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Puerto Rico*

COVENANT
TO
ESTABLISH
A
COMMONWEALTH
OF THE
NORTHERN MARIANA ISLANDS
IN
POLITICAL UNION
WITH THE
UNITED STATES OF AMERICA

SIGNED

on

Saturday, February 15, 1975
MT. Carmel School Auditorium
Susupe, Salpan, Mariana Islands



COVENANT TO ESTABLISH A COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
IN POLITICAL UNION WITH THE UNITED STATES OF AMERICA

Whereas, the Charter of the United Nations and the Trusteeship Agreement between the Security Council of the United Nations and the United States of America guarantee to the people of the Northern Mariana Islands the right freely to express their wishes for self-government or independence; and

Whereas, the United States supports the desire of the people of the Northern Mariana Islands to exercise their inalienable right of self-determination; and

Whereas, the people of the Northern Mariana Islands and the people of the United States share the goals and values found in the American system of government based upon the principles of government by the consent of the governed, individual freedom and democracy; and

Whereas, for over twenty years, the people of the Northern Mariana Islands, through public petition and referendum, have clearly expressed their desire for political union with the United States;

Now, therefore, the Marianas Political Status Commission, being the duly appointed representative of



the people of the Northern Mariana Islands, and the Personal Representative of the President of the United States have entered into this Covenant in order to establish a self-governing commonwealth for the Northern Mariana Islands within the American political system and to define the future relationship between the Northern Mariana Islands and the United States. This Covenant will be mutually binding when it is approved by the United States, by the Mariana Islands District Legislature and by the people of the Northern Mariana Islands in a plebiscite, constituting on their part a sovereign act of self-determination.

ARTICLE I

Political Relationship

Section 101. The Northern Mariana Islands upon termination of the Trusteeship Agreement will become a self-governing commonwealth to be known as the "Commonwealth of the Northern Mariana Islands", in political union with and under the sovereignty of the United States of America.

Section 102. The relations between the Northern Mariana Islands and the United States will be governed by this Covenant which, together with those provisions of the Constitution, treaties and laws of the United States applicable to the Northern Mariana Islands, will be the supreme law of the



Northern Mariana Islands.

Section 103. The people of the Northern Mariana Islands will have the right of local self-government and will govern themselves with respect to internal affairs in accordance with a Constitution of their own adoption.

Section 104. 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.

Section 105. The United States may enact legislation in accordance with its constitutional processes which will be applicable to the Northern Mariana Islands, but if such legislation cannot also be made applicable to the several States the Northern Mariana Islands must be specifically named therein for it to become effective in the Northern Mariana Islands. In order to respect the right of self-government guaranteed by this Covenant the United States agrees to limit the exercise of that authority so that the fundamental provisions of this Covenant, namely Articles I, II and III and Sections 501 and 805, may be modified only with the consent of the Government of the United States and the Government of the Northern Mariana Islands.



ARTICLE II

Constitution of the Northern Mariana Islands

Section 201. The people of the Northern Mariana Islands will formulate and approve a Constitution and may amend their Constitution pursuant to the procedures provided therein.

Section 202. The Constitution will be submitted to the Government of the United States for approval on the basis of its consistency with this Covenant and those provisions of the Constitution, treaties and laws of the United States to be applicable to the Northern Mariana Islands. The Constitution will be deemed to have been approved six months after its submission to the President on behalf of the Government of the United States unless earlier approved or disapproved. If disapproved the Constitution will be returned and will be resubmitted in accordance with this Section. Amendments to the Constitution may be made by the people of the Northern Mariana Islands without approval by the Government of the United States, but the courts established by the Constitution or laws of the United States will be competent to determine whether the Constitution and subsequent amendments thereto are consistent with this Covenant and with those provisions of the Constitution, treaties and laws of the United States applicable to the Northern Mariana Islands.



Section 203.

(a) The Constitution will provide for a republican form of government with separate executive, legislative and judicial branches, and will contain a bill of rights.

(b) The executive power of the Northern Mariana Islands will be vested in a popularly elected Governor and such other officials as the Constitution or laws of the Northern Mariana Islands may provide.

(c) The legislative power of the Northern Mariana Islands will be vested in a popularly elected legislature and will extend to all rightful subjects of legislation. The Constitution of the Northern Mariana Islands will provide for equal representation for each of the chartered municipalities of the Northern Mariana Islands in one house of a bicameral legislature, notwithstanding other provisions of this Covenant or those provisions of the Constitution or laws of the United States applicable to the Northern Mariana Islands.

(d) The judicial power of the Northern Mariana Islands will be vested in such courts as the Constitution or laws of the Northern Mariana Islands may provide. The Constitution or laws of the Northern Mariana Islands may vest in such courts jurisdiction over all causes in the Northern Mariana Islands over which any court established by the Constitution or laws of the United States does not have exclusive jurisdiction.



Section 204. All members of the legislature of the Northern Mariana Islands and all officers and employees of the Government of the Northern Mariana Islands will take an oath or affirmation to support this Covenant, those provisions of the Constitution, treaties and laws of the United States applicable to the Northern Mariana Islands, and the Constitution and laws of the Northern Mariana Islands.

ARTICLE III

Citizenship and Nationality

Section 301. The following persons and their children under the age of 18 years on the effective date of this Section, who are not citizens or nationals of the United States under any other provision of law, and who on that date do not owe allegiance to any foreign state, are declared to be citizens of the United States, except as otherwise provided in Section 302:

(a) all persons born in the Northern Mariana Islands who are citizens of the Trust Territory of the Pacific Islands on the day preceding the effective date of this Section, and who on that date are domiciled in the Northern Mariana Islands or in the United States or any territory or possession thereof;

(b) all persons who are citizens of the Trust Territory of the Pacific Islands on the day preceding the



effective date of this Section, who have been domiciled continuously in the Northern Mariana Islands for at least five years immediately prior to that date, and who, unless under age, registered to vote in elections for the Mariana Islands District Legislature or for any municipal election in the Northern Mariana Islands prior to January 1, 1975; and

(c) all persons domiciled in the Northern Mariana Islands on the day preceding the effective date of this Section, who, although not citizens of the Trust Territory of the Pacific Islands, on that date have been domiciled continuously in the Northern Mariana Islands beginning prior to January 1, 1974.

Section 302. Any person who becomes a citizen of the United States solely by virtue of the provisions of Section 301 may within six months after the effective date of that Section or within six months after reaching the age of 18 years, whichever date is the later, become a national but not a citizen of the United States by making a declaration under oath before any court established by the Constitution or laws of the United States or any court of record in the Commonwealth in the form as follows:

"I.....being duly sworn, hereby declare my intention to be a national but not a citizen of the United States."



Section 303. All persons born in the Commonwealth on or after the effective date of this Section and subject to the jurisdiction of the United States will be citizens of the United States at birth.

Section 304. Citizens of the Northern Mariana Islands will be entitled to all privileges and immunities of citizens in the several States of the United States.

ARTICLE IV

Judicial Authority

Section 401. The United States will establish for and within the Northern Mariana Islands a court of record to be known as the "District Court for the Northern Mariana Islands". The Northern Mariana Islands will constitute a part of the same judicial circuit of the United States as Guam.

Section 402.

(a) The District Court for the Northern Mariana Islands will have the jurisdiction of a district court of the United States, except that in all causes arising under the Constitution, treaties or laws of the United States it will have jurisdiction regardless of the sum or value of the matter in controversy.

(b) The District Court will have original jurisdiction in all causes in the Northern Mariana Islands not



described in Subsection (a) jurisdiction over which is not vested by the Constitution or laws of the Northern Mariana Islands in a court or courts of the Northern Mariana Islands. In causes brought in the District Court solely on the basis of this Subsection, the District Court will be considered a court of the Northern Mariana Islands for the purposes of determining the requirements of indictment by grand jury or trial by jury.

(c) The District Court will have such appellate jurisdiction as the Constitution or laws of the Northern Mariana Islands may provide. When it sits as an appellate court, the District Court will consist of three judges, at least one of whom will be a judge of a court of record of the Northern Mariana Islands.

Section 403.

(a) The relations between the courts established by the Constitution or laws of the United States and the courts of the Northern Mariana Islands with respect to appeals, certiorari, removal of causes, the issuance of writs of habeas corpus and other matters or proceedings will be governed by the laws of the United States pertaining to the relations between the courts of the United States and the courts of the several States in such matters and proceedings, except as otherwise provided in this Article; provided that for the first fifteen years following the



establishment of an appellate court of the Northern Mariana Islands the United States Court of Appeals for the judicial circuit which includes the Northern Mariana Islands will have jurisdiction of appeals from all final decisions of the highest court of the Northern Mariana Islands from which a decision could be had in all cases involving the Constitution, treaties or laws of the United States, or any authority exercised thereunder, unless those cases are reviewable in the District Court for the Northern Mariana Islands pursuant to Subsection 402(c).

(b) 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 for the Northern Mariana Islands, respectively, except as otherwise provided in this Article.

ARTICLE V

Applicability of Laws

Section 501.

(a) To the extent that they are not applicable of their own force, the following provisions of the Constitution of the United States will be applicable within the Northern Mariana Islands as if the Northern Mariana Islands were one of the several States: Article I, Section 9, Clauses 2, 3 and 8; Article I, Section 10, Clauses 1 and 3; Article



IV, Section 1 and Section 2, Clauses 1 and 2; Amendments 1 through 9, inclusive; Amendment 13; Amendment 14, Section 1; Amendment 15; Amendment 19; and Amendment 26, provided, however, that neither trial by jury nor indictment by grand jury shall be required in any civil action or criminal prosecution based on local law, except where required by local law. Other provisions of or amendments to the Constitution of the United States, which do not apply of their own force within the Northern Mariana Islands, will be applicable within the Northern Mariana Islands only with the approval of the Government of the Northern Mariana Islands and of the Government of the United States.

(b) The applicability of certain provisions of the Constitution of the United States to the Northern Mariana Islands will be without prejudice to the validity of and the power of the Congress of the United States to consent to Sections 203, 506 and 805 and the proviso in Subsection (a) of this Section.

