

Marianas - Lawyers Working Group

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MEMORANDUM OF CONVERSATION

Subject: U.S./Marianas Status Commission Legal Group meeting 8 NOV 73

Participants:

U.S.

Brewster Chapman  
Herman Marcuse  
Tom Johnson  
Adrian deGraffenried  
Solomon Silver

MARIANAS

Howard Willens  
Jay Lappin  
three other staff attorneys

The meeting opened by Howard Willens distributing the MSC position papers on citizenship, applicable U.S. income tax and customs and excise tax statutes. He noted that these drafts would again be submitted to the U.S. delegation at Saipan in December.

Citizenship. The MSC generally adopted the U.S. approach of making all Marianas residents U.S. citizens with the option of taking affirmative steps to become a U.S. National. The discussion focused primarily on how to regulate the application of the law so as to prevent an "open door" for U.S. citizenship to aliens and other foreign nationals residing in the Marianas, how to insure that Marianas citizens that are living abroad at the time of the effective date of the agreement will have the same option as their relatives in the Marianas, and whether minor children should be required to have the same status as their parents after the children become adults. The majority of these issues were resolved by amendment to the draft language submitted by the MSC attorneys, who also agreed to review and redraft other sections of the citizenship proposals to conform to our discussions. The U.S. noted that the citizenship approach would still require review and final approval by the U.S. Immigration Service experts. Nevertheless, it was felt that the principals should want to discuss whether or not to make the provisions specifically address U.S. statutes to be amended or whether to delete them in the main draft version.

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U.S. Income Tax. Willens noted that they had consulted with various Federal agencies dealing with taxation in the U.S. territories and that they had worked especially closely with the U.S. Treasury. After hearing the U.S. agencies review the various problems now existing with U.S. statutes in the territories and their recommendation on how the Marianas should approach this issue, the MSC then undertook to write their position paper that incorporated these suggestions. Thus, it does have the tentative approval of the International Tax Counsel, U.S. Treasury and the Department of Justice, with the proviso that there was no taxation of (1) U.S. instrumentality and (2) soldiers on orders in the Marianas.

In essence, the MSC desires to follow Puerto Rico and America Samoa who are permitted to treat their citizens as "non-resident aliens" for U.S. income tax purposes so as to exclude them from U.S. federal income tax laws with the result that ~~however~~ income originating from the Marianas would not be subject to U.S. income taxation, provide, however, that income earned by Marianas citizens from U.S. sources would be subject to U.S. income tax law. Also, U.S. estate and gift taxes would apply to the Marianas but only to property by Marianas held in the U.S. This approach would permit the Marianas to tax their own citizens and retain all the income. The MSC rationale was that they desired to encourage business investment in the Marianas and to have the Marianas treated as a U.S. "possession" for purposes of income tax status. The MSC desired to have their own special security system on the grounds that under present U.S. approaches almost \$80 per month is made available verses a \$10 per month average in the Marianas; however, the MSC attorneys agreed that this would require further study. On tax sharing, the MSC desired to follow the Virgin Islands approach

but unlike the Virgin Islands which has adopted U.S. status "in toto", the Marianas would share in the U.S. taxation of the U.S. military personnel and U.S. citizens in the Marianas. The MSC did not wish to follow Guam, which has enacted local tax statutes that "mirror" the U.S. tax laws so as to permit a "territorial tax" to be applied to U.S. residents in Guam. The MSC did note that the U.S. treasury did not favor the "mirror image" approach now on Guam. The MSC also noted that U.S. tax laws were too complicated and that the MSC was on record for "self-sufficiency".

Mr. Chapman noted that this did not appear to present problems. The U.S. could tax the Marianas residents only on income from U.S. sources and the MSC could tax all other income with privisos. The U.S. could also collect the income due the United States Government and then return it to the Marianas.

