

## II. TRADE POLICY REGIME: FRAMEWORK AND OBJECTIVES

1. During the period under review, new legislation in Brunei has continued to be promulgated by the Sultan as "Emergency Orders", which carry the force of law. International agreements, including WTO Agreements, once ratified by the Sultan, the Head of State and the Executive under Brunei's Constitution, must be adopted through national legislation to be enforceable in the country. A number of changes and revisions relating to WTO provisions have been made to national legislation on intellectual property rights, customs and excise, and investment, including foreign direct investment.

2. Regarding institutional developments, after many years without a legislature in Brunei, the Legislative Council was reconvened as a wholly appointed legislature in 2004, although no date has yet been set for a partial direct Legislative Council election. Trade policy formulation and implementation was transferred from the Ministry of Industry and Primary Resources to the Ministry of Foreign Affairs and Trade in 2005, which works in cooperation with other agencies, notably the Ministry of Finance. The institutional framework is characterized by a lack of transparency with respect to trade and trade-related policies, to the detriment of government accountability; in particular, there is no independent body to evaluate government policy and, as a consequence, to provide impetus for reform of policies that are found to be ineffective.

3. Brunei has intensified its participation in regional and, for the first time, bilateral trade agreements. It is active in ASEAN, the East Asia Growth Area, APEC, and the Trans-Pacific Strategic Economic Partnership Agreement, as well as in bilateral relations with the United States and Japan.

4. Brunei sees foreign investment as playing a key role in its economic and technological development. Seeking to promote private sector development in non-oil and gas industries, it overhauled its investment laws and established the Brunei Economic Development Board (BEDB) in 2001 to promote Brunei as an investment destination. The BEDB adopted a new approach to attracting FDI, focusing on a few large projects, including a global mega port hub and downstream manufacturing industries using natural gas. The Government expects these large-scale investment projects to improve the international image of Brunei, kick-start economic diversification, and provide significant employment opportunities for the local labour force.

### (1) GENERAL CONSTITUTIONAL AND LEGAL FRAMEWORK

#### (i) Introduction

5. The Constitution confers supreme executive authority on the Sultan, who holds the portfolios of prime minister, defence minister, finance minister, chief of the armed forces, Supreme Head of Islam, and chief of police. In 1962<sup>1</sup>, certain provisions of the Constitution (including those pertaining to elections and to the Legislative Council) were suspended, and the Sultan has since ruled by decree, promulgating new laws under the provision of Article 83(3) of the Constitution as "Orders".<sup>2</sup> As was

<sup>1</sup> In 1962, the then Sultan annulled legislative election results after the Brunei People's Party (BPP) won all 10 elected seats in the 21-member council. The BPP then mounted an anti-monarchist insurgency that was put down by British troops. The Sultan invoked constitutionally granted emergency powers, which remain in force, and began ruling by decree. The Brunei National Solidarity Party is now one of only three legal political organization in the country. In 1993, the *Mukim* (district) and *Kampong* (village) Consultative Councils were established in order for the people to air their views and concerns to the Government through locally elected village officials.

<sup>2</sup> Since 1986, the only bills introduced in the Legislative Council have been Supply Bills.

the case at the time of the previous Review in 2001, the power to promulgate new laws is vested solely in the Sultan.

#### (ii) Executive authority

6. In exercising his supreme executive authority, the Sultan is assisted and advised by six councils: Customs and Traditions (*Adat Istiadat*) Council, Religious Council, Privy Council, the Council of Ministers, Legislative Council, and Council of Succession. The Privy Council is presided over by the Sultan; its main functions are to advise the Sultan on matters relating to prerogatives of the royal pardon, and on constitutional matters, and bestow state honours and titles. The Council of Succession determines succession to the throne, subject to the Constitution of Brunei Darussalam and the Succession and Regency Proclamation 1959. The Legislative Council was rejuvenated in 2004 and consists of not more than 45 members.<sup>3</sup> The Council of Ministers consists of the Prime Minister and ministers appointed by the Sultan; currently there are 13 Ministers.

7. Ultimately, the Sultan has powers to make laws concerning peace, order, security, and good government. Laws are still made in accordance with Article 83(3) of the Constitution, under which they are deemed to have been validly made, to be fully effectual, and to have had full force from the date on which a Proclamation of Emergency was declared or any Order made; they are also deemed to have been passed by the Legislative Council.

#### (iii) Legislative process

8. In September 2004, the 21-member Legislative Council was convened, for the first time since the country became independent in 1984, and approved several constitutional amendments, including one providing for the direct election of 15 members of an expanded 45-member Legislative Council. The remaining 30 members were to be appointed by the Sultan. In September 2005, the Sultan dissolved the Legislative Council and appointed a new, enlarged Council comprising 29 members: 15 members of the previous Council were retained and the 14 newcomers were mainly cabinet ministers appointed in May 2005 (including the Crown Prince) and persons involved in district administration. However, no timetable was established for the elections for 15 of the eventual 45 seats. The Legislative Council held a six-day session in March 2006 to endorse the national budget for 2006-07, which it approved unanimously.

9. During the period when the Council was suspended, laws were passed in the form of Emergency Orders by the Sultan, in accordance with Article 83(3) of the Constitution. The laws were drafted by the relevant government ministries (assisted by the Attorney General's Chambers), or directly by the Attorney General's Chambers, if instructed to do so by the Sultan. Draft legislation approved by the Sultan is passed as an "Order" and published in the *Government Gazette*. The law-making process by the Legislative Council is provided for under Part VII of the Constitution. In theory, any member of the Legislative Council may introduce a new bill, propose a motion for the Council to debate, or present any petition to the Council. The bill, motion or petition will then be debated and disposed of in accordance with the Standing Orders of the Legislative Council. Every bill to be introduced needs to be published in the *Gazette* and within seven days of its publication, the bill is laid before the Legislative Council. Certain matters, however, are excluded from discussion by the Legislative Council, unless the Sultan of Brunei approves otherwise.

