

Penetrating the Malaysian Market: The Automotive Industry Context Highlights Barriers to Entry and Opportunities for Success

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Abstract

This article considers issues in trade relations between the United States and Malaysia. The article is written from the standpoint of a composite American automobile parts manufacturer which is attempting to penetrate the Malaysian automotive market. The article raises questions relating to United States and Malaysian trade policies, optimal entry strategies, and intellectual property issues. The article contains Appendices on United States Free Trade and Bilateral Investment Treaties, Malaysian membership in Asia Pacific Cooperation Pact and the Association of Southeast Asian Nations, as well as providing the contact web pages for a variety of institutions, organizations, and international treaties dealing with intellectual property and international trade. The automotive industry was selected as context because of its importance in the world economy, and more specifically, to both the United States and Malaysia.

Keywords: Automotive Industry; International Trade; Trade Barriers; Tariffs; Intellectual Property Rights; Entry Strategy

1. Introduction

The Frederick Glotz Corporation (Glotz)* is a multi-capacity automotive battery, sound system, windshield wiper, and electric window manufacturer and supplier for the American automotive market based in South Bend, Indiana. Glotz has been in business since 1907. The company began with the manufacture of carriages for the wagon and then fledgling automotive and aircraft industries. However, over its more than hundred and ten year history, Glotz now produces specialized products in several overseas locations such as electrical systems, fuel injections, cruise control, automatic climate control, and navigation systems. The company touts a corporate culture which stresses providing quality products designed to satisfy the increasing expectations of a new breed of worldwide automotive consumers. Glotz is considered as a leading "tier one" supplier to the automotive industry, directly supplying a full range of automotive products to a variety of automobile manufacturers including a number of car manufacturers around the world who use components or systems produced by Glotz in their finished products. According to Ian Linton (2017): "A tier one company is the most important member of a supply chain, supplying components directly to the original equipment manufacturer (OEM) that set up the chain."

As a well-established multinational enterprise (also known as a MNC or multinational corporation), Glotz is a *Fortune 1000* company which maintains a presence in fifteen countries with over sixty locations and twenty thousand employees.

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Glotz espouses a wide ranging set of *eleven core values* including "quality, innovation, efficiency, cost saving, excellent customer service, diversity in its employee base, teamwork, integrity, cultural sensitivity, sustainability, and an orientation towards the community." Glotz is committed to further global expansion in order to continue to maximize its profits and customer base by successfully integrating its products into new markets around the world. In order to assure its continued expansion, Glotz will be required to take special notice of the legal and trade barriers involved in such an undertaking, which may differ widely in each country. Glotz currently does business in Asia and Southeast Asia in particular, including Japan, South Korea, Vietnam, Singapore, Indonesia, and the Philippines. It has hopes of entering the Chinese auto market in the future. (See Ding & Akoorie, 2013). Glotz has entered the region mostly through establishing joint venture agreements with local partners (Koprince, 2011). A joint venture may be defined as follows: "... an association of individuals and/or concerns with interests in any degree or proportion by way of contract, express or implied, consorting to engage in and carry out no more than three specific or limited-purpose business ventures for joint profit over a two year period, for which purpose they combine their efforts, property, money, skill, or knowledge, but not on a continuing or permanent basis for conducting business generally" (Koprince, 2011).

Stewart & Maughn (2011) note that "An international joint venture is often described as the joining together of two or more business partners from separate jurisdictions to exchange resources, share risks and divide rewards from a joint enterprise." This model seems to fit the future strategic planning of Glotz as well.

However, there is a growing East Asia and Pacific market that Glotz has yet to penetrate: Malaysia. The past seven years has provided many opportunities relative to the automotive industry. (Malaysian Investment Development Agency; 2012; see also National Automotive Policy, 2014). There are multiple geographic, economic, and development factors that make Malaysia an obvious choice for Glotz's next jointventure activity (Export.gov, 2017). But the endeavor will not be without several significant challenges.

Besides geographic factors and increased opportunity for the manufacturing sector, Malaysia offers an attractive market for Glotz due to the fact that Malaysia is the third largest South-East Asian automaker, although it is a relatively small country. Although Malaysia at one time was simply a "*motor car assembler*," with the rapid growth in the Malaysian economy as well as the establishment of domestic car brands *Proton* (1985—owned by the Malaysian government) and *Perodua* (1994—with strong ties to Toyota), Malaysia is now considered a car manufacturer as well (Sultana & Ibrahim, 2014). By 2012, Malaysia was also the 23rd largest automotive producing country in the world. In 2015, Malaysia ranked 19th in world passenger car production. China, Japan, Germany, the United States, and South Korea were the five leading producers (Statista.com, 2016).

Malaysia's main automotive sales are concentrated in the small or medium sized passenger car market, which fits well with the buying preferences in the region. According to the Malaysian Automotive Association, Malaysia produced 503,691 passenger cars and 41,562 commercial vehicles, representing an 11.29 percent decline from 2015 when 563,883 passenger cars and 50,781 commercial vehicles were produced. However, 45,124 cars were produced in March of 2017, which would indicate a possible rebound in the automobile market for 2017 (IECONOMICS, 2017).

