

From H. Marcuse  
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(informal) 4/0  
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EXPLANATORY NOTES

These notes are designed to clarify certain potential uncertainties which might result from the decision not to burden the text of the Agreement with excessive legal and technical details.

1. Section 101. The Government of the Northern Mariana Islands will not be an agency or instrumentality of the United States.
2. Section 105. Prior to the termination of the Trusteeship the consent of the Northern Mariana Islands envisaged by this section will not be given without the consent of the legislature thereof.
3. Section 202. The provision authorizing the federal courts to determine whether or not the Constitution of the Northern Mariana Islands and subsequent amendments thereto are consistent with the provisions of the Constitution, treaties, and laws of the United States applicable to the Northern Mariana Islands is not intended to preempt the power of the courts of the Northern Mariana Islands to make such determinations in appropriate cases.
4. Section 203(c). The provision that the legislative powers of the Northern Mariana Islands will extend "to all rightful subjects of legislation" mean that the power of the legislature will be limited only by the terms of the agreement, the provisions of the Constitution, treaties and laws of the United States applicable to the Northern Mariana Islands, and the Constitution of the Northern Mariana Islands. See Virgo Corporation v. Paiewonsky, 384 F 2d 569, 578-579 (CA 3, 1967) certiorari denied 390 U.S. 1041, S. Rept 2267, 85th Cong. p.2.
5. Section 203(d). This section is subject to the provisions of Article I, Section 102 (Supremacy Clause), and of Article IV, Section 403 (relationship

between the courts of the Northern Mariana Islands and the federal courts).

6. Section 401. The establishment of a separate district court for the Northern Mariana Islands does not preclude the appointment of the District Judge, United States Attorney and United States Marshall for Guam also to hold the corresponding offices in the Northern Mariana Islands. Congress, in its discretion may also provide, in analogy to Section 27 of the Organic Act of the Virgin Islands, 48 U.S.C. 1617, that the United States Attorney and the United States Marshal for the Northern Mariana Islands are authorized as required to perform, at the request of the Government of the Northern Mariana Islands, certain functions related to the execution of local laws.

7. Section 402(b). The formulation of this subsection is not designed to deprive the courts of the Northern Mariana Islands of jurisdiction in those situations where the jurisdiction of the federal courts is only concurrent. I intend to redraft this subsection together with Mike Helfer in order to obviate this ambiguity.

8. Section 501. The purpose of this section is to extend to the people of the Northern Mariana Islands the basic rights of United States citizenship and to make applicable to them certain of the constitutional provisions governing the relationship between the federal Government and the States. It has no bearing on the authority of the United States to legislate with respect to the Northern Mariana Islands which is provided for in Article I.

9. Section 502(a). The clause "except as otherwise provided for" refers primarily to Sections to be supplied.

(b). The term "federal banking laws" has reference to Sections 12, 25 and 25(a) of the Federal Reserve Act, as amended, (12 U.S.C. 466, and 601-632, respectively and Section 5191 of the Revised Statutes (12 U.S.C. 143)).

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10. Title VI. The property and the activities of the United States and of the Trust Territory of the Pacific Islands will be exempt from taxation by the Government of the Northern Mariana Islands and its subdivisions in the same manner and to the extent as the property and activities of the United States are exempt from taxation by the several States and their subdivisions. Similarly the property of the United States will be exempt from the power of the Government of the Northern Mariana Islands to impose ~~certain~~ customs duties.

11. Section 603(b). The authority of the Government of the Northern Mariana Islands to impose customs duties will not extend to property brought into the Northern Mariana Islands by <sup>the United States,</sup> its personnel, including military personnel, for its own personal or official use.

12. Section 603(c). The agreement does not address itself to the question of a potential conflict between this provision and the international obligations of the United States, in particular the general agreement in Tariffs and Trade (GATT). The Department of State is satisfied that Section 603(c) is in accord with GATT, and that a GATT waiver can be obtained with reasonable <sup>certainty</sup> in the most unlikely event that the compatibility of Section 603(c) <sup>with GATT</sup> should be challenged. It was therefore concluded that the problem was totally of a hypothetical nature and that there was no need to deal with it in the Agreement.

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