Custom and Excise Taxes. The MSC noted that at present, territories cannot raise their tariffs higher than the authority granted by the U.S. Congress. The U.S. lawyers noted that goods from the territories come into the U.S. under the sovereignty of the U.S., that therefore they cannot come into the U.S. at a level higher than the GATT provisions and that they cannot come into territories lower than the U.S. level that would constitute discrimination. Further, there could be no export duties on goods in trade between U.S. territories, which is intended to prevent trade discrimination. Thus, under the present U.S. approach, U.S. sovereignty would be preserved in both foreign affairs by preserving Headnote IIIa treatment on goods from foreign countries and over the U.S. territories by maintaining non-discriminatory levels of taxation on goods in trade between the territories and the U.S. The U.S. noted its desire to have the Marianas as part of the U.S. economy but also wanted to prevent a situation where one territory could "use" other territories such as another's lower labor wage standards to promote their own economy (i.e., Guam using Saipan cheap

labor to assemble watches for export to the U.S. that would result in what is called "sweat labor").

The MSC noted that the Marianas economy is an "insular economy" that is largely dependant on imports. They therefore desired to continue the present TTPI system which is outside the U.S. customs territory. They noted that Guam is given Headnote IIIa treatment and that Guam is also a duty-free port. Thus, the Marianas could be given continued authority over export taxes (but not on U.S. goods) that would permit taxes on goods to any and all U.S. territories. The MSC would therefore like to follow Guam and Puerto Rico: Guam has IIIa treatment which was designed to give equal treatment on goods of like industries between territories and countries and Puerto Rico which has a higher percentage limitation on imported foreign equipment and its own customs and excise taxes. The MSC rationale was that they wanted treatment like a developing country as regards trade with foreign countries, and they wanted the U.S. to negotiate specific treaties with foreign countries to get the Marianas treated as a developing country.

On excise taxes, the MSC noted that the TTPI and other U.S. possessions and territories have control over local excise taxes; the MSC would desire to continue this approach. As it is a part of the import and export tax approach, it is not possible to separate them because of the effect on the local economy. In this respect, the MSC wanted headnote IIIa treatment "+" the return of excise taxes collected in the U.S. on Marianas goods, much like American Samoa and the Virgin Islands now have the right for.

The U.S. lawyers noted that the U.S. wanted to encourage the nexus to the U.S. economy and to avoid taxation of goods to and from the U.S. and to and between U.S. territories and possessions. There was a difference

between preferred treatment and taxation that required reciprocity somewhere. There were also some jurisdictional problems that the MSC must consider.

Applicable Laws. The MSC has difficulty with the Department of Justice print-out, but has noted that there are generally six different types of U.S. statutes: statutes generally applicable to all territories, specifically applicable to some territories, inclusion of some territories as if they were states, statutes that were regulatory and statutes that were grant-in-aid, and statutes that regulated affairs between the territories, and between the territories and the U.S. The MSC wanted the U.S. to come forward to establish those laws which are of particular concern to the Marianas because of problems that may be present in the other U.S. territories, and they said that only the U.S. Government would have the expertise and experience to know which laws were problematical which the Marianas should avoid. Mr. Willens noted that he could not recommend that the MSC endorse any agreement until the MSC had the opportunity to (1) know those laws to be applied and (2) how those laws would affect the Marianas. The U.S. noted that in essence this was a request for an "omnibus" bill and was not practicable at this time, as it was something for Congressional experts to draft, a very lengthy process. <sup>MSC</sup> They noted that the Marianas were coming into the U.S. as if it were a foreign territory and they therefore did not have the long experience other territories had in this regard. The MSC also desired to have assurances that those laws which were fundamental to the operation of the Commonwealth Government and to the U.S. in its exercise of its responsibilities would be operative and applicable on the effective date of the agreement when the trusteeship terminated. They desired to make it understood that they regarded that Article IV, 3, 2 would apply

without question, but that the exercise of that authority would be under review by the MSC. The MSC suggested that the U.S. approach might be better facilitated if the laws generally applicable now to Guam might be applied to the Marianas, excluding those laws which directed themselves to the internal affairs of Guam which were not of concern to the Marianas.

The U.S. attorneys noted that we desired that the Statutory Commission would undertake the review of laws to be made applicable so as to avoid the complicated and time consuming procedure requested by the MSC as a pre-condition to the effective date of the agreement, but that the Guam approach suggested by the MSC had considerable merit and that we would consider it further. It was agreed that this would be taken up at the next meeting in the next few weeks.