<sup>3</sup> Brunei Darussalam Revised Constitution 2004, Article 24(1).

**(iv) Judiciary**

10. Brunei's legal system is based mainly on English common law. All judges are appointed by the Sultan. The Supreme Court comprises the High Court and the Court of Appeals, while the Subordinate Court consists of the Magistrate's courts. The High Court receives appeals from Magistrate's courts in the districts and is itself a court of first instance for criminal and civil cases. An appeal from the High Court is submitted to the Court of Appeals. An Interpretation Tribunal exists, which the Sultan may refer to on questions involving the meaning, interpretation, purpose, construction, ambit or effect of any provisions of the Constitution.<sup>4</sup>

11. A separate Syariah (Islamic) Court<sup>5</sup> co-exists with the Supreme Court. The structure of the Syariah Court is similar to the civil courts; it consists of Syariah Subordinate Courts, the Syariah High Court, and Syariah Appeal Court. The Syariah Court in its criminal jurisdiction tries any Syariah criminal offences relating to Islamic family law and in its civil jurisdiction, hears and determines all proceedings relating to marriage, maintenance of dependants, wills, division of inheritance of property or any other matters in respect of which the jurisdiction is conferred under any written law.

12. Overall, the authorities maintain that the structure of the judiciary has remained unchanged since 2002 and has no substantial effect on trade-related and other economic policy formulation. No trade dispute has ever been brought to the domestic courts. The State of Brunei Darussalam cannot be brought before domestic courts on cases relating to WTO Agreements.

**(2) TRADE POLICY OBJECTIVES AND ADMINISTRATION**

**(i) Objectives**

13. Brunei's economy remains heavily dependent on revenue from oil and gas. Small-scale manufacturers (mainly textiles and furniture) and primary production make up the rest of Brunei's merchandise economy. Brunei has a low tariff regime and imports nearly all of its major manufactured products and around 80% of its total food requirements. During the period under review, the Government has further sought to diversify the economy away from oil and gas as the primary source of revenue and economic activity by promoting private sector development in non-oil and gas industries. The Brunei Economic Development Board (BEDB) was set up in November 2001 to stimulate the growth, expansion, and development of the economy by promoting Brunei as an investment destination. In January 2003, the BEDB launched its two-pronged strategy<sup>6</sup>, through which it aims to attract US\$4.5 billion in foreign direct investment and create 6,000 permanent new jobs by 2008. The BEDB also recognizes that it is imperative for Brunei to develop its small and medium enterprises (SMEs) in order to achieve sustained growth in private sector income and employment.

<sup>4</sup> A Pardons Board is also established under the revised Constitution, whose function is to advise the Sultan in exercising his prerogative of mercy. Its members consist of the Attorney General, the State Mufti (*Mufti Kerajaan*) and three other members, who may be appointed for a term decided by the Sultan of Brunei. However, according to the authorities, the function of the Pardons Board is currently suspended.

<sup>5</sup> The Syariah Court is established under the Syariah Courts Act (Cap. 184); it has jurisdiction to try any offences under Syariah Law.

<sup>6</sup> The first prong involves the development of the Sungai Liang area outside of Bandar Seri Begawan into an industrial site for petrochemical and manufacturing industries that will capitalize on Brunei's proven gas reserves; the second prong involves the construction of a deep water port facility at Palau Muara Besar.

14. The Eighth National Development Plan (2001-05) continued the emphasis of the sixth and seventh plans on diversification of the economy to reduce the country's dependence on petroleum and natural gas. These plans, although far from comprehensive, have delineated proposals for government investment in infrastructure, services, and incentives, all aimed at diversifying the economy and at increasing private sector participation. In the 8<sup>th</sup> Development Plan, the Government has emphasized the need to diversify the economy through the expansion of agriculture and industry and the development of financial services, tourism, and communications technology. Brunei aims to diversify into areas like communications technology, financial services, halal (Muslim dietary law) food<sup>7</sup>, tourism and hospitality services, as well as downstream oil and gas industries like petrochemicals, oil refining, and aluminium smelting (Box I.1). Brunei would also like to turn itself into a major shipping hub. According to the authorities, the completion of the 8<sup>th</sup> Plan marked the end of the first long-term plan (1984-2005). Currently, a new, more comprehensive long-term plan is being formulated, together with supporting medium- and short-term plans. Details have not been made available.

15. Emphasis has been placed on the development of Brunei as a service hub for trade and tourism. Brunei sees itself as a bridge for the EAGA (East ASEAN Growth Area) member states to regional and global markets, and a gateway to EAGA markets for the rest of the world. Ports, airport facilities, and tourism services are being upgraded as part of plans to build upon Brunei's telecommunications network, both regionally and internationally.

## (ii) Policy implementation

16. The Ministry of Foreign Affairs and Trade is the lead agency for trade policy formulation and implementation and is responsible for negotiating, signing, and ratifying trade treaties. The trade policy function was moved to the Ministry of Foreign Affairs (renamed the Ministry of Foreign Affairs and Trade in August 2005) from the Ministry of Industry and Primary Resources. The trade policy function is carried out in cooperation with other government agencies, including the Ministries of Finance, Industry and Primary Resources, Development, Communications, and Energy (Table II.1). In May 2005, the Sultan announced the creation of an Office of the Minister of Energy, working in conjunction with the Petroleum Unit, to improve the management of hydrocarbon resources.

