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OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE
WASHINGTON, D. C. 20301

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INTERNATIONAL SECURITY AFFAIRS

TTP1

15 October 1973

MEMORANDUM FOR DISTRIBUTION

SUBJECT: Third Draft Agreement Between the Marianas Islands and the United States.

The attached third draft, dated 10 October 1973, was circulated by the Office of Micronesian Status Negotiations this date for review prior to interagency approval.

It is requested that this draft be reviewed in connection with the Marianas Negotiations Study, the Instructions for the President's Personal Representative (approved by the President on 8 April 1973) and the Joint Communique issued on 4 June 1973 by Chairman Pangelinan and Ambassador Williams.

Specific comments and modifications are requested where necessary on items of direct interest to the Department of Defense. Illumination of weaknesses or questionable provisions elsewhere in the draft also is desired, in order to alert the Department responsible to a topic requiring further work.

Your comments are requested by 19 October 1973.

E. C. Whelan
Ass't for TTP1
X-71802

DISTRIBUTION:

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→ Finkelstein

General Comments.

- indep
- for Affairs
- priv. power
- denial of access.

LOS - also review - 3 states
- am. status.

appropr by Cong.
nature of agreement.

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DRAFT: AdeG/OJT:klc:10-10-73

AGREEMENT ESTABLISHING A PERMANENT UNION BETWEEN
THE MARIANA ISLANDS AND THE UNITED STATES

Whereas, the ^{District} Mariana Islands of the Trust Territory of
^{hereinafter referred to as the Mariana Islands,}
the Pacific Islands and the United States of America sharing common
values and goals mutually desire to establish an enduring political
relationship with each other; and,

Whereas, the people of the Mariana Islands have for
over twenty years, through public petition and referendum clearly
expressed their desire to enter into such a relationship in order
to attain the benefits inherent under the American system
and their desire that such a political union be permanent in nature;
and,

Whereas, the people of the Marianas Islands believe that
their right, under the Trusteeship Agreement, to self-government
may be fulfilled by becoming a permanent member of the
American political family; and,

Whereas the United States of America in seeking to extend the bene-
fits and privileges of the American system of government and to like-
wise establish a mutually satisfactory and enduring political relation-
ship within the ideals and concepts of democracy, desires to accord
the residents of the Marianas Islands the rights of
self-government to which they are entitled under
the Trusteeship Agreement for the Trust Territory of the Pacific
Islands; Now Therefore

be it known to all these things are made, that the duly

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appointed representatives of the people of the Mariana Islands, being the members of the Marianas Political Status Commission, and the Personal Representative of the President of the United States of America have at _____ (place) _____ on _____ day of 1973 (4), hereto affixed their signatures in agreement to the following principles and attached Articles that shall govern the political union between the Mariana Islands and the United States of America:

GENERAL PRINCIPLES GOVERNING THE POLITICAL UNION BETWEEN THE MARIANA ISLANDS AND THE UNITED STATES OF AMERICA

1. The Mariana Islands of the Trust Territory of the Pacific Islands in its exercise of self-determination shall become a self-governing commonwealth under the sovereignty of the United States and be known as "The Commonwealth of the Mariana Islands".
2. The future Commonwealth government will govern itself pursuant to a constitution of its own adoption and consistent with this agreement, relevant portions of the United States Constitution, and other Federal law.
3. The United States will have responsibility for and complete authority in the fields of defense and foreign affairs and may, pursuant to Article IV, Section III, Clause 2 of the United States Constitution enact appropriate legislation for the Commonwealth.
4. The people of the Mariana Islands will be given the opportunity of becoming citizens or nationals of the United States, as they may desire, with all the rights and privileges attaching thereto.

*Consider
Please act.*

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public and private individuals their right to persons
not of permanent Marianan residency, recognizing the paramount
rights of the United States to acquire property.

6. In order to assure the continuing political viability and continuing improvement in the economic and social condition of the people of the future Commonwealth, the parties agree to a combined effort to finance the costs of general government expenditures and of the capital requirements for economic and financial development.

7. The United States shall extend financial support to the Commonwealth in such amounts and under such terms of which as are established in the attached articles and may be approved by the Congress of the United States to assure effective self-government in the Commonwealth.

