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Section 103. Right to local self-government.

"The people of the Commonwealth will have the right to govern themselves with respect to local affairs in accordance with a Constitution of their own adoption."

MPSC would include reference to fact the Marianas "retain" the right of local self-government, in obvious reference to such rights listed in the UN Trusteeship Agreement; they note that the Marianas is now entitled to local self-government and that specific reference is mere recognition of this situation.

U.S. prefers to narrowly state that the people of the commonwealth have the "right to govern themselves with respect to local affairs..." because the MPSC approach raises the issue of residual rights of sovereignty vesting with the Mariana Islands notwithstanding that the Marianas will be under U.S. sovereignty.

Section 105. Agreement not to exercise U.S. legislative authority to modify certain fundamental provisions of the agreement except by mutual consent.

"The United States may enact, in accordance with its constitutional processes, legislation effective within the Northern Marianas, being guided by its traditional respect for local self-government; but the fundamental provisions of this Agreement, listed as follows, may be modified only with the consent of the Government of the United States and the Government of the Commonwealth: [list]"

MPSC would have a broader approach so as to envision that (1) the U.S. may have limited its legislative authority in other provisions and (2) the provisions of the agreement subject to the mutual consent provisions are much more extensive.

U.S. prefers to have a narrow limitation on the provisions subject to mutual consent under this section so as to maintain broad powers of the U.S. Congress; the U.S. suggests the following be subject to mutual consent:

- "(a) The basic Commonwealth relationship between the United States and the Northern Mariana Islands established in Article I of the Agreement.
- (b) The right of the people of the Marianas to adopt and amend their own Constitution under Article II.
- (c) The conditions under which citizens of the Marianas may become United States citizens or nationals under Article III.
- (d) The application to the Northern Mariana Islands of specified provisions of the United States Constitution under Article V, Section 501.
- (e) The procedures to be followed in the exercise of federal powers of eminent domain under Article VIII, Section 804."

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Section 106. Legislation applicable in the Commonwealth.

"[Legislation which the United States could not make applicable within a State of the Union may be made applicable within the Commonwealth only if such legislation specifically provides that it will be applicable within the Commonwealth and if, taking into account the right of local self-government of the people of the Commonwealth, there is a compelling national interest in the application of such legislation within the Commonwealth.]"

MPSC proposes that legislation effective generally to all the states be applicable in the Marianas and that legislation applied only generally to the territories be extended only if the Marianas is specifically mentioned and there is a compelling national interest. The MPSC notes that this is, with the exception of the requirement for a compelling national interest, the approach taken for Puerto Rico and is necessary to preserve local self-government.

U.S. objects to this approach, Puerto Rico notwithstanding, as it seems to abrogate the Article IV, 3, 2 powers of the U.S. Congress to legislate for the Marianas beyond the provisions in Section 105.

Article II - Constitution of the Northern Mariana Islands

[No Section] - Approval process

MPSC proposes the President review the Marianas Constitution for consistency with the agreement and issue a proclamation that it is approved within 120 days after he has transmitted the constitution to the U.S. Congress for its review.

U.S. believes that the U.S. Congress may insist on a role in the approval process and prefers to leave open how the U.S. Government will approve the Marianas constitution.

Section 202(c). Exception to one man one vote requirement under the equal protection clause of the U.S. Constitution to permit the Marianas to obtain a local legislature modeled after the U.S. Senate (representation on a geographical basis rather than by population).

"The legislative power of the Northern Mariana Islands will be vested in a popularly elected legislature, and will extend to all rightful subjects of legislation. [Nothing in this Agreement or in the provisions of the United States Constitution or federal laws applicable within the Northern Mariana Islands shall prevent the Constitution from providing for a distribution of the membership of the legislature on a basis which takes into account matters such as geographical or historical interests as well as population, provided such distribution is ratified by the people of the Northern Mariana Islands by their approval of the Constitution or amendments thereto.]"

