

EXECUTIVE OFFICE OF THE PRESIDENT
THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

May 6, 2003

The Honorable
George Yeo
Minister for Trade and Industry

Dear Minister Yeo:

I have the honor to refer to the Article 15.26(b) (Status of Letter Exchanges) of the United States – Singapore Free Trade Agreement (the “Agreement”) signed at Washington, D.C., on May 6, 2003.

During the negotiation of the Investment Chapter of the Agreement (Chapter 15), the United States and Singapore (collectively, the “Parties”) discussed Article 15.6.1 (Expropriation) in order to clarify and reaffirm its meaning. Based on those discussions, I have the honor to confirm the Parties’ shared understanding that:

1. Article 15.6.1 (Expropriation) is intended to reflect customary international law concerning the obligation of States with respect to expropriation.
2. An action or a series of actions by a Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right or property interest in an investment.
3. Article 15.6.1 (Expropriation) addresses two situations. The first is direct expropriation, where an investment is nationalized or otherwise directly expropriated through formal transfer of title or outright seizure.
4. The second situation addressed by Article 15.6.1 (Expropriation) is indirect expropriation, where an action or series of actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.
 - (a) The determination of whether an action or series of actions by a Party, in a specific fact situation, constitutes an indirect expropriation, requires a case-by-case, fact-based inquiry that considers, among other factors:
 - (i) the economic impact of the government action, although the fact that an action or series of actions by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that an indirect expropriation has occurred.

(ii) the extent to which the government action interferes with distinct, reasonable investment-backed expectations; and

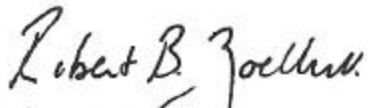
(iii) the character of the government action.

(b) Except in rare circumstances, nondiscriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public health, safety, and the environment, do not constitute indirect expropriations.

I have the honor to propose that this understanding be treated as an integral part of the Agreement.

I would be grateful if you would confirm that this understanding is shared by your Government.

Sincerely,


Robert B. Zoellick



MINISTER FOR TRADE AND INDUSTRY
SINGAPORE

May 6, 2003

The Honorable
Robert B. Zoellick
United States Trade Representative

Dear Ambassador Zoellick:

I have the honor to confirm receipt of your letter, which reads as follows:

"I have the honor to refer to the Article 15.26(b) (Status of Letter Exchanges) of the United States – Singapore Free Trade Agreement (the "Agreement") signed at Washington, D.C., on May 6, 2003.

During the negotiation of the Investment Chapter of the Agreement (Chapter 15), the United States and Singapore (collectively, the "Parties") discussed Article 15.6.1 (Expropriation) in order to clarify and reaffirm its meaning. Based on those discussions, I have the honor to confirm the Parties' shared understanding that:

1. Article 15.6.1 (Expropriation) is intended to reflect customary international law concerning the obligation of States with respect to expropriation.
2. An action or a series of actions by a Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right or property interest in an investment.
3. Article 15.6.1 (Expropriation) addresses two situations. The first is direct expropriation, where an investment is nationalized or otherwise directly expropriated through formal transfer of title or outright seizure.
4. The second situation addressed by Article 15.6.1 (Expropriation) is indirect expropriation, where an action or series of actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.
 - (a) The determination of whether an action or series of actions by a Party, in a specific fact situation, constitutes an indirect expropriation, requires a case-by-case, fact-based inquiry that considers, among other factors:

(i) the economic impact of the government action, although the fact that an action or series of actions by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that an indirect expropriation has occurred;

(ii) the extent to which the government action interferes with distinct, reasonable investment-backed expectations; and

(iii) the character of the government action.

(b) Except in rare circumstances, nondiscriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public health, safety, and the environment, do not constitute indirect expropriations.

I have the honor to propose that this understanding be treated as an integral part of the Agreement.

I would be grateful if you would confirm that this understanding is shared by your Government.”

I have the further honor to confirm that this understanding is shared by my Government and constitutes an integral part of the Agreement.

Sincerely,



George Yeo