Section 502.

(a) The following laws of the United States in existence on the effective date of this Section and subsequent amendments to such laws will apply to the Northern Mariana Islands, except as otherwise provided in this Covenant:

(1) those laws which provide federal services and financial assistance programs and the federal banking



laws as they apply to Guam; Section 228 of Title II and Title XVI of the Social Security Act as it applies to the several States; the Public Health Service Act as it applies to the Virgin Islands; and the Micronesian Claims Act as it applies to the Trust Territory of the Pacific Islands;

(2) those laws not described in paragraph (1) which are applicable to Guam and which are of general application to the several States as they are applicable to the several States; and

(3) those laws not described in paragraphs (1) or (2) which are applicable to the Trust Territory of the Pacific Islands, but not their subsequent amendments unless specifically made applicable to the Northern Mariana Islands, as they apply to the Trust Territory of the Pacific Islands until termination of the Trusteeship Agreement, and will thereafter be inapplicable.

(b) The laws of the United States regarding coastal shipments and the conditions of employment, including the wages and hours of employees, will apply to the activities of the United States Government and its contractors in the Northern Mariana Islands.

Section 503. The following laws of the United States, presently inapplicable to the Trust Territory of the Pacific Islands, will not apply to the Northern Mariana Islands except in the manner and to the extent made applicable



to them by the Congress by law after termination of the Trusteeship Agreement:

(a) except as otherwise provided in Section 506, the immigration and naturalization laws of the United States;

(b) except as otherwise provided in Subsection (b) of Section 502, 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; and

(c) the minimum wage provisions of Section 6, Act of June 25, 1938, 52 Stat. 1062, as amended.

Section 504. 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.

Section 505. The laws of the Trust Territory of the Pacific Islands, of the Mariana Islands District and its local municipalities, and all other Executive and District orders of a local nature applicable to the Northern Mariana Islands on the effective date of this Section and not inconsistent with this Covenant or with those provisions of the Constitution, treaties or laws of the United States applicable to the Northern Mariana Islands will remain in force and effect until and unless altered by the Government of the Northern Mariana Islands.

Section 506.

(a) Notwithstanding the provisions of Subsection 503(a), upon the effective date of this Section the Northern



Mariana Islands will be deemed to be a part of the United States under the Immigration and Nationality Act, as amended, for the following purposes only, and the said Act will apply to the Northern Mariana Islands to the extent indicated in each of the following Subsections of this Section.

(b) With respect to children born abroad to United States citizen or non-citizen national parents permanently residing in the Northern Mariana Islands the provisions of Sections 301 and 308 of the said Act will apply.

(c) With respect to aliens who are "immediate relatives" (as defined in Subsection 201(b) of the said Act) of United States citizens who are permanently residing in the Northern Mariana Islands all the provisions of the said Act will apply, commencing when a claim is made to entitlement to "immediate relative" status. A person who is certified by the Government of the Northern Mariana Islands both to have been a lawful permanent resident of the Northern Mariana Islands and to have had the "immediate relative" relationship denoted herein on the effective date of this Section will be presumed to have been admitted to the United States for lawful permanent residence as of that date without the requirement of any of the usual procedures set forth in the said Act. For the purpose of the requirements of judicial naturalization, the Northern Mariana Islands will be deemed to constitute a State as



defined in Subsection 101(a) paragraph (36) of the said Act. The Courts of record of the Northern Mariana Islands and the District Court for the Northern Mariana Islands will be included among the courts specified in Subsection 310(a) of the said Act and will have jurisdiction to naturalize persons who become eligible under this Section and who reside within their respective jurisdictions.

(d) With respect to persons who will become citizens or nationals of the United States under Article III of this Covenant or under this Section the loss of nationality provisions of the said Act will apply.

ARTICLE VI

Revenue and Taxation.

Section 601.

(a) The income tax laws in force in the United States will come into force in the Northern Mariana Islands as a local territorial income tax on the first day of January following the effective date of this Section, in the same manner as those laws are in force in Guam.

(b) Any individual who is a citizen or a resident of the United States, of Guam or of the Northern Mariana Islands (including a national of the United States who is not a citizen), will file only one income tax return with respect to his income, in a manner similar to the



provisions of Section 935 of Title 26, United States Code.

(c) References in the Internal Revenue Code to Guam will be deemed also to refer to the Northern Mariana Islands, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof or of this Covenant.

Section 602.

The Government of the Northern Mariana Islands may by local law impose such taxes, in addition to those imposed under Section 601, as it deems appropriate and provide for the rebate of any taxes received by it, except that the power of the Government of the Northern Mariana Islands to rebate collections of the local territorial income tax received by it will be limited to taxes on income derived from sources within 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.

(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; nor will any provision of this Article be deemed to affect the operation of the Soldiers and Sailors Civil Relief Act of 1940, as amended, which will be applicable to the Northern Mariana Islands as it is applicable to Guam.

Section 606.

(a) Not later than at the time this Covenant is approved, that portion of the Trust Territory Social Security Retirement Fund attributable to the Northern Mariana Islands will be transferred to the Treasury of the United States, to be held in trust as a separate fund to be known as the "Northern Mariana Islands Social Security Retirement Fund". This fund will be administered by the United States in accordance with the social security laws of the Trust Territory of the Pacific Islands in effect at the time of such transfer, which may be modified by the Government of the Northern Mariana Islands only in a manner which does not create any additional differences between the social security laws of the Trust Territory of the Pacific



Islands and the laws described in Subsection (b). The United States will supplement such fund if necessary to assure that persons receive benefits therefrom comparable to those they would have received from the Trust Territory Social Security Retirement Fund under the laws applicable thereto on the day preceding the establishment of the Northern Mariana Islands Social Security Retirement Fund, so long as the rate of contributions thereto also remains comparable.

(b) Those laws of the United States which impose excise and self-employment taxes to support or which provide benefits from the United States Social Security System will upon termination of the Trusteeship Agreement or such earlier date as may be agreed to by the Government of the Northern Mariana Islands and the Government of the United States become applicable to the Northern Mariana Islands as they apply to Guam.

(c) At such time as the laws described in Subsection (b) become applicable to the Northern Mariana Islands:

(1) the Northern Mariana Islands Social Security Retirement Fund will be transferred into the appropriate Federal Social Security Trust Funds;

(2) prior contributions by or on behalf of persons domiciled in the Northern Mariana Islands to the Trust Territory Social Security Retirement Fund or the Northern Mariana Islands Social Security Retirement



Fund will be considered to have been made to the appropriate federal Social Security Trust Funds for the purpose of determining eligibility of those persons in the Northern Mariana Islands for benefits under those laws; and

(3) persons domiciled in the Northern Mariana Islands who are eligible for or entitled to social security benefits under the laws of the Trust Territory of the Pacific Islands or of the Northern Mariana Islands will not lose their entitlement and will be eligible for or entitled to benefits under the laws described in Subsection (b).

Section 607.

(a) All bonds or other obligations issued by the Government of the Northern Mariana Islands or by its authority will be exempt, as to principal and interest, from taxation by the United States, or by any State, territory or possession of the United States, or any political subdivision of any of them.

(b) During the initial seven year period of financial assistance provided for in Section 702, and during such subsequent periods of financial assistance as may be agreed, the Government of the Northern Mariana Islands will authorize no public indebtedness (other than bonds or other obligations of the Government payable solely from revenues derived from any public improvement or undertaking) in excess of ten percentum of the aggregate assessed valuation



of the property within the Northern Mariana Islands.

ARTICLE VII

United States Financial Assistance

Section 701. The Government of the United States will assist the Government of the Northern Mariana Islands in its efforts to achieve a progressively higher standard of living for its people as part of the American economic community and to develop the economic resources needed to meet the financial responsibilities of local self-government. To this end, the United States will provide direct multi-year financial support to the Government of the Northern Mariana Islands for local government operations, for capital improvement programs and for economic development. The initial period of such support will be seven years, as provided in Section 702.

Section 702. Approval of this Covenant by the United States will constitute a commitment and pledge of the full faith and credit of the United States for the payment, as well as an authorization for the appropriation, of the following guaranteed annual levels of direct grant assistance to the Government of the Northern Mariana Islands for each of the seven fiscal years following the effective date of this Section:

(a) \$8.25 million for budgetary support for government operations, of which \$250,000 each year will



be reserved for a special education training fund connected with the change in the political status of the Northern Mariana Islands;

(b) \$4 million for capital improvement projects, of which \$500,000 each year will be reserved for such projects on the Island of Tinian and \$500,000 each year will be reserved for such projects on the Island of Rota; and

(c) \$1.75 million for an economic development loan fund, of which \$500,000 each year will be reserved for small loans to farmers and fishermen and to agricultural and marine cooperatives, and of which \$250,000 each year will be reserved for a special program of low interest housing loans for low income families.

Section 703.

(a) The United States will make available to the Northern Mariana Islands the full range of federal programs and services available to the territories of the United States. Funds provided under Section 702 will be considered to be local revenues of the Government of the Northern Mariana Islands when used as the local share required to obtain federal programs and services.

(b) There will be paid into the Treasury of the Government of the Northern Mariana Islands, to be expended to the benefit of the people thereof as that Government may by law prescribe, the proceeds of all customs duties



and federal income taxes derived from the Northern Mariana Islands, 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, or consumed in the Northern Mariana Islands, the proceeds of any other taxes which may be levied by the Congress on the inhabitants of the Northern Mariana Islands, and all quarantine, passport, immigration and naturalization fees collected in the Northern Mariana Islands, except that nothing in this Section shall be construed to apply to any tax imposed by Chapters 2 or 21 of Title 26, United States Code.

Section 704.

(a) Funds provided under Section 702 not obligated or expended by the Government of the Northern Mariana Islands during any fiscal year will remain available for obligation or expenditure by that Government in subsequent fiscal years for the purposes for which the funds were appropriated.

(b) Approval of this Covenant by the United States will constitute an authorization for the appropriation of a pro-rata share of the funds provided under Section 702 for the period between the effective date of this Section and the beginning of the next succeeding fiscal year.