Another factor that makes Malaysia attractive for future investment is the country's high GDP compared to other ASEAN countries. Malaysia is a "newly industrialized market economy" and is considered an "upper middle income" nation. In 2015, Malaysia's GDP was US\$296.7 billion (World Bank b, 2017; Export.gov, 2017). Malaysia's growth rate for 2016 was 4.4 percent, following on an increase of 5.0 percent in 2015 and 5.9 percent in 2014. (The decline in GDP over the period may account for the previously described decrease in Malaysian automobile production.)

According to the *Economic Complexity Index*, "Malaysia is the 18th largest export economy in the world and the 23rd most complex economy." Malaysia's total trade for 2015 was US\$429 billion, with exports amounting to US\$254 billion and imports amounting to US\$175 billion—resulting in a positive trade balance of US\$78.8 billion (Export.gov, 2017). As stated in Export.gov (2017): "China is the top trading partner with 15.8 percent market share. Next is Singapore with 13.0 percent market share, followed by the EU with 10.1 percent, the U.S. with 8.8 percent, Japan 8.7 percent, Thailand 5.9 percent, Taiwan 4.1 percent, Indonesia 4.1 percent, South Korea 3.8 percent, Hong Kong 3.3 percent, and India 3.2 percent. 54 percent of Malaysia's imports came from East Asia, with the largest share from China. The advanced economies (the United States, EU, and Japan) accounted for 26 percent of imports."

2. The US and Malaysia and International Trade: First The United States

The United States boasts one of the world's most "open" trade regimes, adhering to the principles outlined by the World Trade Organization, which places its focus on keeping markets open, fair, and predictable (Han, 2010). This not only benefits the United States by allowing its economy to expand, but also encourages developing nations on a pathway towards growth and prosperity. The Office of United States Trade Representative (USTR) exists in order to administer and monitor trade agreements between signatory nations and to assure that all trading partners receive the maximum benefits that come from international trade, including trade liberalization and a reduction in worldwide trade barriers (Hunter & Lozada, 2010) which, over time, will lead to raised living standards, good jobs, an enhanced quality of life, and increasing innovation in products and services. According to the website of the USTR (2017a): "USTR provides trade policy leadership and negotiating expertise in its major areas of responsibility, including:

- Bilateral, regional and multilateral trade and investment issues;
- Expansion of market access for American goods and services;
- International commodity agreements;
- Negotiations affecting U.S. import policies;
- Oversight of the Generalized System of Preferences (GSP) and Section 301 complaints against foreign unfair trade practices, as well as Section 1377, Section 337 and import relief cases under Section 201;
- Trade, commodity, and direct investment matters managed by international institutions such as the Organization for Economic Cooperation and Development (OECD) and the United Nations Conference on Trade and Development (UNCTAD);
- Trade-related intellectual property protection issues; and
- World Trade Organization (WTO) issues."

Through its membership in the World Trade Organization, the United States maintains the ability to make a positive global contribution through both traditional bilateral and regional trade agreements. Through adherence to the philosophy of trade liberalization and maintaining low barriers to market entry, the United States has seen benefits in many of its trade sectors, including manufacturing, agriculture, and services, as well as in increased protection of intellectual property rights and in areas such as "environmental rules, labor standards, [and] competition (antitrust) policy" (Whitman, 2003). But, as Whitman (2003) also presciently noted: "At the same time, this shift has made the process of international trade negotiations more complex and more difficult, impinging as it does on issues of policy traditionally regarded as domestic, and therefore belonging exclusively to the jurisdiction of national governments."

Because the United States places so much emphasis on international trade and maintaining a forceful international presence, the economy of the United States is significantly affected by the world economy and political and economic events that happen around the world. The U.S. economy is essentially in a recovery phase from the deep 2007-2008 financial crisis (Neuhauer, 2015), with growth in GDP hovering around 2-3%, which resulted in a ripple effect, causing a decline in investment across the globe. As Trading Economics (2017a) noted; "Considering full 2016, the US current account deficit went up to USD 481.2 billion from a USD 463 billion gap in 2015. It represents 2.6 percent of current GDP, the same percentage as in 2015." While the United States is still running a current account deficit, in the last three months of 2016, it amounted to US\$112.4 billion—the smallest gap since the second quarter of 2015.

