

SINGAPORE AND INTERNATIONAL LAW

THE objective of this section of the Review is to reproduce materials and information which illustrate Singapore's attitude to, and approaches on, questions of international law and international organisations. As far as possible, primary materials are reproduced but where unavailable, and the topics are important, secondary material including relevant extracts from newspaper reports are produced. The materials are presented under the following headings:

- I. Policy Statements
- II. Legislation*
- III. Judicial Decisions*
- IV. Treaties (other than Asean Instruments)
- V. Asean Treaties, Declarations and other Instruments*
- VI. Singapore in the United Nations and other International Organisations and Conferences*

The materials are selective. As the materials are compiled from the Law Library and other sources, it should be stressed that any text contained herein is not to be regarded as officially supplied to the Review. [*Singapore & International Law Section Editor.*]

I. POLICY STATEMENTS

- (a) *INTERFERENCE IN SINGAPORE'S INTERNAL AFFAIRS:*
Ministry of Foreign Affairs Statement, 16 Jan. 1988 (Singapore Government Press Release No. 23/JAN, 09-0/88/01/16)

The circulation of the *Asian Wall Street Journal* in Singapore was restricted after it was "gazetted" under section 18A of the *Newspaper and Printing Presses Act 1974*¹ as a newspaper "engaging in the domestic politics of Singapore".² The following is a statement by the Ministry of Foreign Affairs in response to comments by a spokesman of the U.S. Embassy in Singapore on the action by the Singapore Government.

"The Ministry of Foreign Affairs has taken up with the US Embassy in Singapore a statement which a spokesman of the US Embassy was reported to have made in the *International Herald Tribune* (9-10 January 1988) and the *Asian Wall Street Journal* (12 January 1988). The US Embassy statement reportedly is as follows:

'We regret this action by the government of Singapore and hope that a way can be found to resolve the circulation restrictions of

* There are no materials under these headings in this issue.

¹ As amended by the *Newspaper and Printing Presses (Amendment) Act 1986*, Act 22 of 1986.

² *Vide* G. N. 543/87, with effect from 16 February

the Far Eastern Economic Review and the earlier restrictions on the Asian Wall Street Journal and Asiaweek.’

After seeking confirmation, the Ministry reiterated its protest to the US Embassy that such comments constituted interference in Singapore’s internal affairs. It recalled a previous occasion when the US Embassy had issued a statement after the gazetting of the Asian Wall Street Journal in February 1987, and reminded the Embassy of Singapore’s position. The Ministry sought the assurance of the US Embassy that it would not interfere in Singapore’s internal affairs.”

- (b) *TERRORIST BOMBING OF KOREAN AIRLINE PLANE:*
Ministry of Foreign Affairs Statement, 20 Jan. 1988
(Singapore Government Press Release No. 29/JAN,
09-0/88/01/20)

The Government of Singapore is shocked to learn that the horrendous act of terrorist bombing which killed passengers on board a Korean Airline plane on 29 November 1987 was perpetrated on official instructions from the Democratic People’s Republic of Korea. It condemns this killing of innocent civilians as an outrage against international law and civilised behaviour.

- (c) *MIDDLE EAST PEACE INITIATIVE: Ministry of Foreign Affairs Press Statement, 27 Jan. 1988 (Singapore Government Press Release No. 36/JAN, 09-0/88/01/27)*

The Singapore Government fully supports the peace initiative of His Excellency President Hosni Mubarak of Egypt, for the resumption of the peace process in the Middle East.

“The tragic events in the West Bank and the Gaza Strip confirm the urgency of resuming the peace process in the interest of all the parties concerned. In order to pave the way for meaningful negotiations, we propose the following:

The parties concerned would halt all forms of violence and repression in the occupied territories for six months. Such a step would be accompanied by the following:

- (i) Ceasing all settlement activities;
- (ii) Respecting the political rights and freedoms of the Palestinian people under Israeli occupation;
- (iii) Ensuring the safety and protection of this people through proper international mechanisms;
- (iv) Movement towards the convening of the international peace conference with the aim of reaching a comprehensive peace settlement that provides for the recognition of the right of all the states in the region to live in peace and for enabling the Palestinian people to exercise their right to self-determination.”

IV. TREATIES (OTHER THAN ASEAN INSTRUMENTS)

- (a) *GRADUATION FROM THE U. S. GENERALISED SYSTEM OF PREFERENCES (G. S. P.) PROGRAMME: Expression of disappointment by the Singapore Government issued by the Singapore Embassy in Washington, D. C. on 29 January 1988 (Singapore Government Press Release No. 41/JAN, 09-0/88/01/30)*

The Government of Singapore is extremely disappointed with the decision of the Administration to graduate Singapore from the US GSP programme with effect from January 1989. Singapore's disappointment is based upon the following considerations.

