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SINGAPORE-AUSTRALIA FREE TRADE AGREEMENT (SAFTA). SINGAPORE, 17 FEBRUARY 2003 [*United Nations, Treaty Series*, vol. 2257, I-40221.]

AMENDMENTS TO THE SINGAPORE-AUSTRALIA FREE TRADE AGREEMENT (SAFTA) (WITH ANNEXES). SINGAPORE, 27 JULY 2009

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Only the authentic English text of the Amendments with the corresponding translation into French are published herein. The technical Annexes are not published herein, in accordance with article 12 (2) of the General Assembly Regulations to give effect to Article 102 of the Charter of the United Nations, as amended, and the publication practice of the Secretariat.

N° 40221. Australie et Singapour

ACCORD DE LIBRE-ÉCHANGE ENTRE SINGAPOUR ET L'AUSTRALIE (ALESA). SINGAPOUR, 17 FÉVRIER 2003 [*Nations Unies, Recueil des Traités*, vol. 2257, I-40221.]

AMENDEMENTS À L'ACCORD DE LIBRE-ÉCHANGE ENTRE SINGAPOUR ET L'AUSTRALIE (ALESA) (AVEC ANNEXES). SINGAPOUR, 27 JUILLET 2009

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Seuls le texte authentique anglais des Amendements et sa traduction en français sont publiés ici. Les annexes techniques ne sont pas publiées ici, conformément au paragraphe 2 de l'article 12 du règlement de l'Assemblée générale destiné à mettre en application l'Article 102 de la Charte des Nations Unies, tel qu'amendé, et à la pratique du Secrétariat dans le domaine des publications.

[ENGLISH TEXT – TEXTE ANGLAIS]

SINGAPORE-AUSTRALIA FREE TRADE AGREEMENT

AMENDMENTS:

Chapter 8 Investment

Chapter 10 Telecommunication Services

Chapter 13 Intellectual Property

Annex 3A: Revised List of Australian Government Entities

Annex 4-I(A) : Australia's Reservations to Chapter 7 (Trade in Services) and Chapter 8 (Investment)

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Annex 4-II(A) : Australia's Reservations to Chapter 7 (Trade in Services) and Chapter 8 (Investment)

Annex 4-II(B) : Singapore's Reservations to Chapter 7 (Trade in Services) and Chapter 8 (Investment)

08 INVESTMENT

ARTICLE I

Definitions

1. For the purposes of this Chapter:

(a) “enterprise” means any corporation, company, association, partnership, trust, joint venture, sole-proprietorship or other legally recognised entity that is duly incorporated, constituted, set up, or otherwise duly organised under the law of a Party, including branches, regardless of whether or not the entity is organised for pecuniary gain, privately or otherwise owned, or organised with limited or unlimited liability;

(b) “freely useable currency” means a currency widely used to make payments for international transactions as classified by the International Monetary Fund;

(c) “investment” means every kind of asset, owned or controlled, directly or indirectly, by an investor, including but not limited to the following:

(i) movable and immovable property and other property rights such as mortgages, liens or pledges;

(ii) shares, stocks, bonds and debentures of an enterprise;

(iii) claims to money or to any contractual performance related to a business and having an economic value;

(iv) intellectual property rights and goodwill; and

(v) business concessions or similar rights required to conduct economic activity and having economic value conferred by law or under a contract, including any concession to search for, cultivate, extract or exploit natural resources;

(d) “investor” means:

(i) an enterprise of a Party; or

(ii) a natural person who resides in the territory of a Party or elsewhere and who under the law of that Party:

(A) is a citizen of that Party; or

(B) has the right of permanent residence in that Party; that has made, is in the process of making, or is seeking to make an investment;

(e) “measure” means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form, and includes measures taken by:

(i) central, regional or local governments and authorities; and

(ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities; and

(f) “return” means an amount yielded by or derived from an investment, including profits, dividends, interest, capital gains, royalty payments, payments in connection with intellectual property rights, and all other lawful income.

2. For the purposes of Article 1.1(c), returns that are invested shall be treated as investments and any alteration of the form in which assets are invested or reinvested shall not affect their character as investments.

3. An investment may be owned or controlled by an investor of a Party, notwithstanding the fact that the investment was made through an enterprise duly incorporated, constituted, set up or otherwise duly organised under the law of a non-Party.

ARTICLE 2

Scope of Application

1. This Chapter shall apply to:

(a) investments made, in the process of being made, or sought to be made, by an investor of a Party in the territory of the other Party; and

(b) with respect to Article 5 (Prohibition of Performance Requirements), all investments in the territory of the Parties.

2. This Chapter shall not apply to:

(a) subsidies or grants provided by a Party or to any conditions attached to the receipt or continued receipt of such subsidies or grants, whether or not such subsidies or grants are offered exclusively to domestic investors and investments; or

(b) a natural person who is a permanent resident but not a citizen of a Party where:

(i) the provisions of an investment protection agreement between the other Party and the country of which the person is a citizen have already been invoked in respect of the same matter; or

- (ii) the person is a citizen of the other Party.
3. Unless otherwise provided, this Chapter shall not apply to any taxation measure.
4. An enterprise of a Party shall not be treated as an investor of the other Party, but any investments in that enterprise by investors of that other Party shall be protected by this Chapter.
5. Nothing in this Chapter shall be construed to impose an obligation on a Party to privatise.

ARTICLE 3

National Treatment

Each Party shall accord to investors of the other Party, and investments of investors of the other Party, in relation to the establishment, acquisition, expansion, management, conduct, operation, liquidation, sale, transfer (or other disposition) and expropriation (including any compensation) of investments in its territory, treatment that is no less favourable than that which it accords in like circumstances to its own investors and investments.

ARTICLE 4

Minimum Standard of Treatment

1. Each Party shall accord to investments of investors of the other Party treatment in accordance with the customary international law minimum standard of treatment of aliens¹, including fair and equitable treatment and full protection and security.
2. For greater certainty, the concepts of “fair and equitable treatment” and “full protection and security” do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens referred to in paragraph 1 and do not create additional substantive rights. The obligation in paragraph 1 to provide:
- (a) “fair and equitable treatment” includes the obligation not to deny justice in criminal, civil or administrative adjudicatory proceedings in accordance with the principle of due process embodied in the principal legal systems of the world; and

¹ The Parties confirm their shared understanding that “customary international law” generally and as specifically referenced in Article 4 results from a general and consistent practice of States that they follow from a sense of legal obligation. With regards to this article, the customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights and interests of aliens.