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DEPARTMENT OF STATE

Washington, D.C. 20520

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November 30, 1973

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MEMORANDUM

TO: OMSN - Ambassador Franklin Haydn Williams  
FROM: L/EA - Oliver T. Johnson, Jr.  
SUBJECT: Applicability of United States Laws to the Marianas: Customs and Excise Taxes

In their discussion paper of November 1, 1973 counsel for the Marianas Political Status Commission (MPSC) presented what is essentially a four part proposal regarding customs duties on goods imported into and exported from the future Marianas Commonwealth. Counsel for the MPSC proposes (1) that the Marianas not be a part of the customs territory of the United States, (2) that the Marianas Commonwealth have the right to enact customs laws applicable alike to goods imported from the United States and elsewhere, (3) that goods of Marianas origin be accorded duty free entry into the United States (in this regard, they also propose that the definition of "goods of Marianas origin" be less restrictive than the definition applied to exports to the United States from its other insular possessions), and (4) that the Marianas Commonwealth be free to impose export taxes.

1. The Marianas Would Not Be A Part Of The Customs Territory Of The United States

We have no reason for objecting to the exclusion of the Marianas from our customs territory. In fact, of our insular possessions only Puerto Rico is within that territory. This exclusion would prevent goods of Marianas origin from receiving automatic duty free treatment. It would also mean that general customs legislation of the United States would not apply to the Marianas. It does not necessarily mean that the Marianas would have an automatic right to impose their own customs duties.

2. The Marianas Commonwealth Would Have The Right To Enact Its Own Customs Laws

This proposal does present a legal difficulty. Under

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the General Agreement on Tariffs and Trade (GATT) the United States has undertaken complex obligations in the area of international trade and commerce with respect to the other contracting parties to this agreement.\*/ We cannot allow ourselves to be put in a position where we cannot enforce compliance on the part of the Marianas with international obligations which we have legitimately undertaken on their behalf as well as our own. Such are the obligations we have undertaken in the GATT.

There are four ways in which we could reconcile our interest in the customs laws of the Marianas with the MPSC's desire for authority in this area:

(a) We could refuse to agree that the Government of the Marianas would have the right to impose whatever customs laws it deemed appropriate. We could, under this option, agree to seek legislation authorizing the Marianas to establish its own customs laws, but retaining in the Congress the power to revoke that authority or amend any such laws.

(b) We could agree that the Government of the Marianas would have the right to establish its own customs laws so long as that right were not exercised in a manner inconsistent with the international obligations of the United States.

(c) We could, pursuant to paragraph 5 of the Protocol of Provisional Application of the General Agreement on Tariffs and Trade, withdraw the Marianas from the application of the GATT. Such withdrawal would dispense with the possibility of a conflict with the customs laws of the Marianas and the United States' obligations under the GATT. However, it would also entail the loss of the benefits of the GATT for the Marianas. This loss would not be in the interest of the Marianas or the United States.

(d) We could, pursuant to Article XXVI(5)(c) of the GATT sponsor the Marianas as a separate contracting

\*/ These obligations consist, essentially, of a general obligation to grant most-favored-nation treatment to goods from all other contracting parties and a complex series of rules under which there may be exceptions to that general obligation. The GATT also sets forth a variety of other rules designed to deal with various trade problems such as dumping, marks of origin, quotas and valuation for customs purposes.

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party to the GATT. This measure would require a declaration by the United States to the effect that the Marianas possessed "full autonomy in the conduct of its external commercial relations". Since it is unlikely that the Marianas would wish to incur the expense of conducting its own external commercial relations, and since such autonomy would not be consistent with the United States' desire to have complete control over the foreign affairs of the Marianas, this last option appears inappropriate.

It should be obvious from the above that only options (a) and (b) would be politically acceptable. Of those two options the first would best serve the interests of the United States in that it would allow us the most flexibility in dealing with the foreign affairs of the Marianas. If, in the end, this option proves unacceptable to the MPSC we should feel free to agree to option (b).

3. Goods Of Marianas Origin Would Be Allowed Duty Free Entry Into The United States

There should be no difficulty in our agreeing to this proposal. The only legal difficulty that it presents is the possibility that we might have to request a new GATT waiver allowing this preferential tariff treatment. We presently have such a waiver with respect to the Trust Territory. The consensus at State is that this waiver probably would not operate to sanction preferential treatment of goods coming from the new Marianas Commonwealth. However, there is also a consensus that there should be no difficulty in obtaining a new waiver.

As noted above, counsel for the MPSC have also proposed that the origin requirements set forth in headnote 3(a) of 19 USC 1202 \*/ be liberalized with respect to the Marianas. We should not agree to this proposal for the simple reason that there is no justification for granting the Marianas better treatment in this regard than we accord

\*/ Headnote 3(a) provides for duty free treatment for articles imported from insular possessions of the United States which are outside its customs territory. It requires, however, that such articles not contain foreign materials to the value of more than 50% of the article's total value. Counsel for the MPSC would like to see the percentage ceiling on foreign materials raised with respect to goods of Marianas origin.

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our other insular possessions. If we were to grant such preferential treatment we would, of course, have to be prepared similarly to liberalize the origin requirements with respect to goods from the rest of our insular possessions.

The MPSC also wishes for the Marianas to have the authority to impose duties on imports from the United States. Subject to there being adequate protection of our foreign affairs interests, as discussed in Section 2 above, we should express willingness to agree to the Marianas having the authority to impose non-discriminatory tariffs on United States goods. Since the Marianas is an underdeveloped area it would not seem appropriate for us to insist on complete duty free treatment of United States goods, thus possibly depriving the Marianas of a necessary means of protecting its own infant industries. This authority could be provided for in the manner described in either option (a) or option (b) of Section 2.

#### 4. The Marianas Would Be Allowed To Impose Export Taxes

It does not appear that the United States has any interest in opposing this proposal. This proposal could be implemented either by saying nothing on this subject in the status agreement or by specifically stating that Article 1 Section 9 Clause 5 of the United States Constitution does not apply. \*/ Either way, the Congress would remain free to step into this area should it so desire.

\*/ This provision of the Constitution prevents states from levying export taxes.

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