MPSC believes that geographic representation in the local legislature is essential to maintaining a viable Commonwealth Government considering the highly competitive island groups which have high local identification; the MPSC notes the U.S. Senate is based on geographic representation.

U.S. is sympathetic but notes that this would require approval by the U.S. Congress which has not yet addressed the issue.

Article IV. U.S. Judiciary Authority.

[No section in U.S. draft]

MPSC proposes that a U.S. Attorney and Marshall be provided and be granted additional authority to enforce local laws as assigned by the Marianas Legislature; notes that the Guam U.S. Attorney and Marshall could be assigned to the Marianas without additional separate appointments of same.

U.S. agrees to study this matter; notes that the MPSC proposal presents some difficulties during the interim period especially as to enforcing local laws but feels there are adequate precedents to make some accomodation by specific language in the agreement or by separate understanding.

Section 401(b). U.S. District Court.

"[The President will nominate and, by and with the advice and consent of the Senate, appoint a district judge for the District Court of the Northern Mariana Islands, who shall hold office for a term of eight years, and until a successor is chosen and qualified, unless sooner removed by the President for cause, provided however that if the President appoints an incumbent judge of the District Court of Guam to be the judge of the District Court of the Northern Mariana Islands, his term as such judge shall not extend beyond that as judge of the District Court of Guam.]"

MPSC proposes a provision for appointment of a district judge which provides for the possibility that the District judge of Guam could be appointed.

U.S. suggests that the matter of judgeship is one for the U.S. Congress and U.S. Executive to resolve, so long as the U.S. agrees that a separate district court is to be established it would seem that local interests in whether the federal courts operate to meet local controversies would be satisfied.

Section 402(b). Federal appellate review of federal court decisions.

"The Northern Mariana Islands will constitute a part of the Ninth Judicial Circuit of the United States, and the decisions of the District Court of the Northern Mariana Islands will be subject to review in the same manner as those of the District Court of Guam."

MPSC proposes that for federal appellate review of decisions of the federal courts in the Marianas that the Marianas be treated as if it were a State of the Union.

U.S. suggests the Guam appeal procedure be adopted to maintain consistency with appeals of the federal courts in that territory.

Section 403(a). Appeal from decisions of the local courts to the federal court system.

"Final judgments and decrees rendered by the highest court of the Northern Mariana Islands will be reviewable by the Supreme Court of the United States in the same manner as those rendered by the Supreme Court of the Commonwealth of Puerto Rico, unless they are reviewable by the District Court for the Northern Mariana Islands pursuant to Section 402."

MPSC suggests that for appeals, writs of habeas corpus, certiorari, etc., of local courts to the U.S. federal courts, we should apply those procedures that regulate appeals to the federal courts from state courts.

U.S. suggests we follow the appeal procedure followed in Puerto Rico which is somewhat preferable to Guam and less rigid than the requirements of a State.

Article V. Applicable laws, special treatment.

[No Section]

MPSC proposes that (1) the U.S. social security provisions relative to salary deductions should be phased-in at the rate of 1% increase per year until the U.S. percentage (5.85%) is reached so as to prevent a dislocation of the local economy but that the Marianas receive the full U.S. social security benefits during the phase-in, (2) the Marianas contribution to the TTPI Social Security System should be managed by the U.S. Social Security Administration.

U.S. notes that there is no precedent for a phase-in of the U.S. Social Security System as it was applied in toto to all the U.S. Territories (American Samoa, Puerto Rico, 1950; Virgin Islands and Guam, 1960) and no serious disturbance evolved in those circumstances; proposes that the U.S. Congress would likely oppose special treatment under the Social Security Laws but this matter is one the U.S. Congress should resolve when it addresses the Marianas request for special treatment under minimum wage laws, etc. We note also, the Social Security Administration has difficulty only with the phase-in proposal; that the U.S. would seek to apply the Social Security laws in toto (at a time to be agreed upon) with the U.S. paying full benefits and extending full credits to those Marianas residents now in the TTPI Social Security System (e.g. merging the Marianas share of the TTPI fund with the U.S. and the U.S. assuming the loss so as to give the Marianas a "windfall" grant).

