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## **Report Of Brunei Darussalam's Individual Action Plan (IAP) Peer Review**

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**3-4 March 2005**

## **REPORT OF BRUNEI DARUSSALAM'S INDIVIDUAL ACTION PLAN (IAP) PEER REVIEW**

The IAP Peer Review Session of Brunei Darussalam was held on March 1, 2005 in Seoul, Korea. Delegates from Australia; Canada; Chile; Hong Kong, China; Indonesia; Japan; Korea; Malaysia; Mexico; New Zealand; Papua New Guinea; Singapore; Chinese Taipei; Thailand, the United States and Vietnam were present. The APEC Secretariat, ABAC were also present.

The Review Team for Brunei Darussalam was comprised of:

Moderator: Mr. Katsuhiko Umehara  
APEC Senior Official for Japan

Discussant: Mr. Lee Sang-kyu  
APEC Senior Official for Korea

Expert: Dr. Tze-Wei Chen  
Assistant Professor  
Graduate Institute of Translation and Interpretation,  
National Taiwan Normal University  
Chinese Taipei

APEC Secretariat: Mr. Julio Bravo  
Professional Staff Member

This report contains the following Annexes.

Annex 1 - Moderator's Wrap-up remarks

Annex 2 - IAP Study Report

Annex 3 - Discussant's Remarks

Annex 4 - Presentation by Brunei Darussalam

Annex 5 - Written Questions Received During the Session

IAP Peer Review – Brunei Darussalam  
Moderator's Wrap-up Remarks

- Thank you all for participating in this IAP Peer Review for Brunei Darussalam.
- I would like to express special thanks to our expert, Dr. Tze-Wei Chen from Chinese Taipei, our discussant Mr. Lee Sang-kyu from Korea, and the Brunei Darussalam team members who have made themselves available for this session.
- Even though it isn't a big economy in terms of land and population, Brunei Darussalam has a young and highly-skilled labor force, plenty of tourist attractions, and ample oil and gas resources. Brunei Darussalam is currently implementing its eighth Five-Year National Development Plan to diversify its economy.
- The progress of Brunei Darussalam stipulated in its IAP is cumulatively substantial, and in many respects in line with the long-term efforts of Brunei Darussalam to work towards the Bogor Goal of free and open trade and investment by 2020. However, there still exist some areas where further action could be taken, such as further progress in privatization, simplification and transparency of quarantine and customs inspection, creation of a more favorable environment to foreign investors and more transparent procedure in introducing new regulations.
- Some economies commented that several IAP chapters are incomplete. I hope Brunei Darussalam will continue to make effort to update all the relevant IAP chapters.

- Brunei Darussalam, which chaired APEC 2000, has played a very important and positive role in the APEC process, particularly in promoting APEC's efforts to reduce the digital divide.
- In closing, I urge Brunei Darussalam to continue its actions in relation to the Bogor Goal, in consideration of the discussion on Mid-term Stock-taking (MTST) this year.

# **2005 APEC IAP Peer Review**

## **Study Report**

### **– Brunei Darussalam**

## **Table of Content**

Table of Content.....	1
I. Summary .....	2
II. Introduction.....	5
1. Socio-economic Environment .....	5
2. Economic Performance Update.....	6
III. IAP Review Issues.....	16
1. Tariff.....	16
2. Non-Tariff Measures .....	18
3. Services.....	21
4. Investment.....	23
5. Standards and Conformance.....	27
6. Customs Procedures .....	29
7. Intellectual Property Rights.....	30
8. Competition Policy.....	34
9. Government Procurement .....	36
10. Deregulation/Regulatory Review .....	37
11. Implementation of WTO Obligations and ROO.....	39
12. Dispute Mediation.....	40
13. Mobility of Business People.....	41
Bibliography .....	42

## I. Summary

### Introduction

- Brunei Darussalam is a small but wealthy and open economy, relying heavily on oil and gas exports as the major economic driving force. The single largest employer is the government, employing around 30% of the work force.
- Implementing through National Development Plans (NDPs), Brunei Darussalam is in the process of diversifying its economy.
- Under government planning, Brunei Darussalam has identified four priority areas, including:
  - A. Business services, concentrating on software development and business process outsourcing;
  - B. Financial services which will focus on high end, niche investment management services, as well as asset and fund management;
  - C. Hospitality and tourism, focusing on eco-tourism, sports tourism and medical tourism; and
  - D. Transportation and logistics primarily focusing on aircraft maintenance services.
- It is important to take into account the characteristics of the Brunei economy when reviewing IAP policy issues.

### Tariff

- Already low tariff average and fairly comprehensive coverage
- Further reduction of tariff will encounter sensitive lines

### Non-Tariff Measures

- To protect health, safety, security, the environment, and religion, or to discharge Brunei Darussalam's obligations under international agreements
- Might achieve the above goals at the expense of market efficiency

### Services

- Committed four out of twelve WTO GATS classifications
- Telecommunication industry in the initial stage of privatization
- e-commerce is drawing the government's attention

### Investment

- Brunei Economic Development Board (BEDB) , Brunei International Financial Center (BFIC) and Economic Planning & Development Department (JPKE) are taking the lead
- Certain restrictions on foreign participation

### Standard and Conformance

- One of the most detailed documented issues
- 36% of standards adopted directly from international standards
- No standard-setting government body
- All standards are voluntary
- Leveraging partnership to improve efficiency

### Customers Procedures

- Hardware and software upgrading
- Continuous training of customs officers
- Yet to implemented pre-shipment mechanism

### Intellectual property Rights

- Generally follow TRIPs commitments
- Working with ASEAN and WIPO
- Patent laws had been revamped and will only be in force when the subsidiary legislations finalized

### Competition policy

- In the process of formulation

### Government Procurement

- Similar to common practice
- No preferential treatment for SMEs or “green” products
- Encouraging local-foreign partnership

### Deregulation/Regulatory Review

- Regulation formulation stage
- Incorporating competition into the system

### Implementation of WTO Obligations and ROO

- WTO goods and services commitments fully implemented



- Overlapping ROOs may cause extra administrative cost

Dispute Mediation

- Never involved in WTO dispute settlement case
- No government-private entity court cases

Mobility of Business People

- Strong foreign presence
- Adopting the British, as well as other international systems, of professional accreditation
- APEC Business Travel Card mostly applied for by foreign travelers

## II. Introduction

### 1. Socio-economic Environment

Brunei Darussalam is situated on the northwest of the island of Borneo, has a total area of 5,765-sq. km. with a coastline of about 161-km along the South China Sea. It is bounded on the North by the South China Sea and on all the other sides by Malaysian State of Sarawak. The updated statistics of Brunei Darussalam's population is 357,800<sup>1</sup> and two major ethnic groups are Malays (66.2%), Chinese (11%). Geographically, the population is concentrated in the Brunei/Muara district (69%, see Figure 1).

Age distribution of the population indicates a relatively large percentage of youth with 0-15 and 20-54 age groups constituting 41% and 53.2% respectively. In terms of education, Brunei Darussalam has a high literacy rate of over 96%, with a girl to boy ratio of enrollment in Primary and Secondary School of over 100. The high literacy rate consequently brings about a highly skilled labor force. Also worth noticing is that Brunei Darussalam's UNDP Human Development Index reaches 0.867 in 2003, only second to Singapore among ASEAN members.

In addition to a high literacy rate, Brunei Darussalam's infrastructure is relatively advanced. Full access to safe drinking water and improved sanitation for all has been achieved. For Telecommunication, penetration rates of fixed-line telephone, mobile phone and Internet are, as of 2002, 25.6%, 40.6% and 4.51%.<sup>2</sup>

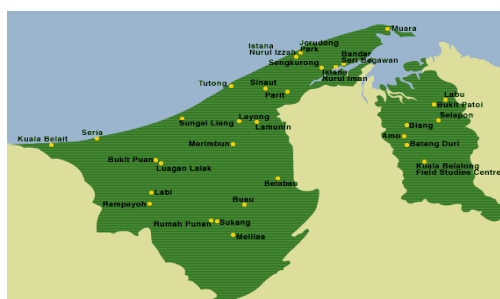


Figure 1. Map of Brunei Darussalam

Source: [http://www.brunei.gov.bn/about\\_brunei/index.htm](http://www.brunei.gov.bn/about_brunei/index.htm), Retrieved on December 27, 2004.

<sup>1</sup> Population statistics compiled from Brunei Darussalam Key Indicators 2004, 16th edition (July).

<sup>2</sup> ASEAN Statistics Handbook, 2004.

The National Philosophy of Melayu Islam Beraja (Malay Islamic Monarchy) is the nation's formal guiding light and as a way of life for Brunei Darussalam. His Majesty The Sultan and Yang Di-Pertuan is the supreme executive authority in Brunei Darussalam. His Majesty has occupied the position of Prime Minister since resumption of independence in 1984.

Brunei's administrative system is centered on the Prime Minister's Office, which has provided the thrust behind His Majesty's aim to introduce greater efficiency in the Government. The Council of Cabinet Ministers includes the following ministries: Ministry of Defense, Ministry of Finance, Ministry of Foreign Affairs, Ministry of Home Affairs, Ministry of Education, Ministry of Industries and Primary Resources, Ministry of Religious Affairs, Ministry of Development, Ministry of Culture, Youth and Sports, Ministry of Health and Ministry of Communications.

## **2. Economic Performance Update**

Brunei Darussalam has the second highest GDP per capita in the Southeast Asia region, reaching US\$12,973. The composition of GDP has remained rather stable since the late 1990s. When divided by sector, it is found that agriculture accounts for around 2%, industry around 58% and service 40%. As of 2004<sup>3</sup>, Crude oil and natural gas constitute over 50% of Brunei Darussalam's GDP. Another important component is government sector, accounting for around 23% of Brunei Darussalam's GDP (see Fig. 2).

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<sup>3</sup>See footnote 1, with forecast figures and calculated at constant price.

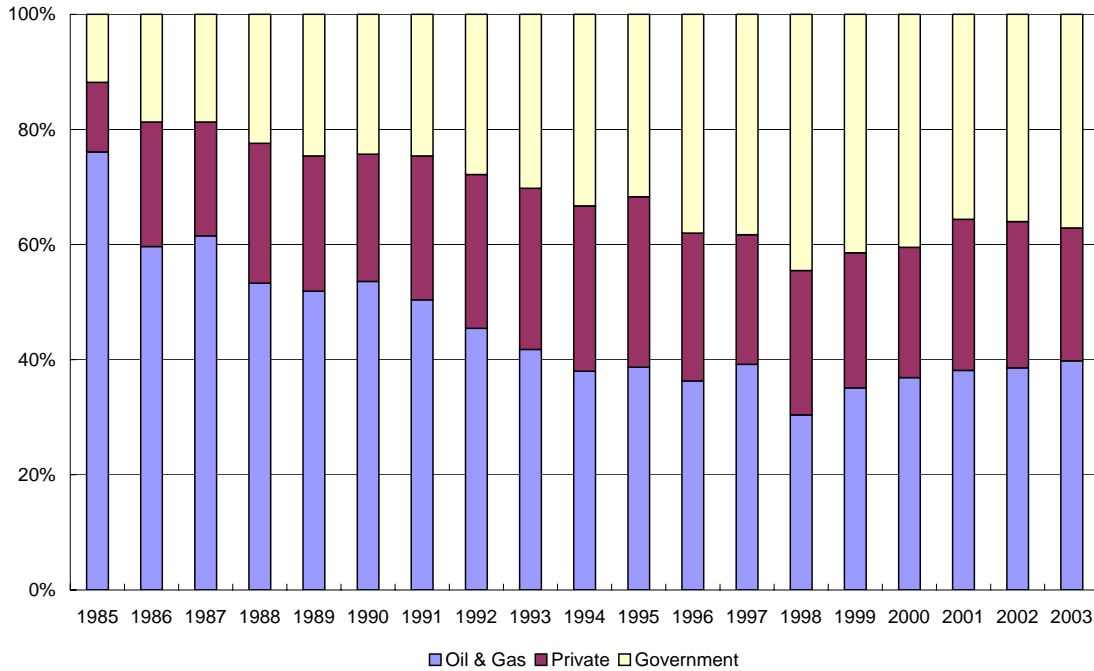


Figure 2. GDP Composition of Brunei Darussalam

Source: Government of Brunei Darussalam

Brunei Darussalam's average economic growth rate between 1996 and 2003 is 2% and has demonstrated a moderate but stable recovery from the Asian financial crisis in the late 1990s (Fig. 3). Inflation has been mild, negative rates of inflation have also been recorded (Fig. 4).

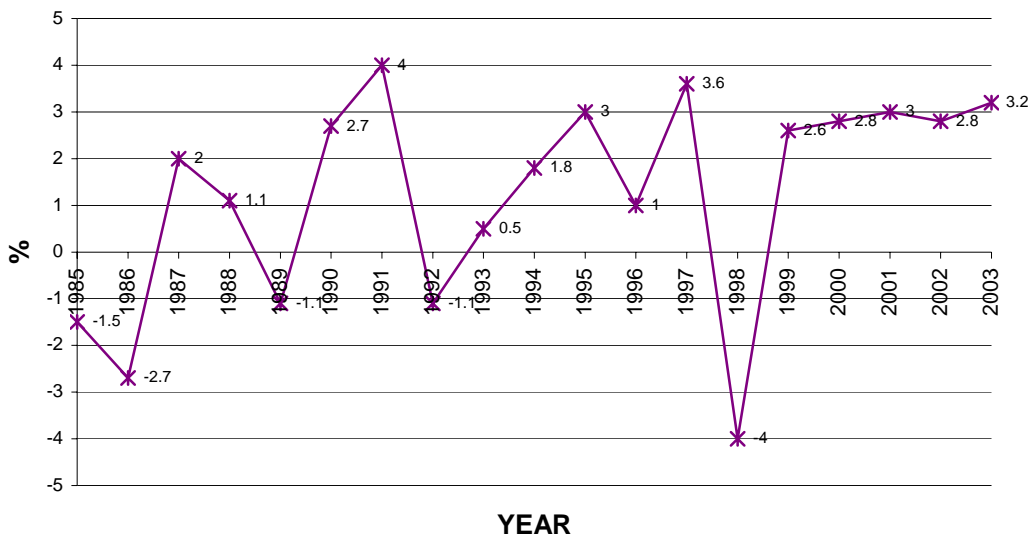


Figure 3. GDP Growth Rate Between 1985 and 2003

Source: Government of Brunei Darussalam

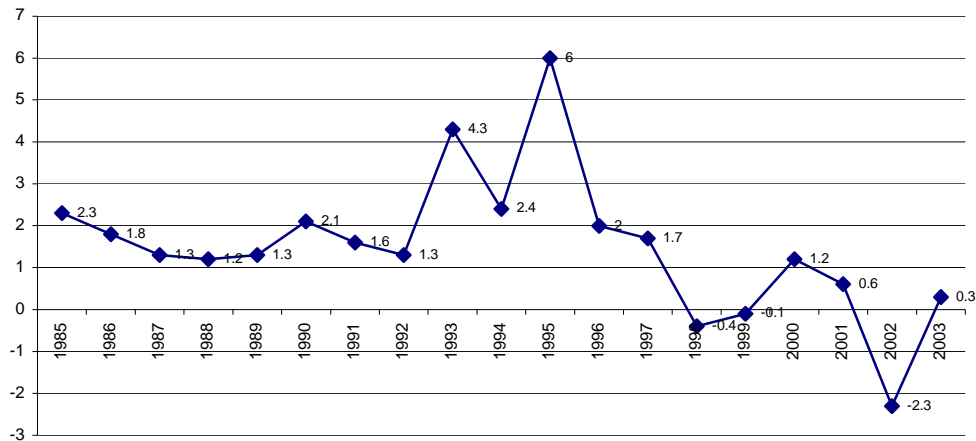


Figure 4. Inflation Rate between 1985 and 2003

Note: year-on-year average

Source: Government of Brunei Darussalam

Brunei Darussalam has a relatively small labor force of around 144,000 out of a population of 357,800, about 40%. Labor force participation rates of male and female are around 80% and 60% respectively while the forecasted unemployment rate of 2004 is 4.8%. Among sectors of the economy, government, construction and wholesale/retail services are the major sources of employment (Fig. 5 and Table 1).

