

BRIEFING PAPERS

NATIONAL GOVERNORS' ASSOCIATION

WINTER MEETING

FEBRUARY 25 - 27, 1990

P R E L I M I N A R Y A G E N D A

**NATIONAL
GOVERNORS'
ASSOCIATION**

February 24

S A T U R D A Y

- | | |
|------------------------------|---|
| <i>1:15 p.m. - 1:45 p.m.</i> | Opening Press Conference |
| <i>2:00 p.m. - 3:30 p.m.</i> | Governors' Work Session on Education
(Open to all Governors) |
| <i>3:45 p.m. - 5:15 p.m.</i> | Corporate Fellows/CEO Roundtable
Discussion with Governors (By Invitation) |
| <i>5:15 p.m. - 7:00 p.m.</i> | Reception for Corporate Fellows and
Governors (By Invitation) |

Winter Meeting
February 25-27, 1990
Washington, DC

February 25

S U N D A Y

- | | |
|--------------------------------|--|
| <i>10:00 a.m. - 11:45 a.m.</i> | NGA Executive Committee and
Standing Committee Chairs
Governor Terry E. Branstad, Iowa, Chairman |
| <i>Noon - 1:00 p.m.</i> | Governors Only Lunch / Work Session |
| <i>1:15 p.m. - 3:15 p.m.</i> | First Plenary Session:
Adoption of National Education Goals
Governor Terry E. Branstad, Iowa, Chairman |
| <i>3:30 p.m. - 5:00 p.m.</i> | Committee on International Trade
and Foreign Relations
Governor Tommy G. Thompson, Wisconsin,
Chairman |
| | Committee on Justice and
Public Safety
Governor Michael N. Castle, Delaware,
Chairman |
| <i>5:15 p.m. - 6:15 p.m.</i> | Meetings of Regional Governors'
Organizations |
| <i>6:30 p.m. - 7:30 p.m.</i> | Reception for all Meeting Attendees |
| <i>7:30 p.m. - 10:00 p.m.</i> | Evening with President and Mrs. Bush
(tentative)
The White House
Black Tie
(Governors and Spouses Only) |



February 26

MONDAY

- 8:00 a.m. - 9:00 a.m.* Time Available for Subcommittee Meetings
- 9:15 a.m. - 10:45 a.m.* **Committee on Agriculture and Rural Development**
Governor George S. Mickelson, South Dakota, Chairman
- Committee on Human Resources**
Governor Richard F. Celeste, Ohio, Chairman
- Committee on Transportation, Commerce, and Communications**
Governor Kay A. Orr, Nebraska, Chairman
- 11:00 a.m. - noon* Meeting with the President (tentative)
(Governors Only)
- 1:00 p.m. - 2:30 p.m.* **Committee on Economic Development and Technological Innovation**
Governor Ray Mabus, Mississippi, Chairman
- Committee on Energy and Environment**
Governor Madeleine M. Kunin, Vermont, Chair
- 2:45 p.m. - 4:30 p.m.* Concurrent Meetings of NGA Task Forces:
Task Force on Education
Task Force on Global Climate Change
Task Force on Waste Management
- 5:30 p.m. - 7:00 p.m.* Reception for Governors and Spouses
at the Smithsonian Institution
(By Invitation)

February 27

TUESDAY

- 8:00 a.m. - 9:15 a.m.* Breakfast Meetings of Democratic Governors' Association and Republican Governors Association
- 9:30 a.m. - noon* **Second Plenary Session**
Governor Terry E. Branstad, Iowa, Chairman
- 12:15 p.m. - 12:45 p.m.* Closing Press Conference
- 1:00 p.m. - 5:00 p.m.* Governors' Meetings on Capitol Hill

GENERAL INFORMATION

The nation's Governors will convene in Washington, D.C., February 25-27, for the National Governors' Association 1990 Winter Meeting. The meeting will be held at the Hyatt Regency Washington on Capitol Hill, 100 New Jersey Avenue N.W.

Attendance at the meeting is by invitation. All attendees, including representatives of the media, must register for the meeting and for housing accommodations by completing the attached registration and housing form. For logistical or program information, call NGA at 202/624-5300. Media inquiries should be directed to the NGA Office of Public Affairs at 202/624-5330. For information about ancillary meetings, contact the individual organizations directly.

Registration Procedures

The attached form should be used to register for the meeting and for housing. **Completed forms, along with the applicable registration fee, should be mailed to the NGA Registration Center at the address indicated on the form no later than February 2, 1990.** Registration and housing requests will not be taken over the telephone or by the hotel directly.

A separate registration form must be completed for each meeting attendee. **The NGA Registration Center will not accept reproductions or photocopies of original forms.** If additional forms are needed, call NGA at 202/624-5300.

Registration Fees. The applicable registration fee must accompany your completed registration form or be paid on site. Checks (payable to the National Governors' Association), credit cards, vouchers, or the equivalent, may be used to pay registration fees. NGA accepts VISA, MasterCard, and American Express credit cards. **Meeting credentials will not be issued unless the registration fee has been paid in full. Registration fees cannot be billed to attendees.**

Registration fees, minus a \$20 handling fee, will be refunded provided written notice of cancellation is postmarked and mailed to the NGA Registration Center no later than February 14, 1990. No refunds will be made for cancellations after that date. Ancillary attendee fees, assessed to cover housing processing, are nonrefundable.

Hotel Accommodations

Hotel accommodations will be available at the Hyatt Regency Washington on Capitol Hill. A block of rooms at special rates has been reserved for meeting attendees. The registration center will make hotel reservations based on completed registration forms. The hotel will not accept reservations directly from meeting attendees. Accommodations will be reserved on a first-received basis. Reservations will be confirmed directly by the hotel. Requests for rooms received after February 2, 1990, will be filled if space is available. Individuals are responsible for their own hotel charges. If direct billing is desired, contact the credit manager at the Hyatt Regency at 202/737-1234.

Transportation

Meeting attendees are responsible for individual travel arrangements to and from Washington, as well as ground transportation during their stay. If special group transportation is to be provided to official program events, a transportation note will be included in the program.

Registration and Credentials

Registration materials and credentials will be available at the NGA Registration Desk, located in the Escalator Lobby on the lower level of the Hyatt Regency. Media representatives can obtain credentials and press materials at the NGA Press Headquarters located in the Regency Foyer on the lower level. Meeting attendees must show identification in order to obtain registration materials and credentials. Credentials are nontransferable and are required for admittance to all NGA meetings and social events. Meeting registration will open on Saturday, February 24, and will be open during all NGA business sessions.

Message Center

A message center will open on Saturday, February 24. The message center should be used only for urgent messages. Messages not retrieved will be discarded at the end of each day. Non-urgent messages for hotel guests should be communicated through the hotel operator at 202/737-1234.

**NATIONAL GOVERNORS ASSOCIATION
1990 WINTER MEETING
AGENDA AND BRIEFING PAPERS**

Day/Time	Committee	Briefing Paper	Tab No.
Sunday			
1:15-3:15 p.m.	First Plenary Session	• Adoption of National Education Goals	1
3:30-5:00 p.m.	Committee on International Trade and Foreign Relations	• Improving the Trade Treatment of Products of Guam by the United States	2
		• The Harmonized System	3
		• Response to U.S. Trade Representative Ambassador Carla Hills' "A Bright New Era for Agriculture" Presentation	4
		• Michigan Governor's Effort to Allow Governors to file Section 301 Petitions Against Unfair Foreign Trade Practices	5
	Committee on Justice and Public Safety	• Four Year limitation on Funded Projects Under Law Enforcement Drug Grant	6
		• 50/50 Match Requirement for Law Enforcement Drug Grant	6
		• Proposed Mandatory Pass Through of Federal Funds to localities having A Minimum Population of 150,000	6
Monday			
9:15-10:45 a.m.	Committee on Agriculture and Rural Development	• Representative Ambassador Carla Hills' "A Bright New Era for Agriculture" Presentation	4
	Committee on Human Resources		
	Committee on Transportation, Commerce and Communications	• Maritime Commerce	7
		• Air Transportation	7
1:00-2:30 p.m.	Committee on Economic Development and Technological Innovation	• Guam's Proposed Overall Economic Development Plan: 1989-1993	8
		• Also refer to Committee on International Trade Briefing Papers	
	Committee on Energy and Environment		

45-4:30 p.m.

Task Force on Education

• Refer to First Plenary Session's Briefing Paper

1

Task Force on Global Climate
Change

Task Force on Waste Management

First Plenary Session
Adoption of National Education Goals

The Government of Guam did not received an advance copy of the proposed National Education Goals; thus no recommendation is provided on whether they should be supported by Guam.

However, goals which solely focus upon improving education by providing more resources and more technology and which do not encourage teachers to flourish should not be supported. The goals should in part also reconceptualize the teaching profession so that it is not only more rewarding, but more effective. The goals should include teachers as a part of the solution rather than a part of the problem. They should to some degree address the following concepts:

- Teacher education must become intellectually rigorous, coherent and based on a symbiotic relationship with practicing professions. Clinical experiences must be meaningful and begin early. The idea is not to socialize individuals into the system but rather to get them to understand the system so that they can become participants and change agents.
- The teaching profession should be restructured so that performance and increased responsibilities and functions

are awarded by increases in salary and prestige. Career ladders which distinguish in pay and prestige between truly excellent and ordinary teachers must be examined. Advancement through "such" career ladders must be based on more than checklists and perfunctory observations. Student performance, peer evaluation and other criteria should be used. Being outside the classroom (becoming an administrator) should not be the reward for being good in the classroom.

