NUCLEAR MATERIAL

Cooperation

Agreement between the
UNITED STATES OF AMERICA
and MALAYSIA

Signed at Selangor February 27, 2008

with

Agreed Minute

NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89—497, approved July 8, 1966 (80 Stat. 271; 1 U.S.C. 113)—

". . .the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof."

MALAYSIA

Nuclear Material: Cooperation

Agreement signed at Selangor February 27, 2008;
Entered into force February 27, 2008.
With agreed minute.

AGREEMENT BETWEEN

THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND
THE GOVERNMENT OF MALAYSIA
CONCERNING COOPERATION TO PREVENT
THE ILLICIT TRAFFICKING IN
NUCLEAR AND OTHER RADIOACTIVE MATERIAL

27 FEBRUARY 2008

AGREEMENT BETWEEN

THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF MALAYSIA CONCERNING COOPERATION TO PREVENT THE ILLICIT TRAFFICKING IN NUCLEAR AND OTHER RADIOACTIVE MATERIAL

The Government of the United States of America and the Government of Malaysia (hereinafter referred to as the "Parties"):

DESIRING to strengthen international nuclear and radiological security through improvements in cargo security and in measures to prevent illicit trafficking of nuclear and other radioactive material;

RECOGNIZING the longstanding close and productive relations between the Customs authorities of Malaysia and the United States of America;

NOTING the volume of trade between seaports in Malaysia and seaports of the United States of America, and Malaysia's role as an intermodal transport hub for cargo originating in many countries;

BEING CONVINCED of a need to detect, deter and, where necessary, to interdict illicit trafficking in nuclear and other radioactive material, including to counter, prevent and suppress all forms of terrorist acts which attempt to disrupt global trade through or from Malaysian ports or to attempt to make use of commercial shipping to further terrorist schemes;

RECALLING the Declaration of Principles on Enhanced Security Cooperation between the Royal Customs Department of the Government of Malaysia and the Customs Service of the United States of America signed 20 January 2003;

RECOGNIZING Malaysia's participation in the United States Container Security Initiative, which is designed to safeguard global maritime trade by enhancing cooperation at seaports worldwide to identify and examine high-risk containers and ensure their in-transit security; and

RESPECTING the principles of sovereignty, territorial integrity, and non-intervention in the Parties' respective domestic affairs;

Hereby agree as follows:

ARTICLE 1

OBJECTIVE

1.1 The objective of this Agreement is to establish a framework for cooperation between the Parties to improve nuclear and radiological security at selected seaports in Malaysia as mutually determined by the Parties' implementing agents as specified under Article 2.

1.2 Cooperation under this Agreement shall be conducted on the basis of equality and mutual benefit.

ARTICLE 2

DESIGNATED IMPLEMENTING AGENTS

To implement this Agreement, the Parties' implementing agents are: for the Government of the United States of America, the Department of Energy of the United States of America (DOE); for the Government of Malaysia, the Royal Malaysian Customs.

ARTICLE 3

SCOPE OF COOPERATION

3.1 The scope of cooperation under this Agreement includes the provision of technical assistance by the DOE, through its National Nuclear Security Administration, to the Royal Malaysian Customs, at no cost to the Government of Malaysia, in the form of equipment and materials, as well as training and services, for use by the Royal Malaysian Customs at Port Klang and other selected seaports in Malaysia, as mutually determined by DOE and the Royal Malaysian Customs, for the purpose of detecting and interdicting illicit trafficking in special nuclear material and other radioactive material.

3.2 The Atomic Energy Licensing Board and the Malaysian Nuclear Agency shall examine and evaluate equipment provided by DOE under this Agreement before its installation.

3.3 For purposes of this Agreement:

a. "special nuclear material" means plutonium, and uranium enriched to 20 percent or more in the isotope U-235; and

b. "other radioactive material" includes, but is not limited to, radioactive sources suitable for use in radiological dispersal devices.

3.4 DOE's technical assistance may include but is not limited to:

a. delivery and installation at Port Klang and other seaports of Malaysia, as DOE and the Royal Malaysian Customs mutually determine, of equipment adapted as appropriate for customs control conditions in Malaysia (including testing, setup, and demonstration of the equipment);

b. delivery of spare parts kits, test equipment and other maintenance equipment to maintain the DOE-supplied equipment;

c. training of the Royal Malaysian Customs personnel and other appropriate personnel (including from the Atomic Energy Licensing Board and the Malaysian Nuclear Agency), as DOE and the Royal Malaysian Customs mutually determine, in the detection of special nuclear material and other radioactive material, and in the proper use and maintenance of the equipment provided by DOE;

d. support for maintenance of the equipment provided by DOE, as set forth in a maintenance and sustainability plan mutually determined by DOE and the Royal Malaysian Customs; and

e. any other areas of cooperation for technical assistance as may be mutually agreed upon by DOE and the Royal Malaysian Customs that will further enhance the Royal Malaysian Customs' ability to detect and interdict illicit trafficking in special nuclear material and other radioactive material.

3.5 The Government of Malaysia shall use the equipment and materials received, and the training and services provided in accordance with this Agreement, only to implement measures to detect and identify special nuclear material and other radioactive material for the purpose of preventing their illicit trafficking.

3.6 Upon reasonable request by DOE, representatives of the DOE shall be permitted to make technical evaluations of the equipment supplied under this Agreement, starting from the deployment date of the equipment.

3.7 DOE and the Royal Malaysian Customs may conduct technical workshops, consultations, site surveys, technical evaluations and acceptance testing of materials and installed equipment.