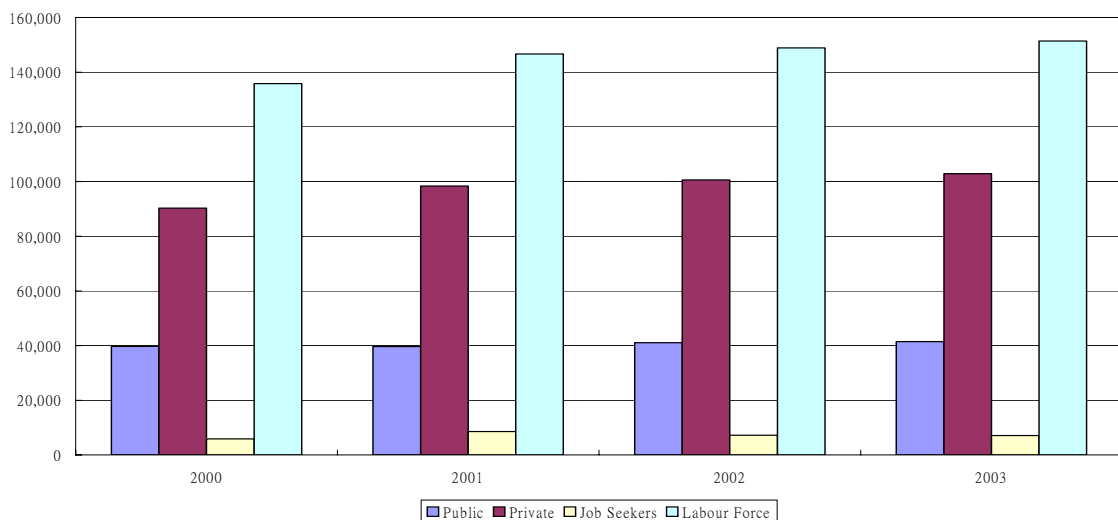


Figure 5. Employment 2000 - 2003

Source: Government of Brunei Darussalam, JPKE

Table 1. Employment by Sector, 1991 - 2003

Year	Public	Private	Total	Growth
1991	33,374	54,420	87,794	-
1992	35,341	63,118	98,459	12.2
1993	36,540	67,990	104,530	6.2
1994	37,363	80,144	117,507	12.4
1995	38,068	75,618	113,686	-3.3
1998	38,313	94,049	132,362	4.7
1999	38,024	84,499	122,523	-7.4
2000	39,704	90,258	129,962	6.1
2001	39,671	98,372	138,043	6.2
2002	41,066	99,800	140,866	2.1
2003	41,505	102,860	144,365	2.5

Source: Government of Brunei Darussalam, Immigration Department

Table 1 provides a long-term trend of employment by sector. It is clear that government has been an important source of employment although the share of government employment has decreased from 38% in 1991 to 29% in 2003.

In terms of trade, import is relatively small when compared to export ( Fig. 6 ). Major important items are manufactured goods and machinery, taking up 32% and 30% respectively. When mapped to the tariff schedule, it can be found that only a small portion of major import items are subject to tariff rates higher than 10%.

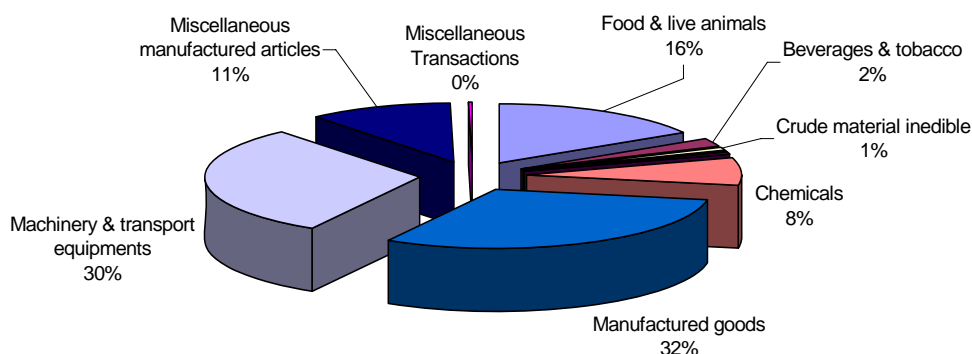


Figure 6. 2001 Import Structure

Source: Government of Brunei Darussalam, JPKE

The largest contributor of GDP, crude oil and natural gas, is largely export-oriented (Fig. 7). Brunei Darussalam is the third largest oil producer in Southeast Asia and produces over 200,000 barrels per day. It is also the fourth largest producer of liquefied natural gas in the world. Brunei Darussalam’s top three crude oil export markets are Australia, Japan and Thailand while over 80% of natural gas production is exported to Japan. This high concentration of GDP source remains a concern over the decade. It is reasonable to assume that the high dependency on oil and gas may result in negative impacts to the economy in the case of price fluctuation.

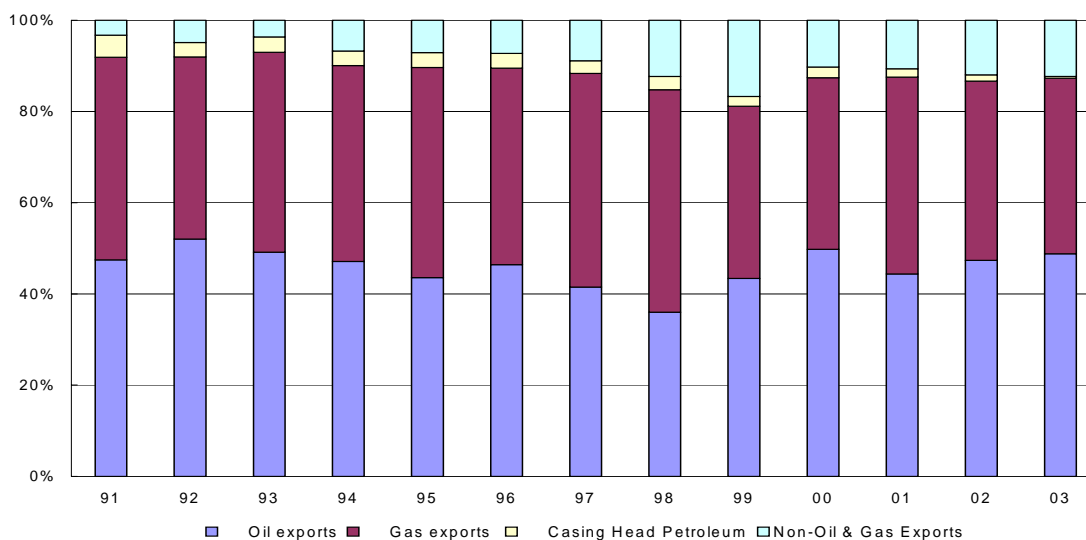


Figure 7. Export Structure

Source: Government of Brunei Darussalam

The recent high oil price has brought about both positive as well as negative impacts to the overall economy. Whilst the high price contributed to higher government revenue and helped stabilize economic growth in the immediate and short term, the higher imported-price from oil-related goods and services could have impacted (or slowed down) the economy as reflected in recent hike in consumer prices and construction materials.

The price impacts are kept within a relatively narrow range largely due to the fact that export prices have previously been negotiated through long-term supply contracts, which usually carry a fixed, pre-determined price clause. In the case of additional incomes, they are normally brought forward to finance the next national budgetary cycle or national development plan. In response, diversification has been a major theme of several phases of the five-year national development plans.

The key objective of the government has been and will continue to be the diversification of its economic dependence from the oil and gas industry. The Textile industry has proven to be the second largest exporter, but this remains uncertain with the expiration of Arrangement Regarding International Trade in Textiles (MFA).

Under the Brunei Economic Development Board (BEDB), a two-pronged strategy was unveiled to kick-start Brunei Darussalam's economic diversification. The strategy is expected to draw in US\$4.5 billion in new investments and create at least 6,000 new permanent jobs by 2008. The first prong of the BEDB strategy involves accessing and attracting two pools of investment to develop downstream and manufacturing industries, power supply and infrastructure in two areas, namely Sungai Liang and Pulau Muara Besar.

The second prong of the strategy involves identifying and developing foreign direct investment (FDI) clusters with growth potential for Brunei Darussalam. Four priority areas are identified, including:

- A. Business services, concentrating on software development and business process outsourcing;
- B. Financial services which will focus on high end, niche investment management services, and asset and fund management;



- C. Hospitality and tourism, focusing on eco-tourism, sports tourism and medical tourism; and
- D. Transportation and logistics primarily focusing on aircraft maintenance services.

Brunei International Financial Center (BIFC) is another important investment facilitator. Since its establishment, BIFC has issued licenses to three international banks, eight registers agents and several mutual funds (Table 2).

Table 2. BIFC licenses Grantees

License Issued	Total issued	Description
International Banking	3	1 Restricted International Banking Licence (Royal Bank of Canada); 1 Full International Banking Licence (Sun Hung Kai International Bank) and, 1 International Investment Banking Licence (HSBC)
Registers Agents and Licensed Trustees (RATLO)	8	Deloitte & Touche, Pricewater (PCW), HMR Trusts, Selangan Star, Canterbury Trust, Ahmad Isa Trust, Power Point Trust, Mutual Trust
Mutual Funds	16	9 Public Funds (Domestic) 1 Public Funds (International) 1 Professional Fund (International) 5 Mutual Fund Operators
Investment Advisers	3	Issued under Securities Order 2001
Securities Exchange	1	Issued under Securities Order 2001
International Insurance	2	1 International Insurer 1 Insurance Broking Licence

Source: Brunei International Financial Center (BIFC), Ministry Of Finance

Also, Brunei Darussalam's overall economic development is directed by phases of five-year national development plans. Currently been implemented is the eighth national development plan (2001-2005). Figure 6 depicts the budget allocation for various items of the sixth, seventh and eighth national development plans. It is clear to see that information and communication technology (ICT), together with science and technology (S&T) clearly emerge in the eighth national development plan, signifying the government's effort to move the economy forward.

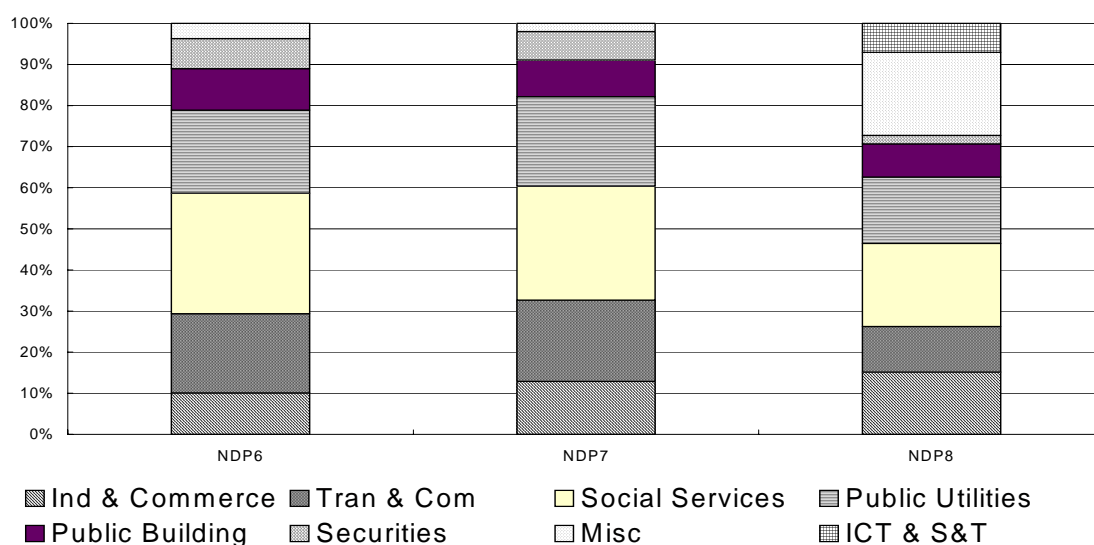


Figure 7. Budget Allocation of national Development Plans

Source: Government of Brunei Darussalam, JPKE

The government of Brunei Darussalam believes that the preliminary results are beginning to emerge and the overall achievement of the goals will take a long period to be fully evaluated.

RTA/FTA is another major driver in Brunei Darussalam's economic development. Brunei Darussalam recognizes the reality of being a small economy and has therefore adopted the approach of regional grouping in the pursuit of economic development. Brunei Darussalam has participated in the APEC Telecommunications Mutual Recognition Agreement (APEC TEL MRA) and at the ASEAN level has plans to implement the first phase of the TEL MRA in the near future. Brunei and Singapore have signed a memorandum of understanding (MOU) on MRA on 19th May 2004.

Also, under the auspice of ASEAN, Brunei Darussalam continues to evolve its policies in order to accommodate Regional Trade Agreement under ASEAN-China, ASEAN-India, ASEAN/CER, P3 CEP, and future ASEAN plus dialogue partners FTA's. A large portion of trade liberation and facilitation will also be advanced through RTA/FTAs. For example, several target dates of zero tariff for trade in goods are already in place through various agreements/arrangements.

In fact, Brunei Darussalam has been engaging in parallel advancement of economic cooperation and trade liberation through various organizations. It should also be noticed that this trend is advancing at different paces. Trade and investment liberalization, for example, illustrates this point.

Brunei Darussalam is currently participating in the ASEAN Investment Agreement. According to Articles 2(i) and 2(ii) of the Schedule III of Framework Agreement on The ASEAN Investment Area<sup>4</sup>, Brunei Darussalam is to open up all industries for investment to ASEAN investors by 2010 and to all investors by 2020 in accordance with the provisions of this Agreement; and extend national treatment to all ASEAN investors by 2010 and to all investors by 2020 in accordance with the provisions of the Agreement. This is a very clear commitment in liberalizing the investment environment. Brunei Darussalam's investment liberalization regime under 2001 APEC IAP submission, on the other hand, is documented in a more comprehensive and flexible fashion. Although this is in no way suggesting any discrepancy in the timeframes of trade and investment liberalization via different economic cooperation organizations, it is clear that Brunei Darussalam is advancing through different groupings. This, according to the authorities, is a reflection of the realization of difficulties a relatively small size economy might encounter under a multilateral mechanism. Brunei Darussalam in many APEC IAP issue areas also demonstrates such a tendency, which will be discussed in respective sections.

In summary, it is important to be aware of the characteristics of the Brunei economy while attempting to review its progress towards the Bogor Goal. This APEC Member Economy is relatively small, but open, with a fairly young population. It relies heavily on the export of oil and gas as the major income source and the job market's single largest employer is the government,

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<sup>4</sup> <http://www.aseansec.org/6466.htm>. Retrieved on December 28, 2004.

employing around one-third of the work force. In term of trade, Brunei Darussalam has a rather concentrated trade pattern, as a consequence of its unique industrial structure. It is essential to have these attributes properly acknowledged when discussing IAP issues so as to maintain an objective and balanced approach.

### III. IAP Review Issues

#### 1. Tariff

##### Objective

- APEC economies will achieve free and open trade in the Asia-Pacific region by:
- a. progressive reduction of tariffs until the Bogor goals are fully achieved; and
  - b. ensuring the transparency of APEC economies' respective tariff regimes.

According to information verified during the in-economy visit, Brunei Darussalam's perception of "free and open trade" is eliminating all tariffs. With this spirit, Brunei Darussalam appears to be moving towards this goal. Currently 79% of Brunei Darussalam's import tariff lines (5,130 out of 6,489) are already at zero and the average applied rate is lower than 2%. There are, however, still 694 tariff lines (10%) with rates higher than 20%, concentrating on the chemical & photographic supplies chapter and the transportation equipment chapter. There are also 87 specific duties (including 68 agricultural lines).

Although a majority of tariff lines are at zero rates, it remains to be observed regarding how Brunei Darussalam will move forward with the remaining "sensitive" lines. According to information verified during the in-economy visit, reasons of maintain higher tariffs include environmental protection and safety as well as security. Part of this issue can be discussed along the line of trade and environment. It would be in accordance with APEC's interests in exploring the issue of tariff as an environmental protection tool *vis-à-vis* other alternatives.

Regarding transparency (objective b), Brunei Darussalam's reports regular updates of the APEC Tariff Database. Even greater transparency will be ensured with the coming tariff section, to be placed in the website of the Royal Customs and Excise Department as indicated in the 2004 IAP.

In terms of progressive reduction of tariff (objective a), the 2004 IAP states that 82% of the total tariff lines will be bounded at 5% by 2010, with exception to those under Article XX. Also documented in the 2004 IAP is another example of Brunei Darussalam's multi-fauceted approach to trade liberalization. Under the "Tariff Preference" title, it is reported that as a

member of the ASEAN and under the ASEAN Free Trade Agreement (AFTA), Brunei Darussalam is committed to reduce all tariff rates to below 5% by 2002. This is a typical situation of reconciliation of an economy's commitments under different trade liberalization mechanisms and will evoke discussions related to GATT article 24, which is beyond the scope of this study report.

In sum, it might be concluded that Brunei Darussalam's progress in the tariff issue of 2004 IAP is cumulatively substantial. The path from the current standing towards the full realization of the Bogor Goal might involve further deliberations of certain fundamental principles and ideologies.

## 2. Non-Tariff Measures

### Objective

- APEC economies will achieve free and open trade in the Asia-Pacific region by:
- a. progressively reducing NTMs to the maximum extent possible to minimize possible distortion to trade;
  - b. in respect to WTO members:
    - Elimination of any measures inconsistent with WTO agreements
    - Full compliance with WTO agreements in accordance to WTO commitments; and
  - c. ensuring the transparency of APEC economies' respective non-tariff measures.

As indicated in the 2004 IAP, Brunei Darussalam maintains non-tariff measures required to protect health, safety, security, the environment, and religion, or to discharge Brunei Darussalam's obligations under international agreements. Comparing the 2001 IAP and the WTO trade policy review (TPR) list<sup>5</sup> with the current submission, it appears that the total number of NTMs has slightly declined. In general, Brunei Darussalam's current NTMs can be divided by different levels of limitations into several categories, including prohibited, restricted, controlled and license-required. Brunei Darussalam reports regulations on both import and export. For the purpose of this study, prohibited and restricted exports will not be discussed. For the imports, all three prohibited items are clearly security, safety and religion related. Controlled and restricted items are also very much of the same nature.

