UNITED STATES – SINGAPORE FREE TRADE AGREEMENT

Summary of the Agreement

This summary briefly describes key provisions of the United States – Singapore Free Trade Agreement.

Chapter 1: Establishment of the Free Trade Area and Definitions

Chapter 1 sets out provisions establishing a free trade area, describing the objectives of the Agreement, and providing that the Parties will interpret and apply the Agreement in light of these objectives. The Parties affirm their existing rights and obligations under the Marrakesh Agreement Establishing the World Trade Organization (WTO) and other agreements to which both the United States and Singapore are party. Chapter 1 also defines certain terms that recur in various chapters of the Agreement.

Chapter 2: National Treatment and Market Access for Goods

Chapter 2 sets out the Agreement's principal rules governing trade in goods. It requires each Party to treat products from the other Party in a nondiscriminatory manner, provides for the phase-out of tariffs on "originating goods" (as defined in Chapter 3) traded between the two Parties, and requires the elimination of a wide variety of non-tariff trade barriers that restrict or distort trade flows.

Tariff Elimination. Chapter 2 provides for the elimination of all tariffs on originating goods traded between the Parties. Most tariffs will be eliminated as soon as the Agreement enters into force. The remaining tariffs will be phased out over periods of up to 10 years. The United States has also agreed not to apply its merchandise processing fee on imports of originating goods from Singapore. The chapter also provides that the two Parties may agree to speed up tariff phase-outs on a product-by-product basis after the Agreement takes effect.

Temporary Admission. Chapter 2 requires the Parties to provide duty-free temporary admission for certain products without the usual bonding requirement that applies to imports. Such items include professional equipment, goods for display or demonstration, and commercial samples.

Import/Export Restrictions, Fees, and Formalities. Chapter 2 also prohibits the Parties from imposing export and import price requirements, import licensing conditioned on performance requirements, and voluntary export restraints inconsistent with the WTO General Agreement on Tariffs and Trade 1994 (GATT). In addition, it limits all fees and charges imposed on or in connection with importation or exportation to the approximate cost of services rendered.

Specific Barriers. Singapore will: 1) harmonize its excise taxes on imports of distilled spirits by 2005; 2) allow imports of chewing gum with therapeutic value; and 3) eliminate its ban on imports of satellite dishes.

Apparel. Chapter 2 calls for the United States to provide tariff preferences during the first nine years that the Agreement is in force for specific amounts of certain non-originating apparel from Singapore. These "tariff preference levels" (TPLs) will apply to a limited quantity of cotton and man-made fiber goods cut and sewn in Singapore using fabric or yarn imported from third countries. In the first year after the TPL provisions take effect, TPL status will apply to 25 million square meters of apparel. This quantity will be reduced each year thereafter. The TPL program will terminate nine years after it first takes effect. The United States will phase out duties on TPL imports in five equal annual increments once the TPL program takes effect, with the U.S. duty rate reduced to zero beginning on the first day of the fifth year.

Chapter 3: Rules of Origin

To benefit from various trade preferences provided under the Agreement, including reduced duties, goods must qualify as "originating goods" under the rules of origin set out in Chapter 3 and three related annexes. These rules ensure that the special tariff and other benefits of the Agreement accrue primarily to firms or individuals that produce or manufacture goods in the Parties' territories.

Key Concepts. Chapter 3 provides four alternative sets of criteria under which a product will generally qualify as an "originating good:"

- when the good is wholly obtained or produced in the territory of one or both of the Parties (for example, crops grown or minerals extracted in the United States);

- when the good is manufactured or assembled from non-originating materials that undergo a specified change in tariff classification in one or both Parties, the good meets any applicable "regional value content" requirement (see below), and the good satisfies all other requirements of Chapter 3;

- when the good is produced in one or both countries entirely from "originating" materials; or

- for certain medical equipment and information technology products listed in Annex 3B (all of which currently enjoy duty-free access to the U.S. market), when the good is shipped from one Party to the other, regardless of where the good was produced.

Chapter 3 and Annex 3A further clarify that simple combining or packaging operations, or mere dilution with water or another substance that does not change the characteristics of the good, will not confer origin.

De Minimis. Even if a good does not undergo a specified change in tariff classification, it will be treated as an originating good if the value of non-originating materials does not exceed 10 percent of the adjusted value of the good, and the good otherwise meets the criteria of the chapter.

Regional Value Content. Some origin rules under the Agreement require that certain goods must meet a regional value content test in order to qualify as "originating," meaning that a specified percentage of the value of the good must be attributable to originating materials. The Agreement provides two methods for calculating that percentage: the "build-down method" based on the value of non-originating materials used, and the "build-up method" based on the value of originating materials used. Under the Agreement, accessories, spare parts, and tools delivered with a good will be considered part of the material making up the good so long as these items are not separately classified or invoiced and their quantities and values are customary. The *de minimis* rule does not apply in calculating regional value content.

Denial and Correction of Claims. A Party must issue any denials of preferential treatment in writing accompanied by legal and factual findings. Chapter 3 also provides that a Party will not penalize an importer where the importer promptly and voluntarily corrects a claim and pays any duties owed within one year of submission of the claim.

Textile and Apparel Rules of Origin. A textile or apparel product will generally qualify as an "originating good" only if all processing after fiber formation (*e.g.*, yarn-spinning, fabric production, cutting, and assembly) takes place in the territory of one or both of the Parties or if there is an applicable change in tariff classification as specified in Annex 3A.

A special de minimis rule applies to certain textile and apparel products. Such products would not ordinarily be considered originating goods because fibers or yarns in their origin-determining components do not undergo an applicable change in tariff classification. Under the special rule, however, the Parties will consider these products to be originating goods if the fibers or yarns in question constitute seven percent or less of the total weight of the component of the good that determines origin. This special rule does not apply to elastomeric yarns.

Consultations. Chapter 3 calls for the Parties to work together to ensure the effective and uniform application of the chapter and the two governments may consider modifying Annexes 3A, 3B, and 3C. Either Party may request consultations in which the Parties will consider whether to modify the chapter's textile and apparel rules of origin.

