

III. TRADE POLICIES AND PRACTICES BY MEASURE

(1) OVERVIEW

1. Since its previous Trade Policy Review in 2001, Brunei has, by and large, maintained a relatively open trading system. It has continued to reduce its already low tariff rates under ASEAN and more recent preferential agreements, although imports of a few products are still subject to non-tariff restrictions.

2. Brunei's applied MFN tariffs average 4.8% in 2007: zero for agriculture and 5.4% for non-agricultural products, and they range from 0% to 30%. Almost 99% of tariff lines are subject to *ad valorem* rates; 131 carry specific rates of duty, mainly on matches, cigarettes, coffee, tea, and petroleum oils and lubricants. As they tend to conceal relatively high *ad valorem* equivalents, estimates of which were not available, it is likely the inclusion of these specific duties in the tariff average would raise Brunei's overall level of tariff protection. Brunei has bound nearly 93% of its tariff lines at the WTO and, while the average applied tariff rate is low, the average bound rate is 25.8%, leaving a large gap between the applied and bound rates. This gap can bring about uncertainty for traders and other economic agents as it provides scope for the authorities to raise applied tariffs. Brunei has not made use of this during the period under review.

3. Brunei has continued to reduce its preferential tariff rates on products included under the ASEAN CEPT. Overall, Brunei's average CEPT tariff rate is 2.4%, half of the average applied MFN rate. Differences between the CEPT and MFN tariffs exist mainly in plastic and rubber products, machinery, transport equipment, and precision instruments. As a result of the Trans-Pacific SEP Agreement (with Chile, New Zealand, and Singapore), Brunei will bind its current MFN applied zero rates at zero and eliminate all the tariffs that it applies to other products by 2015 except for a short list of products, such as alcohol, tobacco, and firearms, which it seeks to exempt on moral, human health, and security grounds. Under the Brunei-Japan EPA, due to enter into force in 2007, Brunei is committed to eliminating tariffs on a range of products, including Japanese automobiles and auto parts, on which the rate is currently set at 20%.

4. Although Brunei's tariff barriers are relatively low, a number of import prohibitions, restrictions, and licensing requirements for health, security, and moral reasons have remained in place during the review period. In addition, a few products (e.g. rice, sugar) are still subject to export restrictions, mainly for security of domestic supply; restrictions are maintained on timber for environmental reasons. There are no mandatory standards (technical regulations) in Brunei; there are 41 voluntary standards relating to construction, and one in the food sector. There is still no national body for setting standards in Brunei; the Construction Planning and Research Unit, based in the Ministry of Development, coordinates for standards and conformity assessment activities.

5. Government procurement remains an important instrument of economic policy, and government construction activities, in particular, play a major part not only in the construction industry, but in the economy as a whole. Brunei is not a signatory to the WTO Government Procurement Agreement.

6. Brunei continues to use extensive tax and other incentives to encourage investment in priority sectors and production for export. In the absence of personal and value-added taxes, the corporate tax remains a leading instrument of industrial policy, offering tax exemptions for up to eight years for companies investing in a broad range of activities under the pioneer status programme; these exemptions are aimed at developing small and medium-sized enterprises (SMEs), which make up nearly 95% of enterprises in Brunei. Various National Development Plans, including the 8th, which

covered the period 2001-05, have attempted to increase the diversification of the economy, the key to Brunei's medium-term growth prospects. However, despite the use of tax and non-tax incentives (whose cost-effectiveness is questionable), the non-oil, SME-dominated private sector remains embryonic and largely dependent on government spending on construction and services.

7. To protect consumers, price controls are maintained on a number of products, including rice, sugar, motor vehicles, and cigarettes. There is no specific legislation on competition, although Brunei is exploring the possibility of introducing one in line with APEC principles; efforts have been undertaken to increase competition through deregulation and corporatization in certain sectors, such as telecommunications. Brunei does not have its own tradeable stock exchange, and there is no specialized corporate governance code or takeover code.

8. Brunei has strengthened its legal framework for IPR protection and is considering accession to the WIPO Copyright Treaty and Performances and Phonograms Treaty, which address copyrighted works in a digital environment. However, it still needs to implement its Patent Order (which dates from 1999) in order to provide patent protection for, *inter alia*, pharmaceutical and agricultural products and processes. Brunei does not appear to have a strong track record in IPR enforcement, partly due to a lack of capacity, and would benefit from targeted technical assistance on TRIPS.

(2) MEASURES DIRECTLY AFFECTING IMPORTS

(i) Customs procedures

9. During the period under review, Brunei Customs has introduced a several improvements in its procedures, in line with APEC trade facilitation guidelines as outlined in Table III.1. Brunei has amended legislation and streamlined administrative practices in order to, *inter alia*: harmonize its tariff nomenclature; make customs-related information more readily available to traders and the public; align its laws with the WTO agreements on customs valuation and intellectual property protection; improve its appeal procedures and advance tariff classification ruling systems; provide facilities for temporary importation; introduce risk-management techniques; introduce the green channel/red channel mechanism for cargo into the Customs Order 2006; raise the level of integrity in customs administration; and enhance computerization by adopting the UN/EDIFACT¹ standard and reducing the requirement for paper documents. Also, Brunei is working with other ASEAN members to develop and put into operation by 2008 its national single window to facilitate customs documentation procedures, cargo release, and clearance.²

10. According to the authorities, several phases of the e-government initiative have been completed and others are in progress. The aim of the initiative is to provide an infrastructure using IT as a platform for paperless transactions. The Customs and Excise Department now accepts declarations using electronic media and is participating in the ASEAN single window project.

11. All imports into Brunei must be accompanied by: a bill of lading/delivery order or airway bill; packing list; commercial invoice, and at least three copies of the customs declaration form, which must include the number and description of packages; marks and numbers of individual packages; detailed description of the goods being imported; gross and net weights or quantities of

¹ The UN/EDIFACT (United Nations rules for Electronic Data Interchange for Administration, Commerce and Transport) comprise a set of standards, directories, and guidelines for the electronic interchange of structured data, and in particular that relate to trade in goods or services, between independent computerized information systems.

² WTO document TN/TF/W/105, 26 May 2006, "Experience on the Development of the ASEAN Single Window".

packages; value (f.o.b. and c.i.f.); place of shipment and destination; and country of origin. The invoice must be signed by the exporter or seller. If applicable, an exemption of duty determination issued by the Economic Development Board and a certificate of origin may be requested.

Table III.1

Main APEC guidelines on customs procedures and actions taken by Brunei since 2001

APEC guideline ^a	Actions taken by Brunei
Greater public availability of information, including implementation of APEC Leaders' Transparency Standards on Customs Procedures (2002 Statement of Los Cabos, Mexico)	<ul style="list-style-type: none"> - Brunei Darussalam Customs continue to update information on customs website, that will include Customs Laws, tariff and procedures, which are currently available to public. Announcement of changes with regard to customs procedures is made through customs circulars and briefings to importers and forwarders. A hotline was also provided to enable the public to lodge any complaint related to illegal activities or contraband to Customs. - In 2004, some of the information related to customs procedures made available through the ASEAN customs website (http://www.asean.or.id/economic/customs/info_brunei.htm). Legislation and most of the procedures available on a hard copy.
Alignment with UN/EDIFACT International Standards for Electronic Commerce/Paperless Trading	<ul style="list-style-type: none"> - Brunei Darussalam introduced computerization and information system known as Customs Information Control System (CCIS). The main function of the system is the processing of customs import/export declarations at the major entry points/customs office. By 2001, the network system of the CCIS expanded to nearly all customs entry points. - Finalizing the Department's IS/IT Plan 2004-2009 for the implementation of e-Government, which include the following: <ul style="list-style-type: none"> - Submission of importer/exporter data (customs declaration) electronically; - Submission of manifest information electronically; - Exchange of information electronically with other government agencies; - Online payment; and - Development of web-services portal (i.e. online application for permits, drawbacks, registrations etc.).
Implementation of Clear Appeals Provisions	<ul style="list-style-type: none"> - The appeal provision is contained in the Brunei Darussalam Customs Act 1984, in which any person aggrieved by Controller's decision except specifically provided that such decision is at the absolute discretion of the Controller, may appeal therefrom to the Minister of Finance whose decision shall be final. - Brunei Darussalam will review its current appeal provision in order to conform to the international practice.
Alignment with WTO Valuation Agreement	<ul style="list-style-type: none"> - Brunei Darussalam implemented the WTO Valuation Agreement in September 2001 after the five-year delay permitted by the WTO. - The Customs (Amendment) Order, 2001 came into force on 1 September 2001 and inserted a new definition of customs value into Customs Act and provided for the keeping of business record. The audit and examination of records, conditions for entry into buildings, the retention of documents obtained during a search and seized documents subjects to court order and proceedings. At the same time the Customs (Valuation of Imported Goods) Rules, 2001 took effect. These Rules applied the WTO Valuation Agreement as the method for valuing imported goods (on the c.i.f. basis).
Provision of Temporary Importation Facilities (APEC economies will provide facilities for temporary importation, by taking such action as acceding, where appropriate, to the Customs Convention on the A.T.A. Carnet for the Temporary Admission of Goods (the A.T.A. Convention))	<ul style="list-style-type: none"> - Brunei Customs is in the process of updating the current facilitation to align with the international practices on temporary importation. Efforts have also been made to study A.T.A. Carnet and Temporary Import Provisions and the legal aspects from the member APEC economies. - Goods for trade sample, exhibition and demonstration are allowed for temporary importation without payment of duty on condition that they are to be re-exported within six months from the date of importation and they must be covered by a Customs Import Declaration. If the goods are not re-exported after the expiry date of the permission granted, duty will become payable. A security deposit is required to cover the potential customs duty on the goods temporarily imported.

Table III.1 (cont'd)

APEC guideline ^a	Actions taken by Brunei
Implementation of an Advance Classification Ruling System	<ul style="list-style-type: none"> - Brunei Darussalam received technical assistance on ACR in June 2000 by experts from Korea and New Zealand. The Committee on Customs Procedures is in the process of drafting legislation. Standard application forms for customs ruling on customs tariff and classification will be introduced for use by applicants requesting tariff and classification. - The Customs Matters Section is responsible for the determination of customs tariff and classification and it is subject to request. Under the provisions of the Customs Act 1984, Brunei Customs Administration provides facilitation upon request either by writing or phone for the determination of tariff and classification.
Implementation of Harmonized System Convention	<ul style="list-style-type: none"> - Brunei Customs Administration implemented HS 2002 version. In 1996, the HS Committee was set up to incorporate current version with the national tariff into the HS version 2002. Brunei Darussalam is not a contracting party to the HS Convention. - In line with the commitment to ASEAN on the HS Convention, Brunei Customs Administration is incorporating the HS version 2002 to ASEAN Harmonized Tariff Nomenclature (AHTN 2004).
Adoption of Systematic Risk Management Techniques (to allow customs administrations to facilitate trade and travel while maintaining high-level border control)	<ul style="list-style-type: none"> - All cargoes are subject to customs examination ranging from 10% to 100%. Passengers and their belonging are subject to random inspection (10% to 100% is still applied in the course of conducting the examination). - Brunei Darussalam Customs is in the process of studying the Risk Management Techniques through training and seminar attended by officer internals or overseas. An Ad Hoc Committee has been set up to study legal aspects and requirements of Risk Management Techniques. - Brunei Darussalam introduced Red and Green Channels at the International Airport.
Integrity	<ul style="list-style-type: none"> - Brunei Darussalam customs officers are subject to the Public Service Commission Act to uphold integrity among public servants (including customs officers) "11 Principal Work Ethic" introduced by the Public Service Department and "Code of Conduct and Rules of Ethics" introduced to customs officers and customs personal. - A Discipline Committee has been set up with the objectives among others, to deal with integrity of customs officials and penalties for non-compliance.

a APEC economies have agreed to facilitate trade in the Asia-Pacific region by: (a) Simplifying and harmonizing customs procedures; (b) Encouraging the use of technologies and e-commerce as productivity tools in keeping with developments of the new economy; and (c) Enhancing cross-border cooperation in the movement of goods and services to counter terrorism.

Source: APEC (2006), Brunei's Individual Action Plan 2006. Viewed at: http://www.apec-iap.org/document/BD_2006_Customs_Procedures.pdf.

12. Importers must register with the port of entry. Import permits are required for some products, including plants, animals, birds, fish, salt, sugar, rice, drugs, gambling machines, and used motor vehicle. These are available from the relevant government ministries and departments. In some cases, including for plants, animals and animal products, birds, and fish, import licences must be accompanied by sanitary or phytosanitary certificates from the exporting country. All other goods, unless prohibited, can be imported under open general licences.

13. Customs decisions may be appealed under section 153 of the Customs Order 2006. Authority for all customs decisions lies with the Controller of Customs; unless it is specifically stated that such decisions may only be made at the absolute discretion of the Controller, appeals may be made to the Minister, whose decision is final.

14. Brunei notified the WTO in 1995 that it has no laws pertaining to pre-shipment inspection. To date, no companies have provided pre-shipment inspection services in Brunei.