**Table II.1**  
**Ministerial/Departmental responsibility for trade-related issues, 2007**

Ministry/Agency	Competence
Ministry of Foreign Affairs and Trade	Trade policy formulation and implementation
Prime Minister's Office	
Attorney General's Chambers	Provision of legal advice, registry for Company's Act and Business Names Act
	Intellectual property rights policy issues; registry of trade marks and patents; enforcement of all IPR laws except copyright
Office of the Minister of Energy and Petroleum Unit	Petroleum and gas policy, pricing, and exploration contracts
Department of Economic Planning and Development (JPKE)	Economic planning; formulation of five-year national development plans
Ministry of Industry and Primary Resources (MIPR)	
Department of Agriculture	Agriculture policy and incentives; sanitary and phytosanitary standards

**Table II.1 (cont'd)**

<sup>7</sup> According to the Australian Government, a joint Australian-Brunei halal food production and marketing export initiative was announced in February 2005 when the Sultan visited Australia. Under the initiative, the two countries agreed to examine ways to develop a niche, high-quality halal export industry combining Australia's capacity as a producer of quality food products with Brunei's stringent halal certification standards (DFAT online information. Viewed at: [http://www.dfat.gov.au/geo/brunei/Brunei\\_brief.html](http://www.dfat.gov.au/geo/brunei/Brunei_brief.html)).

Ministry/Agency	Competence
Department of Forestry	Forestry policy and incentives
Department of Fisheries	Fisheries policy and incentives; sanitary and phytosanitary standards
Brunei Industrial Development Authority (BINA)	Industrial development; management of industrial sites; investment promotion and approval; training
Investment Services Section	Investment incentives; administers the Brunei Economic Development Board Act, the Miscellaneous Licences Act; Secretariat for the Projects Implementation and Technical Committees for investment approval
Tourism Development	Tourism regulation and development
Brunei Economic Development Board <sup>a</sup>	Foreign investment approvals, economic development
Ministry of Development	Infrastructure development; standards and conformance; housing development; land management
Ministry of Finance	
Royal Customs and Excise	Customs tariff; valuation; rules of origin; duty drawback
Treasury	State budget; taxes
Brunei Investment Agency	Outward foreign investment
The Department of Information Technology and State Stores (ITSS)	Procurement of food products such as salt, sugar, and rice
State Tender Board (LTN)	Government procurement
Financial Institutions Division	Insurance and banking supervision
Ministry of Communications	
Department of Civil Aviation	Air transport regulation
Land Transport Department	Land transport regulation
Marine Department	Maritime transport regulation; and maritime safety
Ports Department	Management of shipping, Muara Port, and Muara export zone
Jabatan Telekom Brunei (JTB) was corporatized as TelBru Bhd (fully-owned government service provider) and AiTi (independent regulator) in April 2006	Telecommunications services regulation and provision of local and international telecommunications services

a The BEDB reports to the Minister of Foreign Affairs and Trade.

Source: Government of Brunei Darussalam online information. Viewed at: [http://www.brunei.gov.bn/min\\_dept/index.htm](http://www.brunei.gov.bn/min_dept/index.htm); and information provided by the authorities.

17. In formulating and drafting trade policy, and depending on the issues at hand, the opinions of non-governmental bodies may be solicited, although Brunei does not seem to follow a regular process of consultation with such bodies. A number of economic committees have been formed, including the Human Resources Committee and the National Development Committee (NDC), which was responsible for formulating the recent national development plan. In 2004, the NDC was replaced by the Long Term Development Planning Body, which formulates and reviews the development planning.

### (iii) Policy evaluation

18. Brunei does not have an independent body to evaluate government policy. Under the Constitution, the Auditor General prepares an annual audit of the financial statements to present to the Sultan and the Cabinet.

### (iv) Main trade-related laws

19. In order for an international agreement to take effect in Brunei Darussalam, it must be adopted through enabling legislation and gazetted to carry the force of law. The provisions of the WTO Agreements or ASEAN trade agreements apply only when new or subsidiary legislation is passed to incorporate them into national laws. During the period under review, new national laws were gazetted relating to provisions on customs valuation in the WTO and in ASEAN agreements.

Brunei's main trade and related laws include the Customs Order and Excise Order, which regulate customs and excise procedures. A number of laws and regulations are used to maintain phytosanitary and other health measures (Table II.2), and Brunei introduced legislation on securities in 2001 and banking in 2006.

**Table II.2**  
**Main trade-related laws in Brunei, 2007**

Law	Subject
Customs Order (2006) and related regulations	Customs regulations; preferential tariffs; duty drawback; offences and penalties
Valuation of Imported Goods Rules 2001	Definition of customs value consistent with WTO
Customs (ASEAN Common Effective Preferential Tariffs Order) 2005; Customs (ASEAN Common Effective Preferential Tariffs) (ASEAN Integration System of Preferences) Order 2006 (not yet in force); Customs (Goods under early harvest programme) (Framework Agreement on Comprehensive Economic Cooperation between ASEAN and China) Order 2005; and Customs Agreement on Trade in Goods of the Framework Agreement on Comprehensive Economic Cooperation between ASEAN and China Order, 2006	Adoption of ASEAN trade agreements
Companies Act (1957)	Registration of companies; company law
Securities Order (2001)	Governs financial exchanges, dealers and other relevant persons providing advice in respect of managing or dealing in securities
Banking Order 2006	Licensing of banks; balance sheets and information; control of banks
Investment Incentives Order 2001	Investment
Economic Development Board (Amendment) Order 2001	Foreign investment, economic development
Income Tax Act (Amendment) Order 2001	Tax incentives
Agricultural Pests and Noxious Plants Act (1962); Poisons Act; Misuse of Drugs Regulations 1984; Infectious Diseases Order 2003; and Infectious Diseases (Quarantine) Regulations 2006	Sanitary and phytosanitary regulations
Public Health (Food) Regulations 2001; and Public Health (Food) Act 2002	Food labelling
Halal Meat Act	Regulate the supply and importation of halal meat
Income Tax (Petroleum) Act Cap. 119	Corporate tax on petroleum
Income Tax Act Cap. 35	Corporate tax on non-petroleum and gas companies
Excise Order 2006	Excise taxes
Price Control Act (1974)	Price controls
Copyright Order, 1999	Copyright protection
Inventions Act	Patents protection
Trade Marks Act (2000)	Trade marks
Industrial Designs Order, 1999	Industrial designs
Layout Designs Order, 1999	Layout designs of integrated circuits
Financial Regulations, 1983	Government procurement
International Banking Order, 2000; International Business Companies Order, 2000; International Takaful and Insurance Order, 2000; and Mutual Funds Order, 2001	Regulation and licensing of bodies carrying on the business of international banking