The United States also participates in many international business initiatives through *Trade and Investment Framework Agreements* (TIFAs)—often precursors to more formal Bilateral Investment Treaties and Free Trade Agreements (Taylor, 2009)—which provide "strategic frameworks and principles for dialogue on trade and investment issues between the United States and the other parties to the TIFA," by encouraging developing countries to work with private and non-governmental organizations to transition into an open economy with a strong basis in international trade (United States Trade Representative, 2017c). **[See Appendix I.]**

In addition, the United States has entered into a number of *Free Trade Agreements*, designed to "reduce barriers to U.S. exports, and protect U.S. interests and enhance the rule of law in the FTA partner country" (United States Trade Representative, 2017b; Brown, 2017) [See Appendix II]; and *Bilateral Investment Treaties*, designed to "protect investment abroad in countries where investor rights are not already protected through existing agreements (such as modern treaties of friendship, commerce, and navigation, or free trade agreements); to encourage the adoption of market-oriented domestic policies that treat private investment in an open, transparent, and non-discriminatory way; and to support the development of international law standards consistent with these objectives" (TCC Export, 2017). [See Appendix III].

It should be noted that the United States does not have a free trade agreement with Malaysia at present. The U.S. Chamber of Commerce (2017) reported that although negotiators for both sides had made progress towards concluding an agreement, "sticking points" remained in the areas of financial services and government procurement.

2.1 Malaysia: an Overview

The World Bank (2017b) describes the economy of Malaysia as follows: "Malaysia is a highly open, upper-middle income economy. Malaysia was one of 13 countries identified by the Commission on Growth and Development in its Growth Report to have recorded average growth of more than 7 percent per year for 25 years or more. Economic growth was inclusive, as Malaysia also succeeded in nearly eradicating poverty.... After the Asian financial crisis of 1997-1998, Malaysia continued to post solid growth rates, averaging 5.5 percent per year from 2000-2008. Malaysia was hit by the Global Financial Crisis in 2009 but recovered rapidly, posting growth rates averaging 5.7 percent since 2010."

The CIA *World Factbook* (2017) reports that Malaysia's GDP (in Purchasing Power Parity- PPP) was estimated at \$863.8 billion. At the official exchange rate, Malaysia's GDP stood at US\$302.7 billion. (In comparison, the GDP for China was \$21.270 trillion and \$18.560 for the United States.) GDP per capita for 2016 was estimated to be \$27,200, ranking 67th in the world. Malaysia experienced a 4.4% growth rate in 2016—which was lower than the 5% experienced for 2015. Moody's predicts a 5.6% increase in GDP for 2017. Unemployment stands at 2.9%. By sector of origin, Malaysia's economy is comprised of agriculture (8.2%), industry (37.8%), and services (54%). Agricultural products include palm oil, rubber, cocoa, rice, timber and pepper. Industries include rubber and oil palm processing and manufacturing, petroleum and natural gas, light manufacturing, pharmaceuticals, medical technology, electronics and semiconductors, timber processing, agriculture processing, and logging.

The World Bank's global *Doing Business Report* (2017a) notes that Malaysia ranked in 23rd place overall among the 189 economies covered in the survey, representing a slight decrease from 2016, where Malaysia ranked 22nd out of 189 economies. Malaysia's lowest topic rankings are in "registering property" (40th), "enforcing contracts" (42nd), "trading across borders" (60th), and "resolving insolvency" (46th). Malaysia ranked highest in "protecting minority investors" (3rd), "producing electricity" (8th), and "getting credit" (20th).

2.2 Malaysia and International Trade

Malaysia is considered as one of the world's most trade-dependent economies. Export.gov (2017) described Malaysia as follows: "For centuries, Malaysia has profited from its location at a crossroads of trade between East and West, a tradition that carries into the 21st century." In 2015, Malaysia's total trade was US\$376 billion. Top trading partners in terms of market share include: China (15.8%); Singapore (13.0%); the EU (10.1%); the United States (8.8%); Japan (8.7%); Thailand (5.9%); Taiwan (4.1%); Indonesia (4.1%); South Korea (3.8%); Hong Kong (3.3%); and India (3.2%). It is interesting to note that while Export.gov (2017) reports that: "Malaysia is an attractive destination for U.S. exporters. In addition to Malaysia's attractive business environment and market potential, top reasons why U.S. companies should consider exporting to Malaysia include widespread English usage, relaxed foreign exchange, ability to repatriate capital and profits, a well-established legal framework, good infrastructure, and an affinity for United States products," Malaysia is not yet a truly "open market," especially in market sectors that are heavily protected, such as the automotive and agricultural sectors, where the government imposes higher duty rates and excessive excise taxes, and a system of import permits and licenses designed to "reduce imports in protected and strategic sectors." In addition to protecting strategic sectors, Export.gov (2017), reports that import barriers are also aimed at "protecting the environment... as well as maintaining cultural and religious norms." It is interesting to note that certain technical barriers such as *halal* certification for the importation of meat and poultry are regulated through licensing and sanitary controls (see also Cromer, 1995).

"All imported beef, lamb, and poultry products must originate from facilities that have been approved by Malaysian authorities as *halal* or acceptable for consumption by Muslims" (Export.gov, 2017). Because of dietary restrictions, pork and pork products may be imported into Malaysia only if Malaysia's Department of Veterinary Services (DVS) issues a permit authorizing such importation, and each consignment of pork and pork products is required to be accompanied by a valid import permit issued by the Malaysian Quarantine and Inspection Services (Export.gov, 2017).