(c) The amounts stated in Section 702 will be



adjusted for each fiscal year by a percentage which will be the same as the percentage change in the United States Department of Commerce composite price index using the beginning of Fiscal Year 1975 as the base.

(d) Upon expiration of the seven year period of guaranteed annual direct grant assistance provided by Section 702, the annual level of payments in each category listed in Section 702 will continue until Congress appropriates a different amount or otherwise provides by law.

ARTICLE VIII

Property

Section 801. All right, title and interest of the Government of the Trust Territory of the Pacific Islands in and to real property in the Northern Mariana Islands on the date of the signing of this Covenant or thereafter acquired in any manner whatsoever will, no later than upon the termination of the Trusteeship Agreement, be transferred to the Government of the Northern Mariana Islands. All right, title and interest of the Government of the Trust Territory of the Pacific Islands in and to all personal property on the date of the signing of this Covenant or thereafter acquired in any manner whatsoever will, no later than upon the termination of the Trusteeship Agreement, be distributed equitably in a manner to be determined by



the Government of the Trust Territory of the Pacific Islands in consultation with those concerned, including the Government of the Northern Mariana Islands.

Section 802.

(a) The following property will be made available to the Government of the United States by lease to enable it to carry out its defense responsibilities:

(1) on Tinian Island, approximately 17,799 acres (7,203 hectares) and the waters immediately adjacent thereto;

(2) on Saipan Island, approximately 177 acres (72 hectares) at Tanapag Harbor; and

(3) on Farallon de Medinilla Island, approximately 206 acres (83 hectares) encompassing the entire island, and the waters immediately adjacent thereto.

(b) The United States affirms that it has no present need for or present intention to acquire any greater interest in property listed above than that which is granted to it under Subsection 803(a), or to acquire any property in addition to that listed in Subsection (a), above, in order to carry out its defense responsibilities.

Section 803.

(a) The Government of the Northern Mariana Islands will lease the property described in Subsection 802(a) to the Government of the United States for a term of fifty



years, and the Government of the United States will have the option of renewing this lease for all or part of such property for an additional term of fifty years if it so desires at the end of the first term.

(b) The Government of the United States will pay to the Government of the Northern Mariana Islands in full settlement of this lease, including the second fifty year term of the lease if extended under the renewal option, the total sum of \$19,520,600, determined as follows:

(1) for that property on Tinian Island, \$17.5 million;

(2) for that property at Tanapag Harbor on Saipan Island, \$2 million; and

(3) for that property known as Farallon de Medinilla, \$20,600.

The sum stated in this Subsection will be adjusted by a percentage which will be the same as the percentage change in the United States Department of Commerce composite price index from the date of signing the Covenant.

(c) A separate Technical Agreement Regarding Use of Land To Be Leased by the United States in the Northern Mariana Islands will be executed simultaneously with this Covenant. The terms of the lease to the United States will be in accordance with this Section and with the terms



of the Technical Agreement. The Technical Agreement will also contain terms relating to the leaseback of property, to the joint use arrangements for San Jose Harbor and West Field on Tinian Island, and to the principles which will govern the social structure relations between the United States military and the Northern Mariana Islands civil authorities.

(d) From the property to be leased to it in accordance with this Covenant the Government of the United States will lease back to the Government of the Northern Mariana Islands, in accordance with the Technical Agreement, for the sum of one dollar per acre per year, approximately 6,458 acres (2,614 hectares) on Tinian Island and approximately 44 acres (18 hectares) at Tanapag Harbor on Saipan Island, which will be used for purposes compatible with their intended military use.

(e) From the property to be leased to it at Tanapag Harbor on Saipan Island the Government of the United States will make available to the Government of the Northern Mariana Islands 133 acres (54 hectares) at no cost. This property will be set aside for public use as an American memorial park to honor the American and Marianas dead in the World War II Marianas Campaign. The \$2 million received from the Government of the United States for the lease of this property will be placed into a trust fund, and



used for the development and maintenance of the park in accordance with the Technical Agreement.

Section 804.

(a) The Government of the United States will cause all agreements between it and the Government of the Trust Territory of the Pacific Islands which grant to the Government of the United States use or other rights in real property in the Northern Mariana Islands to be terminated upon or before the effective date of this Section. All right, title and interest of the Government of the Trust Territory of the Pacific Islands in and to any real property with respect to which the Government of the United States enjoys such use or other rights will be transferred to the Government of the Northern Mariana Islands at the time of such termination. From the time such right, title and interest is so transferred the Government of the Northern Mariana Islands will assure the Government of the United States the continued use of the real property then actively used by the Government of the United States for civilian governmental purposes on terms comparable to those enjoyed by the Government of the United States under its arrangements with the Government of the Trust Territory of the Pacific Islands on the date of the signature of this Covenant.

(b) All facilities at Isely Field developed with federal aid and all facilities at that field usable for the landing and take-off of aircraft will be available



to the United States for use by military and naval aircraft, in common with other aircraft, at all times without charge, except, if the use by military and naval aircraft shall be substantial, a reasonable share, proportional to such use, of the cost of operating and maintaining the facilities so used may be charged at a rate established by agreement between the Government of the Northern Mariana Islands and the Government of the United States.

Section 805. Except as otherwise provided in this Article, and notwithstanding the other provisions of this Covenant, or those provisions of the Constitution, treaties or laws of the United States applicable to the Northern Mariana Islands, the Government of the Northern Mariana Islands, in view of the importance of the ownership of land for the culture and traditions of the people of the Northern Mariana Islands, and in order to protect them against exploitation and to promote their economic advancement and self-sufficiency:

(a) will until twenty-five years after the termination of the Trusteeship Agreement, and may thereafter, regulate the alienation of permanent and long-term interests in real property so as to restrict the acquisition of such interests to persons of Northern Mariana Islands descent; and

(b) may regulate the extent to which a person



may own or hold land which is now public land.

Section 806.

(a) The United States will continue to recognize and respect the scarcity and special importance of land in the Northern Mariana Islands. If the United States must acquire any interest in real property not transferred to it under this Covenant, it will follow the policy of seeking to acquire only the minimum area necessary to accomplish the public purpose for which the real property is required, of seeking only the minimum interest in real property necessary to support such public purpose, acquiring title only if the public purpose cannot be accomplished if a lesser interest is obtained, and of seeking first to satisfy its requirement by acquiring an interest in public rather than private real property.

(b) The United States may, upon prior written notice to the Government of the Northern Mariana Islands, acquire for public purposes in accordance with federal laws and procedures any interest in real property in the Northern Mariana Islands by purchase, lease, exchange, gift or otherwise under such terms and conditions as may be negotiated by the parties. The United States will in all cases attempt to acquire any interest in real property for public purposes by voluntary means under this Subsection before exercising the power of eminent domain. No interest



in real property will be acquired unless duly authorized by the Congress of the United States and appropriations are available therefor.

(c) In the event it is not possible for the United States to obtain an interest in real property for public purposes by voluntary means, it may exercise within the Commonwealth the power of eminent domain to the same extent and in the same manner as it has and can exercise the power of eminent domain in a State of the Union. The power of eminent domain will be exercised within the Commonwealth only to the extent necessary and in compliance with applicable United States laws, and with full recognition of the due process required by the United States Constitution.

ARTICLE IX

Northern Mariana Islands Representative and Consultation

Section 901. The Constitution or laws of the Northern Mariana Islands may provide for the appointment or election of a Resident Representative to the United States, whose term of office will be two years, unless otherwise determined by local law, and who will be entitled to receive official recognition as such Representative by all of the departments and agencies of the Government of the United States upon presentation through the Department of State of a certificate of selection from the Governor. The Representative must



be a citizen and resident of the Northern Mariana Islands, at least twenty-five years of age, and, after termination of the Trusteeship Agreement, a citizen of the United States.

Section 902. The Government of the United States and the Government of the Northern Mariana Islands will consult regularly on all matters affecting the relationship between them. At the request of either Government, and not less frequently than every ten years, the President of the United States and the Governor of the Northern Mariana Islands will designate special representatives to meet and to consider in good faith such issues affecting the relationship between the Northern Mariana Islands and the United States as may be designated by either Government and to make a report and recommendations with respect thereto. Special representatives will be appointed in any event to consider and to make recommendations regarding future multi-year financial assistance to the Northern Mariana Islands pursuant to Section 701, to meet at least one year prior to the expiration of every period of such financial assistance.

Section 903. Nothing herein shall prevent the presentation of cases or controversies arising under this Covenant to courts established by the Constitution or laws of the United States. It is intended that any such cases or controversies will be justiciable in such courts and that the undertakings by the Government of the United States and by the Government



of the Northern Mariana Islands provided for in this Covenant will be enforceable in such courts.

Section 904.

(a) The Government of the United States will give sympathetic consideration to the views of the Government of the Northern Mariana Islands on international matters directly affecting the Northern Mariana Islands and will provide opportunities for the effective presentation of such views to no less extent than such opportunities are provided to any other territory or possession under comparable circumstances.

(b) The United States will assist and facilitate the establishment by the Northern Mariana Islands of offices in the United States and abroad to promote local tourism and other economic or cultural interests of the Northern Mariana Islands.

(c) On its request the Northern Mariana Islands may participate in regional and other international organizations concerned with social, economic, educational, scientific, technical and cultural matters when similar participation is authorized for any other territory or possession of the United States under comparable circumstances.



ARTICLE X

Approval, Effective Dates, and Definitions

Section 1001.

(a) This Covenant will be submitted to the Mariana Islands District Legislature for its approval. After its approval by the Mariana Islands District Legislature, this Covenant will be submitted to the people of the Northern Mariana Islands for approval in a plebiscite to be called by the United States. Only persons who are domiciled exclusively in the Northern Mariana Islands and who meet such other qualifications, including timely registration, as are promulgated by the United States as administering authority will be eligible to vote in the plebiscite. Approval must be by a majority of at least 55% of the valid votes cast in the plebiscite. The results of the plebiscite will be certified to the President of the United States.

(b) This Covenant will be approved by the United States in accordance with its constitutional processes and will thereupon become law.