Although most of Brunei Darussalam's NTMs have been maintained since the 2001 IAP submission, certain measures have been taken by the government to gradually introduce competition. One example is rice. The government of Brunei Darussalam still maintains prohibition of exportation of rice sold under the State Store brand whilst at the same time Importation of rice from other sources such as India or other supplier from Thailand has been allowed.

However, for some import license items, the rationale behind some licenses merits further discussion. According the information verified during the in-economy visit, the objective of license and permits for agricultural and fish products is to help control importation of products when it becomes a health hazard and past experience have shown that some imports contains

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<sup>5</sup> WTO, 2001, Trade Policy Review: Brunei Darussalam, Report by the Secretariat, WT/TPR/S/84.

more than the allowed amount of pesticides used by farmers in surrounding country, hence the need to have in place a mechanism for control of this product.<sup>6</sup> This could actually be analyzed from a risk-management perspective and will involve a concept usually referred to in the Sanitary and Phytosanitary (SPS) arena: appropriate level of protection (ALOP), which in general refers to a balance between risk and benefit<sup>7</sup>. Table 3 lists products that require import license and the relevant authorities. Some are in the category of export license. Among them, rice, sugar and salt require import license for quality and stable supply purpose.

Table 3. Import License Items

<b>Product</b>	<b>Authorities</b>
Plants, Crops and life animals	Agriculture Department
Firearms, Explosives	Royal Brunei Police Force Royal Customs and Excise Department
Printed Media	Royal Brunei Police Force
	Ministry of Religious Affair
	Ministry of Home Affair
Woods	Forestry Department
Rice, Sugar and Salt	Information Technology and State Store Department
Used Vehicle	Land Transport Department
	Royal Customs and Excise Department
Telephone equipment & Radio	Telecommunications Department
Antiques & Prehistorical materials made and found in Brunei	Museums Department
Medicine including poison	Ministry of Health

Source: <http://www.customs.gov.bn/tugas/index.htm>, retrieved on January 16, 2005

A case at hand is agricultural products. What must be tested is what type of screening procedure really reduces the risk and at the same time brings

<sup>6</sup> Response to expert questionnaire by the government of Brunei Darussalam.

<sup>7</sup> Anderson et al, 2001.



about maximum benefit. Import licenses grant the exclusive right of bringing products into the economy to a limited amount of agents. Quality, therefore food safety, may be more easily assured given the presumption that there is a low probability of licenses causing the introduction of hazardous products, because of Brunei's experience and expertise in handling the products concerned. Nevertheless, a possible by-product of this type of measures is to limit the supply both in quantity and variety (or choice). Quantity wise, this may cause market inefficiency due to limited sources of supply. In some cases, price may rise due to insufficient supply. This, however, may be less likely to happen in Brunei Darussalam due to the small size of the economy. However, empirical studies must be conducted for a better understanding of the Brunei Darussalam case.

In conclusion, most of Brunei Darussalam's NTMs are based upon non-trade concerns such as health, safety, security, the environment, and religion. Therefore, it is difficult to review this issue purely from the trade perspective. It would also require more effort to verify the extent of WTO-inconsistency. In addition, impacts of market access restriction might be relatively easier for the authorities to remedy without sacrificing too much market efficiency, given the fact that Brunei Darussalam is a small economy.

### 3. Services<sup>8</sup>

#### Objective

APEC economies, in accordance with the APEC Policy Framework for Work on Services, will achieve free and open trade and investment in the Asia-Pacific region by:

- a. progressively reducing restrictions on market access for trade in services;
- b. progressively providing for inter-alia most favored nation (MFN) treatment and national treatment for trade in services;
- c. providing, in regulated sectors, for the fair and transparent development, adoption and application of regulations and regulatory procedures for trade in services; and
- d. recognizing the role that e-commerce plays in the supply and consumption of services.

According to the authorities, Brunei Darussalam's services commitment is WTO-based. So far, Brunei Darussalam has committed four out of 12 services in the WTO Secretariat classification, including business services (professional, computer, and rental or leasing services without operators); communication services (telecommunication), financial services (insurance, and banking and other financial services); and transport services (air transport). Further commitments were made in telecommunications services under the Fourth Protocol<sup>9</sup>. Among these sectors, financial services have been briefly discussed in the introduction and professional services will be included in the Mobility of Business People section.

Also, as described in the introduction section, service sector makes up around 40% of the GDP, the largest two sectors are government service and wholesale/retail services, food and beverage. Since the latter sector is rather liberalized, discussion in this section will focus on government services. Government services are to be reviewed in this section through the cases of telecommunication and tourism.

#### Telecommunication

Telecommunication in Brunei Darussalam can be described as a typical leap-frog development. As of 2004, the penetration rate of fixed line telephone is around 25% and the penetration rate of mobile phone is around 55%. Against this background, this section will touch upon two cases of the telecommunication industry to illustrate the recent development in Brunei

<sup>8</sup> Latest submission of service in IAP by Brunei Darussalam: not available.

<sup>9</sup> WTO, 2001, Trade Policy Review: Brunei Darussalam, Report by the Secretariat, WT/TPR/S/84.

Darussalam regarding objectives c and d. These issues also carry a crosscutting nature.

First of all, with regard to objective c, it can be argue that the government of Brunei Darussalam is gradually implementing the privatization of the telecommunication industry.

Jabatan Telekom Brunei (JTB) was established as a government department in 1952 to provide telecommunication services and to act as a regulatory body for telecommunication at the same time. JTB has been responsible for the development of communication systems and infrastructure and for the transformation in telecommunication services especially after the country's independence in 1984.

While the macro environment evolves, the government of Brunei Darussalam is in the process of restructuring the telecommunication industry through corporatization and eventually privatization. In preparation for the corporatization of JTB, Telekom Brunei Berhad (TelBru) was established in June 2002. Under the Telecommunication Successor Company Order, TelBru is the designated telecommunications successor company which will take over telecommunication service operations from JTB on the date of corporatization.

Meanwhile, the Authority for Info-communications Technology Industry of Brunei Darussalam (AiTi) was established by the Authority for Info-communications Technology Industry of Brunei Darussalam Order, 2001 ("AiTi Order"), as an independent statutory body responsible for regulating and developing Brunei's information, communication technology (ICT) industry. AiTi commenced operations on 1st January, 2003 and has been in preparation to take over the regulatory functions from JTB once the corporatization of JTB is in place under the Telecommunication Successor Company Order 2001. AiTi will have its full licensing authority upon the enforcement of the Telecommunications Order 2001 replacing the Telecommunications Act (Cap.54).

One of the primary objectives of AiTi is to contribute towards the diversification and development of the economy through the development and growth of the local ICT industry.

AiTi has 6 key Thrust Areas, namely,

- (1) Licensing Regime & Regulatory Framework
- (2) Promoting ICT development
- (3) Human Capacity Building for ICT
- (4) Advisory Role on ICT
- (5) Digital Divide & Universal Access
- (6) Representation at International Fora

However, even with plans and agencies been set up and resources moving into places, privatization simply requires more efforts. Currently under the Eighth National Development Plan, this is an on-going project. According to Ministry of Communication, it is likely that this project will continue into the Ninth National Development Plan.

With regard to e-commerce (objective d), the government of Brunei Darussalam is working on several fronts with the Electronic Transactions Order 2000 and Computer Misuse Order 1999 as the legal basis. One of the examples is the Business and Entrepreneur Development Center. This Center is an agency under the Ministry of Industry and Primary Resources which conducts ICT courses to support the development of Small and Medium enterprises (SMEs). These courses have been launched since 1999. The targeted participants are SMEs, retirees, unemployed graduates and those intending to set up their own business. The courses offered ranges from basic Microsoft courses to web designs and programming as well as courses on e-commerce and marketing.

Related to objectives c and d is another on-going project that might improve transparency and facilitate e-commerce: the Treasury Accounting and Financial Information Systems (TAFIS) project under the Ministry of Finance. This is a project that will build up an electronic transaction network to link the Ministry to banks. According to the Ministry of Communication, this is part of a bigger e-government program and might be expanded to incorporate more government entities in the future to advance the paperless environment.

With regard to network security, which is crucial for e-commerce, the Brunei National Computer Emergency Response Team (BruCERT) was established on 1st January 2005. This initiative is in line with what has been

agreed by ASEAN Telecommunications & IT Ministers (ASEAN TELMIN) for ASEAN member countries to establish respective national CERTs by 2005.

## **Tourism**

Tourism is another growing area of Brunei Darussalam's economy. Services provided in Brunei Darussalam with regards to eco-tourism have been improving since 2001. Although the facilities provided are very basic, they are available in every Forest Recreation Park (FRP) in Brunei. The basic facilities provided include forest tracks, toilets, children's playgrounds and prayer areas. Currently the Ulu Temburong National Park is the only place available for guests to stay over night, where chalets are provided, in addition to the basic facilities that are at provided the other FRPs.

On the other hand, a study by Porter and Monitor Group (2003) identifies Hospitality and Tourism as one of the prioritized clusters with potential for Brunei Darussalam to develop. Pursuant to these findings, BEDB has formed a task force with the relevant stakeholders from the public, private and academia to review the recommendations and issues arising from the study. The task force is chaired by the Director of Brunei Tourism and its members includes representatives from Brunei Economic Development Board, Ministry of Home Affairs, Department of Immigration, Department of Technical Education, Department of Land Transport, Royal Brunei Airlines, Empire Hotel, Sheraton Utama Hotel, Orchid Garden Hotel, Mas Sugara Travel and Sunshine Borneo Travel and Tours.

Promotion of awareness and importance of eco-tourism and conservation locally and internationally is also part of Brunei Darussalam's tourism development policy. So much so that the Tourism Office's tag line is The Green Heart of Borneo, The Kingdom of Unexpected Treasures. This activity is also being undertaken by tour operators and travel agencies when promoting Brunei as a tourism destination, and while on tour around in the country.

Brunei Tourism is also working with other Government agencies with regards to conservation, not just of the forests but also of the animals that are found within the boundaries of Brunei.

#### 4. Investment<sup>10</sup>

**Objective**

- APEC economies will achieve free and open investment in the Asia-Pacific region by:
- a. liberalizing their respective investment regimes and the overall APEC investment environment by, inter-alia, progressively providing for MFN treatment and national treatment and ensuring transparency; and
  - b. facilitating investment activities through, inter-alia, technical assistance and cooperation, including exchange of information on investment opportunities.

Brunei Darussalam's major investment facilitation mechanism is performed by government agencies, namely BEDB, Brunei International Center (BIFC) and Economic Planning & Development Department (Jabatan Perancangan dan kemajuan Ekonomi, JPKE). JPKE is also responsible for formulating the programs and projects under the NDPs utilizing government resources.

BEDB was restructured on 26 November 2001 through the Brunei Economic Development Board (Amendment) Order 2001. The primary mandate of the BEDB is to drive the diversification of Brunei Darussalam's economy and to create employment opportunities for the Bruneian people.

The BEDB is a quasi government corporate entity with perpetual succession and a common seal of power, subject to the provisions of the Brunei Economic Development Board Act. The BEDB is empowered to acquire and dispose of property, both movable and immovable and may sue and be sued in its corporate name and perform such other acts as corporate bodies may by law perform.

The BEDB functions as a first-stop agency to attract, retain and add value to local and foreign investments so as to further diversify Brunei Darussalam's economy and create employment opportunities for its people. The BEDB coordinates with relevant ministries and agencies to maximize the benefits generated by both local and foreign direct investments through the strengthening of policy, legal, institutional framework and human resources development.

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<sup>10</sup>. Latest submission of investment in IAP by Brunei Darussalam: 2001.

Regular consultations with existing and potential local and foreign investors are encouraged to identify and address main policy impediments to create a pro-active business environment that is conducive for investment. Moreover, the BEDB keeps abreast with global developments and explores new business opportunities with growth potential for Brunei Darussalam on an on-going basis.

With regard to enterprise ownership, and related to the liberalization issue (objective a), sole proprietary is limited to citizens of Brunei Darussalam. Foreign investment in joint venture must retain a local partner and there is a 49% ownership ceiling. In the case of equity investment, full foreign ownership is allowed.

As discussed in the introduction section, BIFC is another investment facilitator, aiming at the financial sector. Institutionally, the Minister of Finance is the responsible minister under all the legislation. The Authority is appointed by His Majesty The Sultan And Yang Di-Pertuan of Brunei Darussalam and is personified by the Permanent Head of the Ministry of Finance. The BIFC division is multi-disciplinary, led by the Head of Supervision, BIFC, and includes banking, trust and insurance supervisors and support staff.

Finally, in terms of tax incentives, Brunei Darussalam has no personal income tax, no real estate duty and according to the Attorney General Chambers, there is no tax on capital gain but there is timeframe between 5-8 years depending upon status.

## 5. Standards and Conformance

### Objective

APEC economies will, in accordance with the Declaration on APEC Standards and Conformance Framework and with the Agreement on Technical Barriers to Trade (TBT Agreement) and the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) attached to the WTO Agreement:

- a. align their domestic standards with international standards;
- b. endeavour to actively participate in international standardization activities;
- c. promote good regulatory practice for the preparation, adoption and application of technical regulations in the APEC region;
- d. achieve recognition of conformity assessment including mutual recognition arrangements in regulated and voluntary sectors;
- e. promote cooperation for technical infrastructure development to facilitate broad participation in mutual recognition arrangements in both regulated and voluntary sectors; and
- f. ensure the transparency of the standards and conformity assessment of APEC economies.

Brunei Darussalam has no standard-setting body within the government and the Construction Planning and Research Unit of the Ministry of Development is serving as the coordinator of related issues. Given the characteristics of the economy, Brunei Darussalam's approach to this policy issue is, in a way, rather liberal with the exception of the construction, oil and gas industry. All standards are voluntary and are not part of technical regulations. A good example to illustrate this point is that no certification of any type is required for electronic home appliances.

Brunei Darussalam's basic principle of managing standards and conformance is "not to re-invent the wheel" but actively participating in international/regional activities. Current international standards are adopted as deemed appropriate and cooperation with neighboring economies and international/regional organizations are also common ways of introducing standards.

For example, 36% of Brunei Darussalam's standards are directly adopted from international standards. Brunei Darussalam has a MOU with Singapore in certifying laboratories, certification bodies and inspection bodies. Unilateral acceptance of certificates of conformance is another common way of introducing standards (International Standards Organization, Pacific Area Standards Congress, Asia Pacific Metrology Program, Pacific Accreditation Cooperation and others).



To maintain transparency, the Ministry of Development publishes a directory of certified products and accredited laboratories. A website has also been created for updates of standards ([www.mod.gov.bn/PBD.htm](http://www.mod.gov.bn/PBD.htm)).

## 6. Customs Procedures

### **Objective**

APEC Economies will facilitate trade in the Asia-Pacific region by simplifying and harmonizing customs procedures.

Brunei Darussalam's customs procedures are evolving along the rapid changing world. Brunei Darussalam started to implement the WTO Valuation agreement in 2001 and a unit was set up to initiate the implementation of Post-clearance Audit in order to facilitate the traders to release their cargoes efficiently. Although a website has been established, certain portions of the content remain to be expanded and updated.

According to the 2004 IAP, Brunei Darussalam will introduce the green channel/red channel mechanism at the airport before 2006, signifying another coming improving since the 2001 IAP.

Operational and internal procedures also see improvement over the 2001 IAP. For example, an IS/IT plan has started in 2004 to integrate customs procedures into the e-government environment. A paperless customs system is expected to be materialized when the e-government project is completed in 2009. Also, training of customs officers has been held domestic and abroad.

For infrastructure, a network of the CCIS is expanding where lodgment of Customs Declaration and other related matters are viable to almost all customs entry points.

No bonded warehouse rent in Customs control is imposed within a maximum period of two days as an incentive to international cargo consignment. This is part of the BEDB's project to develop Brunei Darussalam into a regional hub of air and maritime transportation.

One improvement that could be undertaken is the implementation of pre-shipment notice. According to the Royal Customs and Excise Department, the possibility of a pre-shipment system is to be re-evaluated as the electronic network is gradually nearing completion. Also in human resources development, training for customs officers has been provided locally and internationally.

