

**BRIEF NOTES: RECENT INTERNATIONAL LEGAL
DEVELOPMENTS IN SINGAPORE**
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I. THE US–SINGAPORE FREE TRADE AGREEMENT (USSFTA)

The last Brief Notes identified the outstanding issue stalling negotiations in the Agreement (at the round of negotiations held from 11 to 19 November 2002 in Singapore) as the sensitive issue of capital controls. Negotiators finally reached a compromise on 16 January 2003, paving the way for the completion of the Agreement.

The Agreement now provides for the free transfer of capital in both countries and enhances the protection and rights of US investors (substantially higher than under the WTO Agreements), while maintaining Singapore's freedom of action to take appropriate measures in the event of an economic crisis, including restrictions on capital flows. The Agreement contains special provisions under which Singapore would not be liable for claims for damages by investors if it imposes restrictions on capital account transactions, provided the restrictions last for less than one year and do not substantially impede transfers.²

After the resolution of that impasse, the United States and Singapore made rapid progress and with US President George W. Bush and Singapore

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2 These special provisions apply only to short term capital account transactions, such as portfolio investments and inter-bank loans and placements. They do not apply to current payments and transfers such as debt servicing, profit repatriation, and dividend payments as well as proceeds from the sale of foreign direct investments. Thus even in a crisis, while Singapore retains the flexibility to place temporary restrictions on potential short-term flows, current payments and direct investments will be fully protected by the free transfers provision. Note that under the Agreement, a restriction is presumed not to substantially impede transfers if it meets certain conditions such as being non-confiscatory, non-discriminatory, price-based (e.g. in the form of a tax or levy), and not interfering with the investor's ability to earn a market rate of return in Singapore. The Agreement also provides for the scope of compensation that investors, affected by measures deemed to substantially impede transfers, may seek.

Prime Minister Goh Chok Tong finally signing the U.S.-Singapore Free Trade Agreement on 6 May 2003. The USSFTA commits both countries to trade liberalisation, *vis-a-vis* each other, over and above their WTO commitments. It will be NAFTA-plus in a number of areas including the protection of intellectual property, the inclusion of specific Chapters dealing with e-commerce and telecommunications, advanced rules of origin and customs cooperation.

The USSFTA covers the following areas: trade in goods, rules of origin, customs administration, technical barriers to trade, trade remedies, cross border trade in services, financial services, temporary entry, telecommunications, e-commerce, investment, competition, government procurement, intellectual property protection, transparency, general provisions, labour, environment, and dispute settlement. The key elements of the USSFTA are as follows:

A. Goods

Singapore committed to zero tariffs for all imports upon the entry into force of the USSFTA. Tariffs will be eliminated for many products including beer and stout. The US will immediately eliminate 92% of their current tariffs on exports from Singapore to the U.S. upon the entry into force of the USSFTA (and to the 100% elimination of tariffs on goods within 8 years). The sectors that will benefit most from these tariff reductions are the electronics, chemicals and petrochemicals, instrumentation equipment, processed foods and mineral products sectors.

Exports with substantial transformation and added value done in Singapore can be conferred 'Singapore origin' and qualify for a preferential tariff. To claim tariff preferences, a US importer has to declare that the good is of Singapore origin. Customs authorities on both sides will provide advance rulings on originating goods, enhancing transparency in regulation. Under the Integrated Sourcing Initiative (ISI), which applies to non-sensitive globalised sectors such as information technology and hi-tech goods (which already enter into US duty-free when exported from Singapore to the US) can be given preferential treatment. For textiles and apparels, there is immediate tariff elimination for products that meet the 'yarn forward' rule of origin.³

B. Customs Co-operation

The Agreement provides for enhanced bilateral customs co-operation. Singapore will implement systems and procedures to ensure that only legitimate goods can claim preferential treatment under the USSFTA. Both sides will

³ This requires the products to be made from the U.S. and/or Singapore originating yarn, with limited exceptions. All other assembly processes must be carried out in Singapore. A 'Tariff Preference Level' mechanism allows some amount of apparel exports from Singapore to be exempted from the 'yarn forward' rule for 8 years. For such exports, tariffs will be phased out over 5 years. The U.S. also committed to introducing more liberal rules of origin for textiles in USSFTA once further liberalisation on rules of origin is achieved in the WTO.

actively exchange information and use risk management techniques in enforcement measures against trade in illicit goods.