(ii) Customs valuation and rules of origin

(a) Customs valuation

15. Brunei made use of the transitional measure under Article VII of the GATT 1994, which gave developing countries the right to delay application of this Article. At the end of the transition period,

Brunei informed the WTO that the legislation on customs valuation had been gazetted and implemented and, with effect from 1 September 2001, the Customs and Excise Department would officially apply the Customs Valuation Code as contained in the Customs (Valuation of Imported Goods) Rules 2001 and amendments made to the Customs Act (Cap. 36) as contained in the Customs Order 2006.³

(b) Rules of origin

16. According to the authorities, there are no laws, regulations or administrative rulings on non-preferential rules of origin. Preferential rules of origin are applied under various preferential trading arrangements, notably ASEAN, the Trans-Pacific SEP and the Brunei-Japan EPA.

17. Under the ASEAN CEPT local-content requirement a product is considered as originating from an ASEAN member country if at least 40% of the f.o.b. price of the finished good originates from any member country. The requirement refers to both single country and cumulative ASEAN content. There are also alternative substantial transformation rules, including: process criterion for textiles and textile products; change in chapter for wheat flour; change of tariff sub-heading for wood-based products; change in tariff classification for certain aluminium products. Tariff preferences under the CEPT scheme depend on certain conditions: the product must be in the CEPT inclusion list of both the importing and exporting countries and must have a CEPT tariff of 20% or below; and the product must meet the local-content requirement of 40% or alternative substantial transformation rules.

18. Under the Trans-Pacific SEP, the rules of origin take into account where the goods are produced and what materials are used in their production, to ensure that only goods originating in the territory of one of the three other parties are entitled to preferential tariff treatment. Generally, the product-specific rules on eligible goods require substantial transformation in the territory of one of the parties, be i.e. a change in tariff classification (CTC) between the imported or non-originating materials and the end product. The CTC based on the HS classification requires the product to have a different HS chapter, 4-digit or 6-digit HS heading or subheading from the non-originating materials used in its production. For a limited range of products regional-value content (RVC) is required, based on the transaction value of the good; depending on the product-specific rules, minimum local-value content must be either 45% or 50% (for textiles, apparel and footwear). For imports into Brunei under the Trans-Pacific SEP, it appears that traders may opt for the rules of origin established under the AFTA.

(iii) Applied tariff

(a) Structure of the MFN tariff

19. Brunei adopted the Harmonized Description and Coding System (HS) in 1992 although it is not a contracting party to the Convention. Import duties are assessed on the basis of c.i.f. value. In 2001, at the beginning of the review period, Brunei's applied MFN tariff was based on the 9-digit HS 96 nomenclature, consisting of 6,503 tariff lines ranging from 0% to 200%. The 2004, 2006, and 2007 tariff schedules are based on the 8-digit HS02 nomenclature consisting of 10,689 tariff lines, ranging from 0% to 30%. According to the authorities, this change in nomenclature has not resulted in any tariff rates exceeding bindings. Around 98.8% of the tariff is subject to *ad valorem* rates while 131 lines carry specific rates.

³The Customs Act (Cap. 36) was repealed by the Customs Order 2006, which entered into force on 4 March 2006.

20. As information was not available on *ad valorem* equivalents for the specific rates, the 131 lines, which cover mainly cigarettes, alcoholic beverages, coffee, tea, petroleum oils, and lubricants, are not included in the tariff analysis in this report. *Ad valorem* equivalents of specific rates tend to be high and are often used to conceal high rates of tariff. According to the authorities, the preference for specific rates for these products is based on their high rates of smuggling; the specific rate is also considered to be administratively simpler for collecting duty. Although the customs tariff is levied on a relatively small number of tariff lines, it accounted for around 3.6% of total tax revenue in 2006⁴, from 4% in 2001. For most of the tariff lines with specific rates, the authorities indicated that there are no or very few imports; this may be because they are prohibitively high in *ad valorem* terms.

21. In 2007, the simple average MFN tariff was 4.8%⁵, zero for agricultural products (both HS 1-24 and under the WTO definition of agriculture) and 5.4% for industrial/non-agricultural products. Tariff rates range from zero for several agricultural products to 30% for hair preparations and fireworks (6 lines in all in the 30% band). In general, basic foodstuffs and goods for industrial use are exempted from import duties as are computers and related products. There are six tariff bands: duty free, 5%, 10%, 15%, 20% and 30% (Chart III.1). The majority of tariff lines (68.1%) are zero rated while 20.4% are subject to rates of 20%, including wood and wood products, boilers, machinery and mechanical appliances, electrical machinery and appliances, vehicles and vehicle parts (except for heavy vehicles, which are taxed at 15%) and precision instruments and apparatus (Table AIII.1). A significant number of tariff lines entail peaks; over 21% of tariff lines exceed three times the simple average MFN tariff, and 20.4% exceed 15% (Table III.2).

22. Although the overall average applied MFN tariff is low, escalation is particularly pronounced in wood and furniture, fabricated metal products and machinery and chemicals, providing relatively higher effective protection to these industries (Chart III.2). In the case of wood and furniture, the tariff on unprocessed and semi-processed products is considerably higher than for finished products; this de-escalation provides higher protection for producers of raw material and semi-processed goods in Brunei.

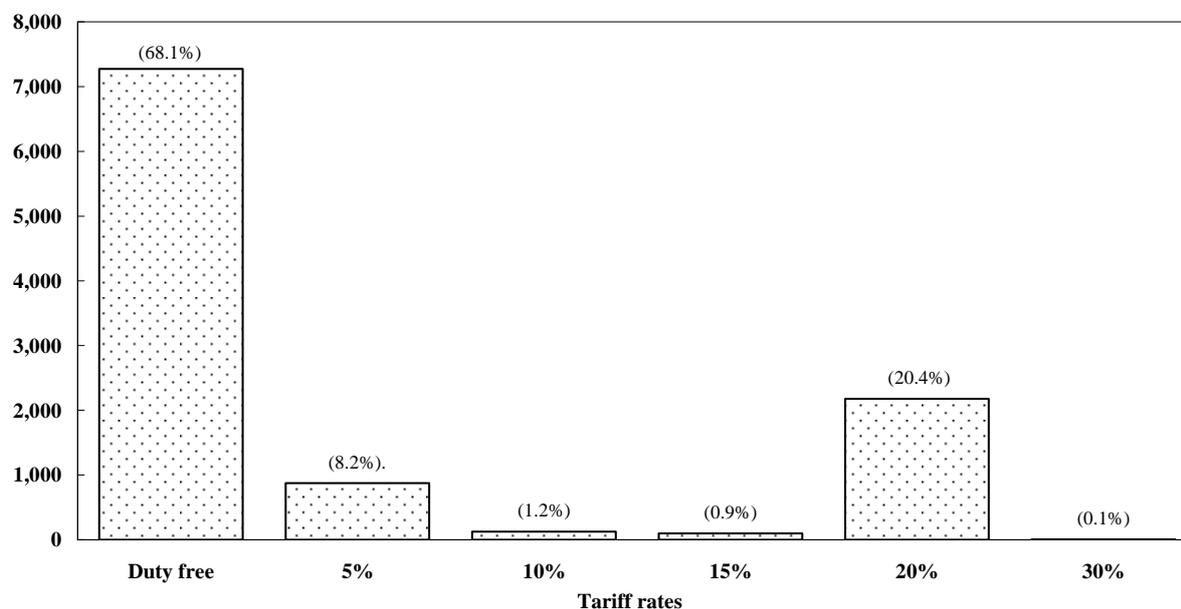
23. Brunei does not maintain any tariff quotas.

⁴ According to IMF figures, import taxes on international trade in 2005/06 amounted to B\$125 million, divided into motor vehicle tax (55mn), tobacco (25) and others (26).

⁵ As shown in Table III.2, there is a jump in the applied MFN average from 3.1% to 4.8% in 2004. According to analysis by the Secretariat, this may be explained by the difference in the total number of tariff lines: the schedules consisted of 6,503 and 10,689 tariff lines, respectively, for 2000 and 2004. Rates have not actually increased; on the contrary they have decreased, for example in the motor vehicle sector, but due to the splitting of lines (mainly where relatively high tariffs exist), averages have gone up. This can be illustrated by the example of HS chapter 44 (wood and wood products), which consisted of 71 tariff lines in 2000 of which 47 were at 20% (representing 66.2% of all 71 lines) and 24 lines at 0% (representing 33.8% of all lines). Since 2004, the same chapter consists of 235 lines, of which 198 are at 20% (representing 84.3% of all lines) and 37 are at 0% (representing 15.7%). The average tariff of chapter 44 rose from 13.2% in 2000 to 16.9% since 2004, as the share of lines at 20% is appreciably higher than in 2000. Other chapters tend to show the same pattern.

Chart III.1
Distribution of MFN tariff rates, 2007

Number of tariff lines



Note: Calculations exclude specific rates. Figures in parentheses denote the share of total lines.

Source: WTO Secretariat calculations, based on data provided by the authorities of Brunei Darussalam.

Table III.2
Brunei Darussalam's tariff structure, selected years
(Per cent)

	Applied MFN				Final bound rate ^a
	2000	2004	2006	2007	
1. Bound tariff lines (% of all tariff lines)	94.4	92.8	92.8	92.8	92.8
2. Simple average rate	3.1	4.8	4.8	4.8	25.8
Agricultural products (HS01-24)	0.0	0.0	0.0	0.0	23.4
Industrial products (HS25-97)	3.6	5.4	5.4	5.4	26.2
WTO agricultural products	0.0	0.0	0.0	0.0	23.5
WTO non-agricultural products	3.5	5.4	5.4	5.4	26.1
Textiles and clothing	0.5	0.8	0.8	0.8	27.4
3. Tariff quotas (% of all tariff lines)	0.0	0.0	0.0	0.0	0.0
4. Domestic tariff "peaks" (% of all tariff lines) ^b	12.7	21.3	21.3	21.3	0.0
5. International tariff "peaks" (% of all tariff lines) ^c	10.7	20.4	20.4	20.4	20.4
6. Overall standard deviation of tariff rates	9.4	8.1	8.1	8.1	8.7
7. Coefficient of variation of tariff rates	3.1	1.7	1.7	1.7	0.3
8. Duty-free tariff lines (% of all tariff lines)	79.0	68.1	68.1	68.1	0.0 ^d

Table III.2 (cont'd)

	Applied MFN				Final bound rate ^a
	2000	2004	2006	2007	
9. Non- <i>ad valorem</i> tariffs (% of all tariff lines)	1.4	1.2	1.2	1.2	0.4
10. Non- <i>ad valorem</i> tariffs with no AVEs (% of all tariff lines)	1.4	1.2	1.2	1.2	0.4
11. Nuisance applied rates (% of all tariff lines) ^e	0.0	0.0	0.0	0.0	0.0

a Based on 2007 tariff schedule. Implementation of the U.R. was reached in 1995. Calculations on bound averages are based on 9,924 bound tariff lines (representing 92.8% of total lines).

b Domestic tariff peaks are defined as those exceeding three times the overall simple average applied rate.

c International tariff peaks are defined as those exceeding 15%.

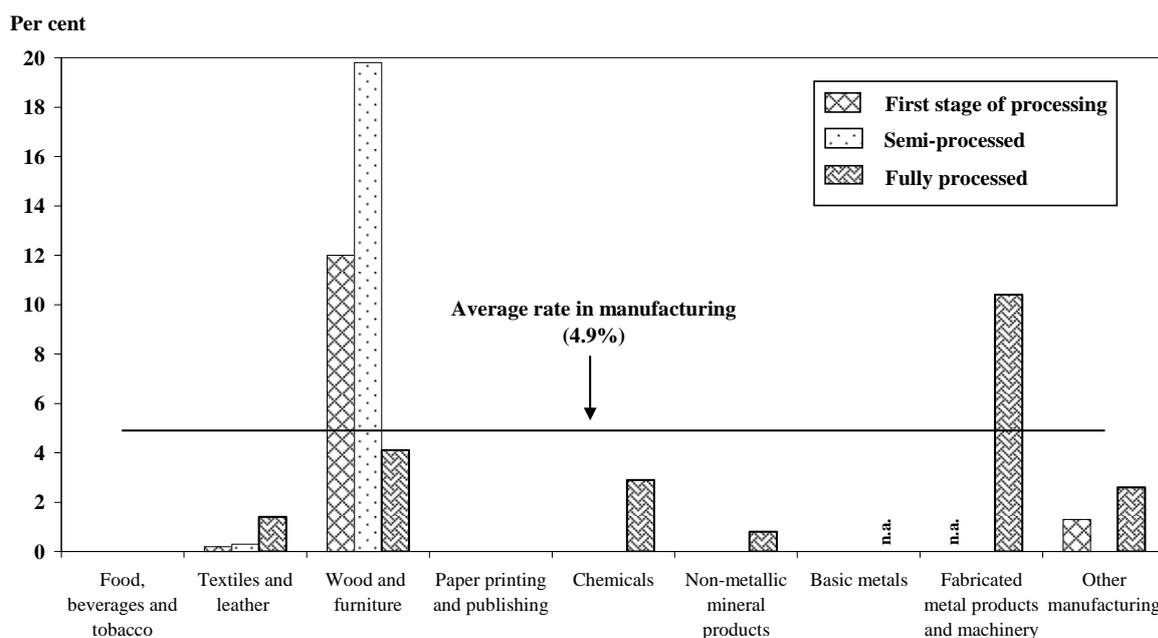
d Negligible. Only one tariff line is bound at zero.

e Nuisance rates are those greater than zero, but less than or equal to 2%.

