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MARIANAS POLITICAL STATUS COMMISSION

December 6, 1973

POSITION PAPER ON APPLICABILITY OF  
FEDERAL LAWS IN THE MARIANAS

16-400903

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Position Paper on the Applicability of Federal Laws in  
the Marianas

The Joint Communique of June 4, 1973, sets forth the tentative agreements of the parties (1) that the question whether "certain major areas of federal legislation" will apply in the Marianas may be dealt with explicitly in the formal status agreement and (2) "at some future date" a Joint Commission would be established to study and make recommendations on the applicability in the Marianas of the large body of federal laws which will not be specifically addressed in the status agreement.

The Communique also records the agreement of the parties:

"that the joint working group of lawyers will study federal laws in these and other areas to determine whether and how their application in the Marianas should be circumscribed by the formal status agreement and whether that agreement might provide generally for resolving questions as to the applicability of future federal laws in the Marianas."

This position paper is a report on the Commission's research and thinking in this area since the last session of the negotiations.

With respect to the eight specific major areas of federal legislation listed in the Joint Communique, the Commission will be presenting during this session proposals in the areas of (1) income, gift and estate taxes, and (2) customs and excise taxes. These proposals were discussed on a

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technical basis in the joint working group of lawyers and with appropriate officials in the Department of the Treasury. The Commission is continuing its work in the other major areas and recommends that these subjects be discussed in the joint working group of lawyers before they are presented formally as topics for consideration in these negotiations. The Commission hopes that this work can be completed before the next session of these negotiations.

As noted above, the United States and the Commission agreed tentatively at the last session of the status negotiations that, except for those important or fundamental federal law problems dealt with in the status agreement, the applicability of the great body of remaining federal laws and regulations would be studied "at some future date" by a Joint Commission (modeled on the Guam Commission of the early 1950's) which would in turn make recommendations to the U.S. Congress. Although not clearly stated, it was assumed that this Joint Commission would not start to function until after the status agreement was signed and approved and the new status took effect.

The Commission has given further thought to the position and has concluded that the parties should resolve questions as to the general applicability of federal laws in the Marianas, if possible, before the status agreement is signed. Our reasons for this change in view are as follows:

1. Unlike Guam or Puerto Rico when those territories changed their status, the Marianas is not now subject to most of the federal code. For the purposes of most such laws, the Marianas is considered a foreign country. Therefore, when the Marianas joins the "American Family", it will be necessary to apply many noncontroversial but important federal laws to the Marianas.

2. Even if one could realistically defer application of those basic

laws until after the status agreement were approved, the Commission is concerned that the likelihood of close Congressional attention to the Marianas after approval of the status agreement is not great. This suspicion is confirmed, and our overall conclusion in this regard is buttressed, by the fact that the recommendations of the Guam Commission have been completely ignored by Congress.

3. Timely attention to the problem will provide the parties to these negotiations with added confidence that they have anticipated all of the potential problem areas in applying federal laws to the Marianas. If either party encounters any additional problem areas and it is determined that their resolution will vitally affect the Marianas, these issues can be raised and resolved in the course of these negotiations.

The Commission recommends that the application in general of all the federal laws that will apply in the Marianas should be discussed in the joint working group of lawyers. The Commission is aware that the working group has had some very preliminary exchanges of views on this subject, including the possibility of developing a general formula or approach to this problem. The Commission is prepared to support a general formula approach, perhaps one which looks especially to those federal laws applicable in Guam, so long as the formula is consistent with other provisions of the status agreement being negotiated and takes into account other laws, such as some of those now applicable in the Trust Territory of the Pacific Islands, which should be made applicable to the future Commonwealth of the Marianas. Before agreeing to any such general formula, of course, the Commission will have to inform itself as to the practical and legal consequences of any such approach and propose any specific exceptions to the formula which appear necessary.

If the general formula approach proves workable, the functions of any Joint Commission on federal laws will have to be modified accordingly. We recommend that this matter be explored first in the joint group of lawyers. However, we do have some thoughts on this subject at this time.

We believe the Joint Commission could usefully serve a fact finding function of identifying the specific federal laws that would be applied in the Marianas by the formula. The results of this study would serve two purposes. First, the Joint Commission would make recommendations to Congress as to the necessary conforming technical amendments in the federal code. Second, the Joint Commission could identify any unforeseen technical or even substantive problems that might require further exceptions to the formula.

We believe it would be preferable to initiate the work of the Joint Commission as soon as there has been general substantive agreement in principle between the parties on the wording of the general formula. In this way, Congress and the Marianas people will be informed, at the time they consider the status agreement, as to the specific consequences of the formula. Moreover, if the Joint Commission identifies any unforeseen problems, these can be referred to the negotiating parties before Congress is asked to enact the status agreement into law.

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SUMMARY

12/10/73

U. S. Response to MPSC Paper on Applicability of Laws

- Topic of applicability of laws was major subject discussion in lawyers working group.
  - Definition of applicable laws is a complex and lengthy process which U.S. would like to see settled in some practical manner before new Government of Marianas comes into being.
  - Delighted when MPSC counsel suggested possible formula for settlement based on Guam example, but now disappointed that this has apparently been changed.
  - Nevertheless believe practical solution can be found which will be wholly acceptable.
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- Appreciate that there is an enormous body of federal law to be dealt with. This includes federal criminal law, federal grant programs, communications statutes, transportation, commerce, acts, regulatory statutes, federal services, etc.
  - Some federal statutes apply to all territories generally; some only to <sup>named</sup> certain territories; others treat some territories as if they were a state.
  - Study of all of this a long and arduous process which will take many lawyers several years.
  - Key question is when we want new Government of the Northern Marianas to start operating under the federal legal system.
  - We had assumed this, by Marianas' choice, would be soon, i.e., as soon as new constitution approved and new government installed.

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- This could be long before end of Trusteeship.
- Also believe new Government would want to decide itself which federal laws should apply over long term.
- Therefore US thought we needed to find a formula now which would permit new government to get underway without waiting for necessarily long study to be completed.
- Formula would be one putting main body of law into effect, but exempting certain laws that were immediately identifiable as needing to be eliminated or modified.
- US therefore pleased when MPSC Counsel suggested using Guam model.
- We thought this meant Marianas would take over all federal laws applicable to Guam, except those identified, after consultation with Guamanians, as being inappropriate for immediate situation in Marianas or requiring modification to meet that changed situation.
- This would require consultation and careful thought but would not involve in-depth analysis of federal law applying to Guam which also would take years.
- Later, when new Marianas Government established, Joint Commission would be able to do thorough and leisurely job of analyzing these federal laws and any others and make definitive recommendations on how structure of federal law in Marianas should be modified to meet long-term Marianas needs.

- Our study of MPSC paper indicates Commission may now have other ideas.
- It now appears MPSC wants a full scale study of federal laws in Guam before MPSC can agree on which should apply to Northern Marianas.
- In our view this would suffer from most of the disabilities of a full scale study of all federal law and would result in long delay before new Marianas Government could be established and worse, before this agreement may be concluded.
- We would certainly not be prepared to finance such a study; had thought joint commission study done after new government established would be paid for out of US support provided regular operating budget and spread over period of years.
- Determination in last analysis is for MPSC to make; timetable in hands of Marianas.

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- Perhaps we have misconstrued MPSC paper.

● If so more than willing to be corrected and to discuss matter further at length.