On the other hand, Malaysia is a member of several trade blocs, which aim at *reducing* and *eliminating* trade barriers among participating nations. For example, Malaysia is a member of APEC—*Asia Pacific Economic Cooperation*—established in 1989 and comprised of 21 nations (Cardenas & Buranakanits, 1999) and ASEAN—*Association of Southeast Asian Nations*—found in 1967 and consisting of 10 nations (Smith, 2016; United States Department of State, 2017). [Appendix IV].

However, trade barriers in Malaysia continue to exist that will require further liberalization in its export licensing system (see Ministry of International Trade and Industry (MITI), 2017); in its import licensing system (see Ministry of International Trade and Industry (MITI), 2017) [Appendix V]; in modernizing its tax regime that currently provides subsidies for certain "targeted" exports; and in ensuring compliance with bilateral export restraint agreements which must be developed in cooperation with manufacturers, traders, consumers, and governments and non-governmental entities. The *Standards and Industrial Research Institute of Malaysia* (SIRIM, 2017), founded in 1996, is a government-owned entity that provides institutional and technical assistance to the government and information to Malaysian manufacturers relating to testing and certification relating to Malaysian standards for manufacturing and production. SIRIM was established to:

- To promote and undertake scientific industrial research;
- To boost industrial efficiency and development;
- To provide technology transfer and consultancy service;
- To develop Malaysian standards and to promote standardization and quality assurance for greater competitiveness; and
- To enhance public and industrial welfare, health and safety.

In this regard, Malaysia adheres to the World Trade Organization's "*Code of Good Practice for the Preparation, Adoption and Application of Standards*," which is better known as the "*WTO Code of Good Practices*," relating to certain technical barriers to trade (see Lewis & Mitchell, 2014). However, as reported by the United States Trade Representative (Export.gov, 2016), Malaysia does *not* observe the WTO's revised Government Procurement Agreement, which means that foreign companies may be denied the same opportunities to compete for business as Malaysian domestic companies in government procurement and purchasing (Mosoti, 2004; Schoeni, 2015). In many cases, foreign companies are required to have a domestic partner, or Malaysian indigenous people called "*Bumiputera*," in order to be considered eligible for contracting by the Malaysian government (Chandia & Choong, 2015).

Import duties can range from 0%-50%, and average 8.56%. Malaysia's tariff regime is mainly imposed on an *ad valorem* (Lockwood & Wong, 2000) basis, "with a simple average applied tariff of 6.1 percent for industrial goods." Import duties for goods where there is significant local production are typically higher than regular tariffs (Export.gov, 2016). Tariffs are also typically lower for raw materials than for finished products. Certain products such as construction equipment and products from the agricultural, mineral, and motor vehicle sectors are especially import-sensitive, and are therefore subject to special ("specific") import duties (Herander, 1985), where decisions of import duties and taxes are made on a yearly basis as a part of the budgeting process. Exemptions from duties are available for machinery and equipment used "directly" in the manufacturing process or when not available locally. As a result, long-term contracts may be more difficult to negotiate.

Furthermore, there are performance requirements that must be met in order to receive the required customs clearances for operations in special foreign trade zones (Tabakis, 2015). Currently, there are 13 Free Industrial Zones (FIZ), where manufacturing and assembly takes place, and 12 Free Commercial Zones (FCZ), for warehousing commercial stock (Export.gov, 2016).

FIZs and FCZs are especially important for Malaysia's international trade since "90 percent of its international trade by volume is seaborne. Malaysia is also a major transshipment center" (Export.gov, 2016).

3. Foreign Investment

Considering that many nations engage in protectionist policies, it may be expected that foreign investors can anticipate receiving less government assistance when trying to gain approvals from regulatory bodies to conduct a wide variety of business activities. However, industries that are targeted for support by the Malaysian government through tax credits, property tax abatements, reductions in sales and excise taxes (Coyne, 2015) may be able to negotiate better terms with governmental departments or agencies or other groups.

The principal law that regulates foreign investment in Malaysia is the *Companies Act of 1965* (Bidin, 2012); but over time, the need for liberalization and economic reform in this area has arisen as circumstances have changed and world-wide competition has increased. The *Malaysian Investment Development Authority* (MIDA) was created in order to attract foreign investment and to establish policies relating to legal and regulatory questions. The MIDA was designed to guide foreign investors in the manufacturing and service sectors and to determine which project proposals will best serve the interest of the country in its desire for economic expansion by simplifying licensing requirements at all levels of production, reducing business compliance costs and contract processing times (Sivalingham, 2012; Malaysian Investment Development Authority (MIDA, 2017b).