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Section 501. Extension to the Commonwealth of specific provisions of the U.S. Constitution.

"(a) The following provisions of the Constitution of the United States will be applicable within the Northern Mariana Islands as if the Northern Mariana Islands were a State of the Union: Article I, Section 9, Clauses 2, 3 and 8; Article I, Section 10, Clauses 1 and 3; Article IV, Section 1, [sentence 1]; Article IV, Section 2; Amendments 1 through 9, inclusive; Amendment 13, [Section 1]; Amendment 14, Sections 1 and 5; Amendment 15, [Section 1]; Amendment 19, [sentence 1]; Amendment 26, [Section 1].

(b) Future amendments to the Constitution of the United States which do not apply of their own force in the Northern Mariana Islands will become applicable within the Northern Mariana Islands only with the approval of the Government of the Northern Mariana Islands and the United States Congress."

MPSC seeks to omit those provisions of the Constitution that permit the U.S. Congress to enforce the various Articles and Amendments (see brackets) on the grounds that (1) this section only seeks to extend the provisions to the Marianas, not grant additional authority to the U.S. Congress; and (2) that the active legislative powers of the U.S. Congress are addressed in Article I of the Agreement where they are specifically delimited to certain areas; and (3) that the U.S. retains the power to enforce these Articles and Amendments by virtue of the supremacy clause in Section 101 (Marianas will be under U.S. sovereignty).

U.S. believes that omission of these specific Congressional powers could be legally interpreted as a further limitation on the powers of the U.S. Congress to legislate for the

Marianas and could raise serious implications about the viability of extending these Constitutional provisions to the Marianas if they cannot be enforced by appropriate Congressional legislation.

Sections 503 and 504. Special exceptions to the application of U.S. laws.

"Section 503. The following laws of the United States presently inapplicable to the Trust Territory of the Pacific Islands will not apply to the Northern Mariana Islands except in the manner and to the extent made applicable by the United States Congress after termination of the Trusteeship Agreement:

(a) The immigration and naturalization laws of the United States;

(b) The coastwise shipping laws of the United States, except as they apply to United States Government shipments; and

(c) The minimum wage provisions of the Fair Labor Standards Act, except as they apply to employees and contractors of the United States Government.

[Section 504. The Secretary of Commerce will issue regulations which provide that persons who are nationals but not citizens of the United States and who are domiciled in the Northern Mariana Islands will be considered citizens of the United States for the purpose of such provisions of the maritime and shipping laws of the United States as he deems appropriate.]"

MPSC proposes: (1) that until the U.S. Congress extends the U.S. immigration laws, the Marianas have sole authority to control immigration; (2) that the U.S. naturalization laws be amended to extend special treatment to close relatives of Marianas citizens, and to permit U.S. nationalization under special circumstances; and (3) that the Secretary of Commerce be authorized to issue regulations to include U.S. nationals who are in the Mariana Islands as within the statutory definition of U.S. citizens so as to meet certain maritime restrictions (a) requiring that U.S. ships have U.S. crews and (b) against the sale of U.S. ships to someone other than U.S. citizens.

U.S. proposes: (1) that as regards immigration, until the Trusteeship Agreement is terminated the U.S. has continuing responsibilities in these areas, therefore, the Marianas would be accorded some authority to enact local measures in specified areas but subject to conformity with U.S. obligations and subject to overall U.S. supervisory authority; (2) that the special treatment sought under the application of other U.S. laws is a matter for the U.S. Congress to resolve and that until such time as it is resolved the Marianas should be accorded the same treatment that is extended to all other territories, especially that treatment under the law as is extended to Guam.