C. *Services*

Service suppliers from both sides will be assured of fair and non-discriminatory treatment and market access except for services specifically exempted in writing – this is the ‘negative list’ approach. US states will give a Singapore service supplier the same treatment given a supplier of that State or another US State. Regulatory authorities are bound to high standards of openness and transparency, including consultations with interested parties, advance notice, reasonable comment period, and publication of regulations. There is also a mechanism to lock in future liberalisation of exempted measures. The benefits of the Agreement extend to all Singapore companies that are not shell companies, regardless of ownership.

For professional services, Singapore will ease conditions on which U.S. firms can enter in to Joint Law Ventures and Formal Law Alliances, recognise degrees earned from 4 U.S. law schools for admission to the Singapore bar, reduce board of director requirements for architectural and engineering firms, and phase out capital ownership requirements for land surveying services. Both sides will engage in consultations to develop mutually acceptable standards and criteria for licensing and certification of professional service providers, especially with regard to architects and engineers. On financial services, Singapore will give US banks better access to Singapore’s retail banking sector.⁴

D. *Telecommunications and E-commerce*

Service suppliers from both countries will have access to respective public telecommunications networks, including submarine cable landing stations, with transparent and effective enforcement by the telecommunications regulators. There will be competition safeguards put in place to protect against discriminatory and anti-competitive behaviour by incumbent suppliers in matters such as interconnection, co-location, access to rights of way and resale.

The government on both sides will work towards the implementation of a comprehensive arrangement for the mutual recognition of conformity assessment for telecommunications equipment. Both countries also commit to the non-discriminatory treatment of digital products and the permanent duty-free status of products delivered electronically.

⁴ I.e. it will remove the quota on Qualifying Full Bank (QFB) and Wholesale Bank licenses for U.S. banks 1 1/2 years and 3 years after the entry into force of the USSFTA, remove restrictions on customer service locations for QFBs 2 years after the entry into force of the USSFTA, and allow Singapore incorporated U.S. QFBs to negotiate with local banks for access into their ATM networks on commercial terms 2 1/2 years after the entry into force of the USSFTA.

E. *Immigration*

There are provisions for the temporary entry of business persons. They create separate categories of entry for citizens of each country to conduct a wide variety of business and investment activities on a temporary basis. For example, Singapore citizens who are business visitors can enter the US to conduct business activities for up to 90 days without the need for labour market test, subject to usual immigration and security measures.

Singapore citizens who are professionals will also be able to work in the US as a professional under a new US Work Visa, which is not subject to the labour market test.

F. *Government Procurement*

Both countries committed to allowing market access by service suppliers of the other Party unless specifically reserved – the ‘negative list’ approach. Commitment applies to all procurement contracts for goods and services worth more than US\$56,190 and for construction procurement contracts worth more than US \$6,481,000.

G. *Investment*

The US and Singapore committed to the granting of fair market value for expropriation and undertook not to impose any unfair performance requirements, such as requiring the investor to export a given level of goods and services, as a condition for the investment. The USSFTA also provides for an investor-to-state dispute mechanism whereby investors aggrieved by government actions, which they allege are in breach of obligations under this Chapter, can exercise the right to take the dispute directly to an international arbitration tribunal for resolution.

H. *Intellectual Property*

The Agreement incorporates strong commitments to enhance intellectual property protection standards on a non-discriminatory basis. For example, on copyright, both sides agreed to align their terms of protection for copyrighted works, performances and phonograms. Both the US and Singapore will also adopt additional protection standards relevant and applicable in the digital environment. Specifically, they will provide strong anti-circumvention provisions prohibiting tampering with technology designed to prevent piracy of copyrighted works over the internet, criminalise unauthorised reception and the re-distribution of satellite signals. It also provides immunity to internet service providers for complying with notification and take-down procedures when material suspected to be infringing are hosted on their servers.

On patents, both sides will strengthen their regimes to protect bio-inventions. Specifically, Singapore will accede to the International Convention for the Protection of New Varieties of Plants (UPOV) to better protect

new plant varieties. Both sides will commit to its current regime on allowing all inventions, including bio-inventions, to be patentable (so long as they do not contradict public order or morality), and they will limit the use of compulsory licenses to safeguard against anti-competitive practices, public non-commercial use, national emergencies and other circumstances of extreme urgency. Moreover, both the US and Singapore will introduce safeguards to strengthen patent protection, especially for pharmaceuticals.⁵

All trademarks, including sound trademarks, will be registrable in Singapore. Both countries will accord stronger protection for well-known marks, and trademark licensees no longer need to register their trademark licenses in order to assert their rights in a trademark. The stronger protection rights will be complemented by strong enforcement obligations. Both sides will continue to undertake strict enforcement measures against piracy, in close consultation and collaboration with the industry. The Agreement also sets out preventive, enforcement and remedial rights.⁶

I. *Competition*

Singapore will set up a general competition regime by January 2005 and will maintain its existing policy of non-interference with the commercial decisions of Government Linked Companies (GLCs). This is a commitment that GLCs will continue to be commercially run and not discriminate against US companies.