First, in January 1987, the Administration affirmed Singapore's GSP status and awarded Singapore with a favourable package of GSP benefits. This was in recognition of Singapore's responsiveness to the US Government and US business concerns relating to the protection of US intellectual property as well as Singapore's clean record of free and fair trade.

Second, on September 23, 1986, at the completion of bilateral consultations held in connection with the General Review of the GSP programme, the Administration promised to award a favourable package of GSP benefits to Singapore, effective July 1, 1987, if Singapore undertook certain specified actions with respect to copyright protection. The Singapore Government proceeded to undertake and implement each of the actions requested and, as agreed, received the more favourable package of GSP benefits on July 1. Now, less than seven months later, we are told that the US Government is not only rescinding the more favourable GSP package we bargained for, but is removing our GSP status altogether. The decision to graduate Singapore in January 1989 would undermine the premises of good faith and predictability which underlie US-Singapore economic relations.

Third, at a time when the US is making efforts to encourage its trading partners to open up their markets and to reduce or eliminate their unfair trade practices, the US would be sending the wrong signal by the accelerated graduation of a free trading national such as Singapore. 96% of US exports to Singapore enter its market duty-free compared to 76% of Singapore's exports to the US. Removal of US GSP benefits from Singapore would reduce this figure to 45%. This imbalance of market access needs to be corrected not made worse.

Fourth, Singapore has enjoyed a trade surplus with the United States only since 1984. Prior to 1984 the balance of trade was in the US favour. In 1986, US trade deficit with Singapore was \$1.5 billion, less than 1% of the total US trade deficits. It would also be noted that 52% of Singapore's exports to the US are from American corporations, a major part of which consists of components which help to make American final products more competitive in the world market.

Fifth, Singapore has not contributed to the global trade imbalance by pursuing a single-minded policy to export. Singapore has always run a balance of trade deficit with the world. In 1986 the deficit amounted to \$6.6 billion, approximately 17.5% of GDP. Despite this Singapore has not engaged in protectionist practices but has continued to maintain its free trade regime.

- (b) *GRADUATION FROM THE U. S. GENERALISED SYSTEM OF PREFERENCES (G. S. P.) PROGRAMME: Statement by the Minister for Trade and Industry on 30 Jan. 1988 (Singapore Government Press Release No. 42/JAN, 15-0/88/01/30)*

We are most disappointed with the decision of the US Administration to graduate Singapore from the US GSP programme with effect from 2 January 1989.

In our discussion with the US during the review of the GSP programme, we had been promised a favourable package of GSP benefits in return for amending our Copyright Legislation.³ This we did expeditiously. Now, barely seven months later, the US Government is removing our GSP status completely.

When we first heard of the possibility of this happening, we registered our concerns with the USTR Clayton Yeutter, who assured us that our views would be taken into consideration in arriving at any decision. The decision to graduate us undermines US' credibility. Should we strike future deals with the US, there is no telling if the US will respect the agreement in letter and spirit.

Graduation is a loss for Singapore. Some \$1.7 billion worth of our exports will be affected. But it is not the end of our world. Our exporters will have to work harder and become more competitive in order to maintain our share of the US market.

- (c) *GRADUATION FROM THE U. S. GENERALISED SYSTEM OF PREFERENCES (G. S. P.) PROGRAMME: Ministry of Trade and Industry explanation of linkage between Singapore's G. S. P. status and copyright legislations, issued on 25 February 1988 (Singapore Government Press Release No. 26/FEB, 15-0/88/02/25)*

The US has maintained that Singapore's GSP privileges are not linked to the passing of the Copyright Act. The following is a chronology of the events and consultations between the US and Singapore leading up to the passage of Singapore's Copyright Act in April 1987.

The first bilateral consultation between Singapore and the US on the US GSP General Review was held in Singapore on 13 November 1985. The US GSP Review team addressed the terms on which Singapore should continue to enjoy US GSP. At that meeting the US provided a status report on the review exercise and formally informed the Singapore delegation of its concern with the lack of copyright protection in Singapore. The US delegation expressed the hope that Singapore would pass a new copyright law before the end of the GSP General Review. The Singapore delegation responded that positive steps were being taken towards enacting a new copyright law.