*Source:* Government of Brunei Darussalam.

**(3) TRADE AGREEMENTS AND ARRANGEMENTS**

20. As an original Member of the WTO, and a contracting party to the GATT since December 1993, Brunei is of the view that its economy will benefit from further multilateral trade liberalization. Brunei Darussalam is committed to applying MFN treatment to products coming from all WTO Members. At the same time, regional agreements and trade liberalization in the regional context, particularly in ASEAN (and EAGA) and APEC are considered to be important and have been pursued in the period under review to enhance access to regional markets. Brunei believes that regional and bilateral trade agreements, if consistent with WTO rules and disciplines, could contribute to multilateral trade liberalization through the WTO.

**(i) Multilateral agreements**

21. Brunei is an original Member of the WTO. At the 2005 WTO Ministerial meeting, it underlined its commitment to the WTO, which it sees as one of the most important pillars of world order, and expressed the hope that the Doha negotiations could find room for the principle of fairness and for "visible development" in the sense of changes that improve day-to-day lives in the developing world. Brunei fears a situation emerging that amounts to "every country and every region for itself" which, in developing nations, could affect long-term peace, stability, and security.<sup>8</sup>

22. Upon accession, Brunei, as a developing country made use of transitional measures available under some of the WTO Agreements, notably Article VII of the GATT (Customs Valuation) and the Agreement on Trade-Related Aspects of Intellectual property Rights (TRIPS). According to the authorities, the Agreement on Customs Valuation was fully implemented with effect from 1 September 2001 as contained in the Customs (Valuation of Imported Goods) Rules 2001 and the Customs (Amendments) Order 2001.<sup>9</sup>

23. Like all Members of the WTO, Brunei is required to make regular notifications of its laws and regulations to the WTO (Table AII.1).

24. Brunei has not been involved in any disputes in the WTO since 2001, either directly or on a third party basis.

**(ii) Regional agreements**

**(a) ASEAN**

25. Brunei became a member of the Association of South-East Asian Nations (ASEAN) at independence in 1984 and attaches the highest importance to its membership. Brunei is also a member of the Brunei-Indonesia-Malaysia-Philippines-East Asian Growth Area (BIMP-EAGA), which seeks to promote economic growth and development in the ASEAN sub-region.

26. The Framework Agreement on enhancing economic cooperation, signed in 1992, established the Common Effective Preferential Tariff (CEPT) Scheme. Under the CEPT, it was agreed that tariffs on goods in the Inclusion List (i.e. subject to tariff reductions) would be reduced to 0-5% by 2002 for the founding members plus Brunei (ASEAN-6), by 2006 for Viet Nam, by 2008 for Laos and Myanmar, and by 2010 for Cambodia. Tariff reduction/elimination under the AFTA is granted on a

<sup>8</sup> WTO document WT/MIN(05)/ST/85, 16 December 2005.

<sup>9</sup> Government Gazette No. 29 of 11 August 2001.

reciprocal basis and local-content requirements apply.<sup>10</sup> The process of reducing tariffs, which began in 1993, is almost complete for ASEAN-6 members; Brunei has reduced tariffs on 93% of tariff lines to 5% or 0% for products of ASEAN origin.<sup>11</sup> Under the terms of AFTA, Brunei applies the two lower tiers, of 0% and 5%, to all goods imports from ASEAN members that meet the AFTA rules of origin requirements. According to the authorities, Brunei does not have any products in the temporary exclusion list.

27. ASEAN is also working to: remove non-tariff barriers to intra-ASEAN trade; harmonize customs nomenclature, valuation, and procedures; harmonize product standards and regulatory requirements; and improve rules of origin (ROOs) under the CEPT. With regard to the work programme on the elimination of non-tariff barriers (NTBs) by 1 January 2008 (First Package), 1 January 2009 (Second Package) and 1 January 2010 (Third Package), the authorities state that Brunei has submitted updates on its NTB list together with the relevant supporting legislation. As to the rules of origin under the CEPT, ASEAN is focussing on finalizing the product specific rules (PSRs) for products under the priority integration sectors (PIS).

28. The ASEAN Framework Agreement on Services, signed in 1995, guides services liberalization over and above WTO commitments, and promotes cooperation among service suppliers in ASEAN. To date, ASEAN has completed several packages of services liberalization covering construction, telecommunications, business services, financial services, air and maritime transport, and tourism. This involves preferential access for other ASEAN member states in the establishment of services entities and employment of professionals. Under the priority integration approach, tourism, healthcare, and air travel are scheduled to be liberalized by 2010. ASEAN countries are currently working on expanding negotiations to cover all sectors and modes of supply.