Section 505. Statutory Review Commission.

"The President will appoint a Commission on Federal Laws to survey the field of federal statutory laws and to make recommendations to the United States Congress as to which statutes of the United States not applicable within the Northern Mariana Islands should be made applicable and to what extent and in what manner, and which statutes applicable should be made inapplicable and to what extent and in what manner. The Commission will consist of seven persons (at least three of whom will be citizens of the Trust Territory of the Pacific Islands who are and have been for at least five years domiciled continuously in the Northern Mariana Islands at the time of their appointments) who will be representative of the federal, local, private, and public interests in the applicability of federal laws within the Northern Mariana Islands. The Commission will make its final report and recommendations to the Congress within two years after the effective date of this section, and before that time [may] make such interim reports and recommendations to the Congress as it considers appropriate to facilitate the transition of the Northern Mariana Islands to its new political status. In formulating its recommendations, the Commission will take into consideration the effect of potential effect of each federal law on local conditions within the Northern Mariana Islands, the federal policies embodied in the law, and the provisions and purposes of this Agreement. [Unless the House of Representatives or the Senate adopts a resolution which specifically disapproves all or part of the recommendations made in the final report of the Commission within one year after the final report has been received by the Congress, all or part of the recommendations therein, as the case may be, will have the force and effect of law.]"

MPSC believes that the Commission should be required to submit interim reports on its activities (prior to the end of the first year term of its existence) and desires that provision be made to automatically effect the recommendations of the Commission unless the U.S. Congress acts within one year to disapprove the Commission's report in whole or in part.

U.S. believes that interim reports are proper but that a mandatory requirement for the issuance is not proper and believes

any attempt to effect the recommendations of the Statutory Review Commission other than by specific U.S. Congressional Legislation is unconstitutional.

Section 601. Internal Revenue Code.

"[Awaiting proposals from MPSC Counsel on application of the Internal Revenue Code in the Marianas]."

MPSC suggests that the Puerto Rican precedent be followed, e.g., that the U.S. Internal Revenue Code be applied to the Marianas, but only as a local territorial tax with the Marianas empowered to amend that Code to meet local circumstances.

U.S. believes that the U.S. Congress will insist on full application of the Internal Revenue Code in the same manner as exists on Guam, e.g., full Internal Revenue Code with power to amend vesting with the U.S. Congress. Suggests that if the Marianas proposal is accepted, that we include a provision whereby the Marianas could not amend the Code during the first year it is applied; notes the U.S. will submit the MPSC proposal to the tax experts for review.

Section 602(c). Import duties.

"The Government of the Northern Mariana Islands will have the [exclusive] authority to impose duties on exports from its territory."

MPSC desires to have the exclusive authority to impose duties on articles exported from the Commonwealth and believes that without this power the U.S. Congress could retain authority to impose local duties and otherwise impinge on the local autonomy of the Commonwealth.

U.S. believes that the U.S. Congress would respect local authority over export matters and would act only in cases of special importance, and believes that further restrictions on the authority of the U.S. legislative powers is unwarranted. We note that the U.S. is entering into several international agreements that would preclude signatories from controlling exports of oil and grain and that the MPSC proposal may therefore be in conflict with these international obligations.

Section 603. Authority to impose excise taxes.

"[(a) The United States may levy excise taxes on goods and services manufactured, sold or used in the Northern Mariana Islands in the same manner and to the same extent as such taxes are applicable within the several States.]"

[(b) The Northern Mariana Islands will have the authority to impose excise taxes upon goods manufactured or sold within its territory or upon goods imported into its territory, provided that such excise taxes imposed on goods imported into its territory must be consistent with the international obligations of the United States.]"

MPSC - Local authority over taxation of goods manufactured, sold or imported into the territory should not be impeded so long as the authority is exercised in a manner consistent with U.S. international obligations. U.S. authority over excise taxes should be limited to that authority the U.S. is able to exercise in the States.

