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Trans-Pacific Strategic Economic Partnership Agreement (Trans-Pacific SEP)

BACKGROUND

On 3 Jun 05, the ministers of Brunei, Chile, New Zealand and Singapore announced the substantive conclusion of the Trans-Pacific Strategic Economic Partnership Agreement (“Trans-Pacific SEP”) on the sidelines of the APEC Ministers Responsible for Trade (MRT) meeting in Jeju (Korea). The Agreement was first launched in October 2002 at the APEC Economic Leaders’ Meeting in Los Cabos (Mexico). Prior to Brunei’s participation as a party to the Agreement, the Trans-Pacific SEP was known as the Pacific-Three FTA.

2. The Trans-Pacific SEP is the first FTA that spans three different continents and it is hoped that by deepening the economic linkages between Brunei, Chile, New Zealand and Singapore, the Agreement will form one of the building blocks towards increased engagement across the Asia-Pacific. The Trans-Pacific SEP is Singapore’s first FTA with a South American country. It also builds on our existing FTA with New Zealand and both countries have sought, where possible, to improve on the commitments made under the Agreement between New Zealand and Singapore on a Closer Economic Partnership (ANZSCEP).

3. An ambitious and high-standard FTA, the Trans-Pacific SEP will serve to complement the WTO and hasten progress towards global trade liberalisation. The accession of like-minded parties such as Brunei to the Agreement demonstrates the potential of the Trans-Pacific SEP to grow into a larger strategic agreement for trade liberalisation.

4. Chile, New Zealand and Singapore signed the Agreement on 18 Jul 05, while Brunei signed the Agreement on 2 Aug 05. The Parties are targeting for the Agreement to enter into force in early 2006, after they have completed their respective domestic processes.

KEY ELEMENTS OF TRANS-PACIFIC SEP

5. The Trans-Pacific SEP covers trade in goods, rules of origin, trade remedies, sanitary and phytosanitary (SPS) measures, technical barriers to trade (TBT), trade in services, government procurement, customs procedures, intellectual property, temporary entry of persons, competition, institutional provisions and dispute settlement. There is also a chapter covering cooperation in fields such education, primary industry, culture and science & technology. Negotiations on Investment and Financial Services

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remain to be concluded and chapters on these two areas will be included in the Trans-Pacific SEP upon their conclusion.

6. In parallel with the negotiations for the Trans-Pacific SEP, the four countries also discussed and agreed to have a Memorandum of Understanding (MOU) on Labour Cooperation and an Environment Cooperation Agreement.

- a. The MOU on Labour Cooperation will enable the countries to work closely together on labour and HR issues and provide opportunities for the countries to share views and experiences on these issues, with the objective of promoting and enhancing the well-being of workers in the four countries.
- b. The Environment Cooperation Agreement will enable the countries to work closely together on environment issues of mutual interest and provide opportunities for the countries to share views and experiences on these issues.

KEY OUTCOMES OF THE TRANS-PACIFIC SEP NEGOTIATIONS

MARKET ACCESS

7. On the whole, the market access package saw the elimination of duties on the majority of tariff lines upon entry into force of the agreement. With respect to New Zealand, duties on all tariff lines would be eliminated with immediate effect, as was the case in the ANZSCEP. With regard to Brunei, the market access package will complement Singapore's existing arrangement under the AFTA. With regard to Chile, tariffs on 89.3% of domestic exports would be eliminated upon entry into force, with tariffs on a further 9.57% eliminated in three years. Altogether, 98.87% of all domestic exports would receive duty-free treatment three years from entry into force, i.e. starting from 1 Jan 09, and this figure would increase to 100% in six years. Key exports that will benefit include processed cocoa powder, chemicals, pharmaceuticals and plastics.

RULES OF ORIGIN (ROO)

8. The Rules of Origin (ROO) determine products that are eligible for preferential tariff treatment. In order to promote trade flows, the Parties have crafted rules which are as outward-looking and trade-facilitative as possible. Many progressive elements reflecting Singapore's unique production patterns have been included in the ROO provisions. Key sectors that will benefit from the various liberal process rules in the ROO

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chapter include the oil, chemicals, plastics, horticultural and pharmaceuticals industries.

9. The salient features of the ROO chapter are:
 - a. A product will qualify for preferential treatment if it meets the specific rule of origin applicable to it (in many cases, this is a liberal Change of Tariff Sub-Heading rule), or where so stipulated, if at least 45% of the cost originates from the Party. Manufacturers that source inputs from Trans-Pacific SEP parties can include the cost of these inputs towards the 45%, but the total value of non-originating materials must not exceed 55% of the value of the good.
 - b. The Parties recognise certain industrial goods produced from recovered goods in the territory of a Party as originating. These goods must have the same life expectancy and meet the same performance standards as new goods.
 - c. The Parties also recognise the concept of outward processing as an integral part of the manufacturing process for certain goods (such as electric irons). These goods will qualify for preferential treatment even if they have undergone processes of production or other operations outside the territory of a Party, provided they are returned to the Party before export.

