

May 25, 2006

The Honorable Rob Portman
The United States Trade Representative
600 17th Street N.W.
Washington, D.C. 20508

Dear Ambassador Portman:

The Consumer Electronics Association (“CEA”) commends the Office of the United States Trade Representative (“USTR”) on the initiation of free trade negotiations with the Federation of Malaysia. CEA supports a United States-Malaysia free trade agreement (“Malaysia FTA”) and welcomes the opportunity to provide comments on the U.S. negotiating agenda. The Malaysia FTA has the potential to significantly promote and enhance trade in the important consumer electronics (“CE”) industry sector, to the benefit of businesses and consumers in the United States and Malaysia.

I. Background on CEA

CEA is the preeminent trade association promoting growth in the CE industry through technology policy, events, research, promotion and the fostering of business and strategic relationships. CEA represents more than 2,000 corporate members involved in the design, development, manufacturing, distribution and integration of audio, video, mobile electronics, wireless and landline communications, information technology, home networking, multimedia and accessory products, as well as related services.

CEA's members account for more than \$121 billion in annual sales in the United States, which represents approximately 40 percent of all CE sales worldwide. U.S. exports of CE products in 2005 amounted to \$28.6 billion. In addition, the CE industry directly employs approximately 1.9 million workers in the United States. Of these, 212,000 jobs are in manufacturing, 574,000 are in retail, 38,000 are in transportation, and 1,073,000 are in parts of the U.S. economy that solely depend on the utilization of CE products, such as the motion picture and sound recording industries, telecommunications, broadcasting, and software development. Many of these jobs are on the cutting-edge of technology, including jobs related to the research and development of new technologies, as well as the marketing and design of new products. In 2005 alone, the U.S. CE industry added nearly 30,000 jobs – growing nearly 1.5 percent in the last 12 months and 19 percent in the last 15 years. Today, the industry represents approximately 1.4 percent of total non-farm employment.

This robust industry picture has occurred despite the fact that CE markets around the world are not as open as they should be. The World Trade Organization (“WTO”) Information Technology Agreement (“ITA”), while an important boon to the global technology industry,

does not include most CE products. Consequently, many CE products are still subject to significant tariffs and non-tariff barriers around the world. The persistence of these trade barriers informs CEA's position with respect to trade negotiations. CEA sees bilateral negotiations, and in this instance, the Malaysia FTA, as one important step in reaching the larger goal of multilateral trade liberalization. In fact, Malaysia is a member of the Association of South East Asian Nations ("ASEAN"), which has enacted the ASEAN FTA to promote freer trade among a number of the Southeast Asian countries. The United States supports this effort and has made significant efforts to cooperate with ASEAN members.

The CE industry is a highly competitive, efficient, and globally integrated industry. These factors, coupled with the large investment needed to manufacture CE products, result in CE products often having narrow profit margins. In the absence of a multilateral agreement covering CE products, small price changes resulting from free trade agreement duty savings can have the effect of shifting quantities of products demanded to those products produced by favored manufacturers, *i.e.*, those trading with the benefit of a free trade agreement. Accordingly, CEA favors global trade liberalization, which best avoids trade distortions that benefit some members while disadvantaging others and that, ultimately, could be detrimental to consumers.

In view of these global market realities, CEA has been a strong advocate for a multilateral sectoral approach to tariff elimination in CE products and appreciates USTR's strong leadership in advancing this approach in WTO Doha Development Agenda negotiations. Furthermore, the timing of the concurrent United States-Korea FTA ("KFTA") negotiations is advantageous in that a parallel and successful outcome with Korea could be an important stepping stone to a comprehensive regional agreement. Moreover, lowering barriers on a reciprocal basis will have the positive effect of maximizing areas in which the U.S. CE industry has a competitive advantage, such as in high technology parts, R & D, design, and the launching of new products.