8. The United States will undertake to implement this agreement as may be practicable prior to the termination of the Trusteeship Agreement upon the approval of the instrument by the Mariana Islands District Legislature and by the residents of the Mariana Islands in a subsequent plebiscite and upon appropriate action by the Congress of the United States of America.

9. The parties to this agreement shall neither terminate the relationship established in these articles nor modify any of the provisions set forth in section 102 of the attached agreed articles unless there be actual consent to such termination or such modification.

AGREED ARTICLES REGARDING THE ESTABLISHMENT OF
THE COMMONWEALTH OF THE MARIANA ISLANDS

Article I

Sec 101. The Mariana Islands, known as the Mariana Islands District of the Trust Territory of the Pacific Islands, consisting of those islands and those territorial waters thereof which lie within the area north of 14° north latitude, south 20° north latitude, west of 150° east longitude, and east of 144° east longitude.

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established by the United States of America pursuant to a Trusteeship Agreement with the Security Council of the United Nations (hereinafter "Trusteeship Agreement"), will upon termination of that trusteeship be a self-governing commonwealth under the sovereignty of the United States, to be known as "The Commonwealth of the Mariana Islands".

*except as otherwise
agreed with
compact*

Sec 102. The relations of the Commonwealth of the Mariana Islands with the United States shall be subject to the provisions of Article IV, Section III, Clause 2 of the Constitution of the United States and shall be conducted through such agency or agencies of the United States as the President may designate, provided that the following provisions of this agreement may be modified only with the consent of the Government of the Commonwealth of the Marianas: (LIST)

Sec 103. The rights, privileges, and immunities of citizens of the United States shall be respected in the Marianas as though the Northern Mariana Islands were a State of the Union and subject to the provisions of Article I, Section 2 of Article IV of the Constitution of the United States. This subsection shall not apply to the regulation of the alienation of real property or interests in real property for the purpose of reducing the acquisition of such property or interests to persons of Northern Marianas descent.

Sec 104. The following provisions of the Constitution of the United States shall apply within the Commonwealth as though it were a state of the union: Art I, Section 9, Clauses 2,3; Art I, Section 10; Art II, Section 3, Clauses 1,2; Art IV, Section 1; Clause 2 of Section 3; Amendments 1 through 9; Amendment 13; Sentence 2 of Amendment 14; Amendments 15 and 19.

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Sec 105. All citizens of the Trust Territory of the Pacific Islands who are residents of the Mariana District at the time of the termination

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of the Trusteeship Agreement and who have taken no affirmative steps to preserve or acquire any foreign citizenship or nationality, shall have the choice of becoming citizens or nationals of the United States as of that date.

Sec 106. (a) All persons born in the Commonwealth of the Mariana Islands after the termination of the Trusteeship Agreement, and subject to the jurisdiction of the United States, are citizens of the United States at birth.

(b) Any person described in Section 105 of this Article who does not wish to be a citizen of the United States shall make declaration under oath of such desire within one year after the termination of the Trusteeship Agreement, or within six months after attaining the age of 18 years, whichever comes later, said declaration to be in the form and executed in the manner to be prescribed. Having made such a declaration, any such person shall be held not to be a citizen of the United States. Such person may elect at the time of such declaration to become a national of the United States or to retain his current national citizenship, but only in the form and manner to be prescribed.

Article II - - Constitutional Convention

Sec 201. Pursuant to a constitution of their own adoption as provided in and in accordance with this agreement, the people of the Mariana Islands shall form a government for these islands.

Sec 202. The District Legislature of the Marianas shall call a constitutional convention to write a constitution for the Mariana Islands, the provisions of which shall be in accordance with these Articles. Each of the present electoral districts within the Mariana Islands shall be represented in the Constitutional Convention.

