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MARIANAS POLITICAL STATUS COMMISSION

December 6, 1973

POSITION PAPER ON APPLICABILITY OF  
U.S. CUSTOMS AND EXCISE TAXES TO  
COMMONWEALTH OF THE MARIANA ISLANDS

The Joint Communique of June 4, 1973 provides that the question of whether certain areas of federal legislation will apply in the Marianas may be dealt with explicitly in the formal agreement establishing the future political status of the Marianas. Pursuant to this understanding, the Commission has undertaken a study of U.S. customs and excise taxes with a view toward determining the applicability of these taxes under the new political status. This position paper set forth the Commission's recommendations on these subjects.

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 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

027536

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. The Commission has concluded 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.

This conclusion is consistent with the agreement in principle reached at the May 1973 session of the U.S.-Marianas status negotiations that the future government of the Marianas should exercise "maximum self-government" in regard to local affairs. It will permit the Marianas to have a "duty-free port" if they so desire, thus reducing the cost of imported consumer goods. This consideration is of particular

significance to an insular economy that is largely dependent on imports to supply the everyday needs of its inhabitants. A duty-free port may also operate as an attraction to tourists seeking bargains while visiting the Marianas. Finally, it will allow the Marianas government to tailor its customs laws to protect local industries, should such protection ever appear desirable, and will give the Marianas government a greater degree of control over the Islands' economy.

Other advantages, and some disadvantages, are discussed below in the context of the results that flow from this general recommendation. But, on balance, the advantages to the Marianas of having autonomous control of their own customs laws manifestly outweigh any disadvantages. Accordingly, the Commission recommends that the Marianas remain outside the customs territory of the United States. This recommendation is in accord with current practice since all insular territories and possessions of the United States, with the exception of Puerto Rico, are outside that territory.

2. Imports into the Marianas from the United States.

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The Commission recommends that these imports be free of customs taxes, at least at the beginning of the new status. The Marianas should, however, have the right to enact customs laws applicable alike to goods from the United States and elsewhere.

Since the Commission has concluded that the Marianas should not be a part of the customs territory of the

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United States, no preferential treatment for imports from the United States follows automatically. The Marianas government will be free to impose any customs taxes it likes on any goods entering the Marianas from any part of the world, including the United States. We believe, however, that at least at the outset the Marianas should be a duty-free port for the reasons outlined above.

In the event the Marianas ever desires to impose customs taxes on goods entering the Marianas, it should do so even-handedly. That is, the Marianas should not accord more favorable treatment to goods entering from one nation rather than another since to do so would invite retaliation by the nation discriminated against. Thus, if the United States seeks assurances that the Marianas will accord goods entering the Marianas from the United States the same treatment it accords like goods entering from any other country, the Commission is prepared to grant such assurance.

3. Imports into the Marianas from Countries outside the Customs Territory of the United States. The Commission makes the same recommendation with respect to these imports. This leaves the new Marianas government free to decide whether to have any customs taxes on these imports. Since the Marianas will not be part of the U.S. customs territory, it may choose to be a duty-free port and, should the need arise, the Marianas government will have the power

to use a customs barrier to protect local industry.

4. Exports from the Marianas to the United States.

The Commission recommends that these exports, likely to be low in volume, should enter the United States free of customs taxes. This would provide a much needed encouragement for the development of local industries. The United States has obtained a special waiver under GATT to permit the United States to accord preferential treatment to products of the TTPI.

No reason appears in the special dispensation from GATT secured by the United States why the permission to accord preferential treatment to imports into the United States from the Marianas should be considered discontinued after the relationship between the Marianas and the United States changes from a trust territory to a commonwealth arrangement. Thus, the United States should continue to be able to accord customs-free entry of Marianas goods into the United States without doing violence to its contract under GATT. Against the possibility that one of the other contracting nations of GATT may object, however, the Commission requests the United States to agree in principle to preferential treatment for imports from the Marianas, and to agree to negotiate another special exception to GATT should that prove necessary.

