November 1, 1973

MEMORANDUM FOR THE MARIANAS POLITICAL STATUS COMMISSION FILE

Subject: Meeting of the Working Committee on Political Status/Legal Issues, November 1, 1973

The Working Committee on Political Status/Legal Issues held a meeting today from 10:00 a.m. until 1:30 p.m. in the offices of Wilmer, Cutler & Pickering. Representing the United States were the following: C. Brewster Chapman, Sol Silver, Herman Marcuse, Adrian DeGraffenried and Tom Johnson. Representing the Marianas Political Status Commission were the following: Howard Willens, Jay Lapin, F. David Lake, David Hanes and Michael Helfer. The following is a summary of the discussions had at the meeting.

1. Citizenship

Mr. Lapin presented a proposal on United States citizenship and nationality in the Marianas (Tab A), and a memorandum explaining the proposal (Tab B). The following are the most significant points discussed with respect to the various portions of the proposal:

Section (a): Mr. Marcuse asked whether nationals of the United States under existing law should also be excluded on the ground that citizenship should not be conferred on any person who has a relationship to the United States under other laws. Mr. Willens replied that this suggestion sounded reasonable to him and would be explored. Mr. Marcuse also asked whether it was necessary to include the phrase "their children" in this section. Mr. Lapin explained that the phrase was intended to apply to minors, and to prevent persons born of Marianas' domiciliaries outside of the Marianas who otherwise meet the qualifications laid out, from being excluded. It was agreed that the phrase "their minor children" should be used instead.

Subsection (a)(2): Mr. Marcuse suggested that a specific cut-off date such as January 1, 1974 be substituted in the place of "for at least five years immediately prior" to "the date of the termination of the Trusteeship." This would avoid persons moving into the Marianas from other islands simply to gain American citizenship. There was no disagreement.

Subsection (a)(3): It was agreed the same cut-off date should be used in this section as in section (a)(2). Mr. Marcuse also asked why the residency clause was necessary. Mr. Lapin explained that legal, permanent residency was included to avoid reaching persons admitted on a temporary visitor or employment permit or in the TTPI illegally. Mr. Marcuse agreed that this was a sensible goal. Hen then raised the question whether it was desirable to provide for the blanket naturalization of aliens. Mr. Chapman suggested that to be included under this section a person ought to have no allegiance to another country; if the person had such an allegiance he would have to be admitted to citizenship in the same way as other aliens from his country. Mr. Marcuse added that some aliens do not want to become citizens, and that it was preferable to make them take affirmative steps to renounce their other citizenship and accept American citizenship. The issue was not resolved.

Section (b): Mr. Chapman said that there was no problem in giving persons the option to become a national rather than a citizen. Mr. Marcuse said that the proviso was unnecessary because the situation was covered by the Nationality Act. Mr. Lapin replied that the intent was simply to make clear the consequences of preserving or acquiring foreign nationality.

Subsection (c)(2): Mr. Chapman suggested that minor children should be bound by their parents' decision on citizenship. Mr. Lapin replied that it might be desirable to maintain the option of nationality instead of citizenship, and that if Mr. Chapman's suggestion were taken, problems could arise for children whose parents had made different choices. Mr. Marcuse suggested only in that situation should the child be given a choice.

Several general points were made during the discussion of the citizenship proposal. It was agreed that Mr. Lapin would attempt to include a definition of "domicile" in the next draft of the provision. It was also agreed that it would be necessary to prepare a register in the Marianas after the termination of the Trusteeship so that records of citizens and nationals could be maintained. In the course of the discussion Mr. Chapman suggested that with respect to restrictions on land alienation the qualifying factor should be made residency, not ancentry, in order to avoid constitutional problems. Mr. Lapin questioned whether a residency requirement alone would meet the goals of the Commission.

It was agreed that Mr. Lapin would attempt to draft a citizenship proposal reflecting today's discussion together with an explanation of the issues involved for consideration at the next round of negotiations.

