficient in their approach to trade.

In recent years, the international community has committed to a variety of multicountry initiatives that emphasize the collection of benchmark information. Such benchmarks allow participating countries to compare their economic and business environments to others. The accepted use of such benchmarks helps countries identify relative areas of strength and weakness and to track evolution in those rankings over time. Examples include the World Economic Forum's Global Competitiveness reports, the International Finance Corporation's Doing Business reports, and the United States Agency for International Development's (USAID) BizCLIR (Business Climate Legal and Institutional Reform) and AgCLIR (Agribusiness Climate Legal and Institutional Reform) reports.

Building on such initiatives—USAID's BizCLIR and AgCLIR, in particular—the ASEAN RATE inquiry has been conducted for Member States of the Association of Southeast Asian Nations (ASEAN) under the Maximizing Agricultural Revenue through Knowledge, Enterprise Development, and Trade (MARKET) project funded by USAID. RATE builds a knowledge base for addressing the priorities of USAID's Feed the Future initiative, which aims to increase investment in agriculture and rural development as both a lever for combating food insecurity and an engine for broader economic growth, prosperity, and stability.

RATE collects certain quantitative and qualitative information across relevant agriculture value chains in ten topical areas critical to trade in agricultural products sector, namely (1) the conditions for enterprise formality; (2) access to finance; (3) infrastructure; (4) intellectual property; (5) competition; (6) non-tariff barriers; (7) trade facilitation; (8) gender; (9) transparency and accountability; and (10) food security. Each RATE country assessment, set forth in a separate detailed, country-specific presentation and reported through a series of Country Summaries, benchmarks the national enabling environment for agribusiness and agricultural trade by identifying the private sector priorities, key market constraints, and successful national initiatives in support of agricultural trade in individual ASEAN Member States.

# INTRODUCTION

Malaysia presents a remarkable story of modern economic development. Over the past 40 years Malaysia has been transformed from an environment of food shortages, restricted human capacity, and ethnic divisions, to one with admirable level of food security, prosperity, and opportunity for its 29 million people. In the 1970s, Malaysia was internationally perceived as an impoverished and remote producer of a limited set of raw mining and agriculture materials. Today, it is an industrialized, upper-middle-income economy that reasonably expects to join the World Bank-designated category of high-income countries by 2020.

Agricultural trade is enormously important to Malaysia's economy. The country's industrial crops of palm oil, rubber, cocoa and tobacco contribute the vast majority of the 11 percent of GDP that the agriculture sector represents, and occupy about 77 percent of the country's agricultural land. The dedication of the country's limited arable land to industrial farming, along with its significant industrialization over recent generations, means that Malaysia is also a net importer of food. Still, production and processing of a wide variety of food products on 16 percent of the land—including rice, fish, cash crops, and fruits and vegetables—remain a government priority, both for purposes of food security and development of small and medium-sized enterprises (SMEs).[1] Malaysia's considerable advances in addressing food security and developing a modern economy offer important lessons and opportunities for other ASEAN Member States. In the broad area of agricultural trade, however, a number of challenges remain.

**Figure 1. Representative Statistics Pertaining to Agricultural Trade: Malaysia**

| | |
|---|---|
| Population (2013) | 29.6 mn |
| Agriculture as % of GDP (2012) | 11.4 |
| Services as % of GDP (2012) | 48.3 |
| Industry as % of GDP (2012) | 40.2 |
| % of population engaged in agriculture (2012) | 1311.1 |
| Exports (all sectors, 2012) | $247bn |
| Imports (all sectors, 2012) | $181.6 bn |
| % of women participating in agriculture sector (2010) | 9 |
| Female/Male literacy rate (%e) (2010) | 90.7/95.4 |
| Female labor participation rate (women over 15, 2011) | 44 |
| Prevalence of undernourishment (2011) (% of population) | 5 |
| Percent of children underweight (2006 % of children under 5) | 12.9 |
| % of workers informally self-employed or informal wage-earners | Not available |

*SOURCES: CIA Factbook; World Bank*

[1] *See* Malaysia Ministry of Agriculture and Agro-Based Industries, Overview of Agriculture Sector in Malaysia (2009), available at http://www.slideshare.net/ranzcdadavao/overview-of-agriculture-sector-in-malaysia-presentation.

## TOPICAL SUMMARIES

For each Association of Southeast Asian Nations (ASEAN) Member State surveyed by RATE, assessors asked approximately 150 questions—around 15 per topic—related to the legal framework, implementing institutions, supporting institutions, and social dynamics of each of the ten topics studied by the assessment. This section summarizes the answers to these questions by setting forth the primary issues, opportunities, and challenges associated with each topic.

### The Informal Economy

When producers, processors, and traders assume the various aspects of enterprise formality, their businesses can grow and their goods can circulate more freely, within and across borders, enhancing food security.

Throughout Southeast Asia, recent generations have witnessed a transition from economies grounded in informal activity—mostly agriculture and casual trade—to more formal and clearly defined relationships between enterprises and the regulating authority of government. Formalization begins with registration with one or more government agencies, and can result, in theory, in a number of advantages, among them limited liability, better access to finance, more opportunities to participate in higher-value pursuits, greater ability to enforce contracts, and even the benefits of a strengthened community tax base. For many informal producers, processors, and traders, however, registration with national or local authorities often means assuming the costs of formal tax collection and licensing interventions, without immediate or obvious tangible benefits. Enterprises typically remain informal because they perceive formalization as too costly, too complex, and not worth the effort. As long documented by the World Bank's *Doing Business* initiative, persistent, widespread enterprise informality undermines improvements to productivity and quality, access to markets, and economic growth.[2]

As recently as 1966, more than 80 percent of Malaysia's population worked in agriculture, mostly informally. Now, as a result of a massive shift of population from rural to urban areas, only around 13 percent work in farming, fishing, and forestry. In rural areas, informal farming remains a way of life, albeit for fewer Malaysians. Over the past generation, the Malaysian government has used its increasing economic advantages, including substantial oil revenue and a healthy trade surplus, to bolster formal entrepreneurship in the agriculture sector. It has done so through progressive implementation of long-established law: Malaysia's Registration of Business Act (1956) applies to sole proprietorships and partnerships and the Companies Act (1965) applies to limited companies, which are usually larger. New businesses in Malaysia are required to register with the Companies Commission of Malaysia (SSM) and may do so either in person or through the "e-Lodgement" system.