29. The ASEAN Investment Area Agreement, signed in 1998, is aimed at facilitating the free flow of direct investment, technology, and skilled professionals. The agreement covers manufacturing, agriculture, fisheries, forestry, and mining, as well as services activities related to these sectors. The agreement is also aimed at increasing intra-ASEAN investment and FDI, promoting the economic integration of ASEAN, and jointly promoting ASEAN as an attractive region for FDI. In accordance with Articles 2(i) and 2(ii) of Schedule III of the Framework Agreement on the ASEAN Investment Area<sup>12</sup>, Brunei Darussalam is due to open all industries for investment to ASEAN investors by 2010 and to all investors by 2020; this constitutes a clear commitment to liberalizing the investment environment.

30. ASEAN is also seeking to enhance regional economic integration through the establishment of the ASEAN Economic Community (AEC) – a single market providing for the free flow of goods, services, skilled labour and, to some extent, capital – by 2015. Member countries have identified 11 priority sectors: agri-based products; air travel; automotive products; electronics; fisheries; healthcare; rubber-based products; information/communications technology (products and services) related to e-commerce; textiles and apparel; tourism; and wood-based products. ASEAN is currently working on legislation for the 12<sup>th</sup> priority sector, logistics. In 2003, the priority sectors accounted for more than 50% of intra-ASEAN trade. A Framework Agreement for the Integration of Priority Sectors was signed in 2004 to accelerate integration across members.

<sup>10</sup> A product is eligible for a tariff concession if at least 40% of its content originates from any ASEAN member state; the 40% local content refers to both single and cumulative content.

<sup>11</sup> "Consolidated 2007 CEPT package: Brunei Darussalam". Viewed at: <http://www.aseansec.org/20937.htm>.

<sup>12</sup> ASEAN online information. Viewed at: <http://www.aseansec.org/6466.htm>.

31. ASEAN is seeking regional trade agreements with other partners, for example China, Japan, Korea, CER members (Australia and New Zealand), and India. At the ASEAN summit in 2002, ASEAN members and China signed a framework agreement to begin negotiations in 2003 to create the world's largest FTA, with a combined market of 1.7 billion people. The ASEAN-China FTA is expected to be implemented over ten years through progressive elimination of tariffs and non-tariff barriers, and progressive liberalization of trade in services and investment. The Agreement on Trade in Goods was signed in November 2004. The first package of tariff reductions, covering 40% of tariff lines, was implemented on 1 July 2005; products covered by the "early harvest package", implemented on 1 January 2004, include live animals, meat, fish, dairy produce, other animal products, live trees, vegetables, fruit, and nuts. The ASEAN-China Services Agreement was signed in 2006 and entered into force on 1 July 2007. An ASEAN-Korea Agreement was signed in August 2006 and entered into force on 1 June 2007.

(b) BIMP-EAGA

32. The Brunei-Indonesia-Malaysia-Philippines East Asian Growth Area (BIMP-EAGA), formed in 1994, aims to increase economic cooperation, trade, investment, and tourism among participating economies in the sub-region.<sup>13</sup> BIMP-EAGA currently has four priority areas of cooperation: transport, infrastructure, and ICT development; natural resource development; joint tourism development; and SME development. Brunei is the designated lead country in transport and oversees a number of working groups dealing with air linkages, sea linkages, and construction and construction materials and ICT.

33. The third BIMP-EAGA summit, held on the sidelines of the main ASEAN summit in January 2007 in the Philippines, concluded that efforts at economic integration were beginning to bear fruit and that faster growth in the region was likely over the medium term. During the summit, Brunei signed a memorandum of understanding (MoU) on air links with partner countries, which would allow fifth freedom traffic rights for passenger and cargo services in designated BIMP-EAGA points. According to the MoU, fifth freedom rights<sup>14</sup> for both passenger and cargo services are to be available between Brunei's Bandar Seri Begawan airport and those of Balikpapan Sepinggan and Ponitanak Supadio in Indonesia, Davao and Zamboanga in the Philippines and Kota Kinabalu and Kuching in eastern Malaysia. The agreement is expected to reduce travel time in the region and boost trade and tourism links. A number of other measures were also agreed to simplify customs and immigration procedures in the region.

(c) APEC

34. Brunei is a member of the Asia-Pacific Economic Cooperation (APEC) forum, which has been instrumental in advancing regional and global trade and investment liberalization since it was founded in 1989. The 21 APEC economies collectively account for 46% of world trade and 57% of global GDP. In 2005, they undertook a review of progress towards the 1994 "Bogor Goals" of free and open trade and investment in the APEC region by 2010 for industrialized economies and by 2020 for developing countries. The review concluded that significant work was needed, including: redoubling efforts to advance the DDA negotiations; promoting high-quality FTAs; and improving the regional business environment.

<sup>13</sup> Brunei Darussalam, the Indonesian provinces of Kalimantan, Sulawesi, Maluku and Irian Jaya; Sabah, Sarawak and the Federal territory Labuan in Malaysia; and Mindanao and Palawan in the Philippines. EAGA covers a land area of 1.54 million sq. km and 57 million people.

<sup>14</sup> Fifth freedom rights allow airlines based in one country to operate services between airports in two other countries.

35. Brunei has played an active role in advancing APEC's efforts to move towards the Bogor goals and to reduce the digital divide in the region with the aim of enabling individual or community-based access to Internet information and services by 2010.

