

CUSTOMS

**Memorandum of Understanding
Between the UNITED STATES OF AMERICA
and MALAYSIA**

Signed at Sepang December 9, 2014



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

Customs

*Memorandum of understanding
signed at Sepang December 9, 2014;
Entered into force December 9, 2014.*

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE GOVERNMENT OF MALAYSIA AND
THE GOVERNMENT OF THE UNITED STATES OF AMERICA
REGARDING MUTUAL ASSISTANCE ON CUSTOMS MATTERS**

The Government of Malaysia and the Government of the United States of America (hereinafter referred to singularly as "the Party" and collectively as "the Parties"),

DESIRING to promote communications, cooperation and assistance between the Parties on Customs matters;

CONSIDERING that offenses against Customs laws are prejudicial to the economic, fiscal, social and commercial interests of the respective countries;

CONSIDERING the importance of ensuring accurate assessment of Customs duties collected upon importation or exportation and for the purpose of ensuring proper enforcement of specific measures of prohibition, restriction and control;

BELIEVING that strengthening cooperation on Customs matters will contribute to the facilitation and increase of trade between both countries;

RECOGNIZING the need for international cooperation in matters related to the application and enforcement of the Customs laws of their respective countries;

HAVING REGARD to international conventions on Customs matters and standards pertaining to prohibitions, restrictions and special measures of control in respect of specific goods;

CONVINCED that action against Customs offenses can be made more effective by cooperation between their Customs Administrations;

BEARING IN MIND the need to harmonize Customs procedures in accordance with relevant international standards;

HAVING REGARD to the Recommendation of the Customs Cooperation Council regarding Mutual Administrative Assistance of December 5, 1953, and affirming that such cooperation and mutual assistance would mutually benefit both Parties and serve their common interests and aspirations; and

HAVING REGARD to other agreements and arrangements between the Parties;

HAVE AGREED as follows:

ARTICLE I

DEFINITIONS

For the purposes of the present Memorandum of Understanding (MOU) –

1. the term "Customs Administration" means, in Malaysia, the Royal Malaysian Customs Department, and in the United States of America, the United States Customs and Border Protection and United States Immigration and Customs Enforcement, Department of Homeland Security;
2. the term "Customs laws" means the laws and regulations administered and enforced by the Customs Administrations concerning the importation, exportation, and transit of goods as they relate to customs duties and other customs charges, or to prohibitions, restrictions and other similar controls respecting the movement of controlled items across national boundaries;
3. the term "information" means data in any form, including copies or extracts of documents, records and reports, or computer-based data;
4. the term "Customs offense" means any violation or attempted violation of the Customs laws;
5. the term "person" means any natural or legal person;
6. the term "Requesting Administration" means the Customs Administration that requests assistance; and
7. the term "Requested Administration" means the Customs Administration from which assistance is requested.

ARTICLE 2

OBJECTIVE

Subject to the terms of this MOU and the laws, rules, regulations and policies of the Parties, and within the limits of their competency, jurisdiction and available resources, the Parties agree to strengthen, promote and develop cooperation and mutual assistance on matters under the purview of the Customs Administrations and to strengthen mutual understanding and communications.

ARTICLE 3

SCOPE OF THE MEMORANDUM OF UNDERSTANDING

1. Each Customs Administration shall execute all requests for assistance made pursuant to this MOU in accordance with and subject to the limitations of its domestic laws, regulations and policies, and within the limits of its competence and available resources.
2. The Parties, through their Customs Administrations, shall assist each other, in accordance with the provisions of this MOU in preventing, investigating and repressing any Customs offense.
3. This MOU is intended solely for mutual assistance between the Parties; the provisions of this MOU shall not give rise to a right on the part of any private person to obtain, suppress, or exclude any information or other item, or to impede the execution of a request.
4. This MOU is intended to enhance and supplement mutual assistance practices in effect between the Parties. No provision in this MOU may be interpreted in a manner that would restrict agreements, arrangements and practices relating to mutual assistance and cooperation in effect between the Parties.

ARTICLE 4

SCOPE OF GENERAL ASSISTANCE

1. The Customs Administrations agree to cooperate and mutually assist each other on Customs matters including furnishing, upon request, any information—
 - a. to ensure the enforcement of Customs laws;
 - b. which may assist the other Customs Administration in accurately assessing Customs duties and other Customs charges;
 - c. relating to transportation and shipment of goods showing destination and disposition of those goods; or
 - d. to determine whether goods exported from the territory of one Party have been lawfully imported into the territory of the other Party. If requested, the information shall contain the Customs procedure used for clearing the goods.