Note: Excludes specific rates. The 2000 tariff schedule is based on 9-digit HS96 nomenclature consisting of 6,503 tariff lines (ranging from 0% to 200%); the 2004, 2006, and 2007 tariff schedules are based on 8-digit HS02 nomenclature consisting of 10,689 tariff lines (ranging from 0% to 30%).

Source: WTO calculations, based on data provided by the authorities of Brunei Darussalam.

Chart III.2
Tariff escalation by 2-digit ISIC industry, 2007



n.a. Not applicable.

Note: Calculations exclude specific duties.

Source: WTO Secretariat estimates, based on data provided by the authorities of Brunei Darussalam.

(b) Preferential tariffs

24. Under the Customs Law, customs duties on imports or exports may be changed by order of the Sultan, and subsequently published in the *Government Gazette*. Brunei has adopted ASEAN trade agreements, which have been incorporated into the following laws: preferential rates applying to imports from other ASEAN countries are contained in the Customs (ASEAN Common Effective Preferential Tariffs) (ASEAN Integration System of Preferences) Order 2006, and the Customs (ASEAN Common Effective Preferential Tariff) Order 2005, which was deemed to commence at the beginning of 2004 and repeals the Customs (ASEAN Common Effective Preferential Tariff) Order of

1999. Regarding the related agreement on the ASEAN-China FTA, Brunei introduced the Customs (Goods under the Early Harvest Programme) (Framework Agreement on Comprehensive Economic Cooperation between ASEAN and China) Order 2005.

ASEAN

25. As a member of ASEAN, Brunei participates in the CEPT scheme, which came into effect in 1993. ASEAN agreed to reduce tariffs to 0-5% over 15 years: it is committed to eliminating all tariffs in the Inclusion List⁶ (IL) by 2010 for the ASEAN-6 (Brunei, Indonesia, Malaysia, Philippines, Singapore, and Thailand) and by 2015 for the new ASEAN countries (Cambodia, Laos, Myanmar, and Viet Nam). For the ASEAN-6, 99.7% of tariff lines in the IL are currently at 0-5%; 65% of items in the list are at zero. In Brunei's case, over 71% of tariff lines are duty free and nearly 22% are at 5% (Chart III.3). The exception to the programme of reducing most tariffs to the 0-5% range appears to be transport equipment, for which the average rate was 13.9% in 2006, well above the target range. In addition, tea, coffee, alcoholic products, and tobacco, which are excluded from CEPT reductions, carry specific rates of duty and are not included in the CEPT analysis presented here. Brunei's CEPT tariff contains 10,689 lines at the HS nine-digit level of which 99.3% have *ad valorem* rates; under 1% of lines, mainly relating to coffee, tea, tobacco, alcohol, petroleum products and matches, carry specific rates of duty. Overall, the CEPT tariff rate is half of the average applied MFN rate (Chart III.4). The simple average rate accorded to other ASEAN members under the CEPT was 2.4% in 2006, down from 2.6 % in 2004. Differences between average applied MFN and CEPT tariffs are mainly (by HS section) in plastic and rubber products, hides and skins, wood and wood articles, footwear and headgear, machinery, transport equipment, and precision instruments.

Other preferential agreements

26. Under the Trans-Pacific SEP duties are to be eliminated on the majority of tariff lines upon entry into force of the agreement. Brunei will bind its current MFN applied zero rates at zero and eliminate tariffs on other products by 2015, except for a short list of products, such as alcohol, tobacco and firearms, that it seeks to exempt on moral, human health, and security grounds.

27. Upon the full implementation of the Brunei-Japan Economic Partnership Agreement (expected in 2007), Brunei will eliminate tariffs on a range of products, including automobiles and auto parts, which are currently set at 20%. Also, the EPA entails tariff exemption for Japanese-made electronic and electrical appliances within five years of EPA approval.

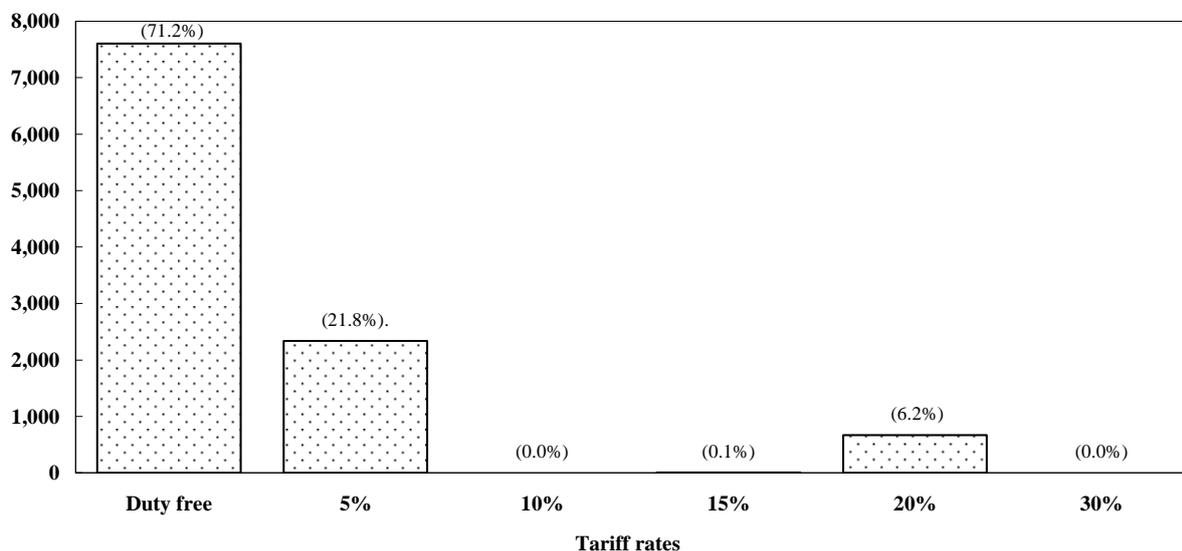
(iv) Tariff bindings

28. Brunei has bound 92.8% of tariff lines. A high percentage of lines are bound in most HS sections, the exceptions being prepared foods (04) at 88.7%, mineral products (05) at 93.4% and transport equipment (17) at 36%, (Chart III.5). Brunei did not sign the WTO Agreement on Information Technology Products. In 2008, Brunei's overall bound rate was 25.8% (24.8% in 2000), 23.4% for agriculture, and 26.2% for industrial products. In agriculture, tariff peak rates of 50% are found mainly in animal products, dairy products, coffee and tea, and fruit and vegetables; for non-agricultural products bound rates of 40% and above are mainly in chemicals, leather products, wood and pulp, transport equipment, and electric machinery.

⁶ All manufactured products, including capital goods and agricultural products are covered under the CEPT scheme. Only products in the General Exception List are exempted. Products in the Temporary Exclusion List are temporarily excluded from the Inclusion List due to national sensitivity but will eventually be phased into the IL. For details of which list a product is classified under, see the Consolidated 2006 CEPT Package. Viewed at: <http://www.aseansec.org>.

Chart III.3
Distribution of CEPT tariff rates, 2006

Number of tariff lines

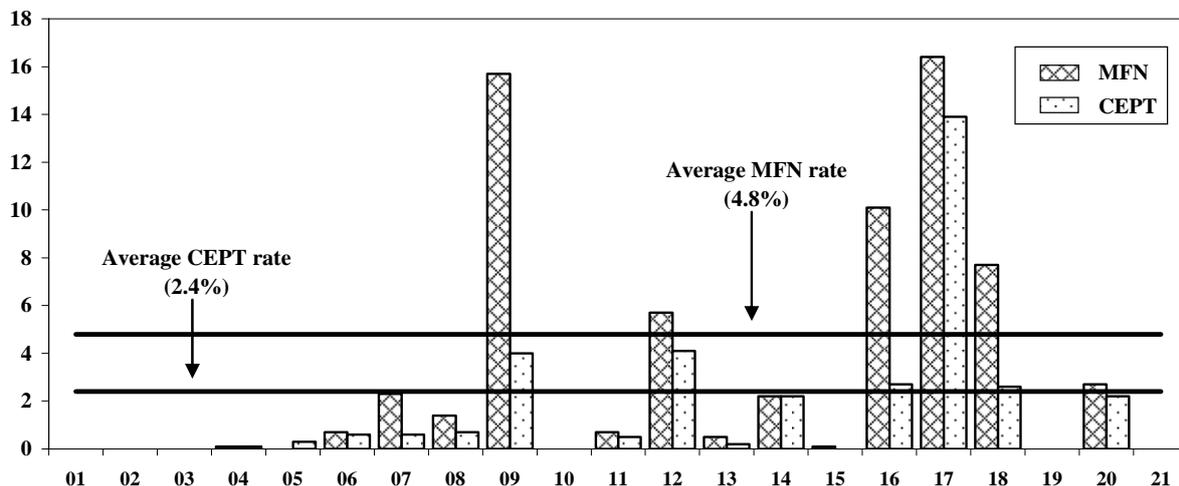


Note: Calculations exclude specific rates. Figures in parentheses denote the share of total lines.

Source: WTO Secretariat calculations, based on data provided by the authorities of Brunei Darussalam.

Chart III.4
MFN and CEPT tariff averages by HS section, 2006

Per cent



- | | | | |
|---------------------------|--------------------------|--------------------------|-------------------------|
| 01 Live animals and prod. | 07 Plastic and rubber | 13 Articles of stones | 19 Arms and ammunition |
| 02 Vegetable products | 08 Hides and skins | 14 Precious stones, etc. | 20 Miscellaneous manuf. |
| 03 Fats and oils | 09 Wood and articles | 15 Base metals and prod. | 21 Works of art, etc. |
| 04 Prepared food, etc. | 10 Pulp, paper, etc. | 16 Machinery | |
| 05 Mineral products | 11 Textiles and articles | 17 Transport equipment | |
| 06 Chemicals and prod. | 12 Footwear, headgear | 18 Precision instruments | |

Note: Calculations exclude specific rates.

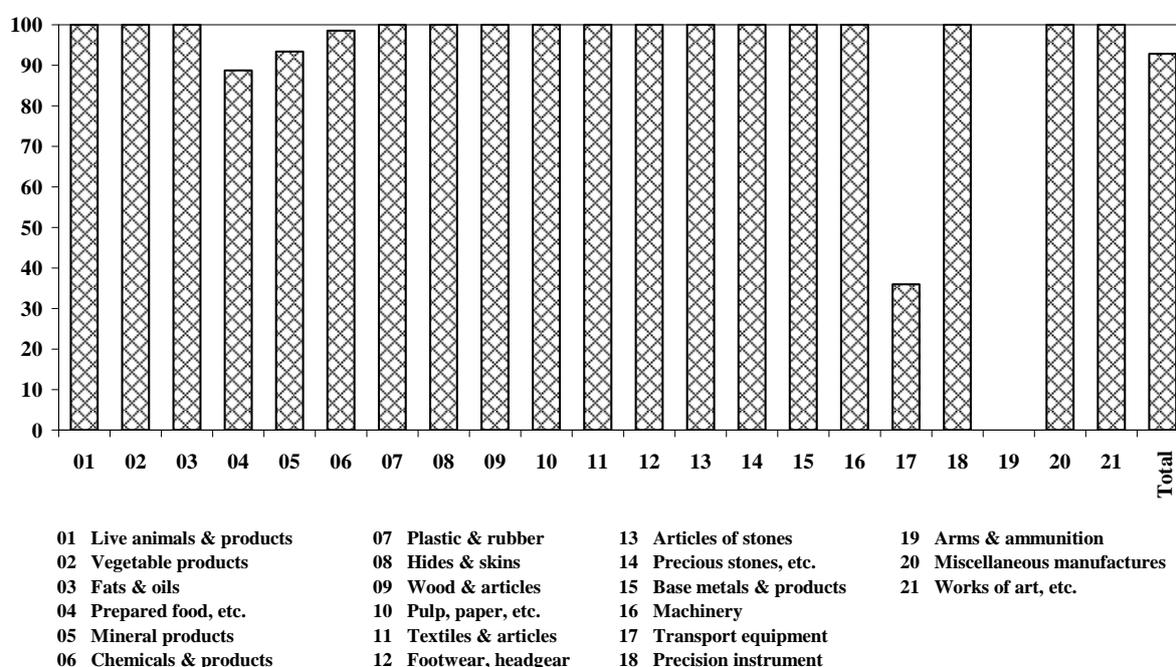
Source: WTO Secretariat calculations, based on data provided by the authorities.

29. Although a high share of the tariff is bound, there remains a significant difference between the overall bound average of 25.8% and Brunei's 2007 applied MFN tariff of 4.8% (Table AIII.1). The difference is even greater in agriculture where the bound average tariff is 23.4% compared with an MFN average of zero. The gap imparts uncertainty to traders and economic agents operating in Brunei by providing the Government with scope to raise tariff rates of products within their corresponding bound rates, although the authorities have stated that applied rates have not been raised during the review period. Regarding agricultural products, the authorities maintain that the difference is necessary to address food security concerns and that it would consult with, and notify, all affected parties in advance, should tariffs be raised.

Chart III.5

Share of bound tariff lines by HS section, 2007

Per cent



Source: WTO Secretariat calculations, based on data provided by the authorities of Brunei Darussalam.