Chapter 4: Customs Administration

Chapter 4 establishes rules designed to encourage transparency, predictability, and efficiency in the operation of each Party's customs procedures and to provide for cooperation between the Parties on customs matters.

General Principles. Chapter 4 commits each Party to observe certain transparency obligations. Each Party must promptly publish its customs measures on the Internet or in print form and, where possible, will solicit public comments before amending its customs regulations. Each Party will also provide written advance rulings, on request, to its importers and to exporters of the other Party, regarding whether a product qualifies as an "originating good" under the Agreement as well as on other customs matters. Each Party will also guarantee importers access to both administrative and judicial review of customs decisions. The Parties will also release

goods from customs promptly and apply expedited procedures for clearing express shipments through customs.

Cooperation. Chapter 4 is also designed to enhance customs cooperation. It encourages the Parties to give each other advance notice of customs developments likely to affect the Agreement. The chapter calls for the Parties to cooperate in securing compliance with each other's customs measures related to the Agreement and to import and export restrictions. It includes specific provisions calling for the Parties to share customs information where a Party has a reasonable suspicion of unlawful activity in connection with goods traded between the two countries.

Chapter 5: Textiles and Apparel

Chapter 5 sets out detailed commitments designed to prevent circumvention of the Agreement's rules governing trade in textile and apparel goods. Chapter 5 seeks to ensure that customs officials will have ample authority to detect, deter, and penalize fraudulent claims for preferential tariff treatment in this sector.

Anti-circumvention. The chapter commits each Party to take necessary and appropriate measures to aggressively enforce its laws related to circumvention of textile and apparel import rules, cooperate in the enforcement of the other Party's laws related to circumvention, and prevent circumvention.

Monitoring. Singapore will establish and maintain monitoring programs designed to enhance the enforcement of its laws relating to trade in textile and apparel goods. In particular, Singapore will:

- monitor imports, exports, and production of textile and apparel goods in its "free trade zones" (special areas designated for favorable treatment under Singapore law);

- institute a comprehensive system of registration, inspection, recordkeeping, and reporting covering all enterprises that produce textile or apparel goods claimed to be "originating goods" under the Agreement or marked as "products of Singapore," and all enterprises that export such goods to the United States; and

- establish and maintain a program to ensure that goods en route to the United States bear accurate country of origin marking and that the documents accompanying the goods accurately describe the goods.

Cooperation. The Parties will share documents and information relevant to circumvention of their rules governing textile and apparel imports. Each Party will also facilitate efforts by the other Party's law enforcement authorities to gather relevant information, including through site visits under specified conditions.

Enforcement. Chapter 5 commits each Party to investigate vigorously claims of circumvention and, where appropriate, take enforcement action. The chapter commits Singapore to take effective action against enterprises in Singapore that engage in intentional circumvention, including by denying particular exporters or producers permission to ship textile and apparel goods to the United States. If the United States discovers that an enterprise in Singapore is engaged in intentional circumvention, it may temporarily bar imports from the enterprise.

Consultations. Either Party may convene bilateral consultations on circumvention issues. If the United States gives Singapore clear evidence of circumvention and consultations do not yield a mutually satisfactory outcome, the United States may reduce imports from Singapore by up to three times the quantity of the goods involved in the circumvention. The United States may also revoke any preferential treatment afforded the goods involved in the circumvention and temporarily deny entry to goods from the enterprise in question.

Textile Safeguard Actions. Chapter 5 includes a "safeguard" provision to deal with emergency conditions that might result from eliminating tariffs on bilateral trade in textile and apparel goods under the Agreement. The chapter permits the importing country temporarily to suspend duty reductions or to reimpose normal trade relations/most-favored-nation (NTR/MFN) duty rates on imports of textile or apparel goods that cause or threaten serious damage to a domestic industry. Safeguard measures may be imposed for up to four years during the first ten years that the Agreement's textile and apparel provisions are in effect.

Effective Date. Chapter 5 provides that the Agreement's textile and apparel provisions, *i.e.*, Chapter 5 and pertinent provisions of other chapters, including Chapters Two (National Treatment and Market Access for Goods) and Three (Rules of Origin), will take effect after the Parties consult and exchange written notices that legislation needed to implement the chapter is in place.

Chapter 6: Technical Barriers to Trade

Chapter 6 seeks to enhance the Parties' implementation of existing WTO rules on technical barriers to trade. It builds on WTO rules to promote bilateral cooperation in the area of technical regulations, standards, and conformity assessment procedures, with a view toward deepening the understanding of each Party's systems.

Key Concepts. The term "technical barriers to trade" (TBT) refers to barriers that may occur in the context of development, adoption, and application of voluntary product standards, mandatory product standards, and procedures used to determine whether a particular product meets such standards. The chapter also addresses "conformity assessment," namely the process for determining whether products fulfill the relevant requirements in a Party's technical regulations or standards.

Cooperation and Recognition. Chapter 6 encourages the Parties to exchange information on TBT issues, hold consultations to resolve issues, and use international standards as a basis for technical regulations, standards, and conformity assessment procedures. It also encourages the

Parties to enhance their cooperation in the context of other agreements, including by implementing with respect to each other the first two phases of the Asia Pacific Economic Cooperation (APEC) mutual recognition arrangement for conformity assessment of telecommunications equipment. Each Party will designate a TBT coordinator to work with domestic firms and groups and the other Party's coordinator on enhancing bilateral cooperation.

Working Group on Medical Products. Annex 6A establishes a bilateral medical products working group that will be jointly chaired by the U.S. Food and Drug Administration and Singapore's Health Sciences Authority. The group will provide a forum for cooperation on medical product regulation issues.

Chapter 7: Safeguards

Chapter 7 establishes a bilateral safeguard procedure that will be available to aid domestic industries that sustain or are threatened with serious injury due to increased imports resulting from tariff reductions or elimination under the Agreement. The chapter does not affect either government's rights or obligations under the WTO's global safeguard provisions or under other WTO trade remedy rules.

