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United States Department of State

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Foreign
Relations
of the
United
States



1937

Volume II

BRITISH
COMMONWEALTH
EUROPE, NEAR EAST
AFRICA

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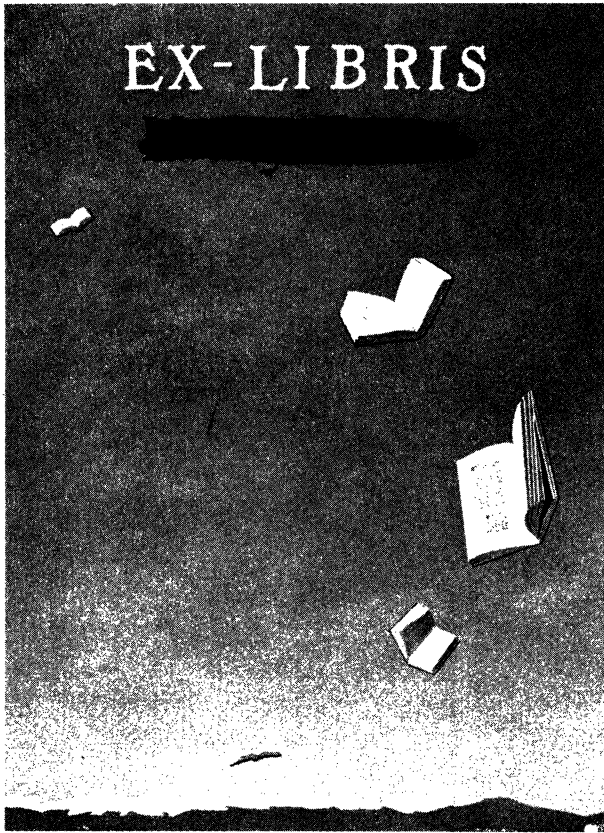
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Foreign Relations
of the
United States
Diplomatic Papers
1937
(In Five Volumes)

Volume II
The British Commonwealth
Europe, Near East and Africa



United States
Government Printing Office
Washington : 1954

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CONTENTS

	Page
THE BRITISH COMMONWEALTH OF NATIONS:	
UNITED KINGDOM:	
Preliminary discussions respecting a trade agreement between the United States and the United Kingdom	1
Informal discussions regarding proposed restriction of trade between Australia and New Zealand to British shipping	95
Protest by the British Government against the seizure of the motor vessel <i>Miserinko</i> by the United States Coast Guard authorities	107
Conflicting American and British claims to various islands in the Pacific Ocean	125
AUSTRALIA:	
Unsatisfactory trade relations between the United States and Australia; announcement by Australian Government of intention to abolish import restrictions	136
CANADA:	
Informal discussions respecting the possible negotiation of a new trade agreement between the United States and Canada	160
Discussions respecting the St. Lawrence Waterway project	168
Negotiations for the conclusion of an addendum to the tax convention of December 30, 1936	177
Representations by the United States and Canada to the United Kingdom respecting projected voyage of the British steamer <i>Thorland</i> to the Pacific halibut fishing grounds	183
Efforts of the Department of State to obtain an agreement with the Canadian Government for the construction of a highway to Alaska	191
Convention between the United States and Canada for the preservation of the halibut fishery of the Northern Pacific Ocean and Bering Sea, signed January 29, 1937	198
Agreement between the United States and Canada regarding exchange of information concerning issuance of radio licenses, effected by exchanges of notes, signed March 2 and 10, August 17, September 8 and 20, and October 9, 1937	199
IRISH FREE STATE:	
Arrangement between the United States and the Irish Free State for air navigation, effected by exchange of notes, signed September 29, 1937, and November 4, 1937	200
NEWFOUNDLAND:	
Desire of the Government of Newfoundland for an arrangement according reductions in rates of taxation similar to the convention between the United States and Canada, December 30, 1936	201

THE BRITISH COMMONWEALTH OF NATIONS—Continued		Page
NEW ZEALAND:		
Informal discussions regarding the possibility of improving trade relations between the United States and New Zealand		203
Efforts to secure from the British Government a solution for the problem of discrimination against American commerce in the New Zealand mandate of Western Samoa		210
EUROPE:		
BELGIUM:		
Preliminary discussions respecting a supplementary trade agreement between the United States and Belgium		219
Exchange of views between the United States and Belgium respecting the interpretation of the naturalization convention of November 16, 1868		234
CZECHOSLOVAKIA:		
Negotiations respecting a trade agreement between the United States and Czechoslovakia		238
Discontinuance by Czechoslovak Government of payment of bounties on certain exports to the United States following representations by the American Government		255
ESTONIA:		
Desire of the Estonian Government for modification of the commercial treaty of 1925; preliminary discussions regarding a trade agreement		259
FRANCE:		
Representations respecting French import control measures in alleged violation of trade agreement		275
Discussions between the United States and France concerning an addendum to the double taxation convention of April 27, 1932		285
Negotiations with France for the suppression of liquor smuggling into the United States from St. Pierre-Miquelon		298
Status under French law of American citizens of French origin with respect to liability to military service in France		311
GERMANY:		
Persecution of Jews in Germany		319
Unsatisfactory trade relations between the United States and Germany.		327
Negotiations for a settlement of the Drier claim and the sabotage claims of the United States against Germany		348
Informal representations by the German Government regarding derogatory remarks about Chancellor Hitler by Mayor La Guardia of New York		367
Informal representations by Germany with respect to certain utterances of Ambassador Dodd; change of American Ambassadors to Germany		377
Discussions with the German Government regarding right of consular officers to correspond directly with authorities on certain protection matters		386

CONTENTS

v

EUROPE—Continued

Page

GERMANY—Continued

- Informal representations regarding warning by the German Government to American motion picture players against acting in pictures declared inimical to German interests 392
- Representations in behalf of Helmut Hirsch, an American citizen sentenced to death in Germany 395

GREECE:

- Preliminary negotiations between the United States and Greece for a provisional commercial agreement 406
- Conclusion of a protocol between the United States and Greece interpreting article I of the extradition treaty of May 6, 1931; and withdrawal by the United States of notice of abrogation of the treaty given November 5, 1933 427

ITALY:

- Negotiations respecting a new treaty of friendship, commerce, and navigation between the United States and Italy; temporary commercial arrangement signed December 16, 1937 435
- Proposals for a convention to supersede the existing consular conventions between the United States and Italy 496

LITHUANIA:

- Representations regarding alleged discrimination against American trade in Lithuania 507
- Treaty of naturalization, dual nationality, and military service between the United States and Lithuania, signed October 18, 1937 514

NORWAY:

- Preliminary discussions respecting a trade agreement between the United States and Norway 517

POLAND:

- Preliminary discussions respecting a trade agreement between the United States and Poland 525
- Discrimination against American bondholders in connection with partial defaults and suspensions of payments on various Polish obligations 535
- Informal representations regarding Polish direct shipment requirement in apparent violation of treaty of June 15, 1931 543
- Anti-Semitism in Poland and consideration of Jewish emigration as a possible solution 552

SPAIN:

- The Spanish Civil War 564

SWITZERLAND:

- Informal representations respecting Swiss measures for the control of imports in alleged violation of the reciprocal trade agreement 565
- Convention between the United States and Switzerland relative to military obligations of certain persons having dual nationality, signed at Bern, November 11, 1937 579

EUROPE—Continued	Page
UNION OF SOVIET SOCIALIST REPUBLICS	583
YUGOSLAVIA:	
Liability of American citizens having dual nationality for military service when visiting Yugoslavia	584
Proposals for the regulation of commercial relations between the United States and Yugoslavia	586
THE NEAR EAST AND AFRICA:	
AFGHANISTAN:	
Granting by Afghanistan of an oil concession to the Inland Exploration Company	597
Consideration by the Department of State of proposals to establish diplomatic representation in Afghanistan	605
EGYPT:	
Conference at Montreux for the Abolition of the Capitulations in Egypt, April 12—May 8, 1937	615
Consideration of advisability of proposing the negotiation of a consular convention between the United States and Egypt	665
Renewed proposals by the United States regarding the negotiation of an extradition treaty with Egypt	672
ETHIOPIA:	
Withdrawal of American diplomatic and consular representatives from Ethiopia	679
Repressive measures by the Italian authorities against foreign missionary activities in Ethiopia	697
IRAN:	
Reluctance of the United States to appoint a Minister to Iran; continued absence of Iranian representation in the United States	718
Resumption by Iran of delivery of second class mail from the United States after further inquiries by the United States	728
Grant of an oil concession by the Iranian Government to the Am-iranian Oil Company	734
Representations by the United States regarding discrimination against American trade resulting from the German-Iranian convention for the regulation of payments of October 30, 1935	761
IRAQ:	
Negotiations between the United States and Iraq regarding proposed treaty of commerce and navigation	767
LIBERIA:	
Proposed new treaty of friendship, commerce and navigation between the United States and Liberia	785
Proposed consular convention between the United States and Liberia	804
Treaty of extradition between the United States and Liberia, signed at Monrovia, November 1, 1937	811

CONTENTS

VII

THE NEAR EAST AND AFRICA—Continued

Page

LIBERIA—Continued

Representations by the United States regarding Liberian customs regulations affecting free entry privileges for missionaries and diplomatic officers 812

Concern of the United States regarding rumored Polish ambitions in Liberia 821

Concern of the Department of State regarding possibility of German financial interest in proposed Dutch mineral concession (NEEP) in Liberia 829

MOROCCO:

Proposed abolition of capitulatory rights of the United States in the French Zone of Morocco 858

PALESTINE:

Interest of the United States in British proposals for the partition of Palestine between Arabs and Jews 881

SYRIA AND THE LEBANON:

Confirmation by the French High Commission of the continued application of the Knabenshue-Gouraud Agreement regarding protection by the United States of naturalized Americans of Syrian or Lebanese origin 923

Agreement between the United States and France regarding customs privileges for educational, religious, and philanthropic institutions in Syria and the Lebanon 938

TANGANYIKA TERRITORY:

Reservation by the United States of its rights as affected by changes of the frontier between the mandated territories of Tanganyika and Ruanda Urundi 939

TURKEY:

Preliminary discussions respecting a trade agreement between the United States and Turkey 941

Adjustment of payments due to the United States by Turkey under the agreement of December 24, 1923, and subsequent supplemental agreements 954

INDEX 961

THE BRITISH COMMONWEALTH OF NATIONS

UNITED KINGDOM

PRELIMINARY DISCUSSIONS RESPECTING A TRADE AGREEMENT BETWEEN THE UNITED STATES AND THE UNITED KINGDOM¹

641.4231/47

The Department of State to the British Embassy

The Government of the United States assumes that the Government of Great Britain concurs fully with its view that economic recovery and those conditions of peace of which the world is so sadly in need cannot be achieved, and disaster averted, unless something more effective is done to reduce excessive barriers to international trade and to arrest and limit the increase in armaments.

Definite progress, despite many impediments, has been made in carrying forward a comprehensive and broad program undertaking to restore normal international trade relationships and thus secure peace and economic well-being. It has been confidently hoped that the Government of Great Britain would display a major interest in the prosecution of this broad program and that much of the great influence of the British Government and of the British Dominions would be exerted in support of this movement.

It is in these circumstances that the Government of the United States is regretfully forced to the conclusion that recent evidences of the commercial policy pursued by the British and Canadian Governments, culminating in a reported pending trade agreement between those two Governments,² raises the question of whether the cumulative effect of such policy is not to obstruct and impede the broad program for economic disarmament that is underway and that is being carried forward with such effort by a number of the nations of the world. This unfortunate impression of obstruction comes likewise at a time when the forces of extreme economic nationalism, as well as of extreme nationalism of other characters, are in a position where they may further handicap and delay the efforts of the Government of the United States and of other powers in support of this movement.

¹ Continued from *Foreign Relations*, 1936, vol. 1, pp. 629-706.

² British Cmd. 5382: *Trade Agreement between His Majesty's Government in the United Kingdom and His Majesty's Government in Canada, Ottawa, February 23, 1937.*

The Government of the United States realizes fully that the questions involved in world economic rehabilitation cannot be divorced from other questions underlying world recovery, upon the successful solution of which questions world peace and national security must in the last analysis depend. It had hoped to find a way in which the Governments of Great Britain and of the United States might appropriately cooperate to the attainment of these great ends, within the limits of their respective national policies. But it would not be possible for the Government of the United States at this juncture to refrain from making it clear in all candor, while in the most friendly fashion, that such possible cooperation on the part of the United States must necessarily be premised upon the positive understanding that the Government of Great Britain is in fact disposed to take part in a practical manner in advancing the cause of world peace by cooperating in turn with the United States in its endeavor to bring about the elimination of those restrictions which today are stifling legitimate international trade.

The Government of the United States recognizes fully that every government has the fullest right to adopt and to pursue such policies relating to peace and economic conditions as that government may desire. For that reason the Government of the United States would not desire to be understood as questioning in any sense the nature or the terms of agreements which may be negotiated between the British Government and the Government of one of the Dominions of the British Empire. It desires solely to express its deep concern because of the prejudicial effects which increased or renewed trade restrictions may have upon international economic rehabilitation, upon the cessation of armament building, and upon the cause of world peace.

WASHINGTON, January 17, 1937.

641.4231/47

Memorandum by the Secretary of State

[WASHINGTON,] January 18, 1937.

The British Ambassador³ called at my apartment at my request on yesterday evening (Sunday). I handed him a memorandum of an oral statement which I proposed to make to him, relative to the apparent movements of Great Britain and Canada further backward in the direction of extreme, economic nationalism. A copy of the memorandum is attached hereto.⁴

³ Sir Ronald Lindsay.

⁴ *Supra*.

I then added orally that Great Britain and Canada must be greatly interested in the broad program for economic rehabilitation in the world and through it the restoration of conditions of permanent peace; and that any individual trade agreement between Great Britain and Canada would not compare for a moment in importance with this big objective. I stated that it was a most unpropitious juncture for Great Britain and Canada to be even seemingly moving still further backwards toward nationalistic, economic policies, resembling the complete closing up of the Empire like an oyster shell, speaking economically; that this is apparently about to happen just as the American Congress must consider insistent demands for the widest embargoes on all credit and all goods of every kind to all belligerent countries in time of war, to say nothing of the further fact that we are seeking an extension of the Reciprocity Trade Act ⁵ just at this time; that Great Britain and Canada by an exhibition of ultra and extreme nationalism at this particular time can very easily impede very greatly the whole movement and program for restoration of normal, economic relationships among nations and leave Europe to pursue her present course of steadily increasing armaments, militarism, dictatorships and certain catastrophe, either military or economic, or both, within another year or two.

I concluded by saying that the warmest spirit of friendship and the strong belief that Great Britain and Canada are as much interested in carrying forward and expanding the program for the improvement and preservation of conditions of peace and economic well-being, in lieu of the only alternative course in Europe along military lines, prompted me to venture thus to call attention. I added that since the present trade agreement ⁶ does not expire until August, there is apparently nothing to prevent Great Britain and Canada from delaying the signing of the proposed agreement at least until these broader and vitally important aspects can be further discussed and considered if necessary.

C[ORDELL] H[ULL]

641.4231/47

The Secretary of State to the Minister in Canada (Armour)

No. 641

WASHINGTON, January 19, 1937.

SIR: I enclose a copy of my memorandum of a conversation I had with the British Ambassador on January 17, 1937,⁷ to which is at-

⁵ The Trade Agreements Act of June 12, 1934, was extended by Joint Resolution of March 1, 1937; 50 Stat. 24.

⁶ Signed at Ottawa August 20, 1932, *British and Foreign State Papers*, vol. CXXV, p. 161.

⁷ *Supra.*

tached a copy of a memorandum which I handed the Ambassador on that occasion, when we discussed the commercial policies of the United States and of the British Empire.

It will be seen that the immediate occasion for the talk which I had with the Ambassador was the reported imminent conclusion of a trade agreement with Canada which binds for a number of years a number of products which the United States had hoped to discuss with the United Kingdom.

Since it had been made abundantly clear to the British Government that concessions of value to the British could only be obtained from us at the expense of less exclusiveness within the British Empire, I have felt that present action indicates that that suggestion was entirely unheeded. Moreover, the British and Dominion Governments in general do not seem to be steering in the direction of liberalized trading so necessary to peace and prosperity in the world, a tendency disappointingly contrary to their broad public expressions and private promises of support in the larger program.

Very truly yours,

CORDELL HULL

641.4231/49

The Minister in Canada (Armour) to the Secretary of State

No. 1119

OTTAWA, January 21, 1937.

[Received January 25.]

SIR: I have the honor to acknowledge the receipt of the Department's instruction No. 641 of January 19, 1937, enclosing a copy of a memorandum of a conversation you had with the British Ambassador on January 17, 1937, together with a copy of a memorandum handed to the Ambassador, on which occasion the commercial policies of the United States and the British Empire were discussed.

I particularly appreciate having these memoranda for background purposes in any future talks I may have here, either with the Prime Minister^{*} or with the Under-Secretary of State for External Affairs, Dr. Skelton.

Yesterday afternoon I had occasion to see Sir Francis Floud, the British High Commissioner, when the latter informed me that he had received from the British Ambassador at Washington a copy of a memorandum of his conversation with you, apparently that which took place on the evening of January 17th last. Sir Francis Floud added that he was sorry to see that the negotiation of the British Trade Agreement with Canada had caused you such concern and that he

* William Lyon Mackenzie King.

hoped that when its terms were published we would see that there was no reason for such alarm: that no tariff rates had been raised. On the contrary, their whole objective had been to lower the rates.

I took the occasion to emphasize to Sir Francis the points you had stressed to me in conversations by telephone, and which I had already presented both to the Prime Minister and to Dr. Skelton. I said that I felt sure he would agree with me that any individual trade agreement, such as that for example between Great Britain and Canada, could not for a moment compare in importance with the big objective we had in view, namely, the broad program for economic rehabilitation in the world and, through it, the restoration of conditions of permanent peace. I went on to say that I felt it would be most unfortunate if, at this critical juncture, any action should be taken by the British and Canadian Governments which might give the impression that instead of cooperating with us in endeavoring to bring about the elimination of those restrictions which are today stifling legitimate international trade they were obstructing and impeding the broad program for economic disarmament.

Sir Francis again insisted that he felt sure the agreement they had reached with the Canadian Government could not be interpreted as a step backwards. On the contrary, he felt that when the agreement was published it would be found to be a step in the right direction. He admitted that he had as yet received no instructions from London and that his only word thus far had been, as already stated, in the form of a communication from Sir Ronald Lindsay.

I have had no further word either from Mr. King or from Dr. Skelton since my talks with them on January 16th and 17th last. In my letter to the Chief of the Western European Division, dated January 18, 1937,⁹ I transmitted informally copies of memoranda of all conversations, and on the morning of January 19th I telephoned the text of an important statement made by the Prime Minister of Canada in Parliament, issued in response to your desire, which I conveyed to him, that he might see his way clear to stating the Canadian Government's position on this question officially and unequivocally.

The text of the Prime Minister's statement, together with certain comment regarding the circumstances under which it was issued, was transmitted to the Department with my confidential despatch No. 1117, dated January 19th last.¹⁰

I shall not fail to keep you fully informed regarding any further developments that may take place.

I should mention that just before I left him Sir Francis stated that he had heard that Mr. Walter Runciman, now in New York and who

⁹ Not found in Department files.

¹⁰ Not printed.

is, I believe, expected to spend the coming weekend in Washington as a guest of the President at the White House, is not planning to come to Ottawa.

Respectfully yours,

NORMAN ARMOUR

611.4131/237

Memorandum by the Assistant Secretary of State (Sayre)

[WASHINGTON,] January 26, 1937.

Immediately after dinner at Mr. Dunn's¹¹ house, Mr. Runciman¹² and I withdrew to the study to go over the prospective trade agreement between the United Kingdom and the United States. I opened the conversation by trying to make clear to Mr. Runciman the heart of the program upon which the United States is engaged. I sought to point out the two contrasting alternative commercial policies which might dominate the world,—the policy of dealing in preferences leading to clearing agreements and to bilateral balancing, with all that these entail, on the one hand, and the policy of equality of treatment embodied in most-favored-nation dealing on the other. I suggested that these two policies were continually warring with each other in different parts of the world and that the world is not big enough to hold them both,—that one or the other must ultimately prevail. I cited Germany as an instance of a country following the former policy and pointed out how in Latin America the consequences of her policy come into square conflict with our own, injuring our trade in Latin America as a result. I went on to say that I felt it of the most vital importance that England and the United States should stand together and that if England agreed with us it would go far toward insuring the ultimate triumph of the policy of equality of treatment.

Mr. Runciman seemed to have but a foggy and hazy notion of what I was driving at and I felt that I was making no real progress. He said that the United Kingdom had made only three clearing agreements, namely with Turkey,¹³ with Italy,¹⁴ and with Spain;¹⁵ and that these clearing agreements, much as one might criticize them, were the only way Britain had of insuring the payment of British creditors. I pointed out that any nation which promised preferential treatment to Britain or any other country was unable thereafter to promise equality of treatment or to enter into a trade agreement based

¹¹ James C. Dunn, Special Assistant to the Secretary of State and Chief of the Division of Western European Affairs.

¹² President of the British Board of Trade.

¹³ Signed September 2, 1936, League of Nations Treaty Series, vol. CLXXII, p. 289.

¹⁴ Signed November 6, 1936, *ibid.*, vol. CLXXVII, p. 183.

¹⁵ Signed January 6, 1936, *ibid.*, vol. CLXVI, p. 283.

upon that principle. Mr. Runciman's attitude, however, was that he had been fighting for British liberal commercial policies and, as evidence of this, he pulled out of his pocket and read to me excerpts from his speech of last year declaring for lower trade barriers. He also read excerpts from the stabilization agreement between the United States, Great Britain and France,¹⁶ declaring that the language used in connection with that agreement had been written by the Chancellor of the Exchequer and that he felt gratified that the Chancellor had been led to adopt such liberal language. Mr. Runciman said that he had been fighting valiantly for liberal trade policies in the face of severe opposition not only among various elements of the British population but among his own colleagues. . . .

I then turned the conversation to our prospective trade agreement and Mr. Runciman said he definitely wanted to go forward and suggested that we get our experts together tomorrow and make all the progress possible before his departure. I spoke again of the political conditions which we face here, saying that in order to support an agreement we must obtain concessions on hog products, barley, rice, fruits, tobacco, lumber and leather. I said that unless we could obtain concessions on these seven commodities, it would be most difficult to obtain political support in this country for the agreement. I also told him that before his arrival we had discussed these matters with Mr. Chalkley¹⁷ and that the obstacle to further progress seemed to be the Ottawa Agreements¹⁸ which gave binding preferences on these commodities to the Dominions and which prevented Great Britain from giving us real concessions on these commodities. Mr. Runciman repeated what he had said to Secretary Hull and myself earlier in the afternoon—that we would be pleased that in the new Ottawa Agreement between the United Kingdom and Canada there was a provision allowing adjustments to be made in even those commodities covered by the Ottawa Agreement. I asked him whether this covered all commodities or only specified ones. He said that he did not know. I said that I was delighted to hear of this provision for it seemed to me to unlock the door which was blocking further progress on a trade agreement between the United Kingdom and the United States. (Note: In a later conversation with Mr. Helmore,¹⁹ I learned that Mr. Runciman is apparently mistaken about the provision in the new Ottawa Agreement and that Great Britain is not free to make adjustments without the consent of Canada.)

¹⁶ See statement of the Secretary of the Treasury, September 25, 1936, *Foreign Relations*, 1936, vol. I, p. 560.

¹⁷ H. O. Chalkley, Commercial Counselor of the British Embassy at Washington.

¹⁸ *British and Foreign State Papers*, 1932, vol. cxxxv, pp. 161 ff.

¹⁹ J. R. C. Helmore, private secretary of Mr. Runciman.

Mr. Runciman said that he definitely wanted to go forward with a trade agreement and again suggested that our experts meet tomorrow and make all progress possible. He added that in view of the rising tide running toward protectionism in England it would be far better to have a trade agreement even if it went no further than conventionalizing rates than to have none at all.

Mr. Runciman then said that he was tired and wanted to return to the British Embassy. He therefore withdrew and I joined our experts who were waiting downstairs, namely Messrs. Hawkins,²⁰ Pasvolsky,²¹ Hickerson²² and Dunn on our side, and Messrs. Chalkley and Helmore on the British side. We talked over possibilities until after midnight.

In view of Mr. Chalkley's and Mr. Helmore's telling us, however, that the provision in the new agreement to be signed between the United Kingdom and Canada required the consent of both sides before any adjustments in preferences could be made, further progress seemed most difficult. It was suggested that we, on our side, give further particulars with regard to the commodities upon which we feel we must have concessions as the basis of a trade agreement and that the British then approach the Canadian Government asking for Canadian consent with regard to these commodities.

F. B. SAYRE

611.4131/234½

The British Embassy to the Department of State

The Government of the United Kingdom concur fully in the view expressed in the first paragraph of Mr. Cordell Hull's oral communication of January 17th, 1937, that economic recovery and conditions of peace cannot be achieved unless something more effective is done to reduce excessive barriers to international trade and to arrest and limit the increase of armaments.

As regards the second paragraph they feel that their own efforts for the restoration of international trade have made a notable contribution to this end. They are ready and anxious to continue those efforts and they feel that any suggestion that they have abandoned them is disproved by the facts that United Kingdom tariff rates have

²⁰ Harry Hawkins, Chief of the Division of Trade Agreements.

²¹ Leo Pasvolsky, Special Assistant to the Secretary of State.

²² John Dewey Hickerson, Assistant Chief of the Division of Western European Affairs.

been maintained at a lower level than those of almost any other country, and, particularly, that the balance of visible trade of the United Kingdom shows the following great and growing excess of imports over exports:—

1934	£284, 000, 000
1935	275, 000, 000
1936	348, 000, 000

The United Kingdom Government have already given proof of their desire to cooperate with the United States Government in endeavouring to eliminate restrictions on world trade. They earnestly desire to continue that cooperation, more especially in any sphere in which it can produce practical results, and they are ready as they have always been to consider any definite projects which the United States Government may have in mind for the realisation of the aims which they believe to be common to both Governments.

With regard to Mr. Cordell Hull's observations on the agreements negotiated between the United Kingdom and Dominion Governments, the United Kingdom Government cannot refrain from observing that in their opinion there is no justification for the suggestion, based on reports of the nature of the United Kingdom agreement with Canada, which is on the point of signature and of which no particulars have been published, that their policy is obstructing and impeding economic disarmament. On the contrary the apprehension which the United States Government appear to entertain that this agreement is likely to restrict the expansion of the trade of the United States with Canada or with the United Kingdom is unfounded. On the United Kingdom side there is no increase in the fixed margins of preference while on the Canadian side the United Kingdom Government have agreed in a number of cases to reduce or abolish fixed margins, thus making it possible for Canada if she so desires to offer concessions in those cases to the United States.

The United Kingdom Government desire to make it clear that in their opinion the Ottawa agreements do not constitute a bar to the rehabilitation of world trade, as is evidenced by the far-reaching agreement made a year ago between the United States and Canada,^{22a} nor can they agree that these agreements which form part of the considered policy of the United Kingdom Government have had any prejudicial effects upon armaments or upon the cause of world peace.

Subject however to the general principles governing this policy the United Kingdom Government are ready to examine any possibilities of making adjustments in individual Ottawa agreements to meet par-

^{22a} Signed November 15, 1935, Department of State Executive Agreement Series No. 91, or 49 Stat. 3960; for correspondence, see *Foreign Relations*, 1935, vol. II, pp. 18 ff.

ticular cases, with the consent of the Dominions concerned. In this connection the United Kingdom Government have informed the Canadian Government very confidentially that negotiations may take place between themselves and the United States Government and that in that event they may have occasion to approach Canada with a view to modification of certain margins of preference fixed on certain imports into the United Kingdom.

WASHINGTON, January 27, 1937.

611.4131/230

Memorandum by the Assistant Secretary of State (Sayre)

[WASHINGTON,] February 1, 1937.

After dinner at the Canadian Legation on Friday night, January twenty-ninth, I had a short, very personal conversation with Sir Herbert Marler²³ about the possibility of our negotiating a trade agreement with Great Britain. We spoke in a most friendly and personal way and Sir Herbert Marler told me that if there was anything at all which he could do to be of service he would like to do so.

This morning he called me on the telephone in reference to our conversation of Friday night. He said that he was most anxious to help us in any way possible. He did not ask formally to come in to have a conversation with me because that might cause embarrassment to me if questions arose concerning the British negotiations. He wanted me to know, however, that he was in entire sympathy with our program for the trade liberalization of the world and that he would stand ready to be of assistance to us in any way possible should the occasion arise. I replied that I warmly appreciated what he had said and that I would be glad to avail myself of his kindness if the occasion should arise.

In the course of our talk, I also intimated that I felt it might be helpful if either the Canadian or the British Government should reveal to us the text of the new Anglo-Canadian trade agreement before its terms were definitively settled and it was signed; for I said that I feared the agreement might present a stone wall which would prevent further progress on our trade agreements program.

F[RANCIS] B. S[AYRE]

²³ Canadian Minister in the United States.

033.4111 Runciman, Walter/10 : Telegram

The Chargé in the United Kingdom (Atherton) to the Secretary of State

LONDON, February 9, 1937—5 p. m.
[Received February 9—1:50 p. m.]

53. Mr. Runciman paid a visit to the Prime Minister yesterday for the first time since his return from the United States and in the House of Commons today made, in the course of expressing "my gratitude to the President of the United States and to the members of the United States Government for the friendly reception they gave to me", the following remarks of particular interest: "It was at no time intended that I should conduct negotiations with the United States Government on any subject. As regards trade matters I had several useful conversations from which it appeared that further explorations will be necessary before it can be determined whether there is a firm basis upon which details and negotiations can take place for a reciprocal trade agreement". He avoided answering a question as to whether there had been debt discussions.

I met Runciman this morning who suggested an early luncheon date to discuss his American visit. I mention this should the Department wish to cable me any background information.

ATHERTON

033.4111 Runciman, Walter/12 : Telegram

The Secretary of State to the Chargé in the United Kingdom (Atherton)

WASHINGTON, February 12, 1937—7 p. m.

45. Your 53, February 9. For your confidential information and background. In our conversations with Runciman we pointed out emphatically that this Government, those of this hemisphere, and many in Europe are in agreement that action directed toward the lowering of trade restrictions on lines indicated by our reciprocal trade program is a vital element in the peaceful working out of the difficulties now facing the countries of Europe; and that we view the solution of this problem as one in which persistent effort and leadership must be given in a simultaneous handling through discussion of all its elements. Besides the rebuilding of trade there is need of adjustments of some exchange situations preparing the way for long-run stability, debt adjustments, the creation by the countries concerned of reliable political accords as a basis for mutual political trust and security, and general

disarmament. Each step in advancing each element of the program must necessarily have to be adjusted to each other step, as nations may develop increasing faith in each other's peaceful intentions and increasing interest in the possibilities of cooperation. To the program every nation would have to make its contribution and upon the government of every nation rests the responsibility of playing its part. Further, we pointed out that there seems to be no alternative course or program for peaceful settlement and adjustment of the present steady drift of Europe toward narrow trade policies, toward bitterness, strife, and steadily increasing races in armaments and with militarism as the central policy.

We stated that in our view the British Empire has created through some features of its Empire preferences the kind of excessive trade barriers which are comparable with the excessive barriers and restrictions contained in the Smoot-Hawley tariff²⁴ and excessive tariff structures of other nations of the world; that in urging or requiring many nations with which it trades to conclude clearing arrangements, compensation agreements, and discriminatory quota understandings, Great Britain is violating the rule of equality of commercial treatment; that there is a growing feeling in the United States, and elsewhere that Great Britain is moving backward instead of forward in support of a program for the restoration of normal economic relations between nations, and instead of aiding is correspondingly obstructing the program which this and an increasing number of other governments are carrying forward; that it is utterly hopeless to contemplate the restoration of the many normal and worthwhile international relationships, political, economic, moral, or peace, unless the economic approach to existing problems and conditions is vigorously pursued under the leadership of our two countries; and hence that a failure of such leadership with suitable program now will leave the entire international situation moving steadily toward anarchy, with no plans to carry forward a comprehensive program for peaceful rehabilitation generally and for cooperation to restore moral concepts and the sanctity of treaties.

With regard to trade agreement we emphasized its desirability from the point of view both of symbolizing community of basic views and policies as between the two countries and of improving Anglo-American trade relations. We pointed out that we were not opposed to the principle of imperial preferences but we insisted that the margins of preference should be such as not to cause artificial and unreasonable diversion of trade. Accordingly, we indicated that reductions in a number of rates bound in the Ottawa agreements are

²⁴ Tariff Act of 1930, 46 Stat. 590.

indispensable to successful negotiations. We are now refining the list of commodities on which we feel we must have such reduction and hope to be in a position to transmit the list to Chalkley very soon. We are making every endeavor to keep both the list and the amount of reduction down to an absolute minimum.

In your conversations with Runciman, you may reiterate, as occasion arises, any of the points brought out in this summary, as your own understanding of our point of view.

You are authorized to show this telegram in confidence to the Commercial Attaché as well as other memoranda, et cetera, which have been sent to you.

Report fully what Runciman says to you and any other developments.

I rather gathered that Runciman was under the impression that the President had expressed a wish to have him come over to see him. I find that the arrangements for the visit were made by a third person who spoke to the President of the value of seeing Runciman if he came over. To this the President readily agreed, but I think it is well for you to know that the President did not take the initiative with regard to the visit.

HULL

641.4281/57

Memorandum by the Secretary of State

[WASHINGTON,] February 18, 1937.

The Canadian Minister came in upon my invitation. I set out for his benefit substantially what I have said to Mr. Runciman and other British officials, and also to the Canadian Government through our Minister to Canada, Mr. Armour. I repeatedly made it very definite that I was telling him nothing which the Canadian Government did not already know and the British Government also; that, therefore, in no circumstances was I sending a word or a line in a message to the Canadian Government; that, knowing his deep interest in the program for economic restoration and the entire harmony of views on his part and mine, I felt that it would give me a sense of relief to send for him and talk generally about the subject, so that he would in any event know all that I knew with respect to this movement for economic liberalism, for whatever it might be worth to him as one of its outstanding supporters.

In the course of the conversation, the Minister inquired what I would suggest as to the course of the British Empire in regard to Empire preference. I repeated to him that I had often said that

neither I nor my country would in any circumstances see anything said or done which would weaken a single link in the British Empire; that it was the greatest stabilizer of human affairs in the world today; and that it meant everything to the future of human progress and civilization for the British Empire to continue to function for the service of the human race, as well as itself.

I then very definitely and emphatically said that, with the entire interests of peace and economic well-being throughout the world tied up with the present program for world economic rehabilitation, it was not for a moment in my mind or in the mind of my Government to bring the slightest pressure to bear on any portion of the British Empire with respect to the problem of Empire preference,—for the reason that if, for considerations of Empire preference, Great Britain and the autonomous dominions would prefer to move backward away from the course of economic liberalism, rather than to be governed by their opportunity and their responsibility to cooperate in promoting the great twin major objectives of economic rehabilitation and through it conditions of permanent peace, it would be futile in any event to bring pressure to bear about Empire preference. I emphasized also that the next few weeks would determine the whole course of peace so far as it was to be tied in with economic rehabilitation, and that this would be determined by whether the British Empire should decide to move backward or move forward in connection with this broad basic economic program.

I need not repeat here my lengthy repetition to the Minister of what has already been said to the Governments of Canada and Great Britain on this general subject.

When he left, the Minister remarked that Canada now had the greatest opportunity within a generation for outstanding service. I said that I heartily agreed.

C[ORDELL] H[ULL]

083.4111 Runciman, Walter/15 : Telegram

The Chargé in the United Kingdom (Atherton) to the Secretary of State

LONDON, February 23, 1937—2 p. m.

[Received February 23—12:25 p. m.]

88. My luncheon with Runciman, postponed from last week, took place yesterday. During the discussion he outlined very fully his trip and impressions and the various conversations he had had, in the course of which I had an opportunity to make use of the information contained in your 45, February 12, 7 p. m. At the close of our

talk he took occasion to give a summary which I felt he intended me to convey to Washington. The following is very nearly verbatim.

"My primary purpose ever since I received last summer the President's letter of invitation to visit him ^{24a} was to take advantage of this opportunity to explain the position of Europe as we see it, particularly that while war was definitely put off for the present nevertheless the threat of Germany persists. In our opinion if Germany looked across the ocean and found the boards were clear between England and the United States such a perspective was enough to check her in her warlike course. My second purpose was to remove as many of those questions from the Anglo-American board as possible. Outstanding among these is the matter of an Anglo-American trade agreement. In this I did not get as far as I had hoped. I explained to the President and Mr. Hull that what I had done 23 times the United States had so far done only 13 times. I tried to explain our position to Mr. Hull not only from our own angle here but also from the Canadian angle. Certainly in spite of what Mackenzie King might say Canada did not negotiate the United States-Canadian trade agreement with any idea of relinquishing empire preferences. I urged Mr. Hull to satisfy himself on this point by asking Mr. Dunning ²⁵ to come to Washington to talk with him. Be that as it may I cannot but feel that my interviews with Mr. Hull were of the greatest value and I am convinced that because there must be a settlement of this problem between us a way will be found without asking Mr. Hull to renounce his policy and without Mr. Hull asking me to renounce mine.

Mr. Morgenthau's ²⁶ statement to me as to his close cooperation with the Chancellor of the Exchequer and the Treasury here were of great satisfaction to me and to my colleagues.

My visit to the White House gave me an opportunity for interviews with the President which were extraordinarily helpful. They were an exchange of ideas without record."

Incidentally the Secretary of the Board of Trade in a dinner conversation last week told me that on his return Mr. Runciman had said a trade agreement with the United States must be worked out even though the negotiations were protracted and that Mr. Runciman in his report to the Cabinet emphasized his belief in the value of his visit to the United States.

ATHERTON

611.4131/274

Memorandum by the Assistant Secretary of State (Sayre)

[WASHINGTON,] March 2, 1937.

Mr. Chalkley called at my office by appointment at 10:00 o'clock. I handed him six copies of the mimeographed list of concessions ²⁷

^{24a} Not found in Department files.

²⁵ C. A. Dunning, Canadian Minister of Finance.

²⁶ Henry Morgenthau, Jr., Secretary of the Treasury.

²⁷ Only the covering memorandum is printed, *infra*.

which we deem as essential and which require modifications in the Ottawa Agreements. I explained to Mr. Chalkley that this list included only those commodities on which reductions were sought which would be in conflict with the Ottawa Agreements.

I also told Mr. Chalkley that we would like very much, in addition, a reduction on wheat,—that even a slight reduction, not sufficiently substantial materially to affect present wheat shipments, would aid us very greatly from a political and psychological standpoint and perhaps could be given without great cost. Mr. Chalkley smiled and remarked that to make such a proposal would seem that Canada would at once come back at us with regard to our own duty on wheat. I told Mr. Chalkley that while the concessions in the list were the vitally important ones for us I hoped nevertheless that something also might be done on wheat.

I then entered into a somewhat lengthy conversation with Mr. Chalkley as to the necessity for Great Britain and the United States to enter into a trade agreement because of the existing world situation. I told him that to my mind the world was not big enough for the continued existence of the two alternative policies—of trading on a basis of preferences and discriminations on the one hand and on the basis of equality on the other. I said that sooner or later one or the other of the two alternative systems would come to prevail and that a British-American trade agreement seemed to me essential if the latter system was to triumph throughout the world.

We had a long and very friendly discussion. At the end, I said to Mr. Chalkley that I hoped Great Britain and the United States would not have to deal at arm's length but that I wanted him to come to me as a friend and to talk things over in a friendly way, with both sides laying their cards on the table.

F[RANCIS] B. S[AYRE]

611.4131/264a

*The Department of State to the British Embassy*²⁸

MEMORANDUM

1. In accordance with the understanding reached in the course of recent conversations concerning a possible basis of negotiations with a view to the conclusion of a trade agreement between the United States and the United Kingdom, there is transmitted herewith a revised list of products subject to the Ottawa Agreements (list 1)²⁹ on which an improvement in the treatment now accorded by the

²⁸ Handed by Assistant Secretary of State Sayre to the Commercial Counselor of the British Embassy, March 2.

²⁹ Not printed.

United Kingdom to the United States is deemed essential, the extent of such improvement being indicated in connection with each article. Attached to the list is a statement of the reasons for each request.³⁰

2. It should be emphasized that the list includes only products with respect to which the preferential duties or margins of preference may not be altered by the United Kingdom without the consent of the Dominions. All products not subject to such commitments, including the products which were specifically mentioned in the list submitted on November 16, 1936,³¹ have been omitted from the present list in view of the understanding that the problem of finding a basis for negotiations arises largely, if not entirely, from the commitments of the United Kingdom to the Empire countries. Those products in respect of which no such contractual obligations exist and which have, in consequence, been omitted from the present list, as well as certain other matters of importance not affected by those commitments, would be included in the comprehensive requests which would be submitted by the American Government in the event that a satisfactory basis for negotiation can be found.

In this connection attention is called to list 1A³⁰ which contains three items on which improved treatment to the extent indicated in the list will be requested. It is not clear whether the requests on these products would affect the United Kingdom's commitments under the Ottawa agreements. If so these requests are submitted for consideration at the present time. If not they will be included in the comprehensive list of requests to be submitted later.

3. It will also be noted that the list includes only products with respect to which an improvement in, as distinguished from a binding of, existing treatment is requested. The reason for thus limiting the scope of the list is the understanding that, in general, the Government of the United Kingdom would find no difficulty in binding existing customs treatment and that for the present purpose of finding a basis for negotiations it is unnecessary to formulate requests of this kind. However, in preparing list 1, consideration was necessarily given to all products of interest to the United States with respect to which the Government of the United Kingdom has contractual obligations to the Dominions and, as a result of these studies, it is possible at this time to present for the information of the Government of the United Kingdom a list of such products (list 2)³⁰ on which a binding of present treatment would be deemed essential.

³⁰ Not printed.

³¹ See American statement regarding concessions, *Foreign Relations*, 1936, vol. 1, p. 699.

4. In general, the reason underlying the requests for improved treatment of products in lists 1 and 1A is not only the effect which the existing preferences to Empire countries have already had in diverting trade from the United States. Of equal or greater importance is the probability that in the course of time the Empire producers will, to an increasing extent, take advantage of their preferential position and that the share of the United States in the trade will continue to decline.

5. The requests presented herewith have been prepared largely on the basis of information from Government sources without consultation with the trade. If negotiations should be undertaken, these requests would be subject to such revision as may seem indispensable in the light of information and views obtained from consultation with the trade and from public hearings.

611.4131/256

Memorandum by the Chief of the Division of Trade Agreements (Hawkins) of a Conversation With the Commercial Counselor of the British Embassy (Chalkley)

[WASHINGTON,] March 17, 1937.

Mr. Chalkley referred to our memorandum setting forth the products subject to the Ottawa agreements on which improved treatment would be essential in any trade agreement negotiated with the United Kingdom and said that this memorandum will be submitted to the British Cabinet at its next meeting which will probably take place Monday or Tuesday, March 22 or 23. Mr. Chalkley stated that it is naturally desired to present the matter to the Cabinet in the best light; and with that end in view, he had been instructed to ask us to provide him with answers to the following questions:

1. Some more precise indication than that already given of the extent to which the United States are likely to be able to meet the reciprocal desiderata of the United Kingdom.

2. Are there any commodities in the United Kingdom desiderata on which concessions are out of the question?

3. Where existing United States tariff rates are high (say of the nature of 40 percent ad valorem or its equivalent) might the maximum reduction of 50 percent be expected?

4. With reference to paragraph 2 of the last United States memorandum on what products not subject to Ottawa commitments is improvement in present treatment likely to be requested as essential for a basis for negotiation?

Mr. Chalkley said it would be necessary to have our replies by Friday afternoon (March 19).

611.4131/257

*The Department of State to the British Embassy*³³

The following are the questions propounded by Mr. Chalkley on March 17, 1937, and the answers:

1. *Some more precise indication than that already given of the extent to which the United States are likely to be able to meet the reciprocal desiderata of the United Kingdom.*

About 125 rates in about 100 paragraphs of the Tariff Act can probably be reduced. Few, if any, commodities of substantial importance to the United Kingdom are not included. These 125 rates vary in coverage from a single homogeneous commodity to groups of commodities which, in many instances, are covered by a single rate.

2. *Are there any commodities in the United Kingdom desiderata on which concessions are out of the question?*

There is no item of which the United Kingdom is the principal source of imports into the United States on which, on the basis of present study, a reduction is precluded.

3. *Where existing United States tariff rates are high (say of the nature of 40 percent ad valorem or its equivalent) might the maximum reduction of 50 percent be expected?*

Of the 125 rates about 60 are, or reach the equivalent of, 40 percent ad valorem or more. On the basis of present studies it appears that the maximum reduction may be feasible on nearly half of these 60 rates, and substantial reductions on most of the remainder. The foregoing are, of course, only rough approximations.

4. *With reference to paragraph 2 of the last United States memorandum on what products not subject to Ottawa commitments is improvement in present treatment likely to be requested as essential for a basis for negotiation?*

Improved quota treatment will be essential on some hog products, particularly hams.

While it is not possible to point to any other single product not subject to Ottawa commitments on which assurance of improved treatment is essential in reaching a basis for announcing negotiations, improved treatment will, of course, be essential on a considerable number of products of which the United States is the chief source of imports into the United Kingdom.

³³ Handed by the Chief of the Division of Trade Agreements to the Commercial Counselor and Commercial Secretary of the British Embassy on March 19.

611.4131/257

*Memorandum by the Chief of the Division of Trade Agreements
(Hawkins)*

[WASHINGTON,] March 19, 1937.

Conversation: Mr. H. O. Chalkley, Commercial Counselor, British Embassy;
Mr. Henry Frank Heywood, Commercial Secretary, British Embassy;
Mr. Harry C. Hawkins.

Mr. Chalkley and Major Heywood called by appointment today to receive the answers to the questions concerning the proposed trade agreement which were presented on March 17, 1937. I gave them the attached statement²⁴ explaining that it represented the best estimate which our experts in the trade agreements organization were able to make on the basis of the present status of our studies.

Mr. Chalkley read the answers to the questions and expressed gratification with them. The only question raised by him related to the second paragraph of the answer to question 4. I explained that the thought we were trying to convey was that, except for the list of products subject to the Ottawa agreements which has already been submitted, we do not specify any particular products, other than pork products, on which the negotiations would hinge. However, in view of the extent of the concessions which we would probably be in a position to make, improved treatment by the United Kingdom on an additional substantial list of products would be essential. I explained further that failure to grant a concession on any one of the products in such additional list probably would not cause a failure of the negotiations if another product or products could be substituted so that, on the whole, the list of concessions were substantially as long and of the same value as the list requested.

Mr. Chalkley then raised the question whether we felt that trade with the Crown Colonies should be dealt with in the negotiations or should figure in the exploratory discussions with a view to finding a basis. I told him that so far as we had considered this matter, we felt that trade with the Colonies should be dealt with in the proposed agreement at least by means of the general provisions, if not detailed schedules; that possibly the task of drawing up detailed schedules for each of the numerous Crown Colonies might, upon examination, be found impractical, in which case general provisions applicable to them might be worked out. In any case, we are concerned now with

²⁴ *Supra.*

finding a basis for negotiations and this requires only that we reach agreement on questions on which negotiations might break down. Since both parties apparently feel that the Crown Colonies should be dealt with in the negotiations and since neither is able to envisage any insuperable difficulties to reaching an agreement in this field, the question might be left open for the time being. Mr. Chalkley agreed with this. I told him we would continue our study of the Colonial question with a view to formulating our views on the subject and would take the matter up with him later.

611.4131/261 : Telegram

*The Ambassador in the United Kingdom (Bingham) to the
Secretary of State*

LONDON, April 2, 1937—2 p. m.
[Received April 2—11:05 a. m.]

187. I have ascertained that the recent tendency of some sections of the British press to intimate that Anglo-American trade negotiations have quite lately taken a more favorable turn is based on current remarks given out by the Foreign Office news section. This in turn I understand is based on the fact that the Foreign Office news section has only recently learned that a new revised list was received by the British Government from the American Government for consideration some time the latter part of February. In spite of the fact that this Embassy has received no copy of this new revised list ⁸⁵ I asked Atherton ⁸⁶ if he was able to obtain very discreetly from his friends in the Board of Trade exactly what progress they were making in consideration of this list and I venture to quote the substance of the remarks made to him :

“We have about finished our study and are waiting until the Cabinet and Government officers concerned return from their Easter holidays before discussing the matter with them. In our opinion, however, some of the items are ‘quite insuperable’ so much so that it is doubtful whether the Cabinet Ministers concerned will find it possible to approach the Dominions on these insuperable items”.

These Board of Trade officials have asked Atherton to lunch with them on Monday next which will provide a fresh opportunity for us to press the American viewpoint.

BINGHAM

⁸⁵ Copies were sent to him in instruction No. 1662, April 1.

⁸⁶ Ray Atherton, Counselor of Embassy at London.

611.4131/263 : Telegram

The Ambassador in the United Kingdom (Bingham) to the Secretary of State

LONDON, April 5, 1937—6 p. m.

[Received April 5—3 : 30 p. m.]

193. At the luncheon referred to in the last paragraph of my 187, April 2, 2 p. m., the permanent official of the Board of Trade, speaking unofficially and solely from his own angle, said that the Cabinet Ministers concerned were agreed in principle as to the desirability of concluding an Anglo-American trade agreement. In fact the will to do so had never been stronger but thus far each Cabinet officer had proved difficult in permitting concessions which affected his own department. Therefore the discussions which begin next week between the Cabinet Ministers concerned and their technical advisers may be protracted.

However in the opinion of my informant the "insuperable" items would prove to be (1) rice because it is the only concession which Great Britain offers to the new Government of Burma, (2) dried prunes and apricots since any concession on these would affect the war veterans industry in Australia, (3) canned fruits in syrup on which it is doubtful whether much if any more could be done than bind the present rate. In my informant's opinion agreement could probably be reached as regards the other edible articles mentioned in the first paragraph of Department's 120, April 2, 8 p. m.⁸⁷ special favorable emphasis being given to fresh apples and pears, honey and preserves without sugar; likewise something could be done for Douglas fir doors and it was presumed that concessions in return for the more expensive type of door exported from England would be forthcoming and it was emphasized that it would be easier to do something for southern pine rather than Douglas fir and that pork products particularly hams would also be negotiable items.

In conclusion the following general opinion was set forth: That while Great Britain was making a greater attempt to meet the United States than it had ever done in the case of any other foreign country with whom it had concluded a trade agreement, nevertheless, it was most unlikely that "despite all the good will in the world" it could meet *in toto* the suggestions of the United States; that it was really not politically possible to reverse at this time the forces which culminated in the Ottawa Agreements and which had as their fundamental aim that an increasing share of the United Kingdom market should go to Empire producers.

BINGHAM

⁸⁷ Not printed.

d11.4131/275

*The Second Secretary of the British Board of Trade (Overton) to the Commercial Counselor of the British Embassy at Washington (Chalkley)*³⁸

[LONDON,] 13 April, 1937.

DEAR CHALKLEY: I enclose our reply³⁹ to the memorandum handed to you by the United States authorities on 2nd March. In communicating it to them we should be glad if you would say how much we appreciate the remarks made by the Assistant Secretary of State when he handed the memorandum to you. It was in no spirit of oriental bargaining that we considered it here. We have gone as far as we possibly can on the items in the United States lists. We have ruled nothing out of consideration purely on the ground that (a) the United States is not the principal supplying country, (b) the reduction asked for exceeded 50 per cent. of the existing duty, or (c) a transfer from the dutiable to the free list is involved, although the United States Executive is not itself, we understand, in a position to offer such concessions. The fact that we have been unable to go further towards meeting the United States' requests arises from the inherent difficulties of which you are well aware and which we have tried to explain in our reply. For example, the attitude of some of the Dominions is bound to be affected by the difficulty they have experienced in developing their exports to the United States. The United States authorities will realise that outlook and opinion vary greatly in the different Dominions and that proposals which might serve as a basis of discussion in some would be entirely unacceptable in others.

We appreciate the political importance which would attach to a trade agreement between this country and the United States. We also concur in the view that an agreement of very narrow scope would be scarcely worth negotiating. But we think that the present United States proposals go far beyond what is politically and economically possible both here and in the Dominions. We are not of course, in a position to judge the political and "publicity" value within the United States of America of the proposals which, as indicated in our reply, we should be prepared to put forward to the Dominions, but they go very much further than anything we have previously contemplated in negotiations with a foreign country. We should have thought that a good deal might be made of this (it certainly will be in this country) and a good deal also of conventionalisation, the practical value of which, as it seems to us, has never been fully recognised.

³⁸ Left at the Department of State by the Commercial Counselor of the British Embassy on April 22.

³⁹ *Infra.*

It assumes a greater significance if our duties on the items in the United States' memorandum are compared with their own on the same items. Such a comparison shows that our own duties on these goods, which are for the most part staple exports from the United States, are in the main on a much lower level than the American.

In view of the fact that Dominion Ministers are already beginning to arrive, it would be helpful if we could as soon as possible have the United States replies on the matters on which further information is sought and learn whether they would desire us to approach the Dominions on the lines we now indicate.

We have not yet had the detailed United States desiderata on the one other "essential" item, namely, hog products, and we should wish to have them at the present stage in order to see whether they are practicable. It would be no good raising matters with the Dominions if there is afterwards going to be an impasse on some other point.

We should like to see what the picture as a whole looks like before approaching the Dominions. For that purpose we should be glad to have some amplification of the information in the Ambassador's telegram No. 85 of 19th March, with perhaps figures, showing the value of the imports from the United Kingdom likely to be affected by the various reductions which the United States have got in mind.

With regard to the note on raisins in our reply, you may think it well to explain orally that having regard to the very substantial interest which Greece and Turkey have in this commodity and to the fact that it is impossible to distinguish between the various classes of dried fruit which are comprised in this tariff specification, it seems doubtful whether the United States would derive any substantial benefit from a reduction in the duty.

Yours sincerely,

A. E. OVERTON

611.4131/275

The British Embassy to the Department of State

1. The United Kingdom Government have carefully and sympathetically examined the memorandum enclosing the revised list of products affected by the Ottawa Agreements on which an improvement in the treatment now accorded by the United Kingdom to the United States is suggested by the latter as a basis of negotiations for a trade agreement. They have also considered the list of products on which a binding of the present treatment is required.

2. The examination has been made with every desire to meet the requirements of the United States, so far as appears possible without prejudicing the chances of favourable consideration by the Governments of the Dominions, India, Southern Rhodesia and Burma. It

is unfortunately clear that the United States proposals as they stand would, at least in many cases, be unacceptable to those Governments and the United Kingdom Government fear that it would be useless to submit the proposals of the United States Government in their present form to the Governments concerned.

3. The United Kingdom Government desire to point out that there is little, if anything, which they could offer to the Dominions etc. by way of compensation for what the latter may be asked to give up in what is by far their most important market. Dominion goods already enjoy free entry into the United Kingdom (subject to a few exceptions mainly of a revenue character); consequently the field in which the Dominions concerned would probably seek compensation consists of further preferences, i. e. increased duties on imports from foreign countries of the classes of goods not covered by the United States desiderata. The United Kingdom Government believe that on general grounds the United States Government would share their desire to avoid any such result.

4. The United Kingdom Government would also point out that in certain cases the United States proposals raise difficulties from the point of view of protecting home interests. This difficulty will no doubt arise more acutely in the further requests which it is understood that the United States authorities may put forward at a later stage (in regard to commodities on which the United Kingdom is free from commitments to other Empire countries), but it also arises on some of the items in the present list. The duty on fresh apples, for example, is largely protective in aim, and is almost entirely so during certain months of the year. Such a duty would have been imposed even if there had been no Ottawa Agreements, and protective duties of the order of 20% ad valorem are far more difficult to reduce than protective duties of a much higher order.

5. With regard to paragraph 3 of the United States Memorandum the United Kingdom Government assume that (subject to the reservation in the fifth paragraph) List 2 contains all the items affected by the Ottawa Agreements in respect of which a binding of the present tariff treatment is required. But they think it well to point out that they would in general be unable to entertain proposals involving the binding of existing revenue duties. While in most cases the binding of other duties naturally presents fewer difficulties than reduction in the rates of duty, it is important to recall, as pointed out in Mr. Chalkley's personal note of the 29th December,⁴⁰ that the United Kingdom Government are already faced with proposals for higher duties on a number of commodities in the course of discussions arising

⁴⁰ Not printed.

out of the Ottawa Agreements, and in the consideration of the claims of domestic industries for increased protection. These facts are mentioned lest the difficulties facing the United Kingdom Government and the value attaching to the conventionalisation of present duties and margins of preference should be underrated.

6. The United Kingdom Government believe that the nature of the difficulties presented by the United States proposals will be most readily appreciated by a consideration of each item. This procedure will bring out in a practical way the difficulties which have already been formulated in general terms. The United Kingdom Government have accordingly prepared the attached notes,⁴² in which they have explained the position and indicated such alternative proposals as they would feel able to put to the various Governments concerned as a basis for consideration. It will be realised that their acquiescence must by no means be assumed.