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*P. Rico - citizens
of U.S. - if
never - if*

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Sec 203. The Constitutional Convention shall prepare a proposed constitution for the Mariana Islands which shall be submitted not later than one year after the convening of the Constitutional Convention to the High Commissioner for transmission to the Congress of the United States. If the Congress of the United States finds that the proposed constitution is not contrary to the relevant provisions of the Constitution of the United States of America, terms of this agreement, legislation establishing the commonwealth pursuant to these articles, and any other relevant federal legislation, it shall so certify to the High Commissioner of the Trust Territory, who shall so advise the Marianas District Legislature which shall dissolve the Constitutional Convention. If the Congress finds that the proposed constitution does not meet the above criteria it shall so advise the High Commissioner of the Trust Territory of the Pacific Islands stating wherein in its judgment the constitution is deficient. The High Commissioner shall in turn submit such message to the Constitutional Convention for further action. The revised document shall be returned to the Congress of the United States and the same procedure repeated until the constitution is certified by the Congress.

Sec 204. (a) Upon certification by the Congress of the United States to the High Commissioner of the Trust Territory of the Pacific Islands in accordance with Section 203 of this Article the High Commissioner shall, within thirty days after receipt of such certification, issue a proclamation for a referendum to be held not more than ninety days after the date of the proclamation to vote "yes" or "no" on the following proposition.

*The people of the Commonwealth of the Mariana Islands
have adopted the Constitution of the Commonwealth of the Mariana
Islands as certified by the Congress of the United States.*

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(b) The High Commissioner of the Trust Territory of the Pacific Islands and the Marianas District Legislature shall, within thirty days, following the referendum, determine the results of that referendum and convey their determination to the President of the United States. If a majority of the qualified votes cast at the referendum are in favor of adopting the proposition, the President, will issue a proclamation so stating, and the Constitution of the Commonwealth of the Northern Mariana Islands shall become effective upon termination of the Trusteeship Agreement.

Sec 205. Amendments to the Constitution of the Commonwealth of the Mariana Islands may be made from time to time as provided in that constitution. The courts of the United States shall be competent to pass on the consistency of such amendments with relevant provisions of the United States Constitution and of other federal law.

Article III - - The Constitution of the
Commonwealth of the Mariana Islands

Sec 301. The Constitution of the Commonwealth of the Mariana Islands will contain provisions for a republican form of government, that will consist of an elected executive, a legislative assembly and a judiciary system.

Sec 302. The Executive. The executive power of the Government of the Commonwealth of the Mariana Islands shall be vested in the Governor of the Commonwealth of the Mariana Islands. The Constitution of the Commonwealth shall make provision for the popular election of the Governor and the Lieutenant Governor and for the term and powers and functions of the Governor.

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Sec 303. (a) The Governor shall have the following powers and duties in addition to those conferred upon him by the Constitution and laws of the Commonwealth. He shall be responsible for the faithful execution of the laws of the Commonwealth and the laws of the United States applicable to the Commonwealth. He may, with the approval of the President of the United States, restore in the Commonwealth such civil rights as may have been lost as the result of convictions in Federal or State courts of the United States.

(b) Whenever it becomes necessary in case of disaster, invasion, insurrection, or rebellion, or imminent danger thereof, or to prevent or suppress lawless violence, the Governor of the Government of the Commonwealth may request of the President of the United States the assistance of the military or naval commanders of the Armed Forces of the United States, which assistance may be given at the discretion of the President if not disruptive of, or inconsistent with, the Federal responsibilities of the Armed Forces.

(c) If any bill presented to the Governor contains several items of appropriation of money, he may object to one or more of such items, or any part or parts, portion or portions thereof, while approving the other items, parts or portions of the bill. In such a case he shall append to the bill, at the time of signing it, a statement of the items, or parts, or portions thereof, to which he objects, and the items, or parts, or portions thereof, so objected to shall not take effect. This provision shall be in effect so long as funds have to be appropriated by the Congress of the United States.

Sec 304. The Legislature. The legislative power of the Commonwealth shall be vested in the Legislature, which shall consist of the

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elected. All such members and all officers of the Government of the Commonwealth of the Marianas shall taken an oath or affirmation to support the United States and the Constitution of the Marianas. The legislative power of the Commonwealth shall extend to all subjects of local application and may not be inconsistent with the Constitution of the United States, terms of this agreement, or with those statutes enacted under the authority of the United States which are specifically applicable to the Mariana Islands, including such statutes as may be enacted in the future.

