

Business
Council of
Australia



Business Council of Australia

**Submission
Malaysian Free Trade Agreement**

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Introduction

The Business Council of Australia (BCA) and its Members are strong supporters of free trade and efforts to progress trade liberalisation and improved market access around the world. Trade liberalisation has brought significant benefits to Australia as well as to those developing countries that have embraced liberalisation as a means of supporting stronger growth and economic activity.

While the Business Council of Australia (BCA) would like to see sustained progress made towards multi-lateral liberalisation through the World Trade Organisation (WTO) and encourages the Government to do what it can to support such progress, we are also strong supporters of efforts to further liberalise trade and investment through appropriate bilateral agreements.

Malaysia is already an important trading and investment partner, although there is clearly scope to build on current trends and relationships particularly in respect of investment. In this context, the BCA would welcome a well structured agreement that achieves further liberalisation between Australia and Malaysia.

In broad terms, the BCA considers that an agreement with Malaysia must adhere to the following principles. Any agreement should be:

- comprehensive, in that it address all barriers to trade in goods and services as well as pursuing agreements on broader issues related to investment, the business environment for foreign businesses operating in Malaysia, including issues such as the movement of people;
- consistent with and support Malaysia's ongoing commitment to its WTO obligations;
- WTO Plus – that is the agreement advances on commitments already achieved through the WTO. Ideally, the agreement could seek to advance liberalisation in areas that may be more difficult to achieve through the WTO. As such, this and other bilateral agreements like it can be seen to be adding impetus to further reform, and ultimately multi-lateral liberalisation down the track; and
- secure commitments and obligations that are bound in international law and subject to compulsory processes of dispute settlement to provide long term certainty and transparency for business.

In addition, the BCA is strongly of the view that any bilateral agreement to which Australia is party must incorporate frequent and regular reviews and mechanisms for ongoing, formal and informal consultation and cooperation as a matter of course. This will ensure that the agreement remains alive to changing circumstances including the nature and scope of agreements entered into with third parties as well the changing domestic policy and economic environments in both countries. In short, Australia needs to position itself to benefit from further liberalisation and market access as circumstances evolve and opportunities present themselves.

While recognising the sensitivity of negotiations, the BCA considers that the greatest degree of transparency possible should be adopted throughout the process. Consultation with business and other relevant stakeholders should be comprehensive and ongoing throughout the feasibility study and negotiations of any subsequent agreement.



Current Market Access Issues and Concerns

Goods – Customs Related Issues

Import Tariffs

There is scope to achieve improved market access through the removal or reduction in tariffs and duties applying to Australian goods. In particular, there is a range of products for which scheduled and applied tariffs exceed those which apply to ASEAN countries through the AFTA-Common Effective Preferential Tariff. An FTA with Malaysia should seek to align Australian tariffs with those that apply to Malaysia's ASEAN trading partners – particularly in light of Australia's intention to scope/negotiate an FTA with ASEAN in the near future.

In addition, there are products for which the tariff applied in practice is below the scheduled tariff rate (in some instances a zero tariff is applied). An FTA agreement with Malaysia should seek to formally 'lock-in' currently applied lower or zero tariff rates.

Specific products which have been highlighted by BCA Members as benefiting from tariff reduction/elimination include: aluminium products (rolled, hydroxide and ingot), motor vehicles and motor vehicle components.

The FTA should ensure that improvements in the tariff treatment of Australian products should not be offset by the adoption of alternative duties, charges or processes that undermine the effective competitiveness of those products vis-vis domestic products or producers.

Customs Procedures

There is a lack of transparency in customs procedures. In addition, procedures are seen to be overly complex and unnecessarily costly in terms of delays in clearance procedures.

Problems have been identified in regard to customs valuations procedures, reclassifications and inconsistent interpretations and application of existing regulations.

Import Licensing Requirements

Restrictive, non-transparent, overly complex licensing processes and systems are in place.

Quarantine, Standards and Certification

Discriminatory treatment of foreign products in the application of standards has been identified as a problem, as have restrictive and complex packaging and labelling requirements.



Other Internal Regulations

Government procurement in Malaysia is used as a tool to achieve broader social and developmental objectives. There are bidding restrictions and discriminatory treatment between local and foreign suppliers. This is an important area where improved access and non-discriminatory treatment should be sought.

Services and Investment

Market Access Issues

The Malaysian Government retains considerable discretionary authority over individual investments. It has used this authority to restrict foreign equity and to require foreign firms to joint venture with local partners. There are restrictions on foreign ownership for trading/retailing, and requirements that foreigners joint venture with local companies in advertising. In addition, there are limitations on the ownership of real estate. An FTA should seek to secure commitments on national treatment and appropriate avenues for the enforcement of national treatment.

Improving the mobility of business people is an important priority for BCA Members. Visa issuance procedures are rigid, excessively complex and time consuming. In addition, lengthy and restrictive work permit procedures apply to business people entering for short-term and temporary assignments.

Intellectual Property Rights

There are concerns regarding intellectual property rights infringements and insufficient or unequal enforcement of intellectual property rights.

Conclusion

The BCA considers that appropriately struck FTAs can assist in progressing liberalisation and achieve improved market access for Australian businesses. As such, the BCA welcomes efforts to negotiate an FTA with Malaysia, a country which is already an important trading and investment partner, but for which there appears significant scope to deepen our economic ties and integration. It is important however, that any FTA adheres to the broad principles outlined above in terms of comprehensiveness and WTO consistency. The issues and concerns raised are by no means comprehensive but should provide some guidance as to the areas that the BCA would be looking for specific progress through an FTA.