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May 12, 2006

VIA E-MAIL
Ms. Gloria Blue
Executive Secretary
Trade Policy Staff Committee
Office of the U.S. Trade Representative
600 17th Street, NW
Washington, D.C. 20508

Re: Comments on the Proposed United States-Malaysia Free Trade Agreement

Dear Ms. Blue:

The Society of the Plastics Industry, Inc. (SPI) hereby responds to the Trade Policy Staff Committee's request for comments on the proposed free trade agreement with Malaysia. *See* 71 Fed. Reg. 14558 (Mar. 22, 2006). We welcome the opportunity to discuss the plastics industry's views on these important free trade negotiations.

Introduction

SPI is the only U.S. plastics industry trade association representing companies that operate in the primary segments of the supply chain – plastics products processors, manufacturers of machinery, molds, and raw materials (resins, polymers, additives, and colorants). Our 1,100 members participate in an industry that in 2004 shipped goods worth $345 billion worldwide and employed 1.3 million workers in nearly 19,000 facilities in all 50 states. SPI's members range from large multinational corporations to small and medium-sized companies, many of which are family-owned businesses, all playing a vital role in the delivery of myriad plastics products that enhance every aspect of our lives.

Malaysia is the industry's 23rd largest export market, and for a number of years, the U.S. industry has had a sizeable trade surplus in bilateral plastics trade with this trading partner. In 2005, the plastics industry shipped goods worth $238.5 million to Malaysia, while plastics imports from Malaysia amounted to $156.3 million. It is worth noting, however, that the U.S. plastics industry's trade surplus with Malaysia declined by nearly a third to $82.1 million in 2005, with imports from Malaysia rising by 45 percent from $107.8 million in 2004 to $156.3 million last year.

While SPI supports, in principle, free trade talks with Malaysia, it is imperative that the final agreement result in a comprehensive and balanced relationship that achieves concrete market access for plastics industry goods and embodies the principle of reciprocity. With respect to a Free Trade Agreement (FTA) with Malaysia, this principle of reciprocity extends to two areas: reciprocity in market access and reciprocity in exchange rates.

Reciprocity in Market Access

Most products manufactured and sold by SPI's members are covered by the following categories (at the four digit level) of the Harmonized Tariff Schedule of the United States (HTS):

Chapter 39 – Plastics and Articles Thereof
- 3901-3914: Resins/Polymers (raw materials)
- 3915-3926: Plastics products (manufactured goods, including intermediate, semi-finished, and finished products)

Chapter 84 – Nuclear Reactors, Boilers, Machinery and Mechanical Appliances; Parts Thereof
- 8477: Plastics machinery and parts
- 8480: Molds for plastics

Resins: U.S. tariffs on resins are far lower than Malaysia's WTO bound rates. U.S. rates at 6.5 percent or lower compare to Malaysia's bound rates of 30 percent. Malaysia's applied tariffs on resins range from zero to 30 percent, with many products subject to tariffs of 10, 20, or 30 percent. Given that resins are the raw materials used in plastics manufacturing operations, the plastics industries in both countries would benefit from immediate elimination of tariffs on these products. If, however, Malaysia is granted longer phase-in periods for particular resins, then SPI requests that reductions take place from applied rates and the same period should be used to phase-out U.S. tariffs.

Plastics Products: We are particularly concerned about tariff elimination on processed plastics products (HTS 3915-3926). Elimination of Malaysian tariffs on plastics manufactured goods is important to the industry because plastics processors comprise approximately 60-70% of the total domestic shipments of the plastics industry. This is also the industry segment dominated by small and medium-sized manufacturers. Plastics processors drive demand for resins/polymers (raw materials), machinery, and molds. The economic stability of our processors can impact the overall health of the industry.

In recent free trade agreements, such as those negotiated with Central American and Andean countries, tariffs on processed plastics products have been subject to longer phase-out periods while U.S. imports from these countries already had duty-free access via U.S. preferential trade programs. SPI attaches great importance to reciprocity in the tariff treatment of plastics products.

Malaysian tariffs are uniformly bound at the rate of 30 percent while U.S. tariffs are at 6.5 percent or below. Moreover, Malaysia's applied tariff rates on the majority of plastics products are 20, 25, or 30 percent. This disparity between U.S. and Malaysian tariffs on plastics products is an important factor contributing to the growing U.S. trade deficit with Malaysia in these goods.