As negotiations proceed and it becomes clearer how the Malaysia FTA will fit within the framework of a broader regional or multilateral agreement, CEA will continue to offer concrete input on product coverage and timing of tariff elimination. (Preliminarily, attached as an appendix to this letter is a list of some items for which CEA members seek tariff reduction. This is not a comprehensive list from industry but merely a starting point. It is also consistent with the broader industry list that has been used in the WTO context). In the meantime, we pledge to work closely with USTR to achieve a Malaysia FTA that is beneficial for the consumer electronics sector. As a preliminary matter, we offer the following comments on specific issues of concern to CEA members, which we expect will prove helpful as the negotiations go forward.

II. National Treatment and Market Access for Goods

As you know, Malaysia is the tenth largest trading partner of the United States and the thirteenth largest importer of CE products from the United States, accounting for \$748.2

million in 2005. Malaysia is the fourth largest exporter of CE products into the U.S., which accounts for \$11.3 billion of CE exports in 2005 -- though Malaysian CE products represent just 8.5 percent of CE products imported from the world. This has resulted in a U.S. \$10.6 billion trade deficit in CE products.

Because the ITA does not include most CE products, there are a number of U.S. CE exports that face significant tariffs in Malaysia. A sample of those products are :

Product Category	HTS #	2005 US Exports to Malaysia **	Current Tariff Rates on Imports	
			US	Malaysia
<i>Electrical Storage Batteries</i>	8507	\$1.6M	2.5 - 3.5 %	20 %
<i>Electrical Apparatus for Line Telephony or Line Telegraphy, including such Apparatus for Carrier Current or Digital Line Systems; parts thereof</i>	8517	\$108M	0 %	0 -15 %
<i>Transmission Apparatus for Radiotelephony, Radiotelegraphy, Radio-broadcasting or TV; TV Cameras; Still Image Video Cameras and Recorders</i>	8525	\$52.4M	0 - 3.0 %	0-10 %
<i>Television Receivers, including Liquid Crystal Displays ("LCD") Monitors, Plasma, LCD Displays, Displays based on Digital Mirror Devices ("DMDs") (e.g., TVs), and other Video Projectors and Monitors</i>	8528	\$4.6M	0 - 5 %	25-35 %

** Total Exports, including Domestic Exports and Foreign Re-exports, made from the United States to Malaysia in 2005 according to the USITC's DataWeb database (dataweb.usitc.gov).

This chart makes plain that there are a number of discrepancies between U.S. and Malaysian tariffs on CE products and a Malaysia FTA would help level the playing field for U.S. CE companies and their workers.

III. Rules of Origin

CEA is pleased that, in recently concluded free trade agreements, there has been an effort to simplify the complex rules of origin found in the NAFTA, which impose unnecessary burdens on companies and raise the cost of doing business internationally. We note that the product-specific rules of origin under CAFTA for Chapters 84, 85, and 90 are generally subject either to a pure tariff shift rule or a tariff shift plus minimum regional value content (“RVC”) rule. RVC requirements are contained, for example, in the rules of origin for ADP parts and accessories, telephone equipment, fax machines, microphones, loudspeakers, TVs, and video cameras. With this in mind, to the greatest extent possible and where there is no longer domestic manufacturing, U.S. trade negotiators are urged to seek rules of origin that:

- embrace a pure or simplified tariff-shift rule;
- avoid the use of RVC thresholds or process-based rules of origin in lieu of, or as an additional requirement to, tariff shift rules, which can actually discourage and limit local production rather than protect it. However, CEA does not oppose the inclusion of RVC thresholds or process-based rules where those rules are provided as an alternative in addition to a tariff shift rule. (See, *e.g.*, the CAFTA rule of origin for 8517.90, which provides for the origin rule to be satisfied if either: (1) a tariff shift rule is met, or in the alternative (2) an RVC threshold is satisfied.);

CEA hopes that the approach to the rules of origin negotiations will be a flexible one and will provide the high-tech sector an opportunity to propose changes to specific rules of origin as necessary based on the sector’s experience since the implementation of the NAFTA and other FTAs.