13 APRIL, 1937.

611.4131/273 : Telegram

The Ambassador in the United Kingdom (Bingham) to the Secretary of State

LONDON, April 21, 1937—6 p. m.

[Received April 21—1:45 p. m.]

234. In the course of a conversation an official of the Foreign Office took occasion to reiterate the request reported in the last paragraph of my 218, April 14, 6 p. m.,⁴² that an answer might be received on the British reply to the American list transmitted with the Department's 1662, April 1st,⁴² before the convening of the Imperial Conference. The Conference is scheduled formally to begin on May 14th; it will immediately adjourn for the Whitsun week end and its serious work will commence on May 19th. In this connection my informant stressed the importance in attempting to obtain concessions from the Dominions to be able to approach them orally for in any case when the British Government asked them to make concessions they would immediately reply "what will we get in return" and the answer could only be "the possibility of a better world". My informant went out of his way to inquire why no request was made for the elimination of the wheat preference and I could not but feel that the British would not like raising the question with the Canadians. In this connection he also mentioned that an

⁴² Not printed.

elimination of this preference would among other things successfully dispose of the Buffalo difficulties.⁴³

Incidentally it is anticipated that the Imperial Conference will last for about 4 weeks.

I gathered that the status of the Ottawa Agreements is briefly as follows: India like Canada will require new agreement. Australia which has given notice of termination does not wish to undertake conclusive negotiations until after its forthcoming election and if necessary the present agreement will by an arrangement be continued in force during the interim period. The negotiations for a revision of the New Zealand Agreement are almost completed. Little seems to be known about the desires or intentions of South Africa.

BINGHAM

600.0031 World Program/92 : Telegram

The Secretary of State to the Chargé in the Union of South Africa
(Russell)

WASHINGTON, April 28, 1937—noon.

7. I am sure that you have followed with sympathetic interest the extensive progress which we have made in our trade agreement program and I am confident that you are familiar with the attitude of myself and other officers of this Government that this program represents merely the American share of a movement which must be world-wide in character. The American Government is convinced that world-wide economic appeasement with progressive reduction of trade barriers is the only alternative to military adventures on the part of certain nations. We feel some concern lest the attitude of the British Commonwealth of Nations in respect to certain aspects of commercial policy, may impede rather than facilitate this broad movement, which is gathering adherents in all parts of the world.

Specifically, we feel concern over the question of extreme imperial preferences. It would be easy for the governments of the British Commonwealth to take the position that preferences are a matter of purely domestic concern; a little analysis will demonstrate, however, that this statement is true only in a strict technical legal sense, if at all. While nominal or very moderate preferences within the Empire to demonstrate political relationship and solidarity are understandable (in fact, the American Government in its trade agreement with Canada formally recognized the principle of imperial preferences), it can scarcely be denied that a preference extensive enough materially

⁴³ Regarding British tariff rates on Canadian wheat stored at Buffalo prior to shipment to the United Kingdom.

to divert trade artificially from a foreign supplier to an empire supplier is thoroughly uneconomic and is indistinguishable from a prohibitive protective tariff. Such preferences not only hurt world trade by preventing its development, but, being uneconomic, will undoubtedly in the long run seriously hurt the British Commonwealth of Nations.

In view of the fact that it is understood that there will be important economic discussions at the Imperial Conference next month in London, it has occurred to us that it might be helpful if you discussed confidentially and informally our views along the foregoing lines with responsible South African officials.⁴⁴ Any discussion should be on your own initiative without any reference to any instruction from the Department. We desire to give you wide discretionary authority in this matter and if, for any reason, you feel that such a presentation of views would be undesirable, telegraph the Department. Any criticism of empire preference should be friendly and be accompanied by reiterations that our country will in any event do the best it can to cooperate in trade and in every other mutually desirable way with the Empire, but that of course we will be greatly handicapped by its extreme nationalism.

HULL

611.0031/2823

Memorandum by the Secretary of State

[WASHINGTON,] May 13, 1937.

The British Ambassador came in to present Mr. Keith Officer, the new Australian Commissioner attached to the British Embassy. I welcomed him as an addition to the British Embassy staff and expressed every disposition to work whole-heartedly with his government in matters of mutual concern.

The British Ambassador remarked that it was well to have Mr. Keith Officer associated with the British Embassy here in order that the Ambassador might more accurately interpret, understand and represent, the situation in and the true interests of Australia. I expressed my hearty concurrence and satisfaction.

I then added that as an illustration of the difficulty of understanding each shade of meaning or significance attached to a given condition or policy in another country, I recalled that some of the important officials in the British Foreign Office until recently had not at all under-

⁴⁴ In telegram No. 13, May 1, 11 a. m., the Chargé in South Africa reported that there were no responsible officials present in Pretoria with whom conversations should be held as most prominent officials who handled trade matters were en route to London (600.0031 World Program/96).

stood the true nature or significance of the liberal commercial program being pursued by this government. I then remarked that in the first place we sought mutually profitable trade relationships with other countries; that a one-sided trade would in the end be hurtful to both countries alike; that a second point—the corner stone of American commercial policy—was the substitution of the principle of equality of treatment for the principle of discriminations; that this broad policy was even more important to the British Empire than to my own country, from the long viewpoint; that we proposed to stand for it and to fight for it indefinitely in the future as offering the only practical course towards permanent conditions of both economic well-being and military peace.

I then said that some years ago my country was seeking to pursue the narrowest isolationist, embargo commercial policy; that in doing so it had assumed a part of the major leadership of the world still further towards extreme economic self-containment; that this was a colossal blunder which played its full part in bringing on the present dislocated and chaotic conditions, both economic and political, in international relations and in world affairs; that this country since 1933 had been strenuously striving to undo its injurious action and to aid in leadership back towards economic liberalism. I then added that nothing had been more clearly demonstrated during recent years than that it was impossible to organize unemployed, distressed people behind any stable structure, either of government, or peace, or economic well-being; that this fact had stood out after 18 years of effort, by European statesmen for example, to rehabilitate normal international relationships with the result that we could see nothing except high tension—due to the narrowest, cut-throat, trouble-breeding, trade methods and a wild, run-away race in military armaments. A distinction was made between arming by peace-loving and peace-seeking countries like the English-speaking countries when heavily armed international desperadoes were at large, and, on the other hand, arming for purposes of aggression.

The British Ambassador spoke approvingly of what I said. The Australian Commissioner nodded his head from time to time in apparent approval or acquiescence.

C[ORDELL] H[ULL]

611.4131/287a

The Department of State to the British Embassy

MEMORANDUM

1. The proposals submitted by the Government of the United States on March 2, 1937, with respect to the treatment which it would re-

quest for certain products affected by the Ottawa agreements have been carefully reexamined in the light of the considerations advanced by the United Kingdom Government in its memorandum of April 13, 1937. The results of these further studies are set forth in the attached supplementary statement⁴⁵ which indicates such modifications as the Government of the United States finds it possible to make in its previous proposals, and supplies the further information or explanation requested by the United Kingdom Government on certain points.

2. In reexamining its proposals of March 2, the Government of the United States has taken into account the considerations advanced by the United Kingdom Government in its memorandum under reference. However, for reasons set forth in the paragraphs which follow, it has not found it possible to make any extensive modifications in the requests previously made.

3. In formulating its memorandum of March 2 and its reply to the questionnaire submitted on March 17 by the Commercial Counsellor of the British Embassy in Washington, the Government of the United States had in view the finding of a basis for a comprehensive trade agreement. Were the Government of the United States to accept as the basis for an agreement the proposals made in the United Kingdom Government's memorandum of April 13, it would find itself compelled to restrict correspondingly the concessions which it would be prepared to accord the United Kingdom. The Government of the United States frankly does not believe that the negotiation of a narrow and limited trade agreement of this type would be worth while in view of the opportunities now presented, or constitute adequate leadership in the field of a general liberalization of trade relations on the part of the Governments of the two largest commercial nations of the world.

4. The United Kingdom Government will readily appreciate the fact that the nature of the concessions which the Government of the United States deems essential to a comprehensive trade agreement grows out of the fundamental requirements of the policy pursued by it in the field of international trade relations. The Government of the United States desires to conclude trade agreements with as many countries as possible in order that the beneficial effects of reciprocal relaxation of trade barriers be given the widest application. But the carrying out of such a program requires that the interests of the various classes of American producers be taken into account. Hence the Government of the United States may easily find itself forced to contemplate the abandonment of all efforts to enter into

⁴⁵ Not printed.

trade agreements with countries whose exports to the United States consist predominantly of primary products, unless improved opportunities for the exportation of American agricultural and other primary products, of the kind involved in the requests for concessions made in the memorandum of March 2, be obtained.

5. The considerations set forth above have a special applicability in the case of the United Kingdom and the British Dominions. With reference to the third paragraph of the United Kingdom Government's memorandum of April 13, it may be pointed out that whatever direct compensations the United Kingdom Government may or may not be in a position to offer the Dominions, the Dominions cannot fail to benefit from a policy of cooperation in this matter. A satisfactory agreement between the United States and the United Kingdom would pave the way for similar agreements between the United States and the Dominions, negotiations with which must necessarily remain in abeyance until it is ascertained whether a basis for a comprehensive trade agreement between the United States and the United Kingdom can be found. Moreover, in so far as economic relationships among the countries of the British Empire can be harmonized with the possibilities of expanding world trade, the movement for a constructive economic world program, from which all countries would enjoy immeasurable benefit, will, to a vital extent, be strengthened and assured of success. Above all, success in this field of effort will serve the supreme end of promoting world peace.

6. With reference to the fifth paragraph of the United Kingdom Government's memorandum under reference, in which it is stated that in general the Government of the United Kingdom would be unable to entertain proposals involving the binding of existing "revenue" duties, it would be appreciated if the Government of the United Kingdom would explain the sense in which the term "revenue" duties is used in this connection.

7. The United Kingdom Government, in its memorandum of April 13, points out that concessions which it would be necessary for the United Kingdom Government to make in a comprehensive trade agreement with the United States might be regarded as undesirable not only by certain producers in the Dominions, but also by some producers in the United Kingdom. The United States Government must also envisage the possibility that the concessions which the United States would be called upon to make in such an agreement might likewise be regarded as undesirable by many producers in this country. Difficulties of this nature are not to be avoided if any progress is to be made in reducing the barriers which are impeding international trade. It may be safely anticipated, however, that such immediate effects as the mutual concessions may have upon certain producers

in each country will be more than compensated for by the benefits derived by all producers through improvement in both domestic and foreign markets, which inevitably will flow from the restoration of healthy international trade relations.

WASHINGTON, May 18, 1937.

841.01 Imperial Conference (1937)/35 : Telegram

The Ambassador in the United Kingdom (Bingham) to the Secretary of State

LONDON, May 24, 1937—5 p. m.

[Received May 24—3 : 35 p. m.]

304. In the course of luncheon conversation Norman Robertson ⁴⁶ of the Canadian delegation made the following comments to a Secretary of this Embassy who has known him for some time, on the understanding that they should receive the same confidential treatment that had been accorded his talks with Mr. Armour: Robertson indicated that he was slightly less optimistic now that he had come nearer the practical details. In the first place he saw the British Cabinet changes as presenting an adverse factor; Baldwin⁴⁷ had always somewhat apologized for tariffs and even his references to preferences were anything but unthinkingly wholehearted. On the other hand his successor Chamberlain worshipped the memory of his father and attached emotional significance to his father's preference system. Furthermore, the contemplated change at the Board of Trade meant at worst that Runciman would be replaced by a hard boiled Tory and at best Runciman would be unwilling to be active in fathering a policy he would not be able to rear.

Secondly Robertson elaborated on the difficulty of the Canadian position particularly the fact that any concessions they were called upon to make for the benefit of an Anglo-American trade agreement could not be submerged in a revision of an Anglo-Canadian agreement; that members of the Canadian Government would have to return to Ottawa worse than empty handed having given up certain preferences the value of which 3 months ago they emphasized when the Anglo-Canadian trade agreement was ratified. In this connection Robertson said that his understanding of its position was that we did not wish to have a discussion of the particular Ottawa items incident to an Anglo-American trade agreement precede the enumeration of an Empire declaration for principle. However, the Canadian dele-

⁴⁶ Economic expert, Canadian Department of External Affairs.

⁴⁷ Stanley Baldwin, British Prime Minister, 1935-1937. On May 28, 1937, Neville Chamberlain became British Prime Minister.

gation felt itself in a somewhat difficult position for if it took the initiative in obtaining such a declaration it would be in effect writing the British a blank check and they thought that the British might be awaiting just such a development. On the other hand, they would not object to taking the initiative provided they knew in advance what it entailed in practical concessions. It was obvious that Robertson did not know what the British reply to the American memorandum contained although I gather that Ambassador Lindsay had given Mackenzie King personally and confidentially "without any strings attached" a copy of the American memorandum. Robertson did vouchsafe that he did not see how Canada could make all the concessions contemplated in the American memorandum and on the other hand he remarked that he was surprised at the omission of one or two items, in particular wheat. The Liberal Government was on record as being opposed to the wheat preference; Australia he felt would be willing to give it up and although it antagonized the Maritime provinces it would stop the thorny transshipment questions which would please Buffalo and other interests. At the same time the removal of a duty preference on one of the essential foodstuffs should make a good impression throughout the world. In this connection reference is made to the British suggestion, last sentence first paragraph my 234, April 21, 6 p. m.

BINGHAM

611.4131/292 : Telegram

The Ambassador in the United Kingdom (Bingham) to the Secretary of State

LONDON, May 24, 1937—6 p. m.
[Received May 24—3:50 p. m.]

305. In discussing the work of the Imperial Conference today a high British official referred to the latest American reply in the matter of the Anglo-American trade agreement and expressed disappointment that there was so little modification in the American position since the last note. Speaking personally he said that he could understand this since as yet the Department of State had no detailed idea as to what the position of the Dominions might be and in this connection Ambassador Lindsay had telegraphed an urgent recommendation that it was important to put before Secretary Hull at the earliest possible moment exactly what action the British Cabinet was taking with regard to the American reply more especially vis-à-vis the Dominions and also exactly what the reaction of the Dominion representatives in London might be. Therefore the Board of Trade hoped to bring the American note before the British Cabinet on Wednesday

and would seek permission to discuss this document with the various Dominion authorities on Thursday or Friday. As soon as possible thereafter Ambassador Lindsay would be informed of the trend of the discussions.

Incidentally the latest name to be favored for the presidency of the Board of Trade in Chamberlain's Cabinet is that of Oliver Stanley present Minister of Education.⁴⁸

BINGHAM

841.01 Imperial Conference (1937)/41 : Telegram

The Ambassador in the United Kingdom (Bingham) to the Secretary of State

LONDON, June 2, 1937—7 p. m.
[Received June 2—2:30 p. m.]

335. I understand from Norman Robertson in strict confidence that he and Pearson⁴⁹ representing the Canadians discussed yesterday with representatives of the seven interested British departments the recent Anglo-American trade agreement interchanges. (Apparently King, Dunning and the other delegates are concentrating on matters of foreign relations and imperial defense). These interchanges will be taken up separately with each Dominion by the United Kingdom authorities.

Robertson did not give me his final conclusions of the meeting which I gather had lasted several hours but he did mention that it was not beyond the bounds of possibility that the fight might eventually have to be moved to Washington. He went on to emphasize the following:

(1) that he had stressed that although political considerations should no doubt weigh with the Cabinets, nevertheless, we should anticipate that adjustments incident to the conclusion of an Anglo-American agreement would have to stand on their economic not their political merits;

(2) that he had taken the line that any such concessions on the part of Canada as the recent Anglo-American interchanges seemed to contemplate would in turn necessitate

(a) that they should form a part of a "comprehensive pattern" and

(b) that Canada should receive such compensation in corresponding concessions as would meet with the approval of the Canadian electorate.

⁴⁸ Oliver Stanley became President of the British Board of Trade on May 28, 1937.

⁴⁹ Lester Bowles Pearson, First Secretary, London office of the High Commissioner for Canada.

As regards (a) Robertson was very vague himself but his purpose seemed to be to obtain guarantees from the British regarding a relaxation of their trade restrictive practices; as regards (b) Robertson seemed to envisage concessions on the part of the United States as well as Great Britain and he again emphasized the difficulties of Canada's position in much the same way as reported in my 304, May 24, 5 p. m.

(3) that the British argument had been based on the somewhat "simple attitude" that the Dominions would obtain virtually compensatory benefits from the indirect results which must flow from the conclusion of such a trade agreement at the present time.

BINGHAM

611.4131/310

*Memorandum by the Chief of the Division of Trade Agreements
(Hawkins)*

[WASHINGTON,] June 4, 1937.

Conversation: Mr. H. O. Chalkley, Commercial Counselor, British Embassy;
Mr. Francis B. Sayre;
Mr. Harry C. Hawkins.

Mr. Chalkley called by appointment to discuss matters relating to the proposed trade agreement with the United Kingdom. After some general discussion as to the manner in which the situation is developing at the Imperial Conference in London, Mr. Sayre referred to the British inquiry some time ago regarding the extent of the concessions which the United States on its side might be prepared to make in a trade agreement and to the tentative estimates which we gave to Mr. Chalkley on that occasion. Mr. Sayre said that since then we have continued our studies and now find, on the basis of more complete data, that our first estimates rather materially understate the extent of the concessions that it might be possible to make; that we think it desirable to advise Mr. Chalkley to this effect so that he will be under no misapprehension as to what it might be possible for us to do.

Mr. Sayre had before him a copy of the tabulations prepared by the Trade Agreements Committee on the basis of its later and more complete studies and said that he would be glad to show them to Mr. Chalkley for his confidential information. Mr. Chalkley looked them over and began taking notes on them. After examining them and asking questions, he finally remarked that this material is extremely important and interesting and inquired whether he might not have a copy for confidential transmittal to London.

Mr. Sayre replied that he thought there would be no harm in this, and gave copies to Mr. Chalkley.⁵⁰ However, in doing so Mr. Sayre stressed the tentative nature of this material, pointing out especially that concessions to the extent indicated could be granted only if there were a complete *quid pro quo*. Mr. Chalkley said he understood this to mean full compliance by the United Kingdom with the requests that we had submitted. Mr. Sayre emphasized that it meant more than this; that the requests submitted are minimum and relate only to products on which the United Kingdom has commitments under the Ottawa agreements; that additional requests covering the whole range of our exports to the United Kingdom would later be submitted and that concessions by the United States to the extent indicated could only be granted if the requests to be made, as well as those already made, were satisfactorily met.

Mr. Sayre also stated that the indicated concessions by the United States are tentative in the further respect that they must be subject to modification in the light of further study and in the light of evidence that will be submitted by private interests after the regular public announcements.

Mr. Chalkley stated that he fully understood our position on the above points, and that in transmitting the material to London he would stress them.

Mr. Chalkley then referred to our list of requests already submitted, and said that almost certainly the Dominions would insist upon modifications on some points. For example, he said that he doubted very much whether Canada would acquiesce in the granting by the United Kingdom of free entry on American lumber. He thought discussions between Canada and the United States might be necessary; that it might be desirable to work out some agreement or arrangement between the lumber producers in this country and in British Columbia. He also referred to the difficulty from the standpoint of the British most-favored-nation policy of a breakdown between the different species of lumber whereby American Douglas fir would be granted better treatment than the Baltic softwoods. He inquired whether we would be prepared to discuss modifications in our requests in case it turned out that the position of the Dominions should make this necessary.

In reply, Mr. Sayre reminded Mr. Chalkley that in preparing our list of requests, we had conscientiously sought to whittle them down to the bare minimum compatible with our objective of concluding a comprehensive agreement and with satisfying the political and other pressures in this country. In view of these considerations, it is difficult, he said, to envisage the possibility of modifying our requests.

⁵⁰ Only the covering memorandum is printed, *infra*.

Mr. Chalkley indicated that he understood our position, and said that we might as well postpone attempting to discuss the aspects of the matter to which he had referred until we have further information from London. He took occasion to make clear his own personal attitude in regard to the proposed agreement and his desire conscientiously to do everything within his power to work out a really satisfactory solution. Mr. Sayre replied that we know what he is doing and deeply appreciate his contribution toward realizing the important object which we all have in view.

611.4131/310

The Department of State to the British Embassy.

WASHINGTON, June 4, 1937.

MEMORANDUM ON PRESENT STATE OF OUR STUDIES WITH RESPECT TO
POSSEIBLE CONCESSIONS WHICH MAY BE GRANTED BY THE UNITED
STATES

On March 17 the Commercial Counselor of the British Embassy submitted a questionnaire concerning the extent of the concessions which the United States might be in a position to make in a trade agreement with the United Kingdom. Our reply of March 19 furnished such general estimates as were then possible on the basis of preliminary and incomplete studies made at that time. A copy of the pertinent portions of the reply is attached hereto.⁵¹ Since then we have made intensive further studies, on the basis of which we have now reached somewhat more definite and detailed, though necessarily still tentative, conclusions, which we are in a position to communicate informally to the United Kingdom Government in amplification of our previous reply to the questionnaire of March 17.

Our present estimate of the extent and character of the possible concessions which it may be feasible to accord the United Kingdom is set forth in the attached tabulations.⁵²

Of course, the concessions indicated are subject to such revision as may seem necessary as a result of further investigation or in the light of evidence presented by private interests following the regular public announcements. Naturally also, the actual granting of the concessions to the extent indicated would be dependent upon the reciprocal concessions which will be granted to the United States, including those coming within the scope of the minimum desiderata which have already been communicated, and those subsequently to be added.

⁵¹ See first three paragraphs of the memorandum of March 19, p. 19.

⁵² Not printed.

On certain items, particularly in Schedule 11, which are subject to compensatory, as well as to protective duties, only the protective portion of such duties can be considered at this time. However, in the event that the existing duties on the raw or semi-manufactured products which serve as the basis for the compensatory rates, should subsequently be reduced, it would be feasible to make corresponding adjustments in the compensatory rates. Consideration could be given to the inclusion in an agreement of a provision to this effect.

It will be noted that the total of items with respect to which concessions appear possible on the basis of present information is 246, of which 239 are reductions, and that on more than 100 of these it now appears that it would be possible to make reductions ranging from 40 to 50 percent of the present rates.

In addition to the products indicated in the attached tabulation, it will probably be feasible also to include for binding most of those products now on the free list of which the United Kingdom is the chief source of imports into the United States.

611.4131/300 : Telegram

The Ambassador in the United Kingdom (Bingham) to the Secretary of State

LONDON, June 4, 1937—noon.
[Received June 4—10:20 a. m.]

344. Today's *Daily Telegraph* contains an article by its well informed diplomatic correspondent which reads in part as follows:

"Following premature disclosure in some Dominions of the lines along which attempts are being made to find a basis for a trade agreement between Britain and America considerable uneasiness developed yesterday . . .⁵³ Disclosure of details through some of the Dominion press has resulted in some political embarrassment to those conducting these purely exploratory talks in London. It will also occasion difficulties in Washington since the stage of "negotiations" which has a special significance under the United States Constitution has not been reached.

Conference talks in London have left no doubt in Dominion minds that an Anglo-American agreement on trade and other matters is a vital first step in the general plans for world settlement as seen by the United Kingdom Government.

But when it comes to discussion of the actual sacrifices required of individual Dominions and the United Kingdom delicate home political questions are raised. It was not concealed yesterday that formidable difficulties are being encountered.

⁵³ Omission indicated in the original.

Before any final agreement with America can be reached it will also be necessary for Britain to prepare for some variations in her existing trade agreements with foreign countries. It is pointed out that all this will take time and early results must not be anticipated."

This article with its suggestion of delay might be noted in connection with the *Times* editorial quoted in my 342 of June 3, 9 p. m.,⁵⁴ particularly the last two sentences thereof.

Incidentally I had a short conversation last evening with a member of the new government who, although confining his remarks to general terms, left me with the same impression as that contained in the articles referred to above.

It may not be amiss to add here that certain newspaper correspondents have obtained from their sources of information suggestions that because of the immediate difficulties of the new government as well as the complicated character of present negotiations the emphasis here is being shifted to stress the importance of a future omnibus settlement which besides trade would also deal with such matters as shipping, war debts et cetera, and for the present merely a limited Anglo-American trade agreement should suffice to keep the door open.

BINGHAM

611.4131/309: Telegram

The Ambassador in the United Kingdom (Bingham) to the Secretary of State

[Extract]

LONDON, June 10, 1937—5 p. m.

[Received June 10—3 p. m.]

367. . . .

Incidentally after the Foreign Office dinner last evening the Prime Minister took [omission?] to say to me that he hoped we fully understood his fixed purpose to cooperate with the United States as far as possible; that he was under the impression that his attitude had been perhaps misunderstood at least to some extent in the United States and I replied that I felt his attitude on this subject had undergone a development in the last 2 years and that I now accepted without any reservation his assurances of the desire for friendly cooperation between our two Governments. Chamberlain went on to say that it was his firm hope and fixed purpose to work out a trade agree-

⁵⁴Not printed; it quotes an editorial entitled "An Opportunity" from the London *Times* of June 3, 1937 (611.4131/299).

ment with the United States and that he intended to give his constant support to that end.

However, from an unofficial source, which I believe is reliable, I understand that it is planned that Casey⁵⁵ (see my 357, June 8, 1 p. m.⁵⁶) will explain in Washington the political difficulties facing the Lyons⁵⁷ government because of the forthcoming Australian election and will point out that the present British Government fully understands and is in sympathy with Lyons' position because they also are in reality opposed to a Lang victory and in this connection it will be emphasized that Lang stands for extreme economic nationalism.

Thus, there may well be an interim period in which the British and Dominions will attempt to clarify how far the United States is willing to weaken her present stand either in substance or by temporary agreement.

BINGHAM

611.4181/813 : Telegram

The Ambassador in the United Kingdom (Bingham) to the Secretary of State

LONDON, June 15, 1937—9 p. m.

[Received June 15—5 p. m.]

384. My 187, April 2, 2 p. m., and subsequent. In conversation with a high official of the Board of Trade this afternoon, he stated that at the last meeting today of the heads of delegations of Imperial Conference Mr. Chamberlain made a very strong and moving impromptu appeal that the Dominions should lend their cooperation for the conclusion of an Anglo-American trade agreement which would mean so much not only as a preliminary to a lowering of world trade restrictions but also towards the establishment of economic international peace.

Summing up the attitude of the Dominions my informant stated:

(1) South Africa, conscious of the advantage of this approach to the United States and undoubtedly influenced by the role that must be played by the United States in future gold discussions, had expressed her entire willingness to withdraw her demands for increased preferences and agreed to make such adjustments as would facilitate the conclusion of Anglo-American negotiations.

(2) Mackenzie King had stated that he had dealings direct with the United States and knew best how to handle the question with

⁵⁵ R. G. Casey, Minister of the Treasury of Australia. For correspondence regarding his visit in Washington, see pp. 136 ff.

⁵⁶ Not printed.

⁵⁷ J. A. Lyons, Prime Minister of Australia.

Washington himself. The British allege that the Canadian Prime Minister gave them the impression that he felt he could secure concessions from the United States which would permit him to yield on the particular items of the Ottawa Agreements that from a Canadian angle were necessary to an Anglo-American trade agreement.

(3) The Australian delegates allegedly took the line that the United States was successfully bluffing England and that it was not possible in a pre-election period for Australia to forego any preferences for the sake of an unsecured future betterment. However, the British authorities here as well as some of the Australians were apparently concerned that Mr. Lyons in the forthcoming election campaign even if pressed should make no campaign statements which would tie his hands for the future.

My informant in conclusion stated that in the next fortnight there would be prepared for despatching to Lindsay a full statement of the situation existing at the end of the Imperial Conference in the matter of the trade agreement.

I transmit the above as of interest although it is patently the British Board of Trade's explanation.

BINGHAM

611.4131/333

*The President of the British Board of Trade (Stanley) to the Secretary of State*⁵⁸

LONDON, 15 June, 1937.

DEAR SECRETARY OF STATE: My first task as President of the Board of Trade has been to study the preliminary exchanges between our Governments on trade matters; and that study has prompted me to write to you in this informal manner, which I hope you will forgive.

I have, of course, been familiar with your policy, and have known something of the practical effect you have been able to give to it. My reason for writing is to assure you of my personal sympathy with the objects you have proclaimed to the world as the proper aims of statesmanship, and to say that although I have not had the privilege, enjoyed by my predecessor, of personal discussion with you, I hope you will feel able to count on me as a collaborator.

You, I know, have had many difficulties. We too have difficulties to overcome. If progress seems slow, if delays are irritating—as they must be—I would only ask you to remember that these things are inevitable in all democratic countries.

I hope shortly to be able to let you know how much progress we have been able to make with the Dominions. For my part, I am con-

⁵⁸ Transmitted to the Secretary of State by the British Secretary of State for Foreign Affairs under covering letter of the same date.

vinced that a full and frank explanation of our position is the most useful step we can take in the immediate future. In that friendly spirit, we can make progress, and that is why I have ventured to send you on taking office this personal message of good will.

Yours sincerely,

OLIVER STANLEY

611.4131/322

Memorandum by the Secretary of State

[WASHINGTON,] June 24, 1937.

The British Ambassador came in and handed me two notes: one from Mr. Anthony Eden, of the Foreign Office,⁵⁹ and the other from the new President of the Board of Trade.⁶⁰ The Notes are self-explanatory and copies are attached hereto. I thanked the Ambassador and requested him to thank these gentlemen.

The Ambassador prefers not to be over-confident about a trade agreement between our two countries, but does feel that the movement is steadily gaining strength and going forward. . . . The Ambassador said that he understood Mr. Chamberlain had made what was really a moving speech in the Imperial Convocation in support of a trade agreement with the United States. I suggested that there were two dangers ahead: one was that the whole matter might be delayed, from one cause or another, until the present fine sentiment in this country and many other countries—with considerable sentiment taking root in Europe—might stagnate and sag down; the other question was whether the British would announce their destination as Chicago, instead of San Francisco where they really expect ultimately to go. I said I meant by that that they might be tempted to stop short of the favored-nation policy—too short in fact—as a first step, while concealing their main and final objective of the unconditional favored-nation policy.

C[ORDELL] H[ULL]

611.4131/333

*The Secretary of State to the President of the British Board of Trade (Stanley)*⁶¹

WASHINGTON, June 30, 1937.

MY DEAR MR. STANLEY: The cordiality of your note and the identity of objective which it denotes, give hope that we are beginning a rela-

⁵⁹ Not printed.

⁶⁰ *Supra.*

⁶¹ Transmitted as an enclosure to a note of June 30, to the British Secretary of State for Foreign Affairs.

tionship which cannot fail to bring to realization our common objective. My appreciation of your message is the deeper because this objective seems to me so vital to the welfare of our two countries and to the general aspect of the whole world.

When you have had time to examine thoroughly into the question, I believe you will find that the tentative outlines of a possible agreement between our countries offers to both a very substantial opportunity for a solid enlargement of their trade along lines of mutual economic benefit. The example of cooperation in trade expansion as well as the opportunity to share fully in the benefits of such an Anglo-American commercial agreement would also be powerful inducements for other countries to resist trade arrangements of a type less helpful and less hopeful for the world.

It is upon my confidence in the results, especially as bearing upon the matter of maintaining peace, that this agreement will promote, that I shall rely for argument and persuasion successfully to overcome in the future, as I have so far done, such opposition and criticism as may present themselves. I realize that similar difficulties may beset you, and I am glad to know the spirit in which you plan to deal with them.

These difficulties will suggest delay. I shall do everything in my power to overcome such delay for, when so much is happening day by day that tends to fit the world's economic relations in firm molds of national struggle, all delay would involve risk and may create new obstacles. Our critics must be forced, I feel, to face their responsibility for blocking action which may indicate the method by which the world can improve its condition on peaceful terms.

I shall give full and careful attention to the explanation of your program and position that you have offered to send in the near future.

Sincerely yours,

CORDELL HULL

611.4181/326 : Telegram

The Ambassador in the United Kingdom (Bingham) to the Secretary of State

LONDON, July 2, 1937—noon.
[Received July 2—11:37 a. m.]

429. From Pasvolsky:⁶²

1. I have just had a full and frank discussion of American-British trade relations with Sir William Brown who as Permanent Secre-

⁶² Leo Pasvolsky, Special Assistant to the Secretary of State.

tary of the Board of Trade holds a key position with respect to trade agreement matters. Brown felt strongly that we fail to appreciate their difficulties and I felt equally strongly that perhaps because of pressure of other affairs he had failed to give sufficiently close consideration to the arguments we have been putting forward in our various communications. We canvassed thoroughly various aspects of the problem and as we concluded this part of the conversation he said that he was glad to have had the opportunity to discuss some of the possibilities that have been bothering him especially because in view of our long acquaintance neither of us needed to mince words.

2. Brown then went on to say that he dislikes preferences as much as we do and is in full sympathy with our broad objectives. The British [omission?] for obvious reasons give up the principle of imperial preference although they are fully prepared to press for a relaxation of preferences whenever possible. He said that one of the most important ideas which Runciman brought back from Washington was the assurance that we would not ask for complete abandonment of the principle of imperial preference. That served more than anything else to convince the Cabinet that they should make every effort to reach an agreement with us. At the session of the Imperial Conference at which trade matters were discussed, Chamberlain made an exceptionally moving and eloquent appeal for Dominion cooperation in making possible an agreement between the United States and Great Britain. (I had a similar description of Chamberlain's speech from several sources.) In addition to setting forth their present ideas in the memorandum which they have despatched to Lindsay for presentation to us, they have sent to Washington an official of the Board of Trade who specializes on American matters and who will be prepared to give us detailed explanation of their position.

3. As regards the attitude of the Dominions, Brown repeated pretty much what he has already told the Embassy. South Africa is willing to play ball but Canada and Australia are difficult.

4. When we talked about Canada, Brown expressed a good deal of satisfaction with the new British-Canadian agreement whereupon I said that the haste with which the agreement was negotiated and signed was a matter of great disappointment to us. I said that the re-binding to Canada of the Ottawa margins of preference in Great Britain looked almost like a deliberate attempt to make more difficult an agreement between the United States and Great Britain. Brown replied that we must remember how difficult the Canadians are. At the time the new agreement was negotiated the Canadians were told and understood perfectly well that in view of the number of bound margins in Canada from which the British had released them they must be prepared to make the concessions needed for an agreement

between Great Britain and the United States. In spite of this the Canadians took the position at the Imperial Conference that they would need compensation from us if they are to give the British what they need. Nevertheless Brown thought that something could be done on apples. He said lumber is more difficult both because of Canada and of the Scandinavian countries, repeating the arguments they have already given us.

5. As regards Australia, Brown said that their principal preoccupation at the present time is to keep Lyons from committing himself irrevocably on the subject of preferences. A statement is now being worked out at the Board of Trade which Lyons might make in the election campaign and which would still make it possible to do something in the event of his victory at the polls.

6. In view of all this I asked Brown why at the beginning of our conversation he was not more optimistic. He replied that it was partly the result of his general feeling, the frank discussion of which with me he thought was very helpful, and partly because he was frightfully tired after weeks of bickering with the Dominion representatives. He then added "never mind all that. Please believe me that we are trying and will continue to try our best." He asked me to be sure to get in touch with him when I return to London in September on my way home. He wants to have another discussion in the light of what might transpire in the meantime.

7. My general impression, more perhaps from what was hinted than said, is that while the British are extremely anxious to have an agreement they are going to make another attempt to get us to bargain directly with the Dominions. I think we ought to maintain our position in this respect. I doubt that we can get our whole must list and will have to recede substantially, especially on dried and canned fruits. But I doubt equally that we can get much more by paying the Dominions directly. I think we can get the removal of preference on wheat. I did not discuss the matter with Brown but I gather from conversations with an Australian and a Canadian friend that there is not likely to be great opposition in their countries. The fact that we did not ask for wheat originally should make it relatively easy for us to indicate it as compensation for some recession. I think we ought to stick to our tobacco request. I understand that the Treasury is questioning the idea of increasing revenue from tobacco by increasing the duty on Empire tobacco and thus narrowing the margin of preferences against us. There is going to be a great deal of bickering on individual commodities but I think the chances for an agreement are very good. The atmosphere in London is extremely favorable in this sense and the Government is likely to come in for a good deal of unpleasant criticisms if they have to admit failure.

Brown intimated that pressure for action on the part of the press and of many influential groups in and out of Parliament was what decided them primarily to send Stirling to Washington in an attempt to expedite the preliminary stages. [Pasvolsky.]

BINGHAM

611.4131/329

Memorandum by the Secretary of State

[WASHINGTON,] July 7, 1937.

The British Ambassador called, accompanied by two trade experts, Mr. Stirling⁶³ and Mr. Chalkley. The British Ambassador had "a very long face" as he launched into a statement to the effect that the British Government finds itself confronted with serious difficulties in its desire to go forward with a suitable trade agreement undertaking with the United States; that his Government has contractual trade relations with the Dominions; that the Dominions are very difficult to deal with in relaxing and liberalizing this situation; that the difficulties are serious. He then said that one helpful step would be for his Government to return to the Dominion governments certain trade concessions which they had given to the British Government as this would enable the Dominions to have more leeway in making trade agreements with other nations of the world. I inquired if this was construed to require the United States, for example, to bargain and pay not once but twice. They replied that it did not.

I then remarked that the Dominions in all reason should not be so difficult to deal with in respect to their Ottawa Empire concessions by the British Government, for the reason the fact is notorious that the Dominions, especially Canada, insisted upon and secured the lion's share while the United Kingdom itself had to be content with a wholly inadequate list of concessions in return; that in these circumstances, assuming that the Dominion statesmen are for a broad liberal program such as this Government is supporting, there should be no real difficulty or hesitation on the part of the Dominions to somewhat liberalize their concessions from the British Government, although I said that I was not passing on that matter so much as I was calling attention to the logic which the uncontroverted facts suggest. I then stated that the Finance Minister of Australia was in to see me some days ago⁶⁴ and, as with his microscope he began to look about, he

⁶³ Of the British Board of Trade.

⁶⁴ See memorandum by the Chief of the Division of European Affairs, July 1, p. 144.

seemed to be seriously concerned to visualize the wholly minor trade items and other phases of the big economic objective rather than the latter itself; that in that connection this Government last year, in the face of exasperating embargoes wholly without bases from the standpoint of fair dealing and fair play, proceeded to buy vast quantities of wool and certain other products from Australia, making a favorable trade balance to that country and thus illustrating the broad attitude that the various governments must assume and practice if they are to get anywhere in economic restoration.

The British Ambassador then said that the United Kingdom was not without its serious difficulties at home, for the reason that the proposed trade agreement would require the removal of much of the protection which some of the home industries are now enjoying. I said that I was well aware of that situation, but I would be glad if the Ambassador would transmit to his Government the experience of the Government of the United States in this regard; that three years ago apparently 90% of the American people were blindly and solidly for embargo tariff protection; that most statesmen said it would be foolish, as well as futile, to attempt to carry forward a broad trade agreements and trade restoration program such as some of us were proposing; that we persisted, however, with the result that today, while various groups are selfishly for embargo protection, the country as a whole is definitely behind our trade agreements program. The Ambassador readily agreed that from his personal knowledge this was what took place.

I then remarked that for the benefit of any of our Dominion friends I could say that when I discussed this broad economic and peace objective with high officials of other governments in Europe they as a rule immediately brought up the British Empire and inquired of me how this movement could go forward, satisfactorily at least, while the British Empire was moving backward further towards economic autarchy instead of forward in support of economic liberalism. I added that when the program we took to and brought back from Buenos Aires for general peace and economic rehabilitation is suggested to some of the important nations on the Continent as the only substitute for present practices and policies of armament races and narrow trouble-making trade methods, which today are responsible for a state of turbulence, threatened violence, and more or less of a constant uproar throughout Europe, we have the British Empire and its attitude thrown in our faces.

The Ambassador finally said that the governments of the United Kingdom and of the Dominions are each favorable to our program and desirous of cooperating to carry it out. I expressed my interest

and appreciation but emphasized the view that the great danger is that there will be excessive discussions and controversies about purely minor phases of the program with the result that the matter may be delayed until it is too late.

C[ORDELL] H[ULL]

611.4181/3274

Memorandum by Mr. Constant Southworth of the Division of Trade Agreements

[WASHINGTON,] July 8, 1937.

Conversation: Mr. Chalkley and Major Heywood of the British Embassy;
Mr. Stirling of the British Board of Trade;
Mr. James Clement Dunn,⁶⁵ Mr. Minter,⁶⁶ Mr. Deimel,⁶⁷ Mr. Southworth.

Mr. Chalkley, Major Heywood and Mr. Stirling came to Mr. Deimel's office the afternoon of July 8. Mr. Chalkley read out loud a memorandum setting forth in general terms some of the considerations facing the Dominions in formulating their positions relative to the American request for reduction of preferences enjoyed by them in the British market. He elaborated orally on parts of the memorandum. He stated that probably on July 9 or 10 he would send Mr. Deimel a copy of this memorandum in elaborated form. He also indicated that he might send statements setting forth the British position relative to our requests for concessions on individual commodities, as a preliminary to oral discussions which it was agreed will begin next week, or even possibly this week.

Mr. Chalkley and Mr. Stirling inquired as to what order it would be desirable to follow in discussions of the individual commodities, suggesting that it might be psychologically helpful to begin with commodities relative to which a mutual understanding seemed to be the nearest. It was agreed, however, that it will be more satisfactory to discuss the commodities in the order in which they appear in our lists, which follow the order of the British import statistics, except that consideration of rice will be deferred because Mr. Stirling had not yet had an opportunity to ascertain the attitude of India and Burma, whose delegates reached London only as Mr. Stirling was leaving.

⁶⁵ Chief of the Division of European Affairs.

⁶⁶ John R. Minter of the Division of European Affairs.

⁶⁷ Henry L. Deimel, Jr., Assistant Chief of the Division of Trade Agreements.

611.4181/338

*The British Embassy to the Department of State*RECORD OF STATEMENT MADE BY MR. CHALKLEY AND MR. STIRLING AT
THE STATE DEPARTMENT ON THE 8TH OF JULY, 1937

Mr. Chalkley said that the Ambassador in his talk with the Secretary of State on the previous day had referred to the letter of June 15th from Mr. Oliver Stanley, President of the Board of Trade, to Mr. Cordell Hull suggesting that "a full and frank explanation of our position is the most useful step that we can take in the immediate future." The Ambassador had in fact explained to Mr. Hull in general terms the position resulting from the conversations which United Kingdom Ministers had held in London with the Ministers of other Empire Governments, adding that the United Kingdom Government had sent out Mr. Stirling, a permanent official of the Board of Trade who had been concerned with these conversations throughout, in order that further discussions with the United States authorities might be conducted in the light of first-hand knowledge of what had recently passed in London. In accordance with the understanding reached with Mr. Hull, Mr. Chalkley and Mr. Stirling would repeat and amplify the Ambassador's statement, in the following form:—

1. The concessions required by the United States Government in their memorandum of March 2nd and May 18th affect the contractual rights of four Dominions as well as of India, Burma, and Southern Rhodesia. Further progress is therefore dependent, not on the decision of the United Kingdom Government alone, but of the several Dominion and other Governments concerned. These Governments are entirely autonomous in economic matters, they enjoy contractual rights in the matter of free entry and preferences for the products of their countries on importation into the United Kingdom. It was therefore necessary to ascertain how far they might be willing to agree to waive their rights in so far as those rights are affected by the requests which the United States put forward as "essential". These enquiries have now been made, and while there still remain considerable difficulties, the United Kingdom Government are anxious to examine, in cooperation with the United States Government, all possible means of solving them.

2. In the course of the recent discussions in London the Dominion and Southern Rhodesian delegates (it had not been possible up to the time when Mr. Stirling left London to ascertain the views of the Governments of India and Burma) expressed general sympathy with the underlying objects of an Anglo-United States trade agreement.

It is clear that the Governments concerned share the desire of the United States and United Kingdom Governments that everything possible should be done to promote the expansion of world trade and to make possible an agreement having that purpose, and that they would help so far as political exigencies in their own countries allow.

3. It appears, however, that the Dominion Governments would in varying degrees find it essential to obtain compensation for any advantages which they might forego in the United Kingdom market in order to be able to justify in their own countries the concessions which they might be called upon to make.

4. This raises the question of what compensation is available. The United Kingdom Government did not fail to call attention to the advantages which would accrue to the Dominions from:—

(a) participation in the general expansion of world trade hoped for from the conclusion of an agreement with the United States,

(b) the increased purchasing power of the United Kingdom for Empire products which might be expected to result from the conclusion of such an agreement,

(c) the assurance contained in paragraph 5 of the United States memorandum of the 18th of May that a satisfactory agreement with the United Kingdom would pave the way for similar agreements with the Dominions,

(d) reductions made in the United States tariff in an agreement with the United Kingdom on commodities of which the Dominions were also suppliers,

(e) such compensation as the United Kingdom Government could offer them.

5. As regards (e) compensation by the United Kingdom could take only two forms, namely (1) to give the Dominions alternative advantages in the United Kingdom market, and (2) to give sympathetic consideration to such reasonable requests as they might themselves desire to put forward for the modification of preferences now enjoyed by United Kingdom goods in their markets, in order to facilitate trade negotiations between themselves and foreign countries, including the United States.

6. As to (1), Dominion goods already enjoy free entry in the United Kingdom (with a few exceptions of a revenue character). One way out might have been to compensate the Dominions by increases of duties on foreign goods designed to give the Dominions further preferences. The United Kingdom Government however decided that they could not contemplate such a course because they regarded an agreement with the United States as a step towards a general reduction of trade barriers. Thus the only form of compensation which the United Kingdom is in fact able to offer the Dominions is that of being ready to agree to some abatement of its rights in their markets if those

rights should stand in the way of trade negotiations which they might wish to conduct.

7. The United Kingdom Government made this offer to the representatives of each Dominion in turn. South Africa accepted it in principle and will formulate proposals to the United Kingdom on these lines. The representatives of the Union Government, however, asked the United Kingdom Government to emphasise the fact that they (the Union Government) were showing themselves ready to make considerable sacrifices and to request that this fact should be borne in mind when at a later stage they came to negotiate with the United States. The other Dominions felt that in order to justify concrete concessions they would require something more than hypothetical advantages to be gained by future trade negotiations. They are faced with political difficulties which can be overcome only if they are able to persuade their Parliaments that commercially they would be no worse off by agreeing to concessions in favour of the United States than they are at present. In other words they must have something more tangible to show in return for immediate concessions than an assurance that an Anglo-United States agreement would pave the way for negotiations with them or that the United Kingdom would help them in trade negotiations by yielding up some preferences. They regard both of these suggestions as deferred compensation, which is not enough to meet their immediate difficulties.

8. An Australian Minister recently in Washington has explained the position of his Government. A New Zealand Minister will no doubt be doing the same next week.⁶⁸ The position of the Canadian Government as explained by their Ministers recently in London is that if they are to justify the impairment of the advantages for which they gave consideration in the recent Anglo-Canadian Agreement, they must be able to point to satisfactory compensating advantages. It is believed that the Canadian Government would welcome discussions with the United States Government which would be simultaneous and linked with those between the United States and the United Kingdom.

9. The foregoing part of this statement has been concerned with the Dominion position. Many of the United States requirements also closely affect United Kingdom producers. It is true that in their case no contractual rights are involved and the position is therefore less rigid. It is nevertheless difficult enough and all the more difficult because the United Kingdom tariff is relatively low. The readiness of the United Kingdom to go as far as possible in meeting the United

⁶⁸ See memorandum by the Assistant Chief of the Division of Trade Agreements of conversations with New Zealand Government officials, July 12, 13, and 14, 1937, p. 203.

States requirements must be taken to mean, not that the requirements occasion no difficulties, but that the United Kingdom Government were prepared to face those difficulties, which are substantial.

10. Explanations of the position in regard to particular commodities, so far as it can at present be defined, will be offered to the United States authorities at an early date.

WASHINGTON, July 10, 1937.

611.4131/335

*The British Embassy to the Department of State*⁶⁹

The attached statements show in greater detail the attitude adopted by the individual Governments concerned and its effect on the particular commodities involved:—

AUSTRALIA

In the case of Australia there is a special difficulty. A general election is due to be held towards the end of this year. It seems to the U. K. Government very doubtful whether the Australian Government would be prepared to make concessions on some dried fruits, especially raisins and on certain of the canned fruits. On the other hand, it is understood to be unlikely that the Australian acreage devoted to the production of some of these fruits will be increased in the near future. This might be regarded as going some way to meet the United States requirement expressed in paragraph 4 of their memorandum of March 2nd.

The other commodities in the United States' proposals, in respect of which Australia enjoys guaranteed preferences under the Ottawa agreement, are apples, pears, grapefruit and honey. For all these other items Australia is less concerned than other Dominions and given time it is hardly to be expected that an impasse should arise on such items owing to the difficulties of Australia.

This statement of the position of Australia as it appeared to United Kingdom Ministers at the close of the London conversations should be read in conjunction with the State Department record of their subsequent conversations in Washington with Mr. Casey.

NEW ZEALAND

The discussions in London with New Zealand Ministers and officials showed that the attitude of New Zealand was not unlike that of Canada. They pointed out that any easing of the position on

⁶⁹ Handed to the Assistant Chief of the Division of Trade Agreements on July 15.

apples, pears and honey (the three items on which they at present have guaranteed margins of preference) in favour of the United States would prejudice New Zealand interests. They added that, if it could be shown that an Anglo-United States agreement would benefit both the United Kingdom and New Zealand, then their Government would be ready to make such concessions as might be necessary.

This statement of the position of New Zealand as it appeared to United Kingdom Ministers at the close of the London conversations should be read in conjunction with the State Department record of their subsequent conversations in Washington with Mr. Nash.

SOUTH AFRICA

The discussions in London with Union of South Africa Ministers and officials showed that they thought that some of the United States requirements were excessive, but the Union Government would, within reason, accept any decision reached by the United Kingdom Government.

SOUTHERN RHODESIA

The discussions with the Ministers of Southern Rhodesia showed that they would make no difficulty in regard to grapefruit. As regards tobacco, the Southern Rhodesian representatives were asked to consider some reduction in the existing margin of preference (which for revenue reasons would have to take the form of an increase in the preferential rate of duty and not a decrease in the general rate). It became evident, however, in the course of the discussions that it would be politically impossible for the Southern Rhodesian Government to agree to any waiver of their rights. Political power in Southern Rhodesia rests mainly in the hands of the agricultural settlers. Tobacco is their great export crop and the United Kingdom is by far their largest market for that tobacco, taking about two-thirds of their total production. Moreover, there seems no possibility of developing exports of tobacco or other agricultural products to the United States of America or other foreign countries. In view of the attitude of the Southern Rhodesian Government and of the fact that the tobacco preference is guaranteed until 1942, there can be no possibility of meeting the United States request on this item.

CANADA

The Canadian Ministers in London indicated that the Canadian Government would give early and earnest consideration to the question of how Canada could reasonably and effectively cooperate in facilitating a successful outcome to the discussions between the U. K. and the U. S. A. Pending consideration of the question by the Canadian Government as a whole the Canadian Ministers in London made an informal and preliminary examination of the U. S. proposals.

Their view was that if they were to justify the impairment of the advantages which they obtained in the recent Anglo-Canadian Agreement, they must be able to point to satisfactory compensating advantages. They added that it would be easier for the Canadian Government to justify sacrifices on their part if they were only part of a comprehensive agreement, in which the U. K. Government also made concessions in the duties designed to protect the U. K. home producer.

They pointed out that, while in general the Canadian Government would be prepared to consider the adjustment of preferences on the basis of compensation, the abandonment of the preference on lumber would be impossible. Apart from lumber, the most difficult item for Canada would be apples, for which substantial compensation would be necessary. It is not anticipated that they would make any great difficulty about the other items on which they have guaranteed margins of preference (apart from tobacco which must be ruled out on other grounds).

The discussions in London with Canadian Ministers and officials showed that they felt very strongly that the Canadian Government should either be a party to any Anglo-United States negotiations, or that they should themselves conduct simultaneous negotiations at Washington. The Canadian Ministers seemed to be more and more turning in the direction of a simultaneous and linked negotiation between Canada and the United States.

INDIA AND BURMA

The position has not yet been discussed with the respective Governments, and it is therefore only possible to conjecture what their attitude will be. In view of the decision reached in regard to tobacco, rice is the only item on the American "essential" list which concerns these two countries. The suggestion in the United States memorandum of 18th May for a differentiation in duty based on the value of rice, has been examined and appears to be impracticable. Attempts to frame a similar differential scheme for malting barley have been abandoned. Apart from difficulties created by fluctuations in value there would be a strong incentive to price manipulation, and it would pay to increase the declared value in order to get the article in at the low rate of duty. In these circumstances, the question of the duty on rice must be reserved pending discussions with the Indian and Burmese Delegations who have recently arrived in London.

SUMMARY

The position resulting from the discussions in London on the products affected by the Ottawa agreements, is that a concession on tobacco is impossible, as is also any substantial concession on timber.

As regards most of the dried and canned fruits, any concession is impracticable at present, although it is just possible that something might be achieved later in a negotiation which secured counter-concessions satisfactory to Australia. At present it is not possible to say anything definite on rice though it is hoped that further instructions in this regard will be received from London shortly.

For the rest the U.K. Government believe that it is possible that the Dominions will go at least some of the way toward meeting the desiderata of the United States, subject to means being found to compensate Canada (especially on apples) and, in less measure, New Zealand and Australia (both of whose interests are comparatively small, apart from the Australian dried and canned fruits).

THE UNITED KINGDOM

Home producers are affected (*a*) by some of the United States proposals dealt with above and notably by that in regard to apples, (*b*) by the demands for the conventionalization of the existing tariff treatment of the products mentioned in List 2 (attached to the United States memorandum of 2nd March), (*c*) by the demands on hog products and (*d*) by the further demands which are still to be put forward and which will be examined with the same readiness to subordinate particular interests to the general objective as the U.K. Government think they have shown hitherto. Their readiness to go as far as possible in meeting the United States demands under these heads must be taken to mean, not that the demands occasion no difficulties, but that the U. K. Government are prepared to face the difficulties. Reference was made to the question of apples in the U. K. Government's memorandum of 13th April, and it is unnecessary to add to it. As regards conventionalizations the U.K. Government are prepared to go far to meet the United States requests on List 2, although this involves real difficulties. For example, a concession on canned pilchards, owing to their competition with canned herrings, will provoke considerable criticism.

Most careful consideration has been given to the requests of the United States Government in regard to hog products. In view of the importance which is attached to them the U.K. Government would be prepared, as part of a satisfactory agreement, to meet those requests to the extent shown below (the references are to the sub-paragraphs in paragraph 5 of the "Supplementary Statement"⁷⁰ attached to the United States memorandum of 18th May).

(1) The U.K. Government could not offer to guarantee free entry for hams and shoulders, but they would be prepared to offer an undertaking not to impose a duty higher than a certain minimum percentage ad valorem. Normally they would not be prepared for this pur-

⁷⁰ Not printed.

pose to name a figure lower than 10% which, as the United States Government are aware, is the level of the general ad valorem duty. But in the special circumstances the U.K. Government might in this particular case, be prepared to agree to a somewhat lower figure. So long ago as June 1935 the United States Government together with other Governments interested, was informed of our proposal to impose a levy on imported bacon and hams. This proposal was not brought into force at the time only because it required the consent of certain countries having the right of free entry.

(2) (a) The United States proposal raises great practical difficulties but the U.K. Government are prepared in principle to establish a separate quota for hams. They could not undertake to extend this treatment to shoulders which, they are informed, are normally cured as bacon and are always entered as bacon for British Customs purposes. Apart from questions of Customs definition there is the difficulty that there would be no statistics of imports of shoulders upon which any separate quota could be based. In the last 2 years United Kingdom imports of bacon from the United States have been less than 3% of total United Kingdom imports of bacon and hams from the United States of America so that it does not appear that the point can be of much practical importance.

(b) The U.K. Government would be prepared, in principle, to accord to the United States a percentage of the quota for hams based on past imports. The proposal to guarantee a specific percentage, however, affects the rights of certain foreign countries with which trade agreements have been made: the Swedish Agreement⁷¹ contains an undertaking by the United Kingdom Government not to guarantee to any country other than Denmark a percentage of imports of bacon and hams, and the Danish and Polish Agreements⁷² contain guarantees applying to bacon and hams taken together. It will be necessary to agree with these countries modifications of the guarantees given to them before any guarantee can be given to the United States, but no insuperable difficulty is anticipated from this.

(c) The request for a minimum quantitative guarantee raises serious difficulties. At present hams are included in the general bacon scheme under which imports from foreign countries are adjusted to the general supply position, after taking into account home production and imports from Empire countries. A minimum guarantee to the United States of America in regard to hams might in certain circumstances involve a progressive increase of imports with serious effects on the market. The U.K. Government would, however, be prepared to discuss this question with the United States delegates during the negotiations.

(3) The U.K. Government would also be prepared to undertake not to impose any quantitative restriction on imports of lard from U. S. They would also be prepared to give an undertaking not to increase the present amount of duty (probably in the form of a specific duty, and possibly to offer some reduction on a specific basis).

⁷¹ Agreement with Sweden, signed May 15, 1933, League of Nations Treaty Series, vol. cxl., p. 317, and amended May 27/June 15, 1935, *ibid.*, vol. clx, p. 422.

⁷² Agreement with Denmark, signed April 24, 1933, *ibid.*, vol. cxxxix, p. 127; supplementary agreement, June 19, 1936, *ibid.*, vol. clxxvii, p. 421. Agreement with Poland, signed February 27, 1935, *ibid.*, vol. clxii, p. 181.