Sec 305. The Judiciary. Courts of the Commonwealth of the [Northern] Marianas shall have jurisdiction over all cases arising under local law. The operation of said courts will be compatible with the federal court system of the United States and consistent with applicable federal law.

Sec 305. The United States shall establish a United States District Court in the Commonwealth which shall have the same powers and jurisdiction as other courts in the Federal Judicial System.

Sec 307. All final judgments or decrees of the highest court or courts of the Commonwealth in cases and controversies arising under the Constitution, treaties, and laws of the United States, not subject to further review in such courts, may be reviewed by the United States Court of Appeals for the Ninth Circuit by writ of certiorari in accordance with such rules as that Court may prescribe and shall be subject to such further review in the Supreme Court of the United States as is provided in title 28 U.S.C.

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Sec 308. The laws of the United States relating to removal of causes, appeals and other matters and proceedings as between the courts of the United States and the courts of the several states shall govern in such matters and proceedings between the courts of the United States and the courts of the Commonwealth of the Mariana Islands.

Article IV - Financial Provisions

Sec. 401. In furtherance of General Principles 6 and 7 looking toward higher standards of living for the people of the Future Commonwealth while moving towards economic self sufficiency, the parties to this agreement have agreed to the financial program outlined in the following sections.

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Sec. 402. Effective on the first day of January following the termination of the Trusteeship Agreement, the income tax laws enforced in the U.S. and those which may hereafter be enacted, should be held likewise in force in the Commonwealth. The Commonwealth, at its option, may augment such taxes by the institution of Commonwealth income taxes as it deems necessary and advisable in order to insure an adequate level of government service to the people of the Commonwealth and assure equitable distribution amongst the people of the costs of government.

Sec. 403. Effective on the first day of July following the termination of the Trusteeship Agreement, all Federal income taxes collected by the U.S. Government from residents of the Commonwealth; all customs duties levied on imports into the Commonwealth from the U.S. or from other than U.S. sources; all imports and excise taxes collected under revenue laws of the U.S. on articles produced in the Commonwealth, whether consumed in the Commonwealth or transported to the U.S., its territories or possessions; any other taxes collected by the Commonwealth from the inhabitants of the Commonwealth; and quarantines, passports, immigration and naturalization fees collected in the Commonwealth -- all these revenues shall be deposited with or returned to the Commonwealth to be expended directly by the Commonwealth for the benefit of the people of the Commonwealth as the Commonwealth Government may, by law, prescribe.

Sec. 404. Recognizing the inevitability of an extended period of transition before achieving economic self sufficiency at a relatively high standard of living, the U.S. Government agrees to augment the funds made available to the future Commonwealth under section 403 for a period of 15 years on a descending scale by appropriations specifically earmarked for budgetary support. A combination of income derived by the Commonwealth from Federal taxes retained by the Commonwealth as outlined in sections 403, and appropriated support funds provided for by this section shall not exceed 6 million dollars for each of the first five full fiscal years after the establishment of the Commonwealth. Starting with the sixth fiscal year the level of appropriated funds will be reduced in phases so that at the end of the 15th fiscal year after the establishment of the Commonwealth, there will no longer be any appropriations for budgetary support.

It is agreed that the economic development of the Commonwealth made possible by the financial support outlined in the next section of this report should provide an economic base sufficiently large to generate enough budget revenues at the end of the 15th year to meet the requirements of the Commonwealth.

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Sec. 405. In order to assure adequate local financing, during the economic transition period, for the economic development of the Commonwealth, the U.S. Government agrees to provide 4 million dollars each year for 10 years in funds appropriated for purposes of financing private and public investments in productive enterprises and economic and social infrastructure projects. In order to provide incentives for the use of such funds in economically feasible projects in both private and public sectors, 2 million dollars of the 4 million dollars annually provided will be on a loan basis. The Commonwealth agrees to repay these funds to the U.S. Government with interest over a 30 year period.

Sec. 406. The Commonwealth agrees to increase the availability of local investment capital by adding to the funds made available under section 405 for economic development purposes. Such additions would be derived from investing in U.S. Treasury bonds those funds received from the U.S. Government for the sale of lands to the U.S. Government for security purposes. The income from such investments would be used at the discretion of the Commonwealth for investment in economic and social development projects in the Commonwealth.