Key Concepts. Chapter 7 authorizes each Party to impose temporary duties on a product imported from the other Party if, as a result of the reduction or elimination of a duty under the Agreement, the product is being imported in such increased quantities and under such conditions as to constitute a substantial cause of serious injury, or threat of serious injury, to a domestic industry producing a "like" or "directly competitive" product.

Specifics. A safeguard measure may be applied only during the Agreement's ten-year "transition period" for phasing out duties on bilateral trade. A safeguard measure may take one of two forms – a temporary increase in duties to NTR/MFN levels or a temporary suspension of duty reductions called for under the Agreement. In "critical circumstances," the importing Party may impose provisional relief for up to 200 days while its investigation of the matter is underway.

A bilateral safeguard measure may last for an initial period of two years. A Party may extend it for two more years if the Party determines that the industry is adjusting and the measure remains necessary to facilitate adjustment and prevent or remedy serious injury. If a measure lasts more than one year, the Party must scale it back at regular intervals. Chapter 7 incorporates by reference certain procedural and substantive investigation requirements of the WTO Agreement on Safeguards.

If a Party imposes a bilateral safeguard measure, Chapter 7 requires it to provide the other Party offsetting trade compensation. If the Parties cannot agree on compensation, the Party entitled to compensation may unilaterally suspend "substantially equivalent" trade concessions that it has made to the other Party.

Global Safeguards. Chapter 7 maintains each country's right to take remedial action against imports from all sources under GATT Article XIX and the WTO Agreement on Safeguards,

without providing additional rights or obligations. A Party may not impose a safeguard measure under Chapter 7 more than once on any product, nor may a Party apply a Chapter 7 measure to a product that the Party has subjected to a safeguard measure under another provision of the Agreement or under a separate agreement. Special safeguard provisions for textile and apparel products appear in Chapter 5 (Textiles and Apparel).

Chapter 8: Cross-Border Trade in Services

Chapter 8 governs measures affecting cross-border trade in services between the United States and Singapore. Certain of its provisions also apply to measures affecting services investments. The chapter is drawn in part from the services provisions of the NAFTA and the WTO General Agreement on Trade in Services (GATS), as well as priorities that have emerged since those agreements.

Key Concepts. Under the Agreement, cross-border trade in services covers supply of a service:

- from the territory of one Party into the territory of another (*e.g.*, electronic delivery of services from the United States to Singapore);

- in the territory of a Party by a person of that Party to a person of the other Party (*e.g.*, a Singaporean company provides services to U.S. visitors in Singapore); and

- by a national of a Party in the territory of another Party (*e.g.*, a U.S. lawyer provides legal services in Singapore).

Chapter 8 should be read together with Chapter 15 (Investment), which establishes rules pertaining to the treatment of service firms that choose to provide their services through a local presence, rather than cross-border. Chapter 8 applies where, for example, a service supplier is temporarily present in the United States or Singapore and does not operate through a local investment.

Core Principles. Among the core obligations in Chapter 8 are requirements to provide national treatment and most-favored-nation treatment to service suppliers of the other Party. Thus, the chapter requires each Party to treat service suppliers of the other Party no less favorably than its own suppliers. The chapter protects the rights of existing service suppliers as well as those who seek to supply services, subject to any reservations by either Party. The chapter also includes a rule prohibiting the Parties from requiring firms to establish a local presence before they can supply a service. In addition, the chapter seeks to remove market access barriers by barring certain types of restrictions on the supply of services (*e.g.*, rules limiting the number of firms that may offer a particular service or restricting or requiring specific types of legal structures or joint ventures with local companies in order to supply a service). The chapter's market access rules apply both to services supplied on a cross-border basis and through a local investment.

Sectoral Coverage and Non-Conforming Measures. Chapter 8 applies across virtually all services sectors. The chapter excludes financial services except that certain provisions of

Chapter 8 apply to investments in unregulated financial services that are covered by Chapter 15 (Investment). In addition, Chapter 8 does not cover air transportation, although it does apply to specialty air services and aircraft repair and maintenance.

Each Party has listed in annexes measures in particular sectors for which it negotiated exemptions from the chapter's core obligations. All existing state and local laws and regulations are exempted from these obligations. Once a Party liberalizes a measure that it has exempted, however, it must thereafter maintain the measure at least at that level of openness.

Transparency and Domestic Regulation. Provisions on transparency and domestic regulation complement the core rules of Chapter 8. The transparency rules apply to the development and application of regulations governing services. The chapter's rules on domestic regulation govern the operation of approval and licensing systems for service suppliers. Like the chapter's market access rules, its provisions on transparency and domestic regulation cover services supplied both on a cross-border basis and through a local investment.

Exclusions. Chapter 8 excludes any service supplied "in the exercise of governmental authority" – that is, a service that is provided on a non-commercial and non-competitive basis. Chapter 8 also does not generally apply to government subsidies, although Singapore has undertaken a commitment relating to cross-subsidization of certain express delivery services.

Chapter 9: Telecommunications

Chapter 9 creates disciplines beyond those imposed under Chapters 8 (Cross-Border Trade in Services) and 15 (Investment) on regulatory measures affecting telecommunications trade and investment between the United States and Singapore. It is designed to ensure that service suppliers of each Party have nondiscriminatory access to public telecommunications networks in the other country. In addition, the chapter requires each Party to regulate its dominant telecommunications suppliers in ways that will ensure a level playing field for new entrants from the other Party.

Chapter 9 also seeks to ensure that telecommunications regulations are set by independent regulators applying transparent procedures, and is designed to encourage adherence to principles of deregulation and technological neutrality. Finally, Chapter 9 improves on work undertaken in the WTO on trade in telecommunications services, where Singapore has committed only to allow only three foreign suppliers to participate in a limited set of its telecommunications markets.

Key Concepts. Under Chapter 9, the term "public telecommunications network" covers the infrastructure used to provide public telecommunications services between defined endpoints. A "public telecommunications service" is any telecommunications service that a Party requires to be offered to the public generally. The term includes voice and data transmission services. It does not include the offering of "information services" (*e.g.*, services that enable users to create, store, or process information over a network).