611.4131/337

Memorandum by the Assistant Chief of the Division of Trade Agreements (Deimel)

[WASHINGTON,] July 16, 1937.

Conversation: Mr. Chalkley }
 Mr. Heywood } of the British Embassy
 Mr. Stirling }
 Mr. Dunn
 Mr. Moffat ⁷³
 Mr. Minter
 Mr. Southworth
 Mr. Deimel

Messrs. Chalkley, Stirling, and Heywood called at 3 p. m. Thursday afternoon, July 15, by appointment. In arranging the appointment Mr. Chalkley had indicated that they wished to discuss procedure for supplying us with the information brought from London by Mr. Stirling. Actually, however, they brought in, and Mr. Stirling read to us, a compilation of specific statements, which they said, while of course official, should be regarded as emanating from the British Embassy rather than from the Government at London. There is attached the copy of these statements which they left with us.⁷⁴ Mr. Chalkley and Mr. Stirling said that our record of our recent conversations with the Australians and New Zealanders was to be considered as supplementing these statements.

They also raised in discussion the following points:

(1) That Canada had indicated an interest in participating in discussions with us on the subject, and that they (Chalkley and associates) would be glad to have our reaction to the suggestion unless we preferred to communicate it direct to the Canadians;

(2) That they would like our consideration of the possibility of broadening our principal supplier rule so that there might be included in the desiderata which the United Kingdom would submit in the course of trade agreement negotiations, requests for concessions on commodities which would be of principal interest to some of the Dominions: for instance, the Canadians had indicated that they were interested in codfish and also in our duties on patent leather, honey, and apples;

(3) That they would like to have our "supplementary desiderata" before an announcement was made that negotiation of a trade agreement with the United Kingdom was contemplated; in discussion, however, they did not appear to hold to this point very strongly;

⁷³ Jay Pierrepont Moffat, Foreign Service Officer, appointed Chief of the Division of European Affairs on July 17, 1937, when Mr. Dunn became Adviser on Political Relations.

⁷⁴ *Supra*.

(4) That with respect to rice, they expected shortly to learn from London the results of the discussions with the Indian and Burmese delegations which had recently arrived in London.

Mr. Chalkley intimated the hope that we would find these statements adequate to enable us to reach the decision to make public announcement that negotiation of a trade agreement with the United Kingdom is contemplated. He said that in the opinion of the British it would greatly facilitate reaching an understanding if the United States would consider its requests as negotiable rather than as iron-clad minima. He went on to say that his definition of a "negotiable request" would cover, for instance, in the case of tobacco, consideration of such action as binding the present preferential margin.

Mr. Chalkley has been indicating anxiety on the part of the British Government to make some early public announcement of contemplated negotiations. Mr. Stirling verified our conjectures by remarking that it was the view of the British Government that failure to do so would, in view of all the recent publicity, have as bad an effect as a breakdown of negotiations after their initiation.

Mr. Chalkley said that they would hold themselves in readiness to discuss the matter further with us at any time, and, if we had questions to ask, would be glad to telegraph to London for the replies. He was assured that the statements submitted would immediately receive our most careful and thorough study and analysis, and that we would communicate with him again as soon as we were in a position to ask further questions or make any comment. He was also told that we could not consider our own record of our conversations with the Australian and New Zealand officials as a part of the United Kingdom Government's statement to us regarding the attitude of the Dominions toward our requests of the United Kingdom, but that we must necessarily look to the United Kingdom Government to make its own statement to us as to how the attitude of Australia and New Zealand, following these conversations, might affect the United Kingdom Government's attitude toward our requests.

611.4131/343

*Memorandum by the Chief of the Division of Trade Agreements
(Hawkins)*

[WASHINGTON,] July 21, 1937.

Conversation: Mr. H. O. Chalkley, Commercial Counselor of the
British Embassy;
Major Henry Frank Heywood, Commercial Secretary,
British Embassy;

Mr. John A. Stirling, British Board of Trade;
Mr. Harry C. Hawkins;
Mr. John D. Hickerson;⁷⁵
Mr. Henry L. Deimel, Jr.;
Mr. Constant Southworth.

Mr. Chalkley, Major Heywood and Mr. Stirling came to Mr. Hawkins' office at 10 a. m., July 21, 1937, to discuss further the British statement of July 15 relative to concessions requested by the United States on commodities affected by the Ottawa agreements.

We informed the British representatives that their recent reply to our requests with respect to products covered by the Ottawa agreements seems to us entirely unsatisfactory; that a tabulation of their latest proposals with those made on April 13 and rejected by us showed no improvement whatever. In fact, on certain items the present offer is less definite, and therefore less satisfactory, than the previous one. We said that, while this represented our own opinion, we had not yet submitted the matter to the Secretary for definite decision, as we first wanted to discuss the matter with the Messrs. Chalkley and Stirling in order to see whether they could not give us something a little more encouraging to be laid before the Secretary.

The British representatives replied that what they have offered is as far as the position taken by the Dominions permits them to go. Canada, they said, is the principal obstacle to meeting our requests. The Canadians take the position that to sacrifice any part of their preferential position in the United Kingdom market without getting some compensation from us is not feasible from the standpoint of domestic politics. They pointed out that the Canadian producers of such important products as lumber and apples, rely to a very large extent on the United Kingdom market, and that acquiescence by the Canadian Government in the impairment of that market without obtaining definite compensating advantages for these important groups of producers is not within the realm of practical politics.

We replied that it is, nevertheless, very hard for us to understand why Canada should stand in the way of an agreement between the United States and the United Kingdom from which Canada and other countries stand to gain long-run benefits of the greatest importance. We find it especially difficult to understand the Canadian position in view of the often expressed desire of the Canadian Government to cooperate in the broad movement for the restoration of international trade. It seems to us, we said, that the Canadians are rather too inclined to look at the matter through a microscope, and to overlook the broad significance which a satisfactory agreement

⁷⁵ Assistant Chief of the Division of European Affairs.

between the United States and the United Kingdom would have from the standpoint of Canada's own broad interests. Of more immediate importance to Canada is the fact that a satisfactory agreement between the United States and the United Kingdom is a prerequisite to any further trade-agreement negotiations between the United States and Canada. As for compensation to Canada for acquiescing in modifications of the United Kingdom preferences to that country, we pointed out that the most logical compensation would be compensation in kind; i. e., an undertaking by the United Kingdom to waive its preferential position in Canada to whatever extent may be necessary to permit the successful conclusion of such negotiations for a supplementary trade agreement with the United States as may later be undertaken. The British referred to the fact that this form of compensation has already been offered to Canada by the United Kingdom. We stated that this would seem to be the most logical form in view of the considerations just mentioned.

The British representatives raised the question whether we would be willing, by way of compensation to Canada, to modify our chief source rule to the extent of including in the agreement between the United States and the United Kingdom some products in which Canada is interested, such, for example, as codfish. Canada would thus obtain benefits on such products under the most-favored-nation clause. We replied that we did not consider this possible; that any concessions from which Canada would derive the chief benefit must be reserved for any supplementary trade agreement which may be negotiated between the United States and Canada.

With reference to the Australian attitude, Messrs. Chalkley and Stirling said that Australia apparently could not be expected to endorse any abatement of its preferences in the United Kingdom prior to the pending election; that it would be undesirable for the Lyons Government to place itself in a vulnerable position in this matter because we might expect a labor government to be less inclined to cooperate than the present one. They said that, in view of this, if we insisted on a specific commitment on each product in our list before public announcement of contemplated negotiations is made, the announcement would have to be delayed until after the Australian elections. In order to avoid this delay they urged that announcement be made at once and that the question as to what should be done on our Ottawa list be dealt with in the negotiations.

We replied that immediate announcement seemed undesirable for the reason that we would be embarking on negotiations without having settled the question now before us, and that negotiations would break down if it turned out that our requests could not be met. Moreover, we pointed out that it is public knowledge in all the coun-

tries concerned that the question of the Ottawa preferences is the issue before us, and that announcement now would imply that the difficulty has been satisfactorily solved, which is not the case. The result would be that the Dominions would assume we had acquiesced in what they now offer and it might then be more difficult to get them to offer more. Also since the nature of our demands is known, it might be assumed in Australia that the Australian Government had acquiesced in them in whole or in part, with consequent embarrassment to the Government prior to the elections; this being the very thing it is sought to avoid. We also expressed doubt whether announcement now would really save any time.

Nevertheless, Mr. Chalkley felt that it would be better if announcement were made and if the present discussions of the Ottawa list were carried over into the actual negotiations. We asked him how a public announcement of negotiations and the mere fact of calling our present discussions "negotiations" could have any beneficial effects. Mr. Chalkley was unable to give any satisfactory answer to this.

Referring again to the attitude of Canada, Mr. Chalkley inquired whether, in order to facilitate negotiations with the Canadians, we would be prepared to enter into negotiations for a supplementary trade agreement with Canada. The thought behind this suggestion apparently is that Canada's only chance of specific compensation for sacrifices in the United Kingdom market lies in the opportunity for a supplementary trade agreement with the United States. Apparently it is thought that Canada should have some idea of what it would get under such an agreement in the way of concessions in the United States in order to determine whether it would really be compensated for what it is giving up. We replied that simultaneous negotiations would not seem feasible, for two reasons: first, the procedural and organizational difficulties of carrying on two such important sets of negotiations at the same time, and, second, the fact that the announcement of simultaneous negotiations with an important agricultural country such as Canada would tend to impair the psychological benefits of the negotiations with the United Kingdom from which American agriculture is expected to derive substantial benefits. Mr. Stirling then asked whether we would be prepared to open "discussions" of an informal and confidential nature with Canada (similar to those which we had agreed to enter into with Australia and New Zealand) when a basis for negotiations with the United Kingdom had been found. We replied that an answer to this would have to be deferred until we could look at the record of the discussions with the Australians and New Zealanders and see what, if anything, had been said to them on this point, and could consider this suggestion in relation to the Canadian position. We promised to give them an answer soon.

Mr. Stirling referred to the fact that it is a little difficult for the British to take a position on our "must" list until they know what other demands we are going to make with respect to products not covered by the Ottawa agreements. He asked, therefore, that we prepare the remainder of our schedule I and give it to them. This we agreed to do.

In the course of the discussion, it was made perfectly clear to the British representatives that before announcement of contemplated negotiations is made we must have an explicit reply from the United Kingdom as to what the United Kingdom is prepared to do for each product on our "must" list. The British representatives admitted, with some reluctance, that this would not delay an eventual agreement since this would have to be done sometime, although it would delay an announcement of intention.

The British representatives indicated that in the light of their conversation with us they would probably telegraph London for further instructions.

Mr. Hickerson said that the United States would bring up the question of the United Kingdom's treatment of American films if and when trade-agreement negotiations began. Mr. Chalkley said that the British might ask reciprocal concessions on films.

611.4131/352

*Memorandum by the Chief of the Division of Trade Agreements
(Hawkins)*

[WASHINGTON,] July 23, 1937.

Conversation: Mr. H. O. Chalkley, Commercial Counselor of the
British Embassy;
Mr. John A. Stirling, British Board of Trade;
Mr. Harry C. Hawkins;
Mr. John D. Hickerson.

In response to the inquiry made by Messrs. Chalkley and Stirling on July 21, Mr. Chalkley was given by telephone the substance of the statement approved by the Secretary this morning. This statement was that after a satisfactory basis has been found for a trade agreement with the United Kingdom, we would be glad to enter into informal and confidential discussions with a view to finding a basis for a supplementary trade agreement with Canada; but it should be understood that such discussions would be confined to trade relations between the United States and Canada and would not deal in any way with the terms of our proposed trade agreement with the United

Kingdom. Some time later, Mr. Chalkley and Mr. Stirling called with a view to making sure that they understood our position on this point.

Mr. Stirling particularly inquired regarding our statement that discussions entered into with the Canadians subsequent to our finding a basis for a trade agreement with the United Kingdom would be confined to trade relations between the United States and Canada and would not deal in any way with our trade-agreement negotiations with the United Kingdom. Mr. Stirling stated that this was very discouraging from their standpoint. He said that we apparently were taking a different position with respect to the Canadians than we were taking with regard to similar discussions with Australia and New Zealand. We informed Mr. Stirling that, while that condition may not have been explicitly laid down in the case of the Australians and New Zealanders, we thought it was implicit in the general position which we have taken that no specific compensation would be given to the Dominions in return for their relinquishing part of their preferences in the United Kingdom; that any concessions given by us to the Dominions in trade-agreements with them would be in return for concessions by the Dominions affecting the importation of American goods into the Dominion markets.

611.4231/2031

Memorandum by the Assistant Chief of the Division of European Affairs (Hickerson)

[WASHINGTON,] August 6, 1937.

Mr. Hawkins and Mr. Hickerson saw Mr. Chalkley of the British Embassy at lunch today at the Metropolitan Club. In the course of the conversation, Mr. Hawkins referred to the fact that Mr. Norman Armour, our Minister to Canada, had been in Washington on Tuesday and Wednesday of this week, and that we had discussed with Mr. Armour the conversations which had taken place with the British representatives regarding the possible basis for trade agreement negotiations with the United States, particularly in so far as the position of Canada is concerned. Mr. Hawkins said that we had learned from Armour with a considerable shock that certain important permanent officials of the Canadian Government appear to know nothing whatever about the British offer stated to have been made to each Dominion in turn to compensate the Dominions for releasing Great Britain from certain guaranteed preferences in their favor by Britain's releasing the Dominions from guaranteed preferences in Do-

minion markets. Mr. Hawkins said that attaching, as we do, such importance to an offer, which in the very nature of things is so logical, we were at a loss to understand why a matter of such consequence was apparently unknown to the very Canadian officials who would have to formulate recommendations for their Government.

Mr. Chalkley stated that it was unfortunately quite true that Canadian officials generally had not been informed of what he considered a tremendously important offer on the part of his Government. He said that this matter was discussed at London in detail with Mr. Norman Robertson of the Canadian Department of External Affairs and that he could not understand why Mr. Robertson had not passed on to his superiors this information concerning an offer of such great importance. Chalkley stated that the minutes of the particular meeting clearly show that the offer was made to Robertson.

Mr. Chalkley went on to say that he did not know whether the Prime Minister knew of this offer or not, but he knew for a fact that Mr. Dunning, the Minister of Finance, did not know of it. He added, however, that "this has now been rectified" and that the appropriate Canadian officials had been fully informed on this subject. He added, however, that it was his impression, from information received from the British High Commissioner's Office in Ottawa, that the Canadian officials were inclined to minimize the importance of this offer.

Mr. Chalkley went on to say that following his conversation with us on July 21 when we had told him that it would be necessary for the British to inform us in detail ("in shillings and pence") of the maximum British offer on each of the products on our "must" list, his Government had undertaken conversations with Canada to find out the ultimate limit to which Canada would go. He said that before these conversations were completed the Canadian Government might wish to send someone to Washington to discuss informally the Canadian position. He urged that we receive any such representatives sympathetically, even though he was aware of the fact that we would necessarily have to tell them exactly what we have already told him in this matter.

Mr. Chalkley went on to say that after termination of their conversations with the Canadians, it was proposed by his Government to approach the other Dominions in turn, timing their overture to Australia to follow the forthcoming election there.

Mr. Chalkley stated that we have "an important ally" in Mr. Neville Chamberlain, who, he stated, had become a convert to the thesis of removing an important portion of the imperial preferences in order to make possible a comprehensive agreement with the United States. Mr. Chalkley added parenthetically that for the son of Joseph Chamberlain to take such a position was "nothing short of a miracle."

611.4131/355

Memorandum by the Secretary of State

[WASHINGTON,] August 9, 1937.

Mr. Chalkley came in to pay his respects before leaving for a two months' vacation in Great Britain. I stressed the view at every stage of the conversation that the great danger is that a suitable trade agreement between the United States and Great Britain will be delayed until too late. I assembled numerous points in support of this view. I repeatedly expressed disappointment and discouragement at the apparent sagging down of the conversations together with the fear that small groups of embargo-tariff people and their lobbies in the British Empire might be able to obstruct and delay this necessary action on the part of the Dominions, as well as the general British Government, so as to seriously if not hopelessly cripple and indefinitely delay all possibilities of a trade agreement, with the result that there will be more troubles similar to that in the Spanish Mediterranean and between China and Japan with absolutely no remedies for them except to the extent that rearmament might serve as a restraining and restricting factor. I emphasized the view that Great Britain did fine work in preserving world peace with her navy during a period when international trade channels were open and not closed as they are now to a large extent; that it will not be possible for Britain with her navy to prevent 70 million hungry Germans from going on the march when they become sufficiently destitute; nor would it be possible for a rearmed Great Britain to prevent an economic collapse and cave-in, beginning in the German area, within another two years. From these facts and conditions I again and again came back to the point that the great necessity for all possible speed in the direction of the British-American trade agreement and hence of liberalizing the international economic situation could scarcely be exaggerated. I said that in any event this Government would continue to pursue its policy of trade reciprocity and economic restoration on liberal lines and would hold out as long as possible, but that naturally Great Britain and the Dominions must realize that we cannot do this indefinitely while Great Britain moves further and further in the direction of more extreme Empire autarchy; that in my firm opinion an appearance of economic and peace solidarity on the part of Great Britain and the United States beginning some months ago would undoubtedly have had a stabilizing effect both in China and the Spanish Mediterranean; also I sought to emphasize over and over again the view that Japan is bent solely on economic control of the Pacific area and that any pacts or agreements for economic or financial cooperation which she may enter into with Great Britain or the United States,

or any other country, are only intended to be temporary and to exist until Japan gathers sufficient economic and financial strength to pursue her single major objective alone, and that the British and American policy on the Pacific cannot recognize this situation too soon and pursue a course that will gradually checkmate this objective on the part of Japan.

C[ORDELL] H[ULL]

611.4131/333

Memorandum by the Second Secretary of Embassy in the United Kingdom (Butterworth), Temporarily in the United States

[Extract]

[WASHINGTON,] September 22, 1937.

Sir Frederick Phillips, Under Secretary of the British Treasury, called to see Secretary Hull at 11:00 o'clock, A. M., accompanied by Secretary of the Treasury Morgenthau, Mr. Mallet, the Chargé d'Affaires of the British Embassy, Mr. Wayne Taylor⁷⁶ and Mr. Butterworth.

After the usual pleasantries, Secretary Hull explained in detail the origin, purposes and prospects of the American trade agreements program, particularly emphasizing the importance of an Anglo-American agreement, the urgent need of action, and the extraordinary beneficial effect the conclusion of such an agreement would have in mobilizing some forty nations behind a definite policy of economic appeasement, which in turn would facilitate political appeasement. Secretary Hull also referred to Mr. Eden's recent speech at Geneva⁷⁷ and expressed gratification of his references to the most-favored nation clause which he hoped would find reflection in the British treatment of third countries.

In the course of the discussion which followed, Mr. Mallet took occasion to emphasize that the initiative in the matter of the Anglo-American negotiations now lay with the Department of State; that the British Government was awaiting the conclusion of the proposed Canadian-American negotiations⁷⁸ and also the receipt of a list of non-Ottawa items which, he alleged, had been promised some three weeks ago. It was indicated to Mr. Mallet that the British Government were somewhat shifting the point of emphasis on the question of the delays which had ensued; that prior to and during the recent Imperial Conference in London the British authorities had empha-

⁷⁶ Assistant Secretary of the Treasury.

⁷⁷ September 20, 1937, League of Nations, *Official Journal*, Special Supplement 169, p. 62.

⁷⁸ See pp. 160 ff.

sized that it was the pending Australian elections which were the main source of delay; that at that time no mention had been made of American-Canadian negotiations which, even now, were not technically in the stage of negotiations but were explorations to ascertain whether it would be possible to conclude a supplementary American-Canadian trade agreement on a fifty-fifty basis.

Secretary Hull particularly stressed that the United States had no intention of paying two for one in the matter of an Anglo-American agreement; that whereas, in order to alleviate certain political difficulties which it had been represented that Mr. Mackenzie King was facing, the American Government was willing to conclude an American-Canadian supplementary agreement, it could not give compensation in that agreement for any releases which Canada made to the United Kingdom in order that the United Kingdom should be in a position to negotiate in turn with the United States; that "the countries which made the Ottawa Agreements must themselves be responsible for the relaxing of their provisions."

For his part, Mr. Mallet stressed the desirability of obtaining the non-Ottawa list, which, he said, would require study beyond the termination of the Australian elections on October 23rd, and he particularly emphasized that his Government was most desirous of doing what it could to accelerate the process of negotiations. Sir Frederick Phillips likewise expressed this view, and it was agreed that Mr. Mallet and the Acting Commercial Counselor should see Mr. Sayre the next day and discuss the matter with him in detail.

Incidentally, in the course of Secretary Hull's exposition of the aims and purposes of the American trade agreements program, the Secretary of the Treasury stated that he "stood shoulder to shoulder" with Mr. Hull in this matter.

In response to a query, Sir Frederick Phillips summarized his view of the position of world trade briefly as follows:

World trade by any standard of measurement was now found to be increasing, but the rate of increase was far too moderate and slow. Due largely to the rise in the prices of primary products, the producers of these raw materials had acquired a purchasing power which was being reflected in the demand for finished goods and, in the absence of a decline in prices, this process of mutual beneficial trade should continue and increase. Sir Frederick Phillips saw as the main difficulty in the way of world trade the exchange and quota systems which had been erected in the first place, not as a means of regulating trade per se, but in order to protect the currency position of particular countries. While he did not expect any abrupt relaxation in these controls, he hoped that, with the return of the world markets from being a buyer's to a seller's market, these countries would gradually, despite

the fear of war and the vested interests which had grown up behind the control systems, relax their barriers in order to obtain a larger share of current trade. He expressed full agreement with Secretary Hull's view that it was important that Great Britain and the United States should take the lead in facilitating the removal of obstructions to freer trade, and he also concurred in the urgency of the need of action.

W[ILLIAM] W. B[UTTERWORTH]

611.4131/3834

Memorandum by the Assistant Secretary of State (Sayre)

[WASHINGTON,] September 23, 1937.

Mr. Mallet and Major Heywood called to see me with regard to the British trade agreement. They informed me of their conversation with the Secretary yesterday when they had brought in Sir Frederick Phillips to see him. Mr. Mallet began by saying that he wanted to clear up what seemed like a possible misunderstanding which arose out of his conversation with the Secretary. He said that it was his own understanding that the next move in the British-American trade agreement must come from the United States. He went on to say that owing to the fact that Great Britain could not go further with the negotiations until Canada had relinquished its preferential rights under the Ottawa Agreement, it now remained with the United States to secure the consent of Canada to such a relinquishment. He understood, however, from yesterday's conversation that the Secretary took a different viewpoint and this is what he wished to clear up.

I replied to Mr. Mallet that I was glad to tell him in confidence that confidential conversations had taken place between my Government and the Canadian Government. I went on to say that the heart of the difficulty was due to the inescapable fact that politically we would be blown higher than a kite if we should undertake negotiations or even conversations with an agricultural country to which we would have to give agricultural concessions before we had assurance of a thorough-going and satisfactory trade agreement with such an industrial country as Great Britain through which to enlarge our agricultural export markets. I said that we could not afford to live in a fool's paradise, that we must be realistic and look facts in the face, that it would be folly to negotiate a trade agreement only to see it blown to pieces by a sufficient political opposition generated by failure to keep political conditions in mind. For this reason I said that whatever our desires might be it would be utterly impossible to announce negotiations with Canada or even to enter into detailed conversations concerning com-

modities with Canada until after we had the trade agreement with the United Kingdom "in the bag", i. e. until we were able to give positive and definite assurances to our farm groups for the enlargement of agricultural export markets so as to win their support and prevent their torpedoing the trade agreements. For this reason I explained to Mr. Mallet that we could not possibly enter into conversations with the Canadians concerning commodities at this time. All we could discuss with the Canadians was the "timing problem", i. e. how to get around the difficulty that we could not enter into negotiations with Canada until after we had positive assurances that the Canadians would relinquish their preferential rights in the United Kingdom. I said that this formed the subject of our conversation with Mr. Skelton who came down here from Canada a short time ago. I added that both sides had frankly discussed this problem but that as yet we saw no light. I further told him that Mr. Skelton at the conclusion had asked whether we would be willing to discuss the matter further, and we replied that our door was never shut in the face of a friend and that we would be glad to discuss this again at any time that he desired. I also told Mr. Mallet that we were expecting him to return but that so far as that matter was concerned the next move was up to Canada.

Both Mr. Mallet and Major Heywood thereupon exclaimed that they understood that the Canadians were waiting for us to move. I said that that was not the fact,—that so far as these conversations were concerned, while we were always ready to entertain any suggestions which the Canadian Government might lay before us, the initiative must come from them. I added that I referred throughout to conversations seeking to solve the problem of "timing", and that in no event could we enter into conversations in the nature of negotiations until this "timing" problem is definitely settled.

Mr. Mallet then brought up the question of what Great Britain could do to forward negotiations. I replied that the present difficulty arose out of the Ottawa preferences. I remarked that when Mr. Runciman was here last winter we expressed to him in earnest terms our fears lest if another Ottawa preferential agreement were signed it would create difficulties and obstacles to the negotiation of an American trade agreement. I said that, to be quite frank, in the face of our expressed fears Great Britain and Canada signed the agreement creating reciprocal preferences. Now each desires to modify the provisions of that agreement. I said that how to do so was entirely a problem as between the British and Canadian Governments and clearly not the problem of my Government. I then made it very clear that there could be no question of the United States' paying with concessions for the elimination of these preferences; and when Major Heywood suggested that it might be worth the United States' giving con-

cessions to secure the elimination of these preferences, I replied that one of the fundamental bases of our trade agreements program was not to pay for the removal of discriminations entered into shortly before the undertaking of negotiations. I said that the whole basis of such negotiations as might be undertaken with Canada must be concessions given only in return for concessions gained, and I made it emphatically clear that the United States could not consider under any circumstances paying Canada in return for Canada's relinquishment of British preferences.

I summed up by saying that we must have the assurance that Great Britain would sign a trade agreement including each item covered in the "must list" as well as the items covered in the "non-Ottawa list" so that we could make definite promises to our farmers before we could support negotiations with an agricultural country like Canada.

Mr. Mallet next spoke of the "non-Ottawa list". He said that he hoped we could give his Government this list at the earliest possible moment and intimated that negotiations were being delayed by our failure to hand his Government this list. I replied that it did not seem to me that negotiations should be held up on account of this list. I explained that in the list which we handed the British Government on November 16, 1936,⁷⁹—the so-called "must list",—each single item was a *sine qua non* for the agreement so that unless this list could be satisfied in its entirety it would be useless to continue further negotiations. On the other hand, I explained that in the "non-Ottawa list" if there were individual items which for political or other reasons the British Government could not grant, it might be possible to substitute for them other items of equal interest to the United States. In other words, whereas each of the two lists was of prime importance, nevertheless no single item in the "non-Ottawa list" would present an insuperable barrier as in the case of the items in the "must list". I went on to say, however, that our men were working on this "non-Ottawa list" night and day and were losing not a single minute in its preparation. I said, however, that we did not want to present a hasty list which would have to be constantly revised but that we desired to present a list subject only to such changes as later might prove necessary, but prepared in such a way that the British Government could rely upon its accuracy. I said that while I could not promise it on a definite day, my expectation was that it would be finished sometime next week and that as soon as it is completed we will at once transmit it.

The conversation was entirely friendly in tone. But I used the occasion to emphasize in no uncertain terms, first, that the success of the negotiations would depend upon our obtaining complete satis-

⁷⁹ *Foreign Relations*, 1936, vol. I, p. 699.

faction with respect to the "must list"; second, that there could be no thought of our paying Canada or anyone else for the removal of discriminations or preferences; third, that the "next move" was not up to us but that the problem is distinctly a British one, i. e. the removal of discriminations and preferences which they themselves created on the very eve of our negotiations after we had expressed our fears to them on this very point.

FRANCIS B. SAYRE

611.4131/374 : Telegram

The Chargé in the United Kingdom (Johnson) to the Secretary of State

LONDON, September 27, 1937—8 p. m.
[Received September 27—3: 15 p. m.]

618. The Foreign Office having learned last week that Senator Thomas of Utah was in London, a suggestion came from Cadogan⁸⁰ that if Senator Thomas would care to do so he would be very glad to see him for a talk. I informed Senator Thomas of this initiative of the Foreign Office and with his consent an appointment was made for us to see Cadogan on Thursday. The conversation for the most part dealt with generalities connected with various difficulties in the Far East and in Europe. Toward the end of the conversation however Senator Thomas mentioned the Secretary's great interest in the American trade agreement program and expressed his own belief in its value as an instrument for world peace. Sir Alexander then stated quite simply that he knew that the Prime Minister, personally, and the Foreign Secretary, personally, were strongly in favor of a trade agreement with the United States but that the Government was faced with real difficulties in putting such a program into effect.

He mentioned the following difficulties specifically:

1. Great Britain up to recent years he said had been a free trade country which had reached great prosperity under that system. Then came a great depression and the institution of a system of tariffs and Imperial preferences. Under this new system Great Britain had made a large measure of economic recovery. It was therefore difficult to convince those interests which had passed from depression and had made recovery under the new system that it would be wise to adopt now some other system.

2. That there were Imperial difficulties. He did not elaborate on the subject.

As illustrative of the type of opposition to a trade agreement with the United States which the Government must face under point one

⁸⁰ Sir Alexander Cadogan, British Deputy Under Secretary of State for Foreign Affairs.

above is the memorandum presented to the Board of Trade on September 24 by the National Union of Manufacturers. This memorandum has been partially published and after referring to statements made by the Foreign Secretary at Geneva on September 20 stated in part: "The Foreign Secretary can hardly be aware of the damage to inter-Imperial trade which would be caused if the preference now given to Dominion products over American were to be reduced. The Dominions would be unable and unwilling to continue the preference they now give to our goods, and the Americans, with their high tariff, cannot be expected to take the British manufactured goods that would be thus shut out from the Dominion markets".

Although this group is not considered important enough to sway the Government's policy, its memorandum illustrates the confusion of mind and the fears of a section of British industry, now profiting under the mantle of Imperial preference, when abatement of the preference is mentioned.

Senator Thomas sailed for the United States on the 25th and I understand he expects to call upon you on his arrival.

JOHNSON

611.4131/875a

The Department of State to the British Embassy

WASHINGTON, September 28, 1937.

On November 16, 1936, the United States Government submitted a tentative list of products on which it would request duty concessions in a trade agreement between the United States and the United Kingdom.

At the request of the United Kingdom Government for a more specific indication of possible United States desiderata there is submitted the attached list of products⁸¹ on which, on the basis of present studies, concessions will probably be requested, with an indication of the nature of these concessions. This list has been formulated without the consultation with the trade which is required by law and must, of course, be considered as tentative pending such consultation.

There are some additional products on which tentative studies prior to consultation with the trade have not yet been completed. This may make it necessary to submit later some additions to the attached list.⁸²

The attached list supplements the list of products which was submitted on March 2, 1937, and revised May 18, 1937.

⁸¹ Not attached to file copy.

⁸² Another list was submitted on October 5, 1937.

611.4131/399 : Telegram

*The Ambassador in the United Kingdom (Bingham) to the
Secretary of State*

LONDON, October 27, 1937—5 p. m.

[Received 6:22 p. m.]

671. In the course of a luncheon conversation Sir William Brown, Permanent Under Secretary of the Board of Trade, stated that a memorandum had been put before the Cabinet which is meeting today setting forth the status of Anglo-American trade interchanges and requesting authority to define to the United States the British position on pertinent individual items. Brown took the line that he was not at all sure that the Cabinet would decide today inasmuch as Chamberlain, the staunchest protagonist for the agreement could not attend due to an attack of gout and the fact that recent telegrams from the British Embassy in Washington and High Commissioner in Ottawa regarding the outcome of the Canada-United States interchanges had caused considerable difficulties and in his opinion beclouded the situation. These telegrams had conveyed the following information:

(1) That the Canada-United States discussions had, contrary to expectations, ranged over a very wide and extensive field and covered the question of the Ottawa items (i. e. must list);

(2) According to a statement Norman Robertson made to a member of the High Commissioner's staff in Ottawa there was now nothing more that could be done for the next 3 or 4 weeks until after the information supplied by the Canadians in Washington had been digested there;

(3) The suggestion had been put forth to Chalkley by the Department, of the possibility of negotiating in Washington with the United Kingdom and the Dominions at the same time.

As regards (1) Brown said that he feared this information might have the effect of permitting the Cabinet to take the line of least resistance, viz that there is little the United Kingdom can do if the Americans and Canadians are attacking the matter themselves. In reply it was strongly represented to Brown that the American Government's position was that it could not pay two for one in the matter of concessions. Brown indicated that he thoroughly understood this; consequently it was the more surprising to him that these discussions had been so broadened. Nevertheless, in spite of these new developments, if the Cabinet approved, he hoped to lay proposals before the American authorities which went further than he understood the Canadians had gone. But his information regarding the Canadians' statements was as yet imperfect. Brown also emphasized that Stan-

ley had again today expressed to him his anxiety lest the United States be unaware of his efforts to facilitate an agreement.

Incidentally, Brown referred to the Canadian allegation that they had not been informed during the Imperial Conference in London of the British willingness to release Canada from certain preferences on British industrial products as compensation for Canada's releases to Great Britain on certain Ottawa agricultural items. About a month ago they had disposed of this matter once and for all by sending to the High Commissioner in Canada for transmission to Mackenzie King a copy of the minutes of the meeting at which this suggestion was put forward; on seeing the record Mackenzie King had backed down. Brown went on to say that they had been quite prepared to bring all proper pressure to bear on Mackenzie King to facilitate action but now the character of the Canadian-United States talks might handicap them.

As regards (2) Brown emphasized that in his view time was of the essence and that he deplored such a delay as Robertson's remark prophesied.

(3) "An Ottawa Conference in Washington" he said frankly was a new idea to him and had filled him with "horror". He recounted at some length the difficulties of the Ottawa Conference itself, professing to fear the manner in which the Dominions when gathered together were able to logroll the United Kingdom into untenable positions and added that if Australia and Canada should join forces they might push the United Kingdom in the matter of concessions so far that the whole structural framework might collapse. He went on to say that he appreciated the special relationship existing between the United States and Canada and why it was highly desirable that a supplementary Canadian-United States agreement be reached. In his view, concurrent negotiations with the other Dominions could hardly be required for the same reason.

In conclusion Brown said he was "desperately afraid lest wires be crossed and time fly by without concrete results eventuating". He suggested another luncheon for Friday, at which time he hoped to be able to clarify further the Cabinet's attitude.

In a conversation with Ashton-Gwatkin⁸³ last evening he referred to his recent travels and said that the proposed Anglo-American trade agreement had taken on a "mystical quality" in central and south-eastern Europe; that it was fast becoming in other countries a symbol of vague but profound hopes. Brown likewise mentioned Ashton-Gwatkin's statement and said that he had urged him to make Eden use this line in today's Cabinet meeting.

BINGHAM

⁸³ Frank T. W. Ashton-Gwatkin, Counselor, British Foreign Office.

611.4131/401

*The British Commercial Counselor (Chalkley) to the Chief of the
Division of Trade Agreements (Hawkins)*

WASHINGTON, 29 October, 1937.

DEAR MR. HAWKINS: You asked me on Monday afternoon if I could give you an indication of the attitude of my Government in regard to the items of your "essential" list in the light of the recent Canadian proposals, but as I had not had time to receive any views or instructions from my Government I could only speak personally. I have now received a telegram from my Government to the following effect:—

We would be glad if you would inform State Department officials as soon as possible that, while we must reserve judgment on the Canadian proposals affecting the United Kingdom until we receive them, we have learned with much gratification of the possibility of the recent U. S.-Canadian discussions leading to a solution of Canada's difficulties.

You should also inform them that we are at work on fresh proposals on the U. S. "essential" list designed to provide in the shortest possible time a basis of negotiation for a United States-United Kingdom agreement and that we hope to let them have these proposals at a very early date.

The State Department officials will see when our proposals are presented that we have tried to eliminate matter which would present serious difficulty to Australia while leaving the way open for subsequent settlement, which we would try to facilitate.

We are very glad to hear of the possibility of negotiations of the United States with Canada. In normal circumstances we should have welcomed simultaneous negotiations by the United States also with Australia, New Zealand and South Africa, but in view of the limited time now available for finding a basis of negotiation of a United States-United Kingdom agreement such a course would introduce complications which would be likely to make the conclusion of negotiations impossible within the time available for conclusion after a basis has been found. Our anxiety in this regard arises solely from the time factor but on that score it is very serious.

Yours sincerely,

H. O. CHALKLEY

611.4131/399: Telegram

*The Acting Secretary of State to the Ambassador in the United
Kingdom (Bingham)*

WASHINGTON, October 29, 1937—7 p. m.

430. Your 671, October 27, 5 p. m. We received this morning from Chalkley the following message which he had been instructed by telegraph to deliver to us from the British Government:

[Here follows text of telegram quoted in note of October 29, from the British Commercial Counselor, printed *supra*.]

As regards Brown's comments reported in your telegram we wish to emphasize the fact that the Canadians approached us in regard to informal and confidential conversations at the suggestion of the British Government and the British representatives were repeatedly urging upon us the desirability of receiving and talking to the Canadians. We had no advance information as to the nature and scope of the Canadian proposals and we restricted ourselves to listening to what the Canadians had to say and promising to look into the more important specific products mentioned by them at the earliest possible moment and to giving the Canadians as soon as possible our comments on them. We did not hold out any particular hope to the Canadians of the likelihood of our being able to deal comprehensively with these products.

As regards the United Kingdom we plan to take no further action pending the receipt of the proposals referred to in the message which we have just received.

It is not our thought that you should take any particular action in pursuance of the present telegram which is sent primarily for the purpose of keeping you informed of what is happening. You are however authorized to make use of this information in any further talks which you may have with Brown or other British officials.

WELLES

611.4181/400 : Telegram

The Ambassador in the United Kingdom (Bingham) to the Secretary of State

LONDON, October 29, 1937—9 p. m.
[Received October 29—5:45 p. m.]

678. My 671, October 27, 5 p. m. Brown today stated that the Cabinet yesterday afternoon had approved the new British proposals in reply to our proposed Schedule One. The Government is informing the Dominions of these offers by "Prime Minister to Prime Minister telegrams" in which Chamberlain will emphasize the time element and will explain that these proposals, which constitute the British position, will be made in the expectation of Dominion cooperation. He will also stress the importance of an Anglo-American agreement. The proposals will not be presented to the State Department before next week, which will allow sufficient time for the Dominions, if they see fit, to comment or protest.

When asked whether he thought the British offers would be substantial enough to satisfy us that a basis for agreement existed, he

ruefully replied that he was afraid not entirely. He said that the offers were the best that could be made at the present stage.

When asked if they represented the maximum we could expect, he merely said that of course in negotiations nothing is final until the agreement is signed, giving the implication that some further concessions were not impossible at a later stage. At the same time he intimated that considerable difficulty had been experienced in getting some members of the Cabinet to agree to these proposals since they feared the opposition of special interests in Parliament.

Brown reiterated his distrust of simultaneous negotiations with Britain and all the Dominions, fearing that the Canadians and Australians working in conjunction would make demands upon Great Britain of such a nature that it would be practically impossible to grant them. He, however, is instructing Chalkley to inform you that if you desire simultaneous negotiations the British are nevertheless ready to go ahead on that basis. Referring to my 656, October 21, 4 p. m.,⁸⁴ Stirling stated today it was practically certain he would sail for the United States on November 3 per S. S. *Aquitania*.

BINGHAM

933.4111 Duke of Windsor/34

Memorandum by the Acting Secretary of State

[WASHINGTON,] November 2, 1937.

The British Ambassador called to see me this morning upon his return from a two months vacation in England.

[Here follows a discussion of the possible visit to the United States of the Duke of Windsor.]

I then took up the subject of trade agreement negotiations and expressed the gratification which we had experienced as a result of recent word from London. The Ambassador then said that he understood instructions from Mr. Chalkley were due today and that he felt at the moment everything was very encouraging except for continued difficulties with regard to timing as regards negotiations with Great Britain and negotiations with the Dominions. He emphasized the fact that if simultaneous negotiations were undertaken here with Canada, Canada would demand simultaneous negotiations with Great Britain and that the many Dominions would then make the same demand. I told him of my depressing experience at the Foreign Office when I had found so little knowledge of the status of the trade agreement negotiations on the part of Sir Alexander Cadogan, al-

* Not printed.

though the best of disposition and evidence of the realization of the importance of negotiations. The Ambassador said that, unfortunately this was true insofar as the Foreign Office was concerned, but that the important feature of the present situation was that the President of the Board of Trade, Mr. Oliver Stanley, was heart and soul in favor of consummation promptly of the British-American trade agreement and that he could assure me that this was far more important than any activity on the part of the Foreign Office. He told me finally that he had sat in at sub-Cabinet meetings last week when in London when the British-American trade agreement matter had been up for discussion and that the sole member of the Cabinet there present who was opposed to a trade agreement was the Minister of Agriculture and that, unfortunately, the influence of the latter had resulted in an agreement on the part of the Cabinet less satisfactory than what the Ambassador had hoped for. Nevertheless, the Ambassador said that he believed that the ground was now prepared for a successful and prompt negotiation. I reminded him that in our judgment a *pro forma* trade agreement would be worse than useless. In our judgment the trade agreement must be a real trade agreement. The Ambassador said that he entirely concurred and evidenced the belief that it must be a trade agreement which at the outset "hurt both ways". I said that on that point we had far greater difficulties to contend with and far more powerful interests in this country to combat than his Government did and that we were convinced that the beneficial results of a real trade agreement would be felt promptly in both countries, not only to our respective advantages, but to the advantage of the rest of the world as well.

611.4131/4093

The British Embassy to the Department of State

MEMORANDUM

1. The United Kingdom Government have been anxiously considering the desire of the United States Government for a more precise indication than it has hitherto been possible to give them as to how far the "essential" requirements set out in their memoranda of March 2nd and May 18th might be met.
2. The United Kingdom Government are deeply impressed with the imperative need for finding a basis of negotiation within the next few weeks if the present opportunity for concluding a trade agreement is not to pass. They cannot of course commit other British

Commonwealth Governments concerned to any proposals involving modifications of duties guaranteed to them under existing trade agreements. Nevertheless they believe that a decision as to whether it is possible for the United States Government and themselves to proceed to formal trade negotiations could most rapidly be reached if the former would indicate whether they would accept as a basis proposals which, though necessarily provisional, are as specific as it is possible to make them at the present stage.

3. With this object the United Kingdom Government accordingly submit for the consideration of the United States Government the attached statement⁸⁵ showing duty reductions and other concessions which they would be prepared to make on items specified in the United States "essential" requests provided (a) that adequate concessions were made by the United States (b) that the proposed agreement was in other respects satisfactory (c) that where necessary the British Commonwealth Governments concerned subsequently concurred.

4. In view of the importance which they understand the United States Government attach to removal of the existing duty on wheat the United Kingdom Government would, subject to the same provisos, be prepared to consider its abolition. As the United States is by no means the principal supplying country the United Kingdom Government would in the event of their making this concession expect the United States Government to consider sympathetically any reasonable requests which they may wish to put forward for reduction of duties where the United Kingdom is not the principal source of supply to the United States, particularly in cases where other parts of the British Empire are also interested.

5. In the opinion of the United Kingdom Government the foregoing proposals represent the greatest common measure of agreement which there is any hope of securing among the British Commonwealth Governments concerned. They would involve in varying degree sacrifices by all the countries affected on a scale which would never be contemplated in trade negotiations with any other country. The United Kingdom Government see no prospect that the other Governments concerned would consent to proposals which would involve greater sacrifices on the part of producers who have no large home market and are consequently almost wholly dependent upon export.

6. The only "essential" requests (apart from those for conventionalization of existing duties) put forward by the United States Government on which the United Kingdom Government are free to offer the concessions set out in the attached statement without the consent of

⁸⁵ Not printed.

other Empire Governments are items numbered 7, 10, 16 and 17 in the statement.

7. Then there are several products on which duties are protective in character as well as being guaranteed under Ottawa Agreements. On these requests namely numbers 4, 9 (berries), 11 and wheat the United Kingdom Government can at this stage indicate only their own attitude.

8. The proposed reduction in duty on tinned loganberries would it is believed substantially meet the United States request on tinned berries. If however there are other varieties of canned berries in which the United States has an important interest the United Kingdom Government would be ready to consider any further request which the United States Government may wish to put forward under this heading.

9. The United States requests for conventionalisation of existing duties are also being met practically in full.

10. The United Kingdom Government have gone to the extreme limit on these items and will have to face acute economic and political difficulties to which their offers will unquestionably give rise.

11. There remain "essential" requests for concessions which affect only other parts of the Empire than United Kingdom. These so far as Canada is concerned have already been the subject of informal conversation between United States and Canadian officials. Australia and the Union of South Africa, are closely affected by the requirements on dried fruits and tinned apricots, pears and peaches. The United States authorities have already had some discussions with Mr. Casey about the possibilities of finding an acceptable solution on these items. Owing to the general election in Australia the United Kingdom Government have been unable to carry the matter any further but for their part they would do their best to facilitate any arrangement which might be reached at a later stage between the United States and the Commonwealth Governments. The United Kingdom Government feel sure that the Government of the Union of South Africa would on their side to do their best to facilitate a solution.

12. The position with regard to apples presents special features. It is understood that in the informal conversations between United States and Canadian officials referred to above it has been intimated that the greatest modification of the United Kingdom duty which Canada will consider would be a reduction to three shillings and sixpence per cwt. The United Kingdom Government would for their part be ready to accept this figure.

WASHINGTON, November 5, 1937.

611.4181/407 : Telegram

The Ambassador in the United Kingdom (Bingham) to the Secretary of State

LONDON, November 5, 1937—8 p. m.
[Received November 5—6:55 p. m.]

700. Yesterday the President of the Board of Trade requested me to meet him this afternoon, which I did. Mr. Stanley gave me a copy of the communication which he said would be presented to you today by the British Ambassador in Washington. He did not discuss with me its contents but he went on to say that he wished to assure me of his great desire, which was shared by every member of the Cabinet, that these proposals would constitute a basis for negotiations leading to an agreement between the United States and Great Britain, insofar as Great Britain could act without commitments from the other members of the Commonwealth. He also stated his earnest hope that such concessions as might be deemed necessary by the United States from Canada, Australia, et cetera, might be forthcoming, but that the British Government was restricted, of course, by the Ottawa Agreements and by the necessity of maintaining proper relations within the Commonwealth.

He said he hoped and believed the United States Government realized the difficulties and complexities of the situation, and that the United States Government would also realize the desire and purpose of the British Government to go as far as it possibly could in an effort to bring about a trade agreement. He stated that it was the purpose and intention of his Government in the statement sent forward today, to lay a firm foundation upon which the trade agreement might be built and that his Government, in making this proposal, was endeavoring to go as far as possible, within the limitations of the Ottawa Agreements, in meeting the wishes of the United States Government.

BINGHAM

611.4181/415 : Telegram

The Ambassador in the United Kingdom (Bingham) to the Secretary of State

LONDON, November 11, 1937—9 p. m.
[Received November 11—6:25 p. m.]

711. (1) In a long conversation at lunch today Sir William Brown discussed the latest British trade agreement proposals. (See Em-

bassy's telegram No. 700, November 5, 8 p. m.) He started by saying that Oliver Stanley had wished to give a copy of the proposals to the Ambassador personally in order not only to keep the Embassy informed but also to emphasize his own great interest in the consummation of a trade agreement. Brown continued by saying that the latest proposals were "as far as the British Government could possibly go at this stage". He appreciated that we would possibly not be satisfied with the proposals on every item.

(2) When we expressed disappointment at the small advance over the previous British proposals, he intimated that if the United States did not feel able to accept the proposals as a whole he hoped it would not turn them down in general terms but would indicate the specific items on which it was really essential that the British make further concessions. Later in another connection he referred [to] Stirling's arrival and said that among other things he was "over there to see where the shoe pinches most".

(3) As to the recent exchanges between Chamberlain and the Dominion Prime Ministers (see Embassy's telegram 678, October 29, 9 p. m.) Brown only volunteered that a reply had been received from Mackenzie King and that its tenor gave no grounds for discouragement; the reply from Australia had unfortunately in no way advanced the position.

(4) In the course of the discussion Brown reiterated the British Government's fear of being put in an impossible position through joint Canadian and Australian action (see Embassy's telegram 671, October 27, 5 p. m.). When reference was made to paragraph 11 of the note of November 5, with its implication that the United States might have to bear at least a share in effecting the releases by the United Kingdom, Brown tacitly admitted that this had had to be included for negotiating purposes. He went on to say that naturally in the case of Canada, because of its special relationship to the United States, the Canadian-American negotiations would be closely geared to the Anglo-American negotiations but that as far as the other Dominions were concerned "we will of course bear the responsibility of exerting the pressure". We took cognizance of this assertion which he then amplified by saying that the cooperation of the Canadians must be secured and a meeting of minds be effected between the Canadians, the British and the Americans before it would be found productive, in his opinion, to face the Australians with the necessity of "coming through". He said that while Stirling would have to say officially to you that the British proposals represented their maximum offers, he would explain confidentially something along the lines of the foregoing.

(5) Incidentally Brown did not attempt to conceal his desire to have the announcement of formal negotiations made as soon as pos-

sible and he specifically referred to the desirability of concluding any agreement before April 1. He also showed that he had in mind as well that the trade recession in the United States, whatever its degree, cautioned speed.

(6) Brown then referred to specific commodities:

(a) Apples. He repeated his former statement that the British were "ready" to go as far on apples as the Canadians would. He apparently felt that this was one of the items of which the United States would make further demands.

(b) Tobacco. Brown was categoric in saying there was nothing doing on reduction in preference but that they would be willing to bind the preferential margin as well as the tariff.

(c) Douglas fir. He began by saying that his conscience was awakened vis-à-vis the Scandinavian countries, and later emphasized the Canadian aspect. Although he was obviously aware of the extraordinary importance of this item to us he remained noncommittal. He did, however, tie this up with Stirling's impressions referred to at the end of paragraph 2.

BINGHAM

611.4131/431

*Memorandum of Conversation, by the Assistant Secretary of State
(Sayre)*

[WASHINGTON,] November 16, 1937.

Participants: Sir Ronald Lindsay, the British Ambassador,
Secretary Hull, and Mr. Sayre.

The British Ambassador came to call at the request of the Secretary at 10:30 this morning. At the opening of the conversation, the Secretary handed to the Ambassador a memorandum for the British Government, a copy of which is attached hereto.⁶⁶ The Secretary said that we had given months of earnest work to make possible the conclusion of a British trade agreement and he also recognized and appreciated the similar earnest and sincere activities of the Ambassador in the same direction. The Ambassador then read the memorandum stating that the United States Government is prepared, on the assumption expressed in the memorandum, to make immediate announcement of contemplated negotiations. The Ambassador, upon reading this memorandum, was visibly moved—immense relief and satisfaction was written all over his face. After felicitations on both sides, it was explained to the Ambassador, as stated in the memorandum, that the proposals contained in the United Kingdom's memorandum of November fifth with respect to concessions on the so-called

⁶⁶ *Infra.*

"must list" were not satisfactory and that the United States must expect substantial improvement in some of the concessions stated in the list. Nevertheless, we realize that time is of the essence; unless negotiations are promptly initiated, various circumstances will make difficult, if not impossible, the conclusion of any agreement. The United States is therefore prepared to make public announcement of the contemplation of negotiations at once and leave to the stage of definitive negotiations the bettering of the concessions indicated in the British memorandum of November fifth. The Ambassador replied that he quite understood and was happy that we had reached that conclusion.

The time of making the contemplated announcement was next discussed. It was suggested that an auspicious date might be next Monday, November twenty-second, in as much as on that day will probably come announcements concerning the Brussels Conference.⁸⁷ The Ambassador was informed that the American Government would be ready to make the announcement by next Monday or even earlier if desired by the British Government. The question was raised as to whether, at the time of the announcement, it would be desirable for the British Prime Minister or the Secretary to comment on the political significance of the making of a trade agreement between the two countries. No definite conclusion was reached, although it was suggested that it might be more dignified and effective merely to announce the bare fact without comment.

The Secretary then went on to comment, at some length, upon the state of world affairs and the significance of the trade agreements program in connection therewith. The Secretary pointed out that the world is on fire and that unless those who share common desires to protect the precious things of our civilization stand together in some practical program, such as the trade agreements program, we may be too late. He went on to comment on the Brussels Conference, stating that in spite of superficial appearances, even if it should now break up, it has not been a failure. In the first place, it has brought the United States into consultation and possible cooperation with European countries, as has not been possible for many years. In the second place, it has given evidence that peace-abiding nations are not content to see law-breakers commit such acts of aggression, as Japan's invasion of China, without speaking up and making known to the world their opinions and voicing the moral judgment of the world. In the third place, it has afforded an opportunity for exploring the possibility of effective, concerted action against Japan. Throughout the Secretary's talk, the Ambassador listened intently and agreed with all that was said.

⁸⁷ See vol. iv, pp. 155 ff.

The Ambassador left, apparently deeply affected by the realization that we are at last close upon the consummation of what has been devoutly desired for so long.

F. B. SAYRE

611.4131/418

The Department of State to the British Embassy

MEMORANDUM

1. The proposals in the United Kingdom Government's memorandum presented on November 5, 1937, with respect to the concessions on products in the essential list for inclusion in the proposed trade agreement, have received careful study. On the majority of items in the list referred to, the proposals are in varying degree less satisfactory than the concessions requested by the United States. With respect to some of the items involved the United Kingdom Government has made no proposals or those which it has made fall far short of the United States requests. In any agreement finally concluded, a substantial improvement in some of the concessions indicated by the United Kingdom Government is essential.

2. Nevertheless, in view of the importance of instituting negotiations at the earliest possible date, the Government of the United States is prepared, on the assumption that the United Kingdom Government will obtain the necessary concurrence of the Empire Governments, to accept the present proposals as a basis for the announcement of contemplated negotiations and to leave for determination in the course of the definitive negotiations the concessions to be granted on the items on which the present proposals do not meet the United States requests, as well as the concessions to be granted on the non-Ottawa items which have been heretofore requested.

3. On the basis indicated in the two preceding paragraphs, the Government of the United States is prepared, if agreeable to the United Kingdom Government, to make public announcement next week, or before, that the negotiation of a trade agreement with the United Kingdom is contemplated and to proceed as rapidly as possible with the negotiations.

4. The Government of the United States is also prepared, if agreeable to the Government of Canada, to make public announcement of the contemplated negotiation of a new or supplementary trade agreement with that country. This announcement would be made not later than two weeks after the announcement with respect to the United Kingdom. The Government of the United States will inform the Canadian Government to this effect.

WASHINGTON, November 16, 1937.

611.4131/430

*Memorandum of Conversation, by the Assistant Secretary of State
(Sayre)*

WASHINGTON, November 16, 1937.

Participants: Mr. Chalkley of the British Embassy,
Mr. Stirling of the British Board of Trade, and
Mr. Sayre, Mr. Hawkins, and Mr. Hickerson.

This afternoon Mr. Chalkley of the British Embassy, and Mr. Stirling of the British Board of Trade, came to see me concerning the memorandum handed to the British Ambassador this morning. (See memorandum of conversation between Sir Ronald Lindsay, the Secretary, and myself of today's date.) They were somewhat concerned lest the memorandum might require the British Cabinet to approach all of the Dominions afresh in order to satisfy the "assumption" of the United States Government as expressed at the top of page 2 of the memorandum. After some discussion, I informed Mr. Chalkley that it was definitely not the expectation of the United States that the British Dominions must be approached by the United Kingdom Government before sending an assent to the immediate announcement of contemplated negotiations. I explained that clearly there could be no trade agreement unless the proposals contained in the United Kingdom Government's memorandum of November fifth were made the basis of negotiations and the concessions there outlined improved, and that this would of course necessitate agreement on the part of the Dominions. I added, however, that the obtaining of the consent of the Dominions might come after the announcement of contemplated negotiations, i. e., during the course of the definitive negotiations.

F. B. SAYRE

611.4131/433

*Memorandum by the Chief of the Division of Trade Agreements
(Hawkins)*

[WASHINGTON,] November 17, 1937.

Conversation: The Honorable Sir Ronald Lindsay;
Mr. Francis B. Sayre;
Mr. Harry C. Hawkins.

Sir Ronald called at 5:15 p. m. today and submitted the following text of an announcement which, if agreeable to us, would be made in the House of Commons tomorrow (November 18). He did not mention the possibility of announcement being made on Friday or at any later date.

"I am very happy to be able to inform House that the informal and exploratory discussions with a view to reaching an agreed basis for negotiation of an Anglo-American trade agreement, have now reached a point at which U.S. and U.K. Governments feel able to announce that negotiations for such an agreement are contemplated. As has been explained to House this announcement marks a definite and well recognized step in U.S. procedure of negotiations.

"I feel sure that House will warmly welcome this further step towards an agreement between the two countries."

In response to an inquiry whether this meant that the United Kingdom is prepared to go ahead with the negotiations on the basis of this Government's memorandum of November 16, 1937, Sir Ronald replied in the affirmative.

Mr. Sayre after consulting the Secretary informed Sir Ronald that it was agreeable to this Government that the announcement of contemplated negotiations be made in London and in Washington tomorrow (November 18).