J. *Labour and Environment*

Both countries committed to the enforcement of their domestic laws relating to labour and the environment, and to consulting and cooperating closely with each other on environmental and labour issues of mutual concern and interest.

K. *Dispute Settlement and General Provisions*

A dispute settlement system that focuses more on co-operation rather than on traditional trade sanctions (by allowing a Party to pay a monetary assessment

5 In particular, both sides will grant originators a data exclusivity period of up to 5 years from the date of marketing approval, instead of the date of application, and extend patent protection period if there is an administrative delay during the marketing approval process.

6 There are provisions for right owners to take the additional avenue of opting for compensation based on a pre-determined range of statutory damages for civil proceedings against copyright and trademark infringements. Measures to prevent and enforce against the illegal manufacture, and the import and export of, pirated goods were also put in place. In this connection, Singapore will formalise its regime of regulating optical disc manufacturing activities through the imprint of Source Identification Code (SIC) on optical discs unless specifically exempted by the right owner.

into a common fund) have been put in place. The common fund will be used to facilitate trade between the US and Singapore.

More than just a comprehensive free trade instrument, the US–Singapore Free Trade Agreement has the distinction of being the first free trade agreement to be concluded between the United States and an Asian country. It paves the way for deeper U.S. economic engagement in the region and should spur other ASEAN-wide Free Trade Agreements.

II. THE SINGAPORE–AUSTRALIA FREE TRADE AGREEMENT (SAFTA)

Negotiations for the Singapore–Australia Free Trade Agreement concluded after 2 years and 10 rounds of negotiations in November 2002. The Agreement was signed by the Minister for Trade and Industry George Yeo and the Australian Trade Minister Mark Vaile in Singapore on 17 February 2003. It is expected to come into force in late 2003, after the Agreement has undergone the necessary legislative processes in both countries.

The SAFTA is a forward-looking comprehensive Agreement which covers the following areas: trade in goods, trade in services, investment, telecommunication and financial services, movement of business persons, government procurement, mutual recognition, intellectual property rights, competition policy, e-commerce and education cooperation. As with other free trade agreements such as the USSFTA, it commits both countries to greater trade liberalisation than what their WTO commitments entail. The key elements of the SAFTA are as follows:

A. *Goods*

Under this Agreement, both countries have committed to eliminate their tariffs and to work towards reducing non-tariff barriers. Tariffs will be immediately eliminated on, and duty-free market access will be given to, all Singapore or Australian products entering the Australian and Singapore markets respectively. Neither country can deny tariff concessions to, or impose other trade restrictive measures on, the other without proper justification. They can only impose non-tariff measures that are permitted under the WTO, and are further obliged to ensure that such non-tariff measures are transparent and do not distort trade.

B. *Customs Co-operation*

The Customs Procedures Chapter will facilitate the flow of goods between the two Parties through the simplification of customs procedures. This ensures that traders will enjoy the full benefits that accrue to tariff removal. Both countries committed to improving the customs clearance of goods between the two countries, through paperless trading, the use of modern management tools such as risk management for cargo clearance processes, and sharing best

practices. The result will be faster turnaround time and lower compliance costs for customs regulatory requirements.

C. Services

Both Singapore and Australia committed to greater market access for service suppliers of the other country to their domestic economy and a variety of services sectors, and made national treatment commitments which are both WTO-consistent and WTO-plus.

Under the Market Access provision, neither country may restrict access to their markets, either by quantitative restrictions (*e.g.* numerical quotas on services suppliers) or qualitative restrictions (*e.g.* requirement to supply a service through joint venture). Under the National Treatment provision, both countries agreed to grant services and service suppliers of the other country the same treatment given their domestic services and service suppliers. There are also disciplines on domestic regulation to ensure both countries impose measures in a reasonable, objective and impartial manner, and provisions preventing monopolies from abusing their position.

