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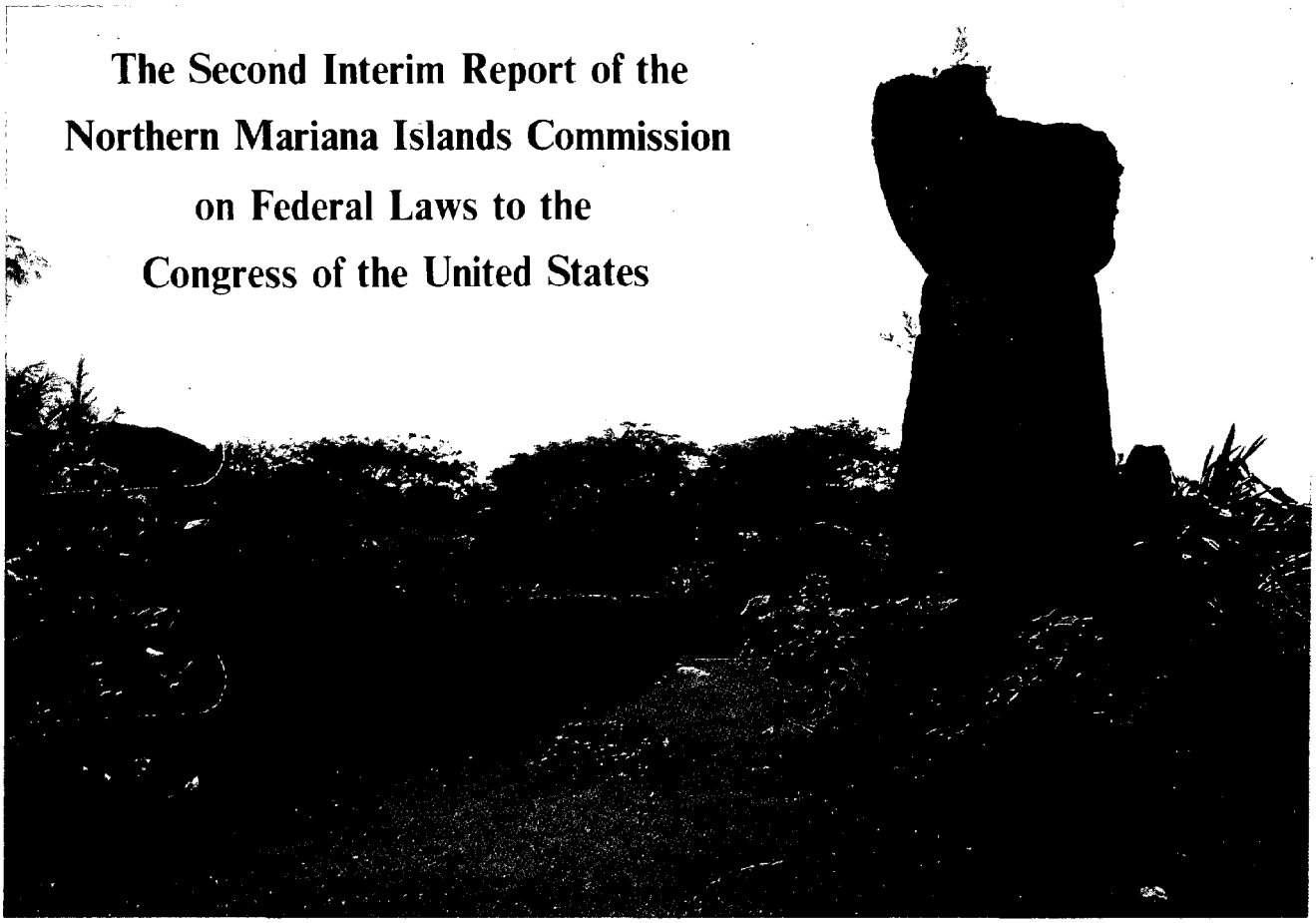

The Second Interim Report of the Northern Mariana Islands Commission on Federal Laws to the Congress of the United States

Documentary Supplement

August 1985

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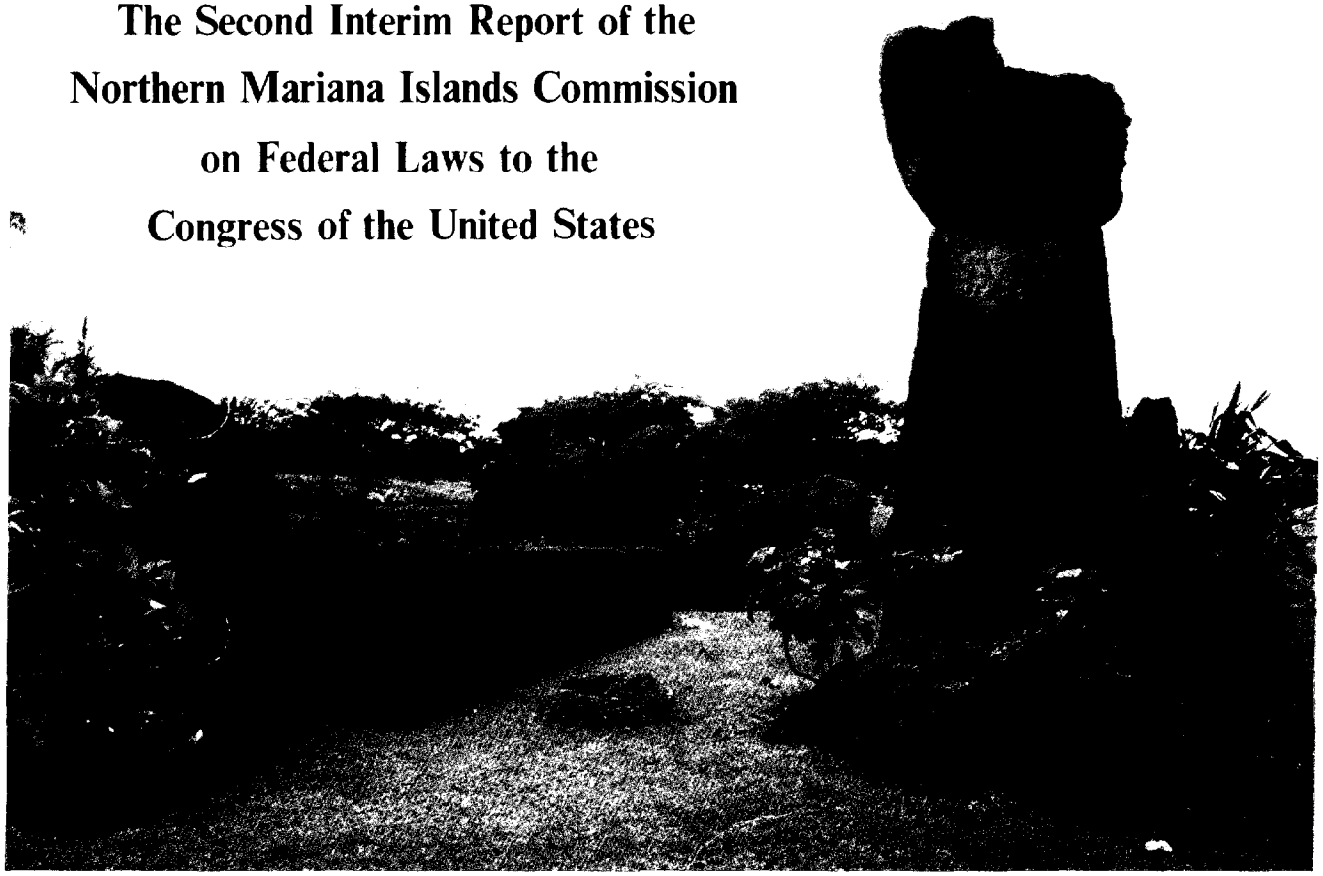

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* * *

BYLAWS

OF THE COMMISSION

BYLAWS

as adopted May 7, 1980

with amendments made January 13, 1981

and July 12, 1984.

Section 1 - The Commission.

1-1. Name. The official name of the Commission shall be the Northern Mariana Islands Commission on Federal Laws.

1-2. Membership. Pursuant to section 504 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, Public Law 94-241, March 24, 1976, 90 Stat. 263 (the Covenant), the members of the Commission are seven persons appointed to the Commission by the President of the United States. At least four members of the Commission shall 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. One member of the Commission shall be designated Chair of the Commission by the President.

1-3. Voting. Each member of the Commission shall be entitled to one vote. Unless otherwise required by these by-laws, action of the Commission shall be taken when four members vote in favor thereof. Every vote of the Commission shall be entered upon the minutes. Voting by proxy shall be allowed.

1-4. Duties of the Commission. In accordance with section 504 of the Covenant, the Commission will survey the laws of the United States and make recommendations to United States Congress as to which laws of the

United States not applicable to the Northern Mariana Islands should be
[4] made applicable, to what extent, and in what manner, and which applicable laws should be made inapplicable, to what extent, and in what manner. The Commission will make its final report and recommendations to the Congress within one year after the termination of the Trusteeship Agreement between the Security Council of the United Nations and the United States of America. It may make interim reports to the Congress before that time as it considers appropriate. The Commission will, in undertaking its duties, take into consideration the potential effect of each law on local conditions within the Northern Mariana Islands, the policies embodied in the law, and the provisions and purposes of the Covenant.

Section 2 - Meetings.

2-1. Quorum. Five members of the Commission shall constitute a quorum. Should there be less than five members serving on the Commission at any time, a quorum shall consist of the total number of members then serving on the Commission. In case less than a quorum is present at a meeting, the presiding officer may adjourn the meeting from time to time until a quorum is present.

2-2. Regular Meetings. Regular meetings of the Commission shall be held at least two times each year at places designated by the Commission, provided, however, that the Chair may reduce the minimum number of meetings to be held each year to one. Regular meetings need not be held during periods in which no funds are available for expenditure by the Commission. Should the Commission fail at a meeting to designate the time and place of the next meeting, that designation shall be made by the Chair.

2-3. Special Meetings. Special meetings of the Commission may be called by the Chair at his or her discretion. The Chair shall call a special meeting when requested in writing to do so by at least four members of the Commission. [5]

2-4. Special Meetings--Conference by Telephone. Special meetings of the Commission may be held by means of telephone conferences or through the use of similar communications equipment with which all members participating in the meeting can hear each other. Participation in a meeting by telephone or similar communications equipment shall constitute presence in person at the special meeting.

2-5. Notice. Written notice of each meeting shall be given to each member of the Commission by the Chair, not less than twenty-one days in advance of the meeting, except that if the Chair deems it appropriate or necessary, he or she may provide less than twenty-one days' written notice of a meeting.

2-6. Recessed Meetings. A recessed meeting shall be considered a continuation of the preceding meeting.

2-7. Open Meetings. Except as otherwise voted by the Commission, all meetings of the Commission shall be open to the public. Notice of regular meetings shall be published in the Federal Register and at least one newspaper of general circulation in the Northern Mariana Islands not less than seven days in advance of a meeting. Persons attending a Commission meeting who are not members may be allowed to address the Commission upon being recognized by the Chair.

Section 3 - Offices of the Commission.

[6] The principal office of the Commission shall be in Washington, D.C. The Commission may establish offices in the Northern Mariana Islands and in such other places as may be designated by the Chair. The office in Washington, D.C., shall be the repository for records of the Commission.

Section 4 - Organization of the Commission.

The Commission shall have a Chair as designated by the President of the United States. The members of the Commission shall elect a Vice-Chair. The Chair of the Commission or the Vice-Chair, in the absence of the Chair, shall:

(a) preside at all meetings of the Commission and of the committee of the whole;

(b) appoint special committees of the Commission as may be required;

(c) rule on all questions or points of order, subject to appeal to the Commission; and

(d) sign all resolutions of the Commission adopted in his or her presence.

Section 5 - Agenda.

An agenda for each meeting of the Commission shall be prepared by the Executive Director in consultation with the Chair. Copies of the agenda for each meeting shall be distributed to the members at least three weeks before the meeting, unless shorter notice of the meeting is provided under section 2-5. Any matter not on the agenda so distributed may be considered at the meeting by consent of four of the members.

Section 6 - Order of Business.

The order of business at each meeting of the Commission shall be as follows: [7]

(a) Call to order;

(b) Roll call;

(c) Proof of notice of meeting, or of waiver thereof;

(d) Review and approval of minutes of previous meeting;

(e) Report by the Executive Director;

(f) Consideration of staff recommendations;

(g) Old business;

(h) New business;

(i) Place and date of next meeting; and

(j) Other matters.

Section 7 - Rules of Procedure.

7-1. Participation by Presiding Officer. The presiding officer at any meeting may move, second, and debate from the chair and shall not be deprived of any right to vote or of any other right, power, or duty of a member by virtue of occupying the chair.

7-2. Motions to Reconsider. A motion to reconsider may be made by a member on the prevailing side, and such motion may be made only either at the same meeting at which the action is taken or at the next succeeding meeting of the Commission.

7-3. Robert's Rules to Govern. Except as otherwise specifically provided by the Commission or these by-laws, the proceedings of the Commission shall be governed by Robert's Rules of Order.

Section 8 - Minutes.

[8] The Executive Director shall have prepared and distributed to the members minutes of each meeting. The minutes of any meeting may be approved without reading whenever they have been distributed at least twenty-four hours prior to the time of approval. The approved minutes of each meeting and any corrections thereof duly adopted shall be signed by the Executive Director.

Section 9 - Committees.

9-1. Executive Committee. The Commission may establish an executive committee of one or more members and may delegate to this committee power to transact the business of the Commission between meetings of the Commission and during any periods in which funds are not available for expenditure by the Commission. The executive committee shall not make any recommendations to the United States Congress regarding applicability of federal laws to the Northern Mariana Islands unless those recommendations have been previously approved by the Commission, either at a meeting of the Commission or pursuant to the procedure authorized by section 10 of these by-laws.

9-2. Other Committees . The Commission may establish other standing or special committees as it deems appropriate or necessary.

Section 10. Voting by Mail.

Whenever in the judgment of the Chair or the executive committee, any question shall arise which the Chair or the executive committee considers should be put to a vote of the members, and when it is deemed inexpedient to call a meeting of the Commission for that purpose, the Chair or the

executive committee may submit the matter to the members in writing by mail for vote and decision. The question thus presented shall be [9] determined according to a majority of the votes received by mail within four weeks after such submission to the members, provided that, in each case, votes of at least a quorum of the members shall have been received. Action taken in this manner shall be as effective as action taken at a duly called meeting of the members.

Section 11 - Commission Staff.

There shall be an Executive Director of the Commission, together with other staff as may be necessary. The Executive Director and all staff, other than secretarial and clerical supporting staff, shall be appointed by the Chair, subject to consultation with the Commission. No staff may be terminated except for cause and with the approval of a majority of the Commission members, provided however that such approval need not be obtained for termination of secretarial and clerical supporting staff. Staff other than the Executive Director shall report to the Chair through the Executive Director. The Executive Director shall be responsible for employment and termination of secretarial and clerical supporting staff.

Section 12 - Administrative and Personnel Services.

Administrative and personnel services, including office space, shall be provided by the United States Department of the Interior.

Section 13 - Duration.

The Commission shall cease to exist fourteen months after termination of the trusteeship under which the United States administers the Northern

Mariana Islands by agreement with the United Nations, unless its life is
[10] extended beyond that date by Act of Congress or unless an earlier cessation of the Commission's existence is agreed upon by the Commission.

Section 14 - Amendments.

These by-laws may be amended, repealed, or altered, in whole or in part, by five members of the Commission at any regular or special meeting of the Commission.

CERTIFICATION

I hereby certify that the foregoing are the By-laws of the Northern Mariana Islands Commission on Federal Laws, as adopted on May 7, 1980, and with amendments made on January 13, 1981, and on July 12, 1984.

James A. Joseph

James A. Joseph
Chair

MINUTES
OF
COMMISSION MEETINGS

May 16, 1980

Minutes: First Northern Mariana Islands Commission Meeting.
May 7, 1980

Department of the Interior Under Secretary James A. Joseph, Chair for the Northern Mariana Islands (NMI) Commission on Federal Laws, called the meeting to order at 9:00 a.m. in Room 5160, main Department of the Interior Building, Washington, D.C.

[13]

Mr. Joseph welcomed the new Commission members, and highlighted historical events leading to the formation of the Commission, and addressed the challenging task ahead. Additional opening remarks were made by Commission member and Congressman Phillip Burton; Department of the Interior Solicitor, Clyde Martz; Department of the Interior Deputy Under Secretary for Territorial and International Affairs, Wallace Green; White House Domestic Staff Representative, Jeff Farrow, and Commissioner Edward Pangelinan.

Other persons present were Pedro Agulto Tenorio, Commissioner; Myron B. Thompson, Commissioner; Agnes Manglona McPhetres, Commissioner; and Jesus C. Borja, Commissioner.

Morning Business Session

- The by-laws previously circulated for comment, were discussed, amended and adopted.
- Pedro Agulto Tenorio was elected Commission Vice Chair.
- The meeting recessed for lunch.

Afternoon Business Session

Vice Chair Mr. Tenorio, in the absence of Mr. Joseph, convened the afternoon session.

- The Staff Memoranda Outline was adopted as amended.
- The Staff Memorandum Sample was adopted as amended.
- Commission members agreed that the Commission staff should develop priorities for laws slated for review, and also estabish procedural guidelines for individuals who wish to comment on Federal laws as they pertain to the Commission task.
- Mr. Dawson, representing Department of Interior Personnel, discussed travel-related concerns before Commission members.
- The Commissioners determined that the next meeting would be held in September at a time and place to be announced later.
- The meeting was adjourned at 3:00 p.m.

CERTIFICATION

The minutes of the May 7, 1980 meeting of the Northern Mariana Islands Commission on Federal Laws are set forth above as adopted by the Commission at its meeting of September 12, 1980.

Daniel H. MacMeekin
Executive Director

NORTHERN MARIANA ISLANDS COMMISSION
ON FEDERAL LAWS

MINUTES OF THE SECOND MEETING
Washington, D.C., September 12, 1980

[14] Mr. Wallace Green, Deputy Under Secretary for the Interior Department's Office of Territorial and International Affairs, opened the second meeting of the Northern Mariana Islands Commission on Federal Laws in Room 5160, main Department of the Interior Building, Washington, D.C. Commission Vice Chair Pedro A. Tenorio called the meeting to order at approximately 1:00 p.m.

Commissioners present were Edward DLG. Pangelinan, Pedro A. Tenorio, Myron B. Thompson, Agnes Manglona McPhetres and Jesus C. Borja. Absent was Congressman Phillip Burton. Commission Chair James A. Joseph joined the meeting shortly after the roll call.

The minutes of the first meeting of the Commission, held May 7, 1980 in Washington, D.C., were approved.

Remarks of the Chair.

Mr. Joseph noted that the Commission's most significant accomplishment since the last meeting was the selection of an executive director for the Commission. Mr. Joseph introduced Mr. Daniel H. MacMeekin to the Commission as the new executive director, and gave a resume of his qualifications.

Report of the executive director.

Mr. MacMeekin then reported to the Commission, summarizing his initial thoughts on how the Commission should accomplish its statutory mandate. Emphasizing that, as executive director, he would receive his instructions from the Commission, he outlined his views with respect to:

- Commission goals;
- criteria for Commission evaluation of particular statutes;
- input the Commission should obtain from other sources;
- the method by which the Commission should determine its priorities, to decide which laws it is going to examine first and which thereafter; and
- procedures for accomplishing its goals.

Goals. Mr. MacMeekin said the Commission's ultimate goals were established by the law creating the Commission: submission of the final report to Congress and any interim reports thought appropriate by the Commission. The final report, to comply with the Covenant, will include recommendations as to whether particular federal laws ought or ought not apply in the Commonwealth of the Northern Mariana Islands (the NMI). Each recommendation rests on a prior conclusion as to whether the law now applies. The final report should include, Mr. MacMeekin suggested, these Commission conclusions, noting whether they rest on specific provisions in the particular statute, on terms or formulae contained in the Covenant, on court decisions, or on other bases. He emphasized, however,

that the Commission's major effort should be directed toward recommendations and not toward study of present applicability. Mr. MacMeekin also suggested that the final report be organized in the same format as the U.S. Code, for easy reference, and that it be comprehensive, covering all sections of the Code. He said the Commission should consider also including in the report (1) a recommended formula for determining the applicability of future acts of Congress to the NMI, and (2) draft legislation to enact all the Commission's recommendations. [15]

Mr. MacMeekin said interim reports to Congress could serve at least three purposes. First, immediate action may be needed to remedy problems caused by present application of particular federal laws in the NMI. He noted some such problems had been mentioned to him already by Commonwealth leaders. Second, interim reports could be used to enhance the Commission's credibility with Congress. Third, the Commission could endorse legislative changes recommended by the various federal agencies within their special jurisdictions or areas of expertise.

Criteria. Mr. MacMeekin then discussed criteria for evaluation of a particular statute, to determine whether that statute should apply in the NMI. In general, he said, this evaluation would amount to an analysis of the pros and cons of application within the context of that statute. Factors more or less peculiar to the NMI would receive special attention: transportation and communications difficulties, the traditional culture of the islands, the relatively small population, and the tropical island environment. He noted the possibility some federal statutes should be universal in their application, either because they should apply to all members of the U.S. political family or because an exception for the Northern Marianas might create a loophole, rendering the law less effective elsewhere in the United States.

Input. The four basic sources of input for the Commission, Mr. MacMeekin said, would be (1) interested parties and the general public in the NMI, (2) concerned NMI government agencies and legislative committees, (3) concerned Federal agencies, and (4) research by the Commission's own staff.

Priorities. Mr. MacMeekin then discussed his views on how the Commission could determine which areas of the law it should examine first. He said he would like, prior to examining particular areas of the law, to devote substantial effort to organization, so that data regarding any statute from any source could be received, recorded, and easily retrieved at any time. He then outlined alternative methods by which the Commission could set its priorities. One approach, which he said he rejected, would be to start at section 1 of Title 1 and proceed serially through the entire U.S. Code to the last section in the Appendix to Title 50. Another possible approach, he said, would be to respond to the particular needs expressed to the Commission from time to time, without any other preconceived plan. A third approach suggested was to follow subject-matter priorities established in advance by the Commission. For example, he said, the Commission might designate health, education, and economic development (and, within economic development, tourism, agriculture, and fisheries) as areas in which staff efforts should be focussed initially.

Or, he said, the Commission could categorize statutes as they are classified in the Covenant--those specifically mentioned, those applicable uniformly to Guam and the fifty states, and so forth--, and examine each group

in order. Yet another approach would be examination first of statutes providing grants or benefits of one sort or another. This could be done in part by reference to the Catalog of Federal Domestic Assistance.

[16] Mr. MacMeekin noted the Commission could solicit outside views on establishing priorities, but suggested this might take much time. He also noted the possibility of combining various of the approaches previously mentioned. For example, it could be determined within a particular subject-matter area to proceed according to categories of statutes made by the Covenant.

Procedures. Mr. MacMeekin then outlined the procedures by which he intends to accomplish the work of the Commission. These procedures would be:

--examination of the resources at hand and preparation of a budget;
--organizational details: printing of stationery, ordering a basic library, hiring a secretary, and so forth;
--employment of the Marianas staff person, who would be in essence a hearing officer, charged with eliciting and recording views of persons in the NMI.
--establishment of liaison with the Federal agencies, surveying plans, work underway, and work completed;
--announcement of the Commission's existence and availability to receive views in the NMI;
--collection and examination of prior work of a similar nature, for example, the work of the Guam and Virgin Islands Commissions, and the 1977 Interior survey of federal programs available in the territories.

Mr. MacMeekin said he would like the staff's presentations to the Commission to be concise--ideally no more than single page per statute--, but comprehensive. The presentation should summarize what the statute does, whether it is presently applicable to the NMI, and the staff's recommendations as to future applicability.

Discussion.

Commission Chair Joseph next asked for general comments on Mr. MacMeekin's presentation.

Mr. Wallace Green stated the willingness of the entire staff of the office of Territorial and International Affairs to assist the Commission.

Commissioner Agnes McPhetres asked if Mr. MacMeekin had been provided an office. Mr. Joseph responded affirmatively, noting a temporary office had been provided and a permanent office, already identified, would be available. While the Commission is independent, he said, the office of Territorial and International Affairs will provide administrative control. The Commission will be in the Department of the Interior but the Department will not appear on the Commission's letterhead, since the Commission is independent of the Department.

The Commission then discussed priorities. Vice Chair Pedro A. Tenorio noted that the logistics of transportation and communications were important factors to consider. Commissioner Myron Thompson suggested that the

Commission keep in mind two important objectives: that the NMI achieve political self-government and economic independence, and that U.S. defense interests in the area be protected.

Mr. MacMeekin noted a hierarchy of priorities would be possible. For example, he said, it would be possible to choose subject-matter priorities such as health, education, and economic development and then, within each subject area, examine laws which provide grant funds ahead of those which do not. Ms. McPhetres said the three subject areas named by Mr. MacMeekin would be good places to start and suggested the need for a survey of the statutes in those areas now applicable to the NMI and of whether the NMI is now participating in all the programs for which it is now eligible. Mr. MacMeekin noted the office of Territorial and International Affairs apparently has such a survey in progress, updating a similar 1977 survey done with reference to the Trust Territory. [17]

Commissioner Jesus Borja said emphasis might best be placed on study of laws not now applicable to the NMI, noting as an example the amendment of federal law to permit enlistment in the armed forces by NMI citizens.

Commissioner Edward Pangelinan suggested examining the work of other commissions, such as those for Guam and the Virgin Islands, to see the priorities they had selected, the information they had collected, and the format they had used. Mr. Joseph agreed, noting that the magnitude of the Commission's task demands identification and creative use of whatever other resources may be available.

Mr. MacMeekin said that to cover the entire U.S. Code with the funds available to the Commission would be possible, but only in a relatively superficial manner. Alternatively, the Commission can decide, he said, to concentrate its attention much more on some statutes than on others. He then raised the question whether the Commission should monitor potential legislation pending in Congress. Mr. Joseph suggested reliance on the monitoring done by Territorial and International Affairs.

Mr. Joseph suggested the inapplicability of the Internal Revenue Code as another potential issue and asked whether Interior was presently working on that issue. (A negative answer was given by a representative from the Solicitor's office.)

Mr. Thompson noted that the Department of Commerce, in connection with the Pacific Basin Development Conference, had collected from various agencies not only proposals for economic development, but lists of laws, rules, and regulations regarded as impediments to economic development.

Mr. MacMeekin asked for and received the Commission's approval to use a generally wide-open approach in conducting the affairs of the Commission, in order to be able to elicit comments and suggestions from a wide variety of sources. He also asked for and received authority to modify as might be necessary the format of the model staff memo adopted by the Commission at its first meeting.

Mr. MacMeekin then agreed to provide in greater detail for the next meeting options for the Commission in selecting priorities.

New business.

Non-Federal contributions. Mr. Joseph said the question had been raised, and referred to Interior's Office of the Solicitor, whether the Commission could use moneys provided by the NMI government. The Solicitor's office had determined, Mr. Joseph said, that the NMI could provide funds [18] to be spent in gathering information for use by the Commission so long as the information-gathering is not initiated by the Commission itself. Mr. Billy Max Paul, Assistant Solicitor for Territorial Law, elaborated. He said the Governor should call the meetings and invite three of the Commissioners to attend. No more than three can attend so as not to consitute a quorum of the Commission and thereby act for the Commission itself, he explained. The three invited must be from the Northern Mariana Islands, and the meetings must be planned and sponsored by the NMI government. Finally, he said, the Commissioners invited may only receive travel expenses.

Mr. Joseph than asked Mr. Paul to draft the standards by which the NMI contribution could be expended, as a basis for initiating correspondence with Governor Camacho.

Regrets of Congressman Burton; Future meetings of the Commission. Mr. Joseph conveyed to the Commission Congressman Burton's apologies for his inability to attend this meeting. He also conveyed the Congressman's suggestion that the Commission should try to accommodate the individual commissioners in the distance they must travel to meetings by holding some meetings somewhere between Washington, D.C. and Saipan, for example, in San Francisco or Honolulu. Mr. Pangelinan volunteered the facilities of his Honolulu office for meetings in that city.

Ms. McPhetres asked whether it would be possible for the Commission to meet in the NMI. Mr. Joseph suggested the fourth meeting be held there.

Salaries. It was asked at what level Commission staff in the NMI and San Francisco would be paid. Mr. Joseph responded that Mr. MacMeekin had not yet gone over the budget, but it was expected those positions would be at about GS-11, or approximately $20,000 per year.

Adjournment.

The meeting was then adjourned.

CERTIFICATION

The minutes of the September 12, 1980 meeting of the Northern Mariana Islands Commission on Federal Laws are set forth above as corrected and adopted by the Commission at its meeting of January 12, 1981.

Daniel H. MacMeekin
Executive Director

MINUTES OF THE THIRD MEETING

Washington, D.C., January 12, 1981

Commission Chair James A. Joseph opened the third meeting of the Northern Mariana Islands Commission on Federal Laws in Room 5160 of the main Department of the Interior building in Washington, D.C. at approximately 9:20 a.m.

Commissioners present, in addition to Mr. Joseph, were Jesus C. Borja, Congressman Phillip Burton, Agnes Manglona McPhetres, Edward DLG. Pangelinan, Pedro A. Tenorio, and Myron B. Thompson. No commissioners were absent.

Remarks of the Chair.

Mr. Joseph began the meeting by expressing his appreciation to the staff of the Department of the Interior's Office of Territorial and International Affairs for the assistance provided in establishing the Commission. Alluding to the forthcoming change in administration, he expressed the hope that the new administration would continue to support the work of the Commission. He noted that the work of the Commission transcended partisan politics, and that members of the Commission were appointed as individuals, not as representatives of particular agencies or interest groupings. He pointed out that the Commission is an independent entity, reporting directly to the U.S. Congress and supported by the office of the Assistant Secretary for Territorial and International Affairs.

Remarks of Commissioner Pangelinan.

Commissioner Edward DLG. Pangelinan expressed the appreciation of the people of the Northern Mariana Islands for assistance given by the Department of the Interior to the Commission and the need for this assistance to be continued by the incoming administration.

Quorum, notice of meeting, and approval of minutes.

Mr. Joseph announced that a quorum was present, and that notice of the meeting had been given as required by the By-laws. The executive director of the Commission, Mr. Daniel H. MacMeekin, said notice of the meeting had been sent for publication to the Federal Register, the Marianas Variety, and the Commonwealth Examiner.

The minutes of the second meeting of the Commission, held September 12, 1980, in Washington, D.C., were corrected and approved.

[20] Report of the Executive Director.

NMI Liaison Attorney. Mr. MacMeekin first introduced Mr. Jose S. Dela Cruz, who has been appointed as the Commission's Northern Mariana Islands Liaison Attorney, and summarized his educational background and experience. Mr. MacMeekin said Mr. Dela Cruz will be the Commission's principal staff representative in the Northern Mariana Islands, primarily responsible for enabling the Commission to perform its statutory duty to take into consideration the potential effect of federal laws on local conditions within the Northern Mariana Islands.

Review of progress--the budget. Mr. MacMeekin stated that the initial appropriation for the Commission, in fiscal year 1980, was $300,000. As part of a government-wide supplemental appropriation for pay raises, an additional $10,000 was appropriated to the Office of Territorial and International Affairs for use of the Commission in fiscal year 1980. Another $15,000, Mr. MacMeekin said, had been added for fiscal year 1981, so that, at the time of this meeting, the total appropriated for use of the Commission is $325,000.

Mr. MacMeekin noted that the Office of Territorial and International Affairs had requested an additional appropriation of $200,000 for the Commission for fiscal year 1982, and that this request had been approved by the Office of Management and Budget. This appropriation is necessary, Mr. MacMeekin said, because the original appropriation contemplated only one office for the Commission (rather than the two offices decided upon by the Commission) and underestimated staff and travel expenditures.

Mr. MacMeekin said that, until additional funding seems assured, he deemed imprudent hiring any personnel beyond himself, his secretary, Mr. Dela Cruz, and a part-time secretary for Mr. Dela Cruz. If, however, the additional $200,000 becomes available, he said, he wanted to hire at least one additional attorney and to extend the life of the Commission for a period of several months, in part to have enough time to make effective use of the additional attorney.

--organizational details. Mr. MacMeekin said Ms. Dianne Brickey had been hired as the Commission's secretary, to begin work on January 26, 1981. He summarized her previous experience and training, noting in particular her expertise with word processing equipment.

Mr. MacMeekin said he had requested the Office of Territorial

and International Affairs to order word processing equipment for the Commission, but that a delivery date had not yet been fixed. [21]

The Commission has obtained its own set of the United States Code Annotated, Mr. MacMeekin said. For most of its library needs, he said, Commission staff will use the Department of the Interior's law library.

Mr. MacMeekin said his immediate concern is obtaining office space, desks, a typewriter, other furniture and equipment, and a part-time secretary for Mr. Dela Cruz.

--establishing liaison with federal agencies. Letters have been sent by the Commission to 44 federal agencies and establishments, asking each to designate a person to act as liaison to the Commission, Mr. MacMeekin said. He said 39 of the agencies have designated liaisons, and that each of those liaisons has been asked to apprise the Commission of any particular federal law problems encountered attributable to creation of the Commonwealth of the Northern Mariana Islands and any legislative efforts the agency was undertaking to remedy problems found. Of the eight responses received by the time of this meeting, he said, none raised any particular problems.

--announcements in the NMI. No announcements of the Commission's existence and availability to receive views have yet been made in the Northern Mariana Islands, Mr. MacMeekin said. He noted that such announcements will be among Mr. Dela Cruz's first tasks on returning to the Northern Mariana Islands after this meeting.

--collection and examination of similar prior work. Mr. MacMeekin said he had collected and examined the reports of the Commission on the Application of Federal Laws to Guam and the Commission on the Application of Federal Laws to the Virgin Islands, and found that an earlier commission established to perform a similar function for Puerto Rico apparently had produced as its final report only a one-page letter to the President. Mr. MacMeekin noted the usefulness of these reports to this Commission is limited by their age, the most recent report being dated 1956, and the many changes that have been made in federal law since they were prepared.

--organization of data. Mr. MacMeekin said he had established a filing system for the Commission to allow the Commission to receive data on any federal statute from any source, and to retrieve that data quickly as necessary.

--Federal controls and procedures. Mr. MacMeekin said that,

[22] after studying the Civil Service Act, the Freedom of Information Act, the Federal Advisory Committee Act, the Administrative Procedure Act, and the Privacy Act, he was of the opinion that only the Privacy Act clearly applied to the Commission. He said that, with respect to the other laws, it made more sense to postpone any detailed inquiry into their applicability to the Commission, an inquiry that would necessarily be time-consuming, until particular problems arose making such an inquiry unavoidable.

Mr. MacMeekin expressed his appreciation to the Department of Interior personnel who had advised him on Interior policies and procedures.

Nondisqualification on FCMA issues. Mr. MacMeekin said he had decided it would not be necessary for him to disqualify himself from making recommendations to the Commission with regard to the Fisheries Conservation and Management Act or the vessel documentation laws. He had considered the possibility of such disqualification, he said, because of his previous association with counsel for plaintiffs in a challenge to the present applicability of those laws in the Northern Mariana Islands, Marianas Fisheries, Inc., v. Kreps (the Olwol case). He said his reasons for deciding not to disqualify himself were (1) he had made full disclosure to the Commission of his prior association; (2) neither he nor the Commission has the power to decide the applicability issue adversely to the interests of the Olwol plaintiffs--he could only recommend to the Commission, and the Commission could only recommend to Congress; (3) he had received no compensation attributable to the Olwol litigation; and (4) the Olwol litigation is primarily concerned with the present applicability of the statutes at issue to the Northern Mariana Islands, while the Commission is concerned with whether as a matter of policy those statutes should apply to the Northern Mariana Islands.

Proposals for other commissions. Mr. MacMeekin noted the existence of proposals to create other commissions, the jurisdictions of which would overlap with that of this Commission if they were created. Those commissions, variously, would examine the applicability of all federal laws, or only federal laws related to economic development, to all territories, to all territories except the Northern Mariana Islands, or to all insular areas of the United States, including Hawaii and Puerto Rico. Although no commission has been authorized by the U.S. Congress, he said, the Department of the Interior's budget request for fiscal year 1982 includes $1,000,000 for a "Federal Laws Commission" "to examine the effects of Federal Laws on all the territories."

Commissioners' tenure. Mr. MacMeekin said he had done some legal research to determine whether the change of administrations

would have any effect on the tenure of members of the Commission. His conclusion is that, because the Commission reports only to Congress, it is not a part of the executive branch. Accordingly, he said, applicable case law holds that members retain their positions throughout the life of the Commission. [23]

Mr. Joseph noted that Mr. MacMeekin's analysis coincided with his understanding at the time the members were originally appointed.

Old business.

Priorities for interim reports. Mr. MacMeekin suggested the Commission initially focus on three areas to determine whether the Commission should recommend amendments to the law by an interim report or interim reports to the U.S. Congress. The three areas are immigration, rights of citizenship, and the Federal Tort Claims Act.

--Immigration. Mr. MacMeekin said that the President's Select Commission on Immigration and Refugee Policy would present its final report and recommendations to the U.S. Congress in March 1981. He noted the Select Commission has a specific statutory responsibility to make recommendations with respect to applicability of the federal immigration laws to the Northern Mariana Islands. He also noted that the Covenant to Establish a Commonwealth of the Northern Mariana Islands provides, in general, that the federal immigration laws will not apply in the Northern Mariana Islands, at the earliest, until after termination of the trusteeship. At least two practical concerns are important, Mr. MacMeekin said. First, because the Northern Mariana Islands have a small population, inclusion of the islands within the United States for immigration purposes raises the possibility that groups of immigrants into the United States, very small in numbers by comparison with the population of the United States but very large by comparison with that of the Northern Mariana Islands, would settle in the Northern Mariana Islands, quickly outnumbering the local populace. Second, he said, because of the importance of tourism to the local economy, the Northern Mariana Islands may prefer to control and, through that control, to minimize entry requirements for foreign visitors.

Because the Select Commission's recommendations will soon be submitted to Congress, Mr. MacMeekin said it would be advisable for this Commission to be ready to comment to Congress on the immigration laws at an early date. Mr. MacMeekin then adverted to a letter from Lawrence Fuchs, Executive Director of the Select Commission, to this Commission, seeking this Commission's views on alternative treatments of the Northern Mariana Islands under the immigration laws. The Commission decided to defer consideration of this letter until later in the meeting.

--Citizenship. Mr. MacMeekin noted that some rights of U.S.
[24] citizenship had already been granted to citizens of the Northern Mariana Islands by statute, presidential proclamation, or administrative decision, but that full U.S. citizenship would not be conferred until termination of the trusteeship. Because the date of termination remains uncertain, he suggested the entire U.S. Code be examined, with the aid of a legal research computer, to determine what other rights of U.S. citizenship should be granted the people of the Northern Mariana Islands before termination of the trusteeship.

--Federal Tort Claims Act. Mr. MacMeekin recommended the Commission make an early examination and, if necessary, recommendation to make sure remedies of the Federal Tort Claims Act are available to persons suffering personal inuries in the Northern Mariana Islands as a result of negligently conducted activities of the federal government.

Other priorities. Mr. MacMeekin recommended examination of the Catalog of Federal Domestic Assistance to determine applicability of programs there listed to the Northern Mariana Islands, with a view to recommending such changes as seem desirable. He also suggested a general survey of the following titles of the U.S. Code:

Title 16.	Conservation (only those chapters dealing with fisheries);
Title 46.	Shipping;
Title 15.	Commerce and Trade;
Title 12.	Banking (and any other chapters or sections of the U.S. Code dealing with banking);
Title 49.	Transportation (only those sections dealing with air transportation);
Title 28.	Judiciary and judicial procedure;
Title 19.	Customs Duties;
Title 29.	Labor; and
Title 18.	Crimes and Criminal Procedure.

He said the Commission should then survey, in an even more superficial fashion, all other titles of the U.S. Code to make sure no important areas are overlooked. He said he had not listed specifically Title 20, Education, or Title 42, Public Health and Welfare, because most programs in these titles would be examined in the course of surveying the Catalog of Federal Domestic Assistance. He called attention to recent legislation allowing the Secretary of Agriculture to extend to the Northern Mariana Islands programs set out in Title 7, Agriculture.

Mr. MacMeekin noted his view that priorities should be flexible and subject to modification. [25]

He then raised a question as to the extent to which the Commission should give priority to statutes, the application of which to the Northern Mariana Islands is controversial. He gave the Clean Air Act as an example. Congressman Phillip Burton said it was important for Congress to know ramifications of applying federal laws in the Northern Mariana Islands. For example, he said, if Congress applied the Clean Air Act to the Northern Mariana Islands, it did so because it thought the Act would be beneficial there. Commissioner Edward DLG. Pangelinan spoke in favor of the Commission addressing the Clean Air Act, and noted that, even though a temporary waiver of Clean Air Act requirements had been obtained, application of the National Traffic and Motor Vehicle Safety Act prevented solution of the problem, since the Japanese automobiles predominantly imported into the Northern Mariana Islands are fitted to comply with both laws or with neither, but not with only one of the laws. Mr. Joseph suggested any matter of serious concern ought to be analyzed so the Commission could make a policy decision on whether it should take a position.

Mr. Burton observed that federal criminal laws assume a standard of conduct uniformly accepted in the United States but perhaps alien to the custom and culture of the Northern Mariana Islands. Because of this factor, he suggested for doubtful cases a presumption against applicability of federal criminal laws to the Northern Mariana Islands, noting that the Northern Mariana Islands Legislature is competent to enact whatever criminal laws may be necessary.

Commissioner Pedro A. Tenorio called attention to delays in obtaining preconstruction permits from the Army Corps of Engineers for dredging wetland areas. Mr. Burton suggested the delays called for speeding up the processing of permit requests by the bureaucracy, not for changing the law requiring the permits.

Mr. Burton noted that public health programs presently applicable in the Northern Mariana Islands are applicable only in theory because an adequate hospital facility is lacking. He particularly noted the Northern Mariana Islands would be eligible for the Medicaid program but for the present inadequate hospital.

Commissioner Agnes M. McPhetres said the same situation applied in the area of higher education grants. She said that although the Northern Mariana Islands educational system is eligible for various higher education grants, it cannot obtain these grants without an accredited college. Mr. Burton suggested, because of the small population of the Northern Mariana Islands, an accredited college

would strain the local budget and, in the long run, might be uneconomical.

[26] Ms. McPhetres noted that recent regulations would increase the number of students in the Northern Mariana Islands who must be provided bilingual education to the point where it is very burdensome and expensive for the local educational system, and expressed her support for congressional efforts to overturn those regulations.

Motion-Agricultural programs. Mr. Burton moved that the Commission send a letter to the Secretary of Agriculture urging an early examination of programs administered by the Department of Agriculture to determine which should be extended to the Northern Mariana Islands under authority granted the Secretary by Public Law No. 96-597. The motion was seconded and passed.

Discussion--continued. Mr. Burton expressed the view that obtaining enactment by Congress of legislation allowing citizens of the Northern Mariana Islands to work in the federal civil service or of legislation amending the Federal Tort Claims Act to include claims arising in the Northern Mariana Islands should not be difficult. He said the most important area of Commission focus is the immigration laws. He also said federal laws affecting fisheries and inter-island transportation deserve the Commission's attention.

Mr. Pangelinan noted that, even though legislation has been enacted to allow citizens of the Northern Mariana Islands to enlist in the U.S. armed forces, other citizenship requirements related to service in the armed forces remain obstacles to citizens of the Northern Mariana Islands and need amendment.

Mr. Pangelinan said persons in the Northern Mariana Islands already had started to look upon the Commission as a source of legal research for questions on the applicability of particular federal laws to the islands. He said such questions could become a burden on the Commission's limited staff. Mr. Joseph said the Commission must select the questions to which the staff will devote time.

Mr. Joseph then proposed the Commission adopt the priorities suggested by the executive director, with modifications as suggested by the Commission's discussion. The Commission agreed to this proposal.

Motion-Hospital funding. Mr. Pangelinan moved that the Commission send letters to the appropriate subcommittees of the House and Senate committees on appropriations, urging early appropriation of architectural and engineering costs, and, to the extent budgetary restrictions permit, of construction costs for the Saipan hospital

authorized by Public Law 96-205. Commissioner Myron H. Thompson suggested the letter include reference to the need for an adequate hospital in order to take advantage of federal laws providing health-care benefits available but for the lack of an adequate hospital. Mr. Pangelinan agreed to this modification. The motion was then seconded and passed. [27]

New business.

Motion-Privacy Act. Mr. Thompson moved the Commission adopt Privacy Act regulations proposed by the executive director. The motion was seconded and passed.

Resolution to amend the By-laws. Mr. Thompson moved passage of the resolution proposed by the executive director, to amend section 10 of the Commission's By-laws to allow appointment and termination of secretarial and clerical supporting staff by the executive director rather than by the Chair in consultation with the Commission. The resolution was seconded and passed.

Funds appropriated by the Government of the Northern Mariana Islands. The Commission, after discussion, decided that, should the Government of the Northern Mariana Islands authorize and appropriate funds for use by the members of the Commission from the Northern Mariana Islands, the use of such funds should be determined by those members and that Government, and the Commission as a whole should neither approve nor disapprove the use made of such funds.

Letter from the Select Commission on Immigration and Refugee Policy. Lawrence H. Fuchs, Executive Director of the Select Commission on Immigration and Refugee Policy on December 22, 1980, wrote this Commission asking its views on the treatment that should be accorded the Northern Mariana Islands under the Immigration and Nationality Act. After discussion, the Commission decided that it should respond by recommending that no change be made in the present treatment of the Northern Mariana Islands, by requesting that the Select Commission make reference in its report to the jurisdiction of this Commission on the subject, and by asking that the Select Commission give this Commission its assurance that its recommendations would not contravene the clear language of the Covenant.

Motion-Additional funding. Mr. Burton moved that the Chair or the Chair's delegate be authorized to support the $200,000 budget request for the Commission for fiscal year 1982. The motion was seconded and passed.

Future Meetings.

[28] Mr. Joseph suggested meetings of the Commission be held only twice a year, because of the impact of travel expenses on the Commission's budget. He suggested the next meeting be held in Saipan in approximately six months. Mr. Pangelinan suggested that the time and place of the next meeting be set by the Chair when it was clear sufficient research had been finished to justify a meeting. This suggestion was adopted without dissent.

--By-laws amendment. Commissioner Jesus C. Borja noted that the Commission's By-laws required three meetings per year, and commented that elimination of one meeting per year might allow the Commission to hire an additional staff attorney in its Washington office. He suggested the By-laws language be amended to require only two meetings per year. Mr. Joseph suggested, as an alternative, the three-meeting requirement be retained, but the By-laws be amended to allow one meeting per year to be waived by the Chair. Mr. Thompson moved amendment of the By-laws to allow the Chair to waive one meeting per year. The motion was seconded and passed.

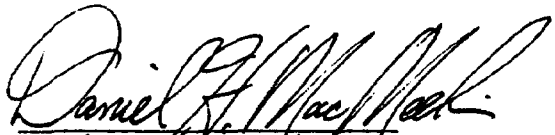
Closing remarks; adjournment.

Mr. Joseph then closed the meeting by expressing his desire to continue as Chair of the Commission, but volunteering to resign if any of the Commission members thought he should. No suggestion for his resignation was made.

The third meeting of the Northern Mariana Islands Commission on Federal laws was then adjourned.

CERTIFICATION

The minutes of the January 12, 1982, meeting of the Northern Mariana Islands Commission on Federal Laws are set forth above as corrected and adopted by the Commission at its meeting of November 30, 1981.



Daniel H. MacMeekin
Executive Director

MINUTES OF THE FOURTH MEETING

HONOLULU, HAWAII

November 30-December 1, 1981

[29]

Commission Chair James A. Joseph opened the fourth meeting of the Northern Mariana Islands Commission on Federal Laws in Room 348 (the Marianas/Hawaii Liaison Office) at 1221 Kapiolani Boulevard in Honolulu, Hawaii, at approximately 9:25 a.m.

Commissioners present, in addition to Mr. Joseph, were Jesus C. Borja, Agnes Manglona McPhetres, Edward DLG. Pangelinan, and Pedro A. Tenorio. Commissioners absent were Congressman Phillip Burton and Myron B. Thompson.

Remarks of the Chair

Mr. Joseph began the meeting by welcoming the members present and noting that he was delighted to continue serving as Chairperson of the Commission. He commended the Commission's executive director, Daniel H. MacMeekin, and the staff for the excellent work being done. He told the members he maintains frequent communication with Mr. MacMeekin in Washington. He informed the members Congressman Phillip Burton was not able to attend the meeting because of his very busy schedule in Congress. He noted that rescheduling the meeting was not practical because of the importance of soon submitting an interim report by the Commission to Congress. He informed the members that Mr. Myron Thompson could not attend the meeting because of previous commitment, but that Mr. MacMeekin met with Mr. Thompson and briefed him on the matters to be discussed at this meeting.

Quorum, Notice of Meeting, and Approval of Minutes

Mr. Joseph announced that a quorum was present, and that notice of the meeting had been published in the Federal Register, the Marianas Variety, and the Commonwealth Examiner. He also noted that the meeting was open to the public.

The minutes of the third meeting of the Commission, held January 12, 1981, in Washington, D.C., were corrected and approved.

Report of the Executive Director

Personnel. Mr. MacMeekin informed the Commission he was able to hire a secretary for his office just before the presidential freeze on hiring came into effect. He mentioned the problem, created by that freeze, in hiring a part-time secretary for the Commission in the Northern Mariana Islands, but noted that, since the freeze was lifted several months ago, Mr. Dela Cruz has been able to hire a part-time secretary for that office.

Budget. Mr. MacMeekin said money is still available from the initial Commission funding of $325,000. In addition, the Department of the Interior requested an additional $200,000 supplemental
[30] appropriation for the Commission as part of its fiscal year 1982 budget request to Congress. Mr. MacMeekin said he endorsed that budget request. The $200,000 request has so far survived the federal budget cuts and has passed the House and the Senate and, thereafter, the conference committee, he said.* He indicated that whether the President will sign the appropriation into law is uncertain in view of the President's statement to Congress that he will veto any "budget busting" appropriation bill.

Mr. MacMeekin told the members he plans to hire an additional attorney and secretary from the present budget. He noted that, according to his estimate, the Commission has spent $140,000, leaving an unexpended balance of $185,000. He said that the official accounting for Commission expenditures by the Department of the Interior was not very timely, so that he had rely on his own figures. The remaining funds, he said, are sufficient for hiring the additional attorney and secretary, and for three more meetings. With those expenditures, a balance of approximately $49,000 would remain available for expenditures for other purposes. Mr. Borja asked whether there will be any balance for the next fiscal year. Mr. MacMeekin replied that some funds remain available for expenditure in fiscal year 1983 according to his best estimate. He said, however, he wanted to hire another attorney and to extend the life of the Commission by at least six months, and that the additional money from Congress would be necessary for these purposes.

Mr. MacMeekin noted that the original budget of the Commission is "no-year money" that remains available until expended. The supplemental $200,000 requested, however, is not no-year money, but must be expended in fiscal year 1982. He said he did not know why the fiscal year 1982 funds were not also no-year money.

Mr. MacMeekin then expressed his appreciation for the in-kind contribution made by the Government of the Northern Mariana Islands for use by the members of the Commission in the Northern Mariana Islands.

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*In fact, the conference committee reduced all appropriations in this bill by 4 percent, thereby reducing the Commission appropriation to $192,000.

Northern Mariana Islands office. Mr. MacMeekin briefed the members on Mr. Dela Cruz's initial operations in the Northern Mariana Islands. He said that Mr. Dela Cruz was originally provided an office in the Department of the Interior's federal comptroller's office on Saipan. That space was inadequate for effective operations. Mr. Dela Cruz then moved to private office space, and eventually to his present quarters in the Nauru Building. [31]

Mr. MacMeekin next summarized for the members the contacts Mr. Dela Cruz had made with various officials, groups, and individuals in the Northern Mariana Islands, noting that the response from the Northern Mariana Islands has been very positive. Announcements of the opening of the Northern Mariana Islands office were made early in the year. Mr. Dela Cruz then further summarized his work in establishing the office in the Northern Mariana Islands.

Federal agency contacts. Mr. MacMeekin then summarized his efforts to obtain from federal agencies information on problems encountered by those agencies with respect to the application of federal law in the Northern Mariana Islands. Few such problems, he said, have been made known to the staff by these agencies. Some agencies, particularly the Departments of Transportation and Justice, have been very helpful to the Commission.

The role of the Office of Management and Budget. Mr. MacMeekin reported that an employee of the Office of Management and Budget (OMB) recently asserted that the Commission must submit any recommendations to OMB for clearance before those recommendations may be given to Congress. Mr. MacMeekin said he felt clearance by OMB would compromise the Commission's statutory mandate to report to Congress. He also noted that, while the OMB routinely cleared recommendations by executive agencies to Congress, the Comptroller General had ruled that this Commission is not a part of the executive branch. Mr. MacMeekin said that OMB probably does have the power to require executive branch agencies to clear any comments on recommendations by the Commission with OMB before those comments are given to the Commission. Mr. MacMeekin explained his understanding that Congress, after receiving Commission recommendations, would no doubt seek executive branch comments on those recommendations and, at that time, any executive branch comments would be cleared by OMB. Mr. Joseph suggested that the question of OMB clearance be addressed by the Commission later in the meeting.

Correspondence. Mr. MacMeekin next reviewed the letters sent pursuant to the directions given by the Commission at its previous meeting. A letter sent to the Secretary of Agriculture sought an examination of the programs administered by the Department of Agriculture to determine which programs would increase agricultural production in the Northern Mariana Islands and, consequently, should be extended there under Public Law 96-597. The reply received, a copy of which was furnished to Commission members, was rather noncommittal, Mr. MacMeekin said.

Mr. Pangelinan noted that the reduction of federal programs and services in general is having an adverse effect on the Northern Mariana Islands. Between three and four million dollars would be
[32] lost to the territories, he said. He mentioned that Senator Weicker had introduced a bill to offset these losses to the territories.

Pursuant to the Commission's direction, a letter was also sent to the Select Commission on Immigration and Refugee Policy, recommending that the Select Commission make no changes in the way federal immigration and naturalization laws are now applied to the Northern Mariana Islands, and allowing this Commission to address the subject and make definitive recommendations to Congress. Mr. Lawrence Fuchs, the executive director of the Select Commission, responded, advising this Commission that the Select Commission would not recommend changes in the existing immigration and naturalization laws with respect to Northern Mariana Islands.

Mr. MacMeekin said that letters were also sent to appropriate committees of both houses of Congress, again pursuant to Commission direction, emphasizing the need for funding the Northern Mariana Islands hospital, noting that some federal health programs could not be made available in the Northern Mariana Islands because the present hospital facility does not meet federal standards. No reply to these letters has been received, he said.

Interior study of federal laws affecting the territories. Mr. MacMeekin said that Ms. Ruth Van Cleve, now working in the Solicitor's Office in the Department of the Interior, several months ago initiated a study of federal laws as they apply to the territories of the United States. Her study encompasses the Northern Mariana Islands, he said. Mr. MacMeekin noted that, from what he has seen of Ms. Van Cleve's initial work, she is a good scholar and her research is useful. He said there should be no objection to the overlapping of her study and the work of this Commission, even if her recommendations to Congress differ from those of this Commission. Mr. Joseph said that the Commission need not be concerned about the overlap and that Ms. Van Cleve's work would be a welcome contribution in an area where much work is needed. He also noted that Ms. Van Cleve's study would represent the views of the executive branch, and that those views would not necessarily coincide with the views of this Commission. Mr. MacMeekin noted that Ms. Van Cleve's recommendations to Congress would probably not be submitted to Congress until she finishes her work with respect to all titles of the United States Code.

Review of Proposed Interim Report of the Commission to Congress

The Commission next reviewed the interim report recommended by the staff for submission by the Commission to Congress.

Substance of recommendations. Mr. MacMeekin first commented on the substantive aspects of the proposed recommendations.

--statutory rights of citizenship. Mr. MacMeekin said a large number of federal laws require persons to be United States citizens in order to qualify for certain rights, privileges, or benefits. At the present time, he said, citizens of the Northern Mariana Islands are treated as if they were citizens of the United States for purposes of a few particular statutes. This treatment is accorded by statute, or through administrative decisions or rulings. For example, he said, legislation has been enacted to allow citizens of the Northern Mariana Islands to be treated as citizens of the United States for purposes of enlistment in the armed forces of the United States. By administrative decision citizens of the Northern Mariana Islands are treated as citizens of the United States for purposes of the Medicare program. An agency's general counsel's opinion holds that citizens of the Northern Mariana Islands are to be treated as United States citizens for purposes of certain vessel documentation laws. Mr. MacMeekin pointed out that, while such administrative rulings are beneficial, those rulings can also be reversed administratively. He gave as an example administrative reversals of policy by the Immigration and Naturalization Service affecting the ability of citizens of the Northern Mariana Islands to enter the United States. [33]

Mr. MacMeekin also noted that the privileges and immunities provision of the Covenant probably has not accorded citizens of the Northern Mariana Islands any rights of United States citizenship under federal statutes, but only protects them from discrimination by the States of the United States.

Mr. MacMeekin pointed out that there are literally thousands of provisions in the United States Code touching on citizenship. Only about one third of these deal with distinctions based on citizenship. Those statutes containing distinctions based on citizenship were divided into seven subject matter categories by the staff for convenience in treatment. The seven categories were: (1) federal employment, (2) uniformed services, (3) protection and services in foreign countries, (4) commerce, (5) political and civil rights, (6) federal programs and benefits, and (7) appointment to high office. He noted that these categories are not exhaustive because certain rights of citizenship are more easily treated separately, for example, those under the tax laws or the immigration laws. Mr. MacMeekin said that the draft interim report included recommendations with respect to all seven subject matter areas. An eighth recommendation offers legislation to ensure citizens of the Northern Mariana Islands are able to enjoy rights of United States citizenship under any federal statute applicable in the Northern Mariana Islands.

Mr. MacMeekin noted that, for purposes of the draft recommendations having to deal with the uniformed services, he had included a requirement that a citizen of the Northern Mariana Islands

declare intent to become a citizen of the United States on termination of the trusteeship in order to qualify as a United States citizen for purposes of the statutes covered by those
[34] recommendations. He said he based this intent requirement on similar language in the legislation allowing enlistment of citizens of the Northern Mariana Islands in the Armed Forces of the United States. Mr. Pangelinan remarked that the intent requirement was included in the enlistment legislation because it was thought advisable in light of provisions in the Trusteeship Agreement.

Mr. MacMeekin noted that the citizenship recommendations did not include any recommendations with respect to laws imposing burdens or liabilities on United States citizens. Mr. Tenorio asked whether the draft recommendations would allow citizens of the Northern Mariana Islands to be commissioned as officers in the U.S. Army Reserve. Mr. MacMeekin replied affirmatively. Mr. Pangelinan noted that his office was presently working on legislation to allow citizens of the Northern Mariana Islands to become officers in the U.S. armed forces reserves.

Mr. MacMeekin noted that the intention of the citizenship recommendations is not to discredit prior administrative rulings treating citizens of the Northern Mariana Islands as United States citizens for purposes of particular federal statutes.

Mr. MacMeekin then raised the question of whether the Commission should submit recommendations to Congress covering all statutes limiting benefits or rights to United States citizens or should use a more targeted approach, focussing only on those statutes apt to create problems for citizens of the Northern Mariana Islands if legislation is not enacted. He also noted the alternative possibility of asking Congress to confer United States citizenship on citizens of the Northern Mariana Islands now, prior to termination of the Trusteeship. Mr. MacMeekin said he thought there might be adverse international reaction and, consequently, adverse reaction from the State Department to an early grant of United States citizenship. He also noted that an early grant would amount to amendment of the Covenant and that, while this particular amendment would be favorable to the Northern Mariana Islands, setting a precedent of amending the Covenant might lead to other, less favorable amendments. Mr. Pangelinan asked whether United States citizenship could be granted without amending the Covenant. Mr. MacMeekin said he felt that many of the rights of citizenship could be obtained by the approach taken in the draft interim report, treating citizens of the Northern Mariana Islands as citizens of the United States for purposes of particular statutes.

Mr. Pangelinan suggested that many of the provisions in the draft recommendation are unlikely actually to affect persons in the Northern Mariana Islands. Mr. MacMeekin explained that his approach

had been to list all statutes which conceivably could affect persons in the Northern Mariana Islands and then allow the Commission to delete those it thought not of sufficient importance to include, rather than making deletions at the staff level, and then trying to explain Commission what other provisions, not before the Commission in draft form, it might want to include. [35]

Mr. Tenorio suggested that early termination of the trusteeship for the Northern Mariana Islands would accomplish the same purpose. Mr. Pangelinan responded that the United States Government has taken the position the trusteeship for the Northern Mariana Islands will not be terminated before it is terminated for the remainder of Micronesia. Ms. McPhetres asked whether the draft recommendations would conflict with the Covenant. Mr. MacMeekin said that they would not, noting that the United States Congress has broad powers under the Trusteeship Agreement to extend federal legislation to the Northern Mariana Islands, and even now treats citizens of the Trust Territory as citizens of the United States for certain purposes.

Ms. McPhetres then suggested that the Commission strike from the recommendations those statutes unlikely to be of importance to citizens of the Northern Mariana Islands. Mr. MacMeekin said he had already identified provisions the Commission might want to delete. The Commission then went through the citizenship recommendations with Mr. MacMeekin, discussing and reaching a consensus on each provision. Mr. Pangelinan then moved for deletion of the statutes identified in this discussion. The motion was seconded by Mr. Tenorio and passed. Mr. MacMeekin then asked whether the citizenship recommendation should include a definition of "citizen of the Northern Mariana Islands". He noted that the group of persons who will become citizens pursuant to the Covenant differed slightly from the group of persons identified as "interim citizens of the United States" under the Constitution of the Northern Mariana Islands, and that presidential proclamations defined the group in yet a third way. Mr. Pangelinan moved that a section be added to the proposed legislation defining citizens of the Northern Mariana Islands in accordance with the definition in section 8 of Schedule on Transitional Matters of the Northern Mariana Islands Constitution. The motion was seconded and passed.

Mr. Pangelinan then moved for adoption of the citizenship recommendations, as set forth in the draft interim report and as modified by the Commission. The motion was seconded and passed.

Introduction of Members of the Public

At this point in the meeting, Mr. Joseph invited three members of the public to introduce themselves. They were Mr. Jerry Norris, executive director of the Pacific Islands Development Council, Mr. Jerome McLaughlin, of Pacific, Micronesia, and Orient Shipping

Lines, and Mr. Mike Gallow. Mr. McLaughlin at this time was given the opportunity to address the Commission pursuant to a request he had made prior to the meeting. He asked the Commission to consider whether a ruling of the Federal Maritime Commission, requiring
[36] carriers serving the Northern Mariana Islands to comply with domestic tariff filing requirements rather than the less burdensome foreign tariff filing requirements, should be changed by legislation. Mr. Joseph asked the staff to study this issue. Mr. MacMeekin noted that he had included the question on his list of possible priority areas for Commission review later in the meeting.

Review of Proposed Interim Report of the Commission to Congress (continued)

Substance of recommendations--Federal Tort Claims Act. Mr. MacMeekin next summarized the second part of the draft interim report to Congress, recommending legislation to insure the applicability of the Federal Tort Claims Act to claims arising in the Northern Mariana Islands. He said that plausible arguments exist both in favor of and against the present applicability of the Act in the Northern Mariana Islands. Passage of the recommended legislation would remove any doubts as to the Act's applicability. Mr. Borja moved for the adoption of the recomendation with regard to the Federal Tort Claims Act. The motion was seconded and passed.

--Clean Air Act. Mr. MacMeekin then explained the recommendation of the draft interim report on application of the Clean Air Act to the Northern Mariana Islands. He said that exemption from the Act is recommended only with respect to the portions of the Act restricting emissions from mobile sources, primarily motor vehicles. The recommendation, he said, also would allow the Administrator of the Environmental Protection Agency to exempt the Northern Mariana Islands from other provisons of the Act on finding benefits of compliance to be significantly outweighed by costs of compliance. Mr. Dela Cruz noted that comments from the Northern Mariana Islands with regard to this draft recommendation were generally favorable and that no opposition to the recommendation had been received by him. Mr. Pangelinan suggested that language be inserted in the proposed draft legislation to authorize waiver of the Act's requirements by the Administrator of the Environmental Protection Agency on request of the Governor of the Northern Mariana Islands. Mr. Borja suggested that, if the Governor made such a request, the Administrator should have no discretion to deny the exemption. Mr. Pangelinan moved that the legislative language proposed be modified to require a waiver by the Administrator on a finding by the Governor that costs of compliance with a particular requirement significantly outweigh benefits to the Northern Mariana Islands from compliance with that requirement. The motion was seconded and passed.

Mr. MacMeekin noted that the Environmental Protection Agency had not yet commented on the draft recommendation and asked whether the agency should be given additional time in which to submit comments. He suggested that the Executive Director, in consultation with the [37 Chair, could either modify the draft recommendation to reflect suggestions from the Environmental Protection Agency or, if the suggested changes were of sufficient gravity, obtain the approval of all Commission members. After discussion, the Commission members decided that the interim report to Congress should not be delayed to permit receipt of comments from the Environmental Protection Agency and possible alterations in the interim report in response to those comments.

Procedure. The Commission next discussed the format of the report and the persons to whom it should be submitted. Mr. Pangelinan suggested the Chair and the Executive Director be given flexibility to decide on the format of the interim report. The members agreed to this suggestion.

Mr. Joseph noted that, while comments on the substance of the draft interim report had been sought from a variety of sources and had been received, the comment process had not been mentioned in the draft interim report. Mr. MacMeekin suggested that, rather than including a list of the persons and organizations commenting on each draft recommendation, general language be inserted in the introduction to the interim report alluding to the efforts made to secure comments from a variety of sources. The Commission concurred in this approach.

Mr. MacMeekin suggested that the interim report be addressed formally to the President of the Senate (who is the Vice President of the United States) and the Speaker of the House of Representatives, the presiding officers of Congress. He also suggested copies be sent to all members of Senate and House of Representatives committees having jurisdiction over the territories. Mr. Borja said that officials of the Government of the Northern Mariana Islands should also be provided with copies. The members of the Commission directed Mr. MacMeekin to distribute the interim report to those recipients.

Adoption of interim report. Mr. Pangelinan then moved adoption of the interim report in its entirety, as amended by the Commission during its deliberations in this meeting. The motion was seconded by Ms. McPhetres and passed.

Old Business

Commission priorities. Mr. MacMeekin said the staff's first priority should be submission of the interim report to Congress. He then discussed federal laws previously identified by the Commission as laws to which the staff should give high priority.

--immigration laws. Mr. MacMeekin said two separate areas of concern were presented by the immigration laws, one involving entry into the Northern Mariana Islands and the other entry into other
[38] parts of the United States. He noted that, under the terms of the Covenant, the Northern Mariana Islands presently controls its own immigration and will continue to do so unless the United States Congress decides otherwise.

Three primary concerns, Mr. MacMeekin said, dominate discussion of possible application of federal immigration laws to entry into the Northern Mariana Islands. First, the small population of the Northern Mariana Islands soon could be outnumbered by emigrants from a particular foreign country if a substantial portion of the 20,000 annual immigrants allowed from that country into the United States each year decided to settle in the Northern Mariana Islands. Second, because Guam has experienced problems attributed to federal administration of alien labor laws there, many persons in the Northern Mariana Islands desire to retain local control over the entry of alien laborers. Finally, he said, entry into the Northern Mariana Islands by tourists should continue to be easy.

Mr. MacMeekin said entry into the United States by citizens of the Northern Mariana Islands has occasionally been difficult. He noted that suggestions have been made for issuance of a special passport to citizens of the Northern Mariana Islands by the U.S. State Department prior to termination of the trusteeship. He said that present authority for admission of citizens of the Northern Mariana Islands into the United States is in the form of a telex of the Immigration and Naturalization Service allowing citizens of the Northern Mariana Islands to be treated administratively as if they were citizens of the United States for purposes of immigration inspection. That telex, he said, does not permit citizens of the Northern Mariana Islands to bring into the United States spouses who are citizens of neither the United States nor the Northern Mariana Islands.

Mr. MacMeekin said that the negotiating history of the privileges and immunities provisions in the Covenant shows those provisions were included to protect citizens of the Northern Mariana Islands from deprivation of rights by State governments, and not by the Federal Government.

Mr. MacMeekin said whether the Northern Mariana Islands could restrict rights of aliens lawfully within United States to travel to the Northern Mariana Islands presented a constitutional question deserving research.

--Fishery Conservation and Management Act. Mr. MacMeekin explained the operation of the Fishery Conservation and Management Act. The emerging governments in other parts of Micronesia where the

Act does not apply have earned substantial sums by selling fishing rights, primarily for tuna, to foreign nations. The Act's applicability to the Northern Mariana Islands has been the subject of debate and litigation, he said, and is not yet settled. If the Act applies, any fees derived from foreign fishing permits would go into the United States Treasury, not into the treasury of the Northern Mariana Islands. Further, he said, the Act does not purport to regulate the tuna fishery. Mr. MacMeekin also referred to the controversial vessel documentation requirements applied under the Act. Those requirements, he said, have been temporarily rendered inapplicable to vessels owned by citizens of the Northern Mariana Islands by a presidential proclamation. [39]

Mr. MacMeekin said that, while an argument could be made for continuing ownership of Northern Mariana Islands waters by the Northern Mariana Islands based on traditional ownership, his impression is that once an area becomes a part of the United States, its waters become United States waters. He noted that, under section 104 of the Covenant, the United States on termination of the trusteeship is responsible for conduct of foreign affairs affecting the Northern Mariana Islands. He said he thought it extremely unlikely the United States would seek to negotiate tuna fishing rights on behalf of the Northern Mariana Islands when it takes the position on its own behalf that tuna may only be controlled by international fishery agreements.

Legislation allowing the Northern Mariana Islands to receive fees derived from foreign fisheries in local waters might be possible, Mr. MacMeekin said, under an amended Fishery Conservation and Management Act. Even were the act so amended, he said, the Northern Mariana Islands would still be unable to collect fees derived from the excluded tuna fisheries.

Mr. MacMeekin said a regional fishery agreement covering tuna is a possibility, but unlikely because the major fishing nations in the area probably prefer the status quo. He noted that the Commission's jurisdiction is limited to making recommendations to Congress, while international fisheries agreeements are negotiated by the executive branch.

--federal grants. Mr. MacMeekin said he had delayed staff study of the availability of federal grants to the Northern Mariana Islands, waiting for a Department of the Interior survey on the question. He also noted that the massive federal budget cuts are restructuring many federal grant programs. The Interior survey, when it finally appeared, was found to have been based on a questionnaire survey of the various grant-administering federal agencies rather than on a study of the applicable legal provisions. The data in the survey was two years old when it was published. Even so, he said, the survey provides a good starting point for the Commission's study. Of the 1012 programs listed in the Interior survey, he said, 785 appear to be available in the Northern Mariana Islands. Of these,

the Northern Mariana Islands actually participates in 150. Mr. MacMeekin proposed that programs be divided into two categories: (1) those available to other territories but not to the Northern Mariana Islands; and (2) those available neither to the Northern Mariana Islands nor the other territories. The Interior survey identifies 68 programs in the first category. Under section 703(a) of the Covenant, the United States promises to make available to the Northern Mariana Islands federal programs and services available to the other territories. Mr. MacMeekin mentioned that he also wants to investigate programs which certain agencies asserted to be available to Guam but not to the Northern Mariana Islands, since such an assertion is contrary to section 502(a)(1) of the Covenant, making available to the Northern Mariana Islands all laws providing federal services and financial assistance programs to Guam. Mr. Pangelinan said that for a number of federal grant programs, the programs are either not necessary in the Northern Mariana Islands or the Northern Mariana Islands does not have the resources to implement those programs.

[40]

--bankruptcy laws. Mr. MacMeekin said a draft staff recommendation insuring applicability of the federal bankruptcy laws to the Northern Mariana Islands is near completion. He said the federal bankruptcy laws had been repealed after the effective date of the Covenant and new bankruptcy laws enacted to become fully effective in 1984. In the process of repeal and amendment, the existence of the Northern Mariana Islands was apparently overlooked. He said the proposed draft recommendation would remedy that oversight.

--land-grant colleges. Mr. MacMeekin suggested that laws providing federal funds to land-grant colleges deserved review and study by the Commission. Even though the Northern Mariana Islands does not have a land-grant college, other institutions might be able to administer funds appropriated under the land-grant college funding laws to accomplish the purposes of those laws. The Northern Mariana Islands Community College is one such institution, but other institutions might also serve the purpose.

--service academy appointments. Mr. MacMeekin suggested that a recommendation be drafted giving the Representative to the United States for the Northern Mariana Islands authority to appoint students to the various service academies. He said that enactment of the provisions in the draft interim report requiring officers in the armed forces to be United States citizens also must be enacted to enable citizens of the Northern Mariana Islands to attend the service academies.

--investment tax credits. Mr. MacMeekin suggested study of whether United States businesses could claim investment tax credits for investments made in the Northern Mariana Islands and, if credits cannot be claimed, drafting of a proposed recommendation allowing such claims.

--customs laws. Mr. MacMeekin suggested that reexamination of whether exclusion of the Northern Mariana Islands from the customs territory of the United States is advantageous to the Northern Mariana Islands might merit further study.

[41]

[The Commission then recessed and reconvened the following day, December 1, 1981.]

--government depository libraries. Mr. MacMeekin suggested a draft recommendation amending existing law to allow the Governor of the Northern Mariana Islands to designate an official government depository library in the Northern Mariana Islands to receive selected publications of the Federal Government.

--tariff filing requirements for the shipping industry. Mr. MacMeekin suggested that the staff should study, as urged by Mr. McLaughlin earlier in the meeting, whether domestic or foreign tariff requirements should apply to shipping between the United States and the Northern Mariana Islands.

--Army Corps of Engineers permit requirements. Mr. MacMeekin said that Mr. Tenorio had suggested that the applicability of federal laws requiring Army Corps Engineer permits for certain types of construction in the Northern Mariana Islands should be studied, since important projects are often delayed by these requirements. Mr. MacMeekin noted that the problem of delay in issuance of permits by the Corps is also being addressed nationally.

--disaster assistance. Mr. MacMeekin said that housing assistance made available by the Federal Government after a disaster requires compliance with building code requirements. A problem is created in the Northern Mariana Islands because there are no local building codes.

--territorial delegate. Mr. MacMeekin said the question of representation for the Northern Mariana Islands in the United States House of Representatives should be addressed by the Commission.

* * *

Mr. MacMeekin also mentioned several areas he thought did not merit substantial study by the Commission.

--foreign aid. Mr. MacMeekin said that the desirability of enacting federal legislation to permit public or private foreign aid to public or private entities in the Northern Mariana Islands probably did not deserve Commission attention. Under section 104 of the Covenant, he explained, the United States will handle the foreign affairs of the Northern Mariana Islands. Foreign affairs are normally conducted by the U.S. Department of State, and are not usually governed by particular legislation from Congress. This Commission, however, reports only to Congress.

--Restrictions on air charter flights and tour groups from Japan to the Northern Mariana Islands. Mr. MacMeekin said it has been suggested that the Commission recommend legislation to remove restrictions on air charter flights and tour groups from Japan to the Northern Mariana Islands. These restrictions, he said, are contained in international agreements between the United States and Japan. Again, the Commission's jurisdiction to recommend only to Congress does not extend to suggesting that the executive branch modify these agreements.

[42]

Mr. Pangelinan emphasized the need for the Northern Mariana Islands to continue its present status as a "domestic essential-air-services area."

Mr. MacMeekin here interjected that federal cabotage restrictions on air carriers, which are closely related to the restrictions on charter flights and tour groups, should be studied by the Commission. These restrictions prevent foreign air carriers from picking up passengers on Saipan and carrying them only to Guam or vice-versa.

--coastwise laws--exception for U.S. Government. Mr. MacMeekin said that, notwithstanding the general inapplicability of the federal coastwise laws to the Northern Mariana Islands, those laws did apply to shipments to the Northern Mariana Islands by the United States Government. As a consequence of this exception, the U.S. Department of Agriculture has experienced difficulty in shipping food commodities to the Northern Mariana Islands because no coastwise-qualified vessels serve the Northern Mariana Islands on regular basis. This problem will soon resolved with implementation of the food stamp program in place of the commodities distribution program in the Northern Mariana Islands.

* * *

The Chair then asked the members for their comments and suggestions on the executive director's list of federal laws to be given high priority for staff study. Mr. Tenorio expressed his desire that the staff review all rules and regulations impeding development in the Northern Mariana Islands. After a brief discussion, the consensus of the members was that areas for study need to be more narrowly defined.

Ms. McPhetres expressed the desire that the staff study federal education block grants for use in the Northern Mariana Islands, with particular attention to incorporating funds available under the Higher Education Act in that block grant. Mr. Pangelinan suggested that Ms. McPhetres look into the situation further, and give her views to the staff.

Mr. Pangelinan then suggested that review of the applicability of federal criminal law to the Northern Mariana Islands also be given high priority for staff study.

The Commission agreed that the staff should proceed with the priorities as outlined by Mr. MacMeekin, incorporating the suggestions made by the members of the Commission. [43]

Purchase orders. Mr. MacMeekin asked the Commission for formal authority to execute purchase orders on behalf of the Commission. He said that, while he assumed this authority was inherent in the position of executive director and had been acting accordingly, some language in the recent Comptroller General opinion on the legal nature of the Commission made desirable a grant of formal authority by the Commission to him. Mr. Borja moved that the authority previously understood to be in the executive director of the Commission to issue purchase orders on behalf of the Commission be confirmed. The motion was seconded and passed.

New Business

Role of the Office of Management and Budget. Mr. Joseph said that the administration wants to control all matters that go to Congress from the executive branch. The General Accounting Office has ruled, he said, that the Commission is independent of the executive branch. He said there appears to be need to confirm the Commission's position as an independent agency to the Office of Management and Budget. Mr. MacMeekin explained that he had informed the Office of Management and Budget that he would raise this issue with the Commission and inform the Office of Management and Budget of the Commission's position. Mr. Borja moved to confirm the Commission's independent status and to direct the executive director to draft a letter to the Office of Management and Budget, for the Chair's signature, stating that position. Mr. MacMeekin suggested adding to the letter appropriate legal citations. Mr. Borja modified his motion to include that suggestion. The motion seconded and passed.

Letterhead. The members agreed that Commission letterhead should be prepared to reflect the existence of the Northern Mariana Islands office of the Commission.

Next meeting of the Commission

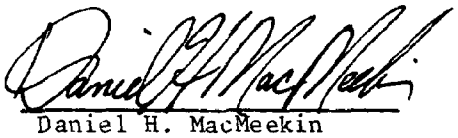
Mr. Joseph recommended that the next meeting of the Commission be held in the Northern Mariana Islands, noting that no meeting of the Commission had yet been held there. The members agreed that the next meeting should be held in the Northern Mariana Islands. The members also agreed that the meeting should be held in either early May or early June, but with discretion in the Chair, in consultation with the executive director, to set exact date.

Closing Remarks; Adjournment

[44] Mr. Joseph asked that the executive director prepare a press release for issuance on transmittal of the interim report to Congress. He then expressed the appreciation of the Commission to the Marianas/Hawaii Liaison Office for hosting this meeting of the Commission. Finally, he expressed his pleasure with the accomplishments of the Commission thus far and thanked the staff for its excellent work. He then adjourned the fourth meeting of the Commission.

CERTIFICATION

The minutes of the November 30-December 1, 1981, meeting of the Northern Mariana Islands Commission on Federal Laws are set forth above as adopted by the Commission at its meeting of July 7, 1982.



Daniel H. MacMeekin
Executive Director

MINUTES OF THE FIFTH MEETING

SAIPAN, NORTHERN MARIANA ISLANDS

July 7, 1982

[45]

Commission Vice-Chair Pedro A. Tenorio, as Acting Chair, opened the fifth meeting of the Northern Mariana Islands Commission on Federal Laws in Room 103C of the Marianas High School, at Susupe, Saipan, Northern Mariana Islands, at approximately 9:15 a.m.

Commissioners present, in addition to Mr. Tenorio, were Agnes Manglona McPhetres, Myron B. Thompson, Edward DLG. Pangelinan, and Jesus C. Borja. Commissioners absent were Chair James A. Joseph and Congressman Phillip Burton.

Opening Remarks

Mr. Tenorio began the meeting by welcoming the Commission members and the members of the general public in attendance. He noted that the Commission was meeting for the first time in the Northern Mariana Islands. He then briefly summarized for the members of the public the purpose and function of the Commission. He mentioned that the Commission earlier in 1982 had submitted to the Congress of the United States an interim report which recommended enactment of legislation altering the applicability of various federal laws to the Northern Mariana Islands. He explained that the meeting was open to the public and that public participation was welcome. He noted that, in addition to listening to views expressed by persons in the audience, the Commission would discuss the proposed format for its final report to Congress.

Quorum, Notice of Meeting, and Approval of Minutes

Mr. Tenorio announced that a quorum was present. Notice of the meeting had been published in the Federal Register, the Commonwealth Examiner, and the Marianas Variety.

The minutes of the fourth meeting of the Commission, held November 30 and December 1, 1982, in Honolulu, Hawaii, were approved.

Report of the Executive Director

Interim Report. Mr. Daniel H. MacMeekin, the executive director, informed the Commission that the interim report adopted by the Commission at its fourth meeting was submitted to the U.S. Congress in January. That report recommended enactment of legislation to (1) extend to citizens of the Northern Mariana Islands various rights, benefits, or entitlements accorded citizens of the

United States pursuant to a number of federal laws; (2) clarify that the Federal Tort Claims Act does apply to the Northern Mariana Islands, and (3) exempt the Northern Mariana Islands from the automobile emission control requirements of the Clean Air Act and
[46] require the Environmental Protection Agency to grant a waiver to the Northern Mariana Islands of any other requirement of the Act, upon a finding by the governor of the Northern Mariana Islands that costs of compliance with that requirement are outweighed by the benefits to be derived.

Mr. MacMeekin noted that copies of the interim report were distributed in the Northern Mariana Islands and in Washington.

Personnel. Mr. MacMeekin informed the members that in May he hired two new staff attorneys for the Commission's office in Washington. The two attorneys are Jeffrey Nackley and John Cutler. Mr. MacMeekin also announced that Lillian C. Villagomez had joined the Northern Mariana Islands office as a part-time secretary.

In addition, Mr. MacMeekin told the Commission he intended to hire Trevor Haydon as a special assistant from September to December 1. Mr. Haydon, formerly the Northern Mariana Islands desk officer in the Department of the Interior, is now starting his second year at Northeastern University Law School in Boston. His work with the Commission will earn him credits toward graduation as part of Northeastern's cooperative education program.

Budget. Mr. MacMeekin explained that the Commission's budget remains adequate. He noted that the fiscal year 1982 budget appropriation for the Commission was cut, along with all federal agency budgets, by four percent. The fiscal year 1982 budget is not "no-year" money, and so is not available after the end of the fiscal year. The Commission still has funds from earlier appropriations which will support the Commission's work at least until March or April of 1983.

Correspondence. As directed by the Commission at its fourth meeting, a letter was sent to the Office of Management and Budget (OMB), informing OMB of the Commission's position that the Commission is not an executive branch agency subject to the jurisdiction of OMB. An OMB official later informed Mr. MacMeekin that OMB had arrived at the same conclusion.

Current status of Commission work. Mr. MacMeekin suggested to the Commission that the staff direct all of its remaining effort toward preparation of the Commission's final report and that another interim report not be prepared. He said he anticipated the final report could be submitted to Congress in March or April of 1983.

Mr. MacMeekin noted that the Northern Mariana Islands and Washington offices of the Commission are in frequent contact with various individuals, groups, and agencies regarding the work of the Commission. The concerns of those individuals, groups, and agencies regarding the applicability of particular federal laws to the Northern Mariana Islands form the basis for the list of work priorities developed by the staff. [47]

With the addition of the two staff attorneys, the work of the Commission is now progressing at a faster pace, Mr. MacMeekin said.

Discussion. Mr. Pangelinan asked that the Commission later in the meeting reserve time to discuss further the Commission budget. He wanted to discuss the need for "follow-up" in Congress after submission of the Commission's final report. Ms. McPhetres also wanted to touch on follow-up procedures when the Commission addresses the proposed outline for the final report. Mr. Borja asked that the Commission later reconsider Mr. MacMeekin's suggestion that another interim report not be submitted.

Mr. MacMeekin explained that even if the Commission were to submit another interim report, congressional action on the recommendations would be unlikely in an election year. He also said few recommendations are ready for inclusion in a second interim report. He noted that only three draft staff recommendations have received sufficient public circulation to reasonably allow their inclusion in an interim report. He said that the Northern Mariana Islands Senate recently adopted a resolution requesting that the Commission's draft staff recommendation on nominations to the service academies be submitted as part of an interim report. Other recommendations that could form a part of a second interim report, however, are not of compelling urgency.

Mr. Thompson asked why nominations to the U.S. Coast Guard Academy were not included in the service academy recommendation. Mr. MacMeekin answered that Coast Guard Academy nominations are not made by members of Congress as are nominations to the other academies and that no statute requires that any proportion of Coast Guard Academy cadets be domiciled in particular jurisdictions.

Proposed Outline for the Final Report

The Commission next addressed the staff's proposed outline for the Commission's final report. Mr. MacMeekin noted that the reports of the Guam and Virgin Islands federal laws commissions are not easy reading. Mr. MacMeekin said he would like this Commission's final report to be readable.

Mr. MacMeekin then briefly described the different sections within the proposed outline for the final report. The introductory section would describe the task of the Commission, its membership, and its history. This section would also describe the methodology

used by the Commission: the determination of priorities, the preparation of draft staff recommendations, the criteria used in deciding whether a particular statute should be made applicable, the solicitation of views from public and private interests in the
[48] Northern Mariana Islands and from concerned federal agencies, and, finally, Commission consideration of staff recommendations.

The second section of the report would then list, in order of importance, the recommendations of the Commission, in concise language.

The third section of the report would be a title-by-title survey of the United States Code. This section would specify whether a particular law does or does not apply in the Northern Mariana Islands and explain the Commission's rationale for recommending or not recommending changes in that applicability.

A fourth section would contain proposed legislative language to implement the Commission's recommendations. An appendix to the report would list the staff of the Commission.

Mr. MacMeekin suggested that the Commission also publish a separate documentary supplement to the final report. This volume would include various official Commission documents, such as the by-laws, the minutes of the Commission meetings, the General Accounting Office ruling regarding the Commission's juridical status, and Commission staff papers.

Mr. MacMeekin proposed that the final report be printed by the offset process on 8 1/2" x 11" paper from typed originals, with an attractive cover.

Mr. Tenorio noted that the proposed outline was quite substantial. Ms. McPhetres asked whether the Commission staff should be given flexibility to readjust priorities as the need arises. Mr. MacMeekin responded saying that he felt the staff has sufficient leeway to adjust priorities as necessary.

Mr. Pangelinan expressed concern that the final report might be too lengthy for individual members of Congress to digest and suggested that the Commission might want to divide the recommendations of the report according to whether they deal with laws now applicable or with those not applicable. Mr. MacMeekin replied that this division could be made.

Mr. MacMeekin then suggested the possibility of publishing an executive summary to the final report, either within the report or as a separate document. Mr. MacMeekin noted the scope of the Commission's task was such that its final report will necessarily be lengthy.

Mr. Borja said he concurs with Mr. MacMeekin's suggested format for the final report. He explained that the work of the Commission should be complete and thorough. He also suggested inclusion of the Covenant in the documentary supplement. [49]

With respect to concerns raised that the final report may be too lengthy or bulky, Mr. MacMeekin pointed out that this Commission's final report will be small compared to the multivolume reports prepared by some other study commissions.

Mr. Thompson asked that the Commission, at a later meeting further discuss the format and contents of the final report.

Mr. Tenorio inquired whether the staff is reviewing federal regulations, since problems of application often occur not in the statutes but in implementing regulations. Ms. McPhetres suggested the Commission address this matter in its discussion of priorities.

Motion. Mr. Thompson then moved for the adoption of the proposed format for the Commission's final report, with flexibility retained to make necessary changes to the format at a later date. The motion was seconded by Ms. McPhetres and passed.

Public Participation

Mr. Tenorio then invited the members of the public to bring to the Commission's attention their federal law concerns.

The Fishery Conservation and Management Act. Donald C. Woodworth, legislative counsel to the Northern Mariana Islands Senate, asked whether any draft staff recommendation had been prepared by the Commission staff on the Fishery Conservation and Management Act. Mr. MacMeekin replied that, while no draft recommendation regarding the Act has been prepared, materials have been gathered and a draft staff recommendation may be ready for circulation in September. Mr. MacMeekin then disclosed, for the record, his prior association with Mr. Woodworth in the Olwol lawsuit, disputing the applicability of the Act in the Northern Mariana Islands, when both were attorneys employed by Micronesian Legal Services Corporation.

Pedro R. Guerrero, a local businessman, informed the Commission that he opposes applying the Fishery Conservation and Management Act to the Northern Mariana Islands. He then asked the Commission to support the Northern Mariana Islands Marine Sovereignty Act, which establishes a local 200-mile exclusive economic zone.

Judge Alfred Laureta of the District Court for the Northern Mariana Islands would like the Commission to decide whether federal laws of doubtful applicability are or are not applicable, giving as an example the Fishery Conservation and Management Act.

Mr. Tenorio noted that, with respect to the Fishery Conservation and Management Act, there are conflicting positions in the Northern Mariana Islands, and that a public hearing, once a draft
[50] recommendation has been circulated on that Act, might be conducted. Mr. MacMeekin agreed that a hearing could be useful.

Responding to a question raised by Judge Laureta, Mr. Pangelinan said that the Commission may recommend that only certain provisions of a particular federal law apply to the Northern Mariana Islands, while other provisions in the same law not apply. This approach was followed in the Commission's recommendation on the application of the Clean Air Act to the Northern Mariana Islands, he noted.

Implementation of Commission recommendations. Janet Econome, an attorney with Micronesian Legal Services Corporation, asked what plans the Commission has made to insure that recommendations in the Commission's final report are acted upon by Congress. Mr. MacMeekin replied that no definite plans have been prepared by the Commission.

Covenant provisions on applicability. Joel Bergsma, legislative counsel to the Northern Mariana Islands House of Representatives, asked whether the Commission has jurisdiction to recommend changes regarding federal laws specifically mentioned in the Covenant, for example, the Internal Revenue Code. Mr. MacMeekin replied that the negotiating history of the Covenant implies the Commission may do so, noting as an example the discussion in the negotiating history of the federal banking laws. He said doing so is not tantamount to amending the Covenant, since establishment of the Commission in the Covenant indicated the drafters of the Covenant expected changes in the applicability of some federal laws, even though the formulas in section 502 of the Covenant generally make every federal law either applicable or inapplicable.

Citizenship. Mr. Bergsma also inquired whether the Commission could recommend to Congress legislation allowing election of United States citizenship by citizens of the Northern Mariana Islands. Mr. MacMeekin replied that the U.S. State Department appears opposed to any blanket grant of U.S. citizenship. Mr. Pangelinan stated that the State Department is opposed to such a grant, because it would be synonymous with exercising sovereignty over the Northern Mariana Islands prior to termination of the trusteeship. Mr. Pangelinan then noted the existence of proposed legislation in Congress allowing Northern Mariana Islands military enlistees to become U.S. citizens upon enlistment.

Slaughterhouse requirements. Pedro R. Guerrero said that Saipan and Rota do not have slaughterhouses meeting the requirements of federal law. These requirements, he said, prevent local livestock raisers from selling beef to retail outlets here. Mr. Tenorio

replied that the office of the Governor of the Northern Mariana Islands is presently studying this matter and that he expects to hear soon from the U.S. Department of Agriculture on how to resolve this issue. [51]

Cultural center. Mr. Guerrero next said there is a need for a cultural center within the American Memorial Park. Mr. Tenorio said that the Commission has no jurisdiction over this matter. The Governor's office has tentative master plans, however, which include a cultural center within the park, he said.

Libraries; communications; Commission records. Ms. Ruth Tighe, acting Commonwealth Librarian, noted her pleasure with the government depository library draft staff recommendation. Ms. Tighe would like the Commission to review the federal regulations establishing postal rates for books and library materials to determine if they adversely affect the Northern Mariana Islands. She also asked the Commission to review federal laws guaranteeing public access to satellite and cable TV franchises. Because of the many satellite and cable TV stations in the mainland United States, public access guarantees are not needed there. They are needed in the Northern Mariana Islands, she said. Ms. Tighe also suggested the need to review the various federal laws aimed at providing sophisticated technical assistance and funding for library systems. What the Northern Mariana Islands needs at this stage of its development, she said, is funding for library buildings and other basic library infrastructure. Finally, Ms. Tighe asked where the records of the Commission will be stored and suggested that these records be microfilmed to reduce their bulk. Mr. MacMeekin suggested that the Commission address this matter at its last meeting.

Law library. David Collins, a law clerk for the District Court for the Northern Mariana Islands, asked that the Commission review existing regulations that limit access to legal research information systems. These regulations limit the ability of the Northern Mariana Islands to establish a comprehensive law library. He suggested amending the regulations to allow the combination of federal and local law libraries in the Northern Mariana Islands.

Commission Priorities

Priority areas. Mr. MacMeekin then provided a progress report on the various priority areas previously established by the Commission:

--Immigration laws. Mr. MacMeekin said that immigration issues divide into two categories, those related to entry into the United States, and those related to entry into the Northern Mariana Islands. With respect to entry into the United States, a draft staff recommendation on the creation of a special U.S. passport for

citizens of the Northern Mariana Islands has recently been circulated. Another problem related to entry into the United States is the limited ability of alien relatives of citizens of the Northern
[52] Mariana Islands to enter the United States. Alternative approaches to this problem are under study.

With respect to entry into the Northern Mariana Islands, Mr. MacMeekin said, a principal issue is whether the Northern Mariana Islands can restrict entry of aliens lawfully admitted into the United States.

Another important issue, he said, arises out of the requirement in the United States Constitution that the naturalization laws of the United States be "uniform". Residency in the United States is required prior to naturalization as a United States citizen. Research is needed on the extent to which requirements for residency in the Northern Mariana Islands may differ from those for residency elsewhere in the United States without conflicting with the uniformity requirement.

—Fishery Conservation and Management Act. Mr. MacMeekin explained that background research has been prepared and a draft staff recommendation should be ready by September or early October. He noted that the Northern Mariana Islands government appears to be of two minds internally regarding whether the Act should be applicable.

—Bankruptcy laws. Mr. MacMeekin pointed out that a draft staff recommendation circulated earlier this year has received generally favorable comments. Recently, however, the U.S. Supreme Court declared the new bankruptcy courts unconstitutional. Congress is now in the process of redrafting the bankruptcy laws to comply with that ruling. Mr. MacMeekin suggested the Commission consider sending a letter to the appropriate committees in Congress, recommending the technical amendments of the draft staff recommendation be incorporated in the redrafted law.

—Land grant college. Mr. MacMeekin said a draft staff recommendation to enable the Northern Mariana Islands to be eligible for funding under the land grant college laws has been prepared and will soon be in circulation.

—Service academies. A draft staff recommendation has previously been circulated to allow the Resident Representative to the United States for the Northern Mariana Islands to nominate one individual each from the Northern Mariana Islands to attend the United States Military Academy, the United States Naval Academy, and the United States Air Force Academy at any one time. The Commission may at this meeting decide to take action on the proposed recommendation, Mr. MacMeekin said.