- Licensing and certification must become responsive to the changing profession and should be controlled by independent bodies of professions. Certification should be controlled primarily by actual classroom teachers, and not by administrators.

Committee
on
International Trade and Foreign Relations

Briefing papers on the following issues follow:

- Improving the Trade Treatment of Products of Guam by the United States, with Regard to Duties, Tariffs and Quotas
- The Harmonized System
- Response to U.S. Trade Representative, Ambassador Carla Hills' " A Bright New Era for Agriculture" Presentation.
- Michigan Governor James J. Blanchard's effort to allow Governors to file Section 301 petitions against unfair foreign trade practices.

DEPARTMENT OF COMMERCE
BRIEFING SERIES
February 13, 1990

PROJECT: Improving the Trade Treatment of Products of Guam by the United States, with Regard to Duties, Tariffs and Quotas

BACKGROUND: Guam is a beneficiary of U.S. Territorial trade preferences under General Headnote 3(a) (Hn3a) of the Tariff Schedules of the United States (TSUS). This regulatory provision allows duty-free entry of all items manufactured, grown or produced in Guam having not more than seventy percent (70%) foreign content (fifty percent for some items, to be discussed later). This trade preference is subject to two eligibility criteria: the products must meet the "value-added" requirement, in that they must have more than thirty percent (30%) of their "Free-on-Board" (FOB), Guam, value created on Guam (more than fifty percent (50%) for some items), and they must meet the "substantial transformation" requirement, meaning that any foreign inputs to the production process must be transformed into different items of commerce, as evidenced by their having a different commercial name, use or character, thus meeting "Country of Origin" standards applied in international trade by the United States.

As Guam initially developed manufacturing enterprises in the late 1960s and early 1970s, predominantly based upon Asian investment in an attempt to take advantage of Hn3a and to de-limit quota restrictions, garments and watches from the island were subjected only to the value-added requirement upon entry into the Customs Territory of the United States (CTUS). At the time, there was a uniform fifty percent (50%) value-added requirement on all items. Then, about early 1972, watches were omitted from Hn3a altogether and placed under a quota scheme in Headnote 6 of Subpart E of Part 2 in Schedule 7 of the TSUS; this was in response to the discovery that both Guam and the Virgin Islands were incorporating Soviet-made watch movements into their exports to the U.S., contrary to the spirit of the "cold war." (Incidentally, buttons are also excluded from eligibility under Hn3a, probably because of the advantage that the island

Territories have in the manufacture of "Mother-of-Pearl" buttons, popular years ago.) Because annual quotas were often not allocated among the Territories until as late as August, manufacturers were unable to effectively and efficiently plan their manufacturing output, and the formidable risks that they faced forced all of them on Guam out of business.

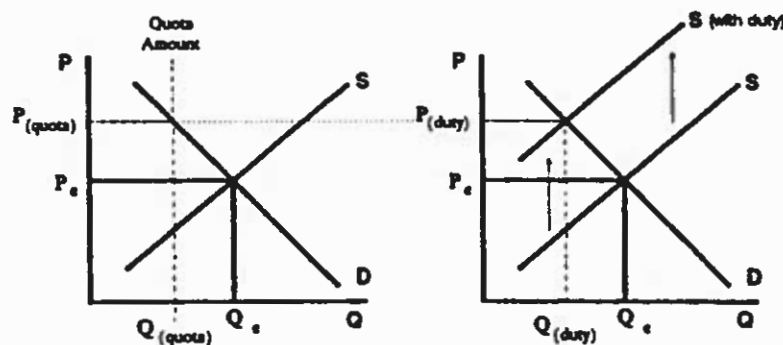
Later in or about 1972, the U.S. Customs Service started rigorously applying "Country of Origin" (substantial transformation) requirements to the exports of Guam. These requirements are somewhat arbitrary (see reference to the 1985 incident, below), and can be changed at any time via an alteration in regulations. Although garment manufacturers could obtain a binding determination regarding enterability of their goods into the CTUS, such determinations often took more than six months; by then, the goods were often out of style, and their value on the market would not cover manufacturing costs. Alternatively, the manufacturer could take the risk of shipping the garments without a binding determination of enterability, relying upon a favorable ruling at the port of entry; more often than not, however, U.S. Customs agents themselves were uncertain as to how to interpret the regulations, and the goods would sit in bonded warehouses (at the manufacturers' expense) indefinitely. Again, the risks faced by the manufacturers in this notoriously low-profit industry eventually forced each of them on Guam out of business.

The combination of these two actions effectively ruined Guam's competitive advantage in the main manufacturing industries it had been able to attract, and the destruction of economic feasibility quickly led to the demise of manufacturing on the island.

More recently, approximately ten years ago, one each watch and garment manufacturing firm were established on Guam. The former produces only a small quantity of fairly high-quality watches, and is virtually assured of coming in under Guam's quota regardless of the arbitrary levels that are set by the U.S. regulatory authorities; the latter nearly failed due to regulatory changes in the interpretation of "substantial transformation" in late 1985.

In the latter half of 1985, U.S. Customs changed the rules regarding Country of Origin requirements for textiles and textile products. Several necessary steps in the production process for garments were suddenly excluded from consideration in determining if substantial transformation had taken place; among these were: cutting panels from pre-marked bolts of cloth; sewing, looping, stitching and binding together of pre-cut fabric panels; pre-washing, washing and super-washing of fabrics and garments; waterproofing of fabrics and garments; labeling; packaging; ironing; and, quality control. Essentially, the minimum acceptable processing of foreign inputs to the garment manufacturing process had to start with the marking of previously unmarked bolt fabric.

Partly because of its nature as an existing firm and partly because of significant lobbying efforts in Washington, D.C., Guam's one remaining garment firm was able to continue in operation, with its goods entering the CTUS as products of Guam for duty and labeling purposes, but products of Hong Kong (at that time; now, products of Korea) for quota purposes; then, this firm was granted a "waiver of visa" against Hong Kong's quota for up to 160,000 dozen units per year. The "waiver of visa" allowed Guam's exports to not count against Hong Kong's quota within the specified limit; this created a de facto quota on Guam's exports of garments into the CTUS.



From an economic perspective, the same trade restrictions can be created using either duties (tariffs) or quotas. In terms of a standard supply and demand graph, a quota restricts the quantity of a good imported by setting a vertical line at the quota quantity; where this vertical line intersects the demand curve, we find the price-quantity "equilibrium" for the imported item. Again in graphical terms, a duty increases the cost of delivering any given quantity of the good, thus shifting the supply curve upward (or, to the left); the intersection of the supply

and demand curves, then, occurs at a lower quantity and a higher price, the same as if a quota had been imposed. While Hn3a grants duty-free entry of the products of Guam into the CTUS, it does not prohibit quotas; thus, we are granted half of an effective trade benefit, which in many ways provides no benefit at all.

Although the issue has never been tested, there is some question as to whether the Constitution allows quotas to be applied by the U.S. against the import of products of the Territories. Nevertheless, in the two most important instances wherein Guam has been able to successfully develop manufacturing, quotas (or their equivalent) have been quickly applied and have led to either the demise or the curtailed activity of manufacturing enterprises on the island. By all appearances, it is the objective of the U.S. to hold out the promise of diversified economic development to its possessions, then to withdraw that promise once such development begins.

PROBLEM: The provisions of General Headnote 3(a) are regulatory rather than statutory, and can be changed arbitrarily (even capriciously) at any time by the U.S. Customs Service. Whether or not economic subterfuge is truly the objective of the U.S. when these changes are made, the effects are the same: Guam attracts investment and creates new, lucrative jobs, spurring a burst of economic development; standards of living rise and a number of the workers in the factories take on substantial debt in line with their new-found prosperity; the industries collapse in the wake of regulatory change, forcing the workers out of their jobs and often into default on their loans, leaving them worse-off than if the industries had never developed; Guam gains the reputation of being a disastrous place for outside investment, stalling further economic development for a period of several years. Then the scenario is repeated.

RECOMMENDATIONS: Guam, through all channels available to it, should seek to have its preferences with the United States made statutory rather than regulatory; this would make the preferences much more stable and reliable, providing for the long-term establishment of manufacturing concerns on the island. The central value of this is that it would allow for the diversification and, thus, overall stabilization of the local economy; this is the basis of effective economic

development. Article 5 of the proposed Guam Commonwealth Act would accomplish this end, but its anticipation should not forestall other efforts in the same direction.

NOTE: In the wake of the 1983 passage and 1984 amendment of the Caribbean Basin Economic Recovery Act (CBER Act; P.L. 98-67, Title II, 97 Stat. 387, August 5, 1983, and P.L. 99-573, Title II, 98 Stat. 2992, October 30, 1984, as found in Title 19, Chapter 15, U.S.C.), the Territories protested that the United States was according foreign nations in the Caribbean more favorable trade treatment than its own possessions around the world. (It seems that Congress again forgot that the U.S. still holds overseas territories.) In response, Hn3a was modified to reduce the value-added requirement from fifty to thirty percent, except for those items excluded from duty-free entry into the CTUS under 213 and 235 of the respective Public Laws; those items remained under the fifty percent requirement, and are:

- 1) Textile and apparel articles subject to textile agreements;
- 2) Footwear, handbags, luggage, flatgoods, work gloves, and leather wearing apparel not designated at the time of the effective date of the CBER Act as eligible articles for the purpose of the U.S. Generalized System of Preferences;
- 3) Tuna, prepared or preserved in any manner, in airtight containers;
- 4) Petroleum or any product derived from petroleum, provided for in Part 10, Schedule 4, TSUS; and,
- 5) Watches and watch parts (including cases, bracelets and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if such watches or watch parts contain any material which is the product of any country with respect to which TSUS Column 2 rates of duty apply [these are generally communist countries, as well as other countries identified in U.S. foreign policy as adverse to U.S. international interests, such as Libya and South Africa].