Business entities entering Malaysia must register with the *Companies Commission of Malaysia* and file Articles of Association, or a company charter, or Declaration of Compliance, and a Statutory Declaration stating that the company has had no bankruptcies and no criminal convictions or has not been involved in what are known as "Ponzi schemes" in the United States (Sulaiman et al., 2016). According to the 2016 *Doing Business* rankings, registering and establishing a business takes only a week to complete. Under the *Industrial Coordination Act of 1975*, foreign investors, such as Glotz, that wish to establish a manufacturing facility must obtain a license if the underlying capital amounts to more than 2.5 RM, or USD \$641,000, or if the entity will employ over 75 full time employees (Umrani & Johl, 2016).

In 2009, the government embarked on reforms in order to attract additional foreign investment, and also removed restrictions on acquisitions of property found in the *Foreign Investment Committee (FIC) Guidelines* (Huayang.com, 2017), which previously served as a detriment to investment, but now allows for some domestic and foreign businesses to operate without FIC approval (Huayang.com, 2017)

Glotz, as a "tier one" automotive supplier, must pay special attention to import restrictions on motor vehicles, where high tariffs are assessed in the automobile sector (Lau, 2006; Sultana & Ibrahim, 2014). The *National Automotive Policy* (NAP) (2014) was introduced in 2006 and revised in 2009 and includes both tariff and non-tariff policies, which makes the cost of imported vehicles much higher than those locally produced. Some of these restrictive policies include complicated import procedures, imposition of excise duties, government supported supplier programs to *Proton* (Rosli & Kari, 2008), and special tax provisions which encourages vehicle production with Malaysian-manufactured components. The system is extremely non-transparent, with the total number of imported vehicles in a year limited, ensuring that foreign manufactured vehicles are not a significant competitor with locally manufactured ones. NAP also encourages domestic vehicle production by lowering taxes on locally assembled vehicles and by using the country's industrial adjustment fund to provide support for the domestic content in vehicles because of the local content requirement mandated by the Malaysian government. NAP was also designed to "promote Bumiputera participation in the total value chain of the domestic automotive industry" (National Automotive Policy, 2014).

2.3 Malaysia And The TPP

As a member of the *Trans-Pacific Strategic Economic Partnership Agreement*, better known as the TPP, formed in February 2016, Malaysia, along with Brunei, Chile, New Zealand, Singapore, Australia, Canada, Japan, Mexico, Peru, the United States (until January 23, 2017), and Vietnam, tariffs were scheduled to be lowered significantly and trade would be increased to boost growth of each country. By fostering closer economic ties between signatory nations, each member nation would individually benefit. However, smaller countries such as Malaysia, who are actively pursuing economic development, were expected to particularly benefit as a result of easier access to financial resources and the ability that comes with strong relationships with some of the most developed nations in the world.

Because this group of twelve countries makes up nearly 40% of global GDP and at least one third of total world trade, global economic growth, job creation, and better relations between signatory nations will be positively impacted. Under the terms of the TPP, tariffs on more than 18,000 thousand of U.S. manufactured goods would be eliminated, many customs procedures would be expedited, and provisions for privacy, security, and consumer protections especially regarding online transactions would be enhanced (Keating, 2015). In fact, the language of the agreement was quite explicit in this regard: "Except as otherwise provided in this Agreement, no Party may increase any existing customs duty, or adopt any new customs duty, on an originating good... [and] each Party shall progressively eliminate its customs duties on originating goods...."

An important aspect of the TPP Agreement is the *investor-state dispute settlement mechanism (ISDS)*, which provides *private investors* with the right to take legal action against the government of a member state for violations of the treaty (Levy, 2015; contrast Elsig, 2015). Proponents have argued that the ISDS would also ensure that investors have rights in criminal, civil, or administrative proceedings relating to international business matters, that the capital invested would be safe, and that the investor would be able to transfer any profits freely necessary and not be subject to "currency blocking" actions. For example, Malaysia would no longer be able to actively discriminate against foreign investors, or seize the property of an international investor without paying proper compensation (Hunter, 2007).

Provisions of the TPP relating to the dispute settlement mechanism have been especially subjected to criticism by broad swathes of the American left and right (Sears, 2015) who have argued that accession to the TPP would further the interests of "big multinational corporations" and undermine U.S. sovereignty at the expenses of American workers, consumers, small businesses, and U.S. taxpayers (Warren, 2015). Some see the agreement as a none-too-thinly veiled threat against China (Chow, 2017). The status of this agreement at least as to the participation of the United States is uncertain due to the change in the presidency in the United States, with the Trump Administration indicating its withdrawal from the agreement as of January 23, 2017.

4. IP Issues

A large multinational enterprise, such as the Glotz Corporation, is required to take issues related to intellectual property very seriously. Glotz is a company that relies heavily on technological innovation because of the diversity of its product mix. Interestingly, when approached by a prospective contributor of an innovative idea or process, Glotz requires that new designs or technology be the subject of an existing valid patent or be "patent pending" for consideration by the company.* Will Glotz's interests be sufficiently protected in Malaysia?