--Investment tax credit. At issue is whether investments by U.S. companies in the Northern Mariana Islands qualify for certain investment tax credits. The question is being reviewed as part of the staff's general review of the Internal Revenue Code, title 26 of the U.S. Code. [53]

--Customs laws. Initially, Mr. MacMeekin said, he had wanted to determine whether it is to the advantage of the Northern Mariana Islands to be outside the customs territory of the United States. He has concluded, he said, that the present situation of the Northern Mariana Islands, outside the customs territory of the United States but entitled to preferential treatment under headnote 3A, is advantageous to the Northern Mariana Islands and should not be changed. In addition, he has conducted a comprehensive survey of the import and export laws of the United States. He plans to circulate the survey prior to formulating any draft staff recommendations on the import and export laws.

--Government depository library. Mr. MacMeekin said a draft staff recommendation for enactment of legislation to allow the Governor of the Northern Mariana Islands to designate a library as a depository for publications of the United States Government has been circulated, and is now ready for Commission action.

--Domestic tariff filing. At issue, Mr. MacMeekin said, is whether the Northern Mariana Islands should be considered a domestic or foreign destination for purposes of tariff filing requirements of the Federal Maritime Commission. If it is considered a domestic destination, the requirements are apparently somewhat more onerous. A draft staff recommendation is in preparation. Mr. MacMeekin noted that the Philippine, Micronesian, and Orient Shipping Line has recently petitioned the Federal Maritime Commission to suspend the application of domestic filing requirments to the Northern Mariana Islands until this Commission has reviewed the matter.

--Army Corps of Engineers permit requirements. Mr. MacMeekin told the members that a draft staff recommendation has been prepared and soon will be circulated. The recommendation treats not only the regulatory requirements of the Army Corps of Engineers, but also other environmental permit requirements.

--Air cabotage laws. A draft staff recommendation to allow foreign air carriers to transport passengers and their luggage between the Northern Mariana Islands and Guam has recently been circulated.

--Criminal laws. A draft staff recommendation on the federal criminal laws, title 18 of the U.S. Code, is in preparation.

--Banking laws. A staff attorney has been assigned to review the federal banking laws. Mr. MacMeekin mentioned that most of these laws appear to be now applicable to the Northern Mariana Islands.

--Territorial delegate. One of the staff attorneys has been assigned to prepare a draft staff recommendation on whether the Northern Mariana Islands should have a delegate to the U.S. Congress.

[54] --Disaster housing requirements. Mr. MacMeekin said there appears no longer to be any problem with building code requirements for federal disaster housing assistance.

--Higher education block grant. Ms. McPhetres asked that the staff study the possibility of consolidating all Higher Education Act grants for the Northern Mariana Islands into a single block grant.

--Rural Electrification Agency loans. Mr. Tenorio said that the Northern Mariana Islands has not been able to obtain electrification loans from the Rural Electrification Agency, although that agency is now considering a loan application from a telephone company in the Northern Mariana Islands. Definition of the term "rural" to exclude the Northern Mariana Islands appears to be the problem, he said.

Discussion--special passports. Mr. Pangelinan suggested that the Commission staff give high priority to the special passport recommendation and that it ascertain the State Department's position on this draft recommendation.

Motion. Mr. Pangelinan moved that the Commission not rank the priority areas but continue to allow the staff flexibility to determine the time to be spent on each area. The motion was seconded by Ms. McPhetres, and passed.

Commission Action on Draft Staff Recommendations.

Bankruptcy laws--motion. Mr. Thompson moved that letters be sent to the chairpersons of the Senate and House Judiciary Committees suggesting that these committees, in their revision of the bankruptcy laws in response to the recent Supreme Court decision, take into account the technical amendments recommended in the draft staff recommendation. The motion was seconded by Mr. Pangelinan and passed.

Government Depository Library--motion. Mr. Thompson moved the adoption of the draft staff recommendation on government depository libraries. The motion was seconded by Ms. McPhetres and passed.

Service Academies--motion. Mr. Thompson moved the adoption of the service academy draft staff recommendation. The motion was seconded by Ms. McPhetres and passed.

No second interim report. The Commission then decided that the two recommendations adopted should not be transmitted as a second interim report, but should be included in the final report.

Recently Circulated Draft Staff Recommendations

The Commission decided not to discuss until the next meeting the draft staff recommendations relating to air cabotage, intellectual property, and creation of a special passport, because these drafts have only been circulated recently. [55]

Other Business

Commission budget. Mr. MacMeekin noted that most of the $192,000 received for fiscal year 1982 will be spent by the end of the fiscal year. Still remaining for use by the Commission is the approximate balance of $185,000 from earlier appropriations. This sum, according to Mr. MacMeekin, will enable the Commission to continue its work at least to the end of the first quarter of calendar 1983. He noted that Commission personnel expenses are on the average roughly $17,000 per month. He also said that the cost of Commission meetings is roughly $20,000 per meeting.

Implementation of Commission recommendations. Mr. Pangelinan said a follow-up effort after submission of the Commission's final report is necessary to increase the chances Congress will act favorably on the Commission's recommendations. He suggested the executive director might do this. Mr. Tenorio agreed that follow-up is desirable. Ms. McPhetres also expressed concern, noting that the Commission's work should not be "shelved," and suggesting as an alternative that the office of the Special Representative to the United States for the Northern Mariana Islands in Washington might perform this function.

Mr. MacMeekin told the members he would like to study this matter further.

Motion. Ms. McPhetres then moved that the staff review the follow-up issue and related matters and report to the Commission on its conclusions at a later meeting. The motion was seconded by Mr. Thompson and passed.

Place and Date of Next Meeting

Motion. Mr. Thompson moved that the next Commission meeting be held in Hawaii in December, with the Chair to determine the specific date and location. Mr. Borja seconded the motion, which then was passed.

Bylaws requirement. Mr. MacMeekin noted that the Commission is unlikely to meet a third time in 1982 and that the bylaw requirement of three Commission meetings each year can be waived as to the third meeting by the Chair. Mr. Tenorio said he would take no action on a waiver at this meeting.

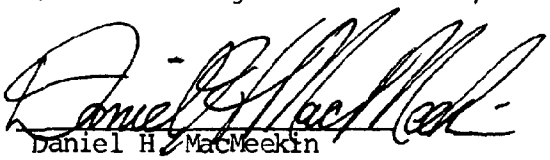
Closing Remarks; Adjournment

Mr. Tenorio expressed his pleasure at the accomplishments of the
[56] meeting, expecially in terms of the public participation. He thanked the audience for attending the meeting. Mr. Pangelinan noted the historical significance of the first meeting of the Commission to be held in the Northern Mariana Islands.

Mr. Thompson then moved to adjourn. The motion was seconded by Mr. Borja and passed. The meeting adjourned at 2:30 p.m.

CERTIFICATION

The minutes of the July 7, 1982, meeting of the Northern Mariana Islands Commission on Federal Laws are set forth above as corrected and adopted by the Commission at its meeting of December 16, 1982.



Daniel H. MacMeekin
Executive Director

MINUTES OF THE SIXTH MEETING

HONOLULU, HAWAII [57]

December 16-17, 1982

Commission Chair James A. Joseph opened the sixth meeting of the Northern Mariana Islands Commission on Federal Laws in room 7323 of the Federal Building, at 300 Ala Moana Boulevard, in Honolulu, Hawaii, at approximately 9:20 a.m.

In addition to Mr. Joseph, Commissioners Myron Thompson, Agnes Manglona McPhetres, Jesus C. Borja, Pedro A. Tenorio, and Edward DLG. Pangelinan were present. Congressman Phillip Burton was absent.

Remarks of the Chair

Mr. Joseph thanked the Vice-Chair, Mr. Tenorio, for conducting the fifth meeting of the Commission, held on Saipan. He then welcomed the Commission members and the members of the general public in attendance. At his request Mr. Tenorio introduced members of the Northern Mariana Islands Senate and other officials present: Senator Ignacio Quichocho, Senator Ramon Dela Cruz, Senator Froilan C. Tenorio, Senate consultant Pete Reyes, Senate legislative counsel Donald Woodworth, Northern Mariana Islands Attorney General Peter Van Name Esser, and Northern Mariana Islands House of Representatives legislative counsel Joel Bergsma.

Mr. Joseph informed the members of the Commission that Congressman Phillip Burton had sent word that he would not be able to attend. Mr. Pangelinan suggested that Congress' busy schedule before holiday adjournment probably prevented Congressman Burton's attendance.

Quorum, Notice of Meeting, and Approval of Minutes

Mr. Joseph announced that a quorum was present, and that notice of the meeting had been published in the Federal Register, the Marianas Variety, and the Commonwealth Examiner. He praised the staff for the quality of the briefing materials.

The minutes of the fifth meeting of the Commission, held July 7, 1982, at Saipan, Northern Mariana Islands, were corrected and approved.

Report of the Executive Director

Mr. MacMeekin announced that he would report on five areas regarding the progress of Commission work. He said he would

brief the Commission on progress made in examining the U.S. Code and on what has been done or needs to be done on each title. He also wanted to provide the Commission an overview of the budget, report on
[58] Commission personnel, report on Commission correspondence, and summarize the testimony the Chair and he gave to the U.S. Congress on the legislation introduced in Congress as a result of the interim report submitted in January.

Progress on final report. Mr. MacMeekin noted that there are 49 titles in the current U.S. Code. Mr. MacMeekin then summarized staff work on each of the 49 titles, describing how much has been accomplished and what remains to be done. He said the staff will treat each of a number of titles as a unit, treating them rather routinely in the final report. For example, there is little to report to Congress on title 1, relating to rules of statutory construction. For other titles, such as title 46 on shipping and title 42 on public health and welfare, a chapter-by-chapter review is planned. Other titles, such as title 11 on bankruptcy and title 17 on copyrights, have already been addressed in the various draft staff recommendations. Further, a number of the draft staff recommendations have addressed specific chapters or sections in still other titles.

Mr. MacMeekin noted his intention to circulate the "border survey" on the import and export laws of the United States for comments. This survey concentrates on title 19, containing the customs laws of the United States, but also includes provisions from other titles, such as title 18 on criminal laws and title 21 on food and drugs.

Mr. MacMeekin then pointed out that drafting for the final report is now completed for six of the 49 titles; another 19 titles will be treated as units of one to three pages in length; three more titles are largely covered by draft staff recommendations, with the remainder of each to be treated as a unit; another nine titles will be treated in forthcoming draft staff recommendations; and, for the remaining 12 titles, a chapter-by-chapter treatment is intended, with most chapters receiving limited attention. In those last 12 titles, there are 417 chapters, which means that, with the other titles to be treated as a unit, a total of 448 separate treatments must be written.

Mr. MacMeekin stated that he intends to circulate all remaining draft staff recommendations by February 1, 1983.

Budget. Mr. MacMeekin briefed the Commission on its budget. For fiscal year 1980, $300,000 was appropriated and an additional $10,000 was received as part of a government-wide pay raise. In fiscal year 1981, $15,000, part of another government-wide pay increase, was added. These appropriations are "no-year" money, meaning they are available until expended. In fiscal year 1982 the

sum of $200,000 was requested for the Commission. A four per cent across-the-board cut in the federal budget resulted in an appropriation of $196,000. This appropriation was not "no-year" money, so that any portion not expended in fiscal year 1982 reverted to the United States treasury. [59]

Mr. MacMeekin said it appears the fiscal year 1982 funds were all spent, although the matter is now academic. The Commission is now operating on carry-over funds from fiscal years 1980 and 1981. He had originally estimated the carry-over funds at $185,000. Department of Interior accounting officials had earlier put the figure at $239,000. Later, in May 1982, those officials reported the figure as $235,000. A month later the Department of the Interior reported to the Office of Management and Budget a remainder of $235,000 less $20,000 charged to the fiscal year 1981 account for fiscal year 1982 expenses, leaving a remainder of $215,000.

Thus, as of October 1, 1982, there remained available for expenditure $215,000. Mr. MacMeekin estimated that for October, November, and December, 1982, the Commission will have spent $75,000 of that sum, leaving $140,000 available for expenditure after January 1, 1983.

Mr. MacMeekin noted that he expects two more Commission meetings at a cost of $12,000 apiece, assuming there is no meeting in the Northern Mariana Islands. He estimated the cost of printing the final report at about $5,000. Variable costs for personnel salaries and equipment rental average about $18,000 per month.

The Commission then agreed to discuss the budget during discussion of priorities to see whether additional funding needs to be sought.

Personnel. Mr. MacMeekin reported that Commission personnel remain essentially the same. On Saipan are Jose S. Dela Cruz and his secretary, Lillian Villagomez. In Washington, the staff consists of himself, the two staff attorneys, Jeffrey Nackley and John Cutler, his secretary, Dianne Brickey, and a clerk, Michelle Monroe. He noted that Trevor Haydon, who had begun his second year of law school at Northeastern University in Boston and who was formerly desk officer for the Northern Mariana Islands at the Department of the Interior, worked for the Commission from September to December and mentioned Mr. Haydon's excellent work on the Higher Education Act, the securities and exchange laws, and title 28 of the U.S. Code on the judiciary and judicial procedure.

Correspondence. Mr. MacMeekin reported that, as instructed by the Commission at its previous meeting, letters were sent to the judiciary committees of the U.S. Senate and House of Representatives, asking those committees to take into account the technical amendments

proposed in the staff recommendation on the bankruptcy laws when they rewrite those laws to comply with the Supreme Court decision in the Northern Pipe Line case. He said a response had been received from
[60] the Senate Committee on the Judiciary.

Interim Report. Mr. MacMeekin reported that in September, Mr. Joseph and he testified before the U.S. Senate Committee on Energy and Natural Resources and submitted written testimony in support of bills introduced in the Senate pursuant to the recommendations made by the Commission in its interim report to Congress. He noted that Mr. Pangelinan, in his capacity as Representative to the United States for the Northern Mariana Islands, also testified in favor of the bills. He also reported that the U.S. House of Representatives, separately, in omnibus territories legislation, later enacted into law the Commission's recommendation clarifying the applicability of the Federal Tort Claims Act to claims arising in the Northern Mariana Islands.

Draft Staff Recommendations

Mr. Joseph asked members of the audience to specify draft staff recommendations on which they desired to be heard. Members of the audience expressed interest in speaking on the draft staff recommendations on: (1) air cabotage, (2) the Fishery Conservation and Management Act and the Vessel Documentation Act, (3) the major aquatic permit laws, and (4) the Higher Education Act.

Air cabotage. Mr. MacMeekin explained that the draft staff recommendation would amend existing federal law to allow a foreign air carrier to carry passengers and their luggage between the Northern Mariana Islands and Guam, and between points in the Northern Mariana Islands, on flights to or from foreign points. The original draft staff recommendation removed the restriction. As revised, the recommendation makes clear that a foreign air carrier must still obtain a permit to so operate from the Civil Aeronautics Board. The Board may decline to issue of a permit if, say, it would endanger a domestic airline already operating. Mr. MacMeekin noted that Continental Air Micronesia, in particular, would be affected adversely by adoption of the recommendation.

Senator Froilan Tenorio said the recommendation, if approved, would hurt the financial viability of U.S. carriers now operating. There are now enough seats on United States carriers serving the islands, he said. Further, foreign airlines like Japan Air Lines have an advantage over United States carriers in that they are government-subsidized. Commissioner Pedro A. Tenorio suggested that more tourists might come to the Northern Mariana Islands if the recommendation is adopted. Senator Ignacio Quichocho said that foreign airlines do not now provide daily service or inter-island service. He pointed out that Continental Air Micronesia now provides

service to Rota under a federal subsidy, and that allowing further competition might endanger the financial viability of United States carriers now operating. [61]

Mr. Frank Der Yuen, a former board member of Continental Air Micronesia, whose firm provides aviation fuel in Hawaii for domestic and foreign airlines, said that a foreign airline is not prohibited from picking up "through-ticketed" passengers stopping in Honolulu, contrary to the assertion in the draft staff recommendation. Mr. MacMeekin said he would check this point. Attorney General Peter Van Name Esser agreed with Mr. Der Yuen. Mr. Esser then mentioned that frequency of flights is important for medical evacuations and that an exception from the anticabotage law for that limited purpose would be beneficial. He noted that Island Air went bankrupt without foreign competition and said he would not want foreign carriers to serve points within the Northern Mariana Islands. Senator Froilan Tenorio said that medical evacuation is a local government responsibility, with which air carriers should not be burdened. Senator Quichocho noted that three domestic carriers now serve the Northern Mariana Islands.

Commissioner Tenorio asked what impact the draft recommendation would have on domestic carriers and suggested deferring action on this recommendation until statistics have been obtained. Mr. Pangelinan agreed, saying the recommendation if adopted might adversely affect employment in the Northern Mariana Islands. He also expressed reservations about giving the Civil Aeronautics Board discretion to issue permits, noting that the Rota/Guam service case has not yet been decided by the Board. Ms. McPhetres noted that airline revenue statistics are needed, and also favored deferring any Commission action. Mr. Borja also suggested deferral to allow Commission staff to verify the point "through-ticketing."

Mr. MacMeekin said that, if the through-ticketing exception does exist, the rationale for the draft recommendation is weakened. He said airline revenue statistics would be difficult to obtain and noted that the Commission may not have the expertise to evaluate whatever statistics are available. He also said that the essential air services provisions of the Federal Aviation Act expire in 1986, at which time seats available will be determined by the market place rather than by essential-air-service guarantees. He said he thought it unlikely the Civil Aeronautics Board would grant a permit to a foreign carrier if that would endanger the financial health of a domestic carrier. He suggested the Commission defer action until the through-ticket exception has been explored by the staff and then make its decision one way or the other. Mr. Thompson noted that the Pacific Basin Development Council is preparing proposals related to the air service needs of American islands in the Pacific and suggested the Commission's staff consult with the Council's staff.

--Motion. Mr. Thompson moved to defer action on the recommendation so the staff could gather additional information. The motion was seconded by Ms. McPhetres, and passed.

[62]

Mr. Joseph said that the Commission will again consider recommendation at its next meeting.

Fishery Conservation and Management Act and Vessel Documentation Act. Mr. MacMeekin noted that the draft staff recommendation treats the Fishery Conservation and Management Act (FCMA) and the Vessel Documentation Act together. He also noted his previous association with Mr. Donald Woodworth, the principal lawyer for plaintiffs in the Olwol case, which addressed the Act's applicability in the Northern Mariana Islands.

Mr. MacMeekin then summarized the staff recommendation. He said all comments received on the staff draft opposed its recommendations. Because of the opposition to the staff recommendation, he suggested that the Commission at this meeting not act on the recommendation.

Mr. MacMeekin also said the U.S. Department of Commerce may oppose the proposal to allow the Northern Mariana Islands to retain revenue derived from fees for foreign fishing permits. A Commerce official informally told him, he said, that establishing a mechanism to determine which fees go to the Northern Mariana Islands would be administratively difficult. The official said foreign vessels now pay permit fees to the United States primarily to fish in the fishery conservation zone adjacent to Alaska. Allowing the Northern Mariana Islands to receive fees paid the United States for foreign fishing in waters adjacent to the Northern Mariana Islands would give Alaska a claim to similar treatment. He suggested that the proposal to return fees to the Northern Mariana Islands might be more palatable if that revenue were earmarked for fisheries development. The official also said that the Northern Mariana Islands should determine whether it wants to encourage a local fishing industry with local people or to develop a land-based industry with canneries and extensive off-island involvement.

Mr. MacMeekin said the central issue concerns tuna. Even if the FCMA were amended to allow the Northern Mariana Islands to sell fishing rights as do Palau and the Marshalls, few fees would be derived if tuna is not included.

An important issue for the Northern Mariana Islands, he said, is determining the extent of the "territorial waters" of the Northern Mariana Islands. This issue, however, is not directly an issue of federal law and is not appropriate for a Commission recommendation.

Mr. MacMeekin then commented on the present exploitation of fishing grounds adjacent to the Northern Mariana Islands. He also

said that, under the privileges and immunities clause of the U.S. Constitution, the Northern Mariana Islands cannot regulate American fishing vessels differently from local vessels. [63]

Mr. MacMeekin said that, while the staff recommendation would allow foreign-hulled vessels documented under the Vessel Documentation Act to fish in the fishery conservation zone adjacent to the Northern Mariana Islands and would allow Northern Mariana Islands citizens to be treated as United States citizens for purposes of that Act, the recommendation did not address another issue that has been raised. Because of the shortage of skilled officers and crew for fishing vessels in the Northern Mariana Islands, it has been urged that these vessels be exempted from federal laws requiring their officers and crew to be United States citizens, so that nationals of foreign countries can be utilized.

Mr. Joseph noted that correspondence just received from the Governor of the Northern Mariana Islands requested that the Commission delay action on the staff recommendation. A similar request was received from the Speaker of the Northern Mariana Islands House of Representatives. In addition, a letter signed by eight of the nine members of the Northern Mariana Islands Senate opposed adoption of the recommendation.

Mr. Esser, the Northern Mariana Islands Attorney General, said a decision on the recommendation should appropriately be made by elected officials of the Northern Mariana Islands. He said he saw no gain to the Northern Mariana Islands in the FCMA being applicable there. He noted that the Northern Mariana Islands' Marine Sovereignty Act is still in effect, and questioned the ability of officials of the Northern Mariana Islands to support applicability of a federal law in conflict with that Act. He felt the argument that the FCMA does not apply to the Northern Mariana Islands is stronger than the opposing argument. He saw the tuna issue as most important and said the draft recommendation should be amended so that tuna would also be regulated under the FCMA. He noted that as long as the tuna fishery is not regulated under the FCMA, the return of foreign permit fees to the Northern Mariana Islands will not constitute a significant source of revenue.

Mr. Esser also stated that permits for foreign fishing are issued by the Western Pacific Regional Fishery Management Council, where the Northern Mariana Islands will have only two votes out of 13. Further, he said, the Council is merely an advisory body; its decisions are subject to veto by the U.S. Department of Commerce. Finally, he pointed out that to earmark revenues derived from foreign fishing for fishery development would be pointless because local economic development money set aside for fishery loans has never been fully utilized by local fishermen. Mr. Pangelinan asked Mr. Esser what solutions he proposed. Mr. Esser noted that under the

Trusteeship Agreement the United States is obligated to promote the economic development of the Northern Mariana Islands. The existing official position of the Northern Mariana Islands, evidenced by the Marine Sovereignty Act, is contrary to FCMA applicability to the
[64] Northern Mariana Islands. Mr. Esser suggested the Northern Mariana Islands should convince the United States Department of State that the Northern Mariana Islands ought to be treated differently from other parts of the United States.

Senator Ignacio Quichocho, speaking on behalf of the Northern Mariana Islands Senate, said that the local Marine Sovereignty Act is still in effect and that little is gained by the Northern Mariana Islands by inclusion under the FCMA because tuna is not regulated. He noted his concern with the U.S. citizenship requirements for employment on fishing vessels documented under the Vessel Documentation Act. He said foreign investors would need foreign fishermen to crew fishing vessels registered in the Northern Mariana Islands because skilled local personnel are lacking.

Mr. Donald Woodworth, legislative counsel to the Northern Mariana Islands Senate, summarized the history of the Olwol litigation. He agreed with Mr. MacMeekin that the "territorial waters" issue should be studied. He noted the need to document the historical basis for the Northern Mariana Islands' claim to the waters surrounding it. He said that for centuries the people of the Northern Mariana Islands have asserted ownership to local waters. Ramp and Nakayama in their 1974 book, Micronesian Navigation: Island Empires and Traditional Concepts mention these assertions of ownership. Mr. Woodworth also said that, by the Covenant, title to territorial waters is to pass, not to the United States, but to the Northern Mariana Islands. He said that under the FCMA, the 200-mile exclusive economic zone is contiguous to the territorial seas of the United States, so that if there is no territorial sea of the United States in the Northern Mariana Islands, there is no contiguous exclusive economic zone under the FCMA.

Mr. Woodworth said he understood that foreign fishing permits have been issued by the Western Pacific Regional Fishery Management Council to cover the entire region, including the Northern Mariana Islands. Mr. MacMeekin said the Department of Commerce official with whom he had spoken told him that no permits have been issued for this area.

Mr. Tenorio noted that when he, as Lieutenant Governor, addressed the Western Pacific Regional Fishery Management Council regarding the position of the Government of the Northern Mariana Islands on the FCMA, he and Governor Tenorio had agreed on the position taken. He inquired as to the basis for seeking an exemption from FCMA applicability and suggested that statements in support of exemption be submitted at a later date, to simplify and speed up the resolution of the issue. Mr. Esser said the argument against FCMA applicability is well stated in the staff recommendation.

--Motion. Mr. Pangelinan moved to defer action on the draft staff recommendation. The motion was seconded by Mr. Thompson, and passed.

[65]

Mr. Thompson inquired whether the Northern Mariana Islands Senate would consider lending its legislative counsel's services to the Commission to help resolve this problem. Mr. Pangelinan suggested that the Senate request its counsel to draft an alternative to the recommendation prepared by the Commission's staff. Mr. Joseph expressed the Commission consensus that the Senate President be requested to have the Senate legislative counsel provide the Commission with an alternative recommendation.

Major aquatic permit programs. Mr. MacMeekin said that this staff recommendation discusses seven laws, all of which have to do with water and require permits.

Mr. MacMeekin said an official of the Department of Justice had recommended making all United States navigation laws, including the River and Harbor Act, apply to the Northern Mariana Islands so that all the territories would be treated uniformly.

Mr. MacMeekin noted that the last sentence of the first full paragraph on page 4 of the staff recommendation should read: "Once a State plan is approved, even federal programs must be consistent, to the maximum extent practicable, with the State program and applicants for a federal permit or license must show that the planned activity will comply with State plan requirements."

Senator Froilan Tenorio stated his opposition to the staff recommendation because these federal laws will adversely affect the economic development of the Northern Mariana Islands. All regulatory laws stifle economic development and make foreign investors reluctant to invest, he said. Commissioner Pedro A. Tenorio agreed, noting as an example the Army Corps of Engineers permit requirements. Senator Tenorio said that even the availability of waivers in hardship cases under these laws is not sufficient and that the laws ought not be applicable. Commissioner Tenorio pointed out that some of these laws include good programs which provide substantial economic benefits. He gave as an the Rivers and Harbors Act, which has thus for provided approximately $4 million for the Rota harbor improvement project. Other grant programs, however, have very little benefit and should not apply, he said. Commissioner Tenorio said these laws should be examined on a case-by-case basis. Commissioner Pangelinan agreed that the Commission should consider the effect of each law before the desirability of its application is determined. Senator Tenorio said the requirements of the Coastal Zone Management Act delayed for two years the Managaha tourist facility project.

Recess.

The meeting recessed at 5:15 p.m. and reconvened December 17, 1982, at 9:20 a.m.

[66]

National Labor Relations Act.

Mr. Joseph first gave Mr. Richard M. Rand, an attorney representing Micronesian Telecommunications Corporation (MTC), an opportunity to address the Commission regarding the National Labor Relations Act. Mr. Rand's written statement was accepted for inclusion in the Commission's files. Mr. Rand summarized his statement, requesting the Commission to recommend that the Act be made inapplicable to the Northern Mariana Islands.

Mr. Joseph then invited Ms. Bambi Weil, an attorney representing a local of the International Brotherhood of Electrical Workers, to address the Commission on the same law. Ms. Weil noted that the union has filed a petition with the National Labor Relations Board to organize MTC employees on Saipan. She asked that the Commission recommend that the Act continue to apply to the Northern Mariana Islands.

—Motion. Mr. Tenorio moved that the staff review the Act and report on it at the next meeting. Mr. Borja suggested that review of the Act be considered during the discussion on priorities. The motion was rephrased as suggested, seconded, and passed.

To Mr. MacMeekin's inquiry as to what would prevent a union from organizing if the Act were not applicable, Ms. Weil replied that a union could still organize, but that workers could be fired for belonging to the union.

Draft Staff Recommendations (continued).

Major aquatic permit programs (continued). Mr. Tenorio asked whether Congress needs to reconfirm the applicability of the aquatic permit laws. Mr. MacMeekin replied that only the Rivers and Harbors Act needs clarification. Mr. Pangelinan said that there may be serious policy questions later, in light of the territorial waters issue, if the Commission were now to adopt the staff recommendation, and suggested that a decision be made after the Commission has acted on the Fishery Conservation and Management Act (FCMA). Mr. Joseph said only two changes in existing law are proposed: confirming the applicability of the Rivers and Harbors Act to the Northern Mariana Islands and making the District Court for the Northern Mariana Islands an appropriate forum for actions brought under the Clean Water Act, the Ocean Dumping Act, and the Ocean Thermal Energy Conversion Act, each of which is now applicable.

Mr. MacMeekin noted that the Federal Power Act results in no burdens or benefits for the Northern Mariana Islands and that the Commission consequently may want to recommend that it be made inapplicable.

[67]

--Motion. Ms. McPhetres moved to adopt the staff recommendation only insofar as it confirms the applicability of the Rivers and Harbors Act. The motion was seconded by Mr. Tenorio, and passed.

Mr. Joseph then asked the staff to review further the other laws covered by the recommendation before the Commission takes final action.

Higher Education Act. Mr. MacMeekin explained the staff recommendation to establish a block grant for the Northern Mariana Islands under the Higher Education Act, consolidating existing formula and discretionary grants. He noted two corrections in the draft. He said that all comments received have been favorable.

Mr. Esser suggested that the proposed legislative language is ambiguous as to whether the legislature should both "establish and designate" the college. He also said the Board of Education, rather than the legislature, should make the designation.

Senator Tenorio opposed the grant of federal funds to a local agency without appropriation by the legislature.

--Motion for amendment. Mr. Pangelinan moved for adoption of the staff recommendation. The motion was seconded by Mr. Tenorio. Mr. Pangelinan then moved to amend his original motion to rephrase section 2 of the proposed legislative language to read: "established or to be established by the Government of the Northern Mariana Islands." The motion to amend was seconded, and passed.

--Motion for amendment. Ms. McPhetres proposed a second amendment to the original motion to include a provision in the proposed legislative language so that the Northern Mariana Islands would not lose any minimum amount of funding guaranteed to all jurisdictions. She also pointed out that under the Elementary and Secondary Education Act block grant, funding is based entirely on population, which is not good for the Northern Mariana Islands with its small population. Mr. MacMeekin offered a proviso to take into account Ms. McPhetres' concern, to be added following subsection (b) of section 1 of the proposed legislative language: "If all jurisdictions entitled to receive funds appropriated pursuant to the authorizations listed in subsection (b) of this section are entitled to receive a minimum amount of funds pursuant to any such authorization and that minimum amount is greater than thirty-three hundredths of one percent of that authorization, then that minimum

amount shall be substituted for thirty-three hundredths of one percent for each such authorization in determining the total amount
[68] of the block grant." Ms. McPhetres moved for amendment by that language. The motion was seconded by Mr. Pangelinan and passed.

--Motion for amendment. Ms. McPhetres moved to again amend the original motion to allow the Northern Mariana Islands Board of Education, rather than the legislature, to designate the postsecondary educational institution to receive the block grant. The motion was seconded by Mr. Borja, and passed.

--Motion. Mr. Pangelinan then moved to adopt the staff recommended, as amended. The motion was seconded by Mr. Tenorio, and passed.

At this point, Mr. Joseph announced that the discussion on the remaining draft staff recommendations would be limited to Commission members, because little time remained for completion of the meeting.

Intellectual property laws. Mr. Tenorio noted that the recommendation to continue applicability of the copyright, patent, and trademark laws was good for musicians and artists in the Northern Mariana Islands. Mr. Pangelinan said that these laws protect the interests of Northern Mariana Islands citizens.

--Motion. Mr. Pangelinan moved for the adoption of the staff recommendation. The motion was seconded by Mr. Borja, and passed.

Creation of special U.S. passport. Mr. Tenorio asked whether the recommended special passport would allow multiple-entry visas to foreign countries. Mr. MacMeekin said that it is up to those countries to issue visas, but that foreign countries would probably treat the proposed passport as equivalent to a United States passport. Mr. Pangelinan noted that a number of countries have waived visas for holders of United States passports.

--Motion. Mr. Pangelinan moved adoption of the staff recommendation. The motion was seconded by Mr. Borja, and passed.

Land-grant colleges. Mr. MacMeekin pointed out that the staff recommendation authorizes the Northern Mariana Islands legislature to designate the institution to receive funds under the land-grant laws. Mr. Pangelinan said that such authority is appropriate. Mr. Tenorio inquired whether the land-grant laws require use of public land in the Northern Mariana Islands, to which Mr. MacMeekin replied in the negative.

--Motion. Mr. Tenorio moved the adoption of the staff recommendation. The motion was seconded by Mr. Borja, and passed.

Federal crimes--motion. Adoption of the staff recommendation on federal crimes was moved, seconded, and passed.

Old Business

Priorities. Mr. MacMeekin briefed the Commission on staff progress on Commission priorities. He noted that the interim report addressed citizenship, the Federal Tort Claims Act, and the Clean Air Act. Other recommendations previously adopted by the Commission for inclusion in the final report have to do with government depository libraries, nominations to the service academies, and the bankruptcy laws. Mr. MacMeekin then commented on the other areas previously set as high priority areas by the Commission, as follows: [69]

--immigration. Mr. MacMeekin said four draft recommendations on the immigration and nationality laws are in preparation, but noted that the four may be combined into a single draft.

--Fishery Conservation and Management Act. Mr. MacMeekin adverted to the earlier discussion of this Act, and asked for guidance as to how the staff should proceed.

--land-grant colleges. Mr. MacMeekin noted the adoption of a recommendation on this subject at this meeting.

--Internal Revenue Code. Mr. MacMeekin said that the staff has done some work on this issue but that he was uncertain whether the Commission should make a recommendation. He noted the widespread sentiment in the Northern Mariana Islands against application of the Code there.

--domestic tariff filing requirements. Mr. MacMeekin said the shipping firm opposed to meeting domestic tariff filing requirements for service to the Northern Mariana Islands, rather than the less onerous requirements for shipping to foreign ports, had now submitted to the domestic requirements. He suggested that the Commission no longer give this issue high priority.

--customs laws. Mr. MacMeekin said that he intends to circulate for comment a survey of the federal laws governing the shipment of goods across the borders of the United States. He noted that many such laws were not enacted for the collection of customs duties.

--aquatic permit laws. Mr. MacMeekin noted the discussion of the staff recommendation on these laws earlier in the meeting and the adoption of the portion of that recommendation dealing with the Rivers and Harbors Act. He asked for Commission guidance on how the staff should proceed with respect to the other laws included in the draft recommendation.

--air cabotage. Again adverting to earlier discussion of the staff recommendation on this subject, Mr. MacMeekin proposed to investigate the "through-ticket" exception. He suggested that, if the exception does exist, this law be removed from the priority list.

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--essential air services. Mr. MacMeekin noted that guarantees of air service to the Northern Mariana Islands (and all other destinations) under the essential air service provisions of the Federal Aviation Act will expire in 1986. He said that the Commission might want to establish this as a priority area for research. He noted that the Pacific Basin Development Council has been looking closely at this subject.

--banking laws. A draft staff recommendation on the federal banking laws is in preparation, Mr. MacMeekin said. The recommendation favors continued application of those laws to the Northern Mariana Islands, with few exceptions. He noted the recent concern that offshore banks in the Northern Mariana Islands might be used for illegal purposes.

--territorial delegate. Mr. MacMeekin said he intends to draft a recommendation for the Northern Mariana Islands to be represented in Congress by a nonvoting delegate, as are Guam and the other territories.

--Higher Education Act. Mr. MacMeekin noted the adoption of the staff recommendation on this Act at this meeting.

--Rural Electrification Act. Mr. MacMeekin asked whether the Commission desired to give this Act, which had been mentioned at previous meetings, priority status.

--federal grants. Mr. MacMeekin said that he intends only to study the six or seven grant programs in the Department of Interior's survey for which the Northern Mariana Islands is not eligible but other territories are.

--judiciary and judicial procedure. Mr. MacMeekin said a staff member has reviewed title 28 of the United States Code, on the judiciary and judicial procedure, and that proposal of a few technical amendments to that title is possible.

--airline passenger taxes. Whether the Northern Mariana Islands should be exempted from a provision in the

Federal Aviation Act barring collection of airline passenger taxes is under study by Mr. Dela Cruz, Mr. MacMeekin said.

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--deep seabed minerals. Mr. MacMeekin said the staff is looking into the application of this law, to determine its effects on the Northern Mariana Islands.

--Resource Conservation and Recovery Act. Mr. MacMeekin said this law, governing the disposal of solid waste, now applies to the Northern Mariana Islands. He noted that its prohibitions against open dumping may create a problem for the Northern Mariana Islands.

--National Traffic and Motor Vehicle Safety Act. This Act was previously discussed, Mr. MacMeekin said, in connection with the Commission's recommendation on the Clean Air Act. Since that discussion, Mr. MacMeekin said, it has again been asserted that Japanese firms will make automobiles complying with both laws or with neither, but not with just one of the laws.

--veterans' benefits. Mr. MacMeekin said there have been recent suggestions that veterans in the Northern Mariana Islands are not entitled by law to all benefits received by veterans elsewhere in the United States.

--crop insurance. Mr. MacMeekin noted that federal crop insurance in the Northern Mariana Islands is already authorized by statute.

--highway funding. Mr. MacMeekin suggested that the Commission could add a proposal to recommend the continued availability of federal highway funds to the Northern Mariana Islands to its list of priorities.

Mr. MacMeekin said for many priority areas, work is not yet finished or has not yet started. The Commission budget will allow work until roughly June 30.

Mr. Joseph noted the need for Commission decisions with respect to the FCMA, the aquatic permit laws, and air cabotage.

Mr. Tenorio asked that the staff participate in the Northern Mariana Islands executive-legislative discussion regarding the FCMA. Mr. Joseph proposed that a letter from the Commission be sent to the Speaker of the Northern Mariana Islands House of Representatives and the President of the Northern Mariana Islands Senate. Ms. McPhetres suggested that the letter specifically seek the assistance of the

Senate legislative counsel, Mr. Woodworth. Mr. Tenorio asked that a similar letter be sent to Governor Tenorio. The Commission agreed that the suggested letters should be sent and that the Senate President should be asked to allow the Senate's legislative counsel
[72] to draft an alternative recommendation for Commission consideration.

On the aquatic permit laws, Mr. Tenorio suggested that the staff review the Coastal Zone Management Act as it applies to the Northern Mariana Islands and determine whether the local executive order implementing the Act could be amended to fit local conditions without violating the Act. Mr. Borja suggested that the other laws listed in the aquatic permit law draft staff recommendation be reviewed in terms of available funding and benefits. He also suggested that the permit process requirements be reviewed.

Mr. Tenorio next suggested that the staff review the Internal Revenue Code (IRC), with a view toward recommending that it be made inapplicable. Mr. Pangelinan said that this issue should not be addressed until the Government of the Northern Mariana Islands has taken a position. He noted that the U.S. Department of the Treasury supports "delinking" of the IRC and taxation in the Northern Mariana Islands. Mr. Tenorio said that the Northern Mariana Islands is seeking permanent exemption from the IRC and that it would be useful for the staff to provide information on the IRC. Mr. Borja suggested that the staff be directed to contact local officials regarding the Northern Mariana Islands position on the IRC. In response to an inquiry by Ms. McPhetres, Mr. Pangelinan explained that changing the applicability of the IRC would not amend the Covenant since the revenue and taxation provisions are not subject to the mutual-consent clause.

Mr. Tenorio asked that the air cabotage issue be dropped, as Mr. MacMeekin had suggested, should there be a "through-ticket" exception, as earlier discussed. Mr. Borja noted his agreement to this proposal.

Mr. Tenorio also suggested that the staff to look into any problems under the immigration and nationality laws arising from the grant of residency in the Northern Mariana Islands to foreign investors. Mr. MacMeekin said that those problems, which have to do with residency requirements for naturalization, are already under study.

Mr. Joseph then asked the members for its views on whether the staff's current priorities should be amended. Mr. Pangelinan suggested the staff continue its work on those priority areas. The Commission then decided that none of the areas mentioned by Mr. MacMeekin as possible additional priorities should be added to the priority list. The Commission made clear that the Rural Electrification Act was intended to be included on the priority list.

Final Report

Mr. MacMeekin proposed that an executive summary of the final report be both available as a separate document and bound into the final report. He suggested that the introduction to the report, in addition to describing the Commission and its methodology, give some information on the territories and possessions of the United States. [73]

Mr. MacMeekin said that the recommendations of the final report need not be limited to recommendations for specific legislation, but may also include more general recommendations. He listed three such general recommendations that could be included. First, noting the inconsistency between representative democracy and territorial status, he said the Commission could recommend that Congress defer to Northern Mariana Islands views whenever possible in deciding whether a particular federal law should apply in the Northern Mariana Islands, that laws providing federal financial assistance or services be routinely made applicable to the Northern Mariana Islands, and that Congress afford to the people of the Northern Mariana Islands that special trust status reserved for people who are subject, but who do not have full access, to the American political processes.

Mr. MacMeekin suggested that the final report also recommend that the Covenant be treated as morally, if not legally, of a status higher than that of ordinary treaty or public law. He also suggested that the Commission recommend that any standard congressional legislative drafting checklists include specification of a statute's geographic applicability.

Mr. MacMeekin asked for the views of the Commission members on whether letters received by the Commission commenting on draft staff recommendations should be included in the documentary supplement to the final report. He said that if those letters were included, a selection should be made, as many letters have little substantive content while others were obviously rather hurriedly written. He also asked for Commission views on the circulation to be given the final report.

Mr. MacMeekin said he hoped to have all remaining draft staff recommendations in circulation well before the next Commission meeting. He suggested two more meetings, one in March 1983 and a final meeting in June 1983. He said the Commission should establish a tentative wind-up date, since the Commission's work can always be expanded to fill time available by going into greater detail in examining particular federal laws. He noted that the staff needs to know when its present employment will end in order to make its own plans. He said the remaining funds of the Commission would allow work to continue into July 1983, and suggested that the Commission set June 15 to July 15, 1983, as the period in which the Commission will windup its affairs. Mr. MacMeekin proposed that the Commission not dissolve itself at that time, however, as it might subsequently want to act officially.

Mr. Joseph agreed that the Commission should not dissolve itself when the staff is dismissed, noting that the Commission might need to meet again after submission of the final report.

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Mr. Tenorio expressed his concern that the June 15-July 15 deadline might be too soon, in view of the amount of staff work remaining.

Ms. McPhetres said that a deadline is necessary, but that she remained concerned about how to encourage congressional action on the Commission's recommendations once they are submitted to Congress.

--Motion. Mr. Tenorio moved for adoption of the June 15 to July 15 time period for winding up the Commission's staff functions. The motion was seconded by Mr. Pangelinan, and passed.

Waiver of third meeting in 1982.

Mr. Joseph, as authorized by the By-laws, waived the requirement for a third meeting in calendar year 1982.

Next meeting

The Commission tentatively agreed to hold its next meeting in Honolulu in March, with the exact dates to be determined by the Chair in consultation with the members.

Coffee service.

--Motion. Mr. Tenorio moved that the staff be allowed to use Commission funds to buy coffee and similar items for Commission meetings. The motion was seconded by Mr. Pangelinan, and passed.

Adjournment

The meeting then adjourned.

CERTIFICATION

The minutes of the December 16-17, 1982, meeting of the Northern Mariana Islands Commission on Federal Laws are set forth above as adopted by the Commission at its meeting of March 29, 1983, and as further corrected by the Commission at its meeting of November 29, 1983.

Daniel H. MacMeekin
Executive Director

MINUTES OF THE SEVENTH MEETING
HONOLULU, HAWAII
MARCH 29-30, 1983

Commission Vice-Chair Pedro A. Tenorio, as acting Chair, opened the seventh meeting of the Northern Mariana Islands Commission on Federal Laws in room C270 of the Federal Building in Honolulu, Hawaii, at approximately 9:20 a.m.

Commissioners present, in addition to Mr. Tenorio, were Congressman Phillip Burton, Jesus C. Borja, and Agnes Manglona McPhetres. Absent were the Chair, James A. Joseph, and Commissioner Edward DLG. Pangelinan. Commissioner Myron Thompson had sent word that he would arrive at the meeting later in the day.

There being no quorum at the morning session of the first day, Mr. Tenorio dispensed with the roll call. The commissioners present agreed to discuss those items on the agenda needing action when a quorum was constituted.

Opening Remarks

Mr. Tenorio welcomed the Commission members and members of the public in attendance. He noted that Chair James Joseph could not attend because of a prior commitment and that Mr. Pangelinan could not attend due to illness.

Mr. Tenorio next acknowledged the presence of the following guests: James Beirne and Jeffrey Farrow, United States Congress staff members; Northern Mariana Islands Senators Froilan C. Tenorio and Ignacio Quichocho and Senate legislative counsel Donald C. Woodworth; Northern Mariana Islands Congressmen Jose Lifoifoi and Jesus A. Sonoda and House of Representatives legislative counsel Joel Bergsma; and Northern Mariana Islands Attorney General Peter Van Name Esser.

Also attending were: Jerry Norris, of the Pacific Basin Development Council; Ignacio Villanueva, of the Marianas/Hawaii Liaison Office; Ken Fuji, of the United States Office of Personnel Management; and Charles Caulkins, of the United States General Accounting Office.

Report of the Executive Director

Budget. Mr. Daniel H. MacMeekin, the executive director, reported on the Commission budget. He said that, as of February 28, 1983, Department of the Interior figures showed $128,000 in unexpended Commission funds. He has budgeted from this amount the sum of $5,000 for the final report. He noted that $14,000 was spent for the last meeting. Monthly Commission expenses average about $18,000, he said. He expects that the remaining funds will carry the Commission until about the end of June or early July, 1983.

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Personnel. Mr. MacMeekin informed the Commission members that the staff has not changed since the last meeting. In Washington, the staff includes himself, staff attorneys Jeffrey Nackley and John Cutler, secretary Dianne Brickey, and clerk Michelle Monroe. On Saipan, the staff consists of Jose Dela Cruz, the liaison attorney, and his secretary, Lillian Villagomez.

Progress. Mr. MacMeekin said that the staff is still working on treatments of the various titles of the United States Code for the final report. He referred to the title-by-title progress report he made to the Commission at the sixth meeting. To Congressman Burton's inquiry, Mr. MacMeekin replied that no draft final report has been completed yet.

--interim report. Mr. MacMeekin next briefed the members on the status of the recommendations contained in the interim report submitted to the United States Congress in January 1982. He said that proposed legislation was introduced in the previous Congress on the citizenship recommendation but not acted on, although a hearing on the bill was held by the Senate Committee on Energy and Natural Resources. No similar bill has yet been introduced in the present Congress. The same is true for the Commission recommendation on the Clean Air Act. The third recommendation, to clarify the applicability of the Federal Tort Claims Act in the Northern Mariana Islands, however, has been enacted into law.

--other adopted recommendations. Mr. MacMeekin noted that recommendations adopted by the Commission since the interim report will be included in the final report. They include recommendations pertaining to land-grant colleges, the Higher Education Act, nominations to the United States service academies, the government depository library program, a special passport for Northern Mariana Islands citizens, the Rivers and Harbors Act, and intellectual property laws.

Mr. MacMeekin said that the recommendation on the federal intellectual property laws--copyrights, trademarks, and patents--favors their continued applicability. He noted that the staff

recommendation on air cabotage has been dropped, as instructed by the Commission, because the "through-ticket" exception has been determined by the staff to be correct.

—recommendations ready for action. Mr. MacMeekin told the Commissioners that the following staff recommendations are now ready for the Commission's consideration and action: (1) the Fishery Conservation and Management Act and the Vessel Documentation Act, (2) the federal immigration and nationality laws, and (3) the Wagner-Peyser Act. [77]

Mr. MacMeekin said that three draft staff recommendations included in the briefing book are not ready for Commission consideration at this meeting since they have only very recently been circulated. Those recommendations are on (1) the nonvoting delegate to Congress, (2) the federal banking laws, and (3) the federal securities laws.

—recommendations in preparation. Mr. MacMeekin said that separate draft staff recommendations are being prepared on the Coastal Zone Management Act, Ocean Thermal Energy Conversion Act, the Ocean Dumping Act, the Clean Water Act, the Deepwater Port Act, and the Federal Power Act.

In addition, Mr. MacMeekin mentioned that he is now working on a very rough draft on the Internal Revenue Code (IRC). He noted that this draft still requires much work. Congressman Burton requested that the Commission reserve time later in the meeting for discussion of the Internal Revenue Code, which he said is now applicable in the Northern Mariana Islands but is in effect ignored. He said the Code should be implemented in the Northern Mariana Islands forthwith. Ms. McPhetres suggested that the matter be discussed under old business. Mr. Tenorio agreed with Congressman Burton that this matter is important and that time should be set aside to discuss it further. Congressman Burton said that the Internal Revenue Code is not a subject on which the Commission staff should spend time .

Another draft staff recommendation in preparation relates to the Rural Electrification Act. A problem may arise from the Act's definition of "rural" and "urban," Mr. MacMeekin stated. Another draft in preparation deals with title 28 of the United States Code, Judiciary and Judicial Procedure. Mr. MacMeekin noted that the law creating the District Court for the Northern Mariana Islands appears to have anticipated and avoided any problems with title 28.

Another draft deals with the federal prohibition on airline passenger taxes imposed by state and local governments, Mr. MacMeekin said. Congressman Burton said that much of the air traffic in the Northern Mariana Islands--like Guam and American Samoa--is

foreign air traffic and, therefore, the Northern Mariana Islands should be exempted from this prohibition, which limits local revenues.

[78] Another draft staff recommendation deals with the Deep Seabed Hard Mineral Resources Act. Mr. MacMeekin explained that because this law deals with areas beyond territorial waters, it is of no great concern to the Northern Mariana Islands.

—draft sections for final report. Mr. MacMeekin next noted that draft treatments of the following titles of the United States Code, for inclusion in the final report, have been completed: titles 1, 9, 25, and 45. Ready for editing are titles 5, 41, 47, and 22.

In addition, Mr. MacMeekin reported that he has continued work on the "borders survey", with the intention of circulating it for comment upon completion. The survey collects all laws relating to the movement of things--goods, currency, contraband, and so forth--across the borders of the United States and for each law determines whether the Northern Mariana Islands is considered within or without the United States for purposes of that law.

Congressman Burton asked that the Medicaid provisions in title 42 of the Code be reviewed to determine if matching-fund requirements will create difficulties for the Northern Mariana Islands. He explained that those requirements have caused a problem for Guam and the Virgin Islands, and suggested similiar problems in the Northern Mariana Islands should be anticipated and resolved prior to the opening of the new health care center on Saipan.

Correspondence. Mr. MacMeekin told the Commission that he had received a copy of a resolution adopted by the Northern Mariana Islands House of Representatives urging Congressional adoption of the citizenship recommendation contained in the Commission's interim report.

He also said that, as directed by the Commission at its previous meeting, the Chair had sent letters to the governor of th Northern Mariana Islands, the speaker of the Northern Mariana Islands House of Representatives, and the president of the Northern Mariana Islands Senate requesting them to prepare an alternative to the Commission staff's recommendation on the Fishery Conservation and Management Act and the Vessel Documentation Act. Mr. MacMeekin noted that the Northern Mariana Islands Senate prepared an alternative recommendation, which is contained in the briefing book.

Resolutions from the Saipan Chamber of Commerce and from the Northern Mariana Islands legislature asking the Commission to review the applicability of the National Labor Relations Act to the Northern

Mariana Islands were also received, Mr. MacMeekin said.

Press. Mr. MacMeekin pointed out the briefing book included the Wall Street Journal article on offshore banking activities in the Northern Mariana Islands. He noted that a committee of the United States Senate is investigating activities of offshore banks in the Northern Mariana Islands and elsewhere. [79]

Staff Recommendations

Mr. Tenorio suggested that Mr. MacMeekin briefly discuss each staff recommendation.

Fishery Conservation and Management Act and the Vessel Documentation Act. Mr. MacMeekin noted the recent passage of United States Public Law 97-453, including the Northern Mariana Islands in the Western Pacific Regional Fishery Management Council. He said Congress through this legislation intended to make the Fishery Conservation and Management Act (FCMA) applicable to the Northern Mariana Islands. Congressman Burton interjected that the Commission should not infer from such legislation that the Northern Mariana Islands is subject to the FCMA. He said that, if it was included, it may have been through inadvertence. Mr. MacMeekin noted that the legislative history of the law shows an explicit intent to apply the FCMA to the Northern Mariana Islands. Ms. McPhetres asked how the bill was passed. Mr. MacMeekin said that the bill was enacted in the closing days of the last Congress, at the same time the Commission, in its most recent meeting, was discussing the applicability of the FCMA. He said the provisions affecting the Northern Mariana Islands were a small part of a lengthy bill and that he did not know what interests had caused the bill to be passed by Congress in its pre-adjournment rush. Congressman Burton said that Congress, in including the Northern Mariana Islands under the FCMA, surely thought it was acting in the best interests of the Northern Mariana Islands, but that it may not have been well-informed on the viewpoint of the people of the Northern Mariana Islands.

Mr. MacMeekin said the staff recommendation had not yet been modified to take into account Public Law 97-453.

Mr. MacMeekin then compared the Commission's staff recommendation with the alternative recommendation prepared by the legislative counsel of the Northern Mariana Islands Senate. He said the staff draft recommends making the FCMA applicable to the Northern Mariana Islands, while the alternative draft recommends making it inapplicable. The staff recommendation would make the Northern Mariana Mariana Islands a member of the Western Pacific Regional Fishery Management Council; the alternative draft would not. Both recommendations would make the Vessel Documentation Act applicable to

the Northern Mariana Islands. Both drafts would make permanent the exemption from the ban on use of foreign-built fishing vessels. Both recommendations treat Northern Mariana Islands citizens as United States citizens under the Vessel Documentation Act in the period
[80] before the trusteeship terminates.

In addition, the staff recommendation provides for return of fishery fees to the Northern Mariana Islands. The alternative recommendation requires the Department of State to enter into regional fishery agreements with other nations on behalf of the Northern Mariana Islands, particularly with respect to tuna. The alternative recommendation permits use of foreign hulls by Northern Mariana Islands citizens in the coastwise trade. Finally, the alternative recommendation would allow third-country nationals to work on vessels owned by Northern Mariana Islands citizens.

--discussion. Congressman Burton noted that the recommendation to allow foreign-built vessels to be used in Northern Mariana Islands fisheries was favored in both drafts and suggested it be submitted by itself to Congress. He said any recommendation should be one the executive branch will not veto. Mr. MacMeekin said the alternative recommendation's provision directing the Secretary of State to negotiate on behalf of the Northern Mariana Islands could be a problem. Congressman Burton agreed that provision could create difficulties and noted that certain of the other recommendations in the alternative recommendation may turn out to be harmful. Further, he said, the Northern Mariana Islands has very little prospect of obtaining exceptions to requirements of maritime law. Mr. MacMeekin noted that the alternative recommendation includes provisions on the coastwise laws. He suggested that, because the Covenant already provides favorable treatment to the Northern Mariana Islands, raising the question in Congress again might be counterproductive. Congressman Burton agreed. Mr. MacMeekin said that the alternative recommendation would allow use of alien crews in foreign hulls owned by Northern Mariana Islands citizens in the coastwise trade between, say, Boston and Baltimore. He said any such proposal must be specifically limited to trade between, say, the Northern Mariana Islands and Micronesia.

Northern Mariana Islands Senator Ignacio Quichocho supported the position taken in the Senate's alternative recommendation, that the FCMA be made inapplicable to the Northern Mariana Islands. He said the alternative draft, if adopted, would allow the local Marine Sovereignty Act to remain in effect and would permit the landing of fish from foreign vessels in the Northern Mariana Islands. He supported repeal of the provision of Public Law 97-453 that makes the Northern Mariana Islands a member of the Western Pacific Regional Fishery Management Council. He said he favors United States negotiation of regional fishery agreements on behalf of the Northern

Mariana Islands.

Congressman Burton asked Senator Quichocho why the Northern Mariana Islands should not be a member of the Council. Senator Quichocho replied that membership implies that the FCMA applies to the Northern Mariana Islands. Congressman Burton asked whether, if it were clear that the FCMA did not apply, membership of the Northern Mariana Islands in the Council would be beneficial. He explained that the Northern Mariana Islands might later regret exclusion from membership. He suggested, as a compromise, that the Northern Mariana Islands could continue as a "observer" until such time as, say, the governor finds that the Northern Mariana Islands should become a member. Such a provision would authorize the governor to ask for full membership at a later date if and when the Northern Mariana Islands decides full membership on the Council would be beneficial. [81]

Donald Woodworth, legislative counsel for the Northern Mariana Islands Senate, explained that the alternative provisions on State Department negotiation of regional fishery agreements on behalf of the Northern Mariana Islands are based on language now in the FCMA. Congressman Burton told Mr. Woodworth that reopening the coastwise laws issue would not be wise since the Covenant already addresses this subject. Mr. Woodworth said the Department of Defense position is that the FCMA does not now apply and that the Northern Mariana Islands should be permitted to enact FCMA-type legislation. Mr. Woodworth said tuna should be regulated under the FCMA and that a regional tuna fishery arrangement should be permitted.

Peter Van Name Esser, Attorney General for the Northern Mariana Islands, said obtaining an exemption from the FCMA is very difficult because of the United States policy considerations. No other part of the United States is exempted, he said. He noted the need to develop Northern Mariana Islands resources and pointed out that ownership of Northern Mariana Islands fishery resources historically has been in the people of the Northern Mariana Islands. He said Governor Tenorio favors an exemption from the FCMA, making that the unified position of the legislative and executive branches of the government of the Northern Mariana Islands.

Senator Quichocho said an objective of the Northern Mariana Islands, in seeking to develop its fishery resources, is to reduce its dependence on federal funding. Congressman Burton replied that the Northern Mariana Islands could begin to reduce that dependence by implementing the Internal Revenue Code. He said for the Northern Mariana Islands to be treated differently from Guam in federal matters is unfair. He noted that the Covenant already provides special treatment for the Northern Mariana Islands by the land-alienation restriction, by the ability to rebate taxes, and by permission for deviation from the one-man one-vote requirement.

Aside from the Covenant exemptions, he said, the Northern Mariana Islands generally should be treated no differently from Guam.

Continuation of Commission operations.

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Congressman Burton said the Commission should not end its staff operations in July as planned. He said the Commission is a very useful forum. He also said that sufficient time must be allowed so the Commission is able to proceed cautiously and be well informed before it makes recommendations to Congress. He said many questions on the application of federal law to the Northern Mariana Islands remain unanswered.

Staff Recommendations (continued).

Federal immigration and nationality laws. Mr. MacMeekin explained that the first proposal in this recommendation would allow Northern Mariana Islands citizens married to aliens to petition for permanent resident status in the United States for their alien spouses and children under 21 years of age prior to termination of the trusteeship. Congressman Burton requested that the Commission staff, independently from this recommendation, prepare a proposed amendment to the Simpson-Mazzoli immigration bill now before Congress, providing that, in the event of a conflict between that legislation and the Covenant, the Covenant would prevail.

Mr. MacMeekin said the second proposed recommendation would permit a Northern Mariana Islands citizen electing to become a United States national rather that a United States citizen after termination of the trusteeship to count residency in the Northern Mariana Islands toward the required period of residency in the United States should he or she later seek naturalization as a United States citizen. He noted that, under existing United States immigration law, that person would have to reside in a United States jurisdiction other than the Northern Mariana Islands to satisfy the residency requirement.

--discussion. Congressman Burton expressed concern that the first proposal does not limit the number of people eligible to become permanent residents of the United States. He said eligibility should be limited to individuals otherwise eligible as of a certain fixed date, for example, the date of introduction of the bill. He also suggested that, after Commission adoption of the immigration recommendation, a concurrent or joint resolution should be passed by the Northern Mariana Islands legislature and approved by the governor, giving Northern Mariana Islands consent to the proposed legislation. He recommended that the Northern Mariana Islands establish a procedural mechanism for granting consent pursuant to the mutual consent requirements of the Covenant.

Quorum, Notice of Meeting and Approval of Minutes

Mr. Tenorio here noted the arrival of Commissioner Myron Thompson and announced the presence of a quorum.

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Mr. Tenorio next announced that notice of the meeting had been published in the Federal Register, the Marianas Variety, and the Commonwealth Examiner.

The minutes of the sixth meeting of the Commission were approved without change.

Agenda. Mr. Thompson moved for the adoption of the proposed agenda. The motion was seconded by Mr. Borja, and passed.

Ms. McPhetres requested that the Internal Revenue Code be discussed under old business.

Staff Recommendations (continued).

Federal immigration and nationality laws (continued). Mr. MacMeekin said that Congress has the power under the United States Constitution to allow the Northern Mariana Islands to control its own immigration. He noted, however, that the others might disagree and that a constitutional challenge to the inapplicability of the federal immigration laws could be made. He said a likely challenger would be an alien who is the immediate relative of a United States citizen. He suggested the Northern Mariana Islands make provision in its own immigration laws to grant such persons a status similar to "immediate relative" status under the federal law. If such a change were made, constitutional challenge to the separate immigration laws of the Northern Mariana Islands would be much less likely, he said. Congressman Burton said the Northern Mariana Islands should consider this suggestion. Senator Froilan Tenorio expressed opposition to the staff recommendation. He said very few people will be effected by the recommendation, which is temporary in nature, and which does not benefit Northern Mariana Islands citizens. He said the aliens who become permanent residents of the United States under the first proposal could enjoy a status superior to Northern Mariana Islands citizens, because they might become United States citizens through naturalization before citizens of the Northern Mariana Islands become citizens of the United States through termination of the trusteeship. Congressman Burton said Senator Tenorio's concern reinforces the need for a fixed cut-off date for eligibility. Senator Quichocho agreed that eligibility should be limited. In response to Senator Tenorio's concern that alien immediate relatives of citizens of the Northern Mariana Islands might become United States citizens before Northern Mariana Islands citizens achieve that status, Congressman Burton

expressed his hope that, by that time, Congress would have accorded to Northern Mariana Islands citizens all rights of United States citizenship.

[84] Wagner-Peyser Act. Mr. MacMeekin said that this law, establishing the United States Employment Service, is now applicable in the Northern Mariana Islands. Federal grants to State employment agencies are available under the Act. In order to receive funding, however, a State must have an approved unemployment compensation law. Mr. MacMeekin said that, under the Act, Guam is exempted from that requirement and that the recommendation here proposed seeks a similar exemption for the Northern Mariana Islands.

—discussion. Congressman Burton expressed surprise at the Guam exemption and asked how the Northern Mariana Islands private sector could justify the absence of an unemployment compensation program. He said that he does not believe that Guam should be exempted.

Senator Tenorio said that he disagrees with the staff recommendation because a federally-funded employment service is not needed in the Northern Mariana Islands. Mr. MacMeekin explained that, although the Act applies in the Northern Mariana Islands, the Northern Mariana Islands still has to apply for funds under the Act. Mr. Thompson said the Northern Mariana Islands will decide whether to apply for funds, even if the proposed recommendation is adopted by the Commission and enacted into law. Senator Tenorio said that, if federal funding is terminated once a program is started in the Northern Mariana Islands, termination of persons hired to work in that program creates hardship. Mr. MacMeekin said the proposed recommendation makes the funds available, but allows the Northern Mariana Islands to decide whether to apply for those funds.

Recess.

The meeting recessed at 2:30 p.m. and reconvened March 30, 1983, at 1:00 p.m.

Staff Recommendations (continued).

Mr. Tenorio said that action should be taken on only the three staff recommendations under consideration (on the Fishery Conservation and Management Act and the Vessel Documentation Act, on the federal immigration and nationality laws, and on the Wagner-Peyser Act). He suggested that discussion be postponed on the other three staff recommendations just circulated (on a nonvoting delegate to the United States Congress, on the federal banking laws and related federal housing laws, and on the federal securities laws). Congressman Burton suggested that most people already know their position one way or the other on the nonvoting delegate staff

recommendation and that action on that recommendation would be appropriate. Mr. MacMeekin pointed out that the three later staff recommendations have only recently been circulated and that no comments have been received on any of them. Senator Tenorio said that the proposed legislative language in the nonvoting delegate [85] staff recommendation provides for election of the delegate in even-numbered years when general elections are held in the Northern Mariana Islands on odd-numbered years. He suggested that the delegate be elected in odd-numbered years.

--motion. Ms. McPhetres moved to defer action until a later meeting on the staff recommendations on the nonvoting delegate, the federal banking laws, and the securities laws. The motion was seconded by Mr. Borja, and passed.

Fishery Conservation and Management Act and Vessel Documentation Act: Consideration and action. Mr. MacMeekin suggested that section 5 (exemption from foreign hull restrictions) and section 6 (removal of citizenship restrictions) of the staff recommendation's proposed legislative language could be acted upon by the Commission. Congressman Burton asked the effect of enacting section 6 on vessel manning requirements. Mr. MacMeekin answered that section 6 would put into statutory form the opinion of the general counsel of the Coast Guard, permitting treatment of Northern Mariana Islands citizens as United States citizens for purposes of the vessel manning laws. Mr. MacMeekin next suggested that section 4 of the proposed legislative language, making the Vessel Documentation Act applicable to the Northern Mariana Islands, could also be acted on, noting that section 4 goes hand-in-hand with section 6.

Mr. Woodworth said that, until all other issues in the Northern Mariana Islands Senate's alternative recommendation have been resolved by the Commission, the Senate favors making the Vessel Documentation Act inapplicable. Congressman Burton said there is no point in recommending provisions that will not be enacted by Congress. He offered to arrange a meeting of Northern Mariana Islands officials and maritime union leaders in Washington to sort out any problems with proposed recommendations.

Mr. Tenorio asked whether the various proposals in either draft are separable. Mr. Woodworth replied that they are separable and that the Commission could take a position on the FCMA now and defer the Vessel Documentation Act until a later meeting. Ms. McPhetres and Mr. Thompson both agreed that a meeting between Northern Mariana Islands government officials and maritime union leaders in Washington, as suggested by Congressman Burton, would be helpful.

—motions. Mr. Borja moved to adopt the portion of the alternative proposal making the FCMA inapplicable. The motion was seconded by Ms. McPhetres, and passed—four members voted in favor;
[86] none opposed; Congressman Burton voted present.

Mr. Borja then moved to defer action on the remaining proposals in each recommendation until a later meeting. The motion was seconded by Mr. Thompson, and passed.

Federal immigration and nationality laws: Consideration and action. In response to Mr. Borja's request for clarification of the need to have a fixed eligibility date, Congressman Burton explained that this suggestion would limit the number of people eligible for permanent residency by requiring that status as an immediate relative be determined as of a date specified in the legislation. He said Congress is reluctant to allow "open-ended" avenues of immigration into the United States. With a cut-off date, no incentives exist for, say, entering into a fraudulent marriage to obtain entry into the United States. He noted that subsequent legislation could be enacted to change the cut-off date to allow aliens who later become immediate relatives of citizens of the Northern Mariana Islands to become permanent residents of the United States and that this could be done more than once or even annually as necessary.

--motions. Congressman Burton moved for adoption of section 1 of the staff recommendation's proposed legislative language, amended to establish the date of introduction of the bill as the eligibility cut-off date. The motion was seconded by Ms. McPhetres, and passed.

Congressman Burton moved for adoption of section 2 of the staff recommendation's proposed legislative language. The motion was seconded by Mr. Borja, and passed.

Wagner-Peyser Act: Consideration and action. Congressman Burton said that Guam should not be exempt from the unemployment compensation requirement and that he is not certain he favors an exemption from the requirement for the Northern Mariana Islands. He said he will not oppose the recommendation but will only vote "present." He asked why the Northern Mariana Islands, when it achieves full-fledged commonwealth status, should not have an unemployment compensation law as does the Virgin Islands. Senator Tenorio said little thought has been given establishing an unemployment compensation program in the Northern Mariana Islands, possibly because such a program may have been thought too burdensome to the struggling private sector there. Congressman Burton said the costs for unemployment compensation insurance premiums are very low. He suggested that the United States Department of Labor be asked to explain the requirements for an approved program in the Northern Mariana Islands and that action on the draft recommendation be

deferred until the next meeting.

--motion. Mr. Borja moved to defer action on the draft staff recommendation on the Wagner-Peyser Act and to ask that the staff investigate why Guam was exempted from the unemployment compensation requirement. The motion was seconded by Ms. McPhetres, and passed. [87]

Old Business

Priorities. Mr. Tenorio asked Mr. MacMeekin to review the status of work on the areas designated by the Commission for priority treatment.

Immigration--Simpson-Mazzoli bill. Congressman Burton suggested that letters, signed by the executive director, be sent to Senators McClure, Johnston, Matsunaga, and Weicker, and Congressmen Lagomarsino and Won Pat, urging that a provision be inserted in the Simpson-Mazzoli legislation to the effect that, in the event of a conflict between that legislation and the Covenant, the Covenant will prevail. The Commission members present agreed that the suggested letters should be sent.

Immigration--Commission recommendation--clarification. In response to Mr. Woodworth's inquiry, Congressman Burton said the eligibility cut-off date did not bar applications for permanent residency after that date, but only applications based on immediate-relative status acquired after that date.

Priorities (continued). Mr. MacMeekin noted that the Commission, at its sixth meeting, planned termination of staff operations in July 1983. He said that he and the staff will concentrate on the preparation of the final report between now and then.

--Internal Revenue Code. Mr. MacMeekin asked for Commission guidance on how to proceed with respect to the Internal Revenue Code. A very rough draft has been prepared but is still quite unsatisfactory and much work remains to be done.

Joel Bergsma, the legislative counsel for the Northern Mariana Islands House of Representatives, inquired whether the Internal Revenue Code is a priority matter for Commission study. Ms. McPhetres said she still considers it a priority. Mr. Thompson suggested that, if no additional funding is received, the Internal Revenue Code should not be accorded priority. If additional funding is received, the Internal Revenue Code could then be included among the Commission's priorities, he said. Congressman Burton said the Covenant expressly provides that the Internal Revenue Code is now applicable and that further treatment of the subject is thus

unnecessary. He said that the Northern Mariana Islands should have no unfair competitive advantage over Guam and emphasized that, except
[88] for, perhaps, earned income credit provisions, the Code should apply in its entirety. He then suggested that the staff be directed to write the governor of the Northern Mariana Islands and ask him, assuming the applicability of the Internal Revenue Code to the Northern Mariana Islands, to identify specific provisions in the Code troublesome to the Northern Mariana Islands. He said the earned income credit is one such possibly legitimate concern. He emphasized that the governor should be asked to identify specific problems and to recommend statutory language to resolve each such problem. Mr. Borja said that the applicability of the Internal Revenue Code raises important issues that should be addressed.

--motion. Mr. Thompson moved that the Commission ask the governor of the Northern Mariana Islands to identify specific concerns of the Northern Mariana Islands with respect to the Internal Revenue Code on the assumption the Code will continue to be applicable to the Northern Mariana Islands and to ask him to offer the statutory language needed to resolve each. The motion was seconded by Congressman Burton, and passed.

The Commission agreed that the Internal Revenue Code should remain as a priority matter but instructed the staff to prepare no draft recommendation.

—title 42, Public Health and Welfare. Mr. MacMeekin said he would look into this title in some detail if additional funding becomes available. In the absence of additional funding, at least the Medicaid issues raised at this meeting should be examined.

—title 15, Commerce and Trade. Mr. MacMeekin said that this title also should be reviewed in some detail if additional funds are available.

--borders survey. Mr. MacMeekin said this survey will be circulated as soon as completed, but that completion may not be possible before July.

--National Labor Relations Act. Mr. MacMeekin asked Commission guidance on whether this Act should be given high priority.

Commission Instructions to Staff

Continuing the Commission. Congressman Burton urged the Commission to seek to continue its work and to send letters requesting additional funds to members of Congress with jurisdiction over Commission funding. He said the Commission should not wind down

yet and noted that the final report of the Commission is not due until one year after the trusteeship is terminated. Mr. Tenorio said that obtaining funding for purposes of continuing the Commission may present a problem. He said that some staff members are now preparing [89] to leave. He noted that Mr. Dela Cruz in particular has already told the executive director of his plans to leave and that the executive director intends to close the Commission's Northern Mariana Islands office when Mr. Dela Cruz leaves. James Beirne suggested that the Commission seek additional funding through Interior's request for supplemental funds for fiscal year 1983. Congressman Burton suggested that no additional staff be hired until an additional appropriation has been approved.

--motion. Congressman Burton moved that the Commission continue its work and request additional funding at the level of the Commission's most recent appropriation. The motion was seconded by Mr. Thompson, and passed.

Medicaid. Congressman Burton said that the Commission should not assign a high priority to drafting a recommendation on the Medicaid program. Instead, he said a statement of the issues, particularly regarding inpatient care payments, should be made.

Final Report. Congressman Burton said a final report should still be prepared in the event that additional funding is not available.

National Labor Relations Act. Congressman Burton suggested that the staff not spend time on the National Labor Relations Act. He said there is very little chance the Northern Mariana Islands would be exempted from this law.

Mr. Bergsma said that the Saipan Chamber of Commerce and the Northern Mariana Islands legislature have adopted resolutions asking that the National Labor Relations Act be made a priority matter. Mr. MacMeekin said that two issues have been raised in the current dispute involving the Micronesian Telecommunications Corporation. The first question, whether the Act is applicable to the Northern Mariana Islands, has been conclusively settled already, he said, in favor of the Act's applicability. The second question, whether the National Labor Relations Board should exercise jurisdiction, is beyond the Commission's normal purview, he said, because the Act gives the Board some discretion in deciding whether to exercise jurisdiction, Thus, to require the Board to exercise or to decline jurisdiction over labor disputes in the Northern Mariana Islands would require legislation restricting the Board's discretion. Congressman Burton expressed agreement with Mr. MacMeekin's interpretation.

--motion. Mr. Borja moved that the National Labor Relations Act not be accorded high priority by the staff. The motion was seconded by Congressman Burton, and passed.

[90] Second Interim Report.

Mr. MacMeekin suggested that the proposed final report be denominated an interim report. That nomenclature, he said, would allow the Commission to remain in existence, albeit without funding, between submission of this report and the deadline for submission of the final report to Congress one year after termination of the trusteeship. If the members perceived a need to address issues not previously treated during that period, they would still be able to take action as necessary, including seeking funds for additional staff work. If no such issues arose, the Commission could submit a one-page letter as its final report, he said. The Commission members agreed to this proposal.

Format. At Mr. Tenorio's suggestion, the Commission members agreed to allow the staff to determine the appropriate format and cover for the report.

Implementation. Ms. McPhetres asked how implementation of the Commission's recommendations by Congress could be encouraged. Congressman Burton suggested that this subject be addressed at the next meeting. He emphasized the importance of providing the report to key members of Congress.

Additional funding.

Congressman Burton said that Mr. MacMeekin should discuss with Mr. Beirne the language for the letter requesting an additional appropriation.

New Business

No new business was offered.

Next Meeting

Mr. MacMeekin said that Mr. Joseph had offered the facilities of the Council on Foundations (of which he is President) for the next meeting of the Commission. The Commission tentatively agreed to hold its next meeting on June 17 and 18, 1983, in Washington, D.C., at the offices of the Council of Foundations. Mr. MacMeekin noted that the meeting might take more than two days.

Adjournment

The meeting was adjourned at approximately 4:50 p.m.

CERTIFICATION

The minutes of the March 29-30, 1983, meeting of the Northern Mariana Islands Commission on Federal Laws are set forth above as corrected and adopted by the Commission at its meeting of November 29, 1983. [91]

Daniel H. MacMeekin
Executive Director

MINUTES OF THE EIGHTH MEETING

WASHINGTON, D.C.

[92]

NOVEMBER 29-30, 1983

Commission Chair James A. Joseph opened the eighth meeting of the Northern Mariana Islands Commission on Federal Laws in the conference room of the Council on Foundations at 1828 L St., N.W., in Washington, D.C., at 9:45 a.m.

Commissioners present, in addition to Mr. Joseph, were Jesus C. Borja, Agnes Manglona McPhetres, Edward DLG. Pangelinan, and Myron Thompson. Absent was Vice-chair Pedro A. Tenorio.

Opening Remarks

Mr. Joseph welcomed the Commission members and members of the public in attendance. He then asked for a moment of silence in honor of Congressman Phillip Burton, a Commission member until his death on April 10, 1983.

—motion. Mr. Pangelinan moved that the Commission's next report be dedicated to Congressman Burton. The motion was seconded by Mr. Thompson, and passed.

Mr. Joseph reported that President Reagan is expected to appoint Congressman Robert J. Lagomarsino in December to fill the vacancy created by Congressman Burton's death.

Mr. Joseph then introduced the members of the Commission and the Commission staff to the public in attendance and asked members of the public to introduce themselves. Among those present were Ruth Van Cleve, of the Department of the Interior; Helene Harvey and Kay Bernstein, of the Social Security Administration; Dorothy Brown, of the Bureau of the Census; Northern Mariana Islands Senator Froilan C. Tenorio; Donald C. Woodworth, Northern Mariana Islands Senate Counsel; Robert Garland, General Counsel to the Northern Mariana Islands Washington Representative; Jeffrey Farrow, Senior Advisor to the Subcommittee on Insular Affairs of the U.S. House of Representatives; and Chris Brennan and Jess Ford, of the General Accounting Office.

Quorum, Notice of Meeting, and Approval of Minutes.

Mr. Joseph announced the presence of a quorum and that notice of the meeting had been provided as required.

The minutes of the seventh meeting of the Commission were corrected and approved. A previously uncorrected error in the already approved minutes of the sixth meeting was also corrected.

Report of the Executive Director.

Omnibus territories legislation. Mr. Daniel H. MacMeekin, the Commission's executive director, reported that Congress had passed, and the President was expected to sign into law, Senate bill 589, the Omnibus Territories bill. Among other provisions, the bill included [93] sections responding to recommendations in the Commission's first interim report to Congress regarding the Clean Air Act and the removal of statutory citizenship requirements for citizens of the Northern Mariana Islands. Mr. MacMeekin said that Mr. Joseph and he had testified before the Senate Committee on Energy and Natural Resources in October 1983 in support of the Commission's recommendations. He said that, with passage of this bill, Congress has now acted favorably on all recommendations in the Commission's first interim report. He said that while the legislation adopted by Congress differs somewhat from that recommended by the Commission, the legislation substantially resolves most of the problems identified by the Commission.

Progress. Mr. MacMeekin reported that he and Commission staff attorney John Cutler continue to work on the title-by-title survey of the United States Code. He reviewed the recommendations previously approved by the Commission subsequent to submission of the first interim report to Congress. Those recommendations are with regard to the bankruptcy laws, nomination to the service academies, government depository libraries, intellectual property laws, the Rivers and Harbors Act, land-grant colleges, the Higher Education Act, federal crimes, and the federal immigration and nationality laws. Mr. MacMeekin said that the draft recommendation on the Fishery Conservation and Management Act had been revised in accordance with the instructions given by the Commission at the previous meeting. As part of that revision, he said a separate draft recommendation on the Vessel Documentation Act had been prepared. That law had previously been treated together with the Fishery Conservation and Management Act. Both recommendations, he said, were now ready for Commission consideration and action.

Mr. MacMeekin said that also ready for consideration and action by the Commission were staff recommendations on the Wagner-Peyser Act, on a nonvoting delegate to the United States Congress, on the federal banking laws, and on the federal securities laws. He noted that three additional draft recommendations--on title 5, government organization and employees; title 39, federal postal laws; and title 41, federal contract laws--had recently been circulated for comment, and should be ready for Commission consideration at its next meeting.

Two staff studies, Mr. MacMeekin said, had also been recently circulated for comment: a "Solicitation of Views on the Application of the Medicaid Program in the Northern Mariana Islands" and "Borders: The Applicability of Federal Law to Imports to and Exports from the Northern Mariana Islands--A Survey." He noted that substantive comments on the Medicaid study were included in the briefing materials prepared for this meeting of the Commission.

--title-by-title progress. Mr. MacMeekin then described for each title of the forty-eight active titles of the United States Code the work that has been completed and that which remains.

Summarizing, he said that language for the Commission's next report to Congress had been approved by the Commission for three [94] titles: Title 11, Bankruptcy; title 17, Copyrights; and title 35, Patents. For seven additional titles, he said, report language had been drafted, but not yet approved by the Commission. Those seven are title 1, General Provisions; title 5, Government Organization and Employees; title 9, Arbitration; title 12, Banks and Banking (with the exception of one recently-enacted chapter); title 25, Indians; title 39, Postal Service; and title 41, Public Contracts.

Mr. MacMeekin said that already-circulated and, in some cases, approved staff recommendations will provide most report language for title 2, the Congress; title 8, Aliens and Nationality; title 18, Federal Crimes; and title 44, Public Printing and Documents. For each of these four titles, he said, relatively brief treatments need to be prepared for the parts of the title not now covered by a staff recommendation. He said he expected little controversy over whether these remaining parts should apply to the Northern Mariana Islands.

For eight additional titles, initial detailed staff research had been completed, Mr. MacMeekin said, but edited report language had yet to be prepared. Those eight titles, he said, are title 7, Agriculture; title 15, Commerce and Trade; title 22, Foreign Relations and Intercourse; title 28, Judiciary and Judicial Procedure; title 30, Mineral Lands and Mining; title 31, Money and Finance; title 33, Navigation and Navigable Waters; and title 47, Telegraphs, Telephones, and Radiotelegraphs.

In addition, Mr. MacMeekin said, research is now underway on title 21, Food and Drugs; title 40, Public Buildings, Property, and Works; and title 42, The Public Health and Welfare.

There are fourteen titles on which the staff has spent little time thus far, but which appear to present few problems of applicability, Mr. MacMeekin said. These titles, he said, he expects to treat rather briefly in the final report. He cautioned, however, that study of these titles might reveal unanticipated issues. These titles are title 3, The President; title 4, Flag and Seal, Seat of Government, and the States; title 10, Armed Forces; title 13, Census; title 14, Coast Guard; title 23, Highways; title 24, Hospitals and Asylums; title 27, Intoxicating Liquors; title 32, National Guard; title 36, Patriotic Societies and Observances; title 37, Pay and Allowances of the Uniformed Services; title 38, Veterans Benefits; title 43, Public Lands; and title 50, War and National Defense.

Mr. MacMeekin said that substantial amounts of research and writing are still necessary if adequate treatment is to be given eight titles of the Code (in addition to the three titles previously mentioned for which research is now in progress). Most of those eight titles, he said, are of importance to the Northern Mariana

Islands. The eight titles are title 16, Conservation; title 19, Customs; title 20, Education; title 26, Internal Revenue Code; title 29, Labor; title 46, Shipping; title 48, Territories and Possessions; and title 49, Transportation.

Correspondence. Mr. MacMeekin told the Commission that the Chair had written President Reagan in April, notifying him of the vacancy created by the death of Congressman Burton. In May majority and minority members of the Committee on Interior and Insular Affairs of the United States House of Representatives wrote the President asking that Congressman Robert J. Lagomarsino be appointed to that vacancy. Shortly thereafter, Mr. Joseph, at the request of several members of the Commission and after confirming the agreement of all members, wrote the President to suggest the appointment of Congressman Lagomarsino. [95]

Mr. MacMeekin also reported that, in accordance with the instructions given by the Commission at its previous meeting, the Chair in April had written to various Senators and Representatives seeking funding for operations beyond the summer of 1983.

Mr. MacMeekin said that, as instructed by the Commission, he had sent letters on behalf of the Commission to various members of the United States Senate and House of Representatives urging inclusion of a provision in any revision of the federal immigration and nationality laws to ensure that the treatment of the Northern Mariana Islands, as set forth in the Covenant, would not be altered. He noted that no responses to those letters had been received. He said he had also sent a letter to the governor of the Northern Mariana Islands, again as instructed by the Commission, asking the governor to identify specific provisions in the Internal Revenue Code of particular concern to the Northern Mariana Islands, based on the premise that the Code will apply in the Northern Mariana Islands. Mr. MacMeekin said no response to this letter had been received.

Mr. MacMeekin reported that two resolutions of the Northern Mariana Islands Legislature had been received since the last meeting. Senate Joint Resolution 3-23 supports the Commission's staff proposal for a nonvoting delegate to the United States Congress from the Northern Mariana Islands. Mr. MacMeekin noted that this resolution erred in reciting that the staff proposal had already been approved by the Commission. House Joint Resolution 30, he said, asks the Commission to request the National Labor Relations Board to delay any decision on its jurisdiction over labor disputes in the Northern Mariana Islands until the Commission has recommended whether the National Labor Relations Act should apply in the Northern Mariana Islands.

Personnel and office space. Mr. MacMeekin announced that the Northern Mariana Islands office of the Commission had been closed as planned. He noted that custody of Commission files and property in the Northern Mariana Islands had been turned over to Commission Vice Chair Pedro A. Tenorio. He said he had also released one of the

Commission's attorneys in Washington, D.C. The present staff, he said consists of himself, attorney John Cutler, secretary Dianne Brickey, and part-time clerk Michelle Monroe.

[96] Mr. MacMeekin noted that the Washington, D.C., offices of the Commission had once again been relocated within the main Department of the Interior building and are now in room 4447.

Budget. Mr. MacMeekin reported that figures provided by the Department of the Interior, which handles the Commission's bookkeeping, showed that $154,000 was available for Commission expenditure as of October 1, 1983. He said he believed an error may have been made and that funds available on that date may have been closer to $180,000. He said he estimated that, if the $154,000 figure is accurate the Commission can continue operations until mid-May 1984, if two additional meetings are held, or until early July 1984, if only one additional meeting is held. If the Commission had $180,000 rather than $154,000 as of October 1, 1983, an additional two months of staff operations would be possible, he said.

Agenda.

The agenda proposed by the staff for this meeting was then adopted by the Commission by consensus.

Staff Recommendations

Fishery Conservation and Management Act. Mr. MacMeekin summarized the revised staff recommendation on the Fishery Conservation and Management Act (FCMA), which would make the FCMA inapplicable to the Northern Mariana Islands.

—motion. Mr. Pangelinan moved adoption of the revised staff recommendation. The motion was seconded by Ms. McPhetres.

—discussion. At the invitation of the Chair, Northern Mariana Islands Senate Legal Counsel Woodworth read a position paper prepared but not yet formally endorsed by the leadership of the Northern Mariana Islands Senate. The paper generally endorsed the revised staff recommendation, but sought modification of its conclusion that the FCMA is now applicable in the Northern Mariana Islands. Mr. Woodworth said that the Commission should be neutral on the issue of the FCMA's current applicability and noted that, despite recent legislation that appears to confirm the FCMA's applicability to the Northern Mariana Islands, there is no territorial sea of the United States adjacent to the Northern Mariana Isands to serve as a boundary for a fishery conservation zone. Mr. MacMeekin suggested that the text of the recommendation could be rewritten to recognize the existence of this argument.

Mr. Pangelinan said the governor of the Northern Mariana Islands has taken the position that the Northern Mariana Islands should be represented on the Western Pacific Regional Fishery Management

Council. Mr. Borja said the Northern Mariana Islands should be accorded observer status on the Council. Mr. Joseph noted that fisheries information obtained at Council meetings by an official observer could be very useful to the Northern Mariana Islands.

--motion--amendment. After further discussion of representation of the Northern Mariana Islands at the Western Pacific Regional Fishery Management Council, Mr. Borja moved to amend the staff recommendation to allow the governor of the Northern Mariana Islands to designate a person as an observer at the Council. The motion was seconded by Ms. McPhetres, and passed. [97]

--motion--amendment. Mr. Borja moved to amend section 3(b) of the staff's proposed legislation to read:

> All payments or other consideration received pursuant to any agreement concluded under the authority granted by subsection (a) of this section and attributable to the taking of fish, or to the right to take fish, by the vessels of foreign nations within the fishery conservation zone of the Northern Mariana Islands shall be paid to the Government of the Northern Mariana Islands.

The motion was seconded by Mr. Pangelinan, and passed.

--motion to table. To give the Northern Mariana Islands Senate time to endorse formally the position paper presented by Mr. Woodworth, Mr. Pangelinan moved that the staff recommendation as amended be tabled until the following day. The motion was seconded by Ms. McPhetres, and passed.

Wagner-Peyser Act. Mr. MacMeekin summarized the staff recommendation on the Wagner-Peyser Act. In response to a question raised at the previous meeting of the Commission, he explained how Guam was exempted from the general requirement of operating a federally-approved unemployment compensation program under the law. The federal-State unemployment compensation program, he said, originally applied only to the fifty States and the District of Columbia. Subsequent laws added, first, Puerto Rico and, later, the Virgin Islands. No legislation to add Guam to the program has been enacted, he said. Consequently, Guam need not have an unemployment compensation law in order to receive assistance under the Wagner-Peyser Act.

--motion. Mr. Borja moved that the staff recommendation be adopted. The motion was seconded by Ms. McPhetres.

--discussion. In response to a question from Senator Tenorio, Mr. MacMeekin said enactment of the recommended legislation would not require the Northern Mariana Islands to establish an unemployment compensation program or to apply for grants available under the Wagner-Peyser Act. Enactment of the legislation, he said, would

merely give the Northern Mariana Islands the option to apply for those grants, an option it does not now have.

Mr. Woodworth said that the Northern Mariana Islands Senate endorsed the recommendation.

[98]

—motion--adoption. The Commission then passed the motion to adopt the staff recommendation on the Wagner-Peyser Act.

Vessel Documentation Act. Mr. MacMeekin summarized the revised staff recommendation on the Vessel Documentation Act, again noting that the staff recommendation on the Act had been separated from the staff recommendation on the Fishery Conservation and Management Act. He explained the revised staff recommendation does not also address the vessel manning laws, even though those laws will become applicable to vessels of the United States in Northern Mariana Islands waters if the Vessel Documentation Act is made applicable to the Northern Mariana Islands, as recommended.

--discussion. Mr. Pangelinan stated that the vessel manning requirements should not apply to the Northern Mariana Islands. Ms. McPhetres asked about the advantages to the Northern Mariana Islands if the Vessel Documentation Act were not applicable. Mr. Borja asked why only fishing vessels were exempted from the domestic-hull requirements in the staff draft. He also suggested that a restrictive definition of "Northern Mariana Islands corporation" should be added to prevent foreign interests from forming corporations in the Northern Mariana Islands to take advantage of provisions intended to benefit only the people of the Northern Mariana Islands.

Mr. MacMeekin said that if the Vessel Documentation Act remains inapplicable to the Northern Mariana Islands, the vessel manning laws would also be inapplicable to the Northern Mariana Islands vessels, at least until termination of the trusteeship. He also said in that case vessels of the Northern Mariana Islands would not enjoy privileges afforded vessels of the United States. He noted that "vessels of the United States" are entitled to protection by the United States when on the high seas. He agreed that a definition of "Northern Mariana Islands corporation" should be added to the proposed recommendation.

Ms. McPhetres and Mr. Borja each noted the importance of allowing foreign vessels to operate in the Northern Mariana Islands. Mr. Pangelinan stated that the fishing vessel Olwol had fallen into disuse because vessel manning requirements prevented use of alien officers or crew. Senator Tenorio concurred in that assessment.

Mrs. Van Cleve said that United States-flag vessels are entitled to certain benefits under treaties of the United States, including access to foreign ports, lesser duties, and other economic benefits.

Mr. Pangelinan asked that the staff recommendation be expanded by the staff to include further analysis of these questions. Mr.

Joseph determined that the consensus of the Commission favored Mr. Pangelinan's request and the postponement of any Commission action on the staff recommendation to a subsequent meeting.

Nonvoting delegate. Mr. MacMeekin next summarized the revised staff recommendation on legislation to provide the Northern Mariana Islands a nonvoting delegate to the United States Congress. He said the revised recommendation raised the clerk-hire allowance for the delegate to correspond to recently-enacted legislation similarly increasing the clerk-hire allowance for the nonvoting delegate from American Samoa. He said the revised recommendation also includes the change directed by the Commission at its previous meeting, setting the date for election of the delegate to coincide with Northern Mariana Islands elections rather than with election to the United States House of Representatives. [99]

Mr. MacMeekin said that the staff recommendation is supported by the governor and legislature of the Northern Mariana Islands.

The principal objection to the proposal, Mr. MacMeekin said, is likely to be that giving the Northern Mariana Islands a nonvoting delegate to Congress creates an obstacle to eventual unification of the Northern Mariana Islands and Guam, since such a unified territory would likely be represented by only one delegate and the Northern Islands would be reluctant to give up its separate representation.

—motion. Mr. Pangelinan moved that the revised staff recommendation be adopted. Mr. Borja seconded the motion.

—discussion. Senator Tenorio suggested that the proposed legislation might conflict with the Covenant, in that the Resident Representative authorized by the Covenant represents the government of the Northern Mariana Islands while the nonvoting delegate would represent the people of the Northern Mariana Islands.

Mr. Pangelinan said that a nonvoting delegate would provide the Northern Mariana Islands a voice in the government of the United States, while the Resident Representative is only a representative to the government of the United States.

Mrs. Van Cleve noted that Puerto Rico's Resident Commissioner represents the government of Puerto Rico in dealing with the government of the United States and represents the people of Puerto Rico in the United States Congress.

Ms. McPhetres and Mr. Pangelinan each suggested that the proposed legislation not specify a two-year term for the nonvoting delegate, since the Resident Representative's term might be changed from two to four years by a forthcoming constitutional convention in the Northern Mariana Islands.

After a brief discussion, the members of the Commission concluded that the proposed legislation should not repeal Covenant provisions authorizing the creation of the position of Resident Representative.

In response to a question, Mr. MacMeekin said that the recommended legislation provided for a special election rather than an interim appointment to fill any vacancy in the nonvoting delegate position because legislation establishing nonvoting delegates for Guam and American Samoa--on which this legislation is
[100] modelled-provided for special election rather than interim appointment.

--amendment and approval. By consensus, the Commission amended the staff recommendation to delete specification of the length of the nonvoting delegate's term of office and to allow the length of that term to be governed by the constitution and laws of the Northern Mariana Islands. The motion to adopt the revised staff recommendation, with the foregoing amendment, was then passed by unanimous vote.

Federal banking laws. Mr. MacMeekin summarized the staff recommendation on the federal banking laws and related federal housing laws contained in title 12 of the U.S. Code. He also explained the nine proposals for legislation contained in the recommendation. He said the United States Department of the Treasury, including the Comptroller of the Currency, and the Federal Home Loan Bank Board had examined the recommendation and found no problems with it. The United States Department of Housing and Urban Development, he said, favors the proposed grant of authority to the Secretary of Housing and Urban Development to raise mortgage insurance limits in the Northern Mariana Islands to reflect increased construction costs there. He said that federal agency also suggested the Northern Mariana Islands might be well-advised, because of its small population, not to create a local banking system. Mr. MacMeekin noted that whether the Northern Mariana Islands creates its own banking system is not a question within the Commission's jurisdiction.

Mr. MacMeekin said the Northern Mariana Islands House of Representatives also supported the recommendation.

--discussion. Mr. Borja asked why the proposed legislation did not extend Farm Credit Administration programs to the Northern Mariana Islands directly, rather than merely granting the Federal Farm Credit Board discretionary authority to extend those programs to the Northern Mariana Islands. Mr. Cutler explained that the staff had followed, as a model, legislation granting the Board authority to extend farm credit programs to the Virgin Islands. The discretionary approach was chosen for the Virgin Islands, he said, to allow the Board to determine if extension was in fact feasible. Mr. Cutler said the same approach seemed appropriate for the Northern Mariana Islands, where questions of feasibility would be even more likely to arise.

Mr. Borja asked whether the provisions of chapter 29 of title 12, requiring depository institutions to disclose to the public information on mortgage loans made, should be made applicable to the

Northern Mariana Islands. Mr. MacMeekin said that the law only applies to depository institutions in standard metropolitan statistical areas and that the Northern Mariana Islands is unlikely to be included in such an area in the foreseeable future.