Sec. 407. It is agreed by both parties that the combination of funding outlined in sections 403, 404, 405 and 406, will permit the Commonwealth to maintain an adequate level of government services, and financing for a substantial investment program. Such investments should lead to a level of economic growth sufficient to achieve economic self sufficiency at or before the end of 15 years.

Sec. 408. All bonds issued by the Commonwealth Government or by its authority shall be exempt, as to principle and interest, from taxation by the Government of the United States or by the Government of any State, Territory, possession, the Commonwealth of Puerto Rico, or any political subdivision thereof, or by the District of Columbia.

Sec. 409. Imports from the Commonwealth of the Northern Marianas into the customs territory of the United States shall be subject to the same treatment as those from Guam.

Sec. 410. The Government of the Commonwealth of the Northern Marianas shall submit to the President of the United States or his appointed representative an annual report on the administration of the funds transferred to the Government of the Commonwealth of the Northern Marianas pursuant to the provisions of this chapter. Such reports shall be

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transmitted by the President to the Congress of the United States.

Sec. 411. Minimum Wage.

Sec. 412. Currency Laws.

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Article V - - Public Property of the Commonwealth and
Property Acquired by the United States

Sec 501. Upon termination of the Trusteeship Agreement the title to all real and personal property in the Marianas District owned by the Government of the Trust Territory of the Pacific Islands, and all interest in such property including rights of use and including all right, title, or interest of the Government of the Trust Territory of the Pacific Islands in tidelands, submerged lands, or filled lands in or adjacent to the Mariana Islands held by the Government of the Trust Territory of the Pacific Islands, shall be transferred to the Government of the Commonwealth of the Marianas. The term "tidelands, submerged lands, or filled lands" shall have the meaning ascribed to it in Section 1(a)

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of Public Law 88-183 (77 Stat. 338). This subsection shall not apply to any interest in lands, which interest by local or customary laws or rights is held in private or communal ownership.

Sec 502. (a) All property and interests in property in the Commonwealth to be held by the United States not directly related to the defense responsibilities of the United States shall be acquired in the following manner: During the three-year period referred to in subsection 502(b), nothing herein shall impair the existing agreements between the Trust Territory Government and the United States Government or any agency or instrumentality thereof insofar as they relate to land use and retention, and the Commonwealth Government takes all such land as set forth in Section 501 subject to such agreements; provided, however, that such retention and use will at all times be consistent with the public purposes of the United States.

Sec 502. (b)(1). Within three years from the termination of the Trusteeship Agreement, the retention and use rights of the United States Government covered by subsection (b) shall terminate, unless, within that time the United States proceeds to acquire, in accordance with subsection (d) or (e) hereof whatever rights in such lands may be considered necessary for the public purposes of the United States.

(2). In any such acquisition, the amount to be paid for the property, or interest therein, shall be the current fair market value of the interest acquired, exclusive of any improvements made by the United States or its assigns, and less any amount or amounts previously paid, gratuitously or otherwise, therefore.

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Sec 502. (c). The United States Government, its departments and agencies, are hereby authorized to, and may acquire for public purposes in the Commonwealth any property or any interest in property, including any temporary use, in accordance with this subsection and subsection (e). Such property, including that owned or controlled by private parties or the Commonwealth Government, may be acquired under this subsection by purchase, lease, exchange, gift, or otherwise under such terms and conditions as may be negotiated by the parties, subject to the limitations in Section _____ of this Article.

Sec 502. (d). In the event the United States is unable to acquire property or an interest in property by negotiation in accordance with subsection (d), then it may acquire property or an interest therein in accordance with its Constitutional authority and presently established and future Federal law and procedures with respect to the acquisition of real property or an interest in real property.

Sec 502. (e). In the event an interest in private or communally-owned property is acquired pursuant to subsection (e) and the owner or owners disagree with the fair market value and wish a further review, the United States shall proceed immediately in accordance with established Federal law and procedures to have the fair market value determined with the right of appeal under said Federal law and procedures to the United States Court of Appeals for the Ninth Circuit.