36. To promote liberalization, each APEC member adopts a unilateral liberalization plan or Individual Action Plan (IAP). The IAPs can be implemented according to each economy's domestic policy objectives and are reviewed periodically by all APEC Members in the context of achieving the Bogor targets. The 2005 peer review of Brunei focused on a number of areas in which progress and best practices towards the achievement of the Bogor Goals were considered<sup>15</sup>: tariffs<sup>16</sup>, NTMs, services, investment, customs, IPRs, government procurement, standards and competition policy. The peer review noted that Brunei maintains low overall tariff rates and no quantitative restrictions, although non-transparent practices exist in some areas, for example quarantine and inspection. In services, the Government remains in a dominant position and maintains entry restrictions in several areas, including telecommunications. Brunei is considered to have a very progressive investment regime, which has facilitated inflows of FDI and thus national development.

(d) Trans-Pacific SEP

37. The Trans-Pacific Strategic Economic Partnership Agreement<sup>17</sup> (Trans-Pacific SEP), between Brunei, Chile, New Zealand, and Singapore, was announced on 3 June 2005, on the sidelines of an APEC Ministers meeting in Korea (Box II.1). As part of the overall package, ministers also announced the conclusion of negotiations on a binding Environment Cooperation Agreement<sup>18</sup>, and a binding labour Cooperation MoU. The Agreement was first launched in October 2002 and Brunei asked to join the negotiations as a founding member before the final round in April 2005. The Agreement entered into force for Brunei on 12 July 2006, on terms that allow it to implement some of its commitments progressively by 2008.

38. The Trans-Pacific SEP will encourage Brunei Darussalam, Chile, Singapore, and New Zealand to pool their expertise, ideas, technology, and resources to improve their competitiveness in the global market. It will also help advance shared objectives in APEC and the WTO. Key elements comprise: a comprehensive agreement on trade in goods, whereby more than 90% of total trade among the four parties will be duty free on implementation; trade facilitation, aimed at reducing transaction costs relating to sanitary and phytosanitary measures, standards and conformance, and customs procedures; a liberalizing framework that will encourage trade in services (negotiations between Brunei and the other parties on its services specific commitments are expected to conclude in 2008); a commitment to ensure that companies from the other parties compete on an equal footing with domestic suppliers for government procurement contracts, above certain thresholds; cooperation on competition and intellectual property rights; and the provision of a framework for collaboration in strategic areas, such as innovation, and research and development.

(e) Asia Cooperation Dialogue (ACD)

39. Established in 2002, ACD is a forum of 30 member countries designed to consolidate Asia's competitiveness and strengths through cooperation in a number of areas, including: energy,

<sup>15</sup> APEC (2005).

<sup>16</sup> For tariffs, see APEC-IAP online information. Viewed at: [http://www.apec-iap.org/document/BD\\_2006\\_Tariffs.pdf](http://www.apec-iap.org/document/BD_2006_Tariffs.pdf).

<sup>17</sup> Notified by the parties to the WTO Committee on Regional Trade Agreements in document WT/REG229/N/1 dated 21 May 2007.

<sup>18</sup> During 2006, for example, New Zealand ran a workshop for Brunei government officials on conducting environmental impact assessments.

agriculture, transport linkages, biotechnology, standards, IT development, tourism, finance, human resource development, and environmental education.<sup>19</sup>

#### **Box II.1: Trans-Pacific Strategic Economic Partnership**

##### **1. Overview**

The Trans-Pacific SEP is to liberalize and facilitate trade in goods and services, improve the business environment, and promote cooperation on a broad range of economic areas of mutual interest to its parties, which have undertaken to remove all tariffs on traded goods over time. The Trans-Pacific SEP also includes broad coverage of services, which will make it easier for service providers to operate in Trans-Pacific SEP markets.

Measures relating to customs procedures, sanitary and phytosanitary procedures, technical barriers to trade, intellectual property, and competition policy are designed to reduce barriers to doing business. The agreement establishes dispute settlement mechanisms and protection to preserve governments' domestic regulatory and policy-making flexibility. It also establishes a framework for expanding the membership, through scheduled reviews and cooperation.

##### **2. Goods**

On entry into force, Brunei Darussalam has undertaken to ensure all tariffs currently at zero will be held at zero. Products include: dairy products, seafood products, fruit and vegetables, and meat products. Its remaining tariffs will be eliminated in three stages, in 2010 (forestry products), 2012 (some machinery) and 2015 (vehicles and vehicle parts, and remaining machinery). A short list of products (alcohol, tobacco, and firearms) is excluded, for the time being, from Brunei Darussalam's tariff elimination schedule for moral, human health, and security reasons. The list is set out in a 'side letter' to the Trans-Pacific SEP, which is available at: [www.mfat.govt.nz/tradeagreements/transpacepa/transpacsepagreement.html](http://www.mfat.govt.nz/tradeagreements/transpacepa/transpacsepagreement.html). There are to be further discussions about how these products will be accommodated under the Trans-Pacific SEP.

##### **3. Services**

Under the agreed conditions for entry, Brunei Darussalam will have two years from entry into force of the Trans-Pacific SEP to negotiate its services schedule. Until it has completed these negotiations it will not benefit from the other parties' commitments in services. For temporary entry, each country has reaffirmed its commitments under the GATS relating to the movement of businesspeople. These are listed in their individual GATS schedules and set out conditions for the entry of mainly intra-corporate transferees including senior and specialized personnel.

##### **4. Government procurement**

The Trans-Pacific SEP applies to procurement by specific government agencies (listed in Annex 10.A of the Trans-Pacific SEP) for contracts valued above specified thresholds. Brunei has been granted a special threshold: on completion of its schedule, the provisions will apply only for tenders of goods and services above B\$250,000. Brunei has been given two years in which to negotiate its government procurement schedule. Until it has completed these negotiations it will not benefit from the other parties' commitments in government procurement.