Mr. Woodworth said the Northern Mariana Islands Senate supports the staff recommendation. [101

--motion--adoption. Mr. Thompson moved to adopt the staff recommendation. The motion was seconded by Ms. McPhetres, and passed.

Federal securities laws. The staff recommendation on the Securities Act of 1933 and the Securities Exchange Act of 1934 was next summarized by Mr. MacMeekin. He noted that these laws now apply in the Northern Mariana Islands, although firms of less than $100,000 in capitalization are generally exempt from the requirements of these laws. The staff recommendation is for no change in the applicability of these laws, he said.

Mr. MacMeekin said the staff recommendation has been supported by the General Counsel of the Securities and Exchange Commission.

--motion--adoption. Mr. Borja moved to adopt the staff recommendation. The motion was seconded by Mr. Pangelinan, and passed.

Recommendations for future consideration. Mr. Joseph noted that additional time was necessary to allow comments from the public on three staff recommendations. He invited comments from Commission members and others in attendance on those three recommendations, which treat titles 5 (Government Organization and Employees), 39 (federal postal laws), and 41 (federal contract laws) of the United States Code.

--federal postal laws. Mr. Borja asked whether federal postal laws prohibit the mailing of advertising material related to lotteries between the Northern Mariana Islands and other places in the United States. Mr. MacMeekin said that such mailings are prohibited and that the staff recommendation would only exempt from the prohibition advertising materials for a qualified lottery if those materials were mailed to an address within the Northern Mariana Islands.

Mr. Woodworth asked whether a lottery run by the government of the Northern Mariana Islands would be subject to the postal prohibitions. Mr. MacMeekin said the State lotteries are generally exempt from those prohibitions, but that he was not sure whether the Northern Mariana Islands is considered a State for purposes of the exemption.

--federal contract laws. Mr. Woodworth asked whether construction of the new Northern Mariana Islands hospital and the proposed federal building for the Northern Mariana Islands is governed by federal contract laws. Mr. MacMeekin said he was not

sure if the hospital was funded through grants to the Northern Mariana Islands that had lost their federal character and so was not sure whether its construction is covered by these laws. Mr. Pangelinan said the construction of a federal building is still only in exploratory stages.

[102]

Mr. Woodworth asked whether Covenant provisions do not require applicability of the Walsh-Healy Act in the Northern Mariana Islands. Mr. MacMeekin said that, regardless of the Covenant, the Act itself gives the Secretary of Labor discretionary authority to exempt areas from application of the Act, and Secretary has exercised this authority to exempt the Northern Mariana Islands.

Medicaid.

Mr. MacMeekin said that, in accordance with the instructions given by the Commission at its previous meeting, the staff had prepared and circulated for comment a study entitled "Solicitation of Views on the Application of the Medicaid Program in the Northern Mariana Islands." He summarized the issues identified in the study, and in six substantive responses to the study included in the Commission's briefing material for this meeting. He then asked for Commission guidance as to its preferred outlines for a staff recommendation on Medicaid. He said the Commission could consider several alternatives: (1) it could make no recommendation; (2) it could recommend that the Secretary of Health and Human Services be granted authority to waive any Medicaid requirement otherwise applicable to the Northern Mariana Islands, other than the "cap" and percentage limitation; and/or (3) it could recommend specific legislation on issues such as freedom to choose health care providers, standards of inpatient care, and changing or removing the cap or percentage limitation.

Discussion. Mr. Thompson, noting that he had administered the Medicaid program in Hawaii, said he favored granting the Secretary of Health and Human Services wide discretion to alter Medicaid requirements applicable to the Northern Mariana Islands. He said the program's requirements are often quite complex.

Mr. Woodworth said the Northern Mariana Islands Senate favored (1) exempting the Northern Mariana Islands from freedom-of-choice requirements; (2) exempting the Northern Mariana Islands from inpatient care standards; and (3) removal of the cap and percentage limitations. Mr. Thompson asked when the new hospital, which would alleviate standard-of-care problems, would be completed. Mr. Pangelinan said that hospital construction is expected to require twenty-four months.

The Commission then postponed further discussion of Medicaid issues until later in the meeting.

Borders survey.

Mr. MacMeekin then commented on the recently-circulated staff study, "Borders: The Applicability of Federal Law to Imports to and

Exports from the Northern Mariana Islands--A Survey." He said the purpose of the study was to acquaint readers with the present applicability to the Northern Mariana Islands of the many federal laws governing imports and exports. He said that little underlying rationale appeared to control which laws include the Northern Mariana Islands as part of the United States and which treat the Northern Mariana Islands as a foreign country. The study may generate recommendations for changes in those laws, he said, as persons discover how they are affected by those laws. He said the study already suggested to him the need for federal legislation allowing the government of the Northern Mariana Islands to enforce federal laws and to receive federal reimbursement for that enforcement. He said that a recommendation on the livestock quarantine laws might also be appropriate, since the nearest quarantine station to the Northern Mariana Islands is more than three thousand miles away, in Honolulu. [103]

Mr. Woodworth said that the study had been well received by members of the Northern Mariana Islands Senate and should be useful to the business community. He suggested that any future draft recognize the argument against the proposition that the Fishery Conservation and Management Act is applicable to the Northern Mariana Islands, the same argument he had outlined during discussion of that law earlier in the meeting.

Recess.

The meeting recessed at 5:00 p.m. and reconvened November 30, 1983, at 9:35 a.m.

Staff Recommendation

Fishery Conservation and Management Act. In response to a question from Mr. Joseph, Mr. Woodworth said he had been unable to obtain official Senate endorsement of the previously presented statement of position with regard to the staff recommendation on the Fishery Conservation and Management Act. Mr. Joseph suggested that the staff recommendation be modified to recognize the existence of the argument previously outlined by Mr. Woodworth against present applicability of the Fishery Conservation and Management Act. The Commission members agreed with this suggestion.

--motion--adoption. The Commission then passed the previously offered motion to adopt the staff recommendation on the Fishery Conservation and Management Act, with the amendments and changes to the staff recommendation already agreed upon.

Old Business.

Priorities. Mr. MacMeekin outlined the tasks remaining to be accomplished by the Commission and its staff. He said that the staff prepares two types of material: text that will be incorporated directly into the Commission's next report to Congress and text in the form of staff recommendation to be circulated for public comment, revised in light of comments received, and then presented to the

Commission for its approval. After the Commission approves staff recommendations, he said, they too are incorporated into the report. Text not circulated in the form of staff recommendations will be approved by the Commission only when submission of the entire report to Congress is approved. Given the probable exhaustion of funds in
[104] June 1983, he said, he feels it important to concentrate on the preparation of text to be incorporated directly into the report. He said that he has a large backlog of research drafts ready to be edited directly into the report. At the same time, he said, there are good reasons to concentrate first on the preparation of additional staff recommendations, since these must be circulated early in order to allow sufficient time for public comment. He said that he felt the staff recommendation on Medicaid, for example, should be quickly prepared and circulated.

Mr. MacMeekin also reiterated his desire to draft several general recommendations to Congress, not tied to particular federal laws. He said three areas for which general recommendations should be prepared are the continuing trust status of the Commonwealth of the Northern Mariana Islands after termination of the trusteeship, the legal status of the Covenant, and the desirability of clear language in future federal laws to indicate geographic applicability.

Mr. MacMeekin said a third area in which Commission staff could spend substantial time is in researching and preparing staff recommendations on specific identified problem areas not yet treated in detail. He gave as examples the vessel manning laws, prohibitions against airline passenger taxes, livestock quarantine laws, the authority of the government of the Northern Mariana Islands to enforce federal laws, and the need for the Northern Mariana Islands to continue to receive essential air service.

Mr. MacMeekin referred to the resolution received on the National Labor Relations Act. He noted that the Commission had already decided not to give priority to this law, and said he felt the Commission, because of the short time remaining for completion of its work, should adhere to that decision.

Mr. MacMeekin noted the Commission's previous decision, at its March 1983 meeting, directing the staff not to prepare a recommendation with respect to the Internal Revenue Code. He said the application of the Internal Revenue Code to the Northern Mariana Islands is now the subject of intense debate among Northern Mariana Islands government officials, organizations and private individuals in the Northern Mariana Islands, the United States Departments of Treasury and Interior, and congressional staff members. He questioned whether the Commission with its limited resources could add anything to this debate and suggested that treatment of the Internal Revenue Code in the Commission's report should be rather cursory.

A final area in which staff work needs to be done, Mr. MacMeekin said, is essentially administrative. The Commission's bylaws, he said, should be revised to give the Commission the ability to

function, if necessary, after the staff is released. He noted that winding up staff operations and determining the ultimate disposition of the Commission's files will also take some time.

Mr. MacMeekin reiterated his goal of a complete, comprehensive report, which he feels will have long-term usefulness to the Congress. An executive summary, he said, would enable readers to obtain the Commission's recommendations without going through the entire report. [105]

Mr. MacMeekin said that conservative estimates indicate that Commission funds will be exhausted in late June or early July 1984. To allow time for final production and printing, he said, the Commission should probably meet in April 1984 to approve the report.

—discussion. Senator Tenorio complimented the work of the Commission, but said he did not think its work could be completed by June 1984.

Mr. Thompson and Ms. McPhetres stated that the Commission should continue to function after June 1984, preferably with staff, but without staff if necessary. Mr. Joseph said that the report submitted in June should not be labelled as the final report and that the Commission should continue in existence until its expiration one year after termination of the trusteeship.

Mr. Joseph then said he thought the general recommendations on the continuing trust status of the Commonwealth of the Northern Mariana Islands and on the sanctity of the Covenant were important. Mr. Thompson expressed his agreement.

Ms. McPhetres said the staff should draft and circulate for comment a recommendation on Medicaid, giving the Secretary of Health and Human Services the authority to waive particular requirements of the program for the Northern Mariana Islands. She suggested that the draft not propose any exemption from the freedom-of-choice requirements.

Mr. Joseph said that the Vessel Documentation Act and the vessel manning laws deserved priority treatment.

Ms. McPhetres asked that the sea grants program be added to the list of areas to be examined.

Mrs. Van Cleve explained that the commissions studying the applicability of federal law to Guam and the Virgin Islands did not examine the Internal Revenue Code not only because of its complexity but because Congress had recently studied its application to those areas and enacted legislation on the subject. Mr. MacMeekin said he hoped that a description of the Covenant provisions and subsequent legislation and reference to other studies that had been done would constitute a sufficient treatment. Ms. McPhetres said that the Internal Revenue Code is one of the most important federal laws and that how it applies to the Northern Mariana Islands is a matter of

some consequence. She said that at the very least the Commission members should know what issues are involved, before they decide whether the Commission should make recommendations to Congress on the Internal Revenue Code. She asked that the staff prepare a paper briefing the members on the issues involved in the application of the
[106] Internal Revenue Code to the Northern Mariana Islands. Mr. Joseph concurred in this request.

Mr. Woodworth suggested that the extent of the Northern Mariana Islands control over submerged lands be added to the Commission's list of priorities. He also asked that the Commission look into legal issues arising out of the declaration by the United States of a 200-mile exclusive economic zone extending outward, in part, from the Northern Mariana Islands. Mr. Joseph suggested that the submerged lands question merited attention, but that time would likely not be available to study 200-mile zone issues. Mr. Pangelinan concurred. Ms. McPhetres suggested the second question be looked at if time were available.

Mr. MacMeekin asked that, as previously has been done, he be given discretion to order priorities for the staff, taking into account the views expressed by the Commission members at this meeting and available time and resources. Mr. Joseph said that, if there was no objection from the members, Mr. MacMeekin should so proceed. No objections were raised.

New Business.

Implementation of Commission recommendations; continued funding. Mr. Joseph said that without further funding the staff would have to be released in June, but that the Commission itself would continue in existence. He said that lack of resources will prevent Commission members from doing very much to seek implementation of the Commission's recommendations. Mr. MacMeekin pointed out that the presence of Congressman Burton on the Commission and the familiarity of Senate and House staff members with the Commission's work had undoubtedly contributed to the enactment of legislation addressing the recommendations in the Commission's first interim report.

Mr. Pangelinan said the Northern Mariana Islands Resident Representative could follow up on the Commission's recommendations, but probably would not be able to prepare detailed testimony to support the recommendations. Senator Tenorio offered to work toward implementation of the Commission's recommendations when he assumes the office of Resident Representative. He also expressed his view that there is much additional work the Commission should do and suggested that perhaps the Commission could receive funds from the government of the Northern Mariana Islands. Mr. MacMeekin said he did not believe the Commission could legally accept funds from the government of the Northern Mariana Islands.

Mr. Pangelinan said additional federal funding should be sought to extend the life of the Commission. Ms. McPhetres concurred. Mr. MacMeekin noted that the Commission may have reached the point where

further expenditures to analyze the applicability of federal laws to the Northern Mariana Islands are not appropriate. After further discussion, Mr. Joseph expressed the consensus of the members, asking the staff to explore the possibility of obtaining further funding.

Old Business (continued). [107]

Immigration. Mr. MacMeekin said that, after the Commission at its last meeting had approved the staff recommendation on the immigration and nationality laws, comments on that recommendation had been received from the Immigration and Naturalization Service. He then summarized those comments. The Commission decided that the issues raised by those comments had been adequately discussed before approval of the recommendation and that no changes in the recommendation were warranted.

New Business (continued).

Omnibus Territories legislation. Mr. MacMeekin said he thought the Department of Justice would draft the presidential proclamation to implement the citizenship provisions of the recently-enacted Omnibus Territories legislation. He said he expected the proclamation would not remove citizenship barriers to federal jury service by citizens of the Northern Mariana Islands because of the practical problem that juries are selected from lists of persons registered as voters, lists that do not include citizens of the Northern Mariana Islands. He said he also expected inclusion of language making clear that nothing in the proclamation grants citizens of the Northern Mariana Islands the right to vote in federal or State elections.

Mr. Joseph asked the staff to issue a press release on the the signing of the Omnibus Territories legislation by the President.

Appreciation.

On behalf of the Commission, Ms. McPhetres expressed the appreciation of the Commission to the Council on Foundations for its hospitality in hosting this meeting and, particularly, to Ms. Karen Bates-Logan of the Council's staff for her assistance in making the arrangements for the meeting.

Next Meeting.

Mr. MacMeekin suggested that the next meeting be set in consultation with Congressman Lagomarsino's staff, on the assumption the congressman would be appointed to the Commission. He said if funds run out at the end of June, the last meeting should probably be in late April. He noted that Chief Judge Hefner of the Commonwealth Court of the Northern Mariana Islands has suggested the next meeting be held in the Northern Mariana Islands, since that is the location most affected by the Commission's work. He said while he recognized the value of Judge Hefner's suggestion, he thought the next meeting--which will likely be the last meeting of the Commission--should take place in Washington, where the Commission's offices and files are located.

After further discussion, the Commission directed the Chair and executive director to set the time and place for the next meeting after consultation with the other Commission members and with particular regard for the desires of Congressman Lagomarsino.

[108] Adjournment.

The meeting was adjourned at 12:15 p.m.

CERTIFICATION

The minutes of the November 29-30, 1983, meeting of the Northern Mariana Islands Commission on Federal Laws are set forth above as adopted by the Commission at its meeting of July 12, 1984.

Daniel H. MacMeekin
Executive Director

MINUTES OF THE NINTH MEETING

SANTA BARBARA, CALIFORNIA

JULY 12-13, 1984

[109]

Commission Chair James A. Joseph opened the ninth meeting of the Northern Mariana Islands Commission on Federal Laws in the Supervisors Conference Room of the Santa Barbara County Administration Building, 105 Anapamu Street, Santa Barbara, California at 9:30 a.m.

Commissioners present, in addition to Mr. Joseph, were Jesus C. Borja, Congressman Robert J. Lagomarsino, Agnes Manglona McPhetres, Edward DLG. Pangelinan, Pedro A. Tenorio, and Myron Thompson. No members were absent.

Opening Remarks.

Mr. Joseph welcomed the Commission members and members of the public in attendance. Among those present were Donald C. Woodworth, General Counsel to the Northern Mariana Islands Washington Representative; Jeffrey Farrow, Senior Advisor to the Subcommittee on Insular Affairs of the U.S. House of Representatives Committee on Interior and Insular Affairs; James P. Beirne, Professional Staff Member of the U.S. Senate Committee on Energy and Natural Resources; Thomas Dunmire, Staff Consultant for Territories and Pacific Affairs of the U.S. House of Representatives Committee on Interior and Insular Affairs; Jay S. Johnson, Assistant General Counsel for Fisheries of the National Marine Fisheries Service in the Department of Commerce's National Oceanic and Atmospheric Administration; Eugene Gonzales, Secretary's Regional Representative, Region IX, Department of Education; John Daugherty, Legislative Assistant to Congressman Lagomarsino; David Collins, a private attorney from San Francisco, California; and Jaime O'Leary, District Manager, Santa Barbara, for the Social Security Administration, Department of Health and Human Services.

Mr. Joseph noted that Congressman Lagomarsino had been appointed to the Commission since its last meeting and welcomed him to the Commission.

Quorum, Notice of Meeting, and Approval of Minutes.

Mr. Joseph announced the presence of a quorum and that notice of the meeting had been provided as required.

The minutes of the eighth meeting of the Commission were approved.

Report of the Executive Director.

Correspondence. Mr. Daniel H. MacMeekin, the Commission's executive director, reviewed the correspondence culminating in President Reagan's appointment of Congressman Lagomarsino to fill the vacancy on the Commission created by the death of Congressman Phillip Burton.

[110]

Mr. MacMeekin reported that, as instructed by the Commission at its previous meeting, he had sent letters to the appropriate members of the United States Congress seeking an additional $192,000 to allow the Commission to continue operations until the summer of 1985.

Budget. Mr. MacMeekin reported that figures provided by the Department of the Interior, which handles the Commission's bookkeeping, show that $153,400 was available for Commission expenditure as of October 1, 1983. Of that amount, $107,900 had been spent as of May 31, 1984, leaving $45,500 available for expenditure as of that date. Mr. MacMeekin estimated that normal operating costs for June and July would use $25,000 of that balance, that this meeting would cost an additional $12,000, and that $5,000 should be reserved for publication of the Commission's report. Accordingly, he said, the Commission will have only about $3,000 for operations in August 1984.

Mr. MacMeekin noted that earlier figures supplied by the Department of the Interior showed an October 1, 1983, balance of $180,500. He said that figure is in closer proximity to his own calculations and that the discrepancy between the two Department of the Interior figures has never been explained. He noted that, if the larger figure is correct, the Commission would have approximately $30,000 for operations in August 1984 and thereafter. In any case, he said, fiscal conservatism requires use of the lesser figure for planning purposes.

First interim report. Mr. MacMeekin reported that, with the enactment of Public Law 98-213 and the issuance of Presidential Proclamation 5207 of June 7, 1984, most of the recommendations in the Commission's first interim report to Congress have been adopted. He said that the legislative language recommended by the Commission has not been adopted verbatim, but the problems identified by the Commission have been in large measure resolved. He noted that the Commission staff had prepared the original draft of the presidential proclamation. He then summarized the requirements of United States citizenship listed in the interim report recommendations that had not been removed for citizens of the Northern Mariana Islands by Public Law 98-313 and Presidential Proclamation 5207. He said that the Commission staff was not involved in the development of the presidential proclamation after submitting the original draft to the Office of Management and Budget, other than to answer questions about

the draft from various federal agency officials during the agency review process. As a consequence, he said, he did not know why some statutes containing citizenship requirements included in the original draft did not appear in the final version. He said hearsay information suggested that the U.S. Department of State opposed provisions that would have allowed citizens of the Northern Mariana Islands to enter the foreign service, to receive the benefits of particular statutes providing federal protection and services to United States citizens overseas, and to receive the benefits of transfer-of-offender treaties with foreign nations (which allow United States citizens in foreign jails to be transferred to American jails). He conjectured that the State Department opposition may have been based on a fear that foreign countries might perceive treatment of citizens of the Northern Mariana Islands as citizens of the United States for these purposes as de facto annexation of the Northern Mariana Islands by the United States prior to termination of the trusteeship. [111]

Mr. MacMeekin said the only explanation he could offer for deletion of a provision that would have removed for citizens of the Northern Mariana Islands a citizenship requirement for becoming a VISTA volunteer is that the Executive Branch may have interpreted the governing statute as not imposing a citizenship requirement. He said that the statute was ambiguous on the point and had been included in the Commission's listing so that the ambiguity would not be resolved adversely to citizens of the Northern Mariana Islands.

Mr. MacMeekin said he also had no explanation for the deletion from the draft proclamation of a provision that would have excused citizens of the Northern Mariana Islands from paying certain taxes on nonresident aliens, including a 20 percent minimum tax on the disposition of real property in the United States by nonresident aliens.

Mr. MacMeekin reported that, because of a practical problem, he omitted from the draft proclamation the Commission's recommendation to allow citizens of the Northern Mariana Islands to serve on federal juries in the United States. He said he had learned, subsequent to submission of the first interim report, that jury members are drawn from voter registration lists. There is no practical way to develop lists that include both citizens of the Northern Mariana Islands, who are ineligible to vote in the United States, and registered voters.

The presidential proclamation, Mr. MacMeekin said, also added a provision treating citizens of the Northern Mariana Islands as citizens of the United States for purposes of the diversity-of-citizenship jurisdiction of the federal courts. This provision, included in neither the interim report nor the draft proclamation, allows citizens of the Northern Mariana Islands to sue (or to be sued by) citizens of other States or territories in federal courts even when questions of federal law are not at issue.

Mr. MacMeekin noted that all United States citizenship requirements listed in the interim report having to do with the uniformed services and with eligibility for federal programs and benefits have now been removed for citizens of the Northern Mariana Islands.

[112]

Mr. Tenorio said that the government of the Northern Mariana Islands is now seeking an exemption fr ı provisions of the Clean Air Act pursuant to the procedures of Publ.: Law 98-213 implementing the recommendation of the interim report on the Clean Air Act.

Progress. Mr. MacMeekin then reported on the progress of the staff in addressing issues identified as high-priority concerns at the previous meeting of the Commission. He called attention to the materials prepared by the staff and circulated since that meeting: the staff study, The Application of the Internal Revenue Code to the Northern Mariana Islands: An Outline of Issues; the two alternative draft staff recommendations on the Medicaid program; the second revised draft staff recommendation on the vessel documentation laws, now expanded to include the vessel crewing laws; and draft staff recommendations on enforcement of federal laws in the Northern Mariana Islands and on submerged lands. He also noted that, pursuant to the Commission's instructions, amended bylaws had been drafted to facilitate the continued functioning of the Commission after the staff has been released and funds available have been spent. In addition, he said, substantial work had been done on the title-by-title survey of the United States Code for the second interim report.

Recent legislative developments. Mr. MacMeekin next reported on recent developments in Congress affecting the work of the Commission. He said major amendments to the bankruptcy laws had been signed into law on July 10, but that he did not know whether those amendments include provisions recommended by the Commission (and sent by letter to the appropriate congressional committee chairmen) to ensure the continued applicability of the bankruptcy laws to the Northern Mariana Islands.

Mr. MacMeekin also noted the continued progress of the Simpson-Mazzoli bill, which would make major changes in federal immigration laws. He said that current versions of the bill do not make the federal immigration laws applicable to the Northern Mariana Islands. Worker identification requirements in the bill, however, make more important the availability to citizens of the Northern Mariana Islands of a document such as the special passport recommended by the Commission.

The Deficit Reduction bill awaiting the President's signature contains at least three provisions of interest to the Commission. The bill raises the annual limitation on federal Medicaid payments to

the Northern Mariana Islands. It repeals the 30% federal withholding tax on passive income paid from United States sources to non-resident aliens (and thereby eliminates the possibility of establishing the Northern Mariana Islands as a financial center channeling passive income from the United States to foreign countries to avoid that tax). It also establishes foreign sales corporations [113]
(FSCs) to replace domestic international sales corporations (DISCs) as tax-advantaged export firms, and makes the territories--including the Northern Mariana Islands--favored locations for FSCs.

Finally, he said, omnibus territories legislation containing provisions on the documentation of vessels in the Northern Mariana Islands has recently been passed by the House of Representatives.

Second interim report. Mr. MacMeekin then summarized the current status of work on the second interim report. He said that the Commission had now approved language for five of the forty-eight active titles of the United States Code: title 8, Aliens and Nationality; title 11, Bankruptcy; title 12, Banks and Banking; title 17, Copyrights; and title 35, Patents. In addition, he said, the Commission had approved language treating part I of title 18, Crimes and Criminal Procedure. For eleven additional titles, edited drafts have been completed but not yet approved by the Commission. Those eleven are: title 1, General Provisions; title 2, The Congress (including the Commission-approved recommendation on a non-voting delegate to Congress from the Northern Mariana Islands); title 3, the President; title 4, Flag and Seal, Seat of Government, and the States; title 5, Government Organization and Employees; title 9, Arbitration; title 25, Indians; title 26, Internal Revenue Code; title 39, Postal Service; title 41, Public Contracts; and title 45, Railroads.

For sixteen additional titles, Mr. MacMeekin said, initial research has been completed. Those titles are: title 7, Agriculture (which also includes the Commission-adopted recommendation on land grant colleges); title 15 (which also includes Commission-adopted language on the federal securities laws and on federal trademark law); title 16, Conservation (which includes the Commission-adopted recommendation on the Fishery Conservation and Management Act); title 20, Education (which includes the Commission-adopted recommendation on the Higher Education Act); title 21, Food and Drugs; title 22, Foreign Relations and Intercourse; title 28, Judiciary and Judicial Procedure (which includes the recommendation on the Federal Tort Claims Act in the Commission's first interim report); title 29, Labor (which includes the Commission-adopted recommendation on the Wagner-Peyser Act); title 30, Mineral Lands and Mining; title 31, Money and Finance; title 33, Navigation and Navigable Waters (which includes the Commission-adopted recommendation on the Rivers and Harbors Act); title 40, Public Buildings, Property, and Works; title

42, The Public Health and Welfare (which includes the staff recommendation on Medicaid and the recommendation on the Clean Air Act in the Commission's first interim report); title 43, Public Lands (which includes the staff recommendation on submerged lands); title 47, Telegraphs, Telephones, and Radiotelegraphs; and title 49,
[114] Transportation.

Mr. MacMeekin said that substantial research is still needed with respect to three titles: title 19, Customs Duties (although the staff's Borders Survey contains some of the necessary research); title 46, Shipping (except for these parts already covered in the revised staff recommendation on the vessel documentation and vessel crewing laws); and title 50, War and National Defense.

Twelve additional titles and part of a thirteenth are not expected to require detailed treatment. Those are: title 10, Armed Forces (other than the already-adopted Commission recommendation on nominations to the service academies); title 13, Census (except for language already drafted on foreign trade statistics); title 14, Coast Guard; parts II, III, and IV of title 18, Crimes and Criminal Procedure; title 23, Highways; title 24, Hospitals and Asylums; title 27, Intoxicating Liquors; title 32, National Guard; title 36, Patriotic Societies and Observances; title 37, Pay and Allowances of the Uniformed Services; title 38, Veterans' Benefits; title 44, Public Printing and Documents (other than the already-adopted Commission recommendation on government depository libraries); and title 48, Territories and Insular Possessions.

Mr. MacMeekin also reiterated his desire, expressed at previous meetings, to draft three general recommendations for inclusion in the second interim report. One such recommendation would urge congressional deference to the sanctity of the Covenant. A second, he said, would urge congressional recognition of a continuing trust relationship between the United States and the Northern Mariana Islands even after termination of the trusteeship. Finally, he said, Congress should be encouraged to incorporate into legislative drafting checklists a reminder to specify whether new legislation is applicable to the Northern Mariana Islands (and other territories).

Mr. MacMeekin then said that, if additional funding is not received, the comprehensive report outlined will need to be reduced in scale. He said that, in that eventuality, he plans to include only the already-drafted introduction and the recommendations already adopted by the Commission set out one after the other in the format in which they were adopted by the Commission.

Staff Recommendations.

Government organization and employees. Commission staff attorney John Cutler summarized the draft staff recommendation on

title 5 of the United States Code, Government Organization and Employees. The draft recommends no changes in the present applicability of tile 5.

—motion--adoption. Congressman Lagomarsino moved to adopt the staff recommendation. The motion was seconded by Ms. McPhetres, and passed. [115]

Federal postal laws. Mr. MacMeekin summarized the revised draft staff recommendation on the federal postal laws contained in title 39 of the United States Code. He said the draft proposes that the federal postal laws continue to apply to the Northern Mariana Islands but that provisions in those laws making certain lottery materials unmailable be modified to exempt mail to an address within the Northern Mariana Islands for a lottery conducted in the Northern Mariana Islands by a nonprofit organization for religious, charitable, educational, or benevolent purposes. He noted that the revised draft differed from the earlier draft in only two minor respects. First, the proposed legislative language was altered slightly to better achieve its purposes. Second, language was added to make clear that any lottery conducted by the government of the Northern Mariana Islands is entitled to the exemption from restrictions on mailing lottery material that is afforded State lotteries.

—motion. Ms. McPhetres moved to adopt the revised staff recommendation. The motion was seconded by Mr. Borja.

—discussion. Mr. Borja noted that residents of the Northern Mariana Islands often participate in church raffles on Guam while residents of Guam participate in similar lotteries in the Northern Mariana Islands. He suggested the exemption be expanded to include materials mailed to either the Northern Mariana Islands or Guam for lotteries conducted in either jurisdiction. Mr. MacMeekin questioned whether the Commission should make a recommendation affecting Guam. Congressman Lagomarsino said the exemption should not be expanded without consulting representatives of Guam.

—motion--adoption. The Commission then passed the motion to adopt the revised staff recommendation on the federal postal laws.

Federal contract laws. Mr. Cutler then summarized the draft staff recommendation on the federal contracts laws, title 41 of the United States Code. He noted that the draft proposes no changes in current law.

—discussion. Discussion centered on the applicability of federal procurement laws to purchases by the government of the Northern Mariana Islands when those purchases are made with funds provided by the Federal Government. In particular, the question was

raised as to whether the construction of the new hospital on Saipan is governed by federal procurement laws. The government of the Northern Mariana Islands is the contracting party for the hospital construction, which is being financed by federal funds. A recent decision by the United States District Court for the District of
[116] Columbia appears to hold that the hospital construction is subject to federal procurement laws. Mr. MacMeekin said that what legal precedent is available on the point indicates that once federal funds are transferred to a territory, they lose their federal character and are no longer subject to provisions governing expenditure of federal funds. He suggested a footnote be added to the recommendation citing this legal precedent.

Mr. Donald Woodworth, General Counsel to the Northern Mariana Islands Washington Representative, pointed out that the hospital litigation had been filed only against the Secretary of the Interior in an effort to halt the transfer of funds to the government of the Northern Mariana Islands. Until that transfer is made, he noted, the funds do not lose their federal character under the precedent mentioned by Mr. MacMeekin.

Mr. Tenorio said that a decision in the hospital litigation has held Office of Management and Budget Circular A-102 applicable to the hospital project. Among other things, he said, Circular A-102 requires the Department of the Interior to approve any contract of the government of the Northern Mariana Islands for the hospital project in excess of $10,000. Mr. Tenorio said that this was burdensome to the Northern Mariana Islands in that many construction change orders would have to be approved in Washington, causing considerable delay and extra expense. He said such a requirement also conflicted with the principle of local self-govenrment set forth in section 103 of the Covenant.

Mr. MacMeekin said that, in his experience, he was unaware that such a requirement had been imposed in the past on either the government of the Northern Mariana Islands or the government of the Trust Territory of the Pacific Islands. Mr. Tenorio said that the requirement is a departure from past practice.

Mr. Joseph suggested that the staff examine the questions raised by application of Circular A-102 to contracts of the government of the Northern Mariana Islands funded by the Federal Government if the requested funds for continued Commission operations are received.

Congressman Lagomarsino suggested that language be added to the discussion of the Buy America Act to make clear that continuation of the special treatment afforded the Northern Mariana Islands (and Guam) by that Act is a matter of policy for Congress to decide.

--motion--adoption. Ms. McPhetres moved to adopt the staff recommendation with the addition of the footnote suggested by Mr. MacMeekin and the language on the Buy America Act suggested by Congressman Lagomarsino. The motion was seconded by Mr. Thompson, and passed.

[117]

Fishery Conservation and Management Act.

Mr. Joseph said that a request had been received from Mr. Jay S. Johnson, Assistant General Counsel for Fisheries of the National Oceanic and Atmospheric Administration, part of the U.S. Department of Commerce, to address the Commission with regard to the Commission's previously adopted recommendation on the Magnuson Fishery Conservation and Management Act (FCMA). At the invitation of Mr. Joseph, Mr. Johnson then addressed the Commission, urging the Commission to rescind its recommendation. He said that the FCMA and the exclusion of tuna from national fisheries jurisdiction are the two cornerstones of American fisheries policy. He said the United States does not recognize the jurisdiction of any nation to control tuna unilaterally. In particular, he said, the United States is opposed to the agreements entered into between island states in the western Pacific--including the Federated States of Micronesia, the Republic of Palau, and the Republic of the Marshall Islands--and foreign fishing interests that grant those interests the right to catch tuna in the exclusive economic zones of those states. He said that, given this opposition, the State Department and the Department of Commerce will almost certainly oppose any proposed legislation to allow the Northern Mariana Islands to sell tuna access rights.

Mr. Johnson suggested that, with respect to fish other than tuna, the Northern Mariana Islands should attempt to keep foreign fishing vessels out of Northern Mariana Islands waters and to develop local fishing efforts and processing. He said the Northern Mariana Islands does not have the infrastructure necessary to support its own tuna fleet and processing, but that it can earn money by supporting and selling services to foreign tuna vessels operating in Northern Mariana Islands waters.

Mr. Johnson said that the United States is not opposed in principle to the concept of access fees, if those fees are paid pursuant to a regional international tuna treaty. He suggested that the Northern Mariana Islands should await the conclusion by the State Department of an international tuna agreement for the western Pacific similar to that recently concluded (but not yet ratified) between the United States and various Central American nations for the eastern Pacific. Under that agreement, he said, tuna fishing fleets pay fees to each coastal state based on the tuna tonnage caught in the waters of that state. He noted that enforcement is facilitated under this type of arrangement because each fishing vessel or fleet, so that its costs are not higher than its competitors, has an interest in ensuring that its competitors pay all fees due. By contrast, he

said, payment of an access fee not related to the amount of fish caught--as is done under the arrangement, for example, between the Republic of the Marshall Islands and Japanese fishing interests--encourages overfishing since fishing vessels will try to maximize their catch and thus their returns once they have paid the
[118] access fee.

Mr. Johnson emphasized that, because tuna travel great distances, no single nation can control and manage the species. He said that, consequently, international agreements are necessary to manage tuna and, in the absence of such agreement, the value of the resource may decline. He said there is some evidence that the Western Pacific tuna stock has been decreasing, noting that several United States tuna vessels have returned from the western Pacific to the west coast of the United States.

Mr. Johnson said that United States tuna policy has been called opportunistic because the United States tuna fleet traditionally operates in waters distant from the United States. He added that, as a matter of policy, the United States is likely to continue to back the United States tuna industry.

Mr. Johnson said that, for fish other than tuna, permit fees paid by foreign vessels under the FCMA for access to the exclusive economic zone are paid to the treasury of the United States, but are set aside from general revenues. He said that the United States would be likely to oppose any effort to return to the Northern Mariana Islands fees paid under the FCMA for access to waters adjacent to the Northern Mariana Islands because allowing the Northern Mariana Islands to receive those fees would establish a precedent for Alaska to make a similar claim. He said that most foreign fees paid under the FCMA are for access to the fisheries adjacent to Alaska.

Mr. Johnson also pointed out that returning FCMA permit fees to the Northern Mariana Islands would not bring large sums of money to the Northern Mariana Islands because the fish foreign vessels are principally interested in catching near the Northern Mariana Islands is tuna, which is not subject to the FCMA.

Mr. Johnson attributed the Commission's recommendation on the FCMA to the strong "sovereign pride" of the Northern Mariana Islands and the desire of the Northern Mariana Islands to receive some revenues from local marine resources. He said that the Northern Mariana Islands was more likely to achieve its goals if the FCMA remained applicable. He said the most promising means of obtaining fisheries revenues for the Northern Mariana Islands is through the receipt of foreign tuna fishing fees paid pursuant to a regional tuna agreement. He said that such an agreement is also the best way to manage and conserve the tuna stock. He said that the National Oceanic and Atmospheric Administration, the parent agency of the

National Marine Fisheries Service, within the Department of Commerce, would encourage inclusion of persons from Pacific insular areas on United States delegations charged with negotiating such an agreement.

Congressman Lagomarsino pointed out that, even though the FCMA is now applicable, surveillance of foreign fishing vessels in waters near the Northern Mariana Islands appeared to be a problem. Mr. Johnson said that foreign vessels in those waters are required to carry United States observers (unless they are fishing only for tuna) and noted that local persons could be deputized to monitor foreign fishing within the United States exclusive economic zone. [119]

Mr. Tenorio said that, to his knowledge, the United States government does very little to patrol the exclusive economic zone adjacent to the Northern Mariana Islands. He said that evidence has been found that foreign fishing vessels have sent landing parties onto some of the uninhabited islands of the Northern Mariana Islands. Mr. Johnson said that the Department of Commerce is looking for means of increasing FCMA enforcement generally and is seeking legislation that would transfer foreign permit fees received under the FCMA to the Coast Guard and the National Marine Fisheries Service for enforcement purposes.

Ms. McPhetres asked how the Northern Mariana Islands could derive some benefit from the exploitation of tuna in adjacent waters. Mr. Johnson said that, if a regional tuna agreement provided for payment of fees to the United States, the United States could enact legislation providing for distribution of those revenues to the Northern Mariana Islands in proportion to the amount of tuna caught in waters adjacent to the Northern Mariana Islands.

Mr. MacMeekin asked whether residents of the Northern Mariana Islands, under a regional tuna agreement, would have to pay fees for tuna caught in waters adjacent to the Northern Mariana Islands. Mr. Johnson said that the agreement could provide that citizens or nationals of the United States would pay no fees for tuna caught in those waters.

Mr. MacMeekin said he knew of no precedent for legislation that would allow fees received in the national treasury to be earmarked to particular political subdivisions, such as the Northern Mariana Islands. He also said that privileges and immunities guarantees applicable to the Northern Mariana Islands would prevent the Northern Mariana Islands from restricting fishing by vessels from other American jurisdictions unless vessels of the Northern Mariana Islands were similarly restricted. Mr. Johnson said that some restrictions, such as limitations on vessel size, could apply equally to vessels from any jurisdiction but in fact favor vessels from the Northern Mariana Islands.

Mr. MacMeekin noted that the Commission's jurisdiction is limited to making recommendations to Congress while it is the Executive Branch that negotiates tuna agreements. He questioned whether the Commission should recommend to Congress that Congress
[120] direct the Executive Branch to negotiate a treaty.

Congressman Lagomarsino said that, if the FCMA is made inapplicable to the Northern Mariana Islands, Coast Guard surveillance of Northern Mariana Islands waters would be likely to become even less frequent than it is now.

Mr. Woodworth said he saw no problem with the Commission recommending that Congress direct the Executive Branch to negotiate a regional tuna agreement since the FCMA itself directs the Executive Branch to negotiate fishing agreements.

Mr. Woodworth also said that any Commission recommendation should recognize the sovereign interests of the Northern Mariana Islands; should require the delegation of enforcement powers to the Northern Mariana Islands, with provisions for federal payment of the costs of enforcement; and should require that the Northern Mariana Islands be permitted to participate as part of the United States delegation in negotiation of a regional tuna agreement.

Mr. Tenorio suggested that the Commission urge the Department of State to begin negotiations toward a regional tuna agreement pursuant to its existing authority under the FCMA.

Mr. Pangelinan recommended that the Commission retain the recommendation already made and not withdraw that recommendation unless progress toward a regional agreement is seen.

In response to a question, Mr. Johnson said that the regional tuna agreement for the eastern Pacific area had been sent to the Senate but had not yet been ratified.

Mr. Thompson said he favored asking Congress to provide increased Coast Guard surveillance of waters adjacent to the Northern Mariana Islands.

Further discussion of the FCMA was then deferred until the following day.

Staff Recommendations (continued).

Medicaid. Mr. MacMeekin summarized the original staff recommendation on Medicaid and the subsequently prepared alternate recommendation. He said the Health Care Financing Administration, which administers the Medicaid program, supports the original recommendation. He noted that the recently-passed Deficit Reduction

Act has raised the ceiling on annual federal Medicaid payments to the Northern Mariana Islands. Congressman Lagomarsino suggested that Congress is unlikely to consider soon new legislation changing that ceiling when it has so recently been changed.

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--motion--adoption. Congressman Lagomarsino moved to adopt the original staff recommendation, with the addition of the discussion--but not the proposed legislative language--on the effects of the ceiling on referrals and on participation in enhanced-match programs from the alternate staff recommendation. The motion was seconded by Mr. Pangelinan, and passed.

Enforcement of federal laws. Mr. MacMeekin then summarized the staff recommendation on enforcement of federal laws in the Northern Mariana Islands. He suggested the addition of legislative language making clear that in the event of a conflict between the government of the Northern Mariana Islands and the federal agency responsible for enforcement of a particular federal law, the federal agency's views control. He also noted that the extent of federal liability for torts committed by agents of the government of the Northern Mariana Islands in enforcing a federal law is not addressed in the recommendation. He said that, rather than try to fashion a rule to cover all such situations, any such questions of liability should be decided by the courts in accordance with established legal precedent.

Mr. MacMeekin said the Department of Justice had expressed opposition to the staff recommendation on two grounds. First, he said, the Department noted that the Marianas Political Status Commission during the negotiation of the Covenant had opposed inclusion of a provision that would have required the governor of the Northern Mariana Islands to enforce federal laws in the Northern Mariana Islands. Second, he said, the Department expressed the view that allowing an elected governor to enforce federal law would violate the Appointments Clause of the United States Constitution. Mr. MacMeekin said that the Marianas Political Status Commission had opposed a mandatory requirement that the governor of the Northern Mariana Islands enforce federal laws, but had not taken a position on a grant of authority permitting the governor to enforce those laws. With respect to the Appointments Clause argument, Mr. MacMeekin noted the current authority of the elected governors of Guam and the Virgin Islands to enforce federal laws in those jurisdictions. Even though that authority was first granted when those governors were appointed by the President, by and with the advice and consent of the Senate, he said that the constitutional authority of Congress over the territories is sufficient to sustain the legislation proposed in the staff recommendation.

--motion--adoption. Mr. Tenorio moved to adopt the staff recommendation. Congressman Lagomarsino suggested that comments on

the substance of the Department of Justice arguments be included in the text of the recommendation. Mr. Tenorio modified his motion to incorporate the suggestion by Congressman Lagomarsino. The motion as modified was seconded by Ms. McPhetres, and passed.

[122]

Vessel documentation. Mr. MacMeekin summarized the second revised staff recommendation on the vessel documentation laws, now expanded to include vessel crewing laws as well.

--discussion. Congressman Lagomarsino noted that the House of Representatives has recently passed omnibus territories legislation that includes provisions on vessel documentation and, consequently, is unlikely to deal soon with the same subject matter again. Mr. MacMeekin suggested that the staff recommendation could be tabled and brought up again later if the omnibus legislation does not take care of the problem.

--motion to table. Mr. Thompson moved to table without prejudice the second revised staff recommendation on the vessel documentation and vessel crewing laws. The motion was seconded by Ms. McPhetres, and passed.

Submerged lands. Mr. MacMeekin summarized the staff recommendation on submerged lands.

--motion--adoption. Congressman Lagomarsino moved to adopt the staff recommendation. The motion was seconded by Mr. Thompson, and passed.

Wagner-Peyser Act.

Mr. MacMeekin said that an error had been found in the previously adopted recommendation on the Wagner-Peyser Act. He said the recommendation concludes that the Act applies to the Northern Mariana Islands by operation of section 502(a)(2) of the Covenant. In fact, it applies by operation of section 502(a)(1), he said. As a consequence, the Northern Mariana Islands does not need the legislative language proposed in the recommendation to receive treatment under the Act equivalent to that afforded Guam. He asked that the recommendation be corrected accordingly.

Motion-adoption. Mr. Thompson moved to correct the error as explained by Mr. MacMeekin. The motion was seconded by Mr. Pangelinan, and passed.

Bylaws Amendments.

Mr. MacMeekin presented the text of the bylaws incorporating proposed amendments to allow the Commission to continue to function without staff or budget. He noted that he had also included other minor changes in the text of the bylaws to reflect actual Commission practice or to improve the style.

Motion--adoption. Ms. McPhetres moved to adopt the proposed amendments to the bylaws. The motion was seconded by Congressman Lagomarsino, and passed.

Disposition of Commission files.

[123]

Ms. McPhetres proposed that the Commission's files on Saipan be transferred to the Northern Marianas College, which has been designated as the official repository of archives of the government of the Northern Mariana Islands. Mr. MacMeekin said that federal law may dictate the disposition of the Commission's files. He said that virtually all materials in the Commission's files on Saipan are duplicates of materials in the Commission's files in Washington, D.C.

Ms. McPhetres said that the college has adequate facilities for secure storage of the files. She also noted that she has been approached by persons seeking access to the files.

Mr. Pangelinan said that the files are secure in the custody of the lieutenant governor, Mr. Tenorio. Mr. Joseph suggested that the Commission allow Mr. Tenorio and Ms. McPhetres to decide between themselves where the files should be located pending dissolution of the Commission. Mr. Joseph's suggestion was adopted by consensus.

Recess.

The meeting recessed at 4:15 p.m. and reconvened July 13, 1984, at 9:10 a.m.

Fishery Conservation and Management Act (continued).

Mr. MacMeekin restated the issues involved in deciding whether to apply the Magnuson Fishery Conservation and Management Act (FCMA) to the Northern Mariana Islands. He said the Commission's current recommendation has the virtue of focussing congressional attention on the problem but is unlikely to be implemented. If the Commission recommends no change in the law, it advises Congress what the Executive Branch should do, and can do, under current law: increase surveillance of waters adjacent to the Northern Mariana Islands, in part by deputizing officials of the government of the Northern Mariana Islands to assist in that effort; and negotiate a regional tuna agreement encompassing the Northern Mariana Islands, along the lines of the Eastern Pacific agreement described by Mr. Johnson. Mr. MacMeekin questioned the extent to which the Commission, charged with recommending changes in federal laws, should recommend Executive Branch actions that can be achieved under existing law.

Congressman Lagomarsino said that a Commission recommendation without specific proposals for legislative changes could provide a basis for congressional action.

Mr. Borja said he was reluctant to alter the Commission's current recommendation because of the substantial time and effort already expended in formulating that recommendation and because public and private interests in the Northern Mariana Islands would not have the opportunity to comment on changes in the recommendation.

[124] Mr. Woodworth agreed that the general thrust of the recommendation should not be changed but suggested separating the non-controversial tuna recommendations from the controversial FCMA provisions. He suggested that the FCMA should be the subject of one recommendation and tuna fisheries the subject of a second recommendation. He then suggested the recommendation on the FCMA need not be reported until after the legislature of the Northern Mariana Islands has been consulted.

Congressman Lagomarsino endorsed the idea of dividing the current recommendation into two separate recommendations, one on the FCMA and the other on tuna.

Motion--adoption. Mr. Thompson moved that the present FCMA recommendation be divided into two separate recommendations, one on the FCMA and the other on tuna, and that the Commission also recommend to Congress that surveillance of the waters adjacent to the Northern Mariana Islands be increased. The motion was seconded by Ms. McPhetres, and passed.

Internal Revenue Code.

Mr. MacMeekin then summarized the staff analysis on applying the Internal Revenue Code to the Northern Mariana Islands. He said that the analysis makes no recommendations, but is designed to acquaint the Commission members with issues involved in applying the Code to the Northern Mariana Islands.

Mr. MacMeekin noted that the Covenant requires application of the Internal Revenue Code to the Northern Mariana Islands.

Discussion. Ms. McPhetres said the Commission should take no position on the applicability of the Code to the Northern Mariana Islands. Mr. Borja said the Commission should affirmatively support the Covenant provisions on the Code. Mr. Tenorio suggested that the Commission not address whether the applicability of the Code should be changed.

Mr. Joseph said that the consensus of the Commission appeared to be against recommending any changes in the applicability of the Code at this time, noting that, if the Commission's funding is extended, recommendations can be made at a later date. Congressman Lagomarsino noted that the Commission could focus on amendments to the Code if problems arise after the Code goes into effect in the Northern Mariana Islands.

Congressman Lagomarsino then called attention to the letter of Mr. Abel Olopai, included in the briefing materials for the meeting and commenting on the application of the Internal Revenue Code to the Northern Mariana Islands. He suggested that the executive director be instructed to write Mr. Olopai, explaining to him that revenues received under the "mirror" tax are paid to the government of the Northern Mariana Islands, not to the government of the United States, as seems to be implied in Mr. Olopai's letter. Congressman Lagomarsino's suggestion was adopted by consensus. [125]

Second Interim Report.

Mr. MacMeekin again outlined the format in which he intended to put the second interim report should additional funding for the Commission not be secured. He said the already-drafted introductory material would be followed by the recommendations adopted by the Commission, and that the title-by-title survey would be omitted. He said he would still include the previously-planned documentary supplement, but would omit from that separate volume the draft staff recommendations circulated for comment. Mr. MacMeekin then asked for the views of the Commission on whether its recommendations in the report should be arranged according to their place in the United States Code or according to the importance of each as seen by the Commission. He said that, if arranged by importance, he would favor giving prominence to the recommendations on a non-voting delegate, on the Fishery Conservation and Management Act, on immigration and nationality, and on creation of a special passport. Ms. McPhetres and Mr. Thompson said that the recommendations on land-grant colleges and on the Higher Education Act should also be given prominence.

Mr. Beirne said that the Commission should arrange its recommendations according to their placement in the United States Code. He said that such an arrangement would prevent lack of progress on a high-priority but controversial recommendation from deterring action on a lower priority noncontroversial recommendation.

Mr. Pangelinan suggested the executive director be given the authority to decide on the most appropriate arrangement, consulting with congressional staff members and others as necessary. Mr. Pangelinan's suggestion was adopted by consensus.

Priorities.

Mr. MacMeekin said that, if no additional funds are received, the staff must devote all its efforts to completion of the second interim report. He said that, if additional funds are available, he would suggest giving high priority to title 15, Commerce and Trade; title 16, Conservation; title 26, the Internal Revenue Code; title 46, Shipping; and title 49, Transportation. He said title 19, Customs Duties, also deserves additional attention. He noted Mr. Tenorio's earlier request that the staff look into Office of

Management and Budget Circular A-102 to determine whether the Commission should make a recommendation in that area. He said he had also received suggestions that the Commission propose recommendations to lift federal agricultural quarantine restrictions on the movement of chickens into the Northern Mariana Islands and to allow the
[126] Northern Mariana Islands to issue postage stamps. He said he did not think the Northern Mariana Islands would be permitted to issue its own stamps and suggested that the staff not work on any recommendation to allow the Northern Mariana Islands to do so.

Mr. MacMeekin said he continued to give high priority to drafting the general recommendations on the continuing trust relationship between the United States and the Northern Mariana Islands, on the sanctity of the Covenant, and on the need for provisions on geographic applicability in legislation enacted by Congress.

Mr. Beirne suggested, with regard to title 26, that a paper should be prepared analyzing the effects of proposed tax reform legislation on the Northern Mariana Islands. Mr. Borja suggested that the Commission retain a tax expert as a consultant. Mr. MacMeekin expressed skepticism about whether the advice a consultant would give would justify the expenditure of Commission funds. Congressman Lagomarsino said that free expert advice is available from the staffs of the congressional committees concerned with tax matters.

Mr. Joseph suggested that Mr. MacMeekin proceed in the manner outlined, as time and resources permit. Mr. Joseph's suggestion was adopted by consensus.

Old Business.

Commission files (continued). Ms. McPhetres said that the government of the Trust Territory of the Pacific Islands is microfilming many United States government documents and suggested that Commission documents might be microfilmed as part of this effort.

Mr. Pangelinan emphasized the need for easy access to Commission files.

Mr. MacMeekin asked that the staff be given the authority to arrange for final disposition of the Commission's files, and be charged with ensuring the best possible access, both in the Northern Mariana Islands and in Washington, D.C., consistent with federal law. The Commission acceded to this request by consensus.

Funding. Mr. Beirne suggested that the Commission modify its request for a fiscal year 1984 supplemental appropriation, increasing

the request to an amount sufficient to allow the Commission to operate until the end of fiscal year 1985. He said the Commission should receive funds on a fiscal year basis and not through the supplemental appropriations process. Mr. MacMeekin pointed out that a shift to a fiscal-year funding cycle presupposes the Commission might continue operations beyond the summer of 1985. Mr. Beirne said that predictions of how much work the Commission should do could change during the coming year. [127]

After discussion, the Commission adopted Mr. Beirne's suggestion by consensus and instructed the executive director to seek an increase in the fiscal year 1984 supplemental appropriation request to allow Commission operations to continue until the end of fiscal year 1985.

Executive committee.

Creation--motion--adoption. Mr. Thompson moved to allow the Chair to appoint an executive committee of the Commission, in accordance with the newly-amended bylaws. The motion was seconded by Mr. Pangelinan, and passed.

Appointment of members. Mr. Joseph appointed Congressman Lagomarsino, Mr. Pangelinan, Mr. Tenorio, and himself to the executive committee, with the proviso that any three of the four could act as the executive committee.

Appreciation.

On behalf of the Commission, Mr. Joseph expressed the appreciation of the Commission to Congressman Lagomarsino and his staff and to the Santa Barbara County Board of Supervisors, for their hospitality in making arrangements for this meeting. Mr. Pangelinan expressed for the Commission its appreciation to the staff in the event this is the last Commission meeting.

Next Meeting.

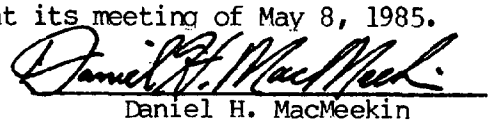
Mr. Joseph tentatively set Washington, D.C. as the site of the next meeting if funding of the Commission is secured for another year. No date was set.

Adjournment.

The meeting was adjourned at 11:00 a.m.

CERTIFICATION

The minutes of the July 12, 1984, meeting of the Northern Mariana Islands Commission on Federal Laws are set forth above as adopted by the Commission at its meeting of May 8, 1985.



Daniel H. MacMeekin
Executive Director

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MINUTES OF THE TENTH MEETING

WASHINGTON, D.C.

MAY 8, 1985

Commission Chairman Benigno R. Fitial opened the tenth meeting of the Northern Mariana Islands Commission on Federal Laws in room 7000 of the main building of the United States Department of the Interior, 18th and C Streets, N.W., Washington, D.C., at 9:45 a.m.

Commissioners present, in addition to Mr. Fitial, were Joel J. Bergsma, Jesus C. Borja, Dewey L. Falcone, and Pedro A. Tenorio. Commissioner Edward DLG. Pangelinan joined the meeting after the recess for lunch. Congressman Robert J. Lagomarsino was unable to attend due to the press of congressional business.

Opening Remarks.

Mr. Fitial welcomed the Commission members and members of the public in attendance. He introduced the Commission members and then the Commission staff in attendance: Daniel H. MacMeekin, the Executive Director; John Cutler, Staff Counsel; and Dianne Brickey, the Commission's principal secretary.

Others present during the course of the meeting were Marion Blank Horn, Associate Solicitor for General Law in the U.S. Department of the Interior; Ruth Van Cleve, of the Office of the Solicitor in the Department of the Interior; Lieutenant Commander Robin Blackwood, of the Office of the Judge Advocate General, U.S. Navy; Froilan C. Tenorio, Representative to the United States for the Commonwealth of the Northern Mariana Islands; Donald C. Woodworth, General Counsel to the Northern Mariana Islands Representative; Herman Guerrero and James Mendiola, both of the Office of the Northern Mariana Islands Representative; and Robert Garland, an attorney in private practive in Washington, D.C.

Quorum, Notice of Meeting, and Approval of Minutes.

Mr. Fitial announced the presence of a quorum and that notice of the meeting had been provided as required.

The minutes of the ninth meeting of the Commission were approved.

Approval of Agenda.

The proposed agenda prepared by the staff was adopted by consensus of the Commission.

Disposition of Commission's Saipan Files.

Mr. Borja recalled that, at its previous meeting, the Commission had asked Mr. Tenorio and Ms. McPhetres to decide between themselves where the Commission's Saipan files should be located. Mr. Tenorio reported that he had since discussed the matter with Ms. McPhetres, who is President of the Northern Marianas College, and agreed to allow any files of interest to the college to be moved to the college. Mr. Fitial said he had agreed with Ms. Ruth Tighe, the librarian at the college, that the college library would be the best location for the files. Mr. MacMeekin noted that the files under discussion, now in the custody of Mr. Tenorio, were maintained by the Northern Mariana Islands office of the Commission during its existence from 1981 to 1983. He said the contents of these files are entirely duplicated in the Commission's Washington, D.C., files. The latter files, he said, will go to the National Archives at the conclusion of the Commission's operations. [129]

Waiver of Meeting Requirement.

Mr. Fitial, exercising authority granted by section 2-2 of the Commission's bylaws, waived the requirement for a second meeting of the Commission in 1984.

Report of the Executive Director.

History of the Commission. Mr. MacMeekin reviewed the history of the Commission for the benefit of the new members of the Commission. He described the Commission's methodology and summarized the Commission's work to date. He said that federal laws in four areas have been particularly controversial in their application to the Northern Mariana Islands. Those four areas, he said, are taxation; citizenship and immigration; fisheries and marine resources; and imports from the Northern Mariana Islands into the United States. He said that the Commission had addressed each of these areas except imports and that the staff had prepared a draft recommendation on imports from the Northern Mariana Islands into the United States. He noted that the staff work did not directly address the most controversial import issue, the imposition of quotas on garments manufactured in the Northern Mariana Islands entering the customs territory of the United States. He also noted that, while the current working draft of the Commission's next report to Congress discusses the application of federal tax laws in the Northern Mariana Islands, the Commission has recommended no legislation to alter the application of those laws.

Discussion. Mr. Tenorio said that the proposed compact of free association for the other parts of the Trust Territory may conflict with section 503(a) of the Covenant, which allows the Northern Mariana Islands to control immigration into its territory. The

proposed compact, he said, grants citizens of the freely-associated states the right to enter the United States, which is apparently defined to include the Northern Mariana Islands.

[130]

Mr. Tenorio also noted that, in restricting the entry into the United States of garments manufactured in the Northern Mariana Islands because alien labor is used to manufacture those garments, the United States is indirectly restricting the right of the Northern Mariana Islands to control immigration into its own territory. He said that the obligations of the United States under the Covenant to assist in the economic development of the Northern Mariana Islands and, particularly, the obligation to allow goods produced in the Northern Mariana Islands to enter the United States duty-free, have been breached by the imposition of limits on the numbers of those garments allowed to enter the United States.

Further discussion of the issues raised by Mr. Tenorio was postponed until discussion of future priorities of the Commission later in the meeting.

Correspondence. Mr. MacMeekin pointed out, in the briefing materials prepared for the meeting, the February 19, 1985, letters of appointment from President Reagan to Mr. Fitial, appointing him to replace James A. Joseph as chairman of the Commission, and to Mr. Bergsma and Mr. Falcone, appointing them as members of the Commission to replace Agnes M. McPhetres and Myron B. Thompson, respectively. Mr. MacMeekin noted for the record that none of the replaced Commission members had indicated to him any intention to challenge the legal authority of the President to remove them from the Commission.

Mr. MacMeekin also pointed out, in the briefing materials, the July 20, 1984, letter he had sent to Mr. Abel Olopai, President of the United Carolinian Association in the Northern Mariana Islands, as instructed by the Commission at its previous meeting. The letter is a response to comments received from Mr. Olopai on the Commission's staff study, The Application of the Internal Revenue Code to the Northern Mariana Islands, and calls to his attention that federal income taxes derived from the Northern Mariana Islands are paid into the treasury of the Northern Mariana Islands, not the treasury of the United States.

Budget. Mr. MacMeekin reported that, subsequent to the previous meeting of the Commission, the Commission had received the requested fiscal year 1984 supplemental appropriation of $192,000. He said that these funds would allow the Commission to continue operations to August 1985. He noted that the additional $25,000 requested after the last meeting to allow operations to continue until September 30, 1985, had not been acted upon by the Congress.

Mr. MacMeekin reported that the new chairman of the Commission, Mr. Fitial, after his appointment had written the appropriate members of Congress seeking a fiscal year 1985 supplemental appropriation in the amount of $217,000. This amount, Mr. MacMeekin said, would be [131 sufficient to allow the Commission to operate until September 30, 1986. Mr. MacMeekin said that, pursuant to section 10 of the Commission's bylaws, a mail ballot had been circulated among the members to affirm the chairman's request. Six members favored the request while none were opposed. Mr. Pangelinan did not vote.

Mr. MacMeekin reported that the most recent accounting summary received from the Department of the Interior showed that, as of March 30, 1985, the Commission had available approximately $96,000. He said that the figure was somewhat higher than anticipated. He said that was fortunate since, immediately preceding the meeting, he had learned that the cost of printing the next report to Congress would be about $23,000 rather the $8,000 Department of Interior personnel had previously told him was a reasonable estimate. The increase in funds available almost exactly covers the increase in printing costs, he said.

Mr. MacMeekin noted that he allocates for each meeting of the Commission approximately $12,000, while all other expenses (other than printing costs) of the Commission are about $13,000 per month. Consequently, he said, one meeting of the Commission costs roughly the same as one month of staff operations.

The estimate of $23,000 for publishing costs, Mr. MacMeekin said, is based on 700 copies of a report of about 620 pages and a documentary supplement of about 340 pages.

Progress. Mr. MacMeekin next reported on the progress of the Commission's work since the last meeting. He said that draft staff recommendations had been circulated on title 31 of the United States Code, Money and Finance, and on title 15, Commerce and Trade. He noted that title 15 is a particularly lengthy title of the Code, that includes a wide variety of laws of importance to the Northern Mariana Islands. Both drafts, he said, were now ready for consideration by the Commission.

Also ready for Commission consideration, he said, were the three general staff recommendations on the continuing trust relationshop between the United States and the Northern Mariana Islands, on the sanctity of the Covenant, and on the specification of geographic applicability in all new federal legislation.

After the last meeting, Mr. MacMeekin said, the staff prepared a report incorporating only the Commission's recommendations and a short introduction, to be submitted to Congress in August or September 1984 in the event the requested additional funding was not

forthcoming. Because additional funds were appropriated for the Commission, this report was not submitted, he said. He noted that the preparation of that draft had suggested a number of format changes which the staff had now incorporated in the current working
[132] draft. The current draft, he said, includes a relatively detailed introduction, the Commission's recommendations, and a title-by-title survey of the United States Code. Mr. MacMeekin said that the survey incorporates all staff drafts approved by the Commission that do not recommend specific legislation as well as draft language not previously submitted to the Commission for its approval. Because the priorities established by the Commission have not called for examination of every title of the Code, he said, the survey for some titles notes that no staff research has been done on the title. For other titles, he said, the survey notes that research had been done but has not been compiled and edited for inclusion in the report. He noted that the briefing materials prepared for this meeting include a checklist of draft recommendations and other studies circulated for comment by the Commission staff and a summary of the status of issues and of titles of the United States Code not treated in detail in the current working draft.

Mr. MacMeekin said that the major omissions in the current working draft were treatments of title 46 of the Code, on Shipping; title 19, on Customs Duties; title 47, on Telegraphs, Telephones, and Radiotelegraphs; and title 49, on Transportation, particularly any treatment of the Federal Aviation Act.

With respect to title 46, Mr. MacMeekin said, a second revised draft staff recommendation on the vessel documentation and vessel crewing laws had been prepared for consideration by the Commission at its previous meeting, but the Commission had deferred action because a bill then pending in Congress would amend the legislation addressed in that recommendation. The bill was subsequently enacted, he said, and the staff recommendation had not yet been revised to take the new legislation into account. In addition, he said, staff research on the remainder of title 46 was largely complete, so that a draft staff recommendation on the title could be circulated within a month or two if additional funding for the Commission became available.

Mr. MacMeekin said that, with respect to title 19, two draft recommendations had been sent out for comment the same day as the meeting, but that the Commission would probably not be able to act with respect to those drafts in a subsequent meeting unless additional funding were received. He said that one draft, on import quotas, was likely to be controversial while the other, on title 19 in general, was unlikely to cause argument.

Although the staff has completed much research on titles 47 and 49, Mr. macMeekin said, quite a bit of additional research on specific issues needs to be done before draft staff recommendations on those titles are ready to be circulated for comment.

Mr. MacMeekin noted that, in the introduction, text still needed to be written to carry the history of the Northern Mariana Islands from the conclusion of the Second World War to the present. He also noted that an inconsistency in the text, regarding the recommendation of legislation on federal court venue in certain environmental lawsuits, needed to be resolved. [133]

Finally, he said, there are a number of specific issues that merit staff research and treatment in the report if time and funds are available. He suggested that the special passport recommendation could be augmented by the recommendation of legislation specifically establishing the right of citizens of the Northern Mariana Islands to enter and reside, and be employed in, the United States. He said that the treatment of the Northern Mariana Islands as a "foreign" rather than a "domestic" location for purposes of telecommunications tariffs from the United States merits investigation, although that investigation might reveal that legislation would be inappropriate.

Mr. MacMeekin said that the presidential proclamation implementing Public Law 98-213, passed in response to the Commission's first interim report, had not addressed the Commission's recommendation that section 897 of the Internal Revenue Code be amended to make clear that citizens of the Northern Mariana Islands are not subject to federal taxes imposed on the sale of real property in the United States by nonresident aliens and foreign corporations. He said he thought the recommendation might merit repetition in the next report.

Two provisions in title 10, on the Armed Forces, also merit investigation and, possibly, recommendations, Mr. MacMeekin said. One provision governs whether the Northern Mariana Islands is a foreign or domestic location for military post exchanges and base exchanges, which in turn determines the extent to which nonmilitary persons may make purchases at those exchanges. The other provision determines the extent to which civilian personnel of the Department of Defense domiciled in the Northern Mariana Islands may be periodically assigned to duty in the Northern Mariana Islands (or nearby Guam).

Mr. MacMeekin said that the staff had spent a fair amount of time in compiling and editing the current working draft. He noted that the draft, consisting of about 1200 double-spaced pages had been sent to the Commission members before the meeting.

Budget (continued)--discussion. Mr. Tenorio suggested that the Commission take affirmative action to secure additional funds. He suggested a second letter to the appropriate members of Congress, restating the Commission's request for additional funding.

Mr. Bergsma said that the White House, by its appointment of new members on the Commission, appears to have an interest in continuing the work of the Commission. Mr. Falcone suggested that the White
[134] House and other federal agencies be asked to support the continuation of the Commission's work. Mr. Tenorio reported that one member of the congressional staff had told him that Congress would be unlikely to support any request for additional funds if it were thought that the new members of the Commission intended to re-examine all of the previously-adopted recommendations.

Mr. Falcone suggested that Mr. Fitial, accompanied by Mr. MacMeekin, should meet with Assistant Secretary of the Interior Richard Montoya, to urge his support for continued funding for the Commission. Mr. MacMeekin noted that the Assistant Secretary had declined to support the earlier request for additional funding for fiscal year 1984. Mr. Falcone also suggested that Mr. Fitial and any other Commission members remaining in Washington after the meeting attempt to meet with Congressman Lagomarsino and obtain his views on how to obtain additional funding.

Staff Recommendations.

Magnuson Fishery Conservation and Management Act, Tuna Fisheries, and Surveillance of Ocean Areas--motion. Mr. Borja moved to adopt the revised staff recommendation on the Magnuson Fishery Conservation and Management Act (FCMA) and the related staff recommendations on tuna fisheries and on surveillance of ocean areas. Mr. Bergsma seconded the motion.

--discussion. Mr. MacMeekin reviewed the history of the three staff recommendations, noting that the Commission had already adopted all three in principle. He recalled that the FCMA recommendation and the tuna fisheries recommendation had previously been combined in a single recommendation but that, at the previous meeting, the Commission had instructed the staff to separate the recommendations and to prepare the additional recommendation on surveillance of ocean areas. He said that, because the Commission had previously adopted all three recommendations in principle, it could limit itself at this meeting to deciding whether the text prepared by the staff conforms to the Commission's instructions. Alternatively, he said, the Commission could reopen the recommendations for debate on the substantive issues involved in each. He then summarized the three recommendations and letters commenting on them received from the U.S. Department of Commerce, the Department of the Navy, and the Department of Transportation. He said he thought that the FCMA recommendation is unlikely to be enacted by Congress, but that the other two recommendations stand reasonably good chances of enactment.

Mr. Falcone asked whether the Commission should make the FCMA recommendation if the chances of congressional implementation were

not good. Mr. MacMeekin said that the recommendation had been adopted by the Commission after considerable debate, a public hearing in the Northern Mariana Islands, and several successive staff drafts. He also noted that the recommendation is strongly supported in the Northern Mariana Islands and that, even if Congress does not act, there is value in presenting the position that has been adopted, since the position has not been set forth elsewhere in a form easily accessible to Congress. Mr. Tenorio and Mr. Borja affirmed the importance of the issue to the Northern Mariana Islands and the support there for the Commission's current draft. [135]

Mr. Fitial invited Lieutenant Commander Blackwood to address the Commission. She said the Navy does not support the recommendation on surveillance of ocean areas because, if it were enacted, the Coast Guard might draw on Navy vessels for use in surveillance and thereby restrict the Navy's ability to carry out its own mission.

Mr. Fitial then invited Mr. Woodworth to address the Commission. Mr. Woodworth noted that the recommendation on tuna fisheries should be favored by the United States tuna industry, since the recommendation does not contravene the federal policy in favor of international regional management of tuna fisheries. He also said that a regional tuna agreement could give the United States tuna industry a competive advantage in Northern Mariana Islands waters since it might not have to pay fees required of foreign vessels in those waters. He said that one reason the FCMA is so controversial in the Northern Mariana Islands is that it did not become law until shortly after the Covenant was approved by the U.S. Congress. Had it been in existance during the negotiation of Covenant, he said, its applicability certainly would have been resolved before agreement was reached on the Covenant.

Mr. Bergsma suggested that reference to Mr. Woodworth's last point be added to the FCMA recommendation. He also suggested the the FCMA recommendation include references to the dollar value of the sales of tuna fishery access rights by the other entities in the Trust Territory. Mr. MacMeekin agreed that the FCMA recommendation would be improved by noting the post-Covenant enactment of the FCMA. He said that references to the value of sales of tuna fishery access rights were already included in the tuna fisheries recommendation, and probably better belonged there than in the FCMA recommendation.

--motion--adoption. By consensus, the Commission agreed that the FCMA recommendation should be modified by including reference to the post-Covenant enactment of the FCMA, as suggested by Mr. Bergsma.

Mr. Fitial then asked for a roll-call vote on the three recommendations. The motion to adopt all three recommendations, with the modification of the FCMA recommendation as noted above, was

passed with all members present voting in favor thereof. Mr. Pangelinan, who was not present at the time of the vote, later in the meeting asked that the record reflect that, had he been present at
[136] the time of the vote, he would have voted in favor of the motion.

Recess.

The meeting recessed for lunch at 1:15 p.m. and reconvened at 2:40 p.m. Mr. Pangelinan joined the other members of the Commission when the meeting was reconvened.

Remarks by Ms. Horn.

Mr. Fitial invited Ms. Horn, the Associate Solicitor for General Law in the U.S. Department of the Interior, to address the Commission. Ms. Horn welcomed the members of the Commission to the Department's building and complimented the Commission and its staff on the high quality of their work. She noted the close cooperation of the Commission's staff and Mrs. Van Cleve, who is studying the applicability of federal laws to the territories and the Trust Territory for the Department of the Interior.

Staff Recommendations (continued).

Title 31 of the United States Code, Money and Finance--motion. Mr. Bergsma moved to adopt the staff recommendation on title 31 of the United States Code, Money and Finance. The motion was seconded by Mr. Borja.

--discussion. Mr. Cutler summarized the staff recommendation, noting that no adverse comments on the recommendation had been received.

Mr. Bergsma asked whether the government of the Northern Mariana Islands should be required to hold public hearings as part of the process of applying for certain federal block grants. Mr. Cutler pointed out the benefits of public participation. Mr. MacMeekin noted that agencies in the Northern Mariana Islands are already experienced in meeting public hearing requirements for block grants and that it would be difficult to supply a rationale for exempting the Northern Mariana Islands from a requirement applicable to all other jurisdictions of the United States, regardless of their size.

--motion--adoption. The Commission, by a roll-call vote, then passed the motion to adopt the staff recommendation on Title 31 of the United States Code, Money and Finance. All six members present voted in favor of the motion.

Title 15 of the United States Code, Commerce and Trade--motion. Mr. Bergsma moved to adopt the staff recommendation on Title 15 of the United States Code, Commerce and Trade. The motion was seconded by Mr. Borja.

—discussion. Mr. Cutler summarized the staff recommendation, noting that--as with the previous recommendation--no adverse comments had been received. Mr. Tenorio asked whether the provisions in title 15 on the metric system would require the use of that system in the Northern Mariana Islands. Mr. Cutler said that those provisions permit, but do not require, the use of the metric system. [137]

Mr. Bergsma asked whether motor vehicles not complying with provisions in title 15 requiring certain safety equipment could be barred from entry into the Northern Mariana Islands, since the Northern Mariana Islands is not a part of the United States customs territory. Mr. MacMeekin said that officials of the Northern Mariana Islands probably have the power to bar vehicles not complying with applicable federal law, although enactment of a Northern Mariana Islands law specifically granting them that authority might be advisable. He noted that the recommendation previously adopted by the Commission, on enforcement of federal laws in the Northern Mariana Islands, is intended to make clear that Congress has granted to officials of the Northern Mariana Islands the authority to enforce federal law.

Mr. Borja asked whether, since recipients of loans guaranteed by the Small Business Administration (SBA) are required to be citizens of the United States, those loans are freely available in the Northern Mariana Islands. Mr. MacMeekin said that the citizenship requirement did not apply to all SBA loans but only to those loans targetted to socially and economically disadvantaged groups. Further, he said, while citizens of the Northern Mariana Islands are affected by this requirement, the requirement is imposed by regulation and not by statute, so that it may be changed without action by Congress. He said that SBA-guaranteed loans are generally available in the Northern Mariana Islands.

Mr. Fitial asked to what extent the Commerce Clause of the United States Constitution restricts the ability of the Northern Mariana Islands to tax insurance firms not incorporated in the Northern Mariana Islands that sell policies there. Mr. MacMeekin said that he could not answer that question without first doing some research. He suggested that investigation of the constitutionality of proposed Northern Mariana Islands tax legislation ought to be, in the first instance at least, the responsibility of the attorney general of the Northern Mariana Islands or the counsel for the legislature of the Northern Mariana Islands.

—motion—adoption. The Commission by a roll-call vote, then passed the motion to adopt the staff recommendation on title 15 of the United States Code, Commerce and Trade. All six members present voted in favor of the motion.

[138] General recommendations: the continuing trust relationship, sanctity of the Covenant, specifying geographic applicability. Mr. MacMeekin summarized the staff's general recommendations on the continuing trust relationship between the United States and the Northern Mariana Islands after termination of the United Nations trusteeship, on the sanctity of the Covenant, and on specifying the geographic applicability of federal statutes at the time of enactment.

—motion. Mr. Pangelinan moved to adopt the three general staff recommendations. The motion was seconded by Mr. Bergsma.

—discussion. Mr. Pangelinan said that the trust concept by itself would not establish everything the Northern Mariana Islands needs in its relationship with the United States. He noted the need for a nonvoting delegate to the United States Congress and the absence of a presidential vote for United States citizens residing in the Northern Mariana Islands.

Mr. MacMeekin said that he envisioned the trust relationship as an incomplete and not totally satisfactory response to the less-than-equal treatment citizens of the United States residing in the Northern Mariana Islands will receive after termination of the trusteeship. If and when those citizens have the right to vote for President and are represented by a voting member in the Senate and House of Representatives, then the need for a special trust relationship will disappear. He said that, in the meantime, the trust relationship may assist the Northern Mariana Islands in defending itself when powerful political or economic intests seek federal action detrimental to the Northern Mariana Islands.

Mr. Bergsma suggested that the recommendation on the continuing trust relationship be modified to note that, because the Northern Mariana Islands will not be a State of the United States, citizens of the United States residing in the Northern Mariana Islands will also not enjoy those right enjoyed only by citizens of the several States. By consensus, the members agreed that the recommendation should be modified as suggested by Mr. Bergsma.

—motion—adoption. The Commission, by a roll-call vote, then passed the motion to adopt the general staff recommendations on the continuing trust relationship, on the sanctity of the Covenant, and on specifying the geographic applicability of federal laws, with the modification of the text on the continuing trust relationship noted above. All six members present voted in favor of the motion.

Resolutions of commendation.

Mr. Pangelinan moved that the Commission adopt separate resolutions commending and thanking James A. Joseph, Agnes M. McPhetres, and Myron B. Thompson for their services to the Commission, with the texts to be prepared by the staff. The motion was seconded by Mr. Tenorio, and was adopted by acclamation. [139]

Second Interim Report.

Mr. MacMeekin proposed alternative courses of action for submission of the Commission's next report to Congress, depending on whether the Commission receives additional funds. He said that, even if additional funds are received, the Commission should submit a report to the Congress in the summer of 1985. If no funds are received, he said, the Commission will have to submit before current funds are exhausted everything it intends to submit to Congress.

Mr. MacMeekin recommended that the current working draft, with a few additions and some minor editorial improvements, together with the proposed appendix and documentary supplement, be submitted as the Commission's next report to Congress if additional funds are not received. If funds are received, he suggested that all already-adopted recommendations be submitted to Congress with a short introduction as soon as possible. This report, he said, would not include the longer introduction, the title-by-title survey, the appendix, or the documentary supplement, all of which would be withheld for inclusion in a third report, to be submitted to Congress probably in the late summer of 1986.

Mr. Falcone said that the Commission must operate on the assumption it will not receive additional funds.

Mr. Tenorio reiterated his desire to address in the next report the control of the Northern Mariana Islands over alien labor entering its territory and the adverse affects on this control resulting from the imposition of federal garment quotas. Mr. MacMeekin doubted that these issues could be examined with sufficient care in time for inclusion in any report to be submitted in the summer of 1985. Mr. Pangelinan noted that the issues were complex and politically charged, and should not be addressed hastily.

--motion--adoption. Mr. Falcone moved to adopt the current working draft as the Commission's second interim report to Congress on the assumption that no additional funds will be received, subject to addition by the staff of a short history of the Northern Mariana Islands subsequent to the second World War and of any recommendations subsequently adopted by the Commission and subject to such minor editorial changes as the staff deems necessary to improve the quality of the report. The motion was seconded by Mr. Bergsma and passed, with all members present voting in favor.

--motion--adoption. Mr. Falcone moved to authorize the executive director to submit to the members for approval by mail any pending staff recommendations, together with copies of comments received with respect to any such recommendation. The motion further [140] provided that if no member's vote against the recommendation is received by the executive director within 28 days after the ballot is mailed, the recommendation will be deemed approved; but that if any member votes against the recommendation, it will not be included in the report as a recommendation of the Commission. The motion was seconded by Mr. Borja and passed, with all members present voting in favor thereof.

Old Business.

Executive committee. Mr. MacMeekin reminded the members that the membership of the executive committee was affected by the change in membership of the Commission. Mr. Fitial then reconstituted the executive committee by appointing to it Mr. Bergsma, Mr. Borja, Mr. Lagomarsino, Mr. Tenorio, and himself.

Second Interim Report (continued).

--motion--adoption. Mr. Bergsma moved that the Commission submit a report to Congress in the summer of 1985 if additional funding is received, the report to include all recommendations adopted to date with a short introduction, but without the other material now in the current working draft and without any documentary supplement. To the recommendation on the immigration and naturalization laws would be added a reference to further related Commission work to be undertaken. The motion was seconded by Mr. Tenorio and passed, with all members present voting in favor thereof.

Priorities.

Motion--adoption. Mr. Borja moved the adoption of the list of priorities provided in the briefing materials (and summarized in the executive director's report), with the addition of the immigration, alien labor, and customs issues raised by Mr. Tenorio, as the guide for staff work in the event additional funds are received. The motion was seconded by Mr. Falcone and passed, with all members present voting in favor thereof.

Next Meeting.

The members agreed that, if additional funds became available, the date and location of the next meeting will be fixed by the chairman in consultation with the other members and the executive director.

Adjournment.

The meeting was adjourned at 5:20 p.m.

CERTIFICATION

The minutes of the May 8, 1985, meeting of the Northern Mariana Islands Commission on Federal Laws are set forth above as adopted by the Commission voting by mail pursuant to section 10 of the Commission's bylaws. [141]

Daniel H. MacMeekin
Executive Director

COMMISSION CORRESPONDENCE TO MEMBERS OF CONGRESS

Northern Mariana Islands Commission on Federal Laws Washington, D.C. 20240 (202) 343-5617

[145]

FEB 5 1981

Honorable James McClure
Chairman
Subcommittee on Interior
Committee on Appropriations
U.S. Senate
1208 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator McClure:

The Northern Mariana Islands Commission on Federal Laws has asked me to urge you to support early funding, for the Saipan hospital authorized by Section 202 of Public Law 96-205, of architectural and engineering costs and, to the extent budgetary restrictions permit, of construction costs. Because of your past leadership with regard to the insular areas generally and health care in those areas specifically, I know you are aware of the inadequate medical facilities presently existent in the Northern Mariana Islands. The need for early construction of a hospital which (unlike the present Dr. Torres hospital) can be accredited was brought to this Commission's attention because the government of the Northern Mariana Islands has found itself unable to take advantage of some federal laws providing much-needed health-care benefits because it lacks an adequate hospital. For example, the Medicare and Medicaid programs cannot be made available in the absence of an accredited medical facility.

Adequate health care is, of course, important everywhere, in the Northern Mariana Islands just as in Guam and the Virgin Islands. Good health care for the local populace is of primary importance. But the Northern Mariana Islands are also heavily dependent on tourism, already the largest employer in the private sector. Lack of adequate hospital facilities is an obstacle to further development of the tourist trade, since many prospective tourists will shun the Northern Mariana Islands on learning of the level of health care presently available.

Lack of adequate medical facilities also restricts economic development in another way. Firms interested in investing in the Northern Mariana Islands are apt to become reluctant to do so once they discover the state of existing health care facilities available to their personnel there.

[146] The Commission is aware that the previous administration had included funds for the hospital in its FY 1982 budget request. Because of the acute need for improvement in health care available in the Northern Mariana Islands, the Commission urges that funds be appropriated for the Saipan hospital in the FY 1981 Interior supplemental appropriation to cover architectural and engineering costs and, to the extent possible, construction costs. The Commission also urges that in no event should funding for this critical project be postponed beyond the fiscal year beginning October 1, 1981.

Sincerely,

James A. Joseph
Chair

Identical Letter sent to:

1. Honorable Robert C. Byrd
   Subcommittee on Interior
   Committee on Appropriations
   U.S. Senate
   1208 Dirksen Senate Office Bldg.
   Washington, D.C. 20510

[147]

2. Honorable Sidney R. Yates
   Chairman
   Subcommittee on Interior
   Committee on Appropriations
   U.S. House of Representatives
   B-308 Rayburn House Office Building
   Washington, D.C. 20515

3. Honorable Joseph M. McDade
   Subcommittee on Interior
   Committee on Appropriations
   U.S. House of Representatives
   B-308 Rayburn House Office Building
   Washington, D.C. 20515

Northern Mariana Islands Commission on Federal Laws Washington, D.C. 20240 (202) 343-5617

James A. Joseph
Chair and Commissioner

Pedro A. Tenorio
Vice-Chair and Commissioner

Jesus C. Borja
Commissioner

Hon. Phillip Burton
Commissioner

Agnes M. McPhetres
Commissioner

Edward DLG. Pangelinan
Commissioner

Myron B. Thompson
Commissioner

Daniel H. MacMeekin
Executive Director

JUL 29 1982

The Honorable Strom Thurmond
Chairman, Committee on the Judiciary
U.S. Senate
Washington, D.C. 20510

Re: Applicability of the federal bankruptcy laws to the Northern Mariana Islands

Dear Senator Thurmond:

The Northern Mariana Islands Commission on Federal Laws was created, pursuant to section 504 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (Public Law 94-241, 48 U.S.C. section 1681 note) "to survey the laws of the United States and to make recommendations to the United States Congress as to which laws of the United States not applicable to the Northern Mariana Islands should be made applicable and to what extent and in what manner, and which applicable laws should be made inapplicable and to what extent and in what manner."

The staff of the Commission has prepared for the Commission's approval a recommendation that the Commission in turn recommend to the United States Congress the enactment of legislation to ensure (1) that the bankruptcy laws of the United States presently apply in the Northern Mariana Islands and will continue to apply pending termination of the trusteeship; and (2) that bankruptcy court jurisdiction will continue to exist in the Northern Mariana Islands after April 1, 1984. The present applicability of the federal bankruptcy laws to the Northern Mariana Islands was left in some doubt with the substantial revision of those laws by Public Law 95-598, 92 Stat. 2549, enacted on November 6, 1978. On June 28, 1982, the Supreme Court announced its decision in Northern Pipeline Construction Co. v. Marathon Pipe Line Co.,--U.S.--, 50 U.S.L.W. 4892 (No. 81-150), holding portions of Public Law 95-598 unconstitutional. At its meeting on July 7, 1982, the Commission decided that the recommendation of its staff should be sent to you with the Commission's endorsement. I now enclose that recommendation in the hope that Congress, in responding to the Northern Pipeline decision, will also ensure the continued applicability of the

federal bankruptcy laws in the Northern Mariana Islands and the continued existence of bankruptcy court jurisdiction in the Northern Mariana Islands. [149]

Sincerely,

James A. Joseph

Enclosure

xc: Members of the Commission

Identical letter sent to:
The Honorable Peter W. Rodino, Jr.
United States House of Representatives
2462 Rayburn House Office Building
Washington, D.C. 20515

[150]

STAFF RECOMMENDATION

ON THE

FEDERAL BANKRUPTCY LAWS

Recommendation. Legislation should be enacted to ensure (1) that the bankruptcy laws of the United States presently apply in the Northern Mariana Islands and will continue to apply pending termination of the trusteeship; and (2) that bankruptcy court jurisdiction will continue to exist in the Northern Mariana Islands after April 1, 1984.

[151]

The statute. Article I, Section 8, Clause 4 of the United States Constitution gives Congress the power to establish uniform bankruptcy laws throughout the United States. Laws enacted pursuant to this power are "for the benefit and relief of creditors and their debtors in cases in which the latter are unable or unwilling to pay their debts." Black's Law Dictionary 134 (5th ed. 1979). Bankruptcy laws cover both voluntary and involuntary bankruptcy, and provide generally for annulment of the bankrupt's debts in exchange for distribution of most of the bankrupt's property to his or her creditors. The bankrupt gains relief from the burden of debt that, no matter how hard he or she labors, cannot be liquidated. The creditors are each assured a fair share of whatever assets the bankrupt can use to pay the debts. Society in general benefits because the bankrupt's incentive to participate in productive activity is restored and because disputes among creditors seeking first satisfaction from the bankrupts' inadequate assets are minimized.

Title 11 of the United States Code contains the bankruptcy laws of the United States. Title 11 was substantially revised by Public Law 95-598, 92 Stat. 2549, enacted on November 6, 1978.

Present applicability. For the bankruptcy laws to be effectively applicable in the Northern Mariana Islands, two conditions must be satisfied: First, a person residing in the Northern Mariana Islands must be able under the laws to qualify as a debtor eligible for discharge of his or her debts in bankruptcy. Second, a court in the Northern Mariana Islands must be able to administer and enforce the bankruptcy laws.

Whether a person residing in the Northern Mariana Islands is able to qualify as a debtor eligible for discharge in bankruptcy is uncertain. (This question is discussed in greater detail in Appendix A to this recommendation.)

The District Court for the Northern Mariana Islands has the power to administer and enforce the bankruptcy laws. That power will expire on April 1, 1984, when administration and enforcement will be transferred from federal district courts to new bankruptcy courts. Through apparent oversight, Congress did not establish a bankruptcy court for the Northern Mariana Islands to assume jurisdiction over bankruptcy matters on April 1, 1984. The lack of provision for a

bankruptcy court in the Northern Mariana Islands after April 1, 1984, is discussed in greater detail in Appendix B to this recommendation.

[152] Discussion. The federal bankruptcy laws should be applicable in the Northern Mariana Islands.

The purposes of the federal bankruptcy laws could be served instead by enactment of a local bankruptcy statute in the Northern Mariana Islands. While the United States Constitution requires a uniform federal law of bankruptcy, Congress almost certainly has the power under the territorial clause, Article IV, Section 3, Clause 2 of the Constitution, to permit deviation from the rule of uniformity for the Northern Mariana Islands. But the policy considerations that supported adoption of the constitutional rule of uniformity support application in the Northern Mariana Islands of the same bankruptcy law that is applicable elsewhere in the United States. "The purpose behind the [constitutional] grant of the bankruptcy [power] . . . was to enable the new central government to eradicate the opportunities for fraud and forum-shopping engendered by varying state insolvency . . . laws . . . ." In re Penn Central Transportation Co., 384 F.Supp. 895, 915 (Spec. Ct., RRRA 1974). See generally 3 J. Story, Commentaries on the Constitution of the United States, sections 1102-04 (1833); Perez v. Campbell, 402 U.S. 637, 656 (1971).

Over the years substantial thought and effort has brought the federal bankruptcy laws into their present form. Development of a local bankruptcy law for the Northern Mariana Islands would require a large allocation of the limited resources of the island, another reason for instead applying the federal law in the Northern Mariana Islands.

Proposed legislative language. The following language, if enacted by the U.S. Congress, would implement the staff's recommendation to ensure (1) that the bankruptcy laws of the United States presently apply in the Northern Mariana Islands and will continue to apply pending termination of the trusteeship; and (2) that bankruptcy court jurisdiction will continue to exist in the Northern Mariana Islands after April 1, 1984:

> An Act to clarify the applicability of the bankruptcy laws of the United States to the Northern Mariana Islands.
>
> Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the Northern Mariana Islands shall be considered a part of the United States for purposes of the bankruptcy laws of the United States.

Sec. 2. Section 2(a) of Public Law 95-157 (48 U.S.C. section 1694a(a)) is amended by inserting "and a bankruptcy court" immediately after "jurisdiction of a district court". [153]

This language might also be incorporated into a larger bill embracing other subjects as well.

[154]

APPENDIX A

to

Staff Recommendation on the Bankruptcy Laws:

ABILITY OF PERSONS

IN THE NORTHERN MARIANA ISLANDS

TO QUALIFY AS DEBTORS

UNDER THE FEDERAL BANKRUPTCY LAWS

There is some doubt whether a person residing in the Northern Mariana Islands is able to qualify as a debtor eligible for discharge in bankruptcy under the federal bankruptcy laws, Title 11 of the United States Code. Section 109 of Title 11 provides:

> Notwithstanding any other provision of this section, only a person that resides in the United States, or has a domicile, a place of business, or property in the United States, or a municipality, may be debtor under this title.

[155]

11 U.S.C.A. section 109 (1979).

If the Northern Mariana Islands are part of the United States, section 109 presents no problem: A person residing in the Northern Mariana Islands would be a resident of the United States eligible to be a debtor under Title 11.

Title 11 does not contain a definition of "United States." (See 11 U.S.C.A. section 101 (1979) ("Definitions").)* The new bankruptcy law includes several references making apparent the congressional intent that the law should apply in Guam and the Virgin Islands. Section 335 of Public Law 95-598 amends the Organic Act of Guam to give the District Court of Guam the powers of a bankruptcy court and to make the federal bankruptcy rules applicable there. Section 336 amends the Revised Organic Act of the Virgin Islands in a similar manner. Similar provisions under the prior bankruptcy laws were considered sufficient to confirm the applicability of those laws in the Virgin Islands by the court in Christensen v. Donovan, 168 F. Supp. 892 (D.V.I. 1958).

Under the logic of the Christensen ruling, the prior bankruptcy laws would have been applicable to Guam. The prior bankruptcy laws

---

*Definitions contained in the now-repealed Title 11 are not helpful:

> "Courts of bankruptcy" shall include the United States district courts and the district courts of the Territories and possessions to which this title is or may hereafter be applicable.
>
> "States" shall include the Territories and possessions which this title is or may hereafter be applicable, Alaska, and the District of Columbia.

11 U.S.C.A. section 1(10), (29) (repealed; reprinted 11 U.S.C.A. App. (1979)). Other provisions of repealed Title 11 gave no clear indication as to which Territories and possessions the title might be applicable. In Perez v. Campbell, 402 U.S. 637, 656 (1971), the Supreme Court read section 1(29), above, as making the bankruptcy laws applicable to the "Territories". This conclusion seems to go beyond the language of section 1(29).

thus would have been applicable to Guam and the several States. Under Section 502(a)(2) of the Covenant, laws in existence on January 9, 1978, [156] and subsequent amendments to such laws will apply in the Northern Mariana Islands if they are applicable to Guam and "of general application to the several states." The now-repealed bankruptcy laws were in existence on January 9, 1978. So, if the prior bankruptcy laws applied on Guam, which they almost certainly did, they also applied in the Northern Mariana Islands.

The new Title 11 is not, however, an amendment of the old Title 11. Section 401(a) of the new bankruptcy law, Public Law 95-598, repealed the bankruptcy laws in effect on January 9, 1978. "'Repeal' of a law means its complete abrogation by the enactment of a subsequent statute, whereas the 'amendment' of a statute means an alteration in the law already existing, leaving some part of the original still standing." Black's Law Dictionary 1167 (5th ed. 1979) ("repeal"). (Some court decisions, however, have held that when a new statute repeals and replaces a similar or almost identical previous statute, the new statute may be treated as an amendment of the old. See, for example, Bear Lake Irrigation Co. v. Garland, 164 U.S. 1, 11-13 (1896); In re Martin's Estate, 153 Cal. 225, 94 P. 1053, 1055 (1908) and State ex rel. O'Connell v. Meyers, 51 Wash. 2d 454, 319 P. 2d 828, 832 (1957) (amendment includes a complete change in the law, so long as it is within the realm of the subject matter contained in the act).)

The new bankruptcy law cannot be considered, independently of the prior law, as applicable to the Northern Mariana Islands under the formula of section 502 (a)(2) of the Covenant, making applicable to the Northern Mariana Islands federal laws in existence on January 9, 1978, and their subsequent amendments which apply to Guam and the several states. The new bankruptcy law had not yet been enacted on January 9, 1978.

Independently of the Covenant, the new bankruptcy law could be held applicable to the Northern Mariana Islands if an intent on the part of Congress to make it applicable to the Northern Mariana Islands could be shown. The Northern Mariana Islands do not appear to have been mentioned at all in the legislative history of Public Law 95-598, as reprinted in 1978 U.S. Code Cong. Adm. News 5787 et seq.

Support for the applicability of the new bankruptcy law in the Northern Mariana Islands may be derived from section 1(c) of Public Law 95-157, 91 Stat. 1265, codified at 48 U.S.C.A. section 1694(c). This provision, enacted on November 8, 1977--just one year prior to enactment of the new bankruptcy law--, provides that "rules heretofore or hereafter promulgated and made effective by the Congress or the

Supreme Court of the United States pursuant to (Title) 11 . . . shall apply to the District Court for the Northern Mariana Islands . . . where appropriate, except as otherwise provided in articles IV and V of the covenant . . . ." (Emphasis supplied.) That the bankruptcy rules are to apply in the District Court for the Northern Mariana Islands is evidence that Congress intended the bankruptcy laws to be generally applicable in the Northern Mariana Islands. [157]

According to information provided the Commission in March, 1981 by the Clerk of the District Court for the Northern Mariana Islands, bankruptcy petitions in the Northern Mariana Islands are handled by the United States Bankruptcy Court for the District of Hawaii. That court instructs prospective Northern Mariana Islands petitioners to send their petitions directly to the Bankruptcy Court in Hawaii.