The reduction in the value-added requirement under Hn3a does not appear to have had any substantial impact on the formation of manufacturing concerns in Guam. This is quite likely because of the arbitrary nature of the second eligibility criterion, that of "substantial transformation."

SUPPORTING DOCUMENT:

The text of General Headnote 3(a) from the Tariff Schedules of the United States.

DEPARTMENT OF COMMERCE
BRIEFING SERIES 1990
DATE 2/15/90

THE HARMONIZED SYSTEM

The Harmonized System has been developed under the auspices of the Customs Cooperation Council (CCC) located in Brussels, Belgium. The CCC is an international organization consisting of representatives from approximately 150 countries including the United States. Its major purpose is to create a harmonized custom operations in order to facilitate international trade and commerce.

Since 1975, the U.S. Customs Service as a U.S. representative on the CCC, has been very active in the development of the Harmonized System. The Bureau of the Census, the Customs Service, and the Department of Agriculture have worked closely with industry representatives in developing proposals in connection with the development of this program.

The Harmonized System is intended to serve as a universally accepted product nomenclature. It is used in the classification of goods for the administration of customs programs, the collection of data on exports, imports, and domestic production, and the assessment of freight charges. The use of a single product code for vessel, air, rail and truck traffic simplifies statistical and customs tariff operations.

The U.S. government adopted the Harmonized System on 1 January 1989 as the direct basis for its new export and import classification system. Guam, as well as most of the other nations of the world, adopted this system on 1 January 1988.

THE ELECTRONIC DATA INTERCHANGE SYSTEM

What is the meaning of Electronic Data Interchange System? The Electronic Data Interchange System is a computer application, frequently implemented on an electronic message system, for the electronic interchange of business documents or communications such as purchase orders, invoices, payment orders, shipping documents and remittance advices in standard data formats. This system attempts to eliminate paper-based order entry and billing practices and standardize transaction set standards.

The Role of Government

In the application of the Electronic Data Interchange procedures, governments role should not be to develop national standards for international use but to use international standards as a governing standard. The Uniform Commercial Code should be modified to apply to the new electronic data interchange to avoid utilizing many different procedures to the new system. The government should facilitate the new procedures and adopt country standards to the interchange process.

Legal Implications of Electronic Data Interchange

Electronic messaging systems and electronic data interchange will change the ways businesses negotiate and enter into contracts. These changes will require a review of fundamental contract principles. Issues requiring review include, but are not limited to, the following: (1) Contract issues stemming from the timing of communications, (2) Paper requirements and the statute of frauds, (3) Forms, (4) Laws which are in conflict, and (5) Emerging technologies.

Several changes in current business practices are expected to take place with the implementation of this new system. For example, in dealing with the new electronic messaging system involves issues such as control, ownership, and liabilities of parties involved in or using the system, and the appropriate role of government and industry. Since its earliest development, contract law has provided rules for determining when offers, acceptance, and counter-offers are effective between parties dealing at a distance. These rules were satisfactory and remained unchanged with the advent of technology. The development of electronic messaging systems and electronic data interchange may create problems which may not be legally acceptable and require modification.

AUTOMATED SYSTEMS FOR CUSTOMS DATA

The implementation of this phase of the transition is directed towards the introduction of a standard across-the-board system for customs data, and will eventually provide the basis for future world-wide data interchange.

SUMMARY

In the context of the development of international trade in recent years, a great deal of attention has been paid to the improvement of the physical infrastructure of the movement of goods, and very little attention has been paid to one of the serious obstacles, that is "paperwork". This newly adopted system

has been instituted to speed up the processing of goods and reduce the unnecessary delays.

The Economic Research Center of the Guam Department of Commerce initiated the Harmonized System of classifying commodities in January 1988 and all documents are now coded under this system. The Center has purchased the necessary computers to record the trade information and tentatively is scheduled to input the data which is coded beginning April 1990.

The forthcoming changes in global trade procedures will certainly have a heavy impact on the recording of Guam's \$600 plus million worth of imports which sustain the island's population and the voluminous tourist trade. Guam's role in this new development will be significant as tourism grows and the United States and the rest of the world enter into the program.

A Bright New Era for Agriculture a presentation by Ambassador Carla
A. Hills:

Ambassador Carla Hills is proposing the elimination of trade distorting subsidies such as production subsidies and direct subsidization for export. The Departments of Commerce and Agriculture and the University of Guam are in support of Ambassador Hills' presentation, but point out that it has no impact upon Guam's agricultural development. Guam however would receive indirect benefits if the U.S. succeeds in having them eliminated.

ONIO S. QUITUGUA
DIRECTOR



JOSE A.E. MANIBUSAN
DEPUTY DIRECTOR



AGANA, GUAM 96910

Director's Office 734-3942/43
Aquatic & Wildlife Resources 734-3944/45
Agricultural Development Services 734-3946/47
Forestry & Soil Resources 734-3948
Animal & Plant Industry 734-3940/49

Mili / who's in this?

*Mike
US Trade Rep
paper*

January 24, 1990



Memorandum

To: Director, Bureau of Planning
From: Director of Agriculture
Subject: Comments on the presentation by
Ambassador Carla A. Hills

The presentation by Ambassador Hills is long overdue. The greatest concern that we have in America today is the fact that in the past, we have experienced a favorable agricultural trade balance. Today, that has dwindled considerably. We have had a negative food trading situation in this country, where we have imported more than we have exported. The thing that we are asking today is what's wrong, and what can we do about it. There is nothing the Farmers of America can do about that. We think the farmer is saying, to many people, "we need your help to call these inequities to the attention of the program people". We here on Guam applaud Ambassador Hills tough stand on closed markets and in general, proposing to eliminate unfair trade practices. Farmers can work more hours, they can work more days and if markets are closed to them, being competitive doesn't matter. We believe that Ambassador Hills presentation and proposal is well-taken and although it appears overly ambitious, it is a step in the right direction in having some results.

JOSE A.E. MANIBUSAN
JOSE A.E. MANIBUSAN



DEPARTMENT OF COMMERCE
DEPATTAMENTON I KOMETSIO
GOVERNMENT OF GUAM
A. A. N. CLAM 198910

Handwritten: miki
ph. min

JAN 29 1990



DC/SE/ERC/90-022

MEMORANDUM

TO: Director, Bureau of Planning
FROM: Director of Commerce
SUBJECT: "A Bright New Era for Agriculture" a Presentation by
Ambassador Carla A. Hills

Guam is a freeport. Guam's agriculture is not a beneficiary of trade distorting subsidies such as production subsidies and direct subsidization for export. Therefore, Ambassador Hills' remarks on the elimination of such subsidies are of no direct concern of Guam.

Because elimination of such subsidies would be beneficial to the world trading system, Guam will receive indirect benefits if the United States succeeds in have them eliminated.


PETER R. BARCINAS

Michigan Governor James Blanchard's effort to enable Governors to file Section 301 petitions against unfair foreign trade practices:

Section 301 of the Trade Act of 1974, as amended allows "interested persons" to request U.S. government investigation of unfair trade practices. The former U.S. Trade Representative Clayton Yeutter rejected a petition by Governor Blanchard of Michigan on the grounds that the Governor lacked "standing" to file a petition because the Governor was not considered an "interested person".

The Governors are currently requesting Ambassador Hills to reverse Clayton Yeutter's position and allow Governors to file a petition under Section 301. Governors should be included as they are in the unique position to represent the significant economic interest of the people, operations and firms in their state affected by unfair foreign trade practices.

A letter from Governor James J. Blanchard, State of Michigan, on this issue follows.

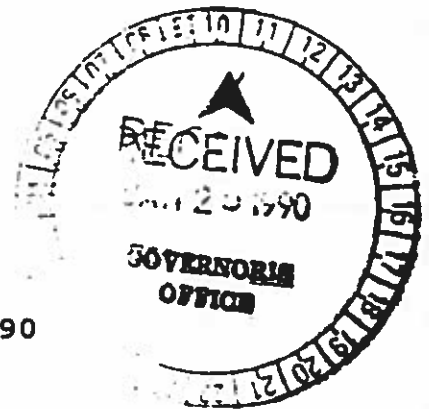
C-90-0244



STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
LANSING

JAMES J. BLANCHARD
GOVERNOR

January 17, 1990



The Honorable Joseph Ada
Executive Chamber
P.O. Box 2950
Agana, Guam 96910

Dear Governor Ada:

I am writing to ask that you join with me in urging the U.S. Trade Representative (USTR) to allow Governors to file section 301 petitions against unfair foreign trade practices. Enclosed is a letter I propose sending to Ambassador Carla Hills on this matter.

Section 301 is the most important legal tool available to the U.S. government to combat unfair foreign trade practices. Governors are unable to use section 301 to request U.S. government investigation of such practices because of an interpretation by USTR denying governors "standing" to file 301 petitions with USTR.

I believe this interpretation should be changed to grant Governors standing. I hope you agree, and ask that you join me on the enclosed letter to Ambassador Hills requesting this change.