Section 1002. The President of the United States will issue a proclamation announcing the termination of the Trusteeship Agreement, or the date on which the Trusteeship Agreement will terminate, and the establishment of the Commonwealth in accordance with this Covenant. Any determination by the President that the Trusteeship Agreement has been



terminated or will be terminated on a day certain will be final and will not be subject to review by any authority, judicial or otherwise, of the Trust, Territory of the Pacific Islands, the Northern Mariana Islands or the United States.

Section 1003. The provisions of this Covenant will become effective as follows, unless otherwise specifically provided:

(a) Section 105, 201-203, 503, 504, 606, 801, 903 and Article X will become effective on approval of this Covenant;

(b) Sections 102, 103, 204, 304, Article IV, Sections 501, 502, 505, 601-605, 607, Article VII, Sections 802-805, 901 and 902 will become effective on a date to be determined and proclaimed by the President of the United States which will be not more than 180 days after this Covenant and the Constitution of the Northern Mariana Islands have both been approved; and

(c) The remainder of this Covenant will become effective upon the termination of the Trusteeship Agreement and the establishment of the Commonwealth of the Northern Mariana Islands.

Section 1004.

(a) The application of any provision of the Constitution or laws of the United States which would otherwise apply to the Northern Mariana Islands may be suspended until termination of the Trusteeship Agreement if the



President finds and declares that the application of such provision prior to termination would be inconsistent with the Trusteeship Agreement.

(b) The Constitution of the Northern Mariana Islands will become effective in accordance with its terms on the same day that the provisions of this Covenant specified in Subsection 1003(b) become effective, provided that if the President finds and declares that the effectiveness of any provision of the Constitution of the Northern Mariana Islands prior to termination of the Trusteeship Agreement would be inconsistent with the Trusteeship Agreement such provision will be ineffective until termination of the Trusteeship Agreement. Upon the establishment of the Commonwealth of the Northern Mariana Islands the Constitution will become effective in its entirety in accordance with its terms as the Constitution of the Commonwealth of the Northern Mariana Islands.

Section 1005. As used in this Covenant:

(a) "Trusteeship Agreement" means the Trusteeship Agreement for the former Japanese Mandated Islands concluded between the Security Council of the United Nations and the United States of America, which entered into force on July 18, 1947;



(b) "Northern Mariana Islands" means the area now known as the Mariana Islands District of the Trust Territory of the Pacific Islands, which lies within the area north of 14° north latitude, south of 21° north latitude, west of 150° east longitude and east of 144° east longitude;

(c) "Government of the Northern Mariana Islands" includes, as appropriate, the Government of the Mariana Islands District of the Trust Territory of the Pacific Islands at the time this Covenant is signed, its agencies and instrumentalities, and its successors, including the Government of the Commonwealth of the Northern Mariana Islands;

(d) "Territory or possession" with respect to the United States includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam and American Samoa;

(e) "Domicile" means that place where a person maintains a residence with the intention of continuing such residence for an unlimited or indefinite period, and to which such person has the intention of returning whenever he is absent, even for an extended period.



Signed at Saipan, Mariara Islands on the fifteenth
day of February, 1975.

FOR THE PEOPLE OF THE NORTHERN
MARIANA ISLANDS

FOR THE UNITED STATES OF AMERICA.

Edward DLG. Pangelinan
Chairman, Marianas
Political Status Commission

Ambassador F. Haydn Williams
Personal Representative of the
President of the United States

Vicente N. Santos
Vice Chairman, Marianas
Political Status Commission

Members of the Marianas Political Status Commission:

Juan LG. Cabrera

Joaquin I. Pangelinan

Vicente T. Camacho

Felix F. Rabauliman

Jose R. Cruz

Oscar C. Rasa

Bernard V. Hofschneider

Manuel A. Sablan

Benjamin T. Manglona

Joannes R. Taimanao

Daniel T. Muna

Pedro A. Tenorio

Dr. Francisco T. Palacios



T. Dunsmuir Minority Staff House
Interior and Insular
Affairs Committee
[Feb. 1975?]

SECTION III. Northern Marianas' Negotiations

For over ten years, the people of the Northern Marianas through their duly elected representatives have on numerous occasions expressed formally and informally to the government of the United States and to the United Nations their strong desire to become a part of the political family of the United States. Because of a common racial, language and cultural tradition (i.e. Chamorro), the Northern Marianas initially sought to achieve unification with Guam. In 1969, however, the Guamanians in referendum rejected the concept of unification, temporarily at least blocking this avenue of political advancement. When it was apparent in April 1972 that the rest of Micronesia was bent on a much looser relationship with the United States (i.e. free association or independence), the Northern Marianas requested separate status negotiations.. In response, the United States replied:

"As the record shows, the U.S. policy as the Administering Authority for the Trust Territory of the Pacific Islands has been to develop Micronesia toward a common status upon termination of the Trusteeship Agreement and our efforts have been directed toward this end.... The further pursuit and implementation of this objective, against the expressed will of the people of the Marianas, would deny them their right of self-determination and impose upon them a future political status which they have said is unacceptable."

Accordingly, the Marianas' Status Talks commenced in December 1972. The Congress of Micronesia's reaction to separate Marianas negotiations was swift and adamant. In early 1973, Resolution Number 38 was adopted, specifying that the Congress of Micronesia is "...the only authority in the Territory that is legally entitled and able to conduct negotiations...." In retort, the Marianas' District Legislature passed a counter-resolution, upholding the legality of its right to negotiate directly with the United States. The Marianas, however, continue to keep abreast of developments in Micronesian Status Negotiations and retain membership on the JCFS.

In June 1973, upon conclusion of the Second Round of Negotiations, both the Marianas and the United States stip-



ulated that all final agreements, including adoption of the Marianas' constitution, were dependent upon the approval of the Marianas' District Legislature, a local plebiscite and the United States Congress. Tentative agreement was reached, nevertheless, on the following issues:

1. The future political relationship between the Marianas and the United States will take the form of a commonwealth; wherein the future Marianas' Government will exercise maximum internal self-government, including the right of the people to draft and adopt their own constitution and to establish local courts to administer local laws.

2. Sovereignty over the Marianas will be vested in the United States, including complete authority in the fields of defense and foreign affairs.

3. The future government of the Marianas will preserve control over land ownership.

The Third Session of the Marianas' Political Status Negotiations concluded on December 19, 1973 with the following tentative agreements:

1. Specified fundamental provisions of the Status Agreement, including certain provisions designed to insure maximum self-government, may not be amended or repealed except by mutual consent. To this extent the authority of the United States in the Marianas is not plenary.

2. Persons born in the Marianas prior to the establishment of the Commonwealth will have the opportunity to chose either U. S. citizenship or U. S. national status. Persons born in the Marianas after the establishment of the Commonwealth would be U. S. citizens.

3. The future government of the Marianas' would have power to enact local taxes in addition to those imposed by the U. S. Internal revenue code.



4. The Marianas would not be included in the customs territory of the United States and authority would be granted to establish a "duty free port."

5. The United States would rebate all custom duties, excise taxes and federal income taxes--estimated to be \$4-5 million per annum--derived from the Marianas.

6. At an appropriate time after the Status Agreement is signed, a Joint Commission on Federal laws will undertake a detailed study of relevant federal legislation and will make specific recommendations to the United States Congress regarding the future applicability of such legislation in the Marianas.

On May 31, 1974, the Fourth Session of the Mariana's Status Talks concluded. During these discussions, the Delegations affirmed basic decisions reached in earlier sessions with respect to the future political relationships between the Northern Marianas and the United States. The main thrust of the negotiations, however, centered upon U. S. military land requirements in the Marianas, principally a \$300 million dollar joint usage base to be constructed on the island of Tinian. For years, the Department of Defense maintained that America's strategic position in the Pacific was dependent upon the establishment of a nuclear base complex in the Marianas, especially in the light of tenuous base rights in Japan, the Philippines, Taiwan and South Korea. Although some opposition to the amount of land required was expressed by the inhabitants of Tinian, the economic advantage of military spending in the islands overcame local hesitancy.

The Fifth Session of the Marianas' Status Negotiations opened in Saipan on December 5, 1974; and agreement was reached between the U. S. Office of Micronesian Status Negotiations and the Marianas' Status Commission on virtually all issues. A draft covenant (distributed on January 21, 1975 to all members under separate memorandum by the Subcommittee Chairman) will be mutually binding when approved by the Marianas' District Legislature, the people of the Northern Marianas and the U. S. Congress. In a dramatic reversal of its previous position, the Department of Defense amended its requirement for immediate base construction on Tinian. Ambassador Williams announced that a review of U. S. defense programs had concluded that an important long-term defense requirement for a joint military base continues to exist; however, in the near term, the major use for Tinian will be limited to ground, sea and air training exercises. The draft



covenant stipulates that the U. S. will acquire at a one time cost of \$19,500,000 the following lands under a 50-year lease with an automatic renewal option for an additional 50 years:

1. On Tinian, 17,799 acres with provisions to lease back to the Government of the Northern Marianas 6,400 acres at a nominal sum of one dollar per acre per year.

2. On Saipan, 177 acres at Tanapag harbor with provisions to lease back 44 acres.

3. On Farallon de Medinilla, the entire island (206 acres) for use as a naval gunnery and bombing range.

Economically, the U. S. agreed to provide for the next seven years multi-year financial support, at the rate of \$13 million per annum, to the Government of the Northern Mariana Islands. Agreement was also reached on matters concerning the applicability of Federal laws; immigration and naturalization; U. S. citizenship; revenue and taxation; social security; and Federal programs and services. The session recessed on December 19, 1974 with the intent to resume negotiations and execute the draft covenant in early February 1975. The following timetable for future action is proposed by the U. S. Delegation.

1. February, 1975 - Signing of the Covenant.
2. March, 1975 - Action by District Legislature of the Northern Mariana Islands.
3. April-June 1975 - Political education program in the Northern Mariana Islands.
4. Late June-early July, 1975 - Plebiscite in the Northern Mariana Islands - with U. N. participation.
5. Administrative separation of the Northern Marianas from the remainder of Micronesia.
6. U. S. Congressional action by July or August, 1975.