At the second bilateral consultation in Singapore on 6 May 1986, the US delegation indicated that it was not in a position to commit itself to Singapore's requests for Competitive Need Limit (CNL) waivers under the US GSP Scheme. However, the US delegation

³ Section Editor's Note: See (1987) 29 Mal. L. R. 319 for details of the extension of the scope of Singapore's *Copyright Act 1987*, No. 2 of 1987, to the U. S. A.

stressed that if Singapore were to respond favourably to US concerns on copyright protection, it would be able to exercise greater flexibility on Singapore's waiver requests. The US delegation also indicated that Singapore could either accede to the Universal Copyright Convention or have a bilateral agreement with the US if it was not possible for Singapore to protect US works in a new copyright bill.

The third round of consultations took place in Washington in September 1986. The Singapore delegation explained the progress made in enacting a new copyright legislation. It was pointed out that the copyright legislation had been expedited because of the GSP General Review and the specific requests of the US had been incorporated into the draft copyright bill to address US concerns. The US delegation commented on the proposed draft copyright bill and made further requests for specified changes. The Singapore delegation took note of these requests and concerns expressed by the US delegation.

The US delegation stated that in view of Singapore's action on copyright it could defend a GSP package which would be on the "plus side of net neutral" for Singapore. It added the GSP package for Singapore would be better than that offered to the other advanced developing countries.

A Record of Understanding of the third round of consultations was drawn up. The Record of Understanding stated that the US delegation would recommend a favourable GSP package if a new Copyright Act, incorporating specific changes requested by the US delegation at the meeting for the protection of US works, was passed by Singapore by the end of 1986. A copy of the Record of Understanding is attached (see para 2 and 3 of Annex A).

The three rounds of bilateral consultations clearly indicate that in reviewing on what terms Singapore should enjoy GSP, US concerns were confined only to the area of copyright protection by Singapore. The consultations established a clear linkage between Singapore's request for a favourable package of GSP benefits and the US request for the adequate copyright protection for US works in Singapore.

Subsequent to the understanding reached at the bilateral consultations in September 1986 in Washington, US officials continued to impress upon Singapore officials the need to ensure early enactment of the copyright bill in time for Singapore to be granted the agreed favourable GSP package. In November 1 1986, US Assistant Secretary of State John Monjo raised with Minister for Trade and Industry, BG Lee Hsien Loong, US concerns over the delay in enacting Singapore's copyright bill before the end of 1986 because the GSP review had to be completed by January 1987. US Embassy officials in Singapore also raised similar concerns. In a non-paper handed over to Singapore, US officials indicated that both the timing and the quality of copyright protection were key in justifying the recommendation of a favourable GSP package for Singapore. It added that deterioration in quality and timing of copyright protection will result in a less favourable GSP package for Singapore. A copy of the non-paper is attached (see para 5 and 6 of Annex B).

Singapore's copyright bill was passed in April 1987 followed by a bilateral agreement with the US in May 1987. On its part the US Administration affirmed Singapore's GSP status in January 1987 and

awarded Singapore with a favourable GSP package which came into effect on 1 July 1987.

From the above it is clear that the review of Singapore's GSP status was linked to its enactment of a copyright bill which took into account US concerns. Singapore's understanding was that having met US concerns on copyright protection it will continue to enjoy GSP benefits as provided under the 1984 US Trade and Tariff Act. The Act states that US GSP would cease when a country's per capita GNP exceeded the mandatory ceiling of US\$8,500 or if the law is changed by the Congress or when the US GSP Law (US Trade and Tariff Act 1984) expires in 1993. Singapore is therefore justifiably deeply aggrieved by the unilateral US decision to graduate Singapore, although Singapore did not fulfil the criteria for mandatory graduation, and had fulfilled its side of the GSP-Copyright deal.

ANNEX A

RECORD OF UNDERSTANDING BETWEEN UNITED STATES AND SINGAPORE AT BILATERAL CONSULTATIONS FOR THE GSP GENERAL REVIEW ON 22ND-23RD SEPTEMBER 1986

1. Mr. Goh Phai Cheng of the Attorney-General's office addressed U.S. concerns with Singapore's draft Copyright Bill. However, he stressed that his responses to the US representations on the bill were given in his capacity as the legal draftsman of the bill. He spoke neither on behalf of the Select Committee of the Singapore Parliament nor on behalf of the Government of Singapore.

2. The U.S. delegation stressed that it would recommend a favourable GSP package described below if the new Copyright Act were passed with the changes described below and protection granted to U.S. works by the end of 1986.

