

8 March 2018

The Honourable
Dato Erywan Pehin Yusof
Second Minister of Foreign Affairs and Trade
Brunei Darussalam

Dear Minister,

In connection with the signing on 8 March 2018 in Santiago, Chile, of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (the "Agreement"), I have the honour to confirm the following agreement reached between the Government of Brunei Darussalam and the Government of New Zealand during the course of negotiations on the Agreement.

1. With respect to Brunei Darussalam:

- a) No investor of New Zealand¹ shall have recourse to dispute settlement against the Government of Brunei Darussalam under Chapter 9, Section B (Investor-State Dispute Settlement) of the Agreement, except in accordance with this side letter.

- b) Any dispute between such an investor and the Government of Brunei Darussalam that would otherwise be subject to Chapter 9, Section B (Investor-State Dispute Settlement) of the Agreement, should be resolved amicably through consultation and negotiations

¹ For greater certainty, an "investor of New Zealand" has the same meaning as in the Agreement.



between the investor and the Government of Brunei Darussalam. This may include the use of non-binding third party procedures, such as good offices, conciliation or mediation. A request for consultations and negotiations shall be made in writing and set out a brief description of facts regarding the measure or measures at issue.

- c) If the dispute cannot be resolved as provided for in paragraph 1(b) within six months from the date of receipt of the written request for consultations, it may be submitted to arbitration in accordance with Chapter 9, Section B (Investor-State Dispute Settlement) of the Agreement, provided that the Government of Brunei Darussalam consents to the application of this Chapter to the dispute.
- d) Where the Government of Brunei Darussalam has provided consent under paragraph 1(c), a request for consultations pursuant to paragraph 1(b) shall be deemed to be a written request for consultations under Article 9.18.2 (Consultation and Negotiation) of the Agreement.
- e) In addition, where the Government of Brunei Darussalam has not provided consent under paragraph 1(c), the Government of New Zealand may request consultations with the Government of Brunei Darussalam under the Agreement between the Government of Brunei Darussalam and the Government of New Zealand on Bilateral Consultation.

2. With respect to New Zealand:



- a) No investor of Brunei Darussalam² shall have recourse to dispute settlement against the Government of New Zealand under Chapter 9, Section B (Investor-State Dispute Settlement) of the Agreement, except in accordance with this side letter.
- b) Any dispute between such an investor and the Government of New Zealand that would otherwise be subject to Chapter 9, Section B (Investor-State Dispute Settlement) of the Agreement, should be resolved amicably through consultation and negotiations between the investor and the Government of New Zealand. This may include the use of non-binding third party procedures, such as good offices, conciliation or mediation. A request for consultations and negotiations shall be made in writing and set out a brief description of facts regarding the measure or measures at issue.
- c) If the dispute cannot be resolved as provided for in paragraph 2(b) within six months from the date of receipt of the written request for consultations, it may be submitted to arbitration in accordance with Chapter 9, Section B (Investor-State Dispute Settlement) of the Agreement, provided that the Government of New Zealand consents to the application of this Chapter to the dispute.
- d) Where the Government of New Zealand has provided consent under paragraph 2(c), a request for consultations pursuant to paragraph 2(b) shall be deemed to be a written request for consultations under Article 9.18.2 (Consultation and Negotiation) of the Agreement.

² For greater certainty, an "investor of Brunei Darussalam" has the same meaning as in the Agreement.

e) In addition, where the Government of New Zealand has not provided consent under paragraph 2(c), the Government of Brunei Darussalam may request consultations with the Government of New Zealand under the Agreement between the Government of Brunei Darussalam and the Government of New Zealand on Bilateral Consultation.

I have the honour to propose that this letter and your letter of confirmation in reply shall constitute an agreement between the Government of New Zealand and the Government of Brunei Darussalam which shall enter into force on the date of entry into force of the Agreement for both the Government of New Zealand and the Government of Brunei Darussalam.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "David Parker".

Hon David Parker
Minister for Trade and Export Growth
New Zealand

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مکتوبین حال احوال لوارن کرپے دان فرما کھن
MINISTRY OF FOREIGN AFFAIRS AND TRADE
BRUNEI DARUSSALAM

Your Reference:

Our Reference:

8 March 2018

The Honourable
David Parker
Minister for Trade and Export Growth
New Zealand

Dear Minister,

I have the honour of acknowledging receipt of your letter of today's date, which states as follows:

In connection with the signing on 8 March 2018 in Santiago, Chile, of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (the "Agreement"), I have the honour to confirm the following agreement reached between the Government of Brunei Darussalam and the Government of New Zealand during the course of negotiations on the Agreement.

