

# TRADE & CUSTOMS

## Malaysia



# Trade & Customs

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Quick reference guide enabling side-by-side comparison of local insights, including into major domestic legislation and international agreements; trade defence investigations; customs duties; trade barriers; export controls; financial and other sanctions, including trade embargoes; and recent trends and hot topics.

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# Table of contents

## LEGAL FRAMEWORK

Domestic legislation

International agreements

## TRADE DEFENCE INVESTIGATIONS (OUTSIDE THE WTO DISPUTE SETTLEMENT SYSTEM)

Government authorities

Complaint filing procedure

Contesting trade remedies

WTO rules

Appeal

Review of duties/quotas

Compliance strategies

## CUSTOMS DUTIES

Normal rates and notification requirements

Special rates and preferential treatment

Challenge

## TRADE BARRIERS

Government authorities

Complaint filing procedure

Grounds for investigation

Measures against foreign trade barriers

Private-sector support

Notable non-tariff barriers

## EXPORT CONTROLS

General controls

Government authorities

Special controls

Supply chain security

Applicable countries

Named persons and institutions

Penalties

## **FINANCIAL AND OTHER SANCTIONS AND TRADE EMBARGOES**

**Government authorities**

**Applicable countries**

**Specific individuals and companies**

## **OTHER RELEVANT ISSUES**

**Other trade remedies and controls**

## **UPDATE AND TRENDS**

**Recent developments**

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## LEGAL FRAMEWORK

### Domestic legislation

What is the main domestic legislation as regards trade remedies?

The main domestic legislation regarding trade remedies is:

- the Countervailing and Anti-Dumping Duties Act 1993; and
- the Safeguards Act 2006.

*Law stated - 11 May 2023*

### International agreements

In general terms what is your country's attitude to international trade? Has it raised tariffs in the last year?

Malaysia is an active international trading country and one of the world's major trading nations. International trade is a key contributor to its economic growth and development.

Malaysia's main exports include electronic products, chemicals and chemical products, machinery equipment and parts, optical and scientific equipment and manufactured metals. In terms of natural resources, Malaysia exports crude oil, liquefied natural gas, palm oil and rubber. In return, the country imports electronics, machinery, petroleum products, plastics, textile, apparels and footwear, processed foods, iron and steel products and chemicals.

In 2022, Malaysia recorded a new milestone, surpassing 2.8 trillion ringgit for the first time and registered the fastest growth since 1994 at 27.8 per cent. Malaysia's exports in 2022, valued at 1.6 trillion ringgit, increased by 25 per cent compared to the preceding year. Total trade in 2022 amounted to 2.85 trillion ringgit and increased by 27.8 per cent compared to 2021, while imports totalled 1.3 trillion ringgit, an increase of 31.3 per cent. Malaysia's trade performance was in tandem with other regional countries such as Indonesia, Singapore, South Korea and Thailand.

Malaysia's main trading partners are the Association of Southeast Asian Nations (ASEAN), China, the European Union, Japan, South Korea and the United States. Significant export growth has also been recorded to emerging markets, notably Afghanistan, Djibouti, Egypt, Mozambique, Papua New Guinea, Sri Lanka and Togo.

Malaysia is a founding member of the WTO under its membership in the General Agreement on Tariffs and Trade since 1957.

As a WTO member, Malaysia accords high priority to the rules-based multilateral trading system under the WTO and has continuously undertaken voluntary reductions and elimination of tariffs to enhance Malaysia's competitiveness. Over the years, Malaysia has adopted open and transparent trade policies and measures.

Also, Malaysia is committed to building regional and bilateral trade arrangements with individual regional groupings and countries.

At the regional level, Malaysia is part of the ASEAN Free Trade Area (AFTA), together with other ASEAN member states such as Brunei, Cambodia, Indonesia, Laos, Myanmar, the Philippines, Singapore, Thailand and Vietnam, creating a complete free trade area among them. ASEAN presently has AFTA free trade agreements (FTAs) with Australia, China, India, Japan, Korea and New Zealand.

Through AFTA, Malaysia has also entered into the ASEAN Trade in Goods Agreement and, together with Brunei, Singapore and Thailand, has embarked on a self-certification pilot project since 1 November 2010 aimed at facilitating an enhanced trading environment.