Competition. Both the U.S. and Singapore regulatory systems provide for open, competitive domestic and cross-border telecommunications markets. Chapter 9 establishes rules that reflect the common elements of these systems. It also provides flexibility to account for changes that may occur through new legislation or regulatory decisions. The chapter includes commitments by each Party to:

- ensure that all service suppliers of the other Party that seek to access or use a public telecommunications network in the Party's territory can do so on reasonable and nondiscriminatory terms (*e.g.*, Singapore must ensure that its public phone companies do not provide preferential access to Singapore banks or Internet service providers, to the detriment of U.S. competitors);

- give the other Party's telecommunications suppliers, in particular, the right to interconnect their networks with public networks in the Party's territory;

- ensure that telecommunications suppliers of the other Party that seek to build physical networks in the Party's territory have access to key physical facilities, such as buildings, where they can install equipment, thus facilitating cost-effective investment;

- ensure that telecommunications suppliers of the other Party enjoy the right to lease lines to supplement their own networks or, alternatively, purchase telecommunications services from domestic suppliers and resell them in order to build a customer base; and

- impose disciplines on the behavior of "major suppliers" – *i.e.*, companies that, by virtue of their market position or control over certain facilities, can materially affect the terms of participation in the market.

Regulation. The chapter addresses key regulatory concerns that may create barriers to trade and investment in telecommunications services. In particular, the Parties:

- will adopt procedures that will help ensure that they maintain open and transparent telecommunications regulatory regimes, including requirements to publish interconnection agreements and service tariffs;

- will require their telecommunications regulators to explain their rule-making decisions and provide foreign suppliers the right to challenge those decisions;

- may elect to deregulate telecommunications services when competition emerges and certain standards are met; and

- will endeavor to avoid impeding telecommunications suppliers from choosing technologies they consider appropriate for supplying their services.

Privatization. In a letter from Singapore's trade minister signed along with the Agreement, Singapore has committed to establish a plan to divest its majority interest in Singapore's two leading telecommunications firms.

Chapter 10: Financial Services

Chapter 10 provides rules governing each Party's treatment of: 1) financial institutions of the other Party, 2) investors of the other Party, and their investments, in financial institutions, and 3) cross-border trade in financial services.

Key Concepts. The chapter defines a "financial institution" as any financial intermediary or other institution authorized to do business and regulated or supervised as a financial institution under the law of the Party where it is located. A "financial service" is any service of a financial nature, including, for example, insurance, banking, securities, asset management, financial information and data processing services, and financial advisory services.

General Principles. Chapter 10's core obligations parallel those in Chapter 8 (Cross-Border Trade in Services) and 15 (Investment). Thus, Chapter 10 imposes rules requiring national treatment and most-favored-nation treatment, prohibits certain quantitative restrictions on market access, and bars restrictions on the nationality of senior management. As appropriate, these rules apply to measures affecting financial institutions, investors and investments in financial institutions of the other Party, and to services companies that are currently supplying and that seek to supply financial services from one Party's territory to the other's.

Non-Conforming Measures. Similar to Chapters 8 and 15, each Party has listed in an annex to Chapter 10 particular financial services measures for which it negotiated exemptions from the chapter's core obligations. All existing U.S. state and local laws and regulations are exempted from these obligations. Once a Party liberalizes a measure that it has exempted, however, it must thereafter maintain the measure at least at that level of openness.

Other Provisions. Chapter 10 also includes provisions on regulatory transparency, "new" financial services, self-regulatory organizations, and the expedited availability of insurance products.

Relationship to other Chapters. Measures that a Party applies to financial services suppliers of the other Party – other than regulated financial institutions – that make or operate investments in the Party's territory are covered principally by Chapter 8 and certain provisions of Chapter 15. In particular, the core obligations of the investment chapter apply to such measures, as do the market access, transparency, and domestic regulation provisions of the services chapter. Chapter 10 incorporates by reference certain provisions of Chapter 15, such as those relating to transfers and expropriation.

Chapter 11: Temporary Entry of Business Persons

Chapter 11 calls for each government to facilitate the temporary entry into its territory of business persons of the other Party. The Agreement requires each Party to use transparent criteria and procedures in carrying out its temporary entry rules. At the same time, the rules set out in Chapter 11 respect each Party's need to ensure border security and protect its domestic labor force and permanent employment.

Key Concepts. Chapter 11 covers temporary entry only. Its provisions do not apply to measures regarding citizenship, permanent residence, or employment on a permanent basis. An annex to Chapter 11 groups business persons into four categories (business visitors, traders and investors, intra-company transferees, and professionals) and identifies the criteria under which the Parties must grant them temporary entry. Each business person meeting these criteria must also be qualified for entry under the Party's general requirements relating to public health and safety and national security. An annex permits the United States to limit the number of Singaporean professionals entering the United States under the chapter to 5,400 per year. The Parties may require attestations for professionals similar to those required by the United States under the "H-1B" visa program.

General Provisions. To avoid unduly impairing or delaying trade in goods or services or investment activities under the Agreement, the chapter calls on each Party to apply its measures relating to temporary entry expeditiously. Chapter 11 clarifies that merely requiring a visa for admission does not violate this rule. Further, a Party may refuse admission if the temporary entry of the business person might affect adversely the settlement of a labor dispute or the employment of a person involved in such a dispute. In such cases, the Party must provide a written statement of the reasons for the refusal and prompt notification to the other Party.

Other Provisions. Chapter 11 permits recourse to dispute settlement in disputes over a Party's pattern of practice in carrying out its temporary entry commitments, but not for individual denials of entry. Each Party will establish a group of immigration and other pertinent officials, called a "temporary entry coordinator." The two coordinators will exchange information and work together on temporary entry issues of mutual interest. Chapter 11 makes clear that it contains all of the substantive obligations the two Parties have assumed under the Agreement with respect to temporary entry. The chapter does not impose obligations or commitments with respect to subjects covered under other chapters of the Agreement.

