

Singapore's Note

MFA/TPN NO. /2003

The Ministry of Foreign Affairs of the Republic of Singapore presents its compliments to the Australian High Commission in Singapore and has the honour to refer to the Singapore-Australia Free Trade Agreement (“the Agreement”) done at _____ on ____ 2003.

The Ministry notes that in the course of negotiations of the Agreement, both Parties to the Agreement reached the following understandings with respect to the various parts of the Agreement:

I. UNDERSTANDING

1. The Parties understand that nothing in the Agreement shall prevent a Party from taking any action it considers necessary to protect critical communications infrastructure from deliberate attempts intended to disable or degrade such infrastructure.

2. Taking note of Article 13 (Security Exceptions) of Chapter 2 (Trade in Goods), Article 14 (Exceptions) of Chapter 6 (Government Procurement), Article 19 (Security Exceptions) of Chapter 7 (Trade in Services) and Article 20 (Security Exceptions) of Chapter 8 (Investment), the Parties understand that nothing in each of these Chapters shall prevent a Party from taking any action it considers necessary to protect its essential security interests in a domestic emergency declared by a Party in accordance with its domestic laws.

3. In relation to Article 4 (National Treatment) of Chapter 7 (Trade and Services) and Article 3 (National Treatment) of Chapter 8 (Investment), the Parties understand that the application of these provisions to central and regional levels of governments shall be consistent with the approach they have adopted in scheduling their commitments pursuant to Article XVII of the WTO General Agreement on Trade in Services.

4. Notwithstanding Section (V) (Note to Singapore's Commitments for Financial Services) of Annex 4-III (Additional Commitments to Chapter 7 (Trade in Services) and Chapter 8 (Investment)), Singapore shall, at such time it lifts its numerical quota on Wholesale Bank licences under its Free Trade Agreement with the United States of America, do the same with respect to Australia, provided that the grant of Wholesale Bank licences would be subject to the relevant admission criteria.

5. With respect to Articles 19 (General Exceptions) and 20 (Security Exceptions) of Chapter 8 (Investment), Singapore agrees to offer immediately to Australia unilaterally and unconditionally any differences in the General Exceptions or Security Exceptions provisions agreed in its Free Trade Agreement with the United States of America.

6. With respect to Article 16 (Industry Development) of Chapter 6 (Government Procurement), it is understood that:

- (a) measures taken by a Party to assist its small and medium enterprises (SMEs) may include measures such as those listed in the Australian Commonwealth Procurement Guidelines in force as on the date of entry into force of the Agreement. To the extent possible, the Parties shall endeavour to ensure that such measures are not applied for trade protectionist purposes; and
- (b) a Party shall, wherever practicable, give reasonable notice to the other Party prior to adopting any new measure relating to SME participation in government procurement.

7. With respect to Singapore's reservation on Air Transport Services (ground handling services) in Annex 4-I(B) of the Chapter on Trade in Services, the Parties, upon the conclusion of the on-going negotiations on a new Air Services Agreement between them, will discuss this reservation with a view to reducing the scope of the reservation, and to align the reservation with the outcome of the aforesaid negotiations. In this regard, any necessary amendment to the reservation will be made pursuant to Article 7 (Amendments) of Chapter 17 (Final Provisions).

8. With respect to section (III) (Waiver and Modifications of Statutory Conditions governing Joint Law Ventures and Formal Law Alliances in Singapore) of Annex 4-III (Additional Commitments to Chapter 7 (Trade in Services) and Chapter 8 (Investment)), Singapore agrees to extend to Australia treatment no less favourable than that granted to the United States under the US-Singapore Free Trade Agreement.

