



United States (USSFTA)

- The US-Singapore Free Trade Agreement (USSFTA) was signed by then Prime Minister Goh Chok Tong and then President George W Bush on 6 May 2003 in Washington DC. The USSFTA entered into force on 1 January 2004 after it was approved by the House of Representatives on 25 July 2003 and by the Senate on 1 August 2003.



The Agreement has helped Singapore exporters to benefit from tariff concessions, increase competitiveness and attract investors. It outlines the duties and obligations of Singapore and the US with regard to areas such as trade in goods and services, customs procedures, movement of business persons, intellectual property protection and the environment. It also sets out the guidelines for dispute settlement procedures.

Benefits to Singapore Exporters to the US

The key objective of the USSFTA is to facilitate trade by eliminating or reducing tariffs. Singapore exporters can benefit from cost-savings in these key sectors:

- Chemicals and Petrochemicals
- Electronics and Information Technology
- Precision Instruments
- Processed Food
- Textiles (originating from Singapore/the US)

Another benefit is the principle of Outward Processing. It recognises a typical manufacturing pattern practiced in Singapore where the high end or sophisticated processes are carried out in Singapore and the labour intensive areas are outsourced to neighbouring locations to enjoy lower cost production.

Furthermore, the USSFTA has facilitated the removal of non-tariff barriers that will keep cost of doing business low and exports more competitive.

Trade in Goods

The Agreement provides for 100 per cent coverage of Singapore's domestic exports to the US and the removal of the tariffs as shown in this table:

Stage of Tariff Elimination (General Notes of Annex 2B)		
Category	Tariff Reduction	Date of entry into US duty-free Stages
A	Immediate elimination	1 January 2004
B	4 equal annual stages	1 January 2008
C	8 equal annual stages	1 January 2012
D	10 equal annual stages	1 January 2014
E	No staging	Already enter the US duty-free, regardless of origin
G	No staging, immediate elimination	1 January 2004 (and without bond)
H	Subject to the appropriate staging schedule of the product as specified	1 January 2014

Under the USSFTA, each party shall progressively eliminate its customs duties on originating goods of the other Party in accordance with the Singapore and US Schedules. A party shall not adopt or maintain a merchandise processing fee for originating goods.

It is the importer who makes a claim for preferential treatment. The information regarding its qualification as originating good has to be submitted by the exporter to the importer. The Singapore exporter has to self-certify that the product originated from Singapore. There is no prescribed format for the self-certification. To verify whether a particular good can be exported to the US, the Singapore exporter could consult the Singapore Customs (www.customs.gov.sg).

Rules of Origin (ROO)

An originating good means a good:

- 1) wholly obtained or produced entirely in the territory of one or both of the parties;
- 2) that has satisfied the requirements specified in Annex 3A; or
- 3) otherwise provided as an originating good under this Chapter.

For manufactured products, depending on the product code, one of the following ROO will apply:

- 1) Change in tariff classification (CTC) for all imported inputs used in the manufacture of the product. Singapore must be the place where the last substantial manufacture takes place.
- 2) Regional value-added content (VA) of 35–60 per cent. This applies mainly to electronic products.
- 3) Process rule that applies mainly to chemicals and petrochemicals.

The ROO in the USSFTA are product specific; that is, specific rules apply for each type of product. The details of the specific rules are set out in Annex 3A. Annex 3A also refers to a regional value content which each party shall provide that the regional value content of a good shall be calculated on the basis of one of the following methods:

- i) Build-up method:

$$RVC = \frac{VOM}{AV} \times 100$$

where

- 1) RVC is the regional value content expressed as a percentage;
- 2) AV is the adjusted value; and
- 3) VOM is the value of originating materials that are acquired or self-produced, and used by the producer in the production of the good.

- ii) Build-down method:

$$RVC = \frac{AV-VNM}{AV} \times 100$$

where

- 1) RVC is the regional value content expressed as a percentage;
- 2) AV is the adjusted value; and
- 3) VNM is the value of non-originating materials that are acquired and used by the producer in the production of the good.

Annex 3C contains a list of goods regarded as remanufactured goods which are also deemed to have originated in Singapore or the US. As stipulated in Articles 3.13.2, each Party may require that importers to maintain for up to five years after the date of importation records relating to the importation of the good. They may require that an importer provide, upon request, records which are necessary to demonstrate that a good qualifies as an originating good.

Outward Processing

Under the USSFTA's concept of Outward Processing, the product can accumulate the value add of all work done in Singapore as 'Singapore originating' as long as the final stage manufacturing is done in Singapore. Only products with an alternate Value Add Rule of origin can utilise the Outward Processing guideline. This allows for Singapore companies to retain the higher value activities in Singapore and to outsource low end tasks to the neighbouring countries.