America's policy in the TTPI, which has often been reiterated before the United Nations, states that the United States has every intention of ending the Trusteeship simultaneously in all of Micronesia. It is also held, however, that it is proper for the United States to administer one part of the TTPI separately from the other if necessary before the end of the trusteeship. If



the U. S.-Marianas' Negotiations are pursued to a successful conclusion, the implications of the above policy become apparent. The implementation of the "Marianas Commonwealth" would be contingent in finding an acceptable political solution for the rest of Micronesia - an event likely to take longer than the less complex negotiations between the U. S. and the Marianas. Consequently, during the interim, the United States intends to separate the administration of the Marianas from the remainder of Micronesia. How the United States would administer the TTPI after its division has not been addressed in detail; one likelihood is the maintenance of a single High Commissioner for the entire area with a dual staff - one for the Marianas and the other for the remaining five districts. Additionally, it would be necessary to move the Capital of Micronesia from its present location, Saipan, to a new island construction site - Ponape has been suggested. Whatever the solution, additional Federal appropriated funds will be required.

Encouraged by the U. S. acquiescence to conduct bilateral negotiations with the Marianas, the separatist sentiment in the Palau and Marshalls Districts continue to grow. For example, the Marshallese have long been dissatisfied with the territory-wide distribution of local revenues. Largely due to the income taxes collected from non-Micronesian employees of the Kwajalein Missile base, the Marshall Islands District generates 60% of all revenue raised in the Trust Territory. Hence, the Marshallese are displeased with their share of funds as allocated by the Congress of Micronesia and opt for a proportionate amount equivalent to their tax base. As to future political status the situation in the Marshalls remains unclear. A local political status commission, headed by Amata Kabua, has been selected. The commission has not yet made formal request to the U. S. for separate negotiations, and for its part, the United States has repeated its hope to maintain the political unity of the Marshall and Caroline Islands. Accordingly, the U. S. may soon be placed in the position of denying separate talks to the Marshalls and Palau while successfully concluding negotiations with the Marianas.



F.1a

FEDERAL ENERGY ADMINISTRATION

WASHINGTON, D. C. 20461

February 18, 1975

N. Ross

Memorandum for Jeffrey Shepard
White House

From: Joseph C. Bell, Assistant General Counsel
for International & Special Programs

Subject: Problems of Puerto Rico Under Mandatory
Oil Import Program

Attached is a copy of a letter which we sent to Puerto Rico on this subject. We are currently negotiating with Lynn Colman, Counsel for Puerto Rico, and the Governor of Puerto Rico concerning a possible administrative rebate of future fees.

Legislation to rebate fees previously collected in accordance with Proclamation 4210 is now before OMB. As a factual matter, the accumulated license fees are in the neighborhood of \$2.6 million for the Virgin Islands, and \$1.4 million for Puerto Rico, and not \$300 million as cited in your memorandum. If a \$3.00 license fee were imposed, then the total could be in the neighborhood of \$250 million per year. The fee, of course, is only supposed to be at a \$2.00 level when the permanent program is adopted.

Attachment



221

FEDERAL ENERGY ADMINISTRATION

WASHINGTON, D. C. 20461

February 18, 1975

Mr. Jose Eligio Velez Torres
President
Puerto Rico Teacher Association
San Juan, Puerto Rico

Dear Mr. Torres:

Mr. Zarb has asked me to respond to your telegram. We appreciate receiving the comments concerning the problems of Puerto Rico under Proclamation 4341, which establishes the Mandatory Oil Import Program. The Administration recognizes that Puerto Rico will not benefit from the revenue sharing and the tax reduction measures which the President has proposed, and consequently the Administration has committed itself to seeking a legislative or administrative solution which would refund to Puerto Rico import license fees for amounts of petroleum actually consumed in Puerto Rico. We are working actively with the Commonwealth of Puerto Rico to this end.

As to the question of the Justice Department opinion, we understand that the department has reviewed its opinion and we expect no change. This is, of course, a matter within the exclusive jurisdiction of that department.

Thank you for writing.

Sincerely,

Robert E. Montgomery, Jr.
General Counsel



DATE: FEB 3 1975

FEDERAL ENERGY ADMINISTRATION
WASHINGTON, D.C. 20461

*Shen
WH*

FROM: Robert E. Montgomery, Jr.
General Counsel

TO: David G. Wilson
Jay F. Lapin
Eric J. Fygi
Joseph C. Bell
David A. Vaughan
J. Peter Luedtke
Douglas G. Robinson
William V. Ochs, Jr.
W. Dennis Summers

* * * * *

Justice

For your action

X

Please review and advise

Please see me

For your information

X

Other: _____



DEPARTMENT OF JUSTICE
ROUTING SLIP

TO	
NAME	BUILDING AND ROOM
1. William Funk	
2. Bob Montgomery	
3.	
4.	
5.	

☐ SIGNATURE
☐ APPROVAL
☐ SEE ME
☐ RECOMMENDATION
☐ ANSWER OR ACKNOWLEDGE ON OR BEFORE _____
☐ PREPARE REPLY FOR THE SIGNATURE OF _____

☐ COMMENT
☐ NECESSARY ACTION
☐ NOTE AND RETURN
☐ CALL ME

☐ PER CONVERSATION
☐ AS REQUESTED
☐ NOTE AND FILE
☒ YOUR INFORMATION

REMARKS

Pursuant to a conversation with Geoff Shepard, I am forwarding these to your Office for reply.

Bill Funk

FROM		
NAME DEPUTY ATTORNEY GENERAL	BUILDING, ROOM, EXT.	DATE

FEB 3 1975



THE WHITE HOUSE

WASHINGTON

January 22, 1975

MEMORANDUM FOR ED SCHMULTS

SUBJECT: Puerto Rico and Oil

Attached please find the letter from Lynn Coleman, Counsel to the Commonwealth of Puerto Rico, to Ken Cole concerning their demand for retention of all fees collected in connection with the refining of oil in Puerto Rico.

The license fees have now accumulated to \$300 million, with a great deal more to come when the President imposes his increased fees per barrel. Although Puerto Rico has been allowed to retain all Federal tax monies raised on the island, I question whether as a matter of tax equity the island should be allowed to retain the massive amounts that will be raised under the President's program on oil which, although refined in Puerto Rico, is ultimately shipped for consumption elsewhere in the United States.

I think this is a matter which will ultimately have to be submitted to the President for decision, and I would appreciate Treasury's analysis in that regard.

Thanks, Ed.

GEOFF SHEPARD

Attachment

cc: ✓ Larry Silberman
Frank Zarb



VINSON, ELKINS, SEARLS, CONNALLY & SMITH

ATTORNEYS AT LAW

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CABLE ADDRESS: VIEWS

TELEX: 762 146

January 17, 1975

Mr. Kenneth R. Cole, Jr.
Assistant to the President
for Domestic Affairs
The White House
Washington, D. C. 20500

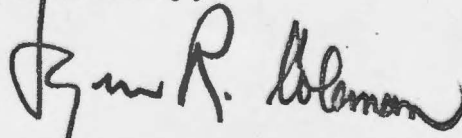
Re: Impact of President's
Import Fee Program on
Puerto Rico

Dear Mr. Cole:

Following up our conversation yesterday at the President's briefing of Governors and Mayors, I enclose a letter to Mr. Zarb together with a legal and policy memorandum which we have hurriedly prepared. This explains why Puerto Rico will be drastically impacted by the import fee program, unless reconsideration is given to a Justice Department letter to FEA of November 14, 1974 (also enclosed). This letter is to the effect that President Nixon's 1973 import fee proclamation, which expressly provided for rebate of license fees to the Commonwealth government, was unlawful. Unless this viewpoint is reconsidered, it appears that the President's new import fee program will extract \$300 million from Puerto Rican refiners, yet Puerto Rico would receive nothing in return.

I know that Governor Hernandez-Colon will personally appreciate any assistance you can give us in this matter.

Sincerely,



Lynn R. Coleman
Counsel to the
Commonwealth of Puerto Rico

LRC:slg
Enclosure



THE WHITE HOUSE
WASHINGTON

January 21, 1975

MEMORANDUM FOR LAURENCE H. SILBERMAN

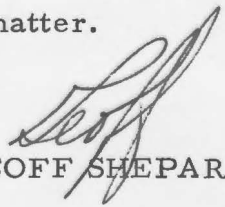
SUBJECT: Puerto Rico and Oil

Pursuant to our phone conversation today, I am sending you another telegram we have received concerning Puerto Rico and license fees on importation of oil. I am also enclosing the blue copy of yesterday's telegram on the same subject with the understanding your Department will answer both telegrams on behalf of the President.

I am also enclosing copies of communications Cole and Zarb have received from Lynn Coleman, Counsel to the Commonwealth of Puerto Rico.

Finally, I am enclosing what I believe to be the memorandum from Scalia to Montgomery which triggered these communications.

I appreciate your help in this matter.



