



MINISTER FOR TRADE AND INDUSTRY
SINGAPORE

May 6, 2003

The Honorable
Robert B. Zoellick
United States Trade Representative

Dear Ambassador Zoellick:

In connection with the signing on this date of the United States - Singapore Free Trade Agreement (the "Agreement"), I have the honor to confirm the understanding reached, by our two Governments, in relation to Chapter 16 (Intellectual Property Rights) of the Agreement as follows:

1. (a) With respect to criminal proceedings authorized under Section 336 (4) and (7) of the Criminal Procedural Code (Chapter 68), Singapore agrees that a right holder and/or its representative(s):
 - (i) shall be required to indemnify the Government only against compensation, costs, or expenses that are actually incurred or paid by the Government by reason of misrepresentations, and negligent or malicious acts or omissions by the right holder and/or its representative(s) in connection with such criminal proceedings; and
 - (ii) shall be entitled to make application under Section 401(1)(a) of the Criminal Procedure Code (Chapter 68) for an order for the payment by the accused persons of the costs arising from their prosecution where prosecution has resulted in a conviction arising from a full trial and if this has been approved by the Public Prosecutor, who will give serious consideration to the submission.
- (b) In the declaration made by the right holder or its representative to the Singapore Police Force as to disclosure of information pertaining to criminal raids, he or she shall only be required to declare, to the best of their knowledge, that information of such raids has not been disclosed by them to any unauthorized person.

2. Concerning the manufacture of optical discs, Singapore agrees to give effect to the following:

- (a) License:
 - (i) No person shall manufacture in Singapore optical discs, including master discs or stampers used in the manufacture of discs, unless he holds a valid license to do so;
 - (ii) No licensee shall manufacture optical discs in any location other than the licensed premises; and
 - (iii) In granting a license, the competent authority shall assign to the licensee a manufacturer's code (such as the source identification (SID) code currently deployed by optical media industries), and may impose such other conditions as it thinks fit.
- (b) Register: The competent authority shall establish and maintain a register of the licenses granted, which shall be available for public inspection.
- (c) Manufacturer's Code:
 - (i) Every licensee shall ensure that each optical disc manufactured is marked with the manufacturer's code endorsed on his license;¹ and
 - (ii) The standard for marking manufacturer's codes on optical discs shall include both a mould code and a mastering code. Every mould must be engraved with a mould code and every Laser Beam Recorder must be hardwired with a mastering code such that every master/stamper and every disc produced will bear markings identifying the source.
- (d) Records: Every licensee shall maintain complete and accurate records of orders received, customers, suppliers, equipment, and discs manufactured. In addition, every licensee shall keep records on the quantity of optical disc grade polycarbonate received on the licensed premises, the quantity of such material being used for the manufacture of optical discs, the quality of such material being disposed in other manner, and the manner of disposal.
- (e) Inspections: The competent authority shall carry out regular inspections without prior notice to ensure that the regulations and the conditions of the license are complied with, and shall be permitted to seize any items – including equipment – if there is a breach of the regulations or the conditions of the license.

¹ Singapore may provide an exception to this obligation in those cases where each right holder that has a right in the content to be contained on an optical disc expressly requests that no manufacturer's code be marked on the optical disc. Singapore shall provide that before executing such request, the manufacturer shall verify, including through contact with the right holder or its representatives, that any person making such a request owns the rights in question.

Every licensee shall produce its records for and permit inspection by the competent authorities at any time.

(f) Exemplars of Discs: Every licensee shall provide exemplars of discs from each of its manufacturing lines to law-enforcement authorities and right-holder organizations, and permit inspection by right-holder organizations.

(g) Offenses: A person who contravenes the obligations of the regulation or breaches any condition of the license shall be liable for a fine or imprisonment, or both. Except for minor violations, all equipment seized shall be forfeited and any license granted shall be revoked.

(h) Licensing: Singapore shall provide for a system of automatic licensing for the import into or the export from Singapore of "stampers" and "masters" and manufacturing equipment used in connection with the production of optical discs.

3. Pursuant to Article 148 of the Singapore Copyright Act (Cap 63), 1987, as amended, Singapore will discontinue the operation of the compulsory licenses established in Articles 143 through 148 of the Act.

4. Singapore and the United States agree that nothing in paragraphs 1, 2, and 4(c) of Article 16.8 (Certain Regulated Products) shall affect (1) the authority of Singapore to grant an import license for a pharmaceutical product that is in all respects the same as a pharmaceutical product for which a product license (i.e., marketing approval) has been granted, or (2) any exclusive right conferred by a patent in each Party for a pharmaceutical product for which a product license has been granted, should such a patent subsist.

5. With respect to the last sentence in Article 16.9.6 setting forth the obligation to provide for a presumption of subsistence of copyright, Singapore is permitted to implement the obligation with respect to civil cases by providing that if the defendant does not put subsistence of copyright in issue in good faith, subsistence shall stand as proved. If the defendant puts subsistence in issue in good faith, then the plaintiff will be permitted to file an affidavit attesting to the facts of subsistence and, at that point, such subsistence will be presumed, in the absence of proof to the contrary, and without the need for the affiant to be present in court unless the court deems it necessary to order otherwise.


6. To the extent that Singapore permits parallel importation of patented pharmaceutical products without the authorization of the manufacturer, Singapore will have legislation or regulations in place to ensure compliance with product identity, safety, quality, integrity, manufacturing practices, and other relevant requirements related to health and safety. The government shall have adequate provisions for enforcing such requirements.

7. Nothing in this Agreement shall require Singapore to restrict the importation or domestic sale of a device that does not render effective a technological measure whose sole purpose is to control market segmentation for legitimate copies of motion pictures, and is not otherwise a violation of law.

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

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

Sincerely,



George Yeo

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 confirm receipt of your letter, which reads as follows:

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will have legislation or regulations in place to ensure compliance with product identity, safety, quality, integrity, manufacturing practices, and other relevant requirements related to health and safety. The government shall have adequate provisions for enforcing such requirements.

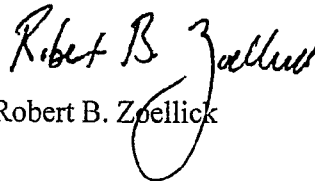
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I have the honor to propose that this understanding be treated as an integral part of this Agreement.

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,

A handwritten signature in black ink that reads "Robert B. Zoellick". The signature is written in a cursive style with a large, looping flourish at the end of the name.

Robert B. Zoellick