Should you or your staff have any questions about this issue, feel free to contact me, or Jim Callow of my Washington office, (202) 624-5840, by February 16th.

Sincerely,


JAMES J. BLANCHARD
Governor

cc: Governor's Trade
SAC Representatives

enclosure



January 17, 1990

Ambassador Carla Hills
Office of the U.S. Trade Representative
600 17th Street, N.W.
Washington, D.C. 20506

Dear Ambassador Hills:

In November 1988, your predecessor, Clayton Yeutter, rejected a petition by Governor Blanchard of Michigan, which requested an investigation of certain Canadian trade practices in the automotive sector. It was rejected in part on the grounds that the Governor lacked "standing" to file a petition under section 301 of the Trade Act of 1974, as amended. Specifically, the Governor was not considered an "interested person" as that term has been interpreted by the U.S. Trade Representative (USTR).

We are writing to urge your reconsideration of this interpretation so as to allow Governors to file petitions under section 301. There are sound legal and policy reasons for making this change, and we urge you to do so.

Nothing in the statutory language of section 301 denies standing to a Governor. The law refers to "any interested person." But more directly, the USTR's own implementing regulations provide a clear basis for a Governor to file a 301 petition. The regulations state that petitions may be submitted by an "interested party." Several examples are offered along with the general definition which refers to "any person representing a significant economic interest affected . . . by the act, policy or practice complained of in the petition."

It is clear that a Governor, as representative of the people of a state which includes firms that are vital to that state's economic well-being, "represents a significant economic interest affected" by unfair foreign trade practices. A Governor has a direct interest in promoting employment and the continued prosperity of firms, and in many cases has committed state resources to encourage the location and growth of firms within the state. A Governor should not be precluded under section 301 from representing this economic interest when unfair foreign trade practices jeopardize the employment and economic well-being of workers and firms in the state.

Letter to the Honorable Carla A. Hills
January 17, 1990
Page Two

Moreover, the interpretation assumes that a "private party" is the best significant economic interest to complain about an unfair foreign trade practice. This assumption is questionable. Increasingly, more and more U.S. companies are also opening operations abroad. In many cases, a foreign government designs trade policies or imposes performance requirements to encourage these operations, primarily for import substitution or for export to the U.S. Such policies financially benefit the multinational as an entity, and improve the relative position of the operations in that country vis-a-vis the U.S. operations.

In such instances, what private party will represent the significant economic interest of concern to the U.S. -- specifically, employment, production and investment in the U.S.?

Multinational companies increasingly do not. Neither do trade associations dominated by such multinationals. Unions no longer represent the vast majority of firms in the U.S. Many small firms are unaware of unfair foreign trade practices, or otherwise lack the financial resources to protest them.

Governors have a clear interest in ensuring strong economic activity by entities within their state's border. Governors are in the unique position to represent the significant economic interest of the people, operations and firms in their state affected by unfair foreign trade practices.

Foreign government trade practices that distort trade and investment to the detriment of workers, operations and firms in the U.S. must be protested. Section 301 is the appropriate means to do so. As Governors, we should not be denied the right to protest unfair foreign trade practices and represent the significant economic interest of our states under section 301.

We believe these are compelling reasons to revise the previous interpretation, and grant Governors standing under section 301. We hope you agree, and look forward to your response.

Sincerely,

Committee
on
Justice and Public Safety

The following are issues which may be addressed by the Governors on the drug control law enforcement grants which their states are receiving.

- Four year limitation on funded projects. When the 1988 Drug Control Act was passed, it stipulated that projects cannot be funded beyond a four year period. Most states, which includes Guam, have effective projects which require funding beyond the four year limitation. Any efforts undertaken by the Governors to eliminate the four year funding limitation should be supported by Guam.

- 50/50 Match requirement. When the 1988 drug Control Act was passed, Congress stipulated that beginning fiscal year 1990 the federal state match would be increased from 75/25 to 50/50. Because of hardship which would be imposed upon the states, the date for the implementation of the 50/50 match ratio was postponed to fiscal year 1991. Guam's match has been waived. However, because Congress did place a ceiling of \$250,000 on the mandatory match waiver, Guam could conceivably be required to match dollar for dollar federal funds in excess of \$250,000. In addition to Guam there are other states and localities which receive federal funds that can't make the new match and which could lose funding. Guam should support efforts to have the required match kept at the

75/25 ratio.

- Proposed mandatory pass through of federal funds to localities having a minimum population of 150,000. This proposal will not have an impact upon Guam. It will however have an impact upon most states and will prevent them from developing and implementing state wide strategies to compact drugs. Guam should support any efforts by the Governors to prevent the mandatory pass through of federal funds to localities.

Committee
on
Agriculture and Rural Development

Please refer to comments on Ambassador Hills' presentation on "A Bright new Era for Agriculture" which is located under the Committee on International Trade and Foreign Relations.

Committee
on
Transportation, commerce and Communications

A briefing paper on maritime commerce and air transportation issues follows.

DEPARTMENT OF COMMERCE
DEPARTAMENTON I KOMETSIO

TRANSPORTATION ISSUES
Briefing Paper for
Governors' Association's Winter Meeting
February 24 - 26

Maritime Commerce

The Government of Guam is challenging maritime rate increases before the Federal Maritime Commission. Hawaii is, reportedly, doing the same.

Beyond the immediate problems, Guam may receive support for a Governor's Association investigation to reform the regulatory environment of the maritime industry. The objective would be to foster reasonable shipping rates through a combination of competition and less costly litigation. The reform would probably include elimination of the industry's exemption from anti-trust laws. It might also limit the Federal Maritime Commission's authority to forbid rate cutting. These recommendations in a study of the U. S. maritime industry published in August 1979 by the Department of Commerce still appear valid.

Support is unlikely for Guam's quest to permit foreign competition of the Guam-Oakland route.

Air Transportation

Guam has had problems with mail carriage by air. Although Hawaiian Air can be blamed, the problem is more fundamental, mail carriage being contracted to only one airline. Other areas, such as some of the outer islands of Hawaii and off-shore islands of coastal states, may have a similar problem. Thus, reform of contracting mail carriage may have support.

It is likely that federal subsidies to preserve air transportation to small communities will be discussed. These subsidies are to be discontinued. In terms of demand for air service, Guam has not been a small community for nearly twenty years. Some of our neighbors are. Such subsidies may assist in regional development.

If federal research for developing short take-off and landing aircraft is discussed, for regional development, Guam should support such research. Short take-off/landing aircraft would increase the possibilities of air service between Guam and some of its neighbors.

Support is unlikely from the Governor's Association to allow foreign carriers to take passengers between Guam and other U. S. port. In the language of transportation law, support for exempting Guam from cabotage requirements is unlikely.

Committee
on
Economic Development and Technological Innovation

A briefing paper on Guam's proposed overall Economic Development Plan for the period of 1989 through 1993 follows. For information on additional issues please refer to the briefing papers under the Committee on International Trade and Foreign Relations.

**BRIEFING SERIES
DEPARTMENT OF COMMERCE**

FEBRUARY 1990

PROJECT:

Overall Economic Development Plan For Guam: 1989-1993 (OEDP)

SUMMARY/BACKGROUND:

The OEDP represents a five-year plan to assist in guiding economic development and serve as a mechanism to focus programs and projects in the lead sectors of the economy. The OEDP was formulated through the OEDP Committee which consists of both government and private sector representatives. The OEDP is built upon the six lead economic sectors of Guam's economy. These are: Tourism, Agriculture, Fisheries, Aquaculture, Commerce/Manufacturing and Services. In addition to the lead sectors, there is the influence of support sectors which include labor-manpower, and infrastructure-public facilities and institutional capacity. These sectors act to support or limit the potential growth in the lead economic sectors.

Policy, goals and objectives are developed for each sector which will give direction to the kind of growth which is desired. Projects are identified for each sector and evaluated against a set of criteria which deal with critical need, diversification of the economy, employment, leveraging of private funds, import substitution/income and environmental compatibility.

The Overall Economic Development Plan (OEDP) and Annual Progress Reports are statutory requirements of the U.S. Department of Commerce, Economic Development Administration (EDA) in order for Guam to remain eligible for funding under EDA programs; however, the OEDP has been expanded beyond the EDA requirements to serve as a formal planning document in providing direction to Guam's economic development.

CURRENT STATUS:

The plan has been finalized and it has also been transmitted to the Governor's office to be considered for adoption through Executive Order and later adoption through the Legislature.

The basic purpose of the plan is to guide economic growth so that it moves toward the desired results. In general, these desired results include a broader economic base, fuller employment, greater employment opportunities, higher wages and salaries, improved standard of living, and equity in the distribution of the benefits of economic growth.