U.S. - This specific proposal would act to further limit U.S. legislative authority and granting the Marianas the authority to impose excise taxes on all goods manufactured, sold or imported into the Marianas may violate U.S. international trade agreements.

Section 604. Limitation on Bond Indebtedness.

"(a) All bonds issued by the Government of the Northern Mariana Islands or by its authority will be exempt, as to principal and interest, from taxation by the United States, or by any State, territory or possession of the United States, or any political subdivision of any of them.

(b) For so long as the United States Government provides direct financial assistance pursuant to Article VII of this agreement, the Government of the Northern Mariana Islands will authorize no public indebtedness (other than bonds or other obligations of the Government payable solely from revenues derived from any public improvement or undertaking) in excess of ten percentum of the aggregate assessed valuation of the property within the Northern Mariana Islands

MPSC notes that although the bond limit applies to all the territories, since Puerto Rico was given the authority to remove the 10% limitation by obtaining the approval of the voters in a local bond referendum, the Marianas should not be required to meet U.S. limits to bond indebtedness.

U.S. believes there is no special case for exemption of the Marianas from the treatment extended to Guam as regards bond indebtedness.

Article VII. U.S. Financial Assistance.

[No Section]

MPSC proposes that the Agreement should constitute an authorization and an actual appropriation measure by the U.S. Congress for U.S. assistance citing the precedent of the U.S. Revenue Sharing Bill.

U.S. - The status agreement would constitute an authorization by the U.S. Congress upon its approval of the Agreement. Incorporation of provisions to configure the bill into an actual appropriation measure may be opposed by the U.S. Congress and delay the approval process.

Article VIII. Land

[No Section]

MPSC desires to include a statement of intention to the effect that the U.S. proposed to acquire lands in the Marianas only as specified in the agreement.

U.S. believes this statement is unwarranted and could be used in arguments to limit any future land acquisition by the U.S. Government.

Section 804. Eminent Domain

"(a) The United States Government will in all cases attempt to acquire any interest in land for public purposes by voluntary means. In the event this is not possible the United States will have and may exercise within the Commonwealth the power of eminent domain to the same extent and in the same manner as it has and can exercise the power of eminent domain in a State of the Union, observing the principles set forth in subsection (a), (b) and (c) of Section 80[3]; provided, however, that in addition to all other requirements of law the United States will not exercise the power of eminent domain to acquire any interest in land within the Commonwealth until the Congress of the United States has by law explicitly authorized and approved the exercise of the power of eminent domain to obtain a particular interest in a particular parcel of land in the Commonwealth.

(b) Notwithstanding the provisions of Subsection (a) of this Section, upon a determination by the President that an interest in land in the Commonwealth is needed for national defense purposes, the United States may take such an interest in land by eminent domain to the same extent and in the same manner as it can take an interest in land in eminent domain in a State of the Union. No interest in land taken pursuant to the preceding sentence will extend beyond nine months, at the end of which period the interest in such land under Section 80[3] or subsection (a) of this Section."

MPSC suggested the above section as a concession to the U.S. Congress position that the U.S. "hold" eminent domain powers; notes that the MPSC has not cleared the language.

U.S. notes the proposal outlines how eminent domain authority is to be exercised; is reviewing for possible technical difficulties with existing federal procedures and to insure that U.S. security interests will be met.

Article IX. Resident Commissioner and Consultation

[No Section]

MPSC desires to have a resident commissioner in Washington until the local population reaches 50,000 at which time the Marianas would be entitled to elect a delegate to the House of Representatives; U.S. would assure all financial costs.

U.S. believes representation in the U.S. Congress is a matter for that body, but that the U.S. is sympathetic to the request; after termination of the Trusteeship Agreement and until the Marianas obtains a delegate, it is proposed that a Resident Commissioner be authorized for the Marianas to be elected or appointed as locally determined. The qualifications, terms of office and duties and powers would follow those of the Puerto Rican Commissioner as were established by federal statute prior to a U.S. Congressional delegate being authorized by the U.S. Congress; U.S. would require that salaries and expenses be assumed by the Marianas.