3.8 Joint working groups of technical experts may be established to exchange technical information and to make proposals on technical and training matters to ensure the effective implementation of this Agreement. The composition of such joint working groups, and the times and places of their meetings, shall be as mutually agreed by DOE and the Royal Malaysian Customs.

3.9 The terms of any technical assistance provided under this Agreement will be set forth in contracts or other written arrangements between DOE and the Royal Malaysian Customs or their designated implementing agents. In case of any inconsistency between these contracts or other written arrangements and this Agreement, the provisions of this Agreement shall prevail.

3.10 The Royal Malaysian Customs shall endeavor to obtain prompt approvals from relevant agencies of the Government of Malaysia to facilitate the entry and installation of equipment and materials provided under this Agreement; and to ensure that equipment and materials provided under this Agreement are afforded priority processing to allow prompt engineering approvals, and equipment and materials deliveries to their ultimate destination in Malaysia.

3.11 The DOE intends to transfer ownership and responsibility for operation of the DOE-provided equipment to the Government of Malaysia, through the Royal Malaysian Customs, upon installation of the equipment.

ARTICLE 4

PROVISION OF INFORMATION

In accordance with procedures jointly determined by DOE and the Royal Malaysian Customs, the Royal Malaysian Customs, following consultation with the Atomic Energy Licensing Board, shall furnish the United States Embassy in Malaysia with information on detections or seizures of special nuclear material and of other radioactive material made as a result of the use of the equipment and materials supplied under this Agreement.

ARTICLE 5

TAX AND CUSTOMS TREATMENT OF EQUIPMENT

5.1 Commodities (including materials, articles, supplies, goods, or equipment) provided, utilized or purchased by the Government of the United States of America, its contractors and grantees (and subcontractors or subgrantees) in connection with United States assistance provided under this Agreement may be acquired, imported into, exported from, or used in the territory of Malaysia free from any value-added taxes (VAT), tariffs, dues, customs duties, import taxes, or other similar taxes or charges, imposed by the Government of Malaysia, or any subdivision or instrumentality thereof.

5.2 If, notwithstanding these exemptions, any taxes, customs duties or other charges are imposed on commodities covered by the foregoing paragraph, the Government of Malaysia shall reimburse the Government of the United States of America or its agents (including contractors and grantees) for, at a minimum, any VAT taxes, customs duties, or similar charges that are imposed, within 5 months from the date of payment.

ARTICLE 6

NON-DISCLOSURE OF INFORMATION AND NON-TRANSFER OF EQUIPMENT

6.1 Information obtained by either Party's Government as a result of the cooperative activities under this Agreement shall not be disclosed to a third government or other third party without the prior consent of the other Party.

6.2 Unless the written consent of the DOE has first been obtained, the Royal Malaysian Customs shall not transfer title to, or possession or use of, any equipment provided by the DOE pursuant to this Agreement, other than to other ministries, agencies, or departments within the Government of Malaysia.

ARTICLE 7

GENERAL PROVISIONS

7.1 Each Party shall implement the provisions of this Agreement in accordance with the laws, regulations and policies to which it is subject and applicable international agreements to which it is a party.

7.2 Provision of assistance by the Government of the United States of America pursuant to this Agreement shall be subject to the availability of funds appropriated for this purpose.

ARTICLE 8

SETTLEMENT OF DIFFERENCES

All questions and/or disputes regarding the interpretation or application of this Agreement shall be resolved by consultations between the Parties and shall not be referred to any national or international tribunal or any other third party for settlement.

ARTICLE 9

ENTRY INTO FORCE, DURATION, AMENDMENT AND TERMINATION

9.1 This Agreement shall enter into force upon signature and, subject to paragraph 3 of this Article, shall remain in force for 5 years. It shall be automatically renewed for an additional 5-year period unless terminated in accordance with paragraph 3.

9.2 This Agreement may be amended or extended by written agreement of the Parties.

9.3 This Agreement may be terminated by both Parties at any time, and may be terminated by either Party upon three months' advance written notification to the other Party.

9.4 Activities not completed at the expiration or termination of this Agreement may be continued to their completion under the terms of this Agreement.

IN WITNESS WHEREOF, the undersigned, being duly authorized, have signed this Agreement.

DONE at Port Klang, Selangor, Malaysia this 27th day of February 2008, in duplicate.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

JAMES R. KEITH

UNITED STATES AMBASSADOR TO MALAYSIA

FOR THE GOVERNMENT OF MALAYSIA:

DATO' SRI HJ. ABD. RAHMAN BIN HJ. ABD. HAMID

DIRECTOR GENERAL ROYAL MALAYSIAN CUSTOMS

AGREED MINUTE

During the negotiation of the Agreement between the Government of the United States of America and the Government of Malaysia Concerning Cooperation to Prevent the Illicit Trafficking in Nuclear and Other Radioactive Material signed today (the Agreement), the following understanding was reached.

The Parties agree that each Party's undertaking in Article 6.1 of the Agreement not to disclose to a third government or other third party information obtained by a Party as a result of cooperative activities under the Agreement, without the prior consent of the other Party, shall be implemented (in accordance with Article 7.1 of the Agreement) in a manner consistent with the applicable laws, regulations and policies and international agreements.

Circumstances under which the information referred to in Article 6.1 of the Agreement may be disclosed include, but are not limited to: a Party's response to an order of a court of law in, or requests by the legislature of, its country; emergency situations which pose a danger to public health or safety, or to national security; where mandated by a Party's domestic law, regulation, or policy; and where required by an applicable treaty or other international agreement to which a Party to the Agreement is party.

James R. Keith

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

JAMES R. KEITH

FOR THE GOVERNMENT OF MALAYSIA:

DATO' SRI HJ. ABD. RAHMAN BIN HJ. ABD. HAMID