

US–BN Labor Consistency Plan

November [-], 2015

The Honorable Pehin Dato Lim Jock Seng

Minister at the Prime Minister's Office and

Second Minister of Foreign Affairs and Trade

Brunei Darussalam

Dear Minister Pehin Dato Lim Jock Seng:

I have the honor to confirm that the United States of America and Brunei Darussalam have reached agreement with respect to the “Brunei—United States Labour Consistency Plan”, a bilateral instrument in accordance with Chapter 19 of the TPP Agreement attached to this letter.

I have the honor to propose that this letter and your letter in reply confirming that your Government shares this understanding shall constitute an agreement between our two Governments. This agreement shall enter into force on the date of entry into force of the TPP Agreement between our two governments.

Sincerely,

Ambassador Michael B. G. Froman

[-] November 2015

The Honorable Michael Froman

United States Trade Representative

600 17th Street, NW

Washington, DC 20508

Dear Ambassador Froman:

I am pleased to receive your letter of [insert date], which reads as follows:

I have the honor to confirm that the United States of America and Brunei Darussalam have reached agreement with respect to the “Brunei—United States Labour Consistency Plan”, a bilateral instrument in accordance with Chapter 19 of the TPP Agreement attached to this letter.

I have the honor to propose that this letter and your letter in reply confirming that your Government shares this understanding shall constitute an agreement between our two Governments. This agreement shall enter into force on the date of entry into force of the TPP Agreement between our two governments.

I have the honor to confirm that the understanding referred to in your letter is shared by my Government, and that your letter and this letter in reply shall constitute an agreement between our two governments.

Sincerely,

PEHIN DATO LIM JOCK SENG

Minister at the Prime Minister's Office and

Second Minister of Foreign Affairs and Trade

Brunei—United States Labour Consistency Plan

This Plan creates rights and obligations only as between Brunei Darussalam and the United States.

I. Preamble

The Governments of Brunei and the United States:

ACKNOWLEDGING that each Party commits under Chapter 19 (Labour) to obligations concerning its labour law and practice, including with regard to its statutes and regulations and the labour rights as stated in the ILO Declaration;

UNDERTAKE through this Plan the following commitments consistent with those obligations.

II. Legal Reforms

Brunei shall undertake the following legal reforms. In addition, Brunei shall undertake other changes, including the issuance of new or revised measures, that are required to fully implement the following legal reforms and any related changes required to ensure consistency across the legal framework.

A. Freedom of Association and Collective Bargaining

Prior Authorization of Union Registration

1. Brunei shall amend the implementing regulations to the TUA, Section 10(1)(b), to clarify that “unlawful” refers only to serious

breaches of law; and shall amend the implementing regulations to the TUA, Section 11(1)(b), to clarify that “willfully...violated” requires intent to violate the law.

International Affiliation

2. Brunei shall amend relevant sections of the TUA, including Section 17, related to prior consent for international affiliation by a union or union confederation, consistent with the labour rights as stated in the ILO Declaration.

Interference in Union Activity, Autonomy and Administration

3. Brunei shall amend relevant sections of the TUA to ensure that workers’ organizations have adequate protection from acts of interference by employers and public authorities, including by prohibiting such interference and applying effective procedures to expeditiously investigate allegations of interference, sanction violations and provide for appropriate remedies.

Protection against Anti-Union Discrimination

4. Brunei shall amend the TUA and the Employment Order (EO) to ensure that workers enjoy adequate remedies for all acts of anti-union

discrimination in respect of their employment.

Limits on Selection of Union Officers

5. Brunei shall amend TUA, Section 16 to ensure workers' right to elect their own representatives in full freedom without undue restrictions and ensure that only appropriate minimum standards are set that do not otherwise limit the workers' ability to select their representatives.

Procedures for collective bargaining and strikes

6. Brunei shall amend relevant sections of the TUA to ensure workers' right to bargain collectively, including by adopting measures that provide procedures for voluntary negotiation between employers or employers' organizations and workers' organizations.

7. Brunei shall amend relevant sections of the Trade Disputes Act (TDA), Section 9, to ensure workers' right to strike, except in the limited circumstances noted in Section 7 and Section 8.

Review and Appeal

8. Brunei shall provide impartial and independent bodies or tribunals with jurisdiction to review any administrative decisions made under its labour laws, and ensure parties to those administrative decisions have access to those bodies or tribunals to review or appeal the decisions. Brunei shall amend relevant sections of its labour laws to clarify that administrative decisions are subject to review by such bodies or tribunals.

Application of Other Laws

9. Brunei shall ensure that laws or legal instruments, or provisions therein, are not applied or amended in a manner to undermine peaceful trade union-related activity protected by the TUA, TDA or EO.