Chapter 12: Anticompetitive Business Conduct, Designated Monopolies, and Government Enterprises

Recognizing that anticompetitive practices can restrict bilateral trade and investment, Chapter 12 calls for each government to enact and enforce competition laws and to cooperate on antitrust matters. The chapter also sets out basic procedural safeguards and rules ensuring against harmful conduct by government-designated monopolies as well as special rules covering "government enterprises."

Antitrust Laws. Chapter 12 requires each Party to adopt or maintain laws prohibiting anticompetitive business conduct and an agency to enforce them. In particular, Singapore has

committed to enact general antitrust legislation by January 2005. Each Party will take appropriate enforcement action to address anticompetitive business conduct. Chapter 12 also affirms that each Party's antitrust enforcement policy is not to discriminate on the basis of nationality.

Procedural Rights. Chapter 12 guarantees basic procedural rights for firms facing antitrust enforcement actions. Each Party will provide such firms a right to be heard and to present evidence before imposing a sanction or remedy, and will ensure that any sanctions or remedies are subject to review by a court or independent tribunal.

Designated Monopolies. Under Chapter 12, whenever a Party gives a private or government-owned entity the sole right to provide or purchase a good or service, the Party must ensure that the entity conducts itself in a manner consistent with commercial considerations, does not discriminate against the other Party's goods or service suppliers, and does not use its monopoly position to engage in anticompetitive practices in markets outside its monopoly mandate.

Government Enterprises. Chapter 12 sets out obligations regarding each Party's responsibilities for "government enterprises." For the United States, this term means companies that the government owns or controls. For Singapore, the term encompasses firms in which the government of Singapore has "effective influence."

Singapore will ensure that its government enterprises act in accordance with commercial considerations, provide nondiscriminatory treatment to U.S. goods and services suppliers, and refrain from entering into anticompetitive agreements among competitors or engaging in exclusionary practices that reduce competition to the detriment of consumers.

Singapore will publish an annual report detailing its ownership and control of larger government enterprises, and will provide the same information for enterprises of any size upon U.S. request. Singapore will not exercise influence over its government enterprises except in a manner consistent with the Agreement, and will continue to reduce its aggregate ownership and other interests in these enterprises.

For its part, the United States will ensure that its government enterprises accord nondiscriminatory treatment in their sales of goods and services to Singaporean companies.

Cooperation and Consultations. Chapter 12 provides for cooperation between the Parties on competition law and policy developments and furthers transparency by providing for the exchange of publicly available information on antitrust enforcement and on designated monopolies and government enterprises. Each Party may also request consultations to discuss specific issues. Where pertinent in such consultations, Singapore will provide information regarding the steps it plans to take or has taken to address anticompetitive conduct by a government enterprise.

Dispute Settlement. The chapter's provisions requiring the Parties to adopt and enforce antitrust laws are not subject to the Agreement's dispute settlement procedures, nor are the provisions

governing cooperation and consultations. By contrast, the chapter's rules addressing conduct by designated monopolies and government enterprises can be enforced through the Agreement's dispute settlement mechanism.

Chapter 13: Government Procurement

Chapter 13 establishes obligations with respect to government purchases that extend beyond those the Parties have undertaken under the WTO Agreement on Government Procurement (GPA), in such areas as thresholds, scope and coverage, and procedures for withdrawing entities from coverage under the chapter when a government's control or influence over them has been eliminated. The chapter also includes many of the fundamental disciplines of the GPA, such as comprehensive rules prohibiting each government from discriminating in its purchasing practices against products, services, and suppliers from the other country and requiring each Party to apply fair and transparent procurement procedures.

General Principles. The chapter incorporates by reference major portions of the GPA, including its basic rules on nondiscrimination and procedural fairness and transparency. The chapter also commits the Parties to cooperate in the ongoing review of the GPA, on procurement matters in APEC, and in WTO negotiations of an agreement on transparency in government procurement.

Coverage and Thresholds. Chapter 13 covers purchases above certain dollar thresholds by government departments and entities that each Party has listed in its relevant GPA schedules. The chapter applies to central (federal) government procurements of goods and services valued at $56,190 or more and construction services valued at $6,481,000 or more. The chapter also applies to certain purchases by 37 state governments listed in the U.S. GPA schedule, namely, procurements of goods and services valued at $460,000 or more and construction services of $6,481,000 or more. For government enterprises subject to the Parties' commitments under the GPA, the chapter's thresholds are set at either $250,000 or $518,000 for goods and services, and $6,481,000 for construction services.

Nondiscrimination. Chapter 13 incorporates the GPA's basic rule of "national treatment," meaning that each Party's procurement rules must treat goods, services, and suppliers from the other country in a manner that is "no less favorable" than it treats their domestic counterparts. Chapter 13 also applies GPA rules that bar discrimination against locally established suppliers on the basis of foreign affiliation or ownership. The chapter also incorporates the GPA bar against "offsets," such as local content, licensing, investment, or similar requirements, designed to favor domestic production.

Transparency. Chapter 13 also brings in GPA rules designed to ensure transparency in procurement procedures. Each Party must publish its laws, regulations and other measures governing procurement, along with any changes to those measures. Procuring entities must publish notices of procurement opportunities in advance.

Tendering Rules. Chapter 13 incorporates GPA rules for setting deadlines on "tendering" (bidding on government contracts). It requires procuring entities to give suppliers all the

information they need to prepare tenders, including the criteria that procuring entities will use to evaluate tenders. Entities must also, where appropriate, base their technical specifications (*i.e.*, detailed descriptions of the goods or services to be procured) on performance-oriented criteria and international standards. GPA rules incorporated into Chapter 13 also provide that procuring entities may not write technical specifications to favor a particular supplier, good, or service.

Award Rules. The GPA provisions made part of Chapter 13 require that to be considered for award a tender must be made in writing and submitted by a qualified supplier. The tender must meet the criteria set out in the tender documentation, and procuring entities must base their award of contracts on those criteria. Procuring entities must publish information on awards, including the name of the supplier, a description of the goods or services procured, and the value of the contract.

Digital Products. In addition to products that each Party has committed to make subject to the GPA, Chapter 13 covers each government's purchases of electronically transmitted "digital products" of the other Party.

