March 4, 1958

MEMORANDUM ON COMMERCE

A. (1) The regulation of United States foreign commerce and commerce among the various States falls within the province of Congress, under specific provisions of the Constitution of the United States, the so-called Interstate and Foreign Commerce clause. In accordance with successive decisions of the Supreme Court, interstate commerce has in fact come to mean nationwide commerce. All commerce within the United States, except in a very restricted local sense, within the States, comes under the powers of the Federal Government.

(2) The regulation of commerce between the United States and its Territories and Possessions also fall within the province of Congress, but not under the Foreign and Interstate Commerce Clause of the Constitution. In accordance with Supreme Court decisions, the Foreign and Interstate Commerce Clause is not applicable to the possessions, specifically not to Puerto Rico. The Congress has heretofore regulated the foreign commerce of Puerto Rico as well as the commerce between Puerto Rico and the Unites States, under its plenary powers derived from the Territorial Clause. The Congress in the past has even regulated commerce within Puerto Rico at the lowest local level as it could not constitutionally do for the States.

But the powers of the Congress vis-a-vis Puerto Rico since the adoption of Law 600 and the creation of the Commonwealth are not plenary powers. Congress recognized fully the principle of government by consent in Puerto Rico, according to the terms of Law 600; thereby it relinquished its plenary powers,

which would include absolute authority, with or without consent. The Congress retained only those powers which Puerto Rico consented to in accordance with the Compact. Again, upon the recognition of the Commonwealth of Puerto Rico, in accordance with Commonwealth Law 447 of 1952, as much authority as was vested in the Commonwealth was relinquished by the Congress.

Only those powers not vested in the Commonwealth and consented to by Puerto Rico are now federal powers. This makes clear that commerce within Puerto Rico, being a matter of internal application, was vested in the Commonwealth of Puerto Rico in accordance with Section 27 of the Federal Relations Act. Accordingly, the competence of Congress to regulate commerce in Puerto Rico is limited only to the external commerce of Puerto Rico. The external commerce of Puerto Rico is both foreign and with the United States, its Territories and Possessions. Section 9 of the Federal Relations Act provides that U.S. statutory laws not locally ainapplicable shall have the same force and effect in Puerto Rico as in the United States. For federal law to regulate commerce between Puerto Rico and the United States, including both ends of this commerce (outgoing and incoming, from and to Puerto Rico) as is commerce between two States, would result in regulating commerce in Puerto Rico. This is inconsistent with the powers of the Commonwealth to regulate commerce in Puerto Rico. The question then is to decide whether the regulation of commerce between Puerto Rico and the United States, by the United States, includes the Puerto Rico end; in other words, would such laws be locally applicable in view of the powers of internal commerce of the Commonwealth? This, I think, is what needs

clarification

(3) It should be kept in mind that commerce between Puerto Rico and the United States is not commerce between Puerto Rico and the individual states, but commerce between the Commonwealth of Puerto Rico and the United States as a whole. It should be kept in mind also that to regulate commerce with Puerto Rico from the U.S. end, i.e., incoming to and outgoing from the United States, must be regulated by the United States. The question then boils down exclusively to determine whether incoming and outgoing commerce from Puerto Rico is subject to U.S. regulation through laws enforceable at the Puerto Rico end. In other words, would laws regulating commerce between United States and Puerto Rico be enforced by U.S. officials at the Puerto Rico end, or only at the U.S. end?

It is obvious that no article of commerce could reach Puerto Rico if originating in the United States unless it left United States in accordance with U.S. laws. It is obvious that no article of commerce coming from Puerto Rico to the United States could be debarked in the United States or, for that matter, be accepted by carriers operating under U.S. laws, if such articles did not conform with the U.S. laws regulating commerce coming into U.S. from Puerto Rico. Would it then be necessary or simply convenient to have U.S. laws enforced at and from the Puerto Rico end?

