



Note No. SMUN667/2017

The Permanent Mission of the Republic of Singapore to the United Nations presents its compliments to the Secretary-General of the United Nations and has the honour to refer to paragraph 4(b) of General Assembly resolution 72/116 (A/RES/72/116) and paragraph 28 of the Report of the International Law Commission on the work of its sixty-ninth session (A/72/10), concerning the topic “Provisional application of treaties” and the request for Governments to submit information on their practice concerning the provisional application of treaties by 15 January 2018.

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The Permanent Mission of the Republic of Singapore also has the honour to refer to paragraph 5 of General Assembly resolution 71/140 (A/RES/71/140) and paragraph 14 of the Report of the International Law Commission on the work of its sixty-eighth session (A/71/10), concerning the topic “Identification of customary international law” and the request for Governments to submit their comments and observations by 1 January 2018.

The Permanent Mission of the Republic of Singapore has the further honour to submit the enclosed responses for transmission to the International Law Commission:

- (a) Enclosure 1: Response of the Republic of Singapore to the International Law Commission’s Request for Information on Practice concerning the Provisional Application of Treaties, with its accompanying Annex; and

- (b) Enclosure 2: Response of the Republic of Singapore to the International Law Commission's Request for Comments and Observations on the Draft Conclusions on Identification of Customary International Law.

The Permanent Mission of the Republic of Singapore avails itself of this opportunity to renew to the Secretary-General of the United Nations the assurances of its highest consideration.

NEW YORK

22 December 2017

Secretary-General of the United Nations  
New York

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**RESPONSE OF THE REPUBLIC OF SINGAPORE TO THE  
INTERNATIONAL LAW COMMISSION'S  
REQUEST FOR INFORMATION ON PRACTICE CONCERNING THE  
PROVISIONAL APPLICATION OF TREATIES**

Singapore is pleased to respond to the following request for information by the International Law Commission (A/70/10, para. 30), which the Commission considers as still relevant (A/72/10, para. 28). Singapore notes that the Commission has asked to receive such information by 15 January 2018 (A/72/10, para. 29).

2. The Commission's request is:

*"The Commission would appreciate being provided by States with information on their practice concerning the provisional application of treaties, including domestic legislation pertaining thereto, with examples, in particular in relation to:*

- (a) the decision to provisionally apply a treaty;*
- (b) the termination of such provisional application;*
- (c) the legal effects of provisional application."*

3. Singapore's response follows.

4. In general, Singapore considers that provisional application is a useful international law technique to immediately bring into operation matters settled by a treaty to be provisionally applied, in circumstances where such provisional application would meet an urgent, practical, or other need.

5. Singapore's existing treaty practice reveals that Singapore has provisionally applied bilateral and multilateral treaties in various sectors including the following:

- (a) air services;
- (b) economic matters, including trade and investment;
- (c) visa abolition.

6. Most Singapore treaty practice concerning provisional application is found in air services agreements, the bulk of which are bilateral treaties. Where the air services agreement is not made to enter into force upon simple signature, provisional application of that agreement is achieved through a separate, legally-binding memorandum of understanding. Typically, the relevant operative language provides that "*the Contracting Parties shall implement the provisions of the agreed ASA provisionally pending its formal signature and entry into force*" in accordance with the entry into force provision of the air services agreement to which the memorandum of understanding is ancillary.

7. In addition, Singapore has provisionally applied treaties or specified clauses thereof in the course of participation in multilateral treaty negotiations, and of membership in various international organisations, where provisional application has been necessary in order to establish new organs or ensure the continuity of treaty obligations. Two such examples in the context of the law of the sea are:

- (a) the *United Nations Convention on the Law of the Sea*, done at Montego Bay, 10 December 1982, 1833 U.N.T.S. 3; and
- (b) the *Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982*, done at New York, 28 July 1994, 1836 U.N.T.S. 3.

8. Singapore considers that, apart from the notification procedure reflected in article 25, paragraph 2 of the 1969 Convention, provisional application will normally terminate in accordance with the express provisions of the parties' agreement to provisionally apply the treaty or part thereof. As to the legal effects of provisional application, Singapore considers that, unless the parties have specified a different result, the practical outcome is that in the provisional

application phase, the parties are bound by the relevant clauses of the treaty as if they were in force.

9. Provisional application is not specifically governed by Singapore law. However, the Singapore Government has had the opportunity to articulate its position on provisional application of the EU-Singapore Free Trade Agreement in a Written Answer to a Parliamentary Question made on 28 February 2017. A copy of this Question and Answer is enclosed at Annex.

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This report was printed from Singapore Parliament website.

Parliament No:	13
Session No.	1
Volume No:	94
Sitting No:	35
Sitting Date:	28-02-2017
Section Name:	Written Answers to Questions
Title:	Update on Ratification of EU-Singapore Free Trade Agreement EUSFTA
MPs Speaking:	Mr Louis Ng Kok Kwang, Mr Lim Hng Kiang

## Update on Ratification of EU-Singapore Free Trade Agreement EUSFTA

1 **Mr Louis Ng Kok Kwang** asked the Minister for Trade and Industry (Trade) in light of the opinion issued by the Advocate General of the Court of Justice of the EU that the EU does not have exclusive competence to conclude the EU-Singapore Free Trade Agreement (EUSFTA), whether he can provide an update on how the relevant parties are working towards a swift ratification of the EUSFTA.

**Mr Lim Hng Kiang:** On 4 March 2015, the European Commission (Commission) sent the negotiated text of the EU-Singapore Free Trade Agreement (EUSFTA) to the European Court of Justice (ECJ) for a legal opinion to establish the Commission's and EU Member States' (MS) areas of competence in the EUSFTA. The opinion would clarify which of the EUSFTA provisions fall within (i) the EU's exclusive competence; or are (ii) shared competence between the EU and MS; or are (iii) within the MS' exclusive competence.

Should the entire EUSFTA agreement be found to be under the EU's exclusive competence, it would only have to be approved by the Council of the EU (Council) and the European Parliament (EP). The agreement would enter into force thereafter on a mutually agreed date.

The Advocate General's preliminary opinion released on 21 December 2016 opined that the EUSFTA should be deemed a "mixed agreement" with areas of shared competence between the EU and MS. If the ECJ takes the same view, it would mean that the agreement has to be approved by the Council, the EP as well as the 38 national and regional Parliaments of all MS. However, the provisions in the agreement deemed to be under the EU's exclusive competence would be provisionally applied and take effect once the Council and the EP have approved. In comparison, provisions that are under shared competence or MS' exclusive competence would have to go through domestic ratification processes in all MS before they can take effect.

The ECJ's final opinion, which is deliberated by a full court of 28 Judges, is typically released three to five months after the Advocate General's preliminary opinion.

Singapore is actively working with the EU and MS to ensure that the EUSFTA can proceed with ratification as soon as the ECJ delivers its final opinion so that businesses can reap its benefits as soon as possible.