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X AdeGraffenried:11/12/74:mjw

MEMCON

U.S./MPSC Joint Drafting Group

Participants:	H. Willens	J. Wilson
	M. Helfer	A. de Graffenried
		H. Marcuse
		O.T. Johnson

Date: 12 November 1974, 2:00

JW: Review of Marianas election results (EP lose; march on hill, J. Cruz)

HW: Cable from EP. December 2 schedule. Request HW 2 weeks early trying to call P. Tenorio. EP re: "counter-proposal on ."

JW: Other MPSC member (F. Pal. as chairman) not want to meet December 2 but up to MPSC - U.S. not want to get involved, but officially deal with Chairman. U.S. willing to do whatever Commission wants to do difficulty is "split" on MPSC.

HW: If a matter shouldn't meet.

JW: F. Pal. says want to reorganize MPSC.

HW: Means meet after Dec/Jan.

HW: No disposition by P. Tenorio to delay session; only noted Tinian home-stead problem and prioty to resolve prior to next round.

JW: P.T. said he understood that was no moratorium was local issue.

HW: U.S. liaison may have better idea on how status invol. in elections.

JW: "Pace" is only status issue raised during elections.

HW: Closer we get to new status, more local residents have emotions reservation.

JW: Raza is a problem - independent advocate - JCFS also chose 2 new members of MPSC via choice of Marianas representative on JCFS (concern could get Raza on JCFS if Territorial party members so determine).

JW: At least we can proceed with joint drafting group. Want to go over items recently drafted?

HW: Are prepared to go to tax matters.

JW: We left off at end of Article VI having skipped §601/602. Have consulted with Department of Treasury and will want to have joint session with them and your Mr. Lake. It is very technical, U.S. comes to Treasury feel strongly that on practical grounds (given recent development) advocate Guam system including Guam system with rebate. Recent development redid Guam as relates to relation between statesides living in Guam with Y. from Guam/U.S. and between Guamanians living in U.S. Now cleared up with series of simple rules which still complex. Guam, VI used to be same and try now record VI follow Guam at next USC session. Because interlat. change Guam/NMI feeling is that Guam system is best system and most equitable. Try point out that Guam's prior to given rebates effectively acts to let Guam alter territorial tax as if an internal law. P.R. is along these lines given that '39 US IRC applies. Do draw line at being able to give rebates to U.S. source income. If superimpose PR on Guam system, have same arrangement in Guam prior to '73. T objects to this result. U.S. go along with 601(a)(b)(c)(d) not (e) and revise 602 to make it conform to Guam.

HW: Out of question - come to far to accept Guam system. Had agents year ago follow P 12. No technical arguments. Not fall in line with Guam/ period. Have principle of self-government involved. Need prior to amend. not balk door via rebates. U.S. have power to step in and make adjustments to any Marianas change. Need to get Lake together with T. if U.S. thinks appropriate.

JW: T. has a whole series of proposals. Problem would be another variation to existing tax situation; and eventual unification with Guam. So that if sign idfferent with Guam have different the two systems and a resulting problem on the hill.

MH: Heard tie in with Guam on 2 aspects (1) income tax and (2) representative in USC. Unification argument not likely to be persuasice Guam/MPSC as relates to integrety of the agent.

JW: No problem with "integrity" of agent - no unification with Guam without NMI consent. But if too inconsistent make more difficult for unification to take place.

HW: On social security have discussed further.

JW: Yes, we have your draft. We wonder whether U.S. Social Security System take over administration of Marianas Social Security. No accord with laws of TTPI at time status agreement become effective.

MH: Yes, need to rewrite to do this.

JW: No substantial problem with that approach.

MH: Still some technical questions on how U.S. social security administered Marianas. Take from TTPI, give to new executive during interim there give to U.S. Social Security Administration which would administer pursuant to local law.

MH: Not be under control of COM.

JW: Not from time of separate administration.

MH: Is U.S. prepared to supplement funds to insure fund receive same benefits as if staged in TTPI.

JW: Not sure why not.

.As to 603 - Adde phrase to (c) "subject to the accomplishment of

obtaining the appropriate action under the provisions of (d)".

MH: This (c) operates of (d).

OTJ: Right. I wished this new (d)(d) take place of old language.

JW: OK go back to legislative history. What about your brackets.

MH: 26 USC exemption from U.S. excise taxes on certain exports of U.S. products. Formula would omit applicable generally to the States and to Guam. 26 USC not apply to States generally 8.

JW: 604 no problem with.

HM: 604(a) conflicts with 603(e).

HW: Lets move to Article VII.

JW: We still have problem on 701.

HM: Any way suggest "standard of living" comparable not in unsuperable problem.

JW: Can find appropait language.

HW: Identifies NMI be part of U.S. and will achieve comparable standard of living.

JW: Reason for "multiyear"?

MH: Yes, to implement agreement in joint communique to permit multiyear planning.

JW: Right, but we say appropriate for 7 years already. 701(a) 2nd line change, that approval by USC auth for appropriate. Leave (b) bracketed for time being and to USC. On (c) U.S. executive branch agrees - is bracketed only because of USC. Is it more appropriate to put under (b)? insofar as revenue sharing.

HW: Remove brackets?

JW: OK; now as to (d) rather say "approval of agreement by USC will constitute authorize for appropriate". because we don't know if is to be "enacted into law" or will be treated as if enacted.

MH: Joint resolution go to President in any event.

JW: If enacted by USC through a bill would also go to President. As to 704, we discussed at last meeting regarding comptroller. Sure USC want retain as long as remains for Guam. May not be needed and just have report requirements.

MH: Under current U.S. laws applied TTPI has comptroller so would have comptroller until end of Trusteeship then USC determine if it wants.

JW: Art VIII.