On the one hand, a great many Malaysian entrepreneurs understand that the government is "in their corner," and there is little incentive for microenterprises to stay informal or "invisible" to the government. Both national and local government agencies provide access to practical advice, some working and long-term capital for new businesses, networking opportunities, marketing support, and more.

[2] *See* World Bank, *Doing Business in 2013* (2012), and accompanying literature at www.DoingBusiness.org.


***Although there are incentives to formalize, informal businesses still abound in Malaysia.***

Malaysia's Ministry of Agriculture and Agro-based Industry (MOAA) is charged with transforming the country's agriculture and agro-based industry into a "modern, dynamic and competitive sector," positioning Malaysia as a major world food exporter; and "developing the agriculture sector as the country's engine of growth." In addition, the national institution charged with supporting new and smaller businesses, SMECorp, offers a host of services, including encouragement of technology and innovation; support for human capital needs; advice on market access and access to capital, and others. The Federal Agriculture Marketing Authority (FAMA) provides a number of services and serves as a buyer of last resort for many of the country's informal farmers.

The process of registering a business in Malaysia is straightforward (only four procedures) and relatively brief (six days). Information on the registration process is accessible online via the SSM website, and, for those registering in person, SSM "counters" are located all over the country. Entrepreneurs in Malaysia do not complain of corruption or informal fees in the process of business registration.

Beyond initial company registration, the government of Malaysia is committed to simplifying the business licensing process, including through expanding coverage of its e-business licensing system to all states in the country by the end of 2013. In the future, the portal, called the Malaysia Business Licensing System (MBLS), will cover all sectors and extend to all states. As a significant incentive to join the formal sector, most businesses do not pay taxes until they meet a certain level of income, another incentive for drawing enterprises into the formal sector.

***Malaysia has invested in a comprehensive system of assisting small businesses, beginning with simplified formalization procedures that secure access to a variety of incentives. Here, an entrepreneur produces a variety of products that she sells domestically and abroad.***

Notwithstanding Malaysia's encouragement of enterprise formality, there remains a large and economically important "informal economy" in the country. Although their presence is difficult to quantify, informal entrepreneurs, particularly those dealing in food products, often choose to remain informal due to perceptions of hassle and expense associated with formalization. In addition, Malaysia's informal economy is substantially comprised of migrant workers from neighboring countries, including Indonesia, Burma, Cambodia, Bangladesh, and the Philippines. In the agriculture sector, they can be found working on industrial plantations and smaller farms, in food-processing plants, in outdoor markets, and in fisheries. In 2007, Malaysia hosted an estimated 2.2 million foreign migrant workers, accounting for 21 percent of the labor force. Although many employers have formally registered these workers with the state, a great many migrants work illegally and are paid "under the table." Foreign workers often face difficult work conditions, which are often poorly monitored by the government. During the RATE assessment, a variety of employers in the agriculture sector stated that it is common practice for them to hold the passports of visiting workers.

## Access to Finance

Producers, processors, and traders seek finance for a variety of purposes: for business start-up or producer operations; to bridge the gap between production of goods and receipt of payment for them; for capital purchases, farming equipment or storage facilities; to cover swings in supply and demand conditions; or to launch a processing enterprise.[3] In many instances, they are disappointed. The risks involved in lending are often too great for banks and other lenders to assume. These include ambiguous or highly disputed land rights, weak property registration systems, limited alternative forms of collateral, inadequate financial infrastructure, and the particular risks faced in agriculture, such as seasonality and geographic clustering of risk.

> A variety of safe and accessible opportunities to access finance helps producers, processors, and traders cope with supply and demand risks, strengthen their enterprises, and contribute to food market stability.

In Malaysia, a wide range of financial services serves individuals and enterprises doing business at all junctures along agricultural value chains, both with respect to industrial crops and food crops. Very small micro-loans are available to poor and marginalized populations, and small businesses are afforded many avenues of financial assistance. Finance opportunities for small enterprises include heavy subsidies for certain inputs, including seed and fertilizer; rent assistance from local development agencies for the first year or two of doing business; grants and loans from MOAA, SMECorp, and other agencies for start-up capital or to obtain key certifications, such as Halal certification or Hazard Analysis and Critical Control Points (HACCP) certifications; financial assistance to engage in trade promotion; and other sources of direct finance and financial support.

In addition, individuals or enterprises that seek unrestricted capital may turn to pawn shops, which charge a 2 percent fee but are generally safe and well regulated. Some individuals or informal enterprises may engage a local system of "ah-long," a relatively dangerous, expensive, and unregulated informal system of borrowing, often referred to as "loan sharking."

The fundamentals of Malaysia's banking and finance system are very sound. The Central Bank of Malaysia Act (2009) identifies a "sound, progressive and inclusive financial system" as an objective of the Bank Negara Malaysia (Central Bank of Malaysia—BNM). That law also bolsters Malaysia's status as a world center for Islamic finance. The Banking and Financial Institutions Act (BAFIA) (1989, as amended in 2006) sets the conditions for licensing and regulation of institutions carrying on banking, finance company, merchant banking, discount house, and money-broking businesses. The BAFIA will be replaced in 2013 by a new Financial Services Act and Islamic Financial Services Act, passed in 2012.

