

Free Trade with Singapore: America's First Free Trade Agreement in Asia

Trade in Services

• A Comprehensive Agreement

- Singapore will accord substantial market access across its entire services regime, subject to very few exceptions. Singapore will treat U.S. services suppliers as well as its own suppliers or other foreign suppliers.

- U.S. services firms will enjoy fair and non-discriminatory treatment through strong disciplines on both cross-border supply of services (such as those delivered electronically, or through the travel of services professionals across borders) and the right to invest and establish a local services presence.

- Traditional market access to services is supplemented by strong and detailed disciplines on regulatory transparency. Regulatory authorities must use open and transparent administrative procedures, consult with interested parties before issuing regulations, provide advance notice and comment periods for proposed rules, and publish all regulations.

- Market access commitments apply across a range of sectors, including but not limited to:

- o Financial services including banking, insurance, securities and related services

- o Computer and related services

- o Direct selling

- o Telecommunications services

- o Audiovisual services

- o Construction and Engineering

- o Tourism

- o Advertising

- o Express Delivery

- o Professional services (architects, engineers, accountants, etc.)

- o Distribution services, such as wholesaling, retailing and franchising

o Adult education & training services

o Environmental services

o Energy services

U.S. firms have the right to own equity stakes in entities that may be created if Singapore chooses to privatize certain government-owned services.

"We have an excellent agreement. It's comprehensive... and we have extensive coverage of services in the Agreement. Given the fact that both our economies are significant services economies, we think we've broken significant new ground," Robert B. Zoellick, U.S. Trade Representative

• **New Opportunities for U.S. Banks**

- The financial services chapter includes core obligations of non-discrimination, most-favored nation treatment, and additional market access obligations.

- The current ban on new licenses for full-service banks will be lifted within 18 months, and within 3 years for "wholesale" banks that serve only large transactions.

- Licensed full-service banks will be able to offer all their services at up to 30 locations in the first year, and at an unlimited number of locations within 2 years.

- Locally incorporated subsidiaries of U.S. banks can apply for access to the local Automated Teller Machine (ATM) network within 2.5 years. Branches of U.S. banks get access to the ATM network in 4 years.

• **Expanded Market Access U.S. Insurance Companies**

- U.S. insurance firms have full rights to establish subsidiaries, branches or joint ventures.

- Singapore to end its prohibition on foreign firms supplying insurance cross-border from their home country. U.S. firms will be able to sell marine, aviation and transport (MAT) insurance, reinsurance, insurance brokerage of reinsurance and MAT insurance, and insurance auxiliary services.

- New principle of expedited availability of insurance services means that prior regulatory product approval is not required for insurance sold to the business community. Expedited procedures are available in other cases when prior product approval is necessary.

- U.S. financial institutions may offer financial services to citizens participating in Singapore's privatized social security system under more liberal requirements.

Singapore is America's 11th largest trading partner, with two-way goods and services trade of \$38.8 billion in 2001.

• Securities and Related Financial Services Liberalized

- U.S. firms may provide asset/portfolio management and securities services in Singapore through the establishment of a local office, or by acquisition of local firms.
- U.S. firms may supply pension services under Singapore's privatized social security system, with liberalized requirements regarding the number of portfolio managers that must be located in Singapore.
- U.S.-based firms may sell portfolio management services via a related institution in Singapore.
- Singapore will treat U.S. firms the same as local firms for the cross-border supply of financial information, advisory and data processing services.

• Express Delivery Services Expedited

- Liberalization of express delivery services and other related services (that are part of an integrated express delivery system) will allow a more efficient and expedited express delivery business in Singapore.
- Singapore commits that it will not allow its postal service to cross-subsidize express letters with revenues from its monopoly services.