Malaysia has also developed significant economic and political relations with the Gulf Cooperation Council (GCC) and is keen to have strong bilateral trade ties with the GCC through future FTAs.

As a member of the Organisation of the Islamic Cooperation (OIC), Malaysia has actively supported and promoted intra-OIC trade and has ratified the Framework Agreement on Trade Preferential System among OIC countries.

On 8 March 2018, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) was signed by all 11 participating countries – Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam. The CPTPP removes 95 per cent of tariffs between its 11 members, providing Malaysian businesses with greater access to new markets such as Canada, Mexico and Peru that are not covered by any existing FTAs. Likewise, companies operating in other CPTPP nations will have easier access to the Malaysian market, giving them access to a wider range of high-quality raw materials at competitive prices. This increases the country's attractiveness as an investment destination.

Further, at the end of 2020, along with the other ASEAN member states such as Brunei, Cambodia, Indonesia, Laos, Myanmar, the Philippines, Singapore, Thailand and Vietnam, together with trading partners such as Australia, China, Japan, New Zealand and South Korea, Malaysia signed the Regional Comprehensive Economic Partnership (RCEP) FTA. The objective of RCEP is to streamline and amalgamate ASEAN FTAs with its Dialogue Partners (ASEAN + 1 FTAs) into a single regional trade agreement that can strengthen regional value chain activities while rendering RCEP more accessible and user-friendly, especially for SMEs.

In 2022, Malaysia implemented two mega-FTAs, namely, RCEP and the CPTPP.

On a bilateral basis, Malaysia has established FTAs with Australia, Chile, India, Japan, New Zealand, Pakistan and Turkey, while negotiations are still underway with the European Union under the European Free Trade Association Economic Partnership Agreement.

*Law stated - 11 May 2023*

## **TRADE DEFENCE INVESTIGATIONS (OUTSIDE THE WTO DISPUTE SETTLEMENT SYSTEM)**

### **Government authorities**

Which authority or authorities conduct trade defence investigations and impose trade remedies in your jurisdiction?

The Trade Practices Section of the Ministry of Investment, Trade and Industry of Malaysia ( MITI ) is the authority tasked with investigating and dealing with unfair trade practices on behalf of the Malaysian government.

*Law stated - 11 May 2023*

### **Complaint filing procedure**

What is the procedure for domestic industry to start a trade remedies case in your jurisdiction?  
Can the regulator start an investigation ex officio?

Generally, any domestic industry or local producer can petition the authority for trade remedies such as anti-dumping, countervailing and safeguard duties against foreign producers or exporters of a similar product.

In a trade remedy petition, cogent evidence in the form of reliable statistics must be provided to the investigative authority. Depending on the type of trade remedies sought, the following information is usually included in the petition:

- the identity of the domestic industry on whose behalf the petition is submitted, including the names and addresses of the other producers of the like product in the domestic industry, and in the case where the petition is

submitted on behalf of the regional producers of the similar product, information and details to support the carrying out of an investigation on a regional basis;

- in the case of an anti-dumping or countervailing petition, the petitioner must show that the domestic producers supporting the petition collectively account for more than 50 per cent of the total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the petition and that the domestic producers expressing support for the petition account for at least 25 per cent of the total production of the like product produced by the domestic industry;
- a detailed description of the merchandise that defines the requested scope of the investigation, including technical characteristics and uses of such merchandise and its current Malaysian tariff classification;
- the name of the country in which the merchandise is produced and if the merchandise is imported from a country other than that in which it is produced, the name of the intermediate country;
- the name and address of each party that the petitioner believes is producing the merchandise for export or is exporting to Malaysia and that:
  - in relation to a countervailing duty petition, is receiving a subsidy; or
  - in relation to an anti-dumping duty petition, is selling the merchandise at prices below the normal value;
- any factual information, particularly documentary evidence, relevant to the alleged subsidy or dumping, including:
  - in relation to a countervailing duty petition, the authority that provided the subsidy and how the subsidy is provided and an estimate of the value of the subsidy to producers or exporters of the merchandise; or
  - in relation to an anti-dumping duty petition, information relevant to the calculation of the normal value and export price of the merchandise;
- for countervailing and anti-dumping petitions filed, the volume and value of the merchandise imported into Malaysia during the past two years and any other recent period that the petitioner believes to be more representative or, if the merchandise was not imported into Malaysia during the two years, information as to the likelihood of its sale for importation into Malaysia. Concerning safeguards, the data period required is three years;
- the name and address of each party who the petitioner believes is importing or, if there were no importations, is likely to import the merchandise;
- evidence of injury to the domestic industry caused by the merchandise and the causal link between the imports of the merchandise and the alleged injury; and
- in relation to a safeguard petition, the petitioner is also required to submit an adjustment plan for the duration of the proposed imposition of the definitive safeguard measure and the proposed relief measures allowing the domestic industry to recover its competitiveness.