Malaysia's Companies Commission Act of 2001 provides for the creation and registration of security rights in moveable property. The Act established the Companies Commission (SSM), which serves as the general registry of companies, as well as a registry for moveable and immovable property. In addition, Malaysia's Credit Bureau has operated since 1982 and automatically processes credit data from financial institutions into credit reports that can be made available to the institutions upon request. Reflecting the

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[3] See USAID/Enabling Agricultural Trade, Agribusiness Commercial Legal and Institutional Reform project, *Lessons from the Field: Getting Credit* (2011).

country's strong legal framework, trade finance services are widely available and support a robust system of trade in industrial agricultural products and food products.

Crop insurance has been formally in place in Malaysia since the establishment of rubber plantations in the 1960s, although it tends to be used primarily by the country's large-scale, plantation enterprises. Smaller and informal producers rarely avail themselves of crop insurance. Insurance coverage is reportedly available for oil palm, cocoa, rubber, and several species of timber trees, as well as, to a more limited extent, for tropical fruits such as durian, mango, and mangosteen. Malaysia's experience with crop insurance is mixed, but insurance companies are known to have used risk management and other progressive methods in insuring crops.

One challenge Malaysia faces with respect to finance is the attitude of certain borrowers. Relative to private sources of lending, financial professionals reported during the RATE assessment that government-backed loans to farmers or small concerns do not have a particularly strong record of repayment, with borrowers often perceiving government-supplied money as not necessary to pay back. Finally, the greatest challenge for obtaining formal finance in Malaysia, reportedly, is for mid-sized enterprises, which typically lack the ability to borrow larger amounts of working capital that would facilitate their long-term growth.

## Infrastructure

A nation's success in agricultural trade, whether domestically or in regional or international markets, is generally only as good as the ability of its producers to get their products to the next stop on the value chain—that is, to local markets, distributors, and processors, or to storage facilities, warehouses, and ports. Producers and processors also need access to inputs that are transported over long distances, including seed, feed, fertilizer, and equipment. All actors need access to market information that comes through reliable telecommunications. To support commerce that extends beyond the farm gate, governments must invest in and maintain a supporting infrastructure that incorporates transport, water, power supplies, and telecommunications.

> Strong markets for agricultural products need public facilities that support production, processing, and trade, such as roads, rail, ports, wholesale markets, storage facilities, and access to communications and information.

The 10th Malaysia Plan (2011-2015) aims for the country to establish a world-class infrastructure to support growth and enhance productivity in all sectors. Specifically, the government plans to spend RM 2.7 billion (around US$872 million) to build roads and rail to key ports and airports and to build an electrified double-track rail project to be extended to Johor Baru. It will spend one billion RM (US$320 million) to deepen port channels and six billion RM (US$1.9 billion) to upgrade Westport, Port of Tanjung Pelepas and Penang Port. The plan further expects to increase rail access to rural areas in the east coast of Peninsular Malaysia and Sabah by modernizing facilities and technologies. Finally, the plan promotes the growth of cities. Since those cities need resources to grow, the government will improve the connectivity and linkages between them and surrounding rural areas to facilitate movement of the resources, goods and services, and people critical to development. The government will promote IT infrastructure, with a target of 75 percent of households having broadband internet access by 2015. Finally, the plan highlights the importance of providing adequate and specific infrastructure, facilities, and logistics to support value-addition in agricultural industries based on availability and proximity of resources, particularly in the designated Permanent Food Production Parks and Aquaculture Industrial Zones.


***Malaysia's ports have enjoyed significant attention from both government and private sector investors.***

With respect to management of water resources, pursuant to Malaysia's Constitution, states are responsible for the planning, development, and management of water resource projects. State governments have long been engaged in upgrading irrigation facilities to increase paddy production, as well as drainage resources for the benefit of oil palm, cocoa, and coconut. To varying degrees throughout the country, irrigation modernization plans are in place. At the federal level, the National Water Resources Council was set up in 1998 to pursue more effective water management, including the implementation of interstate water transfer. In fact, the federal government has become more involved in water management, including irrigation, in recent years.

Recent upgrades of methods and mechanisms for postharvest handling are credited with improved Malaysia's exports. In 2011, total exports of Malaysia's horticulture crops—including fresh fruits, vegetables, and ornamentals—were valued at US$418.6 million (RM1.3 billion), which marked a significant increase of 69.8 percent from 2006, when they were US$246.6 million (RM764.5 million). Over the past generation, Malaysia has created a network of resources for commodity storage, mostly supplied by the private sector. One area in which Malaysia has managed to thrive in comparison to its neighbors is that of cold storage: the private sector provides the transport and storage facilities that Malaysian companies need to export and import goods requiring cold storage. The strong systems of cold storage have made Malaysia's reputation as a worldwide source of Halal-certified products.

Notwithstanding its many successes, there remains considerable mistrust in Malaysia over the implementation of major infrastructure projects. In December 2011, when Malaysia's score and ranking under Transparency International's Corruption Perceptions Index (CPI) fell for the third year in a row, the local Transparency International office noted:

> Elements of state capture which facilitate 'grand corruption' are still prevalent. These include the continuing and snowballing practice of awarding mega projects and contracts without open tenders or competitive bidding, limited access to information which contributes to a culture of secrecy and lack of transparency, allegations of inflated pricing in military purchases, and the continued close nexus between business and politics in Malaysia.[4]

Similarly, in reviewing the process for awarding infrastructure contracts in Malaysia, the Japanese Bank for International Cooperation has said, "More transparency in the tender process is required in order to boost investor confidence to increase their participation in these Government-linked infrastructure projects. This uncertainty or level of imperfect information can pose challenges in raising finance. Thus, credible concessionaires would be a good signal to the market of the viability of the project."[5]

## Intellectual Property Rights

Intellectual property (IP) is increasingly viewed as a key factor in development. Intellectual property is a branch of law that protects intangible property such as inventions, new plant varieties, geographical indications, and trademarks and protects against dishonest business practices. An effective IP system makes markets more predictable and reduces investment risk. This benefits local producers and better positions a country to attract foreign investment, as international investors give substantial weight to IP protection in their decisions on where to locate their business investments.