CONCERNS/ISSUES:

The current administration of the Government of Guam has identified eight major policies which it will attempt to implement through administrative and legislative actions. These are listed below:

1) Political Status

- a. Seek "Commonwealth" politic status to gain true self-determination through obtaining greater control of the political, economic, social and cultural issues that will impact on Guam's future, and to alleviate federal constraints to economic development on Guam.**
- b. Fully participate in regional and international organizations and activities that can cost effectively benefit Guam and promote the awareness of Guam in the regional and international community.**

2) Government

- a. Improve coordination within the government and with the private sector to increase the efficiency and effectiveness in providing services.**

3) Economic Development

- a. Promote economic development of the Territory as a means of improving the revenue base, reduce the deficit, diversify the economy, increase the standard of living and ensure optimum career opportunities for the emerging work force.**
- b. Approach economic development from a regional perspective and promote the development of regional cooperation in trade.**
- c. Actively pursue the firm establishment of Guam as an economic leader in the Micronesian region, while interacting with the Pacific Rim Countries in east-west trade.**
- d. Encourage foreign investment to meet the long-term development policies and objectives of Guam which will maximize the flow of capital within the domestic economy.**
- e. Provide appropriate infrastructure in a timely and efficient manner to support economic development.**
- f. Expand and improve the commercial viability of agriculture and aquaculture activities.**
- g. Facilitate development of all levels of fisheries to the fullest extent economically and manageably viable while maximizing benefits to Guam.**
- h. Improve the timely flow of information on the economy to improve the efficiency in making policy and investment decisions.**
- i. Provide appropriate business investment incentives that enhance the desired type and level of economic growth.**
- j. Improve and streamline the regulatory process to ensure a consistent system for the equal application of regulations and permits.**

4) Planning

- a. Establish and maintain a Strategic Planning Program in the Government which identifies long-term (10-20 years) policies and goals, to guide and improve the efficiency and effectiveness in the allocation of the island's resources.**
- b. Improve coordination in the economic development**

process between planning, project development and implementation.

- c. Implement agency/department level Operational Planning that is consistent with the Government's long-term Strategic Plan and integrated with the budgetary process.

5) Revenue/Budget

- a. Reduce and control Government of Guam General Fund deficit through reduction in the cost of government; increase cost efficiency in delivery of service; spur growth in the economy; and implement innovative cost saving and revenue generating programs;
- b. Reform the Guam Tax Code through delinkage from the Federal Tax Code in a manner that will be conducive to economic growth, and responsive to the particular needs of the Territory, along with assuring equity in its application.

6) Resource Allocation

- a. Fully identify the living and non-living marine resources and properly manage their development for the sustained benefit of Guam.
- b. Utilize and maintain Government of Guam land resources wisely. Implement a government land leasing policy that provides the greatest long-term benefits to the community as a whole.
- c. Privatize government functions that would be more efficiently carried out under private sector management, while assuring equity in distribution of the services or public goods to the community.

7) Employment

- a. Increase employment opportunities and career options in the private sector.
- b. Prioritize the placement of the resident labor force. Henceforth, H-2 certification should be allowed only in cases where there are truly no local qualified personnel.

8) Education

- a. Improve the quality of education to better prepare the youth for useful and meaningful careers.
- b. Coordinate all education and training activities among all pertinent institutions and agencies to improve the quality, efficiency and effectiveness of the educational and training services provided.

RECOMMENDATIONS:

Adoption of the OEDP as the official planning document for the development of Guam's economy.

ADDRESSING PROGRAM CONSTRAINTS
CURRENT STATUS
FEBRUARY 20, 1990

1. Create an interagency working group between APHIS and ARS to develop approaches to overcome constraints.
 - o ARS scientists involved with development of male suppression technique were consulted. A draft program strategy was developed and is being circulated internally at this time.
 - o An APHIS/ARS Interagency Work Group met to discuss technological approach and program constraints. ARS recommended the SIRM combined with MAT using the Min-U-Gel formulation.
2. Seek closer coordination and cooperation from Japan regarding the technical aspects of Melon fly eradication.
 - o Correspondence received from the Japanese dated January 11, 1990 indicates that eradication will be completed in the Okinawa Prefecture around 1992.
 - o A written response has been prepared by APHIS acknowledging this accomplishment and soliciting a more in-depth technical exchange regarding melon fly eradication efforts.
 - o A list of technical questions has been prepared for transmittal to the on-site APHIS representative in Japan.
3. Continue supporting the Governments of Guam and the Commonwealth of the Northern Mariana Islands in the area of quarantine and pest surveillance.
 - o A new PPQ Officer-In-Charge has recently been selected for the vacancy in Guam and will report this month.
 - o The current pest surveillance program carried out by Guam and CNMI requires evaluation.
4. Pursue further development of MAT by combining it with SIRM.
 - o A proposal is being developed for an APHIS Methods Trial which will complete the transfer of technology into the operational program.
 - o Costs associated with sterile fly production and release were identified last week.
 - o The source of dependable sterile flies remains to be determined.

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5. Contact EPA to clarify pesticide registration requirements for Min-U-Gel 400 Attapulgite Cuelure/Malathion formulation.
 - o ARS has submitted a report of their research findings to EPA. Interest in the ARS findings was expressed by the manufacturers of malathion.
 - o Several possibilities exist for the registration of the essential chemical formulation.
 - o Public opposition to the use of malathion in California will influence potential registrants.
 - o Malathion is now undergoing reregistration and the outcome will influence its future uses.
6. Assist in the development of an economic analysis of Melon fly eradication from the islands.
 - o Only the technical feasibility of a program is being addressed at this time.
7. Work to develop non-chemical alternatives to for suppression.
 - o ARS will conduct a research pilot test on the Hawaiian island of Kauai to demonstrate the use and effectiveness of melon fly parasitoids.

**NATIONAL GOVERNORS ASSOCIATION
1990 WINTER MEETING
AGENDA AND BRIEFING PAPERS**

Day/Time	Committee	Briefing Paper	Tab No.
Sunday			
1:15-3:15 p.m.	First Plenary Session	• Adoption of National Education Goals	1
3:30-5:00 p.m.	Committee on International Trade and Foreign Relations	• Improving the Trade Treatment of Products of Guam by the United States	2
		• The Harmonized System	3
		• Response to U.S. Trade Representative Ambassador Carla Hills' "A Bright New Era for Agriculture" Presentation	4
		• Michigan Governor's Effort to Allow Governors to file Section 301 Petitions Against Unfair Foreign Trade Practices	5
	Committee on Justice and Public Safety	• Four Year limitation on Funded Projects Under Law Enforcement Drug Grant	6
		• 50/50 Match Requirement for Law Enforcement Drug Grant	6
		• Proposed Mandatory Pass Through of Federal Funds to localities having A Minimum Population of 150,000	6
Monday			
9:15-10:45 a.m.	Committee on Agriculture and Rural Development	• Representative Ambassador Carla Hills' "A Bright New Era for Agriculture" Presentation	4
	Committee on Human Resources		
	Committee on Transportation, Commerce and Communications	• Maritime Commerce	7
		• Air Transportation	7
1:00-2:30 p.m.	Committee on Economic Development and Technological Innovation	• Guam's Proposed Overall Economic Development Plan: 1989-1993	8
		• Also refer to Committee on International Trade Briefing Papers	
	Committee on Energy and Environment		

2:45-4:30 p.m.

Task Force on Education

• Refer to First Plenary Session's Briefing Paper

1

Task Force on Global Climate
Change

Task Force on Waste Management

First Plenary Session
Adoption of National Education Goals

The Government of Guam did not received an advance copy of the proposed National Education Goals; thus no recommendation is provided on whether they should be supported by Guam.

However, goals which solely focus upon improving education by providing more resources and more technology and which do not encourage teachers to flourish should not be supported. The goals should in part also reconceptualize the teaching profession so that it is not only more rewarding, but more effective. The goals should include teachers as a part of the solution rather than a part of the problem. They should to some degree address the following concepts:

- Teacher eduction must become intellectually rigorous, coherent and based on a symbiotic relationship with practicing professions. Clinical experiences must be meaningful and begin early. The idea is not to socialize individuals into the system but rather to get them to understand the system so that they can become participants and change agents.
- The teaching profession should be restructured so that performance and increased responsibilities and functions

are awarded by increases in salary and prestige. Career ladders which distinguish in pay and prestige between truly excellent and ordinary teachers must be examined. Advancement through "such" career ladders must be based on more than checklists and perfunctory observations. Student performance, peer evaluation and other criteria should be used. Being outside the classroom (becoming an administrator) should not be the reward for being good in the classroom.

- Licensing and certification must become responsive to the changing profession and should be controlled by independent bodies of professions. Certification should be controlled primarily by actual classroom teachers, and not by administrators.

Committee
on
International Trade and Foreign Relations

Briefing papers on the following issues follow:

- Improving the Trade Treatment of Products of Guam by the United States, with Regard to Duties, Tariffs and Quotas
- The Harmonized System
- Response to U.S. Trade Representative, Ambassador Carla Hills' " A Bright New Era for Agriculture" Presentation.
- Michigan Governor James J. Blanchard's effort to allow Governors to file Section 301 petitions against unfair foreign trade practices.

DEPARTMENT OF COMMERCE
BRIEFING SERIES
February 13, 1990

PROJECT: Improving the Trade Treatment of Products of Guam by the United States, with Regard to Duties, Tariffs and Quotas

BACKGROUND: Guam is a beneficiary of U.S. Territorial trade preferences under General Headnote 3(a) (Hn3a) of the Tariff Schedules of the United States (TSUS). This regulatory provision allows duty-free entry of all items manufactured, grown or produced in Guam having not more than seventy percent (70%) foreign content (fifty percent for some items, to be discussed later). This trade preference is subject to two eligibility criteria: the products must meet the "value-added" requirement, in that they must have more than thirty percent (30%) of their "Free-on-Board" (FOB), Guam, value created on Guam (more than fifty percent (50%) for some items), and they must meet the "substantial transformation" requirement, meaning that any foreign inputs to the production process must be transformed into different items of commerce, as evidenced by their having a different commercial name, use or character, thus meeting "Country of Origin" standards applied in international trade by the United States.