[For text of preliminary announcement of the contemplated trade agreement negotiations with the United Kingdom, issued by the Department of State November 18, 1937, see Department of State, *Press Releases*, November 20, 1937, page 383.]

611.4131/487

*Memorandum by the Chief of the Division of Trade Agreements
(Hawkins)*

[WASHINGTON,] November 19, 1937.

Mr. Chalkley and Mr. Stirling called with reference to the trade agreement and left the attached statement:

Mr. Chalkley said that he had been asked to make clear the United Kingdom Government's position in regard to today's announcements.⁸⁸ It was as follows:—

We are glad to see that the United States Government have accepted our composite offer as a basis of negotiation. We note that acceptance is on the assumption that the United Kingdom Government will obtain the concurrence of the Empire Governments to items in that offer affecting them but, as stated in our memorandum of 5th November we cannot commit the other British Commonwealth Governments concerned. We shall of course do our best to secure their concurrence. At the same time the announcement made by the United Kingdom

⁸⁸ Evidently refers to the announcement of November 18, regarding the contemplated United States-United Kingdom negotiations. For text of the preliminary announcement of contemplated United States-Canadian negotiations, November 19, see Department of State, *Press Releases*, November 20, 1937, p. 388.

Government today must not, for the reasons given above, be regarded as implying responsibility for decisions which it is for other British Commonwealth Governments to take. They have, however, been informed of our proposals of 5th November and we know that the other Commonwealth Governments are anxious that these negotiations should succeed. Their views will be obtained as soon as possible.

611.4131/486

*Memorandum by the Chief of the Division of Trade Agreements
(Hawkins)*

[WASHINGTON,] November 19, 1937.

Mr. Chalkley and Mr. Stirling called with reference to the trade agreement and left the attached statement:

Mr. Chalkley said that it is the understanding of the United Kingdom Government, to which they attach special importance, that the State Department will be prepared to open informal exploratory and confidential discussions with Australia, New Zealand and South Africa during the progress of the negotiations with the United Kingdom if any or all of those Dominions desire it.

841.4061 Motion Pictures/70

*Memorandum by the Assistant Chief of the Division of European
Affairs (Culbertson)*

[WASHINGTON,] November 20, 1937.

I telephoned the British Embassy this morning to let the Embassy know that the motion picture industry has expressed to us considerable concern with regard to recent developments in London concerning motion picture legislation now under consideration in the British Parliament. I pointed out that the industry's principal concern at the moment is in connection with two amendments, the one which would do away with multiple quota credit for high cost films, and the other amendment is the one designed to establish a review commission which would have the power to decide that a particular film had no entertainment value and would not therefore be acceptable.

Chalkley stated that his Government and his Embassy were fully informed with regard to the whole situation, and that the views of the American industry had been fully presented to the British Government, and he therefore felt that there was no further action which could be taken. I explained that we had this recent protest from the American industry and that we were of course acting on their representations. Chalkley replied by saying that of course we could not

take statements of the industry; that they had been given fair treatment and that they could expect to receive fair treatment. I answered by saying that we realized that an opportunity had been given for the American interests to present their views, but the question was whether action would be taken with regard to those views, and I also pointed out that any action at this time by the British Government adding severe and new restriction to an industry as important as the American motion picture industry would be very unfortunate. Chalkley, however, concluded by saying that he felt that there was nothing more that could be done about it.

PAUL T. CULBERTSON

841.4061 Motion Pictures/70 : Telegram

*The Secretary of State to the Chargé in the United Kingdom
(Johnson)*

WASHINGTON, November 29, 1937—7 p. m.

468. Department's 318, July 23.⁸⁹ You will note from our 318 that the motion picture question was placed rather squarely before the British Embassy here. Up to the present time we have not, however, felt that we should do much more than assist the industry in presenting to the British Government the views of that industry. However, we do not feel that there could have been or should have been any doubts in the minds of the British Government with regard to our interest in this particular industry. Recent developments have caused us certain uneasiness with regard to this matter. It was for that reason that Mr. Sayre spoke to the British Ambassador on November 20 (see our 455, November 21⁹⁰). Hays⁹¹ now informs us that Stanley is insisting that the various committee reports be brought into open discussion in Parliament tomorrow. These reports are understood to contain recommendations which have been consistently opposed by the American industry. In view of the fact that trade agreement negotiations have now been announced and in view of the fact that motion pictures is an important item to be discussed during the negotiations we feel that the situation has reached such a stage as to warrant a presentation of representations to the British Government. Such representations might be made along the following lines:

"In submitting, at the British Government's request, a tentative list of non-Ottawa items upon which the United States Government

⁸⁹ Not printed, but see last paragraph of memorandum of July 21, by the Chief of the Division of Trade Agreements, pp. 58, 62.

⁹⁰ Not printed.

⁹¹ Will Hays, president, Motion Picture Producers and Distributors of America, Inc.

would seek concessions in the coming trade agreement negotiations my Government included motion pictures. Because of the importance of the industry and the magnitude of the trade my Government considers motion pictures to be one of the important items for future discussion. New legislation now under consideration would materially alter the *status quo* with regard to the treatment accorded by the British Government to this particular industry. It has been the purpose of the American Government to seek the maintenance of the *status quo* in connection with any trade agreement items as between this Government and any other Government. According to information which my Government has received it would appear that the British Government intends to go forward with the consideration of legislation which, if adopted, would add severe restrictions to those already in existence. My Government feels that it would be very unfortunate if irrevocable legislation were adopted by the British Government which would preclude the possibility of discussing this important item in the British-American trade."⁹²

We have consistently maintained for ourselves and sought from others a policy which would preclude any change during the period of negotiations which would be detrimental to the trade of either country. Some months ago it was proposed in a bill presented to Congress to assess duties on antiques. Great Britain is a principal supplier of antiques. Having in mind the possibility of a trade agreement with Great Britain the Department took vigorous steps to have this provision in the bill withdrawn. This was done and had been done prior to the receipt of a protest on this same question from the British Ambassador.

HULL

611.4131/5693

The British Embassy to the Department of State

MEMORANDUM

In the event that the United States Government agree to the inclusion of the Colonial Empire and Newfoundland within the scope of the negotiations contemplated with the United Kingdom for a trade agreement the United Kingdom Government will wish to put forward on behalf of the Colonial Empire and Newfoundland the requests itemised in the attached two lists.⁹³

These lists are provisional only and have been compiled without consultation with the trade interests concerned, but it is not anticipated that any substantial additions will be necessary.

WASHINGTON, December 9, 1937.

⁹² A memorandum in this sense was left at the British Foreign Office on December 3, 1937.

⁹³ Not printed.

611.4131/540 : Telegram

The Chargé in the United Kingdom (Johnson) to the Secretary of State

LONDON, December 9, 1937—6 p. m.
[Received December 9—2:47 p. m.]

761. 1. Beale of the Tariff Commission has arrived.

2. At lunch today Overton informed us that he would be in charge of the British delegation for trade agreement negotiations. Stirling, Norman Archer from the Dominions office and an expert on British tariff together with clerks would complete the delegation, totalling 12 persons. The time of its arrival in Washington is contingent upon the date on which actual negotiations can start.

3. Overton has mailed Chalkley a preliminary list of British requests which may be supplemented later. He has in mind the desirability of getting a full list of requests before you by December 23.

4. When the subject of the relation of British colonies to the forthcoming negotiations was broached, Overton remarked that the British delegation was not preparing itself to discuss concessions on United States products entering colonies. It has occurred to us that, if the State Department were considering including the colonies in the negotiations, it might save time if that subject matter were now taken up with Chalkley so that the delegation would be in a position to discuss the matter when negotiations begin.

JOHNSON

841.4061 Motion Pictures/70 : Telegram

The Secretary of State to the Chargé in the United Kingdom (Johnson)

WASHINGTON, December 10, 1937—noon.

483. Department's 468, November 29, 7 p. m. Mr. Hays came in to see me today and explained to me again the very serious view which the industry takes with regard to British film proposals now or perhaps soon to be placed before Parliament. Furthermore Mr. Hays told me of the difficulties he is experiencing in keeping the industry from embarking upon a press and film campaign which would bring out the true facts involved in this whole situation. Of course we realize that once a campaign were launched even the industry itself would have no control over the extent to which it might be taken up by opponents to this trade agreement program and others. From the standpoint of treatment at all fair, I am much impressed with the seriousness of the present threat to the American motion picture in-

dustry in Great Britain. I have felt it necessary to call in the British Ambassador and again lay this whole situation before him. I have impressed upon him the fact that we are now on the eve of trade agreement negotiations, the importance of which cannot be over-emphasized and that such negotiations cannot but be limited if either government should take irrevocable action involving items of trade which are certain to come under discussion during the negotiations. This is the more important when there is involved an item of such outstanding importance as motion pictures.

You will please call at the Foreign Office and state that you have been instructed to inform the British Government orally that I have felt it necessary to speak to the British Ambassador here in the sense indicated above. You should at the same time reiterate the position set forth in the Department's telegram under reference.

HULL

841.4061 Motion Pictures/81 : Telegram

The Chargé in the United Kingdom (Johnson) to the Secretary of State

LONDON, December 11, 1937—2 p. m.
[Received December 11—11:25 a. m.]

766. Department's 483, December 10, noon. There seems to be some misconception in Mr. Hays' mind of the actual state of affairs here with respect to the films bill. The bill has gone to committee after second reading. The committee is considering the many amendments presented. So far no amendment detrimental to the American industry has been adopted although some have been rejected.

Both Williamson⁹⁴ and Allport have talked with Brown. The former has impressed upon him the seriousness with which we would view the enactment of legislation carrying more restrictions than are provided for by the present act. Allport has submitted to Brown five suggested amendments which, if accepted, would more than satisfy the industry. Brown has promised to put the whole matter up to Stanley who can control to a large extent the pattern of the new bill. All indications at present point to the probability that the bill will emerge from the committee in a form not detrimental to the American industry; in other words the sum of the restrictions in the new bill will probably not be greater than the sum of the restrictions in the old bill. Moreover, if a substantial part of Allport's recommendations is enacted the industry will be better off than at present.

Because the act of 1927 expires this year it is not to be hoped that no legislation to replace it will be enacted at the present time. As a

⁹⁴David Williamson, Second Secretary of Embassy in the United Kingdom.

practical matter, therefore, all of Allport's efforts have been directed towards securing legislation which does not injure the American industry to any great extent. He has felt that during the past week great progress towards that end has been made. The representations directed by your 468 of November 29, 7 p. m. I made personally to the Under Secretary for Foreign Affairs and we have substantial reason to believe that they had real effect upon the Board of Trade's attitude. We gather, and it is Allport's impression, that the Board of Trade is now favorably disposed to some modification of the bill to cover the American industry's principal desiderata.

Brown has promised Allport to tell him in a few days what Stanley is willing to do. I feel, therefore, that until Stanley has had time to manoeuvre further, official representations here might serve to complicate the situation. Allport is anxious that nothing more be done for the moment, fearing that further representations at this time would "get their backs up" and jeopardize the intricate negotiations he has carried on with Brown. I venture, therefore, to suggest that this phase of the matter be considered and that I be authorized to await further instructions before again broaching the matter to Foreign Office.

JOHNSON

841.4061 Motion Pictures/81: Telegram

*The Secretary of State to the Chargé in the United Kingdom
(Johnson)*

WASHINGTON, December 13, 1937—7 p. m.

487. Department's 483, December 10, and your 766 of December 11. We will leave to your judgment whether any further approach should be made to the British authorities at this time. We of course recognize the possibility of some confusion arising with regard to the actual status of the proposed legislation.

On last Saturday the British Ambassador again called on Mr. Sayre and expressed the opinion that the motion picture question has nothing to do with the trade agreement, and that his government would probably refuse to consider it in connection with the trade agreement negotiations. He did consent to convey to his government our interest and concern in the pending legislation. You will of course understand that we do not accept this position. Motion pictures was included in the non-Ottawa list which we submitted to the British, and they have certainly been on notice that we would expect to include motion pictures in the trade agreement negotiations.

HULL

611.4131/581

*The British Commercial Counselor (Chalkley) to the Chief of the
Division of Trade Agreements (Hawkins)*

WASHINGTON, December 14, 1937.

DEAR MR. HAWKINS: I send you herewith 10 copies of a provisional list of the items of the United States Tariff on which the United Kingdom Government will probably request duty reductions in the course of the negotiations for a United States-United Kingdom trade agreement, accompanied by copies of an explanatory letter from the Board of Trade to me and of a Note on Items in Schedule 9 (Cotton Manufactures).⁹⁵

It will be observed that the Board of Trade have not yet received the considered views of the trade interests, and that it is fairly certain they will want to make certain additions to the list. At the same time they have tried to include every item in respect of which they think, on present information, that a reasonable case is likely to be made out.

It follows that they have been unable to make any serious attempt to narrow the various tariff classifications included in the list to particular varieties in which goods of special interest to the United Kingdom are likely to predominate. At a later stage we shall, in our own interests, probably want to limit our requests on some items so as to confine any concessions as far as possible to items falling within existing "basket" paragraphs of the Tariff, or to new sub-classifications which are likely to yield the maximum benefit to United Kingdom exporters. We should be reluctant to narrow our list in this way before publication, but we shall, of course, be ready to consider any particular cases in which the State Department may want, for special reasons, to press for omissions or limitations. I should like to tell the Board of Trade now by telegram of any such cases as they arise without necessarily waiting for your examination of the whole list to be completed.

I suggest that we meet immediately for the purpose of comparing the enclosed Provisional List with your list of dutiable items handed to me on November 24th, checking off the items of the Provisional List which you accept for inclusion in the list to be published and of arranging subsequent meetings to examine the remaining items.

On December 22nd I expect to receive some additions to our list, the items proposed for binding, and notes on some items of the present list the inclusion of which you may question.⁹⁶

Yours sincerely,

H. O. CHALKLEY

⁹⁵ The enclosures, apparently all dated December 7, are not attached to this file.

⁹⁶ Additions to the list were received on December 22, 23, and 26, 1937.

INFORMAL DISCUSSIONS REGARDING PROPOSED RESTRICTION OF
TRADE BETWEEN AUSTRALIA AND NEW ZEALAND TO BRITISH
SHIPPING⁹⁷

811.71247H/81

Memorandum by the Secretary of State

[WASHINGTON,] May 18, 1937.

The British Ambassador came in upon my invitation and I stated to him the substance of the New Zealand shipping question or controversy. I suggested that I considered it very important, for the sake of teamwork between the governments dealing with the matter, that the Government of New Zealand should not put into operation the discriminatory shipping authorization already enacted. I said that this should not be done pending full and elaborate conference between the proper governmental agencies with respect to the broader phases of the shipping situation, especially on the Pacific; that unless this should be done our shipping officials might unintentionally get at cross purposes in some ways, while thus working more or less in the dark as to the ultimate plans and purposes of New Zealand, for example, and that this especially would be true if New Zealand should place this discriminatory policy in operation without further delay.

The Ambassador replied that he doubted whether New Zealand would expressly commit herself on the matter; that this was a club she has in her hand which, as to the use of, in his opinion, she would not commit herself in advance; but that he felt entirely satisfied there would be no purpose to put this discriminatory legislation into operation pending any conferences, discussion, and consideration by the proper governmental agencies looking towards a mutually satisfactory settlement. I replied that was all that could be expected in the circumstances.

I am satisfied the Ambassador will emphasize to his government the view that they should not permit this legislation to be carried into effect pending further and broader consideration of shipping relations between our different countries and, if possible, satisfactory agreements upon policies, etc.

C[ORDELL] H[ULL]

811.71247H/85

The British Embassy to the Department of State

SHIPPING SITUATION IN THE TASMAN SEA

It is understood that the Chairman of the United States Maritime Commission⁹⁸ considers that the Australian Bill in its present form

⁹⁷ Continued from *Foreign Relations*, 1936, vol. I, pp. 706-716.

⁹⁸ Joseph Kennedy.

would not permit Matson Line vessels to disembark or embark passengers at a New Zealand port, and would therefore prevent these vessels calling there, and it has been suggested that, as perhaps the whole situation in which the Australian and New Zealand Governments have felt impelled to enact legislation giving restrictive powers in the latter country and to introduce it in the former may not be entirely clear to the Chairman, it would be opportune to set out the whole position.

2. For the commencement of the events which have led up gradually to the present situation, it is necessary to go back to the year 1885 when the Union Steamship Company of New Zealand, Ltd., a company registered in New Zealand, the shares in which were held largely in that country and in Australia, inaugurated, in conjunction with an American company, a trans-Pacific mail service between Australia, New Zealand, Honolulu and San Francisco. In 1900, when the United States coastwise law was extended to include Hawaii, and so excluded the ships of the Union Steamship Company from the Honolulu-San Francisco service, the eastern terminal was changed from San Francisco to Vancouver, and, some time later, Fiji was included as a port of call. At a later date this service was taken over by a Canadian Company, the Canadian Australasian Line, half the shares in which are held by the Union Steamship Company of New Zealand. But, meanwhile, in 1909, the Union Steamship Company, with the assistance of a subsidy from the New Zealand Government, had inaugurated a service between New Zealand, Rarotonga and Tahiti, which was soon after extended to San Francisco at one end and Sydney at the other. In 1926 the United States of America service between San Francisco and Sydney, which had been inaugurated in 1883, was acquired by the Matson Navigation Company who from 1931 on included a call at Auckland, and for the first time began to compete in the passenger traffic between New Zealand and Australia hitherto confined to unsubsidised Australian and New Zealand shipping. This competition was intensified when two fast modern liners, built with the financial assistance of the United States Government, were placed on the run in 1932. In the face of this competition the Union Steamship Company steadily lost business, and in December, 1936, found themselves forced to discontinue the service between San Francisco, New Zealand and Sydney. The situation thus created was the cause of great anxiety to the Australian and New Zealand Governments. The New Zealand Government took powers to protect the local trade in the Tasman Sea and later somewhat similar but more far-reaching legislation was introduced into the Australian Legislature but has not yet been passed. In the New Zealand Act and in

the Australian Bill both Governments purposely refrained from reserving the Tasman trade to British shipping and confined themselves to taking powers to exclude from that trade ships belonging to countries which in effect discriminate by subsidies, etc., against British shipping.

3. The points which should be emphasised are :

(a) That the company whose ships have been withdrawn from the San Francisco–New Zealand–Australia service is registered in New Zealand, and the shareholders are largely New Zealanders and Australians.

(b) That the same company has a one-half interest in the service between Canada, New Zealand and Australia.

(c) That the ships of both companies are manned in the main by Australians and New Zealanders employed under New Zealand conditions and regulations.

(d) That the United States line between San Francisco and Australia did not call at New Zealand until 1931, when a call was introduced at Auckland, New Zealand, and that since that date its competition in the trans-Tasman passenger trade has seriously prejudiced the Australian and New Zealand owned and unsubsidised shipping on this service, which is paid on a poundage basis for carrying mails.

(e) That it had been a long standing grievance in Australia and New Zealand that their ships were shut out of the Honolulu–San Francisco trade; that this feeling of grievance was substantially increased after the entry in 1931 of the Matson Line into the New Zealand–Australian trade, and is widespread for whilst, on the one hand, the Australian and New Zealand shareholders resent the loss of their profits, the seamen and other unions resent the fact that ships employing Australians and New Zealanders have been forced to discontinue running. The legislation recently enacted or introduced has therefore very strong backing; and, finally

(f) That the legislation passed in New Zealand and introduced in Australia is not designed to give British shipping as such any advantage over the United States of America shipping, but to protect Australian and New Zealand owned shipping employed between Australia and New Zealand against subsidised foreign shipping.

As regards the point raised by Mr. Kennedy with reference to the effect of the Australian legislation on the New Zealand call of the Matson Line, the Australian Government have already realised that the Bill introduced into the Commonwealth Parliament might be interpreted in the way Mr. Kennedy indicates. They propose, therefore, to introduce amendments to ensure that the Bill will not prevent the Matson Line disembarking or embarking in New Zealand passengers with through tickets from or to Australia. It is understood that the New Zealand Act does not create any such difficulty.

5. In this whole situation the Commonwealth and New Zealand Governments feel strongly that Dominion shipping is not getting

a fair deal in that it is prevented by United States law from participating in the Honolulu-United States traffic and as a result of United States subsidies is being seriously prejudiced not only in the trans-Pacific trade but also in the Tasman trade. They realise the political difficulties in the way of the admission of other than American ships to the trade between Honolulu and the United States. As indicated in the preceding paragraph they do not propose to restrict the through traffic carried on American ships. But they are not prepared to see the situation continue under which, by reason of subsidies paid by the United States Government, the most valuable part of the local traffic between Australia and New Zealand is diverted from the unsubsidised Australian and New Zealand lines. In the circumstances they feel that the Matson Line should meet them on the third of these points to the extent of withdrawing voluntarily from the purely local trade between Australia and New Zealand. In that event it can be anticipated that the Australian and New Zealand Governments would not proceed further with the application of the legislation under reference.

WASHINGTON, June 16, 1937.

811.71247H/89

*The Chairman of the Maritime Commission (Kennedy) to the
Secretary of State*

WASHINGTON, July 1, 1937.

MY DEAR MR. SECRETARY: I have received your letter of June 18, 1937⁹⁹ transmitting a memorandum entitled "Shipping Situation in the Tasman Sea," left by Mr. Chalkley and Mr. Keith [Officer] of the British Embassy on the occasion of their meeting with Mr. Dunn of the State Department on June 16th last. I have read that memorandum with much interest, and enclose herewith a memorandum in reply, which is self-explanatory.

The New Zealand statute and the proposed Australian legislation, if put into effect, would by its discriminatory provisions divert a disproportionate flow of passenger business to the new liners which the British are contemplating building for the south trans-Pacific service. The British memorandum states that the Australian Government now proposes to introduce amendments to the pending legislation to insure that it will not affect through-traffic on the Matson Line. While in view of the present itinerary of the Matson Line, no American line would be affected by the restriction in the New Zealand statute it

⁹⁹ Not printed.

would be desirable as pointed out in the enclosure, that the New Zealand statute be similarly amended.

With respect to the suggestion contained in the British Embassy's memorandum that the Matson Line withdraw voluntarily from the local trade between Australia and New Zealand, in which passengers only are carried, the enclosed memorandum also sets forth reasons why such action is deemed inadvisable.

The Commission now is effecting the change from the mail contract disbursements as a means of assistance to American merchant vessels to payments under operating differential contracts under the Merchant Marine Act of 1936,¹ and it is probable that under the new plan there will be no grounds for allegations of discrimination and unfair competition due to the amount of Government-paid subsidy. The proposal that the Matson Line withdraw from the Tasman Sea trade is one with which the Government is concerned both as a matter of policy and in connection with the maintenance of an essential trade route. Of course, the Matson Line is vitally concerned due to the fact that the Tasman Sea route constitutes an important branch of its south trans-Pacific service, built up over a considerable period of time.

Yours very sincerely,

JOSEPH P. KENNEDY

[Enclosure]

Observations Upon a Memorandum From the British Embassy Dated June 16, 1937, Entitled "Shipping Situation in the Tasman Sea" ²

The expressed purpose of the British Embassy's Memorandum is to make clear to the Chairman of the United States Maritime Commission "the whole situation in which the Australian and New Zealand Governments have felt impelled to enact legislation giving restrictive powers in the latter country and to introduce it in the former." The legislation of New Zealand referred to was enacted in October 1936, and, upon the issuance of an Order in Council, would prohibit (with heavy penalties for violation) the embarkation or disembarkation of passengers under certain circumstances, by vessels of the foreign country to which the Order in Council would apply. A similar act has been introduced into the Australian Legislature, but is understood not to have been enacted as a law, up to the present time.

At a recent conference with representatives of the British Embassy, the Chairman of the Commission pointed out that the New Zealand law and the proposed Australian law were both so phrased that, if an Order in Council were issued, the laws might very readily be interpreted as prohibiting the embarkation of through passengers from

¹ Approved June 29, 1936; 49 Stat. 1985.

² A notation on the file copy of this memorandum indicates that a copy was sent to Mr. Keith Officer, Counselor of the British Embassy.

either country in American vessels if stops were to be made in the other. Such a situation would constitute a serious restriction upon the operation of American vessels in foreign trade. On that point, the Embassy's memorandum contains the following paragraph :

"4. As regards the point raised by Mr. Kennedy with reference to the effect of the Australian legislation on the New Zealand call of the Matson Line, the Australian Government have already realized that the Bill introduced into the Commonwealth Parliament might be interpreted in the way Mr. Kennedy indicates. They propose, therefore, to introduce amendments to ensure that the Bill will not prevent the Matson Line disembarking or embarking in New Zealand passengers with through tickets from or to Australia. It is understood that the New Zealand Act does not create any such difficulty."

With respect to the last sentence of that paragraph, it should be pointed out that the provisions of the New Zealand statute are identical with those of the proposed Australian law and that whereas the New Zealand law would not create the difficulty mentioned under the present itinerary of the American line serving New Zealand and Australia, the difficulty would arise in case the itinerary were changed or extended. It would appear to be essential that there be no question whatever but that the laws in question should not "restrict the through traffic carried on American ships," as the Embassy's memorandum states "they do not propose" to do.

The explanation offered as to the reasons impelling the two governments in question to enact the legislation in question appears to be summarized in the following portion of the Embassy's memorandum :

"5. In this whole situation the Commonwealth and New Zealand Governments feel strongly that Dominion shipping is not getting a fair deal in that it is prevented by United States law from participating in the Honolulu-United States traffic and as a result of United States subsidies is being seriously prejudiced not only in the trans-Pacific trade but also in the Tasman trade. They realize the political difficulties in the way of the admission of other than American ships to the trade between Honolulu and the United States. As indicated in the preceding paragraph they do not propose to restrict the through traffic carried on American ships. But they are not prepared to see the situation continue under which, by reason of subsidies paid by the United States Government, the most valuable part of the local traffic between Australia and New Zealand is diverted from the unsubsidized Australian and New Zealand lines."

In regard to first point mentioned therein, it may be pointed out that New Zealand and Australia cannot logically be considered in the same category as Hawaii and the mainland of the United States. There is certainly a difference between coastwise traffic within actual administrative territory of one country and between two political entities each of which is a self-governing unit and each of which has

a mutually exclusive set of coastwise and tariff regulations. New Zealand is understood to have coastwise laws which do not permit the carrying of cargo or passengers between any ports of that Dominion except by New Zealand shipping. Australia has similar laws which include also the Island of Tasmania. The Matson Line is excluded from that service, and has never carried any local cargo or passengers between the ports of Sydney and Melbourne. There does not exist, so far as is known, any restriction against the carriage of traffic between different dominions, commonwealths or colonies of the British Empire in any part of the world, and such traffic is continuously engaged in by ships of all nationalities. On the other hand, the extension of the coastwise laws to Hawaii was the natural consequence of the annexation of Hawaii to the United States. It is in the same status with respect to coastwise shipping laws as the Island of Tasmania is to the mainland of the Australian Commonwealth.

With respect to the second point mentioned in the paragraph quoted above, that is that "Dominion shipping" is not getting a "fair deal," and is "seriously prejudiced" as a result of United States subsidies, "not only in the trans-Pacific trade but also in the Tasman trade," the following important factors must be taken into consideration. The present exchange of views on this matter relates, of course, to the future. Such aid as has been heretofore given to the Matson line by the Government of the United States was terminated on June 30, 1937. The government assistance available to that line after that date will be in accordance with the provisions of the Merchant Marine Act of 1936. It is clearly laid down in that Act that the amount of an operating differential subsidy shall not exceed the difference in the cost of insurance, maintenance repairs, wages and subsistence of crew, and such other items with respect to which the American operator may be found to be at a disadvantage in competition with vessels of foreign countries. The Commission has every intention of granting financial aid to American ship-owners only in strict accordance with the terms of the Act. In these circumstances the suggestion that Dominion shipping is discriminated against as the result of American subsidies, is without foundation as to the future.

While the Matson Line will receive henceforth "parity" payments, the Canadian-Australasian Line (which is engaged in the Tasman Sea trade as well as the trans-Pacific trade) is understood to be receiving fixed amounts of mail pay from New Zealand, Australia, Fiji and Canada totaling substantial amounts.

In connection with the events leading up "to the present situation" as contained in the Embassy's memorandum, consideration should be given to the fact that American companies have been operating in the south trans-Pacific trade route for many years, and almost con-

tinuously since 1885 have received compensation for the carriage of mails either on a lump sum basis or a fixed amount per mile. The value of the foreign trade between the Dominions and the United States for the last sixty years has shown a constant, large, and healthy expansion upward. In 1880 the total of imports and exports amounted to \$7,670,000, in 1900 \$33,427,000, in 1910 \$55,692,000, in 1930 \$134,889,000 and in 1935 \$98,000,000. The southern trans-Pacific route is considered an essential trade route and warrants adequate, suitable, and modern ships. Figures indicate that the Matson Line has not carried an undue proportion of the cargo business available. Prior to the initiation of the new Matson service in 1932 the three American ships then in the trade were constructed in 1900, while the four British ships were built in 1908, 1911, 1913 and 1924. It was inevitable that new and modern ships would eventually be placed in service on this important route. It so happened that the Matson ships were the first replacements.

The Matson Line has used every means to promote and cultivate friendly relationships not only with the commercial interests of Australia and New Zealand but with the competing British lines serving that territory, and has consistently refrained from quoting any rates or fares which could be construed as endeavoring through these means to attract business away from other lines. It has maintained its position in the shipping conferences and has made rates, fares, rules and regulations in cooperation with those interests. Furthermore, the Matson Line vessels carrying passengers in the local trade make one round trip only between New Zealand and Australia each month while the Canadian-Australasian Line, Huddart Parker, Ltd., and the Union Steamship Company, have a joint schedule in this trade with five ships. Doubtless, much of the Tasman Sea passenger traffic carried by the Matson Line, is created by the character of the service rendered. The Thirty-fifth Report of the Imperial Shipping Committee stated:

“The important fact to be borne in mind is that the Matson Line has won its present position not by cutting rates but by superiority of amenities and speed.”

The general tourist business built up by the Matson Line during the last few years has been a distinct benefit to New Zealand. While information regarding the total amount disbursed in the Dominion is not available, this business is certainly of an attractive nature, and indications from the Dominion point to a full appreciation of its value. It is conceivable that the Matson Line, as a result of a prohibition on the carrying of passengers on their present itinerary, may find it necessary to alter their service.

In view of the circumstances set forth above, especially the change in the type of assistance provided for American vessels by the provi-

sions of the 1936 Merchant Marine Act, the purpose of which is to place the merchant fleet on a parity with foreign competitors, it would appear to be unfortunate, in the interests of all concerned, if the Matson Line were to withdraw from the passenger service in the Tasman Sea, either voluntarily, as suggested in the last paragraph of the Embassy's memorandum, or as a result of the application of law, as apparently contemplated by the New Zealand statute and by the proposed Australian legislation.

811.71247H/94

*Memorandum by the Chief of the Division of European Affairs
(Moffat)*

[WASHINGTON,] July 29, 1937.

Mr. Keith Officer, Counselor of the British Embassy, called with reference to the situation of the Matson Line in the trans-Tasman trade. He said that there seemed to be some misunderstanding somewhere inasmuch as our memorandum³ had dealt with the question of Pacific shipping in general, whereas the Australian approach to date had been on the subsidiary question of the trans-Tasman traffic. He said that Mr. Welles⁴ and Mr. Dunn⁵ had agreed to try and find a solution of the latter pending which time the Australian Government would defer its legislation. Mr. Casey⁶ was on the point of arriving in Sydney (probably August 3) and it would be necessary for him to have a message at Canberra when he arrived. As far as the Tasman trade was concerned, our memorandum did not alter the existing situation in any degree.

I told Mr. Officer that I thought there had been some talking at cross purposes as from the very inception the Tasman question had been dealt with as part and parcel of a broader question and not as an isolated question. Our note registered a considerable advance on the question of subsidies but the Tasman question represented a question of principle on which we had not been able to accept the Australian thesis. He, in effect, was asking for a voluntary withdrawal of the Matson Line from the Tasman trade and this we could not for an instant consider doing.

He expounded at considerable length the Australian thesis, which boiled down to the fact that Australia was faced with such political pressure that it could not much longer forego passing the enabling legislation. I told him that we would regret this on the ground:

³ *Supra.*

⁴ Sumner Welles, Under Secretary of State.

⁵ James Clement Dunn, appointed Chief of the Division of European Affairs, June 16, 1937; Adviser on Political Relations, July 17, 1937.

⁶ R. G. Casey, Australian Minister of the Treasury.

(1) that it was based on a misconception of law and geography; (2) that it would create an atmosphere in which the settlement of Pacific shipping in general would be most difficult, and (3) that it would create an impression throughout the country, particularly following the trade diversion measures, that Australia did not mind adopting one discriminatory measure after another against us.

After some discussion, Mr. Officer said that while he had gone as far as his instructions permitted he recognized that we could not assent to the voluntary withdrawal of the Line from the Tasman trade and withdrew the suggestion. On the other hand, he was terribly anxious to see if we could not work out some formula that would enable the Government further to postpone action and purely as his own suggestion and without instructions wondered whether negotiations might not be entered into directly between the two Lines with a view either to the allocation of trans-Tasman passenger traffic or to a voluntary acceptance on the part of the Matson Line that they would not book more than a certain number of passengers per month. It might not even be necessary to make an agreement to this effect of a longer term than two or three years when, with the construction of new British ships, the whole situation would be more or less regularized. He said that, of course, this suggestion might not be acceptable to the Australian Government or to the New Zealand authorities but he really was trying to suggest a way out.

I told him that when in 1935 it had been suggested that the Union Line and the Matson Line discuss matters directly, the Matson Line had expressed a willingness to do so provided the Union Line would not suggest its withdrawal from the Tasman trade. That was the last heard of the suggestion, which had made me feel that the Union Line had been playing for the total exclusion of the Matson Line from the Auckland-Sydney run. He asked if I could find out whether, should the suggestion be agreeable at Canberra, the Matson Line would be willing to talk over matters on this basis. I replied that I was naturally without authority to answer that question.

The matter was therefore left as follows:

The State Department would send to Mr. Kennedy an account of my conversation with Mr. Officer as well as a brief memorandum⁷ which he wrote in reply to Mr. Kennedy's memorandum. Meanwhile, although recognizing that Mr. Kennedy's memorandum represented the official American point of view, he would defer his cable for five or six days waiting to see whether his personal suggestion seemed to offer the possibility of a way out. I told him that I would keep in close touch with him and urge that the Maritime Commission give me an answer as soon as possible.

PIERREFONT MOFFAT

⁷ *Infra.*

811.71247H/93

The British Embassy to the Department of State

MATSON LINE

The position as far as Australia is concerned is that on the 16th June the State Department were given, at their suggestion, a full statement of the Australian case and that in the course of his visit, on the 1st July, Mr. Casey explained to Mr. Sumner Welles and Mr. Dunn that in view of the Secretary of State's request that an attempt should be made to settle the Tasman Sea question by voluntary discussion the Commonwealth Government were holding up the passage of their legislation for the present to allow time for such discussion, and that they looked to the State Department to aid them in trying to find such a settlement.⁸

So far the State Department have not made any proposal on the lines Mr. Casey suggested but Mr. Dunn on the 6th July advised Mr. Chalkley and myself of the Maritime Commission's observations on the discussion we had had with Mr. Dunn on the 16th June. This memorandum unfortunately does not seem to advance the position at all. Although an attempt was made in the memorandum of the 16th June to emphasize that the difficulty to be dealt with was that of the Tasman Sea the present memorandum deals rather with the trans-Pacific problem and particularly the future of shipping in that Sea. After stating that American companies have been operating in the Southern trans-Pacific trade route almost continuously since 1885, it proceeds to say "that the suggestion that Dominion shipping is discriminated against as a result of American subsidies is without foundation as for the future for the reason that whilst the Matson Line will henceforth receive parity payments the Canadian-Australian line will be receiving fixed amounts of mail pay totalling substantial amounts."

From the memorandum it would appear that the Maritime Commission have not appreciated the following points at issue:

(a) That the United States line between San Francisco and Australia did not enter into the Tasman Sea traffic between New Zealand and Australia until 1931 when two ships, built as the result of very large advances by the United States Government, commenced calling in New Zealand and competing in the trans-Tasman trade

(b) That such competition affects not only the Canadian-Australian line but also the Union Steamship Company and Huddart Parker, companies registered in New Zealand and Australia respectively and manned and operated under New Zealand and Australian conditions

(c) That it is this situation created by past action and not the future shipping situation in the Pacific that the Commonwealth Government

⁸ Memorandum of conversation not printed.

is immediately seeking to remedy and was taking steps to that end by introducing legislation on the model of the New Zealand Act

(d) That in view of Mr. Hull's request that action would be deferred to allow time for a discussion with a view to a voluntary settlement the Commonwealth Government did not proceed with their legislation during the recent short sitting of Parliament

(e) That they are still anxious to arrive at a voluntary settlement of the matter in the absence of which they can hardly defer proceeding with the legislation and taking the necessary powers when Parliament meets again probably at the end of August.

WASHINGTON, July 29, 1937.

811.71247H/97

*Memorandum by the Chief of the Division of European Affairs
(Moffat)*

[WASHINGTON,] August 9, 1937.

Major Keith Officer called at my request this afternoon. I told him that I had now heard from Mr. Kennedy who did not feel that the suggestions he had informally put forward last Friday offered much hope for a successful conclusion. In particular, we did not see how one phase of a broad problem could be isolated and treated separately from the broad picture on which we were working.

Major Officer said he was sorry as he had hoped that his suggestions might have proven acceptable; that he was afraid that his Government might have to pass the enabling legislation but that even if they did so there might be a further delay before Australia or New Zealand actually applied the legislation. In any event, he implied that the two Dominions would give us sufficient notice before they took final action so that we could never claim that they had caught us unaware or faced us with a *fait accompli* without adequate forewarning.

I replied that I still hoped that they would not take any steps that would make a final solution more difficult or that would upset a shipping situation which we felt it was to the best interest of the British and ourselves not to be upset at this time.

PIERREPONT MOFFAT

[Discussion of the Tasman trade problem seems to have been discontinued at this time. A letter from the Commercial Counselor of the British Embassy to a member of the Division of International Communications, October 26, 1938, referred to the possibility of the Tasman trade question being revived, and stated: "The position is that New Zealand has passed enabling legislation and Australia is ready to do so, but in deference to strongly expressed American wishes, neither Government has progressed with its proposals, in the expectation that some practical contribution to settlement of the difficulty was to be made by the United States." (811.802/189)]

PROTEST BY THE BRITISH GOVERNMENT AGAINST THE SEIZURE
OF THE MOTOR VESSEL "MISERINKO" BY THE UNITED STATES
COAST GUARD AUTHORITIES

811.114 Miserinko/53

The British Ambassador (Lindsay) to the Secretary of State

No. 194

WASHINGTON, June 27, 1936.

SIR: I have the honour to inform you that I have received instructions from His Majesty's Principal Secretary of State for Foreign Affairs to invite your attention to the following circumstances attending the recent seizure of the British motor vessel *Miserinko* of Bridgetown, Barbados, by the United States Coastguard authorities.

2. It appears that this vessel, which for some time had been suspected of being utilised for the smuggling of liquor into the United States, was seized with some six thousand gallons of alcohol on board by the United States Coast Guard Patrol Boat *Harriet Lane* off the coast of Maine on the 15th March last. In a communication addressed to His Majesty's Consul General at Boston on the 12th June by the Commander of the Boston Division of the United States Coast Guard, in reply to an enquiry by the former, it is stated that the vessel was first sighted by aircraft at a distance of 17 miles from the coast; that she was 31 miles distant from the coast when pursuit began, and 45 miles distant when finally overhauled. The normal speed of the vessel is said to be about 10 knots.

3. From the above statement it emerges that when pursuit began the vessel was outside United States territorial waters and moreover outside the limit of one-hour's steaming distance from the coast laid down in the Anglo-United States Liquor Smuggling Convention of 1924.⁹ There can, therefore, in the view of His Majesty's Government in the United Kingdom be no justification under this Convention for the seizure. It is understood, however, that the authorities based their action upon the United States Anti-Smuggling Act of 1935,¹⁰ claiming that the *Miserinko* is substantially controlled by United States citizens. But even if this be the case His Majesty's Government could not admit that the Anti-Smuggling Act, whatever its provisions, could in the circumstances of the present case justify the seizure of a vessel lawfully flying the British flag. Even though seizure could be justified under United States law, such law could have no international application outside United States territorial waters proper.

4. It is the opinion of His Majesty's Government therefore that the seizure of the vessel was an illegal action under international law, and I have accordingly been instructed to request that the *Miserinko*

⁹ *Foreign Relations*, 1924, vol. I, p. 158.

¹⁰ Approved August 5, 1935; 49 Stat. 517.

should be released. In making this request His Majesty's Government reserve full rights to put forward a claim for compensation at some later date.

I have [etc.]

R. C. LINDSAY

811.114 *Miserinko*/71

The British Ambassador (Lindsay) to the Secretary of State

No. 226

WASHINGTON, July 18, 1936.

SIR: With reference to my note No. 208 of the 9th July,¹¹ I have the honour to inform you that His Majesty's Government in the United Kingdom have taken note of the fact that the master and crew of the British Motor Vessel *Miserinko* were sentenced on the 5th May last, in the United States Court at Concord, New Hampshire, to the following terms of imprisonment:

George L. Lohnes, Master	10 months
Herbert Knickle, Mate	9 months
Titus Mossman, Cook	90 days
Bronson Cluett, Sailor	90 days.

As regards Harold Westhaver, Engineer, it appears that the case was continued for sentence and that the defendant was held in \$500 cash bail as a material witness against certain principals.

2. The master and all the above-mentioned members of the crew of the vessel are from Lunenburg, Nova Scotia, and are British subjects and Canadian nationals. In view of the circumstances attending the seizure of the *Miserinko*, outlined in my note No. 194 of the 27th June, I have the honour, under instructions from His Majesty's Government in the United Kingdom, to request that the master and these members of the crew be unconditionally released forthwith, or failing this that they be released on bail.

3. I have been instructed in making this request to reserve the right to put in a claim for compensation on behalf of these individuals at a later date.

I have [etc.]

R. C. LINDSAY

811.114 *Miserinko*/86

Memorandum by Mr. William R. Vallance of the Office of the Legal Adviser

[WASHINGTON,] July 20, 1936.

During conversation with Mr. Broad, Second Secretary of the British Embassy, on July 17, I referred to the Ambassador's note No. 208

¹¹ Not printed; see first paragraph of memorandum by Mr. William R. Vallance, July 20, *infra*.

of July 9, 1936, in response to this Department's note of July 1, 1936,¹² in which this Department made the following request :

"In the meantime I should greatly appreciate receiving information as to the actual ownership of the above-named vessel."

The response of the Ambassador was that :

"I have learnt from the Governor of Barbados that the motor vessel *Miserinko* is legally registered in Barbados as a British ship in the name of the Marion Elizabeth Shipping Company Limited, of Lunenburg, Nova Scotia, as owners."

As this reply did not furnish data regarding the actual ownership of the vessel I mentioned to Mr. Broad that his note did not seem responsive to the Department's request and that this Department's request seemed appropriate in view of the provisions of the London Agreement of 1936 [1926].¹³ Mr. Broad stated that he was not familiar with the provisions of this Agreement. I told him that I had participated in the conference at London which led to this Agreement and that Sir Charles Hipwood, representing the Board of Trade, and I had been assigned to prepare a draft of the Agreement. I stated that Sir Charles had expressed the opinion that the British Government did not want to have American citizens masquerading under the British flag by means of dummy British companies in whose names the vessels were registered. He stated that such vessels did not bring credit upon the British flag and caused a great deal of difficulty for the British authorities. I told Mr. Broad that it was my understanding there was a provision in the London Agreement which obligated the British Government to make an investigation into the actual ownership of vessels in the smuggling traffic before a protest would be made to the United States.

Mr. Broad stated that he would like to look into the matter and would telephone me later about the results of his investigation.

Mr. Broad referred to the arbitration between the United States and Canada in the *I'm Alone* case¹⁴ and said that he thought the seizure might come within the decision in that case. I replied that the owners of the vessel and of the cargo were not awarded any damages in that case as the vessel and cargo were found to be American owned. Consequently, the decision would hardly support the view that the United States could not have a right to seize a ship and its cargo both of which belonged to citizens of the United States. The part of the decision that went against the United States was based on the excessive force used by the Coast Guard, which resulted in the

¹² Neither printed.

¹³ See *Foreign Relations*, 1926, vol. II, pp. 336 ff.

¹⁴ See *ibid.*, 1929, vol. II, pp. 23 ff.

sinking of the vessel and the consequent death of a member of the crew and the loss of their belongings.

Mr. Broad said that the point was of importance just then. He had prepared a note objecting to the arrest and imprisonment of the members of the crew of the *Miserinko* who were in jail at Concord, New Hampshire, without bail.

I told Mr. Broad that there had been some decisions of the British Courts holding that where a vessel was registered in the name of a British company but the shares of stock and the control of the company was in nationals of a foreign country, the vessel would not be regarded as a British ship. As Mr. Broad said he was not familiar with these decisions I sent him copies of the decisions in the cases of the *Polzeath* (Probate Reports 1916, 241) and the *St. Tudno* (Probate Reports 1916, 291).

Mr. Broad telephoned me during the morning of July 18 that he had found the London Agreement of 1926 in the files of the Embassy and that the only provision he could find bearing on the subject was the following statement:¹⁵

“8. *Diplomatic Support.*

When any complaint in connection with liquor smuggling, or suspected liquor smuggling operations, is made to one side against the officers of the other, the present practice might be continued of examining the record of the complainant and any other information that may be available before deciding whether under the terms of the existing Liquor Convention or on other grounds the case is one in which enquiry or eventual representations should be made.”

Mr. Broad stated that he was doubtful whether this provision was sufficient to require an investigation as to the actual ownership of a vessel under the British flag before a protest was filed by the Embassy. I told him that the language was that of Sir Charles Hipwood and that it was for the purpose of carrying out his statement to me that he did not want American citizens as owners of vessels masquerading under the British flag. Mr. Broad stated that he was very much interested in the question and asked whether I could give him, informally, some indication as to who the American owners were so that he would have something definite to go on. I told him that our information [*investigation*] was not sufficiently completed to send a formal note on the subject but that according to reports the vessel was owned and controlled by one Ralph Bitters, an American citizen of New Jersey, who was being sought by officers of the United States. I also stated that the owner of a large part of the shares of the Marion Elizabeth Shipping Company of Lunenburg was Christian Iversen of Lunenburg who was born in Denmark and who apparently had not

¹⁵ *Foreign Relations*, 1926, vol. II, p. 354.

been naturalized in Canada. I further stated that I understood the Canadian authorities had made some investigation regarding the ownership of the shares of this company.

I suggested to Mr. Broad that it was very important, in my opinion, to conduct a full investigation of the facts in these cases before the positions of the two governments became too firmly crystalized, as upon a full exchange of information it might well be concluded that the persons involved were not entitled to help from the British Government. Such frank discussion at the outset was in accord with the spirit of the Agreement reached at London and this was the first instance of a substantial protest from the Embassy since the London Agreement [came into force].

In view of the reference to the criminal proceedings at Concord, New Hampshire, I telephoned the Department of Justice and talked with John Smith about this phase of the case. He stated that the United States attorney would be instructed to submit a full report on the present status of the case. He further telephoned me this morning that Commander Parker of the United States Coast Guard has under preparation a full report with regard to the seizure and the ownership of this vessel.

W[ILLIAM] R. V[ALLANCE]

811.114 *Miserinko*/91

The Acting Secretary of State to the British Chargé (Mallet)

WASHINGTON, August 20, 1936.

SIR: With reference to the Ambassador's note No. 194, of June 27, 1936, and subsequent communications, regarding the seizure by the United States Coast Guard authorities of the motor vessel *Miserinko*, registered at Bridgetown, Barbados, in the name of the Marion Elizabeth Shipping Company, Limited, of Lunenburg, Nova Scotia, Canada, the following information is furnished:

The appropriate authorities of this Government have made a careful investigation of this case and are convinced that the *Miserinko* was actually owned and controlled by one Ralph Bitters, of East Orange, New Jersey, a citizen of the United States, and other American citizens. The vessel was generally known as "Bitters' boat" and was to all intents and purposes a vessel of the United States. According to statements made by Captain George L. Lohnes and a member of the crew of the *Miserinko* following their arrest, Bitters directed its operations in detail, paid their wages and also paid the expenses for repairs to the vessel. There is evidence to show that Bitters had the vessel tied up for about two months at a shipyard in Brooklyn, New York,

and that in October 1934 Captain Lohnes and a crew went from Nova Scotia to Brooklyn to take charge of it. While the *Miserinko* was lying at the Brooklyn shipyard it was reconditioned and painted by the crew. There is also evidence to show that Bitters intended at one time to have the *Miserinko* converted into a yacht. Affidavits substantiating these statements are in the possession of the appropriate authorities of this Government but copies thereof are not furnished at this time as they may be required for use in legal proceedings which are contemplated against other persons suspected of being involved in violations of the laws of the United States. However, should you wish to see them they will be made available to you.

The *Miserinko* was built at Meteghan, Nova Scotia, Canada, in 1931, by the Meteghan Shipbuilding Company. The manager of the company, Mr. J. T. Deveau, recently informed an officer of this Government that he knew nothing about the owners of the vessel and had no records which would give any information regarding the transaction. He stated that the engine for the boat was shipped from New Jersey and that later a smaller engine was installed. According to records on file, the Standard Motor Construction Company, 172 Whiton Street, Jersey City, New Jersey, shipped a Diesel engine, 280 HP, to the Meteghan Shipbuilding Company, Meteghan, Nova Scotia, in June 1931, and in September of the same year a smaller engine of 150 HP was shipped by the same firm to the same consignee. Ralph Bitters is understood to have had an interest in the Standard Motor Construction Company, of New Jersey, and thus, from the very beginning of the history of this vessel there is an indication of his connection with it.

Although the Marion Elizabeth Shipping Company, Limited, the registered owner of the *Miserinko*, was organized in 1925 with the following incorporators:

John W. Westhaver, Lunenburg, Nova Scotia, Master Mariner	Sixty shares
G. Alvin Himmelman, Lunenburg, Nova Scotia, Master Mariner	One share
W. Pitt Potter, Lunenburg, Nova Scotia, Barrister	One share
Bessie M. Smith, Lunenburg, Nova Scotia, Stenographer	One share
Christian Iversen, Lunenburg, Nova Scotia, Master Mariner	One share

Mr. Christian Iversen, the President of the Marion Elizabeth Shipping Company, Limited, informed a representative of this Government that he organized the company at the request of parties unknown and that the sixty-four shares of stock are owned by persons

other than those who were listed as the incorporators. He added that he is unaware of the names or addresses of any of the owners. John W. Westhaver, who subscribed for sixty shares of stock in the company, is said to be at present a butcher in Lunenburg.

Christian Iversen is understood to be a Danish-born subject and an investigation made in 1934 did not disclose that he has acquired Canadian citizenship.

Mr. Iversen also stated that he has from time to time assisted in organizing companies of this nature because of an understanding that the provisions, supplies and other facilities necessary for the operation of the ships will thereafter be purchased through him. The Lunenburg agents of the *Miserinko* were Robin, Jones and Whitman, of which firm Mr. Iversen is said to be the manager.

The directors of the Marion Elizabeth Shipping Company, Limited, were reported to the Canadian Registrar of Joint Stock Companies under date of July 13, 1936, to be as follows:

Christian Iversen, President, Lunenburg, N. S.
L. J. Iversen, Secretary, Lunenburg, N. S.
Bessie S. Iversen, Director, Lunenburg, N. S.

However, according to information received from the American Consulate General at Halifax, Nova Scotia, Canada, Mr. L. J. Iversen notified the Provincial Secretary on the same date, July 13, 1936, that the "Company is now cancelled." He stated that he was acting on the responsibility of his father and himself, respectively president and secretary of the company; that he, his father, and Mrs. Iversen each held one share and that a block of sixty or sixty-one shares was issued in blank but he does not know who owns these shares. He added that Westhaver has no connection with the company.

There is enclosed a chronological outline¹⁶ of the operations of the *Miserinko* from the time it was built in 1931 to the date of seizure and it will be seen that during its entire period of activity it was apparently engaged solely in facilitating the illegal introduction of intoxicating liquors and alcohol into the United States. I would call your particular attention to the more recent activities of this vessel which are typical of its history since the date it was commissioned:

On January 13, 1936, the *Miserinko* cleared Lunenburg, Nova Scotia, ostensibly for St. George's, Bermuda. It took on board a cargo of alcohol in tins from a vessel at sea (probably the British Oil Screw *Florann*) and proceeded to a position off the coast of the United States. It was found on January 18, 1936, by the United States Coast Guard Patrol Boat *Icarus* about 58 miles southeast of Barnegat Light Vessel, off the coast of New Jersey. It was again found by the Coast Guard plane *Adhara* on January 21, 1936, about 80 miles east of Cape May

¹⁶ Not printed.

Inlet, New Jersey. During the latter part of January 1936 the *Miserinko* entered United States waters and, from a position about one-half mile off the coast of New Jersey, near Little Egg Inlet, transferred 1,365 cans of alcohol to a scow or float which was towed to that Inlet. On February 5 it was found by the Coast Guard Patrol Boat *Galatea* about 95 miles east by south of Atlantic City, New Jersey, and was trailed. The trail was later lost. On the night of February 14, 1936, it came to a position about 1½ miles off the coast of New Jersey, within the territorial waters of the United States, where it was boarded by a group of citizens of the United States, including Bitters, who directed the *Miserinko's* movements. The *Miserinko*, acting under orders received from Bitters, then proceeded to the Gulf of Maine. On the night of February 16, 1936, it entered Little Harbor, near Portsmouth, New Hampshire, and discharged some 500 cans of alcohol. On this occasion Bitters again directed the *Miserinko's* movements, boarded the vessel and directed the unloading, and gave orders to the master concerning a return to Lunenburg for the purpose of having repairs effected. The *Miserinko* arrived at Lunenburg about the 21st of February, 1936.

On February 27, 1936, the *Miserinko* left Lunenburg, Nova Scotia, again clearing ostensibly for St. George's, Bermuda. It took on board from a vessel at sea (probably the British Oil Screw *Reo II*) another cargo of alcohol in tins and proceeded to a position off the coast of New Hampshire. Information had been received that an attempt would be made to land the alcohol in approximately the same place as the previous point of delivery. On the afternoon of March 14, 1936, the United States Coast Guard Plane *CG-137* sighted the vessel standing in for the coast of New Hampshire toward the position previously designated by Ralph Bitters. Upon encountering the plane the *Miserinko* reversed its course and stood off-shore, where it was later seized by the Coast Guard Patrol Boat *Harriet Lane*. It was taken to Portland, Maine, where the vessel and its cargo of alcohol were libelled by the United States for forfeiture under Section 3 of the Anti-Smuggling Act of August 5, 1935 (U. S. C. Title 19, Sec. 1703). A copy of the libel, dated April 13, 1936, is enclosed.¹⁷

On April 15, 1936, one Louis Halle, New York City, consented, as attorney for the Marion Elizabeth Shipping Company, Limited, that a decree be entered for the forfeiture of the vessel and cargo. A certified copy of his consent is enclosed.¹⁷ There are also enclosed copies of the final decree and of the orders for the disposition of the vessel and cargo.¹⁸

¹⁷ Not printed.

¹⁸ None printed. The final decree was dated April 17, 1936, Portland, Maine; the order of disposition, April 21, 1936, Portland, Maine, District Court of the United States, District of Maine, SS: Southern Division.

You will observe from Section 5 of the libel that one of the causes of forfeiture alleged is

“That at all times hereinafter mentioned, the said motor vessel *Miserinko* was operated under certificate of British registry dated at Bridgetown, Barbados, British West Indies, on December 21, 1931, but that said Motor Vessel *Miserinko* was substantially owned and controlled by a citizen of the United States within the meaning of and for the purpose of Section 3 of the Anti-Smuggling Act.”

Also in Section 9 of the libel it is stated:

“That said motor vessel *Miserinko* and her cargo were seized as aforesaid because said motor vessel *Miserinko* was a vessel of the United States within the meaning of the Act of August 5, 1935 (Anti-Smuggling Act) . . .”¹⁹

To these allegations the alleged owner, through its attorney, filed no defense but did file a written consent that a decree of forfeiture of the vessel and cargo be entered. If the claimants should now contend that the *Miserinko* is not an American-owned vessel, the burden of proof would be on them to show the contrary, in accordance with the principle laid down by Sir Samuel Evans in the case of the Steamships *Genesee*, *Kankakee* and *Hocking* in which he made the following statement:

“There is abundant authority to show that especially where there are circumstances of suspicion or doubt, the burden rests upon claimants to satisfy the Court of the honesty and justice of their claim; and that this is not discharged merely by technical proof, or production of formal documents. The Court expects to be informed with candour and accuracy of the circumstances leading up to and accompanying the acquisition of the vessel in the usual way of business, and to have laid before it any contemporaneous correspondence or documents which the circumstances indicate must have existed.” (VIII Lloyd’s Reports of Prize Cases 81.)