As of March, 1981, only one petition for bankruptcy originating in the Northern Mariana Islands appears to have been filed. Its disposition is unknown.

[158]

APPENDIX B

to

Staff Recommendation on the Bankruptcy Laws

BANKRUPTCY JURISDICTION

IN THE NORTHERN MARIANA ISLANDS

AFTER APRIL 1, 1984

For the bankruptcy laws to be effectively applicable in the Northern Mariana Islands, a court in the Northern Mariana Islands must be able to administer and enforce those laws. Under existing law, there likely will be no court able to do so after April 1, 1984.

Section 2 of Public Law 95-157, 48 U.S.C.A. section 1694a (Supp. 1980), creating the District Court for the Northern Mariana Islands, provides in pertinent part, that "the District Court for the Northern Mariana Islands shall have the jurisdiction of a district court of the United States." Section 402(a) of the Covenant is to similar effect. Section 1334 of Title 28, U.S.C.A. (1976), provides that: [159]

> The district courts shall have original jurisdiction, exclusive of the courts of the States, in all matters and proceedings in bankruptcy.

Further, section 1(c) of Public Law 95-157, 48 U.S.C.A. section 1694a (Supp. 1980), makes the Bankruptcy Rules applicable to the District Court for the Northern Mariana Islands "where appropriate, except as otherwise provided in articles IV and V of the covenant. . . ." (The legislative history of Public Law 95-157, as reprinted in 1977 U.S. Code Cong. & Adm. News 3307 et seq. makes no reference to bankruptcy jurisdiction.)

After April 1, 1984, section 151(a) of Title 28 will read: "There shall be in each judicial district, as an adjunct to the district court for such district, a bankruptcy court which shall be a court of record known as the United States Bankruptcy Court for the district." Public Law 95-598, sections 201(a), 402(b) (1978). Thus, as of April 1, 1984, a district court of the United States will not have bankruptcy jurisdiction and the fact that the District Court of the Northern Mariana Islands has the jurisdiction of a district court of the United States will no longer serve, in and of itself, to give it bankruptcy jurisdiction. Nor does the future section 151(a), quoted above, in and of itself create a United States Bankruptcy Court for the Northern Mariana Islands, since the Northern Mariana Islands does not constitute a "judicial district." (The judicial districts enumerated in Chapter 5 of Title 28 include only districts with Article III courts and the District of Puerto Rico; they do not include Guam, the Virgin Islands, or the Northern Mariana Islands.) Public Law 95-598 specifically amends the Organic Act of Guam and the Organic Act of the Virgin Islands to give the District Court of Guam and the District Court of the Virgin Islands, respectively, the "jurisdiction of a district court and of a bankruptcy court of the United States." Section 335(a), 336(a). No similar amendment was made for the Northern Mariana Islands, although this was almost certainly an oversight. (The new bankruptcy law was enacted on November 6, 1978, just short of a year after the November 8, 1977, legislation creating the District Court for the Northern Mariana Islands.)

[160] An argument in favor of the bankruptcy jurisdiction of the District Court for the Northern Mariana Islands after April 1, 1984, may be fashioned from section 403(b) of the Covenant, or the near-identical provision in section 4(b) of Public Law 95-157:

> Those portions of Title 28 of the United States Code which apply to Guam or the District Court of Guam will be applicable to the Northern Mariana Islands or the District Court of the Northern Mariana Islands, respectively, except as otherwise provided in this Article.

Public Law 95-598, the new bankruptcy law, creates a new Chapter 6, "Bankruptcy Courts," in Title 28, Title II, 92 Stat. 2657. (That Chapter becomes effective on April 1, 1984. Id., Title IV, section 402(b), 92 Stat. 2682.) The Chapter will apply to the District Court of Guam by virtue of Section 335(a) of the new bankruptcy law, noted above. And, by operation of section 403(b) of the Covenant (or section 4(b) of Public Law 95-157), Chapter 6 might also be said to "apply" to the District Court for the Northern Mariana Islands. This argument is weakened by the explicit provisions of Public Law 95-598, enacted after creation of the District Court for the Northern Mariana Islands, for establishment of post-April 1, 1984 bankruptcy-court jurisdiction in Guam and the Virgin Islands. Why, the counter-argument goes, should Congress not similarly have provided specifically for the Northern Mariana Islands, rather than relying upon the formula of section 403(b) of the Covenant (or section 4(b) of Public Law 95-157) to accomplish its ends indirectly? Further, that section 403(b) of the Covenant (or section 4(b) of Public Law 95-157) makes applicable to the Northern Mariana Islands or the District for the Northern Mariana Islands those portions of Title 28 which may in the future, after approval of the Covenant, be applicable to Guam or the District Court of Guam is not altogether certain. Section 403(b) of the Covenant (or section 4(b) of Public Law 95-157) just as easily can be read as referring only to those portions of Title 28 applicable to Guam or the District Court of Guam as of the date of approval of the Covenant (or the date of enactment of Public Law 95-157).

Northern Mariana Islands Commission on Federal Laws Washington, D.C. 20240 (202) 343-5617

James A. Joseph
Chair and Commissioner

Pedro A. Tenorio
Vice-Chair and Commissioner

Jesus C. Borja
Commissioner

Hon. Phillip Burton
Commissioner

Agnes M. McPhetres
Commissioner

Edward DLG. Pangelinan
Commissioner

Myron B. Thompson
Commissioner

Daniel H. MacMeekin
Executive Director

APR 08 1983

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The Honorable James A. McClure
United States Senate
SD-368 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator McClure:

As you are aware, the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (approved by Public Law 94-241, 90 Stat. 263) provides in general that the immigration and naturalization laws of the United States shall not apply to the Northern Mariana Islands. As part of its examination of the desirability of applying particular federal laws to the Northern Mariana Islands, this Commission at its March 29-30, 1983, meeting concluded that the inapplicability of the federal immigration and naturalization laws to the Northern Mariana Islands should not be changed in any major respect. The Commission instructed me to write you to urge that any bill to revise the Immigration and Nationality Act (such as the bills introduced by Senator Simpson and Representative Mazzoli) include a provision such as the following:

> Nothing in this Act shall be deemed to alter any provision of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (approved by Public Law 94-241, 90 Stat. 263).

Thank you for your consideration of this request.

Sincerely,

Daniel H. MacMeekin

xc: Members of the Commission

IDENTICAL LETTER TO:

The Honorable James A. McClure
United States Senate
SD-368 Dirksen Senate Ofc. Bldg.
Washington, D.C. 20510

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The Honorable J. Bennett Johnston
United States Senate
SH-136 Hart Senate Ofc. Bldg.
Washington, D.C. 20510

The Honorable Lowell P. Weicker Jr.
United States Senate
SR-315 Russell Senate Ofc. Bldg.
Washington, D.C. 20510

The Honorable Spark M. Matsunaga
United States Senate
SD-564 Dirksen Senate Ofc. Bldg.
Washington, D.C. 20510

The Honorable Robert J. Lagomarsino
United States House of Representatives
2332 Rayburn House Ofc. Bldg.
Washington, D.C. 20515

The Honorable Antonio B. Won Pat
United States House of Representatives
2133 Rayburn House Ofc. Bldg.
Washington, D.C. 20515

IN RE NORTHERN MARIANA ISLANDS
COMMISSION ON FEDERAL LAWS,
DECISION B-202206 OF
THE COMPTROLLER GENERAL OF THE UNITED STATES,
JUNE 16, 1982

DECISION

THE COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-202206 **DATE:** June 16, 1981 [165]

MATTER OF: Northern Mariana Islands Commission on Federal Laws

DIGEST: The Northern Mariana Islands Commission on Federal Laws, although it receives its appropriations from the Department of the Interior, is an independent entity in the Legislative Branch and not an Executive Branch agency. Therefore, it is not subject to administratively imposed hiring, travel, or office equipment procurement freezes applicable to Executive Branch agencies. As an independent entity, its Executive Director may sign purchase orders and travel authorizations. It may not, however, use Interior Department forms for those purchases since it is not a component of Interior. It may not rent office space on its own unless it receives a delegation from the General Services Administration. The Federal Property and Administration Services Act is applicable to Federal entities in all branches of the Government. 40 U.S.C. § 472 (1976).

We have been asked several questions by the Northern Mariana Islands Commission on Federal Laws which explore its relationship to the executive branch and, in particular, to the Department of the Interior.

The Commission was established pursuant to the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, which was enacted in Pub. L. No. 94-241, approved March 24, 1976, 90 Stat. 263, 48 U.S.C. § 1681 nt. (1976). Section 504 of this Covenant establishes the Commission and its duties:

> "The President will appoint a Commission on Federal Laws to survey the laws of the United States and to make recommendations to the United States Congress as to which laws of the United States not applicable to the Northern Mariana Islands should be made applicable and to what extent and in what manner, and which applicable laws should be made inapplicable and to what extent and in what manner. The Commission will consist of seven persons (at least four 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

[166]

> Mariana Islands at the time of their appointments) who will be representative of the federal, local, private and public interests in the applicability of laws of the United States to the Northern Mariana Islands. The Commission will make its final report and recommendations to the Congress within one year after the termination of the Trusteeship Agreement, and before that time will 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 potential effect of each law on local conditions within the Northern Mariana Islands, the policies embodied in the law and the provisions and purposes of this Covenant. The United States will bear the cost of the work of the Commission."

The remainder of the provisions of Article V (sections 501 to 506) deal with the applicability of present laws to the Northern Marianas.

A number of the issues raised by the Commission relate to the applicability of restrictions on hiring, travel and equipment purchases which were administratively imposed on the executive branch of the Government. For the reasons discussed below, since the Commission is not in our view an executive branch agency, these restrictions do not apply to it.

The Commission consists of seven persons, the majority of whom must be citizens of the Trust Territory of the Pacific Islands and must have been domiciled on the Islands for at least five continuous years at the time of their appointments. Among these persons must be at least one person who can represent the Federal interest in the applicability of the United States laws in the Northern Mariana Islands.

Under the heading "Territorial Affairs, Administration of Territories" in the Department of the Interior and related agencies appropriation act, 1981, Interior receives appropriations to fund the Commission:

> "For expenses necessary for the administration of Territories under the jurisdiction of the Department of the Interior, $72,284,000, of which (1) not to exceed $68,000,000 shall be available for * * * expenses of the Northern Mariana Islands Federal Laws Commission as authorized by law (Public

Law 24-241, 90 Stat. 272), to remain available until expended; * * *" Pub. L. No. 96-514, approved December 12, 1980, 94 Stat. 2957, 2968-2969. [167]

In addition to receiving the Commission's appropriation as part of the lump sum provided for the administration of territories, the Department of the Interior provides administrative services to the Commission, including personnel, procurement, payroll and travel services. Commission expenses are charged to an account maintained on its behalf by Interior. The arrangements with Interior are provided in the Commission's bylaws, adopted May 7, 1980.

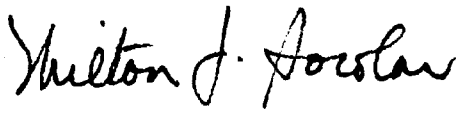
The placement of the Commission's appropriations within the Department of Interior appropriation, without more, would argue in favor of its being an agency within the executive branch. On the other hand, by virtue of its maintaining a continuing trustee responsibility over the Islands until they achieve Commonwealth status, Interior is the United States Government agency in the best position to provide needed housekeeping services for the Commission. Accordingly, we feel this practical consideration determined the placement of the Commission's appropriations and, hence, that this placement should not be controlling in determining its status.

Instead, we feel that the Commission's mission--reporting to the Congress on laws of the United States which should be applicable in the Northern Mariana Islands--is the major criteria. The Commission, although its members are appointed by the President, does not answer either to the Department of the Interior or to the President. Since its sole function is to advise the Congress, we think it very clear that the Commission is a legislative branch agency and not an executive branch agency.

As a legislative branch agency, any hiring, travel, and equipment procurement freezes which may be administratively placed on executive branch agencies do not apply to the Commission. For example, we note that the Presidential memorandum of January 20, 1981, announcing a hiring freeze was addressed to the heads of executive departments and agencies.

It appears to us that in making any future determinations of its authorities to carry out its duties, the Commission should be treated just like other independent agencies in the Legislative Branch. Therefore, its Executive Director, if authorized by the Commission, may sign purchase orders and travel authorizations. On the other hand, we see no authority for the Commission's proposal to use Interior Department purchase order forms since it is not a component of Interior. (This would not prevent Interior itself from making the purchases on the Commission's behalf as part of the administrative services it is required to perform for the Commission.)

[168] The Commission's final question is whether it may rent privately-owned office space until space under the control of the General Services Administration becomes available in July 1981 at the earliest. As an entity in the Legislative Branch, funded entirely from appropriations, the Commission is subject to substantially the same authorities and restrictions about rental of space as most Federal agencies and instrumentalities. The Federal Property and Administrative Services Act applies to all three branches of the Government. 40 U.S.C. § 472 (1976). Without specific authority to rent space in its own name or that of the United States, we conclude that the Commission should make arrangements for office space through the General Services Administration, unless the GSA grants it a delegation of authority pursuant to section 3(b) of the Reorganization Plan No. 18 of 1950, 64 Stat. 1270, 40 U.S.C. § 490 nt. (1976), or Interior obtains the necessary authority on the Commission's behalf, as part of its administrative services pursuant to section 11 of the Commission's bylaws.



Acting Comptroller General
of the United States

COMMISSION
STAFF PAPERS

Northern Mariana Islands Commission on Federal Laws Washington, D.C. 20240 (202) 343-5617

BACKGROUND INFORMATION

ON THE LEGAL STATUS OF

THE NORTHERN MARIANA ISLANDS COMMISSION ON FEDERAL LAWS

April 9, 1981

BACKGROUND INFORMATION

ON THE LEGAL STATUS OF

[172]

THE NORTHERN MARIANA ISLANDS COMMISSION ON FEDERAL LAWS

Basic Documents--Authorization. The Northern Mariana Islands Commission on Federal Laws was established by section 504 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, Public Law 94-241, 90 Stat. 263 (1976). Section 504, in its entirety, reads:

> The President will appoint a Commission on Federal Laws to survey the laws of the United States and to make recommendations to the United States Congress as to which laws of the United States not applicable to the Northern Mariana Islands should be made applicable and to what extent and in what manner, and which applicable laws should be made inapplicable and to what extent and in what manner. The Commission will consist of seven persons (at least four 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 laws of the United States to the Northern Mariana Islands. The Commission will make its final report and recommendations to the Congress within one year after the termination of the Trusteeship Agreement, and before that time will 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 potential effect of each law on local conditions within the Northern Mariana Islands, the policies embodied in the law and the provisions and purposes of this Covenant. The United States will bear the cost of the work of the Commission.

Noteworthy is that the Commission's sole function is to recommend to Congress; it does not administer any law, make rules, or adjudicate. Also of note is that the United States bears the cost of the work of the Commission.

--Appropriation. The Commission's initial funding of $300,000 was provided as a part of the fiscal 1980 appropriations by the U.S. Congress to the Department of the Interior:

TERRITORIAL AFFAIRS

Office of Territorial Affairs

[173]

Administration of Territories

> For expenses necessary for the administration of Territories under the jurisdiction of the Department of the Interior, $86,661,000, of which (1) not to exceed $82,589,000 shall be available for grants to the judiciary in American Samoa for compensation and expenses, as authorized by law (48 U.S.C. 1661(c)); grants to American Samoa, in addition to current local revenues, for support of governmental functions; grants to Guam, as authorized by law (48 U.S.C. 1428-1428e; Public Law 95-134; 91 Stat. 1161, 1162, 1163; Public Law 95-348; 92 Stat. 487, 488); grants to the Government of the Virgin Islands as authorized by law (Public Law 95-348, 92 Stat. 490); expenses of the Northern Mariana Islands Federal Laws Commission as authorized by law (Public Law 94-241, 90 Stat. 268); direct grants to the Government of the Northern Mariana Islands as authorized by law (Public Law 94-241, 90 Stat. 272), to remain available until expended; . . .

P.L. 96-126, 93 Stat. 954, 969 (Nov. 27, 1979) (emphasis supplied). The amount of $300,000 is specified in Congressional reports on P.L. 96-126. See H. Rep. No. 96-374, at page 47 (July 23, 1979); S. Rep. No. 96-363 (Oct. 10, 1979). No reference to the nature of the relationship between the Commission and Interior is found in these reports. (An additional $10,000 was appropriated for the Commission in the fiscal 1980 supplemental appropriation to Interior, and another $15,000 in the fiscal 1981 appropriation.)

Bylaws. The Commission adopted bylaws at its first meeting, on May 7, 1980. Provisions relevant to the juridical status of the Commission are these:

> Section 3 - Office of the Commission.
>
> There shall be Commission offices in Washington, D.C. and the Northern Mariana Islands and in such other places, if any, as determined by the Chair. The office in Washington, D.C. shall be the repository of administration (sic) records of the Commission. . . .
>
> Section 10 - Commission staff.
>
> There shall be an Executive Director of the Commission, together with other staff, as necessary, appointed by the Chair, subject to consultation with the Commission. No staff may be terminated except for cause and with the approval of a majority

of the Commission members. Staff other than the Executive Director shall report to the Chair through the Executive Director.

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Section 11 - Administrative and Personnel Services.

Administrative and Personnel Services, including provisioning of space, shall be provided by the Department of the Interior.

Note, in connection with section 11, that, at the time the bylaws were adopted, the Chair of the Commission was also Under Secretary of Interior.

Practice--Employees. The Chair, in consultation with the members of the Commission, hired an executive director of the Commission on September 2, 1980. The executive director is a schedule A (attorney) Civil Service employee with a term appointment not to extend beyond December 31, 1982. The Commission also employs two other persons, both of whom were selected by the executive director but appointed by or with the approval of the Commission chair. The mechanics of hiring for all Commission employees, including the executive director, were handled through the agency of Interior's Office of Secretarial Operations--Personnel. All employees are considered federal employees.

--Procurement, Payroll, and Travel. All Commission procurement, payroll and travel are handled through the agency of Interior's Administrative Officer for Territorial and International Affairs.

--Accounting. The Commission has been assigned an account number by Interior. Commission expenditures are posted to this account by Interior personnel.

--Space. The Commission's principal office, in Washington, D.C., is located in the main Interior building.

Precedents. Commissions frequently have been established to advise Congress on legislation appropriate for particular territories of the United States. Act of July 22, 1954, ch. 558, section 8, 68 Stat. 500 (Virgin Islands); Act of August 1, 1950, ch. 512, section 25, 64 Stat. 390 (Guam); Act of February 20, 1929, ch. 281, 45 Stat. 1253, as amended by Act of May 22, 1929, ch. 6, 46 Stat. 4 (American Samoa); Joint Resolution No. 55, July 7, 1898, 30 Stat. 750, 751 (Hawaii). In an 1898 report, the House Committee on the Judiciary described the status of such commissions, with particular reference to the Hawaii commission established by Joint Resolution No. 55:

> The duties of the commissioners appointed under the statutes . . . are not continuing or permanent; they have no place of business for the public use, or even for their own use; they give no bond and take no oath. In fact, they are

mere agents appointed by direction of Congress for the purpose of gathering information and making recommendations for its use if the Congress sees fit to avail itself of the labors of the commission. The commissioners appointed under these statutes or resolutions can not be compelled to attend or act, and in the broadest sense they are mere agents of the Congress. These commissioners are not to execute any standing laws which are the rules of action and the guardians of rights, nor have they the right or power to make any such law, nor can they interpret or enforce any existing law. [175]

. . .

[The commissioners] are persons designated by authority of Congress to make certain investigations, inquiries, etc., or to conduct certain negotiations preliminary to and as a basis for possible action by the Congress of the United States or by one branch of it. They neither make law, execute law affecting the rights of the people, nor perform judicial functions. These commissioners are and are intended to be mere advisory agents of the Congress of the United States. Their investigations are confined to some particular matter or subject, and they are not required to take an oath of office. They have no power to decide any question or bind the Government or do any act affecting the rights of a single individual citizen.

. . .

The acts performed are for the information of the Congress, and it alone. Their suggestions or recommendations have no force; they may or may not be adopted. To make their suggestions or recommendations operative, bills or resolutions must be introduced embodying the provisions recommended, or their substance, and these must be enacted into law. If a treaty is recommended by peace commissioners it must be submitted to the Senate and by it ratified. The acts of such a commission do not bind the President, Senate, or the Government. Then such commissioners neither make, execute, nor interpret law. They do not possess or exercise any of the sovereign power of the Government of the United States.

That the Senate may feel that it ought to ratify or approve the recommendations of such a commission can make no difference, the fact remains that their acts are not binding upon anyone or upon any departments of the Government.

If the Congress of the United States should see fit by joint resolution to authorize the President to appoint ten persons as commissioners, whose duties it should be to investigate the condition of the people residing in Puerto Rico and recommend laws suitable to their government, and should appropriate money to pay the expenses of the commission,

> would anyone contend that such commissioners when appointed would become other than mere agents of the Congress for the purposes specified? Would they possess or exercise legislative, executive, or judicial functions or powers? Such commissioners would possess the mere naked power to investigate and report, and their action would conclude no one, nor would they execute or interpret any law. Their action would not affect in the slightest degree the personal or property rights of a single citizen of the Republic. . . .

[176]

House Report No. 2205, 55th Cong. 3d Sess., as quoted in 1 Hinds, Precedents of the House of Representatives section 493, at 608, 610-11 (1907).

The Northern Mariana Islands Commission on Federal Laws differs in no material respect from the Hawaii commission or the hypothetical Puerto Rico commission discussed in House Report No. 2205.

The Commission administers no law; it has no executive or rule-making functions. The Commission only recommends, and its recommendations are directed only to the Congress. In that respect, it is similar to the National Commission on Air Quality, the majority of the members of which are appointed, just as are the members of this Commission, by the President. Public Law 95-95, section 313, 91 Stat. 785 (1977), as amended by Public Law 95-190, section 14(a) (81) and (82), 91 Stat. 1404 (1977). Congress has classified that commission as part of the legislative branch. See Public Law 96-19, section 4(b)(1), 93 Stat. 37 (1979), 2 U.S.C.A. section 701(e) (Supp. 1980).

The heading under which appropriations are made to the Commission is irrelevant to its juridical status. Eltra Corp. v. Ringer, 579 F.2d 294, 301 (4th Cir. 1978).

The Commission has no rule-making or adjudicative functions within the meaning of the Adminsitrative Procedure Act.

Because the Commission reports only to Congress, unlike many commissions which report to the President or to the President and Congress, it is not an advisory committee within the meaning of the Federal Advisory Committee Act, Public Law 92-463, 86 Stat. 770 (1972) as amended. (The Federal Advisory Committee Act applies only to entities which render advice to the President or agencies or officers of the Federal Government. Section 3(2). The U.S. Congress is not such an agency and its members are not officers of the Government. Liberation News Service v. Eastland, 426 F.2d 1379, 1382 (2d Cir. 1970); Gates v. Schlesinger, 366 F. Supp. 797 (D.D.C. 1973).)

Even commissions relatively large in size depend on federal

agencies for administrative support. Thus, the Commission on Governmental Operations (the "Hoover Commission") wrote in an early report: [177]

> The Commission also determined that an expensive administrative staff and a heavy overhead expense could not be justified. Therefore, rather than organize a payroll section, a supply section, a fiscal section, a budget section, a personnel section, and the other usual administrative organizational units, the Commission arranged to get these services from other Government agencies on a reimbursable basis.

Commission on Organization of the Executive Branch of the Government, Progress Report to the Congress, December 31, 1954, at pages 3-4.

Northern Mariana Islands Commission on Federal Laws Washington, D.C. 20240 (202) 343-5617

[178]

A Survey of Rights and Duties of United States Citizenship, As provided in the United States Code, With Notes on Extending those Rights and Duties To Citizens of the Northern Mariana Islands Prior to Termination of the Trusteeship

September 1, 1981

Introduction.

Citizens of the Northern Mariana Islands will become citizens of the United States, unless they choose to become U.S. nationals, at termination of the present trusteeship.* The date for termination of the trusteeship remains uncertain. [179]

Already citizens of the Northern Mariana Islands are treated as though they were U.S. citizens for some purposes. For example, the Immigration and Naturalization Service allows citizens of the Northern Mariana Islands to enter and leave the United States just as do U.S. citizens. Public Law 96-351, enacted September 15, 1980, allows citizens of the Northern Mariana Islands to enter enlist in the U.S. Armed Forces. Presidential Proclamation 4568, dated May 9, 1978, suspends application of the U.S. citizenship requirement for jury service to allow citizens of the Northern Mariana Islands to serve as jurors in the District Court for the Northern Mariana Islands (although not in other federal courts).

This survey attempts to catalog all provisions in the United States Code that attach particular rights or duties to U.S. citizenship. The purpose of the survey is to aid in identifying those rights or duties which should be extended to citizens of the Northern Mariana Islands prior to termination of the trusteeship.

Scope.

In making this survey, the following sources were examined:

(1) The 1976 edition of the United States Code;

(2) Supplement I to the 1976 Code, issued in 1977; and

(3) All later public laws enacted by the U.S. Congress until conclusion of the 96th Congress in December 1980.

All statutes listed in the survey have been checked for subsequent amendment or repeal through conclusion of the 96th Congress in December 1980.

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*Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (hereinafter, "the Covenant"), approved by Public Law 94-241, 90 Stat. 263 (1976), Sections 301-03, 1003.

Methodology.

[180] The survey was accomplished with the use of the JURIS legal research computer, which was instructed to search the above-listed sources for all statutes containing the word "citizen" or any variant thereof ("citizen!" in JURIS parlance) or the word "alien" or any variant thereof ("alien!"). Each of the statutes found was then read to determine whether it contained a meaningful distinction based on U.S. citizenship. (Many statutes culled by the computer referred to other uses of the identifying words, for example, "senior citizens", "promotion of good citizenship," and "alienation of land".) All statutes found to contain such distinctions are included in the listing below.

Comprehensiveness.

The "alien" and "citizen" searches may not have identified all possible distinction in the United States Code between U.S. citizens and other persons. No search has been made for such terms as "United States person," "domestic corporation," or "foreign corporation," which might identify other such distinctions. Nonetheless, the present listing is believed to be rather complete. A search for the term "noncitizen" or variants thereof, for example, yielded no additional references.

Descriptions.

The brief descriptions of the operation of the statutes listed herein give only the gist of each statute as it relates to U.S. citizenship. A statute may impose requirements additional to U.S. citizenship or it may allow exceptions to citizenship requirements, with such additions or exceptions not noted in this listing. It may also include other provisions having nothing to do with citizenship, which likewise are not noted here.

Recommendations For Legislation.

Draft recommendations for treatment of citizens of the Northern Mariana Islands as citizens of the United States for purposes of particular statutes prior to termination of the trusteeship have been prepared as separate documents. An asterisk (*) preceding a statute in this survey indicates that statute is included in such a recommendation.

* * *

The survey, organized by title and section of the United States Code, follows:

TITLE 1. GENERAL PROVISIONS.

[No provisions.] [181]

TITLE 2. THE CONGRESS.

2 U.S.C. section 6 reduces representation in the U.S. House of Representatives of States that deny or abridge rights of U.S. citizens to vote.

2 U.S.C. section 169 allows the Library of Congress to employ up to fifteen aliens without regard to prohibitions of employment of aliens in appropriation acts.

*2 U.S.C. section 441e prohibits nonresident aliens from making contributions to political campaigns for Federal office.

TITLE 3. THE PRESIDENT.

[No provisions.]

TITLE 4. FLAG AND SEAL, SEAT OF GOVERNMENT, AND THE STATES.

[No provisions.]

TITLE 5. GOVERNMENT ORGANIZATION AND EMPLOYEES.

*5. U.S.C. section 552a (a)(2) limits the protections of the Privacy Act to U.S. citizens and resident aliens.

5 U.S.C. section 5102 (c)(11) exempts from the requirements of civil service position classification positions outside the United States occupied by noncitizens.

*5 U.S.C. section 5342 (c) requires that certain blue-collar civil service employees entitled to compensation at prevailing wages in a particular area, within the several States or the District of Columbia, be residents of one of the States or the District of Columbia or a U.S. citizen unless the Secretary of Labor certifies no such resident or citizen is available.

*5 U.S.C. section 5343 (a)(5) requires the Office of Personnel Management to establish wage schedules and rates for U.S. citizen prevailing-rate employees who are employed outside the United States, its territories and possession, or the Trust Territory of the Pacific Islands.

*5 U.S.C. section 5561 requires that missing Federal employees,

to be eligible for continued full pay and certain allowances, be citizens or nationals of the United States or aliens admitted for
[182] permanent residence in the United States.

*5 U.S.C. section 5595 (a)(2)(iii) excludes from the definition of employees entitled to severance pay on involuntary separation from the civil service aliens employed outside the several States, the District of Columbia, or the Canal Zone.

*5 U.S.C. section 5912 allows U.S. citizens employed by the United States in a foreign country to be furnished living quarters and utilities in a Government owned or rented building.

*5 U.S.C. section 5922 (a) limits the payment of overseas differentials and allowances to civil service employees who are U.S. citizens unless payment to a noncitizen is authorized specifically by another statute.

5 U.S.C. section 5924 (4)(B) authorizes payment of college travel expenses for dependents of U.S. citizens who are civil service employees stationed in the Canal Zone, among others. (The Canal Zone was terminated as a juridical entity by the Panama Canal Treaty of 1977.)

*5 U.S.C. section 6301 (2)(viii) excludes aliens employed outside the United States from civil service annual and sick leave benefits.

5 U.S.C. section 6310 allows heads of agencies to grant leave with pay, not in excess of the amount of annual and sick leave available to citizens, to alien employees outside the United States.

*5 U.S.C. section 7103 (a)(2), added by section 701 of Public Law 95-454, the Civil Service Reform Act of 1978, enacted October 13, 1978, excludes aliens employed outside the United States from civil service collective bargaining, grievance, and other labor rights.

*5 U.S.C. section 7532 (c) gives civil service employees suspended from employment for reasons of national security who are U.S. citizens certain notice and hearing rights.

5 U.S.C. section 8137 allows the Secretary of Labor to modify the compensation payable to certain non-resident alien employees for injuries sustained in civil-service employment.

5 U.S.C. section 8138 removes certain minimum limits on monthly

pay used to compute death and disability benefits for noncitizen civil-service employees injured outside the United States.

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*5 U.S.C. section 8171 makes citizens or residents of the United States or its territories or possessions employed by nonappropriated fund instrumentalities (such as post exchanges) ouside the United States eligible for compensation for work-related injuries pursuant to the provisions of the Longshoremen's and Harbor Workers' Compensation Act (Chapter 18 of Title 33, U.S.C.).

*5 U.S.C. section 8172 allows compensation for work-related injuries to be established by regulation for employees of nonappropriated fund instrumentalities outside of the United States who are not citizens or residents of the United States or its territories or possessions.

5 U.S.C. section 8331 (1)(j) includes among federal employees entitled to retirement benefits certain aliens employed by the United States and subsequently employed by a foreign government at the expense of the United States to protect or further U.S. interests.

5 U.S.C. section 8335 (c), as amended by Public Laws 95-256, enacted April 6, 1978, and 96-70, enacted September 27, 1979, specified time of mandatory retirement for certain U.S. citizens employed by the Panama Canal Commission.

*5 U.S.C. section 8501 (1)(D) excludes in determining for civil service unemployment benefits, employment of non-citizens outside the United States, Puerto Rico, and the Virgin Islands.

*5 U.S.C. section 8701 (a) excludes from participation in the federal employees life insurance program persons who are not citizens or nationals of the United States who are employed outside the United States and the Panama Canal Zone.

*5 U.S.C. section 8901 (1) excludes from participation in the federal employees health insurance program persons who are not citizens or nationals of the United States who are employed outside the United States or the Panama Canal Zone.

TITLE 6. SURETY BONDS.

6 U.S.C. section 7 requires companies issuing surety bonds required by federal law to appoint agents in each State or Territory where it issues such bonds and requires that the agent be a citizen of that State or Territory (and, thus, a citizen of the United States).

TITLE 7. AGRICULTURE.

[184] *7 U.S.C. section 1704 (j) allows U.S. citizens to purchase, for dollars, foreign currencies accumulated from the sale of agricultural commodities overseas, if those currencies are in excess of U.S. government needs.

*7 U.S.C. section 1736d cuts off assistance agreements for the sale of agricultural commodities to foreign countries that expropriate property owned by U.S. citizens.

*7 U.S.C. section 1922 requires recipients of certain agricultural real estate laons to be U.S. citizens. But see section 1996, below.

*7 U.S.C. section 1934, added by section 113 of Public Law 95-334, the Agricultural Credit Act of 1978, enacted August 4, 1978, requires recipients of certain loans to low-income farm owners to be U.S. citizens.

*7 U.S.C. section 1941 (a) requires recipients of certain agricultural operating loans to be U.S. citizens. But see section 1996, below.

*7 U.S.C. section 1961 (a) requires recipients of certain agriculture and aquaculture disaster loans to be U.S. citizens. But see section 1996, below.

7 U.S.C. section 1996, added by section 2(3) of Public Law 96-438, enacted October 13, 1980, to amend the Consolidated Farm and Rural Development Act (Public Law 87-128), allows aliens lawfully admitted for permanent residence to obtain loans authorized under sections 1922, 1941, and 1961, above.

*7 U.S.C. section 2015 (f) (Supp. I) excludes most aliens not lawfully admitted for permanent residence in the United States from participation in the food stamp program.

7 U.S.C. section 2020 (e)(18), added by section 118 of Public Law 96-249, the Food Stamp Act Amendments of 1980, enacted May 26, 1980, requires State food stamp plans to provide for immediate reporting to the Immigration and Naturalization Service of denial of food stamps to aliens ineligible to receive food stamps because unlawfully present in the United States.

7 U.S.C. sections 3501-08, added by Public Law 95-460, the Agricultural Foreign Investment Disclosure Act of 1978, enacted October 14, 1978, require "foreign persons" to report their

transactions in and holdings of agricultural land in the United States. Section 3508(3)(A)(ii), however, excludes from the definition of "foreign person" citizens of the Northern Mariana Islands. [185]

TITLE 8. ALIENS AND NATIONALITY.

[Citizens of the Northern Mariana Islands are treated by the Immigration and Naturalization Service as American citizens for purposes of inspection on entry into the United States.

In general, the immigration and naturalization laws of the United States do not apply to the Northern Mariana Islands. See section 503(a) of the Covenant.

The entire title treats the rights of aliens entering or within the United States and the process by which an alien becomes a U.S. citizen. The title also specifies who is a U.S. citizen at birth.]

*8 U.S.C. section 1103 requires that the Commissioner of Immigration and Naturalization be a U.S. citizen.

*8 U.S.C. section 1104 (b) (Supp. I) requires that the Assistant Secretary of State for Consular Affairs be a U.S. citizen.

8 U.S.C. section 1151 excludes from numerical limitations on the admission of aliens into the United States the children, spouse, or parents of a U.S. citizen.

8 U.S.C. section 1151a excludes from numerical limitations on the admission into the United States of immigrant aliens, lawfully admitted for permanent residence and returning from temporary visits abroad, the children, spouse, or parents of a U.S. citizen.

8 U.S.C. section 1152 (c) excludes from numerical limitations on the admission into the United States from colonies of foreign states aliens who are the children, spouse, or parents of a U.S. citizens. Subsection (e) provides preferential treatment in the issuance of certain visas for specified relatives of U.S. citizens.

8 U.S.C. section 1153 (a) allocates visas among aliens subject to numerical limitations by country of origin according, in part, to their relationship to U.S. citizens.

8 U.S.C. section 1154 (a) authorizes U.S. citizens to petition for classification of an alien as an immediate relative or other relative entitled to preference in admission into the United States.

8 U.S.C. section 1182 (b) exempts from certain literacy requirements for immigrating aliens specified relatives of U.S. citizens. Subsection (h) allows the discretionary admission of aliens convicted of certain crimes if they are related to U.S. citizens and their nonadmission would result in extreme hardship for a relative who is a U.S. citizen. Subsection (i) allows the discretionary admission of certain immediate relatives of U.S. citizens despite prior fraud, misrepresentation, or perjury in procuring a visa entering the United States.

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8 U.S.C. section 1184 (d) authorizes admission into the United States of nonimmigrant aliens in order to marry, on the petition of their U.S. citizen-fiancees or fiances.

8 U.S.C. section 1185 as amended by section 707 of Public Law 95-426, the Foreign Relations Authorization Act, Fiscal Year 1979, enacted October 7, 1978, prohibits the movement of aliens into or out of the United States unless according to law and forbids U.S. citizens to enter or leave the United States without a valid passport.

8 U.S.C. section 1201 (c) allows an immigrant visa issued to a child adopted by a U.S. citizen overseas to be valid for up to three years rather than the normal four months.

8 U.S.C. section 1222 authorizes detention of aliens arriving in the United States afflicted with certain diseases or physical or mental disabilities.

8 U.S.C. section 1223 authorizes the temporary removal and detention of aliens from vessels or aircraft bringing them into the United States for examination and inspection to determine their eligibility to enter the United States.

8 U.S.C. section 1224 permits physical and mental examinations of all aliens arriving in the United States.

8 U.S.C. section 1225 authorizes inspection and detention for further inquiry of all persons seeking to enter the United States, and temporary or permanent exclusion of aliens not entitled to enter.

8 U.S.C. section 1226 governs proceedings for exclusion of aliens.

8 U.S.C. section 1227 authorizes immediate deportation from the United States of aliens excluded from admission into the United States or entering the United States illegally.

8 U.S.C. section 1251 (a) enumerates the grounds for deportation of an alien from the United States. Subsection (f) excludes from deportation, on grounds of excludability at time of entry for fraud or misrepresentation in procuring a prior visa or prior entry into the United States, aliens who are the spouse, parent, or child of a U.S. citizen. [187]

8 U.S.C. section 1252 specifies procedures for apprehension and deportation of aliens.

8 U.S.C. section 1254 allows suspension of deportation in certain instances of an alien who is the spouse, parent, or child of a U.S. citizen.

8 U.S.C. section 1281 requires listing of all alien crewman of any vessel or aircraft on arrival in the United States from outside the United States and on departure from the United States.

8 U.S.C. section 1282 forbids alien crewmen from landing in the United States except by permit.

8 U.S.C. section 1283 requires the hospitalization of alien crewmen afflicted with certain diseases and disabilities.

8 U.S.C. section 1285 forbids employment of aliens afflicted with certain diseases or disabilities on vessels or aircraft carrying passengers between U.S. and foreign ports.

8 U.S.C. section 1301 requires an alien to be registered and fingerprinted before a visa may be issued.

8 U.S.C. section 1302 requires registration of all unregistered aliens in the United States.

8 U.S.C. section 1303 authorizes special regulations for registration of certain enumerated categories of aliens.

8 U.S.C. section 1304 (e) requires aliens in the United States to carry with them at all times proof of alien registration.

8 U.S.C. section 1305 requires aliens in the United States to keep the Attorney General informed of their current address.

8 U.S.C. section 1306 makes criminal certain willful violation of the alien registration requirements.

8 U.S.C. section 1325 establishes criminal penalties for illegal entry by an alien into the United States.

8 U.S.C. section 1326 establishes criminal penalties for illegal reentry into the United States by an alien previously deported.

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8 U.S.C. section 1351 authorizes fees for nonimmigrant visas.

*8 U.S.C. section 1355 (a) requires concessionnaires at immigration stations to be U.S. citizens.

8 U.S.C. section 1357 (a) gives officers and employees of the Immigration and Naturalization Service the power to arrest aliens without an arrest warrant and to interrogate aliens and persons believed to be aliens.

8 U.S.C. section 1360 requires the Immigration and Naturalization Service to maintain a central file of all aliens admitted into or excluded from the United States.

8 U.S.C. section 1401 declares certain children born outside the United States, one or both parents of whom is a U.S. citizen, to be U.S. citizens at birth.

8 U.S.C. section 1401a declares certain children born outside the United States, one parent of whom is a U.S. citizen who served in the U.S. Armed Forces between 1941 and 1952, to be U.S. citizens at birth subject to loss of such citizenship if certain conditions are not met.

8 U.S.C. section 1403 declares children (1) born in the Panama Canal Zone of parents one or both of whom is a U.S. citizen, or (2) born in the Republic of Panama of such parents if one or both was employed by the U.S. government or the Panama Railroad Company, to be U.S. citizens.

8 U.S.C. section 1430 eases residency requirements for naturalization of aliens who are spouses or surviving spouses of U.S. citizens.

8 U.S.C. section 1431 grants automatic naturalization to natural children of parents, one of whom is a U.S. citizen, on naturalization of the other parent.

8 U.S.C. section 1433 allows naturalization of natural children born outside the United States without any period of residency in the United States if one or both parents is a U.S. citizen.

8 U.S.C. section 1435 eases naturalization requriements for former U.S. citizens who lost their citizenship by reason of marriage to an alien spouse.

8 U.S.C. section 1438 eases naturalization requirements for former U.S. citizens who lost their citizenship by reason of service in the armed forces of a foreign country allied with the United States during World War II. [189]

8 U.S.C. section 1446 requires affiants supporting a petitioner for naturalization to be U.S. citizens.

8 U.S.C. section 1481 governs loss of nationality by U.S. citizens.

8 U.S.C. section 1555 authorizes the Immigration and Naturalization Service to employ interpreters and translators who are not U.S. citizens.

TITLE 9. ARBITRATION.

9 U.S.C. section 202 excludes from enforcement, under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, arbitration agreements entirely between U.S. citizens unless the agreement has a reasonable relation to one or more foreign states.

TITLE 10. ARMED FORCES.

*10 U.S.C. section 311 limits membership in the militia of the United States, including the National Guard, to U.S. citizens or persons who have declared their intention to become U.S. citizens.

*10 U.S.C. section 312 (a)(8) exempts from militia duty mariners in the "sea service" of a U.S. citizen.

*10 U.S.C. section 351 allows the President to arm American vessels to protect U.S. citizens and their property or commercial interests from the application of force by a foreign government.

*10 U.S.C. section 510 requires, in general, that members of reserve components of the U.S. armed forces be citizens or lawfully admitted permanent residents of the United States.

*10 U.S.C. section 532 (a)(1), added by section 104 of Public Law 96-513, the Defense Officer Personnel Management Act, enacted December 12, 1980, requires that officers in the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps be U.S. citizens.

*10 U.S.C. section 591 requires, in general, that no person be

appointed as a Reserve in the U.S. armed forces unless a U.S. citizen or lawfully admitted permanent resident of the United States.

[190] *10 U.S.C. section 1486 allows the Secretary of Defense to provide on a reimbursable basis mortuary services for certain U.S. citizens who die outside the United States.

10 U.S.C. section 1584 exempts from laws prohibiting employment of aliens by the United States aliens employed in research and development activities of a military department if their employment is determined to be necessary by the Secretary of that department.

*10 U.S.C. section 2004 requires officers of the armed forces eligible for detail as law students to be U.S. citizens.

*10 U.S.C. section 2031 (b)(1), as amended by Public Law 95-358, enacted September 8, 1978, requires, to establish or maintain a unit of the Junior Reserve Officers' Training Corps, that the unit contain at least 100 eligible U.S. citizens or nationals.

*10 U.S.C. section 2104 requires persons eligible to receive advanced training in the Senior Reserve Officers' Training Corps to be U.S. citizens.

*10 U.S.C. section 2107 (b)(1) requires members of the Senior Reserve Officers' Training Corps to be U.S. citizens in order to be eligible for appointment in the reserve of an armed force and thus eligible for special financial educational assistance.

*10 U.S.C. section 2107a (b)(1), added by section 1(c)(1) of Public Law 96-357, enacted September 24, 1980, requires cadets appointed to the Reserve Officers' Training Corps at certain military junior colleges to be U.S. citizens.

*10 U.S.C. section 2122 requires U.S. citizenship as a condition of eligibility for participation in an armed forces health scholarship program.

*10 U.S.C. section 2272 limits to U.S. citizens contracts for furnishing certain aircraft parts winning design competitions for the encouragement of aviation.

*10 U.S.C. section 2279 prohibits aliens employed by the contractors mentioned in section 2272, above, from contact with the plans or specifications for or with the aircraft part being furnished, except with the written consent of the Secretary of the military department to which the part is being furnished.

*10 U.S.C. section 2545 (a), added by Public Law 95-492, enacted October 20, 1978, authorizes the Secretary of Defense to provide transportation on a reimbursable basis to U.S. citizen delegates [191] coming from outside the United States to triennial meetings of the National Council of the Girl Scouts of the United States of America.

10 U.S.C. section 2668 allows the Secretary of a military department to grant easements across military lands to citizens of any State, Territory, Commonwealth, or possession (and, by implication, only to U.S. citizens) among others.

10 U.S.C. section 2669 allows the Secretary of a military department to grant easements across military lands for gas, water, and sewer pipelines to citizens of any State, Territory, Commonwealth, or possession (and, by implication, only to U.S. citizens) among others.

10 U.S.C. section 3253 limits enlistment in the Army to U.S. citizens or persons lawfully admitted for permanent residence in the United States. Public Law 96-351, 94 Stat. 1161 (1980), permits a citizen of the Northern Mariana Islands to enlist in the Army upon declaration in writing of intent to become a U.S. citizen upon full implementation of the Covenant.

*10 U.S.C. section 4308 (a)(2) limits to U.S. citizens eligibility for instruction in marksmanship under the auspices of the Secretary of the Army.

*10 U.S.C. section 4348 requires U.S. Military Academy Cadets who are U.S. citizens or nationals to agree to complete the course of instruction and to serve as officers in the armed forces for a stipulated period after graduation.

10 U.S.C. section 4771 allows the Secretary of the Army to accept gifts of land from U.S. citizens for use as aviation fields.

*10 U.S.C. section 6019 requires all officers of all vessels of the United States to be U.S. citizens.

*10 U.S.C. section 6911 (a) limits participation in the Navy's aviation cadet program to U.S. citizens.

10 U.S.C. section 6957 prohibits persons from foreign countries, with certain exceptions, from attending the U.S. Naval Academy.

*10 U.S.C. section 6958 requires candidates for the U.S. Naval Academy nominated by the Secretary of the Navy from the Regular Navy,

the Regular Marine Corps, the Naval Reserve, or the Marine Corps Reserve to be U.S. citizens.

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*10 U.S.C. section 6959 requires U.S. Naval Academy midshipmen who are U.S. citizens or national to agree to complete the course of instruction and to serve as officers in the armed forces for a stipulated period after graduation.

10 U.S.C. section 7435 prohibits foreign citizens from having any interest in a lease of naval fuel reserves if the country of their citizenship denies U.S. citizens the right to lease public lands in that country.

10 U.S.C. section 7473 allows the Navy to employ aliens with special technical or scientific knowledge or experience not readily obtainable from a citizen, notwithstanding laws prohibiting payment of compensation to aliens.

10 U.S.C. section 7672 allows naval prize courts to restore recaptured vessels to their foreign owners if the owner's government in similar circumstances would restore a vessel to the ownership of a U.S. citizen.

10 U.S.C. section 8253 limits enlistment in the Air Force to U.S. citizens or persons lawfully admitted for permanent residence in the United States. Public Law 96-351, 94 Stat. 1161 (1980), permits a citizen of the Northern Mariana Islands to enlist in the Air Force upon declaration in writing of intent to become a U.S. citizen upon full implementation of the Covenant.

*10 U.S.C. section 8257 requires Air Force aviation cadets to be U.S. citizens.

*10 U.S.C. section 9348 requires U.S. Air Force Academy cadets who are U.S. citizens or nationals to agree to complete the course of instruction and to serve as officers in the Air Force for a stipulated period after graduation.

10 U.S.C. section 9771 allows the Secretary of the Air Force to accept gifts of land from U.S. citizens for use as aviation fields.

TITLE 11. BANKRUPTCY.

[No provisions.]

TITLE 12. BANKS AND BANKING.

*12 U.S.C. section 72, as amended by section 2 of Public Law

95-369, the International Banking Act of 1978, enacted September 17, 1978, requires, in general, directors of a national bank to be U.S. citizens. [193]

*12 U.S.C. section 619 requires, in general, the majority of the stock in the corporations organized to engage in international or foreign banking or financial operations, or banking or financial operations in a U.S. dependency or possession, to be held by U.S. citizens.

*12 U.S.C. section 1427 (a) requires directors of Federal home loan banks to be U.S. citizens.

*12 U.S.C. section 1812 specifies that the Board of Directors of the Federal Deposit Insurance Corporation shall consist of the Comptroller of the Currency and two U.S. citizens appointed by the President with the advice and consent of the Senate.

*12 U.S.C. section 1813 (m)(2), as added by section 6(c)(4) of Public Law 95-369, the International Banking Act of 1978, enacted September 17, 1978, includes within the term "insured deposit," for purposes of the laws insuring bank deposits, deposits by U.S. citizens or residents in U.S. branches of foreign banks.

*12 U.S.C. section 2222 (b) requires members of boards of directors of farm credit district boards to have been U.S. citizens for at least ten years.

*12 U.S.C. section 2242 requires members of the Federal Farm Credit Board to have been U.S. citizens for at least ten years and requires the representative of the Secretary of Agriculture on the Baord to be a U.S. citizen.

12 U.S.C. section 3101 (1), added by section 1(b)(1) of Public Law 95-369, the International Banking Act of 1978, enacted September 17, 1978, defines an "agency" of a foreign bank in the United States for purposes of the laws governing foreign bank participation in U.S. markets, as an office at which deposits may not be accepted from U.S. citizens or residents.

TITLE 13. CENSUS.

*13 U.S.C. section 22 requires all permanent officers and employees of the Bureau of the Census to be U.S. citizens.

TITLE 14. COAST GUARD.

[194] *14 U.S.C. section 371 (a) requires Coast Guard aviation cadets recruited from civilian life to be U.S. citizens.

*14 U.S.C. section 500 (b) authorizes the award of life-saving medals outside U.S. waters if the rescuer or the person rescued is a U.S. citizen or if the rescue is from a vessel or aircraft owned or operated by U.S. citizens.

*14 U.S.C. section 706, added by section 1 of Public Law 96-322, requires that temporary members of the Coast Guard Reserve be U.S. citizens.

*14 U.S.C. section 823 limits membership in the Coast Guard Auxiliary to U.S. citizens.

TITLE 15. COMMERCE AND TRADE.

15 U.S.C. section 77 allows the President to cause detention of vessels discriminating, because required to do so by a belligerent country, in favor of or against U.S. citizens residing in neutral countries during a war in which the United States is not engaged, and prescribes penalties for discrimination against vessels or citizens of any belligerent counry that discriminates against U.S. vessels or citizens.

15 U.S.C. section 78g prohibits U.S. citizens from purchasing U.S. securities on credit unless specified requirements are met.

15 U.S.C. section 78dd-2 prohibits U.S. citizens from bribing foreign officials for business purposes.

15 U.S.C. section 78ff penalizes persons who are U.S. citizens, nationals, or residents or who are otherwise subject to the jurisdiction of the United States and who, as employees or agents of a regulated firm, bribe foreign officials for businesss purposes.

15 U.S.C. section 144 (a) requires the majority of the incorporators of a China Trade Act corporation to be U.S citizens. Subsection (c) prohibits such a corporation from owning or operating a vessel unless the controlling interest in the corporation is owned by U.S. citizens.

15 U.S.C. section 149 requires a majority of the directors, the president, and the treasurer of a China Trade Act corporation to be U.S. citizens resident in China.

15 U.S.C. section 278g (c), enacted on October 15, 1980 as part of Public Law 96-461, permits the National Bureau of Standards to employ aliens as scientific or engineering personnel, notwithstanding statutory prohibitions against Government payment of compensation to aliens. [195]

15 U.S.C. section 1124 prohibits importation of goods infringing trademarks registered in the United States, or in foreign countries giving similar protection to citizens of the United States.

*15 U.S.C. section 1126 (i) provides that U.S. citizens or residents shall receive all benefits afforded by the United States to foreign citizens pursuant to international trademark conventions.

*15 U.S.C. section 2509 (i) requires that recipients of certain federally-guaranteed loans for the development of electric and hybrid vehicles be U.S. citizens.

TITLE 16. CONSERVATION.

16 U.S.C. section 5 allows U.S. citizens to obtain rights-of-way through national park lands for power and communications facilities.

*16 U.S.C. section 19f includes on the Board of the National Park Foundation "no less than six private citizens of the United States appointed by the Secretary of the Interior."

16 U.S.C. section 79 allows the Secretary of the Interior to grant to U.S. citizens rights-of-way for public utilities through certain public lands and national parks.

16 U.S.C. section 80 protects preexisting rights of U.S. citizens in the Kings Canyon National Park.

16 U.S.C. section 420 allows U.S. citizens to obtain rights-of-way through military and other reservations for power and communications facilities.

*16 U.S.C. section 4601-6a (a)(4) authorizes issuance of free permits to enter national parks and recreation areas to persons over sixty-two years of age who are U.S. citizens or domiciliaries. Paragraph (5), added by section 9(2) of Public Law 96-344, enacted September 8, 1980, offers the free permit to blind or permanently disabled persons who are U.S. citizens or domiciliaries.

*16 U.S.C. section 463 (a) limits membership on the National Park System Advisory Board to U.S. citizens.

*16 U.S.C. section 468b requires the six general trustees of the National Trust for Historic Preservation to be U.S. citizens.

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*16 U.S.C. section 742c (b)(7) requires applicants for certain commercial fishery loans from the U.S. government to be U.S. citizens or nationals.

16 U.S.C. section 781 forbids U.S. citizens to take undersize commercial sponges in the Gulf of Mexico or the Straits of Florida.

*16 U.S.C. section 797 (e) requires recipients of Federal Power Commission licenses to be U.S. citizens. The same subsection expressly extends the jurisdiction of the Commission to streams and other bodies of water in "the Territories".

*16 U.S.C. section 831a (e) requires members of the board of directors of the Tennessee Valley Authority to be U.S. citizens.

16 U.S.C. section 1100a-3 excludes from the definition of vessels not permitted to land or transfer certain fish vessels acquired by a U.S. citizen or resident alien before October 27, 1971. (By its terms the chapter containing this section expires on October 27, 1977.)

*16 U.S.C. section 1106 permits the Roosevelt Campobello International Park Commission to employ U.S. and Canadian citizens.

16 U.S.C. section 1432 (g) limits to U.S. citizens and certain other persons subject to U.S. jurisdiction the applicability of regulations governing areas outside the United States designated as marine sanctuaries.

*16 U.S.C. section 1821 (c)(2)(G) requires a foreign nation permitted to fish in the U.S fishery conservation and management zone and its vessels to agree to reimburse U.S. citizens for any loss of or damage to their fishing vessels, gear, or catch caused by any fishing vessel of that nation.

16 U.S.C. section 2402 (16), added by section 3(16) of Public Law 95-541, the Antarctic Conservation Act of 1978, enacted October 28, 1978, defines "U.S. citizen," for purposes of the Act, as including a U.S. citizen or national. Subsection (15) defines "United States" to include "the Trust Territory of the Pacific Islands, including the Government of the Northern Mariana Islands."

16 U.S.C. section 2403, added by section 4 of Public Law 95-541, above, makes unlawful certain activities by U.S. citizens, wherever located, that are injurious to Antartic wildlife.

16 U.S.C. section 2406, added by section 7 of Public Law 95-541, above, authorizes the Secretary of State to require U.S. citizens to give advance notification of expeditions to or within the Antarctic. [197]

16 U.S.C. section 2802 (5), added by section 3(5) of Public Law 96-362, the National Aquaculture Act, enacted September 26, 1980, defines a "person" eligible to receive a grant or contract under the Act as an individual who is a U.S. citizen or national or a citizen of any State. "State" is defined in subsection (8) to include the Commonwealth of the Northern Mariana Islands.

TITLE 17. COPYRIGHTS.

*17 U.S.C. section 104 (b) (Supp. I) grants protection for published works under the U.S. copyright laws to, among other categories, works of which one or more authors is a national or domiciliary of the United States.

TITLE 18. CRIMES AND CRIMINAL PROCEDURE.

18 U.S.C. section 7 defines, for purposes of enforcing U.S. criminal laws, the special maritime and territorial jurisdiction of the United States to include vessels and aircraft owned in whole or in part by U.S. citizens when on the high seas or within the admiralty and maritime jurisdiction of the United States but beyond the maritime jurisdiction of any particular state.

18 U.S.C. section 9 defines "vessel of the United States" for purposes of enforcing U.S. criminal laws to include any vessel owned in whole or in part by a U.S. citizen.

18 U.S.C. section 241 makes criminal conspiracies to deprive U.S. citizens of their rights. (The protection is expressly limited to U.S. citizens. Baldwin v. Franks, 120 U.S. 678 (1887).)

*18 U.S.C. section 243 makes criminal discrimination against U.S. citizens eligible for jury service on account of race, color, or previous condition of servitude.

*18 U.S.C. section 245 (b)(5) makes criminal interference or attempted interference with the rights of any U.S. citizen encouraging others to enjoy the rights to vote, to benefit from or be employed by federal programs, to serve on federal juries, or, free from racial discrimination, to receive a public education, to benefit from or be employed by a State, to use the services of a labor

organization, hiring hall, or employment agency, to travel using facilities of interstate commerce, or to enjoy public accommodations.

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18 U.S.C. section 546 makes criminally liable citizens or domiciliaries of the United States participating in the ownership and control of U.S. vessels used for smuggling.

18 U.S.C. section 757 makes criminal procuring the escape of enemy aliens apprehended or interned by the United States.

18 U.S.C. section 911 makes criminal false and willful representation of oneself as a citizen of the United States.

18 U.S.C. section 953 makes criminal private correspondence by U.S. citizens with a foreign government with the intent of influencing that government in relation to a dispute or controversy with the United States. (Applications for redress of injury are excepted.)

18 U.S.C. section 958 makes criminal acceptance by a U.S. citizen of a commission to serve a foreign government in war against a nation with which the United States is at peace.

18 U.S.C. section 963 allows the President, during a war in which the United States is neutral, to seize armed vessels owned by U.S. citizens.

18 U.S.C. section 1015 makes criminal false or fraudulent statements in connection with immigration or naturalization matters.

18 U.S.C. section 1081 defines "American vessel," for purposes of the laws prohibiting use of American vessels as gambling ships, as including any vessel owned, operated, or controlled by one or more U.S. citizens.

18 U.S.C. section 1082 makes criminal the operation of gambling ships by U.S. citizens or residents or anyone on an American vessel.

18 U.S.C. section 1585 makes criminal involvement by U.S. citizens or residents in the slave trade.

18 U.S.C. section 1586 makes criminal service on vessels in the slave trade by U.S. citizens or residents.

18 U.S.C. section 1652 makes criminal piracy by U.S. citizens against the United States or U.S. citizens.

18 U.S.C. section 1653 makes criminal piracy by aliens against

the United States or U.S. citizens when in violation of a treaty between the United States and the state of which the alien is a subject. [199]

18 U.SC. section 1654 makes criminal acts of privateering by U.S. citizens against U.S. citizens outside the limits of the United States.

18 U.S.C. section 2381 makes criminal treason by persons "owing allegiance to the United States."

18 U.S.C. section 3042 permits arrest and removal of U.S. citizens or nationals, who commit offenses against laws of the United States, from countries in which the United States exercises extraterritorial jurisdiction.

18 U.S.C. section 3045 permits warrants of arrest for violation of the internal revenue laws to issue on complaint of a private citizen approved by a U.S. attorney. (No law has been found on whether the "private citizen" must be a U.S. citizen.)

18 U.S.C. section 3183 permits extradition of U.S. citizens or nationals from countries in which the United States exercises extraterritorial jurisdiction on request of a State, territory, or possession.

*18 U.S.C. section 4001 (a) prohibits imprisonment or detention of U.S. citizens by the United States except pursuant to an Act of Congress.

*18 U.S.C. section 4100 (b) (Supp. I) provides that only U.S. citizens or nationals may be transferred from foreign to U.S. jails under transfer-of-offender treaties.

18 U.S.C. section 4212 authorizes release from prison and deportation of aliens eligible for parole who are subject to deportation.

*18 U.S.C. section 4321 requires the four presidential appointees to the Board of Advisers for the Federal Reformatory for Women to be U.S. citizens.

18 U.S.C. App. (Unlawful Possession or Receipt of Firearms) section 1202 (a) makes criminal possession of firearms by persons who, having been U.S. citizens, have renounced their citizenship or who are aliens illegally or unlawfully in the United States.

TITLE 19. CUSTOMS DUTIES.

[200] 19 U.S.C. section 128 exempts from a discriminating ad valorem duty goods imported in non-U.S. vessels if the vessel is owned by U.S. citizens and, before leaving an American port, becomes registered as a vessel of the United States.

19 U.S.C. section 131 exempts, from the requirement that goods only be imported in vessels of the United States or of their country of origin, vessels owned by U.S. citizens that before leaving an American port become registered as vessels of the United States.

*19 U.S.C. section 1330 (a) requires members of the United States International Trade Commission to be U.S. citizens.

*19 U.S.C. section 1498 (a)(8) allows the Secretary of the Treasury to prescribe regulations for entry into the United States of personal effects of U.S. citizens who have died in a foreign country.

*19 U.S.C. section 1526(a) makes unlawful importation of merchandise of foreign manufacture bearing a trademark owned by a U.S. citizen and registered in the Patent and Trademark Office unless the written consent of the trademark owner is produced at time of entry.

19 U.S.C. section 1586 (c) penalizes masters of ships from foreign ports who transfer prohibited merchandise to vessels of the United States or to vessels owned by U.S. citizens or domiciliaries. Subsection (e) penalizes U.S. citizens who, at any place in the world assist in the entry or transhipment of prohibited foreign goods.

*19 U.S.C. section 1641 (a) requires customshouse brokers to be U.S. citizens.

19 U.S.C. section 1703 (b) includes vessels of foreign registry owned by U.S. citizens among "vessels of the United States" for purposes of this section, providing for seizure and forfeiture of vessels violating the anti-smuggling laws. (The section, however, makes no other reference to vessels of the United States.)

19 U.S.C. section 1708 makes criminal participation by U.S. citizens (or the master or crew of certain U.S. vessels) in loading liquor on a vessel outside the United States for unlawful importation into the United States.

*19 U.S.C. section 2462 (b)(4) and (6) restrict favorable trade treatment otherwise available to a developing country if the country

has expropriated property of U.S. citizens or if the country fails to enforce arbitral awards in favor of U.S. citizens.

[201]

19 U.S.C. section 2571 (9)(B), added by section 451(9)(B) of Public Law 96-39, the Trade Agreements Act of 1979, enacted July 26, 1979, defines "private persons" as U.S. citizens or nationals, for purposes of authorizing measures to discourage private persons from imposing product standards designed to inhibit importation of foreign goods.

TITLE 20. EDUCATION.

20 U.S.C. section 46a permits the Smithsonian Institution to employ aliens in scientific or technical capacities if no U.S. citizens are available, notwithstanding statutory provisions prohibiting payment of compensation to aliens.

*20 U.S.C. section 72 (a) requires the five general members of the Trustees of the National Gallery of Art to be U.S. citizens.

*20 U.S.C. section 76h (a) requires the thirty general members of the Trustees of the John F. Kennedy Center for the Performing Arts to be U.S. citizens.

*20 U.S.C. section 77 (a) includes on the board of the National Air and Space Museum three U.S. citizens appointed by the President.

*20 U.S.C. section 107a (a)(5) requires that blind persons licensed to operate vending facilities in federal buildings be U.S. citizens.

*20 U.S.C. section 901 authorizes employment of U.S. citizens as teachers in overseas schools operated by the Department of Defense.

*20 U.S.C. section 955 (b) requires that twenty-six members of the National Council on the Arts be appointed by the President, with the advice and consent of the Senate, "from among private citizens of the United States."

20 U.S.C. section 1091 (b) provides that permanent residents of the Trust Territory of the Pacific Islands or of the Northern Mariana Islands are eligible, to the same extent as U.S. citizens, for certain college-level student assistance programs.

*20 U.S.C. section 1132 (b), added by Public Law 96-374, the Education Amendments of 1980, enacted October 3, 1980, defines "individuals" eligible to receive benefits under certain

international education programs as U.S. citizens or permanent residents.

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*20 U.S.C. section 1221-1 declares it to be national policy that every citizen is entitled to an education to meet his or her full potential without financial barriers.

TITLE 21. FOOD AND DRUGS.

21 U.S.C. section 955a(b), added by section 1(b) of Public Law 96-350, enacted September 15, 1980, makes criminal knowing manufacture or distribution, or possession with intent to manufacture or distribute, of any controlled substance by a U.S. citizen on board any vessel. Subsection (a) proscribes similar conduct by anyone on board a vessel owned in whole or in part by U.S. citizens.

TITLE 22. FOREIGN RELATIONS AND INTERCOURSE.

22 U.S.C. section 212 limits the issuance of U.S. passports to those owing allegiance to the United States, whether U.S. citizens or not.

22 U.S.C. section 215 establishes fees for aliens' passport visas.

*22 U.S.C. section 257 excludes U.S. citizens from the treaty jurisdiction of foreign consuls over seamen in the United States enforceable by U.S. courts. The section also requires persons specially deputized by U.S. courts to arrest seamen in aid of a foreign consul's jurisdiction to be U.S. citizens.

*22 U.S.C. section 258 requires immediate release of any seamen arrested pursuant to the treaty jurisdiction of a foreign consul if he is found to be a U.S. citizen; and prevents the enforcing court from imprisoning a foreign seaman on the application of a foreign consul if the rights and duties of a U.S. citizen are directly affected by the matter in dispute.

*22 U.S.C. section 276c-2, added by section 4 of Public Law 95-612, enacted November 8, 1978, authorizes civil service benefits for U.S. citizens employed as Executive Directors and Directors or their alternates by various international development banks and funds.

*22 U.S.C. section 283r requires the United States to oppose, except in specified circumstances, loans by the Inter-American Development Bank to countries which have expropriated property of U.S. citizens.

*22 U.S.C. section 284j requires the United States to oppose, except in specified circumstances, loans by the International Bank for Reconstruction and Development and the International Development Association to countries which have expropriated property of U.S. citizens. [203]

22 U.S.C. section 285g reserves the right of the United States and its political subdivisions to tax the salaries of its citizens or nationals paid by the Asian Development Bank.

*22 U.S.C. section 285o requires the United States to oppose, except in specified circumstances, loans by the Asian Development Bank to countries which have expropriated property of U.S. citizens.

*22 U.S.C. section 287n requires U.S. representatives and alternates to the General Conference of the United Nations Educational, Scientific, and Cultural Organization to be U.S. citizens.

*22 U.S.C. section 287p requires members of the National Commission on Educational, Scientific, and Cultural Cooperation to be U.S. citizens.

22 U.S.C. section 288b authorizes duty-free entry of baggage belonging to alien officers and employees of international organizations.

22 U.S.C. section 288d grants alien officers and employees of international organizations the same privileges, exemptions, and immunities from laws governing aliens in the United States as are enjoyed by officers and employees of foreign governments in the United States.

*22 U.S.C. section 288f preserves the authority of the Secretary of State to withdraw privileges, exemptions, and immunities from laws governing aliens in the United States from officers and employees of international organizations who are nationals of any country that does not provide corresponding privileges, exemptions, and immunities to U.S. citizens.

*22 U.S.C. section 290g-1 (b) allows the Director representing the United States in the African Development Fund, and his alternate, to receive certain compensation and allowances if they are U.S. citizens.

22 U.S.C. section 290g-7 reserves the right of the United States and its political subdivisions to tax the salaries of its citizens or nationals paid by the African Development Fund.

*22 U.S.C. section 290g-8 requires the United States to oppose, except in specified circumstances, loans by the African Development [204] Fund to countries which have expropriated property of U.S. citizens.

22 U.S.C. section 441 allows the President to proclaim a state of war exists between specified foreign states if he finds such a proclamation necessary to protect the lives of U.S. citizens.

22 U.S.C. section 444 (b) permits transportation of refugee children under the charge of U.S. citizens notwithstanding now-repealed restrictions on wartime ship movements.

22 U.S.C. section 445 prohibits U.S. citizens from travelling on any vessel belonging to a state proclaimed to be at war under section 441, above.

22 U.S.C. section 450 permits the President, during any war in which the United States is neutral, to protect commercial interests of U.S. citizens by requiring a bond of vessels on condition that they not deliver war materials or men to states proclaimed to be at war under section 441, above, or on condition that alien seamen not be left in the United States longer than permitted by regulation.

22 U.S.C. section 451 permits the President, during any war in which the United States is neutral, to protect commercial interests of U.S. citizens by placing special restrictions on use of U.S. ports and territorial waters by submarines or armed merchant vessels of a foreign state.

22 U.S.C. section 456 defines U.S. citizen for purposes of the neutrality law (including sections 441, 444, 445, 450, and 451, above).

22 U.S.C. section 463 requires armed vessels owned wholly or in part by U.S. citizens to give bond before leaving U.S ports that they will not engage in hostilities against any people with whom the United States is at peace.

*22 U.S.C. section 526 requires protection of patent rights of U.S. citizens and collection of royalties thereon in all contracts for sale of war materials to other American republics.

*22 U.S.C. section 611 (b)(2) excludes from the definition of "foreign principal," for purposes of the laws requiring registration of certain agents of foreign principals, persons who are U.S. citizens domiciled in the United States. Subsection (d) excludes from the definition of "agent of a foreign principal" certain news or press services or associations the officers and directors of which

are U.S. citizens and at least 80% of which are beneficially owned by U.S. citizens.

[205]

22 U.S.C. section 613 (b) exempts certain foreign officials from the requirement of registering as agents of foreign principals if their duties are of public record in the Department of State, but excludes from the exemption foreign officials who are U.S. citizens.

22 U.S.C. section 618 (c) makes aliens found in violation of laws requiring registration of foreign agents subject to deportation.

*22 U.S.C. section 1448 (Supp. I) authorizes the International Communications Agency to provide assistance to certain libraries and community centers abroad founded or sponsored by U.S. citizens.

*22 U.S.C. section 1451 (Supp. I) authorizes the loan of U.S. Government employees who are U.S. citizens to foreign governments for non-military purposes.

*22 U.S.C. section 1452 provides that U.S. citizens loaned to foreign governments pursuant to section 1451, above, continue to be treated as U.S. Government employees for purposes of compensation, allowances, and benefits.

*22 U.S.C. section 1453 allows U.S. citizens loaned to foreign governments pursuant to section 1451, above, to be appointed to offices in such foreign governments as necessary (but not to take an oath of allegiance to that government).

22 U.S.C. section 1472 (3) authorizes payment of travel expenses and per diem of aliens, in connection with information and educational exchange programs.

22 U.S.C. section 1474 authorizes for information and educational exchange programs, employment of aliens as translators, temporary admission of aliens into the United States, payment of travel expenses of aliens employed abroad and their dependents to and from the United States, payment of tort claims of aliens employed abroad, contracts for services abroad by aliens, and payment of expenses of preparing and transporting home the remains of persons who die away from home while participating in such programs.

22 U.S.C. section 1621 defines "national of the United States" for purposes of determining eligibility for adjudication of claims against foreign governments pursuant to certain treaties.

22 U.S.C. section 1631g (a) limits eligibility for filing claims

based on certain pre-World War II debts to U.S. citizens and residents.

[206]

22 U.S.C. section 1641 defines "national of the United States" for purposes of determining eligibility for adjudication of claims against foreign governments pursuant to certain treaties (distinct from those mentioned under section 1621, above).

22 U.S.C. section 1641c authorizes the Foreign Claims Settlement Commission to determine certain World War II claims of U.S. citizens against Italy.

22 U.S.C. section 1642 defines "national of the United States" for purposes of determining eligibility for adjudication of claims against Czechoslovakia for nationalization of property.

22 U.S.C. section 1643a defines "national of the United States" for purposes of determining eligibility for adjudication of claims against Cuba or China for nationalization of property.

22 U.S.C. section 1644a defines "national of the United States" for purposes of determining eligibility for adjudication of claims against the German Democratic Republic for nationalization of property.

22 U.S.C. section 1645a, added by Public Law 96-606, enacted December 28, 1980, defines "national of the United States" for purposes of determining eligibility for adjudication of claims against Vietnam for nationalization of property.

22 U.S.C. section 1731 requires that naturalized U.S. citizens be afforded the same protections by the U.S. Government while in foreign countries as is given native-born U.S. citizens.

*22 U.S.C. section 1732 requires the President to demand and to take other steps for the release of U.S. citizens unjustly deprived of their liberty by a foreign government.

22 U.S.C. section 1796 authorizes the President to appoint U.S. citizens to the Joint Commission on Rural Reconstruction in China.

22 U.S.C. section 1971, as amended by Public Law 95-541, enacted October 28, 1978, provides that the documentation or certification of a vessel as a U.S. vessel shall not be affected, for purposes of the protections of such vessels against seizures and other losses by foreign countries, by command of the vessel by a person not a U.S. citizen if the vessel is on a voyage for the purpose of fishing beyond the U.S. fishery conservation zone.

*22 U.S.C. section 2103 (e) authorizes the President to create committees composed entirely of U.S. citizens to advise him with respect to international cooperation in health and medical research. [207]

*22 U.S.C. section 2151n-1 instructs the Secretary of State to make every effort to seek the early release of U.S. citizens unjustifiably held in foreign jails and to take steps to enhance the protection and welfare of U.S. citizens imprisoned abroad.

*22 U.S.C. section 2174 authorizes the President to furnish assistance to certain schools, libraries, and hospital centers abroad founded or sponsored by U.S. citizens.

*22 U.S.C. section 2198 limits to U.S. citizens eligibility for investment insurance provided by the Overseas Private Investment Corporation.

*22 U.S.C. section 2351 (b)(4) requires the President to assist U.S. citizens in obtaining just compensation for losses sustained or payments exacted in violation of treaties for commerce, trade, or taxes.

*22 U.S.C. section 2370 (a)(2) prohibits U.S. assistance to or sugar quotas for Cuba unless Cuba takes appropriate steps to return or provide compensation for property expropriated from U.S. citizens. Subsection (c) prohibits assistance to the government of any country indebted to any U.S. citizen or person for goods and services furnished or ordered. Subsection (e) requires suspension of assistance to countries which have expropriated property of U.S. citizens abroad.

*22 U.S.C. section 2391 (c) authorizes the President to appoint a U.S. citizen as Chairman of the Development Assistance Committee of the Organization for Economic Cooperation and Development.

22 U.S.C. section 2394a requires the President to report to Congress extortion or attempted extortion in return for permitting a U.S. citizen corporation to do business by officials of foreign countries receiving international security assistance from the United States.

22 U.S.C. section 2395 (f) authorizes alien participants in technical information and assistance programs to be admitted into the United States.

*22 U.S.C. section 2396 (e) authorizes payment of certain training costs of Foreign Service personnel who are U.S. citizens and who are assigned to positions in the foreign assistance program.

*22 U.S.C. section 2452 authorizes the President to finance educational assistance for U.S. citizens and nationals in foreign
[208] countries and to assist schools and institutions of higher learning abroad founded, operated, or sponsored by U.S. citizens.

22 U.S.C. section 2456 (a)(2) gives preference to U.S. citizens who are veterans for the educational assistance authorized under section 2452, above, and requires due consideration to be given to applicants from all geographical areas of the United States.

*22 U.S.C. section 2504 (a) requires Peace Corps volunteers to be U.S. citizens or nationals.

*22 U.S.C. section 2505 requires Peace Corps volunteer leaders to be U.S. citizens or nationals.

*22 U.S.C. section 2507 (b) authorizes the President to make provision for training U.S. citizens, on a reimbursable basis, for other programs similar to the Peace Corps.

22 U.S.C. section 2509 (a)(5) authorizes employment of aliens by the Peace Corps within the United States. Subsection (b) authorizes settlement of claims by persons not citizens or residents of the United States based on the acts or omissions abroad of Peace Corps employees or volunteers.

22 U.S.C. section 2669 authorizes the Secretary of State to settle claims presented by foreign governments on behalf of their nationals and to employ aliens abroad.

*22 U.S.C. section 2670 (f) (Supp. I) authorizes the Secretary of State to pay expenses incident to the relief, protection, and burial of American seamen and alien seamen from U.S. vessels in foreign countries and in U.S. Territories and possessions. Subsection (g) authorizes the Secretary to pay the expenses incurred in acknowledging the services of officers and crews of foreign vessels and aircraft in rescuing American seamen, airmen, or citizens from shipwreck or other catastrophe abroad or at sea. Subsection (j), as amended by section 108 of Public Law 95-426, the Foreign Relations Authorization Act, Fiscal Year 1979, enacted October 7, 1978, authorizes the Secretary to provide emergency medical assistance, dietary supplements, and other emergency assistance to U.S. citizens incarcerated or destitute abroad and unable to obtain such assistance otherwise.

22 U.S.C. section 2672 allows the Secretary of State to employ aliens in connection with U.S. participation in certain international activities.

22 U.S.C. section 2691 prescribes procedures for handling applications for nonimmigrant visas by certain excludible aliens.

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*22 U.S.C. section 2701, added by section 2201 of Public Law 96-465, above, authorizes the Secretary to provide educational assistance to meet the needs of children of U.S. citizens abroad who are engaged in carrying out Government activities.

*22 U.S.C. section 2872 (b)(2) requires that the five voting members of the Board for International Broadcasting be U.S. citizens.

*22 U.S.C. section 3306 (a), added by section 7(a) of Public Law 96-8, the Taiwan Relations Act, enacted April 10, 1979, authorizes the American Institute of Taiwan to act as provisional conservator of the personal estates of deceased U.S. citizens and to perform services for U.S. persons normally performed by consular officers.

*22 U.S.C. section 3507 (d), added by section 407(d) of Public Law 96-53, the International Development Cooperation Act of 1979, enacted August 14, 1979, requires two-thirds of the members of the Council on International Scientific and Technological Cooperation to be U.S. citizens. Subsection (e) provides that members who are U.S. citizens shall be deemed Government employees for purposes of criminal prohibitions against bribery, graft, and conflicts of interest.

22 U.S.C. section 3508 (d) provides that Fellows of the Institute for Scientific and Technological Cooperation who are U.S. citizens shall be deemed Government employees for purposes of prohibitions against bribery, graft, and conflicts of interest.

*22 U.S.C. section 3623 (d), added by section 1113(d) of Public 96-70, the Panama Canal Act of 1979, enacted September 27, 1979, requires that the Ombudsman of the Panama Canal Commission be a U.S. citizen.

22 U.S.C. section 3646, added by section 1206 of Public Law 96-70, above, authorizes payment of a cost-of-living allowance to certain U.S. citizens employed by the Panamal Canal Commission and previously employed by the Panama Canal Company or the Canal Zone Government.

22 U.S.C. section 3647 (a), added by section 1207(a) of Public Law 96-70, above, authorizes payment of college transportation expenses of dependents of the U.S. citizens to whom reference is made in section 3646, above.

*22 U.S.C. section 3649, added by section 1209(a) of Public Law

96-70, above, excludes from federal retirement, life insurance, and health insurance benefits employees of the Panama Canal Commission who are not U.S. citizens.

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*22 U.S.C. section 3652 (a)(4), added by section 1212(a)(4) of Public Law 96-70, above, authorizes the interchange of employees who are U.S. citizens between the Panama Canal Employment System and the federal competitive service.

22 U.S.C. section 3672, added by section 1232 of Public Law 96-70, above, authorizes job placement assistance to certain U.S. citizens who were employed by the Panama Canal Company or the Canal Zone Government.

22 U.S.C. section 3751 (c), added by section 1341(c) of Public Law 96-70, above, requires the President to assert the immunity of U.S. citizens living in the former Canal Zone from retroactive taxation by the Republic of Panama.

*22 U.S.C. section 3903, added by section 103 of Public Law 96-465, the Foreign Service Act of 1980, enacted October 17, 1980, divides members of the Foreign Service into seven categories, one of which is U.S. citizen personnel appointed pursuant to 22 U.S.C. section 3943, section 303 of the Act.

*22 U.S.C. section 3941, added by section 301 of Public Law 96-465, above, requires that only U.S. citizens be appointed to the Foreign Service, other than for service abroad as a consular agent or as a foreign national employee.

*22 U.S.C. section 3952, added by section 312 of Public Law 96-465, above, requires U.S. citizenship as a condition to commission of a member of the Foreign Service as a diplomatic or consular officer.

*22 U.S.C. section 3963, added by section 403 of Public Law 96-465, above, authorizes establishment of a salary schedule for members of the Foreign Service who are U.S. citizens.

22 U.S.C. section 3968, added by section 408 of Public Law 96-465, above, authorizes establishment of local compensation plans abroad for foreign nationals and U.S. citizens who are family members of Government employees.

*22 U.S.C. section 3969, added by section 409 of Public Law 96-465, above, requires that consular agents who are U.S. citizens be paid at least the U.S. minimum wage.

*22 U.S.C. section 3984 (b), added by section 504(b) of Public Law 96-465, above, requires assignment at least once every 15 years of career Foreign Service members who are U.S. citizens to duty in the United States. [211]

*22 U.S.C. section 4008, added by section 608 of Public Law 96-456, above, authorizes mandatory retirement for substandard performance of career Foreign Service members who are U.S. citizens.

22 U.S.C. section 4024 (a)(4)(B), added by section 704 of Public Law 96-465, above, authorizes employment of aliens as language instructors, linguists, and other academic and training specialists in the absence of suitably qualified U.S. citizens.

*22 U.S.C. section 4081, added by section 901 of Public Law 96-465, above, authorizes payment of certain rest and recuperation travel expenses of members of the Foreign Service who are U.S. citizens and members of their families.

*22 U.S.C. section 4083, added by section 903 of Public Law 96-465, above, requires members of the Foreign Service who are U.S. citizens to take periodic leaves of absence in the United States.

*22 U.S.C. section 4084, added by section 904 of Public Law 96-465, above, authorizes medical examinations, inoculations, and vaccinations for members of the Foreign Service who are U.S. citizens and members of their families.

*22 U.S.C. section 4131, added by section 1101 of Public Law 96-465, above, limits the availability of Foreign Service grievance procedures to members who are U.S. citizens.

*22 U.S.C. section 4135 (a), added by section 1105 of Public Law 96-465, above, requires members of the Foreign Service Grievance Board to be U.S. citizens.

*22 U.S.C. section 4193 gives consular officers the right to receive protests or declarations made by or on behalf of U.S. citizens.

*22 U.S.C. section 4195 requires consular officers to discharge certain duties with respect to the personal estates left by U.S. citizens who died, or at time of death were domiciled, within the jurisdiction of the consular officer.

*22 U.S.C. section 4197 requires consular officers to carry out lawful testamentary directions of a U.S. citizen who dies within his

or her jurisdiction with regard to personal property in the country at time of death.

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*22 U.S.C. section 4217 makes criminal embezzlement of personal property of a U.S. citizen by a consular officer.

*22 U.S.C. section 4218 makes criminal false certification by a consular officer that property belonging to foreigners belongs to a U.S. citizen.

TITLE 23. HIGHWAYS.

[No provisions.]

TITLE 24. HOSPITALS AND ASYLUMS.

24 U.S.C. section 196 authorizes the transfer to Saint Elizabeth's Hospital in the District of Columbia of U.S. citizens adjudged insane in the Canal Zone. (The Canal Zone was terminated as a juridical entity by the Panama Canal Treaty of 1977.)

*24 U.S.C. section 196b authorizes the transfer to Saint Elizabeth's Hospital in the District of Columbia of U.S. citizens or nationals or nondeportable aliens who have been adjudged insane in the Virgin Islands or, if permanent residents of the Virgin Islands, elsewhere.

TITLE 25. INDIANS.

25 U.S.C. section 399 authorizes the Secretary of Interior to lease to U.S. citizens certain mineral lands on Indian reservations.

TITLE 26. INTERNAL REVENUE CODE.

[The applicability of Title 26 to the Northern Mariana Islands is treated specifically by sections 601 and 602 of the Covenant.]

26 U.S.C. section 2 (b)(2)(C) allows a taxpayer married to a nonresident alien to be considered as single and thus eligible for treatment as a head of a household. Subparagraph (b)(3)(A) provides that a nonresident alien may not be treated as a head of a household. Subsection (d) notes that the special rules of sections 871 or 877 (see below) govern application of the basic income tax to nonresident aliens.

26 U.S.C. section 32 (1) allows an income tax credit for taxes withheld on income of nonresident aliens from sources within the United States.

26 U.S.C. section 37 (f) prevents nonresident aliens from taking the income tax credit for persons over 65.

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26 U.S.C. section 42 (d) prevents nonresident aliens from taking a general income tax credit available to other taxpayers under this sections.

26 U.S.C. section 43 (c)(2)(B)(iv) excludes from the definition of "earned income" for purposes of computing the earned-income tax credit allowed under this section income received by nonresident aliens from sources within the United States but not connected with conduct of a trade or business within the United States.

26 U.S.C. section 48 (a)(2)(B)(vii) permits an investment tax credit to U.S. citizens or U.S. corporations, but not to other persons or corporations, on certain tangible personal property used predominantly in possessions of the United States.

26 U.S.C. section 63 (e)(1)(B) Supp. I requires nonresident aliens and U.S. citizens entitled to benefits under section 931 (see below) to include in taxable income that portion of the unused zero bracket allowance that exceeds itemized deductions. (In effect, those persons are required to itemize deductions and are not permitted to take the zero bracket allowance, formerly known as the standard deduction.)

26 U.S.C. section 116 (c)(3), as amended by Public Law 96-223, the Crude Oil Windfall Profit Tax Act, enacted April 2, 1980, limits the partial exclusion from gross income of dividends of domestic corporations by allowing nonresident aliens the exclusion only in computing certain taxes imposed by sections 871 and 877 (see below).

26 U.S.C. section 152 (b)(3) defines "dependent" for income tax purposes to exclude any individual not a citizen or national of the United States unless the individual is a resident of the United States or "a country contiguous" to the United States or is legally adopted by a U.S. citizen or national taxpayer, a member of the taxpayer's household, and has the taxpayer's home as his principal place of abode.

26 U.S.C. section 176 allows domestic corporations to deduct from gross income contributions for U.S.-citizen employees of foreign subsidiaries participating in the U.S. social security program.

26 U.S.C. section 401 (d)(3)(B)(ii) excludes nonresident alien employees not receiving earned income from sources within the United States from the group of employees who must benefit from an

owner-employee trust forming part of a pension or profit-sharing plan qualified for favorable tax treatment.

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26 U.S.C. section 402 (a)(4) limits taxability of amounts distributed by the United States Government from an employees' trust to certain nonresident aliens in respect of services performed by an employee of the United States Government.

26 U.S.C. section 404A (e)(2), added by section 2(a) of Public Law 96-603, enacted December 28, 1980, defines a "qualified foreign plan" for deferred compensation, payments into which by an employer are deductible, as one in which 90% or more of the amounts paid are attributable to the services of nonresident aliens.

26 U.S.C. section 406 allows domestic corporations to deduct from gross income contributions for trust, annuity, pension, deferred-compensation, and similar plans for U.S.-citizen employees of qualified foreign subsidiaries.

26 U.S.C. section 407 allows domestic corporations to deduct from gross income contributions for trust, annuity, pension, deferred compensation, and similar plans for U.S. citizens employed outside the United States by qualified domestic subsidiaries of the corporation.

26 U.S.C. section 410 (b)(3)(C) excludes nonresident alien employees not receiving earned income from sources within the United States from the computation of whether a sufficient percentage of employees benefit from a pension or profit-sharing trust to qualify the trust for favorable tax treatment.

26 U.S.C. section 542 (c)(7) excludes from personal holding companies subjected to the personal holding company income tax certain foreign corporations owned entirely by nonresident aliens.

26 U.S.C. section 543 (b)(1)(C) excludes from gross income subject to the personal holding company income tax certain income received by certain foreign corporations owned entirely by nonresident aliens.

26 U.S.C. section 545 (d) defines the taxable income of certain foreign corporations owned entirely by nonresident aliens for purposes of the personal holding company tax.

26 U.S.C. section 551 requires citizens or residents of the United States to include in gross income the undistributed income of foreign personal holding companies in which they own shares.

26 U.S.C. section 552 defines a "foreign personal holding company," in part, as a foreign corporation more than 50% of which is owned by not more than five citizens or residents of the United States. [215]

26 U.S.C. section 565 (e) allows corporations to deduct as dividends from income certain amounts specified by shareholders, but requires special treatment of amounts which, if paid in money, would be subject to the withholding tax on nonresident aliens imposed by section 1441 (see below).

26 U.S.C. section 861 defines what income is to be treated as from sources within the United States. Citizenship and/or residency in several instances distinguish, in whole or in part, income from sources within the United States from income from sources outside the United States.

26 U.S.C. section 864 defines a number of terms used in determining whether income is from sources within the United States. See section 861, above. Again, citizenship and/or residency are in several instances key to the distinctions made.

26 U.S.C. section 871 imposes a 30% tax on income and capital gains of nonresident aliens from sources within the United States.

26 U.S.C. section 872 delineates the items of income included in the gross income of non-resident alien individuals.

26 U.S.C. section 873 limits deductions from gross income by nonresident aliens.

26 U.S.C. section 874 requires nonresident aliens to file accurate returns in order to claim available deductions and credits; permits nonresident aliens to claim exemptions in certain circumstances; and restricts the availability of the foreign tax credit to aliens.

26 U.S.C. section 875 provides that nonresident aliens who are members of a partnership or beneficiaries of a trust or estate shall be treated as doing business in the United States if the partnership, trust, or estate does business in the United States.

26 U.S.C. section 876 provides that aliens residing in Puerto Rico shall not be treated as nonresident aliens.

26 U.S.C. section 877 provieds special tax treatment for nonresident alien individuals who lost U.S. citizenship in order to avoid U.S. income, estate, or gift taxes.

26 U.S.C. section 879 specifies tax treatment of community
[216] income received by a U.S. citizen or resident married to a nonresident alien.

26 U.S.C. section 883 excludes from gross income of foreign corporations earnings from operation of ships or aircraft or from payments for temporary use of railroad rolling stock if the ship is documented or the aircraft registered under the laws, or the rolling stock is owned by a corporation, of a country according an equivalent exemption to U.S. citzens and/or corporations. A similar exclusion is allowed foreign entities owning a communication satellite system if the United States participates in the system.

26 U.S.C. section 891 allows the President to double taxes on citizens and corporations of a foreign country if he finds the laws of that country impose discriminatory or extraterritorial taxes on U.S. citizens and corporations.

26 U.S.C. section 893 exempts from income tax the wages, fees, or salaries of employees of foreign governments or international organizations unless the employees are citizens of the United States.

26 U.S.C. section 894 provides nonresident aliens shall not be deemed to have a permanent establishment in the United States for purposes of applying certain tax treaty exemptions related to income not connected with a U.S. trade or business.

26 U.S.C. section 896 allows the President, on finding a foreign country discriminatorily taxes citizens of the United States or domestic corporations not residents of that foreign country on income from sources within that country, to impose a similar level of taxation on income from sources within the United States of citizens and corporations of that foreign country.

*26 U.S.C. section 897, added by Subtitle C of Title XI of Public Law 96-499, enacted December 5, 1980, imposes certain taxes, including a 20-percent minimum tax, on disposition of real property in the United States by a nonresident alien or a foreign corporation.

26 U.S.C. section 901 allows a credit against U.S. income of foreign taxes paid, the scope of the credit depending upon whether the taxpayer is a U.S. citizen or a domestic corporation, a U.S. resident, a resident alien, or a nonresident alien or foreign corporation. Section 901 also allows the President to proclaim the credit will be unavailable to citizens of a foreign country not offering a similar credit to U.S. citizens residing in that country.

26 U.S.C. section 906 allows nonresident aliens and foreign

corporations a tax credit for taxes paid their country of citizenship or residence (for individuals) or organization or domicile (for corporations) on income connected with conduct of a trade or business within the United States. [217]

26 U.S.C. section 911 allows to qualified citizens of the United States an exclusion from gross income of certain amounts earned for personal services while residing in camps in hardship areas outside the United States.

26 U.S.C. section 913, added by section 203(a) of Public Law 95-615, the Tax Treatment Extension Act of 1977, enacted November 8, 1978, allows deduction of certain expenses of living abroad to U.S. citizens residing abroad and to U.S. citizens or residents physically present in a foreign country for a specified period.

26 U.S.C. section 931 allows exclusion from gross income of qualified U.S.-citizen taxpayers of certain amounts earned in possessions of the United States. (Guam, the Virgin Islands, and Puerto Rico are not possessions for purposes of this section.)

26 U.S.C. section 932 provides that citizens of U.S. possessions who are neither citizens nor residents of the United States shall be taxed as though they were nonresident aliens.

26 U.S.C. section 933 provides special tax treatment for U.S. citizens residing in Puerto Rico.

26 U.S.C. section 934 (c) provides special tax treatment for U.S. citizens residing in the Virgin Islands.

26 U.S.C. section 935 provides for coordination of United States and Guam individual income taxes, based in part upon whether the taxpayer is a citizen of Guam but not of the United States. Under section 601 (b) and (c) of the Covenant, references to Guam in section 935 also refer to the Northern Mariana Islands.

26 U.S.C. section 996 (g) specifies the treatment to be given of certain gains by and distributions to nonresident alien shareholders of domestic international sales corporations.

26 U.S.C. section 1023 (d)(3) excepts, from certain limitations on the valuation of property for purposes of calculating gain or loss on the property's disposition, certain property acquired from a decedent who, at the time of his death, was a nonresident alien.

26 U.S.C. section 1303 (b) restricts income averaging to persons

who are citizens or residents of the United States throughout the tax year.

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26 U.S.C. section 1371 (a)(3) excludes from favorable tax treatment offered certain small business corporations those which have a nonresident alien as a shareholder.

26 U.S.C. section 1402 (b) provides that a resident of Puerto Rico, Guam, or American Samoa who is not a U.S. citizen is not to be considered as a nonresident alien for purposes of the tax on self-employment income.

26 U.S.C. section 1441 requires withholding of tax on the gross income of nonresident aliens from sources within the United States.

26 U.S.C. section 1451 allows qualified U.S. citizens or residents to avoid deduction and withholding of a tax on certain "tax-free covenant" bonds issued before 1934.

26 U.S.C. section 1491 imposes an excise tax on transfers of property to foreign recipients by U.S. citizens or residents to avoid U.S. income taxes.

26 U.S.C. section 2001 imposes a tax on the estates of decedents who are citizens or residents of the United States.

26 U.S.C. section 2014 (h) allows the President to proclaim that the credit against U.S. estate taxes for foreign death taxes paid may be suspended for citizens of a foreign country residing in the United States if that foreign country does not allow its U.S.-citizen residents a similar credit against its death taxes. Subsection (g) provides that U.S. possessions shall be deemed foreign countries for purposes of the foreign death tax credit.

26 U.S.C. section 2032A provides favorable treatment for estate tax valuation of certain farm property belonging to a decedent who, at time of death, was a citizen or resident of the United States.

26 U.S.C. section 2053 (d)(1) allows a deduction from the value of the gross estate of foreign death taxes paid on property in the gross estate of a U.S citizen or resident, located in that foreign country, and transferred by the decedent for public, charitable or religious uses.

26 U.S.C. section 2101 imposes a tax on the estates of decedents neither citizens nor residents of the United States.

26 U.S.C. section 2102 allows credits against the tax imposed by

section 2101 for state death taxes, gift taxes, and taxes on prior transfers, and provides an optional computation of the credit for certain citizens of the United States. (See section 2209, below.) [219]

26 U.S.C. section 2103 defines the taxable gross estate of a nonresident decedent not a citizen of the United States as that part of the gross estate situated within the United States.