*Law stated - 11 May 2023*

## Contesting trade remedies

What is the procedure for foreign exporters to defend a trade remedies case in your jurisdiction?

On receipt of an anti-dumping, countervailing or safeguard petition from the domestic industry or local producers, MITI will issue a notification of the receipt of the petition to governments of the exporting countries concerned. MITI is then obliged to examine the petition to determine whether the evidence presented justifies the initiation of an investigation, the level of support or opposition of the petition by the domestic industry, as well as the public interest involved. If MITI

finds that there is insufficient evidence, or it is not in the public interest to proceed, the petition will be rejected.

If MITI decides to initiate an investigation, it will:

- notify all interested parties (the foreign government or manufacturers concerned and local importers) of the decision to initiate the relevant investigation;
- publish a notice of initiation of an investigation, and gazette the same; and
- send out a questionnaire and a copy of the non-confidential version of the petition to foreign producers or exporters and local importers to obtain information on prices and injury factors.

In the case of a filed safeguard petition, the Committee on Safeguards of the WTO must also be notified of any decision to initiate a safeguard investigation.

All interested parties will have the opportunity to submit both written (including submitting confidential and non-confidential versions) and oral representations. Legal representation, whether foreign or local, is allowed.

The general timeline of an anti-dumping or countervailing investigation is as follows:

- the decision to initiate the preliminary investigation must be made within 30 days from the date of receipt of the petition;
- preliminary determination and the final investigation must be made within 120 days from the date of initiation, and if necessary this can be extended for another 30 days; and
- a final determination must be made within 120 days from the date of the preliminary determination.

The general timeline of a safeguard investigation is as follows:

- the decision to initiate the preliminary investigation must be made within 30 days from the date of receipt of the petition;
- preliminary determination and the final investigation must be made within 90 days from the date of initiation; and
- a final determination must be made within 200 days from the date of the preliminary determination.

*Law stated - 11 May 2023*

## WTO rules

### Are the WTO rules on trade remedies applied in national law?

Malaysia acknowledges and recognises that its international rights and obligations in this area are governed by its membership of the WTO and by the WTO Agreements on Anti-Dumping and on Subsidies and Countervailing Measures, as well as the Agreement on Safeguards. As such, trade remedy laws in Malaysia incorporate and apply the WTO rules on trade remedies.

A 'non-market economy country' is defined in the Countervailing and Anti-Dumping Duties Act 1993 to mean any foreign country that the government of Malaysia determines operates on a centrally planned economy and not on market principles of cost or pricing structures or a free-enterprise economy. There is no definitive list of such non-market economy countries, but each situation will be decided on a case-by-case basis.

*Law stated - 11 May 2023*

## Appeal

What is the appeal procedure for an unfavourable trade remedies decision? Is appeal available for all decisions? How likely is an appeal to succeed?

An interested party who is not satisfied with or who is aggrieved by MITI's decision concerning a final determination or a final administrative review determination may file a judicial review application in the High Court within 30 days of the publication of the final determination or the final administrative review determination in question. The High Court will review administrative acts carried out by MITI as prescribed under the national legislation and WTO rules on trade remedies to determine whether these administrative acts have been properly observed. The High Court is not, however, concerned with the merits of the matter.

An interested party who is not satisfied or is aggrieved by the decision of the authority concerning a final determination or a final administrative review determination may also utilise the WTO dispute settlement mechanism and bring an appeal to the WTO Appellate Body in Geneva, Switzerland.