As it has also done in the case of goods from its other insular territories or possessions, the United States may wish to protect itself against unrestricted entry of foreign products that received a minimum of manufacturing or processing in the Marianas. Thus, goods from Guam may enter the United States free of any customs taxes provided 50% or less of the value of the product (whether manufactured, produced or grown) derives from foreign materials, and if (in the case of goods manufactured in whole or in part from United States material) there was no refund of United States taxes paid upon export of the U.S. material for further manufacture in Guam. If more than 50% of the value of the product derives from foreign materials, or if there was a refund of United States taxes previously paid upon export of the U.S. material for use in the Guamanian manufactured product, then the Guamanian product is permitted to enter the United States subject to the usual customs taxes imposed by column 1 of the United States Tariff Schedules. This special treatment for imports into the United States from its insular territories and possessions is provided for in General Headnote 3(a) of 19 U.S.C. 1202 ("headnote 3(a) treatment").

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The Commission recommends that any such restriction be based upon a higher percentage limitation on foreign material, e.g. 75%. Otherwise the preferential treatment may prove to be illusory, among other reasons because the costs of

transporting goods from a foreign country to the insular possessions are included in computing the value of foreign materials in the product. If the United States desires to assist the Marianas in developing an economy not solely dependent on tourism, it is essential to provide incentives whenever possible for the development of local manufacturing ventures. In particular, the Marianas would like to encourage the processing of various seafood products. The Commission believes that such favorable treatment to Marianas exports is not likely to be abused and that experimentation with this approach in the early years of the new political status is appropriate.

5. Exports from the Marianas to Countries Outside the Customs Territory of the United States. The Commission recognize that these exports will be subject to such import taxes as may be negotiated with those countries. The Commission requeststhe United States to negotiate favorable trade treaties with other countries for the Marianas whenever possible and to consult fully with the Marianas with respect to such negotiations.

One opportunity for negotiating such favorable treaties on behalf of the Marianas exists with respect to the general agreement reached by the signatory nations at the United Nations Conference on Trade and Development



("UNCTAD"). In 1970, over 120 member states of UNCTAD, including the United States, approved the proposals of 18 industrialized countries for a mutually acceptable system of generalized tariff preferences for manufactured and semi-manufactured goods from developing countries. When implemented, the generalized preferences will give certain imports from developing countries access to the markets of industrialized nations at a lower tariff rate than those imposed on like goods imported from other countries. The purposes of such a system are to increase export earnings of the developing countries, to promote their industrialization, and to accelerate their economic growth. The prospective donor countries that are also contracting parties of GATT committed themselves to seek a waiver as soon as possible of the most favored nation principle, the cornerstone of GATT, with respect to such preferences. It may be possible, with appropriate safeguards against U.S. manufactured products, to secure such preferential treatment for the Marianas by having it classified as a developing country for purposes of the UNCTAD agreement. The Commission requests the United States to agree in principle to such treatment for products of the Marianas and to commit itself to negotiate such preferential treatment on behalf of the Marianas with the other donor countries.

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6. Export Duties. The Commission recommends that the Marianas government should be free to impose export duties on any exports from the Marianas. The TTPI government at present may and does impose such export duties.

B. EXCISE TAXES

1. Internal Excise Taxes. The Commission recommends that such taxes, if any, imposed on the manufacture or sale of goods in the Marianas should remain within the exclusive control of the Marianas government. All the territories and possessions of the United States have control over their own internal excise taxes.

2. Customs or Excise Taxes Collected in the United States. The Commission recommends that any such taxes collected in the United States on goods imported from the Marianas should be paid into the Marianas treasury.

At present, even goods entering the United States free of any customs taxes from territories or possessions of the United States may be subject to an excise tax equivalent to that imposed on like goods sold or manufactured within the United States. With the exception of the Virgin Islands (as to which certain matching and dollar limitations apply), all revenues so collected are held for the benefit of the territory or possession from which the goods were imported. Thereafter, the revenues so collected are returned to ("covered into") the treasury of the source territory or possession. The

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Commission requests the United States to accord similar treatment to the Marianas.