



DEPARTMENT OF DEFENSE  
OFFICE OF GENERAL COUNSEL  
WASHINGTON, D. C. 20301

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DEAN

8 November 1974

**MEMORANDUM FOR CAPTAIN EDWARD C. WHELAN, JR., USN  
EA&PR, ISA, OASD**

**SUBJECT: Marianas Agreement - Proposed Revision of Article  
VIII, Property**

Attached draft of the Property Article of the Marianas Agreement has been revised as suggested at our 6 November meeting at the Department of the Interior.

The only significant change is the addition of a sentence at the end of 804(a) to make it clear that the United States will determine the application of the "best effort" policies stated in 803 and 804. While the US position could be strengthened by stating that these policies would not be subject to judicial review, it is felt that such a declaration could attract unnecessary attention to a matter that is not expected to be a problem. The other changes are editorial.

Signed

David W. Ream  
Office of the Assistant  
General Counsel (Logistics)

Attachment

cc: Mr. F. B. Roche, (I&L)  
Mr. H. Almond, OGC(LA) ←  
Maj W. Gehring, Navy JAG

10-63738

ARTICLE VIII

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Property

Section 801. The title to real and personal property remaining in the Mariana Islands District on the date of termination of the Trusteeship Agreement which is owned by the Government of the Trust Territory of the Pacific Islands will be transferred on or before said date to the Government of the Northern Mariana Islands.

Section 802. [Land areas to be acquired by the United States for defense purposes, to include disclaimer of present U.S. intent to acquire more land for defense purposes.]

Section 803. If the Government of the United States must acquire any interest in real property not transferred to it under this Agreement, it may, upon prior written notice to the Government of the Northern Mariana Islands, acquire for public purposes in accordance with United States law and procedures any interest in real property in the Northern Mariana Islands, whether owned by private parties or by the Government of the Northern Mariana Islands, by purchase, lease, exchange, gift or otherwise under such terms and conditions as may be mutually agreeable.

The United States will:

(a) By careful and reasonable selection seek to acquire only the minimum area of land necessary to accomplish the public purpose for which the real property is sought, taking into account the scarcity and special importance of land in the Northern Mariana Islands;

(b) Seek that minimum interest in the real property necessary to support such public purpose, acquiring title only if a lesser interest would not be sufficient to satisfy the requirement.

(c) Seek first to satisfy the requirement by acquiring an interest in public rather than private real property.

Section 804.

(a) Except as provided in Subsection (b) of this Section the United States will not seek any interest in real property unless the Congress of the United States has both authorized the proposed project and provided funds therefore. Any interest in real property acquired pursuant to such Congressional action will be by voluntary means where possible. The power of eminent domain will be exercised within the Commonwealth only when voluntary means fail, only to the extent necessary, in compliance with applicable U.S. <sup>laws</sup> [legislation] and with full recognition of the due process procedures required by the United States Constitution. The implementation of the policies governing real property acquisition, as expressed in this Subsection and Section 803, will be at the discretion of the United States.

(b) The minor land acquisition authority of Title 10, United States Code; Section 2672, or comparable subsequent legislative authority, may be exercised within the Commonwealth to the same extent it is available within any State of the Union. [Add as alternate: However, eminent domain proceedings using the minor land acquisition authority will not be initiated until after the expiration of 30 days from the date on which a report of the facts concerning the proposed transaction is submitted to the Committees on Armed Services of the Senate and House of Representatives.]

Section 805. Except as otherwise provided in this Article, and notwithstanding the provisions of Article V, the Government of the Northern Mariana Islands will regulate all public and private real property transactions for the purpose of restricting acquisition of title to such property to persons of Northern Mariana Islands ancestry and will regulate the extent to which land now classified as public land can be held by individuals.

*Marianas - Applicability of Law*

AdeGraffenried:11/8 '74:mjw

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*Marianas*

*Applicability of Law*

To: J.M. Wilson

From: A. deGraffenried *AdG*

Subj: Applicable Laws, MPSC Request for Special Treatment

Section 503(a). 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 by law after termination of the Trusteeship Agreement:

(3). The coastwise and shipping laws of the United States and prohibition in the laws of the United States against foreign vessels landing fish or fish products in the United States; and

The General Counsel's Office and the Office of Economic Affairs in the Department of Commerce have reviewed *and support, with conditions,* the MPSC request as for special treatment regarding U.S. regulation of fisheries in the Marianas. The Department notes that there is a general prohibition in U.S. statutes and regulations against foreign vessels landing fish in the U.S. The general policy is to protect and promote U.S. commercial fisheries industry. A special exception to the prohibition is made for both Guam and American Samoa.

In these territories, the U.S. felt: (1) there is a need to provide an additional source for local subsistence foods; and (2) there is a need to stimulate the isolated territorial economies. At the same time the special exception provides an opportunity for U.S. commercial fisheries industry to invest in canneries and other fish processing in these territories. The U.S. canneries take raw fish from foreign vessels and convert it into a U.S. finished product to enable its free entry into U.S. ports. Foreign fish is converted into a U.S. product by virtue of U.S. control and ownership of the plants. Department of Commerce notes that the exception could not be used to create a "legal fiction" to evade the intent of the

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law, e.g., raw fish from foreign vessels would be processed in a plant not controlled, financed or owned by U.S. interests, but the finished product would technically be considered a U.S. product entitled to free entry into the U.S. by virtue of the plants location in a U.S. territory.

I imagine Commerce especially would want to avoid a loophole situation from arising during the trusteeship period and before the U.S. Congress addresses the issue. Department of Commerce stated very frankly that the U.S. commercial fishing industry would strongly oppose any opportunity for a legal fiction situation to arise in the Marianas.

I reached an understanding with Department of Commerce that it was our intent to follow the existing situation with Guam and American Samoa and was our intent to encourage U.S. vice foreign commercial fishing investment in the Marianas. We agreed that some specific mention of this might be incorporated into the legislative history document. It would also seem appropriate that the MPSC proposal be amended as a technical matter as follows:

"(3) The coastwise and shipping laws of the United States and prohibition in the laws of the United States against foreign vessels landing fish or *unfinished* fish products in the United States; and..."

This technical change would preclude foreign commercial fishing interests from using high, sophisticated processing techniques to circumvent the law, e.g., foreign fisheries vessels actually processing raw fish on the boats and landing the finished product in U.S. ports or in the Marianas. The change would also prevent TTPI (Marianas) ships from carrying or trans-  
hopping foreign fish products to the U.S.