2. The Customs Administrations agree to cooperate and mutually assist each other on Customs matters, including furnishing, upon request or upon its own initiative, information, including but not limited to information concerning—
 - a. methods and techniques of processing cargo;
 - b. the successful application of enforcement aids and techniques;
 - c. enforcement actions that might be useful to suppress offenses and, in particular, special means of combating offenses; and
 - d. new methods used in committing offenses.

3. The Customs Administrations agree to cooperate and mutually assist each other on Customs matters including the following:
 - a. the sharing of expertise and resources in research and development;
 - b. assisting each other in training;

- c. promoting the sharing of information on training needs and training facilities available;
- d. sharing each Party's new information technology used for the course of international trade and customs procedures;
- e. establishing and maintaining channels of communication to facilitate the secure and rapid exchange of information;
- f. facilitating effective coordination; and
- g. any other general administrative matters in connection with the cooperation and mutual administrative assistance that may, from time to time, require both Customs Administrations' collaborative action.

ARTICLE 5

SCOPE OF SPECIFIC ASSISTANCE

1. Upon request, the Customs Administrations, subject to the terms of this MOU, and the laws, regulations and policies, and within the limits of their competency, jurisdiction and available resources, are to furnish to each other information regarding activities which may relate to Customs offenses within the territory of the other Party.
2. In situations that could involve substantial damage to the economy, public health, public security or similar vital interest of the other Party, the Customs Administrations, wherever possible, shall supply such information without being requested to do so. Nothing in this MOU otherwise precludes the Customs Administrations from providing on their own initiative information regarding activities that may result in offenses within the territory of the other Party.

ARTICLE 6

INFORMATION

1. The Requesting Administration may, in accordance with this MOU, request information, as defined in Article I of this MOU. Upon such request, the Requested Administration shall provide such information to the Requesting Administration in accordance with the laws, rules, regulations and policies of the Requested Administration.
2. The Requested Administration may transmit computer-based information in any form and may also supply such other relevant material or documents ancillary to that computer-based information for interpreting or utilizing that computer-based information.
3. Each Party, to the extent possible, may by mutual arrangement, exchange information via an automated information system.

ARTICLE 7

COMMUNICATION OF REQUESTS

1. Requests pursuant to this MOU shall be made in writing directly between officials designated by the Heads of the respective Customs Administrations, and shall be in the English language. Information deemed useful for the execution of requests shall accompany the request. In urgent situations, oral requests may be made and accepted, but shall be promptly confirmed in writing as expeditiously as possible, no later than ten (10) days from the date of the oral request.
2. Requests shall include -
 - a. the name of the authority making the request;
 - b. a brief statement of the facts and offenses involved;
 - c. the reason for the request; and
 - d. the names and addresses of the persons concerned in the request, if known.

3. The Requested Administration may ask the Requesting Administration to provide information in such form as may be necessary to enable it to execute the request.

ARTICLE 8

EXECUTION OF REQUESTS

1. The Requested Administration shall take all reasonable measures to execute a request and shall endeavor to secure any official measure necessary for that purpose.
2. If the Requested Administration is not the appropriate agency to execute a request, it shall promptly transmit it to the appropriate agency and so advise the Requesting Administration.
3. The Requested Administration shall conduct to the extent possible, inspections, verifications, fact-finding inquiries or other investigative steps as are necessary to execute a request.
4. Upon request, the Requesting Administration shall, when possible, be advised of the time and place of action to be taken in execution of a request.
5. The officials of the Requesting Administration, subject to the consent of the Requested Administration, may be present in the territory of the Requested Party to assist each other's efforts in the execution of a request.
6. The Requested Administration shall comply with a request that a certain procedure be followed, to the extent that such procedure is not prohibited by the domestic law, rules, regulations and policies of the Requested Administration.

ARTICLE 9

LIMITATIONS OF USE

1. Subject to the provisions set forth in this Article, information provided and received pursuant to this MOU shall not be used in any judicial proceedings.

2. Information obtained under this MOU shall be afforded the same degree of confidentiality by the receiving Party that it applies to similar information in its custody.
3. Information obtained under this MOU shall only be used or disclosed for the purposes specified in this MOU, including use by the receiving Party in any administrative proceedings. Such information may be used or disclosed for other purposes or by other authorities of the receiving Party if the supplying Customs Administration has expressly approved such use or disclosure in writing.
4. Information received by either Party shall, upon request of the supplying Party, be treated as confidential. The reasons for such a request shall be stated.
5. This Article shall not preclude the use or disclosure of information to the extent that there is an obligation to do so under the Constitution and domestic laws of the receiving Party in connection with a criminal prosecution.¹ The receiving Party shall give advance notice of any such proposed disclosure to the supplying Party.
6. Nothing in this MOU is intended to preclude the disclosure by the Party receiving information relating to terrorism to any other federal government agencies of the receiving Party where there is an obligation to do so under its applicable laws.
7. Subject to the terms of this Article, the receiving Party is to adhere to any stated conditions that the supplying Party imposes on the use and disclosure of that information.
8. The Customs Administrations shall establish local arrangements to ensure appropriate transmission, safekeeping, storage, handling and internal dissemination of sensitive data and documents.
9. The Parties agree that the provisions of this Article shall continue to apply notwithstanding the termination of this MOU.