Section 904(c). Membership in Regional Organizations

" [The United States will support membership by the Northern Mariana Islands in regional or other international organizations concerned with social, economic, educational, scientific, technical and cultural matters of concern to it, to the extent such organizations will permit such membership. The Government of the Northern Mariana Islands, with the approval of the Secretary of State, may negotiate and sign agreements with any international organization of which it is a member, provided that those agreements apply only to the Northern Mariana Islands and not other parts of the United States.]"

MPSC desires membership in international or regional organizations to insure that its interests are promoted in the foreign affairs areas; it feels that the Marianas are so far removed from the continental United States and is so small in significance that it will not receive the attention of the U.S. especially considering it will have no voice in the U.S. Congress

U.S. notes that the issue of Territorial membership (Puerto Rico) in international and regional organizations is now being actively studied at higher U.S. Executive levels; until that matter is resolved the U.S. must reserve on this issue, although the U.S. previously agreed to Marianas participation in principle

Section 1001. Approval of the Agreement.

"(a) The Agreement will be promptly submitted to the Mariana Islands District Legislature for its approval. Within [120] days after its approval by the Mariana Islands District Legislature it will be submitted to the people of the Mariana Islands District for approval in a plebiscite to be called by the United States Secretary of the Interior. Approval must be by a majority of those voting in the plebiscite. All residents of the Mariana Islands who would be eligible to vote in elections in the Mariana Islands District if such elections were held on the day of the plebiscite shall be eligible to vote in the plebiscite. The results of the plebiscite shall be certified by the Secretary to the President of the United States.

(b) The Agreement will be approved by the United States in accordance with its Constitutional processes.

(c) The President of the United States will issue a proclamation announcing a date upon which the Commonwealth will be established, when he finds:

(1) That the Agreement has been approved as set forth in subsections (a) and (b); and

(2) That the people of the Mariana Islands District have adopted a Constitution pursuant to the Agreement; and

(3) That the Trusteeship Agreement has been terminated or will terminate on the date on which the Commonwealth will be established. "

MPSC proposes that within 150 days after its approval by the legislature, the agreement will be submitted to the people in a plebiscite, and suggests that an even longer time period is required in order to conduct an effective political education program; the MPSC also proposes a specific plebiscite formula.

U.S. believes that the plebiscite should be called as soon as possible after the MDL approval; U.S. suggests 120 days as adequate. As to the plebiscite formula, the U.S. believes it should determine the options and the language to be submitted.

Section 1004. Effective date of Establishment of the
Commonwealth.

"The Constitution of the Commonwealth of the Northern Marianas will become effective in accordance with its terms on the same day that the provisions of this Agreement specified in subsection (b) of Section 1002 become effective, provided that if the President finds and declares that the effectiveness of any provision of the Constitution prior to termination of the Trusteeship Agreement would be inconsistent with the Trusteeship Agreement such provision shall be ineffective until establishment of the Commonwealth. Upon the establishment of the Commonwealth as provided in Section 1001, the Constitution will become effective in its entirety in accordance with its terms, as the Constitution of the Commonwealth of the Northern Mariana Islands."

MPSC proposes that the U.S. obligate itself to terminate the Trusteeship insofar as it affects the Marianas at the earliest practicable date.

U.S. prefers to avoid a specific obligation to seek a partial termination.

Title X.

[Other sections not covered in U.S. draft].

MPSC desires inclusion of reference to the U.S. obligation to seek transitional funds and an obligation to establish a separate administration for the Marianas "...as promptly as possible" after the agreement is approved.

U.S. desires to avoid a specific commitment in the status agreement on these matters as they are not appropriate.

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