The Intellectual Property Corporation of Malaysia has been in operation since 2003, and Malaysia has been involved in the development of intellectual property protections at both domestic and global levels, with legislation enacted relating to patents, trade marks, and copyrights (Pelegrinova & Lacny, 2016; Malaysian Investment Development Agency, 2017a). Malaysia is a signatory to the *Paris Convention* and the *Berne Convention* which regulate intellectual property rights. Malaysia's domestic legal system, and its involvement with the World Intellectual Property Organization (Anechitoae, 2012), as well as with the important agreement known as the *Agreement on Trade Related Aspects of Intellectual Property Rights* or *TRIPS* (Siddiqui, 2016), indicates that Malaysia is serious about efforts to enforce global standards relating to the protection of intellectual property rights. As Export.gov (2017) noted: "Malaysian officials have augmented their resources to combat online piracy and have sustained their efforts to deny access to piracy websites, taking down infringing content on domestic sites, and conducting raids and arrests of Malaysians either operating or posting links to sites with pirated content."

Legislation including the 2000 *Geographical Indications Act*, which traces the origin of goods, has become significantly more efficient and effective (Athukorala, 2005; contrast Calboli, 2006) and has led to a more effective way to protect products such as those manufactured by Glotz entering into Malaysia as imports or those being locally produced by Glotz in Malaysia from infringement by illegally produced domestic production. The Act provides protections where "a given quality, reputation or other characteristic of the goods is essentially attributable to their geographical origin" (Banerji, 2012). Although the Malaysian legal system seems to meet international standards, effective enforcement of these laws may be the greater problem in Malaysia and other Southeast Asian countries.

Persistent issues in this part of the world relate most especially to the production of pirated discs, clothing, software, electronics, handbags, shoes, and other popular consumer goods. Each year, the U.S. Trade Representative is required under Section 182 of the *Trade Act of 1974* to "identify those countries that deny adequate and effective protection for IPR or deny fair and equitable market access for persons that rely on intellectual property protection" (Noonan, 2016). The Trade Representative has implemented these key purposes by creating a "Priority Watch List" and a "Watch List" (Puckett & Reynolds, 1996). Placing a country on one of these lists indicates that the country "exhibits particular problems... with respect to IPR, enforcement, or market access for persons relying on intellectual property" (Noonan, 2016). Lackluster enforcement regarding counterfeit or "fake" items resulted in Malaysia being placed on the United States's *Special 301 Watch List* on several occasions—but not in 2016.

With its focus on producer goods relating to the automotive industry, Glotz may not face many of the same intellectual property rights issues that producers of consumer goods face. Ironically, the greatest risk to Glotz may come from employing Malaysians in Glotz factories or in its Malaysian headquarters who may not be completely loyal to the company and who may illegally share designs or technical production know-how with local or foreign companies that manufacture the same or similar products but who sell them for a lower price (Sheikh, 2017).

5. Deciding On An Entry Strategy

For Glotz, the potential for success, growth, and profitability in the Malaysian market is high, but only if precautions are taken in determining the proper entry mode and in minimizing the legal risks associated with the operation. In deciding to enter any new market, an understanding of the nature of trade barriers, knowledge of the political-legal environment (Hunter et al., 2003/2004), and an assessment of the ease of market entry are some of the most significant factors in determining whether, where, or when to pursue a new business venture (Lyles et al., 1999).

A major consideration will be the choice of the *form of business* under which the entity will operate—whether it is through a joint venture, or through an investment of capital in an on-going business ("Brownfield"). Whatever is the choice must be approved by the Malaysian Ministry of Finance, according to the *Financial Procedure Act*, which is the main legal authority for financial matters in the country. Because local automobile production has been encouraged and supported by the government, and because of major import restrictions that exist in the Malaysian automotive parts industry (SCSG, 2003), foreign investment in this sector has been highly regulated. In fact, SCGC (2003) identified the following ways that the automotive industry has been protected and supported under Malaysian law:

- High import tariffs;
- Taxation;
- Local content requirements, ranging from 45 to 60%; and
- Approval permits.

As a "tier-one" supplier, Glotz will be contributing to local automobile production mainly by providing locally established auto manufacturers with parts. It appears that the optimal solution and the best way to obtain the necessary approvals by the Ministry of Finance will be to manufacture its product line in a joint venture arrangement with a locally established company so as to allow for shared expenses, an allocation of liabilities and risk factors, and a more certain guaranty of ease of entry into the Malaysian economy. The selection of the joint venture model is important for two reasons. As was noted earlier, Malaysia does not subscribe to the WTO's *Government Procurement Agreement*, meaning that a foreign company such as Glotz will not enjoy the same advantages as domestic companies have in the domestic economy (McCrudden & Gross, 2006). Secondly, the United States has not entered into a Free Trade Agreement with Malaysia where conceivably, the issue of government procurement could have been addressed. The failure to abide by the WTO Agreement may also explain why many international firms would choose to enter the Malaysian market as a joint venture and are thus able to compete on a more equal playing field with domestic industries.