IV. Customs Administration

A transparent, efficient and non-discriminatory customs administration regime is beneficial to all businesses engaged in international trade but especially to CE companies that rely on just-in-time inventory and global supply chain methods of delivery. Accordingly, CEA supports streamlined release and clearance of goods; timely publication and availability of customs information and decisions; greater transparency with respect to rulings; greater discipline on fees and charges associated with import/export regimes; and the adoption of the World Customs Organization (“WCO”) HS Convention on Classification. In addition, we raise the following specific issues:

- **Revised Kyoto Convention (“RKC”):** While Malaysia has not yet acceded to the RKC and is not a contracting party to the 1974 International Convention on Simplification and Harmonization of Customs Procedures, CEA understands that Malaysia and other ASEAN members are currently considering RKC accession. Accordingly, CEA urges U.S. negotiators to secure Malaysia’s accession to the RKC

and, more importantly, secure inclusion of the RKC provisions in the Malaysia FTA. The provisions include, among other items: codes of conduct for and cooperation among Customs officials; compatible electronic data interchange systems and common data elements; special procedures for low-value or express shipments and customs information dissemination (e.g., Internet publication of Customs regulations, rulings decisions).

- **Documentary Proof of Origin:** U.S. trade negotiators should seek agreement with their Malaysian counterparts to eliminate certificates of origin. Instead, a simple statement of origin on, for example, invoices or other existing documents, should suffice.
- **Tariff Classification:** We note that as of January 1, 2007 the high-tech chapters 84, 85, and 90 of the Harmonized Tariff System will undergo significant changes as a result of the transition of the WCO from HS2002 to the HS2007. CEA strongly urges U.S. trade negotiators to ensure that there is a mechanism in place to guarantee that market access benefits achieved through FTA negotiations are not adversely affected by this transition.
- **Duty Drawback:** The duty drawback program is one of the last remaining export promotion programs that helps U.S. companies compete in the global marketplace against trading partners that often benefit from trade barriers and other trade-distorting practices. The importance of duty drawback to U.S. exporters is reflected in the fact that the WTO Agreement on Subsidies and Countervailing Measures contains specific provisions stating that a properly constructed duty drawback regime does not confer prohibited export subsidies and allows members to continue to provide drawback. As has long been expressed by the electronics industry, we have serious concerns with FTA provisions that phase-out drawback in the absence of a global consensus on the elimination of tariffs. These phase-outs accelerate the elimination of a program that benefits U.S. exporters, placing them at a competitive disadvantage with respect to exporters of other trading partners. Duty drawback merely levels the playing field for U.S. companies.
- **Import License/Permit Requirements:** A number of CE goods of particular interest to CEA are subject to import licensing requirements in Malaysia and are covered by the Malaysian Customs Prohibition Order 1998, including imports within HS categories 3707, 3920, 8517, 8520, 8522, 8523, 8525, 8529, 8544, and 9009. The Standard and Industrial Research Institute of Malaysia (“SIRIM”), a government-owned company under the supervision of the Minister of Finance, issues the import licenses on behalf of the Malaysian customs authorities. CEA urges U.S. trade negotiators to work with Malaysian counterparts to reduce or eliminate this burden of obtaining an import license for CE goods.

V. Non-Tariff Barriers

As has been noted in recent USTR annual reports, technical barriers to trade in general are major deterrents to an open Malaysian market and we hope to see significant progress in this area in the Malaysia FTA.

Technical Barriers

CEA raises the following specific issues with respect to technical barriers in Malaysia and urges U.S. negotiators to address these concerns:

- **1-1SDOC:** To the extent possible, U.S. negotiators are urged to negotiate the adoption of the “One-Standard One-Test, Supplier’s Declaration of Conformity” (“known as 1-1 SDoC”) approach to clearing the import of CE and IT products. At a minimum, U.S. negotiators are urged to secure mutual acceptance of test results in this regard.
- **Technical Compliance Certification:** Prior to being marketed or used, AC/DC power adapters must be certified by the SIRIM-appointed Malaysian Communications and Multimedia Commission (“CMC”) and bear an approval label. For AC/DC power adaptors, the compliance certificates are valid for only one year, which forces suppliers and importers to obtain a certificate each year. In addition, approval labels can only be purchased from and printed by SIRIM. CEA urges U.S. negotiators to work with their Malaysian counterparts to simplify the labeling process to allow manufacturers to self-generate labels, and to simplify, reduce or eliminate the requirement for an import license prior to receiving technical compliance certification.