Customs Documentation

Tariff preference is given based on importer's declaration. However, it is usually a commercial practice that the US importer will require the Singapore exporter to make some form of self-declaration of origin.

Advanced Ruling

The exporters, importers or manufacturers could apply for a written Advance Ruling from the customs authority on the origin of the good. Relevant information, including production records and cost statements, should be submitted to the US Customs and Border Protection Bureau. A decision will be made by the US Customs within 120 days after all the submission of the information has been completed.

Mutual Recognition Arrangement for Goods

It was agreed that each party shall take steps to implement Phase I and Phase II of the APEC Mutual Recognition Arrangement for Conformity Assessment of Telecommunications Equipment with respect to the other party.

Singapore has become the first country in Asia to operate a Mutual Recognition Arrangement (MRA) on telecommunication equipment certification with the US. The MRA provides for direct entry of telecommunications equipment - such as telephones, radio pagers, Wireless Broadband Access (WBA) equipment, and Asymmetric Digital Subscriber Line (ADSL) modems - into either market without the need for additional testing and certification.

Trade in Services

Service suppliers have been assured of fair and non-discriminatory treatment and market access unless specifically exempted in writing—known as 'negative list' approach. Note that service sectors that are not listed in the negative list can be assured of full market access and national treatment by the government. The type of quantitative restrictions affecting market access and concept of national treatment have been explained and discussed in the Services Chapter 8.

The US extends trade in services benefits of the FTA to all Singapore companies that are not shell companies, regardless of ownership. The chapter also highlights importance of openness and transparency, including advance notice, consultations with interested parties, reasonable comment period and publication of regulations.

Singapore's quota on Qualifying Full Bank (QFB) and Wholesale Bank licenses for US Banks will be lifted within 1.5 and 3 years respectively, thus allowing more US Banks to serve here.

Investment

The USSFTA covers the following areas regarding investment:

- 1) Definition of investment admission and treatment of foreign investment;
- 2) Transfer of funds;
- 3) Compensation with respect to expropriation; and
- 4) Repatriation of profits.

Each side will permit all transfers relating to a covered investment to be made freely and without delay into and out of its territory. The transfers include:

- 1) Contributions to capital;
- 2) Capital gains, dividends, profits and proceeds from the sale of all or any part of the covered investment or from the partial or complete liquidation of the covered investment;
- 3) Interest, management fees, royalty payments and technical assistance and other fees; and
- 4) Payments.

Singapore and the US will commit to grant fair market value for expropriation. Both sides undertake 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. Investors aggrieved by government actions that are in breach of obligations under this chapter have the right to take the dispute directly to an international arbitration tribunal for resolution. The mechanism for an investor to resolve dispute with government that breaches FTA obligations through international arbitration tribunal is as follows:

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| 1st stage: | Dispute resolution through amicable consultations and negotiations facilitated by respective Government Ministries |
| 2nd stage: | If dispute is unresolved, investor provides notice to respondent of its intention to submit claim to arbitration. |
| 3rd stage: | Claim is submitted to International Centre for Settlement of Investment Dispute (ICSID) tribunal |
| 4th stage: | ICSID tribunal issues ruling |

Movement of Business Persons

Only Singapore citizens will gain benefits from the Movement of Natural Persons chapter for the USSFTA. All of the categories for business persons need not be subject to labour certificate tests. Business visitors to the US do not have to apply for a visa because of the Visa Waiver Program.

The H1-b1 visa is a specially created category under the USSFTA. It benefits Singapore professionals in that it can be renewed yearly with no upper time limit. The H1-b1 visa is subject to a quota of 5,400 H1-b1 visas per year for Singaporeans. As it's specifically allotted to Singapore citizens, there is no competition with other nationals.

Whilst the H1-b visa is subject to a labour market test, this is not required under the H1-b1 visa. Hence, the US employer does not need to prove that no other American can take the job that the Singaporean is applying for.

The business visitors could extend their visit up to 90 days. Intra corporate transferees with L1A and L1B visa are allowed up to an initial period of one to three years. An extension up to a maximum of seven years may be allowed. However, the total term must not exceed eight years.

Traders with E1 or E2 visa are allowed a two-year maximum stay period.

Government Procurement

This chapter allows for Singapore suppliers to participate in most procurement tenders of goods and services conducted by the US Government. The thresholds for all sectors have been substantially reduced and also widened the range of goods and services contracts that Singapore-based suppliers can bid for.