Lord Parmoor, in rendering the judgment of the Judicial Committee of the Privy Council in the same case on appeal, made the following statement with regard to the funds with which the vessels were purchased, in order to prove actual ownership:

“Their Lordships are not satisfied that Wagner has fully disclosed the whole character of the transaction involved in sending remittances to Denmark, and the evidence as it stands is in their opinion insufficient to discharge the burden of proof which in this matter rests upon the appellants company.” (VIII Lloyd’s Reports of Prize Cases 123.)

I would also refer you in this connection to the cases of the *Polzeath* (Probate Reports 1916, 241) and the *St. Tudno* (Probate Reports 1916, 291). In the former case Lord Justice Swinfen Eady stated:

¹⁹ Omission indicated in the original.

“And so here, in considering what is the principal place of business of the company, one has to consider the centre from which instructions are given, and from which control is exercised on behalf of the company over the employees of and the business of the company, and where control is exercised, and the centre from which the company is managed without any further control except such control as every company or the directors of a company are liable to by the larger body which they represent, the shareholders of the company in general meeting.”

In view of the facts set forth above, which seem to show clearly that the British registration of this vessel was procured merely as a cloak to hide the illegal activities of certain American citizens, I trust that you will agree with me that the *Miserinko* was not entitled to the use and protection of the British flag but, on the contrary, that it had been desecrating this flag for a long time by using it to shield the unlawful enterprises of its actual owners. I hope that an investigation will be made into the *bona fides* of the British registration and in this connection I would refer to Mr. Chilton's note No. 578, of July 10, 1923,²⁰ with respect to the seizure of the alleged British Schooner *Henry L. Marshall*,²¹ which appears to be a similar case. In that note Mr. Chilton stated that:

“owing to the circumstances in which she [the *Henry L. Marshall*]^{21a} secured her British registry [the vessel]^{21a} was not recognized by His Majesty's Government as entitled to British registry. Consequently, His Majesty's Government have not felt called upon to assert the principle at stake on her behalf, since, as far as His Majesty's Government are concerned, the *Henry L. Marshall* remains an American vessel.”

With reference to the Ambassador's note No. 226, of July 18, 1936, regarding the arrest and imprisonment of the master and certain members of the crew of the *Miserinko*, I am in receipt of a letter from the appropriate authorities of this Government stating that after the seizure of this vessel on March 14, 1936, it developed that about a month previously, that is, on the night of February 16, 1936, the same vessel and crew, as stated above, had landed a cargo of approximately 500 three-gallon cans of contraband alcohol at Little Harbor, near Portsmouth, New Hampshire. Accordingly, the facts were presented to the Grand Jury at Concord, New Hampshire, and the crew of the vessel, together with Ralph Bitters and certain other American citizens, were indicted for conspiracy to violate the Tariff Act.

The master and crew of the *Miserinko* pleaded guilty to the indictment and the master, George L. Lohnes, the mate, Herbert Knickle,

²⁰ *Foreign Relations*, 1923, vol. I, p. 163.

²¹ 292 Fed. 486.

^{21a} Brackets appear in the original instruction.

the cook, Titus Mossman, and the seaman, Bronson Cluett, were sentenced as stated in the Ambassador's note. The case of Harold Westhaver, Chief Engineer, was continued to the November term of court for sentence and he has been released on \$500 bail. Mossman and Cluett have been released as their terms have expired. With respect to Captain Lohnes and Mate Knickle, the authorities of this Government state that their release on bail would not be appropriate. The proper procedure to secure their unconditional release would appear to be for counsel for the prisoners to present to the court that imposed the sentences a motion setting forth such facts as he deems sufficient to warrant reduction of the sentences to the time served. The term of court at which the sentences were imposed expires on the 31st instant. However, the United States Attorney at Concord, New Hampshire, has been telegraphically instructed to move for an indefinite extension of the term for the purpose of this case.

Accept [etc.]

WILLIAM PHILLIPS

811.114 *Miserinko*/161

The British Ambassador (Lindsay) to the Secretary of State

No. 401

WASHINGTON, November 17, 1937.

SIR: In my note No. 88 of the 15th March,²² I had the honour to inform you that His Majesty's Government in the United Kingdom were pursuing their enquiries regarding the ownership and registration of the Motor Vessel *Miserinko*, and that, pending the conclusion of these enquiries, they reserved all their rights in the matter of her seizure by the United States Coast Guard authorities.

2. I have now been instructed by His Majesty's Principal Secretary of State for Foreign Affairs to make the following communication to you:—

3. It was reported to His Majesty's Government in the United Kingdom in April, 1936, that the British Motor Vessel *Miserinko* had been seized by the United States Coast Guard patrol boat *Harriet Lane* on the 14th March at a point which was described by the United States customs authorities of Portland, Maine, as fifteen and a half miles, ninety-eight degrees true from Jeffreys Ledge Buoy, Latitude 42-59 N, Longitude 69-42 W, in Customs Enforcement Area No. 5. In a subsequent communication addressed to His Majesty's Consul-General at Boston by the Commander of the Boston division of the United States coast guard on the 12th June it was stated that the *Miserinko* was sighted seventeen miles off the United States coast by aircraft and that pursuit by the patrol boat began at a point thirty-

²² Not printed.

one miles off the coast. It was added that the vessel's normal speed was ten knots. That indeed is the speed given in the certificate of survey issued at Meteghan on the 31st August, 1931. It is thus clear that the pursuit started when the vessel was not only outside territorial waters but also outside the one hour's steaming distance provided by the Anglo-United States Liquor Convention of the 23rd January, 1924.

4. Accordingly on the 27th June, 1936, I addressed a note to you stating that in the view of His Majesty's Government in the United Kingdom there could be no justification under the Convention for the seizure and that the seizure was an illegal action under international law. I requested the release of the vessel and added that His Majesty's Government reserved their full rights to put forward a claim for compensation at some later date.

5. In a further note dated the 18th July I informed you that His Majesty's Government took note of the fact that the master and crew of the *Miserinko* had been sentenced on the 5th May in the United States Court at Concord, New Hampshire, to certain terms of imprisonment. I pointed out that the members of the crew in question were British subjects and Canadian nationals, and I requested that, in view of the circumstances attending the seizure of the vessel, the master and said members of the crew be unconditionally released forthwith or, failing that, be released on bail. At the same time I reserved the right to put in a claim for compensation on behalf of those individuals at a later date.

6. In an interim reply²³ to my note of the 27th June you requested information as to the actual ownership of the vessel, a request which was repeated in a semi-official letter addressed by Mr. Vallance to Mr. Broad on the 18th July.²⁴ In that letter reference was made to certain statements made by Sir Charles Hipwood in the course of discussions with the Board of Trade in 1926, when he was said to have made it clear that in his opinion His Majesty's Government did not wish to protect persons who were masquerading under the British flag and using it as means of violating the laws of their own country. In a further semi-official letter of the 18th July²³ Mr. Vallance drew attention to certain decisions given in the British courts which were held to have a bearing on the legality of the registration of the *Miserinko* in the name of the Marion Elizabeth Shipping Company of Lunenburg, Nova Scotia.

7. In an official note of the 20th August, 1936, you set forth at length the views of the United States Government on the question. You began by expressing their conviction after careful investigation that

²³ Not printed.

²⁴ Not printed, but see memorandum of July 20, 1936, by Mr. Vallance, p. 108.

the *Miserinko* was actually owned and controlled by one Ralph Bitters, of East Orange, New Jersey, a citizen of the United States, and other American citizens, and was to all intents and purposes a vessel of the United States. Information was furnished showing that from the time she was built to the date of her seizure the *Miserinko* had apparently been solely engaged in facilitating the illegal introduction of intoxicating liquors and alcohol into the United States. In proof of the actual American ownership of the vessel quotations were cited from a libel presented to the attorney for the Marion Elizabeth Shipping Company, Limited on the 15th April, 1936, preparatory to the entry of a decree for the forfeiture of the vessel and cargo. One of the causes of forfeiture alleged had been that the *Miserinko* was substantially owned and controlled by a citizen of the United States within the meaning of and for the purpose of Section 3 of the Anti-Smuggling Act of the 5th August, 1935. Against those allegations the alleged owner had filed no defence but had filed a written consent that a decree of forfeiture of the vessel and cargo be entered. It was suggested that it would be in accordance with the views of the British legal authorities as expressed in various prize cases that the burden of proof would now rest upon the claimants to show that the vessel was not American owned. In view of the facts stated, which were held to show clearly that the British registration of the vessel was procured merely as a cloak to hide the illegal activities of certain American citizens, His Majesty's Government were invited to agree that the *Miserinko* was not entitled to the use and protection of the British flag but on the contrary that she had been desecrating that flag for a long time by using it to shield the unlawful enterprises of her actual owners. The hope was expressed that an investigation would be made by His Majesty's Government into the *bona fides* of the British registration, in which regard reference was made to the seizure of the British schooner *Henry L. Marshall* in 1921.

8. His Majesty's Government have studied these communications from the United States Government with all the care they merit, but after full examination they have been unable to discover anything in them, or in the investigations they have since made into the registration of the *Miserinko*, which would cause them to modify their original view of the case. In the first place they desire to make it clear that it is far from their policy to allow the British flag to be used as a cloak for nefarious practices. If proof be needed of their attitude in this respect it is afforded by their action in the case of the *Henry L. Marshall*, to which reference was made in your note of the 20th August, 1936. In that case, having come to the conclusion that the transfer of the *Henry L. Marshall* from United States to British registration had been fraudulent, and that she was therefore not entitled to be

regarded as a British ship, they withdrew their claim to question the validity of the seizure.

9. In the present case they once again deferred to the suggestion of the United States Government that the possibility of fraudulent registration of the vessel should be investigated. As a result of their enquiries, which have now been completed, no ground is revealed for doubting the authenticity of the British registration and legal ownership of the vessel. The vessel was registered at Weymouth, Nova Scotia, in 1931, by the Marion Elizabeth Shipping Company, Limited, of Lunenburg, Nova Scotia, and the registry was transferred by the same Company to Bridgetown, Barbados, on the 21st December, 1931. The Company is itself unquestionably a registered British Company, and in spite of prolonged and detailed investigations, no flaw has been discovered in the registration of the vessel either at Weymouth or at Bridgetown. In this connexion the statement said to have been made by Mr. L. J. Iversen on the 13th July, 1936, and quoted in your note of the 20th August, to the effect that the "company is now cancelled", would seem to be irrelevant. It is open to any company to go into dissolution at any time, and in any event the "cancellation" would appear to have been made after the events of which complaint is made took place.

10. The United States Government have argued that it would be in accordance with precedents furnished in the British prize courts to lay the onus of proof of British ownership upon the claimants. His Majesty's Government are unable to agree that prize court decisions given in time of war have any relevance or applicability in the present circumstances. The position is that there can be no question about the British ownership of the vessel. As the United States Government have been informed on previous occasions, the British Merchant Shipping Acts make it a condition of registration, very carefully enforced, that a British vessel must be owned by a British subject or Company. When accordingly in your note of the 27th June [*July 1*], 1936, and in Mr. Vallance's communication of the 18th July, it was suggested that His Majesty's Government should make enquiries into the actual ownership of the vessel, His Majesty's Government were for their part disposed to the view that it was for the United States Government themselves to initiate such enquiries if they wished to base the defence of their action on the alleged true ownership of the vessel. In view, however, of the facts alleged in your note of the 20th August, which were evidently based on enquiries already made, His Majesty's Government decided to institute the investigations requested. In the light of their result they can only maintain that the vessel must be held to have been British owned at the time of seizure.

11. His Majesty's Government cannot but feel that there is a fundamental difference of opinion between them and the United States Government as to what constitutes ownership for this purpose. By ownership His Majesty's Government understand legal ownership before the law, and they do not and cannot take account for the purposes of their registration laws of such indeterminate considerations as "ultimate control". They regard as the owner of a vessel the person who would, for instance, be entitled to bring or defend an action on her behalf in a court of law. If that person is a British subject or Company, the vessel is entitled, so far as her ownership is concerned, to British registration and to fly the British flag. It is only in cases where it could be shown that the supposed owner of the vessel was not the true legal owner that her registration could be impugned.

12. In this connexion I have been instructed to draw your attention to my letter of the 17th June, 1935,²⁵ prior to the passage of the United States Anti-Smuggling Act, in which I stated that His Majesty's Government would be obliged to protest against any interference with a British ship outside the three-mile limit, except in those cases where interference could be justified under the provisions of the Liquor Convention, and in which I specifically emphasised that the foregoing considerations applied in respect of a vessel of British registry whatever her ultimate control. In his reply dated the 22nd June,²⁶ Mr. Walton Moore invited my attention to the fact that Section 1 (b) of the bill forbade the enforcement of any United States law on the high seas in contravention of a treaty with a foreign Power.

13. With regard to the allegations contained in your note of the 20th August relative to the activities of the *Miserinko* since her construction, His Majesty's Government have themselves no information on the matter, nor any desire to dispute the allegations. Their position is simply that no amount of illegality by a British vessel, other than a pirate, would justify her arrest by the United States authorities on the high seas outside treaty limits. They are, however, somewhat surprised that, being possessed of the information they had, the United States authorities did not think fit to bring it to the knowledge of His Majesty's Government who would willingly have taken such steps as were within their power to put an end to any improper activities by the ship and, if the allegations had been substantiated and were such as would justify doing so under English law, might even have considered removing her from the registry. His Majesty's Government consider that they can reasonably entertain a feeling of disappointment that their confidence should not have been sought in the matter, more especially in view of the active measures they have taken

²⁵ *Foreign Relations*, 1935, vol. II, p. 4.

²⁶ *Ibid.*, p. 5.

to co-operate with the United States Government in combating the practice of liquor smuggling, measures which have already gone far beyond what one Government is normally willing to do for another in such a matter and which have earned the appreciation of the United States Government themselves. Instead of seeking their co-operation in this case, the United States authorities proceeded to arrest the ship on the high seas, regardless of their obligations under the Convention of 1924, and on the assumption (which is now seen to be erroneous) that the ship was wrongfully registered as British. In the case of the *Henry L. Marshall*, there was some reason for such action, seeing that she had at one time been under United States register and was not flying the British flag at the time of arrest; indeed her name was concealed by a tarpaulin, her officers were absent on shore, and she was boarded in the genuine belief that she was of United States register. No such circumstances attended the arrest of the *Miserinko* and it has never been suggested that the United States Customs authorities were unaware of her nationality when effecting the arrest.

14. His Majesty's Government are accordingly of opinion that they would be fully justified in demanding that the matter be referred for consideration, with a view to ultimate compensation, in the terms set forth in Article 4 of the Liquor Convention. After a careful review of all the circumstances, they have, however, decided to refrain from doing so, and to content themselves with placing on record a formal protest at the action of the United States authorities. This attitude should not be regarded as constituting any precedent for the future. His Majesty's Government must in this connexion point out that the expression of opinion by Sir Charles Hipwood quoted in Mr. Vallance's communication of the 18th July, 1936, is not relevant to the present issue. It may be perfectly true as a general proposition—indeed His Majesty's Government do not seek to deny it—that they have no wish to protect persons masquerading under the British flag and using it as a means of violating the laws of some other country, and in any case where it can be proved that the British flag is being used by persons having no legal right to do so, they are ready to take action. But in this case they are concerned with upholding the rights of the British ships on the high seas, and more particularly to ensure that the provisions of the Liquor Convention, which are already very wide and give the United States Government rights which they could not claim under the ordinary rules of international law, are not exceeded. They must therefore protest formally against the action taken by the United States authorities in this case and express the earnest hope that the United States Government will issue such instructions as may be necessary to ensure that the terms of the Convention be fully observed in the future.

I have [etc.]

R. C. LINDSAY

811.114 Miserinko/162

The British Embassy to the Department of State

MEMORANDUM

His Majesty's Government in the United Kingdom feel strongly about the action taken by the United States authorities in the *Miserinko* case, more particularly in view of the effective cooperation by His Majesty's Government in enforcing the United States anti-smuggling legislation. Broadly speaking, if His Majesty's Government were to admit the United States contentions that they ought not to intervene (*a*) where the alleged ultimate control of the vessel resides in United States citizens and (*b*) where the vessel is an acknowledged smuggler engaged in trying to break United States law, the resulting position would be that the United States could violate the Convention with impunity in almost every case that is likely to arise in practice. The United States Government do not, it is understood, contest the legal right of His Majesty's Government to intervene in any case where a British ship flying the British flag is arrested on the high seas outside treaty limits. What the United States Government contend, if their argument is rightly understood, is that His Majesty's Government ought, on moral grounds, to refrain from such intervention where the vessel is an admitted smuggler in which the ultimately interested parties are United States citizens. But if this argument is sound it would apply irrespective of the existence of the Convention. Even if there were no Convention, a similar argument could be advanced for the purpose of justifying the arrest anywhere on the high seas of British vessels having the character in question. If the Convention is to be interpreted in such a way as to preclude intervention in any case where a vessel is a smuggler or one in which United States citizens are interested, the only scope left to the Convention, so far as His Majesty's Government are concerned, would be to enable intervention to take place where a British vessel, which was not a smuggler or controlled by United States citizens, had been arrested outside conventional limits. But such a case is so extremely unlikely to arise in practice (as is evidenced by the fact that none has ever occurred since the Convention was first entered into) that it can be discounted altogether. Both Governments must have been well aware when the Convention was concluded that all the cases which would arise in practice would be cases in which the vessels were in all probability smugglers; and the object of the Convention was not to give a general licence to the United States authorities to arrest British smuggling vessels at any point on the ocean, but to enable them to be arrested within wide but none the less well-defined limits, and within those limits only. Those limits are wider than those within which

arrests would be permitted under the ordinary rules of international law, but are not, on the other hand, so wide as to cover the high seas in general.

His Majesty's Government feel constrained to make these observations because the communications received from the State Department appear to imply that the United States authorities regard themselves as justified, morally if not legally, in arresting a suspected smuggler wherever found. If such an interpretation of the Convention were to prevail, the limits set out therein would become largely meaningless in practice. The chief benefit now derived by His Majesty's Government from the Convention is that by giving the United States powers of interference with British vessels within fairly wide limits, they secure for those vessels freedom from interference outside those limits. If, however, those vessels are to be interfered with whether they are inside or outside those limits (and, *a priori*, such vessels will almost certainly be smugglers in which United States citizens are interested) then His Majesty's Government will derive no further benefit from the Convention.

His Majesty's Government are far from desirous of engaging in controversy with the United States Government on questions which are necessarily of a somewhat unsavoury character. But the freedom of British shipping is a principle that His Majesty's Government are determined to maintain, and they cannot allow their international rights to be lightly violated, even where to uphold them incidentally involves the appearance of defending the interest of smugglers.

WASHINGTON, November 17, 1937.

811.114 *Miserinko*/165

The Secretary of State to the British Ambassador (Lindsay)

WASHINGTON, December 21, 1937.

EXCELLENCY: I have the honor to acknowledge the receipt of your note no. 401 of November 17, 1937, making a formal protest against the seizure of the vessel *Miserinko* by the United States Coast Guard authorities on March 14, 1936, as well as of your memorandum of the same date setting forth the British Government's position with regard to the seizure of this vessel.

In reply I desire to express regret that the incident occurred and my gratification that it may now be regarded as closed.

Copies of the note and its accompanying memorandum have been forwarded to the appropriate authorities of this Government for their information.

Accept [etc.]

CORDELL HULL

CONFLICTING AMERICAN AND BRITISH CLAIMS TO VARIOUS
ISLANDS IN THE PACIFIC OCEAN

811.0141 Phoenix Group/1

*The Acting Secretary of the Navy (Leahy)*²⁷ to the Secretary of State

WASHINGTON, February 20, 1937.

SIR: The Navy Department has agreed to furnish a ship, the U. S. S. *Avocet*, to transport an eclipse observation party of scientists sponsored by the National Geographic Society, to observe a total solar eclipse on 8 June, 1937.

It is planned that the *Avocet* leave Honolulu on 4 May, land the observation party consisting of Dr. S. A. Mitchell, in charge, eight other scientists and a working party of thirteen enlisted men under a Naval officer and Naval medical officer, total twenty-four, on Enderbury Island or Canton Island of the Phoenix Group, a British possession. The landing party is expected to be ashore about one month, from about 15 May to about 15 June.

It is requested that the usual diplomatic notification be made regarding this visit, and that authority be obtained for the above-mentioned party to land, with their supplies and instruments, and remain during the approximate period 15 May-15 June, on either Enderbury or Canton Island.

Respectfully,

WILLIAM D. LEAHY
Admiral, U. S. N.

811.0141 Phoenix Group/1

The Secretary of State to the Secretary of the Navy (Swanson)

WASHINGTON, March 9, 1937.

SIR: The receipt is acknowledged of a letter dated February 20, 1937, from the Acting Secretary of the Navy, in which the Department is requested that diplomatic notification be made regarding a visit of the U. S. S. *Avocet* to Enderbury or Canton Islands in the Phoenix Group for the purpose of transporting an observation party of scientists.

Inasmuch as this Government has not recognized the sovereignty of any other country over the islands in the group in question the Department is not in a position to give notification to any foreign power of a contemplated visit thereto by a United States naval vessel for any purpose.

Moore's International Law Digest, Volume I, pages 567 and 568, gives a list of Guano Islands appertaining to the United States issued by the Treasury Department in the middle of the nineteenth century.

²⁷ A Admiral Leahy was Chief of Naval Operations.

It will be noted that most of the islands in the Phoenix Group including Enderbury and Mary's (Canton), appear in the list, and since official records disclose that a certificate was issued for Enderbury Island by the Department on December 31, 1859, and that the island was occupied and exploited under that authority, this Department perceives no reason why the U. S. S. *Avocet* should not visit Enderbury Island.

Very truly yours,

For the Secretary of State:
R. WALTON MOORE
Assistant Secretary

811.0141 Phoenix Group/7

The British Ambassador (Lindsay) to the Secretary of State

No. 223

WASHINGTON, July 16, 1937.

SIR: I have the honour to inform you that the attention of His Majesty's Government in the United Kingdom has been drawn to the recent visit to Canton Island of the United States minesweeper *Avocet*, of which no prior official communication was made. I have accordingly been instructed to transmit to you herewith, for the information of the United States Government, the enclosed copy of an Order in Council of the 13th [18th] March, 1937,²⁸ by which Canton Island and the other islands in the Phoenix Group were incorporated in the Gilbert and Ellice Islands Colony.

I have [etc.]

R. C. LINDSAY

811.0141 Phoenix Group/9

The British Ambassador (Lindsay) to the Secretary of State

No. 234

WASHINGTON, July 22, 1937.

SIR: With reference to my note No. 223 of the 16th July I have the honour to inform you that His Majesty's Government in the United Kingdom have now learnt that the United States Ship *Avocet* erected on Canton Island a cement plinth with a painted stainless steel United States flag and a medal of the American National Geographical Society, although the British flag was then flying on the Island and the notices of British sovereignty were intact.

2. In this connexion I have been instructed to explain that in August, 1936 Captain Bevir of His Majesty's Ship *Leith* left a Union Jack on the Island as well as a notice board stating that the Island belonged to His Majesty. Both the flag and the proclamation were replaced by new ones early in 1937 by the same vessel.

²⁸ Not printed.

3. As you will have observed from my note under reference both Canton and other neighbouring islands were incorporated in a British Colony by an Order-in-Council dated the 18th March, 1937. His Majesty's Government accordingly trust that the United States Government will arrange for the United States flag to be removed from the Island.

4. I am further to state that if the United States Government should find it inconvenient to send a ship for that special purpose His Majesty's Government would gladly arrange for its removal themselves.

I have [etc.]

R. C. LINDSAY

811.014/543

Memorandum From President Roosevelt to the Secretary of State

WASHINGTON, July 26, 1937.

I wish you would read this personally.²⁹ It looks to me as if this is a sheer case of bluff on the part of the British.

As I pointed out to you in Cabinet meeting, discovery does not constitute national possession for the country to which the discoverer belongs unless discovery is followed within a reasonable period of time by permanent occupation.

Furthermore, a purely temporary occupation such as, for example, occupation for the purpose of recovering guano and nothing else does not give sovereignty to the country to which the guano company belongs.

In the case of Canton Island, the United States has claimed it by proclamation, as well, I think, as by discovery.

The point is that nobody has occupied it for years and years and it is open to occupancy by us today.

I suggest immediate action from Honolulu.

Will you please return these confidential reports.

F[RANKLIN] D. R[OOSEVELT]

811.0141 Phoenix Group/9a

The Secretary of State to President Roosevelt

WASHINGTON, July 29, 1937.

MY DEAR MR. PRESIDENT: I have received, and read carefully through, your memorandum of July 26, with regard to the incident at Canton Island, which I return herewith.³⁰

²⁹ Evidently refers to confidential reports mentioned in last paragraph; reports not printed.

³⁰ *Supra*.

Before proceeding to occupy the Island as you instruct I feel that I should call your attention to one or two facts with which you may not be familiar.

(1) On March 18, 1937, some two months before the Eclipse Expedition reached Canton Island, the British Government issued an Order-in-Council by which Canton Island and the other islands in the Phoenix Group were formally incorporated in the Gilbert and Ellice Islands Colony.

(2) The British Government has sent us two notes on the subject recently, the first informing us of the Order-in-Council, the second asking us to remove the emblems left by the *Avocet*. Moreover, an opening for discussion was given by an oral remark made by a member of the British Embassy in presenting the notes that if we had any observations to make on the other islands in the group we should do so.

The alternative courses, then, which may be followed are :

(1) We can proceed to permanent occupation of Canton Island by landing settlers, without notification to the British. However, for us to go ahead in the face of the British notes, particularly without having answered them, might be so resented as to render final adjustment of the conflicting claims to the island or islands more difficult than need be. I feel that we might put ourselves in the position that we could also be charged with bad faith if we sent settlers without giving an indication to that effect in the replies which we must make shortly to the British notes.

(2) We can proceed to permanent occupation of Canton Island, by landing settlers, but with advance notification to the British in reply to their notes of July 16 and July 22, together with a statement that we did not recognize the validity of the British Order-in-Council but were prepared to discuss with them the final disposition of all the islands.

(3) Without proceeding to permanent occupation of Canton Island, by landing settlers, we can take advantage of the opening given in the oral statement of the British Secretary and propose the negotiation of a final settlement of the conflicting claims to the eight islands of the Phoenix Group.

In the opinion of the Department's Legal Adviser, our claim to Canton Island is distinctly weak,—much weaker for instance than to three other islands in the group. Our best prospect, therefore, of establishing our right of ownership to at least some of the islands might be through negotiation. I should like to have your instructions as to which alternative you wish followed, in order that I may be guided as to what action I should take in respect to the two British notes.

Faithfully yours,

CORDELL HULL

811.0141 Phoenix Group/9

The Secretary of State to the British Ambassador (Lindsay)

WASHINGTON, August 9, 1937.

EXCELLENCY: The receipt is acknowledged of your two notes, dated respectively July 16, 1937, and July 22, 1937, with regard to Canton Island, and other neighboring islands in the Pacific.

In these notes you pointed out that Canton Island and the other islands in the Phoenix Group were incorporated in the Gilbert and Ellice Islands Colony by an Order-in-Council, dated March 18, 1937, and that the British Government accordingly desired to have removed an American flag painted on the stainless steel, and other emblems left at Canton Island by the U. S. S. *Avocet*, in May 1937.

In the view of the American Government, the sovereignty over the Island of Canton and certain other islands in the Pacific is the subject of conflicting claims. Pending the final settlement of title by mutual agreement between the two Governments, therefore, the American Government cannot accept as binding upon it the British Order-in-Council of March 18, 1937.

The American Government is, however, prepared to discuss with the British Government the question of the sovereignty of such Islands as are claimed by both, on the understanding that pending the outcome of such conversations neither Government should undertake, or cite, any action from this point forward,—such as the establishment of settlers on the Islands,—which would render adjustment of the conflicting claims more difficult.

Accept [etc.]

[CORDELL HULL]

811.0141 Phoenix Group/9

Memorandum by the Chief of the Division of European Affairs (Moffat) of a Conversation Between the Counselor of the Department of State (Moore) and the British Ambassador (Lindsay)

WASHINGTON, August 9, 1937.

Judge Moore told Sir Ronald that he had asked him to come to the Department in order to hand to him a note in reply to the British Embassy's two notes of July 16 and July 22, with regard to Canton Island and other neighboring Islands in the Pacific. After reading the Department's note (which bore the date of August 9²¹) Sir Ronald remarked that in effect what the United States was proposing was (a) to effect a clean-up of the entire situation regarding disputed

²¹ *Supra.*

islands in the Pacific, and (b) meanwhile for both Governments to observe a "stand-still." He remarked that one objection that occurred to him was that while Great Britain and the United States were standing still, other Powers might proceed with settlers or beacons or markings or postings. Mr. Moffat replied that as far as he knew no other Power was asserting claims, and Sir Ronald agreed that his observation was in effect more theoretical than actual. He then asked whether we had claims to islands outside the Phoenix group. Judge Moore replied "yes" but that the number was not large. Sir Ronald then said that if he understood us aright, what we proposed was first, that the British should agree to the principle of the stand-still and that once this was agreed we would present our claims without delay. Judge Moore replied that Sir Ronald's understanding was correct and that we would be in a position to give him this information within a very few days thereafter. The Ambassador replied that he felt he understood the situation and that he would telegraph his Government and let us know their reaction within a very few days.

PIERREFONT MOFFAT

811.0141 Phoenix Group/16½

*Memorandum by the Chief of the Division of European Affairs
(Moffat)*

[WASHINGTON,] August 23, 1937.

I saw Sir Ronald Lindsay this morning apropos of another matter, and asked him if he had received any reply to the proposal we had made regarding methods of discussing the islands in the Pacific to which there were conflicting claims. He replied that he had not had an answer and frankly did not anticipate one for some time, as he felt that the British Government would not make a move on the matter without consulting Australia and New Zealand. I replied that I could well understand this when it came to questions of substance but that all we were interested in now was in trying to work out a means of settling the question without its arousing publicity or undue concern. Sir Ronald replied that he personally did not see that the situation had the makings of any public disagreement and added that as far as he was aware there were at most islands in two small groups to which there were conflicting claims. I asked him if he would mention the matter when he reached London as it seemed to me that our proposals were procedural only and acceptance might forestall possible criticism in either press. He agreed to do so.

PIERREFONT MOFFAT

811.0141 Phoenix Group/16: Telegram

The Vice Consul at Wellington (Lane) to the Secretary of State

WELLINGTON, August 27, 1937—5 p. m.

[Received August 27—6: 25 a. m.]

Press report from Suva dated August 27th states that British naval vessel *Leith* left there for Canton Island at 7:30 p. m., August 26th taking 2 radio operators, building material and equipment for the establishment of a wireless station on the island.⁸²

LANE

811.0141 Phoenix Group/23½

The British Chargé (Mallet) to the Secretary of State

No. 360

WASHINGTON, October 20, 1937.

SIR: With reference to the note which you were so good as to address to Sir Ronald Lindsay on the 9th August last, I have the honour to inform you, on the instructions of His Majesty's Principal Secretary of State for Foreign Affairs, that His Majesty's Government in the United Kingdom deeply appreciate the offer of the United States Government to discuss with them the question of conflicting claims to ownership of various islands in the Pacific, and that they are ready to enter upon such discussions.

In view, however, of the facts that not only were the Phoenix Group of islands incorporated in the Gilbert and Ellice Islands Colony by Orders-in-Council of the 18th March, 1937, but that His Majesty's Government were already in effective possession of Canton and Hull Islands before the receipt of the proposal conveyed in your note under reference, they can only regard the Group as definitely British territory, and they would accordingly be unable, in participating in the discussions referred to above, to include in them the question of the islands of that Group.

Subject to this reservation, His Majesty's Government readily agree that, pending the outcome of such discussions as have been suggested, neither Government should take any action which would render adjustments of any conflicting claims more difficult.

I have [etc.]

V. A. S. MALLET

⁸² In his telegram of September 22, 1937, 4 p. m., the Vice Consul at Wellington stated that press despatches confirmed the establishment of a two-way short wave radio station in the charge of two operators, on August 31 (811.0141 Phoenix Group/20).

811.0141 Phoenix Group/234

Memorandum by the Counselor of the Department of State (Moore)

[WASHINGTON,] October 22, 1937.

Last summer I was directed by the President to approach the British with a view to discussing the ownership of islands in the Pacific, and I handed Sir Ronald Lindsay a note containing a proposal looking in that direction. As no reply was received, the matter was brought to the attention of the British Chargé, who wrote me that he was awaiting instructions from his government, but on October 20th he came in and handed me a reply containing a refusal to discuss the ownership of the islands of the Phoenix group, which include Canton and Hull, the former of which is important. The Chargé said that his government is not disputing our ownership of Howland, Jarvis and Baker,³³ but is declining to admit that there is any doubt about British ownership of Canton and Hull. He indicated that the British are willing to talk about all of the islands except the two last mentioned, Canton being the one we now mainly have in mind. I at once informed the President of all of this, leaving it to him to determine whether he will discuss the matter with Admiral Leahy and me before he goes to Hyde Park tomorrow evening. It may be that he will think it desirable for our government to do what the British government is said to have recently done, namely, build a small house on Canton Island and put a couple of men in charge. While our investigation of the ownership of Canton has not been completed, I am satisfied, as I told the British Chargé that if there were a judicial proceeding involving the British claim, his government would be unable to prove ownership, and that if it can be assumed that neither government can show a perfectly good title, it would seem very desirable to canvass the situation, with the result, perhaps, of agreeing that the island shall be used for aviation purposes under some sort of joint control by both British and Americans.

R. W[ALTON] M[OORE]

P. S. After the foregoing was dictated, Admiral Leahy and I were called to the White House and discussed the matter in question and finally it was determined on my suggestion that no immediate reply should be made to the British note, but further conversation be had with the British Ambassador on his return here around November 1st, it being just possible that he may bring about some reconsideration of the view expressed in the Chargé's note. From what the President

³³ On May 13, 1936, President Roosevelt had issued an Executive Order placing Howland, Jarvis, and Baker Islands under the control and jurisdiction of the Interior Department; *Federal Register*, May 15, 1936, p. 405.

said, it is very probable that he may wish to participate in any conversation with the British Ambassador.

I will of course not forget the importance of contacting with the British Ambassador on his return. There is nothing that we could do in the few days remaining before he will be here that would serve to strengthen our claim to any of the islands, or weaken the British claim.

R. WALTON MOORE

811.0141 Phoenix Group/244

Memorandum by the Counselor of the Department of State (Moore)

[WASHINGTON,] November 4, 1937.

At my request this morning Sir Ronald Lindsay, the British Ambassador, called at my office when I brought him up to date on what has occurred with reference to the Pacific Islands situation. I mentioned the note of August 9, 1937, delivered to him containing our proposal that the two governments discuss conflicting claims to any of the islands, and then I took up with him the note of his Chargé of October 20th indicating a willingness to discuss all claims except those pertaining to Canton and Hull Islands in the Phoenix group. I said that only a discussion had been suggested and that it seemed to us entirely illogical that any islands to which there are conflicting claims should be omitted from the discussion. I said furthermore that it would seem to be a simple process for each government to list the islands it claims, and following that engage in an interchange of evidence in the effort to reach some satisfactory conclusion. I repeated to him what I said to the Chargé about Canton Island, indicating the possibility that it might be found that neither government has any perfect claim of ownership and that the island might conceivably be used by both governments for civil aviation purposes. I did not hesitate to tell him in a very friendly way that we find that ordinarily the British incline to claim everything. I think he fully realized the strength of my statements and promised that he would at once send a pouch communication to London in order perhaps to bring about a reconsideration of the decision in the note of October 20th. Incidentally he said that he was sorry that he had failed to take the matter up while he was in London and was quite satisfied that it was taken up with subordinate officials instead of being referred as a matter of real importance to those high in authority. The conversation with the Ambassador left me very hopeful that within a reasonably short time he will inform us that a discussion can be carried on without any island being excluded.

He remained in my office some length of time and there was a good deal of talk not necessary to be rehearsed about the situation in Europe and the Far East, the Brussels Conference³⁴ and the possibility of a trade agreement being negotiated between our two governments.³⁵ He revealed that he had attended a committee meeting at which the only member who sharply opposed an agreement was the Minister of Agriculture, who took the same position that had been taken by quite a large number of the members of the House of Commons who are against any agreement because of the fear the agricultural interests of the United Kingdom may be sacrificed. He is firmly of the opinion that the Prime Minister is extremely anxious to bring about an agreement if the difficulties due to the opposition of some of the dominions can be overcome.

R. WALTON MOORE

811.0141 Phoenix Group/30½

*Memorandum of Conversation, by the Chief of the Division of
European Affairs (Moffat)*

[WASHINGTON,] December 29, 1937.

Participants: The British Ambassador
Mr. Hugh Wilson³⁶
Mr. Pierrepont Moffat

Mr. Wilson said that he had asked Sir Ronald to call when he was in the Department on other business in order that he might speak to him about the Pacific Islands to which the British and ourselves have conflicting claims. Sir Ronald said that he had written a letter to the Foreign Office, following his talk with Judge Moore of November 3, which he had thought would "move mountains". Unfortunately he had received nothing more than an acknowledgment and an intimation that it would probably be some time more before the British were prepared to reply. In the circumstances he would be only too glad to pass on any further observations we might wish to make.

Mr. Wilson said that we were perturbed at the slow tactics being pursued by the British Government; that we felt it was very much to the interest of both Governments to reach an amicable adjustment and clear up outstanding claims; that there was plenty of room for both our countries to be adequately supplied with islands; and that the British Government might well find comfort in seeing us both established in the Pacific area.

³⁴ See vol. IV, pp. 155 ff.

³⁵ See pp. 1 ff.

³⁶ Assistant Secretary of State.

Sir Ronald said that he surmised the delay was due to the fact that it had been necessary to consult New Zealand and Australia and that, as we well knew, New Zealand "was sore as a pup" over the Pan American aircraft contract.⁸⁷ He said that nothing would be done without the full and free consent of the New Zealand Government.

Mr. Moffat pointed out that the islands to which there were conflicting claims were not claimed by the New Zealand Government, either directly or under mandate, but were claimed by "His Majesty's Government in the United Kingdom". Sir Ronald remarked that irrespective of that technicality the islands in question were of interest in New Zealand and that the British Government would not give up one iota of its claims unless New Zealand consented thereto. Mr. Moffat suggested that in that case New Zealand had a complete veto power over any negotiations between the British and American Governments. Sir Ronald replied in the affirmative.

Mr. Wilson suggested that he thought seven or eight weeks was a long time to hold up an answer to our inquiry. Sir Ronald agreed to write again, but when pushed to telegraph evinced some reluctance. It was agreed that the matter would for the present be given no publicity, and that in so far as possible both Governments would endeavor to work out the questions not through legalistic arguments but through common sense negotiation. Sir Ronald said he quite agreed, and felt that we must both prevent what was a mere pimple from developing into a boil.

PIERREPONT MOFFAT

⁸⁷ The articles of agreement between New Zealand and the Pan American Airways, Inc., were signed November 2, 1935, and extended by New Zealand March 11, 1937 (811. 79690 Pan American Airways/88).

AUSTRALIA

UNSATISFACTORY TRADE RELATIONS BETWEEN THE UNITED STATES AND AUSTRALIA;¹ ANNOUNCEMENT BY AUSTRALIAN GOVERNMENT OF INTENTION TO ABOLISH IMPORT RESTRICTIONS

611.4731/205 : Telegram

The Consul General at Sydney (Moffat) to the Secretary of State

SYDNEY, January 26, 1937—6 p. m.

[Received January 26—1:45 p. m.]

While in Canberra yesterday I endeavored to ascertain why we had not received a reply to our note of November 3rd.² I think the answer is to be found in a growing feeling on the part of many officials (though probably not yet Gullett³ or Lyons⁴) that the present anti-American trade diversion measures must ultimately be reconsidered. This changing outlook seems due in part to our heavy purchase of wool which is altering the trade balance picture and in part to an increasing feeling that the United States and the British Empire should "clean the slate". I definitely do not want to give the Department a feeling that a change in policy is imminent. For instance, I think it would be premature to anticipate a change before the Imperial Conference at the earliest, (1) because Australia wishes to assure herself that recent American purchases are not a mere flash in the pan, (2) because she wishes to make certain that a number of industries which have committed themselves to local manufacture actually set up factories and, (3) because she wishes first to drive the best possible bargain with Great Britain. Nevertheless, for the first time since last May I sensed a better atmosphere.

The foregoing is naturally impression only and does not represent any specific statement made during conversations.

I should add that every one with whom I talked referred with real interest to recent press despatches from Washington hinting at the possibility of some sort of United States-British Empire conference.

MOFFAT

¹ Continued from *Foreign Relations*, 1936, vol. I, pp. 742-774.

² See telegram of October 31, 1936, 2 p. m., to the Consul General at Sydney, *ibid.*, p. 771.

³ Sir Henry Gullett, Australian Minister in Charge of Trade Treaties.

⁴ J. A. Lyons, Prime Minister of Australia.

611.4731/205a : Telegram

The Secretary of State to the Consul General at Sydney (Moffat)

WASHINGTON, February 12, 1937—7 p. m.

Do you think it would help the Australian Government to find a way out, when it is ready to alter its policy toward the United States, if we should now or soon propose the conclusion of a most-favored-nation arrangement, either a treaty, a *modus vivendi*, or simply an exchange of notes. Our note would point out that we have such arrangements with 53 nations; that we have witnessed such vindication of the principle of most-favored-nation treatment to all nations, with or without contractual arrangements, that we are desirous of putting the principle on a more formal basis with the remaining few nations with whom we have no contractual arrangement, and that we would be glad to enter into discussions with Australia looking to an arrangement covering *inter alia* the treatment of commerce and the entry and residence of businessmen.

It seems to us that such a proposal, while carrying no hint that this is a step toward ultimate negotiation of a trade agreement, might drive home the thought that the very first step toward such an end would have to be equal treatment of our commerce. On the other hand, for saving face there, Gullett could rationalize upon the fact that "The United States Government made the first move". Would the latter eventuality be harmful?

HULL

611.4731/206 : Telegram

The Consul General at Sydney (Moffat) to the Secretary of State

SYDNEY, February 15, 1937—1 p. m.

[Received 1:55 p. m.]

Department's telegram of February 12, 7 p. m. I seriously question whether an approach along the lines indicated would help matters at the present time.

First, as to subsistence [*substance?*]. While the feeling is definitely growing in Government circles that Australia will at some point have to abandon her anti-American trade diversion measures I am convinced that they would not consider granting us intermediate tariff rates except as part of a trade agreement. Far from regarding the suggested proposal as a "first move" on our part I fear that the probable reaction in Canberra would be one of suspicion that we were trying to get everything we wanted (namely abandonment of the licensing system and the benefit of all concessions Australia might

make to other countries) after which we would promptly lose interest in the conclusion of a trade agreement. Incidentally concessions on the entry and residence of businessmen would not be an inducement as there is no longer the slightest apparent interest in this question anticipated.

Second, as to timing. As now I see little or no chance of an immediate reconsideration. Australia's negotiations with Canada which are now in progress are going badly; the Cabinet, except for Gullett, are busy campaigning for the constitutional amendment on marketing which comes to a vote early next month; less than 10 days later Lyons and the Australian delegation leave for London and the Imperial Conference. Any approach by us in the near future would probably be referred by Cabinet without adequate consideration to Gullett and Moore⁵ whose anti-American bias remains unmodified.

Third, as to tactics. My personal feeling is that Australia will eventually retreat as a domestic decision on the ground that with the recent investment of American capital in Australian industry and the improvement in the trade balance, the trade diversion measures had served their purpose. Time is on our side; the trend of opinion is at last moving slowly in the right direction; but it is not yet ripe for forcing a change. I feel that our best tactics are to let matters develop without further moves by us until after the Imperial Conference. Casey⁶ and perhaps other Ministers are planning to return from London via the United States and frank talks with them would probably help more than anything we could do at this juncture.

I have shown this text to Squire⁷ who concurs.

MOFFAT

611.4731/207: Telegram

The Consul General at Sydney (Moffat) to the Secretary of State

SYDNEY, March 11, 1937—3 p. m.

[Received March 11—9 a. m.]

Sir Henry Gullett resigned yesterday afternoon as Minister in Charge of Trade Treaties during a stormy Cabinet session in which his policy as it affected the recent unsuccessful negotiations with Canada was severely criticized.

Although Mr. Lyons has intimated that Gullett's resignation would not alter Government's general trade policy there is no doubt but that

⁵ A. Moore, Assistant Secretary of the Department of Trade and Customs of Australia.

⁶ R. G. Casey, Minister of the Treasury of Australia.

⁷ E. C. Squire, American Trade Commissioner at Sydney.

a serious obstacle to the eventual solution of the American-Australian trade dispute has been removed.

The situation in Canberra is still exceedingly confused particularly as Lyons is leaving tomorrow for London. It seems more and more likely that he will return via Washington in the hope of settling outstanding difficulties.

MOFFAT

611.4731/222 : Telegram

The Consul at Sydney (Doyle) to the Secretary of State

No. 424

SYDNEY, May 25, 1937.

[Received June 18.]

SIR: I have the honor to refer to my Despatch No. 417 of May 13, 1937 (File No. 631) entitled "Interview with the Minister for Trade and Customs, Colonel White".⁸ As stated in that despatch, I had informed Colonel White, in reply to his direct question "when the United States was going to do something with reference to the present trade situation", that it was impossible for the United States to institute trade treaty negotiations with a country which at the moment was discriminating against American commerce. I made no further comment, assuming that he was familiar with the subject matter, such as the tenor of the interview of Consul General Moffat with Sir George Pearce,⁹ reported in his despatch No. 215 of June 3, 1936 (File No. 631) entitled "Interviews with Sir George Pearce and Sir Henry Gullett regarding Australia's decision to restrict and divert American trade."¹⁰

I had told Colonel White that I would send him a copy of the Act.¹¹ I was, of course, aware that there was no specific provision in the Act against opening negotiations with a country which had discriminated against our commerce. There follows the text of a letter received from Colonel White, dated May 19, 1937, together with the text of my reply, dated May 24, 1937:

"Commonwealth Offices,
Melbourne, C. 2.
19th May, 1937.

"My Dear Consul: I acknowledge receipt of your letter of May 15th, 1937, under cover of which you forwarded a copy of the amendment, approved on June 12th, 1934, of the Tariff Act of 1930, which authorises the conclusion of trade agreements by the United States with foreign countries.

⁸ Not printed.

⁹ Australian Minister for External Affairs.

¹⁰ Not printed, but see telegram of June 1, 1936, 6 p. m., from the Consul at Melbourne, *Foreign Relations*, 1936, vol. I, p. 755.

¹¹ Trade Agreements Act of June 12, 1934; 48 Stat. 943.

"I have perused the extract with interest, and note that its provisions do not preclude the opening of negotiations for the conclusion of commercial agreements with countries which discriminate against any of the products of the United States. On the contrary, the President is empowered under sub-section (a) of section 350 to enter into foreign trade agreements "whenever he finds as a fact that any existing duties or other import restrictions of the United States or any foreign country are unduly burdening and restricting the foreign trade of the United States."

"If the enclosure which you were good enough to forward contains the only authority to the President bearing on the subject, it would seem that no obstacle exists to the conclusion of a mutually satisfactory trade agreement between the United States Government and the Government of the Commonwealth of Australia."

"American Consulate General,
Sydney, Australia.
May 24, 1937.

"Dear Colonel White: The receipt is acknowledged of your letter of May 19, 1937, concerning the provisions of the Act of June 12, 1934, regarding the conclusion of trade agreements between the United States and other countries. I have referred the matter to the Department of State, Washington, D. C."

Respectfully yours,

ALBERT M. DOYLE

033.4711 Lyons, J. A./37 : Telegram

*The Secretary of State to the Ambassador in the United Kingdom
(Bingham)*

WASHINGTON, June 1, 1937—6 p. m.

213. Please seek an early opportunity to talk to Mr. Lyons and say to him approximately the following:

The President has been delighted to hear through informal channels that Mr. Lyons is contemplating a visit to the United States on his way back to Australia. He wanted you to ask Mr. Lyons to keep you posted regarding his plans in order that the President may try to arrange his own calendar so as to be able to invite Mr. and Mrs. Lyons to be guests at the White House overnight should his proposed visit materialize. At the same time I wish you would say how glad I would be to have an opportunity to exchange views with Mr. Lyons on a number of subjects.

We have recently learned that Mr. Lyons would return directly to Australia in the absence of "an official invitation to visit Washington". We do not wish the foregoing message to be termed an "official invitation" but would rather it be presented as in the nature of willingness to meet the desires which have been expressed openly for some time by Mr. Lyons. We wish to have opportunity to talk to him irrespec-

tive of what develops in London within the next few weeks, as we do not feel that he has become thoroughly aware of the intensity and persistence of the feeling which the policies of his Government have aroused in United States Government circles.

HULL

033.4711 Lyons, J. A./38 : Telegram

The Ambassador in the United Kingdom (Bingham) to the Secretary of State

LONDON, June 4, 1937—4 p. m.

[Received June 4—1:35 p. m.]

348. I saw Lyons and conveyed to him the purport of the Department's message No. 213, June 1, 6 p. m. He asked me to express his gratitude and to say that he had hoped to return via the United States and to have an opportunity to see the President and the Secretary. However, he is confronted with an election within the next few weeks and he said that he was convinced since the opposition was violently isolationist that any appearance of yielding ground or approaching any measure of compromise for a trade agreement at this time would be fatal to him and his party. In the absence of giving the opposition a club of this kind he felt that he would win and that he would then be in a position to resume conversations and to renew consideration of the subjects involved with the hope of arriving at an agreement.

He said that the British Government understood his position exactly and would seek to prevent giving any ammunition to the opposition. In addition he said that by going the other way, he would enter western Australia, which would give him an opportunity to campaign there, which on account of the distance it would be difficult for him to do if he entered Australia via the United States. He said, however, he would like very much for Casey, the Australian Treasurer, to return via the United States and to have the opportunity to see the President and the Secretary.

Apart from his coming election his main concern is to secure support for his Government to a non-aggression pact in the Pacific. I assured him that in my opinion it would be impossible to secure any form of agreement which would bind our Government in any way whatever looking towards the protection of Australia from attack by Japan. He assured me he had nothing of this sort in his mind and had not meant to intimate any such proposal but he insisted that it was his hope that a non-aggression pact in the Pacific might be made between Great Britain, the self-governing Dominions and Japan, which would have at least the blessing of the United States Government. He told me he had discussed this subject with the Chinese Am-

bassador who told him that the Japanese were not making the progress they had hoped at Manchukuo, and were finding their aggressive adventures difficult and burdensome and that he, the Chinese Ambassador, thought there was now a possibility of bringing about an agreement with the Japanese in the Far East which would limit Japan's aggressive activities there, see my 347, June 4, 5 p. m.¹²

Lyons further said if he won his election, which he expected to do, that shortly thereafter he would welcome an opportunity to visit the United States and to confer with the President and the Secretary.

He gave me an impression that his main purpose is to secure a non-aggression pact and he finds difficulty in discussing other subjects when this is the thought uppermost in his mind, apart from the coming election. If his attitude represents public opinion in his own country, Australia would go far in order [*other?*] directions to obtain some security against Japanese aggression. He considered that the Imperial Conference was fully committed to the purpose of securing such a non-aggression pact.

BINGHAM

033.4711 Casey, Richard G./4 : Telegram

*The Secretary of State to the Ambassador in the United Kingdom
(Bingham)*

WASHINGTON, June 10, 1937—5 p. m.

232. Your 348, June 4, 4 p. m. and 357, June 8, 1 p. m.¹³ The British Ambassador¹⁴ has formally requested an interview with the President for Casey on June 30, July 1st or 2nd. He is being informed that in view of the President's absence from Washington attending his son's wedding and on other important business it is unfortunately impossible for him to see Casey at that time. I have informed Lindsay that I shall be glad to see Casey on the morning of July 1st and that Mr. Morgenthau¹⁵ will see him that afternoon. Other appointments will be arranged in due course.

Will you please see Lyons again and say that the President and I are sorry that he found it necessary to alter his plans to visit the United States and thus afford us opportunity for a general exchange of views. At the same time please say that we hope he had not understood our intimation of willingness to see him or Casey as meaning that we were prepared to discuss a trade agreement at this time. We assume that he realizes that the opening of discussions leading to

¹² Not printed.

¹³ Latter not printed.

¹⁴ Sir Ronald Lindsay.

¹⁵ Henry Morgenthau, Jr., Secretary of the Treasury.

possible negotiation of a United States–Australian trade agreement depends rather conclusively upon the removal by the Government of Australia of the discriminations against commerce of the United States. We assume that he also realizes that if a satisfactory basis for a United States–United Kingdom trade agreement¹⁶ is not found it would be practically impossible to find a basis for a United States–Australian trade agreement.

Our reason for desiring that you say this to Lyons is that the Department gained the distinct impression from your 348 that he was of the opinion that we were prepared to discuss a trade agreement when he or Casey came to Washington. We feel that that impression should be corrected.

HULL

611.4731/220 : Telegram

The Ambassador in the United Kingdom (Bingham) to the Secretary of State

LONDON, June 11, 1937—6 p. m.

[Received June 11—2:05 p. m.]

372. I made an appointment with Lyons for this afternoon immediately following receipt of your 232, of June 10, 5 p. m. I conveyed to him your message and he went on to say that he understood the situation did not admit of discussion of a trade agreement at this time. He said, however, that he regretted that on his visit to the United States 2 years ago he had not been able to get at least some slight concession especially as regards wool and wines which he could have used as leverage to combat the tendency in his country which led ultimately to the adoption of their embargo policy. He said he believed in a general restoration of international trade as the best hope for a restoration of stability and for peace in the world and that he hoped the time would come when his country could make a contribution in that direction; but that he could not guarantee such action because it would depend on the local political situation.

He said that he had lunched today with the British Prime Minister and had been assured by Chamberlain that he was heartily in favor of working out a trade agreement between Britain and the United States and that he had told the Prime Minister he hoped it might be possible for Australia to make a contribution in this direction although Chamberlain must understand it would mean concessions on the part of Britain.

¹⁶ See pp. 1 ff.

He said too that he had been again assured by Chamberlain that nothing would be done here to embarrass him in his coming election in Australia. In that connection he said that he personally had favored holding the election last February when he felt certain he would have won so that he might have come to the Imperial Conference with a mandate which would have given him a freer hand; but there had been a leakage about his intention, opposition arose, and he felt it was unwise to go on with an election last February; that now he could hold on until the 12th of December; but that he had told the Prime Minister and wanted to tell me that it was his purpose to hold the election as early as possible—if practicable in September—but he could not attempt to fix a time until after his return to Australia.

He referred again to his hope for a pact of non-aggression in the Pacific and said that he had been told by the British Government that it would take up this subject with the United States, Japan, China and other interested countries and that he had left the matter in that position because he felt it properly belonged to the United Kingdom to deal with this subject.

BINGHAM

611.4731/222: Telegram

The Acting Secretary of State to the Consul at Sydney (Doyle)

WASHINGTON, June 25, 1937—6 p. m.

Your despatch No. 424, May 25. Between appropriate introductory and closing paragraphs you may say the following in an informal letter to Colonel White:

I have received from Washington information which enables me to say that I accurately represented the views of the Department of State when I told you that the United States could not envisage negotiating a trade agreement with Australia so long as Australia maintains its discriminations against American trade. These views are not based on any special prohibition expressed in the law, but upon the policy which has been developed under its operation.

WELLES

611.4731/229

*Memorandum by the Chief of the Division of European Affairs
(Dunn)*

[WASHINGTON,] July 1, 1937.

On Thursday, July 1, Mr. Casey, accompanied by Mr. Keith Officer, Counselor of the British Embassy,¹⁷ called upon the Secretary at 11

¹⁷ On January 22, 1937, the British Ambassador informed the Department of State that the Australian Government had arranged with the British Foreign

a. m. After a conversation which was more or less general on subjects connected with American-Australian relations, Mr. Casey proceeded to the office of the Under Secretary accompanied by Mr. Officer. The Under Secretary¹⁸ called in Mr. Dunn.

Mr. Casey stated that he had explained to the Secretary the reasons which had brought about the restriction against American imports in Australia. He went on to describe in terms with which we were already familiar the gradually falling balance to the credit of the Australian Government for the payment of amortization and interest on its foreign debt largely held in England and for its importations also largely from England. He said that in 1934, this unfavorable balance had reached a point when it was clear to the Australian Government that it was of the highest importance not to permit this situation to develop to a point where the value of the Australian pound in the international market would be undermined, thus possibly necessitating a further devaluation with respect to the pound sterling. Devaluation of the Australian pound would very likely result in a corresponding devaluation in the so-called sterling group and would probably also include Argentina in this general reduction. Mr. Casey stated that it was the requirements of his own Department, the Treasury, which when laid before the Cabinet, resulted in the decision to curtail imports from those countries with which Australia had an unfavorable balance.

Mr. Casey went on to explain that as a result of the restrictions against American importations, there had been a diversion of trade, but that if the Australian Government had been able to foresee the general improvement of the world situation which resulted in higher world prices for Australian products, the Australian Government might not have gone so far as they did in restricting American importations. They might have achieved the measure of protection they desired by increasing tariffs on the commodities on which they wanted to divert trade from the United States.