(v) Other charges affecting imports

30. Brunei's legislation on excise taxes is contained in the Excise Order 2006 (repealing the Excise Act), which allows the Minister of Finance to impose and revoke excise taxes on any goods deemed appropriate. Currently, it appears that excise taxes are levied on locally produced Samsoo (including medicated Samsoo liquor) at the rate of B\$5 per gallon (equal to 0.4546 decalitres, or B\$11 per decalitre). In comparison, imports of Samsoo face customs duties at rates of B\$90 per decalitre for bottled Samsoo not exceeding 40% alcoholic strength by volume, and B\$120 for other kinds of Samsoo.

(vi) **Contingency measures**

31. Brunei informed the WTO Secretariat in 1996/97 that it does not have legislation or regulations on dumping, or relevant to the Agreement on Subsidies and Countervailing Measures or those governing safeguard measures. It appears that no anti-dumping, countervailing or safeguard measures are currently in force or have been taken in the period under review.

(vii) **Import prohibitions, restrictions, and licensing**

32. Brunei continues to maintain non-tariff measures (NTMs) in the form of various import limitations, which are deemed necessary to protect health, safety, security, the environment, and religion or to discharge Brunei's obligations under international agreements. In general, the NTMs are in the form of prohibitions, restrictions, and licensing, and they do not appear to have declined significantly since 2001.

(a) **Import prohibitions**

33. Import prohibitions are maintained on a limited number of products, including opium, indecent and obscene printed matter, firecrackers, vaccines from Chinese Taipei, cough mixture containing codine, Java sparrows and turtle eggs, arms and ammunition, and alcoholic beverages, including spirits and liquors (Table III.3). The prohibitions are maintained for security, health, protection of wild life, and moral reasons. In addition, imports and manufacture of alcohol and alcohol products are restricted for religious reasons under the Customs (Prohibitions and Restriction of Imports and Exports) Amended Order 1990. Imports of alcoholic beverages have been prohibited since 1991 although non-Muslims are allowed to import 2 litres of alcohol and limited quantities of beer duty free. Local distillation of alcohol is governed by the Excise Act. The temporary import ban on cement in order to protect the sole (state-owned) domestic supplier was lifted in February 2005.

Table III.3
Prohibited imports, 2007

Product	Reason for prohibition
1. Opium and chandu, Java sparrows	Health, morals
2. Pigs bred in or exported from Thailand	Prevent introduction of animal diseases
3. Fire crackers	Safety and security
4. Vaccines of Chinese Taipei origin	Health and security
5. Arms and ammunition	Security
6. Spirit and liquors	Health
7. Cough mixture containing codine	Health
8. Pens, pencils, and other articles resembling syringes	Safety and security

Source: Brunei Darussalam authorities.

(b) **Import restrictions and licensing**

34. Brunei maintains import restrictions, mainly for health, sanitary and phytosanitary, and moral reasons, on, *inter alia*, plants and animals, poisons, radioactive material, and alcohol (Table III.4). All imported eggs must be marked with the word "imported" on the shell, to identify the source of supply, thereby preventing illegal cross-border movements of eggs and to ensure conformity with the sanitary and food safety requirements of the Veterinary Authority and the Ministry of Health. Imports of salt, sugar, and rice paddy are restricted to maintain security of domestic supply and for price stability, and to ensure long-term sustainable supplies and market stability. Imports of used motor vehicles of five years and older are restricted for road safety reasons. Import permits for salt, sugar, and rice

paddy may be obtained from the Department of Information Technology and State Stores; import permits for used vehicles are issued by the Land Transport Department. In all cases, the importer must also submit the import permit to the Royal Department of Customs to obtain an approval permit (AP).

Table III.4
Restricted imports, 2007

Product	Reason for restriction	Authorizing agency
Eggs for hatching purposes and fresh eggs unless clearly stamped in non-erasable ink or similar substance with the word "IMPORTED" on the shell of each egg	Health	Agriculture Department, Ministry of Industry and Primary Resources
Any living plant or planting material, including from Sabah and Sarawak	To prevent the introduction of exotic plant diseases	Agriculture Department, Ministry of Industry and Primary Resources
Live cattle, poultry, and birds	To prevent the introduction of animal diseases	Agriculture Department, Ministry of Industry and Primary Resources
Pin tables, fruit machines, slot machines and any other machines of like nature whether involving an element of chance or not	To prevent illegal gambling activities	Ministry of Home Affairs
Poisons and deleterious drugs	Health	Narcotics Control Bureau
Rice paddy and the products thereof, and separated, skimmed or whole milk	Security of supply and price stability	Department of Information Technology and State Stores, Ministry of Finance
Persian glue	Health	Ministry of Health
Poh Ka, Poh Kah or Poh Kau; Liow Ko, Ch'ow Ko	To prevent illegal gambling activities	Ministry of Home Affairs
Sugar, salt	Security of supply and price stability	Department of Information Technology and State Stores, Ministry of Finance
Converted timber	Security of supply and price stability	Forestry Department, Ministry of Industry and Primary Resources
Used and reconditioned vehicles (5 years or older) including motorcars, motorcycles, lorries, omnibuses, tractors and trailers	Safety	Royal Customs and Excise Department, Ministry of Finance
Any radio-active materials	Safety	Ministry of Health
Rhinoceros horn and all other parts of or products derived from the carcass of a rhinoceros	CITES	Agriculture Department, Ministry of Industry and Primary Resources
Beef, including the carcass of the animal or any part thereof, the meat (whether frozen, chilled or fresh), bones, hide, skin, hooves, horns, offal or any other part of the animal or any portion thereof, unless it has been slaughtered in an abattoir approved in writing by the Minister of Religious Affairs	Religious	Ministry of Religious Affairs; Ministry of Health; and Department of Agriculture, Ministry of Industry and Primary Resources
Turtle eggs	Health	Agriculture Department, Ministry of Industry and Primary Resources
Broadcasting equipment	Security	Ministry of Communications
Cigarettes unless with Ministry of Health approved health warning written on the packages	Health	Ministry of Health
Poultry, including the carcass of the bird or any part thereof, the meat (whether frozen, chilled or fresh), bones, skin, offal or any other part of the animal or any portion thereof, unless it has been slaughtered in an abattoir approved by the Minister of Religious Affairs	Religious	Ministry of Religious Affairs; Ministry of Health; and Department of Agriculture, Ministry of Industry and Primary Resources
Alcoholic beverages	Religious ban	Royal Customs and Excise Department, Ministry of Finance

Source: Authorities of Brunei Darussalam.

35. A number of products, including telecommunications equipment, medical products, live plants and animals, mineral water, and used cars over five years old, require an import licence (Table AIII.2). In general, according to the authorities, the main distinction between restricted and licensed imports is that restricted imports require the import and approval permits, while licensed imports require only a licence from the relevant government agency. The procedure for obtaining permission is the same for restricted and licensed imports.

36. Import licences may be granted to persons domiciled and working in Brunei who have a business licence. No specific documents are required to apply for a permit or a licence, although for some products prescribed forms may be required from the relevant authority, including Customs. The primary purpose for requiring licences for these products, according to Brunei's notification to the WTO (which dates back to 1997), is to safeguard health, national security, and morals, although in the course of this Review, the authorities stated that domestic food security is also an objective.⁷ Licences, which must be obtained prior to importation, are issued every six months and are valid for six months; once issued, a licence may not be transferred to another importer.

(viii) Standards and sanitary and phytosanitary measures

(a) Standards

37. There is no national body for setting standards in Brunei.⁸ The Construction Planning and Research Unit (CPRU), based in the Ministry of Development, is the focal point and coordinator for standards and conformity assessment activities. The unit's main functions are to: promote construction quality through conformity assessment (e.g. ISO 900, ISO/IEC 17025), certification of personnel and materials, and training; develop guidance documents and national standards (including adoption of international standards where appropriate) for the construction industry; maintain a library of standards and appropriate technical bulletins to serve industry in general; and to act as the national focal point for safety, standards, and conformity assessment activities.⁹ All standards are voluntary.

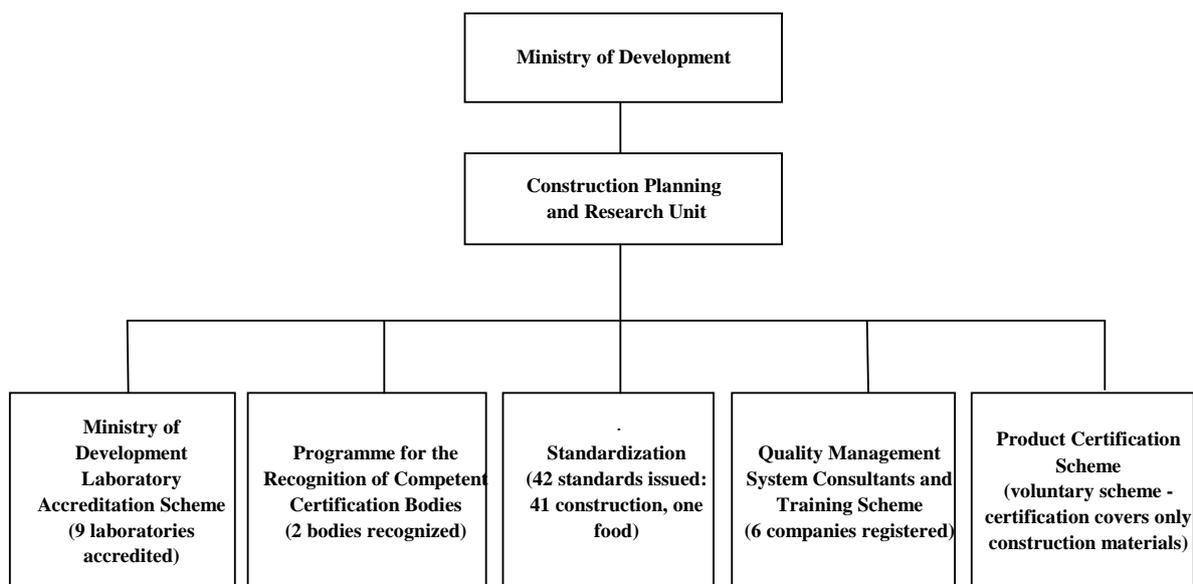
38. National standards, which are prepared by technical committees, are submitted for approval to the Standards Committee, which is chaired by the Minister of Development or the Permanent Secretary in the Ministry. Technical committees currently exist for the construction sector only (for timber, roads, iron and steel, concrete, locally manufactured building products, such as bricks and cement, and quality management systems). A new Technical Committee for food-related standards was set up recently and a standard on halal food was published in August 2007; another ten are being drafted. According to the authorities, it is the policy of the Technical Committees to adopt international standards, where relevant; also the alignment of national standards with existing relevant international standards is being reviewed in line with the ISO/IEC Guide 25. Following examination by the Standards Committee, a standard is sent for comment to the Standards Secretariat at the CPRU, and for public comment (the period for comment is usually six weeks); any comments are forwarded to the Technical Committees (Chart III.6). To maintain transparency, the Ministry of Development publishes a directory of certified products, companies, and accredited laboratories.¹⁰

⁷ WTO document G/LIC/N/3/BRN/1, 10 April 1997.

⁸ According to the authorities, standards and conformity activities are still at the infant stage except for the well-established construction and oil and gas industries. However, there appears to be a study for the establishment of a body to oversee the relevant activities.

⁹ Ministry of Development online information. Viewed at: http://www.mod.gov.bn/cpru_web/new_web/cpru_welcome.htm and the Ministry's 2005 publication "Brunei Darussalam Standards".

¹⁰ Ministry of Development online information. Viewed at: <http://www.mod.gov.bn>.

Chart III.6**Overview of standards and conformity assessment activities in the Ministry of Development, September 2007**

Source : Information provided by the authorities of Brunei Darussalam.

39. There are currently 42 voluntary, mainly construction-related standards in Brunei Darussalam (Piawaian Brunei Darussalam or PBDs); 37 are directly adopted from international standards. They cover use of the metric system in construction, quality management, steel reinforcement, cement, concrete, timber, and roads. In addition, guidance documents (GDs) and guidance specifications (GSs) in these areas have been published by the technical committees; at present, there are 22 GDs, and 8 GSs. Standards for electrical and electronic goods, gas appliances, and fire equipment are currently voluntary and are based on ISO or IEC standards (for electrical/electronic products), where international equivalents exist.¹¹ The authorities note that Brunei has completed the alignment of its standards with international standards in four priority areas: electrical/electronic appliances; rubber products; food labelling; and machinery.

40. Other than setting standards for construction in Brunei, the CPRU also monitors testing and conformity carried out by six testing laboratories associated with the construction industry in Brunei, and manages regional proficiency testing programmes e.g. APLAC. The laboratories are accredited by, and registered with, the Ministry of Development. There are also two accredited laboratories for products related to oil and gas and a calibration laboratory related to defence. Brunei signed a Letter of Understanding with the Singapore Accreditation Council (SAC) in April 2001 for technical cooperation in the area of accreditation, including the use of SAC accreditation of laboratories,

¹¹ Brunei is a correspondent member of the ISO and participates as an observer in ISO TC 34 (Agriculture), TC 71 (Cement), TC 211 (GIS) and ISO TC 122 (Packaging). Brunei is also an observer member of ISO CASCO and ISO COPOLCO.

certification bodies, and inspection bodies. To date, two laboratories have been accredited by the SAC. Brunei maintains that it has reviewed the laboratory accreditation scheme to ensure that it meets ISO/IEC Guide 58. In addition, Brunei's accredited commercial laboratories have increased their scope of testing and calibration services for the construction sector.