GEOFF SHEPARD

Enclosures



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HON GERALD FORD

PRESIDENT OF THE US

THE WHITEHOUSE

WASHINGTONDC

ATT MR/KENNETH COLE

THE RECENT DECISION OF FEDERAL JUSTICE DEPT IN WHICH IT
RULED WILL BE ILLEGAL FOR THE FEDERAL GOVERNMENT REINBURSE
THE COMMONWEALTH OF PUERTO RICO FOR LICENSE FEE COLLECTED

The White House
Washington

1975 JAN 18 PM 7 11



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ON IMPORTED FOREIGN OIL REPRESENTES AN UNFAIR ECONOMIC
BURDEN FOR PUERTO RICO ITS UNFAIR BECAUSE PR CAN NOT PARTICIPATE
IN THE MEASURES YOU HAVE PROPOSED TO OFFSET THIS ADDITIONAL
TAX AS FEDERAL INCOME TAX ITS NOT LEVYED WE RESPECTFULLY URGE
YOU TO CORRECT THIS GRAVE INJUSTICE RESPECTFULLY YOURS

VICTOR PAGAN

PRESIDENT GASOLINE RETAILERS

ASSOCIATION OF PUERTORICO



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HON GERAL FORD PRESIDENT OF THE UNITED STATES

THE WHITEHOUSE WASHDC

PUERTO RICO CHAMBER OF COMMERCE STRONGLY OBJECTS US DEPT OF JUSTICE
REVERSAL OF THE FEDERAL ENERGY ADMINISTRATION DECISION WHICH
PERMITTED PUERTO RICO TO RETAIN THE LICENSE FEES COLLECTED ON
THE IMPORTATION OF OIL . INFLATIONARY IMPACT OF THIS OIL

JLA160 HON PAGE 2/51/50

The White House
Washington

1975 JAN 20 AM 9:27

JAN 20 PM 4 02

WHITE HOUSE
MAIL ROOM

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3 WILL BE MOST HARMFUL TO THE ECONOMY OF PUERTO RICO AND COULD
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12 THE LOSS OF MANY PRESENT AND POTENTIAL JOBS IN PUERTO RICO ,
13 WHERE CURRENT UNEMPLOYMENT RATE IS 13.0 PERCENT .
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15 WE RESPECTFULLY URGE YOUR INTERVENTION IN SEEKING A
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18 JLA160 HON PAGE 3/18

19 RECONSIDERA
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21 TION BY THE US DEPT OF JUSTICE

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23 ALFONSO VALDES JR PRESIDENT

24 CHAMBER OF COMMERCE OF PUERTO RICO
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NNN

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VINSON, ELKINS, SEARLS, CONNALLY & SMITH

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January 17, 1975

Mr. Kenneth R. Cole, Jr.
Assistant to the President
for Domestic Affairs
The White House
Washington, D. C. 20500

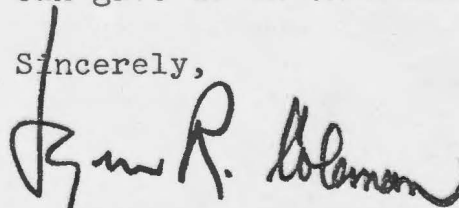
Re: Impact of President's
Import Fee Program on
Puerto Rico

Dear Mr. Cole:

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I know that Governor Hernandez-Colon will personally appreciate any assistance you can give us in this matter.

Sincerely,



Lynn R. Coleman
Counsel to the
Commonwealth of Puerto Rico

LRC:slg
Enclosure



VINSON, ELKINS, SEARLS, CONNALLY & SMITH

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TELEX: 24440

January 17, 1975

Mr. Frank Zarb
Administrator
Federal Energy Administration
12th & Pennsylvania Ave., N.W.
Washington, D.C. 20461

Re: Impact of President's
Proposed Import Fee Program
on Puerto Rico

Dear Mr. Zarb:

As I mentioned to you yesterday at the President's briefing for Governors and Mayors, we represent the Government of Puerto Rico on energy matters. At your request, I am writing this letter to summarize the harsh impact which the President's import fee proposal will have on Puerto Rico unless the November 14, 1974 Justice Department Opinion to FEA is reconsidered.

Under the Puerto Rican Federal Relations Act of 1950, and for fifty years prior thereto, Puerto Rico has been entitled to rebate of all customs, tariffs, and duties collected on imports into Puerto Rico. This is an integral part of the "compact" relationship between Puerto Rico and the United States established when the Commonwealth form of government was created in Puerto Rico.

Under the mandatory oil import program, Puerto Rico received rebate of all import duties on oil imported into Puerto Rico. President Nixon's Proclamations 4210 and 4227, which established the "license fee" system in lieu of import duties, made express provision for rebate of such fees to Puerto Rico. This was confirmed by then Deputy Secretary William Simon as Chairman of the Oil Policy Committee.

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Subsequently, Mr. Dell Perry, as head of the Oil Import Administration, advised Puerto Rican officials by letter of August 15, 1973 that they were entitled to rebate of license fees.

Not until three days ago were we advised by the FEA General Counsel's office that Mr. Scalia of the Justice Department had rendered an opinion dated November 14, 1974, pursuant to FEA's request of July 18, 1974, to the effect that rebate of license fees on crude and product imports into Puerto Rico, as specified by President Nixon's proclamation, would be unlawful. The Commonwealth thus had no notice that its rights were being reconsidered, nor any opportunity to present its viewpoint. The narrow ground for this opinion is that a "license fee" is not technically an import "duty" and therefore no authority exists for rebate of such fees to Puerto Rico.

As we understand the President's proposal, Puerto Rican refiners and petrochemical companies will pay approximately \$300 million a year in import fees. Even with the entitlements program, this may well have a most severe adverse effect on the competitive position of these Puerto Rican refiners and petrochemical companies and in turn on the economy of Puerto Rico which has already been harshly impacted by the four-fold increase in the price of foreign oil on which Puerto Rico is completely dependent for all energy requirements. From statements made yesterday by the President and Secretaries Morton and Simon, it seems clear that the Administration's policy is to "rebate" to American citizens through tax cuts and revenue sharing all funds collected by import fees and excise taxes (if enacted by Congress). None of these measures will be of any benefit to Puerto Rico. Puerto Rico is not included in revenue sharing, and U.S. income tax laws do not apply in Puerto Rico -- hence a tax cut does not benefit Puerto Ricans.

In everything but nomenclature, "import fees" have the same effects on Puerto Rico as "import duties." The method chosen by Congress to assure that Puerto Rico was treated fairly, and not devastated, by application of U.S. import laws was that all funds thus collected be rebated to the Puerto



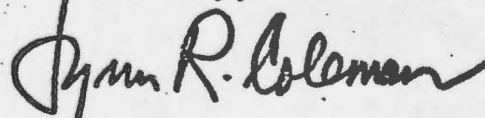
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Rican government: This historic principle should be honored in the President's import fee program as it was in Proclamations 4210 and 4227.

As noted above, the Justice Department's reconsideration of Puerto Rico's right to rebates was done without notice to the Commonwealth. At no time were we offered any opportunity to present our views on legal or policy issues. In an attempt to rectify that oversight, we have hurriedly prepared the enclosed memorandum summarizing this situation and setting forth some of the legal and policy reasons why Puerto Rico should be entitled to rebate of import fees under the existing program, as well as under the President's new import fee program.

I know you are already over-burdened with other problems, but this news has hit Puerto Rico like a shock wave. Accordingly, we shall genuinely appreciate your attention.

Sincerely,


Lynn R. Coleman

LRC:11j
Enclosure



January 17, 1975

M E M O R A N D U M

Re: Puerto Rican Entitlement to Rebate of Oil
Import License Fees Collected On Crude
Oil Imported Into Puerto Rico.

On November 14, 1974 Antonin Scalia, Assistant Attorney General, Office of Legal Counsel, Department of Justice, addressed a letter to Robert E. Montgomery, Jr., General Counsel of the Federal Energy Administration, taking the position that it is illegal and improper for the United States government to rebate to Puerto Rico oil import license fees collected pursuant to Presidential Proclamation 3279, as amended by Proclamations 4210 and 4227, on crude oil imported into Puerto Rico. That opinion was issued without any prior consultation with any representative of the Commonwealth and has come to the attention of the Commonwealth only this week. As detailed in subsequent sections of this memorandum, the Scalia opinion abruptly repudiates more than eighteen months of consistent contrary interpretation by virtually every cognizant federal official, from the President on down. Moreover, as also set forth below, the Scalia opinion is itself contrary to applicable statutes, which fully support the prior interpretations.

I

Shortly after the U.S. victory in the Spanish-American War, by which the United States obtained control of Puerto Rico, Congress enacted the Foraker Act of April 12, 1900 (31 Stat. 77). Section 2 of that statute provided:

"That on and after the passage of this Act the same tariffs, customs, and duties shall be levied, collected, and paid upon all articles imported into Porto Rico from ports other than those of the United States which are required by law to be collected upon articles imported into the United States from foreign countries . . .".



Section 4 of the same statute provided:

"That the duties and taxes collected in Porto Rico in pursuance of this Act, less the cost of collecting the same . . . shall not be covered into the general fund of the Treasury, but shall be held as a separate fund, and shall be placed at the disposal of the President to be used for the government and benefit of Porto Rico."

The same section went on to provide that, upon the formation of a civil government in Puerto Rico,

"all collections of duties and taxes in Porto Rico under the provisions of this Act shall be paid into the treasury of Porto Rico, to be expended as required by law for the government and benefit thereof instead of being paid into the Treasury of the United States."

The quoted provisions are still in effect. Section 2 of the Foraker Act is presently codified as § 739 of Title 48; section 4 is now set forth as § 740 of Title 48 of the United States Code.

Pursuant to these provisions, for almost 74 years all products imported into Puerto Rico from origins outside the United States have been subject to the same tariffs, customs, and duties as have products imported into the United States itself, and all such tariffs, customs, and duties have been duly paid into the treasury of Puerto Rico.

Among the tariffs, customs and duties so collected and paid was the 10-1/2¢ per barrel levy on crude oil which was imposed for many years prior to May 1, 1973. Puerto Rican receipts from this levy were running at an annual level of around \$10 million when the levy was suspended by Presidential Proclamation 4210, issued April 18, 1973. See 38 Fed. Reg. 9645 (April 19, 1973).

Proclamation 4210, issued by President Nixon, abolished the oil import quota system which had been established by Proclamation 3279, issued by President Eisenhower on March 12,

1959. See 24 Fed. Reg. 1781; 3 C.F.R., 1959-63 Comp., p.11. At the same time, Proclamation 4210 suspended the tariff which had theretofore been imposed on imported crude oil and replaced it with a system of import license fees. As stated in the preamble of that Proclamation, its purpose was to adjust imports of petroleum and petroleum products "through the suspension of existing tariffs and institution of a system of fees applicable to imports of crude oil, unfinished oils, and finished products, which fees may be adjusted from time to time."