Mr. Casey then went on to describe the situation which arose at the Imperial Conference just held in London. He said that Mr. Chamberlain had made an earnest plea to the representatives of the Dominions for a general survey of the Ottawa preference system. Mr. Chamberlain had stated frankly to the Dominions that the United Kingdom Government was bending every effort in its studies of the trade situation between it and the United States to find a basis for

Office to have a Counselor who would be an Australian and a member of the Australian Department of External Affairs appointed to the British Embassy at Washington, and that the appointment would be considered merely as a convenience for handling Australian subjects (701.4111/930).

¹⁸ Sumner Welles.

negotiation of a trade agreement with this country. The United Kingdom found that they were hampered in the negotiation of such a trade agreement by preferences on certain commodities, upon which we would want reductions in their existing agreements with the Dominions. A disposition had become apparent at the Imperial Conference to reconsider the preference agreements with a view to allowing the United Kingdom more latitude in consideration of its trade agreement with the United States.

At this juncture Mr. Casey explained that the present Government in Australia headed by Mr. Lyons was coming to the end of its Parliamentary term and that an election must be held between now and the first of December next. He said that, in his opinion, the election would be some time before December and probably very soon. He said, of course, the Lyons Government facing an electoral campaign was not able to commit itself to any specific arrangements with regard to its trade agreement with Great Britain as there was a strong feeling in Australia that the existing trade agreement had conserved to Australia a considerable and secure market for its principal exportable products and in an electoral campaign the present Australian Government felt that it would not be politic to create an uncertainty in the minds of a large portion of the Australian voters with regard to its future trade position.

Mr. Casey then brought up the possibilities of discussions with this Government for a trade agreement between Australia and the United States. He said that if the Australian Government could be sure of supplying through trade with the United States any loss it might incur by reason of a readjustment of its preference position in Great Britain, it would make easier a consideration of a re-adjustment of its present trade agreement with Great Britain. He said, at this point, that he felt it would be possible to make certain readjustments in the Australian-United Kingdom preference agreement,¹⁹ but that, of course, the Australian Government would want to know what arrangements might possibly be made with the United States in the way of trade concessions in order to know how far they could go in any re-adjustment with Great Britain.

Mr. Welles then stated that as far as discussions of trade agreements between Australia and the United States were concerned, it would not be possible for us to consider the matter while the Australian Government was pursuing its policy of discrimination against American trade. He explained that this was a matter of principle with us as we did not in our negotiations of reciprocal trade agreements act on the basis of negotiating the removal of discriminations. It was neces-

¹⁹ *British and Foreign State Papers*, vol. cxxxv, p. 183.

sary before discussions for any trade agreement could be initiated for the foreign nation concerned voluntarily to grant to the United States equality of treatment under whatever system of treatment of foreign trade might be in force in that country. Mr. Casey then asked whether a change-over from a system of licensing of imports to a revision of the tariff upward would be acceptable to this Government. He was informed that the system of treatment accorded by any other Government was a matter for that Government to decide, but our concern in the matter was that American trade be placed on equality with that of any other nation; if a licensing system, that licenses for American imports be granted as freely as to other countries and that no discriminatory or arbitrary withholding of licenses for the importation of American products be applied. Mr. Welles further remarked that if a change-over from the import licensing system to a higher range of tariffs were to be considered, we would naturally expect that the tariff rates would not be raised in excess of the range absolutely needed for internal considerations, and that the rates would not be padded for the purpose of having them negotiated downward by means of a trade agreement.

With regard to Mr. Casey's reference to compensation by the United States for Australian agreement to reduction of differentials now favoring Australian products, Mr. Welles said that it would not be possible for us to enter into discussions of a trade agreement with the Australian Government until we had reached a satisfactory basis of negotiation for a trade agreement with the United Kingdom. Mr. Welles asked whether the British Government had informed the Australian delegation as to the general lines of the possibilities of a trade agreement between the United Kingdom and the United States. Mr. Casey said that this matter, while it had not been the subject of official discussions between the delegates and the British Government, had come up in an informal and informatory manner in general talks with the British Board of Trade. Mr. Casey went on to say that he was very anxious that some exploratory conversations be carried on between the Australian Government and the American Government with regard to the possibilities of a trade agreement between the two countries in order that the Australian Government might be in a better position to reconsider its situation as far as concerned the United Kingdom-Australian trade position. Mr. Welles explained that we were precluded from carrying on any discussions having to do with trade agreements which might be considered negotiations, as under the law there must be previous public announcement before negotiation for trade agreements can be initiated. Mr. Welles did say, however, that the moment we had arrived at a point where we could decide there was a reasonable basis for the negotiation of a trade agree-

ment with the United Kingdom, we would be very glad to give a close and comprehensive study to the Australian trade situation and would be glad to have informal talks with them with a view to the preparation of or the seeking of a basis for the negotiation of a trade agreement with them.

The interview was ended at this point by reason of appointments both Mr. Welles and Mr. Casey had previously made and it was agreed to meet again in the afternoon.

Mr. Casey, accompanied by Mr. Officer, returned to Mr. Welles' office at five o'clock. Mr. Dunn was also present.

At the beginning of this interview, Mr. Casey asked if he could speak a few moments about the situation created by the legislation contemplated in Australia, the effect of which would be to prohibit the existing American shipping line from trading between Australia and New Zealand. The discussion of this matter is made the subject of a separate memorandum.²⁰

Mr. Casey reverted to the possibility of discussions being initiated now or shortly for a trade agreement between Australia and the United States. Mr. Welles repeated to him our feeling that it would be necessary for us first to see whether we will be able to arrive at a basis of negotiation for a trade agreement with Great Britain.

Mr. Welles then stated that he greatly appreciated the frankness and candor with which Mr. Casey had discussed the various phases of the situation with regard to Australian-American, Australian-British and British-American trade and that he would like to put to Mr. Casey a question which he wanted him to feel perfectly free to say whether he felt in a position to answer or not. Mr. Welles said that Mr. Casey no doubt knew that the British Government expected to give us a communication next week²¹ on the general subject of the possibilities of a trade agreement with this Government and that it would be extremely helpful to us in the consideration of this forthcoming communication if we were in a position to know what the attitude of the Lyons Government would be if it were successful in the elections which it was facing. Mr. Casey replied that, without consulting his colleagues in the Cabinet, he would be unable to give any definite indication of what it would be possible to do, and that furthermore issues which might arise in the election may have an influence on the policies they would have to pursue. He said that he himself, however, felt very hopeful that his Government, if returned to power, would be able to make certain concessions in its relations with Great Britain with a view to facilitating a trade agreement between the United Kingdom

²⁰ Not found in Department files; for other correspondence on this subject, see pp. 95 ff.

²¹ Memorandum of July 10 from the British Embassy, p. 49.

and ourselves. He then said that he could tell us in all confidence, as he felt that all of these conversations would be viewed by us, that the Australian delegation realizing that this very question would arise upon its return to Australia, had worked out in collaboration with the British Government the sense of a declaration of his Government's position in the matter which could be made upon the return of the Delegation to Australia for use in the election campaign. He then read from a draft of the declaration. The sense of the statement was: At the Imperial Conference the British Government had informed the Dominions that in studying methods of expansion of international trade, it became advisable to reconsider the attitude of the various members of the Empire toward the existing trade arrangements between themselves. The Australian delegation had taken note of this presentation of the situation as brought up by the United Kingdom Government and stated that upon its return to Australia, a study would be made of its existing trade policies with a view to finding possible increased markets for its products through a general increase in world trade.

While on the subject of the general possibilities with regard to the trade agreement situation, Mr. Casey asked whether there would be any possibility of Australia's obtaining a reduction on wool in a trade agreement with the United States. Mr. Welles said that he felt certain that Mr. Casey realized that the purchase of Australian wool by the United States had increased greatly during last season over previous seasons and that furthermore the United States was already in a progressive stage of increased purchasing and consumptive power. He went on to say that Mr. Casey no doubt realized that there were often many elements which entered into the consideration of a reduction on any particular item, but that he could rest assured that in making our studies of commodities upon which reductions could be granted to Australia, we would as we always did make every effort to provide for an increased market in those commodities to as great an extent as we possibly could. Mr. Casey said that, of course, a substantial reduction in the wool duty would be of great importance to them. Mr. Casey then went on to speak of items he understood were under consideration for treatment in the United Kingdom-United States trade agreement negotiations. With regard to raisins, he explained that it would be very difficult for Australia to make any change in the British preference now enjoyed by Australia for that product as large numbers of war veterans have been induced and assisted to engage in the growing and preparation of raisins. He said, however, that he was not certain that the exact extent of the preference now enjoyed by them in the British market was necessary and that the same reflection applied to the matter of

dried fruits which had been also greatly assisted and encouraged by the Government. At this point Mr. Casey was informed that in dealing with the question of preferences, this Government was not seeking to arrive at a position by which the United States exportations to Great Britain would supplant those from Australia or other Dominions enjoying specific preferences, but our objective was rather to arrest the tendency of Dominion and Colonial producers eventually to supplant entirely United States producers in the British market through the agency of excessive preferences. Mr. Welles said that we, of course, were not in any position to discuss details or specific commodities at this time and Mr. Casey agreed that it was impractical to do so. Mr. Casey mentioned, however, that an Australian official, Mr. McCarty, was passing through here shortly on his way home from the Imperial Conference and would be glad to talk with any persons we might designate in an exchange of information with regard to the general picture of Australian-American trade.

JAMES CLEMENT DUNN

847.00/264

*Memorandum by the Chief of the Division of European Affairs
(Moffat)*

[WASHINGTON,] October 18, 1937.

Mr. Keith Officer, Australian Counselor of the British Embassy, called on me this afternoon. He told me that according to all the latest indications the Lyons Government would come out victorious in the general election next week. He thought they might lose four or five seats at a maximum, which would still leave them with a comfortable majority. The recent elections in Victoria have shown slight labor gains in the city, but the country districts had remained firmly nationalist. The only drawback that he saw from a close election was that it might make the Government somewhat timid in the future.

I told him that in view of the attitude of the labor party there was no need for the Government to show timidity in withdrawing the trade diversion measures. Mr. Officer thought that there would be relatively little delay. He said that since Sir Henry Gullett had left the Cabinet nobody was very keen on the maintenance of this policy. I remarked that Colonel White since taking over Sir Henry Gullett's portfolio had shown himself fully as "hard boiled", and furthermore he had reiterated just the other day in the House that he expected that out of the trade diversion program would come a trade agreement with the United States. Mr. Officer said that whatever Mr. White's personal views might now be, his Department was thoroughly fed up with trade diversion and would be in favor of change.

Mr. Officer said that he had written quite fully after both our previous talks.²² He further stated that he would telegraph early next week when the election returns are safely in, referring to these letters and urging that the Government lose no time in reversing its policy. He said that there might not be prospects of negotiations immediately, but that if Australia moved he thought there were pretty good prospects of "talks". I reiterated that Australia should move just as quickly as was humanly possible as, I said, we were anxious to clean up the situation and it was impossible to deal with the Australians while these measures were being applied.

PIERREPONT MOFFAT

647.116/320

Memorandum by the Secretary of State

[WASHINGTON,] December 9, 1937.

The British Ambassador called upon his own request and handed to me a memorandum (copy attached),²³ giving the statement made by the Minister of State for Customs in the Commonwealth Parliament of Australia on December seventh. The Ambassador stated that he feels encouraged and gratified at this rather significant step in harmony with the proposed British and American trade agreement undertaking. I felicitated with him upon this phase.

C[ORDELL] H[ULL]

647.116/320

The British Embassy to the Department of State

The following is the text of a statement made by the Minister of State for Customs in the Commonwealth Parliament on December 7th.

It is the intention of the Government to make a change in the licensing system introduced on May 22nd 1936 and to substitute a system of adequate duties where such action is necessary for the protection of Australian industry. The import quotas at present applying to motor chassis however will be retained, and the motor chassis quota will continue on the present basis which provides for the annual importation of chassis equal to the number imported during the twelve months ending April 30th, 1936. In the case of other goods now subject to restrictions under the licensing system the action necessary to determine the duties adequate to protect industries established under licensing restrictions or industries which have either extended their manufacturing operations or have laid plans for their establishment

²² Memoranda by Mr. Moffat of conversations of September 18 and October 8, not printed.

²³ *Infra.*

will be put in hand forthwith. It will not however be possible to determine and apply the duties at once, and the change over from the licensing system to the duties cannot be made until Parliament meets after the recess and in appropriate cases reference will be made to the Tariff Board.

In the meantime the licensing system will be administered on the following basis:

1. In the case of goods which are not competitive with Australian industry licenses will be granted for their importation irrespective of country of origin;

2. In the case of goods competitive with Australian industry the licensing restrictions at present in force will operate until duties adequate to the protection of the industries concerned have been determined and applied;

3. In the case of motor chassis importation will continue on present basis.

The Commonwealth Government has arrived at this decision in the light of its experience over the last twelve months and after carefully considering factors operating for and against retention of licensing system including improvement in trade balance since restrictions were first introduced.

WASHINGTON, December 9, 1937.

647.006/73 : Telegram

The Consul General at Sydney (Wilson) to the Secretary of State

SYDNEY, December 8, 1937—9 p. m.

[Received December 10—5 a. m.]

Referring to telegram of December 8, 6 p.m.,²⁴ my impressions from Canberra visit have crystalized as follows:

(1) The statement made by White December 7 is generally regarded as eliminating the principles of discrimination against United States, as meeting our requirements and removing all objections to exploratory discussions;

(2) That the statement was finally agreed to despite divided opinion at a meeting of the Cabinet held immediately before;

(3) That the Government while sincere in purpose to end discriminatory action nevertheless considered it necessary to save face before Australian manufacturers;

(4) That the Government is under strong pressure to effect cooperation with the United States even though some sacrifice is entailed.

Apart from the foregoing Moore who was introduced to me by White as his chief adviser on trade treaty matters states the position of the Government as follows:

²⁴ Not printed; it summarized the statement made by Col. T. W. White, the Australian Minister of State for Customs, December 7, *supra*, and reported that the Collector of Customs had been instructed to issue permits irrespective of country of origin for 34 classifications of goods (647.006/71).

Government proposes to investigate immediately all commodities on prohibited list not included in list of 34 (telegram of December 8, 6 p. m.) to determine whether additional tariff protection is necessary but regard must be paid to assurances given Australian manufacturers to protect industries established as a result of diversion policy. Where additional protection not necessary steps will be taken to issue licenses freely for United States goods.

Arrangements will be made simultaneously to issue licenses freely for United States goods at the time higher tariffs, where decided upon, are imposed. When tariff legislation is introduced early next year diversion policy should disappear.

Situation with respect to motor chassis will remain unchanged with regard to United States and Canada until the final policy is determined with respect to manufacture in Australia.

Australian Government trusts that United States will take the view that there is now no substantial discrimination against the United States. Australian Government is most anxious to enter into exploratory discussions with the United States Government simultaneously with negotiations between the United States and United Kingdom and is prepared to send officials immediately to Washington. End of Moore's statement.

WILSON

647.116/318

Memorandum of Conversation, by the Assistant Chief of the Division of European Affairs (Hickerson)

[WASHINGTON,] December 10, 1937.

Participants: Mr. Dunn ²⁵
 Mr. Hawkins ²⁶
 Mr. Hickerson
 Mr. Keith Officer of the British Embassy

Mr. Keith Officer came in at 12:15 today after having made an appointment with Mr. Dunn. Mr. Officer referred to the British Ambassador's call on the Secretary yesterday, at which time he left with the Secretary, without comment, an official press statement of the Australian Government in regard to a modification of their trade diversion policy. Mr. Officer stated that he was very much pleased at the action which his Government had found it possible to take. He stated that there had been some delay of course because of the necessity of reorganizing the Cabinet, and that, moreover, it had been necessary to convince certain members of the Cabinet of the wisdom of taking this step. He went on to say that it is not an easy matter for a Government to alter a policy of this sort, particularly because of the fact that any alteration necessarily carries with it a certain implication

²⁵ Appointed Adviser on Political Relations, July 17, 1937.

²⁶ Harry C. Hawkins, Chief of the Division of Trade Agreements.

that the policy was wrong in the first place. He said that he would like to be able to report to his Government that we were pleased at this step.

Mr. Dunn stated that we do not have full information on the details of this change in policy, but that Mr. Officer could certainly say that we were pleased, and that we certainly regard it as "a step in the right direction". Mr. Dunn went on to say that we had had a preliminary telegram from our Consul General at Sydney which, according to his recollection, stated that it was proposed, on 36 of the restricted products, to issue licenses immediately without any discrimination against American goods, but that licenses would be continued on 44 products; Mr. Dunn added that the language of the Australian official announcement stated as regards these latter products that licenses would be continued "as at present".

Mr. Officer stated in reply that although his information is not complete on the subject, he felt that he could assure us that there would be no discrimination whatever against the United States in either of these two categories. He said that this was clear as regards the first category from his Government's announcement, and that as regards the second category, pending a consideration of the question of whether increased protection is justified, the Australian Government proposes to continue a license system, but without discrimination against American products. He went on to say that it is his understanding that most of the important products in which we are interested are included in category 1, for which licenses will be issued at once, and that whereas there is reason to suppose that not many licenses will be issued for the second category, there will be no discrimination especially directed at the United States.

At this point Mr. Officer stated that he hoped very much that the United States could shortly see its way clear to remove Australia from the "black list". Mr. Hawkins commented that our attitude in this matter must, under the law, be governed by the facts in the case. He stated that the President suspended our trade agreement rates in the case of Australia²⁷ because he had found as a fact that Australia discriminated against American goods, and that to remove this suspension the President would as a practical matter have to find as a fact that Australia does not discriminate against us.

At this point Mr. Hickerson mentioned the fact that it is his understanding that Australia has signed agreements with Germany, and perhaps other countries, under which she has granted tariff reductions which have not heretofore been extended to American products, and that these rates will have to be taken into account along with

²⁷ See telegram of June 29, 1936, 6 p. m., to the Consul General at Sydney, *Foreign Relations*, 1936, vol. I, p. 763.

the question of the licensing system. Mr. Hawkins said that this was certainly true, and that the President's certification that Australia did not in fact discriminate against American trade would necessarily as a practical matter, have to cover all of our trade and not merely that heretofore covered by the licensing system.

Mr. Officer said that this disturbed him a little bit for the reason that he was not sure that these tariff reductions granted to third countries were not of such a nature that they could only be extended to the United States and other foreign countries in pursuance of some sort of an agreement in that sense. Mr. Hawkins pointed out that ordinarily this was not the case, and that the only instance which he could recall in which this had been the case was in Rumania several years ago, where we had found that they could not, in the absence of some sort of an agreement, extend their lowest tariff rates to us. Mr. Hawkins continued that this situation had been easily and quickly met by an exchange of notes providing reciprocally for the extension of most-favored-nation treatment.²⁸

Mr. Dunn stated to Mr. Officer that we expected to receive further and fuller information on this subject from Sydney, and suggested that Mr. Officer pass on to us any additional information which he received. This Mr. Officer agreed to do.

JOHN HICKERSON

611.4731/250 : Telegram

The Consul General at Sydney (Wilson) to the Secretary of State

SYDNEY [undated].

[Received December 17, 1937—7:30 a. m.]

Moore of Customs Department telephoned me today from Melbourne and asked that I meet him in Canberra on Monday in order that he may go over in some detail the position in which the Government finds itself in the light of present trade policy. I told him I would call on him in Canberra on Monday morning.

WILSON

611.4731/250 : Telegram

The Secretary of State to the Consul General at Sydney (Wilson)

WASHINGTON, December 17, 1937—7 p. m.

Your telegram received Dec. 17th. You may proceed to Canberra as suggested.

²⁸ Signed February 26, 1926, *Foreign Relations*, 1926, vol. II, pp. 898-901. This agreement was denounced by Rumania in 1929, and a provisional commercial agreement was signed on August 20, 1930, *ibid.*, 1930, vol. III, p. 799.

After studying the text of the official statement and the list of unrestricted products²⁹ the following is submitted for your guidance in conversations:

(1) The present Australian move appears to be a step in the right direction but we are unable at this stage to say whether it constitutes removal of discriminations. It does not now appear, as it did after Lindsay's and Officer's first visits, that the Australian Government expects us to take any action before we shall have obtained ample evidence that the granting of licenses on the so-called competitive products is on a non-discriminatory basis. In this connection you are requested to collaborate with Squire in obtaining the kind of evidence which would help us in defining the present treatment of American goods. We realize that this may require some time, and since the Australians are not pressing we would expect your report to be made only after a thorough investigation.

(2) The proposal now appears to be that the Australians desire us to satisfy ourselves in due course that Australia should be restored to the most-favored-nation list of countries. Within a reasonable time after that they would come forward with overtures for the negotiation of a trade agreement, and would expect us to hold informal conversations and perhaps informally exchange lists of desiderata.

(3) Officer stated that it was his belief that the unrestricted list bears in amount of trade a ratio of about 3 to 1 over the competitive list. We have told him that this does not agree with Department of Commerce preliminary analysis which indicates that they are at a ratio of about 1 to 1, each representing about 5 million dollars of trade in the year ended April 30, 1936. Can you and Squire give us a more accurate estimate?

(4) I made no comment to Lindsay when he delivered the official statement. Department officials, however, have recited our position again to Officer about as follows:

(a) The Australian Government has communicated nothing concrete to us and we must therefore await evidence which will enable us to say to the President that there is no longer discrimination.

(b) It would be impossible for us to certify as a fact to the President that there was no discrimination so long as any form of discrimination was practiced. We cited Australia's failure to extend to our products its trade agreements rates and we queried whether Australia was now asking that we extend to them our trade agreements rates when they do not seem prepared to reciprocate.

(c) When Casey inquired last summer whether it would be satisfactory if Australia substituted a system of higher tariffs for the licensing system, Mr. Welles explained to him and Officer that we would

²⁹ On December 15, 21, 22, and 27, 1937, the Counselor of the British Embassy transmitted to the Department detailed lists of unrestricted products.

expect equality of treatment in tariff rates. He added, however, that the question of negotiating with Australia would be made more complicated if Australia should indulge in "tariff padding on items of interest to the United States." See Department's telegram of February 12, 1937, and if you see no objection, or if an opening presents itself, you might say that we have at all times stood ready to conclude a *modus vivendi* with Australia with mutual guarantees of most-favored-nation treatment.

(5) If Australian officials should contend that the United States is now interpreting more strictly in the case of Australia than of some other countries what constitutes discriminatory treatment of American goods, you could use the following explanation: once the President has found that single or combined discriminations are so flagrant as to leave him no alternative than to withdraw most-favored-nation treatment, a reversal of his official declaration cannot be predicated on half measures. In the case of those countries whose discriminations have not been the cause of Presidential action, we are not called upon officially to define their treatment of American goods until that treatment becomes so flagrant as to make Presidential action necessary.

HULL

611.4731/252: Telegram

The Consul General at Sydney (Wilson) to the Secretary of State

SYDNEY, December 23, 1937—5 p. m.
[Received December 23—8:30 a. m.]

Referring to Department's telegram of December 17, 7 p. m. I spent Monday in Canberra and had an interview lasting about an hour with the Prime Minister, spending the rest of the day with Moore.

The Department's telegram of December 17, 7 p. m. presents an interpretation of the present situation vis-à-vis Australia which is at variance with my own and with that given me in Canberra on the occasions of both of my visits (refer to my telegram of December 9, 9 p. m.). The following comments are grouped under the five points of the Department's telegram of December 17, 7 p. m. and should be considered in conjunction therewith.

1. Despite impressions gained by the Department from Lindsay and Officer the Australian Government does ask and expect the Government of the United States: (firstly) to accept what Australia has done and is doing to remove discrimination as sufficient evidence of good faith without further proof; (secondly) to differentiate between "substantial" discrimination and what they contend is now only "technical or actual" discrimination, and to agree to their contention that substantial discrimination no longer exists; and (thirdly) to enter into informal discussions simultaneously with any discussions

taken up by the United States and Great Britain (see last paragraph of my telegram December 9, 9 p. m.).

2. (Refer to your 4 (b) and (c)). According to Moore, Australia is not asking most favored nation tariff treatment from the United States and would not in the absence of a trade agreement accord most favored nation tariff treatment to us (in this connection please refer to Doyle's report dated December 16, 1935 entitled Australian tariff amendments November 29, 1935³⁰).

3. Moore submitted to me a new list of unrestricted items in addition to the 34 items published December 8 and has since added to this list. Situation now is that licenses are being granted freely for all 85 original items except 21 of which number licenses are being granted for 4 on a quota basis. I am working with Squire on an estimate based on the changed situation and will telegraph you further when I am in a position to do so. Moore estimates the percentage of total American trade affected by the restricted items as low as 1.56% which I feel certain will not be corroborated by Squire.

Nevertheless what Moore has done in removing 64 items from the restricted list of 85 together with assurances I have received of intentions to continue along these lines has convinced me that grounds for holding that substantial discrimination exists are in great measure disappearing; furthermore, that the Australian Government is making a determined effort to move the whole licensing system as quickly as possible in accordance with the statement made by Colonel White on December 7.

4. (a) and (b). See the foregoing and, with reference to your phrase "any form of discrimination", note Australia's insistence upon a distinction between "substantial" and "technical or actual" discrimination.

4. (c). Moore gave me his definite assurance that no tariff revision would be undertaken for negotiating purposes, that absolutely no tariff padding was intended or would be done and that the only tariff revision contemplated would be in protection of Australian industry.

5. Lyons' talk was earnest and convincing. He expressed feelings of great friendship towards the President and yourself and assured me definitely that the licensing system was to be abolished as soon as possible but added that commitments made some time ago to Australian industries together with political risks do not allow him at the present time to do more than has been done. He added that if the United States demands more and requires that Australia "toe the line" he must refuse; that although the licensing system will go positively in time irrespective of our action he would then have to rely on "other

³⁰ Not printed.

means" allowable by tariff revision in order to protect the Australian position.

During my conversation with the Prime Minister and with Moore I found occasion to voice my belief that my Government had at all times stood ready to conclude a *modus vivendi* with mutual guarantees of most favored nation treatment. In my talk with the Prime Minister he made the same differentiation that Moore had made to me between most favored nation treatment and most favored nation tariff treatment.

If the Department is not inclined to enter into preliminary discussions with Australia there are certainly technical grounds upon which we could delay doing so. On the other hand if the Government of the United States is inclined to accept in good faith what Australia has already done to abolish discrimination in part and not question her future intentions as expressed to me by the Prime Minister and Moore and allow the Australian Government to send representatives to Washington to engage in informal discussions, we have unquestionably an opportunity to create and perhaps maintain considerable good will between the two countries. The Department's decision will be made of course in the fuller light of facts unknown to me but I cannot help feeling that if we now stand upon strict observance of the letter rather than the principle of our policy of refusing to negotiate as long as any form of discrimination exists, both the Government and the public will be convinced that their good faith has been questioned resulting in a sense of humiliation and hurt and the swing of the pendulum away from the United States will be far and very slow in returning.

On Tuesday the Sydney *Morning Herald* gave inspired and inaccurate publicity to my trip by seeing in it "the first direct step towards the negotiation of a trade agreement between the United States of America and Australia". This I regard as mere face saving on the part of those responsible for a policy which is now generally understood to be discredited.

WILSON

611.4731/253: Telegram

The Consul General at Sydney (Wilson) to the Secretary of State

SYDNEY, December 29, 1937—4 p. m.
[Received December 29—8:55 a. m.]

Referring to section 3 of my cablegram of December 23. Using as a basis import statistics of 1935-36 Squire estimates that 5.63 per cent of our total trade is still being kept out. In other language 35.6 per cent of goods previously prohibited are still prohibited after giving the Commonwealth Government full credit for quotas on prohibited items.

WILSON

CANADA

INFORMAL DISCUSSIONS RESPECTING THE POSSIBLE NEGOTIATION OF A NEW TRADE AGREEMENT BETWEEN THE UNITED STATES AND CANADA

611.4231/2025

*The Canadian Prime Minister (King) to the American Minister in
Canada (Armour)*¹

OTTAWA, August 7, 1937.

DEAR MR. ARMOUR: I have been considering with my colleagues in Council the question of the possible extension of the Trade Agreement between the United States and Canada signed on the 15th November, 1935.² As you will recall, it was the conviction of the Government of the United States as well as of our Government, at the time the Agreement was concluded, that the advantage to both countries of the increase of trade which would follow the coming into force of its provisions would become so apparent that the extension of the reciprocal trade provisions between the United States and Canada might well be considered at a comparatively early date.

Having been aware of the fact that the negotiation of a Trade Agreement between the United Kingdom and the United States was under consideration,³ the Canadian Government has hesitated to suggest consideration of an extension of the United States-Canada Agreement pending discussions between the United Kingdom and the United States, lest some embarrassment might thereby be occasioned either to the United Kingdom or to the United States Government. Our Government, however, has now been informed by the Government of the United Kingdom that it considers discussion of the feasibility of such an extension would facilitate rather than interfere with its own discussions, as the provisions of such an extension might have a direct bearing on the negotiation of an Agreement between the United Kingdom and the United States.

Unless a similar view were held by the Government of the United States, our Government would not wish to raise the question of pos-

¹ Copy transmitted to the Department by the Minister in Canada in a letter to the Assistant Chief of the Division of European Affairs, August 8; received August 11.

² Department of State Executive Agreement Series No. 91 or 49 Stat. 3960; for correspondence, see *Foreign Relations*, 1935, vol. II, pp. 18 ff.

³ See pp. 1 ff.

sible extension of the United States-Canada Agreement at this time, or indeed until such time as the Government of the United States might be desirous of having the matter considered. If, however, the view of the Government of the United States as to the appropriateness of having concurrent consideration given Agreements between the United Kingdom and the United States and Canada and the United States were similar to that of the Government of the United Kingdom, the Canadian Government would be prepared to have exploratory conversations between officials of the two Governments commence immediately with a view to ascertaining in how far it might serve the interests of both Governments to proceed with negotiations. Our Government would be prepared to have these preliminary and confidential discussions take place either at Washington or at Ottawa or at both places as might suit the convenience of the Government of the United States.

I wish to make it clear that in suggesting consideration of this course, the Canadian Government have very much in mind the urgent necessity, which the Secretary of State of the United States has repeatedly emphasized, of widening international trade, as the most constructive and enduring method of ensuring world peace. They also believe that it would be the most effective and speedy means of giving consideration to the important questions affecting Canadian trade which have arisen in the discussions between the United Kingdom and the United States.

Yours sincerely,

W. L. MACKENZIE KING

611.4231/2025

The Secretary of State to the Minister in Canada (Armour)

No. 937

WASHINGTON, August 12, 1937.

SIR: I refer to your letter of August 8, 1937, to Mr. Hickerson⁴ enclosing a memorandum of your conversation on the preceding day with the Prime Minister, and enclosing a copy of a letter dated August 7, 1937, from the Prime Minister to you in which he proposes that there be informal and confidential conversations of an exploratory nature between officials of our two Governments regarding the possibility of a reciprocal trade agreement between the United States and Canada.

Unless you wish to suggest changes, in which event you will telephone the Department, you are requested to address a confidential letter to Mr. King along the following lines:

"I acknowledge the receipt of your letter to me of August 7, 1937, in regard to the trade relations between the United States and Canada.

⁴ John D. Hickerson, Assistant Chief, Division of European Affairs. Letter not printed.

I did not fail to bring your letter immediately to the attention of the appropriate authorities of my Government, who have given it careful consideration.

"The United States and Canada share in common the view that the reduction of excessive trade barriers is essential to the restoration of general prosperity and the preservation of world peace. They also share the view that the need for action in this direction is urgent. It is highly important, moreover, that they cooperate closely in promoting these ends, and my Government therefore welcomes your suggestion for consultation between them.

"My Government had hoped that even before the present time the cumulative effect of a world-wide trade agreement program, participated in by most of the leading trading countries of the world, would be such that it would be possible to conclude a more comprehensive trade agreement between the United States and Canada. The inability thus far, however, of the American Government to conclude more agreements in which the preponderance of reductions on the part of the United States would be on industrial products and the majority of reductions obtained for American products from the other country would be on primary products has tended to create unusual difficulties in the way of further negotiations at this time with countries like Canada, where, it is normally to be expected, a preponderance of the concessions expected of the United States would be on primary products. These difficulties have not yet been overcome.

"Since the broad objectives of our Governments are the same, my Government feels that full and free consultation between them cannot help but serve a useful purpose. It, therefore, would welcome informal and confidential discussions between American and Canadian officials, without prior commitment on the part of either Government, and I am authorized to discuss the necessary arrangements for such conversations to take place immediately."

While normally we would be prepared to have such informal and confidential conversations with the Canadian officials take place either in Washington or Ottawa, it is believed that there would be less likelihood of misleading publicity if the conversations should take place in Washington. It is hoped that Doctor Skelton, the Under Secretary of State for External Affairs, and Mr. Norman Robertson, of the Department of External Affairs, will be designated by the Canadian Government to take part in these conversations, rather than technical experts prepared to discuss individual commodities, because of our view that the conversations must necessarily be of a very general character.

I am somewhat concerned at some of the Prime Minister's remarks to you in your conversation with him on August 7.⁵ I feel that he does not understand fully our situation and it is my hope that the proposed informal and confidential conversations between officials of the two Governments will afford an opportunity for a full and frank exchange of views, which should dispel any existing misunder-

⁵ Memorandum of conversation not printed.

standing and go a considerable distance towards preventing further ones. I desire again to commend you for the able manner in which you presented our views to the Prime Minister in your conversation with him.

It has occurred to me that it might be helpful to give you some further background information for use orally in your discretion on any suitable occasion in future conversations with Canadian officials, and the following paragraphs have been written with that in view:

The American Government has visualized its trade agreement program as a broad frontal attack upon trade barriers which have stifled world trade and which will plunge the world into another depression unless drastic steps are taken to eliminate them. We have continued to hope that since practically without exception every important nation in the world recognizes the soundness of the systematic reduction of trade barriers, other countries would feel impelled to undertake similar programs, the cumulative effect of which would greatly hasten the restoration of world trade and contribute materially to the all important end of preserving world peace.

It has been our view that such a program, undertaken by a large number of important governments on broad lines, would not only contribute to these ends but would make it possible for the United States to conclude trade agreements with other countries with which it has not been found feasible to negotiate thus far, and to negotiate on a broader front, along more comprehensive lines, with countries with which trade agreements have already been signed. In this spirit, we have regarded the trade agreement of November 15, 1935, between the United States and Canada, important though it is within itself, as a first step toward a more comprehensive agreement between our two countries.

As you know, we have, in pursuance of our program, signed sixteen trade agreements involving reductions in our tariff rates on more than five hundred products. Since the signature of our trade agreement with Canada we have actively pursued our trade agreement program and have signed nine agreements with other countries in which the American import duties were reduced on approximately two hundred twenty-five products, in addition to a large number of commitments to retain products on the free list or to bind the existing rates of duty. All of these tariff benefits have been generalized to all countries which extend equality of treatment to American trade.

Throughout this period our Government has resisted, and successfully resisted, the pressure by powerful influences to increase import duties. Our Government has, moreover, sacrificed many opportunities for immediate trade gains through purely bilateral agreements, and has negotiated no trade agreement in which it undertook to take advantage of its surplus of imports from any country in such

a manner as to promote the principles of bilateral balancing of trade or payments between nations. We have made these sacrifices for the sake of the broad objectives of our program and because we are convinced that the principle of bilateral balancing is utterly unsound, inimical to a prosperous world trade, and thus dangerous to the cause of world peace. We mention these matters to demonstrate that our Government has, regardless of the action of other governments, used every force at its command not only to promote the continued systematic reduction of trade barriers but has, in fact, assumed a position of world leadership in such a program.

We should be less than frank if we failed to state that in our view the response of the principal trading nations of the world has not been all that had been expected. The failure of other nations to follow similar policies and to assume their share in such a broad attack on trade barriers has not only been the source of great disappointment to us but has resulted in special difficulties for us in the matter of pursuing as rapidly as we would desire our own objectives. We need hardly say that this failure on the part of other important trading nations has greatly intensified our domestic difficulties, whereas their fullest cooperation should of course make it increasingly easy for us in this movement.

We had hoped that even before the present time the cumulative effect of a world-wide trade agreement program, participated in by most of the leading countries of the world, would be such that it would have been possible to conclude a more comprehensive trade agreement with Canada in addition to new agreements with other countries. The inability thus far of our Government to conclude more agreements in which most of the reductions on the part of the United States would be on industrial products and the preponderance of the reductions obtained would be on American primary products has created unusual difficulties in the way of further negotiations at this time with countries like Canada where, it is to be expected, further reductions would be expected of the United States on primary products. These difficulties have not yet been overcome.

Very truly yours,

CORDELL HULL

611.4231/2047

The Minister in Canada (Armour) to the Secretary of State

No. 1662

OTTAWA, October 14, 1937.

[Received October 18.]

SIR: I have the honor to inform the Department that the Prime Minister called at the office of the Legation this morning and informed

me that he felt that their preliminary studies on trade agreement matters had now progressed to a point where they were in a position to send their representatives down to Washington to open informal conversations with our Government. Mr. King said that he expected that they would be prepared to leave by the end of the week, but that Mr. Robertson would discuss details with us.

Mr. King was in a more optimistic and talkative mood than I have seen him for some time. He remarked emphatically that it was his earnest desire to do everything in his Government's power to facilitate an agreement between the United States and the United Kingdom. His Government had, of course, practical difficulties to consider but he knew that we appreciated this, and if it would be possible to extend our own trade agreement sufficiently to include certain commodities of substantial interest he felt sure that he would be able to meet any criticism that might be levelled at his Government by the Opposition on the ground of having given up privileges Canada now enjoyed in the United Kingdom market.

Mr. King stated that at the same time he thought he understood our position—namely, that we did not wish to be forced to pay twice for what we got from the British; to compensate the British for what they might give us and also to compensate Canada for what they might give up in the way of preferences in the United Kingdom market. For this reason he thought it important that the British should be made to agree to give up or revise certain of the margins of preference they now enjoyed in Canada, and should make their contribution to the common cause.

[The rest of the conversation with Mr. Mackenzie King concerned other matters.]

Mr. King's visit was followed shortly after by one from Mr. Norman Robertson, of the Department of External Affairs, who told me that he, Mr. Dana Wilgress, Director of Commercial Intelligence Service, Department of Trade and Commerce, and Mr. Hector McKinnon, Commissioner of Tariff, were planning to leave Ottawa next Sunday, October 17th, by the "Washingtonian", scheduled to arrive in Washington at 12:35 p. m. Monday, October 18th. Mr. Robertson confirmed what Mr. King had told me, namely, that their preliminary studies had progressed to a point which would enable them to open informal discussions with us.

On the subject of the margins of preference enjoyed by the British in Canada, Mr. Robertson said that from the Legation he was going over to discuss this question with the British High Commissioner. He indicated that while the British Government had informed them that they would be prepared to consider sympathetically any requests that Canada might make for revisions in these margins of preference

until they had had an opportunity to discuss with us possible revisions in our own trade agreement and knew just what further concessions we would wish they would not know definitely what revisions in the British margin of preference would have to be made.

Mr. Robertson informed me later that he had been in communication with Mr. Merchant Mahoney of the Canadian Legation at Washington, and that while office space would be provided for him and his colleagues at the Legation they would actually reside at the Wardman Park Hotel. Mr. Robertson appeared to feel that a four or five day stay in Washington would be all that would be required.

Respectfully yours,

NORMAN ARMOUR

611.4231/2066a : Telegram

The Secretary of State to the Minister in Canada (Armour)

WASHINGTON, November 17, 1937—11 a. m.

114. On November 5, last, the United Kingdom Government submitted further proposals⁶ respecting the concessions to be granted in a trade agreement on the products in our essential list. These proposals constitute a substantial improvement over those previously made. We have today replied that while the concessions indicated fall considerably short of our requests and while a substantial improvement is essential, we are prepared to make public announcement of contemplated negotiations and to leave for the definitive negotiations the final determination of the concessions to be granted. We stated further that we are prepared to announce contemplated negotiations on the basis indicated on the assumption that the United Kingdom will obtain the necessary concurrence of the Empire Governments. We have also stated that we will advise the Government of Canada of our willingness to announce if agreeable to the Canadian Government, contemplated negotiations for a new or supplementary agreement with that country not later than 2 weeks after the announcement is made with respect to the United Kingdom. Negotiations with other British Dominions at this time are not at present contemplated. Copies of the British proposals and our reply are being mailed to you.

Please inform the Canadian Government immediately that if negotiations with the United Kingdom are announced this Government is prepared, not later than 2 weeks after such announcement to make public announcement of a contemplated new or supplementary agreement with Canada, and inquire whether this meets with the approval of the Canadian Government.

You should advise the appropriate officials informally that the pro-

⁶ *Ante*, p. 78.

posals recently made by Robertson and his colleagues⁷ are being carefully studied, but that the studies have not as yet reached the stage of definite recommendations for consideration by the appropriate authorities of this Government. As we pointed out orally to Robertson and his associates, some of the products mentioned by them present serious problems for us. You may say, however, that we are prepared to enter upon negotiations with an open mind with the view of negotiating upon as broad and comprehensive a basis as possible. If it is possible to reach satisfactory agreements with the United Kingdom and Canada, we would be agreeable to signing both agreements the same day, if practicable.

You will note that the foregoing represents a marked change in the attitude which we have in the past maintained. We have been forced to the conclusion that, if we are to negotiate trade agreements with either the United Kingdom or Canada within the next year, it is essential that announcement thereof be made at an early date and that negotiations be concluded within the next 4 or 5 months.

We hope to be able to make an announcement of intention to negotiate with the United Kingdom in the next few days, probably by Monday.

HULL

611.4231/2067 : Telegram

The Minister in Canada (Armour) to the Secretary of State

OTTAWA, November 18, 1937—5 p. m.

[Received 6:20 p.m.]

103. Department's telegram No. 114, November 17, 11 a. m. The following statement to the press will be given out at 6:00 p. m. by the Prime Minister for publication in the morning newspapers of November 19:

"The Prime Minister announced today that negotiations are contemplated for the conclusion of a trade agreement between Canada and the United States of America. A similar statement is being made public in Washington by the Secretary of State. This announcement marks a definite and well recognized step in United States procedure in the negotiation of trade agreements.

In making this announcement, the Prime Minister said: 'In August last, the Canadian Government approached the Government of the United States with a view to extending and revising the trade agreement concluded between them in 1935. Since then, exploratory conversations have been proceeding which have resulted in today's announcement regarding the negotiation of a new agreement which will, we hope, be on as broad and comprehensive a basis as possible.' "

ARMOUR

⁷No record of these proposals has been found in Department files.

[For text of preliminary announcement of the contemplated trade agreement negotiations with Canada, issued by the Department of State November 19, 1937, see Department of State, *Press Releases*, November 20, 1937, page 388.]

DISCUSSIONS RESPECTING THE ST. LAWRENCE WATERWAY
PROJECT ^{1a}

711.42157SA29/1436

The Minister in Canada (Armour) to the Secretary of State

No. 1104

OTTAWA, January 5, 1937.

[Received January 8.]

SIR: Referring to the Legation's despatch No. 1058 of December 7, 1936,⁸ dealing with discussions regarding the St. Lawrence Waterway Treaty and Niagara Falls Convention, I have the honor to inform the Department that I had occasion today to call on Dr. Skelton⁹ and took the opportunity to speak to him regarding the progress, if any, made by the Canadian Government in connection with this question.

I reminded Dr. Skelton that our Congress was convening today and that, as he knew, this was one of the questions in which the President was most interested. I said that we might be over optimistic, but it was hoped very much to be able to have some form of treaty covering the whole St. Lawrence waterway question in form to present to the United States Congress during the present session. However, as Mr. Walsh¹⁰ and his associates had explained to Mr. King¹¹ and his colleagues, before doing this we naturally wished to know the Canadian Government's views and, if possible, to work out a document in collaboration with them which could reasonably be hoped to meet with the approval of the Canadians as well as our own Senate. Time was passing, however,—a month had already elapsed since our talks with Mr. King on December 4th last—and while we would not wish to have him or Mr. King feel that we were pressing them I thought that he might be willing to let me know just what progress was being made.

Dr. Skelton assured me that he and Mr. King appreciated the situation and wished to collaborate in every way possible. He told me that certain officials from Toronto were arriving in Ottawa on Thursday, January 7th, for a private talk on this question with Mr. King. Mr. King hoped that after this talk he would know a little better just where they stood. In the meantime, Dr. Skelton would take the occa-

^{1a} For previous correspondence, see *Foreign Relations*, 1936, vol. I, pp. 834 ff.

⁸ *Ibid.*, p. 845.

⁹ Canadian Under Secretary of State for External Affairs.

¹⁰ Frank P. Walsh, Power Attorney of the State of New York.

¹¹ Prime Minister of Canada.

sion to explain once more to Mr. King that the question was an urgent one and to see what could be done to expedite matters.

Mr. King, he said, realized that assurances had been given by the President to have this matter dealt with during this year, and he felt sure that he would do everything he could to be of assistance. Dr. Skelton added, however, that in all frankness the present moment was not a very propitious one to press matters, so far as Ontario was concerned. (He undoubtedly had reference to the three cornered altercation at present going on in Toronto as a result of the repudiation by the Ontario Government of the Hydro Commissions contracts with the private power companies into which the newly organized Toronto *Globe and Mail* has injected itself.) However, the matter had to be tackled sooner or later, and the sooner it was done, Dr. Skelton felt, the better.

In the meantime, press despatches from Washington under date of December 25th and 26th last, carrying a statement by Mr. Frank P. Walsh with regard to the St. Lawrence waterway question, have been given prominence in the Canadian press.

[Here follows a lengthy report on Canadian press comment.]

In spite of these press attacks and the attitude of certain elements in the Provinces of Ontario and Quebec, I still feel that there is no reason for discouragement, provided Mr. King and the Dominion Government can be persuaded to take a firm stand in favor of finding some solution acceptable to both sides. The visit of Mr. Walsh and his associates and the knowledge of the President's interest in this whole question have undoubtedly been most helpful in this respect, and I am hopeful that as time goes on Mr. King will be able to answer the objections of Ontario, even if necessary at the expense of having the Dominion Government bear a greater burden of the cost so far as Canada is concerned.

Respectfully yours,

NORMAN ARMOUR

711.42157SA29/1447

The Minister in Canada (Armour) to the Secretary of State

No. 1212

OTTAWA, March 2, 1937.

[Received March 4.]

SIR: I have the honor to refer to the Legation's confidential despatch No. 1104 of January 5, 1937, and previous correspondence concerning the St. Lawrence-Niagara Falls Treaty, and to report that I had a conversation this morning with Dr. Skelton on this subject. Dr. Skelton said that the talks with the Ontario officials had taken place last week as arranged. Mr. Thomas B. McQuesten, Minister of High-

ways for the Province of Ontario, and Mr. T. Stewart Lyon, Chairman of the Ontario Hydro Electric Commission, were the two officials who had been sent by Mr. Hepburn¹² for the purpose.

Dr. Skelton said that he felt that distinct progress had been made in that these officials, and apparently Hepburn himself, were very much more favorably inclined toward the whole St. Lawrence-Niagara Falls Treaty than had been the case a month ago. They had come to realize that while the power available from the private companies would tie them over for two or three years, by that time they would require the extra power furnished by Niagara Falls and the Ogoki. And a few years later, say within eight or ten years, they would be ready to use the power from the St. Lawrence development.

Dr. Skelton did not wish to be over-optimistic. He expected that Ontario would still wish to indulge in a certain amount of "horse trading". They felt that New York State had been able to secure better terms from our Government than the Province of Ontario from the Dominion Government, and Dr. Skelton was inclined to think that perhaps there was something in their argument. Also, there were still certain members of Mr. King's Cabinet who were not entirely favorable to the plan, particularly those interested in the financial and transportation angles and certain of the members of the Cabinet who feared the French-Canadian reaction in the Province of Quebec. As a matter of fact Mr. King was, as stated, at that very moment taking up the question with the Government in Council meeting.

As to the possibilities of being able to put the treaty through at this session of Parliament he was somewhat fearful. First of all they would have to work out the details of the treaty. And, also, if a new agreement were to be made by the present Government with the Province of Ontario to replace the Bennett-Henry agreement, covering the financial division, this would take time. Dr. Skelton had explained to the members of the Government the urgency from the American point of view; that is to say that we felt it almost essential to present a treaty to our Senate during the present session of Congress, even though it might be too late to secure ratification by the Canadian Parliament during this session. Mr. King was planning to sail for England about April 20th and that left roughly six weeks only in which to deal with the matter. However, they would do their best, but it would require a good deal of pressure on the various members of the Government so fully occupied with other questions. In order to expedite matters Dr. Skelton had suggested to the Prime Minister that he appoint a subcommittee of the Cabinet to deal with the St. Lawrence question. If Mr. King acted on this suggestion he thought that the Ministers who would presumably be chosen would be the Min-

¹² Mitchell F. Hepburn, Premier of Ontario.

isters of Transport, Public Works and possibly Finance. There will also probably have to be a representative of the French-Canadian group. (Mr. Cardin, the Minister of Public Works, is a French-Canadian and would, it would seem, presumably meet this requirement.)

Dr. Skelton told me that they had been very much interested in studying the draft treaty which I had brought up with me from Washington.¹³ He said that they were all "full of admiration for the fine piece of drafting represented by the new treaty". In general, he felt that it offered a very good basis for discussion. There were, it was true, certain points with which they were not quite in agreement, notably with regard to the powers of the Commission, but he felt that the question had been dealt with very fairly and repeated that he felt the draft constituted an excellent beginning. I shall not fail to report to the Department any further developments, but I felt it important that this despatch should be in the Department's hands, if possible, before the arrival of the Prime Minister. In this connection I wish to call the Department's attention to a despatch from the Consulate General in Toronto dated February 24th last, on the subject of "The Ontario Government and the Hydro Electric Power Issue: Attitude on St. Lawrence Project", two copies of which I note were forwarded to the Department,^{13a} one for the files of the Commercial Office and the other for the Division of Western European Affairs.

This despatch is of particular interest not only as bringing out certain new facts but as confirming points discussed during the recent conversations in Washington between officials of the Department, the Federal Power Commission and the New York Power Authority, at which I was present. I have in mind particularly a conversation which an official of our Federal Power Commission had on February 19th last with Dr. T. H. Hogg, Chief Hydraulic Engineer of the Hydro Electric Power Commission of Ontario, at the office of the Power Authority in New York, as well as the conversations that took place on January 30th in New York between officials of the New York State Authority and the Ontario Government. The Toronto despatch also bears out certain remarks Dr. Skelton made to me some days ago regarding Mr. Hepburn's change in attitude, which he attributed perhaps more to Mr. Hepburn's desire to be independent of the Beauharnois Company than prompted by the more constructive and statesmanlike motive to place the Province of Ontario in a position to meet the power shortage which those competent to judge felt was bound to come unless measures were taken along the lines of the St. Lawrence development.

¹³ Not printed.

^{13a} Not found in Department files.

Dr. Skelton confirmed what I had already heard from the Prime Minister's Secretary, that Mr. King in responding to the President's invitation to come to Washington had decided to proceed via Toronto, and for that purpose would leave Ottawa tomorrow, Wednesday night, arriving in Toronto early Thursday morning and spend the day there, leaving the same night for Washington. While Dr. Skelton did not say so, I take it for granted that one of the objects the Prime Minister has in mind in going to Toronto is to talk over this whole question with Mr. Hepburn and his colleagues. Dr. Skelton stated that the question is being dealt with in Cabinet Council today, which will enable Mr. King to present to Mr. Hepburn the considered view of the Dominion Government. The talks with Mr. McQuesten and Mr. Lyon last week presumably put Mr. King up to date on the attitude of Mr. Hepburn, and it is therefore safe to assume that when Mr. King reaches Washington he will be in a position to give the President and the Secretary a far more definite statement with regard to the Canadian Government's position than anything we have hitherto had since the question was revived.¹⁴

Respectfully yours,

NORMAN ARMOUR

711.42157SA29/1480a

The Secretary of State to the Minister in Canada (Armour)

No. 1016

WASHINGTON, October 25, 1937.

SIR: I refer to your despatch no. 1104 of January 5, 1937 and to other correspondence regarding the proposed St. Lawrence Waterway project.

You are requested at your earliest convenience to seek an interview with the Prime Minister and request of him an indication of the steps which he is now prepared to take looking towards the furtherance of this project.

In your conversation with Mr. King, you may refer to the talks which he had with the President on the subject almost a year ago and emphasize the fact that although this Government was eager to negotiate a new treaty on the basis of the draft shown informally to the Canadian authorities last winter, it did not, in deference to Mr. King's wishes, press the matter pending the outcome of the provincial election in Ontario. The election was held on October 6, 1937, and I believe that having for many months deferred to Mr. King's expressed wish, this Government is now entitled to look forward to

¹⁴No record of discussions of this project by Mr. Mackenzie King while in Washington has been found in Department files.

his active cooperation in pushing the matter to that definite conclusion which promises such material benefits to the people of both countries.

Very truly yours,

CORDELL HULL

711.42157SA29/1482

The Minister in Canada (Armour) to the Secretary of State

No. 1697

OTTAWA, November 2, 1937.

[Received November 5.]

SIR: With further reference to the Department's strictly confidential instruction No. 1016 of October 25, 1937, and the Legation's despatch in reply thereto No. 1695 of November 1st last¹⁵ regarding the proposed St. Lawrence waterway project, I have the honor to inform the Department that I went to see the Prime Minister by appointment late yesterday afternoon and had almost an hour's talk largely devoted to this subject.

I opened the conversation by referring to the talks that the Prime Minister had with the President on the St. Lawrence question last March and refreshed his memory regarding the draft treaty which had been submitted informally to the Canadian Government last winter, reminding Mr. King that in deference to his wishes as expressed to the President we had not pressed this matter since the Washington talk, awaiting the outcome of the Provincial election in Ontario. Now that almost a month had elapsed since that election had been held we felt justified in reviving a discussion of the question and hoped that we might count on his full cooperation.

Mr. King said that it was quite true that in his talk with Premier Hepburn on his way down to Washington last March, Hepburn had suggested that he would prefer to defer further discussion of the St. Lawrence until after the Ontario elections which he then intimated would probably be held in the autumn. To be sure, Mr. Hepburn had not made any promise as to what his attitude would be after the elections but had made it plain that it would be useless to expect him to discuss this matter at any rate until after the elections were behind him. Mr. King had hoped that the situation would have been better after the elections than it had been last spring but the contrary appeared to be the case as Mr. Hepburn had lost no opportunity during the election campaign to register his opposition to the whole St. Lawrence project.

I told Mr. King that while this might be true, it seemed to me possibly a significant fact that, at any rate in his earlier speeches delivered before the heat of the campaign, Mr. Hepburn had taken

¹⁵ Despatch No. 1695 not printed.

pains to state that while he did not believe that Ontario was faced with a power shortage, if his competent engineers could show him that such a shortage did exist then he would be willing to reconsider the matter. To be sure, during the last weeks of the campaign, when Mr. Rowe¹⁶ had made the power question a primary campaign issue, Mr. Hepburn had denied without qualification that any power shortage would exist, but in doing so he had justified his position by pointing to certain power developments which he had in mind. These developments, however, I said, or rather the use of any water resulting from them, would not be possible, as Mr. Hepburn must know, under the existing treaty between Canada and the United States¹⁷ without the consent of both parties. In our early discussions Dr. Skelton had told me that he thought perhaps the strongest argument the Canadian Government would have in bringing Mr. Hepburn to terms was the fact that he would be unable to make use of the extra Niagara power resulting from the Ogoki and Long Lac developments unless the consent of the United States was secured and that of course this consent would not be forthcoming for this part of the project only: that Hepburn would have to accept the whole plan or get nothing.

I went on to call Mr. King's attention to the announcement which had appeared that morning of the resignation of Mr. T. Stewart Lyon as Chairman of the Ontario Hydro Commission and the appointment of Dr. Thomas H. Hogg, Chief Engineer, as his successor. Mr. Lyon had, I remarked, made a speech recently at Lindsay, Ontario, in which he was reported in the press to have expressed himself as opposed to the St. Lawrence power project. The fact that three weeks after this speech had been delivered his resignation should have been accepted and a competent engineer appointed in his place might, it seemed to me, have some significance, particularly when, in addition to Dr. Hogg, Mr. Hepburn had appointed the Honorable William Houck, Member of the Legislature for Niagara Falls, as Vice Chairman of the Commission. The possible significance of these changes, it seemed to me, remembering the talks I had had with Dr. Skelton early in the year, lay in the fact that Dr. Skelton had told me that the competent engineers of the Hydro Commission all seemed to be convinced that Ontario faced a power shortage. This being the case, the appointment by Mr. Hepburn of the Chief Engineer of the Hydro as Chairman of the Commission might, I thought, indicate that he was prepared to admit that such shortage existed and would now perhaps be prepared to discuss methods by which this shortage could be met. The significance of the appointment of Mr. Houck, I thought, lay in the fact that, coming from Niagara Falls, he would presumably be interested in se-

¹⁶ Earle Rowe, leader of Conservative Party opposing Mr. Hepburn's reelection in Ontario.

¹⁷ Apparently the unperfected treaty signed July 18, 1932, *Foreign Relations*, 1932, vol. II, p. 69.

curing further developments in the Niagara Falls section which would, as already stated, not be possible without acceptance of a new treaty.