As Guam initially developed manufacturing enterprises in the late 1960s and early 1970s, predominantly based upon Asian investment in an attempt to take advantage of Hn3a and to de-limit quota restrictions, garments and watches from the island were subjected only to the value-added requirement upon entry into the Customs Territory of the United States (CTUS). At the time, there was a uniform fifty percent (50%) value-added requirement on all items. Then, about early 1972, watches were omitted from Hn3a altogether and placed under a quota scheme in Headnote 6 of Subpart E of Part 2 in Schedule 7 of the TSUS; this was in response to the discovery that both Guam and the Virgin Islands were incorporating Soviet-made watch movements into their exports to the U.S., contrary to the spirit of the "cold war." (Incidentally, buttons are also excluded from eligibility under Hn3a, probably because of the advantage that the island

Territories have in the manufacture of "Mother-of-Pearl" buttons, popular years ago.) Because annual quotas were often not allocated among the Territories until as late as August, manufacturers were unable to effectively and efficiently plan their manufacturing output, and the formidable risks that they faced forced all of them on Guam out of business.

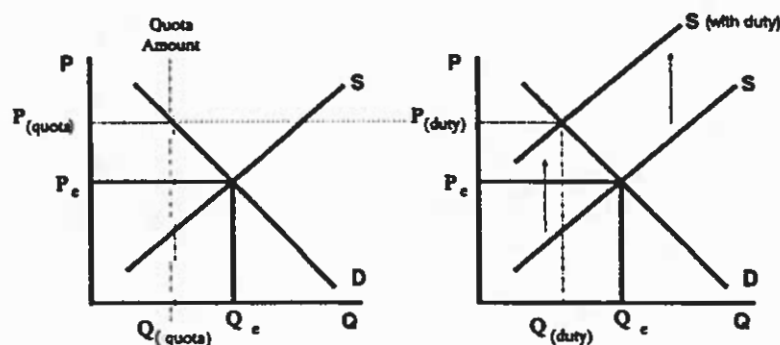
Later in or about 1972, the U.S. Customs Service started rigorously applying "Country of Origin" (substantial transformation) requirements to the exports of Guam. These requirements are somewhat arbitrary (see reference to the 1985 incident, below), and can be changed at any time via an alteration in regulations. Although garment manufacturers could obtain a binding determination regarding enterability of their goods into the CTUS, such determinations often took more than six months; by then, the goods were often out of style, and their value on the market would not cover manufacturing costs. Alternatively, the manufacturer could take the risk of shipping the garments without a binding determination of enterability, relying upon a favorable ruling at the port of entry; more often than not, however, U.S. Customs agents themselves were uncertain as to how to interpret the regulations, and the goods would sit in bonded warehouses (at the manufacturers' expense) indefinitely. Again, the risks faced by the manufacturers in this notoriously low-profit industry eventually forced each of them on Guam out of business.

The combination of these two actions effectively ruined Guam's competitive advantage in the main manufacturing industries it had been able to attract, and the destruction of economic feasibility quickly led to the demise of manufacturing on the island.

More recently, approximately ten years ago, one each watch and garment manufacturing firm were established on Guam. The former produces only a small quantity of fairly high-quality watches, and is virtually assured of coming in under Guam's quota regardless of the arbitrary levels that are set by the U.S. regulatory authorities; the latter nearly failed due to regulatory changes in the interpretation of "substantial transformation" in late 1985.

In the latter half of 1985, U.S. Customs changed the rules regarding Country of Origin requirements for textiles and textile products. Several necessary steps in the production process for garments were suddenly excluded from consideration in determining if substantial transformation had taken place; among these were: cutting panels from pre-marked bolts of cloth; sewing, looping, stitching and binding together of pre-cut fabric panels; pre-washing, washing and super-washing of fabrics and garments; waterproofing of fabrics and garments; labeling; packaging; ironing; and, quality control. Essentially, the minimum acceptable processing of foreign inputs to the garment manufacturing process had to start with the marking of previously unmarked bolt fabric.

Partly because of its nature as an existing firm and partly because of significant lobbying efforts in Washington, D.C., Guam's one remaining garment firm was able to continue in operation, with its goods entering the CTUS as products of Guam for duty and labeling purposes, but products of Hong Kong (at that time; now, products of Korea) for quota purposes; then, this firm was granted a "waiver of visa" against Hong Kong's quota for up to 160,000 dozen units per year. The "waiver of visa" allowed Guam's exports to not count against Hong Kong's quota within the specified limit; this created a de facto quota on Guam's exports of garments into the CTUS.



From an economic perspective, the same trade restrictions can be created using either duties (tariffs) or quotas. In terms of a standard supply and demand graph, a quota restricts the quantity of a good imported by setting a vertical line at the quota quantity; where this vertical line intersects the demand curve, we find the price-quantity "equilibrium" for the imported item. Again in graphical terms, a duty increases the cost of delivering any given quantity of the good, thus shifting the supply curve upward (or, to the left); the intersection of the supply

and demand curves, then, occurs at a lower quantity and a higher price, the same as if a quota had been imposed. While Hn3a grants duty-free entry of the products of Guam into the CTUS, it does not prohibit quotas; thus, we are granted half of an effective trade benefit, which in many ways provides no benefit at all.

Although the issue has never been tested, there is some question as to whether the Constitution allows quotas to be applied by the U.S. against the import of products of the Territories. Nevertheless, in the two most important instances wherein Guam has been able to successfully develop manufacturing, quotas (or their equivalent) have been quickly applied and have led to either the demise or the curtailed activity of manufacturing enterprises on the island. By all appearances, it is the objective of the U.S. to hold out the promise of diversified economic development to its possessions, then to withdraw that promise once such development begins.

PROBLEM: The provisions of General Headnote 3(a) are regulatory rather than statutory, and can be changed arbitrarily (even capriciously) at any time by the U.S. Customs Service. Whether or not economic subterfuge is truly the objective of the U.S. when these changes are made, the effects are the same: Guam attracts investment and creates new, lucrative jobs, spurring a burst of economic development; standards of living rise and a number of the workers in the factories take on substantial debt in line with their new-found prosperity; the industries collapse in the wake of regulatory change, forcing the workers out of their jobs and often into default on their loans, leaving them worse-off than if the industries had never developed; Guam gains the reputation of being a disastrous place for outside investment, stalling further economic development for a period of several years. Then the scenario is repeated.

RECOMMENDATIONS: Guam, through all channels available to it, should seek to have its preferences with the United States made statutory rather than regulatory; this would make the preferences much more stable and reliable, providing for the long-term establishment of manufacturing concerns on the island. The central value of this is that it would allow for the diversification and, thus, overall stabilization of the local economy; this is the basis of effective economic

development. Article 5 of the proposed Guam Commonwealth Act would accomplish this end, but its anticipation should not forestall other efforts in the same direction.

NOTE: In the wake of the 1983 passage and 1984 amendment of the Caribbean Basin Economic Recovery Act (CBER Act; P.L. 98-67, Title II, 97 Stat. 387, August 5, 1983, and P.L. 99-573, Title II, 98 Stat. 2992, October 30, 1984, as found in Title 19, Chapter 15, U.S.C.), the Territories protested that the United States was according foreign nations in the Caribbean more favorable trade treatment than its own possessions around the world. (It seems that Congress again forgot that the U.S. still holds overseas territories.) In response, Hn3a was modified to reduce the value-added requirement from fifty to thirty percent, except for those items excluded from duty-free entry into the CTUS under 213 and 235 of the respective Public Laws; those items remained under the fifty percent requirement, and are:

- 1) Textile and apparel articles subject to textile agreements;
- 2) Footwear, handbags, luggage, flatgoods, work gloves, and leather wearing apparel not designated at the time of the effective date of the CBER Act as eligible articles for the purpose of the U.S. Generalized System of Preferences;
- 3) Tuna, prepared or preserved in any manner, in airtight containers;
- 4) Petroleum or any product derived from petroleum, provided for in Part 10, Schedule 4, TSUS; and,
- 5) Watches and watch parts (including cases, bracelets and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if such watches or watch parts contain any material which is the product of any country with respect to which TSUS Column 2 rates of duty apply [these are generally communist countries, as well as other countries identified in U.S. foreign policy as adverse to U.S. international interests, such as Libya and South Africa].

The reduction in the value-added requirement under Hn3a does not appear to have had any substantial impact on the formation of manufacturing concerns in Guam. This is quite likely because of the arbitrary nature of the second eligibility criterion, that of "substantial transformation."

SUPPORTING DOCUMENT:

The text of General Headnote 3(a) from the Tariff Schedules of the United States.

DEPARTMENT OF COMMERCE
BRIEFING SERIES 1990
DATE 2/15/90

THE HARMONIZED SYSTEM

The Harmonized System has been developed under the auspices of the Customs Cooperation Council (CCC) located in Brussels, Belgium. The CCC is an international organization consisting of representatives from approximately 150 countries including the United States. Its major purpose is to create a harmonized custom operations in order to facilitate international trade and commerce.

Since 1975, the U.S. Customs Service as a U.S. representative on the CCC, has been very active in the development of the Harmonized System. The Bureau of the Census, the Customs Service, and the Department of Agriculture have worked closely with industry representatives in developing proposals in connection with the development of this program.

The Harmonized System is intended to serve as a universally accepted product nomenclature. It is used in the classification of goods for the administration of customs programs, the collection of data on exports, imports, and domestic production, and the assessment of freight charges. The use of a single product code for vessel, air, rail and truck traffic simplifies statistical and customs tariff operations.

The U.S. government adopted the Harmonized System on 1 January 1989 as the direct basis for its new export and import classification system. Guam, as well as most of the other nations of the world, adopted this system on 1 January 1988.