Intellectual property is regarded as an important component of Malaysia's economic development. The Office of the U.S. Trade Representative removed Malaysia from its "Special 301" Intellectual Property Rights (IPR) Watch List in 2012 due to improvements in the legal framework for and enforcement of IPR, while also recognizing continued challenges in a number of areas. To date, Malaysia has enacted legal

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[4] Transparency International, Malaysia (2012).

[5] Japan Bank for International Cooperation, Report on Infrastructure Financing and Bond Issuance in Malaysia (2007).

protections for patents, trademarks, copyright, industrial design, geographical indications, and layout-designs of integrated circuits. In addition, its Protection of New Plant Varieties Act (2004) safeguards plant breeders' rights. This will protect farmers who breed and develop new plant varieties. Copyright and industrial property are under the jurisdiction of the Malaysian Intellectual Property Rights Organization (MyIPO), while the MOAA oversees administration of protected plant varieties. In 2007, Malaysia launched its National Intellectual Property Policy (NIPP) to spotlight intellectual property as a "new engine of growth for the enhancement of social and economic prosperity." The NIPP aims to support the "highest standards" of IP protection, promote the understanding and use of IP protection systems, and protect Malaysia's national interest in its intellectual property. Although Malaysia is a member of five substantive international agreements on intellectual property and two classification agreements relating to trademarks, it is not yet a member of any agreements to facilitate the international protection of trademarks, industrial designs, or new plant varieties.

> Investment in a vibrant food economy is enhanced by systems supporting the recognition and protection of new plant varieties, and of patents, trademarks, and copyrights used in connection with equipment, products, and services.

Of particular interest to many of its agrifood enterprises, Malaysia amended its trademark law in 2002. In accordance with the WTO's Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement, Malaysia prohibits the use of well-known trademarks by unauthorized persons and provides for border measures to prohibit counterfeit trademarks from being imported into the country. The government is presently drafting a new Trademark Act. In addition, the Geographical Indications Act of 2000 provides protection upon registration to goods following the name of the place where the goods are produced, where a given quality, reputation, or other characteristic of the goods is essentially attributable to the geographical origin of the goods. A limited number of products have already received "geographical indication" protection under the national law on intellectual property, including Sarawak pepper, Sabah tea, Sabah seaweed, Sabah virgin coconut oil, Tenom coffee and Bario rice. (Tenom is a rural town of Sabah while Bario is a part of Sarawak.)

Private sector stakeholders exhibit a mixed degree of leadership and involvement in the promotion of IPR in Malaysia. On the one hand, business associations such as the Federation of Malaysian Manufacturers have commented on legislation and educated their members and others about the importance of IPR. The private sector also keeps generally well informed about updates in IPR law and the larger, more sophisticated businesses strive to meet the requirements. On the other hand, there remains a casual approach among many in the private sector about the importance of IP, and the concept is often dismissed by private and public sector representatives, as well as the media, as a principle "imposed" by Western trading partners.

Enforcement remains a problem, with the continued availability of counterfeit and pirated goods, book piracy, and high rates of piracy over the internet. However, Malaysia's Ministry of Domestic Trade, Cooperatives, and Consumerism has taken steps to strengthen enforcement through active cooperation with right holders, training of prosecutors for specialized IP courts, and reestablishing a Special Anti-Piracy Taskforce. The institution of *ex officio* action has resulted in significant seizures of pirated products.

## Competition

Competition compels producers, processors, and traders to be more efficient and innovative and to offer the most attractive array of price and quality options in response to consumer demand.

Competition is at the heart of any successful market economy. True competition promotes economic efficiency, consumer choice and welfare, and overall economic growth and development. Competition forces producers to work as efficiently as possible and offer the most attractive array of price and quality options in response to consumer demand. When consumers dislike the offerings of one seller, they can turn to others. This ability of consumers to “vote with their wallets” imposes a rigorous discipline on sellers to satisfy consumer preferences.

Malaysia’s legal framework can be characterized as supportive of Malaysian enterprises, but not especially oriented toward “open and competitive” agricultural markets. In fact, many government policies can be perceived as conflicting with private-sector or consumer-oriented goals of free-market competition. The government maintains price controls and/or subsidies on some key food and energy products. The government’s $25 billion sovereign wealth fund is an active investor with a development perspective that takes strategic stakes in both domestic and international enterprises . Under the Heritage Foundation’s 2013 Index of Economic Freedom, Malaysia is categorized as “moderately free” and ranked 56 out of 177 countries surveyed.

To its credit, Malaysia has established numerous opportunities for Malaysian enterprises to compete in the international marketplace, including through its strong support of Halal food certification processes, its direct support for Malaysian enterprises to market their agricultural products in the region and beyond, its support for large infrastructure projects that reduce the costs of transport, and even its support for a stable monetary system, which encourages outside investments in the country.

After 15 years of negotiation, Malaysia’s legal framework for competition, the Competition Act, the Competition Commission Act, and the Price Control and Anti-Profiteering Act, came into force on January 1, 2012. The Competition Act prohibits anticompetitive agreements such as price-fixing, market sharing, bid-rigging, and limiting or controlling production, as well as abuse of a dominant position, which includes exploitative and exclusionary conduct such as excessive pricing, tying/bundling, refusal to deal, and predatory pricing. In general, the Competition Act aims to promote consumer welfare, although it exempts industries that are protected by other national laws. Under consideration for many years, the Act is regarded as “industry-driven”—that is, the private sector generally believes that the law will have a positive impact on the economy. The Act covers most government-linked companies—which are said to make up 40 percent of domestic economic activity—thus subjecting them to the same “rules of the road” as private companies.