41. Brunei has little industry other than petroleum and construction; petroleum is dominated by multinational companies with their own testing facilities and standards. Other industries tend to rely on third-party certification in conformity assessment. However, the national Standards and Accreditation centre (NSAC) under the Ministry of Industry and Primary Resources, formed in 2006, is moving towards centralising standards by acting as a quality and accreditation centre for local food and handicraft products. Brunei has no national measurement and metrology centre; the administration of weights and measures for commercial activities is carried out by the Weights and Measures Department. However, the NSAC is working to establish a calibration laboratory that complies with the international measurements system, under the Bureau International des Poids et Mesures, and has proposed the establishment of a national metrology laboratory under the budget of the next national development plan. Measurement and metrology facilities in Singapore (PSB) and Malaysia (SIRIM) are used frequently by Brunei's laboratories in their calibration activities. Currently, laboratory accreditation for the construction sector is covered by the Ministry of Development Laboratory Accreditation Scheme; all other sectors are covered by the Brunei-Singapore SAC MoU on accreditation.

42. Brunei is a member of several international and regional standard-setting fora, including the ISO, Pacific Area Standards Congress, Codex, the ASEAN Consultative Committee on Standards and Quality, the ASEM Trade facilitation Action Plan on Standards and Quality, the ASEM Trade Facilitation Action Plan, the APEC Sub-Committee on Standards and Conformance, and the Asia-Pacific Laboratory Accreditation Cooperation scheme.¹² It was admitted to the IEC Affiliate Member programme in 2001. Brunei participates in the APEC E/E MRA (since 2003) and in May 2004 signed the TEL MRA with Singapore in telecommunications; the scope of these MRAs concerns acceptance of test and certification. To reduce business compliance costs, Brunei unilaterally accepts certificates of conformity from such recognized bodies, and therefore does not require re-certification or testing.

(b) Sanitary and phytosanitary measures

43. Brunei's national notification authority for sanitary and phytosanitary measures is the Department of Agriculture in the Ministry of Industry and Primary Resources. SPS measures are implemented by: the Department of Agriculture for plants and plant products, live animals, and eggs and other fresh animal (non-halal) products; the Ministry of Religious Affairs for halal meat products; the Fisheries Department for fish and fisheries products, and the Forestry Department for forestry products.

Plant regulations

44. Phytosanitary regulations are implemented by the Plant Quarantine Unit of the Department of Agriculture, under the Agricultural Pests and Noxious Plants Act, revised in 1984. Under the Act, imports of all plants and plant materials require import permits, issued by the Department of Agriculture, and phytosanitary certificates, issued by the legal issuing authority in the country of

¹² For example, according to the CPRU, Brunei has participated in 61 projects on the ASEAN EC Standards Quality and Conformity Assessment programme (2003-05) on electrical, pharmaceutical, cosmetic, food, and tourism activities.

origin, certifying the phytosanitary status of the plants.¹³ Imports of a number of plants and materials from specific regions or countries may be prohibited to prevent entry of dangerous pests and diseases. All plant imports are subject to inspection by the Department of Agriculture on arrival in Brunei. Imports of soil (including attached to plant roots), are prohibited. Phytosanitary certificates for exports of agricultural materials may be obtained from the Department of Agriculture.

Animal regulations

45. The Quarantine and Prevention of Disease (Animals) Regulations allow for the prohibition of import, detention of animals for treatment and examination, and for the investigation of imported products. Imports and exports of animals or their products must be declared at the port of entry or exit for quarantine inspection and must be accompanied by an import permit issued by the Department of Agriculture and a veterinary health certificate issued by a veterinarian authorized in the country concerned within seven days before departure; exports of live animals and poultry must be accompanied by a veterinary health certificate. When a certificate is required for exports of products derived from animals, an Animal Health Certificate may be obtained from the Contagious Veterinary Office.¹⁴ Following the outbreak of avian flu in several countries, the Brunei Government imposed an import ban on all types of poultry products from countries affected by, or suspected of having, avian flu outbreaks.¹⁵

Halal

46. Imports of beef and poultry are subject to import restrictions under the Second Schedule of the Customs (Prohibition and Restriction on Imports and Exports) Order, unless they have been slaughtered in a foreign abattoir approved in writing by the Minister of Religious Affairs. The Government maintains a list of approved abattoirs from which meat or poultry may be imported by holders of halal import permits issued under the Halal Meat Act (chapter 183) and the Halal Certificate and Halal Label Order 2005. Under the Halal Meat Act, the Board for Issuing Halal Import Permits grants the permit if the slaughterhouse is already on a list approved by the Majlis Ugama Islam¹⁶; for slaughterhouses not on the list, an inspection committee, including representatives from the Ministry of Religious Affairs, the Majlis, the Ministry of Health, and the Department of Agriculture is required to inspect and approve the abattoir. The Board forwards the application to the Majlis who makes the final decision on issuing the import permit.¹⁷ Authorized officers from the Ministry of Health and the Agriculture Department examine all imports of halal meat and certify it fit for human consumption. Currently, halal meat and poultry can be imported only from Malaysia and Australia. Brunei imports live cattle from its state-owned cattle farm located in Northern Australia for slaughter at local abattoirs.

Other regulations

47. Other sanitary and health restrictions are maintained under the Poisons Act and the Misuse of Drugs Regulations, which are enforced by the Pharmaceutical Enforcement Services, in the Ministry of Health. This includes regulation of all imports and exports of pharmaceuticals, chemicals,

¹³ Phytosanitary certificates issued by the country of origin are valid for 14 days (Plant Quarantine Services, 1993).

¹⁴ Quarantine and Prevention of Disease (Exportation of Animals) Regulations.

¹⁵ WTO document G/SPS/N/BRN/2, 10 March 2004, notification of emergency measures.

¹⁶ The Board is chaired by the Controller of Customs and its members include representatives from the Ministry of Religious Affairs, Medical and Health Services, the Department of Agriculture, and the Majlis (Section 3 of the Halal Meat Act).

¹⁷ Halal Meat Act, Section 3.

agri-chemicals, pesticides, etc. in collaboration with Customs. Regular inspections are also conducted on pharmaceutical wholesalers, clinics, and retailers in Brunei. Imported veterinary pharmaceuticals, animal vaccines, and agri-chemicals are controlled by the Department of Agriculture through the Ministry of Health under the Poisons Act. The Drug Quality Control Service also inspects all drugs, both locally produced and imported, to ensure quality.

48. The Department of Health Services under the Ministry of Health ensures food imported and distributed in Brunei is safe. Food importers are required to comply with the Public Health Order (Food) 1998, Public Health (Food) (Amendment) Order 2002 and its Regulations 2000, which protect consumers from dangerous adulterated or poor quality foods. Food importers are required to submit the customs declaration form together with relevant documents (including health certificates) to the Food safety and Quality Control Division, Department of Health Services, for endorsement.

(c) Labelling and marking

49. Brunei's legislation on food labelling requirements is contained in the Public Health (Food) Order, 1998, which came into force in January 2001. Labels for food products must contain the following information either in Malay or English: name of food, list of ingredients, net/drained content, name and address of manufacturer, packer, wholesaler, importer and distributor, the country of origin, lot identification, date and storage instructions, and instructions and date for use. Where a suitable common name for the food product is not available, a description to indicate the nature of the food is required. All imports of meat and products containing meat must conform to labelling requirements approved by the Board for Issuing Halal Import Permits.¹⁸ For food with animal or alcohol content, the origin of the animal or alcohol product must also be indicated. In addition, the contents of all meat products should be clearly mentioned on the label.

50. Since 1 January 2002, 25 categories of food and beverage products require date marking and must be registered with the Food Safety and Quality Control Division before importation into Brunei. The products include cream, milk and milk products, pasteurised fruit and vegetable juice, soya bean curd, chilled food, sauces, peanut butter, flour and flour products, egg products, raisins and sultanas, chocolate, edible fats and oils, food additives, margarine, meat products, and nutrient supplements.

51. Labelling requirements on imported tobacco are set out in the Tobacco (Labelling) Regulations, 2007 and the Tobacco Order, 2005 (S/49/05). Labels must include a printed health warning in English on one surface and in Malay on the other surface, and conform to the specifications set out in the specific schedules in the Tobacco (Labelling) regulations, 2007.

52. Brunei does not have any labelling requirements for genetically modified foods.

(ix) Government procurement

(a) Overview

53. The Government, through its public works department and individual ministries, is the major source of contracts in the country.¹⁹ Government construction activities play a major part in the construction industry and in the economy as a whole; the level of government spending has a direct impact on the country's economic climate. According to figures supplied by the authorities, goods

¹⁸ Meat products must carry the halal label when sold in Brunei (Emergency (Halal Meat) Order 1998).

¹⁹ All public works (e.g. roads, bridges, airports, infrastructure, offices, low-cost housing, water supplies, drainage and sewage works) are funded by the Government. The Public Works Department, under the Ministry of Development, is responsible for implementing the projects.

and services procured by the Government were valued at B\$780 million in 2006, down from over B\$1.1 billion in 2005, accounting for 4% and over 7% of GDP, respectively (Table III.5). Although foreign suppliers can participate in government tenders, most retain a local agent to represent them in Brunei, as corporate relationships with the Government are of great importance. Teamed with a good local agent with the appropriate connections and knowledge of local business practices, foreign suppliers have a better chance of winning contracts.

Table III.5
Government procurement expenditures, 2002-06
(B\$ million and per cent)

	2002	2003	2004	2005	2006
Goods and services procured by the Government of Brunei (B\$ million)	603.1	585.3	812.0	1,166.5	780.5
Goods and services as % of GDP	5.8	5.1	6.1	7.4	4.1
Goods and services as % of government expenditure	12.6	10.2	16.6	22.9	14.8

Source: Brunei authorities.

54. The main legislation with regard to government procurement is contained in the Financial Regulations 1983 (paragraphs 327-340), which aims to maintain equity, integrity, and efficiency in the tendering process. Relevant circulars include the Ministry of Finance Circular Letter 3/2004 (of 24 October 2004). The State Tender Board is responsible for awarding contracts/projects/services above B\$250,000 (tenders considered by the State Tender Board are approved by the Minister of Finance) and the Mini Tender Board of each Ministry is responsible for awarding contracts/projects/services of B\$250,000 and below. The Ministry/Department submitting the tender recommendations must prepare a detailed report on its evaluation process, a description of the evaluation, and a comparison of prices of all the bids received. The name of the recommended bidder, its tender price and deadline for completion of the project or delivery date are recorded in the minutes of Boards' meetings; recommendations are audited by the Auditor General. The notification timeframe from receiving tender recommendations to award of contracts is approximately a month.

55. Information on government procurement opportunities above B\$25,000 is published in the Government newsletter and other local newspapers not less than two weeks from the date of issue. If the goods or services are not available locally, foreign companies will be invited to submit bids, with prior approval from the State Tender Board or Mini Tender Board depending on the value.

56. Brunei is not a signatory to the WTO Government Procurement Agreement; the authorities state that further study is needed before the Government can make a decision. Coverage under the Trans-Pacific SEP Agreement is extensive.²⁰ Brunei has been given two years (from July 2006) to negotiate its government procurement schedule. Owing to its small size, procurement by Brunei's Mini Tender Board will be exempted from coverage.

(b) Tendering procedures

57. According to the Brunei Darussalam authorities, tenders are awarded to bids that represent the best value for money: criteria include the price offered, compliance with tender specifications, quality of goods and services, timelines in delivery, reliability, and after sales service. Procurement procedures depend on the estimated value of the procurement: for goods or services up to B\$2,000, procurement may be carried out directly by the Department; for goods or services between B\$2,000

²⁰ New Zealand Ministry of Foreign Affairs online information. Viewed at: <http://www.mfat.govt.nz/Trade-and-Economic-Relations>.

and B\$25,000 at least three quotations must be obtained from qualified suppliers; procurement exceeding B\$25,000 should be made by open tender.

58. Selective and invited tender, and waiver of tender procedures may only be used by the Mini Tender Boards. Under Open Tendering, invitations are widely published in order to obtain a reasonable and competitive price. Under Invited Tendering invitations to tender are published, and selected companies are invited to tender. Approval is required from the relevant Tender Board. Selective Tendering is used for procurement of specialized supplies or services, whereby only certain companies are capable of delivering the supplies or services required. Approval is required from the relevant Board. For urgently needed supplies or services, software licence renewal, specialized products, or specialized work or national security concerns, Normal tender procedures are waived. No detailed data were available from the authorities concerning the breakdown of procurement contracts awarded and their values by tender method.

59. Tender notices are published in the *Pelita Brunei* at least two weeks before the closing date of a tender. The tenders submitted by suppliers are recorded and witnessed by an elected quorum appointed by the Sultan, and submitted to the relevant government agencies for evaluation. Evaluated tenders are submitted to the Mini or the State Tender Board for approval.