Changes in Coverage. Chapter 13 includes streamlined procedures under which either Party may remove from the chapter's disciplines government entities that a Party has privatized.

Chapter 14: Electronic Commerce

Chapter 14 establishes rules designed to prohibit duties on, and discriminatory regulation of, electronic trade in digitally encoded products, such as computer programs, video, images, and sound recordings. The chapter represents the first U.S. agreement on this subject with a country in the Asia-Pacific region and a major advance over previous understandings on this subject.

Customs Duties. Chapter 14 provides that a Party may not impose customs duties on digital products that are transmitted electronically. Each Party must assess the customs value (and any applicable tariffs) on the medium rather than the content of any digital products imported on a physical medium, such as a compact disc (*i.e.*, on the value of the disc rather than that of the information it contains)

Nondiscrimination. Chapter 14 requires the Parties to apply principles of nondiscrimination to trade in electronically transmitted digital products so that they benefit from the same sorts of principles that govern trade in goods and services. Thus, for example, each Party must refrain from discriminating against electronically transmitted digital products on the ground that they have a nexus to the other Party, either because they have undergone certain specific activities (*e.g.*, creation, production, first sale) there or are associated with certain categories of persons of the other Party (*e.g.*, authors, performers, producers). Nor may a Party provide less favorable treatment to digital products that have a nexus to the other Party than it gives to like digital products that have a nexus to a third country.

Chapter 15: Investment

Chapter 15 establishes rules to protect investors from one Party against unfair or discriminatory government actions when they make or attempt to make investments in the other Party's territory. It reflects traditional standards incorporated in earlier U.S. investment agreements (including those in the North American Free Trade Agreement and U.S. bilateral investment treaties) and in customary international law, and contains several innovative provisions.

Key Concepts. Under Chapter 15, the term "investment" covers all forms of investment, including enterprises, securities, debt, intellectual property rights, concessions, and contracts. It includes both existing and future investments. The term "investor of a Party" encompasses both U.S. and Singaporean nationals as well as firms (including branches) established in one of the Parties.

General Principles. Investors enjoy six basic protections under Part B of Chapter 15: nondiscriminatory treatment relative to domestic investors as well as investors of non-Parties; freedom from "performance requirements"; free transfer of funds related to an investment; protection from expropriation other than in conformity with customary international law; a "minimum standard of treatment" in conformity with customary international law; and the ability to hire key managerial and technical personnel without regard to nationality.

Sectoral Coverage and Non-Conforming Measures. With the exception of investments in or by regulated financial institutions (which are treated in Chapter 10), Chapter 15 generally applies to all sectors, including service sectors. However, each Party has listed in annexes to the chapter particular sectors or measures for which it negotiated an exemption from the chapter's rules relating to national treatment, most-favored-nation treatment, performance requirements, or senior management and boards of directors. All current state and local laws and regulations are exempted from these rules. Once a Party liberalizes a measure that it has exempted, however, it must thereafter maintain the measure at least at that level of openness.

Investor-State Disputes. Chapter 15 provides a mechanism for an investor of a Party to pursue a claim against the other Party. The investor may assert that the Party has breached a substantive obligation under Part B of Chapter 15 or that the Party has breached an investment agreement with, or an investment authorization granted to, the investor or its investment.

Innovative provisions afford public access to information on Chapter 15 investor-State proceedings and ensure proper application of dispute settlement rules. For example, Chapter 15 requires the Parties to make public all documents and hearings, with limited exceptions for business and other legally confidential information, and authorizes tribunals to accept *amicus* submissions from the public. The chapter also includes provisions based on those used in U.S. courts to quickly dispose of frivolous claims. A special annex addressing investor-State procedures provides Singapore limited policy flexibility with respect to certain capital flows it may consider disruptive.

Chapter 16: Intellectual Property Rights

Chapter 16 complements and enhances existing international standards for the protection of intellectual property and the enforcement of intellectual property rights.

General Provisions. The chapter requires Singapore to ratify or accede to several agreements on intellectual property rights, including the International Convention for the Protection of New Varieties of Plants, the Brussels Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite, and the Patent Cooperation Treaty. The chapter also requires Singapore to give effect to the Trademark Law Treaty. The chapter also includes full national treatment commitments, with no exceptions for digital products. In addition, the chapter requires each Party to publish its laws, regulations, procedures, and decisions concerning the protection or enforcement of intellectual property rights.

Trademarks and Geographical Indications. Chapter 16 imposes rules with respect to the registration of collective, certification, and sound marks, as well as geographical indications and scent marks. The chapter also imposes rules for domain name management that require a dispute resolution procedure to prevent trademark cyber-piracy. Each Party must provide full protection for trademarks with respect to later geographical indications by providing a "first-in-time, first-in-right" rule for trademarks.

Copyrights and Related Rights. Chapter 16 articulates rights that are unique to the digital age, affirming and building on rights set out in several international agreements, including the WIPO Internet Treaties. For instance, the chapter clarifies that the right to reproduce literary and artistic works, recordings, and performances encompasses temporary copies – an important principle in the digital realm. It also calls for each Party to provide a right of communication to the public, which will ensure that authors have the exclusive right to make their works available online. To curb copyright piracy, Chapter 16 requires the two governments to use only legitimate computer software, setting an example for the private sector. The chapter also includes provisions on anti-circumvention under which the Parties commit to prohibit tampering with technology used by authors to protect copyrighted works. In addition, Chapter 16 sets out obligations with respect to the liability of Internet service providers in connection with copyright infringements that take place over their networks. Each Party must also provide copyright protection for the life of the author plus 70 years (for works measured by a person's life), or 70 years (for corporate works).

Recognizing the importance of satellite broadcasts, Chapter 16 ensures that each Party will protect encrypted program-carrying satellite signals. It obligates the Parties to extend protection to the signals themselves, rather than solely to the content contained in the signals.