*Law stated - 11 May 2023*

## Review of duties/quotas

How and when can an affected party seek a review of the duty or quota? What is the procedure and time frame for obtaining a refund of overcharged duties? Can interest be claimed?

An administrative review may be sought in the following situations:

- where there are changed circumstances in the dumping margin or the amount of subsidy; or
- where the duties imposed or undertakings entered into are no longer considered necessary or maintainable.

Such a review can only be made one year after the date of the publication of the imposition of the definitive duties.

An exporter or a producer whose exports of the merchandise are subject to a definitive anti-dumping duty, but who has not exported the merchandise to Malaysia during the period of investigation, may apply for an expedited review – also known as New Shipper Review (NSR).

In respect of the preliminary requirements to initiate an NSR application in Malaysia:

- an exporter or a producer must not have exported the merchandise to Malaysia during the initial period of investigation (POI);
- following the initiation of the anti-dumping investigation, an exporter or a producer must not be affiliated with any exporter or producer that has exported to Malaysia during the POI, including those that were not individually examined during the initial investigation; and
- an exporter or a producer must have either:
  - made an entry for consumption (not for sample) in Malaysia;
  - entered into an irrevocable contract; or
  - sold the subject merchandise – to an unaffiliated customer during the relevant period of review prior to the initiation of the NSR application.

On the other hand, an importer may also request a refund review for any 12-month period after the final determination of an anti-dumping duty investigation.

MITI will conduct a refund review as requested by the importer only if the importer:

- has filed a refund application with the Customs Department within 30 days of entry of the merchandise into Malaysia; and
- has submitted sufficient and complete evidence to show that the amount of anti-dumping duties collected during that 12-month period exceeds the dumping margin determined.

A refund review will be completed within 180 days from the date MITI decides to conduct such a review.

The results of the refund review will determine the final anti-dumping duty applicable for each entry for which the appropriate refund was requested, and will also be the basis for the anti-dumping duty rate applicable to all entries made after the review is completed.

If the margin of dumping is found to be less than the anti-dumping duty paid, the difference will be refunded. If the margin of dumping is found to be greater than the anti-dumping duty paid, the importer must pay the difference.

In the case of a safeguard petition, MITI is obliged to conduct a mid-term review where safeguard measures have been imposed for a term exceeding three years. The review must be completed within 180 days.

*Law stated - 11 May 2023*

## Compliance strategies

What are the practical strategies for complying with an anti-dumping/countervailing/safeguard duty or quota?

An affected party may avail itself of the various review procedures set out in the relevant legislation when changes in circumstances arise.

Price undertakings are also a viable and attractive option instead of the imposition of definitive duties. Such an undertaking may, however, only be offered after an affirmative preliminary determination has been reached.

*Law stated - 11 May 2023*

## CUSTOMS DUTIES

### Normal rates and notification requirements

Where are normal customs duty rates for your jurisdiction listed? Is there an exemption for low-value shipments, if so, at what level? Is there a legally binding system of information for applied tariffs or similar in place? Are there prior notification requirements for imports?

Customs duties are paid on an ad valorem basis on imports and exports as provided under the Malaysian Customs Act 1967. The rates, and any applicable exemptions, are set by subsidiary legislation made under the Customs Act, and depend on the type of goods imported or exported. The rates generally range from zero to 40 per cent, with much higher rates imposed on alcohol and tobacco products.

The complete list of the applicable duties can be found at the Royal Malaysian Customs Department's website . For e-commerce using air courier services, goods imported not exceeding a total value of 500 ringgit per consignment are

exempt from customs duties.

Malaysia uses both the Harmonized Commodity Description and Coding System (the HS Code) and the Association of Southeast Asian Nations (ASEAN) Harmonized Tariff Nomenclature (AHTN).

AHTN is used for trade transactions between Malaysia and other ASEAN countries, while the HS Code applies to trade with non-ASEAN countries. Import permits may be required for certain products.

*Law stated - 11 May 2023*

### **Special rates and preferential treatment**

Where are special tariff rates, such as under free trade agreements or preferential tariffs, and countries that are given preference listed?

This information can be found on the Ministry of Investment, Trade and Industry (MITI) website.

*Law stated - 11 May 2023*

How can GSP treatment for a product be obtained or removed?