26 U.S.C. section 2104 defines property within the United States of a nonresident decedent not a citizen of the United States to include stock issued by a domestic corporation, debts of a U.S. entity, deposits in a domestic commercial banking branch of a foreign corporation, and certain other property.

26 U.S.C. section 2105 defines certain property of a nonresident decedent not a citizen of the United States as property not within the United States. Included are life insurance proceeds, deposits in a foreign commercial banking branch of a domestic corporation, and certain works of art on loan for exhibition in the United States.

26 U.S.C. section 2106 sets forth rules for determining the taxable estate of a nonresident decedent not a citizen of the United States.

26 U.S.C. section 2107 imposes the estate tax imposed on U.S. citizens or residents on nonresident decedents not citizens of the United States who lost U.S. citizenship for the purpose of avoiding U.S. income, estate, or gift taxes.

26 U.S.C. section 2108 allows the President to proclaim that certain credits against U.S. estate taxes may be suspended for citizens of a foreign country not residing in the United States if that foreign country imposes a more burdensome tax than that imposed by the United States on the transfer of property of U.S.-citizen decedents not residing in that foreign country.

26 U.S.C. section 2201 reduces estate taxes on the transfer of estates of decedent U.S. citizens or residents killed in combat or combat-related activity while in the U.S. armed forces.

26 U.S.C. section 2208 provides that U.S.-citizen decedents residing in U.S. possessions shall be considered for estate-tax purposes as U.S. citizens unless U.S. citizenship was acquired solely by reason of citizenship of, or birth or residence within, that posession.

26 U.S.C. section 2209 provides that U.S.-citizen decedents residing in U.S. possessions shall be considered for estate-tax

purposes as nonresidents not citizens of the United States if U.S. citizenship was acquired solely by reason of citizenship of, or birth or residence within, that possession.

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26 U.S.C. section 2501 imposes a tax on gifts and provides that the tax not apply to transfers of intangible property by a nonresident not a citizen of the United States (unless within 10 years prior to the transfer citizenship was lost for the purposes of avoiding income, estate or gift taxes). "Citizen" and "nonresident not a citizen of the United States," for U.S. citizens residing in U.S. possessions, are defined as in sections 2208 and 2209, above.

26 U.S.C. section 2505 allows to U.S. citizens and residents an aggregate lifetime credit against the tax on gifts.

26 U.S.C. section 2511 provides that property of a nonresident donor not a citizen of the United States shall not be subject to the gift tax unless the property is situated within the United States; and deems shares in a domestic corporation or debt obligations of a U.S. entity to be situated within the United States.

26 U.S.C. section 2513 allows a gift by one spouse to a third party to be considered as a gift one-half from each spouse if both spouses are citizens or residents of the United States.

26 U.S.C. section 2522 allows a deduction in computing the amount of taxable gifts of gifts made for charitable or similar purposes. Deductible gifts by nonresidents not citizens of the United States are generally restricted to those made to U.S. organizations and/or for use in the United States. (Deductible gifts by citizens or residents of the United States are less restricted.)

26 U.S.C. section 2523 allows a deduction in computing the amount of taxable gifts of gifts made by a U.S. citizen or resident to the donor's spouse.

26 U.S.C. section 2614(b) defines property of a nonresident not a citizen of the United States subject to the tax on certain generation-skipping transfers in the same way such property is defined for purposes of the estate (if the transferor is deceased) or gift (if the transferor is alive) taxes, that is, generally, by whether or not the property is situated within the United States.

26 U.S.C. section 3121 defines "employment" for purposes of the Federal Insurance Contributions Act to include services performed outside the United States by a U.S. citizen for an American employer; defines "American vessel" as including any vessel the crew of which is employed solely by one or more citizens of the United States;

defines an "American employer" as including an individual who is a resident of the United States, a partnership if two-thirds or more of the partners are U.S. residents, and a trust if all the trustees are U.S. residents, and allows a domestic corporation to include U.S.-citizen employees working outside the United States for a foreign subsidiary in the U.S. social security insurance system. [221]

26 U.S.C. section 3231 provides that, for purposes of railroad retirement taxes, an individual not a citizen or resident of the United States shall not be deemed in the service of an employer while working outside the United States if the employer is required by the laws of that place to employ, in whole or in part, citizens thereof; and defines "compensation" to exclude remuneration paid certain nonresident aliens temporarily in the United States.

26 U.S.C. section 3304 (a)(14) provides that state unemployment compensation plans, contributions to which may be taken as a credit against the federal unemployment tax, may not pay benefits on the basis of services performed by aliens not permanently residing in the United States under color of law; and states rules applicable to determination of the eligibility of an alien to receive benefits.

26 U.S.C. section 3306 defines "employment," for purposes of federal unemployment taxes, as including any service by a U.S. citizen as an employee of an American employer, unless specifically excepted, and defines "American employer" and American vessel" in the same manner as those terms are defined in section 3121, above.

26 U.S.C. section 3401 defines "wages"subject to federal withholding of income tax to exclude services by a U.S. citizen or resident and by certain nonresident aliens for a foreign government or an international organization, and certain services by U.S. citizens in Puerto Rico or in U.S. possessions.

26 U.S.C. section 3402 (f)(6) limits the number of exemptions a nonresident alien may claim in determining income taxes to be withheld by his employer.

26 U.S.C. section 4372 defines insured persons or risks in terms of U.S. ciitzenship or residence for purposes of applying the excise tax imposed by section 4371 on certain insurance policies issued by foreign insurers.

26 U.S.C. section 4404 limits application of the excise tax on wagers, in part, to wagers placed by one person in the United States with another who is a citizen or resident of the United States, or to wagering pools or lotteries conducted by a citizen resident of the United States.

26 U.S.C. section 6012 (a)(1)(c) (Supp. I) requires nonresident aliens and U.S. citizens entitled to benefits under section 931 (see
[222] below) to file income tax returns if their taxable income for the year exceeds $750, regardless of certain exceptions from that requirement for which they might be qualified but for their status. Subsection (a)(5) requires every estate or trust of which a nonresident alien is a beneficiary to file an income tax return. Subsection (a) also permits the Secretary of the Treasury by regulation to exempt certain nonresident aliens from the requirement of filing a return.

26 U.S.C. section 6013 prescribes rules for filing joint income tax returns when a nonresident alien is married to a citizen or resident of the United States.

26 U.S.C. section 6015 (b) prohibits a joint declaration of estimated income by a husband and wife, one of whom is a nonresident alien. Subsection (i) exempts from the requirement of declaring estimated income nonresident aliens unless they are subject to withholding, have income connected to a trade or business in the United States, or reside in Puerto Rico.

26 U.S.C. section 6017 exempts nonresident aliens from the requirement of filing self-employment tax returns.

26 U.S.C. section 6018 distinguishes between citizens or residents of the United States and noncitizens not residents of the United States in the value of a decedent's estate sufficient to require filing of an estate tax return by the executor.

26 U.S.C. section 6042 (b)(2) excludes from the definition of "dividends" for which an information return must be filed payments to nonresident aliens not engaged in trade or business within the United States.

26 U.S.C. section 6044 (b)(2) provides that cooperatives need not file information returns on patronage dividends paid to nonresident aliens not engaged in a trade or business within the United States.

26 U.S.C. section 6046 requires U.S. citizens or residents owning or acquiring stock in a foreign corporation to file a specified form of return.

26 U.S.C. section 6049 (b)(2) excludes from the definition of "interest" for which an information return must be filed payments to nonresident aliens not engaged in trade or business within the United States.

26 U.S.C. section 6072 (c) allows certain nonresident aliens to file returns later than other individuals. [223]

26 U.S.C. section 6073 (a) establishes a presumption as to the date declarations of estimated tax must be filed by certain nonresident aliens.

26 U.S.C. section 6075 (b)(4) allows certain nonresidents not citizens of the United States to file gift tax returns at a later date than other persons.

26 U.S.C. section 6091 provides a different place for filing of returns by nonresident aliens and certain U.S. citizens residing outside the United States, among others.

26 U.S.C. section 6096 (a) prevents nonresident aliens from designating $1 of their taxes due to be paid to the Presidential Election Campaign Fund.

26 U.S.C. section 6104 (d) allows citizens to inspect certain required annual reports of private foundations.

26 U.S.C. section 6166 allows an extension of time for payment of estate taxes when the estate of a deceased citizen or resident of the United States consists largely of a closely held corporation.

26 U.S.C. section 6166A allows an alternate extension of time for payment of estate taxes when the estate of a deceased citizen or resident of the United States consists largely of a closely held corporation.

26 U.S.C. section 6428 (h) prohibits nonresident aliens from receiving a partial refund of 1974 individual income taxes available to other taxpayers.

26 U.S.C. section 6851 (c) allows the Secretary of the Treasury to waive for citizens of the United States or its possessions certain requirements imposed on persons believed to be departing the United States or removing property from the United States for purposes of avoiding U.S. income tax laws.

26 U.S.C. section 7325 requires certain appraisers of property seized under provisions of Title 26 to be U.S. citizens.

26 U.S.C. section 7422 (f)(1) allows an alien to sue for a tax refund notwithstanding limitations on an alien's right to sue imposed by section 2501 of title 28 (see below).

26 U.S.C. section 7456 (b) empowers the Tax Court to require production of records by nonresident alien petitioners.

[224] 26 U.S.C. section 7701 (30) defines "United States person" for purposes of the Internal Revenue Code to include, among others, a citizen or resident of the United States.

TITLE 27. INTOXICATING LIQOURS.

[No provisions.]

TITLE 28. JUDICIARY AND JUDICIAL PROCEDURE.

28 U.S.C. section 1251 (b)(3) gives the U.S. Supreme Court original but not exclusive jurisdiction over all actions or proceedings by a State against citizens of another State or against aliens.

28 U.S.C. section 1332 gives U.S. district court jurisdiction over diversity of citizenship cases including, among others, suits between citizens of different States (defined to include "Territories") or between citizens of a State and citizens of a foreign country.

28 U.S.C. section 1335 allows interpleader actions in district courts if the adverse claimants are of diverse citizenship, as defined in section 1332, above.

*28 U.S.C. section 1343 gives the district courts jurisdiction over suits for damages due to the unlawful deprivation of any right or privilege of a U.S. citizen by an act in furtherance of a conspiracy to deprive the person of his civil rights or, under color of State law, of any right, privilege, or immunity secured by the Constitution or any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.

*28 U.S.C. section 1344 gives the district courts jurisdiction to decide certain election disputes where title to office is at issue because of the denial of the rights of U.S. citizens to vote on account of race, color, or previous condition of servitude.

28 U.S.C. section 1350 gives to district courts original jurisdiction over civil actions by aliens for torts committed in violation of the law of nations or a treaty of the United States.

28 U.S.C. section 1357 gives the district courts jurisdiction

over actions to enforce the right of U.S. citizens to vote in any State.

*28 U.S.C. section 1391 provides that diversity of citizenship cases may be brought only in the judicial district where all plaintiffs or all defendants reside, or in which the claim arose, but that aliens may be sued in any judicial district. [225]

*28 U.S.C. section 1443 permits removal from State to federal courts of civil actions or criminal prosecutions (1) against any person who is denied or cannot enforce in the State court a right under any law providing for equal civil rights of all U.S. citizens or persons within U.S. jurisdiction; or (2) for an act under color of any law providing for equal rights, or a refusal to act on grounds of inconsistency with such a law.

28 U.S.C. section 1603 defines "agency or instrumentality of a foreign state," for purposes of determining its immunity from suit in courts of the United States as an entity not a citizen of a State of the United States, as defined in section 1332, above.

28 U.S.C. section 1821 (e), as amended by Public Law 95-535, forbids payment of certain court per diem and mileage fees to aliens paroled into the United States for prosecution or to deportable aliens.

*28 U.S.C. section 1861 provides, in part, that it is "the policy of the United States that all citizens shall have the opportunity to be considered for service on grand and petit juries in the district courts of the United States, and shall have an obligation to serve as jurors when summoned for that purpose." See comment under section 1865, below.

*28 U.S.C. section 1862 provides that no citizen shall be excluded from grand or petit jury service on account of race, color, religion, sex, national origin, or economic status. See comment under section 1865, below.

*28 U.S.C. section 1863 provides that a district court's plan for random jury selection, if it provides for a jury commission, shall provide for the appointment of a citizen or citizens to that commission.

*28 U.S.C. section 1865 requires that jurors be citizens of the United States. Presidential Proclamation 4568, dated May 9, 1978, suspends until termination of the trusteeship application of this requirement to jury service in the District Court for the United States.

28 U.S.C. section 1872 provides that in all original actions at law against U.S. citizens in the U.S. Supreme Court, issues of fact
[226] shall be tried by a jury.

28 U.S.C. section 2502 limits the right of foreign citizens to file suits in the Court of Claims to citizens of countries which accord a similar right to citizens of the United States.

28 U.S.C. App.--Rules of Court of Claims--Rule 92 (c) provides for the issuance of a subpoena in certain circumstances if a citizen or resident of the United States fails to respond to a letter rogatory. (A letter rogatory is a formal inquiry sent under authority of the court to a person in a foreign country.)

TITLE 29. LABOR.

*29 U.S.C. section 633a (a) exempts aliens employed outside the United States from the prohibition of age discrimination in federal employment.

*29 U.S.C. section 834 (e), added by section 2 of Public Law 95-524, the Comprehensive Employment and Training Act Amendments of 1978, enacted October 27, 1978, forbids discrimination against participants in programs under the Act but limits participation to U.S. citizens and nationals, lawfully admitted permanent resident aliens, and lawfully admitted refugees and parolees. "State" is defined, in section 802(25) of Title 29, to include the Northern Mariana Islands and the Trust Territory of the Pacific Islands.

*29 U.S.C. section 993 (b)(1)(c), added by section 2 of Public Law 95-524, above, limits membership in the Young Adult Conservation Corps to citizens or lawful permanent residents of the United States or lawfully admitted refugees or parolees. The term "State" as used in this section is defined to include the Northern Mariana Islands. 29 U.S.C.A. section 802(25) (Supp. 1980). Section 802 does not define "United States". Nonetheless, the applicability of the law to the Northern Mariana Islands requires treatment of citizens of the Northern Mariana Islands as U.S. citizens to accomplish the purposes of the law in the Northern Mariana Islands. The Young Adult Conservation Corps in fact enrolls citizens of the Northern Mariana Islands in the Northern Mariana Islands. A technical amendment is advisable, particularly to clarify the eligibility of citizens of the Northern Mariana Islands who desire to enroll at locations outside the Northern Mariana Islands.

29 U.S.C. section 1003 (b)(4) exempts from requirements of the Employee Retirement Income Security Act pension plans maintained outside the United States primarily for the benefit of nonresident

aliens. "United States" is defined to include the several States and Guam by section 1002(10) of title 29. By virtue of section 502(a)(2) of the Covenant, the act is thus applicable in the Northern Mariana Islands, so pension plans in the Northern Mariana Islands are covered by the Act. [227]

*29 U.S.C. section 1321 (b)(7) exempts pension plans maintained outside the United States primarily for the benefit of nonresident aliens from benefit protection provided by the Pension Benefit Guaranty Corporation. (The subchapter containing section 1321 does not define "United States", as does the subchapter containing section 1003, above.)

TITLE 30. MINERAL LANDS AND MINING.

30 U.S.C. section 22 declares lands containing mineral deposits owned by the United States open to exploration, occupation, and purchase by citizens of the United States and persons who have declared their intention to become U.S. citizens.

30 U.S.C. section 49 (a) extends U.S. mining laws to Alaska and restricts certain mining rights to U.S. citizens and persons who have declared their intention to become U.S. citizens.

30 U.S.C. section 71 restricts the right of entry to certain unappropriated federal coal lands to U.S. citizens and persons who have declared their intention to become U.S. citizens.

30 U.S.C. section 181 limits the disposition of certain mineral lands owned by the United States to U.S. citizens.

*30 U.S.C. section 185 (r)(4) requires pipeline owners who are also lessees of U.S. oil lands to carry, as a common carrier, the oil of any citizen (among other entities) also operating such a lease or purchasing gas or oil but not owning a pipeline.

*30 U.S.C. section 323 allows citizens of the United States to use any invention, discovery, or process covered by certain patents related to the production of synthetic liquid fuels when those patents have been acquired by the Secretary of the Interior.

30 U.S.C. section 1015 restricts to U.S. citizens the lease of public lands for geothermal steam development.

30 U.S.C. section 1402 (a), added by section 3 of Public Law 96-283, the Deep Seabed Hard Mineral Resources Act, enacted June 28, 1980, disclaims assertion of U.S. sovereignty over the deep

seabed but exercises its jurisdiction over U.S. citizens with respect to exploitation of hard mineral resources of the deep seabed.

[228]

30 U.S.C. section 1403 (14), added by section 4(14) of Public Law 96-283, above, defines "U.S. citizen" for purposes of that law. The term does not include citizens of the Northern Mariana Islands prior to termination of the trusteeship.

30 U.S.C. section 1411 (a), added by Public Law 96-283, above, forbids exploration for or recovery of deep seabed hard minerals by U.S. citizens without a license. Paragraph (b)(1) authorizes the granting of licenses to U.S. citizens engaged in exploration prior to the effective date of the Act. Paragraph (b)(2) authorizes emergency suspension of such exploration for specified reasons. Subsection (c) forbids U.S. citizens from interfering with licensed activities and requires them to exercise reasonable regard for interests of other states in their exercise of the freedoms of the high seas.

30 U.S.C. section 1412 (b)(2), added by section 102(b)(2) of Public Law 96-283, above, makes licenses and permits for exploration and exploitation of deep seabed hard mineral resources exclusive as against other U.S. citizens. Subparagraph (c)(1)(F) requires licensees or permittees to be U.S. citizens.

30 U.S.C. section 1413 (a)(1), added by section 103(a)(1) of Public Law 96-283, above, allows any U.S. citizen to apply for a license for exploration for, or for a permit for recovery of, deep seabed hard minerals.

30 U.S.C. section 1419 (c), added by section 109(c) of Public Law 96-283, above, provides for preparation of environmental impact statements with respect to ocean areas in which U.S. citizens are expected to undertake exploration for or commercial recovery of deep seabed hard minerals.

30 U.S.C. section 1425 (b), added by section 115(b) of Public Law 96-283, above, requires transferees of deep seabed hard mineral exploration licenses and exploitation permits to be U.S. citizens.

30 U.S.C. section 1441, added by section 201 of Public Law 96-283, above, declares the intent of Congress that any international agreement on deep seabed hard minerals to which the United States becomes a party must assure U.S. citizens nondiscriminatory access to such minerals and protect rights of U.S. citizens accruing prior to the agreement.

30 U.S.C. section 1442, added by section 202 of Public Law 96-283, above, continues in effect provisions of the law for

licensing of exploration for and exploitation of deep seabed hard minerals by U.S. citizens not inconsistent with any future international agreement on such minerals to which the United States becomes a party. The section also encourages continuation of such ventures begun before entry into force of such an international agreement. [229]

30 U.S.C. section 1461, added by section 301 of Public Law 96-283, above, makes unlawful certain acts or omissions by U.S. citizens or other persons subject to U.S. jurisdiction in connection with exploration for or exploitation of deep seabed hard minerals.

*30 U.S.C. section 1522 (b)(7), added by section 622(b)(7) of Public Law 96-294, the Energy Security Act, enacted June 30, 1980, requires U.S. citizenship as a condition for eligibility for certain insurance on investments in geothermal resources.

TITLE 31. MONEY AND FINANCE.

*31 U.S.C. section 492a allows U.S. disbursing officers in foreign countries where satisfactory banking facilities are not available to cash checks drawn on the Treasurer of the United States for the accommodation of any person who is a U.S. citizen.

*31 U.S.C. section 699b requires federal employees in the continental United States paid from appropriated funds to be U.S. citizens. This provision is frequently reenacted. See 31 U.S.C.A. section 699b (Supp. 1980).

31 U.S.C. section 700 excepts from the requirement of section 699b, above, personnel employed by the Department of Defense.

*31 U.S.C. section 711 (1) makes a permanent indefinite annual appropriation for payment of the proceeds of the personal estates of American citizens who die abroad to the legal representatives of the deceased.

31 U.S.C. section 750 exempts bonds and obligations of the United States owned by nonresident aliens not engaged in business in the United States from taxation by the United States, States, possessions, or local taxing authorities.

31 U.S.C. section 1121 requires the Secretary of the Treasury to require U.S. citizens or residents or persons in the United States doing business in the United States to maintain records or to file reports on certain foreign financial transactions.

31 U.S.C. section 1241 (b)(2) requires States to allow

"citizens" to comment on proposed uses and budgets for federal revenue-sharing funds. (The reference is probably to state
[230] citizenship.)

TITLE 32. NATIONAL GUARD.

*32 U.S.C. section 313 requires that a person be a U.S. citizen to be eligible for appointment as an officer of the National Guard.

TITLE 33. NAVIGATION AND NAVIGABLE WATERS.

33 U.S.C. section 8 allows U.S. citizens the right to travel certain rivers in Alabama free from toll.

*33 U.S.C. section 382 allows the President to order seizure of vessels committing piratical acts against U.S. citizens.

*33 U.S.C. section 383 allows merchant vessels owned in whole or in part by U.S. citizens to resist pirates and to capture their vessels.

33 U.S.C. section 391 authorizes advancement on the docket of trials for violation of certain navigation laws by persons employed on vessels owned in whole or in part by U.S. citizens.

33 U.S.C. section 702d-1 allows the Secretary of the Army to grant certain easement rights to U.S. citizens over the Bonnet Carre Spillway and Floodway on the Mississippi River.

*33 U.S.C. section 909 (g) limits foreign-resident beneficiaries to specified relatives of aliens for whom death benefits are paid under the Longshoremen's and Harbor Workers' Compensation Act. The Act covers certain injuries on or adjacent to the navigable waters of the United States. 33 U.S.C. 903(a). "United States" is defined to include, "in a geographical sense" "the several States and Territories." Id. section 902(9). The Act thus would cover injuries on or adjacent to navigable waters of Guam. Under section 502(a)(2) of the Covenant, the Act would apply to the Northern Mariana Islands as well.

33 U.S.C. section 1321 (a)(17), as added by paragraph (b)(2) of Public Law 95-576, enacted November 2, 1978, asserts the jurisdiction of the United States over U.S. citizens for purposes of determining the geographical reach of prohibitions against discharge of oil or hazardous substances in certain ocean areas.

*33 U.S.C. section 1365 allows "any citizen" to file certain civil actions to enforce the Federal Water Pollution Control Act.

Most citizen-suit provisions permit "any person" to file suit. This provision might be given a similar construction.

*33 U.S.C. section 1502 (5) defines "citizen of the United States" for purposes of the Deepwater Port Act. [231]

*33 U.S.C. section 1503 (g) limits to U.S. citizens the issuance of licenses for the ownership, construction, and operation of a deepwater port.

33 U.S.C. section 1517 (i)(1) allows the Attorney General to represent citizens, presumably U.S. citizens, as a class to recover for damages sustained from oil discharged into the marine environment in connection with deepwater port operations.

[There is no Title 34 in the current U.S. Code.]

TITLE 35. PATENTS.

35 U.S.C. section 119 treats the date of filing of a patent application in a foreign country as the date of its filing in the United States if the foreign country accords reciprocal treatment to applications filed in the United States or to applications by citizens of the United States. Amendment of this section to treat citizens of the Northern Mariana Islands as U.S. citizens before termination of the trusteeship could complicate patent applications by persons not citizens of the Northern Mariana Islands since a foreign country might negate the reciprocity provision for all U.S. citizens by failing to accord rights to the citizens of the Northern Mariana Islands. Since Northern Mariana Islands patent applications are apt to be few in number and, in most instances, first filed with the United States, amendment of the section does not seem worthwhile.

TITLE 36. PATRIOTIC SOCIETIES AND OBSERVANCES.

*36 U.S.C. section 25 limits membership on the governing board of the Boy Scouts of America to U.S. citizens.

*36 U.S.C. section 34 limits membership on the National Council of the Girl Scouts of America to U.S. citizens.

36 U.S.C. section 45 allows membership in the American Legion to any person who served in the U.S. armed forces during certain wars or hostilities or to U.S. citizens who served in the armed forces of any U.S. ally during those wars or hostilities.

36 U.S.C. section 67e (Supp. I) allows membership in AMVETS (American Veterans) to any person who served in the U.S. armed forces

between 1940 and 1975 or any U.S. citizen who served in the armed forces of any U.S. ally during that period.

[232]

36 U.S.C. section 83 gives the purpose of the United States Blind Veterans of World War I as assisting U.S. citizens who lost their sight in war. Active membership is restricted, by section 85 of Title 36, U.S.C., to "American veterans" of World War I.

36 U.S.C. section 90e allows membership in the Disabled American Veterans to any person who was disabled in war while serving in the U.S. armed forces or to any U.S. citizen disabled while serving in the forces of a U.S. ally during such a war period.

36 U.S.C. section 97 limits membership in the American War Mothers to U.S. citizens.

*36 U.S.C. section 121, added by section 306 of Public Law 95-479, the Veterans' Disability Compensation and Survivors' Benefits Act of 1978, enacted October 18, 1978, requires superintendents and assistant superintendents of cemeteries operated by the American Battle Monuments Commission to be U.S. citizens.

36 U.S.C. section 125 allows the American Battle Monuments Commission to cooperate with U.S. citizens, among others, in the erection and maintenance of war memorials outside the United States.

36 U.S.C. section 177 requires aliens to stand at attention when the flag is being hoisted, lowered, or passed in review or in a parade. (Citizens are to do the same but with right hand over heart.)

36 U.S.C. section 1157 limits membership in the Paralyzed Veterans of America to U.S. citizens.

TITLE 37. PAY AND ALLOWANCES OF THE UNIFORMED SERVICES.

[No provisions.]

TITLE 38. VETERANS' BENEFITS.

38 U.S.C. section 109 (b) allows certain U.S. citizens who served in the armed forces of U.S. allies in World War II to receive veterans' vocational rehabilitation and home loan benefits. Subsection (c)(1) allows certain U.S. citizens who served in the armed forces of Czechoslovakia or Poland during World War I or World War II in armed conflict against enemies of the United States to receive veterans' medical care.

*38 U.S.C. section 235 allows overseas employees of the Veterans' Administration who are U.S. citizens certain pay and allowances. [233]

*38 U.S.C. section 624 (b) allows the Veterans' Administration to furnish necessary medical care for the service-connected disability of an otherwise eligible veteran who is a U.S. citizen sojourning or residing abroad.

38 U.S.C. section 1002 allows interment in national cemeteries of deceased veterans and of any citizen of the United States who served in the armed forces of a wartime ally of the United States during that war.

38 U.S.C. section 3103 (c) excepts aliens from loss of certain veterans' benefits on discharge or dismissal from the armed forces for enumerated reasons.

38 U.S.C. section 3108 prohibits payment of gratuitous benefits by the Veterans' Administration to any alien located in territory under control of an enemy of the United States.

*38 U.S.C. section 4105 (b) restricts to citizens of the United States certain appointments in the Department of Medicine and Surgery of the Veterans' Administration.

38 U.S.C. section 4114 (c) allows appointment of non-citizens to the Department of Medicine and Surgery without regard to section 4105, above, when it is not possible to recruit qualified U.S. citizens.

TITLE 39. POSTAL SERVICE.

[No provisions.]

TITLE 40. PUBLIC BUILDINGS, PROPERTY, AND WORKS.

*40 U.S.C. section 71a (b)(2) authorizes appointment of five "citizen members" to the National Capitol Planning Commission. The other members of the Commission serve ex officio, so "citizen" may mean merely that the member is not an official but a member of the general public; under such a reading these members would not be required to be U.S. citizens.

40 U.S.C. section 782 prevents persons disqualified by section 310 of title 47 (see below) from holding radio station licenses, that is, aliens, from owning, operating, or controlling certain long-lines communications facilities in Alaska formerly owned by the United

States. Allowing citizens of the Northern Mariana Islands to hold radio station licenses under section 310 would remove the bar imposed
[234] by this section.

TITLE 41. PUBLIC CONTRACTS.

41 U.S.C. section 49 prohibits defense contractors from denying employment for failure to produce a birth certificate to anyone who can produce an honorable discharge certificate from the U.S. armed forces, unless that certificate shows its holder may have been an alien when the certificate was issued.

TITLE 42. THE PUBLIC HEALTH AND WELFARE.

*42 U.S.C. section 204 requires that commissioned officers in the Public Health Service be U.S. citizens.

42 U.S.C. section 209 (h) allows aliens to be employed as consultants or appointed to fellowships by the Public Health Service.

42 U.S.C. section 252 requires the Surgeon General to provide facilities for physical and mental examinations of aliens as required by the immigration laws.

42 U.S.C. section 259 (a) requires that alien convict drug addicts subject to deportation be deported upon discharge from a Public Health Service drug treatment hospital.

42 U.S.C. section 295f-1 (Supp. I) provides that, in counting third-year medical students for purposes of computing the amount of certain grants to medical schools, students not U.S. citizens who were not second-year students in the school shall not be counted, while second-year U.S.-citizen students who were previously enrolled in foreign medical schools shall be counted.

42 U.S.C. section 295g-2 authorizes grants to U.S. schools of medicine and osteopathy to train U.S. citizens enrolled in foreign medical schools before October 12, 1976, to permit them to complete their education at U.S. medical schools.

*42 U.S.C. section 295g-8 (d)(12) authorizes grants for the training of U.S. citizens from foreign health professions schools to enable them to enroll in residency programs in the United States.

*42 U.S.C. section 302 (b)(3) requires States receiving federal grants for old-age assistance and medical assistance to the aged to impose no citizenship requirement on eligibility for assistance that would exclude U.S. citizens. The subchapter containing this section

was repealed effective January 1, 1974, except with respect to Guam, Puerto Rico, and the Virgin Islands. Public Law 92-603, section 303(a), (b), 86 Stat. 1484 (1972). While the section is thus not applicable to the Northern Mariana Islands, rights of citizens of the Northern Mariana Islands residing in Guam, Puerto Rico, or the Virgin Islands would be expanded were they treated as U.S. citizens. [235]

*42 U.S.C. section 304 halts payments for old-age assistance or medical assistance to the aged if a State alters a previously-approved plan so the citizenship condition set forth in section 302(b), above, no longer obtains. The repeal discussed under section 302(b) also includes this section.

*42 U.S.C. section 402 (t) suspends old-age, survivors, and disability insurance benefits to aliens who are outside the United States unless they are citizens of a country which allows equivalent benefits to qualified U.S. citizens outside that country, except in certain specified circumstances.

42 U.S.C. section 403 (k) considers certain nonresident aliens engaged in trade or business on Guam (and certain other specified territories) as engaged in noncovered remunerative activity outside the United States for purpose of reducing the monthly social security benefits to which they are entitled.

42 U.S.C. section 410 (a) defines "employment," in determining eligibility for federal old age, survivors, and disability insurance benefits to include, among other relations, employment of a U.S. citizen outside the United States by a foreign subsidiary of a domestic corporation which has entered into an agreement to include the employee within the U.S. social security system pursuant to section 3121(l) of Title 26, above. Specifically excluded from the definition of "employment" is service on a vessel or aircraft that is not an American vessel or aircraft by a person who is not a citizen of the United States if the person is employed on the vessel or aircraft when outside the United States. Also specifically excluded are certain services performed by nonresident aliens temporarily in the United States.

Subsection (c) defines an "American vessel" as including an undocumented vessel, the crew of which is employed solely by one or more U.S. citizens, residents or corporations.

42 U.S.C. section 411 (b) defines "self-employment" income for purposes of determining eligibility for federal old-age, survivors, and disability insurance benefits to exclude earnings of nonresident aliens but to include earnings of residents of Puerto Rico, the Virgin Islands, Guam, and American Samoa who are not U.S. citizens.

Subsection (c) includes in the definition of "trade or business" employment of a U.S. citizen by a foreign government or
[236] instrumentality or an international organization in the United States.

42 U.S.C. section 417 (h) allows certain U.S. citizens who fought in the armed forces of a country at war with a country with which the United States was at war during World War II to receive certain veterans' benefits.

*42 U.S.C. section 426a (a)(4) allows certain U.S. citizens and residents over 65 to receive hospital insurance benefits although otherwise not entitled to those benefits.

*42 U.S.C. section 428 (a)(3) allows certain uninsured U.S. citizens and residents over 72 to receive specified monthly cash benefits. The benefits are not available if the person is receiving benefits under Supplemental Security Income program, and may not be paid to a person residing outside the 50 States and the District of Columbia.

42 U.S.C. section 431 allows certain benefits to be paid U.S. citizens of Japanese ancestry held in U.S. Government internment camps during World War II.

*42 U.S.C. section 1202 (b)(2) requires States receiving federal grants for aid to the blind to impose no citizenship requirement on eligibility for assistance that would exclude U.S. citizens. The subchapter containing this section was repealed effective January 1, 1974, except with respect to Guam, Puerto Rico, and the Virgin Islands. Public Law 92-603, section 303(a), (b), 86 Stat. 1484 (1972). See comment regarding section 302(b) of Title 42, above.

*42 U.S.C. section 1204 halts payments for aid to the blind if a State alters a previously-approved plan so the citizenship condition set forth in section 1202(b), above, no longer obtains. The repeal discussed under section 1202(b) also includes this section.

*42 U.S.C. section 1313 authorizes reimbursable temporary assistance to certain needy U.S. citizens or dependents of U.S. citizens returned or brought from foreign countries.

*42 U.S.C. section 1352 (b)(2) requires States receiving grants for aid to the permanently and totally disabled to impose no citizenship requirement on eligibility for assistance that would exclude U.S. citizens. The subchapter containing this section was repealed effective January 1, 1974, except with respect to Guam,

Puerto Rico, and the Virgin Islands. Public Law 92-603, section303(a), (b), 86Stat. 1484 (1972). See comment regarding section 302(b) of Title 42, above. [237]

*42 U.S.C. section 1354 halts payments for aid to the permanently and totally disabled if a State alters a previously-approved plan so the citizenship condition set forth in section 1352(b), above, no longer obtains. The repeal discussed under section 1352(b) also includes this section.

*42 U.S.C. section 1382c (a)(1)(B) requires that an "aged, blind, or disabled individual" eligible for supplemental security income assistance be a resident of the United States and a U.S. citizen or a permanent resident alien. Paragraph (f)(3), added by section 504 of Public Law 96-265, the Social Security Disability Amendments, enacted June 9, 1980, provides that, for purposes of determining the eligibility of an alien, certain income and resources of the alien's sponsor (if any) and the sponsor's spouse are deemed income and resources of the alien.

Section 502(a)(1) of the Covenant provides that the chapter containing this section, Title XVI of the Social Security Act "shall apply to the Northern Mariana Islands . . . as it applies to the several States." Citizens of the Northern Mariana Islands in the Northern Mariana Islands already receive supplemental security income.

42 U.S.C. section 1382j, added by section 504 of Public Law 96-265, above, specifies formulae and procedures for attributing the income of an aliens' sponsor to the alien for purposes of determining eligibility for supplemental security income.

*42 U.S.C. section 1395i-2 (a)(3) limits to residents of the United States who are citizens or lawfully admitted permanent resident aliens who have resided in the United States for five years eligibility for aged and disabled hospital insurance benefits for certain otherwise uninsured individuals.

*42 U.S.C. section 1395o (2) limits eligibility for supplementary medical insurance benefits for the aged and disabled to residents of the United States who are U.S. citizens or lawfully admitted permanent resident aliens who have resided in the United States for five years.

*42 U.S.C. section 1396a (b)(4) requires States receiving medicaid grants to impose no citizenship requirement on eligibility for assistance that would exclude U.S. citizens. The Northern Mariana Islands Student Services Coordinator on Guam on

June 26, 1981, told Commission staff that otherwise eligible citizens of the Northern Mariana Islands have been denied Medicaid on Guam on
[238] citizenship grounds.

*42 U.S.C. section 1484 (f)(3) requires domestic farm laborers to be citizens or legal residents of the United States for purposes of an insurance program for loans for providing housing for domestic farm labor.

*42 U.S.C. section 1652 (b) limits recipients of compensation for disability or death of nonresident aliens employed by defense contractors at U.S military bases outside the United States to specified dependents and allows or requires the Secretary of Labor to pay one-half the compensation benefits in a lump sum. The exclusive remedy for compensation for injury to or death of persons employed at military bases on Guam, in the Northern Mariana Islands, or in the Trust Territory is provided by this law. See section 1651(a) and (c) of Title 42.

*42 U.S.C. section 1701 (c) limits benefits payable to surviving dependents on the death outside the United States of an employee of a contractor with the United States if that employee is neither a U.S. citizen nor a resident of the United States or Canada.

*42 U.S.C. section 1869 limits award of National Science Foundation scholarships and graduate fellowships to U.S. citizens or nationals.

*42 U.S.C. section 1881 (c) limits award of the National Medal of Science to persons who are U.S. citizens or nationals or who are lawfully admitted permanent resident aliens who have filed applications for petitions for naturalization.

*42 U.S.C. section 1922 limits certain Department of Justice youth medals for character or service to U.S. citizens.

*42 U.S.C. section 1971 (a)(1) declares the right of all U.S. citizens to vote in public elections without distinction of race, color, or previous condition of servitude.

*42 U.S.C. section 1973 prohibits the use of voting qualifications or prerequisites to deny or abridge the right of any U.S. citizen to vote on account of race, color, or membership in a language minority group.

*42 U.S.C. section 1973a (b) requires courts, on application of the Attorney General or an aggrieved person, to set aside the use of tests or devices used in violation of section 1973, above.

*42 U.S.C. section 1973b provides for suspension of literacy tests for voting by U.S. citizens in specified circumstances and guarantees voting rights of U.S. citizens who are members of language minorities. [239]

*42 U.S.C. section 1973h (a) declares that the constitutional right of citizens to vote is abridged by required payment of poll taxes as a precondition to voting.

*42 U.S.C. section 1973aa (a) prohibits denial of the right of a U.S. citizen to vote in any Federal, State, or local election through use of a literacy or educational test, a requirement of good moral character, or by proving qualifications through the voucher of other persons.

42 U.S.C. section 1973aa-1 prohibits durational residency requirements on the right of U.S. citizens to vote for the President and Vice President; and requires that States allow absentee registration and voting in such elections.

*42 U.S.C. section 1973aa-1a sets forth various requirements to enforce the rights of citizens of language minorities to participate in the electoral process.

42 U.S.C. section 1973cc, as amended by section 7 of Public Law 95-593, amending the Overseas Citizens Voting Rights Act of 1975, enacted November 4, 1978, requires States to permit absentee registration for voting by persons in the U.S. Armed Forces and Merchant Marine and their spouses and dependents who are U.S. citizens. "States" is not defined in the subchapter containing this section.

42 U.S.C. section 1973dd-1 extends to otherwise-qualified U.S. citizens residing outside the United States the right to vote in any Federal election in the State of last domicile. "State" is defined in section 1973dd to include the 50 States and Guam, while "United States" is defined by the same section to include the 50 States and Guam but to exclude the Trust Territory of the Pacific Islands.

42 U.S.C. section 1973dd-2 requires States to allow absentee registration and voting by qualified U.S. citizens residing outside the United States. See comment under section 1973dd-1, above.

*42 U.S.C. section 1975c authorizes the Civil Rights Commission to investigate denial of the right of U.S. citizens to vote by reason of fraud or discrimination.

42 U.S.C. section 1982 guarantees to all U.S. citizens equal

rights in receiving, owning, and conveying real property. Section 805 of the Covenant, restricting Northern Mariana Islands land
[240] ownership to persons of Northern Mariana Islands descent, as a more specific and a more recently enacted statute, might be construed to supercede section 1982 with respect to land in the Northern Mariana Islands. Should legislation be sought defining U.S. citizens to include citizens of the Northern Mariana Islands for purposes of section 1982, the Covenant's section 805 restrictions might be brought into question. When citizens of the Northern Mariana Islands become U.S. citizens at termination of the trusteeship, they will have the rights guaranteed by section 1982.

*42 U.S.C. section 1983 provides a remedy for damages to any U.S. citizen or person within the jurisdiction of the United States denied, under color of State or Territorial law, any rights, privileges, or immunities secured by the Constitution or laws of the United States. Under the Trusteeship Agreement the United States has "full powers of . . . jurisdiction" over the Northern Mariana Islands, so the remedy afforded by this section may already be available in the Northern Mariana Islands. But see Thompson v. Kleppe, 424 F. Supp. 1263 (D. Hawaii 1976), holding the remedy unavailable because the Trust Territory is not a State or Territory.

*42 U.S.C. section 1985 provides a remedy for damages to any U.S. citizen injured by a conspiracy to obstruct justice with the intent to deny him the equal protection of the laws or, by force, intimidation, or threat, to deny him his right to support the election of a qualified candidate in a Federal election.

*42 U.S.C. section 2000e-1 provides that the equal employment opportunities laws do not apply to employers with respect to employment of aliens outside any state. "State" is defined to include the several States and Guam. 42 U.S.C. section 2000e(i). Under section 502(a)(2) of the Covenant, "State" would also include the Northern Mariana Islands. The Equal Employment Opportunities Commission concurs in this conclusion. This section would thus not except employment of aliens in the Northern Mariana Islands from the equal employment opportunity laws. Note, however, that discrimination on the basis of citizenship is not forbidden by the equal employment opportunity laws. See sections 2000e-2 and 2000e-3 of Title 42.

The equal employment opportunity laws do apply to employers with respect to employment of U.S. citizens outside of any state.

42 U.S.C. section 2000e-16 prohibits the Federal Government from discriminating in employment on the grounds of race, color, religion, sex, or national origin except with regard to aliens employed outside

the United States. "State" under the law includes the Northern Mariana Islands. See comment under section 2000e-1, above. The law thus bars federal discrimination on the forbidden grounds in the Northern Mariana Islands, but does not bar federal discrimination outside of the United States against citizens of the Northern Mariana Islands. [241]

*42 U.S.C. section 2133 (d) prohibits an alien from obtaining a commercial nuclear energy license.

*42 U.S.C. section 2134 (d) prohibits an alien from obtaining licenses for medical, industrial, commercial, or research uses of nuclear energy.

42 U.S.C. section 2473 (c)(10) allows the Administrator of the National Aeronautics and Space Administration to employ aliens without regard to statutory prohibitions against payment of compensation to aliens.

*42 U.S.C. section 3631 provides criminal penalties for interference with the rights of a U.S. citizen to fair housing or in assisting others to obtain fair housing.

*42 U.S.C. section 4954 (c) implies that only citizens or legal residents of the United States may become VISTA volunteers.

42 U.S.C. section 5816 (h) authorizes the Administrator of the (since-abolished) Energy Research and Development Administration to employ persons who are not citizens of the United States in expert, scientific, technical, or professional capacities.

*42 U.S.C. section 5841 (a)(1) requires that members of the Nuclear Regulatory Commission be U.S. citizens.

*42 U.S.C. 5906 (b)(2)(A) requires the members of the boards of directors of joint Federal-industry corporations established for nonnuclear energy research and development to be U.S. citizens.

*42 U.S.C. section 5919 (p)(1), added by section 207(b) of Public Law 95-238, the Department of Energy Act of 1978--Civilian Applications, enacted February 25, 1978, requires recipients of federal loan guarantees for certain synthetic fuels facilities and municipal organic waste energy generation facilities to be U.S. citizens. "United States" is defined by subsection (p)(1) to include the 50 States and Guam, but the statute was enacted after January 9, 1978. Consequently, the statute is not applicable to the Northern Mariana Islands by virtue of section 502(a)(1) or (2) of the Covenant.

*42 U.S.C. section 6391 requires the President (or his delegate) in allocating petroleum products or electrical energy among classes
[242] or users to give consideration to the need to foster reciprocal and nondiscriminatory treatment by foreign countries of U.S. citizens engaged in commerce in those countries.

*42 U.S.C. section 7141 (f)(1), added by section 641 of Public Law 95-619, the National Energy Conservation Policy Act, enacted November 9, 1978, requires minority members eligible for certain Department of Energy assistance to be U.S. citizens. To be eligible, persons of Northern Mariana Islands descent would have to be considered as of Oriental descent and U.S. citizens.

*42 U.S.C. section 8712 (d), added by section 16(d) of Public Law 96-294, the Energy Security Act, enacted June 30, 1980, requires members of the Board of Directors of the United States Synthetic Fuels Corporation to be U.S. citizens. Section 8702(16) defines "State" for purposes of the part containing this provision to include the Commonwealth of the Northern Mariana Islands.

*42 U.S.C. section 8779 (b)(4), added by section 179(b) of Public Law 96-294, above, requires that technology, patents, and trade secrets developed by certain projects in the Western Hemisphere outside the United States assisted by the U.S. Synthetic Fuels Corporation be available to U.S. citizens.

*42 U.S.C. section 9101 (a)(3), added by section 2(a)(3) of Public Law 96-320, the Ocean Thermal Energy Conversion Act, enacted August 3, 1980, declares as a purpose of the Act the authorization and regulation of the construction, location, ownership, and operation of ocean thermal energy conversion plantships by U.S. citizens. Although section 9102(15) defines "State" to include the "Commonwealth of the Northern Mariana," section 9102(18) defines "United States citizen" so as apparently to exclude citizens of the Northern Mariana Islands.

*42 U.S.C. section 9111 (a), added by section 101(a) of Public Law 96-320, above, requires U.S. citizens to obtain a license to own, construct, or operate an ocean thermal energy conversion facility. Subsection (c) authorizes the issuance of such licenses to U.S. citizens. Subsection (f) requires the issuance of such licenses to qualified U.S. citizens. See comment under section 9101, above.

*42 U.S.C. section 9118 (e)(2)(C), added by section 108(e)(2)(C) of Public Law 96-320, above, requires that ocean thermal energy conversion facilities be manned by U.S. citizens or aliens lawfully admitted for permanent residence, except in specified circumstances. See comment under section 9101, above.

42 U.S.C. section 9151, added by section 301 of Public Law 96-320, above, makes unlawful certain acts and omissions by U.S. citizens or nationals or other persons subject to U.S. jurisdiction in violation of provisions of the Ocean Thermal Energy Conversion Act. See comment under section 9101, above. [243]

42 U.S.C. section 9601 (19), added by subsection 101(19) of PUblic Law 96-510, the Comprehensive Environmental Response, Compensation, and Liability Act, enacted December 11, 1980, provides that U.S. citizens are subject to the jurisdiction of the United States for purposes of the Act, wherever they may be. Subsection (27) defines "United States" to include the Commonwealth of the Northern Mariana Islands.

TITLE 43. PUBLIC LANDS.

43 U.S.C. section 145 allows the Secretary of the Interior to auction and sell certain improved public lands to U.S. citizens.

43 U.S.C. section 161 allows a U.S. citizen or a person who has filed under the naturalization laws a declaration of intention to become a U.S. citizen to make a homestead entry on certain public lands in Alaska.

43 U.S.C. section 164 provides that a homestead entryman under section 161, above, must be a U.S. citizen before a patent to the homestead land will be granted.

43 U.S.C. section 168 allows any female U.S. citizen to obtain an Alaska land patent, notwithstanding her marriage to an alien, if that alien is entitled to become a citizen of the United States.

43 U.S.C. section 177 allows U.S. citizens to gain title to certain public lands in New Mexico through adverse possession at the discretion of the Secretary of the Interior upon payment of a specified fee.

43 U.S.C. section 178 allows the Secretary of the Interior to grant a patent to certain public lands in New Mexico continguous to a Spanish or Mexican land grant to U.S. citizens in adverse possession upon payment of a specified fee.

43 U.S.C. section 185 allows heirs who are U.S. citizens to continue prosecution of the contest of a preemption, homestead, or timber culture entry in Alaska.

43 U.S.C. section 186 allows U. S. citizens who served with allied armies in World War I the preferred right of entry accorded

veterans of the U.S. armed forces under the homestead or desert-land laws, with respect to public lands in Alaska.

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43 U.S.C. section 190 allows Indians located on public lands prior to 1884 to have the same homestead rights as U.S. citizens with respect to land in Alaska.

43 U.S.C. section 231 allows leaves of absence from homestead lands in Alaska in specified circumstances if the entryman is a U.S. citizen.

43 U.S.C. section 272a allows U.S. citizens who served with allied armies in World War I to receive the preferential treatment accorded veterans of the U.S. armed forces with respect to homestead patents to public lands in Alaska.

43 U.S.C. section 296 allows qualified U.S. citizens to relinquish homestead lands acquired before December 29, 1916, to exchange those lands for a larger stock-raising homestead. The section now applies only in Alaska.

43 U.S.C. section 315b limits the issuance of public land grazing permits to U.S. citizens or those who have declared their intention to become such under the naturalization laws.

43 U.S.C. section 321 restricts to U.S. citizens, or those persons who have declared their intention to become such under the naturalization laws, the right to enter and subsequently acquire public desert lands in the western United States by irrigating those lands.

43 U.S.C. section 329 restricts to U.S. citizens the right to acquire public lands in the western United States under desert-land laws.

*43 U.S.C. section 364c limits membership on advisory committees to the Board on Geographic Names to U.S. citizens.

43 U.S.C. section 375 allows certain excess public lands improved by federal reclamation projects to be auctioned and sold to U.S. citizens.

43 U.S.C. section 398 requires that all U.S. citizens be given an equal opportunity to subscribe to interest-bearing certificates of indebtedness issued to finance completion of certain Government reclamation projects begun before June 26, 1910.

43 U.S.C. section 682c limits the lease or sale of small tracts

of public land in Alaska to persons who are U.S. citizens or who have filed declarations of intention to become such under the naturalization laws. [245]

43 U.S.C. section 687a allows U.S. citizens to purchase certain public lands in Alaska.

43 U.S.C. 687c authorizes the Secretary of the Interior to lease public lands in Alaska to U.S. citizens for fur farming.

43 U.S.C. section 897 requires the Secretary of the Interior to issue patents to U.S. citizens, or to persons who have declared their intention to become U.S. citizens, for land purchased from a railroad out of lands erroneously certified or patented to the railroad by the United States.

43 U.S.C. section 898 allows U.S. citizens, or persons who have declared their intention to become U.S. citizens, to purchase unoccupied public lands thought erroneously to have been included in a railroad land grant and in fact sold to those citizens or persons by the railroad.

43 U.S.C. section 906 allows U.S. citizens or persons who have declared their intention to become U.S. citizens who are bona fide purchasers in posession of certain lands included in railroad land grants but subsequently returned to the United States to purchase those lands from the United States.

43 U.S.C. section 942-6 allows the Secretary of the Interior to grant to U.S. citizens rights-of-way over certain public lands in Alaska for the construction of wagon roads or tramways.

43 U.S.C. section 956 allows the Secretary of the Interior to permit the use of rights-of-way through certain public lands to U.S. citizens for canals, reservoirs, and mining and timbering roads.

43 U.S.C. section 957 allows the Secretary of the Interior to permit the use of rights-of-way through certain public lands to U.S. citizens for purposes of generating, manufacturing, or distributing electric power.

43 U.S.C. section 959 allows the Secretary of the Interior to permit the use of rights-of-way through certain public lands to U.S. citizens for various purposes.

43 U.S.C. section 961 allows the grant of easements across certain public lands to U.S. citizens for electric power and communications facilities.

43 U.S.C. section 966 allows grant of a right-of-way for a petroleum products pipeline through public lands in Arkansas to U.S. citizens.

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43 U.S.C. section 967 reiterates the U.S. citizenship requirement for applicants for an Arkansas pipeline right-of-way. See section 966, above.

43 U.S.C. section 992 allows the Secretary of the Interior to sell to U.S. citizens in possession prior to September 21, 1922, certain public lands in Arkansas previously designated erroneously as water-covered.

43 U.S.C. section 993 contains provisions similar to section 992, above, but with respect to lands in Louisiana.

43 U.S.C. section 994 contains provisions similar to section 992, above, but with respect to lands in Wisconsin.

43 U.S.C. section 1062 requires a U.S. attorney, on affidavit of a U.S. citizen that public lands are being enclosed without title, to bring suit to remove the enclosure.

*43 U.S.C. section 1356, added by section 208 of Public Law 95-372, the Outer Continental Shelf Lands Act Amendments of 1978, enacted September 18, 1978, requires that vessels and rigs used for exploration, development, and recovery of oil and gas on the outer continental shelf of the United States be crewed by U.S. citizens or aliens lawfully admitted for permanent residence in the United States unless no such persons are qualified and available.

43 U.S.C. section 1425 limits individuals qualified to purchase certain public lands to U.S. citizens or persons who have declared their intention to become U.S. citizens.

43 U.S.C. section 1602 (b) requires that Alaskan natives, for purposes of Alaskan native claims settlement, be U.S. citizens.

43 U.S.C. section 1717 provides that no public land may be sold, exchanged, or donated to any person who is not a U.S. citizen.

*43 U.S.C. section 1841, added by section 401 of Public Law 95-372, above, requires commercial fishermen to be U.S. citizens in order to obtain compensation from the Fishermen's Contingency Fund for damages to or loss of fishing gear and resulting economic losses attributable to oil and gas exploration, development, and production on the outer continental shelf of the United States.

TITLE 44. PUBLIC PRINTING AND DOCUMENTS.

44 U.S.C. section 2504 allows the National Historical Publications and Records Commission to cooperate with and encourage other entities in collecting, preserving, editing, and publishing the papers of outstanding U.S. citizens. [247]

TITLE 45. RAILROADS.

45 U.S.C. section 231 (d)(3) states, for purposes of determining coverage under the railroad retirement laws, that an individual not a citizen or resident of the United States is not deemed in the service of an employer when rendering service outside the United States to an employer who is required under the laws of that place to employ, in whole or in part, citizens or residents thereof. Subsection (h)(6) excludes from the definition of compensation certain remuneration received by non-resident aliens temporarily present in the United States.

45 U.S.C. section 351 incorporates definitions similar to those in section 231, above, for purposes of determining coverage under the railroad unemployment insurance laws.

*45 U.S.C. section 543 (a)(1) requires that directors of the National Railroad Passenger Corporation be U.S. citizens. Subsection (d) requires officers of the corporation to be U.S. citizens.

TITLE 46. SHIPPING.

46 U.S.C. section 11 restricts issuance of U.S. certificates of registry to vessels wholly owned by U.S. citizens. This section is repealed effective July 1, 1982. Presidential Proclamation 4726, dated February 21, 1980, suspends until termination of the trusteeship application of this requirement for foreign-built fishing vessels owned by citizens of the Northern Mariana Islands or owned by or in the custody of the Northern Mariana Islands Government.

46 U.S.C. section 12 allows U.S. consular officers to issue provisional certificates of registry to vessels abroad purchased by U.S. citizens. This section is repealed effective July 1, 1982.

46 U.S.C. section 13 allows foreign-built vessels owned by U.S. citizens on February 1, 1920, or by the United States on June 5, 1920, and sold to U.S. citizens to engage in coastwise trade so long as they continue to be owned by U.S. citizens.

46 U.S.C. section 14 allows vessels wrecked on U.S. coasts to be

registered if purchased and given substantial repairs in a U.S. shipyard by U.S. citizens.

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46 U.S.C. section 22 requires the master of a vessel, if present in the district of registry at the time of registry, to appear at the registry and attest to his U.S. citizenship. This section is repealed effective July 1, 1982.

46 U.S.C. section 35 permits a U.S. vessel sold or transferred outside the United States in whole or in part to a U.S. citizen to be documented anew outside the United States. This section is repealed effective July 1, 1982.

46 U.S.C. section 61 forbids issuance of documentation certifying any vessel to be a U.S. vessel if it is not either registered as a U.S. vessel or wholly owned by U.S. citizens. This section is repealed effective July 1, 1982.

46 U.S.C. section 65b, added by section 104 of Public Law No. 96-594, enacted December 24, 1980, requires that a vessel, to be eligible for documentation, be owned by a U.S. citizen (or citizens). This section becomes effective on July 1, 1982. Presidential Proclamation 4726, dated February 21, 1980, suspends until termination of the trusteeship application of U.S. vessel documentation laws for foreign-built fishing vessels owned by citizens of the Northern Mariana Islands or owned by or in the custody of the Government of the Northern Mariana Islands.

46 U.S.C. section 98 requires vessels belonging to U.S. citizens to carry, for reasonable compensation, monies and securities of the Government.

*46 U.S.C. section 121 imposes a tonnage tax on any vessel entering the United States from a foreign port if any officer of the vessel is not a U.S. citizen; exempts from another tonnage duty unregistered vessels owned by U.S. citizens if the vessel is registered before it leaves port.

46 U.S.C. section 122 exempts coasting and fishing vessels belong to U.S. citizens from tonnage duties.

46 U.S.C. section 128 exempts from the "light money" tonnage duties imposed on foreign-registered vessels those vessels owned by U.S. citizens that before leaving port become registered as U.S. vessels.

46 U.S.C. section 129 exempts from the "light money" tonnage duties documented but unregistered vessels owned by U.S. citizens.

46 U.S.C. section 141 allows the President to proclaim that "foreign discriminating duties of tonnage" are suspended, in whole or in part, for vessels of a foreign country according similar treatment [249] to vessels owned by U.S. citizens.

46 U.S.C. section 144 allows the President to suspend the right of free passage through the St. Marys Falls Canal for vessels owned by citizens of a foreign government that by imposition of tolls or otherwise unduly burdens the passage of U.S. citizens in specified parts of the St. Lawrence and Great Lakes waterways.

46 U.S.C. section 146 exempts from a discriminating ad valorem duty on goods imported in vessels not vessels of the U.S. goods imported in vessels owned by U.S. citizens if the vessel before leaving port becomes registered as a U.S. vessel.

46 U.S.C. section 170 (13) allows any collector of customs, on the sworn information of any "reputable" U.S. citizen, to detain vessels violating the laws or regulations regarding the carriage of explosives or dangerous substances.

*46 U.S.C. section 221 limits vessels enjoying the benefits and privileges of a vessel of the United States to those owned by U.S. citizens or corporations, and requires that the master and all officers of such vessels be U.S. citizens.

46 U.S.C. section 236 allows the President to suspend the requirement that all watch officers of U.S. vessels be U.S. citizens if he sees such suspension as meeting the needs of foreign commerce.

*46 U.S.C. section 242 requires that registered staff officers--pursers, surgeons, and professional nurses--in the United States merchant marine be U.S. citizens.

46 U.S.C. section 316 (a) prohibits vessels not wholly owned by U.S. citizens from towing vessels, other than vessels of foreign registry or vessels in distress, from point to point within the United States.

*46 U.S.C. section 325 provides for the forfeiture of any licensed vessel on its transfer, in whole or in part, to a person who, at the time of transfer is not a U.S. citizen and resident.

46 U.S.C. section 332 exempts from licensing fees canal boats and barges, built in the United States and owned by U.S. citizens, not carrying passengers and not engaged in foreign commerce. This section is repealed effective July 1, 1982.

46 U.S.C. section 354 requires the master of a vessel belonging
[250] to U.S. citizens to deposit his register on arrival at a foreign port with any U.S. consul there, to be returned on his departure after payment of consular fees and showing compliance with the laws relating to discharge of seamen in a foreign country.

46 U.S.C. section 666 requires every vessel belonging to a U.S. citizen and engaged in foreign commerce or trade between the U.S. Atlantic and Pacific Coasts to carry a chest of medicines.

*46 U.S.C. section 672a requires, after June 25, 1936, all licensed officers and pilots and 75% of the crew of every U.S. vessel to be U.S. citizens.

46 U.S.C. section 713 provides that any person commanding a vessel belonging to a U.S. citizen shall be deemed the master thereof.

46 U.S.C. section 802 provides that, to be a U.S. citizen for purposes of the Shipping Act, a corporation must be controlled and directed by a majority of persons who are U.S. citizens.

46 U.S.C. section 808 allows registry, enrollment, and licensing of any vessel purchased, chartered, or leased from the Secretary of Commerce by a U.S. citizen; permits such vessels, even if foreign-built, to engage in coastwise trade; restricts the subsequent transfer of such vessels to persons who are not U.S. citizens; and provides for forfeiture of vessels transferred in violation of those restrictions.

46 U.S.C. section 813 authorizes the Federal Maritime Commission to investigate certain unfair or discriminatory shipping practices by persons not U.S. citizens.

*46 U.S.C. section 834 authorizes the Secretary of the Treasury to deny port clearance to any vessel able but refusing to receive cargo tendered by a U.S. citizen for shipment to a subsequent port of call.

46 U.S.C. section 835 restricts the transfer to foreign registry and sale or charter to foreign citizens of vessels owned by U.S. citizens during war or national emergency.

46 U.S.C. section 861 declares the policy of the United States to have a merchant marine owned and operated privately by U.S. citizens.

46 U.S.C. section 864 authorizes the Secretary of Commerce to

sell certain World War I merchant vessels owned by the United States to U.S. citizens.

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46 U.S.C. section 865 allows sale of the vessels to which reference is made in section 864, above, to aliens if they cannot be sold to U.S. citizens.

46 U.S.C. section 866 allows sale or charter of the vessels to which reference is made in section 864, above, to U.S. citizens who agree to establish and maintain certain regular steamship lines.

46 U.S.C. section 876 (4) prohibits the Secretary of Commerce from establishing any rule or regulation that favors vessels owned by the United States over U.S. vessels owned by U.S. citizens.

46 U.S.C. section 883 forbids the use of vessels in the coastwise trade other than those built and documented in the United States and owned by U.S. citizens. Section 503(b) of the Covenant provides that the coastwise laws of the United States will not apply to the Northern Mariana Islands, except to activities of the U.S. Government and its contractors in the Northern Mariana Islands, unless the U.S. Congress after termination of the trusteeship enacts legislation to make them applicable.

46 U.S.C. section 883-1 defines U.S. citizen for purposes of the laws restricting coastwise trade and fishing to vessels owned by U.S. citizens to include certain corporations controlled and the majority interest of which are owned by U.S. citizens. See comment on section 883, above.

46 U.S.C. section 922 (a) requires that mortgage of a U.S. vessel be only to a U.S. citizen or certain governmental entities as mortagagee.

46 U.S.C. section 961 prohibits the assignment of rights under a mortgage of a U.S. vessel to any person not a U.S. citizen; transfer of any evidence of indebtedness secured by such a mortgage to any person not a U.S. citizen; or sale by court order of any U.S. vessel to any person not a U.S. citizen.

*46 U.S.C. section 1132 (a) requires that all officers of vessels documented under U.S. laws be U.S. citizens and that all crew members of any cargo vessel that has received a U.S. construction or operating subsidy be U.S. citizens. Subsections (b) and (c) require any passenger vessel that has received a U.S. construction or operating subsidy to have a crew 90% of whom are U.S. citizens with the remaining 10% being stewards admitted for permanent residence or who have declared their intent to become U.S. citizens. Section 3(b)

of Public Law 96-453 amends section 905 of the Merchant Marine Act, 1936, 46 U.S.C. section 1244, to add a definition of the United
[252] States that includes the Northern Mariana Islands. This definition applies throughout the Act, sections 1101-1295g of Title 46. "Citizen of the United States" also is defined, by section 1244(c), but in a way that does not necessarily preclude a reading that includes citizens of the Northern Mariana Islands within the definition. But see comment under section 1274, below, treating citizens of the Northern Mariana Islands as distinct from U.S. citizens for purposes of the Act.

*46 U.S.C. section 1151 allows U.S. citizens to receive certain ship-construction subsidies. See comment under section 1132, above.

46 U.S.C. section 1152 (g) allows the Secretary of Commerce to sell to U.S. citizens certain vessels previously acquired by him. See comment under section 1132, above.

46 U.S.C. section 1158 protects vessels owned by U.S. citizens and registered under U.S. law from competition by certain obsolete vessels sold by the Secretary of Commerce to other persons. See comment under section 1132, above.

*46 U.S.C. section 1159 allows U.S. citizens to receive certain subsidies and loans for the construction of new vessels. See comment under section 1132, above.

*46 U.S.C. section 1160 allows U.S. citizens to turn over certain tankers and obsolete vessels to the Secretary of Commerce in return for cash payments to be made to a shipyard for construction of a replacement vessel. See comment under section 1132, above.

46 U.S.C. section 1161 allows U.S. citizens to set aside certain earnings, indemnities, and proceeds received, in connection with operation of a vessel, toward the acquisition, construction, reconstruction, or reconditioning of a vessel, with the sums so set aside to receive favorable tax treatment. See comment under section 1132, above.

*46 U.S.C. section 1171 allows U.S. citizens to receive operating subsidies for certain vessels used in an "essential service of the foreign commerce" of the United States or in off-season cruises. See comment under section 1132, above.

46 U.S.C. section 1175 (c) protects existing essential service routes served by U.S. citizens from competition by an additional vessel receiving an operating subsidy unless the Secretary, after

notice and hearing to all parties, determines existing service to be inadequate. See comment under section 1132, above.

[253]

46 U.S.C. section 1177 allows U.S. citizens owning or leasing eligible vessels to enter into an agreement with the Secretary of Commerce for establishment of a capital construction fund for the purpose of providing replacement, reconstructed, or additional vessels, said fund to receive favorable tax treatment. See comment under section 1132, above.

46 U.S.C. section 1177-1 defines "eligible vessel" for purposes of section 1177, above, to include certain small fishing vessels owned by U.S. citizens. See comment under section 1132, above.

46 U.S.C. section 1181 (c) prohibits transfer to foreign registry of vessels covered by an operating-differential subsidy contract which the United States has defaulted on or cancelled without just cause if there is outstanding indebtedness to any U.S. citizen secured by the vessel. See comment under section 1132, above.

46 U.S.C. section 1195 allows employment of certain U.S. Department of Commerce vessels on trade routes not adequately served by existing steamship lines owned or operated by U.S. citizens. See comment under section 1132, above.

*46 U.S.C. section 1213 (a) requires U.S. citizens to be given preference for construction-differential subsidy, operating differential subsidy, and related contracts. See comment under section 1132, above.

46 U.S.C. section 1227 protects U.S. citizens operating common carriers on established trade routes to or from U.S. ports from unfair or discriminatory practices by contractors receiving operating-differential subsidies or charterers of certain vessels acquired by the Department of Commerce, in agreement or concert with another carrier. See comment under section 1132, above.

46 U.S.C. section 1242 allows the Secretary of Commerce, in times of national emergency or to secure the national defense, to requisition, purchase, or charter vessels owned by U.S. citizens. See comment under section 1132, above.

*46 U.S.C. section 1273 allows the Secretary of Commerce to guarantee certain ship mortgage payments for U.S. citizens. See comment under section 1132, above.

*46 U.S.C. section 1274 requires that the obligation secured by

the mortgage allowed by section 1273, above, be related to the construction, reconstruction, or reconditioning of a vessel owned by
[254] U.S. citizens. See comment under section 1132, above. Paragraph (a)(2), as amended by section 220(3) of Public Law 96-561, enacted December 22, 1980, allows guarantee of mortgage payments to finance the construction, reconstruction, reconditioning, or purchase of research vessels or commercial fishing vessels by citizens of the Northern Mariana Islands.

*46 U.S.C. section 1279c, (a), added by section 203(a) of Public Law 96-320, the Ocean Thermal Energy Conversion Act, enacted August 3, 1980, authorizes loan guarantees for construction of commercial demonstration ocean thermal energy conversion facilities owned by U.S. citizens. See comment under section 9101 of Title 42, above.

*46 U.S.C. section 1281 requires that "American vessels," for purposes of determining eligibility for war risk insurance, be owned by U.S. citizens. See comment under section 1132, above.

*46 U.S.C. section 1283 permits war risk insurance coverage to extend to, among other interests, foreign-flag vessels owned by U.S. citizens, and cargos for which U.S. citizens bear the risk of loss. See comment under section 1132, above.

*46 U.S.C. section 1295, added by section 1301 of Public Law 96-453, the Maritime Education and Training Act of 1980, enacted October 15, 1980, authorizes the Secretary of Commerce to provide maritime education and training to U.S. citizens. See comment under section 1132, above.

*46 U.S.C. section 1295b (b)(1)(A), added by section 1303(b)(1)(A) of Public Law 96-453, above, requires that nominees for appointment to the U.S. Merchant Marine Academy be U.S. citizens or nationals. The subsection also authorizes, however, nomination of residents of the Northern Mariana Islands by the Governor of the Northern Mariana Islands. Subparagraph (b)(3)(F) of this section requires U.S. citizens selected for appointment to apply for midshipman status in the U.S. Naval Reserve before being appointed. Subsection (c) authorizes the Secretary of the Navy to appoint U.S. citizens appointed as cadets at the U.S. Merchant Marine Academy as midshipmen in the U.S. Naval Reserve. Paragraph (e)(1) requires appointees who are U.S. citizens to agree to complete the course of instruction and to fulfill certain obligations after graduation. Subsection (g) authorizes conferral of a bachelor of science degree on U.S. citizens who meet certain conditions and pass an examination for a merchant marine officer's license. See comment under section 1132, above.

*46 U.S.C. section 1295c (f)(2), added by section 1304(f)(2) of Public Law 96-453, above, requires a State maritime academy, to receive certain federal subsidies, to admit a determined number of U.S. citizens from States and territories other than those supporting the academy. Paragraph (g)(1) authorizes incentive payments to U.S. citizens enrolled in State maritime academies. Subsection (h) authorizes appointment of U.S. citizens attending State maritime academies as midshipmen in the U.S. Naval Reserve. See comment under section 1132, above. [255]

*46 U.S.C. section 1295e (a), added by section 1306(a) of Public Law 96-453, above, requires that members of the U.S. Maritime Service be U.S. citizens. See comment under section 1132, above.

46 U.S.C. section 1354 penalizes U.S. citizens engaging in the slave trade.

46 U.S.C. section 1356 prohibits any U.S. citizen or resident from owning an interest in any vessel used in the slave trade and provides for forfeiture of any such interest.

TITLE 47. TELEGRAPHS, TELEPHONES, AND RADIOTELEGRAPHS.

47 U.S.C. section 17 prohibits ownership, operation, or control of telegraph or cable lines in Alaska by persons not U.S. citizens.

*47 U.S.C. section 154 (b) requires members of the Federal Communications Commission to be U.S. citizens. The Acting Deputy General Counsel of the Commission, in a letter to this Commission dated July 2, 1981, has advised that allowing citizens of the Northern Mariana Islands to be treated as U.S. citizens for purposes of this requirement presents a policy question on which the Office of the General Counsel at the Federal Communications would not make any recommendation.

*47 U.S.C. section 222 (d) prohibits the Federal Communications Commission from approving the merger of telegraph carriers if more than one-fifth of the stock of the resulting carrier will be owned by aliens.

*47 U.S.C. section 303 (1)(1) limits the issuance of radio station operators' licenses to U.S. citizens or nationals or to citizens of the Trust Territory of the Pacific Islands "presenting valid identity certificates issued by the High Commissioner of such Territory." On May 1, 1981, Commissioner Edward DLG. Pangelinan, in his capacity as Representative to the United States of the Commonwealth of the Northern Mariana Islands, formally requested President Reagan to exercise his authority under section 1004(a) of

the Covenant to suspend this citizenship requirement as it applies to citizens of the Northern Mariana Islands until termination of the
[256] trusteeship.

*47 U.S.C. section 310 (b) requires that grantees or holders of broadcast, common-carrier, or aeronautical radio station licenses be U.S. citizens. The Acting General Counsel of the Federal Communications Commission, in a letter to this Commission dated March 16, 1981, has advised that the Federal Communications Commission would have no objection to amendment of this section to allow citizens of the Northern Mariana Islands to hold such licenses before termination of the trusteeship. On May 1, 1981 Commissioner Edward DLG. Pangelinan, in his capacity as Representative to the United States of the Commonwealth of the Northern Mariana Islands, formally requested President Reagan to exercise his authority under section 1004(a) of the Covenant to suspend this citizenship requirement as it applies to citizens of the Northern Mariana Islands until termination of the trusteeship.

47 U.S.C. section 327 allows U.S. citizens publishing newspapers in foreign countries to use Navy radio stations for transmission of press messages at commercial rates if no commercial service is available.

*47 U.S.C. section 396 (c)(2) requires that members of the board of directors of the Corporation for Public Broadcasting be U.S. citizens.

*47 U.S.C. section 733 (a) requires that members of the board of directors of the Communications Satellite Corporation be U.S. citizens. Subsection (b) requires that officers of the corporation be U.S. citizens.

*47 U.S.C. section 734 (d) limits alien ownership of stock in the Communications Satellite Corporation. Amendment of section 310 of this title to allow citizens of the Northern Mariana Islands to hold radio station licenses (see above) would cause citizens of the Northern Mariana Islands to be treated as U.S. citizens for purposes of this section.

TITLE 48. TERRITORIES AND INSULAR POSSESSIONS.

48 U.S.C. section 733 includes in the body politic of Puerto Rico such U.S. citizens as may reside there.

48 U.S.C. section 733a provides that all U.S. citizens who reside in Puerto Rico for one year shall be citizens of Puerto Rico.

*48 U.S.C. section 737 protects the rights, privileges, and immunities of U.S. citizens in Puerto Rico to the same extent as if Puerto Rico were a State. [257]

48 U.S.C. section 874 requires all officials of Puerto Rico (or of the Puerto Rican judiciary?) to be U.S. citizens.

48 U.S.C. section 892 requires the Resident Commissioner of Puerto Rico to be a U.S. citizen.

48 U.S.C. section 1392 extends the jurisdiction of Virgin Islands courts to all cases in which a U.S. citizen is a party.

48 U.S.C. section 1405p limits voting in Virgin Island elections to persons who are U.S. citizens. See also 48 U.S.C. section 1542(a), below.

48 U.S.C. section 1406a gives the District Court of the Virgin Islands jurisdiction over crimes on the high seas on any vessel belonging in whole or in part to a U.S. citizen.

48 U.S.C. section 1411 allows the President to consider unclaimed islands containing guano deposits if discovered and peacefully possessed by U.S. citizens to be considered as part of the United States.

43 U.S.C. section 1414 limits to U.S. citizens the right of occupying and exploiting the guano islands to which reference is made in section 1411, above.

48 U.S.C. section 1415 limits to U.S. citizens the right to purchase or use guano from the guano islands to which reference is made in section 1411, above.

48 U.S.C. section 1422 requires that the Governor and Lieutenant Governor of Guam to have been U.S. citizens for at least five years immediately preceding election.

48 U.S.C. section 1423f requires that members of the Guam legislature be U.S. citizens.

48 U.S.C. section 1459 provides that only U.S. citizens may vote or hold office in any organized territory of the United States; and protects U.S. citizens from denial of the rights to vote or hold office on account of race, color, or previous condition of servitude.

48 U.S.C. section 1501 limits to U.S. citizens and to aliens who

have declared their intention to become U.S. citizens the rights to acquire and own land in the territories of the United States.

[258] 48 U.S.C. section 1503 allows aliens who have inherited or foreclosed on land to hold title for up to ten years notwithstanding the prohibition of section 1501, above.

48 U.S.C. section 1508 applies to the District of Columbia the restrictions on alien ownership of land applicable in the territories. See sections 1501 and 1503, above.

48 U.S.C. section 1509 limits to U.S. citizens and to aliens who have declared their intention to become U.S. citizens the right to homestead public lands in Hawaii and to U.S. citizens the right to own such lands or hold or lease them more than five years after entry.

48 U.S.C. section 1510 prohibits the transfer of public lands in Hawaii to aliens, with specified exceptions.

48 U.S.C. section 1542 (a) limits to U.S. citizens the right to vote in the Virgin Islands. See also 48 U.S.C. section 1405p, above.

48 U.S.C. section 1543 requires all officials of the government of the Virgin Islands to be U.S. citizens.

48 U.S.C. section 1572 (b) requires all members of the Virgin Islands legislature to be U.S. citizens.

48 U.S.C. section 1591 requires the Governor and Lieutenant Governor of the Virigin Islands to have been U.S. citizens for at least five years immediately preceding election.

48 U.S.C. section 1713 requires the nonvoting Delegates from Guam and the Virgin Islands to the U.S. House of Representatives to have been U.S. citizens for at least seven years prior to their election.

48 U.S.C. section 1733 (b), added by section 3(b) of Public Law 95-556, requires the nonvoting Delegate from American Samoa to the U.S. House of Representatives to have been a U.S. citizen for at least seven years prior to election.

TITLE 49. TRANSPORTATION.

*49 U.S.C. section 1301 (3) limits "air carriers," for purposes of the Federal aviation program, to U.S. citizens. "United States" is defined by subsection (38) to include "the several States . . .

and the several Territories and possessions." Under section 502(a)(2) of the Covenant, that definition, to the extent that it determines the applicability of the Federal aviation program, would make the program applicable to the Northern Mariana Islands. The rights, privileges, immunities and liabilities and duties of "air carriers" are set out throughout Chapter 20, sections 1301-1542 of Title 49, dealing with the Federal aviation program. [259]

*49 U.S.C. section 1304 extends to all U.S. citizens a public right to freedom of transit through navigable U.S. airspace. See comment under section 1301, above.

*49 U.S.C. section 1321 (b) limits membership on the Civil Aeronautics Board to U.S. citizens. See comment under section 1301, above. The Board will be terminated and this section will become ineffective on January 1, 1985.

*49 U.S.C. section 1341 (b) requires the Administrator of the Federal Aviation Administration to be a U.S. citizen. See comment under section 1301, above.

*49 U.S.C. section 1342 (b) requires the Deputy Administrator of the Federal Aviation Administration to be a U.S. citizen. See comment under section 1301, above.

*49 U.S.C. section 1371 (d)(4), as amended by section 9 of Public Law 95-504, the Airline Deregulation Act of 1978, enacted October 24, 1978, allows U.S. citizens operating intrastate air common carriers to establish joint services and fares with other air carriers and foreign air carriers. See comment under section 1301, above.

*49 U.S.C. section 1388 (Supp. I) allows the Civil Aeronautics Board to grant to certain U.S. citizens certificates of public convenience and necessity for all-cargo air services. See comment under section 1301, above.

*49 U.S.C. section 1401 limits aircraft eligible for U.S. registration to those owned by U.S. citizens, by aliens lawfully admitted for permanent residence, and by certain foreign corporations organized and doing business in the United States. See comment under section 1301, above.

*49 U.S.C. section 1422 allows the Secretary of Transportation to prohibit or restrict the issuance of airman certificates to aliens.

*49 U.S.C. section 1533 allows the Secretary of Transportation

to provide aviation insurance, if such insurance is not commercially available on reasonable terms and conditions, on certain cargo owned
[260] by or the risk of loss of which is on U.S. citizens as well as against other risks. See comment under section 1301, above.

TITLE 50. WAR AND NATIONAL DEFENSE.

50 U.S.C. section 855 makes subject to deportation aliens convicted of violating certain internal security laws.

*50 U.S.C. section 1801 (i), added by section 101(i) of Public Law 95-511, the Foreign Intelligence Surveillance Act of 1978, enacted October 25, 1978, defines "United States person" for purposes of protections afforded by the Act as including U.S. citizens and aliens lawfully admitted for permanent residence. "United States" is defined by subsection (j) to include, when used in geographical sense, the Trust Territory of the Pacific Islands.

TITLE 50--APPENDIX

*50 U.S.C. App. section 2 defines "enemy" and "ally of enemy" for purposes of the law forbidding trade with either to exclude U.S. citizens not residing in the territory of a nation with which the United States is at war. The same section defines "United States," apparently only in a geographical sense, to include "all land and water, continental or insular, in any way within the jurisdiction of the United States" including areas occupied by U.S. military or naval forces. This definition probably does not expand similarly the definition of "United States" for purposes of determining who is a U.S. citizen, since Congress no doubt did not intend the populace of enemy territory occupied by the U.S. armed forces to be treated as U.S. citizens.

*50 U.S.C. App. section 8 (b) gives any U.S. citizen the right to abrogate any contract entered into with an enemy or ally of an enemy prior to beginning of a war or within thirty days after the beginning of a war.

50 U.S.C. App. section 9 (b) allows the return of certain seized World War I alien property to certain former U.S. citizens married to enemies.

*50 U.S.C. App. section 10 allows U.S. citizens, on approval of the President, to pay taxes or fees required by, or file applications with, an enemy, or an ally of an enemy in connection with patents, copyrights, and trademarks; and allows the President to grant to any U.S. citizen a license to use patents, copyrights, or trademarks owned by an enemy or an ally of an enemy.

*50 U.S.C. App. section 12 limits sale of alien property to purchasers who are U.S. citizens, unless the President determines otherwise; and prohibits resale to a person not a U.S. citizen. [261]

50 U.S.C. App. section 21 protects naturalized U.S. citizens presumed to have been expatriated from loss of property under the alien property laws upon a showing of loyalty.

50 U.S.C. App. section 32 allows return of alien property to certain enemy corporations owned, before vesting of the property and continuously thereafter, by U.S. citizens to U.S. citizens resident in enemy territory and to U.S. citizens who lost, through marriage to a foreigner, but later reacquired U.S. citizenship. The section also allows U.S. citizens or residents to institute attachment proceedings against such property.

50 U.S.C. App. section 34 limits to U.S. citizens or residents and certain other persons the payment of debts out of property taken by the Alien Property Custodian from the debtor.

50 U.S.C. App. section 453 requires all male citizens and residents of the United States except certain nonimmigrant aliens to register for the draft. (Section 466 of Title 50 Appendix defines "United States" "when used in a general sense" to include the several States and Guam (among other areas). This geographical definition would not appear to enlarge the definition of U.S. citizens in section 453 to include citizens of the Northern Mariana Islands.)

50 U.S.C. App. section 455 prohibits local selective service boards from ordering induction into the armed forces of aliens who have been in the United States less than one year.

*50 U.S.C. App. section 460 (b)(3) forbids denial to any U.S. citizen of membership on a selective service local board or appeal board on account of sex; and requires members of local and appeal boards to be U.S. citizens.

*50 U.S.C. App. section 514 extends to U.S. citizens serving in the armed forces of a U.S. wartime ally the benefits of the Soldiers' and Sailors' Relief Act, suspending civil legal proceedings against certain persons in the U.S. armed forces.

*50 U.S.C. App. section 572 extends to U.S. citizens serving in the armed forces of a U.S. wartime ally certain rights and exemptions related to their tax liabilities.

50 U.S.C. App. section 1737 (a) limits to U.S. citizens the

right to purchase from the United States certain World War II surplus vessels.

[262]

50 U.S.C. App. section 1738 (a) limits to U.S. citizens the right to charter from the United States certain World War II surplus vessels.

50 U.S.C. App. section 1739 allows sale by the United States to aliens of certain World War II surplus vessels if no U.S. citizen wants to buy the vessel on the same terms and conditions.

50 U.S.C. App. section 1740 requires that U.S. citizens be preferred over non-citizens in offering certain U.S. World War II surplus vessels for sale or charter.

50 U.S.C. App. section 1741 permits the exchange of vessels owned by U.S. citizens for a credit against purchase from the United States of certain World War II surplus vessels.

50 U.S.C. App. section 1745 (c) permits certain World War II surplus vessels sold or chartered to U.S. citizens to engage in coastwise trade despite foreign registry during the Second World War.

*50 U.S.C. App. section 2004 allows benefits to certain U.S. citizens captured by the Japanese Government during World War II or by hostile forces during the Korean War or the Vietnam conflict. [Quaere: Are any citizens of the Northern Mariana Islands possibly eligible for Vietnam benefits under this Act?]

50 U.S.C. App. section 2014 allows payment of prisoner-of-war benefits to U.S. citizens who served in allied armed forces during World War II.

50 U.S.C. App. section 2015 limits to U.S. citizens certain benefits for merchant seamen imprisoned or interned during World War II.

50 U.S.C. App. section 2017 (c) defines "nationals of the United States" eligible for payment of certain World War II losses to include U.S. citizens.

50 U.S.C. App. section 2017c allows U.S. citizens who lost citizenship through marriage to a foreign citizen but who subsequently regained U.S. citizenship to be eligible for payment of certain World War II losses.

50 U.S.C. App. section 2316 allows U.S. citizens to study in India with funds paid by India for emergency food aid from the United States. [263]

* * *

Northern Mariana Islands Commission on Federal Laws Washington, D.C. 20240 (202) 343-5617

[264]

BORDERS:

The Applicability of Federal Law

To Imports to and Exports from

The Northern Mariana Islands

-- A Survey

ERRATA

November 1983

Page 7: Delete the fourth line through the ninth line on the page and substitute the following:

> customs territory of the United States duty-free if 70 percent or less of the value of the product (whether manufactured, produced, or grown) derives from foreign materials. Public Law 98-67, § 214(a)(1)(A) (1983). See Senate Report 94-433, The Covenant to Establish a Commonwealth of the Northern Mariana Islands 81 (1975). If more than 70 percent of the value of the product derives from foreign materials, the product is subject to the usual duties. For certain textile, apparel, canned tuna, petroleum, and watch products, only 50 percent or less of the value of the product may be derived from foreign materials. Public Law 98-67, § 214(a)(1)(B).

[265]

Page 10: The section entitled "Imports by returning residents of the United States." should be revised to read as follows:

> Imports by returning residents of the United States. Item 813.31 of the Revised Tariff Schedules of the United States allows returning residents of the United States to import duty-free goods valued at not more than $400 or, if arriving from the Virgin Islands, Guam, or American Samoa, not more than $800 (of which no more than $400 shall be the value of goods acquired elsewhere than in those insular possessions). Section 603(c) of the Covenant provides that imports from the Northern Mariana Islands into the customs territory of the United States will receive the same treatment as imports from Guam. Accordingly, returning residents of the United States arriving from the Northern Mariana Islands may import duty-free goods valued at not more than $800 (of which no more than $400 shall be the value of goods acquired elsewhere than in the Virgin Islands, Guam, American Samoa, or the Northern Mariana Islands). Goods acquired in the Northern Mariana Islands are also treated as goods acquired in Guam for returning residents of the United States arriving from the Virgin Islands, Guam, and American Samoa, that is, as goods from insular possessions and not as goods from a foreign country subject to a duty-free maximum value of $400.

Page 10: The section entitled "Gifts" should be revised to read as follows:

> Gifts. Section 1321 of title 19, U.S.C., authorizes the Secretary of the Treasury to allow persons in the United States to receive duty-free gifts valued at not more than $100 sent from persons in the Virgin Islands, Guam, and American Samoa. For gifts from other areas outside the

customs territory of the United States, the maximum value of such gifts is $50. Regulations implementing the
[266] Secretary's authority are found in sections 10.152 and 10.153 of title 19, C.F.R. (1983).

Imports from the Northern Mariana Islands to the customs territory of the United States are to receive the same treatment as imports from Guam. Covenant § 603(c). Accordingly, persons in the customs territory of the United States may receive gifts valued at not more than $100 sent from persons in the Northern Mariana Islands.

Page 31, line 1: Insert a period (.) after "United States".

Page 33, third line from bottom of page: "the" should be "The".

Page 48, fourth paragraph, line 12: "(1976." should be "(1976).".

Page 48, fourth paragraph, line 19: Delete the quotation mark.

Page 69: Insert the following paragraphs immediately above the heading "ENFORCEMENT OF THE IMPORT AND EXPORT LAWS . . .":

As part of the Caribbean Basin Economic Recovery Act (CBERA) of 1983, Congress made clear that producers in the insular possessions of the United States could seek the imposition or modification of duties or quotas to protect themselves from serious economic injury from foreign competition. Public Law 98-67, § 214(f); House Report 98-266, at 23 (1983). The International Trade Commission is also required by that legislation, in assessing whether increased imports have caused injury to domestic industry, to consider the effects of the increased imports on industries in the insular possessions as well. Id.

The Northern Mariana Islands is not an insular possession of the United States at this time, so producers in the Northern Mariana Islands are not directly protected by the CBERA provisions from serious injury due to import competition. Further, the CBERA was enacted after January 9, 1978, the effective date of section 502(a)(2) of the Covenant. Since its provisions did not protect producers on Guam on that date, section 502(a)(2) does not operate to entitle producers in the Northern Mariana Islands to seek relief from the competition of foreign imports. See also House Report 98-266, at 22 (1983).

* * *

Northern Mariana Islands Commission on Federal Laws Washington, D.C. 20240 (202) 343-5617

BORDERS:

The Applicability of Federal Law To Imports to and Exports from The Northern Mariana Islands -- A Survey

OCTOBER 1983

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ENFORCEMENT OF THE IMPORT AND EXPORT LAWS OF THE UNITED STATES IN THE NORTHERN MARIANA ISLANDS . . . . . 69 [273]

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The Northern Mariana Islands

-- A Survey

INTRODUCTION

The United States has different borders for different purposes. One set of lines on a map indicates the areas over which the United States claims sovereignty, to the exclusion of all other nations in the world. A distinct set of lines delineates the area into which foreign goods may not be imported without payment of a tariff to the government of the United States. These or yet other lines define the areas in which particular laws of the United States are effective.

On executing and approving the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (approved by Public Law 94-241, March 24, 1976, 90 Stat. 263; hereafter, "the Covenant"), the people of the Northern Mariana Islands and the people of the United States agreed that the borders of the United States would be redrawn to include the Northern Mariana Islands for many purposes. For other purposes, it was agreed, the Northern Mariana Islands would remain outside the boundaries of the United States.

More than one hundred different federal statutes regulate in one way or another the movement of things across the borders of the United States. (Yet other statutes--the immigration and nationality laws--control the movement of people across the national boundaries of the United States. Those statutes are not examined in this survey.) To determine which of those statutes include the Northern Mariana Islands as part of the United States and which do not, examination of each of those statutes and of pertinent provisions of the Covenant is necessary. This survey sets forth the results of such an examination. The survey lists all federal laws directly affecting the movement of goods and other things across the national boundaries of the United States. Each law is briefly described, but persons directly affected by a law are encouraged to refer to the law itself, since the short description here necessarily omits important information about the law and its operation. Often, too, more detailed information about the law will be found in regulations issued by the federal agency administering the law. (These regulations are first published in the Federal Register and then compiled in the Code of Federal Regulations.) A conclusion is then given as to whether the Northern Mariana Islands is within or without the boundaries of the United States for purposes of the law.

A particular law governing the movement of goods and other things* across the borders of the United States may affect only imports into the United States; it may affect only exports from the United States; or it may affect both imports and exports. Further, [275] the same law may or may not also contain provisions regulating the movement of goods within the boundaries of the United States. Consequently, determining that the Northern Mariana Islands is not within the United States for purposes of a particular law governing imports does not mean the law has no effect on the Northern Mariana Islands. For, while imports into the Northern Mariana Islands will not be covered by that law, exports from the Northern Mariana Islands to the United States are imports into the United States subject to the law.

Likewise, even though the Northern Mariana Islands is outside the United States for purposes of a law controlling exports, exports from the United States to the Northern Mariana Islands are subject to that law. Even when the Northern Mariana Islands is considered as part of the United States for purposes of a law regulating imports and exports of a particular commodity, other provisions of the same law may regulate movement of that commodity within the United States and, thus, between the Northern Mariana Islands and other parts of the United States.

Categorizing the various federal statutes affecting imports into and exports from the United States is not easy. The statutes serve a wide variety of purposes, from raising revenue for the United States Treasury to protecting consumers against adulterated foods, and from protecting wildlife to carrying out the foreign policy of the United States. The goods regulated range from honeybees to mobile homes, and from whale products to tea. Various branches of the Federal Government, including the Departments of Agriculture, Commerce, Health and Human Services, Interior, Justice, Transportation, and Treasury, are involved in enforcing one or another of these laws. Persons affected by the laws vary as widely as do the laws themselves: importers, exporters, agriculturists, pharmacists, conservationists, automobile dealers, consumers, and manufacturers, among others, are touched by the provisions of one or more of these statutes.

Federal laws affecting the movement of goods and other things across boundaries of the United States are classified here first between:

(a) those affecting imports only or imports and exports,

(b) those affecting exports only.

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*The term "goods" would not include noxious weeds or injurious wildlife; thus, "goods or things."

The first group is further subdivided into (1) laws raising customs revenues, (2) laws regulating specific goods (or other specific things), and (3) general restrictions enforcing particular statutes. The survey also examines laws related to, but not directly
[276] regulating, the flow of goods across national borders, those having to do with trade adjustment assistance. Finally, certain problems of enforcing applicable federal laws in the Northern Mariana Islands are examined.

IMPORT AND EXPORT LAWS OF THE UNITED STATES

LAWS AFFECTING IMPORTS ONLY, OR IMPORTS AND EXPORTS

Customs laws.

Customs are duties or taxes imposed by a nation on goods imported to or exported from that nation. Marriott v. Brune, 50 U.S. 632 (1850). The customs laws of the United States, generally found in title 19 of the United States Code, include tariff rates and classifications, import restrictions, and various other measures related to international trade. The United States Customs Service, a part of the Department of the Treasury, is responsible for administration of the customs laws.

Article I, Section 8, Clause 1 of the United States Constitution requires that "all Duties, Imposts and Excises shall be uniform throughout the United States." This provision, however, has been held to require uniformity only throughout the States admitted into the Union. Downes v. Bidwell, 182 U.S. 244 (1901). Congress is thus not required by the Constitution to include the Northern Mariana Islands within the area in which all duties, imposts, and excises are uniform.

Sections 603, 604, and 605 of the Covenant treat expressly the applicability of federal customs laws to the Northern Mariana Islands:

> Section 603. (a) The Northern Mariana Islands will not be included within the customs territory of the United States.
>
> (b) The Government of the Northern Mariana Islands may, in a manner consistent with the international obligations of the United States, levy duties on goods imported into its territory from any area outside the

customs territory of the United States and impose duties on exports from its territory.*

[277]

(c) Imports from the Northern Mariana Islands into the customs territory of the United States will be subject to the same treatment as imports from Guam into the customs territory of the United States.

(d) The Government of the United States will seek to obtain from foreign countries favorable treatment for exports from the Northern Mariana Islands and will encourage other countries to consider the Northern Mariana Islands a developing territory.

Section 604. (a) The Government of the United States may levy excise taxes on goods manufactured, sold or used or services rendered in the Northern Mariana Islands in the same manner and to the same extent as such taxes are applicable within Guam.

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

Section 605. Nothing in this Article will be deemed to authorize the Government of the Northern Mariana Islands to impose any customs duties on the property of the United States or on the personal property of military or civilian personnel of the United States Government or their dependents entering or leaving the Northern Mariana Islands pursuant to their contract of employment or orders assigning them to or from the Northern Mariana Islands or to impose any taxes on the property, activities or instrumentalities of the United States which one of the several States could not impose . . . .

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*Congress may delegate to the Northern Mariana Islands the power to impose tariff duties on imports into the Northern Mariana Islands. See Miranda v. Puerto Rico, 101 F.2d 26 (1st Cir. 1938); Pan American Standard Brands, 177 F. Supp. 769, 773 (Customs Ct. 1959). In approving section 603(b) of the Covenant, Congress has delegated that power to the Northern Mariana Islands. (Footnote added by Commission staff.)

The Marianas Political Status Commission, in its Section-by-Section Analysis of the Covenant,* concluded that:

> It is to the advantage of the Northern Marianas to be
> [278] outside the customs territory [of the United States], for it permits the Northern Marianas to have a duty-free port. This will mean lower consumer prices in the Northern Marianas and will also encourage the tourist business. It means that goods will enter the Marianas subject to duties imposed by the local government rather than subject to the duties which are imposed by the federal government. This is an important element of local self-government and assures that the duties can be tailored to local conditions.

Another commentator notes that,

> . . . In addition, [the Marianas] are free to levy duties on exports or imports from non-U.S. sources independent of the United States schedule of duties. Thus, duties may be custom tailored to meet local needs and need not impose too great a burden on Marianas residents who must, of necessity, rely to a considerable extent on imports.