COMPETITION

10. These provisions facilitate the maintenance of an environment supportive of competition so that the gains from trade and investment liberalisation achieved by the FTA can be maximised. The chapter provides general principles of competition that Parties will abide by and encourages cooperation between the respective competition authorities.

TRADE REMEDIES (Anti-dumping and Safeguards)

11. The Parties have agreed that a Party initiating a global safeguard action will inform the other Parties of its intent and the reasons for the action.

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CUSTOMS PROCEDURES

12. Under Customs Procedures, the Agreement seeks to institutionalise a platform to facilitate trade amongst the Parties. This includes enhancing transparency in regulation so that traders would be fully aware of the Customs requirements and procedures in the respective countries. Key facilitative commitments under this chapter include:

a. Self-certification for the claiming of preferential tariffs

Using the case of Singapore-originating goods as an example, an importer would have to prove that the goods are of Singapore origin via the presentation of a declaration of origin on the export invoice, in order to claim preferential tariffs on the goods in question. Under the Agreement, the Singapore exporter or producer can make this declaration of origin without the need for a formal certificate of origin. Furthermore, to facilitate the trade in low-value consignments, the requirement of a declaration of origin is waived if the value of the consignment is below US\$1,000.

b. Risk Management

The Customs Administrations of the Parties have agreed to enhance the application of risk management to focus on high-risk goods and facilitate the clearance of low risk consignments.

c. Advance Rulings

The customs authorities in each country will on the request of the trader provide an advance ruling on the eligibility of originating goods for preferential tariffs and tariff classification, providing traders with greater certainty on the status of their goods at the country of import.

SERVICES

13. The Trade in Services Chapter is ambitious, comprehensive, and will bind Parties to their current levels of liberalization as well as any future liberalization in most sectors. New Zealand and Chile have significantly improved on their commitments at the WTO, thus granting Singapore service suppliers preferential treatment over their competitors from other countries in sectors like medical services, private education services, computer and related services, construction services, real estate services and distribution services.

14. With regard to the ANZSCEP that was concluded in 2000, the agreement locks in and builds upon the benefits that Singapore and New Zealand service suppliers have been enjoying.

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15. The Chapter will initially not apply to Brunei. Instead, Brunei will have 2 years after entry into force of the agreement, to prepare, negotiate and finalise its commitments under the Chapter.

16. The other main features of the Chapter are as follows.

- a. Beneficiaries. Singapore service suppliers with business operations in Singapore, provided they are not shell companies, will be able to take advantage of the benefits under this agreement.
- b. Non-discriminatory treatment. New Zealand and Chile are to give Singapore service suppliers the same treatment that they give their own suppliers.
- c. Sectoral coverage. The Chapter takes a negative list approach, which starts from the premise that all sectors are open, except for those measures or sectors which have been expressly reserved. This creates a more predictable business environment for Singapore businessmen, who would have a better knowledge of the sectors which are protected before entering the respective markets.

Under this approach, Parties have listed in Annex III existing measures that do not conform to the agreement but which they intend to maintain. These measures however cannot become more trade-restrictive and any future liberalization must be locked in. Listed in Annex IV are the sectors in which Parties are free to take any measures.

- d. Domestic regulation. There are also disciplines on domestic regulation to ensure that Parties impose measures in a manner that is reasonable, objective and impartial. In addition, measures relating to qualification requirements and procedures, technical standards, and licensing requirements are required to be:
 - i. based on objective and transparent criteria, such as competence and the ability to supply the service;
 - ii. not more burdensome than necessary to ensure the quality of the service; and
 - iii. in the case of licensing procedures, not in themselves a restriction on the supply of the service.

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- e. Most Favoured Nation. The Chapter also contains a Most Favoured Nation clause. Thus, if in the future, a Party grants more favourable treatment in any sector to any other country, that Party will be required to extend the same treatment to the other Parties of the SEP. This means that Singaporean service suppliers will be able to ride on any further commitments by Chile and NZ in their future FTAs with other countries

TECHNICAL, SANITARY & PHYTOSANITARY REGULATIONS, AND STANDARDS

17. The Sanitary and Phytosanitary Measures (SPS) and Technical Barriers to Trade (TBT) chapters serve to facilitate trade by enhancing cooperation amongst the Parties' regulatory agencies on issues such as standards and technical regulations. They also provide a framework to address the impact of potential barriers to trade posed by such regulations and standards.