Section 3(c)(1) of the Proclamation provided as follows:

"All monies received by the Secretary under the terms of paragraph (b) of this section [the license fees] shall be held by the Secretary of the Interior in a suspense account and may be drawn upon by the Secretary for the payment of any refunds of refundable license fees and for payments to Puerto Rico of sums collected by way of license fees for imports into Puerto Rico." (Emphasis supplied.)

Lest the language of the Proclamation leave any doubt as to the intention to rebate license fees to Puerto Rico, William E. Simon, then Deputy Secretary of the Treasury and Chairman of the President's Oil Policy Committee, issued an explanatory statement simultaneously with the issuance of the Proclamation. In that statement Deputy Secretary (now Secretary) Simon stated:

"All license fees on Puerto Rican imports of oil will revert to the Commonwealth of Puerto Rico." CCH Energy Management ¶819; emphasis supplied.

Proclamation 4210 was specifically approved by the Office of Legal Counsel, Department of Justice, in a May 17, 1973 letter from Robert G. Dixon, Assistant Attorney General, to William E. Simon, Deputy Secretary of the Treasury. The letter concludes that

"the President's broad basic authority under the National Security Amendment [19 U.S.C. § 1862], as well as his continuing responsibility to adjust actions taken under that



Amendment to changing circumstances, empower him to modify the oil import program in the manner provided by Proclamation No. 4210."

Nowhere in Mr. Dixon's letter is there the slightest hint of any problem with § 3(c)(1).

On June 19, 1973 President Nixon issued Proclamation 4227 amending certain portions of Proclamation 4210, including § 3(c)(1). See 38 Fed. Reg. 16195 (June 21, 1973). However, the revised paragraph 3(c)(1) still clearly provided for rebate of license fees to Puerto Rico:

"All monies received by the Secretary under the terms of paragraph (b) of this section [the license fees] shall be held by the Secretary in a suspense account and may be drawn upon by the Secretary . . . (ii) for the payment to Puerto Rico of sums equal to the sums collected by way of license fees for imports into Puerto Rico (other than imports from the Virgin Islands) and not otherwise refundable . . .". (Emphasis supplied.)

Proclamation 4227 thus apparently contemplated rebate to Puerto Rico of the net license fees remaining after such refunds as were provided for in § 3(a)(2).*/ Puerto Rico desired to receive the gross amount of all license fees attributable to imports into Puerto Rico and then to make the required refunds itself. To this end, James M. Clark of the Puerto Rican Economic Development Administration (known as "Fomento") wrote to Mr. Dell Perry, Assistant Director, Oil Imports, Office of Oil and Gas, U.S. Department of Interior, on July 3, 1973, requesting appropriate revisions in Proclamation 4227. On August 15, 1973 Mr. Perry replied to Mr. Clark's letter, explaining that a new draft proclamation was being prepared which would make some changes in Proclamation 4227. Specifically in regard to the rebate of license fees Mr. Perry stated:

*/ The most significant provisions in that section specified refunds of license fees paid with respect to crude oil subsequently manufactured into asphalt or into finished products or petrochemicals which are then exported.



"The language which you have asked to be included in subparagraph (3) of paragraph (a) of section 3 of the Proclamation is not included in the draft; however, the draft proclamation makes very clear that license fees collected for imports into Puerto Rico will be returned to Puerto Rico." (Emphasis supplied.)

The pertinent language of the draft proclamation attached to Mr. Perry's letter was identical to Proclamation 4227:

"All monies received by the Secretary under the terms of paragraph (b) of this section [the license fees] shall be held by the Secretary in a suspense account and may be drawn upon by the Secretary . . . (ii) for the payment to Puerto Rico of sums equal to the sums collected by way of license fees for imports into Puerto Rico (other than imports from the Virgin Islands) and not otherwise refundable . . ." (Emphasis supplied.)

In sum, every Presidential Proclamation and every interpretation of such proclamations -- including interpretations by the Chairman of the President's Oil Policy Committee and by the Assistant Director of the Interior Department's Office of Oil and Gas -- has consistently taken the position that oil import license fees attributable to crude oil imported into Puerto Rico are to be rebated to Puerto Rico. Those provisions and interpretations have been passed upon and approved by the Justice Department's Office of Legal Counsel. The Scalia letter of November 14, 1974 thus abruptly repudiates a course of administrative interpretation which has been absolutely consistent over the entire life of the import license fee system.

This sweeping reversal of prior policy was effected without consultation with any representative of the Commonwealth of Puerto Rico and without any opportunity for the Commonwealth to present its side of the question or to focus attention on the history and purpose of the statutory provision under which Puerto Rico's rights arise. Thus deprived of an opportunity to consider opposing views by such secrecy, it is not surprising that the conclusion reached in the Scalia letter is erroneous. Indeed, a fair analysis of the

questions involved strongly supports the Administration's consistent interpretation over the last eighteen months that rebate of import license fees to Puerto Rico is not only proper but required.

II.

The Scalia letter recognizes that 48 U.S.C. § 740 requires rebate of duties and taxes collected in Puerto Rico. It even recognizes that this statutory provision is an appropriations statute satisfying the constitutional provision requiring that "no money shall be drawn from the treasury, but in a consequence of appropriation made by law . . .". Article I, Section 9, clause 7. However, the Scalia letter concludes that § 740 does not authorize rebate of import license fees because such fees are not "duties". pp.3-4. In this conclusion the letter clearly errs.

The Foraker Act of 1900 was entitled "An Act Temporarily to Provide Revenues and a Civil Government for Porto Rico, and For Other Purposes." (Emphasis supplied.) As Senator Fairbanks stated during the Senate debates:

"We rest the justification of the pending bill upon the broad and simple proposition that it is the duty of Congress to provide revenue for the territories belonging to it, and to provide it in a just and equitable manner."
33 Cong. Rec. 3569 (March 31, 1900); emphasis supplied.

To this end, Congress provided in Section 2 of the Foraker Act (set forth above) that the same tariffs, customs, and duties should be levied upon articles imported into Puerto Rico from foreign countries as are levied upon articles imported into the United States from such countries. It also provided, in Section 3, that articles of Puerto Rican manufacture coming into the United States should be subject to U.S. internal revenue taxes and, conversely, that articles of U.S. manufacture coming into Puerto Rico should be subject to Puerto Rican internal revenue taxes. Finally, it provided in Section 4 that:

"the duties and taxes collected in Porto Rico in pursuance of this Act, less the cost of collecting the same, and the



gross amount of all collections of duties and taxes in the United States upon articles of merchandise coming from Porto Rico"

should be for the use and benefit of Puerto Rico.

The provision in Section 4 prescribing rebate of duties is now a key part of the Puerto Rican Federal Relations Act, Pub. L. 600 (64 Stat. 319); 48 U.S.C. §740, pursuant to which the Commonwealth of Puerto Rico was created and which constitutes part of the "compact" between the U.S. and Puerto Rico. See Calero-Toledo v. Pearson Yacht Leasing Co., ___ U.S. ___, 40 L.Ed 2d 452, 461 (1975); 28 Dept. of State Bull. 584-589.

In short, in the interest of providing a just and equitable source of revenue for Puerto Rico, Congress enacted a comprehensive system of duties and taxes on products coming into Puerto Rico and on Puerto Rican products shipped to the United States -- and provided that all such duties and taxes, wherever collected, should be for the account of Puerto Rico.

The comprehensiveness of these provisions was consistently emphasized during the Congressional debates leading to passage of the Foraker Act. Thus, Congressman Tawney stated:

"Every dollar of the revenue collected under this bill, whether collected at the ports of Puerto Rico or in the ports of the United States, under the provisions of this bill, is segregated from all other revenues of the Government and turned over to the people of Puerto Rico to be used in defraying the expense of their government and to enable them to make such internal improvements as are necessary to better their present condition. Not a dollar of it is retained . . ." 33 Cong. Rec. 2201 (February 24, 1900); emphasis supplied.

To the same effect was the statement of Congressman Grosvenor of Ohio:



"[W]hen I told him [a newspaper editor] that every dollar of the money raised at either end of the line went into the Treasury and for the benefit of the Puerto Ricans, he was utterly amazed." Id. at 2407 (February 28, 1900).

The same theme was struck by Senator Perkins during the Senate floor debates:

"[I]t has been deemed wise, as well as expedient, . . . to raise what money is needed by an indirect tax from duty on its exports to this country and internal-revenue taxes on manufactured articles only that are exported into the United States.

"The money thus collected, being derived in this way, and also from duties on foreign imports into Porto Rico, comes from the most productive kinds of business in the island. So this indirect tax is less severely felt than if of a more general character, and every dollar thus collected is turned into the insular treasury of Porto Rico for the sole benefit of the people of that island . . ." Id. at 3639 (April 2, 1900); emphasis supplied.

The Senate report explained

"These revenues are given to Porto Rico not only because the necessities of the island are immediate and very great but for the further reason that it seems only just that the island should have the full benefit of all such duties and taxes, inasmuch as they arise on account of the island alone, and for the further reason that there is no satisfactory system of taxation or raising of revenues now in force in the island, and there will necessarily be much delay in inaugurating one." S. Rep. 249, 56th Cong., 1st Sess. 8 (February 5, 1900); emphasis supplied.



Thus the legislative history of the Foraker Act demonstrates:

1) That it was the intention of Congress to provide a sufficient source of revenue for Puerto Rico and to provide it in a just and equitable manner;

2) That Congress considered it only fair and just that Puerto Rico should have the full benefit of duties and taxes arising "on account of the island alone" -- i.e., on products produced in or imported into Puerto Rico; and

3) That, consistent with the two concerns set forth immediately above, Congress enacted a statute comprehensively providing for rebate to Puerto Rico of all duties and taxes imposed on Puerto Rican products transported to the United States as well as on all products imported into Puerto Rico. In light of these purposes, it is inconceivable that Congress could have intended that Puerto Rico be denied rebate of levies on foreign source petroleum imported into the Island simply by changing the appellation attached to such levies from "tariffs" to "import license fees".

An examination of Proclamation 4210 and of Deputy Secretary Simon's explanation of that proclamation makes clear that that is exactly what was done. Thus, the preamble to the Proclamation recites that the Chairman of the President's Oil Policy Committee had recommended

"immediately suspending tariffs on imports of petroleum and petroleum products and shifting to a system whereby fees for licenses covering such imports shall be charged and whereby such fees may be adjusted from time to time . . .".