• U.S. Professionals Gain New Access

- Singapore will ease restrictions on U.S. firms creating joint law ventures to practice in Singapore, and will recognize degrees earned from certain U.S. law schools for admission to the Singapore bar.
- Singapore will reduce onerous requirements on the make-up of boards of directors for architectural and engineering firms.
- Capital ownership requirements for land surveying services will be eliminated.
- Liberalization of the requirements for registration and certification of patent agents.
- Cooperation in developing standards and criteria for licensing and certification of other professional services providers.

U.S. exports of private commercial services to Singapore were \$4.1 billion in 2001, up 54% from 1994.

• An Open and Competitive Telecommunications Market

- A full range of commitments on telecommunications services provides for open markets, consistent with the regulatory regimes of the U.S. and Singapore.
- Users of the telecom network are guaranteed reasonable and non-discriminatory access to the network. This prevents local firms from having preferential or "first right" of access to telecom networks.
- U.S. phone companies obtain right to interconnect with networks in Singapore in a timely fashion, on terms, conditions, and cost-oriented rates that are transparent and reasonable.
- U.S. firms seeking to build a physical network in Singapore granted non-discriminatory access to buildings that contain telephone switches and submarine cable heads.
- U.S. firms will be able to lease elements of Singaporean telecom networks on nondiscriminatory terms and to re-sell telecom services of Singaporean suppliers to build a customer base.
- Opens rule-making procedures of telecom regulatory authority, and requires publication of inter-connections agreements and service rates. Singapore commits that when competition emerges in a telecom services area, that area will be deregulated.
- Agreement specifies that companies, not governments, make technology choices, particularly for mobile wireless services, thus allowing firms to compete on the basis of technology and innovation, not on government-mandated standards.

E-Commerce and Digital Products

• Free Trade in the Digital Age

- Singapore and the U.S. agreed to provisions on e-commerce that reflect the issue's importance in global trade, and the principle of avoiding barriers that impede the use of e-commerce.
- The Agreement establishes explicit guarantees that the principle of non-discrimination applies to products delivered electronically (software, music, video, text), thus providing fair treatment to U.S. firms delivering digital products via the Internet.
- Establishes a binding prohibition on customs duties charged on digital products delivered electronically, such as legitimate downloads of music, videos, software or text.
- For digital products delivered on hard media (such as a DVD or CD), customs duties will be based on the value of the media (e.g., the disc), not on the value of the movie, music or software contained on the disc.
- The e-commerce text makes binding a number of e-commerce commitments that are now only voluntary or temporary in the World Trade Organization.

- Affirms that any commitments made related to services in the Agreement also extend to the electronic delivery of such services, such financial services delivered over the Internet. This sets a very good precedent for services liberalization efforts in the WTO and in other FTAs.

Investment

• Important Protections for U.S. Investors

- The agreement will provide a secure, predictable legal framework for U.S. investors operating in Singapore.

- All forms of investment are protected under the Agreement unless specifically exempted, the so-called "negative list" approach.

- U.S. investors are provided treatment as favorable as local Singaporean investors or any other foreign investor.

- Pursuant to U.S. Trade Promotion Authority, the agreement draws from U.S. legal principles and practices to provide U.S. investors a basic set of substantive protections that Singaporean investors currently enjoy under the U.S. legal system.

- Among the rights afforded to U.S. investors (consistent with those found in U.S. law) are due process protections and the right to receive a fair market value for property in the event of an expropriation.

- The Agreement prohibits and removes certain performance-related restrictions on U.S. investors, such as limitations on the numbers of locations.

- These investor rights are backed by an effective, impartial procedure for dispute settlement that is fully transparent. Submissions to dispute panels and panel hearings will be open to the public, and interested parties will have the opportunity to submit their views.

U.S. foreign direct investment in Singapore was \$27.3 billion in 2001, up 6.5% from the prior year. U.S. investment in Singapore is concentrated in manufacturing, finance, and petroleum

Intellectual Property Rights (IPR)

• High Level of IPR Protection

- Protection of copyrights, patents, trademarks and trade secrets is state-of-the-art, going farther than previous free-trade agreements. Enforcement of intellectual property rights is also enhanced under this Agreement.