Patents and Trade Secrets. Chapter 16 requires patent term extensions to compensate for unreasonable administrative or regulatory delays (including for marketing approval) that occur while granting the patent. The chapter also protects against imports of pharmaceutical products without the patent-holder's consent by allowing lawsuits when contracts are breached. To guard against arbitrary revocation of patents, each Party must limit the grounds for revoking a patent to the grounds that would have justified a refusal to grant the patent. The chapter also limits the exceptions to patent protection. In addition, Chapter 16 offers protection against unfair

commercial use of test data that a company submits in seeking marketing approval for certain regulated products. It precludes other firms from relying on the data for specific periods – five years for pharmaceuticals and ten years for agricultural chemicals.

Enforcement Provisions. Chapter 16 imposes obligations with respect to the enforcement of intellectual property rights. Among these, it requires the Parties, in determining damages, to take into account the value of the legitimate goods as well as the infringer's profits. The chapter also provides for damages fixed in advance (i.e., "statutory damages"), at the option of the right holder. Such pre-established damages help to deter piracy by ensuring an appropriate remedy in cases where, for instance, information on actual damages is inadequate.

Chapter 16 provides that the Parties' law enforcement agencies must have authority to seize suspected pirated and counterfeit goods, the equipment used to make or transmit them, and documentary evidence. Each Party must give its courts authority to order the forfeiture and/or destruction of such items. Chapter 16 also requires each Party to empower its law enforcement agencies to take enforcement action at the border against pirated or counterfeit goods – including those in transit – without waiting for a formal complaint. Chapter 16 provides that each Party must make counterfeiting and piracy subject to criminal penalties. In addition, the chapter specifically requires Singapore to implement rules that will prohibit the production of optical discs (*e.g.*, CDs, DVDs, or software) without source identification codes, unless the copyright holder authorizes the production.

Transition Periods. The chapter takes effect six months after the Agreement enters into force, with short additional transition periods for certain provisions.

Chapter 17: Labor

Chapter 17 sets out the Parties' commitments and undertakings regarding trade-related labor rights. It draws on, but does not replicate, the North American Agreement on Labor Cooperation (the supplemental NAFTA labor agreement) and the labor provisions of the United States-Jordan Free Trade Agreement.

General Principles. Under Chapter 17, the Parties reaffirm their obligations as members of the International Labor Organization (ILO) and under the 1998 ILO *Declaration on Fundamental Principles and Rights at Work*. Each Party must strive to ensure that its domestic law recognizes and protects the fundamental labor principles spelled out in the ILO declaration and listed in the chapter. Each Party must also strive to ensure it does not derogate from or waive the protections of its domestic labor laws to encourage trade with or investment from the other Party. The Parties also commit to afford procedural guarantees that ensure workers and employers have access to fair, equitable, and transparent procedures in the enforcement of labor laws.

Effective Enforcement. Chapter 17 commits each Party not to fail to effectively enforce its labor laws on a sustained or recurring basis in a manner affecting bilateral trade. The chapter defines labor laws to include those related to: 1) the right of association; 2) the right to organize and bargain collectively; 3) a prohibition of forced or compulsory labor; 4) a minimum age for the

employment of children and elimination of the worst forms of child labor; and 5) acceptable conditions of work with respect to wages, hours and occupational safety and health. The U.S. commitment includes federal statutes and regulations addressing these areas, but not state or local labor laws. While committing each Party to effective labor law enforcement, the chapter also recognizes each Party's right to establish its own labor laws, exercise discretion in investigatory, regulatory, prosecutorial, and compliance matters, and allocate enforcement resources.

Dispute Settlement. Chapter 17 provides for cooperative consultations if a Party believes that the other Party has violated its labor commitments. If the matter concerns a Party's compliance with the chapter's labor law enforcement provision, the complaining Party may choose to pursue consultations under the labor chapter or Chapter 20 (Administration and Dispute Settlement). After 60 days of consultations under the labor chapter, the Parties may agree to refer the matter directly to the Agreement's ministerial-level Joint Committee for resolution under the dispute settlement chapter.

Cooperation. The Joint Committee may establish a subcommittee to oversee the chapter's implementation. Each Party will designate a contact point for communications with the other Party and the public regarding the chapter. An annex creates a mechanism for ongoing labor cooperation focusing on the improvement of labor standards, particularly those in the 1998 ILO declaration, and the elimination of the worst forms of child labor.

Chapter 18: Environment

Chapter 18 establishes the Parties' commitments and undertakings regarding environmental protection, and includes several key provisions that parallel those in the Agreement's labor chapter. Chapter 18 draws on, but does not replicate, the North American Agreement on Environmental Cooperation and the environmental provisions of the United States-Jordan Free Trade Agreement.

Like the labor chapter, Chapter 18 includes a commitment on effective law enforcement. It also includes commitments to establish high levels of environmental protection and to strive not to weaken or reduce environmental laws to encourage bilateral trade or investment. It also includes commitments to enhance bilateral cooperation in environmental matters.

General Principles. The Parties must ensure that their laws provide for high levels of environmental protection and strive to improve those levels. They must also strive to ensure they do not waive or derogate from their environmental laws to encourage trade with or investment from the other Party.

Effective Enforcement. Chapter 18 commits each Party not to fail to effectively enforce its environmental laws on a sustained or recurring basis in a manner affecting bilateral trade. The U.S. commitment applies to federal environmental statutes and regulations enforceable in the first instance by the federal government. At the same time, the chapter recognizes the right of

each Party to establish its own environmental laws, exercise discretion in regulatory, prosecutorial, and compliance matters, and allocate enforcement resources.

Dispute Settlement. If a Party believes that the other Party is not complying with its obligations, Chapter 18 provides for cooperative consultations. If the matter concerns a Party's compliance with the chapter's environmental law enforcement provision, the complaining Party may choose to pursue consultations under the environment chapter or Chapter 20 (Administration and Dispute Settlement). After 60 days of consultations under the environment chapter, the Parties may agree to refer the matter directly to the Joint Committee for resolution under the dispute settlement chapter.

Cooperation. The Joint Committee may establish a subcommittee to oversee the chapter's implementation. Chapter 18 also includes a commitment to pursue cooperative environmental activities under a bilateral memorandum of intent and includes a recognition of the importance of ongoing environmental cooperation outside the Agreement. The Parties will consult on the outcome of the current WTO negotiations regarding the relationship between the WTO and multilateral environmental agreements.