Although a competitive private sector, including the agriculture sector, is a goal of Malaysia’s government, key ministries are often charged with acting in a way that conflicts with efficient allocation of resources and consumer welfare. For example, like some other governments in the region, the Malaysian government stringently controls the import and export of sugar and subsidizes sugar purchases to control its price on the open market. In addition, it sets price controls on certain products, such as chicken and meat, during festival periods. Also, based on weekly assessments of imports, the government, by way of the Federal Agriculture Marketing Authority, restricts certain vegetable imports from Indonesia and China. FAMA further acts as a purchaser of last resort of many agrifood products produced by ethnic

Malay farmers. For certain agricultural products that otherwise cannot be sold, FAMA guarantees a market, although not a price.

Marketing and distribution channels for agricultural goods in Malaysia (with the exception of rice, which is controlled by a single company) are considered highly competitive. Agricultural enterprises seeking to market their goods have a variety of options, ranging from green markets to supermarkets to distributing companies and other marketing opportunities. Government agencies, including SMECorp, implement programs that help Malaysian producers gain better access to supermarkets, which often have high standards of quality and consistency of output. The high quality of Malaysian infrastructure means that many potential buyers can reach producers, as opposed to just a few “inside” players.

***Businesses relying on inputs that are subject to government price manipulation are at a disadvantage in a competitive global business climate***

## Nontariff Barriers

Although the formal definition of what constitutes a “nontariff barrier” (NTB) varies according to the source, NTBs are generally viewed as government-imposed or government-sponsored measures—other than tariffs—that are used to protect a domestic industry from international competition. A great many measures can be interpreted as an NTB, ranging from restrictions on food imports due to food safety considerations, to business licensing requirements that are especially difficult for outsiders to fulfill, to outright quotas. For the purposes of agricultural trade, NTBs may include import restrictions on inputs, sanitary and phytosanitary (SPS) regulations, animal and plant health standards, food safety standards, business licensing procedures, labeling and packaging requirements, and constraints on trade in services. Some of these are sanctioned by the world trade community through agreements, while others can be challenged by trade partners as restrictive of trade.

> Markets function more efficiently when trade is managed through transparent tariffs and legitimate health and safety measures, rather than via more opaque quotas, licenses, and other barriers.

First, stakeholders in Malaysia's agriculture and food processing sectors express satisfaction with the legal framework for imports of agricultural inputs. Malaysia's trade laws permit generally open flows of fertilizer and pesticides, while still supporting certain health and safety requirements. In addition, most heavy machinery and industrial equipment is imported without government interference, including import duties. Raw materials and capital equipment used in manufacturing are exempt from import duty and sales tax. On the other hand, importers of sugar, an important food ingredient, require a license, which is difficult to obtain. Importers must also be mindful of other areas where licenses may be required, including food and medicines, animal products, plant products, refrigerators, and construction materials. Some importers of pork have been unable to obtain import permits and allege that an import permit system administered by the Department of Veterinary Affairs is non-transparent and prioritizes certain favored competitors.

Although Malaysia's conditions for import and export of food products are generally consistent with international standards, the country's emphasis on Halal is the source of both positive and negative response from trading partners. Malaysia is recognized for its stringent standards covering the Halal certification of food products, and is indeed using its leadership in the field as an economic opportunity, both with respect to export promotion and assisting other countries in certifying their own foods. However, companies wishing to import meat products into Malaysia regard those stringent Halal standards – as well as effective bans on the import and sale of non-Halal beef and poultry – as an NTB, particularly because a significant portion of the country is not religiously obliged to consume Halal products. In 2012, the European Union raised the issue of meat imports into Malaysia—including those used as ingredients in processed food products—as facing "increasingly serious non-tariff barriers in the form of new and stricter (but non-transparent) Halal requirements, a cumbersome, costly and non-transparent inspection regime … and unclear and often contradictory information from the competent authorities."[6] The Office of the U.S. Trade Representative has also raised this issue in its 2013 National Trade Estimate Report, pointing out that Malaysian Halal standards are stricter than the multi-laterally agreed Codex Alimentarius Halal standard.

Like many countries, Malaysia is concerned about the quality of foodstuffs coming from other countries, China in particular, and is continuously taking steps to prevent the import of unsafe foodstuffs. Malaysia's systems of promoting food safety, though somewhat bureaucratically complex, ensure coverage of food safety issues from "upstream," through "midstream" to "downstream"—that is, beginning with inputs (such as fertilizers and pesticides), to farms and fisheries, to primary processors (i.e. grain mills, dairies, and abattoirs), to secondary processors (canning, freezing, drying, brewing), to food distribution (domestic and international), to food retailing and catering. Along this spectrum,

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[6] European Commission, Directorate Genera for Trade, 9th Report on Potentially Trade Restrictive Measures (2012).

numerous agencies are involved in protecting food safety. With respect to the import of agricultural products, the Malaysian Quarantine and Inspection Service (MAQIS) aims to perform its functions in accordance with international standards pertaining to the import of goods.

Although definitions of NTBs tend to center on goods, related types of barriers also apply to and restrain trade in services. In Malaysia, as in other ASEAN Member States, trade in services, including agriculture-related services, is a growing portion of the gross domestic product. Since 2010, the Malaysian government has announced the liberalization of a number of services sectors, including the removal or liberalization of foreign equity restrictions. Still, trade in services remains significantly restricted in Malaysia, chiefly through such NTBs as professional licensing restrictions and cumbersome work-permitting procedure. At the same time, the manufacturing and agricultural sectors rely heavily on the unskilled labor provided by workers from other countries. Although the demand for laborers is high, the costs and bureaucratic steps involved in documenting laborers are cumbersome. In fact, these barriers to entry result in a significant population of undocumented workers, many from ASEAN Member States, who then have few rights and are subject to considerable abuses.

## Trade Facilitation

Prudent and effective international trade facilitation requires the provision of high-quality, transparent government services at the border, including predictable and consistent procedures by customs agencies, health and agriculture inspectors, immigration agencies, and others. Governments throughout the world increasingly recognize that capable and responsible trade-related operations, including fast and efficient border procedures, are a prerequisite for development. Because of its high perishability, food especially requires efficient trade regimes and border crossings. Food security is enhanced when cross-border flows of products are “facilitated” to minimize time spent by food-related cargo in trade, thus reducing both physical losses and costs.