6. Some Tentative Conclusions Or Observations

What are the prospects for the Glotz Corporation or for other businesses attempting to enter the Malaysian market? Glotz's chances of success in entering the Malaysian automotive market have been enhanced for several reasons, which may or may not be able to be duplicated in other nations in the region:

- Malaysia is actively seeking to enhance their world footprint as an attractive and safe location for foreign investment;
- The government of Malaysia has shown itself willing to accept assistance in creating a stronger domestic economy through cooperation with its neighbors and other "investing" nations;
- Investments by Glotz in Malaysia are strategically located near other Southeast Asian ventures which have proven to be successful thus far;
- Asia is a "leading hotbed" of innovation as indicated by its position as a "world leader in patent operations" and now accounts for 56% of the world's grant of patent rights (Dettoni, 2017);
- Malaysia is already a member of several important regional trade blocs, making trade and development with and through Malaysia somewhat easier for the Glotz corporation to navigate; and
- The legal environment in the country is growing more predictable and stronger every year which bodes especially well for the protection of Glotz's intellectual property (Hunter et al, 2003/2004).

Attracting foreign investment and engaging in trade are important aspects of becoming a full member of the international community. By loosening restrictive policies and inviting foreign investment, Malaysia will open itself up for much greater prosperity than it has previously been able to realize. As both the U.S. and Malaysia are members of the Asia-Pacific Economic Cooperation Pact, economic ties between nations have been strongly encouraged. The safest and most efficient way for Glotz to proceed in attempting to enter the Malaysian market is to form a joint venture with a local entity and to produce its product line solely for use by Malaysian automotive makers—at least initially. As an entry strategy, this will gain the trust of the Malaysian government and will hopefully ensure that legal issues relating to foreign investment in the Malaysian market will be handled in a most expeditious and fair manner. With the currently expanding market in Malaysia and Malaysia's desire to reach high-income status in the near future, the Glotz Corporation should be welcomed into the country, creating jobs, high quality products, and increasing income for the country.

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Appendix I – United States Trade and Investment Framework Agreements

Africa

- U.S.-Angola TIFA
- U.S.-Common Market for Eastern and Southern Africa (COMESA) TIFA
- U.S. East African Community TIFA
- U.S.-Economic Community of West African States (ECOWAS) TIFA
- U.S.-Ghana TIFA
- U.S.-Liberia TIFA
- U.S.-Mauritius TIFA
- U.S.-Mozambique TIFA
- U.S.-Nigeria TIFA
- U.S.-Rwanda TIFA
- U.S.-South Africa TIFA
- U.S.-West African Economic and Monetary Union (WAEMU) TIFA

Americas

- U.S.-Argentina TIFA
- U.S.-Caricom TIFA
- U.S.-Uruguay TIFA

U.S.-Uruguay TIFA Protocol on Trade and Environment
U.S.-Uruguay TIFA Protocol on Trade Facilitation

Europe and the Middle East

U.S.-Algeria TIFA
U.S.-Bahrain TIFA
U.S.-Egypt TIFA
U.S.-GCC Framework Agreement for Trade, Economic, Investment and Technical Cooperation (English)
U.S.-Georgia TIFA (English)
U.S.-Iceland TICF
U.S.-Iraq TIFA
U.S.-Kuwait TIFA
U.S.-Libya TIFA (English)
U.S.-Oman TIFA
U.S.-Qatar TIFA
U.S.-Saudi Arabia TIFA
U.S.-Switzerland TICF
U.S.-Tunisia
U.S.-Turkey TIFA
U.S.-Ukraine TICA
U.S.-United Arab Emirates TIFA
U.S.-Yemen TIFA

TIFA

China, Mongolia, and Taiwan

U.S.-Mongolia TIFA

South and Central Asia

U.S.-Afghanistan TIFA
U.S.-Central Asian TIFA (Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan)
U.S.-Maldives TIFA
U.S.-Nepal TIFA
U.S.-Pakistan TIFA
U.S.-Sri Lanka TIFA

Southeast Asia and the Pacific

U.S.-ASEAN TIFA
U.S.-Brunei TIFA
U.S.-Burma TIFA
U.S.-Cambodia TIFA
U.S.-Indonesia TIFA
U.S. - Laos TIFA
U.S.-Malaysia TIFA
U.S.-New Zealand TIFA
U.S.-Philippines TIFA

Customs Administration and Trade Facilitation Protocol

U.S.-Thailand TIFA
U.S.-Vietnam TIFA

Appendix II – United States Free Trade Agreements

The United States has free trade agreements in force with 20 countries. These are:

Australia
Bahrain
Canada
Chile
Colombia
Costa Rica
Dominican Republic

El Salvador
Guatemala
Honduras
Israel
Jordan
Korea
Mexico
Morocco
Nicaragua
Oman
Panama
Peru
Singapore

Appendix III- United States Bilateral Investment Treaties

The United States has negotiated Bilateral Investment Treaties with:

Albania
Argentina
Armenia
Azerbaijan
Bahrain
Bangladesh
Bolivia
Bulgaria
Cameroon
Congo, Democratic Republic of (Kinshasa)
Congo, Republic of (Brazzaville)
Croatia
Czech Republic
Ecuador
Egypt
Estonia
Georgia
Grenada
Honduras
Jamaica
Jordan
Kazakhstan
Kyrgyzstan
Latvia
Lithuania
Moldova
Mongolia
Morocco
Mozambique
Panama
Poland
Romania
Rwanda
Senegal
Slovakia
Sri Lanka
Trinidad and Tobago
Tunisia
Turkey
Ukraine
Uruguay

Appendix IV- APEC and ASEAN Members**APEC MEMBERS:**

Australia
Canada
Chile
Hong Kong
Indonesia
Japan
Malaysia
Mexico
New Zealand
Papua New Guinea
People's Republic of China
Peru
Philippines
Republic of China
Russia
Singapore
South Korea
Thailand
United States
Vietnam

ASEAN MEMBERS:

Brunei
Cambodia
Indonesia
Laos
Malaysia
Myanmar
Philippines
Singapore
Thailand
Viet Nam

Appendix V – List of Products That Require Import And Export Licenses Under The Ministry Of International Trade and Industry (MITI)**The following goods require an Import license by MITI:**

- Activated Clay and Activated Bleaching Earth.
- Flat-Rolled Products of Iron or Non-Alloy Steel, of a width of 600mm or more, Hot Rolled, Not Clad, Plated or Coated.
- Flat Rolled Products of Iron or Non-Alloy, of a width of 600mm or more Cold-Rolled. (Cold-Reduced), Not Clad, Plated or Coated.
- Flat-Rolled Products of Iron or Non-Alloy Steel, of a width of 600mm or more, Clad, Plated or Coated.
- Flat Rolled Products of Iron or Non-Alloy, of a width of 600mm or more Cold-Rolled (Cold-Reduced), Not Clad, Plated or Coated not further worked than Hot Rolled.
- Flat-Rolled Products of Iron or Non-Alloy Steel, of a width of less 600mm or more, Not Clad or Coated.
- Tubes, Pipes and Hollow Profiles of Cast Iron.
- Tubes, Pipes and Hollow Profiles, Seamless, of Iron (other than Cast Iron) or Steel - Line Pipe of kind used for Oil or Gas Pipelines.
- Other Tubes and Pipes (ex: Welded, Riveted or Similarly Closed) having Circular Cross- Sections, the external diameter of which exceeds 406.4mm of Iron and Steel.
- Other Tubes, Pipes and Hollow Profiles (e.g., Open Seam or Welded, Riveted or similarly loosed) of Iron or Steel.
- Iron & steel products which has been exempted from Import License but require Certificate of Approval from CIDB (Construction) or SIRIM (Other than Construction).

- Cable.
- Vehicle.
- Motorcycle.
- Motor Vehicles for the transport of goods (i.e.: Dump Truck & Crawler Carrier).
- Special purpose motor vehicles, other than those principally designed for the transport of persons or goods excluding fire fighting vehicles (for example breakdown lorries, crane lorries, concrete-mixer lorries, road sweeper lorries, spraying lorries, mobile workshops, mobile radiological units).
- Ships' derricks; cranes, including cable cranes; mobile lifting frames, straddle carriers and works trucks fitted with a crane.
- Road Tractors for semi-trailers, completely built-up, old (i.e.: Prime Mover).
- Toxic Chemicals and their precursors covered under the Chemical Weapon Convention (CWC) 2005 (precursors is a substance that precedes and is the source of another substance).
- Toxic chemicals and their precursors covered under the Convention on the Prohibition (prohibition) of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction 1993 (CWC).

The following goods require an Export license from MITI:

- Wire Rods.
- Steel Bar.
- Other Bars Free Cutting Steel.
- Bars and Rods, Hot- Rolled, in irregularly, Wound Coils, Of other Alloy Steel.
- Rods of Alloy Steel; Angles, Shapes and Sections of Other Alloy Steel; Hollow Drill Bars and Rods Of Alloy or Non-Alloy Steel.
- Slag, Dross, Scaling & Similar, Waste; iron and steel, zinc.
- Iron Waste and Scrap.
- Stainless Steel Waste and Scrap.
- Copper Waste and Scrap.
- Nickel Waste And Scrap.
- Aluminum Waste and Scrap.
- Lead Waste And Scrap.
- Zinc Waste And Scrap.
- Zinc Dust, Powders and Flakes.
- Pure Tin Ingot.
- Tin Waste and Scrap.
- Magnesium Waste and Scrap.
- Toxic chemicals and their precursors covered under the Convention on the prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction 1993 (CWC).

* Any correspondence to any American corporation is purely coincidental as a result of comparisons of similar corporate profiles and international business practices.