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2. Income Tax Laws

Mr. Lake presented and explained the memorandum which had been prepared on the applicability of United States income tax law to the Marianas (Tab C). Mr. Chapman summarized the basic points of the proposal as follows: (1) the U.S. income tax law would not apply to Marianas' citizens unless they have U.S. source income; (2) U.S. income tax derived from the Marianas would be covered into the Marianas treasury; and (3) the Marianas would have authority to develop their own tax system. Mr. Chapman said he agreed with these broad principles. He also agreed that serious problems had been encountered in other territories when the Congress had imposed the equivalent of the Internal Revenue Code on those territories as a local tax code. Mr. Chapman did not specifically address the details of the memorandum.

Mr. Marcuse asked why Paragraph A-1 of the proposal only applied to those who become U.S. citizens by virtue of their birth, citizenship or residency in the Marianas. Mr. Lake explained that otherwise a tax loophole could be created in the Marianas with unintended benefits extended to Stateside U.S. citizens. Mr. Silver asked whether the views of the Office of Management and Budget had been obtained with respect to proposal to return U.S. income tax revenues to the Marianas. He stated that OMB was opposed to the automatic covering of tax revenues into the Treasury of Guam. Mr. Chapman stated that OMB was simply interested in increasing revenues, and that the historical reason for returning tax revenues to the territories was to avoid the expensive annual budget cycle process, and to spare Congress the chore of reviewing the details of the programs of every territory. He added that the concept of returning tax revenues to the Marianas was included in the earlier Commonwealth proposal, which also foresaw a decreasing level of federal assistance as the Marianas reached economic self-sufficiency.

Mr. Chapman agreed to present further comments on the proposal after the United States had an opportunity to review it, so it could be considered at the next round of negotiations.

3. Customs and Excise Tax Laws

Mr. Hanes presented and explained the memorandum which had been prepared on the applicability of United States customs and excise tax laws to the Marianas (Tab D). Mr. Chapman raised the following significant points. First, he thought there were policy problems with permitting the Marianas to tax goods going from the Marianas to the United States and its territories, or coming from

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the United States and its territories to the Marianas. Second, he thought that it would be difficult to persuade Congress to agree to increase from 50% to a higher percentage that portion of the value of any product which may be attributable to a foreign country before the product is excluded from the customs benefit available to products produced in the Marianas and transferred to the United States.

On a more general matter, Mr. Chapman stated that it should be made clear to the Commission that the Marianas will not be able to tax American government activity in the Marianas, particularly the proposed military base. Mr. Lapin asked what the American position on this was and Mr. DeGraffenried replied that the Marianas would have power to tax federal government activity to the same extent that a State can do so. Mr. Lapin asked that we be informed if there is any change in that position.

Mr. Willens asked Mr. Chapman to present the United States' views on this proposal just as he had agreed to do on the income tax proposal, and Mr. Chapman agreed.

4. Review of Laws

Mr. Willens suggested that it was appropriate to exchange views on how the working group should proceed in its overall review of federal laws. Mr. Lapin stated that studies have been undertaken on behalf of the Commission in the six areas of law identified as potentially important during the last negotiations. With respect to other areas of law, little progress had been made. The computer printout which the United States had provided was incomplete and difficult to work with. He proposed that the working group attempt to identify laws outside the six areas already under review which may be controversial or which may warrant special attention as part of the status agreement; the burden of finding these laws, he said, was properly on the Commission. But, Mr. Lapin suggested, the United States was most competent to identify other laws which would have to be made applicable in the Marianas before or at the time the Trusteeship terminates. Mr. Chapman stated that he preferred a simpler approach which he has suggested before: a Commission to review the laws and prepare an Omnibus Bill. With respect to laws not already applicable to the TTPI, Mr. Chapman suggested that the regulatory laws were most important and ought to be reviewed first; this he said would limit the scope of the inquiry substantially. Mr. Lapin repeated that the United States was in the best position to tell the Commission which laws it proposed to have apply.