> The volume and efficiency of markets improve when procedures and controls governing the movement of goods across borders are transparent, accessible, and consistently administered by customs agencies and other key border agencies, including port authorities, health agencies, quarantine services, and immigration.

Although its main law addressing cross-border trade in goods—the Customs Act—dates to 1967, Malaysia has made a concentrated effort in recent years to implement a legal and regulatory framework that supports effective logistics, customs, and other trade facilitation functions. In the 10$^{th}$ Malaysia Plan, the government committed to reducing transaction costs arising from customs procedures and logistics. The government also aspires to “unlock the potential” of free trade areas. This will include expansion of services under the national single window to include services for free zone declarations, dangerous goods declarations, and non-customs permits.

The government further aims to promote greater use of ICT in the provision of cross-border customs and logistics services and has announced plans to review regulations and procedures pertaining to trade with the view to reduce cost and time as well as increase efficiency. Certain key areas of trade facilitation, including health inspections and quarantines, have moved away from the customs authority and into the jurisdiction of other ministries, including MAQIS. Malaysia receives high marks from international sources for its efficient trade facilitation practices. Malaysia is also regarded as quite forward-looking in terms of pilot exchanges of trade documentation with other ASEAN Member States, especially Indonesia, looking ahead to when the ASEAN Single Window/National Single Window framework is in place, linking all NSWs for enhanced regional trade facilitation.

Malaysia's strong reputation for trade facilitation is due in significant part to robust coordination among border agencies. A National Trade Facilitation Council helps coordinate major trade facilitation issues. In addition to the cross-cutting trade promotion activities of the Ministry of International Trade and Industry (MITI), trade in agricultural products is regulated mainly by MOAA (responsible for the agrifood sector including crops, livestock, and fisheries); the Ministry of Plantation Industries and Commodities (responsible for the overall development of the plantation and the commodities subsectors including pepper, cocoa, palm oil, rubber, timber, and tobacco); and the Ministry of Rural and Regional Development (responsible for raising the income levels of rural residents). Other related and engaged ministries include the Ministry of Health for food safety, the Ministry of Domestic Trade, Co-operatives and Consumerism for food prices, and the Ministry of Natural Resources and the Environment.

In addition, Malaysia receives high marks, both in international surveys and from local traders, for the general efficiency of its ports, run by two private entities, which reportedly move containers at a healthy rate of 28-35 per hour. The private entities lease the ports from the state and may only change terminal handling rates with approval from the government, since these are set by law. In fact, the rate has not changed since the enactment of the Port Authority Act of 1963, to the chagrin of the port operators. As of July 2012, nearly 50 percent of goods that land at the country's largest ports involve no customs formality, because they are designated as transshipment, according to port officials. The ports would prefer to serve as a gateway (unloading and redistributing goods for additional transport), rather than a transshipment hub (in which the goods are kept in sealed containers until they reach their destination). The ports further contend that they could be even more efficient if they had more modern gantries, but costs to upgrade cranes are high. Some traders complain that the roads to the port, maintained by local institutions, are inadequate and lead to unnecessary congestion.

Malaysia fosters relatively robust relationships between associations of importers and exporters, and private-sector associations generally, and representatives of trade-related government agencies such as MITI and the Royal Malaysian Customs Department. A wide variety of private sector associations is active in Malaysia and lobby on behalf of their own interests. Representatives of Malaysia's international trade community contend that the country lacks sufficient expertise in international trade law, including issues pertaining to trade in agricultural products. An initiative has been underway since 2012 to liberalize the sector of international law and allow foreign lawyers to work in Malaysia on a "joint-venture basis" so that they can assist the country and mentor Malaysian colleagues in international trade law, although it remains to be seen whether this opening will be sufficient to attract foreign law firms to Malaysia.

## Gender

> Strengthening educational and economic opportunities for women can lead to more robust and equitable economic growth.

As underscored by USAID's 2012 Gender Equality Policy, gender equality and female empowerment are "fundamental to the realization of human rights and key to effective and sustainable development outcomes. Although many gender gaps have narrowed over the past two decades, substantial inequalities remain across every development priority worldwide—from political participation to economic inclusion—and remain a significant challenge across all sectors in which USAID works, particularly in low-income and conflict-affected countries and among disadvantaged groups."

Article 8(2) of Malaysia's Federal Constitution, as amended in 2001, prohibits discrimination on the basis of gender. However, Article 150, 6(A) of the Constitution ensures the Parliament may never extend its powers to pertain to "any matter of Islamic law or the custom of the Malays, or with respect to any matter of native law or custom in the State of Sabah or Sarawak." These identified sources of law may indeed contain many practices that do not provide for full gender equality in Malaysia, particularly in the areas of family, marriage, and inheritance. Malaysia's dual legal system of civil law and multiple versions of Sharia law are reported to contribute to discrimination against certain women, especially those living in rural or less developed areas. In 1995, Malaysia ratified the U.N. Convention on the Elimination of All Forms of Discrimination Against Women with specific reservations pertaining in particular to rights in the family and marriage.

Against this backdrop, the greatest gender differences faced by men and women generally concern the inheritance rights of women. Inheritance for non-Muslims—about 40 percent of the population—is governed by the Inheritance (Family Provision) Act of 1971 and the Distribution Act of 1958. Before 1997, the Distribution Act favored men with respect to intestate inheritance rights, but the law was revised such that, for non-Muslims, inheritance laws are now gender-neutral, allowing women and men equal entitlements. In contrast, citizens submitting to Islamic law encounter detailed and complex calculations of inheritance shares. For example, although women may inherit land from their father, mother, husband, or children and, under certain conditions, from other family members, the share provided by Islamic law to men is usually double that afforded to women in the same degree of relationship.