Both Singapore and Australia have committed to a wide range of services sectors in SAFTA beyond what has been committed at the WTO. Services sectors covered by this Agreement include professional services, transportation services, distribution services, tourism services, environmental services, and recreational, cultural and sporting services. With such a 'negative-list' approach, all sectors are liberalised except those specifically reserved under Annex 4.⁷

One noteworthy area is the sensitive legal services sector which has been expressly reserved by Singapore. Singapore has entered into commitments to waive and modify certain statutory conditions making it easier for Australian law firms to establish joint law ventures and formal law alliances with Singapore law firms in Singapore. Singapore has also agreed to recognise law degrees from eight Australian Universities⁸ for admission as qualified lawyers.

⁷ Annex 4 includes a list of measures which each country can continue to maintain, notwithstanding commitments in the Chapter. Australia's services commitments are in Annexes 4-I(A) and 4-II(A), while Singapore's services commitments are in Annexes 4-I(B) and 4-II(B). Australia has currently made commitments at its Federal level and would be making further commitments at the State level during the first review of this Agreement. In Annexes 4-I(A) and 4-I(B), both countries list down any of their existing measures maintained in the various services sectors that violate the Market Access and National Treatment obligations. Annexes 4-II(A) and Annex 4-II(B) contain sensitive service sectors where the parties reserve flexibility to impose non-conforming Market Access and National Treatment measures. Annex 4-III contains both countries' commitments in addition to the Market Access and National Treatment obligations, such as in the area of legal services.

⁸ The eight Australian Universities are: Monash University, University of Melbourne, University of Sydney, University of New South Wales, Australian National University, Flinders University, University of Queensland and University of Western Australia.

Under a separate Chapter, SAFTA also promotes bilateral trade and investment in financial services through market opening measures. The Chapter on Financial Services adds to commitments made in the Chapters on Trade in Services and Investment, for the financial services sector. These commitments will ensure that the market access treatment of financial services is also based on transparent principles that are applied in a non-discriminatory manner.

D. Telecommunications and E-commerce

The Agreement offers telecommunication companies in both countries greater market access and a more level playing field in the other country's telecommunications market. Both countries will also recognise the other's telecommunications conformity assessment systems so that businesses benefit from faster time-to-market and reduced costs. There will also be greater trade efficiency in e-commerce. For example, Singapore's Telecom Competition Code provides for a clear, coherent and strong competition framework to prevent anti-competitive and unfair practices. It also provides for the development of sustainable competition in the telecommunications market by setting clear boundaries for competitive behaviour. Notably, both sides have agreed to accept and make available electronic versions of all trade administration documents by 2005.

E. Immigration

Trade and investment flows will be facilitated by temporary entry to each country by citizens and Permanent Residents (PRs) of the other country who are going there for business through expeditious and streamlined immigration clearance. The Movement of Business Persons Chapter will facilitate the movement of two major categories of business persons directly involved in cross-border trade and investments through specific commitments. Both countries also agreed to confer the same benefits on both citizens and PRs of the other country. Furthermore, conditions of entry and immigration formality processing for business visitors from one country to the other will not be less favourable than those imposed on citizens of any other country, and neither country will require labour market testing, labour certification tests or other similar procedures as a condition for temporary entry of business persons.⁹

F. Government Procurement

As Parties to APEC, Singapore and Australia provided in the Agreement for suppliers from both countries to be treated in the same manner as any

⁹ The Chapter does not apply to measures regarding citizenship, residence or employment on a permanent basis. It also does not apply to immigration measures as long as these immigration measures do not nullify or impair the commitments made by either country.

locally established supplier. Both countries also agreed to cooperate to ensure that policies and procedures that are adopted will facilitate access to government procurement opportunities by suppliers via electronic means, that is, e-procurement.

G. *Investment*

SAFTA contains comprehensive provisions on investment promotion and protection, aimed to foster an open international environment for cross-border investment, minimize restrictions, strengthen protection of investments, and provide access to each others' markets.¹⁰ The two key areas under this Chapter are investment promotion and investment protection. The Chapter covers both investments in the manufacturing and service sectors.¹¹ It covers all stages of investment, from the pre-establishment to post-establishment stage. Concessions are premised on the more liberalising and transparent 'negative list' approach.

The disciplines include national treatment,¹² expropriation and compensation,¹³ free transfer of funds,¹⁴ provisions for the review of commitments and access to investor-to-state dispute settlement.¹⁵

H. *Intellectual Property*

Singapore and Australia are signatories to the TRIPS Agreement, which sets out the minimum standards of intellectual property rights (IPR) protection for WTO member countries. Under the Agreement, both countries go beyond the standards that are required under the TRIPS Agreement in areas of mutual benefit. There will be an increase in dialogue and co-operation between Singapore and Australia IPR-related matters, and a review of areas of cooperation

10 Investors who can benefit from this Chapter are also not limited to nationals of Singapore or companies owned by Singaporeans but include permanent residents and enterprises with substantive business operations in Singapore.