U.S. works will be protected in Singapore on the basis of regulations issued under the new Copyright Act. The U.S. government will simultaneously extend copyright protection to Singapore works on the basis of a Presidential proclamation issued under U.S. Law.

All U.S. works presently protected under the U.S. copyright law will be protected in Singapore on the basis of national treatment. This protection will apply regardless of whether or not these works are eligible for protection in Singapore on the basis of first publication in Singapore or the Commonwealth, or under any other basis for eligibility under the present Singapore Copyright Act.

Singapore works presently protected under U.S. Copyright Act on the basis of first publication in the United States, first publication in a UCC state, or any other basis for eligibility under the U.S. law will continue to be protected. Eligibility for protection under the U.S. Presidential proclamation will extend to works first published on or after the date of the proclamation. All unpublished works of Singapore nationals are now or still continue to be protected in the U.S.

The changes in the draft law deemed necessary are: relaxing the guilty knowledge requirement; making "possession" of infringing copies or works a criminal offense; prohibiting unauthorized public perfor-

mances of cinematographic films; making the compulsory licencing provisions consistent with the UCC; assuring that fair dealing extends only to "private" uses; allowing copyright owners to restrict importation of cinematographic works and sound recordings; providing for destruction or return to true owners of infringing goods; and, extending full coverage to performances of in-house cable programs and musical works in hotels.

3. Based on paragraph 2 above, U.S. delegation would recommend a favourable package for Singapore under the U.S. GSP General Review:

a. Excluding the 2 non-grantable items, all remaining 16 out of 18 waivers in Singapore's request list would be granted, except that the U.S. delegation informed the Singapore delegation that, due to an oversight of one of the 16 waiver items (machine and parts NSPF) may be found sensitive within the next two weeks and may not be grantable. The Singapore delegation noted that it would have difficulty if this happened. The U.S. side noted that the Singaporean delegation's concern but expressed the view that regardless of the outcome with respect to this item, the results of the General Review will be very positive for Singapore.

b. With respect to TSUS 685.32 (tranceivers) the TSUS 685.70 (electric signalling devices) the U.S. side will seek to subdivide current 5-digit classifications at the 7-digit level, so that waivers would be granted for GSP exports not falling within TSUS 685.3277 and TSUS 685.7036.

c. The U.S. delegation identified 2 items (synthetic drugs and submersible pumps) for reduction of competitive need limits to 25/25. The Singapore delegation could offer substitutes for consideration in two weeks.

4. The U.S. clarified that:

a. Generators (TSUS 682.60) classified as a non-grantable item in the General Review would continue to be subject to the current competitive need limit.

b. In the process of converting the GSP program to the Harmonized System, opportunity will be afforded to all interested parties to provide comments, including comments with respect to the conversion of competitive need waivers. The U.S. side noted that as a matter of policy it would seek to create a conversion that was, to the extent possible within reasonable terms of tariff nomenclature, trade neutral.

ANNEXB

Passage of Copyright Act 1986 and GSP for Singapore

Washington agencies are seriously concerned with MTI Acting Minister Lee's recent comment to Deputy Assistant Secretary of State John Monjo that Singapore will not be able to pass and implement copyright legislation in 1986 despite its longstanding, firm commitment to do so.

The U.S. GSP delegation informed Singapore's GSP delegation during the September consultations in Washington that the extremely favourable GSP package outlined in the Record of Understanding was possible only because of:

—Singapore's commitment that the entire copyright issue, including enactment of legislation and protection of U. S. works, would be completed in 1986 and

—Singapore's commitment that the legislation would include all the protection elements listed in the Record of Understanding as "changes in the draft law deemed necessary."

Both the timing and the quality of copyright protection were key in justifying the recommendation of such a favourable GSP package for Singapore.

Deterioration in quality and/or timing of copyright protection will result in the GSP committee's recommending a less favourable GSP package for Singapore. The extent to which fewer waivers will be granted or more competitiveness findings will be made depend on the extent and significance of Singapore's departure from the agreed-upon package.

Timing of the Act's passage in Parliament was discussed at length during the September GSP consultations, and the Singapore delegation never implied that passage in December was unlikely since Parliament does not normally sit in December. Rather, the Singapore delegation informed us that the Parliament meets on an ad hoc basis, as needed, and that without a doubt the law would pass by the end of the year.

Our principals have asked that the Government of Singapore inform the Embassy by December 5 whether it will carry out the terms of Record of Understanding or, alternatively, whether the Government of Singapore wishes to reopen the GSP package agreed upon in September.