II. REVIEW OF AGREEMENT

9. At the first review of the Agreement provided under Article 3 (Review) of Chapter 17 (Final Provisions), the Parties shall:

- (a) in the context of Chapter 8 (Investment), consider the inclusion of a provision relating to performance requirements using as a guide the illustrative list in the WTO Agreement on Trade-Related Investment Measures or similar provisions in other international investment agreements;
- (b) in the context of the Chapter 8 (Investment), consider the incorporation of a provision relating to "taxation measures as expropriation" using the proposed clause set out in Appendix I and the footnote therein as the basis for future discussion;
- (c) consider Singapore's request to incorporate in the Agreement commitments on non-discriminatory treatment of digital products, which Singapore understands to include software, and to consider Singapore's request for the application of such non-discriminatory treatment to the procurement practices of Australian entities covered by Chapter 6 (Government Procurement) for software created, produced or distributed by Singapore's suppliers;

(d) with respect to Chapter 10 (Telecommunications Services), either Party may initiate consultations in order to review the scope and operation of Article 9.8 within six months of the passage of any laws relating to the interconnection dispute resolution process in Australia with a view to negotiating appropriate amendments to this paragraph;

(e) with respect to paragraphs 2(a) and 2(b) in Part I (Singapore's Commitments) of Section (II) (Recognition of Law Degrees for Admission as Qualified Lawyers) of Annex 4-III (Additional Commitments to Chapter 7 (Trade in Services) and Chapter 8 (Investment)) relating to the Recognition of Law Degrees for Admission as qualified lawyers, consider Australia's request to include up to 2 additional Australian Universities into the First Schedule to the Legal Profession (Qualified Persons) Rules (S357/2001) and review the 30% criterion; and

(f) with respect to Article 16 (Industry Development) of Chapter 6 (Government Procurement), review the use of measures covered by this Article, in the light of the objectives of the Chapter, and consult on ways of addressing any concerns raised by either Party.

10. In respect of Chapter 3 (Rules of Origin), Australia expects that a large proportion of Singapore's exports to Australia, that were dutiable prior to the date the Agreement enters into force, will become duty free over time. Where Singapore considers that this expectation has not been met, the Parties shall enter into consultations with a view to reviewing the provisions of Chapter 3 (Rules of Origin).

The Ministry has the honour to propose to the High Commission that this Note together with the High Commission's Note in reply shall constitute an understanding between Singapore and Australia as from the date the Agreement enters into force.

The Ministry of Foreign Affairs of the Republic of Singapore avails itself of this opportunity to renew to the Australian High Commission in Singapore the assurances of its highest consideration.

APPENDIX I

Article XX*

Taxation Measures as Expropriation

1. Article 9 (Expropriation and Nationalisation) shall apply to taxation measures, to the extent that such taxation measures constitute expropriation as provided for in paragraph 1 of Article 9 (Expropriation and Nationalisation).
2. Where paragraph 1 above applies, Article 14 (Settlement of Disputes between a Party and an Investor of the other Party) shall also apply in respect of taxation measures.

Footnote :

* With reference to Articles 9 (Expropriation and Nationalisation) and XX (Taxation Measures as Expropriation), in assessing whether a taxation measure constitutes expropriation, the following considerations are relevant:-

- (i) the imposition of taxes does not generally constitute expropriation. The mere introduction of new taxation measures or the imposition of taxes in more than one jurisdiction in respect of an investment, does not in and of itself constitute expropriation;
- (ii) taxation measures which are consistent with internationally recognised tax policies, principles and practices do not constitute expropriation. In particular, taxation measures aimed at preventing the avoidance or evasion of taxes should not, generally, be considered to be expropriatory; and
- (iii) taxation measures which are applied on a non-discriminatory basis, as opposed to being targeted at investors of a particular nationality or specific individual taxpayers, are less likely to constitute expropriation. A taxation measure should not constitute expropriation if, when the investment is made, it was already in force, and information about the measure was made public or otherwise made publicly available.

Australia's Note

The Australian High Commission in Singapore presents its compliments to the Ministry of Foreign Affairs of the Republic of Singapore and has the honour to refer to the Ministry's Note No. MFA/TPN NO. /2003 which reads as follows.

{Insert text of Singapore's Note}

The High Commission has the honour to confirm that the Ministry's Note No. MFA/TPN NO. /2003 and this Note in reply constitute an understanding between Singapore and Australia as from the date the Agreement enters into force.

The Australian High Commission in Singapore avails itself of this opportunity to renew to the Ministry of Foreign Affairs of the Republic of Singapore the assurances of its highest consideration.