- Non-discrimination obligations apply to all types of intellectual property.

• Trademarks: State-of-the-Art Protection

The U.S.-Singapore FTA contains ground-breaking protection for U.S intellectual property such as software, movies, music and books. These protections are vitally important in the digital age.

- Ensures government involvement in resolving disputes between trademarks and Internet domain names, which is important to prevent "cyber-squatting" of trademarked domain names.
- Applies principle of "first-in-time, first-in-right" to trademarks and geographical indicators (place-names) applied to products. This means that the first to file for a trademark is granted the first right to use that name, phrase or geographical place-name.
- Streamlines the trademark filing process by allowing applicants to use their own national patent/trademark offices for filing trademark applications.

• **Copyrights: Protection for Copyrighted Works in A Digital Economy**

- Ensures that only authors, composers and other copyright owners have the right to make their works available online. Copyright owners maintain rights to temporary copies of their works on computers, which is important in protecting music, videos, software and text from widespread unauthorized sharing via the Internet.
- Copyrighted works and phonograms are protected for extended terms, consistent with U.S. standards and international trends.
- Strong anti-circumvention provisions to prohibit tampering with technologies (like embedded codes on discs) that are designed to prevent piracy and unauthorized distribution over the Internet.
- Ensures that governments only use legitimate computer software, thus setting a positive example for private users.
- Singapore to prohibit the production of optical discs (CDs, DVDs or software) without a source identification code, unless authorized by the copyright holder in writing.
- Protection for encrypted program-carrying satellite signals extends to the signals themselves as well as the programming, thus preventing piracy of satellite television programming.
- Limited liability for Internet Service Providers (ISPs), reflecting the balance struck in the U.S. Digital Millennium Copyright Act between legitimate ISP activity and the infringement of copyrights.

• **Patents & Trade Secrets: Protection Expanded**

- Patent term can be extended to compensate for up-front administrative or regulatory delays in granting the original patent, consistent with U.S. practice.

- Grounds for revoking a patent are limited to the same grounds required to originally refuse a patent, thus protecting against arbitrary revocation.
- Provides protection for patents covering biotech plants and animals.
- Protects against imports of pharmaceutical products without patent-holder's consent by allowing lawsuits when contracts are breached.
- Test data and trade secrets submitted to a government for the purpose of product approval will be protected against disclosure for a period of 5 years for pharmaceuticals and 10 years for agricultural chemicals. Closes potential loopholes to these provisions.
- Ensures that government marketing-approval agencies will not grant approval to patent-violating products.

• **IPR Enforcement: Tough Penalties for Piracy and Counterfeiting**

- Criminal penalties for companies that make pirated copies from legitimate products.
- Singaporean government guarantees that it has authority to seize, forfeit and destroy counterfeit and pirated goods and the equipment used to produce them. IPR laws will be enforced against traded goods, including trans-shipments, to deter violators from using U.S. or Singaporean ports or free-trade zones to traffic in pirated products. Ex officio action may be taken in border and criminal IPR cases, thus providing more effective enforcement.
- Mandates both statutory and actual damages under Singaporean law for IPR violations. This serves as a deterrent against piracy, and provides that monetary damages can be awarded even if actual economic harm (retail value, profits made by violators) cannot be determined.
- Singapore to cooperate in preventing pirated and counterfeit goods from being imported into the United States.

Competition Policy

• **U.S. Firms Protected Against Anti-Competitive and Monopolistic Behavior**

- Commits Singapore to enact a law regulating anti-competitive business conduct and to create a competition commission by January 2005.
- Specific conduct guarantees are imposed to ensure that commercial enterprises in which the Singapore government has effective influence will operate on the basis of commercial considerations, and that such enterprises will not discriminate in their treatment of U.S. firms.
- Singapore to provide annual information on government enterprises with substantial revenues or assets.