18. Under the SPS chapter, the Parties have agreed to put in place eight Implementing Arrangements setting out the details of agreed procedures for trade to take place. These procedures include the determination of equivalence, audit and verification procedures, import checks and certification. Under the TBT chapter, the Parties have agreed on a work programme on the mutual or unilateral recognition of standards, regulations and test results, and the harmonisation of standards. The programme includes electrical and electronic goods, beef grading and shoe labelling.

GOVERNMENT PROCUREMENT

19. This chapter sets out a strong government discipline in the member Parties to maximise competitive opportunities and to reduce costs of doing business for both government and industry.

20. Under the chapter, procuring entities in each Party will grant equal and non-discriminatory access to government tenders in excess of the agreed monetary thresholds to suppliers from other Parties to the Trans-Pacific SEP. The agreed threshold for goods and services (excluding construction services) is Special Drawing Rights (SDR) 50,000 (~S\$120,000). The threshold for construction services is SDR 5 million (~S\$120 million). The Parties have committed to call for an open tender except for specific situations, such as extreme urgency or those connected with the protection of exclusive rights (such as patents or copyrights). In calling for open tenders, the government entities should publish a notice of

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intended procurement and provide sufficient time for suppliers to respond to the notice.

21. The coverage of the government procurement chapter is extensive. Under the chapter, most Chilean central government agencies and thirteen regional governments have been listed as committed entities. New Zealand has listed all departments under the NZ Public Service as covered entities. Brunei will negotiate its government procurement schedule within two years of entry into force of the Trans-Pacific SEP. Brunei will not benefit from the commitments that the other parties have made in this area until it has negotiated its schedule.

INTELLECTUAL PROPERTY (IP)

22. Brunei, Chile, New Zealand and Singapore are all signatories to the World Trade Organisation (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement), which sets out the minimum standards of IP protection for WTO member countries. The IP chapter of the Trans-Pacific SEP seeks to provide an enhanced standard of IP protection beyond that required under the TRIPS Agreement in areas that are of benefit to all Parties.

23. This chapter also aims to increase dialogue and cooperation between Brunei, Chile, New Zealand and Singapore on IP-related matters.

24. The salient features of this IP chapter are as follow:

- a. Brunei, Chile and Singapore have hitherto committed to accede to the World Intellectual Property Organisation (WIPO) Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) which address copyrighted works and copyright protection issues arising in a digital environment. On the part of New Zealand, there is firm commitment that their Copyright regime will be enhanced to address such issues.
- b. Brunei, Chile, New Zealand and Singapore acknowledge their consensus on specific IP principles such as the need to strike a balance between the rights holders and the legitimate interests of users.
- c. Brunei, Chile, New Zealand and Singapore acknowledge that Geographical Indications (GIs) will be protected in the respective jurisdictions to the extent permitted by and according to the terms and conditions set out in their respective domestic laws.

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- d. Both New Zealand and Singapore have agreed that the TRIPS Agreement will govern all intellectual property issues arising under the ANZSCEP.

STRATEGIC PARTNERSHIP

25. The Strategic Partnership chapter sets out a framework for cooperation between two or more Trans-Pacific SEP Parties across five fields – economic, education, primary industry, cultural, and science, research and technology. Under the chapter, the Parties have agreed to build on existing cooperative agreements between them and to strengthen mechanisms for the sharing of information and experiences. The Implementing Arrangement for the chapter sets out specific activities of mutual interest which the Parties can initiate collaboration on, such as R&D in biotechnology and other fields, sharing of best practices and exploring partnerships for business opportunities in third countries.

DISPUTE SETTLEMENT

26. The Trans-Pacific SEP sets out a robust process for consultation or settlement of disputes between the Parties.

FINAL PROVISIONS

27. The Parties have agreed to commence negotiations on Investment and Financial Services no later than two years after entry into force of the Trans-Pacific SEP with a view to including self-contained chapters on these issues in the Agreement.

28. The Agreement will be provisionally applied to Brunei from 1 Jan 06 or 30 days after the deposit of an instrument accepting provisional application of the Agreement, whichever is later. This provisional application will not apply to the Government Procurement, Trade in Services and Competition Policy chapters.

ACCESSION BY OTHER ECONOMIES

29. This Agreement is open to accession any APEC Economy, or by any other country, provided that the signatories to the Trans-Pacific SEP agree to this accession.

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REVIEW OF THE AGREEMENT

30. The Trade Ministers of the Parties will meet two years after the Agreement enters into force to review and expand on the commitments under the Trans-Pacific SEP. They will meet at least every 3 years thereafter for further reviews of the Agreement.

Ministry of Trade and Industry
Singapore
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