Chapter 19: Transparency

Chapter 19 sets out requirements designed to foster openness, transparency, and fairness in the adoption and application of administrative measures covered by the Agreement. For example, it requires that to the extent possible each Party must promptly publish all laws, regulations, procedures, and administrative rulings of general application concerning subjects covered by the Agreement, and give interested persons a reasonable opportunity to comment. Wherever possible, each Party must ensure reasonable notice of regulatory proceedings and the opportunity to present facts and arguments. Chapter 19 also provides for independent review and appeal of final administrative actions. Appeal rights must include a reasonable opportunity to present arguments and to obtain a decision based on evidence in the administrative record.

Chapter 20: Administration and Dispute Settlement

Chapter 20 creates a Joint Committee to supervise implementation of the Agreement, assist in the resolution of any disputes that may arise under the Agreement, and consider and adopt amendments to the Agreement. The Committee will be chaired by each government's trade minister and will convene at least once a year.

Chapter 20 also sets out detailed procedures for the resolution of disputes between the Parties over compliance with the Agreement. Those procedures emphasize amicable settlements, relying wherever possible on bilateral cooperation and consultations. When disputes arise under provisions common to the Agreement and other agreements (*e.g.*, the WTO agreements), the complaining government may choose the forum for resolving the matter.

Consultations. Either Party may request consultations on any matter that it believes might affect the operation of the Agreement. If the Parties cannot resolve the matter through consultations within 60 days, a Party may request a meeting of the Joint Committee.

Panel Procedures. If the Joint Committee cannot resolve the dispute within 60 days, the complaining Party may refer the matter to a panel comprising independent experts that the Parties select. The Parties will set rules to protect confidential information, provide for open hearings and public release of submissions, and allow an opportunity for the panel to accept submissions from non-governmental entities in the Parties' territories.

Once the panel presents its initial report containing findings of fact and a determination on whether a Party has met its obligations, the Parties will have the opportunity to provide written comments to the panel. When the panel receives these comments, it may reconsider its report and make any further examination that it considers appropriate. Within 45 days after it presents its initial report, the panel will submit its final report. The Parties will then seek to agree on how to resolve the dispute, normally in a way that conforms to the panel's determinations and recommendations.

Suspension of Benefits. In disputes involving the Agreement's "commercial" obligations (*i.e.*, obligations other than enforcement of labor and environmental laws), if the Parties cannot resolve the dispute after they receive the panel's final report, the Parties will seek to agree on acceptable trade compensation. If they cannot agree on compensation, or if the complaining Party believes the defending Party has failed to implement an agreed resolution, the complaining Party may provide notice that it intends to suspend trade benefits equivalent in effect to those it considers were impaired, or may be impaired, as a result of the disputed measure.

If the defending Party considers that the proposed level of benefits to be suspended is "manifestly excessive," or believes that it has modified the disputed measure to make it conform with the Agreement, it may request the panel to reconvene and decide the matter. The panel must issue its determination no later than 90 days after the request is made (or 120 days if the panel is reviewing both the level of the proposed suspension and a modification of the measure).

The complaining Party may suspend trade benefits up to the level that the panel sets or, if the panel has not been asked to determine the level, up to the amount that the complaining Party has proposed. The complaining Party cannot suspend benefits, however, if the defending Party provides notice that it will pay an annual monetary assessment to the other Party. The amount of the assessment will be established by agreement of the Parties or, failing that, will be set at 50% of the level of trade concessions the complaining Party was authorized to suspend.

Labor and Environment Disputes. Equivalent compliance procedures apply to disputes over a Party's conformity with the labor and environmental law enforcement provisions of the Agreement. If a panel determines that a Party has not met its enforcement obligations and the Parties cannot agree on how to resolve the dispute, or the complaining Party believes that the defending Party has failed to implement an agreed resolution, the complaining Party may ask the panel to determine the amount of an annual monetary assessment to be imposed on the defending

Party. The Panel will establish the amount of the assessment, subject to a $15 million annual cap, taking into account relevant trade- and non-trade-related factors. The assessment will be paid into a fund established by the Joint Committee for appropriate labor or environmental initiatives. If the defending Party fails to pay an assessment or to establish an escrow for paying such an assessment, the complaining Party may take other appropriate steps, which may include suspending tariff benefits.

Compliance Review Mechanism. If, at any time, the defending Party believes it has made changes in its laws or regulations sufficient to comply with its obligations under the Agreement, it may refer the matter to the panel. If the panel agrees, the dispute ends and the complaining Party must withdraw any offsetting measures it has put in place. Concurrently, the defending government will be relieved of any obligation to pay a monetary assessment.

Chapter 21: General and Final Provisions

Chapter 21 sets out general provisions that apply to all or large portions of the Agreement. For example, it incorporates the general exceptions set forth in Article XX of the GATT and Article XIV of the GATS for various chapters. It also sets the terms for the Agreement's entry into force and termination.

Essential Security. Chapter 21 allows each Party to take actions it considers necessary to protect its essential security interests.

Taxation. An exception for taxation limits the field of tax measures subject to the Agreement. For example, the exception generally provides that the Agreement does not affect either Party's rights or obligations under any tax convention. The exception sets out certain circumstances under which tax measures are subject to the Agreement's: 1) national treatment obligation for goods, 2) national treatment and most-favored-nation obligations for services, 3) prohibitions on performance requirements, and 4) expropriation rules.

Disclosure of Information. The chapter also provides that a Party may withhold information from the other where such disclosure would impede domestic law enforcement, otherwise be contrary to the public interest, or prejudice the legitimate commercial interests of particular enterprises.

Corrupt Practices. Under Chapter 21, the Parties pledge to continue to combat bribery and corruption in international business transactions, to work together on anti-corruption issues, and to support relevant initiatives in international fora.

General Provisions. Chapter 21 provides that the annexes are part of the Agreement and that the Parties may amend the Agreement subject to applicable domestic procedures. The chapter also provides for the entry into force of the Agreement and for its termination six months after a Party provides written notice that it intends to withdraw.