Mr. King, who admitted that he had been very much preoccupied with other matters recently and had not had an opportunity to study these new developments, seemed to be somewhat impressed by the logic of this argument, and in any case said that he wished to study the matter. In particular he wished to see Dr. Skelton, who was, of course, the one most familiar with this whole St. Lawrence question, having handled it from the beginning. Dr. Skelton would, he felt sure, be the one best able to interpret these changes.

Mr. King wondered whether there would be anything to be gained by having the New York State Power Authority, either through Mr. Frank Walsh or one of his associates, get in touch with Hepburn and the Ontario Hydro Commission direct. He was, he said, only thinking out loud but perhaps if the need for further power by the State of New York could be brought home to Mr. Hepburn by the New York authorities he might be more disposed to move.

I told Mr. King that while I had no authority to speak on this point I doubted whether, at this point at any rate, it would be advisable to cloud the issue by transferring the conversations from talks between the two governments to discussions between New York State and the Province of Ontario. Possibly at some later date, although on this point again I hesitated to offer an opinion, direct discussions between the New York and Ontario authorities might be advisable. At this time I felt that it might be better to confine the discussions, at any rate as between the two countries, to talks between the two governments. Mr. King agreed and said that it had been merely an idea that had come to him on the spur of the moment.

I asked Mr. King whether he did not agree with me that possibly the strongest argument that could be used with Mr. Hepburn would be that so far as the United States was concerned, the power was badly needed and that this being the case the Government of Ontario would not presumably wish to be the means of preventing the obtainment of such power by the United States. He must realize that had the St. Lawrence basin lain within the territorial jurisdiction of the United States this power development would undoubtedly have been undertaken some time ago, just as had been the case in the Tennessee Valley development and the Bonneville Dam, to mention only two. Of course, had the Province of Ontario not been able to use such power when made available it would perhaps have been asking a good deal of them to agree to pay their share of the expense of the development merely because the power was needed in the United States. But this was not the case: competent engineers of the Hydro Commission, and even members of Mr. Hepburn's own Cabinet, Dr. Skelton told me

last spring, admitted that Ontario would need the power, particularly when it was borne in mind that it would probably be close to seven years after work was started before the power would be available. (The Department will recollect that Dr. Skelton told me early last spring that in talks with Mr. McQuesten, Minister of Roads and Highways in Mr. Hepburn's Cabinet, and with Mr. Roebuck, formerly Attorney General of Ontario, both of these officials had finally rallied to the viewpoint that Ontario faced a power shortage and that the St. Lawrence development would probably be the best way ultimately of meeting it, particularly since, if the increase in demand for power continued as at present, at the end of seven years even the reserve powers available from the private companies would not prove sufficient to meet the needs of the Province.)

In conclusion, Mr. King told me that he planned to see Dr. Skelton as soon as possible and that he thought that it would be best to have another talk with me after his talk with Dr. Skelton before taking up the matter with Mr. Hepburn or the Ontario authorities.

Respectfully yours,

NORMAN ARMOUR

711.421578A29/1484 : Telegram

The Minister in Canada (Armour) to the Secretary of State

OTTAWA, November 27, 1937—6 p. m.

[Received 9:34 p. m.]

125. The Prime Minister informs me he received a letter this morning from Hepburn in which the latter reaffirms his opposition to the St. Lawrence project. He bases his opposition on competition with the railways whose earnings are already insufficient, and the fact that the power from this source will not be required: that he has other sources from which to meet increasing demands. Hepburn said that in the meantime, however, he had no objection to having the Dominion and Provincial experts meet to talk over the power situation as suggested by Mr. King. Hepburn is coming to Ottawa November 29 to see King on other matters, and the latter informs me he may have something more to report after this talk.

The Prime Minister said Hepburn's letter also stated that he is in negotiation with Beauharnois and hopes for a favorable settlement shortly.¹⁸ King said that while Hepburn may be over-optimistic, the latter undoubtedly feels that if successful this will give him all the power he requires to meet present or future efflux.

ARMOUR

¹⁸ In telegram No. 128, December 11, 1937, noon, the Minister in Canada reported that a new contract between the Ontario Hydro Electric Power Commission and the Beauharnois Co. had been signed (842.6463/258).

NEGOTIATIONS FOR THE CONCLUSION OF AN ADDENDUM TO THE
TAX CONVENTION OF DECEMBER 30, 1936¹⁹

811.512342 Double/49

Memorandum by the Secretary of State

[WASHINGTON,] May 10, 1937.

The Minister of Canada²⁰ came in by his own appointment, his ostensible purpose being to hand me a letter with regard to the visit of Lord and Lady Tweedsmuir to this country.²¹ (A separate memorandum has been made of this part of the conversation.)²²

The Minister then said he had no other business unless he should refer to the pending tax convention between the United States and Canada now before the Senate for ratification. He soon made it clear that his Government was definitely interested in the early ratification of this convention. I said to him that it had not been in my mind at any time to take steps which would be materially disappointing to the Canadian Government in view of the fact that the treaty had been negotiated and sent to the Senate by the President for ratification during my visit to South America and prior to my return; that for a time after my return I was hopelessly overwhelmed with emergency problems of a major character; that without unreasonable delay I had selected a committee of experts to make a careful study of the tax relationship between the two countries with a view to ascertaining whether tax arrangements on a broader and what to the outside world would appear to be a less discriminatory basis might be worked out and carried into effect by mutual agreement; that this study had now progressed virtually to a conclusion and that probably no other alternative suggestion could satisfactorily be made at present; that in any event there was no purpose unduly to delay action on the convention pending in the Senate, and that I should within a few days hope to communicate further with the Canadian Minister. I then added it was natural that the matter of chief concern would be the psychology created by this tax proposal just at the stage when this government and others were making earnest appeals to governments everywhere to abandon discriminatory practices and methods and as quickly as possible get on a basis of equality of treatment towards each other; that in any event it was my disposition not to cease efforts until every

¹⁹ For text of convention, see Department of State Treaty Series No. 920, or 50 Stat. 1399; for previous correspondence, see *Foreign Relations*, 1936, vol. I, pp. 790 ff.

²⁰ Sir Herbert Marler.

²¹ The Governor General of Canada and Lady Tweedsmuir visited the United States March 30–April 1, 1937; see Department of State, *Press Releases*, April 3, 1937, p. 193.

²² Not printed.

discriminatory practice of my government, including that with Cuba, had been abolished and abandoned; that this was the only way we could successfully urge other governments to take these steps so necessary and indispensable to the restoration of international trade; that employment was the one great firm basis of economic well-being, military disarmament, and peace. The Minister concurred in the foregoing but still held out for this tax ratification. He also referred to the earnest fight he and others were making for a loosening up of British Empire economic policies, adding that Sir Edward Beatty²³ had gone away from Washington entirely favorable to our viewpoint, although belonging to the reactionary group in Canada.

C[ORDELL] H[ULL]

811.512342 Double/55a : Telegram

The Acting Secretary of State to the Ambassador in the United Kingdom (Bingham)

WASHINGTON, May 24, 1937—6 p. m.

194. From the Secretary of State. I should like to have conveyed in some way to Mr. King²⁴ and Mr. Dunning²⁵ the information that I have notified the Senate Foreign Relations Committee that I no longer have any objection to their favorable consideration of our Tax Convention with Canada, signed on December 30, 1936, and already ratified by Canada. For background purposes, see Department's press release of that day.²⁶

It is my understanding that the Convention has been reported favorably by a sub-committee of the Foreign Relations Committee, but that no action has yet been taken by the Committee as a whole.

Confidentially, this information was conveyed sometime ago to the Canadian Minister here, but I have just learned that he has not yet transmitted the information to his Government. I also pointed out to him that, under the terms of the Convention, either Government was free at any time to raise the withholding rate above 5%, and that the result of such action would merely be to release the other Government from its obligation. I stressed this point because it is not yet known whether the policy of the Treasury Department will necessitate a higher withholding tax and, if it were found necessary to do this, I did not wish this Government to be charged with bad faith.

²³ Sir Edward W. Beatty, president of the Canadian Pacific Railway; vice president of Canadian Airways.

²⁴ W. L. Mackenzie King, Canadian Prime Minister.

²⁵ A. C. Dunning, Canadian Minister of Finance.

²⁶ Department of State, *Press Releases*, January 2, 1937, p. 4.

Both Mr. King and Mr. Dunning professed great interest in this Convention prior to their departure for London and, at this critical time, I consider it important that they should know that this Department no longer stands in the way of ratification. [Hull.]

WELLES

811.5123 Foreign Investments/32

*Memorandum by the Adviser on International Economic Affairs
(Feis)*

[WASHINGTON,] July 19, 1937.

The Canadian Minister called upon the Secretary of State to present to him certain thoughts with regard to contemplated revision of our tax laws bearing upon the taxation of non-resident aliens in foreign corporations. The Secretary asked me to be present.

The Canadian Minister said he wished to rest his remarks upon the general idea that the Canadian and American peoples, and their economic relations, are extraordinarily close and that they will be best served by constantly striving to look at their interests as part of a unified whole and developing in every way relationships between them. He therefore wished to express his sense of regret if action in the tax field taken by this country would work counter to this development, which he was confident likewise represented the Secretary's general attitude. The Secretary indicated that this was so.

Further, the Minister continued that the Canadian interest in American securities is widely scattered among a great number of small investors. If therefore prospective legislation took the form of imposing a heavy original withholding tax (22½ and 25 percent have been mentioned), and all these small investors found their dividends lessened by this amount, unless they went through the whole procedure of filing income tax returns to the United States, the Minister stated he was afraid it would adversely affect Canadian opinion. In saying this the Minister stated he did not want to seem to be threatening retaliatory action but merely to call attention to what appeared to him an inevitable consequence.

Further, the Minister dwelt upon the disappointment that would arise in Canada if the tax treaty recently negotiated between the two governments is not ratified by the United States Government. The Secretary indicated that he thought this had been ratified. The reasons for recent delay were not known either to the Secretary or to myself. The Treasury had been informed that this Department was prepared to have the treaty ratified and it understood that the Treasury had so notified Senator Pittman.

After a considerable interchange regarding detail, the Minister tentatively advanced the suggestions first that perhaps it might be possible for the Secretary to bring it about that there was no new legislation in this field at this session, or second that the tax treaty with Canada would be promptly ratified and that provision be made in any legislation that was passed making special exception for the treaty commitments of the United States; and in that case the Canadian Treasury will be prepared immediately thereafter to enter discussion with the American Treasury with regard to the possible revision of the treaty for the purpose of carrying out the idea of equality of tax treatment as between Americans and Canadians in the matter of income derived from American sources.

The Secretary did not give any clear indication as to his judgment of the feasibility of either line of procedure. The first line was in no way encouraging. Mr. Feis indicated that the Treasury might find the second line of procedure acceptable.

It was agreed that an opportunity be presented for the Canadian Minister to discuss this matter directly with Mr. Magill, Under Secretary of the Treasury, directly in charge of the Treasury work in this field.

Throughout the discussion the Minister emphasized the fact that the Canadian Treasury is completely prepared to cooperate with the American Treasury to deal with tax evasion. It will do everything feasible to see that the American Treasury is kept fully advised of the income secured by Americans from Canadian sources.

After talking with the Secretary the Minister came to my Office and I telephoned Mr. Magill, who is up in Connecticut, and explained the gist of the matter to him and arranged for a meeting between the Minister and Mr. Magill on Wednesday morning next.

811.512342 Double/63

*Memorandum by the Adviser on International Economic Affairs
(Feis)*

[WASHINGTON,] July 27, 1937.

Sir Herbert Marler, Canadian Minister at Washington, telephoned me from Montreal to inform the Department that he had talked over with the Canadian Prime Minister and Minister of Finance and various other officials the tax matters he had previously discussed with the State and Treasury Departments.

He wanted us to know at the first possible moment that he was now authorized to give this Government the fullest assurances (which would be given in written form upon his return) : (1) that the Cana-

dian Government was disposed to extend to the American Government "the closest possible cooperation" in the handling of the tax evasion situation (meaning both the evasion now encountered on the part of non-resident aliens and also the evasion by American taxpayers through the device of Canadian holding companies and the like), (2) if the Canadian-American tax treaty were ratified the Canadian Government would be ready to enter into negotiation with the American Government, at the convenience of the American Government, looking towards the supplementation of the treaty in such a way as to provide for the full fiscal cooperation, and for the working out of measures for applying the agreed-on rates, and even to consider the question of revision of rate (the underlying idea previously discussed with the Minister was that a low withholding rate would be retained for the thousands of Canadians whose revenues from American securities were very small in amount and that based on full cooperation between the two Treasuries, the Canadians who receive large revenues in the United States would file returns and pay the same rates as Americans).

I told the Minister that I appreciated the promptness of this report and would convey it at once to the Secretary of State and the Acting Secretary of the Treasury. I reaffirmed the fact that both Departments were trying to expedite the ratification of the tax treaty.

He said this was the first important move and that even though the American Congress should pass no legislation this session modifying the withholding tax rate, for the United States not to ratify this treaty would have an unfortunate effect in Canada. Furthermore, he stated that in his judgment an exceptional opportunity would be missed to build up the fiscal cooperation between the two countries which would be beneficial in the way of revenue to both countries, and furthermore to bring into existence a relationship in this tax field which might well serve as a most useful model in dealing with other countries.

811.512300/6

Memorandum by the Assistant Adviser on International Economic Affairs (Livesey)

[WASHINGTON,] August 11, 1937.

Mr. Eldon King, Deputy Commissioner of Internal Revenue, who visited the Department August 9 to discuss the relation between the pending tax bill and the Canadian taxation treaty, said he had received a note last week from Under Secretary of the Treasury Magill

saying that the latter wished to push negotiations looking to obtaining treaties for cooperation against fiscal evasion with Canada, France and the Netherlands. This should be taken up as soon as it is possible after disposition of the pending legislation and every effort should be made to expedite the matter. The Department of State would be asked to cooperate.

Today Mr. Francis de Wolf ²⁷ tells me that Mr. King again mentioned the matter to him. Mr. de Wolf suggested that Mr. King might be able to advance the matter when he attends the session of the Fiscal Committee of the League of Nations in October. Mr. King seemed to think well of the suggestion.

Canada is prepared to go ahead actively with negotiations for a treaty regarding fiscal evasion as soon as the Canadian taxation treaty is ratified ²⁸ and the pending tax bill enacted.²⁹ This has been publicly announced by Under Secretary Magill in connection with the hearings on the tax bill. . . .

811.512342 Double/87

The Secretary of State to the Canadian Minister (Marler)

WASHINGTON, October 18, 1937.

SIR: I am transmitting herewith a copy of a provisional draft of an addendum ³⁰ to the tax convention between the United States and Canada of December 30, 1936. This draft is being transmitted to you for the consideration of the appropriate Canadian officials and for the formulation of such criticisms and suggestions as they may deem appropriate.

The Treasury Department has expressed a desire that negotiations for the conclusion of the addendum to the tax convention may be initiated at an early date. In the circumstances I should appreciate it if you will be so good as to inquire from your Government whether it will be agreeable to it to have the negotiations in question take place in Washington early in November.

Accept [etc.]

For the Secretary of State:
R. WALTON MOORE

²⁷ Of the Treaty Division.

²⁸ Ratification having been advised by the Senate August 6, 1937, ratifications were exchanged at Washington on August 13, 1937.

²⁹ Revenue Act approved August 26, 1937; 50 Stat. 813.

³⁰ Not printed.

811.512342 Double/89

The Canadian Minister (Marler) to the Secretary of State

No. 215

WASHINGTON, November 1, 1937.

SIR: I have the honour to reply to your note of October 18th, 1937, with which you were good enough to transmit a copy of a provisional draft of an addendum to the tax convention between the United States and Canada of December 30th, 1936. I took pleasure in transmitting this draft to my government and I enquired whether it would be convenient to have the negotiations in question take place in Washington early in November.

I am now informed that the Commissioner of Income Tax is not expected to return to Canada from Europe until November 8th. Consequently, it will not be possible for the Canadian officials to participate in a discussion during the first half of November. I shall inform you as soon as possible of the earliest date upon which it will be convenient for Canadian representatives to proceed to Washington for this purpose.

I have [etc.]

HERBERT MARLER

[Inconclusive discussions between representatives of the United States and Canada were held at Washington, January 26-29, 1939, and at Ottawa, June 28-July 6, 1939; the negotiations were then temporarily interrupted. A new convention and protocol were signed in 1942.]

REPRESENTATIONS BY THE UNITED STATES AND CANADA TO THE UNITED KINGDOM RESPECTING PROJECTED VOYAGE OF THE BRITISH STEAMER "THORLAND" TO THE PACIFIC HALIBUT FISHING GROUNDS

711.428/2029

Memorandum by Mr. Joseph T. Keating of the Treaty Division

[WASHINGTON,] November 16, 1936.

Mr. Frank Bell, Commissioner of Fisheries of the United States and a member of the International Fisheries Commission, and Mr. John Gardner of the Bureau of Fisheries, called at the Department on November 13, 1936, in order to confer with Department officials in connection with a recent development which seriously concerns the continuance of the Halibut Convention between the United States and Canada which regulates the Northern Pacific halibut fishery.²¹

²¹ Signed May 9, 1930, *Foreign Relations*, 1930, vol. I, p. 518.

A meeting was called in Room 388 of the Western European Division and was attended by Mr. John Hickerson, Assistant Chief of the Western European Division, Mr. Dooman of the Division of Far Eastern Affairs, Mr. Bonbright of the Western European Division and Mr. Keating of the Treaty Division.

Mr. Bell stated that he had just returned from a trip to the Pacific coast where he had attended a meeting of the International Fisheries Commission; that the members of the Commission were greatly concerned with the fact that they had received definite information that a British-registered fishing vessel was being outfitted at Oslo, Norway, and was about to depart for the Northern Pacific waters which are covered by the halibut convention. The vessel is named *Thorland* and is classed as a mother ship with all modern equipment and freezing apparatus together with small boats. Mr. Bell stated that the vessel's owners have already entered into negotiations with distributing organizations in the United States and Great Britain with a view to having the organizations agree to purchase the halibut. If the British vessel is successful it is believed that the vessels of other countries will become immediately interested. The Commissioners are particularly anxious not to have Japanese vessels enter this area. They believe unless something is done to stop the project the whole convention will be jeopardized and that Americans and Canadians will object to having the area regulated when other vessels come in to take advantage of the sacrifice made by the Americans and Canadians. Mr. Bell further stated that a formal resolution was passed by the Commission and signed by each member and that copies thereof will be forwarded at an early date to the two Governments concerned so that they may be made a basis for joint representations to Great Britain with a view to preventing British-registered fishing vessels from engaging in halibut fishing in the Northern Pacific area.

Mr. Hickerson stated that he believed that we could take the matter up with a fair chance of success but that it would be most advisable to take the matter up with the Canadians first and make sure that they will make a protest with us through the Canadian High Commissioner at London.³² He believed that working through the Canadians our representations by the American Ambassador at London would be more effective and that they could probably reach the difficulty by preventing access to the British market of halibut caught in the Northern Pacific area when these waters were closed to such fishing by the International Fisheries Commission. Commissioner Bell agreed that this would solve the question because the only other important market besides the United States is the British market and

³² Vincent Massey.

under the Northern Pacific Halibut Act fish caught in this manner could not be imported for sale in the United States.

Mr. Dooman stated that he did not think there was any reason to be apprehensive about the Japanese. He stated for one thing the Russo-Japanese fishery treaty had recently been renewed and that the Japanese were more interested in salmon and that there was no market for halibut in Japan.

Mr. Hickerson suggested that it might be advisable to have Mr. Found of the Canadian Department of Fisheries come to Washington or that possibly Mr. Bell might be interested in going to Ottawa and conferring informally in regard to this matter so that there could be an understanding and concerted action on the part of the two Governments. Mr. Bell thought that was a very good suggestion and stated that he would be in Ottawa in the near future in connection with other matters and that he would report back to the Department when he had conferred with Mr. Found.

711.428/2028a : Telegram

The Acting Secretary of State to the Ambassador in the United Kingdom (Bingham)

WASHINGTON, November 16, 1936—4 p. m.

406. You are requested at the earliest possible moment to communicate with the Canadian High Commissioner and in company with him leave the following memorandum with the appropriate British authorities. The High Commissioner is receiving similar instructions today.

"1. The International Fisheries Commission, now operating under the Convention of 1930 between Canada and the United States for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea, have information that the S. S. *Thorland* is now outfitting in Oslo in order to undertake shortly a voyage for the purpose of halibut fishing and freezing operations off the coasts of British Columbia and Alaska. This vessel, it is said, is under British registry and previously operated as a 'Mother Ship' in halibut fishing in Greenland waters.

2. In view of the past history of the Northern Pacific halibut fishery, and of the experience gained by the International Fisheries Commission, this report, if true, presents the possibility of a very serious situation arising. If fishing expeditions from other countries should invade this area and operate without restriction it would become practically impossible either to maintain the Treaty between Canada and the United States or to preserve this halibut fishery from immediate serious depletion and ultimate commercial extinction.

3. This halibut fishery began to assume importance in the early nineties when reasonable transport facilities from the west coast to

the eastern markets became available. The fishing expanded so rapidly that by 1910 the evidence of serious depletion was unmistakable. As the fishing area had to be expanded farther and farther to the north-western high seas, the west coast fishing industry became alarmed, and in 1917 the problem was referred by the Governments of Canada and the United States to an international commission, for study.³³ Upon its recommendation a Treaty was concluded in 1923³⁴ providing for an annual close season of 3 months and a permanent International Fisheries Commission to investigate and report upon further measures for the preservation and development of the fishery.

4. After 5 years of intensive study the permanent Commission reported³⁵ that the stocks of halibut had greatly declined, that the production of eggs and young had fallen to a dangerously low level, and that the decline was continuing. Upon its recommendation a new Treaty was concluded in 1930 granting regulatory powers. Under the regulations adopted the main producing portion of the seas was divided into two areas and for each area the quantity of halibut to be taken in any year was specifically limited. Certain areas found to be nurseries for young halibut were closed to all halibut fishing, and the close season was extended.

5. As a result of these regulations the decline in the fishery has ceased and upbuilding has begun. With a view to preventing the glutting of the markets, the fishermen in the different areas have been arranging amongst themselves so to distribute their catches as to cover, as nearly as practicable, the whole fishing season.

6. Fishing operations carried on by means of 'Mother Ships' despatched from other countries and of a magnitude to endanger this Northern Pacific fishery would seem to be entirely practicable. For example, halibut fishing in Greenland waters has recently been carried on from Great Britain by means of such ships, one or more of them running up to 10,000 tons, which are equipped with freezing and cold storage facilities and which receive their catch not only from accompanying fishing vessels but from small boats whose fishermen live on the 'Mother Ship', the latter remaining on the fishing grounds until a cargo is obtained or the season ends. The Greenland halibut fishery, though thus intensively conducted for only a relatively few years, is already in a seriously depleted condition.

7. Although it was not by any means impracticable for fishermen of other nations to have extended their halibut fishing operations to the areas in question, they have not done so as yet. But should this expedition invade these areas there is substantial reason to believe that other nations would immediately follow suit.

8. In all these circumstances it seems entirely clear that such invasions would mean the end of the Northern Pacific halibut fishery within a measurable future. In the first place, in the face of such invasions it would become impracticable for Canada and the United States any longer effectively to restrain the operations of their fishermen in this region. The operations of all parties, being unrestricted and being more intensive because of the increased competition and

³³ See *Foreign Relations*, 1918, pp. 432 ff.

³⁴ Signed March 2, 1923, *ibid.*, 1923, vol. I, p. 468.

³⁵ For text of report, see *ibid.*, 1928, vol. II, p. 7.

the greater numbers engaged, could result only in accelerating the depletion and finally in practical extinction of the fishery. That this would happen seems evident from the history of the fishery to date and the information gathered by the International Fisheries Commission."

In addition to leaving the memorandum you should make a strong oral plea that the British assist us in preventing a step which may well lead to the failure of our halibut convention with Canada and the ultimate extinction of the halibut fishery on the Pacific Coast.

MOORE

711.428/2030

Memorandum by Mr. James C. H. Bonbright of the Division of Western European Affairs

[WASHINGTON,] November 17, 1936.

In the absence of Mr. Hickerson I telephoned our Minister at Ottawa on Saturday morning, November 14, and discussed with him the halibut fishery question referred to in TD's ³⁶ memorandum of November 16. In order to save Mr. Bell the trouble of going up to see Mr. Found in Ottawa, or vice versa, I suggested that the Canadians might be willing to prepare a background memorandum to form the basis of our joint representations to the British Government. This they did and the text of their memorandum ³⁷ was telephoned to me at 1:15 P. M., November 14.

A further meeting was held in Room 388 on Monday morning, November 16. Mr. Turner of FE ³⁸ attended in the absence of Mr. Dooman. Mr. Hickerson was also absent, so the meeting consisted of Messrs. Bell, Gardner, Keating, Turner and Bonbright. At that meeting the Canadian memorandum was discussed and found acceptable. It was therefore used as a basis for the Department's telegram to London, No. 406 of November 16, 4 p. m. The only change made in the Canadian memorandum was the elimination in paragraph seven of the direct reference to Japanese fishermen. This change was approved by the Canadian Government and presumably on the same afternoon they telegraphed similar instructions to their High Commissioner in London.

[In paragraph (1) of his telegram No. 552, November 20, 1936, 8 p.m., the Ambassador in the United Kingdom stated: "I presented

³⁶ Treaty Division.

³⁷ Not printed.

³⁸ Division of Far Eastern Affairs.

the Foreign Secretary today with a copy of the memorandum contained in your 406, November 16, 4 p. m., and at the same time made the suggested plea. All arrangements had been made to comply with the Department's instruction 'in company with' the Canadian High Commissioner; at the last moment his office telephoned the Embassy that 'a question had arisen on a matter of procedure which made it impossible for Mr. Vincent Massey to keep the appointment.' For full text of telegram No. 552, see *Foreign Relations*, 1936, volume I, p. 700.]

711.428/2051a : Telegram

The Acting Secretary of State to the Ambassador in the United Kingdom (Bingham)

WASHINGTON, January 13, 1937—7 p. m.

9. My 406, November 16. Department is informed that the S. S. *Thorland* is preparing to leave England within a few days, possibly by January 15th. Please again endeavor to secure a reply from the British Government to representations made in November.

MOORE

711.428/2052 : Telegram

The Ambassador in the United Kingdom (Bingham) to the Secretary of State

LONDON, January 14, 1937—6 p. m.
[Received January 14—4:09 p. m.]

19. Department's 9, January 11 [13], 7 p. m. Foreign Office informs the Embassy that though they have not yet received replies from all of the interested departments the Ministry of Agriculture and Fisheries has written to them in substance as follows.

The anxiety of the United States Government is appreciated. The good results achieved by the convention of 1930 should not be adversely affected by the activities of fishing vessels sailing under the flags of states which were not parties to that convention since in the opinion of the Ministry of Agriculture and Fisheries that convention was conceived on thoroughly sound lines. As regards the expedition of the Steamship *Thorland* to these waters a member of the Foreign Office who owns the vessel called at the Ministry and it emerged from the ensuing conversation that owners of the vessel are aware of the provisions of the convention and that it is intended that the vessel shall conform to all the regulations made under the convention. In the circumstances there would appear to be very little risk of damage

being done to the halibut fisheries as a result of the operations of the vessel. In the absence of any general convention regulating the fisheries in the waters in question to which His Majesty's Government is a party it will not be practicable to take any action to restrain the owners of the *Thorland* from sending the vessel on this expedition. It would moreover be entirely against the habitual policy of His Majesty's Government to attempt unduly to restrain the activities of British fishing industry in its reasonable use of fishing grounds in any area outside territorial waters.

The Foreign Office advise the Embassy informally that until answers from the other interested Ministries were received the Foreign Office could not make a formal reply to the Embassy's representations of November. The Foreign Office believes, however, that its formal reply will not differ in essentials from the above views of the Ministry of Agriculture and Fisheries.

I understand the Canadian High Commissioner is telegraphing his Government today in a similar sense.

BINGHAM

711.428/2066

The British Secretary of State for Foreign Affairs (Hoare) to the American Ambassador in the United Kingdom (Bingham) ³⁹

No. A 673/206/45

LONDON, 27 January, 1937.

YOUR EXCELLENCY: In a memorandum dated the 18th November last which Your Excellency was so good as to leave with me on the 21st November, it was explained that the Governments of the United States and of Canada had concluded a Treaty in 1923 and again in 1930 for the preservation of the halibut fishery in the Northern Pacific Ocean, and the fear was expressed lest the projected despatch of the British steamship *Thorland* to participate in the fishing in those waters might, both in itself and by serving as an example to others, lead rapidly to the depletion and finally to the practical extinction of the fishery.

2. I have the honour to inform you in reply that full consideration has been given by His Majesty's Government in the United Kingdom to the views set forth in Your Excellency's memorandum, and that His Majesty's Government appreciate the anxiety of the United States Government that the good results achieved by the Convention of 1930 should not be adversely affected by the activities of fishing vessels sailing under the flags of States which were not parties to that Con-

³⁹ Transmitted to the Department by the Chargé in the United Kingdom in his despatch No. 2812, January 28; received February 6.

vention, since, in the opinion of His Majesty's Government, that Convention was conceived on eminently sound lines.

3. With regard to the proposed expedition of the steamship *Thorland* to those waters, enquiries have been made of the owners of the vessel, who have explained that it is their desire to obtain for the United Kingdom market a supply of frozen halibut of good quality, but they have found it impossible, notwithstanding discussions with the Canadian interests concerned, to arrange for obtaining supplies of the desired quality, and accordingly they consider that the only method of obtaining such supplies is to send their vessel to the fishing grounds and to undertake their own freezing operations. It has been impressed upon the firm that it is most important that no action should be taken which would interfere with the good results of the Convention between Canada and the United States for the protection of the halibut fishery, and the firm have given assurances that they will conform voluntarily to all the regulations under the Convention. In the circumstances there would seem to be very little risk of damage being done to the halibut fisheries as a result of the operations of the vessel.

4. As regards the possibility of the example of the *Thorland* being followed by other vessels, His Majesty's Government in the United Kingdom have no reason to think that any other ships registered in the United Kingdom are likely to seek to take part in the fishery. So far as foreign vessels are concerned, it does not seem likely that the position would be affected by the participation in the fishery of the *Thorland*.

5. I should explain that in the absence of any general Convention regulating the fisheries in the waters in question to which His Majesty's Government in the United Kingdom are a party, it would not be practicable to take any action to restrain the owners of the *Thorland* from sending a vessel on this expedition. Indeed it would be contrary to the policy of His Majesty's Government in the United Kingdom to attempt to restrain the activities of the fishing industry of the United Kingdom in its reasonable use of fishing grounds in any area outside territorial waters. Should, however, it appear hereafter that there was a serious risk of other United Kingdom vessels taking part in the fishery in a manner likely to have prejudicial effects, a new situation would clearly arise and His Majesty's Government in the United Kingdom would be glad to discuss with the United States Government the possibility of making arrangements for dealing with it.

I have [etc.]

(For the Secretary of State)

J. M. TROUTBECK

711.428/2068 : Telegram

The Chargé in the United Kingdom (Atherton) to the Secretary of State

LONDON, February 18, 1937—4 p. m.
[Received February 18—11:55 a. m.]

77. Foreign Office note received on the projected voyage of the *Thorland* to the Pacific halibut fishing grounds states: "It has now been learned from the owners of the vessel that this project has been abandoned for the current year."

ATHERTON

EFFORTS OF THE DEPARTMENT OF STATE TO OBTAIN AN AGREEMENT WITH THE CANADIAN GOVERNMENT FOR THE CONSTRUCTION OF A HIGHWAY TO ALASKA

842.154 Seattle-Fairbanks Highway/134a

The Secretary of State to the Minister in Canada (Armour)

No. 228

WASHINGTON, January 30, 1936.

SIR: I am enclosing for your information and guidance a copy of an act (Public—No. 345—74th Congress—S. 1374) approved on August 26, 1935,⁴⁰ requesting the President to enter into an agreement with the Dominion of Canada for the survey, location, and construction of a highway to connect the Pacific northwestern part of continental United States with British Columbia, the Yukon Territory, and the Territory of Alaska.

In compliance with the terms of this act you are requested to bring this matter formally to the attention of the Canadian Government, with a view to ascertaining whether or not the latter will be willing to enter into an agreement for the purposes mentioned.

For your own information reference is made to the Department's instruction No. 13, of August 5, 1933,⁴¹ transmitting copies of the report submitted by the special commissioners⁴² appointed, under an act of Congress approved on May 15, 1930,⁴³ to cooperate with representatives of Canada in a study of this proposed project.

You are requested to submit an early report on the action taken by you in compliance with this instruction.

Very truly yours,

For the Secretary of State:
WILLIAM PHILLIPS
Under Secretary

⁴⁰ 49 Stat. 869.

⁴¹ Not printed.

⁴² Department of State Conference Series No. 14, *Report of the Commission To Study the Proposed Highway to Alaska* (Washington, Government Printing Office, 1933).

⁴³ 46 Stat. 335.

842.154 Seattle-Fairbanks Highway/151

The Minister in Canada (Armour) to the Secretary of State

No. 1169

OTTAWA, February 12, 1937.

[Received February 15.]

SIR: I have the honor to refer to my telegram No. 7 of January 16, 4 p. m., in reply to the Department's No. 3 of January 15, 6 p. m.,⁴⁴ regarding the proposed highway from Seattle, Washington, to Fairbanks, Alaska, and to enclose a copy of a letter from the Under Secretary of State for External Affairs⁴⁵ confirming the information previously reported by the Legation as to the lack of funds in Canada for any such project at the present time.

The letter points out that in Canada highways are the concern of the provinces and that while the government of the Province of British Columbia are sympathetic toward the proposal they do not appear to be in a financial position to undertake it. The letter also explains that the federal Departments indirectly interested appear to have no funds available which could be used to subsidize or assist a provincial project for such a highway, and that, in fact, the federal Government has already undertaken extensive commitments to subsidize an east-west trans-Canada highway which public opinion would probably regard as having priority over a north-south project in one province.

In conclusion the letter states that in these circumstances it would be difficult for the Government at the present time to enter an arrangement looking to the planning, financing and construction of the proposed highway from Seattle to Fairbanks, and that while it may be hoped that circumstances will alter in the future it would hardly be feasible to make any definite forecast.

Since the receipt of the above mentioned letter the Department of External Affairs has telephoned to the Legation to say that a new angle to this question has arisen⁴⁶ and that in certain quarters an interest in the above road has suddenly been manifested. While the Department of External Affairs does not feel that this new development will change the ultimate decision, nevertheless they have suggested that the Legation may wish to defer reporting finally on this question pending the submission of a subsequent report from the Canadian Government.

In view of the above the Department may wish to hold this despatch, not communicating its contents to the interested Departments of our Government until hearing further from the Legation.

⁴⁴ Neither printed.

⁴⁵ Not printed.

⁴⁶ i. e., the visit of the Premier of British Columbia to Ottawa.

I have thought it advisable to send this despatch along in its present form in order that the Department may be in a position to explain the situation in the event of further inquiries of the nature referred to in the Department's telegram No. 3 of January 15, 6 p. m.

Respectfully yours,

NORMAN ARMOUR

842.154 Seattle-Fairbanks Highway/155%

*Memorandum by the Minister in Canada (Armour)*⁴⁷

[OTTAWA,] March 25, 1937.

I called on Dr. Skelton⁴⁸ this afternoon by appointment and with regard to the Alaska highway he said that Mr. King⁴⁹ had perhaps told me of his talk with the President, in the course of which this matter had come up. I said that Mr. King had given me a brief account of his talk with the President. Dr. Skelton repeated more or less what he had said to me on a previous occasion, that while the project was undoubtedly a useful and interesting one and while the Government of British Columbia would like to go ahead with it, as Mr. Pattullo, the Premier, had made plain on a recent visit to Ottawa, the question revolved [*resolved?*] itself largely to one of where the funds were to come from. British Columbia was in no condition to furnish them and Dr. Skelton feared that there would be criticism of the Dominion Government were it to advance the money. As it was, the other Provinces felt that British Columbia had more than its share of funds for road construction and he did not feel that the Dominion could very well advance any more money for this purpose, at any rate at the present time.

Remembering what Mr. King had said with regard to the possibility of the territory of the Yukon being incorporated within the Province of British Columbia, I asked whether his remarks also applied to the Yukon. He said they did with perhaps additional emphasis, as the Yukon would certainly not be able to bear any of the expense of such a road, which would have to be entirely defrayed by the Dominion.

So altogether, while both the Provincial and Dominion Governments were sympathetically disposed toward the project, he feared that there was little they could do for the present.

I said that I had understood from Mr. King that the President had made the statement that the road would be able to pay for itself within thirty years. It was not clear to me on what basis this estimate was

⁴⁷ Transmitted to the Department by the Minister in his personal letter to Mr. James C. H. Bonbright of the Division of Western European Affairs, May 6; received May 25.

⁴⁸ Canadian Under Secretary of State for External Affairs.

⁴⁹ Canadian Premier and Secretary of State for External Affairs.

made, whether by tolls charged for using the road or concessions for gasoline, "hot dog" stands, etc. Dr. Skelton said it would be very interesting to have further information on this point as, of course, if it could be clearly shown that the road would actually pay for itself within thirty years this would put the matter in another light.

842.154 Seattle-Fairbanks Highway/174

The Secretary of State to the Minister in Canada (Armour)

No. 972

WASHINGTON, September 3, 1937.

SIR: I refer to the Department's instruction no. 228 of January 30, 1936 and to subsequent correspondence regarding our efforts to obtain the consent of the Canadian Government to the construction of a highway to connect the northwestern part of continental United States with British Columbia, the Yukon Territory and the Territory of Alaska.

It has long been a source of disappointment to the President that the Canadian authorities have not found it possible to cooperate with us in the initiation of this project. He has recently written to me⁵⁰ of his eagerness to have the highway completed as soon as possible, and of his hope that negotiations to this end may proceed vigorously.

At the same time, the President suggested the possibility of the establishment, by the two countries, of an international park in the region north and west of Skagway, Alaska. Such a park might include the Canadian territory lying directly north of the international boundary between the 141st and 135th meridians of longitude, with not only our own St. Elias and Fairweather Ranges, but Mt. Logan, second highest peak in the northern hemisphere. For our part the park might properly include the territory from the boundary to the coast lying between the 141st and 136th meridians of longitude, Malaspina Glacier in the West, Glacier Bay National Monument, and as far as Lynn Canal on the East and Icy Strait and Cross Sound on the South. The northern boundary of the park might follow a straight line from Mt. Foster, near Chilkoot Pass, to the 141st meridian, passing just north of Kluane Lake.

For your guidance, I am transmitting under separate cover a map on which is outlined, roughly, the area referred to.

Under the terms of an Act of Congress, approved on August 26, 1935,

⁵⁰ Letter not printed.

a copy of which was transmitted to you with the Department's instruction no. 228 of January 30, 1936, the President was requested

"through such channels as he may deem proper, to negotiate and enter into an agreement or agreements between the Governments of the United States and of the Dominion of Canada, for the survey, location, and construction of a highway to connect the Pacific north-western part of continental United States with British Columbia and Yukon Territory, in the Dominion of Canada, and the Territory of Alaska; in cooperation with the Government of the Dominion of Canada to cause a survey or surveys to be made to determine the most practicable route for such highway, as well as specifications and estimates of the probable cost thereof, and plans for financing its construction and maintenance."

No formal reply has been received from the Canadian Government to the representations which you made in accordance with the provisions of law just quoted. You have been given to understand, however, that although both the Dominion Government and the Provincial Government of British Columbia are sympathetically disposed towards the project, doubts concerning the means whereby the Canadian share might be financed have been primarily responsible for the reluctance of the Dominion Government to enter into formal negotiations. These doubts are understandable, but they do not in our opinion form a valid basis for a refusal to initiate studies designed, among other things, to arrive at an equitable distribution between the two countries of the cost of the combined project, and to determine how the financial burden to both countries may be minimized.

You are therefore instructed to take this matter up again with the Canadian authorities, preferably in a formal note supported by oral representations, with the purpose of obtaining their immediate consent to the appointment of a Commission, on which both Governments would be represented, to explore the possibilities of the early construction of the proposed highway and the establishment of an international park.

It should not be difficult for the Governments to reach agreement on the terms of reference to such a Commission and, if the Dominion Government is sincere in its statement that it is sympathetically disposed towards the highway project, it is difficult to see how it can take objection to this proposal.

The following observations are added for your own information, but, in your discretion, you may use such of them as will be useful in your conversations with the Canadian authorities.

1. In the proposed combined project, the construction of the international highway is the objective to which this Government attaches by far the most importance. By itself, the proposed international park would obviously be of little utility, but this Government feels that it

would be a useful adjunct to the highway and might serve as an added attraction to win the consent of the Canadians to the highway project. In particular, a simultaneous study of both projects might point the way to a method whereby the cost to Canada of its share of the highway project alone could be materially lessened.

2. The boundaries of the proposed international park, as set forth in this instruction, are tentative and are only indicated in order to give the Canadian authorities a general picture of what we have in mind. Should the Canadians feel that the proportion of Canadian territory in the proposed park is too great, we would be prepared to consider the expansion of the park westward to include Bering Glacier, and the Wrangell Mountains, which contain half a dozen peaks higher than any in continental United States and form a region of singular beauty.

3. You will observe that the city of Skagway, Alaska, and the territory in its immediate vicinity, are not included within the borders of the proposed international park. The omission is intentional. We realize, however, that for many years the question of the freer passage of ocean-borne goods into the Yukon has been of interest to the residents of that Territory. After your preliminary conversations with the Canadian authorities, should you consider it helpful in gaining their consent to the highway project, you are authorized to inform them that this Government is prepared to give sympathetic consideration to any suggestion which they may care to make having as its object the freer movement of goods between the Yukon and British Columbia.

4. It is contemplated that one of the requirements which we would impose upon the proposed Commission would be to submit definite recommendations to the two Governments upon the completion of its studies. Although we will naturally give the most careful and sympathetic consideration to any recommendations which the Commission may make and have no reason to believe that they will not be wholly acceptable to both Governments, we are prepared to reserve the right of each Government to propose changes in or reject the Commission's recommendations, in whole or in part. A realization of the fact that the recommendations of the Commission need not be rigidly binding upon the Governments should make it easier for the Canadian authorities to agree to the appointment of the Commission. This point should not be stressed, however, unless it appears that your efforts will otherwise fail.

Please keep me fully and promptly informed of the progress of your representations.

Very truly yours,

CORDELL HULL

842.154 Seattle-Fairbanks Highway/175

The Minister in Canada (Armour) to the Secretary of State

No. 1635

OTTAWA, September 23, 1937.

[Received September 29.]

SIR: I have the honor to refer to the Department's instruction, Confidential—For Staff Use Only, No. 972 of September 3, 1937, (file No. 842.154 Seattle-Fairbanks Highway/167 [174] regarding efforts to obtain the consent of the Canadian Government to the construction of a highway to connect the northwestern part of continental United States with British Columbia, the Yukon Territory and the Territory of Alaska.

Under date of September 14th last I addressed to the Secretary of State for External Affairs a formal note in which the question was presented to the Canadian Government along the lines indicated in the Department's instruction. (Copy of the Legation's note is enclosed herewith.)⁵¹

I delivered this note, together with the map which formed an enclosure to the Department's instruction, personally to the Under-Secretary of State for External Affairs, explaining to him once more the great interest attached by our Government to this question and expressing the hope that prompt and favorable consideration might be given to this new proposal. Dr. Skelton referred once more to the fact that a trans-Canada highway had not yet been completed and that until it would be possible for Canadians to cross their own country by automobile the Government would certainly be criticized if it were to authorize an expenditure of funds to construct such a highway as that suggested across British Columbia. Dr. Skelton also referred to the study made by a commission appointed some years ago, whose report had been published in 1933, and wondered what, if any, additional evidence a new commission such as they suggested might be able to present. I told Dr. Skelton that I thought that one of the most important objects to be accomplished by such a commission as was suggested would be to initiate studies designed, among other things, to arrive at an equitable distribution between the two countries of the cost of the combined project, and to determine how the financial burden to both countries may be minimized.

In discussing this matter later, as I did with Mr. Loring Christie of the Department of External Affairs, to whom Dr. Skelton referred the proposal, I pointed out that while certain Canadian officials had been of great assistance to the American Commissioners appointed by the Act of Congress of May 15, 1930, officially Canada had not partici-

⁵¹ Not printed.

pated in this study: also that the question of how the financial burden to the two countries might be minimized had not, of course, been gone into at that time.

Both Dr. Skelton and Mr. Christie appeared to view the question favorably, subject always to the qualification that they could not at the present time see how the Government could justify an expenditure of any such sum as that mentioned in the 1933 report (\$12,000,000 for the Canadian section of the highway). Memoranda of my talks with Dr. Skelton and Mr. Christie are enclosed herewith.⁵²

Until the competent Departments of the Canadian Government, notably the Department of Mines and Resources to which the matter will be referred, has had an opportunity to examine the project I have not thought it advisable to bring forward any of the suggestions contained in the latter part of the Department's instruction (pages 3-5).

It will be noted that Mr. Christie outlined to me, very briefly and roughly, certain suggestions by which he thought that the costs of the commission might be materially reduced and the proposal accordingly viewed more favorably by his Government. I think it might be helpful to Mr. Christie, in developing this idea, if the Department were to inform me whether our Government would be disposed to consider appointing Federal and State officials as members of the commission, thus avoiding so far as possible expenditure on appropriations for salaries, and reserving funds thereby saved for use in defraying other necessary expenditures of the commission.

Both Dr. Skelton and Mr. Christie have referred to the Report of the Commission of 1933. It might also be helpful if the Department would enable me to inform the Canadian Government how much of the Report of the Commission of 1933 it is proposed to use; that is to say, whether the findings of this Report, in so far as they go, will be accepted by our Government or whether it is proposed to go into the whole question afresh.⁵³

Respectfully yours,

NORMAN ARMOUR

CONVENTION BETWEEN THE UNITED STATES AND CANADA FOR THE PRESERVATION OF THE HALIBUT FISHERY OF THE NORTHERN PACIFIC OCEAN AND BERING SEA, SIGNED JANUARY 29, 1937 ⁵⁴

[For text of the convention, see Department of State Treaty Series No. 917, or 50 Stat. 1351.]

⁵² Not printed.

⁵³ Under an Act approved May 31, 1938 (52 Stat. 590), the President appointed an Alaskan International Highway Commission to cooperate with Canadian representatives in a study of the project. On December 31, 1938, the Canadian Premier announced the formation of a similar Canadian commission.

⁵⁴ For previous correspondence regarding the convention, see *Foreign Relations*, 1936, vol. I, pp. 825 ff.

AGREEMENT BETWEEN THE UNITED STATES AND CANADA REGARDING EXCHANGE OF INFORMATION CONCERNING ISSUANCE OF RADIO LICENSES, EFFECTED BY EXCHANGES OF NOTES, SIGNED MARCH 2 AND 10, AUGUST 17, SEPTEMBER 8 AND 20, AND OCTOBER 9, 1937

[For texts of notes, see Department of State Executive Agreement Series No. 109, or 51 Stat. 314.]

IRISH FREE STATE

**ARRANGEMENT BETWEEN THE UNITED STATES AND THE IRISH FREE
STATE FOR AIR NAVIGATION, EFFECTED BY EXCHANGE OF NOTES,
SIGNED SEPTEMBER 29, 1937, AND NOVEMBER 4, 1937**

[For text of the arrangement, see Department of State Executive
Agreement Series No. 110, or 51 Stat. 319.]

NEWFOUNDLAND

DESIRE OF THE GOVERNMENT OF NEWFOUNDLAND FOR AN ARRANGEMENT ACCORDING REDUCTIONS IN RATES OF TAXATION SIMILAR TO THE CONVENTION BETWEEN THE UNITED STATES AND CANADA, DECEMBER 30, 1936¹

811.512343 Double/3

The British Ambassador (Lindsay) to the Secretary of State

No. 266

WASHINGTON, August 7, 1937.

SIR: I have the honour to inform you that a request has been received from the Governor of Newfoundland, through His Majesty's Principal Secretary of State for Foreign Affairs, that similar benefits may be extended on a reciprocal basis to Newfoundland holders of United States securities to those embodied in the reciprocal agreement between the Governments of the United States and the Dominion of Canada signed on December 30th last under which the rate of taxation imposed on dividends and interest coupons payable to non-residents is limited to 5% for each taxable year.

In support of this request it is pointed out that income tax in Newfoundland is not deducted from interest and dividends payable abroad. Companies in Newfoundland are liable to normal tax at a flat rate but not to super-tax. Dividends paid by companies so taxed are not further liable to normal tax in the hands of shareholders, whether resident or non-resident, although they are liable to direct assessment to super-tax in the hands of individuals (but not companies). Nor is any deduction of tax at the source made from interest or other fixed or determinable income paid to non-residents, though taxes due from a non-resident may be collected from any person who pays such income to the non-resident.

In the circumstances it is hoped that the Government of the United States will be prepared to accede to the request. In that event, I would appreciate your views as to the method of proceeding.

I have [etc.]

R. C. LINDSAY

¹ For correspondence on the convention between the United States and Canada, see *Foreign Relations*, 1936, vol. i, pp. 790 ff.; for text, see Department of State Treaty Series No. 920, or 50 Stat. 1399.

811.512343 Double/7

The Secretary of State to the British Chargé (Mallet)

WASHINGTON, October 8, 1937.

SIR: I refer to the Ambassador's note of August 7, 1937 concerning the desire of the Governor of Newfoundland that similar benefits be extended on a reciprocal basis to Newfoundland holders of American securities to those embodied in the convention between the United States and Canada of December 30, 1936, concerning income taxation, and advise you that a communication concerning this matter has been received from the Treasury Department. In this communication the Acting Secretary of the Treasury states that the Treasury Department will be glad to consider any proposals which you may see fit to advance along the lines suggested in the Ambassador's note. However, the Acting Secretary of the Treasury suggests that there is now under consideration another tax convention with Canada supplementary to that of December 30, 1936.² The scope and terms of such a supplementary convention have not yet become clearly defined and hence their effect upon the existing convention cannot at this time be accurately determined. The Acting Secretary concludes that when the situation in this regard has become clarified the Treasury Department will be better prepared to give further consideration to a tax convention with Newfoundland.

Accept [etc.]

For the Secretary of State:
R. WALTON MOORE

[A note dated August 25, 1938, from the Secretary of State to the British Ambassador quoted a letter from the Treasury Department stating that the policy of the Department regarding tax conventions with other countries had become more clearly defined and that it was not contemplated that such conventions would reduce rates of taxation unless such reductions were authorized by revenue acts. The letter of the Treasury Department concluded:

“For these reasons this Department is at present unable to entertain favorably suggestions for negotiations looking to adoption of a tax convention by which is contemplated a reduction in the rates of taxation imposed under existing law upon income from United States sources flowing to residents of Newfoundland.” (811.512343 Double/15)]

² See pp. 177 ff.

NEW ZEALAND

INFORMAL DISCUSSIONS REGARDING THE POSSIBILITY OF IMPROVING TRADE RELATIONS BETWEEN THE UNITED STATES AND NEW ZEALAND¹

611.47H81/98

Memorandum by the Assistant Chief of the Division of Trade Agreements (Deimel) of Conversations With New Zealand Government Officials, July 12, 13, and 14, 1937

In fulfillment of the desire expressed by Mr. Walter Nash, Minister of Finance and Customs of New Zealand, that he and the New Zealand officials accompanying him be given opportunity to discuss trade relations between New Zealand and the United States on the occasion of their visit to Washington on the way back to Wellington, following the Imperial Conference at London, a series of meetings were held in the State Department.

These meetings took place on the afternoon of July 12, the morning and afternoon of July 13, and the morning and afternoon of July 14. Mr. Nash himself attended during a part of four of the five sessions. Other New Zealand officials who attended were:

- Mr. J. P. D. Johnsen, of the Department of Commerce of New Zealand (an official of the New Zealand customs organization);
- Dr. Sutch, Economic Adviser to Mr. Nash;
- Mr. J. W. Collins, Trade Commissioner of New Zealand for Eastern United States and Canada;
- Mr. W. J. Stevenson, Customs Expert for New Zealand in the United States.

By previous arrangement members of the Country Committee on the British Dominions of the trade-agreements organization were invited to attend these discussions. The attendance for the United States accordingly included:

- (1) For the State Department:
 - Mr. Minter, of Eu;²
 - Mr. Deimel and Mr. Southworth, of TA;³
 - Consul General Bucklin.

¹ For previous correspondence respecting trade relations between the United States and New Zealand, see *Foreign Relations*, 1935, vol. II, pp. 69 ff.

² Division of European Affairs.

³ Division of Trade Agreements.

- (2) For the Tariff Commission :
Commissioner Durand ;
Mr. Mark Smith and Mr. Burns, of the Economics Division.
- (3) For the Department of Agriculture :
Mr. John Stewart.
- (4) For the Department of Commerce :
Mr. Hungerford.

At the initial meeting, Mr. Deimel opened the discussion by stating that we were glad to take advantage of this opportunity for a strictly informal exchange of ideas regarding the possibility of improving our mutual trade relations; that of course no commitments of any sort could result from informal discussions of this nature but, within the limitations of such informal discussions, we would be glad to point out the nature of our situation and policy and the possibilities that seem to be implicit therein. He continued with a brief outline of the salient aspects of the trade-agreements program, pointing out that it involved a new delegation of executive authority in tariff adjustment which enabled closer account to be taken of our international commercial relations in the adjustment of our tariff rates but required extreme care and deliberation in its exercise in order to convince the American public that the authority is being exercised with full responsibility and discretion; that this procedure was absolutely essential in order to develop the public confidence which would permit in increasing measure the taking of action which, however justified it might appear on economic grounds, would entail such political difficulties as otherwise would make it practically impossible. Mr. Deimel then reviewed briefly the nature of the trade-agreements authority and of the agreements which had been concluded under it and emphasized the following two considerations:

(a) That the unconditional most-favored-nation policy is an essential part of the program and that this policy, when coupled with a bargaining tariff policy as is the case in the trade-agreements program, makes requisite a selection of commodities for tariff negotiation restricted by the principal supplier rule, but that other countries may expect to benefit, with respect to commodities in which they are interested but are not sufficiently a leading supplier to warrant concessions being accorded directly to them, by the extension to their trade under the reciprocal most-favored-nation principle of concessions granted to third countries in trade agreements with the latter.

(b) That in the present status of the program no extensive new concessions could be granted on competitive agricultural products in trade agreements with countries whose main interest would lie in the export of such products to the United States; it was essential that there first be negotiated trade agreements with countries supplying industrial products to the United States, by means of which

it would be possible to provide for restored foreign markets for American agricultural export products. Applying this consideration to the commercial relations between the United States and the British Empire, it was quite clear that the negotiation of a satisfactory trade agreement with the United Kingdom⁴ would necessarily be "the first next step" in the development of the program prior to the negotiation of trade agreements with the British Dominions, but that the negotiation of such an agreement with the United Kingdom would remove a decisive obstacle from the road toward the negotiation of trade agreements with the Dominions.

Mr. Deimel stated that he understood the New Zealand officials had learned in London the details of the relationship between the Ottawa preferences and the necessary requisites for the conclusion of a trade agreement between the United States and the United Kingdom, and that there was accordingly no occasion to go into those details here; he pointed out, however, that our position was not to be construed as an attempt to bring about the collapse of the British preferential system but rather that we were pointing out the extent of the moderation in the preferentials, as established under the Ottawa system, which would be necessary to the conclusion of a trade agreement between the United Kingdom and ourselves.

In answer to a question as to why, if the conclusion of a trade agreement with the United Kingdom was a prerequisite to the conclusion of a trade agreement with the Dominions, a trade agreement had already been concluded with Canada,⁵ it was pointed out that the trade agreement with Canada was negotiated at an entirely different, much earlier stage of the program, and that the early negotiation of such an agreement was readily to be explained by the particularly close commercial relations between the United States and its northern neighbor.

Mr. Johnsen noted that the most-favored-nation principle was considered essential to any trade agreement of the United States and said that this would create difficulties so far as New Zealand was concerned, not merely in that New Zealand had been seeking to balance its trade with individual foreign countries but because of revenue difficulties; that a concession which might be granted to one country alone without causing much disturbance as to customs revenues, would become much more difficult if it had to be applied to the trade of all other countries. In the resulting discussion it was pointed out that these and other apparent objections to the unconditional most-favored-nation policy had received most detailed and thorough con-

⁴ See pp. 1 ff.

⁵ For text of agreement signed November 15, 1935, see Department of State Executive Agreement Series No. 91 or 49 Stat. 3960; for correspondence, see *Foreign Relations*, 1935, vol. II, pp. 18 ff.

sideration in the extensive public and private discussion which had been connected with our adoption of a tariff bargaining policy connected with the unconditional most-favored-nation policy, and that thorough consideration invariably led to the conclusion that the advantages of the unconditional most-favored-nation policy, the policy of equality of treatment, outweighed any apparent difficulties or disadvantages which might seem to accompany it. While Mr. Johnsen did not express concurrence, he did not raise the point again during the remainder of the discussions.