60. The bid evaluation criteria are applied differently by different Ministries/Departments depending on the nature of projects: they may involve financial capability, technical capability, past performance, and track records of potential bidders. These criteria are specified in the tender document. Tender documents should include: pertinent instruction to bidders, such as forms that need to be submitted; specifications; tender document fees; validity of tender; terms of acceptance or rejection; criteria for consideration; tenderer's responsibilities; terms and conditions of the contract.

(x) Import-related operations of state enterprises

61. Brunei has not notified any state-trading enterprises to the WTO. Certain products subject to import restrictions and licensing, such as rice and sugar, are imported directly by the Government through the Department of Information Technology and State Stores, in the Ministry of Finance. In particular, the Department imports much of Brunei's rice through BruSiam Food Alliance, a joint venture between the governments of Brunei and Thailand. The Department also issues import permits for other restricted products, such as salt.

62. Other state-trading companies, according to the authorities, are Royal Brunei Catering Sdn Bhd; Mulaut Abbatoir Sdn Bhd; Royal Brunei Airlines Group of Companies and its subsidiaries; the DST Group of Companies, and the Royal Brunei Technical Services (RBTS) Sdn Bhd. The RBTS is the authorized agent of the Government for certain equipment for the use of the Royal Brunei Air Force, Police Force, and other lawfully established security forces of the Government.

(3) MEASURES DIRECTLY AFFECTING EXPORTS

(i) Procedures

63. There have been no substantial changes in export procedures during the review period. Exporters must be registered with the Ministry of Industry and Primary Resources and the Royal Customs and Excise Department. Documentation requirements include an export declaration for customs, invoice, packing list, and certificate of origin. An SPS certificate, an export licence, and other documents are required for restricted exports, under the Quarantine and Prevention of Disease (Animals) Regulations and the Agricultural Pests and Noxious Plants Act (chapter 43). As in the case

of imports, appeals against Customs decisions may be made to the Minister, under section 153 of the Customs Order 2006; the Minister's decision is final.

(ii) Export prohibitions, restrictions, and licensing

64. Export prohibitions remain in place for prawn refuse and copra cake, and exports of timber, oil palm, rice, and sugar are still restricted (Table III.6). Consumer prices for rice and sugar are subject to ceilings, and export restrictions appear to be intended to ensure adequate domestic supply. Export licences are required for cigarettes, diesel, gasoline, kerosene, and salt. The authorities state that, in general, there is no distinction between restricted and licensed exports. Licences may be obtained upon fulfilment of certain requirements including local content, and packaging and labelling requirements.

Table III.6
Prohibited and restricted exports, 2007

Product	Reason for prohibition or restriction/licensing agency
Prohibited export	
Prawn refuse and copra cake	To ensure adequate supply
Restricted exports	
Articles of an antique or historical nature made or discovered in Brunei	To preserve national heritage/Department of Museums
Derris species (Tuba)	To protect wildlife/Department of Agriculture, Ministry of Industry and Primary Resources
Elaeis quinaesis (oil palm)	To ensure adequate supply/Department of Agriculture, Ministry of Industry and Primary Resources
Rice, paddy and products thereof	To ensure adequate supply/Department of Information Technology and State Stores
Timber Class 1A, IB, IC, Nibong, Rotaus	To ensure adequate supply/Forestry Department, Ministry of Industry and Primary Resources
Sugar	For security of supplies and price stability/Department of Information Technology and State Stores, Ministry of Finance

Source: Brunei authorities.

(iii) Export taxes, charges, and levies

65. Brunei has no export taxes or other charges on exports.

(iv) Duty and tax concessions

(a) Drawbacks

66. Provisions for duty drawback are made under Part X of the Customs Order 2006²¹ (as amended in 2006). Nine-tenths of the import duty paid is reimbursed on goods re-exported without transformation within 12 months of duty payment, for import consignments of not less than B\$500 in value.

67. Imported inputs used in the manufacture of exports may also be eligible for drawback under certain conditions, including that the manufactured premises are approved by the Controller of Customs and that re-export is within 12 months of payment of the import duty.²² Drawback is also permitted for personal effects and other goods imported by visitors for their personal use in Brunei and for trade samples, if the goods are re-exported within three months of importation.

²¹ Customs Order 2006, under the Constitution of Brunei Darussalam (Article 83 (3)).

²² Article 92 of the Customs Order 2006.

(b) Other tax concessions and subsidies

68. Brunei has no other explicit tax concessions or subsidies for exports, but tax rebates may be available under the pioneer status programme for investment in industries with favourable export prospects.

(c) Export-processing zones

69. The Muara EPZ, situated outside Brunei's main port (the Muara Port) was developed mainly to promote and develop Brunei as a regional trade hub, and especially to promote the BIMP-EAGA region. In 2004, the Brunei Economic Development Board (BEDB) proposed a new deep-water port at Pulau Muara Besar (PMB) in association with a new EPZ, to develop the PMB into a transshipment port for a wide range of manufacturing goods for re-export. The EPZ would play a crucial role in supporting the operation and profitability of the port by attracting foreign investment, and stimulating export-oriented growth and industrial development. It should also create jobs.

(v) **Export operations of state enterprises**

70. No information was available to the Secretariat on exports by state enterprises. Petroleum and natural gas are exported by Brunei Shell Marketing, jointly owned by the Government of Brunei and Brunei Shell Petroleum. It is not clear which companies are involved in the export of restricted items, including timber, oil palm, rice and sugar, cigarettes, and salt.

(4) MEASURES AFFECTING PRODUCTION AND TRADE

(i) Legal framework for businesses

71. All companies intending to do business in Brunei must be registered with the Registrar of Business Names or Registrar of Companies, both based in the office of the Attorney General of Brunei. Certain types of business must obtain special approval and a licence before commencement of business activities: such controls are deemed necessary to safeguard the public, for health, environmental, security or moral interests. Banks, finance companies, insurance agencies, money changers, travel agencies, private schools, tuition classes, and securities and investment companies require approval from the relevant government regulatory authorities.

72. A business may be established as a sole proprietorship, partnership, company, or branch of foreign company. Foreign individuals may hold equity in partnerships but may not register as sole proprietorships. Companies formed as partnerships or proprietorships are not subject to corporate tax in Brunei, which is normally 30%. Foreign companies are required to register under section 299 of the Companies Act.

73. Companies may incorporate in Brunei under the Companies Act (Cap 39), as (either private or public): companies limited by shares; companies limited by guarantee; companies limited by both shares and guarantees; or unlimited companies. At least half the directors of a company incorporated in Brunei must be either nationals of Brunei or ordinarily resident in Brunei. Registration of the company by the Registrar may take place after the compliance conditions imposed by the Government have been fulfilled. Registration fees are graduated depending on the authorized share capital of the company. Under the Companies Act, there is no restriction on the ownership in the equity of a company, although some form of local participation is required in industries based on local resources and related to national food security.

74. A foreign company that does not incorporate as a local company, must register as a branch of the foreign company as provided under Part IX of the Companies Act. The branch must have a registered office in Brunei and appoint a local authorized person.

(ii) Corporate governance

75. The main regulations concerning corporate governance in Brunei Darussalam are in the Companies Act and the Securities Order 2001, which was enacted to manage and regulate financial exchanges, dealers and other persons who provide advice in respect of dealings in securities. "Securities" has been broadly defined to encompass most forms of financial instruments as well as dealings in currencies and commodities. Brunei does not have its own tradeable stock exchange, and there is no specialized corporate governance code or takeover code.

76. Since its enactment in 1956, the Brunei Companies Act has undergone minor additions. Shareholders retain the right to appoint or remove directors from the board of directors. However, only executive directors can control day-to-day operations. Directors have a duty to act in good faith as well as to perform to the best of their abilities when discharging their fiduciary duties to the company.

(iii) Incentives

(a) Tax regime

77. There are no export, sales, payroll or manufacturing taxes, and sole proprietorships and partnership businesses are not subject to income tax. Brunei has no personal income tax. Only companies are subject to income tax, which is levied at rates of 55% for petroleum companies under the Income Tax (Petroleum) Act, 1963 as amended, 55% for natural gas companies, and 30% for all other companies.²³ Companies are subject to tax on: gains or profits from any trade, business or vocation; dividends received from companies not previously assessed for tax in Brunei; interest, rents, royalties, premiums, and any other profits arising from properties. There is no capitals gains tax, unless the gains are considered as part of the operational income from normal trading activities. Petroleum and natural gas companies pay tax on a quarterly basis, while all other companies pay taxes annually. Other taxes include stamp duty on documents, a withholding tax of 20% on interest paid to non-residents, a 3% estate duty for estates valued at over B\$2 million (of persons deceased on or after 15 December 1988), and a building tax with rates varying up to 12% of the value of the building.

(b) Tax incentives

78. In order to attract investment to targeted sectors, the Government provides a number of tax incentives (Table AIII.3). At the start of the period under review, the Government enacted the Investment Incentives Order 2001 and Pioneer Status and Income tax Relief in June 2001. The new law and regulations replace the Investment Incentives Act (chapter 97) with the stated objectives of: promoting the diversification of economic activities by providing tax incentives to promoted activities; and encouraging investment and reinvestment activities to upgrade technology, undertake research and development, increase production capacities, and expand market coverage. The authority to administer the new legislation was transferred to the Minister of Industry and Primary Resources.

²³ Only companies incorporated in Brunei are liable for corporate tax. Non-resident companies are taxed only on income arising in Brunei.

79. The new law provides guidelines in granting pioneer status to industries and tax relief for foreign and local investment, as well as extending the tax relief period. The investment incentives include exemption from payment of corporate tax for up to 5 years for companies that invest B\$500,000 to B\$2.5 million in approved ventures; up to 8 years for investing more than B\$2.5 million, and up to 11 years if the venture is located in a high-tech industrial park.

80. The legislation also specifies that to encourage the development of new service activities not yet established on a commercial scale, companies may be classified as pioneer service companies if they are engaged in any qualifying activity including: any engineering or technical services including laboratory, consultancy and R&D activities; computer-related services; industrial design development; leisure and recreational services; publishing; educational services; medical services; services related to agricultural technology and the provision of warehousing facilities, financial and business services. The incentives include a full corporate tax holiday of up to 8 years (extendable up to 11 years), with carry-forward of losses.

81. Investment incentives in the form of tax concessions continue to be granted to enterprises or industries approved by the Government under the Investment Incentives Order 2001. According to the authorities, tax concessions play a vital role in the pace and direction of Brunei's industrial development: they are used to promote new investment in preferred industries and services and to encourage existing companies to upgrade through modernization and automation and through the introduction of new products and services. However, in the absence of any available studies by the authorities to evaluate the effectiveness of these tax incentives in achieving their industrial development objectives and in relation to tax revenues forgone, the cost-effectiveness of these measures is questionable. Brunei's economic development might be better served by a more broadly-based corporate income tax system involving fewer incentives, but with a tax rate substantially lower than the 30% currently levied. This would bring it more into line with the tax rates in several of Brunei's neighbours (possibly complemented by a personal income tax levied at a similarly low rate). Such a tax would be more neutral, and thus less distorting, as far as private investment decisions are concerned.

(iv) Other assistance

(a) Subsidies

82. As noted in the previous report, Brunei notified the Secretariat in 1997 that it maintains no subsidies that are notifiable pursuant to Article XVI:1 of GATT 1994, or Article 25 of the Agreement on Subsidies and Countervailing Measures.²⁴ Subsidies, nevertheless, appear to be provided for agricultural inputs and for water, energy, and telecommunications services. In addition, housing, education, and medical care are provided free of charge. Government employees also have access to low-interest or interest-free loans for the purchase of cars and houses.

(b) Price controls

83. Under the Price Control Act (chapter 142), administered by the Economic Planning and Development Department in the Prime Minister's Office, maximum prices for selected goods may be fixed by the Price Controller, for consumer protection purposes. The goods are within the category of basic necessities: motor vehicles, infant milk powder, and cigarettes. The Act covers several aspects of market activity, such as control of movement, export/import of specified goods, refusal to sell goods, prohibition against selling greater quantities of a controlled article than required for "ordinary use", hoarding, and display of prices on goods.

²⁴ WTO document G/SCM/N/1/BRN/1, 18 March 1997.

84. Internal distribution controls are maintained by the Department of Information Technology and State Stores in the Ministry of Finance on items subject to import and export restrictions, for example, rice and sugar.

(c) Assistance under the East ASEAN Growth Area

85. The Government of Brunei also provides assistance in the form of tax exemptions for companies investing in the BIMP-EAGA, as well as tariff exemptions on imports of all raw materials and capital goods. The main activities appear to include production of halal meat, shrimp and fisheries cultivation, bio-pharmaceuticals, high-value-added forestry products, and tourism activities such as diving and eco-resorts.