(4) There is free trate between United States and Puerto Rico within a common tariff but free trade up to now has been referred to as meaning absence of a tariff. It should include also absence of quantitative restrictions which have not been agreed to or which do not result from the regulation of the domestic market of the U.S. by the Congress. Such regulation should apply to merchandise coming into U.S. from Puerto Rico as if it originated in a State.

(5) The Compact, therefore, should clarify the question as to the application of commerce laws between Puerto Rico and the United States. It should also clarity the questbn of the application by the United States and by Puerto Rico of quantitative restrictions to mutual trade. On these two questions I propose:

(a) Concerning the application of U.S. commerce laws to commerce between Puerto Rico and the United States: To provide that outgoing commerce from Puerto Rico destined for the United States and incoming commerce from the United States shall be regulated by the Commonwealth of Puerto Rico but that the laws of the Commonwealth would have no force and effect insofar as inconsistent with laws applicable in the United States to commerce coming into the United States but originating in Puerto Rico or commerce from the United States to Puerto Rico and that the laws of the United States on commerce originating in Puerto Rico shall have no force and effect insofar as inconsistent with the Compact.

(b) As to quantitative restrictions, the Compact should read that there will be no quantitative restrictions imposed in Puerto Rico on merchandise produced and consumed in Puerto Rico and, conversely, that there will be no quantitative restrictions on merchandise originating in Puerto Rico and entering U.S. domestic market except such restrictions which equally apply to goods produced and consumed in the mainland. To this general rule there should be a specific exception and that is to the amount of refined sugar coming from Puerto Rico into the United States. This should be specifically determined in the Compact.

It should also be stated that all benefit payments made by the United States Government to domestic producers of goods to be consumed in the United States shall accrue to producers of goods in Puerto Rico for the U.S. market. This would in fact amend the Sugar Act in the sense that producers of sugar in Puerto Rico for local consumption would not receive benefit payments for such sugar, but by the same token sugar refined in Puerto Rico for local consumption would not be subject to the processing tax which is now being collected. The processing tax in effect would not apply in Puerto Rico under Federal law even if sugar refined in Puerto Rico were to be sold in the U.S. domestic market. Such sugar would be subject to a tax at the port of entry in the United States equal to the processing tax collected on sugar refined in the United States. Under present provisions of the Compact this tax should be covered into the Treasury of Puerto Rico. It is not being covered into the Treasury of Puerto Rico and I do not think that under present conditions it would be wise to press for itsz return. By resolution of the Legislative Assembly of Puerto Rico consent has been given to the collection of the tax on all sugar refined in Puerto Rico. Nothing has been said about the coverage of the tax into the Puerto Rico Treasury. Puerto Rico should be deterred from doing it because of the fact that Puerto Rico's producers get benefit payments. Although this is a logical and wise attitude it does not necessarily follow from the present law. This should be clarified in the Compact. Puerto Rico would collect its own tax on sugar refined in Puerto Rico for local consumption and could collect also a tax on sugar refined in Puerto Rico to be shipped to the United States. However,

such sugar upon arrival in United States would be subject to a tax in the United States equal to the processing tax collected on sugar refined in the United States for local consumption. There would be a credit against such tax to the amount that the tax was paid in Puerto Rico. In practice, refined sugar coming from Puerto Rico to United States would pay no tax upon arrival. This would mean an income of about one million dollars to the Puerto Rico Treasury in spite of the fact that Puerto Rican producers would be getting full benefit payments on sugar refined in Puerto Rico and sold in the United States. From this one million dollars the Commonwealth would pay the difference between the tax collected on sugar produced in Puerto Rico for local consumption and the cost of benefit payments to its producers. The producers for local consumption would not get federal benefit payments. This amounts to about half a million dollars. Besides, the cost of operation would be about $250,000. The ltotal gain to Puerto Rico would be $250,000. In view of the restriction on the amount of refined sugar that Puerto Rico could sell in the U.S. market, this is almost a trifle.

(6) Regulating the foreign trade of Puerto Rico should be the competence of the Federal Government but subject to the provisions of the Compact.