*Source:* New Zealand Ministry of Foreign Affairs and Trade, *Trans-Pacific SEP Booklet*, October 2006. Viewed at: <http://www.mfat.govt.nz/downloads/trade-agreement/transpacific/trans-pacificbooklet.pdf>.

<sup>19</sup> The members are: Bahrain, Bangladesh, Brunei Darussalam, Bhutan, Cambodia, China, India, Indonesia, Iran, Japan, Kazakhstan, South Korea, Kuwait, Laos, Malaysia, Mongolia, Myanmar, Pakistan, Philippines, Oman, Qatar, Russia, Saudi Arabia, Singapore, Sri Lanka, Thailand, Tajikistan, UAE, Uzbekistan, and Viet Nam.

**(iii) Bilateral agreements**

40. In December 2002, Brunei and the United States signed a Trade and Investment Framework Agreement (TIFA) to enhance bilateral trade and investment liberalization in such areas as intellectual property, information and communication technology, biotechnology and eco-tourism, aquaculture, and halal products. It also includes consultations on the elements of a possible free-trade agreement. The TIFA was a product of the "Enterprise for ASEAN Initiative" announced by the United States in October 2002, aimed at strengthening ties between the United States and ASEAN countries.

41. In December 2006, Japan and Brunei announced an agreement in principle to negotiate a free-trade agreement in the first half of 2007 to enhance cooperation in energy, human resources development, and capacity building. The Brunei-Japan Economic Partnership Agreement (BJEPA) was signed on 18 June 2007, to facilitate the free flow of goods, services, and investment. The agreement is also aimed at improving the overall business environment of both countries, and enhancing cooperation in fields including energy, human resource development, and science and technology. Brunei's exports to Japan consist almost entirely of oil and natural gas, while its imports from Japan are mainly cars and automotive parts. Brunei has undertaken to eliminate import tariffs on Japan's automotive products by 2010. The agreement covers trade in goods and services, customs procedures, investment, government procurement, intellectual property protection, and competition policy.

42. According to the authorities, regular consultations between Brunei Darussalam and Pakistan are being held with the objective of further strengthening trade ties. A Brunei Darussalam-Pakistan Joint Study Group, initiated in 2005, held its first meeting in November 2006 in Pakistan, and subsequently in August 2007 in Brunei Darussalam.

**(4) FOREIGN INVESTMENT REGIME**

43. The authorities state that foreign investment is open except in restricted sectors in which the Government is the major provider of services, such as the mass media, telecommunications, posts, energy and utilities. Other restricted activities are banking, arms and ammunition, retail businesses, petrol stations, and manufacture and sales of liquor. According to the type of industry and particular situation, full, majority or minority foreign ownership is allowed. Only activities relating to national food security and those based on local natural resources require local participation. Brunei does not restrict the repatriation of capital and there are no restrictions on the remittance of profits (e.g. dividends) or royalties from investments. Brunei allows recruitment of foreign workers ranging from labourers to executive managers in areas in which the supply of local workers is insufficient.

**(i) Legislative and institutional framework and investment procedures**

44. The basic legislation on investment, the Investment Incentives Order 2001, replaced the Investment Incentives Act (chapter 97), and the authority to administer the legislation was transferred from the Ministry of Finance to the Ministry of Industry and Primary Resources. Its main objectives are to promote the diversification of Brunei's economic activities by providing tax-based incentives to promoted activities; and to encourage investment and reinvestment activities to upgrade technology, undertake research and development, increase production capacities. Foreigners may be allowed to hold up to 100% of the equity in certain industries and activities in which the Government wishes to encourage investment (Table AII.2). Foreign nationals are generally not permitted to own land (of

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which 95% is estimated to be owned by the State), but may lease land for industrial purposes, agriculture, forestry, and aquaculture on a long-term basis.<sup>20</sup>

45. The Government of Brunei has established several agencies to promote foreign direct investment (FDI), which it hopes will become an important driver of growth in the local economy. The Ministry of Foreign Affairs and Trade is involved with national agencies, including MIPR and JPKE, in formulating national investment policies and monitoring developments nationally and regionally with a view to improving the investment climate of Brunei. The Brunei International Financial Centre (BIFC), under the Ministry of Finance, also aims to attract investment to the financial sector. In addition, the Brunei Industrial Development Authority (BINA), under the Ministry of Industry & Primary Resources, coordinates all industrial development activities and liaises with other agencies to expedite applications for those requiring Government facilities and assistance. The BINA has developed several industrial parks near the Muara Port and in other parts of Brunei, with infrastructure to facilitate small and medium-sized enterprises.

46. Other significant legislation on domestic and foreign investment is the Economic Development Board (Amendment) Order 2001, which restructured the EDB as an autonomous statutory body tasked with promoting inward and outward investment. The Brunei Economic Development Board (BEDB), formed in 2001, aims to attract FDI and promote joint ventures so as to further diversify Brunei's economy and create employment opportunities for its people (Box II.2). The BEDB coordinates with relevant ministries and agencies to maximize the benefits generated by both local and foreign direct investment. The BEDB proposed a five-year US\$4.5 billion infrastructure development strategy in January 2003, which could offer foreign firms significant technical, construction, and expansion opportunities. Specifically, the plans include a US\$3 billion industrial site at Sungai Liang and a US\$1.5 billion Mega port at Pulau Muara. The proposed industrial site includes a US\$400 million power plant, relying on the Sultanate's natural gas resources, an aluminium smelter and downstream projects, as well as a port, free-trade zone, and supporting infrastructure. The Government of Brunei is in various stages of negotiation with investors on those projects.<sup>21</sup>

47. Additionally, the BEDB announced significant incentives and loans to encourage other investment projects from abroad. International consultancies have confirmed the growth potential for hospitality and tourism, focusing on eco-tourism, sports and medical tourism; financial services, aiming at high-end, niche investment management services and asset fund management; transportation and logistics primarily focusing on aircraft maintenance services; and business services, concentrating on software development and business process outsourcing.

