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November 1, 1973

DISCUSSION PAPER

FOR

MARIANAS JOINT POLITICAL/LEGAL WORKING GROUP

SUBJECT: Applicability of United States laws to  
Marianas: Customs and Excise Taxes

In accord with the Joint Communique of June 4, 1973, and previous discussion in this Working Group, counsel for the Marianas Political Status Commission have undertaken a study of the extent to which the Marianas should have control under their new political status of the customs laws and excise taxes applicable to the sale, import and export of goods. This discussion paper summarizes our preliminary recommendations in this area and is designed to provide a basis for consideration of these issues within the Working Group and, subsequently, by the principals in the negotiations.

A. CUSTOMS LAWS

The principal question is whether the Marianas are to be part of the "customs territory of the United States," that is, whether imports to the Marianas are to be treated as imports into the United States and thus subject to the same customs taxes as like goods entering the United States, or whether the Marianas are to be free to enact their own schedules of customs taxes. Different results follow depending

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on the answer to that question. Thus, if the Marianas is part of the customs territory of the United States, trade between the Marianas and the United States will be free of any customs taxes; imports to the Marianas from countries outside the customs territory of the United States will be taxed at the rates applicable to like imports into the United States; and exports from the Marianas to foreign countries will be treated in those countries as exports from the United States. On the other hand, if the Marianas is not part of the customs territory of the United States, trade between the Marianas and the United States will not automatically be free of customs taxes, though it may be; imports to the Marianas may be taxed at the port of entry at whatever rates the Marianas government may choose; and exports from the Marianas to other countries should not automatically be treated by those countries as exports from the United States. At present the TTPI is not included within the customs territory of the United States.

1. General Conclusion. It is our general conclusion that the Marianas should not be included in the customs territory of the United States and that the Marianas government should have complete control over its own customs laws. A breakdown of the further specific conclusions with respect to customs laws follows.

2. Imports into the Marianas from the United States

should be free of customs taxes, at least at the beginning. The Marianas should, however, have the right to enact customs laws applicable alike to goods from the United States and elsewhere. If the United States seeks assurances that the Marianas will not discriminate against United States goods, the Marianas should grant such assurances.

3. Imports into the Marianas from Countries

Outside the Customs Territory of the United States should be free of customs taxes, at least at the beginning. The Marianas should, however, have the right to enact customs laws applicable alike to goods from the United States and elsewhere.

4. Exports from the Marianas to the United States

should enter the United States free of customs taxes. The United States should be asked to agree to this principle; however the United States may wish to protect itself against unrestricted entry of purely foreign products that received only minimal processing in the Marianas on their way to the United States. In the past it has secured such protection by means of a percentage limitation on foreign material; the Marianas should seek a higher percentage limitation than that presently in effect for exports to the United States from its other insular possessions.

5. Exports from the Marianas to Countries Outside

the Customs Territory of the United States will be subject to such import taxes as may be negotiated with those countries. The United States should be asked to agree in principle to treatment of the Marianas as a "developing country"

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for purposes of the United Nations Conference on Trade and Development ("UNCTAD") and to agree to negotiate such status on behalf of the Marianas.

6. Export Duties. The Marianas government should be free to impose export taxes on any exports from the Marianas. The status agreement should expressly exempt the Marianas from the application of the constitutional prohibition against such taxes contained in U.S. Constitution, Article 1, Section 9, Clause 5, if there is any doubt whether that prohibition would otherwise apply.

B. EXCISE TAXES; REVENUE ON MARIANAS GOODS TO BE RETURNED TO THE MARIANAS.

The issues with respect to excise taxes are much less complex than those with respect to customs. With respect to internal excise taxes, no reason whatever appears why those taxes should not remain within the exclusive control of the Marianas government.

It is likely that goods entering the United States from the Marianas will be subject to the same excise taxes as like goods manufactured or sold in the United States. Any revenues so collected in the United States should be returned to ("covered into") the treasury of the Marianas.

It is also possible that, by virtue of a percentage limitation on foreign materials, certain goods entering the United States from the Marianas may be subject to some or all of the customs taxes ordinarily imposed on foreign goods.

In that event any revenues so collected should likewise be covered into the Marianas treasury. A summary of these conclusions follows:

1. Internal Excise Taxes, if any, imposed on the manufacture or sale of goods in the Marianas should remain within the exclusive control of the Marianas government.

2. Customs or Excise Taxes Collected in the United States on goods imported from the Marianas should be "covered into" the Marianas treasury.