Liebman, Income Tax Incentives for Investment in the Northern Mariana Islands, 2 University of Hawaii Law Review 389, 396 (1981). Collection costs, however, "likely would exceed revenues from the duties at the current level of imports." Id. at 396 n.43.**

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*The Analysis is reprinted in Hearings on the Covenant to Establish the Commonwealth of the Northern Mariana Islands before the Subcommittee on Territorial and Insular Affairs of the House Committee on Interior and Insular Affairs, 94th Cong., 1st Sess. 626 (1975) and in Hearings on the Northern Mariana Islands before the Senate Committee on Interior and Insular Affairs, 94th Cong., 1st Sess. 356 (1975).

**The Northern Mariana Islands may be precluded from levying duties on goods that may enter the customs territory of the United States from foreign countries duty-free. Should the Northern Mariana Islands attempt to levy a duty on such goods, the importer could merely first enter the goods into the United States and then ship them to the Northern Mariana Islands. Section 603(b) of the Covenant prevents the Northern Mariana Islands from levying duties on goods imported from the United States. See generally Miranda v. Puerto Rico, 101 F.2d 26, 28 (1st Cir. 1938).

Because of the treatment afforded the Northern Mariana Islands in the Covenant, laws of the United States having to do with tariffs and import quotas generally should be presumed inapplicable to the Northern Mariana Islands. But even if inapplicable to the Northern Mariana Islands, those laws may have effects in the Northern Mariana Islands. Laws of the United States related to tariffs and import quotas are as follows: [279]

The Revised Tariff Schedules of the United States.* General Headnote 1 to the Revised Tariff Schedules provides that "all articles imported into the customs territory of the United States from outside thereof are subject to duty or exempt therefrom as provided" in the General Headnotes and the Revised Tariff Schedules. The Northern Mariana Islands, as noted above, is outside the customs territory of the United States. Covenant § 603(a). See also General Headnote 2 of the Revised Tariff Schedules. Accordingly, articles imported into the Northern Mariana Islands are not subject to duty (or exempted therefrom) as provided in the General Headnotes and Revised Tariff Schedules.

Articles exported to the customs territory of the United States from the Northern Mariana Islands are, however, subject to duties and exemptions as provided in the Revised Tariff Schedules. Section 603(c) of the Covenant provides that such articles will receive the same treatment as articles exported to the customs territory of the United States from Guam, which is also outside the customs territory of the United States.** General Headnote 3(a) to the Revised Tariff

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*These schedules, formerly published at section 1202 of title 19, U.S.C., are now published as a separate document available from the Superintendent of Documents.

**Neither the Revised Tariff Schedules nor any specific provision of the Covenant govern duties on articles moving between the Northern Mariana Islands and Guam, both of which are outside the customs territory of the United States. The Marianas Political Status Commission, in its Section-by-Section Analysis of the Covenant, noted that "there will be no guarantee that Guam's goods will enter [the] Northern Marianas duty free or that Northern Marianas goods will enter Guam duty-free." That Commission then recorded its expectation "that appropriate arrangements can be developed with Guam to assure the economic development of both areas in an appropriate manner."

Carriers of merchandise into Guam must deliver a cargo manifest to the Government of Guam before they can unload. 15 C.F.R. § 30.81 (1983).

Schedules governs the treatment of articles exported to the customs territory of the United States from Guam and other insular possessions. In general, such articles may be imported into the customs territory of the United States duty-free "if 50 percent or
[280] less of the value of the product (whether manufactured, produced, or grown) derives from foreign materials." Senate Report 94-433, The Covenant to Establish a Commonwealth of the Northern Mariana Islands 81 (1975). If more than 50% of the value of the product derives from foreign materials, the product is subject to the usual duties.

Section 703(b) of the Covenant turns over to the Northern Mariana Islands government the proceeds of "all customs duties . . . derived from the Northern Mariana Islands" as well as "the proceeds of all taxes collected under the internal revenue laws of the United States on articles produced in the Northern Mariana Islands and transported to the United States, its territories or possessions."* Under section 602 of the Covenant, the Northern Mariana Islands government may in turn rebate taxes collected under the United States internal revenue laws. Because section 703(b) treats "customs duties" and "taxes collected under the internal revenue laws" as distinct categories, the rebate authority under section 602 does not authorize the Northern Mariana Islands government to rebate customs duties received from the United States under section 703(b).

—tuna. Canned tuna not packed in oil imported into the customs territory of the United States is charged a 6 percent ad valorem duty, so long as the total quantity of a canned tuna imported in a year does not exceed 20 percent of the total amount of canned tuna packed within the United States during the preceding year. When that quantity is exceeded, the ad valorem duty jumps to 12.5 percent.

Section 102 of Public Law 97-446, 96 Stat. 2329 (1983), makes clear that shipments from "insular possessions of the United States" are not counted in determining the extent to which the tariff quota has been filled. House Conference Report 97-989, at 37 (1982). While Guam is an insular possession of the United States, the Northern Mariana Islands cannot be considered as such prior to termination of the trusteeship. Even though Public Law 97-446

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*In Puerto Rico v. Blumenthal, 642 F.2d 622 (1980), certiorari denied, 451 U.S. 983 (1981), and Virgin Islands v. Blumenthal, 642 F.2d 641 (1980), certiorari denied, 451 U.S. 983 (1981), the United States Court of Appeals for the District of Columbia Circuit narrowly construed similar provisions in the organic acts for Puerto Rico and the Virgin Islands to exclude excise taxes collected on gasoline produced in those jurisdictions and shipped into the United States.

was enacted after January 9, 1978, its purpose was to make clear that the law in effect prior to that date included Guam, among other insular possessions, as a part of the United States and not as a foreign country for purposes of determining the extent to which the tariff quota has been filled. Id. Accordingly, by operation of section 502(a)(2) of the Covenant, shipments of canned tuna not packed in oil form the Northern Mariana Islands to the United States are not counted in determining the extent to which the tariff quota has been filled. [281]

Tuna is potentially a significant export from the Northern Mariana Islands to the United States. Exports of tuna to the United States from the Northern Mariana Islands, however, are governed by General Headnote 3(a), discussed under The Revised Tariff Schedules of the United States, above, and are little affected by the tariff quota.

—watches. The United States provides favorable tariff treatment for watches manufactured in the insular possessions of the United States, subject to an adjustable annual quota that is allocated among the Virgin Islands, Guam, and American Samoa. Public Law 97-446, § 110, 96 Stat. 2329 (1983). See Senate Report 97-564, at 12-14 (1982). Section 603(c) of the Covenant provides that "[i]mports from the Northern Mariana Islands into the customs territory of the United States will be subject to the same treatment as imports from Guam into the customs territory of the United States." Thus, the Northern Mariana Islands would appear to be entitled to a portion of the annual quota equal to that of Guam. Public Law 97-446, enacted after approval of the Covenant, makes no provision, however, for allocation of a portion of the quota to the Northern Mariana Islands. Accordingly, watches manufactured in the Northern Mariana Islands are not entitled to the favorable tariff treatment afforded by Public Law 97-446.

Foreign trade zones. Chapter 1A (sections 81a et seq.) of title 19, U.S.C., authorizes establishment of foreign trade zones. In a foreign trade zone, business firms may import and assemble products free of tariffs that would otherwise be imposed. Import duties are levied when the goods leave the trade zone. If items are reexported, no duties are paid. A foreign trade zone is, in effect, an area of American soil legally defined as outside the customs territory of the United States. Since the Northern Mariana Islands is already outside that customs territory, no gain from establishing a zone under title 19 is apparent:* A firm already can import and assemble products in

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*The trade panel of the February 1980 Pacific Basin Development Conference recommended that the Northern Mariana Islands study the possible creation of a foreign trade zone. Pacific Basin Development Conference, Economic Growth and Development through Unity 236 (1980).

the Northern Mariana Islands free of United States tariffs. The firm can reexport those goods to anyplace other than the United States without paying United States tariffs. And, because of General Headnote 3(a), the firm, if the local value added is sufficiently [282] high, may be able to enter the goods into the United States without paying United States tariffs. Goods entering the United States from a foreign trade zone always pay the full United States tariff.

Agricultural products. Section 624 of title 7, U.S.C., authorizes the President to impose fees or quotas on imported articles found to threaten the United States agricultural price support program or other programs of the Department of Agriculture. Section 610(f) of title 7 makes the chapter containing section 624 inapplicable to Guam. Section 624 consequently is also inapplicable to the Northern Mariana Islands and articles imported into the Northern Mariana Islands are not subject to fees or quotas imposed under section 624. (Articles exported from the Northern Mariana Islands to the United States, however, would be subject to applicable fees and quotas.)

Countervailing duties. Section 128 of title 19, U.S.C., imposes a ten percent additional duty on goods imported into the United States in foreign vessels, unless those vessels are exempted from the duty by treaty. Section 159.42 of title 19, C.F.R. (1983), provides that this duty shall be imposed only on specific instructions of the Commissioner of Customs. Neither the language of this law nor its legislative history indicates whether territories or possessions of the United States are to be treated as parts of the United States. In the absence of any such indication, the United States is presumed not to include those areas and, consequently, not to include the Northern Mariana Islands.

Vessel restrictions. Section 130 of title 19, U.S.C., subjects to forfeiture goods imported into the United States in vessels other than vessels of the United States or of the country where the goods were produced. The vessels are also subject to forfeiture. Section 131 exempts vessels and goods of any foreign nation that does not similarly restrict vessels of the United States. Neither the language of this law nor its legislative history indicates whether territories or possessions of the United States are to be treated as parts of the United States. In the absence of any such indication, the United States is presumed not to include those areas and, consequently, not to include the Northern Mariana Islands.

Section 1706 of title 19, U.S.C., prohibits the importation into the United States of foreign goods subject to duties in vessels of less than thirty tons, except under federal license. "United States" is defined, for purposes of section 1706, to exclude Guam. 19 U.S.C. § 1709(a). Accordingly, section 1706 does not apply to the importation of goods into the Northern Mariana Islands.

Emergency supplies. Section 1318 of title 19, U.S.C., allows the President to authorize importation of food, clothing, and medical supplies free of duty for use in emergency relief work. Section 1318 does not specify the places into which such importation free of duty may be permitted. "United States" is defined, however, for purposes of part I and subtitle II of chapter 4 of title 19, which includes section 1318, to exclude Guam. The reasonable conclusion is that the President's authority would extend only to lifting duties imposed by the United States on goods entering the customs territory of the United States and would not reach duties imposed by the Northern Mariana Islands pursuant to section 603(b) of the Covenant. [283]

Imports by returning residents of the United States. Item 813.31 of the Revised Tariff Schedules of the United States allows returning residents of the United States to import duty-free goods valued at not more than $400 or, if arriving from the Virgin Islands, Guam, or American Samoa, not more than $800 (of which no more than $400 shall be the value of goods acquired elsewhere than in those insular possessions).

Since the $800 exemption is not applicable to goods acquired in the Northern Mariana Islands under the terms of the Covenant, only goods valued at not more than $400 may enter the customs territory of the United States from the Northern Mariana Islands duty-free with returning residents of the United States.

Gifts. Section 1321 of title 19, U.S.C., authorizes the Secretary of the Treasury to allow persons in the United States to receive duty-free gifts valued at not more than $100 sent from persons in the Virgin Islands, Guam, and American Samoa. For gifts from other areas outside the customs territory of the United States, the maximum value of such gifts is $50. Regulations implementing the Secretary's authority are found in sections 10.152 and 10.153 of title 19, C.F.R. (1983).

Since the $100 exemption is not applicable to gifts from the Northern Mariana Islands under the terms of the Covenant, only gifts valued at not more than $50 may enter the customs territory of the United States from the Northern Mariana Islands duty-free.

Trade fair imports. Sections 1751 to 1756 of title 19, U.S.C., allow articles to be brought into the United States for use at a federally-approved trade fair free of duty or internal revenue taxes and without complying with certain labelling requirements of the internal revenue laws and the Federal Alcohol Administration Act. "United States" is not defined for purposes of these sections. Duties are collected only on goods imported into the customs territory of the United States. The Northern Mariana Islands is not part of that customs territory. Covenant § 603(a). Nor is the Northern Mariana Islands part of the United States for purposes of

the Federal Alcohol Administration Act. 27 U.S.C. § 211(a)(1). Some internal revenue laws are, however, applicable to the Northern Mariana Islands. Accordingly, there might be some slight benefit if the Northern Mariana Islands were eligible for federal approval and [284] the exemptions conferred thereby. Trade fairs are a possible means of promoting tourism, the principal industry of the Northern Mariana Islands.

Automotive products from Canada. Section 2001 to 2033 of title 19, U.S.C., amend the Tariff Schedules of the United States to allow the duty-free import into the United States from Canada of motor vehicle equipment for use in the manufacture of motor vehicles in the United States. Duties under the Tariff Schedules are imposed only on entry into the customs territory of the United States. General Headnote 1, Revised Tariff Schedules of the United States. The Northern Mariana Islands is not within that customs territory. Covenant § 603(a). Accordingly, sections 2001 to 2033 do not affect the import of motor vehicle equipment into the Northern Mariana Islands from Canada.

Construction materials for deepwater ports. Section 1518 of title 33, U.S.C., requires that duties and taxes be paid on foreign articles used in the construction of a deepwater port "in accordance with laws applicable to merchandise imported into the customs territory of the United States." The customs laws do not otherwise apply to deepwater ports licensed by the United States.

Deepwater ports are located off the coasts of the United States but beyond the territorial seas of the United States, and are used for transporting of oil "to any State." 33 U.S.C. § 1502(10). "State" is defined to include the territories and possessions of the United States. Id. § 1502(18). By operation of section 502(a)(2) of the Covenant, the Northern Mariana Islands is a State for purposes of section 1502.

The Northern Mariana Islands is outside the customs territory of the United States. Covenant § 603(a). Nonetheless, section 1502 would require payment of duties and taxes on foreign articles used in the construction of any deepwater port adjacent to the Northern Mariana Islands.

Tonnage duties and light money. Section 121 of title 46, U.S.C., imposes tonnage duties on certain foreign vessels entering the United States. Section 128 imposes an additional tonnage duty, called "light money" on the same vessels at entry into the United States. Neither duty, however, is levied on the vessels of nations which do not discriminate against the United States by imposing similar duties.

Tonnage duties on vessels are considered as entirely independent and distinct from customs duties levied on imported merchandise. The Conqueror, 49 F. 99, 103-05 (S.D.N.Y. 1892), reversed on other grounds, 166 U.S. 110 (1897). Vessels of more than 100 nations, [285] including most of the major trading nations of the world, have been exempted from payment of tonnage duties higher than those imposed on vessels of the United States and from payment of light money. 19 C.F.R. § 4.22 (1983).

Neither the language of these statutes nor their legislative history indicate whether territories or possessions of the United States are to be treated as parts of the United States. In the absence of any such indication, the United States is presumed not to include those areas and, consequently, not to include the Northern Mariana Islands.

Discriminating duties. Section 146 of title 46, U.S.C., imposes a discriminating ad valorem duty on goods imported in foreign vessels unless by treaty or act of Congress those vessels are entitled to treatment equivalent that afforded vessels of the United States. If the President finds a foreign country does not impose a discriminating duty on vessels or goods of the United States, he may suspend the duty on the goods of that nation. 46 U.S.C. § 141. Neither the language of this law nor its legislative history indicates whether territories or possessions of the United States are to be treated as parts of the United States. In the absence of any such indication, the United States is presumed not to include those areas and, consequently, not to include the Northern Mariana Islands.

Criminal penalties and forfeitures--illegal entry of goods. Section 541 to 552 of title 18, U.S.C., impose criminal penalties for various violations of law related to entry of goods into the United States. "United States" is defined, in several of those sections for the purpose of each such section alone, to exclude Guam. See sections 542 (entry of goods by means of false statements), 544 (relanding of goods), and 545 (smuggling goods into the United States). These sections accordingly do not apply to the entry of goods into the Northern Mariana Islands. Section 547, imposing criminal penalties for receiving or depositing goods in a building on a boundary line between the United States and a foreign country, patently has no application to the Northern Mariana Islands where no such building could exist.

The applicability or nonapplicability to the Northern Mariana Islands of sections 541, 543, 546, and 548 to 552 is less obvious.

Section 541 imposes criminal penalties for entering goods falsely classified as to weight or value, or by payment of less than the amount of duty legally due. Section 543 of title 18 imposes criminal penalties on "officers of the revenue" who "admit to entry"

goods on payment of less than the duty legally due. "Entry" is, presumably, entry into the United States for purposes of sections 541 and 543. "United States" is defined, for purposes of title 18, to include all places subject to the jurisdiction of the United States.
[286] 18 U.S.C. § 5. Guam is thus part of the United States for purposes of section 541 and 543. By operation of section 502(a)(2) of the Covenant, section 541 also would impose criminal penalties for entering falsely-classified goods into the Northern Mariana Islands. Similarly, section 543 would impose criminal penalties on officers of the revenue who allow entry of goods into the Northern Mariana Islands on payment of less than the legal duty.

The Northern Mariana Islands, however, is outside the customs territory of the United States. Covenant § 603(a). Any classification of goods entering the Northern Mariana Islands and any duties on those goods will be imposed under the laws of the Northern Mariana Islands, not under the laws of the United States. While it is possible for local law to be enforced by federal criminal penalties, the more likely conclusion is that sections 541 and 543 apply only to entry of goods into the customs territory of the United States. Similarly, the "officers of the revenue", to whom reference is made in section 543, are most likely only such officers who are employees of the United States. Because of these ambiguities, legislative clarification may be desirable.

Section 546 of title 18 imposes criminal penalties for smuggling goods into foreign countries that by their laws reciprocally penalize violations of laws of the United States respecting the customs revenue. Thus, the law does not directly affect persons moving goods in and out of the Northern Mariana Islands. Complicated questions, however, could arise.* It might be necessary to determine whether "laws of the United States respecting the customs revenue" includes laws of the Northern Mariana Islands enacted under the authority of section 603(b) of the Covenant. (Note that the Covenant is a law of the United States.) If it is concluded that customs laws of the Northern Mariana Islands are "laws of the United States respecting the customs revenue," then it becomes necessary to examine the laws of the particular foreign country to determine if its laws extend to punishment of persons violating the customs laws of the Northern Mariana Islands and thus meet the reciprocity condition.

The better result is to conclude that the laws of a particular foreign country need not punish violations of the Northern Mariana Islands customs laws in order for reciprocity to exist. Otherwise,

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*Based on the absence of headnotes following section 546 in the current edition of United States Code Annotated, prosecutions under this section appear to be infrequent.

persons who have violated the antismuggling laws of a foreign country could escape prosecution under section 546 because the foreign country, in a good-faith effort to accord reciprocity, had failed to take into account the special situation of the Northern Mariana Islands in enacting its own legislation imposing penalties for violation of the laws of the United States respecting the customs revenues. [287]

To achieve this better result, it is necessary to first conclude that Northern Mariana Islands customs laws are not "laws of the United States respecting the customs revenues." Since there is at least colorable argument to the contrary, clarifying legislation may be desirable.

Section 548 of title 18 imposes criminal penalties for tampering with goods in bonded warehouses. Section 549 of title 18 imposes criminal penalties for tampering with goods in customs custody or under customs seal. Section 550 of title 18 imposes criminal penalties for filing false claims for refund of duties. Section 551 of title 18 imposes criminal penalties for concealing or destroying invoices or other papers relating to merchandise imported into the United States, after a demand for inspection thereof by "the collector of any collection district." As with sections 541 and 543, above, the intent of sections 548, 549, 550, and 551 is to protect the customs revenues of the United States, derived from duties on goods entering the customs territory of the United States. As noted, that customs territory does not include the Northern Mariana Islands. Sections 548, 549, 550, and 551 can also be read as enforcing the local customs laws of the Northern Mariana Islands.

Section 552 of title 18 imposes criminal penalties on any officer, agent, or employee of the United States who aids in the violation of "any of the provisions of law" against importing obscene or treasonous books and articles. Section 552 clearly applies only to persons working for the United States government, and does not apply to employees of the Northern Mariana Islands government. If a federal law prohibits importation of the proscribed materials into the United States and includes the Northern Mariana Islands as part of the United States, employees of the United States aiding in violation of that law are subject to section 552's penalties. More complex is whether "any of provisions of law" against importing the proscribed materials would include provisions in the laws of the Northern Mariana Islands. Because legal principles call for narrow reading of criminal statutes, section 552 should be read not to reach employees of the United States who aid in violation of provisions in the customs laws of the Northern Mariana Islands restricting importation of obscene or treasonous books and articles. Because a court of law almost certainly would reach this conclusion, legislative clarification is unnecessary.

In summary, sections 541 to 552 of title 18 all should be regarded as inapplicable to the importation of goods into the Northern Mariana Islands or the payment of duties to the Northern Mariana Islands. (The Northern Mariana Islands, in establishing its [288] own customs duties under section 603(b) of the Covenant, may also enact its own legislation to enforce collection of those duties.) For the most part, no changes are necessary in sections 541 to 552 to establish their inapplicability to the Northern Mariana Islands. For sections 541, 543, and 546, legislation clarification is appropriate.

The Commission has agreed to recommend to Congress that federal criminal penalties for violation of the customs laws of the United States, as set forth in sections 496, 541-552, 1364, and 1915 of title 18, U.S.C., not apply to the entry of goods or articles into the Northern Mariana Islands nor to the export of goods or articles therefrom.

—compromise of claim by customs officers. Section 1915 of title 18, U.S.C., imposes criminal penalties on officers of the United States who compromise or attempt to compromise any claim of the United States arising under the customs laws. By the language of the statute, officers of the Northern Mariana Islands are not subject to criminal penalties and a compromise of a claim of the government of the Northern Mariana Islands is not conduct forbidden by the statute.

—smuggling vessels. Section 1703 of title 19, U.S.C., subjects to forfeiture vessels used "to defraud the revenue or to smuggle any merchandise into the United States." "United States" is defined, for purposes of section 1703, to exclude Guam. 19 U.S.C. § 1709(a). Accordingly, vessels smuggling merchandise into the Northern Mariana Islands are not subject to forfeiture. Under the strict construction given forfeiture statutes, section 1703 also would not apply to fraud against the government of the Northern Mariana Islands.

Laws regulating specific goods (or other specific things).

Many federal laws regulate imports and, in many cases, exports of specific goods or things. The laws are here grouped, for ease of reference, under the following headings:

Agricultural and textile products (see also Foods, drugs, cosmetics, and dentures; Textiles)
Agricultural items
Alcoholic beverages, narcotics, and tobacco
Art works and cultural property
Boats and boating equipment
Consumer products
Energy products

Firearms, switchblades, and explosives
Fisheries products
Foods, drugs, cosmetics, and dentures (see also Agricultural and textile products; Alcoholic beverages, narcotics, and tobacco) [289]
Furs
Gambling devices and paraphernalia
Hobby items
Mobile homes
Money, securities, gold, and silver
Motor vehicles
Obscene and immoral items
Pesticides, chemicals, hazardous substances, and biological products
Publications (see also Obscene and immoral items)
Recreational fishing and archery equipment
Television sets, radio transmitters, and other electronic products
Textiles (see also Agricultural and textile products)
War materials
Wildlife

The categories set forth are not, of course, the only possible categories among which the statutes could have been distributed. Further, many statutes could be classified just as easily in one category as in another.

Agricultural and textile products. Section 1854 of title 7, U.S.C., authorizes the President to negotiate international agreements limiting importation of specified agricultural and textile products into the United States. "United States" is not specifically defined. Under section 104 of the Covenant, the United States has the authority to conduct all matters relating to foreign affairs affecting the Northern Mariana Islands. Whether importation of a particular product into the Northern Mariana Islands would be limited by such an agreement would be governed by the terms and intent of that agreement.

Agricultural items--nursery stock. Section 154 of title 7, U.S.C., forbids importation of nursery stock (plant seeds, bulbs, cuttings, etc.) into the United States except by permit. Section 157 requires packages of nursery stock imported into the United States to meet certain labelling requirements. Section 159 allows the Secretary of Agriculture to restrict the import into the United States of other plants and plant materials to keep out plant diseases and pests. Section 160 authorizes prohibition of the import of nursery stock into the United States from insect-infested localities.

"United States" is not defined in these provisions, but section 159 and other sections of the original 1912 legislation make clear the law was intended to apply to the "Territories" of the United States. See 7 U.S.C. §§ 156, 158, 159, 161, and 163.

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Regulations of the Department of Agriculture for enforcement of these provisions and other laws define "United States" to include the several States and Guam. 7 C.F.R. § 352.1(31) (1983). Under this administrative definition, these laws--by virtue of section 502(a)(2)--control imports into the Northern Mariana Islands as well. Accordingly, section 154 forbids importation of nursery stock into the Northern Mariana Islands without a federal permit.

The Animal and Plant Health Inspection Service of the Department of Agriculture has implemented the Nursery Stock Quarantine Act* (of which section 154 of title 7 is a part), the Federal Plant Pest Act, and other legislation in combined regulations. See 7 C.F.R. parts 300 et seq. Of particular interest among these regulations are sections 318.82 et seq., governing the movement of plants and plant materials from Guam to other parts of the United States. (Note, however, that under section 502(a)(2) of the Covenant, the Northern Mariana Islands is to be treated not like Guam, but like the States of the Union.)

Section 319.37-2 of title 7, C.F.R. (1983), promulgated under the authority of the same legislation, prohibits importation into the United States of a wide variety of plants and plant products (subject to certain exceptions). "United States" is defined, for purposes of section 319.37-2, specifically to include the Northern Mariana Islands. 7 C.F.R. § 319.37-1 (1983). Among the plant articles prohibited are all parts except seeds from all species of the genus Areca, which includes the betel nut palm. Betel nut seed is commonly imported to the Northern Mariana Islands from the Yap and Palau Islands. Only the seed, however, is imported.

Coconuts for planting purposes may only be imported into the United States (including the Northern Mariana Islands) after issuance of a federal permit. Id. § 319.37-3(a)(4).

--seeds. Sections 1581 et seq. of title 7, U.S.C., prohibit importation into the United States of agricultural seeds that are adulterated, mislabelled, or otherwise unfit for seeding purposes. "United States" is defined for purposes of these sections to exclude Guam. 7 U.S.C. § 1561(a)(1). Consequently, the import prohibitions are not made applicable to the Northern Mariana Islands by operation

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*This Act is also known as the Plant Quarantine Act.

of the Covenant and do not restrict the movement of agricultural seeds into the Northern Mariana Islands from foreign countries.

Other provisions of the Federal Seed Act, of which sections 1581 et seq. are a part, apply to transactions in interstate commerce. See 7 U.S.C. §§ 1571 et seq. "Interstate commerce" is defined to include commerce originating or terminating in "any . . . Territory [or] possession." 7 U.S.C. § 1561(a)(3)(A). The provisions of the Act applicable to interstate commerce are thus applicable to Guam and, under section 502(a)(2) of the Covenant, to the Northern Mariana Islands. Consequently, imports into the Northern Mariana Islands from foreign countries are not covered by the Act, but seeds moving into the Northern Mariana Islands from the United States or into the United States from the Northern Mariana Islands are subject to the Act's controls on interstate commerce in seeds. Seeds moving into the United States from the Northern Mariana Islands are also subject to the importation prohibitions. See 7 U.S.C. § 1561(a)(10). [291]

--plant varieties. Section 2483(a) of title 7, U.S.C., provides that certificates of plant variety protection issued by the Secretary of Agriculture entitle the breeder to the right to exclude others from importing or exporting that variety during the period of protection. Section 2541 provides that the import or export of varieties without the owner's permission is an infringement of the owner's protection. "United States" is defined to include the territories and possessions of the United States. Id. § 2401(b). Guam is such a territory or possession. Accordingly, by operation of section 502(a)(2) of the Covenant, plant breeders in the Northern Mariana Islands may obtain protection under sections 2483(a) and 2541, and imports into or exports from the Northern Mariana Islands of protected plant varieties without proper authorization may be prevented by the owner.

--honeybees. Sections 281 and 282 of title 7, U.S.C., prohibit (with some exceptions) importation into the United States of honeybees and honeybee semen, in order to protect the United States honeybee population from diseases and parasites and to protect the genetic integrity of that population. The territorial extent of the for purposes of this law is not defined by the law. United States Department of Agriculture regulations implementing the law, however, define "United States" to include the several States and Guam. 7 C.F.R. § 322.6 (1983). Under this administrative definition, the prohibitions against honeybee imports, by virtue of section 502(a)(2) of the Covenant, control imports into the Northern Mariana Islands as well. Accordingly, sections 281 and 282 prohibit the importation of honeybees or honeybee semen into the Northern Mariana Islands.

—plant pests. Section 147a of title 7, U.S.C., authorizes the Secretary of Agriculture to control the spread of plant pests. The Secretary is also authorized to provide for inspection of plants or plant products being exported from the United States, and their [292] certification as free from plant pests. Although "United States" is not defined for purposes of section 147a, subsection (d)(3) of section 147a defines "State," for purposes of the section, to include the territories and possessions of the United States. The inclusion of territories and possessions as "States" is strong evidence of congressional intent that the territories and possessions be considered part of the United States for purposes of section 147a. Guam is a territory or possession of the United States and is thus part of the United States for purposes of this section. So, by virtue of section 502(a)(2) of the Covenant, is the Northern Mariana Islands. Accordingly, the Secretary's authority under section 147a extends to the Northern Mariana Islands.

The Animal and Plant Health Inspection Service of the Department of Agriculture has implemented the Federal Plant Pest Act (of which section 147a is a part), the Nursery Stock Quarantine Act and other legislation in combined regulations. See the discussion of these regulations under the heading Agricultural items--nursery stock, above.

—noxious weeds. Section 2803 of title 7, U.S.C, generally prohibits the movement into or within the United States of noxious weeds. "United States" is defined, for purposes of section 2803, to include the territories and possessions of the United States. 7 U.S.C. § 2802(d) and (f). Guam is a territory or possession of the United States. Section 2803 is thus applicable to Guam and, under section 502(a)(2) of the Covenant, to the Northern Mariana Islands. Accordingly, section 2803 prohibits the movement of noxious weeds into or within the Northern Mariana Islands.

--animals affected by or exposed to communicable disease. Sections 101 to 135b of title 21, U.S.C., set forth various measures for preventing the introduction and spread of contagious livestock and poultry diseases. Section 101 authorizes the President to suspend the importation into the United States of any class of animals in order to protect animals in the United States against infectious or contagious diseases. Section 102 allows the Secretary of Agriculture to quarantine livestock imported into the United States. Section 103 prohibits importation into any port in the United States of animals other than prescribed quarantine ports. Section 104 prohibits importation of diseased livestock. Section 105 authorizes inspection of imported animals described in sections 101 to 104 and of animals intended for export. Sections 101, 102 103, 104, and 105 originally were enacted as part of the Act of August 30, 1890, c.839, 26 Stat. 414.

In 1955 the House and Senate and the Department of Agriculture assumed each of these sections included the authority to prevent the spread of disease into the Virgin Islands.* Further, section 104 authorizes an exception from the prohibition for cattle infested with or exposed to ticks imported from the British Virgin Islands to the Virgin Islands of the United States. The clear implication of this provision is that in its absence section 104's prohibition would apply to imports of diseased livestock into the Virgin Islands.** The status of the Virgin Islands, both now and in 1954 when this exception was added to section 104, is essentially the same as that of Guam. Both were then and are now organized but unincorporated territories of the United States. If sections 101, 102, 103, 104, and 105 apply to the Virgin Islands, they also apply to Guam in the absence of evidence of a contrary congressional intent. By operation of section 502(a)(2) of the Covenant, these sections also apply to livestock imported to or, in the case of section 105, exported from the Northern Mariana Islands. Section 103, prohibiting importation except at prescribed quarantine ports, may cause difficulties for the Northern Mariana Islands because the nearest quarantine port to the Northern Mariana Islands is Honolulu, more than 3000 miles away. Livestock from Australia, New Zealand, and other areas relatively close to the Northern Mariana Islands should not have to make the journey to the Northern Mariana Islands via Honolulu. [293]

Section 111 authorizes the Secretary of Agriculture to issue regulations to prevent the spread of poultry and animal diseases "from a foreign country into the United States or from one State or Territory of the United States or the District of Columbia to another," and to seize meat, hides, animal feed and bedding, and other materials coming from an infected foreign country. Section 113 authorizes the Secretary of Agriculture to adopt measures necessary to prevent the exportation of diseased livestock or poultry "from any port of the United States to any port in a foreign country." Section 120 authorizes the Secretary of Agriculture to issue regulations concerning "the exportation and transportation of [diseased] livestock and/or live poultry from any place within the United States . . . and through any State or Territory . . . and to foreign

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*See House Report 1295, 84th Cong., 2d Sess. (1955), reprinted at 1956 U.S. Code Cong. & Ad. News 2206.

**And, in fact, the provision was inserted because the prior law was seen as contributing to a severe meat shortage in the Virgin Islands. See letter from Assistant Secretary of the Interior Lewis to Senator Butler, Chairman of the Committee on Interior and Insular Affairs, November 30, 1953, quoted in Senate Report 1271, 83d Cong., 2d Sess. (1954), reprinted at 1954 U.S. Code Cong. & Ad. News 2585, 2597, 2601-03.

countries." Section 111 was part of the Act of February 2, 1903, c.349, 32 Stat. 791. Sections 113 and 120 were amended by that Act. In 1955 the House and Senate and the United States Department of Agriculture assumed that the 1903 Act included the Virgin Islands
[294] within the United States.* As with sections 101, 102, 103, 104, and 105, above, if sections 111, 113, and 120 apply to the Virgin Islands, in the absence of evidence of a contrary congressional intent, they also apply to Guam. Accordingly, by virtue of section 502(a)(2) of the Covenant, sections 111, 113, and 120 apply to the Northern Mariana Islands.

Section 112 authorizes the Secretary of Agriculture to establish regulations to prevent the spread of livestock and poultry diseases along borders between the United States and foreign countries and along lines of transportation "from all parts of the United States to ports from which livestock and/or live poultry are exported." There appear to be no regulations implementing section 112 now in effect. The authority granted the Secretary by section 112 appears sufficiently broad to allow implementing regulations to treat the Northern Mariana Islands as part of the United States if necessary to prevent the spread of livestock and poultry diseases. The Secretary also has discretionary authority to extend to the Northern Mariana Islands any program administered by the Department of Agriculture. 48 U.S.C. 1469d(c). Regulations implementing section 112 that treat the Northern Mariana Islands as part of the United States are thus well within the Secretary's authority.

Section 113a prohibits the introduction of live foot-and-mouth disease virus into "the mainland of the United States." Neither Guam nor the Northern Mariana Islands is part of the mainland of the United States. Accordingly, section 113a does not prohibit the introduction of the virus into the Northern Mariana Islands.

Section 134c authorizes the Secretary of Agriculture to prohibit or regulate the movement of any animals into the United States if necessary to protect the livestock and poultry of the United States from communicable disease. (Those regulations are found in part 92 of title 9, C.F.R. (1983).) "United States" is defined, for purposes of section 134c, to include Guam. 21 U.S.C. § 134(c). By operation of section 502(a)(2) of the Covenant, the Secretary's authority extends to movement of animals into the Northern Mariana Islands.

Section 135 allows animals to be brought to an international quarantine station within the United States notwithstanding other laws to prevent the spread of disease, and subsequently to be moved to other parts of the United States if such movement will not spread

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*See House Report 1295, 84th Cong., 2d Sess. (1955), reprinted at 1956 U.S. Code Cong. & Ad. News 2206.

disease. Section 135a makes a violation of the antismuggling law (18 U.S.C. § 545) the unauthorized bringing of animals to the quarantine station or movement from the quarantine station to other parts of the United States, "including Guam." Thus, while the antismuggling law [295] does not apply to Guam, unauthorized movement of animals from the quarantine station to Guam does trigger the criminal penalties imposed by that law. By operation of section 502(a)(2) of the Covenant, section 135a also imposes the penalties of the antismuggling law on the unauthorized movement of animals from the quarantine station to the Northern Mariana Islands.

Section 1306 of title 19, U.S.C., prohibits importation into the United States of livestock from countries where rinderpest or foot-and-mouth disease exist. "United States" is defined, for purposes of this prohibition, to exclude Guam. 19 U.S.C. § 1401(h). Under section 502 of the Covenant, then the Northern Mariana Islands is not part of the United States for purposes of section 1306. Accordingly, importation of livestock from countries where rinderpest or foot-and-mouth disease exist into the Northern Mariana Islands is not barred by this statute.

--biological products. Section 152 of title 21, U.S.C., prohibits importation into the United States of any virus, serum, toxin, or analogous product for use in treatment of domestic animals (1) without a permit, or (2) that is worthless, contaminated, dangerous, or harmful. "United States" is not defined in this statute. Regulations issued to implement the statute also do not define "United States." See 9 C.F.R. chapter 1, subchapter E (1981). Those regulations do give some indication of an intent to afford the protections of the statute to territories of the United States. See 9 C.F.R. §§ 103.3, 114.1 (1983). Further section 151 of title 21, enacted by the same Act of Congress as section 152, prohibits the preparation or sale of such products "in any place under the jurisdiction of the United States." Congress no doubt also intended the ban on importation imposed by section 152 to include importation "into any place under the jurisdiction of the United States." Guam is under the jurisdiction of the United States. Accordingly, by operation of section 502(a)(2) of the Covenant, the importation of veterinary biological products into the Northern Mariana Islands is subject to the restrictions of section 152.

Alcoholic beverages, narcotics, and tobacco--alcoholic beverages. Section 1263 of title 18, U.S.C., imposes criminal penalties for shipping liquor "into any place within the United States" without an accompanying invoice or other document containing certain information as to consignee, nature of contents, and quantity. "United States" is defined, for purposes of title 18, to include all places subject to the jurisdiction of the United States. 18 U.S.C. § 5. Guam is subject to the jurisdiction of the United States. Accordingly, by operation of section 502(a)(2) of the

Covenant, section 1263 imposes criminal penalties for shipping liquor into the Northern Mariana Islands without the required documentation. Section 3615 of title 18 provides for forfeiture of such liquor.

[296] Section 1707 of title 19, U.S.C., subjects to forfeiture alcoholic liquors imported into the United States in vessels of less than 500 tons without a federal certificate. Section 1708 imposes criminal penalties on the master and crew of such vessels. "United States" is defined, for purposes of sections 1707 and 1708, to exclude Guam. 19 U.S.C. § 1709(a). Accordingly, sections 1707 and 1708 do not apply to importation of alcoholic liquor into the Northern Mariana Islands.

Section 5001 of title 26, U.S.C., imposes an excise tax on all distilled spirits imported into the United States. Section 5041 of title 26 imposes an excise tax on all wine imported into the United States. Section 5051 imposes an excise tax on all beer imported into the United States. (The same taxes are also imposed on the same items when sold by domestic manufacturers.) Section 604(a) of the Covenant allows the United States to "levy excise taxes on goods . . . sold . . . in the Northern Mariana Islands in the same manner and to the same extent as such taxes are applicable within Guam." "Importation," for purposes of sections 5001, 5041, and 5051 is defined as bringing an article into the United States from a source outside the United States. See 26 C.F.R. § 48.0-2(a)(4)(i) and (a)(10) (1982). "United States" is defined, for purposes of the entire Internal Revenue Code, to include only the several States and the District of Columbia. 26 U.S.C. § 7701(9). "United States" is also defined by administrative regulation, for purposes of sections 5001, 5041, and 5051, to include only the several States and the District of Columbia. 27 C.F.R. §§ 251.11 (1982). Accordingly, the excise taxes levied by these sections do not apply to distilled spirits, wine, or beer imported into (or sold in) Guam or the Northern Mariana Islands.

Section 122 of title 27, U.S.C., prohibits the transportation of alcoholic beverages into "any State, Territory, or District of the United States, or any place noncontiguous to but subject to the jurisdiction thereof" for use contrary to the law of that State, Territory, District or place. Guam is not contiguous to the United States but is subject to the jurisdiction of the United States. Thus, by operation of section 502(a)(2) of the Covenant, if the Northern Mariana Islands prohibits the possession, use, or sale of certain alcoholic beverages, section 122 prohibits transportation of those alcoholic beverages into the Northern Mariana Islands.

Section 203 of title 27, U.S.C., forbids engaging in the business of importing alcoholic beverages into the United States

without a federal permit. "United States," as defined for purposes of section 203, includes neither Guam nor the Northern Mariana Islands. 27 U.S.C. § 211(a)(1). Accordingly, section 203 does not require persons engaged in the business of importing alcoholic beverages into the Northern Mariana Islands to have a federal permit. [297]

--narcotics and dangerous drugs. Sections 951 to 969 of title 21, U.S.C., strictly control the importation of narcotics and dangerous drugs into both the United States and the customs territory of the United States and their exportation from the United States. "United States" is defined, for purposes of these sections, to include all areas under the jurisdiction of the United States, including the Trust Territory of the Pacific Islands. 21 U.S.C. §§ 802(24), (26); 951. By operation of section 502 of the Covenant, "United States" also includes the Northern Mariana Islands. Consequently, importation of narcotics and dangerous drugs into the Northern Mariana Islands is subject to sections 951 to 966 as is exportation from the Northern Mariana Islands (including exportation into the customs territory of the United States). (Movement of narcotics and dangerous drugs between the Northern Mariana Islands and Guam is subject to other provisions of title 21. See sections 841 et seq.)

--tobacco. Section 376 of title 15, U.S.C., requires persons importing cigarettes into a State to file certain information with State tax officials. "State" is defined, for purposes of section 376, to exclude Guam. 15 U.S.C. § 375(6). Consequently, section 376 does not apply to persons importing cigarettes into the Northern Mariana Islands.

Section 1333 of title 15, U.S.C., prohibits importation into the United States of cigarettes the packages of which do not bear a required health warning. "United States" is defined, for purposes of section 1333, to include Guam. 15 U.S.C. § 1332(3). By operation of section 502(a)(2) of the Covenant, the Northern Mariana Islands is also part of the United States for purposes of section 1333. Accordingly, cigarettes imported into the Northern Mariana Islands must bear on their packages the required warning.

Section 5701 of title 26, U.S.C., imposes excise taxes on various tobacco products imported into the United States. (The same taxes are also imposed on the same items when sold by domestic manufacturers.) Section 604(a) of the Covenant allows the United States to "levy excise taxes on goods . . . sold . . . in the Northern Mariana Islands in the same manner and to the same extent as such taxes are applicable within Guam." "Importation," for purposes of section 5701 is defined as bringing an article into the United States from a source outside the United States. See 26 C.F.R. § 48.0-2(a)(4)(i) (1982). "United States" is defined, for purposes of the entire Internal Revenue Code, to include only the several States and the District of Columbia. 26 U.S.C. § 7701(9). Further,

"importation" includes importation from possessions of the United States. 26 U.S.C. § 5702(l). "Importation" thus does not include importation into those possessions. See also id. § 5702(i).
[298] Accordingly, the excise taxes levied by section 5701 do not apply to tobacco products imported into (or sold in) Guam or the Northern Mariana Islands.

Art works and cultural property. Section 2092 of title 19, U.S.C., prohibits importation into the United States of certain pre-Columbian sculpture and murals from Latin America. "United States" is defined, for purposes of section 2092, to exclude Guam. 19 U.S.C. § 2095(2). Section 2092 consequently does not prohibit importation of pre-Columbian art into the Northern Mariana Islands.

Sections 2601 et seq. of title 19, U.S.C., implements the Convention on Cultural Property. The President, upon request of another nation party to the Convention, may restrict the import of archeological or ethnological material taken from that other nation in violation of its laws. These import restrictions apply to the United States, defined to include "any territory or area the foreign relations for which the United States is responsible." 19 U.S.C. § 2601(10). The United States is responsible for the foreign relations of the Northern Mariana Islands. Trusteeship Agreement, Arts. 2-5, 10-11, 14; Covenant §§ 104, 1003(c). Accordingly, the President may prohibit the import of archeological or ethnological material into the Northern Mariana Islands under section 2601 et seq. Section 2613 of title 19 provides that the prohibitions against importation of illegally-possessed cultural property will be enforced in the customs territory of the United States and in the Virgin Islands by United States customs officers and in other areas subject to United States jurisdiction by persons designated by the President.

Boats and boating equipment. Section 1461 of title 46, U.S.C., prohibits importation into the United States of boats and boating equipment not in compliance with federal safety standards. "United States" is defined, for purposes of section 1461, to include specifically "the Commonwealth of the Northern Marianas." 46 U.S.C. § 1452(10). Accordingly, section 1461 prohibits importation into the Northern Mariana Islands of boats and boating equipment not in compliance with federal safety standards.

Section 1322 of title 33, U.S.C., prohibits importation into the United States of any marine sanitation device not complying with federal regulations designed to prevent the discharge of untreated or inadequately treated sewage in navigable waters. "United States" is defined in subsection (a)(4) of section 1322 to include Guam (as well as the Trust Territory of the Pacific Islands). Consequently, by operation of section 502(a) of the Covenant, section 1322 prohibits importation into the Northern Mariana Islands of noncomplying marine sanitation devices.

Consumer products. Section 2066 of title 15, U.S.C., refuses admission into the customs territory of the United States (as defined in General Headnote 2 to the Revised Tariff Schedules of the United States) of consumer products determined to be hazardous or not in compliance with applicable product safety rules. The Northern Mariana Islands is not within the customs territory of the United States. Covenant § 603(a). Consequently, importation into the Northern Mariana Islands of consumer products banned as unsafe in the United States is not barred by section 2066. Section 2068 of title 15, however, bars importation into the United States of any consumer product not in conformity with an applicable consumer product safety standard or declared a banned hazardous product. "United States" is defined, for purposes of section 2068, to include Guam. 15 U.S.C. § 2052(10) and (14). By operation of section 502(a)(2) of the Covenant, "United States" also includes the Northern Mariana Islands, so importation of unsafe consumer products into the Northern Mariana Islands is banned. [299]

Section 6301 of title 42, U.S.C., forbids importation into the customs territory of the United States of various consumer products that do not meet federal energy-efficiency standards and labelling requirements. Among the products covered are refrigerators, freezers, clothes washers and dryers, kitchen ranges, air conditioners, water heaters, and television sets. The Northern Mariana Islands is not within the customs territory of the United States. Covenant § 603(a). Consequently, section 6301 does not prohibit importation of covered but noncomplying consumer products into the Northern Mariana Islands. Note, however, that other provisions prohibit the distribution in commerce of such products. 42 U.S.C. § 6302. "Commerce" is defined for purposes of section 6302 to include commerce "between a place in a State and a place outside thereof." Id. § 6291(a)(17). "State" in turn is defined to include any territory or possession of the United States. Id. § 6202(4). Guam is a territory or possession of the United States. Under section 502(a)(2) of the Covenant, section 6302 prohibits the distribution of noncomplying products brought into the Northern Mariana Islands from other parts of the United States or from foreign countries.

Energy products--natural gas. Section 717b of title 15, U.S.C., forbids importation to or exportation from the United States of natural gas without prior authorization of the Federal Energy Regulatory Commission. The Natural Gas Act, of which section 717b is a part, does not define "United States" for purposes of the Act. Section 2(4) of the Act, 15 U.S.C. § 717a(4), does define "State" to include "any organized Territory of the United States." Sections 20 and 22 of the Act, 15 U.S.C. §§ 717s and 717u, give jurisdiction to enforce the Act to "the United States courts of any Territory or other place subject to the jurisdiction of the United States." These provisions provide some evidence of a congressional intent that at

least the "organized Territories" and, perhaps, all "places subject to the jurisdiction of the United States" be considered part of the United States for purposes of the prohibitions on the import and
[300] export of natural gas.

If all places subject to the jurisdiction of the United States are within the United States for purposes of section 717b, imports to and exports from Guam are clearly within the section's prohibitions. By operation of section 502(a)(2) of the Covenant, imports to and exports from the Northern Mariana Islands would also be included.

If only "organized Territories" are within the United States for purposes of section 717b, the applicability of the section to the Northern Mariana Islands, by operation of section 502(a)(2) of the Covenant depends upon whether Guam is an "organized Territory," as the term is used in the Natural Gas Act. Guam did not yet have an organic act in 1938 when the Act was passed, and thus was not then "organized." When it received its organic act in 1950, it became "organized." See United States v. Standard Oil Co., 404 U.S. 558, 559 n.2 (1972).*

The tropical climate of the Northern Mariana Islands makes unlikely the importation of natural gas for heating purposes. There are at present no large-scale industrial users of natural gas in the Northern Mariana Islands.

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*Guam is not, however, incorporated. 48 U.S.C. § 1421a. Incorporated territories are those predestined for Statehood. A distinction is sometimes made between "Territory" and "territory," with the capitalized form deemed to apply only to incorporated territories and the lower-case form deemed to mean only unincorporated territories or used as a generic term, to include both incorporated and unincorporated territories. See, for example, House Report 93-507 (1973), reprinted at 1973 U.S. Code Cong. & Ad. News 2730, 2732; House Report 1521, 90th Cong., 2d Sess., Appendix (1968); House Committee on Interior and Insular Affairs, Resource Materials Used in the Preparation of the Report of the Commission on Application of Federal Laws to Guam 182 (Committee print 1952); U.S. Department of State, Bureau of Intelligence & Research, United States and Outlying Areas 9 (Geographic Bulletin No. 5, April 1965). The capitalized form, however, has been used so often to embrace unincorporated areas that whether or not the word is capitalized is not a reliable indication of congressional intent. See, for example, Public Law 90-201, § 2, 81 Stat. 584 (1967), 21 U.S.C. § 601(g); United States v. Villarin Gerena, 553 F.2d 723, 724-26 (1st Cir. 1977); Kanazawa Ltd. v. Sound Unlimited, 440 F.2d 1239 (9th Cir. 1971); and Moreno Rios v. United States, 256 F.2d 68, 71-72 (1st Cir. 1958). See also Garcia v. Friesecke, 597 F.2d 284 (1st Cir. 1979, certiorari denied; 444 U.S. 940 (1979). Indeed, the capitalized form has been used on at least one occasion to include the Trust Territory of the Pacific Islands. See 12 U.S.C. § 1772.

On the export side, at present no sources of commercial quantities of natural gas are known to exist in the Northern Mariana Islands.

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--petroleum products. Sections 753 and 760g of title 15, U.S.C., allow the President by regulation to allocate all crude oil, residual fuel oil, and refined petroleum products imported into the United States. By Executive Order 12287, 3 C.F.R. 124 (1982), controls previously instituted under these sections were lifted. (Petroleum products produced in the United States are also subject to regulation.) Section 760b authorizes the President by regulation to establish a procedure whereby the United States Government becomes the exclusive importer of petroleum products for resale in the United States. See 10 C.F.R. part 218 (1983). "United States" is defined, for purposes of section 753, to include the territories and possessions of the United States. 15 U.S.C. § 752(7). Guam is a territory or possession of the United States. By operation of section 502(a)(2) of the Covenant, regulations issued under sections 753 and 760b would apply to importation of petroleum products into the Northern Mariana Islands.

Section 4081 of title 26, U.S.C., imposes an excise tax on the sale of imported gasoline by the importer. (The same tax is also imposed on gasoline sold by domestic manufacturers.) Section 604(a) of the Covenant allows the United States to "levy excise taxes on goods . . . sold . . . in the Northern Mariana Islands in the same manner and to the same extent as such taxes are applicable within Guam." "Importation," for purposes of section 4081 is defined as bringing an article into the United States from a source outside the United States. See 26 C.F.R. § 48.0-2(a)(4)(i) (1982). "United States" is defined, for purposes of the entire Internal Revenue Code, to include only the several States and the District of Columbia. 26 U.S.C. § 7701(9). Accordingly, the excise tax levied by section 4081 does not apply to imported gasoline sold in Guam or the Northern Mariana Islands.

Section 4611 of title 26, U.S.C., imposes a tax on petroleum and petroleum products entered into or exported from the United States. "United States" is defined, for purposes of section 4611, to include "the Commonwealth of the Northern Mariana Islands." 26 U.S.C. § 4612(a)(4)(A). Accordingly, petroleum and petroleum products imported into or exported from the Northern Mariana Islands are subject to the tax imposed by section 4611.

--nuclear energy materials and equipment. Sections 2011 et seq. of title 42, U.S.C., govern the import and export of materials and equipment used for the production of nuclear energy. For purposes of these provisions, "United States" is defined to include "all Territories and possessions" of the United States. 42 U.S.C. § 2014(bb). Guam is thus within the United States for purposes of

these provisions. By operation of section 502(a)(2) of the Covenant, the controls imposed by sections 2011 et seq. apply to the importation to and exportation from the Northern Mariana Islands of
[302] materials and equipment used for the production of nuclear energy.*

Firearms, switchblades, and explosives—firearms. Under section 922 of title 18, U.S.C., engaging in the business of importing firearms or ammunition without a license or transporting firearms or ammunition in interstate or foreign commerce without a license is illegal. "State" is defined, for purposes of section 922, to include the possessions of the United States. 18 U.S.C. § 921(a)(2). See also id. § 922(a)(2)(C). Guam is thus a "State" for purposes of section 922 and so, by operation of section 502(a)(2) of the Covenant, is the Northern Mariana Islands. "Interstate or foreign commerce" includes commerce between any place inside a State and any place outside that State. Any business importing firearms or ammunition into the Northern Mariana Islands thus requires a federal license.

Section 5844 of title 26, U.S.C., prohibits importation into the United States "or any territory under its control or jurisdiction" of any firearm, except for certain specified purposes. Guam is under the control and jurisdiction of the United States. Accordingly, by operation of section 502(a)(2) of the Covenant, the importation of firearms into the Northern Mariana Islands for other than the specified purposes is prohibited by section 5844.

Section 4181 of title 26, U.S.C., imposes excise taxes on firearms. (The same taxes are also imposed when firearms are sold by domestic manufacturers.) Section 604(a) of the Covenant allows the United States to "levy excise taxes on goods . . . sold . . . in the Northern Mariana Islands in the same manner and to the same extent as such taxes are applicable within Guam." Section 5801 imposes an occupational tax on importers of firearms, and section 5802 requires them to register with the Secretary of the Treasury. Section 5841 requires registration by the importer of all imported firearms. Section 5842 requires importers to mark all imported firearms with a serial number. Section 5843 requires importers to keep certain records regarding imported firearms. "Importation," for purposes of sections 4181, 5801, 5802, 5841, 5842, and 5843, is defined as bringing an article into the United States from a source outside the United States. See 26 C.F.R. § 48.0-2(a)(4)(i) (1982). "United States" is defined, for purposes of the entire Internal Revenue Code,

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*Movement of materials and equipment between the Northern Mariana Islands and other parts of the United States is not subject to the import-export controls, but is subject to other provisions of the law. See, for example, 42 U.S.C. § 2073(a).

to include only the several States and the District of Columbia. 26 U.S.C. § 7701(9). Accordingly, the excise tax levied on firearms by section 4181 does not apply to firearms imported into (or sold in) Guam or the Northern Mariana Islands and the requirements of sections 5801, 5802, 5841, 5842, and 5843 do not apply to persons importing firearms into Guam or the Northern Mariana Islands [303]

—switchblade knives. Section 1242 of title 15, U.S.C., prohibits the transportation of switchblade knives in interstate commerce. "Interstate commerce" is defined, for purposes of section 1242, to mean "commerce between any State, Territory, possession of the United States, or the District of Columbia, and any place outside thereof." 15 U.S.C. § 1241(a). Guam is a Territory or possession of the United States, so importation of switchblade knives into Guam is prohibited by section 1242. By operation of section 502(a)(2) of the Covenant, importation of switchblade knives into the Northern Mariana Islands is also prohibited.

—explosives. Section 842 of title 18, U.S.C., makes unlawful engaging in the business of importing explosives without a federal license or transporting explosives in interstate or foreign commerce without a federal license. "State" is defined, for purposes of section 842, to include the possessions of the United States. 18 U.S.C. § 841(b). Guam is thus a "State" for purposes of section 842 and so, by operation of section 502(a)(2) of the Covenant, is the Northern Mariana Islands. "Interstate or foreign commerce" includes commerce between any place inside a State and any place outside that State, as well as commerce within any possession. Any movement of explosives into or within the Northern Mariana Islands thus requires a federal license.

Fisheries products--Northern Pacific halibut. Section 773e of title 16, U.S.C., prohibits bringing into any place subject to the jurisdiction of the United States halibut caught in certain Northern Pacific waters from vessels other than United States or Canadian vessels or otherwise caught in violation of legislation implementing a United States-Canada treaty for the preservation of the halibut fishery of the Northern Pacific Ocean and the Bering Sea, 5 U.S.T. 5, T.I.A.S. 2900 (1954). Guam is subject to the jurisdiction of the United States. Accordingly, by operation of section 502(a)(2) of the Covenant, Northern Pacific halibut imported into the Northern Mariana Islands is subject to the prohibitions of section 772e.

--whale products. Section 916c of title 16, U.S.C., prohibits any person subject to the jurisdiction of the United States from importing or exporting whale products taken or processed in violation of the International Convention for the Regulation of Whaling, 10 U.S.T. 952, T.I.A.S. 4228 (1959), to which the United States is a signatory, and regulations issued thereunder. Persons in the Northern Mariana Islands are subject to the jurisdiction of the

United States Trusteeship Agreement, Art. 3; Covenant §§ 101, 1003(c). Accordingly, section 916c is applicable to importation to and exportation from the Northern Mariana Islands of whale products.

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--tuna from inter-American waters. Section 957 of title 16, U.S.C., prohibits any person from importing or exporting fish taken in violation of regulations implementing the Convention for the Establishment of an Inter-American Tropical Tuna Commission, 1 U.S.T. 230, T.I.A.S. 2044 (1950), to which the United States is a signatory. Sections 955 and 957 of title 16 also prohibit entry into the United States of fish in any form taken, or from a country the vessels of which are taking fish, from an area regulated under that Convention* contrary to the Commission's conservation recommendations. Any person subject to the jurisdiction of the United States is subject to these prohibitions. 16 U.S.C. § 951(d). "United States" is defined to include all areas under the sovereignty of the United States and the Trust Territory of the Pacific Islands. Id. § 951(e). The Northern Mariana Islands, now a part of the Trust Territory of the Pacific Islands, will be under the sovereignty of the United States on termination of the trusteeship. Covenant §§ 101, 1003(c). Persons in the Northern Mariana Islands are even now subject to the jurisdiction of the United States. Trusteeship Agreement, Art. 3. Accordingly, persons in the Northern Mariana Islands are subject to the section 957 prohibitions on importing and exporting fish taken in violation of regulations implementing the Convention for the Establishment of an Inter-American Tropical Tuna Commission. Entry into the Northern Mariana Islands of fish taken, or from a country the vessels of which are taking fish, from an area regulated under that Convention contrary to the Commission's conservation recommendations is prohibited.

--North Pacific fisheries products. Section 1029 of title 16, U.S.C., prohibits any person subject to the jurisdiction of the United States from importing or exporting any fish taken in violation of the International Convention for the High Seas Fisheries of the North Pacific Ocean, 4 U.S.T. 380, T.I.A.S. 2786 (1953), as amended, 30 U.S.T. 1095, T.I.A.S. 942 (1979), to which the United States is a signatory, or of statutes, regulations, and permits implementing that convention. The convention provides a mechanism for allocating the North Pacific salmon fishery among the United States, Canada, and Japan. Persons in the Northern Mariana Islands are subject to the jurisdiction of the United States. Trusteeship Agreement, Art. 3; Covenant §§ 101, and 1003(c). Accordingly, persons in the Northern Mariana Islands are subject to the import and export prohibitions of section 1029.

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*The regulated area, off the west coast of the United States and Latin America, includes no waters within the Trust Territory of the Pacific Islands or, indeed, west of 125 degrees west longitude, which is considerably to the east of Hawaii. See 50 C.F.R. §§ 280.1(g)(1982).

—fisheries conservation and management. Section 1825 of title 16, U.S.C., forbids importation into the United States of fish and fish products from fisheries of, or from, nations found to be violating, or refusing to enter into, international fisheries agreements with the United States. Section 1857 of title 16 prohibits the importation or exportation of any fish taken in violation of the Fishery Conservation and Management Act (the FCMA)--of which sections 1825 and 1857 are a part—or any international fishery agreement entered into under authority of the FCMA, any regulation under authority of the FCMA or such an agreement, or any permit under the FCMA. [305]

Prior to January 12, 1983, the applicability of the FCMA to the Northern Mariana Islands was the subject of litigation and much controversy.* On that date Public Law 97-453 became effective. 96 Stat. 2481. That law amends the FCMA to provide the Northern Mariana Islands voting membership on the Western Pacific Regional Fishery Management Council. Id. § 5, amending 16 U.S.C. § 1852(a)(8). the legislative history of Public Law 97-453 establishes that, whatever the applicability of the FCMA to the Northern Mariana Islands prior to passage of Public Law 97-453, the FCMA became clearly applicable to the Northern Mariana Islands on January 12, 1983. House Report 97-549, at 17-18 (1982), reprinted in 1982 U.S. Code Cong. & Ad. News 4320, 4330-31.

The import and export prohibitions of sections 1825 and 1857 consequently bar imports to and exports from the Northern Mariana Islands.

The Commission has agreed to recommend to Congress that the Northern Mariana Islands not be treated as part of the United States for purposes of the FCMA.

--fish caught from foreign-flag vessels. Section 251 of title 46, U.S.C., prohibits foreign-flag vessels from landing fish in a port of the United States, except pursuant to treaty. Section 503(b) of the Covenant makes inapplicable to the Northern Mariana Islands federal prohibitions against foreign vessels landing fish in the United States. Accordingly, section 251 does not prohibit foreign-flag vessels from landing fish in the Northern Mariana Islands.

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*The Executive Director of the Commission was previously associated with the law firm representing the plaintiffs in litigation asserting the inapplicability of the FCMA to the Northern Mariana Islands, although he was not attorney of record for plaintiffs.

Foods, drugs, and cosmetics--adulterated, misbranded, or otherwise illegal products. Section 381 of title 21, U.S.C., forbids importation into the United States of adulterated, misbranded, or
[306] otherwise illegal foods, drugs, devices, and cosmetics. Although the Food, Drug, and Cosmetic Act, of which section 381 is a part, does not define "United States", it does define "State" to include any territory or possession of the United States. 21 U.S.C. § 321(a)(1) and (2). Guam is a territory or possession of the United States. Thus, Guam and, by virtue of section 502(a)(2) of the Covenant, the Northern Mariana Islands are States for purposes of the Act and imports into the Northern Mariana Islands are covered by the Act.

Section 18 of title 21, U.S.C., authorizes the President to halt the importation of dangerously adulterated food or drink into the United States. Section 18 was enacted as part of the Act of August 30, 1890, c.839, 26 Stat. 414, the same legislation discussed under "Agricultural items--animals affected by or exposed to communicable disease," above. In the earlier discussion, this legislation was shown to be applicable to the Northern Mariana Islands. Section 18, as part of the same statute, should also be deemed to include the Northern Mariana Islands as part of the United States, in the absence of evidence of a contrary congressional intent. Accordingly, the President, pursuant to section 18, may halt the importation of dangerously adulterated food or drink into the Northern Mariana Islands.

--food and dairy products mislabelled as to origin. Sections 16 and 17 of title 21, U.S.C., prohibit the introduction into "any State or Territory of the United States or the District of Columbia" from any other State or Territory or the District of food or dairy products falsely labelled as to the State or Territory in which they were made or grown. An early opinion of the Attorney General of the United States held that these sections also bar importation of foreign food or dairy products labelled as domestic in origin. 24 Op. Attorney General 675, 679 (1903). Neither the language of this law nor its legislative history indicates whether territories or possessions of the United States are to be treated as parts of the United States. In the absence of any such indication, the United States is presumed not to include those areas and, consequently, not to include the Northern Mariana Islands.

--perishable foods. Sections 4401 et seq. of title 7, U.S.C., implement the Agreement on the International Carriage of Perishable Foodstuffs and on the Special Equipment to be Used for Such Carriage. This Agreement requires that frozen foods and other perishable foods be transported internationally only in containers meeting certain standards. Equipment used in sea voyages of more than 150 kilometers is exempted. The Secretary of Agriculture ensures compliance in the United States. 7 U.S.C. § 4403. the Northern Mariana Islands is included in the United States for purposes of these statutes by specific reference. Id. § 4402(6).

—fruits and vegetables. Section 608e-1 of title 7, U.S.C., prohibits importation into the United States of a variety of fruits and vegetables unless the fruit or vegetables meet the terms or conditions regulating grade, size, quality, or maturity contained in [307] applicable marketing orders issued by the Secretary of Agriculture. The purpose of marketing orders is to stabilize agricultural markets, minimize ruinous competition, and assure American farmers a fair price for their product. See generally 7 U.S.C. § 602. Fruits and vegetables subject to the import controls are tomatoes, raisins, olives (other than Spanish-style green olives), prunes, avocados, mangoes, limes, grapefruit, green peppers, Irish potatoes, cucumbers, oranges, onions, walnuts, dates, filberts, table grapes, and eggplants. The prohibition of section 608e-1 does not apply to fruits and vegetables shipped into the continental United States "from any Territory or possession" where the law "has force and effect." The law is applicable to all United States possessions "except the Virgin Islands, American Samoa, the Canal Zone, and the island of Guam." 7 U.S.C. § 610(f). The law is thus not applicable to the Northern Mariana Islands. Accordingly, the named fruits and vegetables may be imported into the Northern Mariana Islands unrestrained by marketing orders issued by the Secretary of Agriculture. (Note that exports from the Northern Mariana Islands to the United States (though not to Guam) of any of these items must comply with any applicable marketing order standards.)

—rice. Section 1380l of title 7, U.S.C., requires importers of processed rice to acquire certificates entitling them to shares of the national quota for rice production authorized by the Secretary of Agriculture. The national quota is the amount the Secretary estimates will be consumed in the United States, "including its Territories and possessions" during the coming year. 7 U.S.C. § 1380c. Section 1380p defines "United States" for purposes of these rice import restrictions, however, to exclude Guam. Thus, rice imported into Guam is not subject to these import restrictions.* The restrictions, therefore, are not applicable to imports of rice into the Northern Mariana Islands by the operation of the Covenant.

--wheat and wheat flour. Section 1642 of title 7, U.S.C., authorizes the President to regulate the importation or exportation of wheat or wheat flour in order to implement the International Wheat Agreement, 22 U.S.T. 820, T.I.A.S. 7144 (1971), to which the United States is a signatory. The Agreement provides that each party will implement the Agreement in all territories for the foreign relations

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*But Guam is a Territory or possession, the rice consumption of which must be taken into account in determining the national quota under section 1380c.

of which it is responsible and that a party may declare that the agreement will not apply in specified overseas territories. The United States is responsible for the foreign relations of the Northern Mariana Islands. Trusteeship Agreement, Arts. 3, 10, 14; [308] Covenant §§ 104, 1003(c). No declaration by the United States of a decision not to implement the Agreement in the Northern Mariana Islands is known to exist. Section 1642 should be construed consistently with the Agreement. See Menominee Tribe v. United States, 391 U.S. 404, 413 (1968). Accordingly, the Northern Mariana Islands is part of the United States for purposes of section 1642, subject to presidential regulation of wheat and wheat flour imports and exports.

—sugar. Section 3602 of title 7, U.S.C., authorizes the President to regulate the entry of sugar into the customs territory of the United States in order to implement the International Sugar Agreement, to which the United States is a party. 31 U.S.T. 5135, T.I.A.S. 9664 (1980). The Northern Mariana Islands is not within the customs territory of the United States. Covenant § 603(a). Accordingly, the President's authority does not extend to sugar entering the Northern Mariana Islands. Sugar produced in the Northern Mariana Islands would, however, be subject to the President's authority to regulate the entry of sugar into the customs territory of the United States.

--tea. Section 41 of title 21, U.S.C., prohibits importation into the United States of tea not meeting federal quality and purity standards. Neither the Tea Importation Act, 21 U.S.C. §§ 41 et seq., nor the regulations issued thereunder, 21 C.F.R. part 1220 (1982) and 19 C.F.R. § 12.33 (1982), define "United States" for purposes of section 41. References in the Act to the Tariff Schedules of the United States, 21 U.S.C. § 41, and United States customhouses, id. §§ 43, 44, make clear that section 41 prohibits the importation of substandard tea only into the customs territory of the United States. Accordingly, section 41 does not apply to the importation of tea into the Northern Mariana Islands.

--poultry. Section 466 of title 21, U.S.C., prohibits importation into the United States of slaughtered poultry or poultry products not in compliance with federal wholesomeness standards. "United States" is defined for purposes of section 466 to include Guam. 21 U.S.C. § 453(c) and (d). By operation of section 502(a)(2) of the Covenant, importation into the Northern Mariana Islands of poultry products not meeting federal standards is also prohibited by section 466.

—meat. Sections 612 to 624 of title 21, U.S.C., require live or slaughtered meat animals to be certified as to condition prior to export. Section 620 prohibits importation of meat that is adulterated, misbranded, or otherwise not in compliance with the law.

"United States" is defined, for purposes of these sections, to include the States and Territories. 21 U.S.C. § 601(i). "Territory" in turn is defined to include Guam. Id. § 601(g). Under section 502(a)(2) of the Covenant, the United States also includes the Northern Mariana Islands, so exports from the Northern Mariana Islands to third countries and imports to the Northern Mariana Islands from third countries are covered by the provisions regarding exports and imports. (Meat and meat animals shipped between the Northern Mariana Islands and the rest of the United States are not governed by these provisions but are subject to other meat inspection requirements in title 21.) [309]

--dairy products. Section 62 of title 21, U.S.C., prohibits shipment of filled milk in interstate or foreign commerce. "Interstate or foreign commerce," for purposes of section 62, includes commerce between any possession and any point outside thereof. 21 U.S.C. § 61(b). Guam is a possession of the United States. By operation of section 502(a)(2) of the Covenant, section 62 also prohibits shipment of filled milk to and from the Northern Mariana Islands. (The constitutionality of the Filled Milk Act-- of which section 62 is a part-- was sustained in United States v. Carolene Products, 304 U.S. 144 (1938), but has more recently been brought into doubt by the decision in Milnot Co. v. Richardson, 350 F. Supp. 221 (S.D. Ill. 1972).)

Section 141 of title 21, U.S.C., prohibits the importation of milk and cream into the United States without a federal permit. Section 149 of title 21 defines "United States," for purposes of section 141, to exclude Guam. Section 141 consequently does not apply to importation of milk or cream into the Northern Mariana Islands.

--eggs. Section 1046 of title 21, U.S.C., prohibits importation into the United States of eggs or egg products not in compliance with federal wholesomeness, inspection, and labelling regulations. "United States," for purposes of section 1046, is defined to exclude Guam. 21 U.S.C. § 1033(y) and (z). The Northern Mariana Islands consequently is not part of the United States for purposes of section 1046, and that section does not apply to the importation of eggs or egg products into the Northern Mariana Islands.

--dentures. Section 1821 of title 18, U.S.C., makes criminal the transportation of dentures without the authorization of a licensed dentist into a State or territory where local law prohibits the supplying of dentures by persons other than licensed dentists. "United States," for purposes of title 18, is defined to include all places subject to the jurisdiction of the United States. 18 U.S.C. § 5. Guam is subject to the jurisdiction of the United States. Accordingly, by operation of section 502(a)(2) of the Covenant, section 1821 is applicable to dentures brought into the Northern Mariana Islands.

Furs. Section 69d of title 15, U.S.C., prohibits importation into the United States of furs and fur products that are misbranded or falsely or deceptively invoiced. "United States," for purposes of
[310] the prohibition, is defined to include the "Territories and possessions of the United States" and thus includes Guam. By virtue of section 502(a)(2) of the Covenant, the importation of furs and fur products into the Northern Mariana Islands is also subject to section 69d. But the invoicing requirements, violation of which this section prohibits, are clearly not applicable to imports to Northern Mariana Islands. The section refers specifically to the invoicing requirements of the Tariff Act of 1930, 19 U.S.C. §§ 1301 et seq. Those requirements, set forth at sections 1481 et seq. of title 19, are not applicable to imports into Guam. See 19 U.S.C. § 1401(h). There thus is no rationale under the Covenant for their application to the Northern Mariana Islands.

Section 1151 of title 16, U.S.C., prohibits the importation of certain fur seals and fur seal products into any place subject to the jurisdiction of the United States. 16 U.S.C. § 1159. Guam is subject to the jurisdiction of the United States. Accordingly, by operation of section 502(a)(2) of the Covenant, importation of fur seals and fur seal products into the Northern Mariana Islands is prohibited.

Gambling devices and paraphernalia--gambling devices. Section 1172 of title 15, U.S.C., prohibits transportation of gambling devices, including slot machines, into any State other than a State that has enacted legislation to make use of such devices legal. Section 1177 requires forfeiture of gambling devices transported in violation of section 1172. "State" is defined, for purposes of sections 1172 and 1177, to include Guam. 15 U.S.C. § 1171(b). By operation of section 502(a)(2) of the Covenant, "State" also includes the Northern Mariana Islands and sections 1172 and 1177 apply to shipment of gambling devices to the Northern Mariana Islands.

--lottery tickets. Section 1301 of title 18, U.S.C., imposes criminal penalties for bringing lottery tickets into the United States. "United States," for purposes of title 18, is defined to include all places subject to the jurisdiction of the United States. 18 U.S.C. § 5. Guam is subject to the jurisdiction of the United States. Accordingly, by operation of section 502(a)(2) of the Covenant, section 1301 imposes criminal penalties for bringing lottery tickets into the Northern Mariana Islands.

The Commission has agreed to recommend to Congress elimination of these penalties for certain nonprofit lotteries in the Northern Mariana Islands.

--wagering and bookmaking paraphernalia. Section 1953 of title 18, U.S.C., imposes criminal penalties for transportation in

interstate or foreign commerce of wagering or bookmaking paraphernalia (except to States where the use of the particular paraphernalia is lawful). "Interstate commerce" is defined, for purposes of title 18, to include "commerce between one State, [311]
Territory, Possession, or the District of Columbia and another State, Territory, Possession, or the District of Columbia." 18 U.S.C. § 10. "State" is defined to include the territories and possessions of the United States. Id. § 1953(d)(1).* Guam is a Territory or Possession of the United States, so that commerce between Guam and either other parts of the United States or a foreign country is embraced within the term "interstate or foreign commerce." By operation of section 502(a)(2) of the Covenant, section 1953 of title 18 of the United States, also imposes criminal penalties for transporting wagering or bookmaking paraphernalia in or out of the Northern Mariana Islands.

Hobby items. Sections 2101 and 2104 of title 15, U.S.C., prohibit importation into the United States and authorize forfeiture of improperly marked imitation political and numismatic items. The statute is intended to protect collectors of coins and of political memorabilia (such as old political campaign buttons). "United States" is defined to include the States, the District of Columbia, and the Commonwealth of Puerto Rico. 15 U.S.C. § 2106(7). This definition, by excluding Guam and other territories, excludes those areas from the geographic scope of the hobby protection laws. There thus is no rationale under the Covenant for their application to the Northern Mariana Islands, and imports of improperly marked imitation political and numismatic items into the Northern Mariana Islands are not prohibited by sections 2101 and 2104.

Mobile homes. Section 5409 of title 42, U.S.C., forbids importation into the United States of mobile homes not in compliance

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*This definition, however, merely makes clear that transportation of paraphernalia to territories and possessions where its use is lawful does not violate the law. The exception also applies to paraphernalia the use of which is lawful in the Northern Mariana Islands. Section 1953 applied to Guam on the effective date of section 502(a)(2), although the amendment defining "State" was not enacted until after that date. Under section 502(a)(2) of the Covenant, amendments enacted after the effective date of section 502 to laws applicable to the Northern Mariana Islands on the effective date of section 502 are also applicable to the Northern Mariana Islands.

with federal construction and safety standards. Although "United States" is not defined for purposes of section 5409, "State" is defined to include Guam. 42 U.S.C. § 5402(12). The inclusion of
[312] Guam as a "State" is strong evidence of congressional intent that Guam be considered part of the United States for purposes of section 5409. By operation of section 502(a)(2) of the Covenant, section 5409 also prohibits importation into the Northern Mariana Islands of mobile homes not in compliance with federal construction and safety standards.

Money, securities, gold, and silver--money and negotiable securities. Section 5316 of title 31, U.S.C., requires any person transporting more than $5000 in money or negotiable securities into or out of the United States to file a report thereon with the Secretary of the Treasury. Section 5314 of title 31 requires any resident or citizen of the United States or any person in the United States doing business therein to file certain reports on transactions with foreign financial agencies. Section 5315 authorizes the Secretary of the Treasury by regulation to require additional reports on foreign currency transactions. "United States" is defined, for purposes of these sections, to include those possessions of the United States specified in regulations issued by the Secretary of the Treasury. 31 U.S.C. § 5312(a)(5). The Secretary has defined "United States" to include all territories and possessions of the United States. 31 C.F.R. § 103.11 (1982). Guam is such a territory or possession. By operation of section 502(a)(2) of the Covenant, persons transporting money or negotiable instruments in and out of the Northern Mariana Islands are subject to section 5316's reporting requirements; and persons residing in the Northern Mariana Islands and persons in the Northern Mariana Islands doing business there must report foreign transactions as required by sections 5314 and 5315.

—gold and silver. Subsection (1) of section 95a of title 12, U.S.C., authorizes the President in time of war to investigate, regulate, or prohibit the import or export of gold or silver coins or bullion, currency, or securities and to control importation or exportation of any property in which any foreign country or a national thereof has any interest. (Section 95a was enacted as part of the Trading with the Enemy Act during the First World War.) Any property subject to the jurisdiction of the United States is within the authority granted the President. Id. "United States" is defined to include any place subject to the jurisdiction of the United States. Id. § 95a(3). Guam is subject to the jurisdiction of the United States. By operation of section 502(a)(2) of the Covenant, the President thus may control imports to and exports from the Northern Mariana Islands in exercising his authority under section 95a.

Section 294 of title 15, U.S.C., prohibits the importation, exportation, or movement in interstate commerce of falsely marked gold or silver. Movement between the States and the Territories and

possessions is specifically prohibited. The intent of the prohibition, as shown by the language of the statute, is to include the Territories and possessions within the United States for purposes of the statute. Guam is thus included and, by operation of section 502(a)(2) of the Covenant, so is the Northern Mariana Islands. [313] Section 294 consequently prohibits the importation and exportation of falsely marked gold and silver to and from the Northern Mariana Islands and prohibits its movement between the Northern Mariana Islands and other parts of the United States.

—counterfeit obligations and securities. Section 472 of title 18, U.S.C., imposes criminal penalties for bringing counterfeit obligations or securities of the United States into the United States. Section 474 of title 18 imposes criminal penalties for bringing into the United States printing plates or stones that can be used for printing obligations or securities of the United States and for bringing into the United States photographs, engravings, or other likenesses of obligations or securities of the United States. Section 481 imposes criminal penalties for bringing into the United States plates or stones useful for printing foreign obligations or securities and for bringing into the United States photographs, engravings, or other likenesses of foreign obligations or securities. Section 485 imposes criminal penalties for bringing into the United States counterfeit coins or gold or silver bars. Section 490 imposes criminal penalties for bringing into the United States counterfeit United States coins of small denomination. Section 509 imposes criminal penalties for bringing into the United States or any place subject to the jurisdiction thereof plates or stones useful for printing United States government transportation requests or photographs, engravings, or other likenesses of such requests.

"United States" is defined, for purposes of title 18, to include all places subject to the jurisdiction of the United States. 18 U.S.C. § 5. Guam is subject to the jurisdiction of the United States. Accordingly, by operation of section 502(a)(2) of the Covenant, sections 472, 474, 481, 485, 490, and 509 impose criminal penalties for bringing into the Northern Mariana Islands counterfeit items, plates or engravings useful for counterfeiting, or photographs, engravings, or other likenesses of the specified documents.

Motor vehicles--information disclosure. Sections 1232 and 1233 of title 15, U.S.C., require each new automobile distributed in commerce to bear a label containing specified information about the automobile, including the manufacturer's suggested retail price. "Distributed in commerce" is defined, for purposes of sections 1232 and 1233, to include delivery to ultimate purchasers in Guam, the Trust Territories [sic] of the Pacific Islands, or any other place under the jurisdiction of the United States. 15 U.S.C. § 1231(h). Guam is under the jurisdiction of the United States. The law is thus

applicable to the Northern Mariana Islands by operation of section 502(a) of the Covenant. Accordingly, new automobiles imported into the Northern Mariana Islands must bear the required labels.

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—safety standards. Section 1397 of title 15, U.S.C., prohibits importation into the United States of motor vehicles and motor vehicle equipment not meeting United States safety standards. The National Traffic and Motor Vehicle Safety Act, of which section 1397 is a part, does not define "United States," but does define "State" to include Guam. 15 U.S.C. § 1391(8). The inclusion of Guam as a "State" is strong evidence of congressional intent that Guam be considered part of the United States for purposes of section 1397. By virtue of section 502(a)(2) of the Covenant, "State" also includes the Northern Mariana Islands, so the Northern Mariana Islands is part of the United States for purposes of section 1397's prohibitions.

Section 1916 of title 15, U.S.C., prohibits importation into the United States of any passenger motor vehicle not meeting applicable federal bumper standards. Although "United States" is not defined, "State" is defined for purposes of section 1916 to include Guam. 15 U.S.C. § 1901(16). The inclusion of Guam as a "State" is again strong evidence of congressional intent that Guam be considered part of the United States for purposes of section 1916. By virtue of section 502(a)(2) of the Covenant, "State" also includes the Northern Mariana Islands, so the Northern Mariana Islands is part of the United States for purposes of section 1916's prohibition against importation of passenger automobiles not complying with applicable federal bumper standards.

--fuel economy standards. Section 2006 of title 15, U.S.C., requires automobiles imported into the customs territory of the United States to be labelled as to their fuel economy. See also 15 U.S.C. § 2001(9) and (10). Section 2007 requires automobiles imported into the customs territory of the United States to meet federal fuel economy standards. The Northern Mariana Islands is not within the customs territory of the United States. Covenant § 603(a). Accordingly, automobiles imported into the Northern Mariana Islands need not comply with the labelling and fuel economy requirements of sections 2006 and 2007.

—excise taxes. Section 4061 of title 26, U.S.C., imposes an excise tax on the sale of imported vehicles by the importer. Section 4064 of title 26 imposes a "gas guzzler" tax on the sale of imported motor vehicles by the importer in inverse proportion to the fuel economy of those vehicles. Section 4071 imposes an excise tax on the sale of imported tires and tubes by the importer. (The same taxes are also imposed on the same items when sold by domestic manufacturers.) Section 604(a) of the Covenant allows the United States to "levy excise taxes on goods . . . sold . . . in the Northern Mariana Islands in the same manner and to the same extent as

such taxes are applicable within Guam." "Importation," for purposes of sections 4061, 4064, and 4071 is defined as bringing an article into the United States from a source outside the United States. See 26 C.F.R. § 48.0-2(a)(4)(i) (1982). "United States" is defined, for purposes of the entire Internal Revenue Code, to include only the several States and the District of Columbia. 26 U.S.C. § 7701(9). Accordingly, the excise taxes levied by sections 4061, 4064, and 4071 are not applicable to motor vehicles, tires, or tubes imported into (or sold in) Guam and the Northern Mariana Islands. [315]

--air pollution control standards. Section 7522 of title 42, U.S.C., forbids importation into the United States of any new motor vehicle not certified as in compliance with federal air-pollution control regulations. While "United States" is not defined for purposes of section 7522, "State" is defined, by a 1977 amendment of the law, to include specifically the Northern Mariana Islands. 42 U.S.C. § 7602(d). The clear intent of the 1977 amendment was to include the Northern Mariana Islands within the coverage of the Clean Air Act, of which sections 7522 and 7602 are a part. House Report 95-294 (1977), at 341. Accordingly, section 7522 forbids importation into the Northern Mariana Islands of new motor vehicles not certified as in compliance with Clean Air Act standards.*

Obscene and immoral items. Section 1462 of title 18, U.S.C., imposes criminal penalties for bringing into the United States, or any place subject to the jurisdiction thereof, obscene materials. Guam is subject to the jurisdiction of the United States. Accordingly, by operation of section 502(a)(2) of the Covenant, the criminal penalties of section 1462 are applicable to persons bringing obscene materials into the Northern Mariana Islands.

Section 1305 of title 19, U.S.C., bars importation into the United States of items classified as immoral. "United States" is defined for purposes of this prohibition to exclude Guam. 19 U.S.C. § 1404(h). Accordingly, the prohibition of section 1305 against importation of immoral items into the United States does not bar similar importations into the Northern Mariana Islands.

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*In its January 1982 interim report to the United States Congress, this Commission recommended that part A of title II of the Clean Air Act, which contains section 7522, be made inapplicable to the Northern Mariana Islands. The United States Environmental Protection Agency has suspended enforcement of section 7522 in the Northern Mariana Islands. Letter from Ann M. Gorsuch, Administrator, United States Environmental Protection Agency to Carlos S. Camacho, Governor of the Northern Mariana Islands (December 28, 1981).

Pesticides, chemicals, hazardous substances, and biological products--pesticides. Section 136o of title 7, U.S.C., controls the import and export of pesticides and certain related devices to and from the United States. "State" is defined, for purposes of section
[316] 136o, to include Guam and the several States. 7 U.S.C. § 136(aa). See also Pacific Construction Co. v. Branch, 428 F. Supp. 727-28 (D. Guam 1976), holding the legislation, of which section 136o is a part, applicable to Guam. Under section 502(a)(2) of the Covenant, the Northern Mariana Islands is also considered as part of the United States for purposes of these controls.

—chemicals. Section 4661 of title 26, U.S.C., imposes a tax on designated chemicals imported into the United States. "United States" is defined, for purposes of section 4661, to include "the Commonwealth of the Northern Mariana Islands." 26 U.S.C. §§ 4612(a)(4)(A); 4662(a)(2). Accordingly, the designated chemicals if imported into the Northern Mariana Islands are subject to the tax imposed by section 4661.

--hazardous substances. Section 1273 of title 15, U.S.C., forbids the importation into the United States of misbranded or banned hazardous substances and restricts their export. The Federal Hazardous Substances Act, of which section 1273 is a part, does not define "United States." The Act does define "interstate commerce" to include commerce between any territory and any place outside thereof as well as commerce within any unorganized territory. 15 U.S.C. § 1261(b). "Territory" is defined to include "any territory or possession" of the United States. Id. subsection (a). The United States courts of the territories have jurisdiction to enforce the Act. Id. § 1267. Thus, Congress intended territories and possessions of the United States to be considered part of the United States for purposes of the Act. Since Guam is a territory or possession of the United States, imports and exports of hazardous subjects to and from Guam are controlled by section 1273. Under section 502(a)(2) of the Covenant, imports and exports of hazardous substances to and from the Northern Mariana Islands are similarly subject to section 1273.

Section 1803, 1804, and 1808 of title 49, U.S.C., authorize the Secretary of Transportation to issue regulations for the safe transportation of hazardous materials. Materials defined as hazardous include flammable, radioactive, explosive, corrosive, poisonous, and other dangerous substances. See 49 C.F.R. § 172.101 (1982). Pursuant to that authority, section 171.12 of title 49, C.F.R. (1982), requires persons importing hazardous materials into the United States to comply with certain labelling and other safety requirements. "United States" is defined, for purposes of these requirements, to include Guam. 49 U.S.C. § 1802(5) and (7); 49 C.F.R. § 171.8 (1982). By operation of section 502(a)(2) of the Covenant, persons importing hazardous materials into the Northern Mariana Islands must comply with these requirements.

Section 2612 of title 15, U.S.C., bars admission into the customs territory of the United States (as defined in general headnote 2 to the Tariff Schedules of the United States) of certain toxic or hazardous chemicals. See also 15 U.S.C. § 2602(7). The Northern Mariana Islands is not within the customs territory of the United States. Covenant § 603(a). Consequently, importation into the Northern Mariana Islands of toxic or hazardous chemicals banned in the United States is not barred. But the Toxic Substances Control Act, of which section 2612 is a part, defines "United States" to include specifically the Northern Mariana Islands. 15 U.S.C. §2602(13) and (14). So, although the prohibitions of section 2612 do not bar imports of toxic chemicals into the Northern Mariana Islands, other provisions of the Act achieve essentially the same result by regulating the manufacture, processing, or distribution in commerce of those chemicals in the United States. See id. §§ 2604-2606. [317]

--white phosphorous matches. Schedule 7, Part 9A, Headnote 1, of the Revised Tariff Schedules prohibits importation into the United States of white phosphorus matches. Other imported matches are controlled to ensure that white phosphorus matches are not imported. See 19 C.F.R. § 12.34 (1983). Imports into Guam and the Northern Mariana Islands are not subject to the Revised Tariff Schedules. See the discussion, The Revised Tariff Schedule of the United States, above. Accordingly, the importation of white phosphorus matches into the Northern Mariana Islands is not prohibited by Schedule 7, Part 9A Headnote 1 of the Revised Tariff Schedules, and other match imports are not subject to the controls implementing that prohibition.

--biological products. Section 262 of title 42, U.S.C., prohibits bringing for sale from a foreign country into a State or possession of the United States any biological product without a federal license. Biological products include viruses, serums, toxins, antitoxins, vaccines, and other items. (Section 262 also prohibits bringing biological products for sale from one State or possession to another State or possession.) The Northern Mariana Islands is defined as a "State" for purposes of section 262. 42 U.S.C. § 201(f). Accordingly, section 262 prohibits bringing biological products into the Northern Mariana Islands for sale without a federal license.

Publications--copyrighted works. Section 602 of title 17, U.S.C., prohibits importation into the United States of works that violate copyrights protected under United States copyright laws. Guam is part of the United States for purposes of the copyright laws. 48 U.S.C. § 1421n; 17 U.S.C. §101 ("United States" includes the organized territories under the jurisdiction of the United States). By operation of section 502(a)(2) of the Covenant, the Northern Mariana Islands is also part of the United States for purposes of the ban on importation of infringing works.

Until July 1, 1986, section 601 of title 17, U.S.C., prohibits importation into the United States of certain English-language

materials protected under United States copyright laws unless those materials were printed in the United States or Canada. Guam is part of the United States for purposes of the copyright laws. 48 U.S.C. § 1421n; 17 U.S.C. § 101 ("United States" includes the organized [318] territories under the jurisdiction of the United States). By operation of section 502(a)(2) of the Covenant, the Northern Mariana Islands is also part of the United States for purpose of the ban on importation of certain English-language materials not printed in the United States or Canada. After July 1, 1986, the prohibition of section 601 will no longer apply.

—foreign political propaganda. Section 614 of title 22, U.S.C., imposes controls on the movement into and within the United States of political propaganda by foreign agents. Section 614 is applicable to movement of propaganda into and within "the Territories, . . . the insular possessions, and all other places now or hereafter subject to the civil or military jurisdiction of the United States. 22 U.S.C. § 619; see also id. § 611(m). Guam is an insular possession of the United States. Accordingly, by operation of section 502(a)(2) of the Covenant, section 614 is applicable to foreign political propaganda brought into the Northern Mariana Islands.

Recreational fishing and archery equipment. Section 4161 of title 26, U.S.C., imposes excise taxes on recreational fishing and archery equipment. (The same taxes are also imposed on the same items when sold by domestic manufacturers.) Section 604(a) of the Covenant allows the United States to "levy excise taxes on goods . . . sold . . . in the Northern Mariana Islands in the same manner and to the same extent as such taxes are applicable within Guam." "Importation," for purposes of sections 4161 is defined as bringing an article into the United States from a source outside the United States. See 26 C.F.R. § 48.0-2(a)(4)(i) (1982). "United States" is defined, for purposes of the entire Internal Revenue Code, to include only the several States and the District of Columbia. 26 U.S.C. § 7701(9). Accordingly, the excise taxes imposed by section 4161 do not apply to recreational fishing and archery equipment imported into (or sold in) Guam or the Northern Mariana Islands.

Television sets, radio transmitters, and other electronic products--electronic products. Section 263h of title 42, U.S.C., prohibits importation into the United States of any electronic product not complying with federal regulations designed to protect the public from radiation emissions. "United States" is not defined for purposes of section 263h, but "State" is defined, for purposes of the subpart containing section 263h, specifically to include the Northern Mariana Islands. 42 U.S.C. § 263c(5); see also id. § 201(f). Congress thus intended to prohibit importation of noncomplying electronic products into the Northern Mariana Islands. (Regulations of the Food and Drug Administration implementing section 263h do not define "United States." 21 C.F.R. §§ 1005.1-1005.3 (1982).) United States Customs Service regulations bar importation

of noncomplying electronic products into the customs territory of the United States, but do not address enforcement in areas of the United States outside the customs territory of the United States. 19 C.F.R. §§ 12.90-12.91 (1983).)

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—television sets. Section 303 of title 47, U.S.C., authorizes the Federal Communications Commission to require all television sets imported into the United States to receive all United States television broadcasting frequencies. The Commission has established such a requirement. 47 C.F.R. § 15.65 (1982). "United States" is defined, for purposes of section 303, to include "the Territories and possessions of the United States." 47 U.S.C. § 153(g). Guam is a Territory or possession of the United States. By operation of section 502(a)(2) of the Covenant, section 303 and Federal Communications Commission regulations prohibit importation into the Northern Mariana Islands of television sets incapable of receiving all United States television broadcasting frequencies (Section 329 of title 47, U.S.C., allows the Commission to obtain assistance from officers or employees of other agencies of the federal government on duty in any Territory or possession to carry out its duties.)

--radio transmitters. Section 2.1202 of title 47, C.F.R. (1982), prohibits importation into the customs territory of the United States of radio transmitters and other radiofrequency devices--as defined at 47 C.F.R. § 2.801 (1982)—capable of causing harmful interference to radio communications. Section 2.1202 was promulgated by the Federal Communications Commission pursuant to its general rulemaking authority under sections 154(i) and 303(r) of title 47, U.S.C. The Northern Mariana Islands is not within the customs territory of the United States. Accordingly, section 2.1202 does not apply to importation of radio transmitters and other radiofrequency devices into the Northern Mariana Islands.

Textiles. Section 70g of title 15, U.S.C., prohibits importation into the United States of textile products not meeting certain labelling and invoicing requirements. "United States" is not defined for purposes of this section, which is part of the Textile Fiber Products Identification Act. See 15 U.S.C. § 70. Other provisions of the Act apply to any textile products moved in "commerce," and also specifically forbid importation into the United States. See id. § 70a. "Commerce" is broadly defined to include commerce between or among the States, Territories, possessions of the United States, and foreign countries. Id. § 70(k) and (l) Commerce to and from Guam is thus subject to those provisions and so, under section 502(a)(2) of the Covenant, is commerce to and from the Northern Mariana Islands, whether or not the specific prohibition against importation is applicable.

Implementing regulations define "United States," for purposes of the Act, to include the Territories and possessions of the United States. 16 C.F.R. § 303.1(d) (1983). Under this definition, the Act's prohibitions on importations apply to textiles imported into

Guam. Under section 502(a)(2) of the Covenant, the Act's prohibitions similarly are applicable to imports of textiles into the Northern Mariana Islands. But the invoicing requirements, violation of which this section prohibits, are clearly not applicable to
[320] imports to Northern Mariana Islands. The section refers specifically to the invoicing requirements of the Tariff Act of 1930, 19 U.S.C. §§ 1301 et seq. Those requirements, set forth at sections 1481 et seq. of title 19, U.S.C., are not applicable to imports into Guam. See 19 U.S.C. § 1401(h). There thus is no rationale under the Covenant for their application to the Northern Mariana Islands.

