

OFFICE FOR MICRONESIAN STATUS NEGOTIATIONS

WASHINGTON, D.C. 20240

April 11, 1974

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MEMORANDUM

To: J. Wilson

From: A. deGraffenried

Subj: U.S. positions re: Marianas/Guam, potential conflicts

We have proffered several positions to the MPSC during rounds II and III which, although satisfactorily reflecting the particular circumstances of the Marianas, may conflict in fact or perception with current and proposed U.S. positions regarding the political and economic status of the Territory of Guam. A majority of U.S. Congressional members support OMSN positions to the Marianas of such rights and privileges as local circumstances justify; however, some Congressmen still reserve judgment on OMSN proposals to the MPSC primarily because of: (1) their experience with other territories (Puerto Rico, Virgin Islands and American Samoa), and (2) their fears that an enhanced territorial status for the Marianas which is significantly superior to other U.S. territories will result in those territories demanding political and economic adjustments to their status situations.

Attached is a brief comparison of U.S. offers to the MPSC with Guam, as our most immediate concern is potential adverse impact of our Marianas talks upon Guam; an expanded comparison table with other U.S. territories could be prepared but would require extensive study and would not be possible prior to MPSC IV.

Briefly, the major conflicts between our positions in the Marianas talks and with Guam appear to be:

1. Marianas will have a local government established under a locally drafted constitution (Guam's local government derives from the Organic Act);
2. there will be a limitation in the Marianas of the plenary power of the U.S. Congress under Article IV, 3, 2 of the U.S. Constitution. The U.S. will not change the basic political status of the Marianas without its consent and agrees to refrain from legislating in certain, unspecified areas of local concerns (U.S. Congress plenary power applies fully to Guam);
3. the Marianas will retain the authority to preserve control of local lands in the hands of persons of Marianas descent (Guam is not so permitted);

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4. Local residents may become U.S. nationals vice U.S. citizens;

5. U.S. income tax laws are not to apply to income earned in the Marianas but only on income earned from other U.S. sources and U.S. estate-gift taxes apply only to property in U.S. outside the Marianas (Local Marianas income tax not to follow U.S. Code) (Guam has a local income tax that follows the U.S. internal revenue code);

6. §931 of the Internal Revenue Code granting favorable tax treatment to persons and corporations doing business in territories fully applied to Marianas (on Guam, §931 not applicable).

7. U.S. district court to be established in Marianas with jurisdiction same as it would be in a state (where issue involves at least \$10,000 controversy)(Guam, U.S. district court has jurisdiction equal to U.S. district court in State for cases arising under U.S. law; original jurisdiction over all matters not transferred to local courts by Guam Legislature [e.g., matters over \$2,000]); and

8. membership for Marianas in regional institutional organizations to "the extent such organizations permit such representation" (Guam represented as part of larger U.S. political family except WHO and South Pacific Commission but may believe that Marianas will retain ECAFE, UNDP, etc., membership because it is now so represented through TTPI membership).

We have potential conflicts in several other areas (e.g., Series E/H Bonds) if the MPSC determines to retain its current status positions (eminent domain, land lease for U.S. military requirements).

023898

SUBJECT	MARIANAS COMMONWEALTH	GUAM	GUAM (DY)
Self-Determination	By approval of the status agreement	By elected form of government	U.S. recognition (right to by permitting local constitution)
Political Status	Commonwealth (fundamental relationship with U.S. subject to modification only by mutual consent)	Unincorporated, organized U.S. territory (status subject to unilateral U.S. determination)	Commonwealth or modified territory status on terms as good as Northern Marianas status
U.S. Sovereignty	X	X	No change
Foreign Affairs/Defense Authority	X; U.S. welcome the advice of Marianas on international matters directly affecting Marianas	"	U.S. seek Guam advice on matters directly affecting Guam
U.S. Constitution	Partially apply	Partially apply	No change
Article I, § 9, cl. 2, 3	X	X	
§ 9, cl. 6, 8	X	By implication of sovereignty	
§ 10, cl. 1-3	X	By implication of sovereignty	
IV, § 1, (full faith & credit)	X	X	
§ 2, cl. 1 (privileges & immunities)	X; but lands under local control	X	Further study on local controls of land as relates to foreign investor.
§ 2, cl. 2	X	By implication of sovereignty	

023899

SUBJECT

MICRONESIA
COMMONWEALTH

GUAM

GUAM

Article IV, § 3, cl. 2 (plenary power USC)

X; but some local areas not subject to U.S. Congress authority

X

VI, cl. 2

X

By implication of sovereignty

Amendment 1 - 4

X

X

5

Except as it provides a right to indictment by a grand jury

Except as it provides a right to indictment by a grand jury

6

X

X

7

Except as it provides a right to trial by jury in non-criminal cases.

Except as it provides a right to trial by jury in non-criminal cases

8 - 9

X

X

13

X

X

14, § 1, sent. 2

X

X

§ 5

X

X

15

X

X

19

X

X

U.S. Citizenship

With an option to become a U.S. National

X

Representation in U.S. Congress

0

X

Non-voting member

023900

Application of U.S. Laws

Joint Statutory Review Commission

Internal Revenue Laws

§ 931 of IRC

Jones Act (U.S. bottoms for goods between U.S. ports)

Eminent Domain

Trade/Tariff

Duty free port

Customs laws

Import duties

Interim application of Guam federal laws until U.S. Congress acts on status agreement and on Joint Commission report

X

Exclusive local income tax with local rates

X

U.S. Congress determines

1950

Territorial tax follows U.S. IRC rates

Not applicable

X

X

X

X

locally derived to extent not in conflict with U.S. obligations

Headnote III-A free entry if value 50% locally derived

Headnote III-A free entry if value 50% locally derived

No change

Notes act not ext. to Virgin Islands and American Samoa but should include Guam yet exempt during shipping strikes

023901

Local authority to enact excise tax

Local authority to enact export tax

U.S. to seek favorable foreign tariff on local exports and encourage foreign states to regard local area as a "developing territory"

Minimum Wage

Immigration & Nationality Act

Permanent Immigration

Temporary Admission of Aliens

X

X

X

As prevails in Guam

X

X

X

(Guam Minimum wage above U.S.; prevailing wage for construction above U.S. minimum wage but below (1/2) U.S. prevailing wage)

Federal government controls

Federal government controls

U.S. seek more Gu advice on matters directly affectin Guam

To permit reducti of prevailing wag to level of Guam minimum wage rate for alien labor m be studied

Local control wou lead to discrimin tion and abuse bu Guam to be given same degree of lo control as Marian but need to tight up practices wher non-immigrants on 3 year temporary admission remain Guam by short vis beyond 3 mile lim

Temporary 1 year admission for per manent-type jobs no local labor; admit families of such workers

SUBJECT

Banking Laws

U.S. District Court

Membership in Regional/International Organizations

Local Constitution

023903

M. ANAS
COM. WEALTH

With jurisdiction as state court (\$10,000 suit)

"To the extent such organizations permit representation of constituent parts of a political family".

X

GUAM

Federal government controls

Jurisdiction over suits involving U.S. law equal that of U.S. court in a state; over local matters involving more than \$2,000

World Health Organization, South Pacific Commission.

Embodied in the Organic Act

GUAM COPY

Maintain status quo

1. Trade agreements U.S. to consult with Guam, with possible Guam representation on U.S. delegation
2. Membership in regional organizations generally discouraged but allowed where federal supremacy not challenged (ECAF) ADB possibilities: [DOD - discourage such membership case by case exceptions considered

Possible, with U approval of local draft.