THE ELECTRONIC DATA INTERCHANGE SYSTEM

What is the meaning of Electronic Data Interchange System? The Electronic Data Interchange System is a computer application, frequently implemented on an electronic message system, for the electronic interchange of business documents or communications such as purchase orders, invoices, payment orders, shipping documents and remittance advices in standard data formats. This system attempts to eliminate paper-based order entry and billing practices and standardize transaction set standards.

The Role of Government

In the application of the Electronic Data Interchange procedures, governments role should not be to develop national standards for international use but to use international standards as a governing standard. The Uniform Commercial Code should be modified to apply to the new electronic data interchange to avoid utilizing many different procedures to the new system. The government should facilitate the new procedures and adopt country standards to the interchange process.

Legal Implications of Electronic Data Interchange

Electronic messaging systems and electronic data interchange will change the ways businesses negotiate and enter into contracts. These changes will require a review of fundamental contract principles. Issues requiring review include, but are not limited to, the following: (1) Contract issues stemming from the timing of communications, (2) Paper requirements and the statute of frauds, (3) Forms, (4) Laws which are in conflict, and (5) Emerging technologies.

Several changes in current business practices are expected to take place with the implementation of this new system. For example, in dealing with the new electronic messaging system involves issues such as control, ownership, and liabilities of parties involved in or using the system, and the appropriate role of government and industry. Since its earliest development, contract law has provided rules for determining when offers, acceptance, and counter-offers are effective between parties dealing at a distance. These rules were satisfactory and remained unchanged with the advent of technology. The development of electronic messaging systems and electronic data interchange may create problems which may not be legally acceptable and require modification.

AUTOMATED SYSTEMS FOR CUSTOMS DATA

The implementation of this phase of the transition is directed towards the introduction of a standard across-the-board system for customs data, and will eventually provide the basis for future world-wide data interchange.

SUMMARY

In the context of the development of international trade in recent years, a great deal of attention has been paid to the improvement of the physical infrastructure of the movement of goods, and very little attention has been paid to one of the serious obstacles, that is "paperwork". This newly adopted system

has been instituted to speed up the processing of goods and reduce the unnecessary delays.

The Economic Research Center of the Guam Department of Commerce initiated the Harmonized System of classifying commodities in January 1988 and all documents are now coded under this system. The Center has purchased the necessary computers to record the trade information and tentatively is scheduled to input the data which is coded beginning April 1990.

The forthcoming changes in global trade procedures will certainly have a heavy impact on the recording of Guam's \$600 plus million worth of imports which sustain the island's population and the voluminous tourist trade. Guam's role in this new development will be significant as tourism grows and the United States and the rest of the world enter into the program.

A Bright New Era for Agriculture a presentation by Ambassador Carla
A. Hills:

Ambassador Carla Hills is proposing the elimination of trade distorting subsidies such as production subsidies and direct subsidization for export. The Departments of Commerce and Agriculture and the University of Guam are in support of Ambassador Hills' presentation, but point out that it has no impact upon Guam's agricultural development. Guam however would receive indirect benefits if the U.S. succeeds in having them eliminated.

TONIO S. QUITUGUA
DIRECTOR



SE A.E. MANIBUSAN
DEPUTY DIRECTOR



AGANA, GUAM 96910

Director's Office 734-3942/43
Aquatic & Wildlife Resources 734-3944/45
Agricultural Development Services 734-3946/47
Forestry & Soil Resources 734-3948
Animal & Plant Industry 734-3940/49

Mili / who's is this?

Mike 05 Trade Rep paper

January 24, 1990



Memorandum

To: Director, Bureau of Planning
From: Director of Agriculture
Subject: Comments on the presentation by
Ambassador Carla A. Hills

The presentation by Ambassador Hills is long overdue. The greatest concern that we have in America today is the fact that in the past, we have experienced a favorable agricultural trade balance. Today, that has dwindled considerably. We have had a negative food trading situation in this country, where we have imported more than we have exported. The thing that we are asking today is what's wrong, and what can we do about it. There is nothing the Farmers of America can do about that. We think the farmer is saying, to many people, "we need your help to call these inequities to the attention of the program people". We here on Guam applaud Ambassador Hills tough stand on closed markets and in general, proposing to eliminate unfair trade practices. Farmers can work more hours, they can work more days and if markets are closed to them, being competitive doesn't matter. We believe that Ambassador Hills presentation and proposal is well-taken and although it appears overly ambitious, it is a step in the right direction in having some results.

Se A.E. Manibusan
ANTONIO S. QUITUGUA



DEPARTMENT OF COMMERCE
DEPATTAMENTON I KOMETSIO
GOVERNMENT OF GUAM
AGANA, GUAM 96910

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JAN 29 1990



DC/SE/ERC/90-022

MEMORANDUM

TO: Director, Bureau of Planning

FROM: Director of Commerce

SUBJECT: "A Bright New Era for Agriculture" a Presentation by
Ambassador Carla A. Hills

Guam is a freeport. Guam's agriculture is not a beneficiary of trade distorting subsidies such as production subsidies and direct subsidization for export. Therefore, Ambassador Hills' remarks on the elimination of such subsidies are of no direct concern of Guam.

Because elimination of such subsidies would be beneficial to the world trading system, Guam will receive indirect benefits if the United States succeeds in have them eliminated.


PETER R. BARCINAS

Michigan Governor James Blanchard's effort to enable Governors to file Section 301 petitions against unfair foreign trade practices:

Section 301 of the Trade Act of 1974, as amended allows "interested persons" to request U.S. government investigation of unfair trade practices. The former U.S. Trade Representative Clayton Yeutter rejected a petition by Governor Blanchard of Michigan on the grounds that the Governor lacked "standing" to file a petition because the Governor was not considered an "interested person".

The Governors are currently requesting Ambassador Hills to reverse Clayton Yeutter's position and allow Governors to file a petition under Section 301. Governors should be included as they are in the unique position to represent the significant economic interest of the people, operations and firms in their state affected by unfair foreign trade practices.

A letter from Governor James J. Blanchard, State of Michigan, on this issue follows.



STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
LANSING

JAMES J. BLANCHARD
GOVERNOR

January 17, 1990



The Honorable Joseph Ada
Executive Chamber
P.O. Box 2950
Agana, Guam 96910

Dear Governor Ada:

I am writing to ask that you join with me in urging the U.S. Trade Representative (USTR) to allow Governors to file section 301 petitions against unfair foreign trade practices. Enclosed is a letter I propose sending to Ambassador Carla Hills on this matter.

Section 301 is the most important legal tool available to the U.S. government to combat unfair foreign trade practices. Governors are unable to use section 301 to request U.S. government investigation of such practices because of an interpretation by USTR denying governors "standing" to file 301 petitions with USTR.

I believe this interpretation should be changed to grant Governors standing. I hope you agree, and ask that you join me on the enclosed letter to Ambassador Hills requesting this change.

Should you or your staff have any questions about this issue, feel free to contact me, or Jim Callow of my Washington office, (202) 624-5840, by February 16th.

Sincerely,


JAMES J. BLANCHARD
Governor

cc: Governor's Trade
SAC Representatives

enclosure

January 17, 1990

Ambassador Carla Hills
Office of the U.S. Trade Representative
600 17th Street, N.W.
Washington, D.C. 20506

Dear Ambassador Hills:

In November 1988, your predecessor, Clayton Yeutter, rejected a petition by Governor Blanchard of Michigan, which requested an investigation of certain Canadian trade practices in the automotive sector. It was rejected in part on the grounds that the Governor lacked "standing" to file a petition under section 301 of the Trade Act of 1974, as amended. Specifically, the Governor was not considered an "interested person" as that term has been interpreted by the U.S. Trade Representative (USTR).

We are writing to urge your reconsideration of this interpretation so as to allow Governors to file petitions under section 301. There are sound legal and policy reasons for making this change, and we urge you to do so.

Nothing in the statutory language of section 301 denies standing to a Governor. The law refers to "any interested person." But more directly, the USTR's own implementing regulations provide a clear basis for a Governor to file a 301 petition. The regulations state that petitions may be submitted by an "interested party." Several examples are offered along with the general definition which refers to "any person representing a significant economic interest affected . . . by the act, policy or practice complained of in the petition."

It is clear that a Governor, as representative of the people of a state which includes firms that are vital to that state's economic well-being, "represents a significant economic interest affected" by unfair foreign trade practices. A Governor has a direct interest in promoting employment and the continued prosperity of firms, and in many cases has committed state resources to encourage the location and growth of firms within the state. A Governor should not be precluded under section 301 from representing this economic interest when unfair foreign trade practices jeopardize the employment and economic well-being of workers and firms in the state.

Letter to the Honorable Carla A. Hills
January 17, 1990
Page Two

Moreover, the interpretation assumes that a "private party" is the best significant economic interest to complain about an unfair foreign trade practice. This assumption is questionable. Increasingly, more and more U.S. companies are also opening operations abroad. In many cases, a foreign government designs trade policies or imposes performance requirements to encourage these operations, primarily for import substitution or for export to the U.S. Such policies financially benefit the multinational as an entity, and improve the relative position of the operations in that country vis-a-vis the U.S. operations.

In such instances, what private party will represent the significant economic interest of concern to the U.S. -- specifically, employment, production and investment in the U.S.?

Multinational companies increasingly do not. Neither do trade associations dominated by such multinationals. Unions no longer represent the vast majority of firms in the U.S. Many small firms are unaware of unfair foreign trade practices, or otherwise lack the financial resources to protest them.