11 It covers a broad range of investment instruments including stocks and equities, intellectual property rights, debt instruments and rights conferred by licenses and permits.

12 Both countries cannot discriminate the other country's investors vis-a-vis their own investors.

13 Both countries cannot unduly expropriate investments unless the expropriation is premised on public purposes as defined in the Agreement. In the event that such expropriation occurs, the governments are required to afford compensation for the expropriated investment. Land expropriation will be governed by the domestic legislation of each country.

14 Both countries will allow the investors to freely repatriate and transfer funds related to their investments (such as capital, profits, dividends and royalties) into and out of the country.

15 Both countries have committed to allowing investors from either country, aggrieved of government actions that violate their benefits under this chapter, to take the dispute to an international arbitration tribunal for resolution. The investor has several international platforms to choose from, specifically that of the International Centre for Settlement of Investment Disputes (ICSID) and the United Nations Commission on International Trade Law (UNCITRAL).

with a view to improving bilateral IP relations. Both Singapore and Australia have committed to acceding to the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty by 1 January 2005.¹⁶

Both countries also committed to the adoption of a common standard of protection for the protection of industrial designs by ensuring compliance with the provisions of the Geneva Act (1999) of the Hague Agreement Concerning the International Registration of Industrial Designs. Singapore and Australia also agreed to affirm elements of protection to account for the changing nature of media and communication such as the digitisation of content and internet communication, and to ensuring effective enforcement of intellectual property rights by agreeing to take efforts to improve communication between enforcement agencies as well as cooperating on information exchange on education and awareness programs.

I. *Competition*

SAFTA aims to promote fair competition and curtail anti-competitive business practices. The government of both countries have committed to ensuring that anti-competitive business practices are proscribed. This may be done through existing law or through the enactment of a general competition regime. The Parties have also agreed that unless a specific exemption applies, the relevant competition laws will apply to all businesses irrespective of ownership. Additionally, both countries have committed to ensuring that government-owned enterprises are not given any competitive advantage in their commercial activities simply as a result of being government-owned. There are also provisions for consultation and cooperation and review.

J. *Mutual Recognition*

The Chapter on Mutual Recognition builds on the 2001 Mutual Recognition Agreement on Conformity Assessment between Australia and Singapore and extends the coverage to sanitary and phytosanitary measures (SPS).¹⁷ The Agreement provides for the mutual recognition of test reports and/or certificates issued by the exporting country to testify that they meet with the mandatory requirements of the importing country. This means that products would be already tailored for the destination market upon their arrival there, and removes the need for duplicative testing and/or certification in the importing country before the product can be sold. As a result of this, companies will be able to obtain savings on the cost of duplicative testing and/or certification.

16 These treaties address copyright protection issues by the enactment of clear and appropriate legal provisions which are not found in the existing international agreements and conventions on copyright.

17 SPS measures refer to any measure, procedure, requirement, or regulation, taken by governments to protect human, animal, or plant life or health from the risks arising from the spread of pests, diseases, disease-causing organisms, or from additives, toxins, or contaminants found in food, beverages, or feedstuffs.

The Chapter sets out the overall general principles which had to be incorporated for the different product sectors. The detailed requirements and procedures to ensure that specific types of products meet the mandatory requirements of the destination market are set out in separate Annexes. The overall principles aim to do the following: set out the scope, coverage and definitions of the technical jargon, stipulate the fundamental obligations for both countries to accept the equivalence of mandatory requirements and/or the results of conformity assessment and approval procedures of the other Party, and provide for information exchange and updates of changes in each others' regimes.

K. *Dispute Settlement and General Provisions*

Both countries have negotiated a comprehensive set of dispute settlement procedures. Disputes are subject to consultations, negotiations, conciliation and arbitration just like in the WTO.

III. OTHER ECONOMIC COOPERATION AND FREE TRADE NEGOTIATIONS IN PROGRESS

A. *The India–Singapore Comprehensive Economic Cooperation Agreement*

The first round of negotiations for the India-Singapore Comprehensive Economic Cooperation Agreement (CECA) was held on 27 to 28 May 2003 in New Delhi. The 30-member Singapore delegation was led by the Permanent Secretary for Trade & Industry Heng Swee Keat, and the Indian side, representing more than two dozen departments and organisations of the Government of India, was led by Secretary of Commerce Dipak Chatterjee. Preliminary discussions were held on investments, trade in goods and services.