The Generalised System of Preferences (GSP) is a system whereby developed countries grant preferential treatment to eligible products imported from developing countries so that exports of developing countries would be competitive in the developed countries' markets. The preferential treatment is in the form of reduced import duties and granted without reciprocal obligation on the part of the developing countries.

GSP treatment for a product can be obtained when the product genuinely originates from the beneficiary countries and when certain origin conditions are satisfied. The product must also be transported directly from the exporting preference-receiving country to the preference-giving country.

The claim for GSP treatment must be supported by documentary evidence as to origin and consignment. The documentary evidence accepted for purposes of GSP is the certificate of origin, which is more commonly referred to as Form A, which in Malaysia can be obtained by the interested manufacturer or exporter from the Federation of Malaysian Manufacturers. In Malaysia, the authorised issuing or endorsing authority for Form A is MITI.

To obtain GSP treatment, manufacturers or exporters are required to apply for cost analysis approval. Manufacturers and exporters must submit the applications through the Electronic Preferential Certificate of Origin (ePCO) online system. Cost Analysis approval will be processed through ePCO within five working days. Once an approval letter is issued, MITI will endorse the Form A submitted by the interested manufacturer or exporter.

*Law stated - 11 May 2023*

Is there a duty suspension regime in place? How can duty suspension be obtained?

No, there is no duty suspension regime in place. However, Malaysia has established numerous free trade zones and licensed manufacturing warehouses with various investment incentives where manufacturing companies can produce or assemble imported products primarily for re-exportation. Customs controls in these zones are minimal, and all machinery and raw materials and components used in the manufacturing process may be imported duty-free.

*Law stated - 11 May 2023*

## Has your country applied tariffs for 'national security' reasons?

No.

*Law stated - 11 May 2023*

### Challenge

#### Where can customs decisions be challenged in your jurisdiction? What are the procedures?

The Customs Appeal Tribunal (CAT) is an independent body, established to decide on appeals against the decision of the Director-General of Customs about matters under:

- the Customs Act 1967;
- the Sales Tax Act 2018;
- the Service Tax Act 2018; and
- the Excise Act 1976.

Applicants who are dissatisfied by the custom's ruling decision may submit an application for review to the Director-General of Customs within 30 days from the date the applicant is notified of the customs decision.

The Director-General will review the decision and announce the result within 60 days of the receipt of the application.

Applicants who are dissatisfied with the decision of the review may submit an appeal by filing Form A to the CAT within 30 days from the date of notification in writing of the decision of the Director-General.

A filing fee of 100 ringgit is payable for each appeal lodged and must include details such as the name, address, particulars of dispute, reasons of appeal and the remedy sought.

If the 30 days period has lapsed, an appellant can apply for an extension to file an appeal. The extension application must be filed together with Form A.

The CAT's decision is deemed to be an order of a sessions court and can be enforced accordingly. The appellant or the Director-General of Customs may appeal against the decision of the CAT to the High Court on a question of law or mixed law and fact.

*Law stated - 11 May 2023*

## TRADE BARRIERS

### Government authorities

#### What government office handles complaints from domestic exporters against foreign trade barriers at the WTO or under other agreements?

The Trade Practices Section of the Ministry of Investment, Trade and Industry of Malaysia handles complaints from domestic exporters.

*Law stated - 11 May 2023*

### Complaint filing procedure

What is the procedure for filing a complaint against a foreign trade barrier?

Malaysia does not have a specific procedure for trade barrier complaints and adopts the WTO procedure for dispute settlement. This includes requesting consultations, formally demanding negotiations to try to settle the matter or, as a last resort, requesting the WTO to set up a panel of three arbitrators to judge the case.

*Law stated - 11 May 2023*

### Grounds for investigation

What will the authority consider when deciding whether to begin an investigation?

Alternative measures include government-to-government negotiations and the threat of possible trade sanctions.

*Law stated - 11 May 2023*

### Measures against foreign trade barriers

What measures outside the WTO may the authority unilaterally take against a foreign trade barrier? Are any such measures currently in force?

Where it is deemed necessary, the government will institute a WTO case in Switzerland through the Attorney-General's Chambers (AGC). The private sector is expected to assist by forwarding the necessary trade information and figures to the AGC and responding to any queries the AGC might have in preparation for the WTO case.