The plastics industry is already facing stiff competition from imports, resulting in a deficit that reached a record high level of $ 6.1 billion last year. China is the largest contributor to the negative and declining balance of plastics product trade, with a bilateral deficit of $6.4 billion in these products. Further reducing the rates of duty on imports of these products would worsen an already unfavorable situation by increasing imports from Malaysia. Consequently, SPI requests that any phase-out use the maximum period allowed in the agreement for products falling under headings 3916-3926, inclusive. Whether or not a longer phase-out period is applied, it is imperative that Malaysia reduce its tariffs from applied rates and that any phase-out transition be reciprocal, i.e., that U.S. and Malaysian tariffs be reduced over the same period.

Plastics Molds: Malaysian tariffs on plastics molds are comparable to those of the United States. Malaysian bound tariffs of 5 percent are slightly higher than U.S. tariffs ranging from zero to two percent. Malaysia maintains zero applied tariffs on molds for plastics (HTS headings 8480.71 and 8480.79), but does apply tariffs of 25 percent to molding patterns of plastics (HTS 8480.30.00A). The U.S. maintains a trade surplus in plastics molds with Malaysia, which in 2005 stood at $1.7 million. Therefore, SPI supports immediate elimination of duties on these products as long as Malaysia affords the same treatment to U.S. plastics mold exports.

Plastics Machinery: Malaysian tariffs on plastics machinery, similar to plastics molds, are comparable to U.S. tariffs. Malaysian bound tariffs of 5 percent are slightly higher than U.S. tariffs of 3.1 percent. However, Malaysia's applied tariffs are zero on all categories of plastics machinery. SPI supports immediate elimination of tariffs on these products to achieve reciprocal tariff treatment and to maximize the benefits of tariff reductions for U.S. manufacturers.

Reciprocity in Exchange Rates

The deteriorating trade balance in U.S. plastics trade has been greatly influenced by the maintenance of undervalued currencies in the Asia-Pacific region, including the Malaysian ringgit. During the Asian Financial Crisis, Malaysia – like other countries in the region – witnessed the decline in the value of its currency to align with the Chinese yuan, which had depreciated in 1994. Since then, Malaysia has maintained a hard peg against the dollar at an undervalued rate in order to retain its competitive position with respect to China and other Asian currencies. As a result, Malaysia's foreign exchange reserves have almost tripled from $29 billion in 2000, to about $75 billion at the end of 2005. This rise in foreign exchange reserves has resulted in increases in Malaysia's money supply, credit, and excess production capacity, a direct result of a concerted government policy to maintain an undervalued currency to expand employment and exports. SPI believes that Malaysia's policy of subsidizing its exports through its exchange rate distorts competition and unfairly disadvantages U.S. manufacturers of resins, plastics products, molds, and machinery.

In this regard, we strongly believe that the FTA should contain some mechanism that requires Malaysia to maintain a market-determined exchange rate that is not the result of government interference, in one direction, which results in an undervalued currency. SPI believes that currencies should be a neutral factor in determining competition for markets and that currency valuation should be determined by market fundamentals, not government policies, to pursue export-led growth through a subsidized currency.

Non-Tariff Barriers

A comprehensive FTA with Malaysia should also address the plethora of regulatory and standards-related issues that impede access to Malaysia's market. Plastics products are subject to numerous standards and regulatory measures. On behalf of U.S. plastics manufacturers, SPI strongly supports transparency and openness in rule-making processes in U.S. trading partners. Therefore, we respectfully request that U.S. negotiators seek to incorporate language in the U.S.-Malaysia FTA that establishes increased transparency in the regulatory and standards development process in Malaysia. We also urge USTR to seek Malaysian agreement that new standards and regulations should be based on sound science and should not be arbitrary and discriminatory against foreign producers. Additionally, we would like to see a mechanism for foreign manufacturers to provide meaningful input to regulatory agencies in Malaysia incorporated into the FTA.

With regard to the issue of technical barriers to trade and other non-tariff barriers, we strongly support the comments submitted by the National Association of Manufacturers. SPI agrees that any standards, regulatory activities, and sanitary and phytosanitary measures should have solid justification and should not favor local industry.

Protection of Intellectual Property Rights

Sustained innovation to develop new materials, applications, processes, and highly efficient machinery is a hallmark of the U.S. plastics industry. The nearly $40 billion in plastics industry goods exported from the United States last year attests to the significant worldwide demand for the superior, high-value goods manufactured by U.S. plastics companies. The plastics industry must be assured that its patents and trademarks, in particular, are not infringed upon to safeguard investments in innovation and competitiveness. For this reason, an effective mechanism to strictly enforce intellectual property rights protections is another key objective for the U.S.-Malaysia FTA negotiations for SPI members.

