



17 October 1973

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MEMORANDUM FOR CAPT. EDWARD G. WHELAN  
EA&P REGION, ISA, OASD

SUBJECT: Trust Territory - Strategic Trust Agreement -  
Articles 6 and 8.

I have reviewed the memorandum dated August 13, 1971, of Mr. Stowe on the above subject and the Dorrance draft dated October 9, 1973, on Foreign Investment in Micronesia. In paraphrase, Article 6 of the Trusteeship Agreement is almost identical to Article 76(b) of United Nations Charter, calling upon the United States "to promote the economic advancement and self-sufficiency of the inhabitants" and also toward promoting their development toward self-government or independence "as may be appropriate to the particular circumstances of the Trust Territory."

Article 8 declares that the discharge of obligations under Article 76(d) of the Charter as defined by Article 83(2) of the Charter, the United States, "subject to the requirements of security, and the obligation to promote the advancement of the inhabitants," shall accord nationals "of each member of the United Nations" most favored nation treatment with respect to one another but not with respect to United States trade.

The balancing or harmonizing of United States interests addressing security with its obligations to promote the development and ultimate capacity toward self-government is brought into play by these two Articles. The policy of the United States in the past has been to exclude all other countries from carrying on trade or commerce or investing in the Islands. It has not reached certain Japanese investments undertaken sub rosa under Micronesian fronts and disguised as lines of credit. Since the United States has

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EXECUTIVE ORDER 11652. AUTOMATICALLY DECLASSIFIED  
AT TWO YEAR INTERVALS. DECLASSIFIED ON 31 Dec 1979.

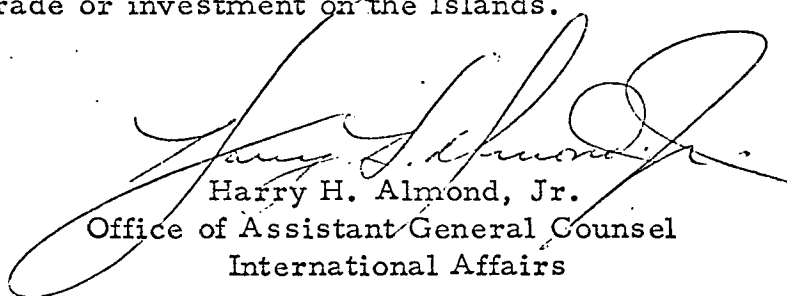
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to accommodate these two objectives, it must determine how far foreign trade should be promoted by the Micronesians in their own interests compatible with maintaining United States security interests. Except for the possible justification that over the past 30 years the Micronesians have not reached the stage where they might profitably engage in such activities, the United States policies for exclusive economic exploitation of the Islands are questionable. I believe that it will be recognized that any imposition of reasonable United States measures for security purposes are acceptable but that these should not extend toward establishing exclusive trading privileges in view of United States obligations under Article 6.

For these reasons the proposals presently before us require us to determine how far MFN treatment shall extend under the Trusteeship Agreement and, secondly, whether MFN treatment must continue to apply once the Trusteeship Agreement is terminated. I find Option 2 of the Dorrance paper acceptable with the clarified understanding that the United States may condition any trade or investment on security standards which the United States may reasonably determine for itself and that in establishing such standards the United States might reasonably determine the total amount of trade or investment by a given foreign country or its nationals or the amount for a particular sector of the economy, or exclude them from any investment or control in such vital matters as communications, public utilities, and the like. Such standards and their implementation should be formulated however after a thorough analysis not intended here.

The MFN treatment set forth in Article 8 of the Trusteeship Agreement identifies that treatment in terms of or balanced against the obligation of the United States to promote the advancement of the inhabitants. It is strongly arguable that once the Trusteeship Agreement comes to an end and once, at that time, the peoples of the Trust Territory have chosen self-government pursuant to Article 6 the obligation to continue with MFN treatment would also terminate. But this would depend upon a determination, which I reserve for later consideration, as to whether the United States has fully discharged its obligations under Article 76(d) and Article 83(2) of the United Nations Charter.

In conclusion I should note that Article 76(d) of the Charter calls for "equal treatment" concerning all social, economic, and commercial matters for all members of the United Nations with respect to the Trust Territory but that this provision was not fully implemented up to the present time under the Trusteeship Agreement nor included in Article 8. On the other hand, the Charter makes it clear that the Charter provisions including Article 7(d) would apply notwithstanding this omission from Trusteeship Agreement (Article 8). On the other hand this standard at present and assuming its survival after termination lends support to placing limits on any foreign country's trade or investment on the Islands.

  
Harry H. Almond, Jr.  
Office of Assistant General Counsel  
International Affairs

cc: Mr. W. Solf, JAG-A  
Mr. P. Barringer, FMRA, ISA  
COL W. R. Kenty, J-5  
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