*Law stated - 11 May 2023*

### Private-sector support

What support does the government expect from the private sector to bring a WTO case?

The private sector is expected to work hand-in-hand with the government to support a WTO case.

*Law stated - 11 May 2023*

### Notable non-tariff barriers

What notable trade barriers other than retaliatory measures does your country impose on imports?

The Malaysian government operates a system of import licensing. Import permits are required for several items, including:

- arms and explosives;
- motor vehicles;
- certain drugs and chemicals;
- plants;
- soil;

- tin ore;
- slag or concentrates; and
- various essential foodstuffs.

Prohibited imports include multicolour copying machines, any 'indecent or obscene' articles and certain poisonous chemicals.

All imported beef and poultry products must originate from facilities that have been approved by Malaysian authorities as producers of halal goods.

Further details can be found under the [Customs \(Prohibition of Imports\) Order 2023](#) .

Import duties generally range from zero to 40 per cent. In line with Malaysia's commitment to the Association of Southeast Asian Nations (ASEAN) Common Effective Preferential Tariff scheme, all industrial goods traded within ASEAN are subject to import duties of between zero and 5 per cent only.

In addition to import duties, the Malaysian government also imposes excise duties on certain selected categories of imports such as:

- automobiles;
- leaf tobacco;
- cigarette products;
- alcoholic beverages, spirits and vinegar; and
- toys, games and sports requisites.

Further details can be found under the [Excise Duties Order 2022](#) .

*Law stated - 11 May 2023*

## EXPORT CONTROLS

### General controls

#### What general controls are imposed on exports?

Goods may be exported to any country except Israel. Exports are only controlled in certain cases, as follows:

- gazetted or controlled goods (usually this applies when the goods are in short supply);
- goods sensitive in nature and strategic or hazardous items; and
- goods regulated or prohibited by international agreements to protect endangered wildlife species.

There are two categories of controls on items for export:

- items that are prohibited from being exported to all countries (eg, turtle eggs, rattan, arms and related materials, petroleum and petroleum products); and
- products that require an export licence and are subject to government control (eg, livestock and livestock products, grains, minerals and toxic or hazardous materials).

The Ministry of Investment, Trade and Industry (MITI) and the Ministry of Domestic Trade and Consumer Affairs administer the requisite licences for most of the controlled goods.

*Law stated - 11 May 2023*

## Government authorities

### Which authorities handle the controls?

The Royal Malaysian Customs Department (RMCD) is responsible for the enforcement of customs and related laws, including the issuance of legally binding advance rulings on valuation and classification matters, among others. Matters in dispute (eg, product classification and valuation of goods for customs purposes) can be brought before the Customs Appeal Tribunal.

*Law stated - 11 May 2023*

## Special controls

### Are separate controls imposed on specific products? Is a licence required to export such products? Give details.

Yes. The Strategic Trade Act 2010 (STA) was enacted to strengthen the country's ability to curb exports and transshipment of strategic items and technology, including:

- arms and related material:
  - military items;
  - nuclear materials, facilities and equipment;
  - special materials and related equipment;
  - material processing;
  - sensors;
  - lasers;
  - navigation and avionics equipment; and
  - electronics and computers; and
- activities that will or may facilitate the design, development, production and delivery of WMDs.

The STA is administered by MITI and controls the transactions of strategic items, unlisted items and restricted activities.

A special permit is required for transactions of strategic items or of unlisted items to a restricted end user, while transactions of strategic items or unlisted items to a prohibited end user are not allowed.

*Law stated - 11 May 2023*

## Supply chain security

### Has your jurisdiction implemented the WCO's SAFE Framework of Standards? Does it have an AEO programme or similar?

The authorised economic operator (AEO) is a concept introduced by the Standards to Secure and Facilitate Global Trade (SAFE) Framework of Standards, referring to operators involved in the movement of goods along the international trade supply chain who have achieved the required security standards and are accredited by the member country. The AEO scheme developed by the RMCD is based on a similar concept.

The RMCD AEO website lists the approved AEO companies.

*Law stated - 11 May 2023*

## Applicable countries

Where is information on countries subject to export controls listed?