Malaysia has taken notable steps in recent years to improve its legislative framework for intellectual property rights (IPR) protection. However, adequate IPR enforcement remains elusive in Malaysia. We urge USTR to obtain specific commitments from Malaysia to ensure enhanced enforcement of the country's IPR laws, especially with regard to trade in imported infringing goods. This is a particular concern with imports into Malaysia of counterfeited and pirated goods originating in China, Thailand, and India. While Malaysia is cooperating with the U.S. on IPR issues, we would like to see additional commitments on steps Malaysia will take to combat the problem of goods infringing on intellectual property rights crossing its borders.

SPI is also concerned about Malaysia's continued deficiencies in adequately protecting the rights of trademark holders. In its annual Special 301 Report to Congress in both 2005 and 2006, USTR stressed that "trademark counterfeiting . . . . is rampant in Malaysia due to poor enforcement."[1] Moreover, as noted in the 2006 National Trade Estimate Report on Foreign Trade Barriers, "Counterfeiting in Malaysia goes beyond the counterfeiting of luxury branded products"[2] to include plastics containers, toys, and other plastics products. We urge USTR to address the issue of trademark protection in the context of the U.S.-Malaysia FTA negotiations.

Sanitary and Phytosanitary Issues

An area of concern to SPI members is the unfair competitive advantage that plastics producers from U.S. trading partners are often afforded from uneven regulations governing food contact substances or additives in their packaging materials. U.S. plastics companies that manufacture plastics packaging materials are subject to very stringent standards enforced by the U.S. Food and Drug Administration (FDA). Our members report that their competitors in developing countries are typically not subject to standards that are nearly as stringent as the U.S. FDA, but they may freely market and sell their materials in the United States because there is currently no U.S. enforcement mechanism to reject the goods at the border for failing to meet FDA's standards.

The potential for imports of such products that do not comply with U.S. regulations into the U.S. from Malaysia is of serious concern to SPI members. For example, Malaysia currently does not appear to have specific regulations addressing food additives. Needless to say, packaging imports that fail to meet the same standards that U.S. packaging materials must raise serious public health and safety concerns. This situation also gives Malaysian producers an unfair cost advantage because they do not have to comply with similarly stringent requirements. Thus, this FTA could potentially lead to increased imports of Malaysian-produced packaging materials that do not meet FDA food contact substances and additive standards, resulting in a loss of market share for U.S. producers and public health concerns.

We believe that USTR should further explore the comparability of food contact substances and additive standards with Malaysian authorities in the FTA talks. At a minimum, this issue should be identified as a specific topic for discussion in any Sanitary or Phytosanitary Consultative Mechanism established under the FTA. Such consultations should seek input from industry participants in both countries to explore the impact of different standards in the two markets.

Rules of Origin

Given the high bound rates of duty on plastics products entering Malaysia and the preferential free trade agreement among the ten member-states of the Association of Southeast Asian Nations (ASEAN), producers in the ASEAN region have been protected from import competition from outside the region. In this regard, those producers have become more integrated and will likely try to enjoy the benefits of the FTA between the United States and Malaysia. Special attention needs to be focused on the rules of origin incorporated in this agreement to ensure that substantial transformation occurs in the manufacture of plastics products before the benefits of the FTA are granted. SPI's support for this FTA will depend on

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[1] *See* "2006 Special 301 Report" at 38-39.
[2] *See* 2006 National Trade Estimate Report on Foreign Trade Barriers (NTE Report) at 436.

sound rules of origin that ensure that the benefits flow to plastics manufacturers in Malaysia and the United States, as opposed to other countries in the ASEAN region.

Market Access for Critical Plastics End Markets

Finally, we emphasize the importance of addressing the concerns of several sectors that are critical to the plastics industry. The U.S. plastics industry is a major supplier to several key manufacturing sectors such as automotive, pharmaceuticals (packaging), electronic and electrical equipment, and medical devices and packaging – to name a few. We are aware that several of these industries have identified specific non-tariff barriers that impede market access for their goods. SPI members share their concerns because greater market access for these industries will generate economic benefits for the plastics industry. Therefore, we urge USTR to work closely with these industries to seek specific commitments from the Malaysian government to resolve their identified concerns.

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We hope the TPSC staff finds this information helpful as it develops its negotiating objectives for these talks. If you need additional information or have questions, please do not hesitate to contact the undersigned.

Respectfully submitted,

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