--wool products. Section 68f of title 15, U.S.C., prohibits importation into the United States of wool products not meeting certain labelling and invoicing requirements. "United States" is not defined for purposes of this section, which is part of the Wool Products Labelling Act. See 15 U.S.C. § 68. Other provisions of the Act apply to any wool products moved in "commerce". See id. §§ 68a, 68c. "Commerce" is broadly defined to include commerce between or among the States, Territories, possessions of the United States, and foreign countries. Id. § 68(h) and (i). Commerce to and from Guam is thus subject to those provisions and so, under section 502(a)(2) of the Covenant, is commerce to and from the Northern Mariana Islands. But the invoicing requirements, violation of which this section prohibits, are clearly not applicable to imports to Northern Mariana Islands. The section refers specifically to the invoicing requirements of the Tariff Act of 1930, 19 U.S.C. §§ 1301 et seq. Those requirements, set forth at sections 1481 et seq. of title 19, U.S.C., are not applicable to imports into Guam. See 19 U.S.C. § 1401(h). There thus is no rationale under the Covenant for their application to the Northern Mariana Islands.

--flammable fabrics. Section 1192 of title 15, U.S.C., forbids importation into the United States or the movement in commerce (including commerce with foreign countries) of fabrics or fabric products violating flammability regulations issued by the Consumer Product Safety Commission. The Flammable Fabrics Act, of which section 1192 is a part, does not define "United States." See 15 U.S.C. § 1191. "Commerce" is defined, however, to include commerce between any territory or possession of the United States and either any foreign country or any other part of the United States. Id. subsections (b) and (c). Further, the Consumer Products Safety Commission, charged with enforcing the Act, has defined "United States" to include "the Territories and Possessions of the United States." 16 C.F.R. § 1608.1(c) (1982). Since Guam is a territory or possession, bringing proscribed products into Guam from a foreign country would violate the restrictions against movement in commerce, whether or not such movement would also constitute importation into the United States. Under section 502(a)(2) of the Covenant, importation of fabrics and fabric products into the Northern Mariana Islands is also movement in commerce subject to section 1192.

Exports from the United States are generally exempt from the Flammable Fabrics Act. 15 U.S.C.§ 1202. Although the Act does not define "United States," the Consumer Product Safety Commission, has defined "export" to include exports from any territory or possession of the United States. 16 C.F.R. § 1602.2(b)(2) (1982). "Exports" exempted by section 1201 thus include exports from Guam and, by operation of section 502(a)(2) of the Covenant, exports from the Northern Mariana Islands. [321]

War materials. Section 401 of title 22, U.S.C., authorizes seizure and forfeiture of arms, munitions, or other articles exported or attempted to be exported in violation of law. "United States" is defined in the legislation of which section 401 was originally a part to include all territory subject to the jurisdiction of the United States. Act of June 15, 1917, c.30, title XIII, § 1, 40 Stat. 217, 231. Guam is subject to the jurisdiction of the United States. Accordingly, by operation of section 502(a)(2) of the Covenant, section 401 authorizes the seizure of illegal war material exports from the Northern Mariana Islands.

The principal laws controlling such exports are the arms export control provisions of chapter 39 of title 22, U.S.C. (especially section 2778), and the Export Administration Act of 1979, 50 U.S.C. App. §§ 2401 et seq.

Section 2778 of title 22, U.S.C., authorizes the President to regulate the import as well as the export of arms, munitions, and other defense articles. Section 2778 does not specify whether import to or export from the United States includes only the movement of goods into or out of United States customs territory or includes movement into or out of any area under the jurisdiction of the United States. (A now-repealed subsection (d) of section 2778 provided that the section "applies to and within the Canal Zone.") The legislative history of section 2778 shows a congressional intent to exercise its power to the fullest extent possible to control and restrain the international trade in arms. Senate Report 94-876, at 4, 8 (1976); House Report 94-1144, at 12 (1976. The United States currently has "full powers of legislation" over the Northern Mariana Islands. Trusteeship Agreement, Art. 3. The purpose of section 2778 is to further various foreign policy objectives of the United States. See 22 U.S.C. § 2751. On termination of the trusteeship, the United States will have complete responsibility for and authority with respect to matters relating to foreign affairs and defense affecting the Northern Mariana Islands." Covenant §§ 104, 1003. Since Congress clearly has the power to enact legislation controlling arms shipments to or from the Northern Mariana Islands, and since Congress in enacting section 2778 desired to exercise its power to the fullest extent possible, section 2778 should be read as applying to arms shipments to and from the Northern Mariana Islands. See United States v. Standard Oil Co., 404 U.S. 558 (1972). Accordingly, the Northern Mariana Islands should be considered as part of the United States for purposes of section 2778.

The Northern Mariana Islands is also part of the United States for purposes of the Export Administration Act of 1979. See the discussion under Export controls, below.

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Wildlife. A number of statutes, discussed below, govern the importation to and exportation from the United States of wildlife of one sort or another. The Northern Mariana Islands is part of the United States for purposes of each of these statutes. The Fish and Wildlife Service of the Department of the Interior has consolidated the regulations implementing these statutes. The consolidated regulations provide, with certain exceptions, that "all wildlife imported into the United States must be cleared by a [United States Fish and Wildlife] Service officer prior to release from detention by Customs officers. 50 C.F.R. § 14.52(a) (1982). Wildlife may be imported or exported only at designated Customs ports of entry. Id. § 14.11. The nearest such port to the Northern Mariana Islands is Honolulu, 3300 miles away, although Guam is a permissible port of entry for wildlife (with some exceptions) originating in or destined for Guam. Id. §§ 14.12, 14.19(c).

--bald and golden eagles. Section 668 of title 16, U.S.C., prohibits any person within any place subject to the jurisdiction of the United States from importing or exporting bald eagles and golden eagles. Guam is subject to the jurisdiction of the United States. Accordingly, by operation of section 502(a)(2) of the Covenant, the importation to or exportation from the Northern Mariana Islands of bald eagles and golden eagles is prohibited by section 668.

--migratory birds. Sections 703, 704, and 705 of title 16, U.S.C., restrict the import and export of certain migratory birds, their nests, and their eggs. Sections 705 and 708 indicate a specific intent that these restrictions apply to the "several States and Territories." See also 16 U.S.C. § 701.

These sections implement various international conventions for the protection of migratory birds. See 16 U.S.C. §§ 703, 712. Among these agreements are conventions between the United States and Japan, 25 U.S.T. 3329, T.I.A.S. 7990 (1974), and between the United States and the Union of Soviet Socialist Republics, 29 U.S.T. 4647, T.I.A.S. 9073 (1978). Id. Under the present trusteeship, the United States has the authority to apply in the Trust Territory the provisions of particular international conventions. Trusteeship Agreement, Art. 14. The United States has determined that the conventions with Japan and with the Union of Soviet Socialist Republic are applicable to the Trust Territory. U.S. Department of State, Trust Territory of the Pacific Islands: 1980 (33d Annual Report to the United Nations), at 135, 137, 140. (No determinations have been made with respect to similar conventions with Great Britain and Mexico antedating execution of the Trusteeship Agreement. Id. at 144 n.1.) Further, by its own terms the Convention between the United States and Japan applies specifically to the Trust Territory of the Pacific Islands. See Convention for the Protection of Migratory Birds and Birds in

Danger of Extinction, and their Environment, Art. I(a), 25 U.S.T. 3329, T.I.A.S. 7990 (1974). This applicability was mentioned by Congress in its reports on the 1974 amendments to section 703 of title 16. House Report 93-936, at 3 (1974); Senate Report 93-851, at 2 (1974). These provisions should be construed consistently with the conventions they implement. See Menominee Tribe v. United States, 391 U.S. 404, 413 (1968). Since the statutes implement, among other agreements, the Convention with Japan, the statutes are applicable to the Trust Territory of the Pacific Islands, including the Northern Mariana Islands. [323]

--marine mammals. Sections 1371 et seq. of title 16, U.S.C., control the importation into the United States of marine mammals in order to protect the populations of those animals from depletion or extinction. "United States" is defined to include, for purposes of these provisions, the Northern Mariana Islands. 16 U.S.C. § 1362(13). Thus, the Northern Mariana Islands is part of the United States for purposes of the provisions controlling the importation of marine mammals into the United States.

—endangered species. Section 1538 of title 16, U.S.C., prohibits importation into or exportation from the United States of endangered fish, wildlife, and plants. "United States" is defined to include all States and "States," in turn, are defined to include the several States and Guam. 16 U.S.C. § 1532(17) and (21). By operation of section 502(a)(2) of the Covenant, "State" also includes the Northern Mariana Islands. Consequently, the Northern Mariana Islands is part of the United States for purposes of the prohibitions against importing endangered species into or exporting endangered species from the United States.

The United States has, additionally, implemented the Convention on International Trade in Endangered Species of Wild Fauna and Flora, 27 U.S.T. 1087, T.I.A.S. 8249 (1975). Section 23.11 of title 50, C.F.R. (1982), prohibits importation into, or exportation from, the United States of enumerated endangered plant and wildlife species without a license. "United States" is defined to include Guam and the Trust Territory of the Pacific Islands. 50 C.F.R. § 23.3 (1982). By operation of section 502(a) of the Covenant, importation to or exportation from the Northern Mariana Islands of the designated species without a license is prohibited by section 23.11.

—wildlife illegally caught or in improperly labelled packages. Section 3372(a) of title 16, U.S.C., prohibits the import or export of any fish, wildlife, or plant captured, killed, or transported in violation of State, federal, or foreign laws. The section also imposes criminal penalties for transporting in interstate or foreign commerce improperly labelled packages containing fish or wildlife. Id. subsection (b). "State" is specifically defined to include the Northern Mariana Islands. Id. § 3371(h). "Import" is defined to include imports into "any place subject to the jurisdiction of the United States" whether or not the importation is an importation

"within the meaning of the customs laws of the United States." Id. § 3371(b). The Northern Mariana Islands is subject to the jurisdiction of the United States. Trusteeship Agreement, Art. 3; [324] Covenant §§ 101, 1003(c). Accordingly, the movement of wildlife illegally caught or in improperly labelled packages into or out of the Northern Mariana Islands is prohibited.

--injurious wildlife. Section 42 of title 18, U.S.C., prohibits importation into the United States or any of its territories or possessions wild mammals, wild birds, fish (including mollusks and crustacea), amphibians, or reptiles which the Secretary of the Interior finds injurious to human beings, agriculture, horticulture, forestry, wildlife, or the wildlife resources of the United States. The statute specifically designates "fruit bats of the genus Pteropus" as one such injurious mammal. Fruit bats of the genus Pteropus are a highly-sought gourmet delicacy in the Northern Mariana Islands.

Section 42's prohibition of importation into any of the territories or possessions of the United States clearly bars importation into Guam. The prohibition is thus applicable to the several States and Guam and, under section 502(a)(2) of the Covenant, to the Northern Mariana Islands as well. While the purpose of section 42 would be served by barring only live animals (or eggs), the only exception for dead animals is for natural-history specimens for museums and scientific collections. Thus, even the importation of killed fruit bats is prohibited.

The Commission has agreed to recommend to Congress that section 42 be amended to remove the bar against importing fruit bats into the Northern Mariana Islands.

—wild mammals and birds imported in violation of foreign law. Section 1527 of title 19, U.S.C. prohibits importation into the United States of wild mammals or birds taken, killed, possessed, or exported in violation of foreign law. "United States" is defined, for purposes of the subtitle containing section 1527, to exclude Guam. 19 U.S.C. § 1401(h). Section 1526 consequently does not prohibit importation of wild mammals and birds into the Northern Mariana Islands.

General restrictions enforcing particular statutes.

All import and export restrictions enforce particular statutes, if only the statutes containing those restrictions. For the statutes listed in the preceding section, the congressional purpose underlying the statute is achieved by applying restrictions to particular classes of goods, whether defined broadly--for example, consumer products--or narrowly--for example, switchblade knives. In the

statutes listed below the goods or other things subject to import and export restrictions are defined not by any qualities of their own, but only by the larger purpose of the statute pursuant to which the restrictions are imposed. [325]

Protection of commerce--unfair competition. Section 72 of title 15, U.S.C., prohibits importation into the United States of articles to be sold at less than market value or wholesale price with the intent of injuring industry or competition in the United States. Neither the language of this law nor its legislative history indicates whether territories or possessions of the United States are to be treated as parts of the United States. In the absence of any such indication, the United States is presumed not to include those areas and, consequently, not to include the Northern Mariana Islands.

Section 73 of title 15, U.S.C., triples the duty on articles imported into the United States under an agreement (other than an exclusive sales agency agreement) that prevents the importer or any other person from using or dealing in the articles of any other person. Neither the language of this law nor its legislative history indicates whether territories or possessions of the United States are to be treated as parts of the United States. Again, in the absence of any such indication, the United States is presumed not to include those areas and, consequently, not to include the Northern Mariana Islands.

Section 1337 of title 19, U.S.C., allows the United States International Trade Commission to order excluded from entry into the United States goods found to be unfairly competing with goods made in the United States or otherwise injuring competition in the United States. Subsection (j) of section 1337 defines "United States" as the customs territory of the United States. The Northern Mariana Islands is not within the customs territory of the United States. Covenant § 603(a). The United States International Trade Commission consequently has no authority to prohibit imports into the Northern Mariana Islands or to consider the effects of foreign imports on industry, competition, and consumers within the Northern Mariana Islands when deciding whether to bar entry of certain goods into the United States.

--prison-made goods. Section 1761 of title 18, U.S.C, imposes criminal penalties for transporting prison-made goods into the United States. "United States," for purposes of title 18, is defined to include all places subject to the jurisdiction of the United States. 18 U.S.C. § 5. Guam is subject to the jurisdiction of the United States. Accordingly, by operation of section 502(a)(2) of the Covenant, section 1761 imposes criminal penalties for transporting prison-made goods into the Northern Mariana Islands.

Section 1307 of title 19, U.S.C., bars importation into the United States of goods made by convict labor. "United States" is defined for purposes of this prohibition to exclude Guam. 19 U.S.C.
[326] § 1401(h). Consequently, the Covenant does not make the Northern Mariana Islands part of the United States for purposes of section 1307, and importation into the Northern Mariana Islands of convict-made goods is not barred by section 1307. But the criminal penalties on prison-made goods imposed by section 1761 of title 18, above, operate effectively to bar importation into the Northern Mariana Islands of goods made by convict labor.

—antitrust. Section 11 of title 15, U.S.C., requires forfeiture of property imported into the United States in violation of the prohibitions against combinations in restraint of trade in imported goods. Section 11 also requires forfeiture of such property "in the course of transportation from one State to another, or to or from a Territory or the District of Columbia." "United States," "State," and "Territory" are not defined in section 11. The Supreme Court has held that Congress intended other provisions of the antitrust laws to apply wherever the power of Congress reaches. United States v. Standard Oil Co., 404 U.S. 558 (1972) (American Samoa); Puerto Rico v. Shell Co., 302 U.S. 253 (1937) (Puerto Rico).

The power of Congress to legislate for the Northern Mariana Islands is already well established. Trusteeship Agreement, Art. 3. Further, Guam is also clearly within the reach of congressional power, so that section 11 is also applicable to the Northern Mariana Islands by operation of section 502(a)(2) of the Covenant. Accordingly, property brought into the Northern Mariana Islands in violation of the prohibitions against combinations in restraint of trade in imported goods is subject to forfeiture.

--retaliatory restrictions. Section 75 of title 15, U.S.C., allows the President to prohibit particular imports into the United States from nations prohibiting particular imports from the United States.

Section 181 of title 19, U.S.C., allows the President to prohibit importation into the United States of particular products of countries unjustly discriminating against products of the United States.

Neither the language of these statutes nor their legislative history indicates whether territories or possessions of the United States are to be treated as parts of the United States. In the absence of any such indication, the United States is presumed not to include those areas and, consequently, not to include the Northern Mariana Islands.

—trademarks. Section 1124 of title 15, U.S.C., forbids importation into the United States of goods bearing trademarks or

trade names copying trademarks or trade names protected in the United States or otherwise misleading the public. "United States," for purposes of this section, "includes and embraces all territory which is under [United States] jurisdiction and control." 15 U.S.C. § 1127. Importation of the offending goods into Guam is consequently prohibited and so, by operation of section 502(a)(2) of the Covenant, is importation of such goods into the Northern Mariana Islands. [327]

Section 1526 of title 19, U.S.C., prohibits importation into the United States of merchandise bearing an American trademark without the consent of the trademark owner and authorizes seizure and forfeiture of merchandise bearing a counterfeit trademark. "United States" is defined, for purposes of the subtitle containing section 1526, to exclude Guam. 19 U.S.C. § 1401(h). The prohibitions of section 1526 consequently do not apply to importation of trademarked goods into the Northern Mariana Islands.

--false representations. Section 1125 of title 15, U.S.C, forbids importation into the United States of goods that are falsely labelled or described. "United States," for purposes of this section, "includes and embraces all territory which is under [United States] jurisdiction and control." 15 U.S.C. § 1127. Importation of the offending goods into Guam is consequently prohibited and, by operation of section 502(a)(2) of the Covenant, so is importation of such goods into the Northern Mariana Islands.

Section 1304 of title 19, U.S.C., prohibits importation into the United States of goods not properly labelled as to their country of origin. "United States" is defined for purposes of this prohibition to exclude Guam. 19 U.S.C. § 1401(h). The Northern Mariana Islands is thus not part of the United States for purposes of section 1304, so importation of improperly labelled goods into the Northern Mariana Islands is not barred by this statute.

--fair packaging and labelling. Sections 1453 and 1454 of title 15, U.S.C., prohibit the distribution in commerce of packaged consumer commodities not in conformity with fair packaging and labelling regulations. Section 1456 provides for enforcement of sections 1453 and 1454 against consumer commodities imported into the United States, pursuant to section 381(a) and (b) of title 21, U.S.C. Although the Fair Packaging and Labeling Act, of which these sections are a part, does not define "United States," it does define "commerce" to include "commerce between any State, the District of Columbia, the Commonwealth of Puerto Rico, or territory or possession of the United States, and any place outside thereof." 15 U.S.C. § 1459(e). The territories and possessions, such as Guam, are grouped as part of the United States in this definition. By operation of section 502(a)(2) of the Covenant, the Northern Mariana Islands is also part of the United States for purposes of the Fair Packaging and Labeling Act. Sections 381(a) and (b) of title 21,

U.S.C., to which reference is made in section 1456, also apply to imports into the Northern Mariana Islands. See the discussion, Foods, drugs, cosmetics, and dentures--adulterated, misbranded, or
[328] otherwise illegal products, above. Accordingly, packaged consumer commodities not in conformity with fair packaging and labelling regulations may not be imported into the Northern Mariana Islands.

Foreign policy--neutrality. Section 76 of title 15, U.S.C., allows the President, during a war in which the United States is not involved, to prohibit particular imports into the United States from nations prohibiting particular imports from the United States, and imposes criminal penalties for violation of any such prohibitions. The purpose of section 76 is to further foreign policy objectives of the United States. On termination of the trusteeship, the United States "will have complete responsibility for and authority with respect to matters relating to foreign affairs and defense affecting the Northern Mariana Islands." Covenant §§ 104, 1003. The Northern Mariana Islands should be considered as part of the United States for purposes of section 76.

--international trade agreements--the Trade Expansion Act of 1962. Section 1821 of title 19, U.S.C., authorized the President to enter into international trade agreements between 1962 and 1967 and to change rates of customs duties in order to carry out those agreements. Section 1862 allows the President to impose import quotas to protect national security, national defense industries, or the economic welfare of other domestic industries. Section 1881, with certain exceptions, requires that duties or other import restrictions or duty-free treatment established to implement international trade agreements apply to products of all foreign countries (the most-favored-nation principle). Section 1981 authorizes the President to increase duties or to impose other import restrictions on particular articles to prevent or remedy serious injury to domestic industries. Section 1982 authorizes the President to negotiate orderly marketing agreements with foreign countries to limit their export of particular items into the United States, in order to prevent or remedy serious injury to domestic industries. Neither the language of these statutes nor their legislative history indicate whether territories or possessions of the United States are to be treated as parts of the United States. In the absence of any such indication, the United States is presumed not to include those areas and, consequently, not to include the Northern Mariana Islands.

--international trade agreements--The Trade Act of 1974. Section 2111 of title 19, U.S.C., authorized the President to enter into international trade agreements between 1975 and 1980 and to change rates of customs duties in order to carry out those agreements. Section 2112 authorized the President to enter into international trade agreements to reduce or eliminate nontariff trade barriers. Section 2132 authorizes the President to impose temporary

surcharges or quotas on articles imported into the United States to alleviate balance-of-payments problems. Section 2133 authorized the President to enter into international trade agreements in 1981 and 1982 subject to greater limitations than under the authority granted by section 2111, above. [329]

Section 2411 allows the President to enforce international trade agreements by withdrawing concessions granted the other country party to the agreement and by imposing duties or other import restrictions on the products and services of that country.

Sections 2431 to 2440 govern trade relations with countries with nonmarket economies, in general, the Communist nations.

Section 2461 authorizes the President to provide duty-free treatment for any eligible article imported from any "beneficiary developing country" under the Generalized System of Preferences. The Trust Territory of the Pacific Islands is a "beneficiary developing country" for purposes of section 2461. 19 U.S.C. § 2462(a)(3). The United States has agreed to seek from foreign countries favorable treatment for exports from the Northern Mariana Islands and to encourage other countries to consider the Northern Mariana Islands a developing territory. Covenant § 603(d). The General Agreement on Trade and Tariffs permits preferential tariff treatment of goods exported from developing countries and territories, in order to encourage exports from and, thus, the economic development of those countries and territories. Section 2461 authorizes preferential treatment for Northern Mariana Islands exports to the United States, so long as the Northern Mariana Islands remains part of the Trust Territory. Preferential treatment is also authorized, both before and after termination of the trusteeship, by section 603(c) of the Covenant.

"United States" is not defined in the various provisions authorizing international agreements for the reduction or elimination of duties and import restrictions. Duties and import restrictions are generally imposed, however, at the point where an article enters the customs territory of the United States. The Northern Mariana Islands is not part of that customs territory. Covenant § 603(a). Imports into the Northern Mariana Islands are unlikely to have more than marginal effects on national security, national defense industries, or the economic welfare of other industries in the United States. While imports into the Northern Mariana Islands might have important effects on industries in the Northern Mariana Islands, the Northern Mariana Islands has the authority to impose duties on imports to protect its own industries. Covenant § 603(b).

International agreements affecting the Northern Mariana Islands are negotiated and concluded by the United States. Trusteeship Agreement, Art. 8(4); Covenant §§ 104, 1003(c). Duties and excise

taxes imposed by the government of the Northern Mariana Islands on goods imported into the Northern Mariana Islands must be consistent with the international obligations of the United States. Covenant
[330] §§ 603(b), 604(b). Should provisions in any international trade agreement or orderly marketing agreement lawfully be applicable to the Northern Mariana Islands, duties and excise taxes imposed by the government of the Northern Mariana Islands could not conflict with those provisions. Applicability would have to be determined by reference to the terms and negotiating history of each agreement. The legality of making an agreement applicable to imports into the Northern Mariana Islands depends on (1) whether the statutes authorize the President to impose duties or other restrictions on imports into the Northern Mariana Islands, or (2) if there is no such authority in these statutes, whether the President has such authority under the United States Constitution or some other statute.

--international trade agreements--the Trade Agreements Act of 1979. Sections 2501 et seq. of title 19, U.S.C., the Trade Agreements Act of 1979, approve a number of trade agreements negotiated in the Tokyo Round of multilateral trade agreements and provide for their implementation.

One such agreement is the Agreement on Technical Barriers to Trade (relating to product standards). See 19 U.S.C. § 2503(c)(4). Sections 2531 to 2573 of title 19, also part of the 1979 Act, deal specifically with technical barriers to trade. States are encouraged, but not required, to refrain from imposing product standards that unnecessarily obstruct the foreign commerce of the United States. 19 U.S.C. § 2533. States are also eligible for certain grants and contracts for "standards-related activities." Id. § 2545. "State" and "United States" are defined, for purposes of sections 2531 to 2573, to include "the Commonwealth of Puerto Rico, . . . Guam and any other Commonwealth, territory, or possession of the United States. Id. § 2571(15) and (17). Since the legislation was not enacted until 1979, section 502(a)(2) of the Covenant--making applicable to the Northern Mariana Islands those laws applicable to the several States and Guam on January 9, 1978--does not make this legislation applicable to the Northern Mariana Islands. Whether the term "State" includes the Northern Mariana Islands thus depends on whether the Northern Mariana Islands is a Commonwealth, territory, or possession of the United States. Although the Northern Mariana Islands is already frequently called a Commonwealth, it technically does not become one until termination of the trusteeship. Covenant §§ 101, 1003(c). On the other hand, there are no other commonwealths of the United States, except for Puerto Rico, already mentioned specifically in the definition.

--United Nations economic sanctions. Section 287c of title 22, U.S.C, authorizes the President to implement United Nations Security Council resolutions for economic sanctions against foreign countries

by regulating or prohibiting economic relations between that country and the United States or any person subject to the jurisdiction of the United States or involving property subject to the jurisdiction of the United States. Persons and property in the Northern Mariana Islands are subject to the jurisdiction of the United States. Trusteeship Agreement, Art. 3; Covenant §§ 101, 1003(c). Accordingly, the President's authority under section 287c includes the authority to regulate or prohibit economic transactions involving a foreign country and persons or property in the Northern Mariana Islands. [331]

—Cuban trade embargo. Section 2370 of title 22, U.S.C., authorizes the President to impose a total embargo on trade between the United States and Cuba. Such an embargo, imposed by President Kennedy in 1962, is in effect. Proclamation No. 3447, 27 Federal Register 1085 (February 3, 1962). The embargo prohibits the importation into the United States of all goods of Cuban origin and all exports from the United States to Cuba. Id. ¶¶ 2 and 3.

The purpose of section 2370 is to further foreign policy objectives of the United States. Id. On termination of the trusteeship, the United States "will have complete responsibility for and authority with respect to matters relating to foreign affairs and defense affecting the Northern Mariana Islands." Covenant §§ 104, 1003. The Northern Mariana Islands should be considered as part of the United States for purposes of section 2370.

—trading with the enemy. Section 5 of the appendix to title 50, U.S.C., authorizes the President to regulate a wide variety of foreign transactions in the interests of national security. The authority conferred on the President extends to all persons, property, and places subject to the jurisdiction of the United States. The Northern Mariana Islands is subject to the jurisdiction of the United States. Trusteeship Agreement, Art. 3; Covenant §§ 101, 1003(c). Accordingly, persons, property, and places in the Northern Mariana Islands are subject to the President's regulatory authority.

Foreign asset control regulations implementing section 5 are found in Chapter V of title 31, C.F.R. (1982). In general, those regulations govern trade with communist nations.

Section 11 of the appendix to title 50, U.S.C., authorized the President to limit importation into the United States of particular articles during the First World War. The provision is now obsolete.

Quarantine and inspection. Sections 264 to 272 of title 42, U.S.C., authorize the Surgeon General of the United States to make and enforce regulations to prevent the spread of communicable diseases from foreign countries into any State or possession (or from

one State or possession to another). Included in the Surgeon General's authority is the power to destroy imported animals or articles, id. § 264(a), and to suspend imports from particular foreign countries, id. § 265. The Northern Mariana Islands is
[332] defined as a "State" for purposes of the provisions in sections 264 to 272 authorizing the Surgeon General to control imports. Accordingly, imports into the Northern Mariana Islands are subject to this authority of the Surgeon General.

Excess federal property. Section 512 of title 40, U.S.C., requires that foreign excess property of the United States government, if sold, be sold on condition it not be imported into the United States. "United States" is not defined by the statute, but "foreign excess property" is defined, for purposes of section 512, to exclude property in Guam or the Trust Territory of the Pacific Islands. 40 U.S.C. § 472(f). Under section 502 of the Covenant, federal excess property in the Northern Mariana Islands also would not be "foreign excess property" for purposes of section 512.

In 1974 Congress amended the definition of "foreign excess property" with the specific intention of putting Guam and the Trust Territory of the Pacific Islands in the same status as other parts of the United States for purposes of the Federal Property and Administrative Services Act of 1949, of which section 512 is a part. See Senate Report 93-1419 (1974), reprinted at 1974 U.S. Code Cong. & Ad. News 7047, 7048. Accordingly, foreign excess property sold by the United States may not be imported into the Northern Mariana Islands. (Note, however, that "United States" is defined in regulations implementing section 512 to include only the 50 States and the District of Columbia. 41 C.F.R. § 101-43.001-24 (1981).)

Noise control. Sections 4908 and 4909 of title 42, U.S.C., prohibit importation into the United States of products not in compliance with applicable federal noise control regulations. Although "United States" is not defined for purposes of sections 4908 and 4909, "State" is defined to include Guam and the Trust Territory of the Pacific Islands. 42 U.S.C. § 4902(9). The inclusion of Guam as a "State" is strong evidence of a congressional intent that Guam be considered part of the United States for purposes of sections 4908 and 4909. By operation of section 502(a)(2) of the Covenant, sections 4908 and 4909 also prohibit importation into the Northern Mariana Islands of products not in compliance with applicable federal noise control standards.

Import and export statistics. Sections 301 et seq. of title 13, U.S.C., authorize the Secretary of Commerce to collect, compile, and publish foreign trade statistics, in order to promote the domestic and foreign commerce of the United States. An important means for collection of these statistics is the Shipper's Export Declaration. See 15 C.F.R. part 30 (1983). The Secretary has broad authority to issue regulations to carry out the provisions of this chapter. 13 U.S.C. §§ 4, 302, 307.

Section 301 authorizes the Secretary of the Treasury to collect information "from all persons exporting from, or importing into, the United States and the noncontiguous areas over which the United States exercises sovereignty, jurisdiction, or control." Collection of such information from persons engaged in trade between the United States and the noncontiguous areas, or between the noncontiguous areas is also authorized. Guam is a noncontiguous area over which the United States exercises sovereignty, jurisdiction, and control. Collection of information is thus authorized with respect to goods moving (1) between foreign countries and the United States, including Guam and other noncontiguous areas, (2) between the United States, on the one hand, and Guam and the other noncontiguous areas, on the other; and (3) between Guam and the other noncontiguous areas.

Section 502(a)(2) of the Covenant makes applicable to the Northern Mariana Islands federal laws "which are applicable to Guam and which are of general application to the several states." The Secretary of Commerce's authority under sections 301 et seq. applies to importers and exporters in both Guam and the several States, as well as to persons trading between Guam and the several States. Accordingly, these sections are also applicable to the Northern Mariana Islands.

The several States and Guam, however, are not subject to the same treatment under these sections. The Secretary may collect information on trade between Guam and foreign countries, between the several States and foreign countries, between Guam and the several States, and between Guam or the several States and the other contiguous areas. The Secretary is not authorized, however, to collect information on trade between two States of the United States. Federal laws applicable to Guam and the several States are to be applied to the Northern Mariana Islands as they are applied to the several States, not as they are applied to Guam. Covenant § 502(a)(2). In what is surely an unintended result of application of the Covenant formula, the Secretary is thus authorized to collect information on trade between the Northern Mariana Islands and foreign countries and on trade between the Northern Mariana Islands and Guam,

but not on trade between the Northern Mariana Islands and the several States.*

[334] The regulations now in effect under these provisions treat the Trust Territory of the Pacific Islands (which, of course, still includes the Northern Mariana Islands) as a foreign country. 15 C.F.R. § 30.1 (a)(1) (1983). Those regulations have been in effect since prior to approval of the Covenant by the United States Congress. To the extent those regulations purport to collect information on trade between the Northern Mariana Islands and the several States, they now exceed the authority granted the Secretary by sections 301 et seq.

The regulations themselves have the status of law under section 502(a)(2) of the Covenant. In applying those regulations, the Northern Mariana Islands must be treated as a State. (Note, however, the broad authority of the Secretary to issue regulations implementing these provisions allows the Secretary to change the treatment of the Northern Mariana Islands in those regulations, so long as changes do not purport to require information on the flow of goods between the Northern Mariana Islands and the several States.)

Since the Northern Mariana Islands is treated as a State under the regulations:

> (1) exporters in the other States (or the District of Columbia) are not required to file Shipper's Export Declarations when sending goods to the Northern Mariana Islands and exporters in the Northern Mariana Islands are not required to file Declarations when sending goods to those other States (15 C.F.R. §§ 30.1, 30.2 (1983)).

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*The authority of the Secretary under this chapter extends to the movement of goods in and out of noncontiguous areas that are under the jurisdiction and control, but not the sovereignty, of the United States. The Trust Territory of the Pacific Islands is such an area. Until approval of the Covenant by the United States Congress, the Northern Mariana Islands was subject to this authority as part of the Trust Territory of the Pacific Islands, and thus a noncontiguous area rather than a State for purposes of the chapter. The Covenant, however, makes clear that if a statute is applicable to Guam and the several States, it is to be applied to the Northern Mariana Islands as it is applied to the several States without regard for its prior applicability to the Trust Territory of the Pacific Islands. Compare Covenant § 502(a)(2) with id. § 502(a)(3).

(2) exporters in Guam and the Virgin Islands are not required to file Shipper's Export Declarations when sending goods to the Northern Mariana Islands (id. § 30.1(a)(2) n.1); [335]

(3) exporters in the Northern Mariana Islands are required to file Shippers Export Declarations when sending goods to foreign countries, including other parts of the Trust Territory of the Pacific Islands (id. § 30.1(a)(1)(i));

(4) importers in the United States are not required by these regulations to provide information on goods received from the Northern Mariana Islands, although most of the same information is required by Customs regulations (id. § 30.70 & n.9);

(5) importers in the Northern Mariana Islands must provide information on goods entering the Northern Mariana Islands from foreign countries (including the Trust Territory of the Pacific Islands) and from Guam and other noncontiguous areas on specified United States Customs forms (id. § 30.70); and

(6) importers in the Northern Mariana Islands are not required by these regulations to provide information on goods entering the Northern Mariana Islands from the fifty States, the District of Columbia, or Puerto Rico (id.).

LAWS AFFECTING EXPORTS ONLY

Export controls. Sections 2401 et seq. of the appendix to title 50, U.S.C., authorize imposition of controls on exports from the United States to achieve a variety of national security and foreign policy objectives. Industrial technology of significant military value and materials in short supply, for example, may be restricted. Similarly, export of goods to particular countries may be limited in order to implement United States foreign policy. Not explicitly stated is whether these sections apply only to exports from the customs territory of the United States or to exports from any area under the sovereignty of the United States.

The legislation was enacted in September 1979, after the effective date of section 502 of the Covenant. Its applicability to the Northern Mariana Islands, then, is determined by its own terms rather than through operation of the Covenant. Neither the Northern Mariana Islands nor the Trust Territory of the Pacific Islands is mentioned by name in these sections. A number of provisions in the legislation make specific reference to the territories and

possessions of the United States, leading to the conclusion that Congress did intend exports from the territories and possessions to be subject to controls imposed by the law. See 50 U.S.C. App.
[336] §§ 2404(c)(3), 2405(k), 2406(j), and 2407(c); see also id. § 2406(f). Until termination of the trusteeship, however, the Northern Mariana Islands will not be under the sovereignty of the United States and, consequently, will not be a territory or possession of the United States.

The language of the legislation, however, goes further than its references to the territories and possessions of the United States. Controls on exports for reasons of national security or foreign policy may be imposed on any goods or technology or on any person "subject to the jurisdiction of the United States." 50 U.S.C. App. §§ 2404(a)(1), 2505(a)(1).

> The bill contains the authority delegated to the President . . . to control exports subject to U.S. jurisdiction or exported by any person subject to U.S. jurisdiction . . . .

Senate Report 96-169 (1979), at 4, reprinted at 1979 U.S. Code Cong. & Ad. News 1147, 1151.

Under the present trusteeship arrangement, citizens and residents of the Northern Mariana Islands are subject to the jurisdiction of the United States. Trusteeship Agreement, Art. 3. And, on termination of the trusteeship, they will continue to be under the jurisdiction of the United States. Covenant §§ 101, 1003(c). Accordingly, exports from the Northern Mariana Islands are subject to controls imposed under sections 2401 et seq.

The President's authority to impose export controls under sections 2401 et seq. expired September 30, 1983, but has been temporarily extended to mid-October 1983 to allow consideration of its further extension. 41 Congressional Quarterly Weekly Report 2057 (October 1, 1983).

Agricultural products--subsidies. Section 612c of title 7, U.S.C., appropriates for each fiscal year an amount equal to 30 per cent of all customs duties collected by the United States during the previous calendar year to a separate fund administered by the Secretary of Agriculture. One of the permissible uses of this fund is to "encourage the exportation of agricultural commodities and products thereof by the payment of benefits in connection with the exportation thereof or of indemnities for losses incurred in connection with such exportation . . . ." Section 610(f) of title 7 makes the chapter containing section 612c applicable to the United States and all United States possessions "except the Virgin Islands, American Samoa, the Canal Zone, and the island of Guam." Section 612c is thus not applicable to the Northern Mariana Islands under the

Covenant. The special fund established thereby is not available to subsidize agricultural exports from the Northern Mariana Islands.

Under section 603(a) of the Covenant, the Northern Mariana Islands is not within the customs territory of the United States. Section 612c of title 7 does not earmark customs receipts, but does tie the level of appropriations directly to the level of those receipts. Nonapplicability of section 612c to the Northern Mariana Islands is consistent with the exclusion of the Northern Mariana Islands from United States customs territory. [337]

--reports. Section 612c-3 of title 7, U.S.C., requires exporters of wheat, cotton, and other agricultural commodities regularly to report to the Secretary of Agriculture specified information with regard to their export sales. Section 610(f) of title 7 makes the chapter containing section 612c-3 inapplicable to Guam. Section 612c-3 consequently is not applicable to the Northern Mariana Islands under the Covenant and persons exporting agricultural commodities from the Northern Mariana Islands are not subject to its provisions.

--tobacco seeds and plants. Section 516 of title 7, U.S.C., prohibits the export of tobacco seed or live tobacco plants from the United States "or any Territory subject to the jurisdiction thereof" except for experimental purposes under a federal permit. The purpose of section 516 is to discourage the development of foreign competition to the American tobacco industry. See 86 Cong. Rec. 4274-75 (1941). Neither the statute nor regulations issued thereunder, 7 C.F.R. part 34 (1983), define "Territories subject to the jurisdiction of the United States."

In its 1951 report to the United States Congress, the Commission on the Application of Federal Laws to Guam concluded that section 516 of title 7, in the substantially similar language in effect on August 1, 1950, was then applicable to Guam. Report of the Commission on the Application of Federal Laws to Guam, House Document 212, 82d Cong., 1st Sess. 15 (1951).

The Commission staff concluded:

> The application of [the law to Guam] is particularly unclear. Strictly speaking, only Alaska and Hawaii are covered, but the modifying phrase ("subject to the jurisdiction" of the United States) should be given some meaning. However, since no tobacco is grown on Guam, the question is totally academic.

House Committee on Interior and Insular Affairs, Resource Materials Used in the Preparation of the Report of the Commission on Application of Federal Laws to Guam 46 (Committee print 1952). The

question is likewise largely academic in the case of the Northern Mariana Islands. If the geographic extent of the law remains unclear, however, persons might attempt to evade enforcement of the
[338] law by exporting tobacco plants from other parts of the United States to the Northern Mariana Islands and then to foreign countries.

--apples and pears. Sections 581 et seq. of title 7, U.S.C., prohibit the export of apples or pears not meeting certain minimum quality standards, in order to protect and enhance the reputation of American-grown apples and pears in foreign markets. Section 587 authorizes the Secretary of Agriculture to cooperate with, among others, any "Territory" or possession in enforcing these prohibitions. "Foreign commerce" is defined by section 589(3) to mean "commerce between any State, or the District of Columbia, and any place outside of the United States or its possessions." Whether commerce between a "Territory" and a foreign country is within that definition is not clear. Regulations enforcing sections 581 et seq. also do not specify whether commerce between a "Territory" and a foreign country is within the section 589(3) definition of foreign commerce. See 7 C.F.R. part 33 (1983).

Apples and pears are not grown in the Northern Mariana Islands. If apples and pears exported from the United States to the Northern Mariana Islands must meet United States export standards, that is, if the Northern Mariana Islands is not considered part of the United States for purposes of this law, consumers in the Northern Mariana Islands would be able to purchase export quality fruit from the United States but would not have the option of purchasing lower-quality fruit from the United States at lower prices.

—grapes and plums. Sections 591 et seq. of title 7, U.S.C., prohibit the export of grapes or plums not meeting certain minimum quality standards, in order to protect and enhance the reputation of American-grown grapes and plums in foreign markets. Section 597 authorizes the Secretary of Agriculture to cooperate with, among others, any "Territory" or possession in enforcing these prohibitions. "Foreign commerce" is defined by section 599(3) to mean "commerce between any State, or the District of Columbia, and any place outside of the United States or its possessions." Unclear is whether commerce between a "Territory" and a foreign country is within that definition. Regulations enforcing sections 591 et seq. also do not specify whether commerce between a "Territory" and a foreign country is within the section 599(3) definition of foreign commerce. See 7 C.F.R. part 35 (1983).

Grapes and plums are not grown in the Northern Mariana Islands in commercially significant quantities. If grapes and plums exported from the United States to the Northern Mariana Islands must meet United States export standards, that is, if the Northern Mariana Islands is not considered part of the United States for purposes of

this law, consumers in the Northern Mariana Islands would be able to purchase export quality fruit from the United States but, as with apples and pears, would not have the option of purchasing lower-quality fruit from the United States at lower prices. [339]

—timber. Sections 616 and 617 of title 16, U.S.C., limit timber exports from national forests, public lands in Alaska, and federal lands located west of the 100th meridian. The purpose of the restrictions is to prevent foreign purchasers of federal timber from bidding up prices to the detriment of American lumber mills. Senate Report 1479, 90th Cong., 2d Sess., reprinted at 1968 U.S. Code Cong. & Ad. News 3957, 3971.

Since no lands in the Northern Mariana Islands fall within the statutory categories, sections 616 and 617 do not affect possible timber exports from lands in the Northern Mariana Islands. The legislation does not indicate however, whether Guam or other territories or possessions of the United States are considered as inside or outside the United States for purposes of the export limitations. In the absence of any indication, the United States is presumed not to include those areas and, consequently, not to include the Northern Mariana Islands. Accordingly, shipments of timber from the described lands to the Northern Mariana Islands are subject to export controls imposed pursuant to sections 616 and 617.

—dairy products. Section 693 of title 21, U.S.C., authorizes the Secretary of Agriculture to establish rules and regulations for the inspection and labelling of dairy products intended for export. Section 693 incorporates by reference the federal meat inspection laws. Those laws include the Northern Mariana Islands as part of the United States. See the discussion, Food, drug, cosmetics, and dentures—dairy products, above). Consequently, dairy products intended for export from the Northern Mariana Islands to foreign countries are subject to federal inspection and labelling regulations.

Energy supplies. Section 6212 of title 42, U.S.C., allows the President, in the interests of energy conservation, to restrict exports of coal, petroleum products, natural gas, petroleum feedstocks, or materials or equipment used in their production or transportation. "United States" is defined, for purposes of section 6212, to include the territories and possessions of the United States. 42 U.S.C. § 6202(4) and (5). Guam is thus included and so, by operation of section 502(a)(2) of the Covenant, is the Northern Mariana Islands. The President's authority accordingly extends to energy exports from the Northern Mariana Islands.

Armed vessels. Section 964 of title 18, U.S.C., imposes criminal penalties for exporting from the United States, during a war in which the United States is neutral, a war vessel to a belligerent [340] nation. "United States" is defined, for purposes of title 18, to include all places subject to the jurisdiction of the United States. 18 U.S.C. § 5. Section 464 of title 22, U.S.C., authorizes the detention of any vessel "built for warlike purposes" carrying a cargo of "arms and munitions of war" about to depart from any place subject to the jurisdiction of the United States, if the vessel is intended to be employed in hostilities against a nation with which the United States is at peace. Guam is subject to the jurisdiction of the United States. Accordingly, by operation of section 502(a)(2) of the Covenant, section 964 of title 18 imposes criminal penalties for exporting a war vessel from the Northern Mariana Islands to a belligerent country during a war in which the United States is neutral and section 464 of title 22 authorizes the detention of such vessels about to depart from the Northern Mariana Islands.

Arms, liquors, and narcotics to the Pacific Islands. Section 969 of title 18, U.S.C., derived from a 1909 statute, imposes criminal penalties on anyone "subject to the authority of the United States" who gives or sells arms, liquor, or narcotics to "any aboriginal native of any of the Pacific Islands" in a specified area unless the island is "in the possession or under the protection of [a] civilized power." The object of the statute, which was strongly supported by missionary societies, was to avoid sales "for the purpose of so infuriating these tribes that they may kill the civilized portion of the people that are on those islands." 35 Cong. Rec. 1202 (1902). The specified area includes all of Micronesia (including the Northern Mariana Islands), Melanesia, and Polynesia (except Easter Island). Persons in the Northern Mariana Islands are subject to the authority of the United States. Trusteeship Agreement, Art. 3; Covenant §§ 101, 1003(c). Presumably, the authors of this legislation would concur that the Northern Mariana Islands is now under the protection of a civilized power. The statute could conceivably be applied, however, to persons in the Northern Mariana Islands exporting, for example, liquor to other island nations. This law should be repealed as obsolete, and the Commission has agreed to recommend to Congress that this be done.

Letters. Section 602 of title 39, U.S.C., prohibits vessels leaving the United States for foreign ports from carrying letters not received from a United States post office or not related to the cargo of the vessel, except under specified circumstances. Statutory restrictions on the private carriage of letters are intended to implement the United States Government monopoly in the delivery of letters. National Association of Letter Carriers v. Independent Postal System, Inc., 470 F. 2d 265, 270 (10th Cir. 1972). The United States Postal Service's responsibilities extend to delivery of mail to and from the territories and possessions of the United States. 39

U.S.C. § 403(a). It is a reasonable supposition that Congress also intended the federal postal monopoly to extend to the territories and possessions. Guam is a territory or possession of the United States. By operation of section 502(a)(2) of the Covenant, the federal postal monopoly also extends to the Northern Mariana Islands. Accordingly, section 602 prohibits vessels leaving the Northern Mariana Islands from engaging in the private carriage of letters to foreign ports. [341]

TRADE ADJUSTMENT ASSISTANCE

Sections 2251 to 2395 of title 19, U.S.C., part of the Trade Act of 1974, provide for relief of injury caused by import competition. Section 2253 authorizes the President to impose or modify duties or quotas, or to negotiate orderly marketing agreements, in order to protect domestic industry from serious economic injury from foreign competition. Section 2291 authorizes payment of trade readjustment allowances to certain workers who become unemployed because of foreign import competition. Sections 2343 and 2344 authorize technical and financial assistance to firms seriously injured by foreign import competition. Section 2373 authorizes assistance to eligible communities adversely affected by foreign import competition with local products.

The geographic application of sections 2251 et seq. is not defined in those provisions. For purposes of the sections authorizing trade adjustment allowances to workers, "State" and "United States" are defined to include only the several States, the District of Columbia, and the Commonwealth of Puerto Rico. 19 U.S.C. § 2319(8). These definitions are reiterated in regulations implementing this program. See 29 C.F.R. § 91.3(a)(26) (1981).

Guam is thus not included in those definitions and, accordingly, neither is the Northern Mariana Islands. While payment of allowances to workers is not conditioned on their residence within the United States, the definition of "United States" indicates the allowance is payable only to workers in the jurisdictions named in that definition. (Both "State" and "United States" are used in these statutes for purposes other than defining a worker's eligibility. See, for example, section 2294 (disqualification for State unemployment insurance disqualifies worker for trade adjustment allowances) and sections 2297 and 2298 (job search and relocation allowances may only be used for job searches or relocation within the United States). These examples indicate, however, that Congress did not contemplate payment of benefits to persons outside the United States, as the term is defined in section 2319(8).)

Regulations implementing the trade adjustment assistance statutes as they apply to communities require those communities to be in a "trade impacted area." 13 C.F.R. § 315.98(a) (1983). "Trade impacted areas" must be within the customs territory of the United

States. Id. § 315.2(b)(7). Neither Guam nor the Northern Mariana Islands are within that customs territory. Revised Tariff Schedules, General Headnote 2; Covenant § 603(a).

[342] Only for trade adjustment assistance to firms are both the statutes and the regulations implementing the statutes silent as to the geographic reach of the program. Since this program was enacted as part of the same statute that provides trade adjustment assistance to workers and to communities, a reasonable assumption is that Congress intended assistance to firms to be available only in those areas where assistance to workers and communities is also available. Accordingly, the trade adjustment assistance programs are not available to workers, firms, or communities in the Northern Mariana Islands.*

ENFORCEMENT OF THE IMPORT AND EXPORT LAWS OF THE UNITED STATES IN THE NORTHERN MARIANA ISLANDS

The United States Customs Service does not presently operate in the Northern Mariana Islands, Guam, or American Samoa. 19 C.F.R. § 7.8 n.5 and part 101 (1983). "The Customs administration of American Samoa is under the jurisdiction of the [United States] Department of the Interior (Office of Territories). . . . The Customs administration of Guam is under the Government of Guam." Id.

The customs laws of the Virgin Islands are administered by the United States Secretary of the Treasury. 48 U.S.C. § 1406i. The Virgin Islands is not within the customs territory of the United States. Revised Tariff Schedules, General Headnote 2. The customs laws of the Virgin Islands are enacted locally. 48 U.S.C. §§ 1406i; 1574 (c), (f). The expenses of customs administration are paid from customs receipts. Id. § 1406i. The remaining receipts are paid into the treasury of the Virgin Islands. Id. § 1406h.

Although no law of the United States so states in specific terms, enforcement of federal laws applicable to the movement of goods and other things in and out of the Northern Mariana Islands on a day-to-day basis is entrusted to the government of the Northern Mariana Islands.

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*The Northern Mariana Islands has the ability to protect its own workers, firms, and communities from import competition by levying its own import duties. Covenant § 603(c). The Northern Mariana Islands can also allow foreign goods to enter without duty to maintain low prices for consumers, and can enact its own legislation to provide assistance to workers, firms, and communities adversely affected by the competition of foreign goods.

The authority of the government of the Northern Mariana Islands to enforce federal law. In Ex parte Rogers, 104 F. Supp. 393 (D. Guam 1952), the court held:

[343]

> The Governor of Guam has the residual authority to enforce the immigration laws of the United States in default of performance by the Immigration and Naturalization Service of the United States.

The residual authority is exercised, not as an agent of the Immigration and Naturalization Service, but pursuant to section 6b of the Organic Act of Guam, providing that the Governor of Guam "shall faithfully execute the laws of the United States applicable to Guam." (Section 1422 of title 48, U.S.C., in the present Organic Act, provides that the Governor "shall be responsible for the faithful execution of . . . the laws of the United States applicable in Guam.")

Nothing in the Covenant or in other federal statutes specifically confers power on the Governor of the Northern Mariana Islands, comparable to that given the Governor of Guam by the Organic Act of Guam, to "faithfully execute the laws of the United States." And, even in the case of Guam, local efforts to enforce federal law have not always been successful. In Pacific Construction Co. v. Branch, 428 F. Supp. 727 (D. Guam 1976), the right of the Guam Environmental Protection Agency to enforce its own regulations implementing the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. §§ 136 et seq., was successfully challenged. The court found that the Act did not grant to the States (including, for purposes of the Act, Guam) the power to limit and inspect pesticides imported from a foreign country. The court noted that the Act delegated the power to control imports to the Secretary of the Treasury. While the Act authorizes cooperative arrangements between the federal government and a State for enforcement of the Act, the federal government had entered into no such arrangement with the Government of Guam. The court concluded, "If the Territory of Guam desires to enforce the Federal Insecticide, Fungicide, and Rodenticide Act, it must do so within the confines of that Act." 428 F. Supp. at 728. The court made no mention of the duty of the Governor of Guam, under the Organic Act for Guam, to faithfully execute federal laws applicable to Guam.*

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*The authority of Government of Guam customs inspectors to enforce federal laws has recently been questioned. See Customs can't halt bogus items, Pacific Daily News (Guam, July 29, 1982), at 26; Gold taels allowed in states--sometimes, id. (April 11, 1982), at 1.

The decisions of the District Court of Guam in the Rogers and Pacific Construction Co. cases, if read to deny the government of Guam power to enforce federal law in the absence of congressional authorization, appear contrary to established judicial precedent, [344] although the issue is not entirely free from doubt. States of the United States are encouraged to cooperate in enforcing federal criminal laws. United States v. Chadwick, 415 F.2d 167, 171 (10th Cir. 1969).* State courts commonly enforce federal law:

> Nothing in the concept of our federal system prevents state courts from enforcing rights created by federal law. Concurrent jurisdiction has been a common phenomenon in our judicial history, and exclusive federal court jurisdiction over cases arising under federal law has been the exception rather than the rule. . . . [O]ur judgment [has] been * * * to affirm the [state-court] jurisdiction, where it is not excluded by express provision, or by incompatibility in its exercise arising from the nature of the particular case.

Charles Dowd Box Co. v. Courtney, 368 U.S. 502, 507-08 (1962). See also Claflin v. Houseman, 93 U.S. 130, 137 (1876).**

In other cases upholding State power to enforce or implement federal law, however, State enforcement or implementation has been pursuant to specific congressional authorization. Thus, in American Horse Protection Association v. Frizzell, 403 F. Supp. 1206, 1221-22 (D.Nev. 1975), the court held a formal agreement between the United States and the State of Nevada did not constitute an illegal delegation of federal management responsibilities to State officials. The court relied, however, on specific authorization for such agreements in the federal statute to be enforced under the agreement. Similarly, in Oklahoma v. Federal Energy Regulatory Commission, 494 F.Supp. 636, 660 (W. D. Okla. 1980), affirmed, 661 F.2d 832 (10th Cir. 1981), certiorari denied, 102 S. Ct. 2902-03 (1982), the court held that ". . . the federal government may delegate implementation of federal programs to states willing to comply," and, in the cases discussed therein as precedent, stated the delegation of federal power was specifically authorized in the acts of Congress establishing the various programs.

Even though some cases upholding State power to enforce federal law rely on specific provision by Congress for State enforcement, no cases have been found denying States the power to enforce federal law

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*But offenses against the United States may not be prosecuted in State courts. Tennessee v. Davis, 100 U.S. 257 (1880).

**Where Congress expressly gives State courts specific powers to enforce federal law, the State courts clearly may exercise those powers unless prohibited from doing so by State legislation. Holmgren v. United States, 217 U.S. 509, 517 (1910).

in the absence of such a provision. Further, no policy is served by denying States the power to enforce federal law. And, if States may enforce federal law, so also may territories and possessions. See United States ex rel. Gereau v. Henderson, 529 F.2d 889, 894 (5th Cir. 1976), following Duncan v. Madigan, 278 F.2d 695, 696 (9th Cir. 1960), certiorari denied, 368 U.S. 919 (1961). [345]

Accordingly, the government of the Northern Mariana Islands should be considered to have the authority to enforce federal laws in the Northern Mariana Islands. Specifically, the government of the Northern Mariana Islands should be recognized to have the authority to enforce federal laws governing the movement of goods and other things in and out of the Northern Mariana Islands. Given the uncertainty in the controlling case law, however, congressional legislation confirming that authority may be desirable.

Paying for enforcement of federal law in the Northern Mariana Islands. The United States does not reimburse the government of the Northern Mariana Islands for expenses incurred by the Northern Mariana Islands in enforcing federal laws at its borders. While the Northern Mariana Islands may be the principal beneficiary of such enforcement, the costs of enforcing federal border laws principally benefitting Hawaii or Puerto Rico, are borne by the United States, not by the governments of Hawaii or Puerto Rico. See Customs rules disputed, Pacific Daily News (Guam, October 9, 1981), at 3.

CONCLUSION

This survey is intended to acquaint readers with the present applicability of federal import-export legislation to the Northern Mariana Islands. Here and there the desirability of clarifying the applicability of certain of those laws has been noted. In general, however, recommendations for changes in applicability are not made in the survey. The survey should enable agencies, organizations, and individuals concerned with one or more of the federal import-export laws discussed to formulate their own recommendations. The Commission staff solicits such recommendaitons, as well as notice of any errors or omissions in the survey.

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[346]

SOLICITATION OF VIEWS

ON THE APPLICATION OF

THE MEDICAID PROGRAM

IN THE NORTHERN MARIANA ISLANDS

Introduction.

The staff of the Commission has been instructed to examine the application of the Medicaid program in the Northern Mariana Islands. Since we have only a limited acquaintance with the Medicaid program, we solicit your suggestions and insights as to what legislative changes, if any, ought to be made in the governing statute to make the Medicaid program more effective or more efficient in the Northern Mariana Islands.

The statute.

Subchapter XIX of chapter 7 of title 42, U.S. Code (§§ 1396 et seq.), contains title 19 of the Social Security Act, creating the Medicaid program. The program

> authorizes Federal grants to States for medical assistance to low-income persons who are age 65 or over, blind, disabled, or members of families with dependent children. The program is jointly financed by the Federal and State governments and administered by States. Within broad Federal rules, each State decides eligible groups, types and range of services, payment levels for services, and administrative and operating procedures. Payments for services are made directly by the State to the individuals or entities that furnish the services.

42 C.F.R. § 430.0 (1982).

States participating in the Medicaid program must submit a medical assistance plan to the United States Department of Health and Human Services for approval and, thereafter, in providing assistance must comply with that plan. 42 U.S.C. §§ 1396, 1396c. Eligible individuals needing financial assistance apply to the State or local agencies designated in the State plan. Medical services, in most instances, may then be obtained from any institution, doctor, or other person qualified to perform the services. Id. § 1396a(a)(23).

Present applicability.

The definition of "State" for purposes of this subchapter was amended in 1981 to include the Northern Mariana Islands, thereby making the Medicaid program available to the Northern Mariana Islands. Public Law 97-35, § 2162(a)(1), 95 Stat. 358, 42 U.S.C.

§ 1301(a)(1). See also 42 C.F.R. § 430.1 (1982).*

[348] Although generally treated as States for purposes of the Medicaid program, the Northern Mariana Islands and other insular areas of the United States are subject to two rules not applicable to the States. First, total federal payments under the Medicaid program in any fiscal year may not exeed an amount specified by statute. 42 U.S.C. § 1308(c). For the Northern Mariana Islands the "cap" on annual federal payments is $350,000. Id.**

Second, for the Northern Mariana Islands (and Puerto Rico, the Virgin Islands, Guam, and American Samoa), the Federal Government pays fifty per cent of the costs of services provided under an approved Medicaid plan. Id. § 1396d(b). For all other eligible jurisdictions, the federal contribution ranges from fifty percent to eighty-three percent of the costs, the poorer States receiving a greater percentage of total costs from the Federal Government while the more affluent States receive a lesser percentage.***

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*Section 1396a(b)(4) of title 42, U.S.C., requires States receiving Medicaid grants to impose no citizenship requirement on eligibility for assistance that would exclude United States citizens. In its January 1982 interim report to the United States Congress, the Commission recommended enactment of legislation to treat citizens of the Northern Mariana Islands as citizens of the United States for purposes of this requirement. If enacted, this legislation would be of benefit to citizens of the Northern Mariana Islands needing Medicaid assistance while in other parts of the United States.

**Annual Medicaid expenditures in the Northern Mariana Islands apparently have not yet been sufficiently large to bring the "cap" into operation. This situation is likely to change when a new hospital is completed, making qualified persons eligible for the first time to receive Medicaid assistance for inpatient medical services in the Northern Mariana Islands. See the discussion, Health care in the Northern Mariana Islands, below.

The upper limits for the other insular areas are: Puerto Rico--$45,000,000; Virgin Islands--$1,500,000; Guam--$1,400,000; and American Samoa--$750,000. 42 U.S.C. § 1308(c). The limits are roughly related to the population of each area.

***Congress may provide that persons in the territories receive less assistance from federally-funded programs than similarly situated persons in the States without violating constitutional guarantees of equal protection. Harris v. Rosario, 446 U.S. 651 (1980).

The Northern Mariana Islands has an approved Medicaid plan and is providng financial assistance to qualified individuals. Medicaid assistance in the Northern Mariana Islands is administred by the Northern Mariana Islands Department of Public Health and Environmental Services. Northern Mariana Islands Public Law 1-8, § 3(d). [349]

Health Care in the Northern Mariana Islands.

In general, the health of the people of the Northern Mariana Islands is quite good. An infant mortality rate 60% higher than that in the United States, however, is the principal contributor to an crude death rate 20% greater than in the United States. See Robert Mytinger Associates, Inc., New Directions for Health Services for the Commonwealth of the Northern Mariana Islands 3 (1980)(hereafter, the "Mytinger Study").

The principal hospital in the Northern Mariana Islands, Dr. Torres Hospital on Saipan, has been characterized as "woefully inadequate." 125 Cong. Rec. 10090, 10092 (1979) (remarks of Representative Phillip Burton). The hospital cannot meet the standards for Medicaid payments for inpatient medical services. See U.S. Department of Health, Education & Welfare, Statement of Deficiencies and Plan of Correction: Dr. Torres Hospital, Saipan, Northern Marianas (February 9, 1979). In 1980, the United States Congress authorized construction of a new hospital on Saipan. Public Law 96-205, § 202, 94 Stat. 84. Monies have been appropriated pursuant to that authorization, and construction of the new hospital is now underway.

Health care is in large part provided by personnel employed by the government of the Northern Mariana Islands. A private dental clinic operated by the Seventh-Day Adventists, a private optometrist, and a number of traditional healers (suruhana) also provide health care. The principal government health care facilities are the 84-bed Dr. Torres Hospital and four small dispensaries on Saipan, a 12-bed sub-hospital on Rota, and a four-bed sub-hospital/dispensary on Tinian. Id. at 35, 38, 40.

> The geographic location of the [Northern Mariana Islands] contributes to extraordinarily high costs of training, employing and retaining health personnel. Its isolation contributes to inordinate costs of importing medical technology and building materials. The small population base and low volume of use of highly specialized medical services makes it impossible to provide the desired mix of high technology medical services on site. This, in turn, generates increasing costs for care and transport of patients to medical facilities abroad (in Guam, Hawaii and the U.S. mainland).

Id. at 11

[350] Throughout administration of the Trust Territory of the Pacific Islands by the United States, medical care has been provided the people of the Northern Mariana Islands by the government at fees that reflect only a small portion of the actual costs of that care. The government of the Northern Mariana Islands inherited this system of health care financing. Although efforts are underway to bring fees for medical services more into line with the costs of those services, these efforts are hampered by the inability of many persons in the less-developed economy of the Northern Mariana Islands to pay a larger share of the costs.

Issues.

Should the Northern Mariana Islands be exempted from the Medicaid freedom-of-choice requirement? In general, State plans for Medicaid assistance must allow individuals eligible for that assistance to choose any hospital, doctor, or other institution or person qualified to provide the medical services needed. 42 U.S.C. § 1396a(a)(23). (Some exception and waivers from this requirement are permitted. See id. § 1396n.)

In 1975, Congress provided that the plans for Puerto Rico, the Virgin Islands, and Guam need not permit individuals eligible for Medicaid assistance freedom to select their own medical providers. Public Law 94-48, § 2, 89 Stat. 247, 42 U.S.C. § 1396a(a)(23). Congress noted that each of these jurisdictions "had in place before Medicaid a well-developed public health care system, used by most of the population" and concluded that exemption "from the freedom-of-choice requirement would allow them to determine how to utilize their own limited dollars in meeting the health needs of the large eligible population." House Report 94-327, at 3 (1975). See also 121 Cong. Rec. 20930-31 (1975).

The Northern Mariana Islands similarly has a public health care system used by most of the population. At present, few alternatives to that system are available so, even if the Medicaid recipient has a legal right to choose any provider of health care, the public health care system will in most cases be the provider.

If the Northern Mariana Islands is exempted from the freedom-of-choice requirement, physicians and other providers of health care may be discouraged from establishing practices in the Northern Mariana Islands, since they may not be eligible to receive Medicaid payments for services provided. On the other hand, if other sources of medical assistance do become established in the Northern Mariana Islands, and the freedom-of-choice requirement is in effect, many persons would be likely to resort to those other sources. These

sources are apt to be more expensive than the government system. The Northern Mariana Islands would nonetheless be required to fund the minimum services required by the Medicaid program. Since the Northern Mariana Islands is subject to an annual "cap" of $350,000 on federal assistance under the Medicaid program, application of the freedom-of-choice requirement could divert funds from the treasury of the Northern Mariana Islands from the government health care system to private providers. [351]

Should the Secretary of Health and Human Services be authorized to waive or modify requirements of the Medicaid program otherwise applicable to the Northern Mariana Islands? The medical care system of American Samoa is of about the same sophistication as that of the Northern Mariana Islands. Mytinger Study 146. The Medicaid program was extended to American Samoa in 1982. Public Law 97-248 § 136(a), 96 Stat. 324, 42 U.S.C. § 1301(a)(1). In extending the program to American Samoa, Congress authorized the Secretary of Health and Human Services to waive or modify any requirement of the Medicaid program except the requirements that (1) American Samoa provide matching funds, (2) annual federal expenditures be subject to a statutory "cap" of $750,000, and (3) expenditures be for health services covered by the program. 42 U.S.C. § 1396a(j). Note that the Secretary is not required to grant all requests for waivers or modifications of Medicaid requirements applicable to American Samoa. The only reason given for American Samoa's special treatment in the legislative history of Public Law 97-248 is "the unique circumstances in the health system in American Samoa." House Conference Report 97-760, at 441 (1982).

A bill, the Health Care Financing Amendments of 1983, now pending before Congress, would extend the treatment accorded American Samoa to Puerto Rico, the Virgin Islands, Guam and the Northern Mariana Islands. S. 643, 98th Cong., 1st Sess. § 227 (1983).

Should legislation be enacted to allow Medicaid payments for inpatient care at Dr. Torres Hospital, even though that hospital cannot meet Medicaid standards for inpatient care? As noted above, Dr. Torres Hospital, the principal hospital in the Northern Mariana Islands, cannot meet the standards for Medicaid payments for inpatient hospital services. Inpatient hospital services may only be furnished by hospitals meeting requirements for participation in Medicare. 42 C.F.R. § 440.10(a)(3)(iii) (1982). Those requirements are set forth in section 1395x(e) of title 42, U.S.C., and in sections 405.1011 *et seq.* of title 42, C.F.R. (1982).

> [The] conditions for participation are included to provide assurance that participating institutions are safe, that they have facilities and organization necessary for the provision of adequate care, and that they exercise their responsibility to

> discourage improper and unnecessary utilization of their services and facilities. . . . To allow payments to
> [352] institutions for services of lower quality than are now generally acceptable might reduce the incentive for establishing high-quality institutions or for maintaining high standards where they now exist.

Senate Report 404, 89th Cong., 1st Sess. (1965), reprinted in 1965 U.S. Code Cong. & Ad. News 1943, 1969.

Thus, even though persons in the Northern Mariana Islands may be eligible for inpatient Medicaid assistance, they cannot receive that assistance in the Northern Mariana Islands because no hospital is qualified to provide inpatient care under the Medicaid program. The persons needing inpatient services obtain those services at Dr. Torres Hospital, but receive no Medicaid assistance in paying for those services.

At present, denial of Medicaid assistance for inpatient hospital care to eligible persons in the Northern Mariana Islands does not cause great hardship. The government pays most costs of hospital care from its own general revenues, so fees charged to individuals are low. Mytinger Study 4.

The new hospital under construction is expected to meet Medicaid standards for inpatient care. Consequently, when that hospital is opened, eligible persons will be able to receive inpatient care for medical assistance in the Northern Mariana Islands.

Are there other requirements in the Medicaid program that should be eliminated for the Northern Mariana Islands to make the program more effective there? We are interested in learning whether particular characteristics of the Northern Mariana Islands make advisable legislative changes in the manner in which the Medicaid program is made available there. Three characteristics occur to us that might have adverse effects on the operation of the Medicaid program in the Northern Mariana Islands: (1) its small population; (2) the dual role of the government as administrator of the Medicaid program and as principal provider of medical services; and (3) the subsidy of health care by the government from its general revenues.

--small population. The Northern Mariana Islands has a small population compared to that of the States and other jurisdictions eligible to participate in the Medicaid program. As a consequence, the number of persons with the talent and education to ensure that the Northern Mariana Islands meets all requirements for participation in the Medicaid program is limited. Even more than in other areas, these persons should not be diverted from more productive enterprise to compliance paperwork unless absolutely necessary to achieve the

purposes of the Medicaid program in the Northern Mariana Islands.

—dual role of government. The government of the Northern Mariana Islands, as principal provider of health services, will be the principal recipient of Medicaid payments. At the same time, as administrator of the Medicaid program, it will pay for these services. In effect, the government will be paying itself. There consequently may be opportunities to eliminate Medicaid requirements governing relationships between State Medicaid agencies and providers of medical services that deal with each other at arm's length. [353]

—government subsidy. Hospitals are normally paid by Medicaid no more than their customary charge for inpatient services provided. 42 U.S.C. § 1396b(i)(3).* When, as in the Northern Mariana Islands, public institutions provide inpatient hospital services free of charge or at nominal charge, those institutions may be paid no more than the amount Department of Health and Human Services regulations determine will provide fair compensation to the institution for the services rendered. Id. Those regulations allow the institution to receive payment "at the same rate that would be used if the provider's charges were equal to or greater than its costs." 42 C.F.R. § 447.271 (1982). Additional upper limits on Medicaid payments are based on principles of reimbursement established under the Medicare program. Id. §§ 405.401 et seq., 447.272.

Conclusion.

Although the broad outline of the Medicaid program is relatively simple, the governing statute is detailed and implemented by many pages of regulations. We would greatly appreciate your comments and suggestions with respect to the issues we have discussed and your assistance in identifying issues we have not recognized.

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*Medicaid payments to hospitals must also be reasonable. 42 U.S.C. § 1396a(a)(13)(A). See also 42 C.F.R. § 447.250 (1982).

Draft Staff Recommendations
Not Acted on by the Commission

[356]

STAFF RECOMMENDATION

ON

TITLE 19 OF THE UNITED STATES CODE,

CUSTOMS DUTIES

RECOMMENDATIONS

The only legislation recommended with respect to title 19 is a group of technical amendments. Section 603 of the Covenant contemplates that the Northern Mariana Islands will be treated as is Guam for purposes of the federal customs laws. Each of the proposed technical amendments makes clear that the Northern Mariana Islands is to be treated as is Guam for purposes of a particular provision. [357]

Tariff Act of 1930--shipments from bonded warehouses. Legislation should be enacted to make clear that goods may be withdrawn from bonded warehouses within the customs territory of the United States for shipment to the Northern Mariana Islands without payment of duty on those goods. The Northern Mariana Islands is not now included in the list of jurisdictions outside the customs territory of the United States to which goods may be shipped from a bonded warehouse without payment of duty.

Anti-Smuggling Act. Legislation should be enacted to make the Anti-Smuggling Act inapplicable to the Northern Mariana Islands on termination of the trusteeship. In the absence of legislation, the Act will become applicable to the Northern Mariana Islands at that time. The Act is intended only to prevent the smuggling of merchandise into the customs territory of the United States. Since the Northern Mariana Islands is outside that customs territory, the Act should be inapplicable to the Northern Mariana Islands, as it is now inapplicable to Guam, American Samoa, and other territories and possessions of the United States that are outside the customs territory.

Import relief. Legislation should be enacted to allow producers in the Northern Mariana Islands to seek the imposition or modification of United States duties or quotas to protect themselves from serious economic injury from foreign competition in markets within the customs territory of the United States. Producers in Guam and other United States possessions outside the customs territory of the United States now have that right.

INTRODUCTION

Customs are duties or taxes imposed by a nation on goods imported to or exported from that nation. Marriott v. Brune, 50 U.S. 632 (1850). The customs laws of the United States, generally found in title 19 of the United States Code, include tariff rates and classifications, import restrictions, and various other measures related to international trade. The United States Customs Service, a part of the Department of the Treasury, is responsible for administration of the customs laws.

Until the great overseas territorial expansion of 1898, all American territorial acquisitions had been regarded as within the customs territory of the United States. United States duties were [358] charged when foreign goods entered a territory, but not when goods from a territory entered other parts of the United States. DeLima v. Bidwell, 182 U.S. 1, 187-94 (1901); Cross v. Harrison, 57 U.S. 164 (1853). The 1898 acquisitions--Puerto Rico, the Philippine Islands, Hawaii, and Guam--, unlike earlier territorial acquisitions, were not located on the North American continent and differed markedly from the earlier territories in history and culture. Their arrival into the American political family sparked an animated debate as to the status of the new possessions under the Constitution of the United States. The debate culminated in a series of Supreme Court decisions, collectively known as the "Insular Cases." The Insular Cases are best known for establishing the dichotomy between "incorporated" territories, ultimately destined for statehood, in which the Constitution is fully applicable, and the "unincorporated" territories, where only "fundamental" constitutional rights are protected. Several of the Insular Cases, however, treated the customs status of the new American possessions, and it is that aspect of those decisions that is of interest here.

Puerto Rico became part of the United States as a result of the Spanish American War. In one of the Insular Cases, DeLima v. Bidwell, 182 U.S. 1 (1901), the Supreme Court held that, after the 1898 treaty of peace between Spain and the United States, Puerto Rico was not a foreign country for purposes of the Dingley Tariff Act of 1897, 30 Stat. 151, which levied duties "upon all articles imported from foreign countries." In the Spanish American War, the United States also took possession of the Philippine Islands and undertook the civil administration of those islands. In another of the Insular Cases, Fourteen Diamond Rings v. United States, 183 U.S. 176, 177 (1901), the Supreme Court held that, after the treaty ending the war, the Philippine Islands similarly were not a foreign country for purposes of the Dingley Tariff Act.*

Article I, Section 8, Clause 1, of the United States Constitution requires that "all Duties, Imposts and Excises shall be uniform throughout the United States." In yet another of the Insular cases, Downes v. Bidwell, 182 U.S. 244 (1901), the Supreme Court held that this provision only requires uniformity throughout the States admitted into the Union. Thus, if Congress so chooses, a territory

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*But see Downing v. United States, 116 Fed. 779 (S.D.N.Y. 1902), affirmed, 122 Fed. 445 (2d Cir. 1903) (Cuba under United States military occupation held to be a foreign country for purposes of the Dingley Tariff Act; Cuban imports into the United States thus subject to duty).

or possession can remain outside the customs territory of the United States or, if within the customs territory, may be treated differently from a State.*

Puerto Rico has remained within the customs territory of the United States. Act of April 12, 1900, c.191, §§ 2-3.** [359]

Hawaii, also acquired in 1898, was brought into the customs territory of the United States in the first legislation establishing a territorial government for those islands.*** Act of April 30, 1900, c.339, § 88, 31 Stat. 141, 159. See also id. § 93.

Congress decided, however, that the Philippine Islands would not be brought into the customs territory of the United States. Act of March 8, 1902, c.140, §§ 2, 8. Instead, it would be treated as a foreign country for purposes of federal customs laws. Id. § 2. In an effort to promote the economy of the Philippines, "all articles the growth and product of the Philippine Archipelago coming into the United States from the Philippine Archipelago" were to pay only 75 percent of the regular duties. Id.

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*One other constitutional provision relating to customs duties is worth noting: Article I, Section 10, Clause 2, of the United States Constitution prohibits States from levying duties on imports without the consent of Congress. Goods brought into the customs territory of the United States from an unincorporated territory of the United States are "imports" protected from State duties by that provision. Hooven & Allison Co. v. Evatt, 324 U.S. 652, 668-79 (1945).

**For a brief period, in order to raise revenue for the government of Puerto Rico until a local system of taxation could be established, fifteen percent of the normal duty on foreign goods was levied on goods entering the United States from Puerto Rico. The proceeds of this duty were for the use of the government of Puerto Rico. Id. §§ 3-4.

***The Joint Resolution of Congress for the Annexation of the Hawaiian Islands, 30 Stat. 750 (1898), had provided that:

> Until legislation shall be enacted extending the United States customs laws and regulations to the Hawaiian Islands the existing customs relations of the Hawaiian Islands with the United States and other countries shall remain unchanged.

See Crossman v. United States, 105 Fed. 608 (S.D.N.Y. 1900), affirmed, 182 U.S. 221 (1901).

Presumably because imports into the United States from Guam were negligible, Congress did not enact legislation fixing the customs status of that island until many years later.

[360]

In the Tariff Act of 1909, c.6, 36 Stat. 11, Congress modified the customs status of the Philippine Islands. Section 5 of that Act, 36 Stat. at 83, allowed "all articles, the growth or product of or manufactured in the Philippine Islands from materials the growth or product of the Philippine Islands or of the United States, or of both, or which do not contain foreign materials to the value of more than twenty per centum of their total value" to be admitted into the United States free of duty. Rice was not permitted duty-free entry, and quantitative limits were placed on the duty-free admission of sugar and tobacco. By the same section, "in consideration of the exemptions aforesaid, all articles, the growth, product, or manufacture of the United States" were accorded entry into the Philippines free of Philippine duties.

Section IV.C. of the Tariff Act of 1913, c.16, 38 Stat. 114, continued the duty-free treatment of Philippine goods in language identical to that of the Tariff Act of 1909. The exception for rice and the quotas on sugar and tobacco, however, were eliminated. The 1913 provisions were retained intact in the Tariff Acts of 1922 and 1930. Act of June 17, 1930, c.497, § 801, 46 Stat. 590; Act of September 21, 1922, c.356, § 301, 42 Stat. 858.

In 1917 Congress, in enacting its first legislation for the government of the Virgin Islands, provided that "all articles, the growth or product of or manufactured in [the Virgin Islands] from materials the growth or product of, such islands or of the United States, or of both, or which do not contain foreign materials to the value of more than 20 per centum of their total value" should be admitted into the United States free of duty. Act of March 3, 1917, c.171, § 3, 39 Stat. 1132. The language, intentionally, is virtually identical to that in the Tariff Acts of 1909 and 1913, providing duty-free treatment for Philippine goods. See 54 Cong. Rec. 3649 (1917).

In 1950, Congress enacted the first organic legislation for Guam. Section 27 of the Organic Act of Guam, 64 Stat. 392, provided that "[a]rticles which are the growth, production, or manufacture of Guam coming into any State, Territory, or insular possession of the United States from Guam shall be entered at the several ports of entry free of duty."

In 1954, Congress enacted the Revised Organic Act for the Virgin Islands. Act of July 22, 1954, c.558, 68 Stat. 497. Section 28(d) of the Revised Organic Act continued the duty-free exemption for Virgin Islands goods, but raised the permissible foreign content of such goods from 20 percent to 50 percent of total value.

Within six weeks of enacting section 28(d) of the Revised Organic Act of the Virgin Islands, Congress enacted the Customs Simplification Act of 1954. Act of September 1, 1954, c.1213, 68 Stat. 1139. One of the purposes of that act was to "eliminate certain inconsistencies in the present law relating to the application of duties to products of our insular possessions" and to provide "equal treatment of all insular possessions, except Puerto Rico."* House Report 2453, 83d Cong., 2d Sess. 1, 5 (1954). Section 401 of the Customs Simplification Act added a new section 301 to the Tariff Act of 1930,** which extended the treatment given six weeks earlier to the Virgin Islands to all insular possessions, except Puerto Rico. Goods from the insular possessions, so long as their foreign content did not exceed 50 percent of total value, were entitled to admission into the customs territory of the United States without payment of duty. Section 301 of the Tariff Act of 1930 is the statutory antecedent to General Headnote 3(a), discussed in more detail under chapter 4 in the chapter-by-chapter analysis of title 19, below. [361]

Sections 603, 604, and 605 of the Covenant treat expressly the applicability of federal customs laws to the Northern Mariana Islands:

> Section 603. (a) The Northern Mariana Islands will not be included within the customs territory of the United States.
>
> (b) The Government of the Northern Mariana Islands may, in a manner consistent with the international obligations of the United States, levy duties on goods imported into its territory from any area outside the customs territory of the United States and impose duties on exports from its territory.***

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*By this time, the Philippines had become independent. Hawaii, an "incorporated Territory" but not yet a State, was not considered an insular possession.

**See the discussion of chapter 4 in the chapter-by-chapter analysis of title 19, below.

***Congress may delegate to the Northern Mariana Islands the power to impose tariff duties on imports into the Northern Mariana Islands. See Miranda v. Puerto Rico, 101 F.2d 26 (1st Cir. 1938); Pan American Standard Brands, 177 F. Supp. 769, 773 (Customs Ct. 1959). In approving section 603(b) of the Covenant, Congress has delegated that power to the Northern Mariana Islands. (Footnote added by the Commission.)

(c) Imports from the Northern Mariana Islands into the customs territory of the United States will be subject to the same treatment as imports from Guam into the customs
[362] territory of the United States.

(d) The Government of the United States will seek to obtain from foreign countries favorable treatment for exports from the Northern Mariana Islands and will encourage other countries to consider the Northern Mariana Islands a developing territory.

Section 604. (a) The Government of the United States may levy excise taxes on goods manufactured, sold or used or services rendered in the Northern Mariana Islands in the same manner and to the same extent as such taxes are applicable within Guam.

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

Section 605. Nothing in this Article will be deemed to authorize the Government of the Northern Mariana Islands to impose any customs duties on the property of the United States or on the personal property of military or civilian personnel of the United States Government or their dependents entering or leaving the Northern Mariana Islands pursuant to their contract of employment or orders assigning them to or from the Northern Mariana Islands or to impose any taxes on the property, activities or instrumentalities of the United States which one of the several States could not impose . . . .

The Marianas Political Status Commission, in its Section-by-Section Analysis of the Covenant,* concluded that:

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*The Analysis is reprinted in Hearings on the Covenant to Establish the Commonwealth of the Northern Mariana Islands before the Subcommittee on Territorial and Insular Affairs of the House Committee on Interior and Insular Affairs, 94th Cong., 1st Sess. 626 (1975) and in Hearings on the Northern Mariana Islands before the Senate Committee on Interior and Insular Affairs, 94th Cong., 1st Sess. 356 (1975).

> It is to the advantage of the Northern Marianas to be outside the customs territory [of the United States], for it permits the Northern Marianas to have a duty-free port. This will mean lower consumer prices in the Northern Marianas and will also encourage the tourist business. It means that goods will enter the Marianas subject to duties imposed by the local government rather than subject to the duties which are imposed by the federal government. This is an important element of local self-government and assures that the duties can be tailored to local conditions.

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Another commentator notes that,

> . . . In addition, [the Marianas] are free to levy duties on exports or imports from non-U.S. sources independent of the United States schedule of duties. Thus, duties may be custom tailored to meet local needs and need not impose too great a burden on Marianas residents who must, of necessity, rely to a considerable extent on imports.

Liebman, Income Tax Incentives for Investment in the Northern Mariana Islands, 2 University of Hawaii Law Review 389, 396 (1981). Collection costs, however, "likely would exceed revenues from the duties at the current level of imports." Id. at 396 n.43.*

As provided in section 603(c) of the Covenant, goods exported from the Northern Mariana Islands into the customs territory of the United States are subject to the same treatment as goods exported from Guam into the customs territory of the United States. Goods from Guam and, thus, from the Northern Mariana Islands enter that customs territory duty-free, provided that a sufficient part of the value of such goods is derived from Guam or the Northern Mariana Islands rather than from some foreign country. In other words, an importer may not escape United States duties by shipping foreign goods through Guam or the Northern Mariana Islands on their way into the United States. See the discussion of chapter 4 in the chapter-by-chapter analysis, below.

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*The Northern Mariana Islands may be precluded from levying duties on goods that may enter the customs territory of the United States from foreign countries duty-free. Should the Northern Mariana Islands attempt to levy a duty on such goods, the importer could merely first enter the goods into the United States and then ship them to the Northern Mariana Islands. Section 603(b) of the Covenant prevents the Northern Mariana Islands from levying duties on goods imported from the United States. See generally Miranda v. Puerto Rico, 101 F.2d 26, 28 (1st Cir. 1938).

Other territories. Puerto Rico is within the customs territory of the United States. Revised Tariff Schedules of the United States, General Headnote 2.* Guam and American Samoa are not within that customs territory and administer their own customs laws. Id.; 19 C.F.R. § 7.8 n.5 (1983).** The Virgin Islands is also outside the
[364] customs territory of the United States, but its customs laws are administered by the United States Customs Service. Id.; 48 U.S.C. § 1406i. See also id. §§ 1574(f), 1642, 1642a, 1644, 1645.

Border searches. In Barusch v. Calvo, 685 F.2d 1199 (1982), the United States Court of Appeals for the Ninth Circuit addressed the extent to which the Fourth Amendment to the Constitution of the United States prohibits searches of persons arriving in Guam from other parts of the United States. The Ninth Circuit refused to prohibit customs searches of persons arriving in Guam from the Northern Mariana Islands, but only on the ground that the Northern Mariana Islands is still part of the trusteeship and not yet part of the United States. The clear implication of the opinion is that, on termination of the trusteeship, the Fourth Amendment--as interpreted by the Supreme Court in Torres v. Puerto Rico, 442 U.S. 465 (1979)--will bar customs searches of persons coming to Guam from the Northern Mariana Islands. By the same reasoning, the Northern Mariana Islands would also be unable to examine the baggage of persons arriving in the Northern Mariana Islands from Guam or other parts of the United States.

Section 603(b) of the Covenant allows the Northern Mariana Islands to levy duties on goods imported into the Northern Mariana Islands from any area outside the customs territory of the United States. Guam is outside the customs territory of the United States. Revised Tariff Schedules, General Headnote 2. Thus, under section 603(b), the Northern Mariana Islands may levy duties on goods imported from Guam. But under the Barusch reasoning, the Northern Mariana Islands could not examine the baggage of incoming passengers or, for that matter, air or ocean freight shipments, to determine whether its customs laws were being violated.

A question is also raised as to the baggage of a person coming from foreign countries who spends some time on Guam before proceeding

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*See also 48 U.S.C. §§ 738-740; Leibowitz, The Commonwealth of Puerto Rico: Trying to Gain Dignity and Maintain Culture, 11 Georgia Journal of International & Comparative Law 211, 266-72 (1981).

**The Governor of American Samoa may request the United States Department of the Treasury to "administer and enforce the collection of all customs duties derived from American Samoa, without cost to the government of American Samoa." 48 U.S.C. § 1669.

to the Northern Mariana Islands. Guam is able to levy duties on articles in that person's baggage and may inspect that person's baggage. That is of no particular concern to the Northern Mariana Islands. But the Northern Mariana Islands may not inspect that [365] person's baggage to enforce its customs laws. (Guam, of course, will be in the same situation if the traveller visits the Northern Mariana Islands before going to Guam.)

Customs searches do not only enforce tariff laws. Customs searches also enforce laws against various sorts of contraband, tainted foods, hazardous materials, misbranded articles, and so forth. To the extent the Northern Mariana Islands has its own laws restricting the entry of articles into its customs territory, its ability to enforce those laws will be debilitated by the Barusch decision.

The situation in Barusch is significantly different from that in Torres, since Puerto Rico--unlike Guam (and the Northern Mariana Islands)--is within the customs territory of the United States. The customs territory of the United States, however, is defined by statute and distinctions based on federal statute cannot modify the prohibition of a constitutional amendment. But the Fourth Amendment prohibits unreasonable searches and seizures. A search to enforce separate customs laws sanctioned by Congress is reasonable and, therefore, not within the prohibition of the Fourth Amendment. Accordingly, to the extent the Barusch decision implies that persons arriving in the Northern Mariana Islands after termination of the trusteeship from Guam or other parts of the United States cannot be subjected to customs searches, that decision is in error. (Likewise, any implication that persons arriving in the customs territory of the United States from the Northern Mariana Islands or Guam cannot be subjected to border searches by the United States Customs Service is wrong as well as contrary to current practice.) See generally United States v. Chabot, 531 F. Supp. 1063 (D.V.I. 1982), sustaining the constitutionality of a customs search of a person travelling from Puerto Rico (within the customs territory of the United States) to the United States Virgin Islands (outside that customs territory).

CHAPTER-BY-CHAPTER ANALYSIS.

Note. The provisions of chapter 2 of title 19 have been repealed or otherwise omitted from the current edition of the United States Code.

Chapter 1. Collection Districts, Ports, and Officers.

The statutes.

Chapter 1 contains a variety of provisions related to administration and enforcement of the customs laws of the United

States. The President is authorized to rearrange customs districts and to determine the locations of ports of entry into the customs territory of the United States. The Secretary of the Treasury is authorized to oversee the collection of customs duties and to
[366] establish rules and regulations as necessary for the administration of the customs laws. Other provisions in chapter 1 govern fees for customs services, provide for compensation of customs officers and employees, define certain criminal offenses by those officers and employees, and prohibit a vessel captain from obstructing federal officers boarding the vessel to enforce the customs or navigation laws of the United States.

Present applicability.

The provisions of chapter 1 are directed almost exclusively to the collection of duties on goods entering the customs territory of the United States. The Northern Mariana Islands is not part of that customs territory. Covenant § 603(a). Accordingly, chapter 1 is in large part inapplicable to the Northern Mariana Islands.

One provision in chapter 1 could conceivably apply to the Northern Mariana Islands. Section 70 of title 19 prohibits the captain ("master") of a vessel from obstructing federal officers boarding the vessel to enforce the customs or navigation laws of the United States. Because the Northern Mariana Islands is outside the customs territory of the United States, a federal officer would be unlikely to board a vessel in waters adjacent to the Northern Mariana Islands to enforce the customs laws of the United States. Some federal navigation laws, however, are applicable to the Northern Mariana Islands. See, for example, 33 U.S.C. §§ 1221 et seq., 1222(3). A federal officer could board a vessel in waters adjacent to the Northern Mariana Islands to enforce a navigation law applicable to the Northern Mariana Islands. If the captain of the vessel were to obstruct that federal officer, the captain would be subject to a fine under section 70.

Chapter 1A. Foreign Trade Zones.

The statutes.

Chapter 1A authorizes establishment of foreign trade zones. In a foreign trade zone, business firms may import and assemble products free of tariffs that would otherwise be imposed. Import duties are levied when the goods leave the trade zone. If items are reexported, no duties are paid. A foreign trade zone is, in effect, an area of American soil legally defined as outside the customs territory of the United States.

Present applicability.

Since the Northern Mariana Islands is already outside the customs territory of the United States, no gain from establishing a foreign trade zone under chapter 1A is possible:* A firm already can [367] import and assemble products in the Northern Mariana Islands free of United States tariffs. The firm can reexport those goods to any place other than the United States without paying United States tariffs. And, because of General Headnote 3(a), the firm, if the local value added is sufficiently high, may be able to enter the goods into the United States without paying United States tariffs. Goods entering the United States from a foreign trade zone always pay the full United States tariff.

Chapter 3. The Tariff and Related Provisions.

The statutes.

Most provisions in chapter 3 have been repealed or omitted. Current laws relating to tariffs are, for the most part, found in chapter 4, below, which contains the Tariff Act of 1930.

Some provisions in chapter 3 are still effective. Section 128 of title 19 imposes a ten percent additional duty on goods imported into the United States in foreign vessels, unless those vessels are exempted from the duty by treaty. Section 159.42 of title 19 of the Code of Federal Regulations (1983) provides that this duty shall be imposed only on specific instructions of the Commissioner of Customs.

Section 130 subjects to forfeiture goods imported into the United States in vessels other than vessels of the United States or of the country where the goods were produced. The vessels are also subject to forfeiture. Section 131 exempts vessels and goods of any foreign nation that does not similarly restrict vessels of the United States.

Section 181 allows the President to prohibit importation into the United States of particular products of countries unjustly discriminating against products of the United States.

Other miscellaneous provisions in chapter 3 specify the form of payment for customs duties, 19 U.S.C. §§ 197-198; provide that the

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*The trade panel of the February 1980 Pacific Basin Development Conference recommended that the Northern Mariana Islands study the possible creation of a foreign trade zone. Pacific Basin Development Conference, Economic Growth and Development Through Unity 236 (1980).

value of imports upon which duty is levied shall be the true market value in the exporting country on the date of shipment, id. § 240; provide for overtime compensation for customs officers and employees, id. §§ 261, 267; govern the payment of duty on goods purchased abroad
[368] to be used on vessels, id. §§ 282; specify the duties of vessel captains when touching foreign ports on voyages between two United States ports or when departing or arriving at a United States port lacking a customhouse, id. §§ 286-294; specify measures to prevent domestic liquors from being sold as imported, id. §§ 468-469; and authorize searches and seizures to enforce the customs laws, id. § 482.

Present applicability.

Neither the language of any of these statutes nor their legislative histories indicate whether territories and possessions of the United States are to be treated as parts of the United States. In the absence of any such indication, the United States is presumed not to include those areas and, consequently, not to include the Northern Mariana Islands. All of the still effective statutes in chapter 3 are concerned with enforcing the obligation to pay duties on merchandise imported into the United States. The inapplicability of the chapter to the Northern Mariana Islands is thus consistent with the status of the Northern Mariana Islands as an area outside the customs territory of the United States. See Covenant § 603(a).

Two exemptions in chapter 3 are available only to citizens of the United States. Citizens of the Northern Mariana Islands will not become citizens of the United States until termination of the trusteeship. Covenant §§ 301, 1003(c). Section 128 exempts from a discriminating ad valorem duty goods imported in non-United States vessels if the vessel is owned by United States citizens and, before leaving an American port, becomes registered as a vessel of the United States. In general, goods may be imported only in vessels of the United States or of their country of origin. 19 U.S.C. § 130. Section 131 exempts from this requirement vessels owned by United States citizens that before leaving an American port became registered as vessels of the United States.*

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*In its 1982 interim report to Congress, this Commission recommended that citizens of the Northern Mariana Islands be treated as citizens of the United States for purposes of a number of statutes. The Commission, however, made no recommendation in that report with respect to sections 128 or 131.

Chapter 4. Tariff Act of 1930.

The statutes.

[369]

Chapter 4, the Tariff Act of 1930, is the principal legislation under which duties are assessed and collected on merchandise entering the United States. The Revised Tariff Schedules of the United States were formerly published as part of this chapter, at section 1202 of title 19. (Because of their bulk and the frequent amendments to the Schedules, the Schedules are now published as a separate document available from the Superintendent of Documents.)

General Headnote 1 to the Revised Tariff Schedules provides that "all articles imported into the customs territory of the United States from outside thereof are subject to duty or exempt therefrom as provided" in the General Headnotes and the Revised Tariff Schedules.

Chapter 4 also establishes the United States International Trade Commission and assigns it a variety of functions. The Commission is charged with additional duties under other federal laws, including chapter 12 of title 19. The Commission has broad powers to investigate the international trade of the United States and to advise the President and Congress with respect to particular issues. See generally U.S. Government Manual 618-622 (1982).

The Revised Tariff Schedules and the remainder of chapter 4 contain a number of provisions of particular interest to the Northern Mariana Islands. Those provisions are summarized in the course of describing their present applicability, below.

Present applicability.

The Revised Tariff Schedules of the United States. The Northern Mariana Islands, as noted above, is outside the customs territory of the United States. Covenant § 603(a). See also General Headnote 2 of the Revised Tariff Schedules. Accordingly, articles imported into the Northern Mariana Islands are not subject to duty (or exempted therefrom) as provided in the General Headnotes and the Revised Tariff Schedules.

Articles exported to the customs territory of the United States from the Northern Mariana Islands are, however, subject to duties and exemptions as provided in the Revised Tariff Schedules. Section 603(c) of the Covenant provides that such articles will receive the same treatment as articles exported to the customs territory of the United States from Guam, which is also outside the customs territory

of the United States.* General Headnote 3(a) to the Revised Tariff Schedules governs the treatment of articles exported to the customs territory of the United States from Guam and other insular possessions. See also 48 U.S.C. § 1421e. In general, such articles
[370] may be imported into the customs territory of the United States duty-free if 70 percent or less of the value of the product (whether manufactured, produced, or grown) is derived from foreign materials. Public Law 98-67, § 214(a)(1)(A) (1983). See Senate Report 94-433, The Covenant to Establish a Commonwealth of the Northern Mariana Islands 81 (1975). If more than 70 percent of the value of the product is derived from foreign materials, the product is subject to the usual duties. For certain textile, apparel, canned tuna, petroleum, and watch products, only 50 percent or less of the value of the product may be derived from foreign materials. Public Law 98-67, § 214(a)(1)(B). (The costs of transporting the materials to

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*Neither the Revised Tariff Schedules nor any specific provision of the Covenant govern duties on articles moving between the Northern Mariana Islands and Guam, both of which are outside the customs territory of the United States. The Marianas Political Status Commission, in its Section-by-Section Analysis of the Covenant, noted that "there will be no guarantee that Guam's goods will enter [the] Northern Marianas duty-free or that Northern Marianas goods will enter Guam duty-free." That Commission then recorded its expectation "that appropriate arrangements can be developed with Guam to assure the economic development of both areas in an appropriate manner."

