



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.
May 6, 2003

UNDER SECRETARY

Mr. Koh Yong Guan
Managing Director
Monetary Authority of Singapore
10 Shenton Way
MAS Building
Singapore 079117

Dear Mr. Koh:

I am pleased that our governments have been able to reach agreement on the following principles, with respect to Annex 15-A of the Free Trade Agreement between our Governments signed on this day. It is the intent of both Parties that this letter provide interpretative guidance for any dispute settlement panel that considers any issue addressed in this letter, and that any such panel must decide such issues in accordance with the principles contained herein.

First, without attempting to exhaustively define the term “substantially impede transfers,” we agree, as a rebuttable presumption, that restrictive measures on outward payments and transfers will be deemed not to substantially impede transfers, if they are applied on a national treatment and most-favored-nation basis, are price-based, are not confiscatory, do not effectively prohibit or ban transfers over any period of time,¹ do not constitute a dual or multiple exchange rate practice, do not restrict the sale or conversion of the assets to any other asset denominated in Singapore dollars, and do not otherwise interfere with the investor’s ability to earn a market rate of return in Singapore on the restricted assets. A measure will not be deemed to substantially impede transfers by virtue of the fact that it relies on approval procedures for outward payments and transfers, provided the approval procedures are based on objective and transparent rules, and investors have an alternative means of making payments and transfers through a price-based mechanism.

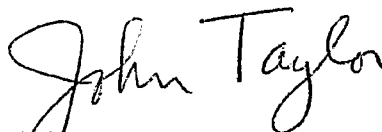
Second, if a measure is found to “substantially impede transfers,” the investor will have the burden of proving the existence and extent of diminution in its asset value as a consequence of the measure. If an investor can only speculate that the exchange rate would have been more favorable on the date when it was prepared to transfer its funds than when the funds were transferred, and Singapore presents evidence that the exchange rate could have been even less favorable at that time had the measure not been imposed, the investor has not met its burden of proof.

¹⁵⁻¹⁶ Restrictive measures will be deemed not to effectively prohibit or ban transfers if a reasonable investor could have made outward payments and transfers.

Third, if a measure substantially impedes transfers, it shall not prevent investors from earning a market rate of return in Singapore on any restricted assets. The investor, in turn, is obligated to mitigate damages, and cannot recover to the extent it was afforded a reasonable opportunity to mitigate its losses. Moreover, so long as Singapore has afforded investors a reasonable opportunity to mitigate their losses by investing in other Singapore dollar denominated assets during the first year that transfers of any assets are restricted, investors will not be able to recover their alleged opportunity costs from forgoing alternative investments.

I appreciate your assistance and that of your staff in resolving this issue.

Sincerely,

A handwritten signature in black ink that reads "John Taylor". The signature is written in a cursive, flowing style.

John B. Taylor
Under Secretary for International Affairs

May 6, 2003

The Honorable John B. Taylor
Under Secretary for International Affairs
U.S. Department of the Treasury

Dear Mr. Taylor:

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

“I am pleased that our governments have been able to reach agreement on the following principles, with respect to Annex 15-A of the Free Trade Agreement between our Governments signed on this day. It is the intent of both Parties that this letter provide interpretative guidance for any dispute settlement panel that considers any issue addressed in this letter, and that any such panel must decide such issues in accordance with the principles contained herein.

First, without attempting to exhaustively define the term “substantially impede transfers,” we agree, as a rebuttable presumption, that restrictive measures on outward payments and transfers will be deemed not to substantially impede transfers, if they are applied on a national treatment and most-favored-nation basis, are price-based, are not confiscatory, do not effectively prohibit or ban transfers over any period of time,¹ do not constitute a dual or multiple exchange rate practice, do not restrict the sale or conversion of the assets to any other asset denominated in Singapore dollars, and do not otherwise interfere with the investor’s ability to earn a market rate of return in Singapore on the restricted assets. A measure will not be deemed to substantially impede transfers by virtue of the fact that it relies on approval procedures for outward payments and transfers, provided the approval procedures are based on objective and transparent rules, and investors have an alternative means of making payments and transfers through a price-based mechanism.

Second, if a measure is found to “substantially impede transfers,” the investor will have the burden of proving the existence and extent of diminution in its asset value as a consequence of the measure. If an investor can only speculate that the exchange rate would have been more favorable on the date when it was prepared to transfer its funds than when the funds were transferred, and Singapore presents evidence that the exchange rate could have been even less favorable at that time had the measure not been imposed, the investor has not met its burden of proof.

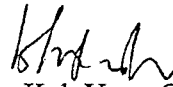
¹⁵⁻¹⁶Restrictive measures will be deemed not to effectively prohibit or ban transfers if a reasonable investor could have made outward payments and transfers.

Third, if a measure substantially impedes transfers, it shall not prevent investors from earning a market rate of return in Singapore on any restricted assets. The investor, in turn, is obligated to mitigate damages, and cannot recover to the extent it was afforded a reasonable opportunity to mitigate its losses. Moreover, so long as Singapore has afforded investors a reasonable opportunity to mitigate their losses by investing in other Singapore dollar denominated assets during the first year that transfers of any assets are restricted, investors will not be able to recover their alleged opportunity costs from forgoing alternative investments.

I appreciate your assistance and that of your staff in resolving this issue.”

I have the further honor to confirm my Government’s understanding that this letter provides interpretative guidance for any dispute settlement panel that considers any issue addressed in this letter, and that any such panel must decide such issues in accordance with the principles contained herein.

Sincerely,



Mr. Koh Yong Guan
Managing Director
Monetary Authority of Singapore