The discussion on trade in goods covered a wide range of issues including free trade agreement, customs facilitation, anti-dumping and safeguard measures, and the dispute settlement mechanism. Mutual Recognition Agreements would be entered into by the end of the year, in electrical/electronic equipment, food products and telecom equipment. Three new areas of pharmaceuticals, gas appliances and computer software were identified for further discussion. It was agreed that rules of origin should provide preferential treatment for goods originating from India and Singapore only.

In Services, sectors including information and communication technology, telecom, postal services, audio-visual, health, education, biotech, environmental and air services were discussed. In addition, an issue of great importance to India relating to the movement of natural persons was also discussed. It was agreed that there will be exchange of information leading to further investment in environment, biotech and other related R&D services. Further cooperation will be pursued in health and audio-visual sectors by leveraging talent and infrastructure facilities available in the two countries.

India and Singapore have agreed to develop an India–Singapore dialogue mechanism to further promote investment and industrial cooperation. Effective investment facilitation mechanism would be put in place in both countries to assist investors. International Enterprise Singapore, which promotes Singapore investment abroad and has presence in 36 countries, could extend its services to Indian investors in setting up joint ventures with Singapore investors in third countries. India and Singapore agreed to review the existing double taxation avoidance agreement to create an effective climate for the growth of trade and investment. Preliminary discussions were also held on the setting up of the India-Singapore fund. The next meeting will be held from 1 to 3 July 2003 in Singapore.

B. The Canada–Singapore Free Trade Agreement

Singapore and Canada completed the fourth round of negotiations on the Canada-Singapore Free Trade Agreement from 13 to 17 January 2003 in Ottawa, Canada. The two sides conducted an exchange of offers for the first time on a comprehensive range of issues such as trade in goods, trade in services, financial services, investment and government procurement prior to this negotiation round. This round focused on the clarification of the offers made by both sides. The next round of negotiations is scheduled to be held in Singapore from 21 to 25 July 2003.

C. The ASEAN–China Framework Agreement on Comprehensive Economic Cooperation

Following the signing of the Framework Agreement on Comprehensive Economic Cooperation between ASEAN and China on 4 November 2002, the negotiations based on the principles and timeframes as set out in the Agreement began in February 2003. The negotiations covered goods, services, investment and economic cooperation activities. Although negotiations were held back by the SARS outbreak, they resumed soon after the end of the outbreak and representatives from the various states met again recently from 23 to 28 June 2003 for a new round of negotiations in Jakarta, Indonesia. The parties have set ambitious targets to complete the goods negotiations by June 2004 and the rest within a reasonable time thereafter.

D. The ASEAN–Japan Framework Agreement on Comprehensive Economic Partnership

The third round of negotiations for the ASEAN–Japan Framework Agreement on Comprehensive Economic Partnership has just taken place and the next round will be from 25 to 26 July 2003 in Singapore.

E. *The Joint Study Group on the Korea–Singapore Free Trade Agreement*

The Joint Study Group (JSG) on the Korea-Singapore Free Trade Agreement has met twice during the first half of this year, from 4 to 5 March 2003 in Seoul, and from 23 to 25 April 2003 in Singapore. The Joint Study Group discussed the effects, feasibility, scope, and key issues of a bilateral free trade agreement between the two countries. Such an agreement will play a constructive role for economic integration of the region. The JSG will continue to meet over the course of six months from the first meeting, at the end of which the JSG will present a joint report to their governments. The government on both sides will then decide on whether to begin the official negotiations with a view to concluding a bilateral free trade agreement.

IV. AGREEMENT REACHED ON WHO FRAMEWORK CONVENTION ON TOBACCO CONTROL

Singapore was one of the 171 Member States of the World Health Organization (WHO) that finalized a groundbreaking public health treaty to control tobacco supply and consumption. They agreed on a final text for a WHO Framework Convention on Tobacco Control (FCTC)¹⁸ governing tobacco taxation, smoking prevention and treatment, illicit trade, advertising, sponsorship and promotion, and product regulation.

The negotiations, the final round of which began on 17 February, conclude four years of work to produce an international tobacco control treaty. The Convention is part of a global strategy to reduce tobacco-related deaths and disease around the world. The final text was presented to the World Health Assembly in May, adopted, and then opened for signature by Member States. The treaty will come into force shortly after 40 countries have ratified it. The text requires Signatory Parties to implement comprehensive tobacco control programmes and strategies at the national, regional and local levels. In its preamble, the text explicitly recognizes the need to protect public health, the unique nature of tobacco products, and the harm that companies that produce them cause.