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Mr. Chapman suggested that instead of reviewing every federal law, it should be assumed that every law (except those dealt with in the status agreement) will apply in the Marianas after termination if it is a law which is within the power of Congress to pass "with respect to the several States." Mr. Lapin pointed out that there were two separate issued involved: one, the authority of the United States to pass laws applicable in the Marianas, a question which would be dealt within the status agreement; and consistent with the powers granted to the United States, the existing laws which would actually apply at the time the Trusteeship was terminated. After further discussion of this distinction Mr. Chapman pointed out that the questions of the apliciability of specific laws in the Marianas was beyond the scope of this working group, and said that he did not have the staff or expertise to identify areas of potential controversy. He also stated that it would be pointless to attempt to draft an Omnibus Bill before the status agreement was concluded. Mr. Johnson and Mr. DeGraffenried suggested that to draft an Omnibus Bill would delay the conclusion of the status agreement at least one or two years. After further discussion Mr. Lapin suggested that one possible formula would be the following: as of the termination of the Trusteeship, all laws which apply in Guam would apply in the Marianas to the extent that they could apply if the Marianas were a state. It was agreed that a formulation like this might be workable. Mr. Lapin agreed to attempt to develop this formulation in more detail.

Michael S. Helfer

cc: Mr. H. Willens
Mr. J. Lapin
Mr. D. Hanes
Mr. F. D. Lake
Mr. B. Carter
Mr. J. Leonard

01- 05159

October 16, 1973
Marianas Counter-draft

UNITED STATES CITIZENSHIP AND NATIONALITY IN THE MARIANAS

(a) The following persons, and their children born before the date of termination of the Trusteeship, who are not citizens of the United States under any other provision of law, and who have taken no affirmative steps to preserve or acquire foreign nationality, are declared to be citizens of the United States;

(1) All persons born in the Marianas who are citizens of the Trust Territory of the Pacific Islands on the date of termination of the Trusteeship, and who on that date reside or are legally domiciled in the Marianas or in the United States, the Virgin Islands, Guam, the Commonwealth of Puerto Rico or any other possession or territory of the United States;

(2) All persons who are citizens of the Trust Territory of the Pacific Islands on the date of termination of the Trusteeship, and who have been legally domiciled continuously in the Marianas for at least five years immediately prior to that date; and

(3) All persons who were lawfully residing as permanent residents of the Trust Territory of the Pacific Islands at least five years prior to the date of termination of the Trusteeship, and who have been legally domiciled

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continuously in the Marianas for at least five years immediately prior to the date of termination of the Trusteeship.

(b) Any person who becomes a citizen of the United States solely by virtue of the provisions of paragraphs (1) through (3) of subsection (a) may within six months after the date of termination of the Trusteeship, or within six months after reaching the age of eighteen years, whichever date is the later one, make a declaration under oath before a court in the district wherein he resides in the form as follows:

> "I . . . being duly sworn, hereby declare my intention to become a national but not a citizen of the United States."

Any person who makes this declaration shall be a national but not a citizen of the United States; provided further, that any person hereinbefore described who, within the period allowed for making the aforesaid declaration, shall have taken any affirmative steps to preserve or acquire foreign nationality, shall not be a citizen or national of the United States.

(c)(1) All persons born in the Marianas on or after the date of termination of the Trusteeship, and subject to the jurisdiction of the United States, shall be citizens of the United States.

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(2) Any person who becomes a citizen of the United States at birth after the date of termination of the Trusteeship, and who is born of parents either [both?] of whom had a right to become a national but not a citizen of the United States in the manner provided in subsection (b), shall also have the right to become a national but not a citizen of the United States by making a declaration, within six months after reaching the age of eighteen years, in the manner and form provided in subsection (b).

(d) Notwithstanding the foregoing, persons residing in the Marianas after the date of termination of the Trusteeship shall have a right to become naturalized citizens of the United States to the same extent as persons similarly situated but residing in a State; for purposes of satisfying any residence or physical presence requirement under the nationality and naturalization laws of the United States, residence or physical presence, respectively in the Marianas after the date of termination of the Trusteeship shall qualify to the same extent as residence or physical presence, respectively, in a State; the courts of general jurisdiction established under the Constitution of the Marianas shall have jurisdiction to naturalize persons as citizens of the United States in accordance with applicable law.