***Women have made inroads in the private sector in recent years.***

In contrast, most other laws and institutions in Malaysia show an affirmative effort to promote gender equity in the agriculture sector. The Banking and Financial Institution Act (1989) and related banking and financial legislation do not discriminate on the basis of gender. As a practical matter, the government has introduced a number of schemes, including micro-credit schemes, to improve women's access to credit, particularly in rural areas. Women are substantially involved in the production of food crops and are widely included in public extension efforts to promote crop productivity and quality. Women benefit from many government initiatives, including those initiated by local development councils as well as Malaysian Agricultural Research and Development Institute (technology transfer), the Federal Agriculture Marketing Authority (marketing), and the Agro-Bank (access to credit). Furthermore, Women's Service Centers at the state and district levels provide services such as training and counseling.

Although women are well represented in local and regional associations dedicated to agricultural enterprises, including agricultural cooperatives and farmer associations, their leadership roles and visibility in private sector associations diminishes at the national level. To some extent, women are in leadership positions in trade and agricultural associations, but men hold most high level positions, particularly at the national level. Malaysian women do hold senior positions and are active in all government institutions, including the MOAA, MITI, Malaysian Agricultural Research and Development Institute (MARDI), MyIPO, and the new Competition Commission. They are also well represented in research organizations such as the Institute of Agricultural and Food Policy Studies and as public sector lawyers contributing to issues of agriculture and trade. Women are less well represented in the private sector, although they have made progress in recent years. They are generally found in mid-level positions at banks, although statistics about women's participation in this sector are not well maintained. With respect to trade facilitation services, women tend to hold clerical positions, while men are more significantly represented in jobs in transport and at the ports.

## Transparency and Accountability

When discussed in terms of governance, the term "transparency" indicates the free and full availability of critical information to the public. "Accountability" refers to the authority that citizens confer to those they elect to govern on their behalf, such that it is always limited, provisional, temporary, and subject to recall through regular elections or other arrangements. In the absence of transparency and accountability, corruption often results. In the popular definition long espoused by Transparency International (TI), "corruption" is "the abuse of entrusted power for private gain." Of course, as TI says, corruption hurts everyone who depends on the integrity of people in a position of authority. Issues of transparency, accountability, and corruption are relevant in all sectors of an economy, including the public and private institutions involved in agriculture.

> Transparency and accountability in all aspects of agricultural trade–including production, processing and trade–facilitate increases in regional and international cooperation and trade.

The Malaysian Anti-Corruption Commission Act of 2009 prohibits bribery of an officer and mandates a penalty of at least 14 days, with a maximum of 20 years, along with a fine of at least five times the sum of the bribe if it can be monetized or 10,000 Ringgit, whichever is higher. The law also requires any public official who is offered a bribe to report it. In addition, a Whistleblower Protection Act, enacted in December 2010, is intended to encourage informers to expose corrupt practices and other misconduct in government agencies. The increasing use of the Internet as a means of interacting with the Malaysian government reduces opportunities for petty corruption, although some Malaysians charge that government anti-corruption efforts have not been successful in targeting grand corruption.

Notwithstanding Malaysia's up-to-date legal framework, the gap between the content of the anticorruption laws and their enforcement is said to be considerable. In Malaysia's first Global Integrity

Report examination in 2010, it fared relatively poorly, with the international inquiry finding a "significant implementation gap between laws on the books and their actual enforcement." Malaysia registers poorly with respect to freedom of the media and election integrity and journalists fear for their safety when reporting about corruption. Article 10 of the Constitution provides that laws may impose restrictions on freedom of speech "in the interest of the security of the Federation… [or] public order." In addition, Global Integrity asserts that

> There are no regulations governing conflicts of interest in the executive branch apart from the requirement for the heads of state and government to file an asset disclosure form. Repressive laws in Malaysia hamper freedom of expression and deny citizens' access to government information; there is no right to information law in place. Likewise, the separation of government powers in Malaysia is unclear, and the executive appears to enjoy relatively unchecked power. A supreme audit institution exists but the public cannot access its reports. Malaysia's judiciary is perceived as unprofessional and partial.[7]

Under these conditions, Malaysia's systems of public financial management cannot be said to be truly transparent. Moreover, Global Integrity asserts that civil judges and courts in Malaysia are regarded as "unprofessional and partial."[8] This fact discourages many agricultural enterprises from approaching the courts to enforce their business contracts.

With respect to the private sector, the legal framework sets forth policies of transparency and accountability through clear systems of corporate governance. Pursuant to the Companies Act of 1965, basic shareholder rights are generally well-observed and information is generally available in a timely and regular manner. Publically held companies consider financial disclosure requirements very strict, and "active watch dog groups" are reportedly present at most public shareholder meetings. The Companies Act provides statutory remedies for shareholders who are aggrieved by the acts of directors or the company, or treated inequitably by the company. Significant weaknesses remain, however, in the ability of investors to take action against directors for breach of their fiduciary duties.

Due to exceptionally strong leadership in Malaysia's central bank, the country's banking sector is considered to maintain generally strong standards of corporate governance, including through responsible lending practices. As an international center for Islamic banking, Malaysia's system of bank governance carries an extra level of stringency.

## Food Security

The 10th Malaysia Plan (2011-15), which is the latest iteration of the government's long-term framework for development, generally addresses food security and specifically provides that state institutions are committed to ensuring "the availability, accessibility and affordability of food, particularly rice for the general public." The Third National Agriculture Policy (1998-2010) identified food

> Food security exists when all people, at all times, have physical and economic access to sufficient, safe, and nutritious food to meet food preferences and dietary needs for active and healthy lives.

[7] Global Integrity, *Global Integrity Report – Malaysia* (2010).