B. Forced Labour

Brunei shall ensure effective enforcement in implementing the Passport Act, Section 12(g), which prohibits withholding of another person's passport without lawful authority. Implementation shall include measures that make clear that: retention of a worker's passport by an employer is illegal; employers and foreign workers must be fully informed of foreign workers' right to retain their own passports; and foreign workers retain the right to access their

passports at any time, without delay or approval of any other individual, and without consequence to their status and relationship with their employer or recruitment agency.

C. Child Labour

Brunei shall amend relevant sections of the Employment Order to include a list of hazardous occupations prohibited for persons under 18 years of age.

D. Employment Discrimination

Brunei shall amend relevant sections of the Employment Order to prohibit discrimination in respect of employment and occupation, including on the basis of race, sex, color, religion, political opinion and national extraction.

E. Acceptable Conditions of Work

Brunei shall enact laws and regulations that provide for a minimum wage for private sector workers.

III. Institutional Reforms and Capacity Building

Brunei shall undertake necessary institutional changes and capacity building to implement the legal reforms required by this Plan, including: establish new administrative functions, procedures and mechanisms; expand and adequately train the labour inspectorate and relevant criminal system authorities; and provide the necessary resources to implement these changes.

Labour Inspectorate

1. Brunei shall revise internal inspection and other enforcement procedures for the labour inspectorate of its Department of Labour, to ensure effective enforcement of the new legal provisions, and train all relevant personnel on the reformed procedures and new provisions.
2. Brunei shall ensure its complaint mechanisms are effective, allow workers to confidentially and anonymously report violations of the labour laws, and include procedures for referring complaints to labour inspectors for follow up and for documenting and tracking the follow-up inspections and investigations conducted, including the status of an inspection or investigation, any violation identified, the existence or amount of any fine or sanctions imposed, and any remedies ordered.

IV. Transparency and Sharing of Information

A. Public Comment

1. Brunei shall provide for public comment, including using any existing procedures, of the draft laws and other measures that result from the commitments in this Plan.
2. Brunei shall, consistent with its existing procedures, publicly post on the applicable agency website the final legal instruments that result from the commitments in this Plan after their issuance.

B. Collaboration

Brunei and the United States shall collaborate on the development of the relevant legal reforms and other measures related to the implementation of this Plan.

C. Outreach and education

Brunei shall ensure an outreach program to inform and educate stakeholders, including employers and workers, on their rights under the revised laws and regulations; on the new administrative processes for the implementation of the revised laws and regulations; and on

related remedies and courses of action available to stakeholders to enforce those rights.

V. Review

1. The United States and Brunei shall regularly assess progress in implementing this Plan, including follow-up enforcement and application of the amended laws and regulations and institutional reforms.
2. The United States and Brunei shall establish a Committee comprising senior officials from the Office of the U.S. Trade Representative and the Department of Labor for the United States and from the Ministry of Foreign Affairs and Trade and the Department of Labour, Ministry of Home Affairs for Brunei to monitor, assess and facilitate rapid response to any concerns about compliance with and implementation of the legal and institutional reforms under this Plan.
3. The United States and Brunei shall designate the responsible senior officials prior to the date of entry into force of this Agreement between the United States and Brunei and promptly inform the other Party of any subsequent changes.

4. The Committee shall meet, in person or by any technological means available, annually for seven years after the date of entry into force of this Agreement between the United States and Brunei. At the request of either Brunei or the United States, the Committee shall continue to meet annually thereafter or as otherwise agreed.

5. Unless otherwise agreed, the Committee shall convene within 30 days after a request by Brunei or United States to determine actions necessary to address any concerns with regard to compliance with or implementation of the legal and institutional reforms under this Plan.

VI. Technical Assistance

1. Brunei may request cooperation, advice and technical assistance from the United States or other Parties to the Agreement or any relevant international organisation for the purpose of implementing this Plan.

2. Brunei and the United States shall endeavor to share expertise, and to exchange information and best practices for the purpose of implementing this Plan.

VII. Implementation

1. Brunei shall enact the legal and institutional reforms in Part II and Part III of this Plan prior to the date of entry into force of the TPP Agreement between the United States and Brunei.
2. This Plan shall be subject to consultations under Article 19.5 (Labour Consultations) of the Labour Chapter, except that with respect to paragraphs 2 and 3, the requirement to circulate the request and reply, respectively, to the other TPP Parties, shall not apply; and paragraph 4 shall not apply.
3. This Plan shall be subject to dispute settlement under Chapter 28 (Dispute Settlement) of the TPP Agreement, except for Article 28.13 (Third Party Participation), which shall not apply.