01- 05162

October 18, 1973

MEMORANDUM FOR THE JOINT WORKING GROUP OF LAWYERS,
U.S. - MARIANAS STATUS NEGOTIATIONS

Subject: Citizenship Proposal for the Marianas

We agreed at our last meeting to study the U.S. draft citizenship proposal (dated 9/5/73) -- with a view toward preparing a critique of that draft. We have found it convenient to express our comments in the form of a counter-draft which is attached to this memorandum and which is explained on a section-by-section basis below.

At the outset we should state our belief that the objective of our principals in delegating this matter to the working group level has been realized: the U.S. proposal reflects an understanding of and concurrence in the basic components of the tentative position of the Marianas Commission. Specifically, the Commission proposed that U.S. citizenship be readily available to Marianas residents and that there be an alternative provided (other than the status of "alien") for those persons who did not wish to become United States citizens.

As the U.S. representatives in the Joint Working Group have recognized, there are two basic approaches which satisfy these requirements. One approach would automatically make a designated class of persons U.S. nationals, with the

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opportunity of individuals to opt for U.S. citizenship. The other approach, and the one adopted for discussion purposes in both the U.S. draft and our counter-draft, would make the class of persons U.S. citizens, with individuals having an option to become U.S. nationals. We believe that the Joint Working Group is in agreement that there are no technical objections to either approach and that the choice between them is a matter for decision by our principals.

In the counter-draft, as described below, the principal differences from the U.S. proposal are not, we believe, matters of substantive disagreement with the U.S. position. Rather, beside minor matters of draftsmanship, our counter-draft attempts to set forth additional options for extending citizenship to persons other than those born in the Marianas. Some of these options were discussed at our last meeting, and we suggest them only tentatively and for purposes of discussion. Obviously additional fact-finding (as to the consequences of the various additional categories of persons to be made citizens) will be required before any final decisions can be made on this subject. Also, we recognize that the ultimate decision as to what persons should be offered U.S. citizenship is a decision to be made by our principals.

Other minor differences from the U.S. proposal are set forth in our counter-draft. As more specifically described below, these changes were designed to more precisely achieve the objectives that we believe were implicit in the U.S. proposal.

It should be understood that our counter-draft is submitted tentatively and for discussion purposes only. We have not reviewed it with our client. Indeed, although the preparation of draft language with respect to citizenship and nationality in the Marianas has been a most useful and productive exercise, the final "status agreement language" will undoubtedly materially depart from either of our proposals since it will have to reflect the many substantive decisions which have yet to be made.

Section-by-Section Analysis of Marianas Counter-Draft

Subsection (a). Subsection (a) should be compared with "(a)" of the U.S. draft. It describes the classes of persons to whom citizenship will automatically be extended upon termination of the Trusteeship. The lead-in to the subsection is a form used in collective naturalization acts for other territories. It is more comprehensive than the U.S. proposal in that it picks up children of the persons who qualify for U.S. citizenship. Since we have a number of subclasses of recipients of citizenship, the use of this lead-in provides an economical way to state the generic conditions for citizenship.

Subsection (a)(1). This class of persons is almost identical with the class described in the U.S. proposal, with two exceptions. First, "domicile" as well as "residence"

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will qualify (this picks up students and others temporarily overseas on the date of termination of the Trusteeship). Second, residence or domicile in the U.S. also qualifies. The U.S. proposal, probably through oversight, is limited to residence in the territories. We have introduced the concept of "domicile" into this and other subsections. We believe it is an essential concept because of the fact that many persons in the Trust Territory have multiple residences. This concept is not new to Micronesia: the present TT Code provisions for citizenship uses the term "domicile." The concept of "domicile" also has a fairly well-established meaning in U.S. law. To the extent this term may raise complications, we believe they could be solved through appropriate qualification, or through substitution of other language with equivalent meaning.