1. *With respect to Brunei Darussalam:*

- a) *No investor of New Zealand¹ shall have recourse to dispute settlement against the Government of Brunei Darussalam under Chapter 9, Section B (Investor-State Dispute Settlement) of the Agreement, except in accordance with this side letter.*

¹ For greater certainty, an "investor of New Zealand" has the same meaning as in the Agreement.

- b) *Any dispute between such an investor and the Government of Brunei Darussalam that would otherwise be subject to Chapter 9, Section B (Investor-State Dispute Settlement) of the Agreement, should be resolved amicably through consultation and negotiations between the investor and the Government of Brunei Darussalam. This may include the use of non-binding third party procedures, such as good offices, conciliation or mediation. A request for consultations and negotiations shall be made in writing and set out a brief description of facts regarding the measure or measures at issue.*

- c) *If the dispute cannot be resolved as provided for in paragraph 1 (b) within six months from the date of receipt of the written request for consultations, it may be submitted to arbitration in accordance with Chapter 9, Section B (Investor-State Dispute Settlement) of the Agreement, provided that the Government of Brunei Darussalam consents to the application of this Chapter to the dispute.*

- d) *Where the Government of Brunei Darussalam has provided consent under paragraph 1(c), a request for consultations pursuant to paragraph 1(b) shall be deemed to be a written request for consultations under Article 9.18.2 (Consultation and Negotiation) of the Agreement.*

- e) *In addition, where the Government of Brunei Darussalam has not provided consent under paragraph 1(c), the Government of New Zealand may request consultations with the Government of Brunei Darussalam under the Agreement between the Government of Brunei Darussalam and the Government of New Zealand on Bilateral Consultation.*

2. *With respect to New Zealand:*

- a) *No investor of Brunei Darussalam² shall have recourse to dispute settlement against the Government of New Zealand under Chapter 9, Section B (Investor-State Dispute Settlement) of the Agreement except in accordance with this side letter.*

² For greater certainty, an "investor of Brunei Darussalam" has the same meaning as in the Agreement.



- b) *Any dispute between such an investor and the Government of New Zealand that would otherwise be subject to Chapter 9, Section B (Investor-State Dispute Settlement) of the Agreement, should be resolved amicably through consultation and negotiations between the investor and the Government of New Zealand. This may include the use of non-binding third party procedures, such as good offices, conciliation or mediation. A request for consultations and negotiations shall be made in writing and set out a brief description of facts regarding the measure or measures at issue.*

- c) *If the dispute cannot be resolved as provided for in paragraph 2 (b) within six months from the date of receipt of the written request for consultations, it may be submitted to arbitration in accordance with Chapter 9, Section B (Investor-State Dispute Settlement) of the Agreement provided that the Government of New Zealand consents to the application of this Chapter to the dispute.*

- d) *Where the Government of New Zealand has provided consent under paragraph 2(c), a request for consultations pursuant to paragraph 2(b) shall be deemed to be a written request for consultations under Article 9.18.2 (Consultation and Negotiation) of the Agreement.*

- e) *In addition, where the Government of New Zealand has not provided consent under paragraph 2(c), the Government of Brunei Darussalam may request consultations with the Government of New Zealand under the Agreement between the Government of Brunei Darussalam and the Government of New Zealand on Bilateral Consultation.*

I have the honour to propose that this letter and your letter of confirmation in reply shall constitute an agreement between the Government of New Zealand and the Government of Brunei Darussalam which shall enter into force on the date of entry into force of the Agreement for both the Government of New Zealand and the Government of Brunei Darussalam.



I have the further honour to confirm that your letter reflects the understandings made by the Government of Brunei Darussalam and the Government of New Zealand during the course of the negotiations on the Agreement and that your letter and this letter in reply shall constitute an agreement between the Government of Brunei Darussalam and the Government of New Zealand which shall enter into force on the date of entry into force of the Agreement for both the Government of Brunei Darussalam and the Government of New Zealand.

Yours sincerely,



DATO ERYWAN PEHIN YUSOF

Second Minister of Foreign Affairs and Trade