Government Procurement

• Strong Government Procurement Disciplines

- Additional commitments by Singapore on non-discrimination in government services procurements, based on a "negative list" approach in which U.S. firms gain nondiscriminatory access unless specifically excluded in the Agreement.
- Re-enforces WTO commitments to strong and transparent disciplines on procurement procedures, such as requiring advance public notice of purchases, as well as timely and effective bid review procedures.
- Monetary thresholds for when government procurement disciplines apply is lowered, thus expanding the contracts that are subject to FTA disciplines.

Customs Procedures and Rules of Origin

• Ground-Breaking Customs Procedures

- U.S.-Singapore FTA is one of the first U.S. trade agreements with specific, concrete obligations on how customs procedures are to be conducted.
- Agreement requires transparency and efficiency in customs administration, with commitments on publishing laws and regulations on the Internet, and ensuring procedural certainty and fairness.
- Both parties agree to share information to combat illegal trans-shipment of goods. In addition, the Agreement contains specific language designed to facilitate the clearance through customs of express delivery shipments.
- Strong but simple rules of origin will ensure that only U.S. and Singaporean goods benefit from the Agreement.

Temporary Entry of Personnel

• Mobility For Highly-Trained Personnel

- Separate categories of entry for businesspersons to engage in a wide range of activities on a temporary basis.
- Business visitors may enter Singapore without the need for a labor market test.
- Preserves ability of Congress to legislate in the area of immigration.

Trade in Goods

• **Tariffs Eliminated**

- Most U.S. tariffs on Singaporean goods will be eliminated immediately upon entry into force of the Agreement, with remaining tariffs phased out over 3-10 years.
- Singapore guarantees zero tariffs immediately on all U.S. products.
- Textiles and apparel will be duty-free immediately if they meet the Agreement's rule of origin, promoting new opportunities for U.S. and Singaporean fiber, yarn, fabric and apparel manufacturing. A limited yearly amount of textiles and apparel containing non-US or non-Singaporean yarns, fibers or fabrics may also qualify for duty-free treatment.
- Extensive monitoring and anti-circumvention commitments—such as reporting, licensing, and unannounced factory checks—so that only Singaporean textiles and apparel receive tariff preferences.

Labor and Environmental Provisions

• **Ground-Breaking Cooperation to Protect the Environment**

- Agreement fully meets the environmental objectives set out by Congress in TPA. Environmental obligations are part of the core text of the trade agreement.
- Both parties shall ensure that their domestic environmental laws provide for high levels of environmental protection and shall strive to continue to improve such laws. Agreement makes clear that it is inappropriate to weaken or reduce domestic environmental protections to encourage trade or investment.
- Agreement requires that parties shall effectively enforce their own domestic environmental laws, and this obligation is enforceable through the Agreement's dispute settlement procedures.

• **Promotion of Worker Rights**

- Agreement fully meets the labor objectives set out by Congress in TPA. Labor obligations are part of the core text of the trade agreement.
- Both parties reaffirm their obligations as members of the International Labor Organization (ILO), and shall strive to ensure that their domestic laws provide for labor standards consistent with internationally recognized labor principles. Agreement makes clear that it is inappropriate to weaken or reduce domestic labor protections to encourage trade or investment.
- Agreement requires that parties shall effectively enforce their own domestic labor laws, and this obligation is enforceable through the Agreement's dispute settlement procedures.

Dispute Settlement

- **Innovative New Tools to Enforce a Trade Agreement**

- All core obligations of the Agreement, including labor and environmental provisions, are subject to the dispute settlement provisions of the Agreement.
- Dispute panel procedures set high standards of openness and transparency:
 - o Open public hearings;
 - o Public release of legal submissions by parties;
 - o Rights for interested third parties to submit views.
- Emphasis is on promoting compliance through consultation and trade-enhancing remedies.
- An innovative enforcement mechanism includes monetary penalties to enforce commercial, labor, and environmental obligations of the trade agreement.