[8] Id.

security as one of the government's central objectives, along with increased productivity and competitiveness and greater links between productive sectors. After the price shocks and supply shortages of 2008, Malaysia implemented a "temporary" food security policy that increased the national stockpile from 45 days' worth of rice to a three-month supply and targeted increased "self-sufficiency" in rice, specifically to a level of 70 percent of rice consumption. The central stipulations of that policy remain in effect, notwithstanding practical concerns over limited land available for rice cultivation, the aging population of rice farmers, and insufficient access to seed. Figures 2 and 3, below, present summary data on Malaysia's major agricultural exports and imports, as well as seed, fertilizer, and machinery.


***Malaysia's formal approach to food security chiefly entails careful regulation of rice. Liberalization of trade has also led to great advancements in food security.***

Malaysia's framework for national rice policy has been in place since 1974, following a food crisis in 1972-1973, when the government mandated that only one entity could purchase wholesale quantities of rice, domestically and internationally. Until 1996, that "national gatekeeper" for rice was the Rice Board, a corporatized government institution. The process was then privatized such that a single private entity, BERNAS, was granted a 15-year concession as the national gatekeeper for rice, which was extended for 10 years in 2011. The terms of the contract state that BERNAS is to (1) serve as a buyer of last resort for Malaysian paddy farmers, (2) guarantee rice prices to domestic farmers, (3) maintain a national stockpile, (4) manage government subsidies to farmers, and (5) implement a rice milling scheme directed at indigenous farmers.

More generally, the 10$^{th}$ Malaysia Plan, along with related laws and regulations, aims to encourage greater productivity and efficiency in the agriculture sector. The country has adopted certain legal and policy tools to achieve these goals, including the promotion of agricultural consortia and cooperatives, for the purpose of achieving the benefits of scale, and the continuous review and streamlining of the regulatory environment for agriculture and agri-trade to attract investment and promote private sector growth. In addition, the plan commits the government to promoting innovation-based growth and production processes that use modern farm technology and ICT; providing specific infrastructure, facilities, and logistics to support value-added activities, particularly in designated Permanent Food Production Parks and Aquaculture Industrial Zones; and intensifying collaborative research and development with established agriculture research institutes.

In September 2011, Malaysia's Cabinet announced a National Agri-Food Policy (2011-20), a successor to the Third National Agriculture Policy. This policy, though publically announced in 2011, had not been formally launched as of September 2013 and its provisions pertaining for food security are not well known.

**Figure 2. Malaysia's Major Agricultural Exports to ASEAN Member States, plus Exports of Key Inputs, 2001-2011 (US$ millions)**

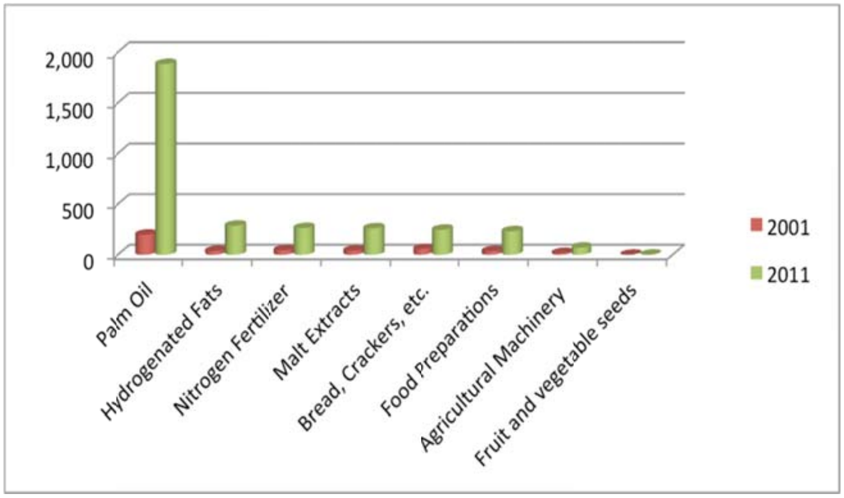
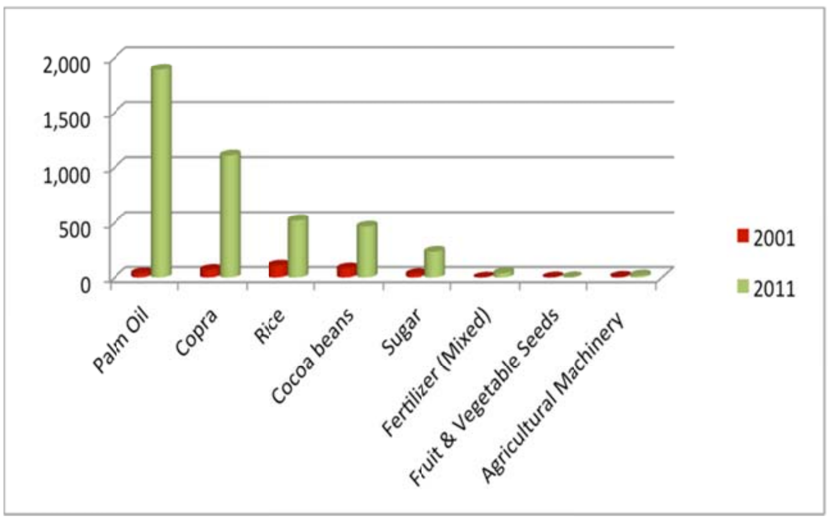



**Figure 3. Malaysia's Major Agricultural Imports from ASEAN Member States, and Imports of Key Inputs, 2001-2011 (US$ millions)**




In general, public confidence in the government's commitment to food security and the general welfare of the Malaysian people is strong. Nonetheless, the heavy politicization of the economy, including the enormous power held by large corporations or empowered groups over access to land and land use, causes some misgivings over the details of agricultural policy, including issues of food production and food security.

# CONCLUSION

By any measure, Malaysia's economic transformation over the past few decades tells a remarkable story of perseverance and good public management. With respect especially to business formalization, banking and finance, and trade facilitation, Malaysia is a model for all of ASEAN. Still, the next stage of the country's transition into high-income status will warrant careful review of its legal and institutional strengths and weaknesses and overall competitiveness, including measures affecting the agriculture sector.