## 7. Intellectual Property Rights<sup>11</sup>

<p><b>Objective</b></p> <p>APEC economies will:</p> <ol style="list-style-type: none"><li>a. in conformance with the principles of the TRIPS Agreement:<ul style="list-style-type: none"><li>● ensure adequate and effective protection, including legislation, administration and enforcement of intellectual property rights,</li><li>● foster harmonization of intellectual property rights systems in the APEC region,</li><li>● strengthen public awareness activities and</li><li>● promote dialogue on emerging intellectual property policy issues, with a view to further improve intellectual property rights protection and use of the intellectual property rights systems for the social and economic benefit of members.</li></ul></li><li>a. address the challenges for intellectual property rights arising from the rapid growth and developments of the New Economy by:<ul style="list-style-type: none"><li>● establishing legal frameworks to promote creative endeavor and encourage on-line activity;</li><li>● ensuring a balance between the different rights and interests of copyright owners, users and distributors;</li><li>● establishing an appropriate balance among all stakeholders, including content providers and ISPs in terms of the liabilities for infringing</li><li>● intellectual property on-line; and</li><li>● providing incentives for innovation without sacrificing the community's interest in reasonable access to information.</li></ul></li></ol>
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According to the Attorney General Chambers, Brunei Darussalam's IPR legislations were drafted in close coordination with WIPO to ensure that the legislations would be in compliance with their obligations under the WTO Agreement on Trade-Related Aspects of Intellectual Property. Enforcement procedures and remedies (including border control measures) are available under the various legislations as well as under the common law to enable effective action to be taken against acts of infringement. These procedures and remedies may be sought through both civil and criminal actions. Sentences which could be imposed if found guilty of a criminal offence under relevant legislations include fines and imprisonment.

In terms of government agencies coordination, the Attorney General's Chambers (Registries Divisions) has the overall responsibility for overseeing intellectual property rights issues in Brunei Darussalam. The Attorney General's Chambers responsibilities include advising on and assisting in the formulation of policy, drafting of legislation, prosecution of criminal offences under the relevant legislations, maintaining Offices for the Registries of

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<sup>11</sup> Latest submission of IPR in IAP by Brunei Darussalam: 2001.

Trademarks, Patents and Industrial Designs), a general advisory role to other government departments and public education and awareness. The Royal Brunei Police Force is responsible for general enforcement and investigating criminal offences under the relevant legislations while the Royal Customs and Excise Department is responsible for enforcement of border control measures. The Intermediate Court and the High Court have jurisdiction to hear intellectual property rights infringement cases.

In the following section, description of several pieces of legislation will be presented.

### **Copyright**

Copyright Order, 1999

Commencement: 1<sup>st</sup> May 2000

Copyright protection is afforded to original literary, dramatic, musical or artistic works, sound recordings, films, broadcasts or cable programs and the typographical arrangement of published editions. "Literary works" includes computer programs and tables or compilations of data. The duration of copyright in a literary, dramatic, musical or artistic work is 50 years from the death of the author; or in the case of a computer generated work, 50 years from the end of the year in which it was made; or as relevant (for example, subject to the description of the 'work') 50 years from which the work was made available to the public or published. The Order also makes provision for 'neighboring rights' and moral rights.

The Order provides exclusive rights to the copyright owner over the following acts: copying, issuing copies to the public, performing, showing or playing the work in public, broadcasting the work, making adaptations and communicating the work to the public.

The Copyright Order also contains provisions against devices designed to circumvent copy protection.

The Copyright Order also applies to works eligible for protection in Brunei Darussalam by virtue of international conventions or agreements to which Brunei Darussalam is a party.

## **Trade Marks**

Trade Mark Act (Chapter 98)

Revised in 1999, Commencement: 1<sup>st</sup> June 2000 (with the exception of sections 75-81, Trade Mark agents)

The Trade Marks Act makes provision for the registration of trade marks and applies to both goods and services. A trademark is registered for renewable 10-year periods.

## **Industrial Designs**

Industrial Designs Order, 1999

Commencement: 1<sup>st</sup> May 2000

The Industrial Designs Order, 1999, governs the registration and protection of industrial designs in Brunei Darussalam. The total term of protection afforded under the Order is 15 years.

## **Layout Designs**

Layout Designs Order, 1999

Commencement: 1<sup>st</sup> May 2000

An original layout design of integrated circuits is protected under the Layout Designs Order, 1999. Protection is automatic and the duration of protection is either 10 years from the first commercial exploitation (if the exploitation takes place within 5 years after the year it is created) or 15 years from the year it is created.

## **Patents**

(1) Inventions Act (Chapter 72)

Makes provision for the re-registration of patents granted in the United Kingdom, Malaysia and Singapore.

(2) Patents Order, 1999

Commencement: Not yet in force (in the process of finalization of subsidiary legislation under the Order)

The Patents Order will create an independent patent system in Brunei Darussalam. The duration of protection will be 20 years from the date of filing the application.

## 8. Competition Policy<sup>12</sup>

### Objective

APEC economies will enhance the competitive environment to increase consumer welfare in the Asia-Pacific region, taking into account the benefits and challenges of globalization, developments in the New Economy and the need to bridge the digital divide through better access by ICT, by:

- a. introducing or maintaining effective, adequate and transparent competition policy and/or laws and associated enforcement policies;
- b. promoting cooperation among APEC economies, thereby maximizing, inter-alia, the efficient operation of markets, competition among producers and traders, and consumer benefits; and
- c. improving the ability of competition authorities, through enhanced capacity building and technical assistance, to better understand the impact of globalization and the New Economy.

Brunei Darussalam is in the process of formulating a set of competition policies. There are, however, several pieces of legislation related to consumer protection, fair trade, and monopoly.

In addition to the public utility monopolistic type of state-owned entities, monopoly is allowed by law in Brunei Darussalam for only one commercial item under the Monopolies Act: crocodile skin and lizard skin. However, according to the Attorney General Chambers, no application has been filed for the monopoly right.

One very unique feature of Brunei Darussalam's laws governing the functioning of the market is the Price Control Act. The Act was commenced in 1974 and the latest revision is 1999. This Act covers several aspects of market activities such as control of movement, export and import dealing in specified goods, refusal to sell goods, prohibition against a greater quantity of a controlled article than required for ordinary use, prohibition against selling greater quantities of controlled article than required for ordinary use, hoarding, and display of price on goods.

According to the JPKE, price control only applies to a few import items such as rice and sugar, or specific products such as motor vehicles. In commerce practice, certain types of large-scale sale must obtain approval for the competent authority, JPKE in some cases, in advance. Such controls

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<sup>12</sup> Latest submission of competition policy in IAP by Brunei Darussalam: 2001.

serve several purposes, including preventing market volatility, ensuring stable supply, consumer protection and fair competition.

The rationale behind this Act is very closely related to that governing the NTM mechanism, especially licensing. It is culturally and socially acceptable and legitimate in Brunei Darussalam and other economies to have some sort of government intervention on the pricing of commodities in order to maintain the smooth operation of the economy. This of course will lead to different arguments regarding several core issues of economies. It is not the purpose of this study report to further explore this very intriguing issue of price control but a resolution/consensus building process will definitely bring about tremendous progress mutual understanding amongst APEC Economies.



## 9. Government Procurement<sup>13</sup>

### Objective

- APEC economies will
- a. develop a common understanding on government procurement policies and systems, as well as on each APEC economy's government procurement practices;
  - b. achieve liberalization of government procurement markets throughout the Asia-Pacific region in accordance with the principles and objectives of the Bogor Declaration, contributing in the process to the evolution of work on government procurement in other multilateral fora; and
  - c. increase the use of electronic means to conduct government procurement and in so doing seek to promote the uptake of e-commerce more broadly.

Although Brunei Darussalam is not a signatory to the WTO Government Procurement Agreement (GPA). A close examination of their government procurement procedures will indicate similarities to the practice of many other economies and international organizations. The current government procurement mechanism is based upon the Financial Regulations, 1983. Under current regulations, government procurements are subject to several levels of procedures, depending on the amount of purchase. As a common practice through the world, as the amount of procurement rises, the procedure tends to involve more monitoring and screening processes.

There is no preferential treatment for environmental-friendly, or “green” products during the procurement process.

In addition, there is no government procurement project specially set aside for small and medium enterprises (SMEs). According to JPKE and BEDB, SMEs are encouraged to participate in large-scale government procurement project through partnership with multinational partners. It is so designed by the government with a hope to provide SMEs opportunities to receive technology transfer from multinational partners. And this design also functions *vice versa*. According to Companies Act, foreign corporation must have at least one partner in order to setup local commercial presence. This is to ensure accountability. Therefore, for foreign corporations to participate in the government procurement process, commercial presence becomes a prerequisite and therefore strengthens the cooperative relationship between foreign and local team members.

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<sup>13</sup> Latest submission of service in government procurement by Brunei Darussalam: 2001.

## 10. Deregulation/Regulatory Review<sup>14</sup>

### Objective

APEC economies will facilitate free and open trade and investment in the Asia-Pacific Region by, inter alia:

- a. enhancing the transparency of regulatory regimes (including through the use of new technologies);
- b. eliminating domestic regulations that may distort or restrict trade, investment or competition and are not necessary to achieve a legitimate objective; and
- c. speeding up reforms which encourage efficient and well functioning product, labour and capital markets and supportive of institutional frameworks.

According to Attorney General Chambers, Brunei Darussalam is at the initial stage of forming laws and regulations. It is therefore important to review the development of laws and regulations in such a context so as to have a pragmatic view of the policy evolution process.

Regarding transparency of regulatory regimes, one aspect of the issue is the discrepancy government officials have in terms of the approach, timeframe and other elements of administrative procedure. In this regard, many Brunei Darussalam government agencies are under the regulation of respective client charters. Within these charters, processing days are specified so to control the timeframe of the process. Though such charters, at least one aspect of transparency can be ascertained.

This section will end with a case study provided by the government of Brunei Darussalam:

The financial sector in Brunei Darussalam is dominated by the banking sector. There are nine banks presently licensed to conduct business in the country and six are foreign owned and presented by branch operations.

Financial Institutions Division (FID), Ministry of Finance is the regulator and supervisor of the financial institutions in Brunei Darussalam. FID has always treated all the financial institutions, local and foreign branches of banks, the same in terms of allowing these institutions to open branches and installing off-site auto teller machines. The annual fees charged for these facilities are also the same for all local and foreign branch banks.

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<sup>14</sup> Latest submission of in deregulation/regulatory review by Brunei Darussalam: 2001.

In a continuing effort to provide a sound and stable financial environment, Ministry of Finance observes the Basel minimum requirement for Capital Adequacy Ratio. This ratio is used for ensuring that banks have sufficient capital to survive likely economic shocks.

The risk-weighted capital ratio (RWCR) for three local banks at the end of Q3 2004 increased to 18.47% showing strengthening in the banking system in terms of capitalization and improved asset quality. This ratio surpasses the Basel minimum requirement of banks to have a specific measure of capital greater than or equal to 8% of a specific measures of assets weighted by their estimated credit risk. In addition, the core capital ratio (CCR) recorded at 14.45% is also above the minimum requirement of 4%. RWCR and CCR are both calculated based on Total On and Off Balance sheet assets using Tier 1+2 and Tier 1 respectively.

Looking at the current structure, Brunei Darussalam has always been quite open in terms of allowing foreign financial institutions to operate here. Possible entrance and consideration will be given to those applying if the financial institutions that applied meet the criteria set by the FID.

## 11. Implementation of WTO Obligations and ROO<sup>15</sup>

### Objectives

APEC economies will ensure full and effective implementation of Uruguay Round outcomes within the agreed time frame in a manner fully consistent with the letter and the spirit of the WTO Agreement.

On Rules of Origin, APEC economies will:

- a. ensure full compliance with internationally harmonized rules of origin to be adopted in relevant international fora; and
- b. ensure that their respective rules of origin are prepared and applied in an impartial, transparent and neutral manner.

For this issue area, Brunei Darussalam appears to have no major actions since the 2001 IAP. According to the information verified during the in-economy visit, it is so because Brunei Darussalam has fully implemented its obligations in goods and services but is constantly review the possibility of extension.

With regard to ROO as discussed in the final part of introduction, Brunei Darussalam is a member to many regional economic cooperation organizations and is therefore subject to several sets of ROO regulations. Customs responded by saying that too many and sometimes overlapping ROO regulations might create extra administration burdens in the future.

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<sup>15</sup> Latest submission of in implementation of WTO obligations by Brunei Darussalam: 2001.

## 12. Dispute Mediation<sup>16</sup>

### Objective

APEC economies will:

- a. encourage members to address disputes cooperatively at an early stage with a view to resolving their differences in a manner which will help avoid confrontation and escalation, without prejudice to rights and obligations under the WTO Agreement and other international agreements and without duplicating or detracting from WTO dispute settlement procedures;
- b. facilitate and encourage the use of procedures for timely and effective resolution of disputes between private entities and governments and disputes between private parties in the Asia-Pacific region; and
- c. ensure increased transparency of government laws, regulations and administrative procedures with a view to reducing and avoiding disputes regarding trade and investment matters in order to promote a secure and predictable business environment.

According to the Attorney General Chambers, dispute mediation cases mostly fall under civil codes (courts/contracts). Also according to the Attorney General Chambers, disputes between government and private entities are mostly resolved outside the court, sometimes through consultation and negotiation. It is so because most cooperative relationships between the government of Brunei Darussalam and private entities are long-term based. Both sides tend to develop some sort of mutual understanding so to avoid serious disputes. So far, there has been no court case involving the government of Brunei Darussalam and any particular private entity.

On the WTO dispute settlement issue, Brunei Darussalam has never been involved in any case.

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<sup>16</sup> Latest submission of in dispute mediation by Brunei Darussalam: 2001.

### 13. Mobility of Business People

#### Objective

APEC Economies will:

- a. enhance the mobility of business people who are engaged in the conduct of trade and investment activities in the Asia-Pacific region; and
- b. enhance the use of information and communications technology (ICT) to facilitate the movement of people across borders, taking into account the Leader's Statement on Counter Terrorism.

Historically tied to the British system, Brunei Darussalam recognizes many professional qualifications largely in accordance with the British system. Foreigners who wish to practice professional service will have to present appropriate credentials. Similar to the arguments presented in the standard and conformance section, Brunei Darussalam adopts a rather open and liberalized approach towards the issue of mobility of business people. In Brunei Darussalam, there is already a strong presence of foreign professionals. When taking into account the characteristics of the economy, it could be argued that mobility of business people policy should be in principle follows Brunei Darussalam's WTO GATS commitments. Brunei Darussalam's current mode four GATS commitment is that the movement of natural persons is unbound with respect to both market access and national treatment, with the exception of temporary intra-corporate transfers at the level of management, executives and specialists.

In terms of APEC Business Travel Card operation, since the 2003 IAP, Brunei Darussalam received 4,956 foreign applications and approved 3,468 cases. However, local applications only amounted to 16 with 10 approvals. According to the Immigration Department, it is so because Brunei Darussalam business travelers have already enjoyed frequent interactions with foreign partners and the most frequently traveled destinations are already offering services that are comparable to APEC Business Travel Card. It is therefore no firm demand for APEC Business Travel Card.

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# Annex I

## 2005 APEC IAP Peer Review: Brunei Darussalam

### Members of the IAP Review Team

<b>Moderator</b>	Mr. Katsuhiko Umehara APEC Senior Official for Japan
<b>Discussant</b>	Mr. Lee Sang-kyu APEC Senior Official for Korea
<b>Expert</b>	Dr. Tze-Wei Chen Assistant Professor Graduate Institute of Translation and Interpretation, National Taiwan Normal University Chinese Taipei
<b>APEC Secretariat</b>	Mr. Julio Bravo Director Program

Annex II

2005 APEC IAP Peer Review: Brunei Darussalam

**FINAL ANSWERS**

**TO**

Economies Questionnaires

## BRUNEI DARUSSALAM'S IAP 2004

### COMMENTS, QUESTIONS – MEMBER ECONOMIES

#### General Comments

#### Australia

1. Australia notes that Brunei's 2004 IAP, as posted on the APEC website, is incomplete. We have therefore been forced to limit our comments to those areas that have been reported against. We encourage Brunei to complete all chapters in future IAPs.

#### Answer:

We thank Australia for its comment. In general Brunei Darussalam continues to attach importance in updating all the chapters in the IAP in tandem with its domestic legal infrastructure as well as its commitment in the regional and multilateral arena. Brunei Darussalam will update the relevant IAP Chapters when relevant domestic regulations had been put in place.

#### Japan

2. Brunei has submitted its IAP in 4 areas only. What has become of the other areas?

#### Answer:

See Answer to Question 1. There are several Updates for other Chapters in the IAP available.

3. Are all the procedures concerning promotion of trade and investment stipulated in the domestic laws and regulations? If there are any non-stipulated procedures, we would be interested in their details.

Answer:

All procedures concerning promotion of trade and investment have been stipulated in the domestic laws and regulation. Procedures are publicized in the forms of booklets and information leaflets are available to the public at relevant agencies and in respective websites.

4. Could you please clarify whether the government or any government officials retain any discretion in the interpretation or application of any of the administrative procedures contemplated under this IAP?

Answer:

Government and its official does retain some form of discretion in exercising the implementation and application of administrative procedures. Administrative procedures however are clear cut and precise which leaves no room for differing interpretation.

5. What has the government of Brunei done to ensure transparency in the administrative procedures under its IAP? In particular, what procedures exist if a Brunei national wishes to file a complaint with regard to a procedure or claim damages following a government ruling?

Answer:

Most administrative procedures are in the form of client charter which depict the procedure and time taken for the completion of a specific procedure, for example, application for registry of business. Client charters are publicized at counter as well as printed in the form of leaflets at different agencies and at respective websites.