Procurement

- **Domestic Procurement Preferences:** U.S. trade negotiators should seek agreement with their Malaysian counterparts to eliminate or reduce domestic preferences in government procurement and to grant U.S. suppliers national treatment. Malaysia is not a signatory of the WTO Government Procurement Agreement (“GPA”), and its government procurement sector explicitly discriminates against foreign companies. Specifically, Malaysian government procurement law gives preference to “Bumiputra”-owned companies (i.e., local companies with local-born Malay representing at least 51 percent of the shareholding) that are registered with the Ministry of Finance. Moreover, for many types of government contracts in Malaysia, Foreign Owned Companies (“FOCs”) must have at least 30 percent Bumiputra ownership to be eligible to bid on the contracts. FOCs are therefore either forced to take on a local investor or “silent partner,” or they must make arrangements with a local company to subcontract bidding and applications processes.

For instance, foreign hardware companies are forced to bid on software-based system-integration projects with Bumiputra third party integrators, which adds considerable costs and harms companies' competitiveness and ability to serve customers. As such, CEA requests that the 30 percent Bumiputra requirement be eliminated completely and that U.S. companies be given equal access to government procurements. Finally, CEA urges U.S. negotiators to encourage Malaysia to accede to the GPA.

VI. Investment

CEA strongly supports the negotiation of an investment chapter with strong protections for investors, as well as transparent and investor-friendly investor-state dispute settlement procedures.

VII. Intellectual Property Rights

CEA members support provisions in FTAs that give copyright holders the protection necessary to exercise and enforce their intellectual property rights. At the same time, however, we have advocated a balance between copyright holders' exclusive rights and the rights of consumers to use lawfully acquired content as they are entitled to under the U.S. legal principle of "fair use." Such a balance of interests is crucial not only to the rights of consumers and copyright holders but also to the notion of fostering innovation. *Per se* standards that create ambiguity about "fair use" diminish consumer demand, chill innovation, and reduce sales of technology products.

While CEA acknowledges the balance of interests found in the Digital Millennium Copyright Act ("DMCA"), we nevertheless believe that innovation would be enhanced most if USTR were to adhere to the language in the U.S.-Chile FTA as it relates to provisions concerning anti-circumvention. The agreement provides in part as follows:

17.7.5. In order to provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by authors, performers, and producers of phonograms in connection with the exercise of their rights and that restrict unauthorized acts in respect of their works, performances, and phonograms, protected by copyright and related rights:

- (a) each Party shall provide that any person who "**knowingly circumvents**"¹ without authorization of the right holder or law consistent with this Agreement any effective technological measure that controls access to a protected work, performance, or phonogram

¹ Emphasis added. The Chile FTA further provides that "[f]or purposes of paragraph 5, knowledge may be demonstrated through reasonable evidence taking into account the facts and circumstances surrounding the alleged illegal act."

shall be civilly liable and, in appropriate circumstances, shall be criminally liable, or said conduct shall be considered an aggravating circumstance of another offense. No Party is required to impose civil or criminal liability for a person who circumvents any effective technological measure that protects any of the exclusive rights of copyright or related rights in a protected work, but does not control access to such work.

We strongly recommend that the Chile FTA “knowingly” standard be adopted, since this standard does not allow for violations to occur unwittingly. The clarity this standard offers would avoid the imposition of unreasonable economic burdens on electronics manufacturers.

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Malaysia has embraced CE use, as measured by statistical indicators (e.g., computer and cell phone use). However, further market growth and technology penetration can be achieved through reduction or elimination of tariff and non-tariff barriers. Greater market liberalization will boost U.S. investment and competitiveness in the region; give Malaysian citizens greater access to new and developed technologies at lower costs; and enhance productivity in the government, office and home environments.