(d) Assistance for small and medium-sized enterprises

86. As part of its efforts to increase private sector participation in the economy, the Government has continued to encourage the development of small and medium-sized enterprises (SMEs), which make up 98% of enterprises in the country and account for 58% of Brunei's total employment in the private sector. Financial assistance for SMEs consists of the Enterprise Facilitation Scheme (EFS), a financing scheme developed by the Enterprise Development Centre in the MIPR, and the Micro-credit Financing Scheme (MFS); the EFS and MFS provide maximum loans per enterprise of B\$1.5 million and B\$30,000, respectively. Under the EFS, priority is given to enterprises operating in industrial sites, agricultural development sites, and fisheries development sites as well as operators of tourism activities in Brunei. Both schemes are financed by the Government through the Industrial Development Fund, managed jointly with two appointed local banks responsible for the administration of the fund. The loans are at a favourable rate of interest of 4%, repayable over seven years for EFS projects and four years for MFS loans. At end-March 2007, total EFS applications covered 75 enterprises (with a loan value of B\$21.4 million) and MFS loans amounted to B\$7 million disbursed to 369 micro-enterprises.²⁵

87. MIPR runs a number of courses in business management, an area that has been identified as one of the causes of SME failure. Training covers accounting and finance, business management, marketing, quality and standards, and new technologies. Nevertheless, the Government continues to be concerned about the number of SME bankruptcies. According to the Economist Intelligence Unit, in 2006 there were 114 bankruptcies, up from only three in 1996.²⁶ The Government also set up the SME Innovation Centre in 2006 to help SMEs in the information and communications business. The Centre is managed in partnership with Sun Microsystems and Malaysian Incubation specialist SKALI (main providers of Java and Open Source technology) and aims to provide a supportive environment for promising Brunei ICT businesses.

88. The Government is taking a "proactive" approach to diversifying the country's sources of economic growth and creating opportunities for SMEs. As noted in the previous chapter, the Brunei Economic Development Board (BEDB), formed in 2001, aims to attract FDI and promote joint ventures – targeting US\$4.5 billion in new investment and at least 6,000 new permanent jobs by 2008. BEDB has a two-prong strategy: to develop a number of industry clusters, including tourism, transportation and logistics, and financial services; and to develop a port and industrial complex at Pulau Muara Besar as well as develop oil and gas-related downstream activities at Sungai Liang²⁷,

²⁵ Information provided by the authorities of Brunei.

²⁶ EIU (2007), p. 9.

²⁷ Key to the BEDB strategy is the development of Sungai Liang into a world class industrial site for petrochemical and manufacturing industries that will capitalize on Brunei's proven gas reserves. See BEDB

with proposals including urea and ammonia plants, a methanol plant²⁸, an aluminium smelter, and a tyre recycling facility. The BEDB considers that projects around the world similar to the Sungai Liang Industrial Park have shown that a number of "spin-off" opportunities can be derived from the production of methanol and ammonia/urea. In addition, the BEDB anticipates that 6,000 construction workers will be required for the construction of the petrochemical projects. This would create opportunities for the local construction industry for around two years and for support and service industries in catering for the worker population at the Sungai Liang site.

(v) The public sector and private investment

(a) The public sector

89. The Government is the largest employer in Brunei. It has large shareholdings in key companies, including a 50% share in Brunei Shell Petroleum Company Limited (BSP), which is owned jointly with Royal Dutch Shell and is the main producer of petroleum and natural gas in Brunei. The state-owned Petroleum Brunei, which took over the roles of the Brunei Oil and Gas Authority and the Petroleum Unit, in 2002, is responsible for managing Brunei's assets in its joint oil and gas ventures and for regulating the country's petroleum industry. The Government also has a 50% share in Brunei LNG. Public sector monopolies also appear to exist in key infrastructure sectors, including electricity, and water.

90. The Government also plays a major role in the economy through its holding company Semaun Holdings Sendirian Berhad. Semaun Holdings was incorporated as a private limited company under the Companies Act in 1994 and it serves as an investment and trading arm of the Ministry of Industry and Primary Resources in enhancing economic diversification programmes in Brunei. Its Board of Directors is almost entirely composed of government representatives, including from the Ministries of Industry and Primary Resources, Communications, Finance, and the Bank Islam of Brunei. According to the authorities, the company's mission is to spearhead industrial and commercial development through direct investment in key industrial sectors and thereby accelerate industrial and commercial development in Brunei as well as generate opportunities for active participation of Brunei citizens.

91. Semaun Holdings focuses on: integrated poultry projects; commercial mushroom production; food manufacturing and processing; computer software development; design of electronic components; technology park development, including commercial ventures into biotechnology; high-tech manufacturing, including downstream activities from oil and gas and packaging projects; and value-added services in tourism and related services, packaging support services and information communication technology. The company, along with its subsidiary and joint-venture companies, appears to dominate domestic manufacturing. Little information is available, however, on its contribution to GDP, or annual accounts, suggesting a lack of transparency and public accountability.

press release, September 2004 on the development of Sungai Liang Industrial Park at: <http://www.bedb.com.bn/sme/documents/PR-Petrochemical-20,09.04.pdf>.

²⁸ Agreements relating to the financing of the construction of a methanol plant at Sungai Liang were signed in May 2007 by the local Brunei Methanol Company, the Japan Bank of International Cooperation, and the bank of Tokyo Mitsubishi. The plan to build a methanol plant with a capacity of 850,000 tonnes a year will require investment of US\$500 million. Work on the first phase of construction of the 16-ha methanol plant began in February 2007, with completion due by end 2009 (EIU, 2007, p. 12).

92. Semaun Holdings Sdn Bhd has established six joint-venture companies under partnership with SemaunPrim Sdn Bhd, its subsidiary in the fisheries industry²⁹: Seiwa Sdn Bhd; Semaun Seafood Sdn Bhd; Semaun Aquaculture Sdn Bhd; Semaun Marine Resources Sdn Bhd; and AquaMas Farm Services Sdn Bhd. In addition, it has formed Mahkota Crystal Sdn Bhd a joint-venture company directly in partnership with Semaun Holdings and acquired equity shareholdings in OakTree Holding Ltd and Falcon Cross (B) Sdn Bhd, two Semaun linked companies.

(b) Corporatization and privatization

93. Efforts to reduce the scope of direct government involvement in the economy began under the Sixth National Development Plan and continued under the Seventh and Eighth National Development Plans. The various plans have been aimed at promoting diversification and strengthening economic growth, but progress has been slow. Under the Eighth Plan (2001-05), the Government pushed for economic diversification by: strengthening the private sector by encouraging FDI and corporatization, commercialization of government agencies and activities, and enhancing SME capabilities; and by improving the legal and administrative system and procedures relating to investment, the business climate, and land ownership policies. In this regard there have been a number of important legislative improvements including the Economic Development Board Act (chapter 104), the Industrial Coordination Order 2001, and the Investment Incentives Order 2004, which were introduced at the start of the Eighth Plan. Overall, the Government has encouraged the private sector to play a leading role in economic growth and diversification, while increasingly restricting its own activities to investment in infrastructure facilities. The Eighth Plan recommended boosting annual government expenditure to B\$7.3 billion (B\$7.2 billion under the previous Plan). However, it appears that only a small part of the money allocated was disbursed. In 2003³⁰, for example, only 26% of allocated funds were spent and in some sectors the proportion was much lower (only 2% in information technology). Persistent underspending, even in areas such as public housing, makes the realization of government plans difficult.

94. The authorities state that during the 8th NDP a total of B\$1.8 billion was spent, which constituted about 25% of the overall planned budget. This is considered to be low, mainly due to delays in the pre-contract stages (appointment of consultants, preparation of documents, assessment of tenders, securing bankers' guarantees), and in implementation.

95. The authorities indicated in 2001 that government agencies in the pipeline for corporatization, commercialization or privatization, included the Department of Telecommunications, part of Electrical Services, the Postal Department, the Department of Information Technology and State Stores, the Meragang Hatchery section of the Department of Fisheries, and the Employees Provident Fund. Subsequent efforts to reduce public sector involvement in the economy included "corporatization" of public sector companies, contracting out public sector services to the private sector, and privatization of some public sector services. Privatization, however, has been piecemeal and ad hoc. So far, the Government has incorporated the Employees Trust Fund as an autonomous

²⁹ Production of prawns increased from 60 tonnes in 1999 to 487.5 tonnes in 2004, of which 93% are Rostris prawns. Seiwa Corporation Sdn Bhd is the main supplier and distributor of quality Rostris prawn fry, which are certified as specific pathogen free and resistant to prawn diseases. Semaun Seafood Sdn Bhd processes prawn and fish products utilizing local materials; it has marketing networks in the United States, Japan, and Chinese Taipei. Semaun Marine Resources Sdn Bhd supplies Rostris prawn fry to, *inter alia*, Fiji, Vanuatu, New Caledonia, and Chinese Taipei. Semaun Aquaculture Sdn Bhd produces fresh prawns and supplies raw material to the seafood processing industry for the export market.

³⁰ Development expenditure for the Eighth Plan (2001-05) was estimated at some B\$7.3 billion, of which around 20% and 16% were to be spent on social services and public facilities, and 15% and 11% on industry and commerce, and transport and communications, respectively.

board; also, a decision was reached to establish the Housing Development Department as a board and in April 2006, the Government announced the corporatization of the Telecommunications Department. JTB's functions were split between two successor organizations, TelBru, responsible for delivering telecom services, and AiTi, responsible for regulating the local ICT industry; in addition, the Government partially privatized certain services, such as internet access and mobile telephony in 2006.

(vi) Competition policy

96. According to Brunei's APEC Individual Action Plan, it has no specific legislation on competition policy but is considering competition policies in line with APEC principles. So far, competition regulations exist only in the telecommunications sector under AiTi, the telecoms regulator. Under the Trans-Pacific SEP Agreement, owing to its small size, Brunei was granted flexibility to apply the commitments in the competition chapter on a best endeavours basis; if, however, Brunei establishes a competition law or competition authority, the provisions of the competition chapter will fully apply.³¹

(vii) Intellectual property rights

(a) Overview

97. Brunei is a party to the Convention Establishing the World Intellectual Property Rights Organization (since 1994). It acceded to the Berne Convention for the Protection of Literary and Artistic Works on 30 August 2006. Brunei has not joined the Paris Convention for the Protection of Intellectual Property. Brunei has notified several of its intellectual property laws to the WTO and, as a developing country Member, made use of the transitional period available to it until 1 January 2000. Brunei's national legislation on intellectual property rights was reviewed by the WTO Council for TRIPS in November 2001. The authorities state that enforcement procedures and remedies are available under the various laws, as well as under the common law, to enable effective action against infringement.

98. The IP Section of the Registries Division of the Attorney General's Chambers³² (under the Prime Minister's Office) is responsible for all matters concerning intellectual property including formulating and reviewing intellectual property policies, drafting relevant legislation, registration and administration under the respective intellectual property legislation and promoting awareness and disseminating information on intellectual property in the country. The Head of Registries, who is also Assistant Solicitor General, is responsible for administering the Division. The Royal Brunei Police Force is responsible for general enforcement and investigation of criminal offences under the relevant laws, while the Royal Customs and Excise Department enforces border control measures. The Criminal Justice Division of the Attorney General's Chambers initiates prosecution of IPR cases. The Division does not have a public awareness programme as it lacks capacity in implementing such a programme. Public outreach is limited to talks and lectures on the importance of IPR protection for local businesses, SMEs, and business students. The IP Section would benefit from appropriate technical assistance in this area as public awareness on IP in the country is considered generally low.

³¹ The competition chapter provides general principles of competition (New Zealand Ministry of Foreign Affairs and Trade online information. Viewed at: <http://www.mfat.govt.nz>).

³² For historical reasons, the Attorney General is also the Registrar. Currently, the Registries Division administers: Trade Marks Act (Cap. 98) and Trade Marks Rules, 2000; Inventions Act (Cap. 72); Copyright Order, 1999; Industrial Designs Order, 1999, Industrial Designs Rules, 2000 and Layout Designs Order, 1999.

99. At the regional level, Brunei participates in the work of ASEAN on intellectual property cooperation, including measures to strengthen and enhance intellectual property rights protection, enforcement, administration, and legislation in ASEAN member countries.³³ Brunei also participates in the EC–ASEAN Intellectual Property Rights Cooperation Project (ECAP II). ECAP II's main objectives are to foster trade, investment, and technical exchanges between Europe and ASEAN member countries and to foster intra-ASEAN trade and investment.

100. The intellectual property chapter of the Trans-Pacific SEP seeks to provide an enhanced standard of IP protection beyond that under the TRIPS Agreement. The three salient features of the IP chapter are: Brunei (and Chile and Singapore) is considering accession to the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty, which address copyrighted works in a digital environment; they acknowledge their consensus on specific IP principles between the rights holders and the legitimate interests of users; and acknowledge that geographical indications will be protected in the respective jurisdictions according to the terms and conditions of their respective domestic laws.

(b) Trade marks

101. The Trade Marks Act (Cap. 98) and Trade Marks Rules of 2000 cover the registration of trade marks in Brunei Darussalam and entered into force on 1 June 2000. Prior to this, the repealed Act was based on the English Trade Marks Act of 1938 with some modifications to suit local conditions. The law provided for the registration of trade marks in respect of goods but not services. In line with the TRIPS Agreement, the current Act caters for applications for goods and services, and geographical indications, and incorporates border control measures. A trade mark must be visually perceptible, capable of being represented graphically (thus smell and scent marks are excluded) and capable of distinguishing goods and services of one undertaking from those of others. In addition, the proposed trade mark must satisfy the formalities and substantive requirements set out in the Act and Rules that govern the registration procedures. After an application has been accepted for registration, it is published in the *Government gazette* (for a period of two months). If there is no opposition, a certificate of registration is issued to the applicant. Once registered, a trade mark is protected for ten years, renewable upon payment of a fee.