Some of the key elements of the final text include tax and price measures,¹⁹ labelling requirements,²⁰ advertising restrictions,²¹ and

18 The elements of the treaty reflect WHO and World Bank policies on a comprehensive plan to reduce global tobacco consumption. While there have been nearly 20 World Health Assembly resolutions to support tobacco control since 1970, the difference with this treaty is that these obligations will become legally binding for Parties to the convention once it comes into force.

19 The text formally recognizes that tax and price measures as important ways of reducing tobacco consumption, particularly in young people, and requires signatories to consider public health objectives when implementing tax and price policies on tobacco products.

20 The text requires that at least 30 per cent – but ideally 50 per cent or more – of the display area on tobacco product packaging is taken up by clear health warnings in the form of text, pictures or a combination of the two. Packaging and labelling requirements also prohibit misleading language that gives the false impression that

the liability options,²² financing of domestic tobacco-control programmes.²³

V. THE ARMS AND EXPLOSIVES (AMENDMENT) ACT

It was reported in the Brief Notes of the previous issue that Parliament had passed the Arms and Explosives (Amendment) Act on 31 October 2002. The Act came into operation on 21 March 2003. The amendments to the Arms and Explosives Act relate to Singapore's fight against terrorism and maintain national security. The Act now gives effect to the Convention on the Marking of Plastic Explosives for the Purpose of Detection to which Singapore had acceded, while updating some other existing provisions.

VI. THE PEDRA BRANCA DISPUTE (MALAYSIA *v.* SINGAPORE)

On 9 May 2003, Singapore and Malaysia cleared the last hurdle in referring their territorial dispute over the island (on which the Horsburgh Lighthouse stands) to the International Court of Justice (ICJ). Officials from both sides exchanged instruments of ratification of the Special Agreement to refer the Pedra Branca issue to the International Court of Justice.

Earlier, on 6 February 2003, the Minister for Foreign Affairs, Professor S. Jayakumar and his Malaysian counterpart, Foreign Minister Datuk Syed Hamid Albar had signed the "Special Agreement for Submission to the International Court of Justice of the Dispute between Malaysia and Singapore Concerning Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge".

The exchange of instruments of ratification took place in Putrajaya. Singapore was represented by the High Commissioner of Singapore to

the product is less harmful than others. This may include the use of terms such as 'light', 'mild' or 'low tar'.

21 While all countries agreed that a comprehensive ban would have a significant impact in reducing the consumption of tobacco products, some countries have constitutional provisions – for example, those covering free speech for commercial purposes – that will not allow them to implement a complete ban in all media. The final text requires Parties to move towards a comprehensive ban within five years of the convention entering into force. It also contains provisions for countries that cannot implement a complete ban by requiring them to restrict tobacco advertising, promotion and sponsorship within the limits of their laws. The text also explicitly requires signatories to the convention to look at the possibility of a protocol to provide a greater level of detail on cross-border advertising. This could include the technical aspects of preventing or blocking advertising in areas such as satellite television and the internet.

22 Parties to the convention are encouraged to pursue legislative action to hold the tobacco industry liable for costs related to tobacco use.

23 Parties are required to provide financial support to their national tobacco control programmes. In addition, the text encourages the use and promotion of existing development funding for tobacco control. A number of countries and development agencies, have already pledged their commitment to include tobacco control as a development priority. The text also requires countries to promote treatment programmes to help people stop smoking and education to prevent people from starting, to prohibit sales of tobacco products to minors, and to limit public exposure to second-hand smoke.

Malaysia, Mr. Ashok Kumar Mirpuri, while Malaysia was represented by the Deputy Secretary-General of Foreign Affairs of Malaysia, Dato' Abdul Aziz Mohammed. With the exchange of the Memorial, Counter-Memorial and Reply and the hearing dates yet to be set, it may be expected that the process will be a long drawn-out one and it will take several years before there is a resolution to the dispute, possibly on or around 2007.

VII. *FORUM NON CONVENIENS* AND SOVEREIGN IMMUNITY INVOKED IN SINGAPORE HIGH COURT

In a recently reported High Court case, *Praプトно Honggopati Tjitrohupojo & Ors v Tunku Ibrahim Ismail Ibni Sultan Iskandar Al-Haj* [2002] 4 SLR 667, the Court stayed the proceedings against the Crown Prince of State of Johor on the basis of *forum non conveniens*. The plaintiffs were Indonesian parties who had entered into two oral agreements with the defendant in connection with a petroleum project in Indonesia. It was alleged that the defendant had breached the oral agreements. The plaintiffs commenced action in Singapore on the basis that the two oral agreements emanated in Singapore and all parties had intended to subject themselves to the jurisdiction of the Singapore courts. Furthermore, it is claimed that the plaintiffs might be unable to pursue a claim against the defendant as he may ascend the throne of Johor and enjoy sovereign immunity from suits by non-Malaysians in Malaysia.