Subsection (a)(2). This is the first of the two subsections setting forth options for extending U.S. citizenship to additional classes of persons -- some of which we discussed at our last meeting. As noted above, there is some fact-finding required to determine the consequences of (and need for) these options. In addition, such options must be reviewed by the Marianas Commission, even before they become a subject of negotiation between our principals. Subsection (a)(2) describes TT citizens, not born in the Marianas, who had clearly cast their lot with the Marianas long before termination of the Trusteeship.

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The five-year domicile requirement could be made longer or shorter. By relying on domicile, rather than residence, this provision would exclude TT government officials who have kept their homes and continued to vote in other Districts of Micronesia.

Subsection (a)(3). Subsection (a)(3) is an attempt to deal with a problem which may be significant for many permanent residents in the Marianas. The TT Code naturalization provisions are much narrower than the equivalent provisions for the U.S. They make it impossible for certain persons, not born in the TT, to become TT citizens. We are sensitive to the problem of "back-door" citizenship. However, we think the principals should have an opportunity to consider whether persons who have clearly cast their lot with the Marianas (and many of whom are long-time Marianas residents and/or have married TT citizens) should be denied the opportunity for U.S. citizenship merely because the TT Code prevented their naturalization as TT citizens. In this connection it is interesting to note that the collective naturalization acts for other territories typically have extended to all "inhabitants" of the territory -- and have not been limited to "citizens" of the territory under its previous administration. We would welcome any suggestions the U.S. might have as to how better to accomplish the objective of this subsection.

Subsection (b). This subsection basically parallels "(c)" of the U.S. draft -- with some minor elaboration.

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<u>Subsection (c)(1)</u>. This provision is identical to "(b)" of the U.S. draft.

<u>Subsection (c)(2)</u>. This provision is designed to continue the option of becoming U.S. nationals for the descendants of the class of Marianas residents to be collectively naturalized. The U.S. draft intended to accomplish this result but did so imprecisely. For example, descendants of the collectively naturalized class who happened to be born outside the Marianas are denied the right to become U.S. nationals; at the same time, any person who happens to be born in the Marianas, regardless of his ancestry, would automatically obtain the right to become a U.S. national.

<u>Subsection (d)</u>. This provision is largely self-explanatory. In part it attempts to duplicate "(d)" of the U.S. draft which contained conforming amendments to existing U.S. law. We had some question as to the effect of the U.S. draft on this score since the conforming amendments were somewhat inconsistent. Subsection (d) of the counter-draft assures that the opportunity for persons to become naturalized U.S. citizens in the Marianas is equal to that of persons residing in a State. Subsection (d) also makes clear that any "physical presence" or "residence" requirement that qualifies the right of U.S. citizenship for children born overseas (of parents who are

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U.S. citizens) shall be satisfied by residence or physical presence in the Marianas as if it were a State. Finally, subsection (d) proposes that the courts of general jurisdiction organized under the Marianas constitution would have jurisdiction to naturalize persons as citizens of the United States -- as if they were "State courts" in the United States. This proposal in no way presupposes the absence or presence of naturalization jurisdiction in any federal court whose process would run to the Marianas. In our view, the conforming amendments suggested in "(d)" of the U.S. draft would result in local Marianas courts having such jurisdiction in any event.

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November 1, 1973

DISCUSSION PAPER

FOR

MARIANAS JOINT POLITICAL/LEGAL WORKING GROUP

SUBJECT: Applicability of United States laws to the Marianas: Income Tax Laws

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 tax relationship between the Marianas and the United States that would be set forth in the formal Status Agreement. 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. Applicability of Internal Revenue Code

1. U.S. taxation of Marianas citizens. The status agreement should provide that a person who is not a resident of the United States and who becomes a United States citizen or United States national solely by reason of birth, citizenship or residence in the Marianas shall only be subject to income tax on U.S. source income, but not on any foreign source income (including income earned in the Marianas). In effect, this would continue the present treatment

of Marianas citizens as nonresident aliens for U.S. income tax purposes notwithstanding the fact that they become U.S. citizens or U.S. nationals as a result of an act of the U.S. Congress. The existing estate and gift tax treatment of Marianas citizens should also be continued by treating them as nonresident aliens. As a result of these recommendations, citizens or nationals of the Marianas who are resident in the Marianas and only have income from Marianas sources would not be subject to U.S. income tax; would not be subject to U.S. gift tax except to the extent that a gift is made of tangible property located in the United States; and would not be subject to U.S. estate tax except for property situated or deemed to be situated in the United States.