Any person is encouraged to file their complaint by writing to the respective Ministry accordingly.

## **New Zealand**

6. New Zealand notes with interest the proactive approach being taken by Brunei Darussalam to diversify its sources of economic growth with a focus on foreign direct investment (FDI) and services. Brunei is involved with the development of closer relations between ASEAN and China, Japan and South Korea (ASEAN+3). New Zealand welcomes the fact that Brunei is currently observing the P3 CEP negotiations that involve New Zealand, Singapore and Chile, and it has endorsed the ASEAN decision to launch ASEAN/CER FTA negotiations. Brunei hosted and chaired APEC in 2000 and works constructively in this forum, as well as in the WTO.

## **APEC Review Team**

7. Please provide an assessment of the impact(s) of the recent high oil price on the economy.

Answer:

The impact of high oil price did not create major impact on the overall economy of the country with the exception of higher revenue. Additional incomes are normally brought forward to finance the next national budgetary cycle or NDP. Ideally, primary focus would be to undertake more intensive oil exploration in deep waters offshore within its EEZ boundary. Short term effects seems less visible as Brunei does not import oil or oil by products.

8. Please identify major economic policy evolutions, if any, between 2000 and 2004.

Answer:

Under the auspice of ASEAN, Brunei Darussalam continue to evolve its policies in order to accommodate Regional Trade Agreement under ASEAN-China, ASEAN-India, and future ASEAN plus dialogue partners FTA's. The setting up of the Brunei International Offshore Financial Center have also resulted in some evolution of policies in the Financial sector.

9. Please provide a brief description of the government's vision of Brunei Darussalam's economic development.

Answer:

Brunei Darussalam's economy has been dominated by oil and gas ever since its discovery in 1929. The oil and gas sector is the main source of the nation's revenue. It constitutes about 90% of Brunei Darussalam's exports and accounts for about 40% of the country's GDP. To sustain and strengthen the oil and gas industry, His Majesty's Government is actively promoting and pursuing the development of new upstream and downstream activities.

Aside from this, Brunei Darussalam is also driving towards economic diversification from dependence on these non-renewable resources to ensure a more sustainable source of national income. It recognizes that a more diverse economic base is in the long-term interests of the nation and community. The efforts to develop the non-oil and gas sector of Brunei Darussalam's economy offers considerable opportunities for foreign direct investment in areas such as ICT, human resource development, food-processing, manufacturing, transshipment, financial services and tourism. His Majesty's Government has taken steps to create an attractive and competitive environment for investors through incentives and streamlined regulation.

**Specific comments:**

**CHAPTER 1 – TARIFFS**

**Australia**

1.1. We note that since 1996, import tariffs on motor vehicles have fallen from between 40 per cent and 200 per cent to 20 per cent.

**Answer:**

This reduction is in line with Brunei Darussalam overall objective to liberalise and open trade and also with its commitment regionally.

1.2. We also note that Brunei Darussalam restricts the imports of second-hand automotive vehicles. A number of economies, including Australia, have measures in place to restrict the importation of such vehicles.

**Answer:**

Restriction of Second hand cars is in place to ensure that products are safe for use by any person in the country.

**Hong Kong, China**

1.3. We commend Brunei for maintaining a low average applied rate of 1.98%. We also welcome Brunei's plan to progressively reduce bound tariffs between 2010 and 2020. This will make significant contributions to achieving the Bogor goal.

**Japan**

1.4. How has Brunei implemented tariff reductions?

Have the reductions been implemented according to the schedule of commitments made during the WTO Uruguay Round?

What is Brunei's basic policy on tariff reductions and what implementation schedule is envisaged?

Answer:

Brunei Darussalam implements its tariff reduction in accordance with its commitment in the regional and multilateral arena. Brunei Darussalam's basic policy is to reduce tariff in a gradual manner until it reaches a set percentage.

1.5. How often does Brunei update its table for tariff rates on the Brunei Government and APEC Secretariat websites?

Answer:

Brunei Darussalam updates its tariff table yearly and informs the public of any changes to the tariff upon its enforcement. Plans are in progress to provide web link to the government website.

### **New Zealand**

1.6. Brunei's APEC IAP notes applied MFN tariffs are low, with around 79% at zero. Brunei Darussalam reduced the bound tariff of 80% of its total tariff lines to 8% between 1997–2000. However, certain products are subject to bound tariff rates up to 30%. **What plans does Brunei have to bind its tariff rates on these goods more closely in line with its applied rates?**

Answer:

Brunei Darussalam are currently reviewing such plan to bind its tariff rates closer to its applied rate. This falls under its short term plan of review in accordance to its commitment in the Regional and Multilateral arena.

### **APEC Review Team**

1.7. Brunei Darussalam has been continuously reducing tariff rates over the past years and has reached substantial results. It is stated in the 2004 IAP that Brunei Darussalam will bound 82% of the total lines at 5% before 2010. For the remaining 18%, do they all fall within Brunei Darussalam's WTO commitments under Article XX? If not, what are the exceptions?



Answer;

Yes it falls under WTO Article XX.

1.8. It is also stated in the 2005 IAP that the Royal Customs Department is in the process of putting all information related to tariff on its website, will that include tariff information? If yes, will this bring about the opportunity of a web-based tariff database that can further be linked to the APEC Tariff Database?

Answer;

The Customs and Excise Department has been actively progressing towards computerization of its procedures and tariff database. Ideally there are plans to include tariff information in the website and could be linked to APEC Tariff Database.

1.9. In Brunei Darussalam's 2001 WTO trade policy review, questions were raised regarding the difference between bound rate and applied rate. The 2004 IAP touches upon the reduction of both rates but does not address the issue of the discrepancy. Please provide a brief numerical explanation of the latest development.

Answer;

79% of Brunei Darussalam's tariff lines are at zero percent with the remaining tariff are applied at 5 – 30%. In addition to that 95% of Brunei Darussalam's tariff lines are already bound and there are no plans to increase the applied tariff. Brunei Darussalam is currently reviewing its bound rate and will consider reducing them in WTO negotiations.

## CHAPTER 2 - NON-TARIFF MEASURES (NTMS)

### Hong Kong, China

2.1. We note from Brunei's IAP that its NTMs are applied mainly for health, safety, security, environmental and religious reasons or to fulfill international obligations. However, to facilitate international trade, we encourage Brunei to regularly review the NTMs with a view to reducing their application as far as possible.

Answer:

Brunei Darussalam continue to assess the application of NTM's so as not to restrict trade and to periodically assess the possibility of eliminating NTM's when appropriate.

### Japan

2.2. Please explain the reasons for each of the non-tariff measures stipulated in the IAP and how these will be implemented.

Answers:

In general, NTM measures are based on health, security, environmental and religious reasons which are stipulated in various laws and regulation. Border measures are in place to monitor the importation of goods that are subjected to NTM's.

2.3. Are import prohibitions applied equally to all importers? Please specify any exceptions and demonstrate that these exceptions are designated in a transparent manner.

Answer:

There are no discrimination to any importers of goods that is restricted by NTM's

2.4. Are all non-tariff measures invoked by the Brunei Government explicitly stipulated in written regulations? What are these regulations? Are any non-tariff measures not so specifically stipulated? Does the Brunei Government publish the details, scope, purpose and assessment criteria of otherwise non-stipulated non-tariff barriers?

Answer:

All NTM's are stipulated in the various laws and regulations such as under Customs and Excise Act and Health Order Act which are publicly available.

2.5. If companies or citizens encounter a non-tariff measure aside from those specified in the IAP, where should they seek information and what procedures exist for settlement?

Answer:

Reference should first be made to any Customs and Excise official who can advice if any goods are subjected to NTM measures.

### **New Zealand**

2.6. A number of non-tariff measures exist in Brunei. Products subject to import restrictions include: rice, sugar and salt – for the purpose of maintaining food supplies; beef, poultry and alcoholic beverages – for religious reasons; plants and live animals, converted timber, and used vehicles five years and older – for safety reasons. **What plans does Brunei have to reduce these non-tariff measures?**

Answer:

Brunei Darussalam continue to consider the elimination of NTM's that are considered out dated or no longer valid. Assessment are periodic but currently there are no plans to reduce the current ones.

## **APEC Review Team**

2.7 Religious rules and traditions must be respected in international trade activities. At the operational level, does Brunei Darussalam have any guidelines or informative materials available for foreign export to make reference to while engaging in trade with Brunei Darussalam?

Answer:

Information with regards to trading with Brunei Darussalam is publicized in numerous publications and through websites. Most government department has its own website that host a variety of information and web links.

Ideally for specific products, the Royal Customs and Excise department should be consulted first as they could provide further advice as to which specific agencies or government department parties could address their queries to. In most other circumstances, queries can be made to Ministry of Industry and Primary Resources.

2.8 According to the 2004 IAP, many current non-tariff measures are used to safeguard the health consideration. For example, import of agricultural and fish products require license/permits issued by various government authorities. What is the nature of such license/permits? Is it of SPS nature? If yes, then the issue of whether these are to be listed as non-tariff measures could be further discussed.

Answer:

Considering the small area and population of the country, the government's primary policy is to ensure the importation of agri and aqua products that are safe for consumers. In some cases, it is also vital to secure a stable food supply.

Ideally, the objective of License and permits is to help maintain control on the importation of goods and to serve as a means to collect statistics. Application for the right to import food products through permits and licenses are not restricted and is opened to all interested parties.

## CHAPTER 3 – SERVICES

### Japan

(This section is not provided in the IAP.)

3.1. Is it possible to conduct business in industries where there are no related laws or regulations?

Answer:

Any person is required to first register the names and nature of the business they wish to conduct as specified under the Business Enactment Act. The list of nature of business are currently available at the Registrar. Application for registering a business that falls outside the list shall be referred to respective agencies and Ministries. No person can undertake any form of business without going through this process.

3.2. What is the basic position of Brunei concerning national treatment and MFN provisions as stipulated in the CAP guideline? How will Brunei introduce national treatment and MFN treatment provisions or have they been already introduced?

Answer:

Brunei Darussalam basic position can be found in its GATS Commitment of the WTO.

3.3. To what extent has Brunei implemented action as stipulated in CAP in the field of tourism?

Answer:

Brunei Darussalam recognizes that tourism can help diversify its economy. It continue to build and develop tourist infrastructure, encourages and attract investment, streamline entry process and undertake promotional activities worldwide and regionally. Brunei also recognizes the importance of maintaining its resources and have put emphasis on eco tourism as a platform towards sustainable management of its resources

Brunei plans to set up its own Tourism Satellite Account which will help to collate statistics more effectively and assess the contribution of tourism on its GDP.

### **New Zealand**

**3.4. When does Brunei plan to submit information on their services regime for their APEC IAP? Brunei's focus on economic diversification includes targeting the services sector. What sub-sectors within the services industry is Brunei focusing on for growth? Like many governments, the Brunei authorities face difficulties producing accurate statistics of services trade. What plans does Brunei have to improve its services statistical export/import data?**

Answer:

Submission of Services regime falls closely under the gambit of Brunei's commitment in the WTO. There are short term plans to submit information on this IAP Chapter. Brunei is currently looking into several sectors namely Business services - software development and business process outsourcing; Financial service - niche investment management services and asset and fund management; Hospitality and tourism - eco-tourism, sports and medical tourism; Transportation and logistics.

Brunei Darussalam is in the process of strengthening its statistics collection process and would welcome assistance from member economies on their own experience and know how.

### **APEC Review Team**

3.5 According to many secondary data, service industry appears to be a major part of Brunei Darussalam's future economic development agenda. In this regard, has Brunei Darussalam made any additional GATS commitments since 2002?

Answer:

Brunei is currently in the process of developing and considering tabling new offers in the near future.

3.6 Has there been any change of restrictions on the provision of professional services by foreign operators since 2002?

Answer:

There have been no changes to the restriction in this area. Brunei Darussalam welcomes operators to set up a formal business or form joint ventures with local companies in order to provide professional services. However, Brunei Darussalam is currently in the process of drafting a legislation with regards to provision of professional services as a mean to regulate this sector.

3.7 Has Brunei Darussalam successfully participated in the APEC telecommunications mutual recognition agreement?

Answer:

Brunei Darussalam at the ASEAN level participated in the TEL MRA and have plans to implement the first phase of the APEC TEL MRA in the near future.

3.8 A 1999 Brunei Darussalam Economic Council report mentioned the possibility of privatization. Is there any long-term plan to privatize the telecommunication industry?

Answer:

The telecommunication industry is undergoing privatization scheme namely Jabatan Telekom Brunei (TelBru) and Authority for Telecommunication Industry (AiTi) which looks after the provision of services and regulating the industry respectively. Please see answers to question Deregulation/Regulatory Review

## CHAPTER 4 – INVESTMENT

### Japan

(This section is not provided in the IAP.)

4.1. Please specify those businesses where foreign investment is restricted and not restricted.

For those businesses where foreign investment is not restricted, do any conditions apply, such as ratio of share, percentage of Brunei employees, requirement not to export final product, etc.?

Are the above-stated restrictions specified in any domestic law or regulation? Please specify.

Answer:

Investment Chapter has now been uploaded into the APEC website. In general there are no restriction for foreign investors to invest in any sector in Brunei however we encourage investors to make full use of the local workforce. Foreign ownership is allowed but in case of Joint Ventures 51% ownership should be retained by locals. Laws and regulation are specified in Investment Incentive Act Order 2001.

### New Zealand

4.2. **When does Brunei plan to submit information on its investment regime for their APEC IAP?** In an aim to diversify the economy away from a dependence on oil/gas, Brunei encourages foreign direct investment (FDI). The recently created Economic Development Board (EDB) is charged with encouraging FDI to Brunei. **What sectors form Brunei's focus for FDI?** Foreign investment appears to be permitted in most sectors, including up to 100% foreign equity investment in all sectors except those employing local resources and those relating to national food security, for which some local participation is required. To encourage foreign investment, Brunei provides tax incentives, particularly under the pioneer status programme, which exempts non-petroleum companies from payment of corporate tax up to a maximum of eight years. **How does Brunei see itself liberalising the FDI regime further in order to enhance opportunities for international competition?**



Answer;

The Investment Chapter had been uploaded into the APEC website. The Brunei Economic Development Board (BEDB) is the body mainly responsible for attracting FDI into the country. In this regard, The BEDB has come up with their “two prong strategy”. The “first prong” is to access and attract two pools of investment to develop downstream and manufacturing industries, power supply and infrastructure to the Sungai Liang and Pulau Muara Besar projects.

The “second prong” is to identify and develop FDI clusters that have growth potential for Brunei Darussalam. In this regard, the BEDB has appointed the Monitor Group to undertake a study to add value to their work. The study highlighted four (4) clusters with the highest growth potential for Brunei Darussalam. These are:

1. Business services concentrating on software development and business process outsourcing.
2. Financial service which will focus on high end, niche investment management services and asset and fund management.
3. Hospitality and tourism, focusing on eco-tourism, sports and medical tourism
4. Transportation and logistics primarily focusing on aircraft maintenance services.

### **APEC Review Team**

4.3 Please provide a brief assessment of the performance of Brunei Financial Center in terms of attracting foreign investment.

Answer

Prior to the setting up of the BIFC, Brunei enjoys an excellent support services from domestic banks namely, Baiduri Bank(joint venture with Banque Paribas), Islamic Bank of Brunei, Islamic Development Bank Brunei, Brunei Islamic Trust Fund and international banking corporation such as HSBC, Citibank, Standard Chartered, Maybank, RHB Bank and United Overseas Bank. Since then licenses were issued as follows;

License Issued	Total issued	Description
International Banking	3	1 Restricted International Banking License (Royal Bank of Canada); 1 Full International Banking License (Sun Hung Kai International Bank) and, 1 International Investment Banking License (HSBC)
Registers Agents and Licensed Trustees (RATLO)	8	Deloitte & Touche, Pricewater (PCW), HMR Trusts, Selangan Star, Canterbury Trust, Ahmad Isa Trust, Power Point Trust, Mutual Trust
Mutual Funds	16	9 Public Funds (Domestic) 1 Public Funds (International) 1 Professional Fund (International) 5 Mutual Fund Operators
Investment Advisers	3	Issued under Securities Order 2001
Securities Exchange	1	Issued under Securities Order 2001
International Insurance	2	1 International Insurer 1 Insurance Broking Licence

Source: Brunei International Financial Center (BIFC), Ministry Of Finance

4.4 WT/TPR/S/84 (*Secretariat Report*) indicated that, back in 2001, foreign investments encountered pediments such as unclear time schedule of approval and ambiguous procedure and no direct response from Brunei Darussalam to the above comment can be found in related documents. It is possible to provide an update on this specific issue?

Answer:

With the establishment of the Client Charter, procedures and timing of approval are now clear and furnished in respective agencies. Investors are however encouraged to seek advice from several Ministries namely Ministry of Finance and Ministry of Industry and Primary Resources prior to applications and also through Brunei Economic Development Board (BEDB ).

BEDB was restructured on 26 November 2001 through the Brunei Economic Development Board (Amendment) Order 2001. The primary mandate of the BEDB is to drive the diversification of Brunei Darussalam's economy and to create employment opportunities for the Bruneian people.