48. The Ministry of Industry and Primary Resources is the main coordinating agency for investment and industrial development in the primary sector, manufacturing, and tourism. The Ministry encourages and helps local and foreign investors to participate in ventures to produce goods and services for export and local markets and to satisfy national food security and employment needs.

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<sup>20</sup> Based on the Land Code, foreign nationals are permitted to own land only with the consent of the Sultan.

<sup>21</sup> In 2006, the Brunei Methanol Company Sdn.Bhd (BMC), a joint venture between Mitsubishi Gas Chemical Company and Itochu Corporation of Japan, and Petroleum BRUNEI, began construction of a methanol plant at Sungai, targeting full commercial operation by 2010 and anticipating employment of 120 people, involving an investment of US\$400 million. Under discussion are plants for ammonia/urea production, an aluminium smelter, a plant for biodiesel production, and a container terminal.

The Ministry is aware of the importance of a clear timeframe and decision making process with respect to investment approvals.<sup>22</sup>

**Box II.2: Brunei Economic Development Board's economic diversification strategy**

The Brunei Economic Development Board's (BEDB) economic diversification strategy is designed to create long-term business and employment opportunities for Bruneians. It is currently focusing on developing downstream oil and gas industries, particularly on its Sungai Liang Industrial Park (SPARK) and planning the development of a globally competitive port on Pulau Muara Besar, supported by an export processing zone for logistics, distribution and light to medium manufacturing industries. In addition to industrial site development, in 2003 the BEDB sponsored a study to identify industry clusters with the potential for growth. Subsequently, four industry clusters were prioritized: transportation and logistics; business services; financial services; and hospitality and tourism. The BEDB collaborates with various lead agencies to develop these clusters.

The BEDB's main objectives are to: stimulate the growth and development of the economy by promoting Brunei Darussalam as an investment destination; develop plans to attract foreign and local investment in industries and skill-intensive services that enjoy good export-market prospects; promote and assist in the development of industrial activities; encourage foreign and local industries to invest in new technology, automation, training, research, and product development activities; and support the development of local entrepreneurs and SMEs.

The general criteria for evaluation of investment projects are: sustainability, prospects of industrial spin-off and businesses opportunities for domestic SMEs, potential to create employment opportunities and fit with the national economic development plan. In keeping with its efforts to ensure real and sustainable benefits are derived from investments, investors enter into a Cooperation Agreement with the BEDB. In signing the agreement, the BEDB helps the investor in securing incentives, utilities, and infrastructure. The investor commits to agreed quantifiable and qualitative undertakings on a best endeavours basis in such areas as employment, transfer of technology, local participation, promotion of local SMEs, spin-offs, and community development.

*Source:* Authorities of Brunei Darussalam.

**(ii) Incentives**

49. In January 2001, the Sultan issued the Investment Incentives Order 2001 and the Income Tax Act (Amendment) Order 2001, which contained reforms designed to stimulate investment. The first made application for tax incentives simpler for corporations and the second broadened the tax incentives. The Investment Incentives Order 2001 provides for a number of incentives, mainly in the form of tax exemptions for companies that have been granted "Pioneer Status" and for the expansion of established enterprises. Administration of the legislation is under the Minister of Industry and Primary Resources. Longer corporate tax relief periods are provided to promote the establishment of industries; the emphasis is on pioneer enterprises, including high-technology industries, export-oriented manufacturing and services, research and development, transhipment, and activities that support the introduction of new technology into Brunei Darussalam. Any limited company with a Pioneer Status Certificate will be granted an exemption from corporate income tax (normally levied at a rate of 30%), for between two and five years depending on the level of investment on capital assets. The exemption begins on the first day of production and may be extended to 20 years. Pioneer Status companies are also exempted from customs duty on plant, machinery, and equipment for their premises, and on raw materials that are not available in Brunei and are to be used in the production of the pioneer products. Tax incentives are also provided for the expansion of an enterprise already established in Brunei.

<sup>22</sup> Ministry of Industry and Primary Resources (2006), p. 34.

**(iii) Bilateral investment treaties and double taxation agreements**

50. During the period under review, Brunei has concluded bilateral investment treaties with France, Bahrain, India, and Iran; they will be signed once approval by the Government is obtained. Double taxation agreements (DTAs) have been signed with China, Singapore, and Laos; a number of other DTAs have been concluded (with Thailand, Pakistan, Oman, Viet Nam, and the Philippines) and await signature pending approval.

**(5) AID FOR TRADE**

51. Brunei continues to face significant human resource and capacity challenges that limit its responsiveness at the multilateral level and affect the pace of implementation of its WTO obligations. New obligations for implementation arising out of the DDA may further challenge already stretched resources. Support from the international community could assist Brunei in achieving greater integration into the multilateral trading system. Two prominent areas in this regard are standards/SPS measures and intellectual property protection. Brunei could benefit from technical assistance to help develop its resources and establish appropriate standard institutions. Officials involved in the development of national standards, for example, could benefit from improved training, monitoring, and surveillance capacity, and performance in the area of notifications in both TBT and SPS matters. On TRIPS, while Brunei has enacted much of the legislation necessary to be fully compliant with the Agreement, lack of administrative capacity in a number of IPR-related areas is a major obstacle to implementation. Additional training on TRIPS and on the administration of IP legislation, including the development bodies to deal with IPR issues, and enforcement issues would be beneficial.