USSFTA GP Chapter Thresholds		
	Minimum Contract Value for Goods & Services (US\$)	Minimum Contract Value for Construction Services (US\$)
Federal Entities	56,190	6,481,000
State Entities	460,000	6,481,000
Other Entities	250,000 or 518,000	6,481,000

The threshold for contracts for goods and services to federal departments has been brought down drastically from SDR130,000 (US\$192,472) to US\$56,190. For state entities, Singapore-based suppliers can enter the market as long as the contracts are above US\$460,000 (as compared to US\$525,598). With regards to the construction services, suppliers can bid for contracts which are above US\$6.48 million (as opposed to US\$7.4 million under the WTO GPA). Singapore suppliers can participate in procurement activities of 97 federal entities, specified entities in 37 states and six other entities.

Information on procurement opportunities can mainly be obtained from the net. Procurement opportunities in federal departments can be accessed on the US Federal Data Procurement System (FPDS) site www.fpds.gov. For federal procurement above US\$25,000, access the Federal Business Opportunities (FBO) Site at www.fedbizopps.gov. For state, sub-central and other entities, procurement opportunities are also advertised in publications utilised by state governments such as the New York Contract Reporter.

The goods that can be supplied under USSFTA are those covered by the WTO GPA. Other sectors such as communications, coherent radiation equipment and detection are also covered.

Dispute Settlement

The investor-to-state dispute mechanism outlines the relevant steps to be taken to initiate a dispute. The parties in dispute must first seek to resolve the dispute amicably through consultations or negotiations. If this is not possible, then the parties could resort to arbitration. A 90-day notice has to be given by the respondent when submitting any claim to arbitration. The USSFTA also provides for compensation. So, the parties are obliged to act in good faith and ensure that the arbitration award is adhered to.

Intellectual Property

Singapore and the US agreed on intellectual property (IP) standards above their commitments under the WTO Agreement on Trade Related Intellectual Property Rights (TRIPS). The underlying mutual impetus was increasing knowledge and competitive advantage and innovation and capability in the creative industries, information technology (IT), pharmaceutical, science and other high-technology industries. To date, Singapore has duly implemented all her commitments into the IP regime and they are reflected in Singapore's current legal provisions.

Key commitments for each genre of IP are as follows:

In the field of copyright and related rights:

- 1) Increased duration of copyright protection for a copyright work;
- 2) Entrenched IP protection in the digital, e-commerce and Internet environment via accession to the World Intellectual Property Organization (WIPO) 'Internet Treaties' viz. the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT);
- 3) Clarified that an IP rights owner's control over his copyright materials extends to temporary and transient copies and to interactive and other transmission modes;
- 4) Prohibition on tampering with the technology protection measures (TPMs) (eg: embedded codes on discs) and rights management information (RMIs) (eg: watermarks and digital signatures) used by an IP rights owner on his copyright materials;
- 5) Protection for television signals by prohibiting unauthorised retransmission or compulsory licence; protecting encrypted programme-carrying satellite signals and prohibiting unauthorised reception and re-distribution and manufacture or distribution of devices to intercept them;
- 6) Clarified liability of a network service provider (NSP) for infringing copyright materials hosted on its servers and safe harbour (immunity) in exchange for the NSP's compliance with notification and take-down procedures; and
- 7) Regulation of optical disc manufacturing by stipulating licensed manufacturers mark products with manufacturers codes and prohibiting production without source identification codes, unless specifically authorised.

In the field of trademarks:

- 1) Expanded the scope of range of marks that can be registered to cover non-visual marks, eg: sound and scent marks;
- 2) Dispensed requirement that trademark licensee must register its licence to assert rights to a trademark in Singapore; and
- 3) Expanded protection available to owner of 'well-known' trademark to cover dissimilar goods and services, whether registered or not.

In the field of patents and related rights:

- 1) Expanded registration eligibility to extend to all plants and animals, enhancing the scope of biotechnology products/inventions;
- 2) Established patent term adjustment to compensate for any delay faced by owners in issuance of the patent grant;
- 3) Limited the use of compulsory licences; and
- 4) Expanded protection for pharmaceutical and agricultural chemical products, including a period of data protection exclusivity for test data and trade secrets submitted for product approval, and extension of patent term due to delay in grant of approval from the marketing authority.

In the field of IP enforcement:

- 1) Ensuring adequate anti-piracy enforcement resources;
- 2) Enhanced civil and administrative procedure and remedies such as providing an IP right owner in a civil infringement suit the option of statutory damages, and facilitating ex-officio border action by government officials against IP infringements; and
- 3) Enhanced criminal penalties for wilful infringement occurring either in a commercial context or where the scope is substantial.

These provisions allow Singapore to rank, with her increased standards of IP protection and enforcement, as a true safe haven in Asia, poised to attract greater foreign investment and trade in key industries.