Funded by His Majesty's Government, the BEDB is a quasi government corporate entity with perpetual succession and a common seal of power, subject to the provisions of the Brunei Economic Development Board Act. The BEDB is empowered to acquire and dispose of property, both movable and immovable and may sue and be sued in its corporate name and perform such other acts as corporate bodies may by law perform.

The BEDB functions as a first-stop agency to attract, retain and add value to local and foreign investments so as to further diversify Brunei Darussalam's economy and create employment opportunities for its people. The BEDB coordinates with relevant ministries and agencies to maximize the benefits generated by both local and foreign direct investments through the strengthening of policy, legal, institutional framework and human resources development

Regular consultations with existing and potential local and foreign investors are encouraged to identify and address main policy impediments to create a pro-active business environment which is conducive for investment. Moreover, the BEDB keeps abreast with global developments and explores new business opportunities with growth potential for Brunei Darussalam on an on-going basis.

Also within the scope of the BEDB's functions is to promote and assist the development of small and medium enterprises (SMEs) especially those with good export market prospects.

4.5 There were various regulations on foreign holdings as reported in the above-mentioned report. Are there any amendments since 2001? If yes, please provide a brief description.

Answer

In general foreign holdings are not subjected to restriction depending upon the cluster or sector. Under the auspice of BEDB, 100% foreign ownership is allowed for while Joint Ventures are expected to yield 49% foreign ownership.

## CHAPTER 5 – STANDARDS AND CONFORMANCE

### Hong Kong, China

5.1. Noted that Brunei Darussalam has not yet participated in the APEC Arrangement for the exchange of Information on Food Recalls. We would encourage Brunei Darussalam to participate in the Arrangement from the angle of food control in the near future.

Answer:

Brunei Darussalam adheres to the ruling of food recall as advice by the WHO and continues to assess the need to participate in other similar fora's. Brunei Darussalam will canvass appropriate authorities from the Ministry of Industry and Primary Resources and the Ministry of Health to consider participation in the APEC Arrangement for the exchange of Information on Food Recalls.

### Japan

5.2. What percentage of Brunei's "standards and conformance" regulations, both mandatory and voluntary are in conformance with international standards?

Answer:

All Brunei Darussalam Standards are Voluntary and are not part of technical regulations. Currently 36.5% of Brunei Darussalam Standards are adopted from International standards.

5.3. How are standards set and revised? What regulations determine these procedures? How are new standards and revisions communicated to citizens?

Answer:

Technical committees (TECOs) are formed to set and revise standards. Currently there is no law or Act to cover this activity except by administrative means (Government forms the Technical Committee consisting of members

from public and private sector, including consumer interest). Information on the new standards and revision are currently communicated through the website [www.mod.gov.bn/PBD.htm](http://www.mod.gov.bn/PBD.htm)

5.4. In assessing the conformity of standards does Brunei rely on self assessment declarations or does it use independent 3<sup>rd</sup> party assessments?

Answer:

Brunei Darussalam relies on both self assessment declaration and 3<sup>rd</sup> party assessment in assessing the conformity standards.

5.5. What is the current status of Brunei's domestic primary standards and their traceability?

Answer:

The Weights and Measures Department is responsible for Brunei Darussalam's Domestic primary standards. Currently, they keep only reference and working standards which are traceable to SIRIM (Malaysia) and PSB (Singapore).

5.6. Please provide details of standards conformity and laboratory accreditation with respect to the construction industry.

Where do you expect the focus of standards conformity issues will move after the construction industry?

Answer:

The focus on standards and conformity issues will move to the Food and Handicraft sector after construction industry.

5.7 What type of businesses can obtain approval under the laboratory accreditation system?

Answer:

Currently laboratory accreditation for construction sector is covered by the Ministry of Development Laboratory Accreditation Scheme. All other sectors are covered by the Ministry of Development/Brunei Darussalam and SAC/Singapore MOU on Accreditation.

### **New Zealand**

5.8 Brunei's APEC IAP notes it is to review its standards, which are not yet aligned with international standards. How is this review progressing and what are the areas of focus?

Answer:

The review of national standards with international standards is progressing well and two sectors have been completed (timber and concrete).

5.9 What specific measures does Brunei have in place to attempt to reduce business compliance costs?

Answer:

To reduce business compliance costs, Brunei Darussalam accepts certificate of conformance from recognized bodies and therefore does not require recertification or retesting.

### **APEC Review Team**

5.10 According to the 2004 IAP, standard and conformance seems to be one of the most achieved areas. Please provide an assessment of how these accomplishments have helped facilitating international trade. Case studies are also very much appreciated.

Answer:

- i. MOU signed between Brunei Darussalam and Singapore (SAC) on

cooperation in Accreditation on 9<sup>th</sup> April 2001 includes Accreditation of Laboratories, Certification Bodies and Inspection Bodies. Currently, laboratories that are involved in testing for the purpose of export market is accredited by SAC, Singapore under the MOU.

- ii. Unilateral acceptance of certificates of conformance by bodies signatory to regional organizations/international organizations (e.g. APLAC, PAC, IAF, ILAC)
- iii. Unilateral acceptance of certificates of conformance (e.g. Product testing, ISO 9000, etc) from recognized accredited conformity assessment bodies in the region
- iv. Adoption of International Standards or direct use of International Standards
- v. Use of recognized accredited services in the region (e.g. SIRIM, PSB, etc)

5.11 Brunei Darussalam seems to have no national standard body. Standard and conformance related issues are managed in a decentralized manner. Are there any particular reasons for the government to adopt such an approach?

Answer:

Standard and Conformance activities are mainly in the infant stage except for the construction, oil and gas industry which were traditionally the larger industries in Brunei Darussalam. However, there is an ongoing study for a body which will oversee and coordinate the standards and conformance activities that are decentralized.



## CHAPTER 6 - CUSTOMS PROCEDURES

### Australia

6.1. Is Brunei Darussalam planning to introduce red and green channels for cargo?

Answer:

Brunei Darussalam is currently in the process of incorporating red and green channels for cargo into the Customs and Excise Act.

6.2. Does Brunei Darussalam Customs have regular consultation with industry?

Answer

Brunei Darussalam undertake regular consultation with industries for the purpose of streamlining and improving procedures

### Hong Kong, China

6.3 On “Greater Public Availability of Information”, it is noticed that measures have been undertaken to improve and update the website. HKC would like to know what are the measures and when will they be completed.

Answer:

Measures involve revising and updating the website with new information as well as upgrading systems hardware which is on a continuous basis and will continue to take place over time as new up-to-date information becomes available.

6.4. Regarding “Adoption of Systematic Risk Management Techniques”, risk management techniques will be applied to the Red and Green Channels established at the Airport in 2005-06, HKC wishes to know what and how the risk management techniques will apply to air cargoes.

Answer:

A Committee has been formed to implement this management technique and are applying it on a phase to phase basis. Plans are in the pipeline to utilize this technique to air cargo.

## Japan

6.5. We understand that the Brunei government has regular discussions on customs procedures with private companies. What are the outcomes of discussions held in 2004?

Answer:

Please see answer to question 6.2

6.6. What has made Brunei review its appeal provisions in the past and what measures have been taken as a result of those reviews?

Answer:

Brunei Darussalam undertakes constant review of its procedures in totality. Currently there are no plans to review the current appeal provision as they have been deemed sufficient for the time being.

6.7. To what extent has Brunei introduced paperless trading?

Answer:

Several phases of the E-Government initiative have been completed and is currently in progress. The aim of this initiative is to provide an infrastructure using IT as a platform and common tool towards paperless transaction with the possibility of paperless trading. Customs and Excise Department now accepts declaration using electronic media and is actively participating in the ASEAN Single window project.

6.8. What discretionary options do customs officials have and what are the limits to these options? Are these discretionary options legally defined? How are disputes settled when an ordinary citizen appeals a decision?

Answer:

Please refer to sub chapter “Integrity” in the Customs Chapter. Officials are not ideally encouraged to exercise discretion, however some discretion are allowed base on the degree of the offence. Parties/persons should be responsible in ensuring that the laws and regulations are adhered to. Goods are often confiscated and disputes should be addressed to the Commissioner of Custom and Excise where settlement can be assessed according to the prescribed laws and regulation of the country.

### **New Zealand**

6.9. When does Brunei plan to submit information on its Customs policy/operations for its APEC IAP?

Answer:

The various policy/operations are incorporated throughout the Customs Chapter. For further information Customs procedures, policy and operation are defined in the Custom and Excise Act 1984 which are available in the Department’s website.

### **APEC Review Team**

6.10 In the rising trend of RTA/FTAs, does Brunei Darussalam foresee any complication of customs procedures caused by the “spaghetti bowl” effect, meaning overlapping RTA/FTAs requiring different degrees of preferential treatments and therefore causing extra burden on the customs operations?

Answer:

Yes, we do see complications in the customs procedures caused by differing RTA/FTA’s. Complication arises due to differing Rules of Origin subjected to by the various Arrangement.

6.11 Please provide a brief description, if applicable, of how to incorporate cargo movements regarding bonded warehouses through international express consignment agencies within the paperless trading mechanism.

Answer:

At present, there is no laid down procedure to incorporate cargo movements regarding bonded warehouses through international express consignment. However in the strategic goal, Brunei Customs is planning to introduce certain procedure on paperless trading mechanism through e-government project.

## CHAPTER 7 - INTELLECTUAL PROPERTY RIGHTS

(This section is not provided in the IAP.)

### Japan

7.1. Please explain the legal grounds and means of enforcement of IPR protection.

How effective are the enforcement measures being taken by the Brunei authorities?

Answer:

Infringement actions are instituted:

-by the patent owner or exclusive licensee under the Patents Order;

-by the trademark owner or registered licensee under the Trade Marks Act;

-by the copyright owner, exclusive licensee and performer under the Copyright Order;

-by the registered owner or exclusive licensee under the Industrial Design Order;

-by the owner of the layout-design or exclusive licensee under the Layout-Design Order.

Enforcement procedures and remedies (including border control measures) are available under the various legislations as well as under the common law to enable effective action to be taken against acts of infringement. These procedures and remedies may be sought through both civil and criminal actions. Sentences which could be imposed if found guilty of a criminal offence under relevant legislations include both fines and imprisonment. Since the entry into force of the IPR legislations in 2000 (ie. Copyright Order, new Trademarks Act, Industrial Designs Order and Layout Designs Order – the Patents Order was passed in 1999 but will only be enforced once the Rules under the Order have been completed) there have only been 4 prosecutions for offences under the Copyright Order, the Courts imposed fines in all these cases.

7.2. While Brunei gives priority to the patents of certain countries, does it plan to extend this to other countries?

Answer:

The Patents Order, 1999, when it comes into force, will allow any person (either alone or jointly with another) to make an application for a patent. There is no specific nationality requirement.

7.3. How has Brunei publicized the importance of copyright to its citizens?

Answer:

The Attorney General's Chambers often gives talks and seminars to the public regarding IPR protection in Brunei Darussalam. In April 2004 the Attorney General's Chambers together with the University of Brunei Darussalam held a public awareness seminar on IPR to mark World IP Day. The seminar was attended by around 150 participants comprising both government officials and members of the public. The Attorney General's Chambers also conducts public awareness sessions on copyright and related issues with the private sector.

### **New Zealand**

7.4. What legal and enforcement steps are Brunei's authorities taking to ensure protection of intellectual property rights? When does Brunei plan to submit information on their intellectual property policy for their APEC IAP?

Answer:

Please refer to answer to question 7.1. IPR Chapter have now been uploaded into the APEC website.

### **USA**

7.5. Article 39.3 of the TRIPs Agreement obliges members, when requiring (as a condition of approving the marketing of pharmaceutical or agricultural chemical products) the submission of undisclosed test or other data, to protect such data against unfair commercial use and disclosure.

Please explain how Brunei complies with this provision.

Answer:

The marketing of pharmaceutical or agricultural chemical products in Brunei Darussalam 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 to regulate medicinal products and cosmetics, this legislation will provide for restrictions on the disclosure of information.

Licensing under the Poisons Act, does not make provision for the disclosure of undisclosed test or other data, only that a license is required in order to import, possess for sale, sell or offer for sale any poisons listed in the schedule to the Act.

7.6. TRIPs Article 41 requires member states to enact enforcement procedures to permit effective action against any act of infringement of intellectual property rights, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements. Please describe any recent laws, rules, decrees that Brunei has promulgated to comply with this article.

Answer:

Enforcement procedures and remedies (including border control measures) are available under the new Trade Marks Act, the Copyright Order, 1999, the Industrial Designs Order, 1999, the Layout Designs Order, 1999 and the Patents Order 1999, as well as under the common law to enable effective action to be taken against acts of infringement. These procedures and remedies may be sought through both civil and criminal actions. The Magistrates Courts (criminal cases only), Intermediate Court and the High Court have jurisdiction over intellectual property rights infringement cases. Sentences which could be imposed if found guilty of an offence under relevant legislations include both fines and imprisonment. Civil remedies that are available include provisional measures, damages, delivery up, seizure, forfeiture and destruction/disposal of infringing articles and documents

7.7. Please let us know when Brunei plans to accede and fully implement the WIPO Copyright Treaty, and the WIPO Performance Phonograms Treaty.

Answer:

At present, Brunei Darussalam has no immediate plans to accede to the WCT or the WPPT as we are still in the process of acceding to the Berne Convention for the Protection for Literary and Artistic Works and the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations. However, the Copyright Order, 1999, already incorporates most of the requirements of the WCT and the WPPT.

7.8. Copyright holders must have a representative in Brunei and file a complaint for each infraction, which most are not willing/able to do.

Answer:

The relevant authorities welcome the opportunity of increased cooperation with copyright owners in enforcing the rights afforded to them under Brunei law and urge copyright owners to extend their full support in securing the successful prosecution of offenders. Brunei welcomes copyright holders to establish office or elect representative to ensure prosecutions are done properly and efficiently

## **ABAC**

7.9. Brunei is encouraged to participate in the APEC IPR Service Center scheme and to establish a Center or Centers at the earliest convenience.

Answer:

Brunei Darussalam welcomes the APEC IPR Service Center but is of the view that it does not have the capacity to establish such Center immediately. Brunei Darussalam continue to assess such requirement for future works.

7.10. ABAC asks for Brunei's adoption and ratification of the WIPO Digital Treaties (i.e., the WIPO Copyright Treaty (WCT) and the WIPO



Performances and Phonograms Treaty (WPPT)), and for the enactment of strong laws and enforcement mechanisms to control optical media production to complement civil and criminal measures.

Answer:

Please see answer to question 7.7

### **APEC Review Team**

7.11 Published data indicate that a fairly comprehensive set of laws and regulations is in place to cover various areas of IPR. Please provide a brief update of IPR cases.

**Answer:**

Since the entry into force of the IPR legislations in 2000 (ie. Copyright Order, new Trademarks Act, Industrial Designs Order and Layout Designs Order – the Patents Order was passed in 1999 but will only be enforced once the Rules under the Order have been completed) there have only been 4 prosecutions for offences under the Copyright Order namely for offences of making for sale or hire and distributing in the course of a business. Sentences imposed by the Courts in these cases were in the form of fines ranging from BND\$2,000 to BND\$12,000. These prosecutions were instituted by direct complaints from the copyright owner/exclusive licensee to the Royal Brunei Police Force.

7.12 Please provide a brief description of the institutional framework of IPR enforcement, i.e. government agencies responsible for various issues of IPR protection.

Answer:

The Attorney General's Chambers (Registries Divisions) has overall responsibility for overseeing intellectual property rights issues in Brunei Darussalam. The Attorney General's Chambers responsibilities include advising on and assisting in the formulation of policy, drafting of legislation, prosecution of criminal offences under the relevant legislations, maintaining Offices for the Registries of Trademarks, Patents and Industrial Designs), a general advisory role to other government departments and public education and awareness. The Royal Brunei Police Force is responsible for general enforcement and investigating criminal offences under the relevant legislations while the Royal Customs and Excise Department is responsible for enforcement of border control measures. The Intermediate Court and the High Court have jurisdiction to hear intellectual property rights infringement cases.

## CHAPTER 8 – COMPETITION POLICY

### USA

8.1. Please summarize Brunei's approach to competition policy.

Answer:

Brunei Darussalam does not have any competition laws as yet but are currently in the process of assessing and building up a policy that suits its current position. Brunei Darussalam's general approach however is open liberalization in all sectors.

8.2. Please describe the steps Brunei has taken to implement the APEC Principles to Enhance Competition and Regulatory Reform.

Answer:

Brunei Darussalam have been studying the APEC principle closely and assessing the need and suitability to incorporate them as future guidelines and principles in accordance with its current circumstance.

### APEC Review Team

8.3 Brunei Darussalam's latest submission of competition policy in IAP is 2001. Together with WT/TPR/S/84 (*Secretariat Report*), it is shown that competition policy was still at the initial stage of policy formulation back in 2001. Please provide a brief update in this regard.

Answer:

Brunei Darussalam have initiated and are still in the process of formulating a sound policy on competition. In general Brunei approach is towards open liberalization in all sectors.