Governors have a clear interest in ensuring strong economic activity by entities within their state's border. Governors are in the unique position to represent the significant economic interest of the people, operations and firms in their state affected by unfair foreign trade practices.

Foreign government trade practices that distort trade and investment to the detriment of workers, operations and firms in the U.S. must be protested. Section 301 is the appropriate means to do so. As Governors, we should not be denied the right to protest unfair foreign trade practices and represent the significant economic interest of our states under section 301.

We believe these are compelling reasons to revise the previous interpretation, and grant Governors standing under section 301. We hope you agree, and look forward to your response.

Sincerely,

Committee
on
Justice and Public Safety

The following are issues which may be addressed by the Governors on the drug control law enforcement grants which their states are receiving.

- Four year limitation on funded projects. When the 1988 Drug Control Act was passed, it stipulated that projects cannot be funded beyond a four year period. Most states, which includes Guam, have effective projects which require funding beyond the four year limitation. Any efforts undertaken by the Governors to eliminate the four year funding limitation should be supported by Guam.
- 50/50 Match requirement. When the 1988 drug Control Act was passed, Congress stipulated that beginning fiscal year 1990 the federal state match would be increased from 75/25 to 50/50. Because of hardship which would be imposed upon the states, the date for the implementation of the 50/50 match ratio was postponed to fiscal year 1991. Guam's match has been waived. However, because Congress did place a ceiling of \$250,000 on the mandatory match waiver, Guam could conceivably be required to match dollar for dollar federal funds in excess of \$250,000. In addition to Guam there are other states and localities which receive federal funds that can't make the new match and which could lose funding. Guam should support efforts to have the required match kept at the

75/25 ratio.

- Proposed mandatory pass through of federal funds to localities having a minimum population of 150,000. This proposal will not have an impact upon Guam. It will however have an impact upon most states and will prevent them from developing and implementing state wide strategies to compact drugs. Guam should support any efforts by the Governors to prevent the mandatory pass through of federal funds to localities.

Committee
on
Agriculture and Rural Development

Please refer to comments on Ambassador Hills' presentation on "A Bright new Era for Agriculture" which is located under the Committee on International Trade and Foreign Relations.

Committee
on
Transportation, commerce and Communications

A briefing paper on maritime commerce and air transportation issues follows.

DEPARTMENT OF COMMERCE
DEPARTMENT OF COMMERCE

TRANSPORTATION ISSUES
Briefing Paper for
Governors' Association's Winter Meeting
February 24 - 26

Maritime Commerce

The Government of Guam is challenging maritime rate increases before the Federal Maritime Commission. Hawaii is, reportedly, doing the same.

Beyond the immediate problems, Guam may receive support for a Governor's Association investigation to reform the regulatory environment of the maritime industry. The objective would be to foster reasonable shipping rates through a combination of competition and less costly litigation. The reform would probably include elimination of the industry's exemption from anti-trust laws. It might also limit the Federal Maritime Commission's authority to forbid rate cutting. These recommendations in a study of the U. S. maritime industry published in August 1979 by the Department of Commerce still appear valid.

Support is unlikely for Guam's quest to permit foreign competition of the Guam-Oakland route.

Air Transportation

Guam has had problems with mail carriage by air. Although Hawaiian Air can be blamed, the problem is more fundamental, mail carriage being contracted to only one airline. Other areas, such as some of the outer islands of Hawaii and off-shore islands of coastal states, may have a similar problem. Thus, reform of contracting mail carriage may have support.

It is likely that federal subsidies to preserve air transportation to small communities will be discussed. These subsidies are to be discontinued. In terms of demand for air service, Guam has not been a small community for nearly twenty years. Some of our neighbors are. Such subsidies may assist in regional development.

If federal research for developing short take-off and landing aircraft is discussed, for regional development, Guam should support such research. Short take-off/landing aircraft would increase the possibilities of air service between Guam and some of its neighbors.

Support is unlikely from the Governor's Association to allow foreign carriers to take passengers between Guam and other U. S. port. In the language of transportation law, support for exempting Guam from cabotage requirements is unlikely.

Committee

on

Economic Development and Technological Innovation

A briefing paper on Guam's proposed overall Economic Development Plan for the period of 1989 through 1993 follows. For information on additional issues please refer to the briefing papers under the Committee on International Trade and Foreign Relations.

**BRIEFING SERIES
DEPARTMENT OF COMMERCE**

FEBRUARY 1990

PROJECT:

Overall Economic Development Plan For Guam: 1989-1993 (OEDP)

SUMMARY/BACKGROUND:

The OEDP represents a five-year plan to assist in guiding economic development and serve as a mechanism to focus programs and projects in the lead sectors of the economy. The OEDP was formulated through the OEDP Committee which consists of both government and private sector representatives. The OEDP is built upon the six lead economic sectors of Guam's economy. These are: Tourism, Agriculture, Fisheries, Aquaculture, Commerce/Manufacturing and Services. In addition to the lead sectors, there is the influence of support sectors which include labor-manpower, and infrastructure-public facilities and institutional capacity. These sectors act to support or limit the potential growth in the lead economic sectors.

Policy, goals and objectives are developed for each sector which will give direction to the kind of growth which is desired. Projects are identified for each sector and evaluated against a set of criteria which deal with critical need, diversification of the economy, employment, leveraging of private funds, import substitution/income and environmental compatibility.

The Overall Economic Development Plan (OEDP) and Annual Progress Reports are statutory requirements of the U.S. Department of Commerce, Economic Development Administration (EDA) in order for Guam to remain eligible for funding under EDA programs; however, the OEDP has been expanded beyond the EDA requirements to serve as a formal planning document in providing direction to Guam's economic development.

CURRENT STATUS:

The plan has been finalized and it has also been transmitted to the Governor's office to be considered for adoption through Executive Order and later adoption through the Legislature.

The basic purpose of the plan is to guide economic growth so that it moves toward the desired results. In general, these desired results include a broader economic base, fuller employment, greater employment opportunities, higher wages and salaries, improved standard of living, and equity in the distribution of the benefits of economic growth.

CONCERNS/ISSUES:

The current administration of the Government of Guam has identified eight major policies which it will attempt to implement through administrative and legislative actions. These are listed below:

1) Political Status

- a. Seek "Commonwealth" politic status to gain true self-determination through obtaining greater control of the political, economic, social and cultural issues that will impact on Guam's future, and to alleviate federal constraints to economic development on Guam.
- b. Fully participate in regional and international organizations and activities that can cost effectively benefit Guam and promote the awareness of Guam in the regional and international community.

2) Government

- a. Improve coordination within the government and with the private sector to increase the efficiency and effectiveness in providing services.

3) Economic Development

- a. Promote economic development of the Territory as a means of improving the revenue base, reduce the deficit, diversify the economy, increase the standard of living and ensure optimum career opportunities for the emerging work force.
- b. Approach economic development from a regional perspective and promote the development of regional cooperation in trade.
- c. Actively pursue the firm establishment of Guam as an economic leader in the Micronesian region, while interacting with the Pacific Rim Countries in east-west trade.
- d. Encourage foreign investment to meet the long-term development policies and objectives of Guam which will maximize the flow of capital within the domestic economy.
- e. Provide appropriate infrastructure in a timely and efficient manner to support economic development.
- f. Expand and improve the commercial viability of agriculture and aquaculture activities.
- g. Facilitate development of all levels of fisheries to the fullest extent economically and manageably viable while maximizing benefits to Guam.
- h. Improve the timely flow of information on the economy to improve the efficiency in making policy and investment decisions.
- i. Provide appropriate business investment incentives that enhance the desired type and level of economic growth.
- j. Improve and streamline the regulatory process to ensure a consistent system for the equal application of regulations and permits.

4) Planning

- a. Establish and maintain a Strategic Planning Program in the Government which identifies long-term (10-20 years) policies and goals, to guide and improve the efficiency and effectiveness in the allocation of the island's resources.
- b. Improve coordination in the economic development

process between planning, project development and implementation.

- c. Implement agency/department level Operational Planning that is consistent with the Government's long-term Strategic Plan and integrated with the budgetary process.
- 5) Revenue/Budget
- a. Reduce and control Government of Guam General Fund deficit through reduction in the cost of government; increase cost efficiency in delivery of service; spur growth in the economy; and implement innovative cost saving and revenue generating programs;
 - b. Reform the Guam Tax Code through delinkage from the Federal Tax Code in a manner that will be conducive to economic growth, and responsive to the particular needs of the Territory, along with assuring equity in its application.
- 6) Resource Allocation
- a. Fully identify the living and non-living marine resources and properly manage their development for the sustained benefit of Guam.
 - b. Utilize and maintain Government of Guam land resources wisely. Implement a government land leasing policy that provides the greatest long-term benefits to the community as a whole.
 - c. Privatize government functions that would be more efficiently carried out under private sector management, while assuring equity in distribution of the services or public goods to the community.
- 7) Employment
- a. Increase employment opportunities and career options in the private sector.
 - b. Prioritize the placement of the resident labor force. Henceforth, H-2 certification should be allowed only in cases where there are truly no local qualified personnel.
- 8) Education
- a. Improve the quality of education to better prepare the youth for useful and meaningful careers.
 - b. Coordinate all education and training activities among all pertinent institutions and agencies to improve the quality, efficiency and effectiveness of the educational and training services provided.

RECOMMENDATIONS:

Adoption of the OEDP as the official planning document for the development of Guam's economy.