Carriers of merchandise into Guam must deliver a cargo manifest to the government of Guam before they can unload. 15 C.F.R. § 30.81 (1984).

the Northern Mariana Islands are included in the foreign component of the product's value. 19 C.F.R. § 7.8(d) (1983).)*

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[371]

*In supplementary information accompanying certain "Customs Regulations Amendments Relating to Textiles and Textile Products," 50 Fed. Reg. 8710 (March 5, 1985), the United States Customs Service asserts that, under General Headnote 3(a), "to achieve the preferential tariff treatment, merchandise must both be the growth or product of the insular possession and satisfy a specified percentage of its value derived from that insular possession" (emphasis added). Id. at 8712. The Customs Service thus envisions the possibility that an article could derive more than the specified minimum percentage of its value from the insular possession without being considered a product of that insular possession.

The Customs Service cites in support of its two-fold test a literal reading of General Headnote 3(a):

> [A]ll . . . articles the growth or product of any [insular] possession, or manufactured or produced in any such possession from materials the growth, product, or manufacture of any such possession or of the customs territory of the United States, or of both, which do not contain foreign materials to the value of more than 70 percent of their total value [subject to various qualifications] . . . are exempt from duty.

See 50 Fed. Reg. at 8712.

The percentage of local value in an article furnishes a bright-line test to determine whether that article is local. In the statutory antecedents of General Headnote 3(a), it was clear that any article that did not exceed the specified percentage was entitled to duty-free admission into the customs territory of the United States. Thus:

> [A]ll articles, the growth or product of or manufactured in the Philippine Islands from materials the growth or product of the Philippine Islands or of the United States, or of both, or which do not contain foreign material to the value of more than 20 per centum of their total value, upon which no drawback of customs duties has been allowed therein, coming into the United States from the Philippine Islands shall hereafter be admitted free of duty. . . .

Tariff Act of 1930, c. 497, § 301, 46 Stat. 590 (emphasis added). And

(footnote continues:)

> [A]ll articles, the growth or product of, or manufactured in, [the Virgin Islands], from materials grown
> [372] or produced in such islands or in the United States, or both, or which do not contain foreign materials to the value of more than 50 per centum of their total value, upon which no drawback of customs duties has been allowed therein, coming into the United States from such islands shall be admitted free of duty. . . .

Revised Organic Act of the Virgin Islands, c.558, § 28(d), 68 Stat. 497 (1954) (emphasis added).

The emphasized "or" in the statutory antecedents of General Headnote 3(a) was dropped when the customs treatment of products of the insular possessions (except Puerto Rico) was consolidated in the Customs Simplification Act of 1954. Act of September 1, 1954, c.1213, 68 Stat. 1139. From the omission of the critical "or" in the 1954 legislation, one can argue that Congress intended to require that an article, to receive duty-free treatment, must be both the growth or product of the insular possession and satisfy the required percentage of value derived from the insular possession. That was not, however, the intent of Congress. In both the Senate and House reports on the legislation that became the Customs Simplification Act of 1954, the proposed legislation is set forth in the form in which it was enacted, that is, without the critical "or." Senate Report 2326, 83d Cong., 2d Sess. 10 (1954); House Report 2453, 83d Cong., 2d Sess. 12 (1954). Yet each of those reports describes the new legislation in identical terms:

> The new section would provide that all articles imported from an insular possession of the United States, except Puerto Rico, shall be dutiable at the same rate as are importations from foreign countries, except those which (1) are of native growth or product or (2) are manufactured in such possession and contain 50 percent or less of foreign materials or (3) are articles previously imported into the United States with full payment of dutes and taxes and have been shipped from the United States directly to the possession without remission, refund, or drawback of such duties or taxes. Except in the case of Puerto Rico, this proposal would result in equal treatment for all the insular possessions of the United States.

Senate Report 2326, above, at 6; House Report 2453, above, at 5 (emphasis added). Thus, Congress clearly intended that an article manufactured in an insular possession and containing no more than 50 percent foreign materials would be entitled to enter the customs territory of the United States without payment of duty. Congress did not intend that the article be subject to an additional test, that the article also be the growth or product of the possession.

Section 703(b) of the Covenant turns over to the Northern Mariana Islands government the proceeds of "all customs duties . . . derived from the Northern Mariana Islands" as well as "the proceeds of all taxes collected under the internal revenue laws of the United States on articles produced in the Northern Mariana Islands and transported to the United States, its territories or possessions."* Under section 602 of the Covenant, the Northern Mariana Islands government may in turn rebate taxes collected under the United States internal revenue laws. Because section 703(b) treats "customs duties" and "taxes collected under the internal revenue laws" as distinct categories, the rebate authority under section 602 does not authorize the Northern Mariana Islands government to rebate customs duties received from the United States under section 703(b). [373]

Tuna. Canned tuna not packed in oil imported into the customs territory of the United States is charged a 6 percent ad valorem duty, so long as the total quantity of a canned tuna imported in a year does not exceed 20 percent of the total amount of canned tuna packed within the United States during the preceding year. When that quantity is exceeded, the ad valorem duty jumps to 12.5 percent.

Section 102 of Public Law 97-446, 96 Stat. 2329 (1983), makes clear that tuna shipments from "insular possessions of the United States" are not counted in determining the extent to which the tariff quota has been filled. House Conference Report 97-989, at 37 (1982). While Guam is an insular possession of the United States, the Northern Mariana Islands cannot be considered as such prior to termination of the trusteeship. Even though Public Law 97-446 was enacted after January 9, 1978, its purpose was to make clear that the law in effect prior to that date included Guam, among other insular possessions, as a part of the United States and not as a foreign country for purposes of determining the extent to which the tariff quota has been filled. Id. Accordingly, by operation of section 502(a)(2) of the Covenant, shipments of canned tuna not packed in oil from the Northern Mariana Islands to the United States are not counted in determining the extent to which the tariff quota has been filled.

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*In Puerto Rico v. Blumenthal, 642 F.2d 622 (1980), certiorari denied, 451 U.S. 983 (1981), and Virgin Islands v. Blumenthal, 642 F.2d 641 (1980), certiorari denied, 451 U.S. 983 (1981), the United States Court of Appeals for the District of Columbia Circuit narrowly construed similar provisions in the organic acts for Puerto Rico and the Virgin Islands to exclude excise taxes collected on gasoline produced in those jurisdictions and shipped into the United States.

Tuna is potentially a significant export from the Northern Mariana Islands to the United States. Exports of tuna to the United States from the Northern Mariana Islands, however, are governed by General Headnote 3(a), discussed under The Revised Tariff Schedules
[374] of the United States, above, and are little affected by the tariff quota.

Watches. The United States provides favorable tariff treatment for watches manufactured in the insular possessions of the United States, subject to an adjustable annual quota that is allocated among the Virgin Islands, Guam, and American Samoa. Public Law 97-446, § 110, 96 Stat. 2329 (1983). See Senate Report 97-564, at 12-14 (1982). Section 603(c) of the Covenant provides that "[i]mports from the Northern Mariana Islands into the customs territory of the United States will be subject to the same treatment as imports from Guam into the customs territory of the United States." Thus, the Northern Mariana Islands would appear to be entitled to a portion of the annual quota equal to that of Guam. Public Law 97-446, enacted after approval of the Covenant, makes no provision, however, for allocation of a portion of the quota to the Northern Mariana Islands. Accordingly, watches manufactured in the Northern Mariana Islands are not entitled to the favorable tariff treatment afforded by Public Law 97-446.

Imports by returning residents of the United States. Item 813.31 of the Revised Tariff Schedules allows returning residents of the United States to import duty-free goods valued at not more than $400 or, if arriving from the Virgin Islands, Guam, or American Samoa, not more than $800 (of which no more than $400 shall be the value of goods acquired elsewhere than in those insular possessions). Section 603(c) of the Covenant provides that imports from the Northern Mariana Islands into the customs territory of the United States will receive the same treatment as imports from Guam. Accordingly, returning residents of the United States arriving from the Northern Mariana Islands may import duty-free goods valued at not more than $800 (of which no more than $400 shall be the value of goods acquired elsewhere than in the Virgin Islands, Guam, American Samoa, or the Northern Mariana Islands). Goods acquired in the Northern Mariana Islands are also treated as goods acquired in Guam for returning residents of the United States arriving from the Virgin Islands, Guam, and American Samoa, that is, as goods from insular possessions and not as goods from a foreign country subject to a duty-free maximum value of $400.

White phosphorous matches. Schedule 7, Part 9A, Headnote 1, of the Revised Tariff Schedules prohibits importation into the United States of white phosphorus matches. Other imported matches are controlled to ensure that white phosphorus matches are not imported. See 19 C.F.R. § 12.34 (1983). Imports into Guam and the Northern Mariana Islands are not subject to the Revised Tariff Schedules. See

the discussion, The Revised Tariff Schedules of the United States, above. Accordingly, the importation of white phosphorus matches into the Northern Mariana Islands is not prohibited by Schedule 7, Part 9A, Headnote 1, of the Revised Tariff Schedules, and other match imports are not subject to the controls implementing that prohibition. [375]

Improperly labelled goods. Section 1304 of title 19 prohibits importation into the United States of goods not properly labelled as to their country of origin. "United States" is defined for purposes of this prohibition to exclude Guam. 19 U.S.C. § 1401(h). The Northern Mariana Islands is thus not part of the United States for purposes of section 1304, so importation of improperly labelled goods into the Northern Mariana Islands is not barred by this statute.

Immoral items. Section 1305 of title 19 bars importation into the United States of items classified as immoral. "United States" is defined for purposes of this prohibition to exclude Guam. 19 U.S.C. § 1401(h). Accordingly, the prohibition of section 1305 against importation of immoral items into the United States does not bar similar importations into the Northern Mariana Islands.

Livestock. Section 1306 of title 19 prohibits importation into the United States of livestock from countries where rinderpest or foot-and-mouth disease exist. "United States" is defined, for purposes of this prohibition, to exclude Guam. 19 U.S.C. § 1401(h). Accordingly, importation of livestock from countries where rinderpest or foot-and-mouth disease exist into the Northern Mariana Islands is not barred by this statute.

Goods made by convicts. Section 1307 of title 19 bars importation into the United States of goods made by convict labor. "United States" is defined for purposes of this prohibition to exclude Guam. 19 U.S.C. § 1401(h). Consequently, the Covenant does not make the Northern Mariana Islands part of the United States for purposes of section 1307, and importation into the Northern Mariana Islands of convict-made goods is not barred by section 1307. But criminal penalties on prison-made goods imposed by section 1761 of title 18, United States Code, operate effectively to bar importation into the Northern Mariana Islands of goods made by convict labor.

Drawbacks. When goods exported from the United States are manufactured with goods imported into the United States on which customs duties have been paid, the exporter is entitled to a refund of 99 percent of the duties paid. 19 U.S.C. § 1313; 19 C.F.R. part 22 (1983).* "United States" is defined, for purposes of the drawback

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*Drawback of customs duties paid is also allowed in certain other situations. Id.

provisions, to exclude Guam. 19 U.S.C. § 1401(h). Thus, a firm that brings goods to the Northern Mariana Islands that have been manufactured in the United States from foreign components is entitled to a drawback of 99 percent of the United States duties paid when those foreign components were brought into the United States.

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Emergency supplies. Section 1318 of title 19 allows the President to authorize importation of food, clothing, and medical supplies free of duty for use in emergency relief work. Section 1318 does not specify the places into which such importation free of duty may be permitted. "United States" is defined, however, for purposes of part I and subtitle II of chapter 4 of title 19, which includes section 1318, to exclude Guam. 19 U.S.C. § 1401(h). The reasonable conclusion is that the President's authority would extend only to lifting duties imposed by the United States on goods entering the customs territory of the United States and would not reach duties imposed by the Northern Mariana Islands pursuant to section 603(b) of the Covenant.

Gifts. Section 1321 of title 19 authorizes the Secretary of the Treasury to allow persons in the United States to receive duty-free gifts valued at not more than $100 sent from persons in the Virgin Islands, Guam, and American Samoa. For gifts from other areas outside the customs territory of the United States, the maximum value of such gifts is $50. Regulations implementing the Secretary's authority are found in sections 10.152 and 10.153 of title 19, C.F.R. (1983).

Imports from the Northern Mariana Islands to the customs territory of the United States are to receive the same treatment as imports from Guam. Covenant § 603(c). Accordingly, persons in the customs territory of the United States may receive gifts valued at not more than $100 sent from persons in the Northern Mariana Islands.

Equalizing foreign and domestic production costs. Section 1336 of title 19 authorizes the United States International Trade Commission to investigate differences in production costs between domestic goods and competing foreign goods and, if warranted, to recommend to the President changes in customs duties to reduce those differences. "Domestic" goods are those produced in the United States. 19 U.S.C. § 1336(h)(i). "United States" is defined to include "the several States and Territories and the District of Columbia. Id. § 1336(h)(2). "Foreign country" is defined to exclude "the United States and its possessions." Id. § 1336(h)(3). The use of "Territory" in one definition and "possession" in the other indicates that "Territory" is not to be used in its broad sense, encompassing all possessions of the United States. "Territory" should be construed in its narrow sense to include only the incorporated territories of the United States, that is, territories intended eventually to become States of the Union. When section 1336

was enacted in 1930, the only incorporated territories were Alaska and Hawaii, both of which were then within the customs territory of the United States. (There are now no incorporated territories of the United States.)

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Accordingly, "domestic" goods, for purposes of section 1336, do not include goods produced in Guam or the Northern Mariana Islands, neither of which is incorporated and both of which are outside the customs territory of the United States.

The relief available under section 1336, the raising of duties on foreign goods, does not protect producers outside the customs territory of the United States. That fact further buttresses the conclusion that goods produced in the Northern Mariana Islands are not "domestic" goods for purposes of section 1336. Accordingly, the United States International Trade Commission is not authorized to investigate differences in production costs between goods produced in the Northern Mariana Islands and foreign goods.*

Goods produced in the Northern Mariana Islands are not, however, "foreign" goods for purposes of section 1336. Goods produced in "the United States and its possessions" are not produced in a foreign country. 19 U.S.C. § 1336(h)(3). Guam is a possession of the United States. By operation of section 502(a)(2) of the Covenant, goods produced in the Northern Mariana Islands are not produced in a foreign country. Consequently, the United States International Trade Commission is not authorized to investigate cost differentials between goods produced in the United States and those produced in the Northern Mariana Islands. Again, the relief available under section 1336 is an increase of the duty on products entering the customs territory of the United States. Under General Headnote 3(a) of the Revised Tariff Schedules, goods produced in the Northern Mariana Islands enter the customs territory of the United States without payment of duty. Accordingly, goods produced in the Northern Mariana Islands are properly treated, for purposes of section 1336, as not produced in a foreign country.

Goods competing unfairly with American goods. Section 1337 of title 19 allows the United States International Trade Commission to exclude from entry into the United States goods found to be unfairly competing with goods made in the United States or otherwise injuring competition in the United States. Subsection (j) of section 1337 defines "United States" as the customs territory of the United States. The Northern Mariana Islands is not within the customs

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*See also 35 Op. Att'y Gen. 495 (1928) (Puerto Rico not part of United States under predecessor statute).

territory of the United States. Covenant § 603(a). The United States International Trade Commission consequently has no authority to prohibit imports into the Northern Mariana Islands or to consider the effects of foreign imports on industry, competition, and
[378] consumers within the Northern Mariana Islands when deciding whether to bar entry of certain goods into the United States. The Commission may, however, prevent goods from the Northern Mariana Islands from entering the United States if those goods compete unfairly with goods made in the United States or otherwise injure competition in the United States.

Discrimination against American goods. Section 1338 of title 19 allows the President to impose additional duties on imports on finding that the exporting country unfairly discriminates against products of the United States. "United States" is defined, for purposes of section 1338, to include only the customs territory of the United States. 19 U.S.C. § 1337(j). Since the Northern Mariana Islands is outside that customs territory, the President may not impose additional duties because a foreign nation unfairly discriminates against products of the Northern Mariana Islands. "Foreign country" is defined to exclude the "United States and its possessions" for purposes of section 1338. Id. § 1338(i). Since Guam is a possession, the Northern Mariana Islands--by operation of sections 502(a)(2) and 603(c) of the Covenant--is not a foreign country for purposes of section 1338. Accordingly, additional duties may not be imposed under section 1338 on goods imported into the United States from the Northern Mariana Islands.

Trademarked goods. Section 1526 of title 19 prohibits importation into the United States of merchandise bearing an American trademark without the consent of the trademark owner and authorizes seizure and forfeiture of merchandise bearing a counterfeit trademark. "United States" is defined, for purposes of the subtitle containing section 1526, to exclude Guam. 19 U.S.C. § 1401(h). The prohibitions of section 1526 consequently do not apply to importation of trademarked goods into the Northern Mariana Islands.

Wild mammals and birds imported in violation of foreign law. Section 1527 of title 19 prohibits importation into the United States of wild mammals or birds taken, killed, possessed, or exported in violation of foreign law. "United States" is defined, for purposes of the subtitle containing section 1527, to exclude Guam. 19 U.S.C. § 1401(h). Section 1526 consequently does not prohibit importation of wild mammals and birds into the Northern Mariana Islands.

Citizenship requirements. Citizens of the Northern Mariana Islands will not become citizens of the United States until termination of the trusteeship. Covenant §§ 301, 1003(c). Several requirements of United States citizenship are imposed in chapter 4.

Section 1330(a) requires members of the United States International Trade Commission to be citizens of the United States. No recommendations were made with regard to this citizenship requirement in the Commission's January 1982 interim report to the United States Congress. [379]

Section 1498(a)(8) allows the Secretary of the Treasury to prescribe regulations for entry into the United States of personal effects of United States citizens who have died in a foreign country. In its January 1982 interim report, the Commission recommended that citizens of the Northern Mariana Islands be treated as citizens of the United States for purposes of section 1498(a)(8). In 1983 Congress enacted Public Law 98-213, 97 Stat. 1459. Sections 19 to 23 of that statute allow the President by proclamation to declare that citizenship requirements in particular federal laws are not applicable to citizens of the Northern Mariana Islands. In 1984 the President removed for citizens of the Northern Mariana Islands many citizenship restrictions. Presidential Proclamation 5207, 49 Fed. Reg. 24365. The restriction in section 1498(a)(8), however, was not removed.

Section 1526(a) makes unlawful importation of merchandise of foreign manufacture bearing a trademark owned by a United States citizen and registered in the Patent and Trademark Office unless the written consent of the trademark owner is produced at time of entry. In the January 1982 interim report, the Commission also recommended treatment of citizens of the Northern Mariana Islands as citizens of the United States for purposes of section 1526(a). In 1984, pursuant to sections 19 to 23 of Public Law 98-213, the President allowed trademarks owned by citizens of the Northern Mariana Islands the protection of section 1526(a). Presidential Proclamation 5207, § 4(j), 49 Fed. Reg. 24356.

Section 1641(a) requires customhouse brokers* to be United States citizens. No recommendations were made with regard to this

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*Customhouse brokers are private individuals or firms licensed by the United States Customs Service. Only customhouse brokers are authorized by law "to act as agents for importers in the transaction of their customs business. . . . Customhouse brokers will prepare and file the necessary customs entries, arrange for the payment of the duties found due, take steps to effect the release of the goods in Customs custody, and otherwise represent their principals in customs matters." U.S. Customs Service, Importing into the United States 13 (1981).

citizenship requirement in the Commission's January 1982 interim report to the United States Congress.*

[380] Discussion.

Shipments from bonded warehouses. Sections 1551 et seq. of title 19 allow imported merchandise on which United States duties have not been paid to be transported and stored under bond. Before the merchandise can be taken from the bonded carrier or the bonded warehouse, the duties owed must be paid. If, however, the goods are to be transported to a foreign country or "to the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, or the island of Guam," they may be released from bond without payment of duty. 19 U.S.C. §§ 1557(a), 1562. All of the listed areas are outside the customs territory of the United States. The Northern Mariana Islands is also outside the customs territory of the United States. No provision however, allows shipment of bonded goods to the Northern Mariana Islands without payment of duty. Nor does the Covenant authorize duty-free shipment of bonded goods to the Northern Mariana Islands.

Even though duty must be paid when bonded goods are shipped to the Northern Mariana Islands, the exporter is entitled to a drawback (refund) of 99 percent of the duty paid because the goods are being shipped outside the customs territory of the United States. 19 U.S.C. §§ 1313(j). No good reason requires persons exporting bonded goods to the Northern Mariana Islands to apply for a drawback or to pay even one percent of federal duties. The Northern Mariana Islands should be added to the list of jurisdictions outside the customs territory of the United States to which bonded goods may be shipped without payment of duty. Legislation is proposed herein to add the Northern Mariana Islands to that list.

Chapter 5. Smuggling.

The statutes.

Chapter 5, the Anti-Smuggling Act, authorizes various measures to prevent or deter the entry of merchandise into the United States

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*In addition, section 1586(c) penalizes masters of ships from foreign ports who transfer prohibited merchandise to vessels of the United States or to vessels owned by United States citizens or domiciliaries. Subsection (e) of section 1586 penalizes United States citizens who, at any place in the world, assist in the entry or transshipment of prohibited foreign goods. The Commission made no recommendations with respect to section 1586 in its 1982 interim report.

without payment of customs duties. The President is authorized to establish special customs enforcement areas on the high seas in order to allow smuggling vessels to be seized while hovering just outside the "customs waters" of the United States.

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Vessels of under five hundred tons may not bring liquor into the United States without a federal license. Vessels of under thirty tons may not bring any foreign merchandise into the United States without a federal license. Any vessel violating these requirements or otherwise bringing merchandise into the United States without payment of customs duties is subject to forfeiture.

Chapter 5 also makes criminal participation by United States citizens (or the master or crew of certain vessels of the United States) in loading liquor on a vessel outside the United States for unlawful importation into the United States.

Present applicability.

"United States" is defined for purposes of chapter 5 to include "all Territories and possessions of the United States, except the Virgin Islands, the Canal Zone, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, and the island of Guam." 19 U.S.C. § 1709(a). Since "United States" does not include Guam, section 502 of the Covenant does not expand the definition of "United States" to include the Northern Mariana Islands. Accordingly, chapter 5 does not apply to the smuggling of merchandise into the Northern Mariana Islands. The nonapplicability of chapter 5 to the Northern Mariana Islands is consistent with the exclusion of the Northern Mariana Islands from the customs territory of the United States. Covenant § 603(a).

On termination of the trusteeship, the Northern Mariana Islands will become a "Territory or possession of the United States" and, thus, will become part of the United States for purposes of chapter 5 (since it is not among the enumerated excluded Territories and possessions).

Discussion.

The Northern Mariana Islands will remain outside the customs territory of the United States on termination of the trusteeship. Since chapter 5 is intended to prevent and deter the smuggling of merchandise into the customs territory of the United States, its purpose is not served by making it apply to the Northern Mariana Islands. The Northern Mariana Islands should be treated as are American Samoa and nearby Guam, both of which are also outside the customs territory of the United States. Legislation is proposed herein to ensure that the Northern Mariana Islands is not treated as part of the United States for purposes of chapter 5 on termination of the trusteeship.

Chapter 6. Trade Fair Program.

The statutes.

[382]

Chapter 6 allows articles to be brought into the United States for use at a federally-approved trade fair free of duty or internal revenue taxes and without complying with certain labelling requirements of the internal revenue laws and the Federal Alcohol Administration Act.

Present applicability.

"United States" is not defined for purposes of chapter 6. Duties, however, are collected only on goods imported into the customs territory of the United States. The Northern Mariana Islands is not part of that customs territory. Covenant § 603(a). Nor is the Northern Mariana Islands part of the United States for purposes of the Federal Alcohol Administration Act. 27 U.S.C. § 211(a)(1). Some internal revenue laws are, however, applicable to the Northern Mariana Islands.

Discussion.

Trade fairs are a possible means of promoting tourism, the principal industry of the Northern Mariana Islands. Because some internal revenue laws are applicable to the Northern Mariana Islands, there might be some slight benefit to the Northern Mariana Islands were trade fairs in the Northern Mariana Islands eligible under chapter 6 for federal approval and the exemptions conferred thereby. No recommendation is here made, however, to confirm the eligibility of trade fairs in the Northern Mariana Islands for favorable treatment under this chapter. The principal benefit of chapter 6, freedom from United States duties, is already available to trade fairs in the Northern Mariana Islands by operation of section 603(a) of the Covenant.

Chapter 7. Trade Expansion Program.

The statutes.

Chapter 7 authorized the President to enter into international trade agreements between 1962 and 1967 and to change rates of customs duties in order to carry out those agreements. The chapter also allows the President to impose import quotas to protect national security, national defense industries, or the economic welfare of other domestic industries. With certain exceptions, duties or other import restrictions or duty-free treatment established to implement international trade agreements apply to products of all foreign countries (the most-favored-nation principle). The President is authorized, on the recommendation of the United States International

Trade Commission, to increase duties or to impose other import restrictions on particular articles to prevent or remedy serious injury to domestic industries. The President is also authorized, again on the recommendation of the United States International Trade Commission, to negotiate orderly marketing agreements with foreign countries to limit their export of particular items into the United States, in order to prevent or remedy serious injury to domestic industries. [383]

Present applicability.

Neither the language of chapter 7 nor its legislative history indicates whether territories or possessions of the United States are to be treated as part of the United States. In the absence of any such indication, the United States is presumed not to include those areas and, consequently, not to include the Northern Mariana Islands. Accordingly, import quotas established pursuant to the Act may be applied to goods coming into the United States from the Northern Mariana Islands. Whether a particular quota applies to goods from the Northern Mariana Islands depends on the language of the presidential proclamation establishing that quota.

Presidential authority under chapter 7 is sufficiently broad to overcome the presumption that the United States does not include the Northern Mariana Islands. A presidential proclamation restricting particular imports into the Northern Mariana Islands pursuant to the chapter, if challenged, would almost certainly be upheld for two reasons. First, the President has wide latitude in determining what action to take under the chapter and the action selected is supported by a general presumption of validity. Federal Energy Administration v. Algonquin SNG, Inc., 426 U.S. 548, 561-71 (1976); Pancoastal Petroleum, Ltd. v. Udall, 348 F.2d 805, 807 (D.C. Cir. 1965). Second, import quotas established pursuant to this chapter are closely related to the conduct of foreign affairs and the national defense, both areas in which the United States exercises complete authority for the Northern Mariana Islands. Trusteeship Agreement, Arts. 3, 5, 8(4), 10, 11(2); Covenant 104, 1003(c).

Presidential proclamations issued pursuant to chapter 7 have included territories and possessions of the United States as part of the United States. See, for example, Presidential Proclamation 4907, 3 C.F.R., Comp. 1982, at 21 (1983), as amended by Presidential Proclamation 5141, 3 C.F.R., Comp. 1983, at 143 (1984). These proclamations, issued pursuant to section 232 of the Trade Expansion Act of 1962, bar importation of Libyan crude oil into the United States, its territories or possessions." Presidential Proclamation 5141, § 3(a). (Although Guam is a territory or possession of the United States, the proclamations were issued after January 9, 1978, the effective date of section 502(a)(2) of the Covenant, and are thus not made applicable to the Northern Mariana Islands by operation of that section. Accordingly, the presidential proclamations do not bar

the importation of Libyan crude oil into the Northern Mariana Islands.)

Chapter 8. Automotive Products.

[384]

The statutes.

Chapter 8 amends the Tariff Schedules of the United States to allow the duty-free import into the United States from Canada of motor vehicle equipment for use in the manufacture of motor vehicles in the United States.

Present applicability.

Duties under the Tariff Schedules are imposed only on entry into the customs territory of the United States. General Headnote 1, Revised Tariff Schedules. The Northern Mariana Islands is not within that customs territory. Covenant § 603(a). Accordingly, chapter 8 does not affect the importation of motor vehicle equipment into the Northern Mariana Islands from Canada.

Chapter 9. Visual and Auditory Materials of Educational, Scientific, and Cultural Character.

The statutes.

Chapter 9 authorizes the President to implement the international Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific, and Cultural Character, 17 U.S.T. 1578, T.I.A.S. 6116 (1949). The Agreement exempts qualified films, filmstrips, microfilms, sound recordings, glass slides, models, maps, charts, and posters from customs duties, quotas, and import licensing requirements when the materials move from one nation that is party to the Agreement to another. The material must be certified by the government of the country in which it originates as "of an educational, scientific, or cultural character."

The United States Information Agency (USIA) has been designated by the President as the agency charged with implementing the Agreement for the United States. Executive Order 11311, 3 C.F.R., Comp. 1966-1970, at 593 (1971). The USIA certifies materials originating in the United States as qualified for exemption under the Agreement. The USIA also reviews certificates of foreign governments attesting to the qualification of materials originating within their jurisdiction. See generally 22 C.F.R. part 502 (1984); 19 C.F.R. § 10.121 (1983).

Present applicability.

In its ratification of the Agreement, the United States declared

that the Agreement would be observed "by the United States of America and by the citizens of the United States of America and all other persons subject to the jurisdiction thereof." 17 T.I.A.S. 1602, 1603 (1966). Persons in the Northern Mariana Islands are subject to the [385] jurisdiction of the United States. Trusteeship Agreement, Art. 3; Covenant §§ 101, 1003(c). Accordingly, qualified materials originating in the Northern Mariana Islands may enter the territory of other nations that are party to the Agreement, and qualified materials originating in those other nations must be accorded similar treatment on entering the Northern Mariana Islands. In neither case may customs duties, quotas, or import licenses be required.

Even though the Northern Mariana Islands is outside the customs territory of the United States, the Northern Mariana Islands may not levy duties, impose quotas, or require licenses of materials qualified for exemption under the Agreement. (The power of the Northern Mariana Islands, under section 603(b) of the Covenant, to levy duties on foreign goods is specifically qualified by the requirement that any such duties be levied "in a manner consistent with the international obligations of the United States." The Agreement, of course, is such an international obligation.)

Chapter 10. Customs Service.

The statutes.

Chapter 10 establishes the United States Customs Service, within the Department of the Treasury.

> The Customs Service . . . enforces customs and related laws . . . . Some of the responsibilities which Customs is specifically charged with are assessing and collecting customs duties, excise taxes, fees, and penalties due on imported merchandise; interdicting and seizing contraband, including narcotics and illegal drugs; processing persons, carriers, cargo, and mail into and out of the United States; administering certain navigation laws; detecting and apprehending persons engaged in fraudulent practices designed to circumvent customs and related laws; copyright, patent, and trademark provisions; quotas; and marking requirements for imported merchandise.

U.S. Government Manual 429 (1982).

Present applicability.

The United States Customs Service does not presently operate in the Northern Mariana Islands, Guam, or American Samoa. 19 C.F.R. § 7.8 n.5 & part 101 (1983). Each of those areas is outside the customs territory of the United States. Covenant § 603(a); Revised Tariff Schedules, General Headnote 2.

"The Customs administration of American Samoa is under the jurisdiction of the [United States] Department of the Interior (Office of Territories). . . . The Customs administration of Guam is
[386] under the Government of Guam." 19 C.F.R. § 7.8 n.5 (1983).

The customs laws of the Virgin Islands are administered by the United States Secretary of the Treasury. 48 U.S.C. § 1406i. The Virgin Islands is not within the customs territory of the United States. Revised Tariff Schedules, General Headnote 2. The customs laws of the Virgin Islands are enacted locally. 48 U.S.C. §§ 1406i; 1574(c), (f). The expenses of customs administration are paid from customs receipts. Id. § 1406i. The remaining receipts are paid into the treasury of the Virgin Islands. Id. § 1406h.

Should a law administered or enforced by the United States Customs Service be applicable to the Northern Mariana Islands, nothing in chapter 10 (or elsewhere in the United States Code) bars the Customs Service from undertaking activities within the Northern Mariana Islands to administer or enforce that law. The Customs Service may undertake activities outside the customs territory of the United States. See 19 U.S.C. §§ 6, 2076, 2079.

Discussion.

The principal function of the United States Customs Service, enforcing the customs laws of the United States, does not require the Customs Service to be present in the Northern Mariana Islands, since the Northern Mariana Islands is outside the customs territory of the United States. Some laws enforced by the Customs Service at the borders of the customs territory of the United States are also applicable to the Northern Mariana Islands. For example, the Customs Service assists in the enforcement of federal laws controlling the importation of narcotics and dangerous drugs. 19 C.F.R. § 161.2(a)(2) (1983). Sections 951 to 970 of title 21 of the United States Code strictly control the importation of narcotics and dangerous drugs into both the United States and the customs territory of the United States and their exportation from the United States. "United States" is defined, for purposes of these sections, to include all areas under the jurisdiction of the United States, including the Trust Territory of the Pacific Islands. 21 U.S.C. §§ 802(24), (26); 951. By operation of section 502 of the Covenant, "United States" also includes the Northern Mariana Islands. Consequently, importation of narcotics and dangerous drugs into the Northern Mariana Islands is subject to sections 951 to 970 as is exportation from the Northern Mariana Islands (including exportation into the customs territory of the United States).

Although no law of the United States so states in specific terms, enforcement of federal laws like the laws on narcotics and dangerous drugs applicable to the movement of goods and other things

in and out of the Northern Mariana Islands on a day-to-day basis is entrusted to the government of the Northern Mariana Islands. In its recommendation, Enforcement of federal laws in the Northern Mariana Islands, the Commission urges enactment of legislation to confirm the authority of the government of the Northern Mariana Islands to [387] enforce federal laws in the Northern Mariana Islands.

Chapter 11. Importation of Pre-Columbian Monumental or Architectural Sculpture or Murals.

The statues.

Chapter 11 prohibits importation into the United States of certain pre-Columbian sculpture and murals form Latin America and the Caribbean islands.

Present applicability.

"United States" is defined, for purposes of chapter 11, to include only the several States, the District of Columbia, and Puerto Rico. 19 U.S.C. § 2095(2). Accordingly, neither Guam nor the Northern Mariana Islands is part of the United States for purposes of the chapter. The importation of pre-Columbian sculpture and murals into the Northern Mariana Islands, consequently, is not prohibited by this chapter.

Discussion.

Although chapter 11 does not apply to importation of pre-Columbian sculpture or murals into the Northern Mariana Islands, that importation may be subject to restrictions imposed pursuant to chapter 14 of title 19, discussed below.

Chapter 12. Trade Act of 1974.

The statutes.

International trade agreements. Section 2111 of title 19 authorized the President to enter into international trade agreements between 1975 and 1980 and to change rates of customs duties in order to carry out those agreements. Section 2112 authorized the President to enter into international trade agreements to reduce or eliminate nontariff trade barriers. Section 2132 authorizes the President to impose temporary surcharges or quotas on articles imported into the United States to alleviate balance-of-payments problems. Section 2133 authorized the President to enter into international trade agreements in 1981 and 1982 subject to greater limitations than under the authority granted by section 2111, above.

Section 2411 allows the President to enforce international trade agreements by withdrawing concessions granted countries not complying with an agreement and by imposing duties or other import restrictions
[388] on the products and services of those countries.

Sections 2431 to 2440 govern trade relations with countries with nonmarket economies, in general, the Communist nations.

Section 2461 authorizes the President to provide duty-free treatment for any eligible article imported from any "beneficiary developing country" under the Generalized System of Preferences.

Trade adjustment assistance. Sections 2251 to 2395 of title 19, part of the Trade Act of 1974, provide for relief of injury caused by import competition. Section 2253 authorizes the President to impose or modify duties or quotas, or to negotiate orderly marketing agreements, in order to protect domestic industry from serious economic injury from foreign competition. Section 2291 authorizes payment of trade readjustment allowances to certain workers who become unemployed because of foreign import competition. Sections 2343 and 2344 authorize technical and financial assistance to firms seriously injured by foreign import competition. Section 2373 authorizes assistance to eligible communities adversely affected by foreign import competition with local products.

Present applicability.

International trade agreements. The Trust Territory of the Pacific Islands is a "beneficiary developing country" for purposes of section 2461. 19 U.S.C. § 2462(a)(3). The United States has agreed to seek from foreign countries favorable treatment for exports from the Northern Mariana Islands and to encourage other countries to consider the Northern Mariana Islands a developing territory. Covenant § 603(d). The General Agreement on Tariffs and Trade permits preferential tariff treatment of goods exported from developing countries and territories, in order to encourage exports from and, thus, the economic development of those countries and territories. Section 2461 authorizes preferential treatment for Northern Mariana Islands exports to the United States, so long as the Northern Mariana Islands remains part of the Trust Territory. Preferential treatment is also authorized, both before and after termination of the trusteeship, by section 603(c) of the Covenant.

In addition, articles imported into the customs territory of the United States from an insular possesison of the United States are generally entitled to duty treatment no less favorable than that afforded similar articles imported into the United States from a beneficiary developing country. General Headnote 3(a)(iii), Revised Tariff Schedules of the United States. Guam is an insular possession. Imports from the Northern Mariana Islands into the

United States are given the same treatment as imports from Guam into the United States. Covenant § 603(c). Accordingly, articles imported into the United States from the Northern Mariana Islands are entitled to duty treatment no less favorable than the treatment afforded similar articles imported into the United States from beneficiary developing countries pursuant to this chapter. [389]

"United States" is not defined in the various provisions authorizing international agreements for the reduction or elimination of duties and import restrictions. Duties and import restrictions are generally imposed, however, at the point where an article enters the customs territory of the United States. The Northern Mariana Islands is not part of that customs territory. Covenant § 603(a). Imports into the Northern Mariana Islands are unlikely to have more than marginal effects on national security, national defense industries, or the economic welfare of other industries in the United States. (While imports into the Northern Mariana Islands might damage industries in the Northern Mariana Islands, the Northern Mariana Islands has the authority to impose duties on imports to protect its own industries. Covenant § 603(b).)

International agreements affecting the Northern Mariana Islands are negotiated and concluded by the United States. Trusteeship Agreement, Art. 8(4); Covenant §§ 104, 1003(c). Duties and excise taxes imposed by the government of the Northern Mariana Islands on goods imported into the Northern Mariana Islands must be consistent with the international obligations of the United States. Covenant §§ 603(b), 604(b). Should provisions in any international trade agreement or orderly marketing agreement lawfully be applicable to the Northern Mariana Islands, duties and excise taxes imposed by the government of the Northern Mariana Islands could not conflict with those provisions. Applicability must be determined by reference to the terms and negotiating history of each agreement. The legality of making an agreement applicable to imports into the Northern Mariana Islands depends on (1) whether the statutes authorize the President to impose duties or other restrictions on imports into the Northern Mariana Islands, or (2) if there is no such authority in these statutes, whether the President has such authority under the United States Constitution or some other statute.

Paragraphs (4) and (6) of section 2462 restrict favorable trade treatment otherwise available to a developing country if the country has expropriated property of United States citizens or if the country fails to enforce arbitral awards in favor of United States citizens. In its 1982 interim report to Congress, the Commission recommended enactment of legislation to treat citizens of the Northern Mariana Islands as citizens of the United States for purposes of section 2462. In 1983 Congress enacted Public Law 98-213, 97 Stat. 1459. Sections 19 to 23 of that statute allow the President by proclamation to declare that citizenship requirements in particular federal laws

are not applicable to citizens of the Northern Mariana Islands. In 1984 the President removed for citizens of the Northern Mariana Islands many citizenship restrictions. Presidential Proclamation 5207, 49 Fed. Reg. 24365. The restriction in section 2462, however,
[390] was not removed.

Trade adjustment assistance. As part of the Caribbean Basin Economic Recovery Act (CBERA) of 1983, Congress made clear that producers in the insular possessions of the United States could seek the imposition or modification of duties or quotas to protect themselves from serious economic injury from foreign competition. Public Law 98-67, § 214(f), 19 U.S.C. § 2251 note; House Report 98-266, at 23 (1983). The United States International Trade Commission is required by that legislation, in assessing whether increased imports have caused injury to domestic industry, to consider the effects of the increased imports on industries in the insular possessions as well. Id.

The Northern Mariana Islands is not an insular possession of the United States at this time, so producers in the Northern Mariana Islands are not directly protected by the CBERA provisions from serious injury due to import competition. Further, the CBERA was enacted after January 9, 1978, the effective date of section 502(a)(2) of the Covenant. Since its provisions did not protect producers on Guam as of that date, section 502(a)(2) does not operate to entitle producers in the Northern Mariana Islands to seek relief from the competition of foreign imports. See also House Report 98-266, at 22 (1983). Neither will producers in the Northern Mariana Islands become eligible for import relief on termination of the trusteeship. Covenant § 105.

For purposes of the sections authorizing trade adjustment allowances to workers, "State" and "United States" are defined to include only the several States, the District of Columbia, and the Commonwealth of Puerto Rico. 19 U.S.C. § 2319(8). These definitions are reiterated in regulations implementing this program. See 29 C.F.R. § 91.3(a)(26) (1984). Guam is thus not included in those definitions and, accordingly, neither is the Northern Mariana Islands. While payment of allowances to workers is not conditioned on their residence within the United States, the definition of "United States" indicates the allowance is payable only to workers in the jurisdictions named in that definition. (Both "State" and "United States" are used in these statutes for purposes other than defining a worker's eligibility. See, for example, section 2294 (disqualification for State unemployment insurance disqualifies worker for trade adjustment allowances) and sections 2297 and 2298 (job search and relocation allowances may only be used for job searches or relocation within the United States). These examples indicate, however, that Congress did not contemplate payment of benefits to persons outside the United States, as the term is defined in section 2319(8).)

Regulations implementing the trade adjustment assistance statutes as they apply to communities require those communities to be in a "trade impacted area." 13 C.F.R. § 315.98(a) (1984). "Trade impacted areas" must be within the customs territory of the United States. Id. § 315.2(b)(7). Neither Guam nor the Northern Mariana [391] Islands are within that customs territory. Revised Tariff Schedules, General Headnote 2; Covenant § 603(a).

Only for trade adjustment assistance to firms are both the statutes and the regulations implementing the statutes silent as to the geographic reach of the program. Since this program was enacted as part of the same statute that provides trade adjustment assistance to workers and to communities, a reasonable assumption is that Congress intended assistance to firms to be available only in those areas where assistance to workers and communities is also available. Accordingly, the trade adjustment assistance programs are not available to workers, firms, or communities in the Northern Mariana Islands.

Discussion.

The Northern Mariana Islands has the ability to protect its own workers, firms, and communities from import competition within the Northern Mariana Islands by levying its own import duties. Covenant § 603(c). The Northern Mariana Islands can also allow foreign goods to enter without duty to maintain low prices for consumers, and can enact its own legislation to provide assistance to workers, firms, and communities adversely affected by the competition of foreign goods.

The Northern Mariana Islands does not, however, have the ability similarly to protect the markets of its producers in the United States from foreign competition. Producers in the Northern Mariana Islands now export few goods into the customs territory of the United States. Nonetheless, those producers--like producers in Guam and other United States possessions outside the customs territory of the United States--should be able to seek the imposition or modification of duties or quotas to protect themselves from serious economic injury from foreign competition in United States markets. Legislation is proposed herein to afford them that ability.

Chapter 13. Trade Agreements Act of 1979.

The statutes.

Chapter 13, the Trade Agreements Act of 1979, approves a number of trade agreements negotiated in the Tokyo Round of multilateral trade agreements and provides for their implementation.

One such agreement is the Agreement on Technical Barriers to Trade (relating to product standards). See 19 U.S.C. § 2503(c)(4). Sections 2531 to 2573 of title 19, also part of the 1979 Act, deal [392] specifically with technical barriers to trade. States are encouraged, but not required, to refrain from imposing product standards that unnecessarily obstruct the foreign commerce of the United States. 19 U.S.C. § 2533. States are also eligible for certain grants and contracts for "standards-related activities." Id. § 2545.

Present applicability.

"State" and "United States" are defined, for purposes of sections 2531 to 2573, to include "the Commonwealth of Puerto Rico, . . . Guam and any other Commonwealth, territory, or possession of the United States." Id. § 2571(15), (17). Since the legislation was not enacted until 1979, section 502(a)(2) of the Covenant--making applicable to the Northern Mariana Islands those laws applicable to the several States and Guam on January 9, 1978--does not make this legislation applicable to the Northern Mariana Islands. Whether the term "State" includes the Northern Mariana Islands thus depends on whether the Northern Mariana Islands is a Commonwealth, territory, or possession of the United States. Although the Northern Mariana Islands is already frequently called a Commonwealth, it technically does not become one until termination of the trusteeship. Covenant §§ 101, 1003(c). Accordingly, the Northern Mariana Islands until termination of the trusteeship is not a "State" for purposes of the provisions of chapter 13 related to product standards.

Section 2571(9)(B) defines "private persons" as United States citizens or nationals, for purposes of authorizing measures to discourage private persons from imposing product standards designed to inhibit importation of foreign goods. The Commission did not recommend, in its January 1982 interim report to Congress, that citizens of the Northern Mariana Islands be treated as citizens of the United States for purposes of this provision.

Chapter 14. Convention on Cultural Property.

The statutes.

Chapter 14 implements the international Convention on Cultural Property. The President, upon request of another nation party to the Convention, may restrict the importation of archeological or ethnological material taken from that other nation in violation of its laws.

Present applicability.

Import restrictions imposed by the President under chapter 14

apply to the United States, defined to include "any territory or area the foreign relations for which the United States is responsible." 19 U.S.C. § 2601(10). The United States is responsible for the foreign relations of the Northern Mariana Islands. Trusteeship Agreement, Arts. 2-5, 10-11, 14; Covenant §§ 104, 1003(c). Accordingly, the President may prohibit the importation of archeological or ethnological material into the Northern Mariana Islands under chapter 14. Section 2613 of title 19 provides that the prohibitions against importation of illegally-possessed cultural property will be enforced in the customs territory of the United States and in the Virgin Islands by United States customs officers and in other areas subject to United States jurisdiction by persons designated by the President. [393]

Chapter 15. Caribbean Basin Economic Recovery.

The statutes.

In order to promote economic development in the Caribbean basin, chapter 15 authorizes certain products of eligible nations in that region to enter the United States free of duty.

Present applicability.

"United States" is not defined for purposes of chapter 15, but the clear intent of the chapter is to allow duty-free entry of eligible products into the customs territory of the United States. See 19 U.S.C. §§ 2702(a)(1)(B), (C); 2703(a)(1)(A). Accordingly, the chapter does not affect duties levied on products entering the Northern Mariana Islands. And, since the Northern Mariana Islands is not located within the Caribbean basin, products exported from the Northern Mariana Islands to the United States are not directly affected by this chapter.*

The Caribbean Basin Economic Recovery Act amended General Headnote 3(a) to provide generally that articles imported into the customs territory of the United States from an insular possession of the United States receive duty treatment no less favorable than the treatment afforded similar articles imported from the Caribbean nations favored by that Act. General Headnote 3(a)(iv), Revised Tariff Schedules of the United States. Guam is an insular possession. Imports from the Northern Mariana Islands into the United States are given the same treatment as imports from Guam into the United States. Covenant § 603(c). Accordingly, articles imported into the United States from the Northern Mariana Islands are entitled to duty treatment no less favorable than the treatment afforded similar articles imported into the United States from the

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*See also the discussion under chapter 12, above, of the import relief provisions of the Caribbean Basin Economic Recovery Act.

Caribbean nations benefitting from the Caribbean Basin Economic Recovery Act.

[394] PROPOSED LEGISLATIVE LANGUAGE

The following language, if enacted by the United States Congress, would implement the proposals contained herein:

An Act to amend the applicability of certain provisions of the federal customs laws to the Northern Mariana Islands.

Be it enacted by the Senate and House of Representative of the United States of America in Congress assembled, that

Sec. 1. Tariff Act of 1930--shipments from bonded warehouses. (a) Subsection (a) of section 557 of the Tariff Act of June 17, 1930, c.497, 46 Stat. 590, as amended (19 U.S.C. § 1557(a)), is further amended by inserting the phrase "the Northern Mariana Islands," after the phrase "Johnston Island," each time it occurs.

(b) Section 562 of the Tariff Act of June 17, 1930, c.497, 46 Stat. 590, as amended (19 U.S.C. § 1562), is further amended by inserting the phrase "the Northern Mariana Islands," after the phrase "Johnston Island,".

Sec. 2. Anti-Smuggling Act. Subsection (a) of section 401 of the Act of August 5, 1935, c.438, 49 Stat. 517 (19 U.S.C. § 1709(a)), is amended by inserting "the Northern Mariana Islands," immediately after "Johnston Island,".

Sec. 3. Import relief. Section 214(f) of Public Law 98-67, 97 Stat. 369 (1983) (19 U.S.C. § 2251 note), is amended by deleting the final period and adding thereto the following: "and in the Northern Mariana Islands.".

* * *

STAFF RECOMMENDATION

ON

IMPORT QUOTAS

Recommendation.

Legislation should be enacted to allow products of the Northern Mariana Islands to enter the customs territory of the United States without regard for quotas or other quantitative limitations so long as fifty percent of the value of those products is attributable to
[396] the Northern Mariana Islands. For purposes of this legislation, value added by foreign laborers residing in the Northern Mariana Islands is not considered as value attributable to the Northern Mariana Islands.

The statutes

"An import quota is a quantity control on imported merchandise for a certain period of time." U.S. Customs Service, Importing into the United States 70 (1981). Once the quota has been filled, no additional imports of that merchandise are permitted. Id. (If the quota is a "tariff-rate" quota rather than an "absolute" quota, additional merchandise may be imported, but only a higher rate of duty. Id.)

Import quotas are imposed pursuant to authority granted by a number of different federal laws. Generally, import quotas are imposed by presidential proclamation, often after a prerequisite recommendation by the United States International Trade Commission.

Quantitative limitations on imports are imposed for a variety of reasons. The President, on the recommendation of the United States International Trade Commission, may impose import quotas on particular goods to protect domestic industry from serious economic injury from foreign competition. 19 U.S.C. §§ 1981, 2253. If imported goods endanger the national security, national defense industries, or the economic welfare of other domestic industries, the President may restrict the importation of those goods. Id. § 1862.

Similarly, the President on the recommendation of the International Trade Commission (or, in an emergency, of the Secretary of Agriculture) may restrict the importation of any agricultural commodity or product if imports of that commodity or product materially interfere with federal price-support, soil conservation, or acreage allotment programs. 7 U.S.C. § 624.

A second major purpose for which the President is given authority to impose import restrictions is the implementation of international agreements. The President may impose import restrictions when necessary to implement or enforce international trade agreements. 19 U.S.C. §§ 2135, 2411. The President, on the recommendation of the United States International Trade Commission, may also negotiate and implement orderly marketing agreements with foreign countries to limit their export of particular items into the United States, in order to prevent or remedy serious injury to domestic producers. Id. § 2253(a)(4).

The President is also authorized to impose import quotas to implement international agreements governing the importation into the United States of agricultural commodities, textiles, and agricultural and textile products. 7 U.S.C. § 1854. In addition to that general authority, the President has specific statutory authority to impose import restrictions to implement particular international commodity agreements. Id. §§ 1642 (International Wheat Agreement); 3602 (International Sugar Agreement); 19 U.S.C. § 1356k (International Coffee Agreement). [397]

A third major purpose of import quotas is to stabilize the international monetary system. The President may impose temporary import quotas on goods entering the United States in order to reduce United States balance-of-payments deficits, to prevent depreciation of the dollar, or to cooperate with other nations in correcting an international balance-of-payments disequilibrium. Id. § 2132.

The procedure for bringing goods subject to import quotas into the customs territory of the United States is set forth in part 132 of title 19 of the Code of Federal Regulations (1983).

Present applicability.

The applicability of an import quota to goods entering the customs territory of the United States from the Northern Mariana Islands* depends upon the terms of the statute authorizing that particular quota. In general, however, neither the statutes nor their legislative histories indicate whether territories or possessions of the United States are to be treated as parts of the United States. In the absence of any such indication, the United States is presumed not to include those areas and, consequently, not to include the Northern Mariana Islands. Accordingly, import quotas generally may be applied to goods coming into the United States from the Northern Mariana Islands. Whether a particular quota applies to goods from the Northern Mariana Islands depends on the language of the presidential proclamation or other document establishing that quota. Many such proclamations amend the Revised Tariff Schedules of the United States, which apply only to the customs territory of the United States. As a consequence, those proclamations (to the extent they are not directed exclusively to goods from particular designated countries) subject goods from the Northern Mariana Islands to the import quotas established. See, for example, Presidential Proclamations 5104, 3 C.F.R., Comp. 1983, at 99 (1984) (sugars); 5074, id. at 68 (steels); 5071, id. at 64 (sugars); 5050, id. at 41 (motorcycles); 4998, 3 C.F.R., Comp. 1982, at 107 (1983) (brooms); 4941, id. at 55 (sugars); 4901, id. at 12 (clothespins).

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*The Northern Mariana Islands is not within the customs territory of the United States. Covenant § 603(a).

Discussion.

Goods manufactured, grown, or produced in the Northern Mariana Islands should be allowed entry into the customs territory of the [398] United States without regard for quotas or other quantitative restrictions imposed by the United States on the entry of foreign goods.

The United States, in section 701 of the Covenant, has agreed to assist in the economic development of the Northern Mariana Islands. One means by which the United States assists in that economic development is by affording goods from the Northern Mariana Islands duty-free status on entering the customs territory of the United States. Covenant § 603(c); General Headnote 3(a), Revised Tariff Schedules of the United States.

Business firms face certain difficulties in becoming established in the Northern Mariana Islands. The Northern Mariana Islands has a small population and an underdeveloped infrastructure, and is distant from suppliers and markets. A firm, overcoming these obstacles, may make the necessary investment in plant and equipment, in securing a labor force, and in otherwise establishing a business in the Northern Mariana Islands intending to sell in the United States goods manufactured, grown, or produced in the Northern Mariana Islands. The firm most likely will have made its investment relying on the implicit assurance that its goods will be able to enter the customs territory of the United States without payment of duty. The imposition of quotas or other quantitive restrictions that limit the ability of the firm to bring its goods into the United States market is an abrupt frustration of the firm's expectations.

It takes few such abrupt frustrations before investors decide that attempting to establish a business in the Northern Mariana Islands that will bring goods to consumers in the United States is simply not worth the risk. The purpose of General Headnote 3(a), in providing favorable treatment for Northern Mariana Islands goods, will have been defeated. A possible avenue toward the economic development of the Northern Mariana Islands will have been closed.

To date, only one industry, garment manufacturing, has been established in the Northern Mariana Islands with the objective of exporting goods into the customs territory of the United States. See, for example, Knitter to Sell Sweaters to Sears, Pacific Daily News (Guam), Focus supplement, July 27, 1984, at 3; New Garment Factories Opens Soon [sic], Marianas Variety, June 16, 1984, at 16; Garment Factory Begins Production, id., January 27, 1984, at 11; Fourth Application for Saipan Garment Factory, id., December 23, 1983, at 5; Saipan Gets 2nd Garment Factory, id., December 16, 1983, at 1; Garment Factory Opens on Saipan, Pacific Daily News,

October 15, 1983, at 7. In August 1984, less than a year after the first of these factories began production, the United States Customs Service issued regulations that curtailed the ability of the Northern Mariana Islands garment manufacturers to import garments into the customs territory of the United States. 49 Fed. Reg. 31248. See [399]
Garment Firms Lay Off 305, Marianas Variety, February 15, 1985, at 1; Textilers Say Industry 'Dying', Pacific Daily News, Focus supplement, February 15, 1985, at 1; Garment Rules Exemption Sought, Marianas Variety, November 16, 1984, at 1; Tenorio Asking for Negotiations, Pacific Daily News, Focus supplement, November 16, 1984, at 5; Saipan Garment Makers Brace for Shutdown, Pacific Daily News, November 12, 1984, at 1; CNMI, Guam Seek to Cut Textile Rules, id., October 7, 1984, at 3; Islands' Reps Oppose Textile Regulations, id., September 28, 1984, at 4; Textile Industry Reprieve Unlikely, id., September 24, 1984, at 1; Guam, CNMI Officials Drafting Textile Industry Position Paper, Pacific Daily News, September 13, 1984, at 5.*

In the international arena, the United States acts for the Northern Mariana Islands. Trusteeship Agreement, Arts. 3, 5, 8(4), 10, 11(2); Covenant §§ 104, 1003(c). To regulate the international trade of a particular commodity or product, the United States, in negotiating a bilateral or multilateral international agreement, could conceivably find it necessary to agree to limit imports of that commodity or product into the Northern Mariana Islands. But under no circumstances could the requirements of such an international agreement justify the imposition of import quotas on trade between the Northern Mariana Islands and the United States.

The United States balance of payments is the difference between all payments made by the United States to all other nations in the world and the payments made to the United States by all other nations. See Black's Law Dictionary 130 (5th ed. 1979). The Northern Mariana Islands is within the area in which the United States dollar is made legal tender by federal law. 31 U.S.C. § 5103; 12 U.S.C. § 41 & historical note following id. § 38; Covenant § 502(a)(1). Further, the Northern Mariana Islands is under the jurisdiction of the United States and, on termination of the

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*Similarly, a watch-assembly industry in Guam some years ago was reportedly destroyed by the institution of quotas on the importation of watches into the United States from Guam. Joe Murphy, Pipe Dreams, Pacific Daily News, May 7, 1984, at 19; On Free Trade Issue, id., March 9, 1984, at 40. See also Virgo Corp. v. Paiewonski, 384 F.2d 569, 581-82 (3d Cir. 1967), certiorari denied sub. nom. Master Time Co. v. DeJongh, 390 U.S. 1041 (1968); Tuna Tariff Clarified, News Bulletin (Government of American Samoa), October 19, 1981, at 1.

trusteeship, will be under the sovereignty of the United States. Trusteeship Agreement, Art.3; Covenant, §§ 101, 1003(c). The Northern Mariana Islands, accordingly, is part of the United States for balance-of-payments purposes. Including the Northern Mariana
[400] Islands as part of the United States when import quotas are imposed for balance-of-payments reasons or to prevent depreciation of the dollar may be useful. But imposing import quotas on goods entering the United States from the Northern Mariana Islands neither improves the balance-of-payments position of the United States nor affects the value of the dollar.

Establishing import quotas on goods entering the customs territory of the United States from the Northern Mariana Islands may protect industries within that customs territory from competition and, thus, from possible economic loss. The United States, however, should not act to protect industry within the customs territory of the United States from competition from the Northern Mariana Islands, any more than it should protect industry in Kansas from competition from Oregon.* This is particularly so when the United States is obligated to assist in the economic development of the Northern Mariana Islands. Covenant § 701.

The United States has a legitimate interest in ensuring that foreign exporters do not use the Northern Mariana Islands as a "passthrough" point, transshipping their goods through the Northern Mariana Islands in order to avoid applicable United States quantitative restrictions. For that reason, the legislation here proposed requires that, in order to be free of quantitative restrictions, at least fifty percent of the value of each article entitled to enter the customs territory of the United States be attributable to the Northern Mariana Islands. If foreign materials constitute more than fifty percent of the value of the article, the article will remain subject to any applicable quantitative restrictions on entering the customs territory of the United States.

The legislative language proposed below is modelled on that of General Headnote 3(a) to the Revised Tariff Schedules of the United States. The principal difference is that, while General Headnote 3(a) allows articles to enter the customs territory of the United States free of duty so long as the value of foreign materials in the

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*If the United States does protect industry within its customs territory by imposing import quotas on goods from the Northern Mariana Islands, can the Northern Mariana Islands impose its own import quotas on goods from the United States? The Covenant does not prohibit the Northern Mariana Islands from imposing its own import quotas.

article does not exceed 70 percent of the article's total value,* the proposed legislative language allows entry into the customs territory free of import quotas only if the value of foreign components does not exceed 50 percent of the article's total value. Under the proposed legislation, an article could thus qualify for duty-free [401] entry into the customs territory of the United States under General Headnote 3(a), but still be subject to an applicable quota. For example, if sixty percent of the value of an article subject to a quota were attributable to foreign sources, the article might enter the customs territory of the United States from the Northern Mariana Islands free of duty, but only if the quota on that article had not been exhausted.

To the extent a business firm in the Northern Mariana Islands employs aliens rather than citizens of the Northern Mariana Islands, the firm's contribution to the economic development of the Northern Mariana Islands is diminished. Similarly, the interest of the United States in promoting the economic development of the Northern Mariana Islands is not well served to the extent the labor force employed because of the freedom from quantitative restrictions is composed of aliens rather than citizens of the Northern Mariana Islands. A foreign firm, for example, should not be able to avoid applicable quotas by bringing its entire foreign labor force to a rented building in the Northern Mariana Islands. Pursuant to section 503(a) of the Covenant, the Northern Mariana Islands is not generally subject to the immigration laws of the United States. The ability of a business firm in the Northern Mariana Islands to employ alien labor is controlled by the laws of the Northern Mariana Islands, not by the laws of the United States. To minimize the incentive for business firms in the Northern Mariana Islands to import foreign labor, the proposed legislation provides that foreign labor be treated as are foreign materials in determining the percentage of the value of an article that is attributable to the Northern Mariana Islands. Only the labor of persons who are citizens of the Northern Mariana Islands or citizens or nationals of the United States will not be counted as "foreign" in determining the percentage of an article's value attributable to foreign sources.

At this time, the only goods imported in significant quantities into the customs territory of the United States from the Northern Mariana Islands are garments, as discussed above. Exports, other than garments, from the Northern Mariana Islands to any place in the world are generally insignificant. The recommendation here made is

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*For certain textile, apparel, canned tuna, petroleum, and watch products, no more than 50 percent of the value of the product may be derived from foreign materials.

not intended to resolve the current controversy over the importation of garments from the Northern Mariana Islands into the customs territory of the United States. Rather, the recommendation is intended to supply firm and fair rules on which entrepreneurs can
[402] rely in determining whether to establish a business in the Northern Mariana Islands that would export goods into the customs territory of the United States.

Proposed legislative language.

The following language, if enacted by the United States Congress, would implement this recommendation:

An Act to allow products of the Northern Mariana Islands to enter the customs territory of the United States free of quantitative restrictions.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that articles imported from the Northern Mariana Islands into the customs territory of the United States shall not be subject to any quota or quantitative restriction, so long as such articles are the growth or product of the Northern Mariana Islands, or manufactured or produced in the Northern Mariana Islands from materials that are the growth, product, or manufacture of the Northern Mariana Islands or of the customs territory of the United States, or of both, or which do not contain foreign materials to the value of more than fifty percent of their total value.

(b) In determining whether an article produced or manufactured in the Northern Mariana Islands contains foreign materials to the value of more than fifty percent--

(1) that portion of the article's value attributable to the labor of persons residing in the Northern Mariana Islands who are not citizens of the Northern Mariana Islands or citizens or nationals of the United States shall be regarded as foreign;

(2) constituent parts of the article previously imported into the customs territory of the United States with payment of all applicable duties and taxes imposed upon or by reason of importation which were shipped from the United States, without remission, refund, or drawback of such duties or taxes, directly to the Northern Mariana Islands, shall be regarded as materials produced or manufactured in the Northern Mariana Islands;

(3) No material shall be considered foreign which, at the time such article is entered into the customs territory of the United States, may be imported into that customs territory from a foreign country, other than Cuba or the Philippine Republic, and entered free of duty. [403]

(c) For purposes of this section, "citizens of the Northern Mariana Islands" are those persons defined as United States citizens or United States nationals in section 8 of the Schedule on Transitional Matters of the Constitution of the Northern Mariana Islands, as approved by Presidential Proclamation 4534 of October 24, 1977.

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[404]

SECOND REVISED STAFF RECOMMENDATION

ON

VESSEL DOCUMENTATION

AND

VESSEL CREWING LAWS

SECOND REVISED STAFF RECOMMENDATION

ON

VESSEL DOCUMENTATION [405]

AND

VESSEL CREWING LAWS

OUTLINE

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Legislation should be enacted (1) to allow permanent use of foreign-hull fishing vessels by citizens of the Northern Mariana Islands and citizens or nationals of the United States domiciled in [406] the Northern Mariana Islands; (2) to affirm that citizens of the Northern Mariana Islands, prior to termination of the trusteeship, are to be treated as citizens of the United States for purposes of federal laws governing the documentation and operation of vessels; (3) to allow the Northern Mariana Islands to issue restricted licenses and restricted certificates of registry, without regard for otherwise applicable citizenship requirements, for use on locally-owned documented vessels operating only in waters adjacent to the Northern Mariana Islands; (4) to exempt locally-owned documented vessels operating only in waters adjacent to the Northern Mariana Islands from federal statutes imposing citizenship requirements on officers and crew; and (5) to make minor amendments in the vessel documentation laws so those laws are consistent with the exemption of the Northern Mariana Islands from the coastwise laws of the United States under section 503(b) of the Covenant.

The statutes.

Vessel documentation laws. A vessel at sea is regarded for many purposes as part of the nation to which it belongs. Persons on board the vessel are protected by and subject to the laws of that nation. St. Clair v. United States, 154 U.S. 134, 152 (1894).

> Ships have a national character as recognized by the law of nations, because they regularly carry the flag of the nation to which they belong. This conception is fraught with important consequences, in times of both peace and war. Thus, commercial nations generally have, for the advancement of their own individual prosperity, conferred great privileges on the ships belonging to their own citizens, and, in consideration thereof, have imposed on their owners certain special duties and obligations. On the outbreak of war, the national character of a vessel determines the liability of itself and cargo to capture and condemnation by the war vessels and privateers of the respective belligerents. Ordinarily, national character is dependent on compliance with the conditions imposed by the law of the country whose flag the vessel claims.

70 Am. Jur. 2d, Shipping § 4 (1973).

> The registration of ships and the need to fly the flag of the country where the ship is registered are considered essential for the maintenance of order on the open sea, since it is easy to enforce the rule that a vessel not sailing under the maritime flag of a State

> enjoys no protection whatsoever. It is now a well-established doctrine of international law that "freedom of navigation on the open sea is freedom for such vessels only as sail under the flag of a State." [407]

9 Whiteman, Digest of International Law § 1, at 21, quoting from a 1960 statement prepared by the Government of India. See also United States v. Barrio, 556 F. Supp. 395, 400 (D.P.R. 1982).

> It would be disastrous financially for the owners and operators of [a ship] to have it be regarded as without nationality since . . . any state could assert jurisdiction over the vessel while it was on the high seas and the vessel would not have the benefit of any commercial treaty from which rights to enter foreign ports normally stem.

U.S. Dep't of State, "Answers to Questions of Senate Foreign Relations Committee Concerning the Law of the Sea Conventions," printed in Hearings on Conventions on the Law of the Sea before the Senate Committee on Foreign Relations, 86th Cong., 2d Sess. 82, 86 (1960).

Article 5 of the Convention of the High Seas, 13 U.S.T. 2312, T.I.A.S. 5200 (1958), a multilateral treaty to which the United States is a party, requires each signatory "State"* to

> fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag.

The purpose of the vessel documentation laws of the United States is to declare the requirements a vessel must meet in order to identify itself as a vessel of the United States. Douglas v. Seacoast Products, Inc., 431 U.S. 265, 272-73 (1977); The Mohawk, 70 U.S. (3 Wall.) 566, 571 (1865).

The Vessel Documentation Act** was enacted in 1980 to revise and simplify a large number of complex and often archaic federal vessel

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*That is, nation.

**The Vessel Documentation Act, Public Law 96-594, 94 Stat. 3453, is codified to various locations in title 46, U.S.C. In 1983 parts of title 46, including the vessel documentation laws, were again revised and enacted into positive law. Public Law 98-89, 97 Stat. 500. Citations in this discussion are to the Vessel Documentation Act as codified into the United States Code by the 1983 revision.

documentation laws. Vessel documentation is the administrative procedure that identifies a ship or boat as a vessel of a particular nation. The document issued a vessel is analogous to a certificate [408] of registration for an automobile. See generally House Report 96-428, at 2, 4 (1979).

The Vessel Documentation Act makes certain vessels eligible for documentation as vessels of the United States. See 46 U.S.C. § 12102.* Vessels may not engage in specified activities unless they are documented. See id. §§ 12105-12108, governing foreign trade, certain insular trade, coastwise trade, Great Lakes trade, and fisheries. If a vessel eligible for documentation engages "in a trade for which certificates of documentation are issued under the vessel documentation laws" without documentation, it is liable to civil monetary penalties. Id. § 319. Since the activities for which certificates of documentation are issued include virtually all commercial activities, it is in the interest of a vessel owner to document his or her vessel.

A ship documented as a vessel of the United States is also eligible for certain protections and privileges afforded by other federal statutes. For example, a vessel may be seized by a foreign nation for violating its territorial waters. If the United States does not recognize the claim of the foreign nation to the waters in which the vessel is seized, the United States will take steps to protect and secure the release of the vessel and its crew and will reimburse the owner of the vessel for fines or other charges paid to secure the release of the vessel and its crew. These measures will only be undertaken, however, on behalf of vessels of the United States. 22 U.S.C. §§ 1971 et seq.

Only fishing vessels that are vessels of the United States are eligible to receive monetary compensation for damage to or loss or destruction of the vessel or its gear in the fishery conservation zone of the United States. 22 U.S.C. § 1980(b).

Vessels of the United States are given preference in hauling cargo for the United States Government, including foreign-aid shipments and exports financed by federal instrumentalities, such as the Export-Import Bank. 46 U.S.C. §§ 1241, 1241-1.

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*Vessels of less than five net tons are not documented, but are numbered. Numbering is generally carried out under State law in conformity with standards prescribed by the Coast Guard. Vessels so numbered are vessels of the United States. See 46 U.S.C. §§ 2101(46), 12102, 12301 et seq.

Vessel crewing laws. In general, any master, mate, or engineer of a vessel of the United States must be licensed. 46 U.S.C. § 8304(c). The license attests that its holder meets the minimum requirements of professional capacity. Id. § 8304(e). Only citizens of the United States may be issued licenses by the United States. Id. § 7102. [409]

A separate statute limits to United States citizens those who may serve "as master, chief engineer, or officer in charge of a deck watch or engineering watch on a documented vessel." Id. § 8103(a). Yet another statute requires officers on vessels of the United States to be citizens of the United States. 10 U.S.C. § 6019.

Licenses for ship radio operators are issued only to those who have radiotelegraphers licenses from the Federal Communications Commission (FCC). 46 U.S.C. § 7103(a). To obtain the FCC license, it is necessary to be "legally eligible for employment in the United States." 47 U.S.C. § 303 (l)(1). Individuals legally eligible for employment in the United States are citizens and nationals of the United States and aliens allowed to enter and work in the United States under the federal immigration laws.

Vessels of the United States (other than fishing vessels, whaling vessels, or yachts) cannot leave ports of the United States unless at least 75 percent of the crew are citizens of the United States. 46 U.S.C. § 8103(b). If the vessel is a passenger vessel built or operated with a federal subsidy, at least 90 percent of the crew must be citizens of the United States and the remainder (except for stewards) must be aliens lawfully admitted to permanent residence in the United States. Id. § 8103(d). For vessels, other than passenger vessels, built or operated with federal subsidies, the entire crew must be composed of citizens of the United States. Id. § 8103(c).

Present applicability.

When the Vessel Documentation Act became law in 1980, the Northern Mariana Islands was not included as part of the United States for purposes of the Act. House Report 96-428 (1979), reprinted at 1980 U.S. Code Cong. & Ad News 7162, 7168. When the vessel documentation laws, along with other parts of title 46 of the United States Code, were revised, consolidated, and enacted into positive law in 1983, a new section on definitions was added. The definitions are applicable not only to the vessel documentation provisions but to other parts of title 46 included in the revision. In the new revision, both "State" and "United States" are defined to include the Northern Mariana Islands. Public Law 98-89, 97 Stat. 500; 46 U.S.C. § 2101(36), (44). The addition of this definition

makes the vessel documentation laws applicable to the Northern Mariana Islands. House Report 98-338, at 129-30 (1983).*

[410] The vessel crewing laws are applicable to vessels of the United States wherever they may be.

Discussion.

Vessel documentation as an act of sovereignty. Vessel documentation is a national responsibility, an act of sovereignty. When the trusteeship ends, sovereignty over the Northern Mariana Islands will become vested in the United States. Covenant §§ 101, 1003(c). At that time, the Northern Mariana Islands will not be capable under international law of conferring nationality upon vessels. 22 Opinions of the Attorney General 578 (1899) (holding that Hawaii's vessel registration law was abrogated when the United States acquired sovereignty over Hawaii).

The United States is obligated under international law to "effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flags." Convention on the High Seas, Art. 5, 13 U.S.T. 2312, T.I.A.S. 5200 (1958); United States v. Arra, 630 F.2d 836, 845 n.13 (1st Cir. 1980). Jurisdiction and control must be exercised, among other purposes, to ensure compliance by American vessels with international treaties to which the United States is a party. Among these treaties are the International Convention for the Safety of Life at Sea, 16 U.S.T. 185, T.I.A.S. 5780 (1960);** the Convention concerning the Certification of Able Seamen, 5 U.S.T. 605, T.I.A.S. 2949 (1946);*** the Convention concerning the Minimum Requirement of Professional Capacity for Masters and Officers on Board Merchant Ships, 54 Stat. 1683, T.S. 950 (1936);† and the Convention concerning Liability of

*The legislative history of this provision does not specify the rationale for applying the vessel documentation laws to the Northern Mariana Islands.

**This treaty is applicable to Guam and the Trust "Territories" of the Pacific Islands. By operation of section 502(a)(2) of the Covenant, the Northern Mariana Islands is also part of the United States for purposes of this treaty.

***This treaty is specifically applicable to Guam. By operation of section 502(a)(2) of the Covenant, the Northern Mariana Islands is also part of the United States for purposes of this treaty.

†This treaty extends to all areas over which the United States has jurisdiction and, thus, to the Northern Mariana Islands. Trusteeship Agreement, Art. 3; Covenant §§ 101, 1003(c).

the Shipowner in case of Sickness, Injury or Death of Seamen, 54 Stat. 1693, T.S. 951 (1936).*

The legislation here proposed does not alter the general applicability of the Vessel Documentation Act to the Northern Mariana Islands. Vessels and vessel owners, with a few exceptions discussed below, will remain subject to the Act, just as are vessels and vessel owners in, say, Hawaii. [411]

Coastwise laws and prohibitions against foreign vessels landing fish. The proposed legislation specifically provides that it does not amend section 503(b) of the Covenant. That section makes inapplicable to the Northern Mariana Islands the coastwise laws of the United States and any prohibition in the laws of the United States against foreign vessels landing fish or unfinished fish products in the United States.

In addition, the proposed legislation makes two minor amendments in the vessel documentation laws to make them consistent with the general exemption of the Northern Mariana Islands, under section 503(b) of the Covenant, from the coastwise laws of the United States. Registry, one form of documentation, allows a foreign-built vessel that is United States owned to be used in trade between the United States and foreign ports and between the United States and certain parts of the United States not subject to the coastwise laws. 46 U.S.C. § 12105(a), (b). The proposed legislation adds the Northern Mariana Islands to the list of areas not subject to the coastwise laws.

The vessel documentation laws allow a foreign-built vessel that is procured outside the United States by United States owners and that is proceeding to the United States under temporary documentation to engage en route in trade with certain parts of the United States not subject to the coastwise laws. 46 U.S.C. § 12112. The proposed legislation again adds the Northern Mariana Islands to the list of areas not subject to the coastwise laws.

Use of foreign hulls for fisheries. The legislation here proposed confirms the right of residents of the Northern Mariana Islands to operate foreign-built fishing vessels in waters adjacent to the Northern Mariana Islands.

The Fishery Conservation and Management Act (FCMA), 16 U.S.C. §§ 1801 et seq., prohibits fishing within the waters of any United States jurisdiction or within the fishery conservation zone by any vessel other than a vessel of the United States, unless that vessel

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*This treaty also extends to all areas over which the United States has jurisdiction and, thus, to the Northern Mariana Islands.

has been issued a foreign fishing permit under the FCMA.* Id. § 1857(2). (And foreign fishing permits are given only for that portion of the optimum yield of a fishery not expected to be [412] harvested by vessels of the United States. See id. § 1821(d)(2).) A "vessel of the United States", for purposes of the FCMA, is "a vessel documented under the laws of the United States or registered under the laws of any State." Id. § 1802(27). Regulations under the FCMA further define such a vessel as one "documented or numbered by the Coast Guard under United States law" or, if under five net tons, "registered under the laws of any State." 50 C.F.R. § 611.2(gg) (1983).

Until June 1, 1982, section 11 of title 46, U.S.C., limited "registry" of vessels to those vessels built within the United States with certain exceptions, most notably an exception for seagoing vessels engaged in trade with foreign countries or with Guam and certain other United States possessions in the Pacific Ocean. On June 1, 1982, section 11 was replaced by what is now section 12102 of title 46. Section 12102 makes "any vessel" of at least five net tons eligible for documentation subject to certain ownership restrictions,** regardless of where it was built. Thus, the FCMA requirement that only vessels of the United States be permitted to fish in the fishery conservation zone (without a foreign fishing permit) can now be met by a foreign-built vessel if its owners meet the qualifications of section 12102.

But, while the FCMA requirements can be satisfied by a foreign-built vessel, a similar prohibition in the vessel documentation laws cannot. Section 12105(d) of title 46, U.S.C., prohibits foreign-built vessels from fishing within the fisheries conservation zone. See also 46 U.S.C. §§ 2101(11), 12106, 12108. The only difference, then, is that formerly a foreign-built vessel could only be documented in specific circumstances and for specific purposes, none of which included fishing. Now the foreign-built vessel may be documented but still may not fish.

On February 21, 1980, exercising his powers under section 1004(a) of the Covenant,*** the President suspended until termination of the trusteeship "any provision of the vessel documentation laws of

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*The Commission has agreed to recommend that the FCMA be made inapplicable to the Northern Mariana Islands.

**Those ownership restrictions in general require the owners to be citizens of the United States. See the discussion, citizenship requirements, below.

***Section 1004(a) permits the President to suspend until termination of the trusteeship federal laws inconsistent with the Trusteeship Agreement.

the United States" preventing citizens of the Northern Mariana Islands or the Government of the Northern Mariana Islands from using their "foreign-built, United States registered fishing vessels" in the territorial sea and fisheries conservation zone adjacent to the Northern Mariana Islands. Presidential Proclamation 4726, 45 Fed. Reg. 12369 (1980). The suspension was directed primarily at section 11 of title 46, U.S.C., which was repealed by the Vessel Documentation Act of 1980. Sections 12105(d) and 12108, barring fishing by foreign-built vessels, were enacted by the Vessel Documentation Act. That Act is a vessel documentation law, so those sections are suspended by the proclamation. [413]

Because the question of whether foreign-built vessels may fish adjacent to the Northern Mariana Islands has given rise to several lawsuits and the forementioned presidential proclamation, the proposed legislation specifically allows foreign-built vessels to fish in those waters.

In suspending the application of these provisions of the vessel documentation laws, the proclamation declared:

> Because of the considerable distance of the Northern Mariana Islands from American shipyards and resultant high transportation costs associated with the purchase of American-built ships for use in the Northern Marianas fisheries, this result is inconsistent with the undertakings assumed by the United States in the Trusteeship Agreement to provide for the economic advancement and self-sufficiency of the inhabitants and to encourage the development of the fisheries of the Northern Mariana Islands.

The United States has similarly committed itself to promote the economic advancement of the Northern Mariana Islands in the post-trusteeship period. See Covenant § 701. The rationale for suspension of the foreign-hull prohibition will be just as cogent when the suspension ends on termination of the trusteeship. The use of foreign-built vessels for fishing by citizens of the Northern Mariana Islands, the Government of the Northern Mariana Islands, or by citizens or nationals of the United States domiciled in the

Northern Mariana Islands* should be permitted in the territorial sea and any fisheries conservation zone adjacent to the Northern Mariana Islands, both before and after termination of the trusteeship.

[414]

Partnerships, corporations, and other firms controlled by persons who are citizens of the Northern Mariana Islands or citizens or nationals of the United States and who are domiciled in the Northern Mariana Islands are also permitted the privilege of using documented foreign-built vessels in fisheries adjacent to the Northern Mariana Islands under the proposed legislation.

Citizenship requirements for ownership of documented vessels. Section 12102 of title 46, U.S.C., allows only vessels owned bycitizens of the United States to be documented. Citizens of the Northern Mariana Islands are not now citizens of the United States.** On full implementation of the Covenant, at the termination of the trusteeship, most citizens of the Northern Mariana Islands will become citizens of the United States. Covenant §§ 301, 1003(c). Some, however, may choose to become United States nationals rather than United States citizens. Id. § 302. Under current law, vessels owned by nationals of the United States are not eligible for documentation as vessels of the United States. 46 U.S.C. § 12102.

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*Presidential Proclamation 4726 allows only foreign-built hulls owned by citizens of the Northern Mariana Islands and the Government of the Northern Mariana Islands to fish in the territorial sea and fisheries conservation zone adjacent to the Northern Mariana Islands. On termination of the trusteeship, citizens of the Northern Mariana Islands will become citizens or nationals of the United States. Covenant Art. III; § 1003(c). The proposed legislation extends the privilege of fishing in these waters to foreign-built vessels owned by other United States citizens and nationals domiciled in the Northern Mariana Islands as well, on the ground that no valid reason supports discrimination among United States citizens and nationals domiciled in the Northern Mariana Islands.

**An opinion of the Chief Counsel of the United States Coast Guard, dated June 27, 1978, concludes that "for the purposes of vessel documentation and licensing, the citizens of the [Northern Mariana Islands] may be treated as if citizens of the United States." That opinion was directed, however, primarily at the vessel documentation requirements then contained in section 11 of title 46, U.S.C. Those requirements have now been repealed and replaced by the requirements of section 12102. The legislation here proposed is not intended to cast doubt on the validity of the Chief Counsel's opinion. Rather it affirms the conclusions reached by the Chief Counsel, removes any doubts that may persist, and ensures that those conclusions remain applicable to the subsequently-enacted legislation.

The proposed legislation allows vessels owned by citizens of the Northern Mariana Islands to be documented as vessels of the United States during the period between enactment of the legislation and termination of the trusteeship.* The proposed legislation also allows vessels owned by nationals of the United States domiciled in the Northern Mariana Islands to be documented as vessels of the United States after termination of the trusteeship. Thus, under the proposed legislation, all persons who are now citizens of the Northern Mariana Islands will be able to document vessels owned by them as vessels of the United States, both before and after termination of the trusteeship. (Those who after termination of the trusteeship choose United States nationality rather than citizenship must, however, be domiciled in the Northern Mariana Islands in order to avail themselves of this right.) [415]

A "citizen of the Northern Mariana Islands" for purposes of the proposed legislation is defined therein as a person who qualifies as a United States citizen or a United States national under section 8 of the Schedule on Transitional Matters of the Constitution of the Northern Mariana Islands. The Constitution of the Northern Mariana Islands was deemed approved by Presidential Proclamation 4534 of October 24, 1977, and came into effect on January 9, 1978.

Citizenship requirements for operation of documented vessels--citizens of the Northern Mariana Islands. The proposed legislation provides that citizens of the Northern Mariana Islands shall be deemed citizens of the United States for purposes of all

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*The paragraphs of the proposed legislation allowing documentation of vessels owned by citizens of the Northern Mariana Islands by their own terms expire on termination of the trusteeship, and all rights and privileges extended pursuant to those paragraphs merge with those acquired with United States citizenship at that time. Citizens of the Northern Mariana Islands who choose to become nationals rather than citizens of the United States at that time will consequently have no further rights under these paragraphs, but another provision in the proposed legislation will allow them to continue to document their vessels as vessels of the United States.

citizenship requirements related to operation of vessels documented under the laws of the United States.*

[416] Citizenship requirements for operation of documented vessels--aliens. The Northern Mariana Islands lacks the skilled vessel officers and crew generally available in United States ports. Few citizens of the Northern Mariana Islands are qualified for this work and few United States citizens who are qualified in maritime occupations reside in the Northern Mariana Islands. Further, the Northern Mariana Islands is so small and so distant from parts of the United States where qualified vessel officers and crew are available that it is unlikely to be able to attract at a reasonable cost United States citizens to serve on vessels operating out of the Northern Mariana Islands.

While American officers and crew are likely to be difficult to recruit for service on vessels in the Northern Mariana Islands, alien officers and crew from other nations in the western Pacific are more apt to be available. The legislation here proposed would allow aliens to serve as officers and crew on documented vessels operating out of the Northern Mariana Islands, but only in waters generally adjacent to the Northern Mariana Islands. The proposed legislation is carefully restricted to prevent the exemption granted from being used to undermine the vessel crewing laws elsewhere. A ship owner will not find it advantageous, under the legislation here proposed, to operate a vessel out of the Northern Mariana Islands in order to be able to hire alien officers and crew. The proposed exemption is available only to a documented vessel owned and controlled by persons who are citizens of the United States or the Northern Mariana Islands and who are domiciled in the Northern Mariana Islands. Further, the exemption is available only for voyages between ports in the Northern Mariana Islands or between the Northern Mariana Islands and Guam.

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*As with the citizenship requirements for ownership of documented vessels, above, citizens of the Northern Mariana Islands may already be treated as United States citizens by virtue of the June 27, 1978, opinion of the Chief Counsel of the United States Coast Guard. Again, the intention of the proposed legislation is to affirm the conclusions reached in that opinion and to remove any lingering doubts.

In its January 1982 interim report to Congress, at pages 11, 26-27, the Commission recommended legislation to treat citizens of the Northern Mariana Islands as citizens of the United States for purposes of statutes imposing citizenship requirements on officers and crew of vessels of the United States. Sections 19 and 20 of Public Law 98-213, 97 Stat. 1459 (1983), authorize the President by proclamation to effect that result.

(The exemption is also available for a voyage from the Northern Mariana Islands to a port outside the Northern Mariana Islands if the voyage is made for the exclusive purpose of repairing, renovating, or refurbishing the vessel or if the stop at the foreign port is made for the exclusive purpose of preventing the loss at sea of the vessel or persons or cargo on board.) [417]

The proposed legislation also allows the government of the Northern Mariana Islands to issue restricted licenses and restricted certificates of registry for individuals on documented vessels. The restricted documents would be good only on vessels owned by persons who are citizens or nationals of the United States or the Northern Mariana Islands and who are domiciled in the Northern Mariana Islands. And, again, the documents would be valid only for voyages within the Northern Mariana Islands or between the Northern Mariana Islands and Guam (or elsewhere if only for ship repair, renovation, or refurbishing or for prevention of loss at sea).

The restricted licenses and restricted certificates of registry, unlike the licenses and certificates of registry issued by the United States Coast Guard, could be issued to persons who are not citizens of the United States. In other respects, the government of the Northern Mariana Islands would be expected to adhere to the licensing standards enforced by the Coast Guard.* (The international obligations of the United States to ensure the competency of persons operating vessels of the United States would thus continue to be fulfilled.)

As an alternative to the provision here proposed, the restricted licenses and restricted certificates of registry could be issued by the United States Coast Guard. The legislation here proposed places that function in the government of the Northern Mariana Islands in order to minimize the need to appear at or communicate with the Coast Guard's nearest regional examination center, in Honolulu.

After termination of the trusteeship, citizens of the Northern Mariana Islands who choose to become nationals rather than citizens of the United States would also be eligible, under the legislation here proposed, to serve as officers and crew on documented vessels operating out of the Northern Mariana Islands in waters generally adjacent to the Northern Mariana Islands. Another possibility, not included in the legislation here proposed, is amendment of the laws governing the operation of vessels to allow nationals as well as citizens of the United States to obtain licenses and certificates of registry and to serve as officers and crew on vessels of the United States wherever those vessels may operate. In addition to those

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*These standards may be found in part 10 of title 46, C.F.R. (1983).

relatively few citizens of the Northern Mariana Islands who are expected to choose to become nationals on termination of the trusteeship, the principal beneficiaries of such legislation would be
[418] American Samoans who are nationals rather than citizens of the United States. See 8 U.S.C. §§ 1101(a)(29), 1408.

Proposed legislative language.

The following language, if enacted by the United States Congress, would implement this recommendation:

An Act to alter the application of the vessel documentation laws and the vessel crewing laws in the Northern Mariana Islands; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that a foreign-built vessel documented under the laws of the United States and owned by a citizen or national of the United States who is domiciled in the Northern Mariana Islands, or by a qualified firm, shall be entitled to engage in fishing within the territorial sea and any fishery conservation zone or exclusive economic zone adjacent to the Northern Mariana Islands, without acquiring a permit under section 204 of the Magnuson Fishery and Conservation Act, as amended (16 U.S.C. § 1824), notwithstanding the prohibitions of subsection 2 of section 307 of that Act, as amended (16 U.S.C. § 1857(2)), or of sections 12105, 12106, or 12108 of title 46, United States Code.

Sec. 2. (a) (1) Citizens of the Northern Mariana Islands shall be deemed citizens of the United States of America for purposes of the vessel documentation laws of the United States, for the purposes of all citizenship requirements related to operation of vessels documented under those laws, and for purposes of this Act.

(2) Upon the establishment of the Commonwealth of the Northern Mariana Islands pursuant to section 1002 of the Covenant, the rights and privileges extended under this section shall merge without interruption into those to which the recipient is entitled by virtue of his or her acquisition of United States citizenship, unless the recipient exercises his or her privilege under section 302 of the Covenant to become a national but not a citizen of the United States.

(b) Notwithstanding the requirements of section 12102 of title 46, United States Code, upon the establishment of the Commonwealth of the Northern Mariana Islands pursuant to section 1002 of the Covenant, a vessel of at least five net tons not registered under the laws of a foreign country is eligible for documentation as a vessel of the United States if it is owned by a national of the United States domiciled in the Northern Mariana Islands or by a qualified firm. [419]

Sec. 3. Subsection (b) of section 12105 of title 46, United States Code, is amended by inserting after "Guam," the phrase "the Northern Mariana Islands,".

Sec. 4. Subsection (b) of section 12112 of title 46, United States Code, is amended by inserting after "Guam," the phrase "the Northern Mariana Islands,".

Sec. 5. The government of the Northern Mariana Islands may issue restricted licenses and restricted certificates of registry for individuals on documented vessels. The restricted licenses and restricted certificates of registry shall be valid only for service on board qualified vessels while such vessels are engaged in Northern Mariana Islands voyages. Restricted licenses and restricted certificates of registry may be issued to persons who are not citizens of the United States or citizens of the Northern Mariana Islands, notwithstanding the provisions of sections 7102 and 7103 of title 46, United States Code. Applicants for restricted licenses or restricted certificates of registry shall otherwise be required by the government of the Northern Mariana Islands to meet all qualifications established by the United States Coast Guard for the issuance of licenses or certificates of registry, as the case may be.

Sec. 6. The citizenship requirements of section 8103 of title 46, United States Code, and section 6019 of title 10, United States Code, shall not apply to qualified vessels engaged in Northern Mariana Islands voyages.

Sec. 7. Nothing in this Act shall be deemed to amend section 503 of the Covenant.

Sec. 8. For purposes of this Act--

(a) "Citizens of the Northern Mariana Islands" are those persons defined as United States citizens or United States nationals in section 8

of the Schedule on Transitional Matters of the Constitution of the Northern Mariana Islands, as approved by Presidential Proclamation 4534 of October 24, 1977;

[420]

(b) "Covenant" means the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (approved by Public Law 94-241, 90 Stat. 263, 48 U.S.C. 1681 note (1976));

(c) A "qualified firm" is--

(1) an association, trust, joint venture, or other entity capable of holding title to a vessel under the laws of the United States or of the Northern Mariana Islands, all the members of which are citizens or nationals of the United States domiciled in the Northern Mariana Islands;

(2) a partnership whose general partners are citizens or nationals of the United States domiciled in the Northern Mariana Islands and the controlling interest in which is owned by citizens or nationals of the United States domiciled in the Northern Mariana Islands;

(3) a corporation created under the laws of the United States, or the Northern Mariana Islands if--

(A) the controlling interest is owned by citizens or nationals of the United States domiciled in the Northern Mariana Islands;

(B) its president or other chief executive officer and the chairman of its board of directors

are citizens or nationals of the United States domiciled in the Northern Mariana Islands; and [421]

(C) no more of its directors than a minority of the number necessary to constitute a quorum are other than citizens or nationals of the United States domiciled in the Northern Mariana Islands; or

(4) the government of the Northern Mariana Islands;

(d) a "qualified vessel" is a vessel of at least five net tons that is not registered under the laws of a foreign country that is owned by—

(1) an individual who is a citizen or national of the United States who is domiciled in the Northern Mariana Islands; or

(2) a qualified firm;

and

(e) a "Northern Mariana Islands voyage" is--

(1) a voyage between one port in the Northern Mariana Islands and the same port or another port within the Northern Mariana Islands;

(2) a voyage between a port in the Northern Mariana Islands and Guam;

(3) a voyage between a port in the Northern Mariana Islands and a port outside the Northern Mariana Islands, but only when the voyage is made for the exclusive purpose of

[422] repairing, renovating, or refurbishing the vessel or when the stop at the foreign port is made for the exclusive purpose of preventing the loss at sea of the vessel or persons or cargo on board.

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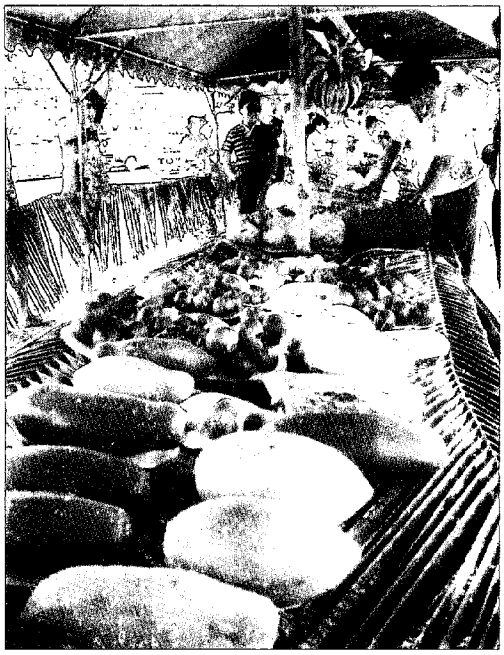
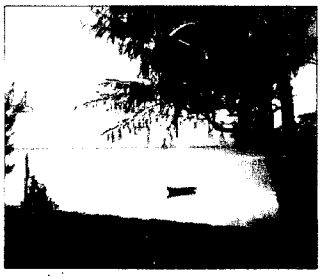
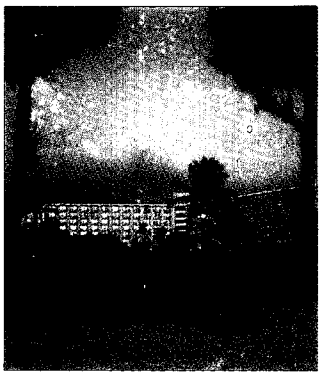

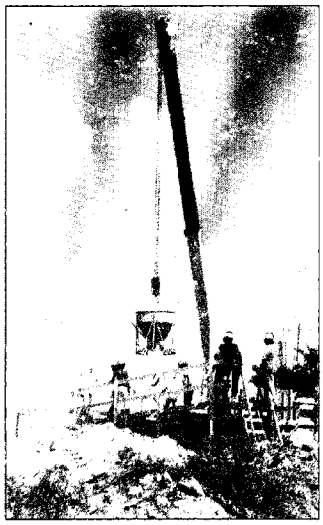

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