On the sovereign immunity issue, the Court considered that even if Singapore was a suitable forum, a Ruler of a Malaysian state may still be entitled to claim sovereign immunity in Singapore in view of the old English decision of *Mighell v Sultan of Johore* [1894] 1 QB 149. The English Court of Appeal had held that English Courts had no jurisdiction over an independent foreign sovereign unless he submitted himself to the jurisdiction. Plaintiffs argued that immunity no longer existed with the development of the law since *Mighell* and sections 3, 5, 16 and 17 of the State Immunity Act 1979. Defendants argued that for contracts entered into by a Ruler in his private capacity, immunity still existed.

The Court refrained from delving further into the issue, but expressed the view that the plaintiffs may also not be able to pursue a claim against the defendant in Singapore if he ascended the throne and the President of Singapore were to grant him that immunity under section 17 of the State Immunity Act. Section 17 states that if it appears that the immunities and privileges conferred by the Act exceeds those accorded by the law of that State in relation to Singapore or are less than those required by any treaty, convention or other international agreement, the President may extend those immunities and privileges to such extent as the President deems appropriate. The Singapore High Court stayed proceedings against the defendant on grounds of *forum non-conveniens* under paragraph 9 of the First Schedule to the Supreme Court of Judicature Act (Cap 322, 1999 Ed). The Plaintiffs' appeal to the Court of Appeal was dismissed on 22 May 2002.

VIII. THE SINGAPORE–PERU INVESTMENT GUARANTEE AGREEMENT

Singapore and Peru signed an Investment Guarantee Agreement on 27 February 2003. This Agreement gives investors from both countries greater confidence and protection when investing in each other's country. The Agreement is also Singapore's first with a Latin American country. The key provisions of the agreement include the following:

- a. the IGA would apply to all approved investments made by investors of either contracting party in the territory of the other contracting party, before or after the IGA enters into force;
- b. most-favoured nation treatment will be accorded to all approved investments; and
- c. compensation in the event of expropriation and nationalisation will be made in accordance with the laws of each Contracting Party and will be freely convertible and transferable.

IX. LAUNCH OF THE LEGAL PROFESSION (INTERNATIONAL SERVICES) SECRETARIAT WEBSITE

On 5 June 2003, the Legal Profession (International Services) Secretariat of the Attorney-General's Chambers launched its own website at the address <http://www.agc.gov.sg/lps/> with information on its mission, role and the legislative framework for which the Secretariat is responsible for implementation and regulation as well as the contact details of the Secretariat.

All relevant application forms, guidance notes for the various applications, information on registration fees, notices, conditions and guidelines governing joint law ventures, formal law alliances, representative offices, foreign law firms and foreign lawyers are now available conveniently online with links to other relevant Singapore websites. The Directories of the joint law ventures, formal law alliances, representative offices and foreign law firms containing their names and contact information can also be found on the website. In addition, there is a section on 'Frequently Asked Questions' which sets out the Secretariat's responses to frequent or routine inquiries from joint law ventures, formal law alliances, representative offices, foreign law firms and foreign lawyers.

LIST OF TREATY ACTION

The following list describes some of the more important treaty actions taken by Singapore from 1 January 2003 to date:

The EFTA²⁴-Singapore Free Trade Agreement

Signature: 26 June 2002

Entry into force: 1 January 2003

24 EFTA (European Free Trade Association) is a trade grouping consisting of Switzerland, Liechtenstein, Norway and Iceland.

Convention on the Marking of Plastic Explosives for the Purpose of Detection

Accession: 20 January 2003

Entry into force: 21 March 2003

Special Agreement for Submission to the International Court of Justice of the Dispute between Malaysia and Singapore, Concerning Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge

Signature: 6 February 2003

Entry into force: 9 May 2003

Singapore–Australia Free Trade Agreement

Signature: 17 February 2003

Agreement between the Government of the Republic of Singapore and the Government of the Republic of Peru on the Promotion and Protection of Investments

Signature: 27 February 2003

United States–Singapore Free Trade Agreement

Signature: 6 May 2003

Memorandum of Intent between the Republic of Singapore and the United States of America on Cooperation in Environmental Matters

Signature: 13 June 2003

Entry into force: 13 June 2003