MH: Is largely old stuff.

JW: U.S. put forward 801 to clear up possible ambiguity. 1st transfer X, take place separate administration, so all TTPI X used by MD go to MD and other TT property needed by interim executive. Note that TTPI HQ have stay in MD until place to move to but prior to end TA, will move out and take X (personal) with it; any remaining TTPI X go to MD. Now maybe don't need old 801.

NH: 801 effectively says that TTPI retain property.

HW: Seems well to have some provision dealing with this. Would recommend to client that this transfer would occur no later than at this date. Most important is firm U.S. commitment that all TTPI property in Marianas go to MD at end TA.

MH: Why "or held" dropped?

JW: Was a defense objection could include MARAD equipment owned by USC out to TTPI. Only Section 802 problem is lease U.S. purchase note that "purposes" for which base to be used was dropped.

MH: Right - not sure U.S. wanted to restrict use to a set purpose.

JW: Agree. Note: Land Survey in (a) 17,808 acres on Tinian not acct. for adjustment on Harbor. (b) 484 acres Isley (c) 133 acres Tanapag (d) 226 acres Farallon.

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On terms/conditions of land transfer our tentative thinking is that if land entity in being at time really to sign no problem; if no legal entity at time then maybe include in technical agreement. All the items to be included in the lease so that when entity created could be included in lease agreement. Not some who sign technical agreement.

HW: Prepare to consider a technical agreement to pull out from status agreement but make part of status agreement. Prefer to deal with U.S. OMSN not DOD.

JW: Agreeable, but technical have to get DOD to sign. A lot of stand. language would go into technical agreement, but leave to real estate lawyers most important items in technical agreement. Prefer to focus on that kind of agreement rather than agreement on joint land draft report. Make whole thing subject to condition subsequent. §804 split on "to be empowered" on alienation on return of military retention land no substantive problem but want to see MPSC language. §805 leave in brackets.

MH: Note military concerned that won't be able to get apt. leases in Marianas so put in "short-term" interests.

JW: Have some technical suggestions.

MH: Note that can't use present "except as otherwise provided" clause. Will have to refer to applicable provision of U.S. Constitution and this agreement.

JW: On 806 would become 807 - eminent domain.

HW: Just seen U.S. draft.

MH: U.S. 607(a) is description how U.S. eminent domain works as such is superfluous - Guam formula would apply and is no change in initial U.S. position.

HW: So a substantive difference.

JW: Quite right.

HW: Suggest we draft language to put in brackets.

JW: How about drafting joint language except for substantive differences.

OTJ: Defense emphasized that current procedure gives USC review over
would satisfy MPSC.

HW: Our initial reaction is that it doesn't. If DOD want USC review
should agree to MPSC approach.

OTJ: That would require a bill USC cs. Committee approval.

HW: Right, MPSC insisting change in existing procedure, want full USC
to review.

JW: Art IX. Durton had difficulty with term "resident commissioner".

MH: Why

JW: Burton notes (1) PR still has R. Comm. (2) R. Comm considered sup,
to delegate and would have problem with Guam and VI.

HW: This interferes with basic representation rights. Burton may have to
swallow MPSC approach.

JW: U.S. try to come up with a suitable term; have (examined "agent"
"emissary", etc.). 902 no substantial difference between U.S./MPSC. We do
have a modified version. No problem with MPSC 1st bracket: consult. at
request and not less frequently than every 10 years. §903 agree. §904(c)
membership in regional organization. Issue is clear might note that Guam
just denied request for ESCAP membership.

MH: Agreed to in joint communiqué.

JW: Quite right, but is where "Homer" nodded. On Article X. Might delete
"promptly" submitted.

HW: OK

JW: Any 101 difficulty on enactment issue.

MH: Is substantial difference.

JW: Lets get some language to overcome "enactment" issue - all agreement it will have "effect of laws". On 1002.

MH: Problem. 101 provides commonwealth come into being on end trusteeship. So 1002(a) repetitive (c) also. If read 1002 literally - Commonwealth can't come into existence until proclamation issued by President. Not turn on issuance proclamation but on end of trusteeship.

HW: No problem with language saying Commonwealth coming into effect "on termination of TA or declaration that termination is effected".

JW: Right. Lets get some language.

MH: If 202 language adopted then eliminate all of 1002.

JW: Lets fo to §1004 and effective date. 1st difference is 104 (U.S. def/FA provs.) U.S. come into effect at end of trusteeship. No need to be given FA/D'se provs. as have under TA.

HW: Agree.

JW: 503 - during interim period not want to change provisions 503 so should become effective immediately. U.S. problem is that conceptually you say you don't want certain laws to apply but immediately apply the provision. No real substantial difference.

HM: Why shouldn't 502 and 503 come into effect at same time since 503 is an exception to 502.

HW: At the time the commonwealth government becomes effective is time at which all laws applied to it.

JW: No problem with making 503 applicable immediately. 504; U.S. doesn't have.

MH: 602 - treats Marianas as a possession under US IRC so don't want until end TA.

JW: MPSC want postpone 601 to end of TA?

HW: Client should have 601 apply to get idea of local income available. 602
Also want different effective dates so that they will have only 1 tax
return to file until end of TA and give locals idea of mysteries of the
US IRC return.

JW: 605 and 801 save for discussion. 901 - a problem?

MH: 901 should come into effect when new government comes into effect.

JW: Right. As to §1006 - 1st sentence superfluous. §1007 Definitions.
No problems except DOD to check inclusion of certain shoals in def. of NMI.

JW: No need to put separate administration in agent; timing - be solved in
next month or so; at Hawaii. Agreed that it would be after plebiscite.

HW: Agree not include in light of this information.

JW: Next meeting - next week.

HW: Will call and set up a time.