We thank USTR for this opportunity to comment on the Malaysia FTA. We look forward to working with you to achieve a free trade agreement that will forge even better relations with an important U.S. strategic partner and will enhance prospects for greater multilateral trade liberalization, leading to growth in the consumer electronics industry to the benefit of consumers worldwide.

Sincerely,



Elizabeth A. Hyman
Vice President, International
The Consumer Electronics Association

Attachment

APPENDIX

REDUCTION OF TARIFFS SOUGHT

Product Category	HTS #
Other articles of plastics for the conveyance or packing of goods	392390
Other cartons, boxes and cases of corrugated paper or paperboard	481910
Technical, scientific, and professional books, etc.	490199
Self-tapping screws	731814
Other springs: iron or steel	732090
Hat-racks, hat pegs, brackets and similar fixtures; parts thereof	830250
Input/output units, whether or not containing storage units in the same housing, including: keyboards and display units with or without color CTR	847160
ADP storage units, including: flexible (floppy) and hard magnetic disk drive units and other magnetic disk drive units not assembled in cabinets and without external power supply; other storage units not assembled in cabinets for placement on tables, desks, etc.	847170
Other units to be incorporated into ADP machines, including other control and adapter units	847180
Parts and accessories for machines under heading 8471	847330
Other electrical transformers having a power handling capacity not exceeding 1 kVA	850431
Static converters	850440
Other primary cells and primary batteries	850680
Other storage batteries	850780

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Product Category	HTS #
Headphones and earphones	851830
Audio-frequency electric amplifiers	851840
Sound reproducing apparatus not incorporating a sound recording device, including cartridge-type tape players and optical (including CD) disk players	851999
Other magnetic cassette-type tape recorders incorporating sound reproducing apparatus	852033
Other magnetic tape recorders and other sound recording apparatus, including optical disc recorders	852090
Other than magnetic tape-type video recording or reproducing apparatus	852190
Parts and accessories of apparatuses under headings 8519 through 8521 other than pick-up cartridges	852290
Records, tapes and other recorded media for reproducing representations of instructions, data, sound and image, recorded in a machine readable binary form, and capable of being manipulated or providing interactivity to a user, by means of an automatic data processing machine; proprietary format recorded discs; other	852439
Transmission apparatus for TV, other	852510
Transmission apparatus with receiving apparatus	852520
Radiobroadcast receivers with sound recording or reproducing apparatus	852713
Radio broadcast receivers not capable of operating without an external source of power, of a kind used in motor vehicles, including apparatus capable of receiving also radiotelephony or radiotelegraphy combined with sound recording or reproducing apparatus, including radio-tape player combinations, cassette-type stereo players, and apparatus incorporating optical disc players and recorders	852721
Radio broadcast receivers combined with sound recording or reproducing apparatus	852731

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Product Category	HTS #
Radio broadcast receivers not combined with sound recording or reproducing apparatus but combined with a clock	852732
Other radio-broadcast receivers not specified elsewhere	852739
Articles designed for connection to telegraphic or telephonic apparatus or instruments or to telegraphic or telephonic networks	852790
Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits for a voltage not exceeding 1,000 V, including printed circuit connectors	853669
Boards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading 8535 or 8536, for electric control or the distribution of electricity, including those incorporating instruments or apparatus of chapter 90, and numerical control apparatus, other than switching apparatus of heading 8517: for voltage not exceeding 1,000 V, including programmable controllers	853710
Diodes, other than photosensitive or light-emitting diodes, including Zener diodes	854110
Transistors, other than photosensitive transistors, with a dissipation rate of less than 1W	854121
Monolithic integrated digital circuits	854221
Electrical machines and apparatuses, having individual functions, not specified elsewhere	854389
Coaxial cable and other coaxial electric conductors	854420
Other electric conductors fitted with connectors for a voltage not exceeding 80V	854441
Other electric conductors fitted with connectors for a voltage exceeding 80V but not exceeding 1,000V	854451
Other non-specified electrical insulators	854690