102. Any person (individual, partnership or company), whether local or foreign, claiming ownership of a trade mark used or proposed to be used by him in Brunei Darussalam may apply for registration of the trade mark. Under the Act, a foreign applicant must provide an address in Brunei Darussalam for all related correspondence from the Registrar.

103. To register a trade mark, an applicant must file Form TM1 together with the fee of B\$150. Foreign applications account for 99% of all applications received (Table III.7).

104. Amendments to the Trade Marks Rules, expected to take effect by end 2007, include revision of the fee structure and electronic filing of trade mark applications. In line with the e-Government initiative, the Registry of Trade Marks is in the process of automating its business processes under the

³³ Brunei Darussalam is a member of the ASEAN Working Group on Intellectual Property Cooperation (AWGIPC), which was set up as a result of the ASEAN Framework Agreement on IP Cooperation in December 1995. AWGIPC implements the ASEAN Intellectual Property Rights Action Plan, which is designed to build on the progress in collaboration among ASEAN governments, ASEAN dialogue partner countries and institutions, and civil society organizations. The ASEAN common form for the domestic filing of trademarks, ASEAN filing form for trademarks, and a consolidated list of ASEAN ethnic goods and services have been developed under AWGIPC since 2000.

e-Registry Project; the project is expected to be completed by end 2007 and will enable online filing of trade mark applications and statutory documents.

105. Brunei provides protection for geographical indications under the Trade Marks Act (chapter 98).

Table III.7
Trade mark registrations, 2000-07

	2000	2001	2002	2003	2004	2005	2006	2007 ^a
Applications								
Residents	31	28	37	43	51	49	34	3
Non-residents	1,392	730	572	763	740	726	717	226
Total	1,423	758	609	806	791	775	751	229
Registrations								
Residents	22	28	20	24	10	4
Non-residents	1,266	569	466	283	327	89	157	..
Total	1,288	597	486	407	337	93	157	..

.. Not available.

a January-April.

Source: Brunei authorities.

(c) Patents

106. Under the Inventions Act (chapter 72), patents granted in the United Kingdom, Singapore, and Malaysia, may be re-registered in Brunei within three years from the date of grant. These privileges will cease once the Patents Order comes into force. Patent registration is administered by the Registry of Patents under the auspices of the Attorney General's Chambers; applications may be made by any persons. There is no independent system of examination for patentability; substantive examination is done by the patent office that granted the patent. The patent re-registrations received by the Registry are from foreign applicants; patent applications and grants (all from non-residents) averaged around 30 annually between 2001 and 2006.

107. At the time of the previous Review, the Patents Order 1999 was expected to be implemented in 2001 to replace the Inventions Act, 1984, essentially a re-registration system for patents granted in the United Kingdom, Malaysia, and Singapore. However, according to the authorities, the Order was published in the *Government Gazette* but has yet to be implemented. The new patent regulations, submitted to WIPO in 2006 for comments and recommendations, are based on Singapore's Patent Act, and will provide for an independent system based on examination only. Due to lack of qualified persons and expertise, substantive examination for patentability will be conducted abroad under a referral arrangement with foreign patent offices.

108. The Order provides for patent protection for 20 years from the date of filing, for any product or process that is considered to be novel, involves an inventive step, and is industrially applicable. Pharmaceutical and agricultural products and processes are protected under the new law. The Order will not include protection for plant varieties; the authorities are currently looking into the possibility of a *sui generis* system of protection for plant varieties, given the lack of expertise in the area.

109. The Order also provides for compulsory licensing under Sections 55 to 57 if, after three years from the date of grant or four years from the date of filing, the market for the patented invention is not being supplied by the patent holder on reasonable terms or if the patent is not being adequately

worked. Compulsory licensing may be granted by the High Court or an intermediary court; under this provision they are non-exclusive, and may only be used predominantly in Brunei and for the purpose for which they were authorized. The patent holder must be paid adequate remuneration, as agreed between the licensee and patent holder or as determined by the Court.

110. In determining whether it is appropriate to grant a compulsory licence, the court takes into account: the nature of the invention, the time that has elapsed after the grant of the patent, measures already taken by the proprietor to make use of the invention, the ability of the potential compulsory licensee to work the invention to the public advantage, and investment and other risks involved for the applicant.

111. Non-exclusive use for the services of the Government of Brunei of any patented invention is also provided for under the Order and may only occur if the Government has taken all reasonable steps to obtain the consent of the patent holder to use the patented product. Under the Inventions Act, which is to be replaced by the Emergency (Patents) Order, there is no provision for the granting of compulsory licences. The exclusive rights to the invention can only cease if the Sultan declares in a public statement in Bandar Seri Begawan that the exclusive right, or the way in which it is exercised, is detrimental to Brunei Darussalam or prejudicial to the public.

112. There are no provisions on parallel imports in the IP laws currently in force. The Inventions Act (chapter 72) does not prohibit parallel importation, and the Patents Order does not give the patent holder an opportunity to interfere with a parallel trader.³⁴

(d) Copyright and related rights

113. The Copyright Order 1999, entered into force on 1 May 2000.³⁵ It protects literary, dramatic, musical, and artistic works, including computer programs, as well as sound recordings, films, broadcasts, and cable programmes. It also provides for the protection of performers' rights and any other rights granted to other persons under an exclusive recording contract. Data compilations, including databases, whether in machine-readable or other form, which are original by reason of selection or the arrangement of contents, are protected under the Order, as are producers of phonograms and broadcasting organizations, provided they meet the conditions of authorship described under section II of the Order. The Order provides copyright protection for the creator's life plus 50 years for works; 50 years from the date that the work was made or recorded for computer-generated works, sound recordings or films; and 50 years from the date of broadcast or performance for broadcasters and performers. Copyright for published works is granted for 25 years from the year of the first publication. Foreign works are protected in Brunei under the Order by virtue of an international convention or agreement to which Brunei is a party. Thus, as a Member of the WTO, Brunei provides copyright protection to works from all the other WTO Members. Under the Order, copyright owners have exclusive rights to reproduce, adapt, issue, perform, broadcast or otherwise communicate the work to the public.³⁶ Any infringement of these rights may be actionable by the copyright holder or the licensee and remedies may be sought through a local court of law.

³⁴ Section 66(2)(g) indicates that the proprietor of the patent has no right to prevent acts with regard to products that have been put on the market by him (or with his consent), including products that were put on the market outside Brunei Darussalam under his equivalent patents.

³⁵ The Emergency (Copyright) Order 1999 was published on 26 February 2000. Previously Brunei had no copyright law, although UK copyright law applied.

³⁶ Article 18. See also provisions in Chapter II of the Emergency (Copyright) Order 1999 and exceptions in Chapters III and IV.

114. The Copyright Order is being amended; the amendments will include higher penalties for offences under the Order; entry without warrant by police officers; arrest without warrant by police officers; and power to stop and search vehicles.³⁷

(e) Other industrial property rights

115. The Industrial Designs Order and Rules, which came into force on 1 June 2000, are based on the Hong Kong industrial designs law. The Order provides for registration of new industrial designs for the visual appearance of products. The Registry administers a registration system based on formalities examination only and does not conduct prior art searches. To be registered, an industrial design must be new at the filing date of the application. An industrial design is new if it has not been registered, published, used or sold in Brunei Darussalam or elsewhere before the date on which the application for registration was lodged. Once accepted for registration, industrial designs are published in the *Government gazette* and a certificate of registration is issued to the applicant. Registration is for five years, extendable for two periods of five years each, subject to payment of a renewal fee. Protection for textile designs, including textile and plastic pieces of goods, handkerchiefs, shawls, and other similar articles that the Registrar may include, is limited under the Order to features of pattern and ornaments.

116. The Layout Designs Order 1999 protects the exclusive rights of the rights holder, with the exception of copying for private, research, or teaching purposes. Protection is from the day on which the layout design was created, for 10 years from the date of commercial exploitation, if it was commercially exploited within 5 years of creation, or for 15 years in all other cases. Only layout designs created after 1 May 2000 are protected. As with industrial designs, non-exclusive use by the Government for security and defence purposes is permitted, provided the right holder is remunerated. Infringement issues may be addressed in the national courts, including through injunctions, and damages.

(f) Trade secrets

117. There is no specific law on trade secrets; according to the authorities, protection is accorded under the common law. Article 39.3 of the TRIPS Agreement obliges Members, when requiring the submission of undisclosed test or other data (as a condition for the marketing of pharmaceutical or agricultural chemical products), to protect such data against unfair commercial use and disclosure. According to the Brunei authorities, the marketing of pharmaceutical or agricultural chemical products in Brunei is not currently subject to an approvals procedure requiring the disclosure of undisclosed test or other data. The Ministry of Health is in the process of drafting legislation that will regulate the disclosure of information on medical products and cosmetics.

(g) Enforcement and penalties

118. The legislation on intellectual property rights also provides for penalties for infringement of rights.³⁸ The powers of the police however, dependent the complainant or right holder reporting an infringement of specific products and supplying sufficient information and proof. According to the authorities, the main impediments to effective enforcement of IP rights include: the reluctance of rights holders to use border enforcement measures; lack of technical assistance and training for

³⁷ As of October 2007, the amendments to the Copyright Order were still being finalized; once the Attorney General confirms the amendments, the draft will be submitted to the Sultan for approval.

³⁸ TRIPS Article 41 requires Members to enact enforcement procedures to permit effective action against any act of infringement of IPRs, including expeditious remedies to prevent infringements and remedies, which constitute a deterrent to further infringements.

customs and police officers; absence of rights holders; and the frequent lack of documentation from complainants to show they own the rights or that they act on behalf of the rights holder. Resources and manpower are limited, and success is highly dependant on the commitment and support of rights holders to protect their own rights. Police officers from the Commercial Crime Unit and Attorney General's Chambers officers have been trained in general IPR enforcement, for example to detect counterfeit hard goods, and are trying to improve enforcement capabilities.

119. Border enforcement measures for infringements are undertaken by the Brunei Darussalam Customs Department. Statutory authority for border enforcement is expressly provided for under the Copyright Order 1999, which enables copyright holders to give notice to the Controller of Customs if they suspect that infringing copies are crossing the border. The authorities state that no such notice has been received and therefore no seizures have been made. Border enforcement measures do not appear to be well received by rights holders, despite advice from the authorities as to the effectiveness of this method.³⁹ However, the Customs Department can on their own initiative, under different grounds and laws, seize certain articles detrimental to public health and safety, providing they have information to show that there exists a potential danger to the public or individuals.

120. The authorities did not provide statistics on the number of trade mark and copyright infringement complaints received during the period under review. However, the authorities have indicated that in the case of copyright infringement, the majority of complaints were withdrawn on the basis of an agreement with the alleged infringer.

121. Trade marks and copyright legislation has been tested in Court and is deemed by the authorities sufficient to give protection to rights holders. The authorities also state that in ordinary criminal cases the courts in Brunei Darussalam have handled cases expeditiously. Delays are attributed due to the unavailability of the complainant rights holder and necessary documents.

122. Under the Emergency (Copyright) Order 1999⁴⁰, copyright infringements are actionable by the copyright holder, or in the event of a licence, the exclusive licensee. The production, import, sale, rental or distribution of copyright-infringing goods on a commercial scale is considered a criminal offence under the new legislation. Remedies include damages, injunction, and the right to seize infringing copies. Seizure can be made when a reasonable complaint has been laid with supporting evidence. Most complainants are based outside of Brunei Darussalam.

123. Penalties for infringement include imprisonment for up to two years, a fine or both; the size of the fine and the period of imprisonment is at the discretion of the Intermediate and High Courts, which have jurisdiction in cases of infringement of intellectual property rights.⁴¹ According to the authorities, there have been four prosecutions for offences under the Copyright Order, with the courts imposing fines in all four cases ranging from B\$2,000 to B\$12,000. The prosecutions were instigated by complaints made to the police by the copyright owners/exclusive licensee.

124. Once the Patents Order has been implemented a patent holder will be able to bring civil proceedings against an alleged infringer in any national court of law. Available remedies include

³⁹ The Brunei Darussalam Customs Department has repeatedly asserted willingness to cooperate with rights holders but has yet to receive any notices.

⁴⁰ Criminal offences are dealt with under sections 203-212 of the Copyright Order; the penalty is a fine and imprisonment.

⁴¹ Depending on the intellectual property right and monetary damages claimed, civil actions are generally commenced in the Intermediate Court or High Court. The Intermediate Court may hear any IPR matters subject to sections 13 and 14 of the Intermediate Courts Act (Cap. 162), while the High Court may hear any IPR matters subject to sections 16 and 17 of the Supreme Court Act (Cap. 5).

injunctions, orders to deliver or destroy the infringing product or the means of its production, damages, and accounts of profits. Under certain circumstances, including falsely representing a product, criminal penalties may apply.

125. Wilful counterfeiting of trade marks is a criminal offence under the Trade Marks Act (chapter 98) 1999⁴², and may result in fines of up to B\$100,000 or up to ten years imprisonment or both. Furthermore, seized counterfeit goods may be forfeited, destroyed or otherwise disposed of.

⁴² Criminal offences are dealt with under sections 94-103 of the Trade Marks Act; the penalty is a fine and imprisonment. Goods will be forfeited upon application made through the Court.