A definitive and comprehensive list of strategic items as prescribed in the Strategic Trade (Strategic Items) Order 2010 that also lists information on the subject items .

Restricted and prohibited end users are determined by MITI through the issuance of a ministerial order, and such an order may include, from time to time, regimes, countries' bodies corporate or individuals subject to United Nations Security Council sanctions, as well as any persons of concern to Malaysia.

Currently, the list of restricted and prohibited end users can be found in the Strategic Trade (Restricted End-Users and Prohibited End-Users) Orders 2010 and 2016 (PU(A) 484/2010 and PU(A) 177/2016).

## Restricted end users

These include:

- Iran and North Korea (embargoed and no exception for transit);
- the Democratic Republic of the Congo, Ivory Coast, Lebanon, Libya and Sudan (embargoed and subject to transit permit for military items);
- Afghanistan, Iraq, Liberia, Rwanda and Somalia (subject to transit permit for military items); and
- Eritrea (subject to transit permit for restricted military items).

## Prohibited end users

These include:

- various named individuals and entities of North Korea included in the list established, maintained and updated by the United Nations Security Council under the United Nations Security Council Resolution 1718 (2006); and
- various named individuals and entities of Iran included in the list established, maintained and updated by the United Nations Security Council under the United Nations Security Council Resolution 2231 (2015).

*Law stated - 11 May 2023*

## Named persons and institutions

Does your jurisdiction have a scheme restricting or banning exports to named persons and institutions abroad? Give details.

Yes, under the Strategic Trade (Restricted End-Users and Prohibited End-Users) Orders 2010 and 2016:

### Restricted end users

These include:

- Iran and North Korea (embargoed and no exception for transit);
- the Democratic Republic of the Congo, Ivory Coast, Lebanon, Libya and Sudan (embargoed and subject to transit permit for military items);
- Afghanistan, Iraq, Liberia, Rwanda and Somalia (subject to transit permit for military items); and
- Eritrea (subject to transit permit for restricted military items).

### Prohibited end users

These include:

- various named individuals and entities of North Korea included in the list established, maintained and updated by the United Nations Security Council under United Nations Security Council Resolution 1718 (2006); and
- various named individuals and entities of Iran included in the list established, maintained and updated by the United Nations Security Council under United Nations Security Council Resolution 2231 (2015).

*Law stated - 11 May 2023*

## Penalties

What are the possible penalties for violation of export controls?

Both the Customs Act 1967 and the Strategic Trade Act 2010 have their own penalty provisions and, in summary, provide for the following penalties for violation of export controls:

- a jail sentence of between two years and life imprisonment, depending on the severity and type of offence; and
- fines of between 10,000 ringgit and 30 million ringgit.

Also, given the serious repercussions from the misuse of strategic items and unlisted items for restricted activities, the STA imposes capital punishment for certain offences where the breach or offence results in death.

*Law stated - 11 May 2023*

## FINANCIAL AND OTHER SANCTIONS AND TRADE EMBARGOES

### Government authorities

What government offices impose sanctions and embargoes?

The Strategic Trade Secretariat of the Ministry of Investment, Trade and Industry ( MITI ) is the authority charged with imposing trade sanctions.

**Applicable countries**

What countries are currently the subject of sanctions or embargoes by your country?

Iran and North Korea, in relation to strategic items , and Israel, under the Customs (Prohibition of Imports) Order 2023 and the Customs (Prohibition of Exports) Order 2023, subject to a special licence issued by MITI.

Law stated - 11 May 2023

**Specific individuals and companies**

Are individuals or specific companies subject to financial sanctions?

Yes, under United Nations Security Council (UNSC) resolutions.

Furthermore, the primary legislation governing terrorism financing (TF) in Malaysia is the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLA). Malaysia implements its obligations relating to targeted financial sanctions on TF under the relevant UNSC resolutions through the legislative provisions of Part VIA of the AMLA. In addition to the AMLA, Bank Negara Malaysia (BNM) has issued guidelines, policies and procedures on countering terrorism financing under its Policy Documents on Anti-Money Laundering, Countering Financing of Terrorism.