## CHAPTER 9 - GOVERNMENT PROCUREMENT

### Japan

9.1. Please explain briefly the government procurement process, especially tendering procedures? What measures have been taken to ensure transparency?

#### Answer:

Government Procurement are closely governed by Brunei Darussalam Financial Regulations 1983 and Ministry of Finance circulars which are policies introduced and enforced depending on the current economic climate and are guidelines on the use of best practices in terms of improving the Government Procurement procedures.

A tender is called when the Brunei Darussalam Government procurement value exceeds the BND\$25,000.00<sup>17</sup> threshold. The tendering procedures are as follows;

1. A notice is published in a publicly available medium and accessible to any supplier who wishes to participate in Government Procurement. The notice will be published at least two weeks before the closing date of a tender and must be submitted to a predetermined address, date and time according to the instructions in a tender documents.
2. The tender documents, which are submitted by suppliers, will be recorded accordingly and witnessed by an elected quorum appointed by His Majesty The Sultan Of Brunei Darussalam. Recorded tender documents will be submitted to relevant government agencies for evaluations.

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<sup>17</sup> US\$1.00=BND\$1.70

3. Evaluated tenders will be submitted to Mini Tender Board (for Government Procurement which has a value of between \$25,000.00 and \$250,000.00) or to the State Tender Board (for Government Procurement which has a value of \$250,000.00 and above) for considerations and approval to award a tender.
4. Evaluated Government Procurement will be considered by elected quorum based on submission that complies to a predefined specification and the lowest among the suppliers that fully complied. For a tender that is considered by Mini Tender Board of a Ministry, the Minister of that Ministry are given the authority for approval and awarding a tender while a tender considered by the State Tender Board will be approved by His Majesty The Sultan Of Brunei Darussalam.

Transparency is ensured by the practice of a fair and non-discriminatory manner in all aspects of Government Procurement procedures which are governed by Brunei Darussalam Financial Regulations 1983 and updated circulars from the Ministry Of Finance. All recommendations that are recorded in the minute of meeting will be audited by the Auditor General. Any discrepancies and deviation from procedures and regulations will be reported to appropriate authorities and action will be taken against such discrepancies according to the Laws of Brunei Darussalam.

9.2. Please explain the procedures for any complaints filed by tenders? What measures have been taken to ensure transparency?

Answer:

Written complaints should be addressed to the Government Agencies that called for the tender which will address the complaint accordingly.

9.3. Are national companies and foreign companies treated equally as tenders? If preferential treatment for national companies exists, please explain its detail.

Answer:

All suppliers are treated in a fair and non-discriminatory manner.

9.4 Are there any conditions for participating in tendering procedures, such as threshold values?

Answer:

A tender is called when Government Procurement value exceeds the \$25,000.00<sup>18</sup> (Brunei Dollar) threshold. There is no specific conditions enforced by State Tender Board which might discriminate a supplier unfairly.

### **New Zealand**

9.5 What is Brunei's policy on government procurement and how it relates to trade? When does Brunei plan to submit information on its government procurement policy for their APEC IAP?

Answer:

Government spending primarily drives Brunei Darussalam's domestic economic activities. The level of government spending has a direct impact for the country's economic climate. Therefore, Brunei Darussalam's policy on Government Procurement must be done to 'best practices and in a fair and non-discriminatory manner' ensuring procurement is made in an open and competitive climate.

Brunei will continue to assess and identify information which can be updated into the previously uploaded GP Chapter.

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<sup>18</sup> US\$1.00=BND\$1.70

## **ABAC**

9.6 ABAC urges Brunei to enhance the transparency of government procurement rules and procedures by making information available to the public. Extensive capacity-building programmes should be one effective approach

Answer:

Transparency is ensured by the practice of a fair and non-discriminatory manner in all aspects of Government Procurement procedures which are governed by Brunei Darussalam Financial Regulations 1983 and Ministry of Finance's relevant circulars.

There are plans in the pipeline for an extensive capacity building programme ensuring best practice in transparency is achieved in the near future.

## **APEC Review Team**

9.7 Is there any preference favoring domestic suppliers in the area of government procurement?

Answer:

State Tender Board (under the directive of Ministry Of Finance) is an independent body that does not give preferential treatment to any suppliers whether is domestic nor non-domestic in the area of Government Procurement. All suppliers are treated in a fair and non-discriminatory manner.

9.8 From the sustainable development point of view, is Brunei Darussalam providing any preference favoring products that are proven to be environment-friendly, i.e. so-called "green products"?

Answer:

In the area of Government Procurement, State Tender Board does not enforce the use of environmentally friendly products.

Note: Brunei Darussalam's latest submission of government procurement in IAP is 2001.



## CHAPTER 10 - DEREGULATION/REGULATORY REVIEW

### APEC Review Team

10.1 It is stated in the 2001 IAP that “The Government of Brunei Darussalam is undertaking and will continue to undertake steps to eliminate or reduce the negative impact of any domestic regulations...” Please provide an update on the development in this regard.

Answer:

Brunei Darussalam’s main focus is to have an open trading system. Trade liberalization is considered one of the prime mover towards such system. As such, Brunei Darussalam will continues to assess and monitor the overall impact of domestic regulations towards trade. Regulations that are seen to cause negative impact will be access accordingly and amended where and when appropriate.

Note: Brunei Darussalam’s latest submission of deregulation/regulatory review in IAP is 2001.

## CHAPTER 11 - IMPLEMENTATION OF WTO OBLIGATIONS

### New Zealand

11.1 New Zealand welcomes the constructive role Brunei plays at the WTO. **On WTO services, when does Brunei plan to submit their services offer?**

Answer:

Brunei Darussalam is in the progress of building up its offer on services which falls under its short term schedule/plan.

### APEC Review Team

11.2 Brunei Darussalam's 2001 IAP indicated that WTO obligations of goods and services have been fully implemented and IPR would also soon be in place. Against this background, is Brunei Darussalam considering any extension in any of the three areas?

Answer:

Brunei is still in the process of assessing and considering further extension.

Note: Brunei Darussalam's latest submission of implementation of WTO obligations in IAP is 2001.

## CHAPTER 12 - DISPUTE MEDIATION

### APEC Review Team

12.1 It was reported in the 2001 IAP that no further improvement was planned at the time of submission. Can no submission of this topic in 2004 be interpreted as no change in Brunei Darussalam's assessment of this topic?

Answer:

Continuous assessment and changes are expected in this area. Updates on this chapter is now available in the website.

12.2 Is there any reported case of dispute arisen from a joint venture between foreign and local partners? If yes, how was it resolved?

Answer:

There have been no reported court cases in this area.

Note: Brunei Darussalam's latest submission of dispute mediation in IAP is 2001.

## CHAPTER 13- MOBILITY OF BUSINESS PEOPLE

### New Zealand

13.1 Brunei's APEC IAP notes that while maintaining proper and effective immigration control, Brunei will continue to work in simplifying and expediting procedures. Business mobility is streamlined through visa exemption for social and business visits. Brunei participates in the APEC Business Travel Card (ABTC) scheme. **Has Brunei found that there is a firm demand for ABTCs and how many have been issued to date?**

Answer:

Demands for ABTC is still in the infancy stage and promotional activities are still running.. Since November 2003 Brunei have received 16 local application for ABTC and have issued 10. Of that 3,468 foreign ABTC holders have been successfully vetted from a total of 4,956 submitted.

### ABAC

13.2 ABAC encourages Brunei to introduce e-lodgement arrangements for temporary residency applications.

Answer:

Brunei Darussalam is in the process of accessing such need.

13.3 Brunei is asked to make visa application forms available on the web.

Answer

Please see answer to question 13.1

**APEC Review Team**

13.4 Please provide a brief description of the current status of APEC Business Travel Card utilization.

Answer:

A total number of 16 applicants have applied for the ABTC and 10 ABTC have so far been issued.

13.5 For provide a brief description and relevant statistics of foreign workers holding employment visa (temporary residence for business) for the past five years.

Answer:

The statistics of foreign workers holding Employment Pass for the past 5 years are as follows;

<b>YEAR</b>	<b>Government Sector</b>	<b>Private Sector</b>	<b>Domestic Sector</b>	<b>Total</b>
2000	4,635	64,309	23,717	92,661
2001	4,019	57,306	27,452	88,777
2002	4,004	71,119	24,217	99,340
2003	2,695	67,519	25,796	96,010
2004	1,508	69,230	18,378	89,116

## **FOOD SYSTEM:**

### **USA**

1. Halal Chicken: There is a highly restrictive regime vis-à-vis religious requirements for the slaughter of imported chicken. Brunei frequently does not accept certification that chicken has been slaughtered in accordance with Muslim practice, even from other Muslim countries (including Malaysia), and therefore prohibits importation. This is effectively a trade barrier.

#### Answer:

Brunei Darussalam does not see this measures as a Trade Barrier or restriction, rather as a form of control. Brunei Darussalam have allowed importation of chicken from approved slaughter house in Sabah, Malaysia and welcome slaughter houses elsewhere to submit their application to be approved by Brunei Darussalam. Approval procedures are available at Agricultural Department, Ministry of Industry and Primary Resources.

2. Food Quality Certifications: Each individual shipment of food items apparently needs to be recertified by Health Ministry. Makes importing food items difficult

#### Answer:

This is necessary to ensure effective control of safe food products entering Brunei.

## Annex III

2005 APEC IAP Peer Review: Brunei Darussalam

Participant List for APEC Peer Review

	Name	Position	Agency	Tel	E-mail
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3	Kamilah Hanifah	Special Duties Officer	International Relations and Trade Development, Ministry of Industry and Primary Resources		
4	Md. Hakashah H A Samad	Special Duties Officer	International Relations and Trade Development, Ministry of Industry and Primary Resources		
5	Kadir Yusof	Special Duties Officer	International Relations and Trade Development, Ministry of Industry and Primary Resources		



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19	Hj Nazmi Hj Mohamad		Ministry of Finance		
20	Hj Md Shamsul Reza Hj Sulaiman		Ministry of Finance		
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## **Discussant's Remarks on the Brunei Darussalam IAP**

### **Introduction**

I am very much honored to be a discussant at the IAP peer review session of Brunei Darussalam today.

Before I begin with my comments, I would like to congratulate Brunei Darussalam for its participation in the IAP review process by preparing for the review in a thorough and sincere manner, which unambiguously reveals the firm will of Brunei Darussalam towards achieving the Bogor Goals of free and open trade and investment by 2020.

I also would like to thank Professor Tze-Wei Chen for his preparation of this excellent Study Report. Special thanks go to the Secretariat, who assisted Professor Chen in completing this report in a timely fashion, so that all the participants in this meeting are well prepared.

### **General Comments**

The Report by Professor Chen covers Brunei Darussalam's past and current economic situations and trade policies in a comprehensive and categorical way.

Brunei Darussalam, which chaired APEC 2000, has played a very important and positive role for the advancement of the APEC process, particularly with regard to APEC's efforts in moving towards the Bogor Goals of free and open trade and investment. Brunei also contributed to promoting APEC's efforts in reducing the digital divide in the region with an initiative of the Brunei Goal which aims at enabling everyone in the region to have individual or community-based access to information and services offered via the Internet by 2010, and tripling the number of people with Internet access by 2005.

On behalf of the Korean government, I would like to extend my deepest appreciation to Brunei Darussalam for these contributions.

Turning to the IAP review, I would like to make some general comments on Brunei Darussalam's trade and investment policies and several specific comments, by area, based on Professor Chen's report.

Firstly, I noted that Brunei Darussalam seems to have had a somewhat limited scope of trade and economic policy options to maintain the openness of the economy due to its small size. In particular, its economy has been heavily dependent on the petroleum and natural gas industry as an income source, and a large portion of employment is being absorbed by the public sector. These seem to constitute a limitation for Brunei Darussalam in determining development strategies.

Second, Brunei Darussalam has attached great importance to regional groupings, such as ASEAN and APEC, where Brunei Darussalam is a member of. I noted that smaller economies like Brunei Darussalam naturally seek alliances with neighboring economies for their development and political and economic stability, while pursuing continuous trade and investment liberalization through regional trade arrangements (RTAs).

However, the importance of the multilateral trading system cannot be ignored. As the WTO DDA round of negotiations are under way, it is important that all members, including Brunei, contribute to the successful conclusion of the negotiations by coming forward with constructive ideas and offers of trade liberalization. In particular, the WTO should make substantial progress in the DDA negotiations by December of this year at the 6<sup>th</sup> Ministerial Conference scheduled to be held in Hong Kong, China.

In this regard, I hope Brunei Darussalam, among others, submits its list of offers in the area of services as soon as possible.

Third, as the oil and gas reserves are expected to be depleted in about 20 years at the current rate of extraction according to some reports, Brunei Darussalam may need to adjust its economic and trade policy direction for its sustainable growth.

Brunei Darussalam, even though it is a small economy in terms of the size of land and population, has a young and highly-skilled work force and plenty of tourist attractions, along with warm weather. I believe it is very appropriate and timely that Brunei Darussalam decided to diversify its economy since it adopted the 8<sup>th</sup> Five-Year National Development Plan (2001-2005). I am eager to hear from Brunei Darussalam on the progress of the 8<sup>th</sup> and the preparation of the 9<sup>th</sup> five-year plans.

According to the 8<sup>th</sup> plan, Brunei Darussalam relevantly put an emphasis on the ICT and science and technology development, and identified industry sectors, like business services, financial services, tourism, and transportation and logistics, which have new growth potentials under the two-pronged approach of the Brunei Economic Development Board (BEBD).

Notwithstanding, Brunei Darussalam might still be vulnerable to possible outside economic impacts, as long as the public sector accounts for a large portion of Brunei Darussalam's economy. Brunei Darussalam is recommended to consider further privatization of the sectors where inefficiencies and non-transparent practices continue to exist.

Moreover, it should be noted that when Brunei Darussalam pursues a new development strategy, there might be risk of competition with other economies in the region to become the financial or logistics hub (the cities in the vicinity including Singapore, Labuan, Hong Kong, etc. also have existing establishments for similar purposes).

### **Specific comments**

*Tariff, NTMs, import charges, quota system, etc.*

Brunei Darussalam maintains considerably low tariff rates with the exception of some agricultural products and sensitive items such as motor vehicles on which a 20% flat rate is applied regardless of engine size. There is no quantitative restriction including tariff quota, exchange rate restriction, VRAs or local content requirements in place. There is no industry specifically protected by trade policies or subsidies either.

Several products are prohibited to be imported due to public moral, health and environmental reasons, which are permitted under Articles XX of GATT.

All in all, however, I agree with Professor Chen that Brunei Darussalam's progress stipulated in its IAP is cumulatively substantial and in many aspects in line with the long-term objectives of Brunei Darussalam towards free and open trade and investment by 2020.

Furthermore, Brunei Darussalam plans to progressively reduce bound rates of 82% of total tariff lines to zero by 2020, which will bring Brunei Darussalam substantially forward in reaching the Bogor Goals.

However, it is noted that in some areas like quarantine and inspection, complicated or non-transparent practices seem to exist, which bring about extra costs to importers. It is recommended that Brunei Darussalam try to make the quarantine and customs inspection systems more simplified and transparent. In addition, Brunei Darussalam needs to do its best to bind more unbound tariff lines and minimize the application of import licensing system.

### *Services*

In regard to the services sector, the government remains in a dominant position. Brunei Darussalam committed only four out of twelve services sectors and maintains entry restrictions in many areas including the telecommunication sector, the privatization of which is gradually being implemented.

Even though the penetration ratio of mobile phone services has drastically increased during the past years, further liberalization of the telecom services is particularly important in enhancing the accessibility of people to the Internet, which stood at 4.51 % of the total population as of 2002, according to the Expert's Report, and lags far behind in comparison with neighboring economies.

### *Investment*

Brunei Darussalam has a very progressive investment regime which successfully induces FDI inflow for national development. The Brunei Economic Development Board (BEDB) provides a one-stop service to prospective investors and plays a coordinating role between relevant authorities engaged in investment-related policies in Brunei Darussalam.

Even though Brunei Darussalam answered to the question 4.1 posed by Japan that there are no restrictions for foreign investors to invest in any sector in Brunei, it seems that there is an ownership ceiling of 49% on foreign investors except for ASEAN members, and thereby encourages joint ventures with minority ownership. Other obstacles which should be improved

to create a more favorable environment to foreign investors doing business in Brunei Darussalam are: the duration of work permits which are currently valid only for two years; de facto limitation in employing foreign expatriates in foreign invested companies due to requirement of employment of local people; and the prohibition of purchase of real estate by foreigners.

### *IPR*

There are laws implementing the WTO TRIPs Agreement such as the Trade Mark Act, Merchandise Mark Act, Invention Act, Copyright Order, and Layout Designs Order, and Industrial Designs Order. And as the common law system is also applied, it seems that Brunei Darussalam is fully implementing the TRIPs Agreement.

However, it is not clear whether the IPRs are properly enforced in Brunei Darussalam, which is another important aspect of an IPR protection regime under the TRIPs Agreement. In addition, to effectively prevent on-line piracy, Brunei Darussalam needs to accede to the WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty.