2. U.S. tax incentive for doing business in Marianas. As an incentive to attract U.S. business to the Marianas, the status agreement should provide that a United States citizen or United States corporation shall not be taxed on any foreign source income (including income earned in the Marianas) if the citizen or corporation meets the requirements set forth in section 931 of the Internal Revenue Code. Section 931 generally exempts income earned outside the United States from U.S. tax if 80 percent of the gross income for a designated period is derived from sources within a U.S. possession and 50 percent or more of such income is derived from the active conduct of a trade or

business within a possession. The Marianas would be treated as a possession for purposes of applying this section.*/

3. Treatment of Marianas as possession for U.S. income tax purposes. The status agreement should provide that the Marianas shall be treated as a possession for the numerous additional provisions of the U.S. income tax law where such treatment is beneficial. In a few relatively minor instances, a shift from foreign country to possession status may result in the loss of existing tax benefits or cause potentially adverse consequences for certain taxpayers. However, consistency requires the treatment of the Marianas as a possession for purposes of these provisions as well as for the provisions that are beneficial.

4. Applicability of social security taxes. Further consideration must be given to whether the Marianas should request coverage under the U.S. social security system which is funded by a payroll tax on employers and employees and by a tax on the earnings of the self-employed. The social security provisions include the Federal Insurance Contributions Act ("FICA") and the Federal Unemployment Compensation Act ("FUTA"). FICA is applicable in Guam, the

*/ A commonwealth may be treated as a possession for federal tax purposes, as in the case of Puerto Rico.

Virgin Islands, Puerto Rico, and American Samoa, but FUTA is only applicable in Puerto Rico.

5. Other provisions. Technical adjustments may need to be made in other provisions of the Internal Revenue Code with respect to the Marianas so that the system works harmoniously. The Marianas should also seek to preserve one existing U.S. tax advantage that would be lost upon the dissolution of the Trust Territory of the Pacific Islands. Section 872(b)(4) provides that income derived by a nonresident alien individual from a series E or H U.S. savings bond is exempt from tax if such individual acquired the bond while a resident of the Trust Territory of the Pacific Islands. Unless this provision is amended to apply to the Mariana Islands, savings bond income would be taxable to a Marianas citizen as U.S. source income.

B. Tax Sharing

The status agreement should establish the principle that U.S. income taxes derived from the Marianas should be paid over to the Marianas by the United States. This principle can best be implemented by requiring that all income tax withheld by the United States*/ from wages earned in the Marianas be covered into the Marianas treasury, for expenditure as the Marianas legislature shall provide. Amounts

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*/ Pursuant to Chapter 24, Subtitle C of the Internal Revenue Title.

paid over to the Marianas would include U.S. income tax withheld from both civilian and military employees of the United States as well as from nongovernment employees.

C. Marianas Tax System

1. Authority over taxes. The status agreement should provide that the Marianas legislature shall have the exclusive power to enact, amend or repeal its internal tax laws, including any territorial income tax it might choose to adopt.

2. Development of new tax system. As a second phase of its transition to commonwealth status, the Marianas should initiate the study and drafting of a tax system to be enacted by the Marianas legislature. The study should focus on the desirability of continuing the present Trust Territory taxes and should assess the need for a progressive income tax, gift tax, inheritance or estate tax, and tax incentives or direct subsidies to promote economic growth. It is our initial recommendation that the Marianas should not adopt the mirror image of the Internal Revenue Code as its own territorial income tax; a simpler income tax more suitable for the Marianas can be devised.

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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.

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