ARTICLE 10

PUBLICLY AVAILABLE INFORMATION

Any publicly available information may be used for any purpose.

¹ Reference to prosecution in this paragraph specifically relates to the disclosure of exculpatory information.

ARTICLE 11

EXEMPTIONS

1. Nothing in this MOU will require the Parties to grant assistance if the Parties determine that the granting of such assistance would infringe upon its sovereignty, security, public policy or other substantive national interest, or would be inconsistent with its domestic laws and regulations.
2. If the Requesting Administration would be unable to comply if a similar request were made by the Requested Administration, it shall draw attention to that fact in its request. Compliance with such a request shall be at the discretion of the Requested Administration.
3. The Requested Administration may postpone assistance on the ground that it will interfere with an ongoing investigation, prosecution or proceeding. In such instance, the Requested Administration shall consult with the Requesting Administration to determine if assistance can be given subject to such terms or conditions as the Requested Administration may require.
4. In the event that a request cannot be complied with, the Requesting Administration shall be promptly notified and the Requesting Administration may be provided with a statement of the reasons for postponement or denial of the request. Circumstances that might be of importance for the further pursuit of the matter shall also be provided to the Requesting Administration.

ARTICLE 12

COSTS

1. The Requested Party shall normally pay all costs relating to the execution of the request for information or assistance under this MOU, with the exception of expenses for experts and the costs of translation, interpretation and transcription.
2. If during the execution of a request it becomes apparent that completion of the execution of the request will entail expenses of an extraordinary nature, the Customs Administrations shall consult to determine the terms and conditions under which execution may continue.

ARTICLE 13

IMPLEMENTATION OF THE MOU

1. The Customs Administrations--
 - a. shall communicate directly for the purpose of dealing with matters arising out of this MOU;
 - b. after consultation, and where necessary, shall issue any administrative directives necessary for the implementation of this MOU.
2. The Customs Administrations agree to meet periodically as necessary at the request of either Party in order to review the implementation of this MOU.

ARTICLE 14

APPLICATION

This MOU shall be applicable to the Customs territories of both Parties as defined in their domestic laws, rules and regulations.

ARTICLE 15

CONSULTATION

The Parties shall consult with each other at times to be mutually agreed upon by the Parties, concerning matters relating to implementation of this MOU, including its effects on either Party's rights and interests with respect to its national security, national and public interest or public order, protection of intellectual property rights and confidentiality of information, to ensure that the rights and interests of the Parties are protected and safeguarded.

ARTICLE 16

REVISION, AMENDMENT AND MODIFICATION

1. Either Party may request in writing a revision, amendment or modification of all or any part of this MOU.
2. Any revision, amendment or modification to which the Parties mutually consent shall be reduced into writing and shall form part of this MOU.
3. Such revision, amendment or modification shall come into force on such date as may be determined by the Parties.
4. Any revision, amendment or modification shall not prejudice the rights and obligations arising from or based on this MOU prior or up to the date of such revision, amendment or modification.

ARTICLE 17

SETTLEMENT OF DISPUTES

1. The Customs Administrations shall endeavor by mutual accord to resolve disputes or differences arising from the interpretation, implementation or application of the MOU.
2. Any dispute or difference for which no solution can be found between the Customs Administrations arising out of the interpretation, implementation or application of any of the provisions of this MOU shall be settled by mutual consultation between the Parties through diplomatic channels without reference to any third party or international tribunal.

ARTICLE 18

ENTRY INTO FORCE AND TERMINATION

1. This MOU shall enter into force upon signature.

2. Either Party may terminate this MOU at any time by notification through diplomatic channels. The termination shall take effect three (3) months from the date of notification of termination to the other Party. Ongoing requests at the time of termination shall nonetheless be completed in accordance with the provisions of this MOU.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this MOU.

DONE at Sepang, Malaysia on the 9 day of December in the year 2014, in duplicate, both texts being equally authentic.

FOR THE GOVERNMENT OF
MALAYSIA

FOR THE GOVERNMENT OF
THE UNITED STATES OF AMERICA



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DATUK AHMAD BIN MASLAN
Deputy Minister of Finance I



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MR. ALAN BERSIN
Assistant Secretary for US Department of
Homeland Security