Sec 503. All agreements respecting property or interests in property in the Commonwealth held by the United States as of _____ attendant to its defense responsibilities shall continue in force and effect under the terms of the respective agreements notwithstanding the provisions of this agreement. The Commonwealth Government shall secure the right

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and uses of such lands and waters as is or may be required by the United States in the exercise of its responsibilities for defense and security of the Commonwealth or of the United States. Specifically, the Commonwealth Government shall upon the ratification of this agreement take all measures necessary to effect the transfer of title to the United States of the following areas :

(a) Tinian Island. Twenty-six thousand two hundred acres and encompassing waters immediately adjacent to the island shall be made available for the use of the United States to establish an integrated homogeneous basing area to minimize the total land area required by the United States in the Commonwealth.

(b) Saipan Island

(1) Isley Air Field. One thousand eight hundred nine and thirty-five hundredths acres shall be made available for the use of the United States, which shall at its discretion make available for the use of the Commonwealth Government such acreage as is not essential for the immediate exercise of its defense responsibilities.

(2) Tanapag Harbor. Six hundred forty and twenty-three hundredths acres and the encompassing waters immediately adjacent to the harbor shall be made available for the use of the United States, which shall at its discretion make available for the use of the Commonwealth Government such acreage as is not immediately essential for the exercise of its defense responsibilities.

(c) Farallon de Medinilla Island. Two hundred twenty-nine acres encompassing the entire island and the waters immediately adjacent thereto shall be made available for use by the United States.

Sec 504. The United States agrees to pay to the Government of the Commonwealth of the Mariana Islands the sum of \$ _____ for title to the lands and adjacent waters described in section 503 above, of this article.

Sec 505. The agreements for the lands and waters listed in section 503 shall conform to the provisions of this Instrument and such agreements shall not contain any limitations on the use of such lands and

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waters which conflict with the basic authorities and responsibilities of the United States for the defense and security of the Commonwealth and the United States under the Constitution of the United States. Such agreements will contain provisions for reversion, protections against environmental damage, resettlement of occupants wherever necessary, joint undertakings of the parties to insure a balanced social and community growth, and such other provisions that will provide for the mutual benefit and security of the parties.

Sec 506. The Governments of the United States and the Commonwealth will undertake to consult at any time requested by either of them on matters relating to defense.

Article VI - - Other Provisions

Sec 601. The United States will welcome the advice of the Commonwealth Government on international matters directly affecting the Mariana Islands.

Sec 602. The United States will support the Commonwealth Government for membership in regional or international organizations concerned with economic, cultural or comparable areas of interest which permit representation from constituent parts of a political family.

Sec 603. The laws of CCM, IDL, local municipalities, and all other executive or district orders now applicable in the Mariana Islands shall remain in force and effect until and unless repealed or amended by the Commonwealth Government.

Sec 604. The rights of the United States to acquire property as set forth in Section 104 and Article V of these Articles shall be recognized in the Constitution of the Commonwealth.

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Sec 605. No law shall be enacted under the authority of the Commonwealth imposing any tax upon property of the U.S. or property of the Commonwealth. No taxes or levies shall be imposed on goods imported into the Commonwealth from the United States or any of its territories or exported from the Commonwealth to the United States or any of its territories or transported within the territories of the United States.

Article VII - - Transitional Provisions

Sec 701. So much of the legislation of the U.S. Congress implementing these articles as relates to this agreement should become effective upon the enactment of that legislation. So much of that legislation as deals with this agreement should become effective upon the termination of the Trusteeship; provided, that the President shall have the power to make effective at an earlier date so much of the legislation relating to these articles and so much of the constitution of the Commonwealth of the Marianas as is consistent with the continuation of the trusteeship.

Sec 702. The President of the United States shall appoint a commission of seven persons, at least three of whom shall be residents of the Mariana Islands, to survey the field of Federal statutes, including federal service and assistance programs, and make recommendations to the Congress of the United States within twelve months after the implementation of these Articles by Congress as to which statutes of the United States not applicable to the Mariana Islands on such date shall be made applicable to the Commonwealth of the Mariana Islands upon the termination of the Trusteeship Agreement and which statutes shall be made inapplicable.

Article VIII - - Effective Date and Ratification Procedures

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