The preamble continues by noting that the President agreed with this recommendation and therefore deemed it necessary to adopt

"a long term program for adjustment of imports of petroleum and petroleum products through the suspension of existing tariffs and the institution of a system of fees applicable to imports of crude oil, unfinished oils and finished products, which fees may be adjusted from time to time."



Finally, in his statement explaining and interpreting the Proclamation, Deputy Secretary Simon stated:

"Also effective May 1, 1973, existing tariffs on crude oil and refinery products will be suspended. In their place license fees will be imposed on imports . . .". CCH Energy Management ¶819; emphasis supplied.

No one can question the proposition that tariffs imposed by the United States on crude oil imported into Puerto Rico are "duties" required by 48 U.S.C. § 740 to be rebated to the Commonwealth. Since the present system of import license fees was adopted in place of the tariff and is, in all essential aspects, identical to a tariff */ such fees should clearly be treated as tariffs for rebate purposes within the meaning of the Puerto Rican Federal Relations Act.

Particularly is this so in light of the clear intent of Congress that all levies on products imported into Puerto Rico should be for the account of the Commonwealth. The narrow, technical interpretation of 48 U.S.C. § 740 in the Scalia letter simply ignores this broader picture. In so doing it clearly errs.

*/ That is, it is a levy imposed by the United States government on crude oil imported into the United States from foreign countries and must be paid before such crude oil can lawfully be brought into the United States.



would be unlawful.

NOV 14 1974

Robert E. Montgomery, Jr., Esq.
General Counsel
Federal Energy Administration
Washington, D.C. 20461

Dear Mr. Montgomery:

This is in response to your letter of July 18, 1974, requesting our opinion as to the legality of the system outlined in section 3(c)(1)(ii) and (iii) of Presidential Proclamation 3279, as amended by Proclamations 4210 and 4227, providing for payments to Puerto Rico, the Virgin Islands, Guam, and American Samoa derived from funds collected as oil import license fees pursuant to the Proclamation.^{1/} We regret the delay in responding.

Section 3(c)(1) provides in relevant part as follows:

All monies received by the Secretary [now the Administrator of FEA] under the terms of paragraph (b) of this section shall be held by the Secretary in a suspense account and may be drawn upon by the Secretary (i) for the payment of refundable license fees; (ii) for the payment to Puerto Rico of sums equal to the sums collected

^{1/} For a general discussion of the legal basis of Proclamation 4210, amending Proclamation 3279, see letter from Assistant Attorney General Robert Dixon to Deputy Secretary of the Treasury William Simon, dated May 17, 1973 (hereinafter "OLC letter of May 17, 1973"). Neither that letter nor the letter from Assistant Attorney General Robert Dixon to the President, dated June 14, 1973, dealing with Proclamation 4227 which further amended Proclamation 3279, addressed the question at issue here.

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by way of license fees for imports into Puerto Rico (other than imports from the Virgin Islands) and not otherwise refundable; and (iii) for the payment to American Samoa, Guam, or the Virgin Islands, as the case may be, of sums equal to the sums collected by way of license fees and not otherwise refundable for imports therefrom into the customs territory of the United States of crude oil or motor gasoline, other finished products, or unfinished oils, manufactured in American Samoa, Guam, or the Virgin Islands. Balances remaining in such suspense account and not required to be reserved for payments hereinabove provided shall be deposited at the end of each fiscal year in the Treasury of the United States and credited to miscellaneous receipts.

To carry out this mandate there was established in the Treasury a "Budget Clearing Account (Suspense)" in which the license fees have been deposited and from which refunds of license fees pursuant to section 3(a)(3) have been made. This type of account was first created in 1968 so as to give immediate budget effect to remittances which were "presumed to be applicable to Budget accounts in general" but which had to be held in suspense either because the specific budget account to be credited could not yet be determined or because the specific amount to be credited could not yet be determined. See Transmittal Letter No. 14 to the Treasury Fiscal Requirements Manual for Guidance of Departments and Agencies (hereafter "Transmittal Letter No. 14").

Article I, section 9, clause 7 of the Constitution states: "No money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law. . . ." Funds held in Budget Clearing Accounts (Suspense) would appear to be "in the Treasury" for purposes of this provision. That appears first, from the manner in which such funds are recorded by the Treasury--to wit, as receipts into the Treasury in the same fashion as fees, fines, gifts, rents, and taxes. See Combined Statement of Receipts, Expenditures, and Balances of the United States Government (1973). (hereinafter referred to as "Combined Statement"). Moreover, all funds in Budget Clearing

Accounts (Suspense) are utilized in determining the monthly budget surplus or deficit, which reflects that the funds are dedicated "for the use of the United States" and are therefore required to be paid into the Treasury. See 31 U.S.C. § 484. Thus, the effect of placing the oil import license fees in a Budget Clearing Account (Suspense) is to require an appropriation by Congress for any payments to be made to Puerto Rico, the Virgin Islands, Guam or American Samoa pursuant to the Proclamation

A search of the statutes dealing with territories and with money and finance has failed to disclose any such appropriation act. The sole provision which even requires discussion relates only to Puerto Rico. Section 740 of Title 48 of the United States Code provides in relevant part that:

The duties and taxes collected in Puerto Rico in pursuance of the provisions of this chapter . . . shall be paid into the Treasury of Puerto Rico.

This is deemed a permanent, indefinite special fund appropriation. See The Budget of the United States Government in Fiscal Year 1975, Appendix, 735. But application of this statute to the oil import license fees requires a determination that such fees are "duties . . . collected . . . in pursuance of the provisions of [chapter 191 of the Act of April 12, 1900, 31 Stat. 77.]"^{2/} It is our view that such a determination is

^{2/} There are other statutes which say in general terms that customs duties shall be turned over to the respective island governments. See 48 U.S.C. §§ 1394, 1396, 1421e, 1421h, 1616, 1644. With reference to the Virgin Islands, however, the longstanding administrative interpretation of the statutes is that they apply only to duties collected on items imported into the Virgin Islands, not to duties collected on items imported into the United States from the Virgin Islands. See 23 Comp. Dec. 574 (1917). The provisions relating to Guam also apply only to duties on items imported into Guam. H.R. Rep. No. 1677, 81st Cong., 2d Sess., 15 (1950). There is no law dealing with Samoan customs duties at all.

not possible. While there are certain similarities between duties and these oil import license fees, there are substantial differences. These were outlined in a memorandum accompanying a letter from Assistant Attorney General Robert Dixon to Deputy Secretary of the Treasury William Simon dated April 11, 1973 (hereinafter referred to as "OLC memo"), preliminarily assessing the legality of the proposed Presidential Proclamation which, upon its issuance, replaced the previous oil quota system with the import license fee system. One conclusion of the memorandum was that the money exaction proposed by the Proclamation should be denominated an oil import license fee, not a duty, because aspects of the regulatory scheme were inconsistent with the latter concept.^{3/} Id. at 11. The difference between the license fees and normal duties is further reflected in the actual transactions involved in the collection and retention of the respective funds. Customs duties contemplated by 48 U.S.C. § 740 are collected by U.S. Customs Officials in Puerto Rico, and the funds are placed in a special funds receipt account, 20 x 5687. Combined Statement at 570. The oil import license fees, however, are paid to FEA and placed in its Budget Clearing Account (Suspense). Customs officials have no role whatever in the process. Thus the fees do not appear to be duties contemplated by 48 U.S.C. § 740, and that statute's appropriation of customs duties collected in Puerto Rico would not seem to apply to the oil import license fees. Even as to Puerto Rico, then, executive payment of funds from the Treasury account would violate the Constitution.

3/ This was so because: (1) duties are normally considered primarily a revenue measure, while the fees involved here had assuredly regulatory purposes; (2) the oil import scheme provides exemptions for certain persons based on their actions and such exemptions from a duty are anomalous; (3) the scrapping of the existing statutory duty on oil would not be justified unless a whole new system were being created, using different regulatory devices. Id. at 10-11.

The question may arise how refunds (as distinct from the payments here at issue) may be made under section 3(a)(3) of the Proclamation. The answer is to be found in 31 U.S.C. § 725q-1, a permanent, indefinite appropriation for moneys erroneously deposited in the Treasury. This statute is regarded generally as an appropriation of money for the purpose of paying refunds on customs duties, taxes, fees, fines, etc. The justification would appear to be that the amount of money entitled to be refunded was not "received for the use of the United States" within the meaning of 31 U.S.C. § 484 and therefore should not have been covered into the Treasury. This justification cannot be applied to the regular payments to the island governments contemplated by section 3(c)(1) of the Proclamation, since these do not involve funds erroneously collected, and since the President had no authority to receive the funds properly collected except "for the use of the United States."

If the payments to the island governments were necessary to comply with or furthered the purpose of 19 U.S.C. § 1862, the statute which is the legal basis of Proclamation 3279, then it might be argued that that statute authorizes the President to make such payments. Cf. Varney v. Warehine, 147 F.2d 238 (6th Cir. 1945), cert. denied, 325 U.S. 882. Such is not the case, however. See Letter from Deputy Secretary of the Treasury William Simon to John Sawhill, dated May 25, 1973; Memorandum from Sandra Sherman to you, dated July 17, 1974.

It is our conclusion, therefore, that it is not within the President's authority to direct the payment to Puerto Rico, the Virgin Islands, Guam, and American Samoa of those oil import license fees collected on oil imported from the respective islands. Accordingly, section 3(c)(1)(ii) & (iii) is without legal foundation, and the payments contemplated therein should not be made.

We realize that this Office approved both Proclamation 4210 and 4227 for their legal sufficiency prior to their going into effect. We regret our oversight, pleading in

mitigation only that the provisions in question formed a small and relatively insignificant part of a complex Proclamation, raising substantial issues of executive authority and reviewed on an urgent basis.

Sincerely,

Antonin Scalia
Assistant Attorney General
Office of Legal Counsel