Pursuant to section 66B of the AMLA, the Malaysian Minister of Home Affairs may issue orders declaring individuals and entities as specified entities under the AMLA if he or she is satisfied that they have, among other things, knowingly committed, attempted to commit, participated in committing or facilitated the commission of a terrorist act or knowingly acted on behalf or in association with such individuals or entities. This is also known as the domestic list of specified entities under the AMLA that can be found under the Anti-Money Laundering and Anti-Terrorism Financing (Declaration of Specified Entities and Reporting Requirements) Order 2014 (as amended in February 2023) (the Domestic List ).

According to section 66C of the AMLA, the Malaysian Minister of Home Affairs may issue orders to give effect to UNSC resolutions and declare entities under the UNSC sanctions as specified entities. This is also known as the UNSCR list of specified entities under the AMLA, and can be found under the Anti-Money Laundering and Anti-Terrorism Financing (Security Council Resolutions) (Al-Qaida and Taliban) (Amendment) Order 2014 (the UNSCR List). Relevant UNSCR Lists to be considered under the AMLA are:

- The ISIL (Daesh) and Al-Qaida Sanctions List (1267 List); and
- The Taliban Sanctions List (1988 List).

On 12 April 2023, BNM issued a circular to notify all institutions of the latest amendments to the Anti-Money Laundering and Anti-Terrorism Financing (Declaration of Specified Entities and Reporting Requirements) Order 2014 (PU(A) 93/2014) made by the Minister of Home Affairs pursuant to sections 66B and 66D of the AMLA via PU(A) 112/2023. The BNM circular was also issued pursuant to sections 66B(11) and 66E of the AMLA to direct all institutions to undertake certain measures in relation to obligations under sections 66B and 66D of the AMLA, as well as any other subsidiary legislation made by the Minister of Home Affairs under those provisions.

Law stated - 11 May 2023

## OTHER RELEVANT ISSUES

### Other trade remedies and controls

Describe any trade remedy measures, import or export controls not covered above that are particular to your jurisdiction.

In recent years, Malaysia has adopted strengthened protectionist measures on the local steel industry. This trend is observed from the recent imposition of anti-dumping duties on imports of steel-related products by the Malaysian government.

*Law stated - 11 May 2023*

## UPDATE AND TRENDS

### Recent developments

Are there any emerging trends or hot topics in trade and customs law and policy in your jurisdiction? What effects are Brexit, the withdrawal of the US from TPP and TTIP, RCEP and negotiations of FTAs (such as the EU–Japan Free Trade Agreement, the Pacific-Alliance, etc) expected to have on your jurisdiction?

The general consensus is that Malaysia will benefit from the Regional Comprehensive Economic Partnership (RCEP) with industries related to electronics, chemical products, rubber products, plastic products and machinery and equipment, benefitting the most. In early 2022, Malaysia officially came on board and ratified the RCEP, signalling a new area of trade in the region.

The Trans-Pacific Partnership Agreement (TPPA) was a trade agreement between 12 Pacific Rim nations: Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States and Vietnam signed on 4 February in Auckland, New Zealand. In light of the US withdrawal, the remaining 11 member countries reached an agreement on the core elements, text of the agreement and way forward to implement the TPPA, which was renamed as the Comprehensive and Progressive Agreement for the Trans-Pacific Partnership (CPTPP). The CPTPP was ratified in Malaysia on 29 November 2022.

Negotiations are still underway between Malaysia and the European Union under European Free Trade Association Economic Partnership Agreement.

*Law stated - 11 May 2023*

## Jurisdictions

	<b>Chile</b>	Porzio Ríos García
	<b>China</b>	Global Law Office
	<b>Colombia</b>	Araújo Ibarra International Trade Consultants SAS
	<b>Eurasia</b>	Dentons
	<b>European Union</b>	Fieldfisher
	<b>India</b>	Khaitan & Co
	<b>Japan</b>	Mori Hamada & Matsumoto
	<b>Jordan</b>	AL Armouti Lawyers & Consultants
	<b>Malaysia</b>	SKRINE
	<b>Mexico</b>	Galicia Abogados SC
	<b>Turkey</b>	ACTECON
	<b>Ukraine</b>	Sergii Koziakov & Partners
	<b>United Kingdom</b>	Clifford Chance
	<b>USA</b>	Cassidy Levy Kent LLP