### *Government Procurement*

According to the WTO TPRM report of 2001, it is unclear whether the government of Brunei Darussalam gives local goods and services 15% preferential margin, which should be further clarified. In addition, experts' report says that there is no special treatment given to SMEs participating in a bid for government procurement. However, a measure taken by Brunei Darussalam to reduce the threshold for government procurement tenders (please refer to the WTO Report) would facilitate the participation of local SMEs in tenders.

### *Deregulation/Regulatory Review*

As Professor Chen has suggested in the report, we hope that Brunei Darussalam will make relevant procedures necessary to introduce new regulations more transparent. It is also recommended that it make the procedure available to the public, including foreigners, via public means such as the Internet in advance so that interested parties can have the opportunity to view them, submit their opinions on them, and be well prepared for their implementation.

As Brunei Darussalam is at the initial stage of establishing a regulatory regime, it must be emphasized that in pursuing a regulatory policy, one economy should fully assess, in advance, the effect of new regulation or deregulation taking into account opinions from the interested parties so that a quality of the regulatory regime is to be ensured.

Thank you.

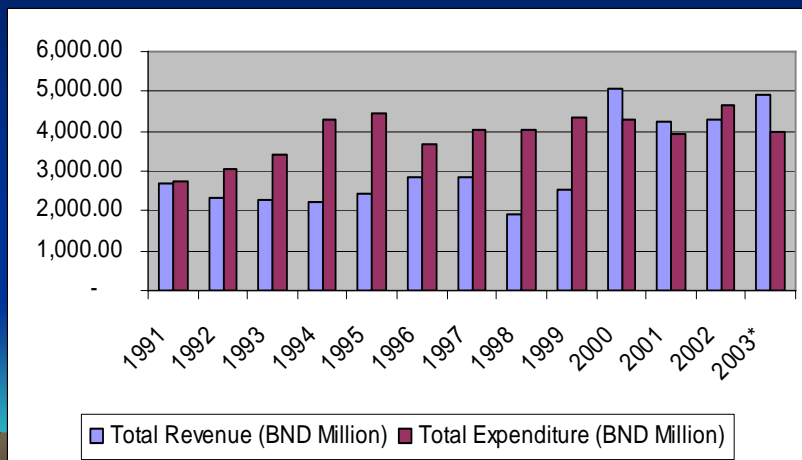
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# BRUNEI DARUSSALAM'S ECONOMIC DEVELOPMENT

- 1. ECONOMIC ENVIRONMENT**
- 2. TRADE AND INVESTMENT POLICY**
- 3. PERFORMANCE & ACHIEVEMENTS**
- 4. FUTURE DIRECTION**

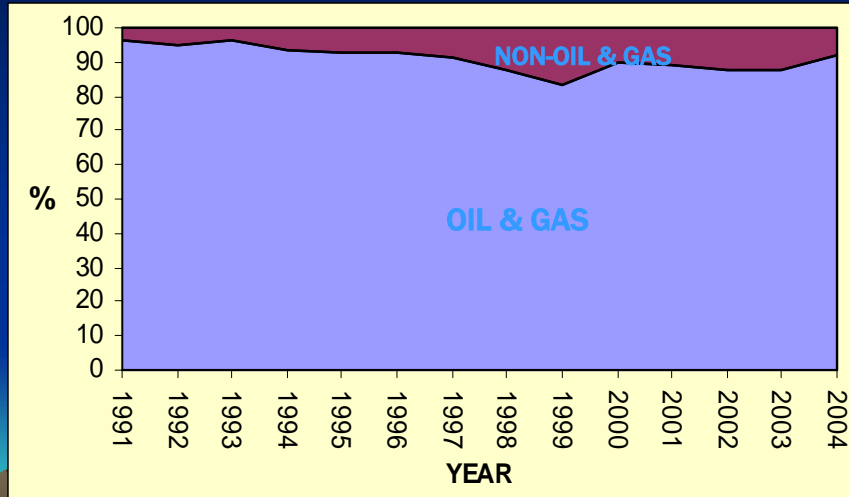
# ECONOMIC ENVIRONMENT

## GOVERNMENT REVENUE & EXPENDITURE (1991-2003)

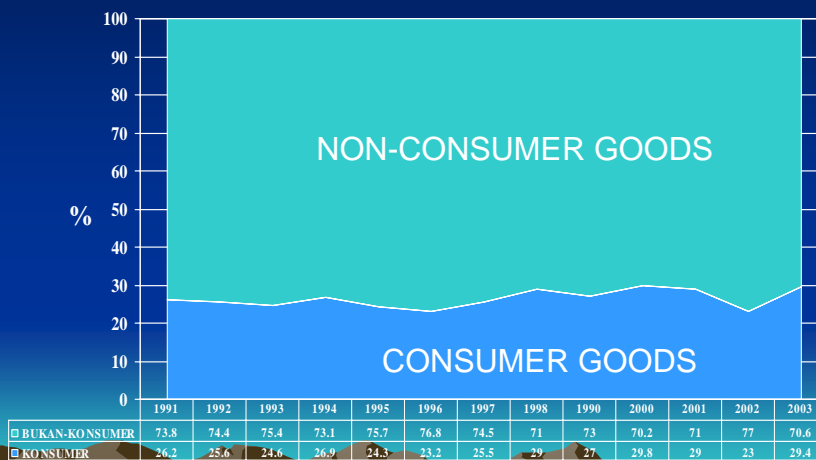




## STRUCTURE OF EXPORT (1991-2004)



## STRUCTURE OF IMPORT (1991-2003)





## **TRADE AND INVESTMENT POLICY**

- **MARKET DRIVEN**
- **SUPPORTS RULES BASED MULTILATERAL TRADING SYSTEM**
  - MEMBER OF WTO

## •SUPPORTS OPEN REGIONALISM

- ASEAN FREE TRADE AREA
- ASEAN + DIALOGUE PARTNERS FTA'S
- US TIFA
- P3

## LIBERAL AND TRANSPARENT TARIFF STRUCTURE \*

- 95% BOUND
- 2.5% MFN RATE

## OVERALL

- 79% OF ALL TARIFF LINE ELIMINATED
- MOVE TOWARDS ZERO TARIFF

\* Source : WTO



- **OPEN INVESTMENT REGIME**

- ATTRACTIVE AND COMPETITIVE INCENTIVES

- **BILATERAL INVESTMENT TREATIES (BIT)**

- **DOUBLE TAXATION AGREEMENT (DTA)**



**PERFORMANCE  
AND ACHIEVEMENTS**

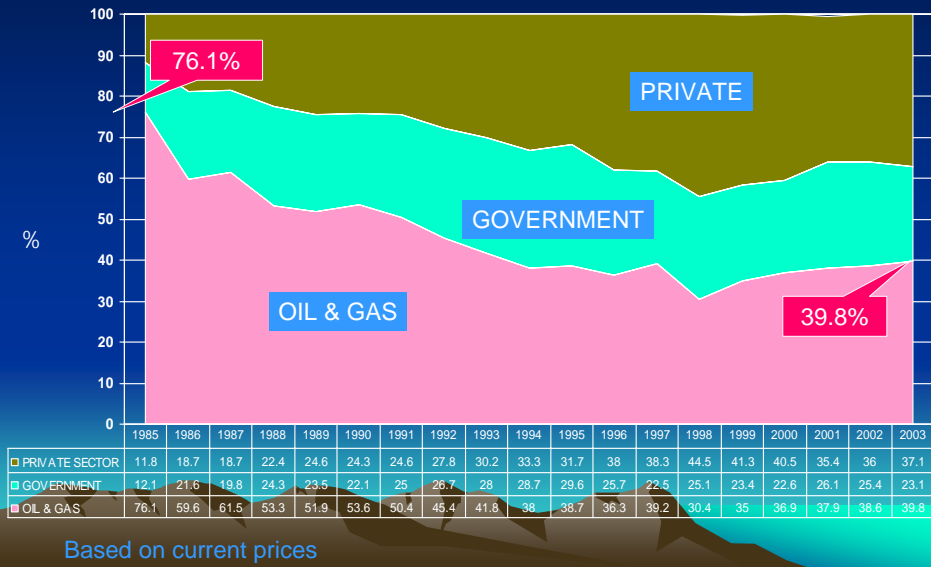
## The Brunei Economy in 2004

- ◆ GDP = BND 8,769 million
- ◆ POPULATION = 357,800
- ◆ Per Capita GDP= BND 24,508

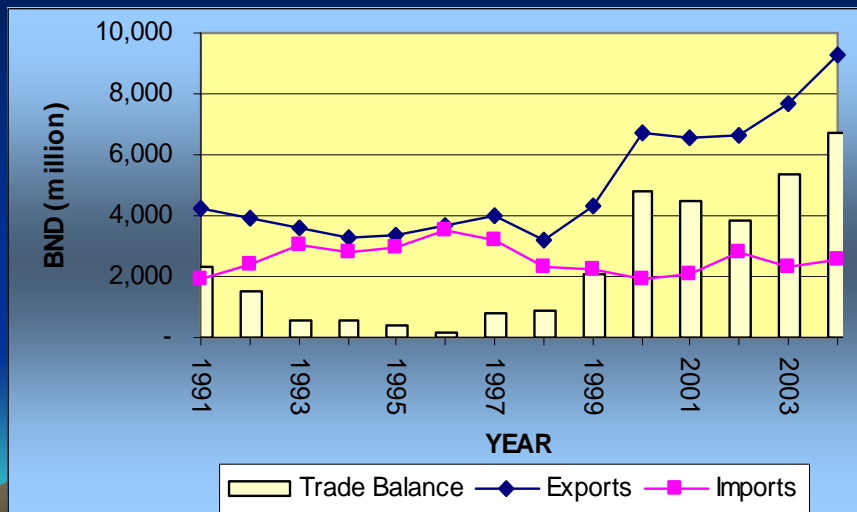
## GDP GROWTH 1985-2004



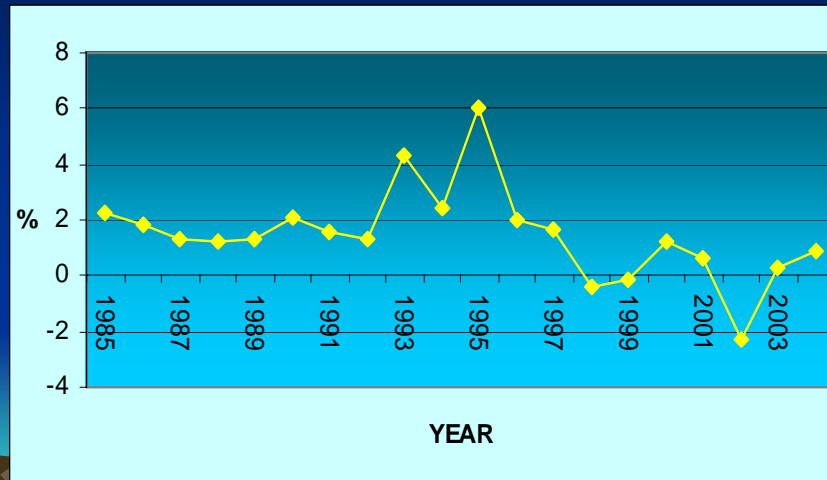
## SECTORAL CONTRIBUTION TO GDP



## BRUNEI DARUSSALAM'S INTERNATIONAL TRADE 1991-2004



## INFLATION RATES IN BRUNEI DARUSSALAM 1985 - 2004



AVERAGE ANNUAL GROWTH RATE = 1.5 PER CENT

## HUMAN DEVELOPMENT INDEX 2004

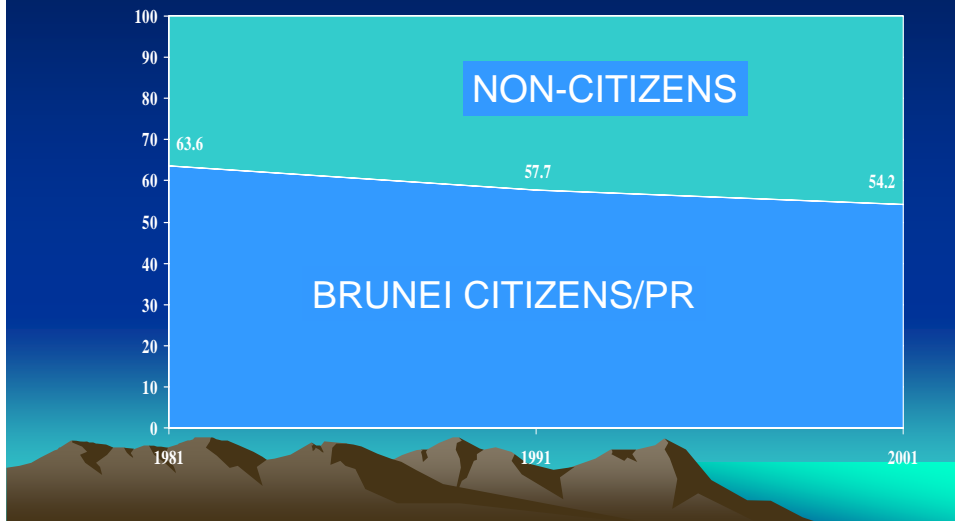
>>>33<sup>rd</sup> out of 177 countries<<<

- Components of HDI:-

- GDP Per Capita
- Life Expectancy
- Literacy rate
- Educational Enrolment

Source: United Nations Development Programme, UN

## EMPLOYMENT STRUCTURE BY RESIDENTIAL STATUS



**FUTURE DIRECTION**



**MAINTAINING GROWTH  
AND  
SUSTAINABLE DEVELOPMENT  
VIA  
ECONOMIC DIVERSIFICATION**



- **STRENGTHEN GOVERNMENT FINANCE**
- 

- **STRENGTHEN GOVERNMENT FINANCES**
- **STRENGTHEN THE PRIVATE SECTOR**



- **STRENGTHEN GOVERNMENT FINANCES**
- **STRENGTHEN THE PRIVATE SECTOR**
- **IMPROVE LEGAL AND ADMINISTRATIVE SYSTEM**



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- **PROVISION OF ADEQUATE AND WELL PLANNED INFRASTRUCTURE**

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  - **EFFECTIVE IMPLEMENTATION OF HRD**
  - **DEVELOP THE PROMOTED SECTORS**

**Thank You**

**BRUNEI DARUSSALAM IAP PEER REVIEW**

**Additional Comments/Questions to Brunei Darussalam  
Received at the session**

**Additional Comments/Questions from Australia**

*Education Services*

Australia notes that education services were not mentioned in any detail in the Brunei IAP

*Financial Services*

Australia seeks clarification regarding the rationale for restrictions on the opening of new bank branches.

*Accounting Services*

Australia notes that there doesn't appear to be any discussion of accounting services in Brunei's IAP.

To what extent do accounting standards in Brunei align with International Financial Reporting Standards?

**IAP Peer Reviews Questions (Korea)**

■ Brunei Darussalam

**1. Investment (Chapter 4)**

- The BEDB has performed its role as a one-stop agency successfully, resulting in a huge increase of FDI inflow. As a complementary measure, Korea is curious as to whether Brunei is open to concluding double taxation prevention treaties with interested member economies.
- Does Brunei have plans to remove the 49% ownership ceiling on foreign investors, other than the ASEAN members?

## 2. Dispute Mediation (Chapter 12)

- Brunei Darussalam has never been involved in a WTO dispute settlement case. Is it because there have been simply no cases fitted for the multilateral forum to discuss or all the problems have been solved bilaterally or informally?
- Are there any issues that Brunei Darussalam might want to file complaint with the WTO that could lead to a dispute settlement? Are there any pending issues that are at least discussed at one of the WTO councils and committees?

### Questions from ABAC

#### Question A)

The government plays a central role in the economy. Almost 30% of the work force is in the public sector and it accounts for almost 25% of the GDP.

Is there any plan or strategy in the current National Development Plan to reduce the importance of the government in the economy?

#### Question B)

We understand that the key objective of the government has been to diversify the economic dependence from the oil & gas industry. As part of the strategy put in place to diversify the economy, four priority areas to attract and develop FDI have been identified.

Is there any kind of methodology to measure the progress achieved by the policies applied in the 4 key areas?

Is the reduction of the role of the state part of the goals in those areas?

#### Question C)

Brunei has made significant progress in the liberalization of the foreign trade reducing tariffs. Nevertheless, the levels of NTM in key sectors remain very high and even some concerns regarding WTO consistency have been expressed.

Isn't there a fundamental contradiction in Brunei's trade policy objectives since Bogor Goals imply also reduction of NTM?

#### Question D)

Among the NTM there are some import licenses in agricultural products that are applied for purposes that could involve not only an infringement of the SPS but the purpose of controlling

the market for certain products, reducing the level of competition and causing market inefficiencies due to limited sources of supply.

Is there any policy in place to eliminate these licenses in the near future?

Question E)

In the sphere of enterprise ownership there are still limitations to foreigners.

Is there any plan from the authorities to remove the current barriers, ensuring MFN and national treatment as well as transparency?

Question F)

In Brunei's own assessment, how far along is it in moving towards the Bogor Goals?

Question G)

Please comment on Brunei's FTA strategy?