At this point, Mr. Nash joined the meeting and Dr. Sutch explained to him what had gone before, pointing out that in particular the unconditional most-favored-nation policy was considered a necessary part of the trade-agreements policy and that a trade agreement with the United Kingdom was considered "the first next step" in the program, as a prerequisite to the negotiation of trade agreements with the Dominions. Mr. Nash indicated that the matter had been brought to his attention at London and that his position was essentially that he could not agree to changes which would deprive New Zealand of trade which she now enjoyed, and that also, although bilateral balancing of trade with other countries had been one of the principal aims of New Zealand's commercial policy, he would not be willing to approve measures which would involve a restriction of actual trade required to meet human needs, and further that aside from these considerations he would be favorable to anything which would lead to improved trade and commercial relations between the United States and the British Empire and contribute to the maintenance of peace. Mr. Nash also stated that New Zealand being a debtor country and finding it desirable to reduce the total of its foreign indebtedness, it was essential that New Zealand's commercial policy should be such as to promote an export balance which would enable the service and reduction of its debts to be carried. He added that he and the officials with him would like to take advantage of their stay in Washington to get as close an idea as practicable of the nature of such agreement between the United States and New Zealand as might ultimately result if the way to such an agreement were cleared. He said Mr. Johnsen had brought with him a list of commodities in which New Zealand was particularly interested and pertinent statistics and would like to discuss each of these commodities individually. It was pointed out to him that the present discussions could lead to no specific commitments whatsoever; but, with this in mind, it was agreed that the respective experts might, in the continued discussions arranged for the next day, go over the commodities in question and the statistics with a view to developing what might be the general nature of the consideration that might be given to them, in the event trade agreement negotiations should be initiated.

July 13

In the morning and afternoon meetings of the second day's discussions, Mr. Johnsen read out, item by item, a list of products with regard to which New Zealand would be interested in obtaining concessions from the United States in the event of the initiation of trade agreement negotiations between the two countries. The officials of both Governments present were supplied with a statistical compilation prepared by the Tariff Commission of the products of which New Zealand has been a principal supplier to the United States; and other statistical data were available so that, as each item was read out, the statistics were examined and, on the basis thereof, Commissioner Durand indicated what might be expected to be our attitude, under existing policies, with respect to the possible consideration of those items for concessions, on the basis of the information at present available. In this connection, it was emphasized, however, that these expressions could in no wise be considered as specific commitments but merely as indications as to how our policy would apply in the light of the information at present available; it was also pointed out that any comment made at the present time would be tentative, since the prerequisite to any specific commitments, in addition to the general prerequisites previously mentioned, would have to be the most thorough expert study by the trade-agreements organization of all available facts, including those obtained from the trade following announcement of intention to negotiate.

It was emphasized that the legal necessity for these procedural steps in itself made it impossible for the current remarks to be in the nature of commitments on our part.

The commodities mentioned by Mr. Johnsen are indicated below, together with a summary of the comment made to him on each.

[Here follows a list of twenty-four commodities with comments on each. The items most extensively discussed were butter and meat.]

July 14

At the close of the discussions on July 13, the New Zealand delegation asked whether we would care to make similar inquiries of them with regard to the commodities which would be of interest to us in the event trade agreement negotiations should be initiated. They were informed that we could not indicate specifically what our requests for concessions on individual commodities might be, since our procedure required public announcement and an opportunity for the trade to present its views before we could make any determining decision as to the products on which concessions would be requested. With this proviso, however, it was agreed that we would give them some indication of the general nature of the requests which we thought might be expected

from us in the event of trade agreement negotiations. For this purpose they were provided with a compilation prepared in the Department of Commerce showing the trade in the products of which the United States has been a principal supplier to New Zealand. It was pointed out that this compilation, just as was the case in regard to the Tariff Commission's compilation of imports from New Zealand previously handed to them, was the result of a purely mechanical procedure.

On the basis of this compilation, Mr. Hungerford and Mr. Stewart commented by way of example upon some of the more important industrial and agricultural commodities in the trade. Mr. Hungerford pointed out that the preferences to British countries which appear in the customs duties are increased somewhat through surtaxes. Mr. Johnsen pointed out that the additional surtax was bound only to certain British countries as a preferential duty, and furthermore that representations from the United States for removal of the surtax would doubtless receive favorable consideration from the New Zealand Government. Mr. Hungerford commented on certain commodities of particular interest to us in our export trade to New Zealand, such as motor cars and parts, lubricating oil, radios, vacuum cleaners, typewriters and lumber. Mr. Stewart commented on certain agricultural items of particular interest, such as canned fruit, pork products, tobacco and flour, pointing out that in any trade agreement we should expect to obtain such concessions as would enable us to maintain our present share in the New Zealand trade.

Mr. Deimel then outlined the procedure followed by the United States in negotiation of a trade agreement with any country, pointing out the legal requirements which resulted in the necessity for public hearing and receipt of suggestions and views from the trade, and also the necessity for study and recommendation by the interdepartmental trade-agreements organization before specific commitments or requests could be formulated.

The necessity of a satisfactory agreement with the United Kingdom, as a prerequisite to the negotiation of agreements with the British Dominions was again emphasized; no precise formula was expressed as to when or at what stage it would be possible to enter into preliminary discussions with the Dominions' Governments; it was stated that while the initiation of such discussions would not necessarily have to await the conclusion and signature of an agreement with the United Kingdom, a satisfactory agreement with the United Kingdom would have to be definitely in prospect before serious trade agreement discussions could, in the existing state of affairs, be initiated with the Dominions' Governments.

In a brief final session on the afternoon of July 14, the outcome of the discussions was summarized. Mr. Johnsen in his summary to Mr. Nash of the proceedings indicated an impression that New Zealand would obtain "compensation" for such concessions as it might grant with respect to Ottawa preferences for the purpose of making a United States-United Kingdom trade agreement possible, in the subsequent negotiation of a trade agreement between New Zealand and the United States. Mr. Minter corrected his understanding by pointing out that, while, of course, we would remember such action as New Zealand would take to facilitate the conclusion of a satisfactory agreement between the United States and the United Kingdom, New Zealand's compensation would essentially be the result of opening the way to the negotiation of a mutually satisfactory agreement between New Zealand and the United States, but that under our law the latter agreement would necessarily be reciprocal and have to stand on its own.

Mr. Nash indicated briefly the nature of the comments which he intended to make to the British Ambassador, before his own departure that afternoon, as to the results of these discussions; he reiterated what he had said at the opening of the discussions, namely, that he could not agree to provisions which would cause the loss to New Zealand of trade which she already had and that he could not agree to provisions for the curtailment of production; but that aside from this he would do everything he could for the promotion of improved trade relations and would not stand in the way of trade agreement negotiations between the United States and the United Kingdom.

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[In a telegram to the Consul at Wellington, dated January 28, 1939 (611.47H31/109), the Secretary of State gave the following reasons for not accepting an invitation of December 31, 1938, from the New Zealand Government, to send a representative to New Zealand to resume conversations:

"1. We wish to see how the licensing system will be administered and to appraise its effect on American trade. . . .

"2. We are not in a position to proceed with trade agreement negotiations with New Zealand at this time even if exploratory conversations should reveal an adequate basis. We, therefore, consider that any conversations in the near future would be premature."]

EFFORTS TO SECURE FROM THE BRITISH GOVERNMENT A SOLUTION FOR THE PROBLEM OF DISCRIMINATION AGAINST AMERICAN COMMERCE IN THE NEW ZEALAND MANDATE OF WESTERN SAMOA⁶

611.62M31/100a

*The Secretary of State to the Chargé in the United Kingdom
(Atherton)*

No. 1591

WASHINGTON, February 8, 1937.

SIR: Reference is made to the Embassy's despatch No. 2242 dated June 5, 1936,⁷ transmitting Foreign Office note dated June 3, 1936, in regard to the treatment of American commerce in Western Samoa.

I am convinced that the Department has possibly erred in the past by having conducted correspondence on this matter as if it were a matter strictly between the Government of the United States and the Government of New Zealand, even though the correspondence has passed through the various offices at London where its tenor could be observed. It is not my intention that the New Zealand Government shall be denied the courtesy of an acknowledgment to its present note, which shall be forthcoming in due course, but I believe the best approach to the question at the present time should be to initiate correspondence with the British Government where, in our opinion, the responsibility chiefly lies. Accordingly, in handing to Mr. Eden the note which is quoted below, you are requested to inform him that the Government of New Zealand may expect, in due course, an acknowledgment to its note of June 3, 1936, and that the present note is addressed to the British Government, not with reference to any previous correspondence, but because of a situation arising out of apparent disregard by the Government of Great Britain of its obligations to the United States under the Tripartite Treaty of December 2, 1899, between the United States, Germany, and Great Britain.⁸

The text of the note follows:

"This note discusses the obligations toward one another of the United States, Great Britain and Germany to fulfill certain promises made in a treaty signed by the three countries on December 2, 1899, respecting the administration of the Samoan Islands.

"By that treaty the United States and Germany guaranteed to Great Britain equal rights with themselves in the regions defined by the Treaty and impliedly designated thereby for administration as protectorates by the United States and Germany. The United States has administered the Eastern group continually since 1899, while Germany lost administration of the Western group in 1914. During the first fifteen years of the Treaty the United States and Germany accorded

⁶ For previous correspondence regarding discrimination against American commerce in the New Zealand Mandate of Western Samoa, see *Foreign Relations*, 1936, vol. I, pp. 852 ff.

⁷ *Ibid.*, p. 852.

⁸ *Ibid.*, 1899, p. 667.

to each other equal rights in their respective protectorates and both accorded to Great Britain equal rights in both protectorates. During the British military administration of the Western group the United States and Great Britain satisfactorily fulfilled their treaty obligations, the British Administration apparently taking the view that the rights of the United States in Western Samoa were not to be impaired by a change of administration within the circle of the signatories of the Treaty under reference. That action indicated that Great Britain, so long as it was concerned with the Western group in either an administrative or an advisory capacity, intended to secure for the United States its treaty rights in that group.

"The administrative capacity of Great Britain temporarily ceased when His Britannic Majesty issued the Samoa Customs Order, 1920, and permanently when, the Council of the League of Nations having conferred upon His Britannic Majesty a Mandate, His Britannic Majesty designated his Ministers composing the Government of New Zealand as administrators of the territory, responsible to His Britannic Majesty as well as to the League of Nations. The advisory capacity of Great Britain, however, did not cease with those acts, as is evidenced by the fact that a New Zealand Order in Council of April 20, 1920, discriminating as between the customs treatment to be accorded to goods of British Empire and of American origin, was issued under advice from His Britannic Majesty's Ministers in London. The approval of that Order in Council by those Ministers indicated a change of feeling on their part regarding the obligations of Great Britain under the Treaty of 1899.

"Concurrent with this action by His Britannic Majesty's Ministers and personal representatives, but not because of it, a Merchant Marine Act^{2a} was being discussed and enacted in the United States Congress. Through inadvertence the Act as passed proved inconsistent with the Treaty of 1899 to the extent that, without its amendment, the Act would deprive the vessels of Great Britain and Germany of equal rights with United States vessels in American Samoa. Since the violation of treaty obligations, whether by municipal law accidentally inconsistent with them or by official act made in full realization of them, is repugnant to the Government of the United States, it devoted its best efforts to secure an amendment to that Merchant Marine Act. His Britannic Majesty's representatives in the United States could hardly have failed to be aware of the fact that there was no Committee discussion of the treaty aspects of Section 21 before passage of the Act, which fact makes it evident that the Congress of the United States was not motivated by any spirit of retaliation for the action of His Britannic Majesty's ministers. These representatives must also have known that existing statutes empowered the Government of the United States to retaliate, if it felt so disposed. Moreover, they could most certainly not have failed to take note of the bills subsequently introduced at the instance of the Government and to have realized that their purpose was the reparation of an oversight by the legislative body. Failure of the United States Government to give periodic notice to Great Britain of its renewed efforts to restore to British shipping equal rights with American shipping in Eastern

^{2a} Approved June 5, 1920; 41 Stat. 988, 997.

Samoa, cannot, in view of the public nature of those efforts, be interpreted as silence.

“On the other hand His Britannic Majesty’s Ministers, on constant notice of the efforts of the United States Government, continued to condone the discrimination against American commerce by the Administrator of Western Samoa, apparently using the American statute as justification. This state of affairs continued despite the fact that there existed in the British system no constitutional obstacle to immediate reinstatement of American commerce on an equal footing with British commerce in Western Samoa. That state of affairs continues today, more than two years after the necessary amendment of the Merchant Marine Act has been effected, and the Government of the United States would be both surprised and disappointed if the British Government would condone its further continuance. It looks to the British Government for a solution of the problem and would be grateful for a very early response to this note.”

Very truly yours,

For the Secretary of State:
FRANCIS B. SAYRE

611.62M31/102 : Telegram

*The Ambassador in the United Kingdom (Bingham) to the
Secretary of State*

LONDON, March 18, 1937—3 p. m.
[Received March 18—11:15 a. m.]

153. The note quoted in the Department’s instruction 1591 February 8, 1937, was textually transmitted to Foreign Office on February 18.

In a conversation yesterday at his request with an official of the Foreign Office it was stated that in the British opinion the subject matter of the Department’s note could be more conveniently treated if it were presented orally or in an informal communication. If the British must reply to the signed note as it stands, it was stated that the reply must be adverse to the contentions of the United States and that it would be difficult to avoid “asperities.”

In the British view, the whole question resolves itself to whether or not His Majesty is fulfilling international British obligations in Western Samoa. If these obligations are not being fulfilled by His Majesty’s Government in New Zealand, it is immaterial whether the New Zealand action is based or not upon advice from law officers of the Crown in London. The point was made and somewhat insisted upon that action in this matter has been entirely that of New Zealand without pressure from London which has merely offered legal advice upon request of the New Zealand Government.

The Foreign Office gave no indication of what the reply would be if the communication were made in an informal manner. It is quite

clear however that they regard the formal note as unjustifiably sharp and that they desire it withdrawn. Please instruct.

BINGHAM

611.62M31/102 : Telegram

*The Secretary of State to the Ambassador in the United Kingdom
(Bingham)*

WASHINGTON, March 26, 1937—7 p. m.

106. Your 153, March 18, 3 p. m., regarding Samoa.

(1) Please seek an early opportunity to discuss this matter fully at the Foreign Office with a view of ascertaining the British position and achieving the purpose of Department's instruction of February 8. You may say:

(a) That your Government had no disposition to give displeasure in the matter of phraseology and will gladly make modifications in the Embassy's note of February 18 in order to facilitate compliance by His Majesty's Government with the just requests of the United States, or even withdraw the note if the end in view can by other means be more happily achieved.

(b) That your Government, while not concerned with forms or language, must stand on the principles set forth in the Embassy's note of February 18.

(c) That your Government is gratified that His Majesty's Government agrees that (as your telegram states it) "the whole question resolves itself to whether or not His Majesty is fulfilling international British obligations in Western Samoa".

(d) That your Government is interested primarily in results. The results contemplated are the maintenance of the integrity of the treaty of 1899 and the abolition of the discriminations against American commerce in Western Samoa.

(2) For your confidential information and guidance, the Department feels at a loss to understand what is behind the intransigency of the British regarding what seems so clear a case of failure to comply with a treaty; whether, for instance, their fundamental position is (a) one of opposition, as a matter of policy, to the restoration of equality of commercial treatment; (b) a proposal to try to sustain the claim of tacit abrogation of the treaty provisions; (c) a disclaimer of any responsibility on the part of London for New Zealand's acts; or (d) something else of which no hint has been given. It is hoped that your discussions will elicit some light on this matter.

(3) If feasible, and if it is still adhered to, Department would like to obtain a copy of the opinion which the London law officers of the crown gave to the New Zealand authorities.

Please keep Department adequately informed by telegraph.

HULL

611.62M31/104 : Telegram

*The Ambassador in the United Kingdom (Bingham) to the
Secretary of State*

LONDON, April 19, 1937—5 p. m.
[Received April 19—12:55 p. m.]

226. Your 106, March 26, 7 p. m. The following points emerged with some insistence from conversation at the Foreign Office on the line of the Department's instruction :

(1) The issue is one between the United States and "His Majesty's Government in New Zealand".

(2) The stand of the New Zealand Government is undoubtedly taken on the ground of tacit abrogation of the treaty provisions.

(3) London does not admit responsibility for the action of the New Zealand Government.

(4) The basis for the New Zealand Government's stand is fully set forth in the note of June 3, 1936, (my despatch No. 2242 June 5, 1936^{sb}).

The opening sentence, paragraph 3 of my 153 March 18, 3 p. m., "In the British view the whole question resolves itself to whether or not His Majesty is fulfilling international obligations in Western Samoa" is not to be interpreted as meaning His Majesty's Government in Great Britain. The reference is to His Majesty as the sovereign represented by Government in New Zealand.

I expect to have an early opportunity for further discussion of this matter with the Foreign Office and have requested that at the next meeting the Legal Adviser who has been handling the matter may be present.

BINGHAM

611.62M31/104 : Telegram

*The Secretary of State to the Ambassador in the United Kingdom
(Bingham)*

WASHINGTON, April 22, 1937—1 p. m.

145. Your 226, April 19, 5 p. m. Department appreciates interim information and commends continued vigorous presentation of this Government's position, particularly the responsibility of His Majesty to fulfil British international obligations in Western Samoa.

HULL

^{sb} *Foreign Relations*, 1936, vol. I, p. 852.

611.62M31/106 : Telegram

The Ambassador in the United Kingdom (Bingham) to the Secretary of State

LONDON, April 29, 1937—6 p. m.
[Received April 29—3:08 p. m.]

251. Your 145, April 22, 1 p. m. Further discussion at the Foreign Office has not resulted in elucidation of the British position and has served only to reaffirm and emphasize arguments previously made.

The issue, it is insisted, is one between the United States and "His Majesty's Government in New Zealand". The New Zealand Government has from the beginning pressed for the maintenance of the present regime in Western Samoa and the offer made to the United States by New Zealand in 1924,⁹ the Foreign Office stated, would not have been made except upon the suggestion and insistence of the Government in London. The United States did not reply to that offer and New Zealand maintains that it must be considered as a tacit abrogation of the stipulations of the treaty of 1899. The Foreign Office admits that there is a possible basis for differences as to whether tacit abrogation of the treaty took place. It was frankly stated, however, that they agree with the stand taken by the New Zealand Government. They admitted that this moral support, even considering the British disclaimer of responsibility, must be a comfort to the Government of New Zealand.

The Foreign Office still prefers (my telegram 153, March 18, 3 p. m.) not to answer our note of February 18, 1937 as they could not, they say, avoid what might appear to be acrimonious argument in refutation of certain points set forth in our note. They specifically mentioned the stated inability of the United States to fulfill the treaty by reasons of adverse legislation and said that, while they fully realized the difficulty then confronting the United States in their opinion it is no argument in law. They also discount the argument that British officials in the United States must have been aware of the efforts being made by the Department to cause the defective legislation to be remedied and allege that the British Government could not be legally cognizant of those efforts unless advised by the United States Government. The Foreign Office several times referred to the offer made to the United States in 1924 which they say is evidence of good will and even more strongly emphasize the fact that the United States did not reply to that offer. The Foreign Office would prefer, therefore, to keep the discussions on their present oral and

⁹ See note from the Governor General of New Zealand to the British Secretary of State for the Colonies, *Foreign Relations*, 1924, vol. II, p. 245.

informal basis and to await the reply of the United States Government to the Government of New Zealand's note of June 3, 1936.

The sum of the New Zealand Government's case as supported by the Government in London seems to be that they think there are sufficient grounds for considering the treaty was tacitly abrogated and because a reversal of the stand in this matter now would cause considerable domestic difficulties for New Zealand in its relations with Western Samoa, they are determined not to do so if it can possibly be avoided.

BINGHAM

611.62M31/106 : Telegram

The Acting Secretary of State to the Ambassador in the United Kingdom (Bingham)

WASHINGTON, May 25, 1937—4 p. m.

196. Your 251, April 29, 6 p. m., regarding Samoa, penultimate paragraph. As indicated in instruction No. 1591, February 8, 1937, Department contemplates replying to New Zealand with reference to the note of June 3, 1936, transmitted with the Embassy's despatch No. 2242, June 5, 1936. This reply should be ready for delivery within the next few weeks.

Please inform Foreign Office of above and add that this Government agrees to continuance of discussion on present oral and informal basis. This acquiescence should create no misunderstanding of the United States' intention to look to His Majesty, acting through one of his governments, for eventual compliance with the Treaty of 1899.

If at all possible to obtain it the Department would appreciate a copy of the opinion of the crown law officers.

WELLES

611.62M31/107

*The Ambassador in the United Kingdom (Bingham) to the Secretary of State*¹⁰

No. 3280

LONDON, August 9, 1937.

[Received August 17.]

SIR: I have the honor to refer to the Department's telegram No. 196 of May 25, 4 p. m., and to previous correspondence relating to the

¹⁰ Attached to the original is a memorandum, dated December 31, 1937, from Wallace McClure, Assistant Chief of the Treaty Division, to John Minter of the Division of European Affairs stating: "I believe we agreed this case is in abeyance for the present."

Mandated Territory of Western Samoa. The Department expressed the desire to obtain, if possible, a copy of the opinion of the Crown law officers which was furnished to the New Zealand Government. This matter was taken up informally with the Foreign Office and I regret to have to report that the appropriate officials there state that it will be impossible for them to furnish the Embassy with a copy of the Memorandum. It was stated that this Memorandum is one of a strictly confidential nature for interdepartmental use only, and that it would be contrary to all their practice and precedents to give us a copy. The refusal was made, needless to say, with expressions of regret.

Respectfully yours,

For the Ambassador:
HERSCHEL V. JOHNSON
Counselor of Embassy

EUROPE

BELGIUM

PRELIMINARY DISCUSSIONS RESPECTING A SUPPLEMENTARY TRADE AGREEMENT BETWEEN THE UNITED STATES AND BELGIUM¹

611.5531/693

Memorandum by Mr. Jacques J. Reinstein of the Division of Trade Agreements

[WASHINGTON,] January 4, 1937.

Conversation: The Belgian Ambassador^{1a} and Mr. Raoul E. L. Grenade, Commercial Counselor to the Belgian Embassy;

Mr. Culbertson and Mr. Williamson of the Division of Western European Affairs;

Mr. Fowler and Mr. Reinstein of the Division of Trade Agreements.

The Belgian Ambassador and Mr. Grenade called to discuss the terms of an agreement containing general provisions to supplement the existing trade agreement between Belgium and the United States.²

Mr. Fowler outlined the Department's viewpoint with respect to a number of points on which there are divergences between the United States standard provisions³ and the Belgian counter-draft.⁴ It appeared to be the intention of the Ambassador to consult his Government by telegram as to whether they were prepared to accept our alternative proposals to their counter-draft on points of importance. In order to facilitate this method of handling the negotiations, it was agreed that the Department would prepare a "clean draft" of provisions based on the Belgian counter-draft and embodying the American desiderata, to be accompanied by comments outlining our viewpoint with respect to any changes in wording made in the counter-draft.

¹ For previous correspondence regarding the supplementary trade agreement, see *Foreign Relations*, 1936, vol. II, pp. 10 ff.

^{1a} Count Robert van der Straten-Ponthoz.

² For text of agreement between the United States and the Belgo-Luxemburg Economic Union, signed February 27, 1935, see Department of State Executive Agreement Series No. 75, or 49 Stat. 3680.

³ For text of standard general provisions, see *Foreign Relations*, 1935, vol. I, p. 541.

⁴ Belgian counterdraft not printed.

Mr. Grenade will call to pursue the discussions on the basis of the Department's memorandum on Monday, January 11.

The specific points which were informally discussed with the Ambassador and Mr. Grenade were as follows (the article numbers given refer to those in the Belgian counter-draft).

[Comments on the various articles are omitted.]

611.5531/696

The Belgian Ambassador (Van der Straten-Ponthoz) to the Secretary of State

[Translation]

WASHINGTON, January 9, 1937.

DEAR SIR: Supplementary to our telephone conversation, I hasten to advise you that I have received from Brussels, in connection with the cable that I sent after our first meeting, a response informing me that it was impossible for the Belgian Government to reply to the suggestions of the United States Government without knowing the reasons for them.

The Minister of Foreign Affairs desires that I send him a report on the articles of our counter project, which do not meet with the approval of the Department of State, giving the reasons therefor, and that I transmit to him the text of the proposed modifications.

I would especially appreciate it if you would kindly enable me to reply to the Minister of Foreign Affairs.

I am entirely at your disposal to come and discuss the question with you when convenient, and I take [etc.]

R. V. STRATEN

611.5531/712

*The Secretary of State to the Belgian Ambassador
(Van der Straten-Ponthoz)*

WASHINGTON, July 9, 1937.

MY DEAR MR. AMBASSADOR: I refer to your note of January 9, 1937, in which you advised me of the desire of your Government to examine the exact text of the proposed changes in the Belgian counter-draft of general provisions to supplement the trade agreement of February 27, 1935, before commenting on them.

In accordance with your request, I have had a new draft prepared embodying the changes which were discussed with you and Mr. Grenade by officers of the Department. I am enclosing⁵ the original and

⁵ Enclosures mentioned not printed.

a copy of this revised draft, together with the original and a copy of a memorandum showing the exact changes which are proposed in the counter-draft prepared by your Government and outlining the reasons why they have been proposed.

The changes which are contained in the present draft relate principally to wording except in the article on exchange control, with respect to which the Government of the United States is presenting a new proposal. In so far as the general content of the provisions is concerned, there appears to be substantial agreement. I hope that we may therefore be able to look forward to an early conclusion of the negotiations.

I am [etc.]

CORDELL HULL

611.5531/722

*Memorandum by Mr. Jacques J. Reinstein of the Division of
Trade Agreements*

[WASHINGTON,] August 26, 1937.

Conversation: Mr. Walravens, Second Secretary of the Belgian Embassy;
Mr. Culbertson;
Mr. Hawkins;⁶
Mr. Reinstein.

Mr. Walravens called to inquire for information regarding our position on the draft of general provisions sent to the Belgian Embassy on July 9. He said that the Ambassador had received a personal letter from someone in the Belgian Foreign Office stating that the Belgians were very much disappointed over the attitude which we had apparently taken with regard to the negotiation of the general provisions; that they felt we had not approached the matter in the friendly spirit in which the agreement was concluded and that we had not made any effort to meet their views with regard to certain points in the draft which they considered of importance; and that it was therefore difficult for them to see how they could accede to our wishes on points in regard to which we were particularly interested.

Mr. Walravens inquired whether it would be possible for us to give him a further statement on our position indicating the points which we consider to be of importance. He felt that such information would facilitate the examination of our draft by the Belgian authorities.

Mr. Hawkins stated that we would be glad to do this, and it was arranged that Mr. Walravens and Mr. Reinstein should go over our draft together at an early date.

⁶Harry C. Hawkins, Chief of the Division of Trade Agreements.

611,5531/723

*Memorandum by Mr. Jacques J. Reinstein of the Division of
Trade Agreements*

[WASHINGTON,] August 31, 1937.

Conversation: Mr. Walravens, Second Secretary of the Belgian Embassy;
Messrs. Reinstein, Wadleigh, de Rycke, and Ross
of the Division of Trade Agreements;
Mr. Clark, of the Division of European Affairs.

Mr. Walravens called by appointment this morning to secure a statement of our position with regard to the draft of general provisions for the Belgian trade agreement which was transmitted to the Belgian Embassy in July of this year.

At the outset Mr. Walravens was informed that it would be difficult for us to make any statement on the possibility of our modifying our view with respect to any particular article without having some indication as to the points which were troubling the Belgian Foreign Office. He said that it was not his desire to obtain a statement of this character at the present time, but that he merely wished to learn the reasons which had motivated the changes which we had made in the Belgian draft.

It was emphasized to Mr. Walravens that we do not regard the drafting of general provisions as a subject for bargaining in the sense that we bargain for concessions. A framework for the supplementary agreement already exists in the provisions of the exchange of notes of February 27, 1935, and the preparation of a text of general provisions would seem to involve merely the filling in of this framework with somewhat more detailed provisions. The two Governments are already in agreement on the basic principle of non-discriminatory treatment, which finds expression in the trade agreement and in the liberal commercial policies which they pursue. The problem appears to us, therefore, as one primarily of drafting a text which will conform to the legal requirements and practices of the two countries.

It was pointed out to Mr. Walravens that the text of our standard provisions had been given to the Belgian Government prior to the conclusion of the trade agreement and that the Belgian Government had not indicated that the type of provisions included in our standard draft were unacceptable to it.

We had not felt, in working on the Belgian draft, that the two Governments were in disagreement as to these principles, and it was,

therefore, a matter of some surprise to us to learn that the Belgian Government apparently considers such to be the case.

It was pointed out that, while we have introduced a number of changes in the Belgian draft, most of them were necessitated by the form in which we had drawn the agreement or by legal considerations. It was explained that the language used in our standard provisions has been developed over a long period of years, and has acquired a precise meaning in many instances through judicial interpretation. In regard to matters which may be made the subject of litigation, we naturally prefer this language to different phraseology with regard to the probable judicial interpretation of which we could not be certain. Where the subject covered by the provisions is not of such a character, there is more latitude.

It was then explained to Mr. Walravens why we had prepared our draft in the form of a supplementary agreement. Although the exchange of notes called for a supplementary agreement, the agreement might possibly be drawn up in the form of a full agreement with the schedules included, were it not for certain legal problems. We have been informed by our Legal Division that it will be necessary to issue a public notice of intention to negotiate a supplementary agreement and to hold a hearing before the agreement is concluded. If the schedules were to be repeated in the supplementary agreement, it would be necessary to hold hearings on them, and we would be placed under considerable pressure to reopen the entire agreement, and, particularly, to modify or withdraw some of the concessions which we have granted to Belgium. Both Governments presumably would wish to avoid this. In view of this fact, we have been careful to prepare the draft in a form which would not repeat the concessions previously granted, and we plan to restrict the hearings to the subject which we dealt with in our recent draft, that is, to the general provisions. In this connection, Mr. Walravens' attention was later called to the phraseology which we had used in the opening sentences of Article I and Article II, in which the duty assurances in the present agreement are mentioned by reference rather than restated as a new commitment.

Our draft was gone over with Mr. Walravens article by article. For the most part the comments which were included in the memorandum enclosed with the draft given the Belgian Embassy in July were merely reiterated.

The substance of the statements made to Mr. Walravens on the various articles of the draft is as follows:

[The comments on the various articles are omitted.]

611.5531/723

The Secretary of State to the Ambassador in Belgium (Gibson)

No. 28

WASHINGTON, November 2, 1937.

SIR: As you are aware, the trade agreement between the United States and the Belgo-Luxemburg Economic Union, effected by an exchange of notes on February 27, 1935, does not include comprehensive general provisions respecting the treatment which will be accorded by each country to the other's trade. However, it was provided in the exchange of notes that the agreement should be supplemented as soon as possible by an agreement containing general provisions.

The text of the United States standard draft of general provisions was furnished to the Belgian Government during the negotiation of the trade agreement, and a revised text was sent to the Belgian authorities on June 27, 1935.⁷ Under date of March 31, 1936, the Belgian Government, through its embassy in Washington, transmitted to the Department the proposed text of an agreement, which, although based in general upon the United States standard provisions, varied from them in a number of important particulars. A mimeographed copy of the Belgian proposals, with the corresponding Articles of the United States standard provisions as submitted to the Belgian Government shown in a parallel column, is enclosed herewith.⁸

In view of the requirement under the Trade Agreements Act⁹ that public notice be given and that a public hearing be held with regard to the negotiation of the supplementary agreement, the Department felt that announcement at that time of intention to negotiate might result in pressure for the renegotiation of the entire trade agreement. This view was communicated to the Belgian Embassy on August 11, 1936,¹⁰ with a suggestion that the negotiations be postponed until a favorable opportunity presented itself. The Department desired, however, to reach more or less definitive agreement with the Belgians as to the text of the supplementary agreement in advance of any public announcement, and, therefore, began informal discussions with the Belgian Ambassador in January, 1937, with regard to the points of difference between the two drafts.

As a result of these conversations, the Belgian Ambassador requested that the Department furnish him with the exact text of the changes in the Belgian draft desired by the Department and with a statement of the reasons for the desired changes. This was done on July 9, 1937.

⁷ Letter of June 27, 1935, to the Belgian Ambassador, missing from Department files.

⁸ Not attached to file copy.

⁹ 48 Stat. 943.

¹⁰ *Foreign Relations*, 1936, vol. II, p. 10.

The text of the United States counter-draft and a memorandum showing the changes made in the Belgian draft and commenting on the changes are enclosed.¹¹

The Department has not received any formal expression of the Belgian Government's views with regard to the United States draft. However, Mr. Walravens, Second Secretary of the Belgian Embassy, recently called at the Department and stated informally that the Belgian officials responsible for the negotiation of the supplementary agreement felt that the Department had not made any effort to meet their wishes on certain points in which the Belgian Government was interested and that it would, therefore, appear difficult for the Belgian Government to accede to the Department's wishes on certain other points. Copies of memoranda of two conversations held with Mr. Walravens on August 26 and August 31, which are self-explanatory, are also enclosed,¹² as well as a copy of a memorandum later handed to Mr. Walravens.¹³

The Department is anxious to avoid coming to an impasse with the Belgian Government in the present negotiations and believes that it would be helpful if a detailed statement of its position were to be made to the Belgian officials who are directly responsible for the negotiation of the agreement. You are therefore requested to seek an opportunity at an early date to go over the United States draft with the Foreign Office and to reiterate the statements made to Mr. Walravens on August 31. In doing so, you should make clear that the Department does not wish to change the place of the negotiations and that your purpose is merely to facilitate the examination by the Foreign Office of the Department's proposals.

In connection with this general subject, reference is made to the Embassy's despatch No. 1301, dated July 1, 1937,¹⁴ regarding the extension by Belgium to the United States of the concessions granted by the Belgian Government in the Oslo Convention of May 28, 1937.¹⁵ In the despatch under reference, the Embassy reported a statement by an official of the Belgian Foreign Office to the effect that the Belgian Government intended to extend the benefit of the Convention to the United States, although it did not consider itself legally obligated to do so.

The position taken by the Belgian Government with reference to the extension of the Oslo Convention benefits is presumably the same as that stated by it at the time of its adherence to the Agreement relative to the Non-application of the Most-Favored-Nation Clause to

¹¹ Neither printed.

¹² *Supra.*

¹³ Not found in Department files.

¹⁴ Not printed.

¹⁵ League of Nations Treaty Series, vol. CLXXX, p. 5.

certain Multilateral Economic Conventions¹⁶ (Treaty Series No. 898). This Agreement, which was opened for signature at the Pan American Union in 1934 in accordance with a resolution adopted at the Montevideo Conference,¹⁷ has been ratified only by the United States and Cuba. It was signed *ad referendum* by the Belgian Government, which made the following declaration at the time of signing the agreement:

"The Belgian Government declares that in signing the present agreement it does not intend to recognize that in the absence of engagements of the same nature as those stipulated therein, and outside of any reciprocity of fact, the most-favored-nation clause may be invoked with a view to being admitted to the benefits of economic conventions susceptible of a general application which have for their purpose the promotion of international trade, and to which all countries may adhere."

The Department does not concur in the view expressed in the Belgian declaration nor is it believed that it has been widely accepted by other countries. It is the view of the Department that the Belgo-Luxemburg Economic Union is legally obligated by its trade agreement with the United States to extend to this country the concessions granted by it in the Oslo Convention. However, in view of the fact that the Belgian Government has extended to this Government the benefits of the concessions granted in the Oslo Convention, the Department does not consider it necessary or desirable at this time to engage in a discussion with the Belgian Government as to its legal obligations under the trade agreement. In this connection, note has been made of Miss Willis'¹⁸ oral statement, also reported in your despatch of July 1, that the position of this Government with regard to the legal obligation to extend the benefits of the Oslo Convention might not be identical with that of the Belgian Government.

You will note that the draft agreement prepared by the Belgian Government included, as numbered paragraph (5) of Article 13, a reservation similar to the provisions of Articles I and II of the Agreement for the Non-application of the Most-Favored-Nation Clause. This reservation has been omitted in the United States draft. In discussing this omission you should say to the Foreign Office that the reservation has not been included in any of the most-favored-nation trade agreements concluded by the United States with other countries, and that the Department does not wish, by including the reservation in the supplementary agreement with Belgium, to establish a precedent for the inclusion of such a reservation in bilateral treaties

¹⁶ See *Foreign Relations*, 1934, vol. iv, pp. 8 ff.

¹⁷ For correspondence concerning the Montevideo Conference, see *ibid.*, 1933, vol. iv, pp. 1 ff.

¹⁸ Frances E. Willis, Third Secretary of Embassy in Belgium.

or agreements of the United States. If this explanation does not satisfy the Foreign Office, you may say further that the Department does not wish to enable other countries to obtain thereby the benefits of such a provision in so far as the United States is concerned without undertaking obligations corresponding to those assumed by the United States in the Agreement for the Non-application of the Most-Favored-Nation Clause. Under the terms of that agreement the provision is applicable as between all governments adhering to the agreement. If the reservation is included in a bilateral agreement it is applicable only between the two parties. For these reasons the Department considers that the Agreement for the Non-application of the Most-Favored-Nation Clause provides the most suitable method for establishing and securing the general acceptance of the reservation proposed by the Belgian Government.

Very truly yours,

For the Secretary of State:
FRANCIS B. SAYRE

611.5581/726

The Ambassador in Belgium (Gibson) to the Secretary of State

No. 101

BRUSSELS, December 13, 1937.
[Received December 22.]

SIR: Since the entry into force of the United States-Belgian Trade Agreement on May 1, 1935, this Embassy has had frequent occasion to report failure on behalf of the Belgian authorities to observe the terms and spirit of that Agreement.

I feel I should preface what I have to say on this subject with the statement of my conviction that the responsible heads of the Belgian Government have at all times had the best possible intentions of observing both the spirit and letter of the Agreement. The difficulty has in every instance arisen from the obstructive tactics of subordinate officials scattered throughout the various Ministries. Whenever abuses have been brought to the attention of the Prime Minister or the Foreign Minister, remedial action has been taken or at least attempted.

Shortly after my arrival here last summer, it became evident that a concerted drive was being made by a number of subordinate officials, members of the Inter-Ministerial Commission, with a view to curtailing American benefits under the Trade Agreement. After satisfying myself as to the essential facts, I called upon M. van Zeeland, then Prime Minister, on September 20th, and laid the whole subject before him in an informal conversation.

As I had anticipated, M. van Zeeland was indignant at this evidence that subordinate officials were seeking to evade strict observance of the Agreement and I soon had indications that he had acted with promptness and decision. There was a distinct betterment of the situation but with the usual intimation that in view of the temporary character of Cabinet Ministers the subordinate officials were merely holding in abeyance measures which they were determined eventually to put into effect.

Since the Cabinet crisis which began in October, there have been evidences that the members of the Inter-Ministerial Commission were emerging from their retreat and resuming their old tactics. I have therefore for some time been trying to gather definite information to serve as a basis for further representations. I have, however, encountered certain difficulties, not peculiar to this post, which I venture to restate briefly as essential to an understanding of the general situation. These difficulties may be briefly summarized as follows:

(1) Each time the Embassy takes up with the Belgian authorities an important question under the Agreement, it is my practice to urge the American interests involved to keep the Embassy currently informed as to developments in order that we may judge as to the efficacy of our representations and be in a position to take preventive action without waiting for serious difficulties to arise. It has been our almost invariable experience that once immediate danger is out of the way, these American interests neglect to keep the Embassy informed, take little notice of requests for information, and wait for a new crisis before communicating with the Embassy.

(2) The work of the Embassy has been complicated in several instances by the tendency of certain American interests to enter upon direct negotiations with subordinate Belgian authorities, making concessions the significance of which they do not understand until difficulties arise which bring them back to the Embassy for help.

As an illustration, the Department will recall that during the negotiations for the Trade Agreement the Belgian representatives proposed that the assemblers of American cars should consent to employ in all cars assembled in Belgium at least 40% of the value in Belgian work and materials. This proposal was rejected by the Department. However, soon after the Agreement went into force, the authorities renewed this proposal directly to the American assemblers, and General Motors, Ford, and Chrysler, the largest American assemblers in Belgium, made formal acceptance of the scheme without previous consultation with the Embassy or previous agreement with the other American assemblers operating in this country. The smaller assemblers were not in a position to accept any undertaking on a 40% basis and they felt that they were being put in a vulnerable position by

the action of the three largest assemblers. On consulting the Embassy they were informed that under the terms of the Trade Agreement they were under no obligation to accept restrictions as to the use of Belgian material or labor. They appealed to the Belgian Government for special consideration in view of the fact that they had no installations for assembling that would permit the utilization of such a large percentage of Belgian material and labor. However, in view of the position taken by the larger assemblers it soon became evident that they must make some concessions or retire from the Belgian market, and after considerable negotiation it was agreed that they should incorporate 4,000 francs in Belgian labor and material in each vehicle assembled.

This unofficial acceptance of a proposal which had been officially rejected by our Government has now placed all these American importers in a difficult position. These percentages and quantities having been accepted, the Inter-Ministerial Commission is now discussing further increases, and it is obvious that if the American assemblers had stood on the position adopted by the Department they would be in a stronger position to resist increases than they now are, having accepted the 40% requirement.

In other words, there is a tendency on the part of some of these American companies to carry on their negotiations independently and apply to the Embassy for help only when they have got themselves into an untenable position.

(3) The difficulty of securing documentary information on which to base representations. There have been a number of instances of this sort. One of them I may describe briefly as follows:

Some time ago the director of one of the largest American assembly plants called on me and stated that the Inter-Ministerial Commission proposed to increase to 60% the proportion of Belgian material and labor to be incorporated in buses and trucks, and that one of the members of the Inter-Ministerial Commission had written to a certain Senator stating that this was with the knowledge and approval of the American Government. He himself had seen the letter. I said that if he could furnish me the letter or a copy of it, I would like very much to take the matter up with the Prime Minister. He then informed me that in view of the fact that the letter was not official, he was unable to give me a copy or authorize its being shown to me. I was obliged to state that under the circumstances it would be futile for me to call on the Prime Minister and inform him that I had been told that a subordinate member of one of the Ministries had written an unofficial letter to a Senator making incorrect statements about the attitude of the American Government.

(4) Difficulty in securing definite facts and figures as to the business of various companies. Such information is occasionally important in

determining the effect upon American business of measures taken by the Belgian authorities. This reluctance which I have encountered in other posts is for the most part due to fear that this information may reach their American and other competitors, and it is not always easy to secure sufficiently detailed information to serve as a basis for representations.

Since the Cabinet crisis referred to above there has been a noticeable revival of abuses which fall into a number of clearly defined categories which may be briefly indicated as follows:

(1) Duties have been increased through the subterfuge of increasing the valuation on a number of articles on which a quota was bound under the Trade Agreement. One item particularly involved is ladies' dresses. (See Annex IV of the enclosed memorandum.)¹⁹

(2) Although quotas have not been established for articles on which only the duty is bound by the Trade Agreement the same purpose has been achieved by establishing quotas on certain important commodities not specifically included under the Trade Agreement, thereby vitiating our benefits under the Treaty.

Although automobile tires were not specifically included in the Trade Agreement, they are obviously considered as an essential factor in the automobile business. This would appear to be clearly shown by the action of the Belgian authorities themselves in giving tires a specific value in their requirements for the incorporation of 40% of labor and materials in cars assembled in Belgium. The clear purpose of this measure is to bar so far as possible the importation of American tires and thereby permit the increased use of Belgian tires.

It will be remembered that the duty on Diesel motors was reduced under the terms of the Trade Agreement. Since the Agreement went into effect consideration has been given to the establishment of a quota, and while matters have not yet gone so far, other expedients adopted by the Belgian authorities have for all practical purposes achieved the approximate effect of a quota. As matters now stand, a Belgian desirous of importing a Diesel motor from the United States is called on for such extensive and vexatious information and for the disclosure of trade secrets to such an extent that, coupled with the delay in granting the license, he is turning more and more to the purchase of Diesel motors from other countries. (A more complete statement in regard to these two items will be found in Annex III of the enclosed memorandum.)

(3) Licensing systems have been established for various articles. At the time this system was established, it was explained that the system would have no restrictive application but was merely set up in order to make sure of full statistical information as to imports into

¹⁹ Memorandum and its annexes not printed.

Belgium. While there could have been little objection to such a system if it had been used in this way, I regret to report that it has been used to the detriment of American commerce. On numerous recent occasions the difficulty in obtaining licenses has delayed delivery of American products so long that the importer has finally found it more advantageous to buy elsewhere. One article which has been particularly affected is silk hose. (See Annex V of the enclosed memorandum.)

(4) Regulations have been put into force which prevent American firms from enjoying the full benefit which would be derived from the Agreement. One article seriously affected is linseed oil cake. (See Annex VI of the enclosed memorandum.)

(5) The administration of quotas has been carried out in such a way as effectively to block the use of the amounts to which we are entitled. The authorities have withheld information concerning the employment of quotas and the amounts remaining available. At the end of the last calendar year it was found that on several articles large quotas still remained unused and this information was brought to the attention of the interested importers only when it was too late to obtain delivery from America. This practice alone brought about a material cut in American exports of certain items, particularly automotive tires, silk hose, ladies' dresses, and lard. (Annexes III, V, IV, and II, respectively, of the enclosed memorandum.)

(6) The authorities have also without consultation divided some quotas arbitrarily into monthly instalments and have taken the position that if the monthly allocation was not exhausted in January, it was irrevocably lost. This has had a harmful effect as regards some quotas, particularly lard, of which imports are far below the quota agreed upon. (See Annex II of the enclosed memorandum.)

(7) The Inter-Ministerial Commission, the members of which are under all sorts of pressure from private interests, has tried various other expedients to restrict American trade.

One of the most conspicuous examples is the successful attempt to impose on assemblers of American cars the incorporation of 40% of the value in Belgian labor and materials. The Commission has for some time been engaged in an effort to increase this percentage by substantial amounts which are calculated to drive American manufacturers from the Belgian market as regards buses and trucks. This situation is further complicated by the fact that the Belgian Railways Administration is exerting all possible pressure on behalf of any measure calculated to drive trucks and buses off the roads in order to increase the business of the State Railways. This has, of course, no bearing on the principle involved but does constitute an added difficulty from our point of view. (See Annex I of the enclosed memorandum.)

Another instance may be found in the arbitrary regulations concerning the importation of American linseed oil cake. The practice in the past has been to utilize American linseed oil cake carrying approximately 9% of moisture with other cake containing larger amounts up to 15%, the combination working out at the legal limit of 12%. At the instance of local interests the authorities have now issued a regulation preventing the addition of any moisture to the linseed oil cake during the process of crushing, even in order to bring it up to the legal proportion of 12%, with the result that American cake, if used alone, sustains an appreciable loss. This is a clear case of arbitrary regulations enforced for the purpose of restricting American imports. (See Annex VI of the enclosed memorandum.)

The Embassy has been in constant touch with this general subject through frequent calls at the Ministry for Foreign Affairs and other Ministries as regards specific cases. However, in the light of the accumulated evidence of the serious inroads that are being made on American trade, I think the Department will agree that it is desirable to make representations bearing upon the whole scope of the Trade Agreement. In view, however, of the importance and delicacy of the entire subject I do not feel that I should take it upon myself to make representations of this character without the knowledge and approval of the Department. The reaction of American interests in Belgium has now reached a point where I feel that this is a matter of some urgency and trust therefore that I may be afforded the benefit of the Department's instructions if possible by telegraph.

Unless the Department prefers some other method of approach I should like to bespeak its consideration of the following suggestions. I think it would be wise for me to call on the Minister for Foreign Affairs and Foreign Commerce, M. Spaak, as soon as possible and hand him a memorandum accompanied by certain carefully considered remarks. In order to indicate what I have in mind, I venture to submit herewith a tentative draft of such a memorandum for the Department's approval or to serve as a basis of alternative instructions. As will be seen, this memorandum is confined to a rather direct statement as to the nature of the infringements which have come to the notice of the American Government of both the terms and spirit of the Trade Agreement, concluding with a request for adequate remedial action.

On the last occasion I took the matter up with the Prime Minister but that was because he was giving his personal attention to all economic matters, and the present Prime Minister, M. Paul Emile Janson, does not interest himself particularly in such matters; and I therefore feel that it would be better to deal direct with M. Spaak.

If the Department approves, I would propose to preface the presentation of this memorandum with some general remarks as to the importance attached by the American Government to our Trade Agreement policy and our conviction that this policy can be expected to give its maximum benefits to all concerned only if loyally and even generously interpreted and executed, that for this reason the American Government is disturbed at the long series of complaints which have been received from American interests as to obvious violations of the terms and spirit of the Agreement. I would add that we are thoroughly convinced of the desire and intention of the Belgian Government loyally to interpret its obligations but that in the course of months and in the light of previous experience it has become evident that the violations which form the subject of this memorandum are due to the action of subordinate officials who would appear to be acting independently and against the declared policy of the Belgian Government; that I have discussed this matter previously with M. van Zeeland who took prompt and decided remedial action with the result that the complaints subsided for a time, but that since the recent Cabinet crisis the complaints have increased in volume and I feel I cannot any longer delay bringing them to the attention of the Minister for Foreign Affairs with the request that he afford them his earnest study; in numerous previous cases the Embassy has had occasion to appeal to the Foreign Office and that I am glad to be able to say that the Foreign Office has always risen to the occasion by using its best efforts to meet any just cause for complaint from the Embassy; that the difficulty has arisen from the fact that no means have been devised for obliging officials of other Government Departments to conform to the wishes of the Minister for Foreign Affairs even in matters affecting Belgian foreign policy and that the only way I can see of putting an end to the present abuses would be for the Foreign Minister to make a clear statement of the present situation before the Belgian Cabinet and insist that orders be given by his colleagues to their representatives on the Inter-Ministerial Commission that in any matter affecting American trade there shall be no action against the recommendations of the Foreign Office representative unless and until the matter has been carried to higher authority and a decision reached by responsible Ministers. If we can keep these questions, some of them petty in themselves, out of the hands of subordinate officials, I feel that the existing good will is an adequate guarantee that we could put an end to the difficulties which we have experienced.

To supplement the foregoing and reinforce these general observations, I could then hand M. Spaak the memorandum and go over it with him carefully. In order further to reinforce our representa-

tions I would suggest, if the Department approves, that at the same time I call on M. Spaak, the Belgian Ambassador in Washington be called in and given a similar statement of the Department's views on this whole subject as well as a copy of the memorandum and that at the same time he be requested to impress upon M. Spaak by telegraph the great importance we attach to such action as may be necessary to bring about the full observance of the terms of the Trade Agreement.

In view of the urgency of this question I should be glad to receive the Department's instructions by telegraph as soon as may be possible.

Respectfully yours,

HUGH GIBSON

EXCHANGE OF VIEWS BETWEEN THE UNITED STATES AND BELGIUM
RESPECTING THE INTERPRETATION OF THE NATURALIZATION
CONVENTION OF NOVEMBER 16, 1868 ²¹

711.554/12

The Belgian Chargé (De Ligne) to the Secretary of State

[Translation]

No. 1332

WASHINGTON, April 1, 1937.

MR. SECRETARY OF STATE: By letter dated September 14,²² Your Excellency was good enough to send to the King's Embassy a memorandum in which the Government of the United States set forth its arguments relative to the interpretation of the word "naturaliser" (naturalize) as the latter appears in the Belgo-American Convention of November 16, 1868.

The document was transmitted at the proper time to the King's Government which has just sent me a new memorandum containing the observations to which such examination has given rise on the part of the Belgian Government.

I have the honor to transmit this memoir, together with its enclosures, to Your Excellency, and to request you to be so good as to let me know whether the American authorities agree with the conclusions of that Exposé,—conclusions which, in the field of practice, do not appear, for that matter, to raise any difficulty.

I avail myself [etc.]

PRINCE EUGÈNE DE LIGNE

²¹ Continued from *Foreign Relations*, 1936, vol. II, pp. 12-23. For text of convention, see William M. Malloy (ed.) *Treaties, Conventions, etc., Between the United States of America and Other Powers, 1776-1909* (Washington, Government Printing Office, 1910), vol. I, p. 80, or 16 Stat. 747.

²² *Foreign Relations*, 1936, vol. II, p. 19.

[Enclosure—Translation]

MEMORANDUM

The King's Government previously maintained that Article 1 of the Convention, concluded on November 16, 1868, between Belgium and the United States of America for the regulation of the nationality of emigrants sanctions by the loss of our nationality, the acquisition of American nationality by direct naturalization. The Government of the United States declares on its part that whatever may be the provisions of domestic law in the matter, we have, by virtue of the Convention, the obligation to sanction by the loss of our nationality, every form of American naturalization, either direct or indirect. In the latter term there is included, in particular, the case of the minor, who, because of the naturalization conferred on his father, himself acquires American nationality as the result of his settling in the United States.

The American Government from the first rejects the conclusion that we have felt justified in drawing from the principal purpose of the Convention. According to it, the essential obligation of the Convention consists in the "unlimited and reciprocal" engagement undertaken by the two governments to recognize as citizens of the other power those who shall have been naturalized there. (Article 1)

As to Article 3, (relating to the actions which may be brought against the citizens of one of the two countries, naturalized in the other country, on account of violations of their military obligations toward their country of origin) instead of determining the essential object of the Convention, it would only restrict the scope of Article 1, by authorizing the country of origin to bring actions in the case of desertion from an organized military or naval corps.

It may be that the American Government has attributed such a scope to the Convention, but it was not so understood in Belgium.

The preparatory work of the law approving the Convention (see annexes²³) clearly establishes that the legislator of 1869 saw no other merit in the Convention and did not attribute any purpose to it other than that of regulating the question of military obligations of Belgians emigrating to the United States. The exposition of reasons for the law states in particular: "The international act in question only ratifies the principles which are included in our codes: it modifies only the provisions of the legislation regarding the military service as to what they might contain that is too rigorous."

This statement singularly weakens the conclusion drawn, from the general terms of the Convention, by the American Government. The latter "is of the opinion that the terms of Article 1 are clear and un-

²³ None printed.

equivocable" and that they contemplate the nationality acquired by any acceptable manner of naturalization "which has been or may be fixed by the legislation of the contracting parties".

Such was not the thought of the Belgian legislator. He refers expressly to the domestic legislation in force and by no means intends to deviate therefrom. This intention was clearly manifested and we cannot admit that, from the vague terms of a treaty, presented by the Government of the United States, and accepted without observation by Belgium, it could be deduced that the Belgian Government and the Belgian legislator meant to make the loss of Belgian nationality depend upon subsequent and unforeseen amendments of American legislation.

Moreover, the Belgian Government cannot admit as pertinent, the conclusion drawn from the adoption of the American point of view by the various European powers, which have concluded treaties with the United States similar to that of 1868.

The interpretation maintained by Belgium does not mean that, for the application of the Convention, the principles of the civil code in force at the time of its conclusion shall be adhered to but that, for the decision in cases of loss of Belgian nationality, it will be necessary to refer to the national legislation whether existing or future.

On this basis, the King's Government by no means denies that a minor child of a Belgian, who is a naturalized American, loses his nationality as a Belgian, if he acquires American nationality, at the same time as his parents. This case is expressly regulated by Article 18.4 of the coordinated laws on Belgian nationality.

It limits itself to excluding from the field of application of the Convention the case of a minor child who, as his parent was naturalized in the United States, himself acquires American citizenship at the expiration of a period of five years following his own settlement in the United States. This particular concept was introduced into American legislation by Article 5 of the Law of March 2, 1907,²⁴ a provision which was itself amended by Article 2 of May 24, 1934. It could not, therefore, have been contemplated by the negotiators of the Treaty of 1868, either on the part of America or Belgium.

The American Government makes no essential distinction between the immediate acquisition of American nationality by a minor child of a naturalized person and the postponed acquisition of such nationality resulting from settlement in the United States, the fundamental principle being the family unit.

It should be noted that, even under the American system, such family unit will run a great risk of not being realized, that moreover,

²⁴ 34 Stat. 1228.

the principle of the unit of nationality in the family was not the basis either of the legislation of the Civil Code nor to any extent whatever of present Belgian legislation, that the postponed acquisition of foreign nationality does not correspond to any of the groups of Belgian legislation; it would in particular be impossible to determine the essential point of ascertaining whether such acquisition is derived from a voluntary act of nationality or constitutes an *ipso facto* acquisition.

The King's Government believes that the difference of interpretation arising from the Convention presents only a limited practical interest.

It cannot be attempted, by means of this Convention, to eliminate all conflict between Belgian and American laws with regard to nationality. Therefore, according to the first note of the American Government, the Supreme Court of the United States declared: "Any person born in the United States and subject to the jurisdiction of this country, becomes by virtue of this fact a citizen of the United States and does not need any naturalization". The American Government must, however, admit that such person if he is born of a Belgian father will retain the nationality of his parent. And if the latter has himself naturalized—which can have no effect on the status of the person born in the United States—the child will continue nevertheless to have Belgian citizenship. This case, however, is not regulated by the Convention, however broad may be the interpretation given to it.

The only point upon which the King's Government cannot agree with American authorities concerns the case of a person who acquires American nationality as a result of the naturalization granted to his parent but after his own establishment in the United States.

It should be observed that the interested parties remain free to sign a declaration renouncing Belgian nationality, a declaration which may even be signed before the diplomatic or consular agent of their residents (Article 18, 1, 2, *a*1 and 22 of the coordinated laws on Belgian nationality).

The King's Government is moreover entirely willing to grant the authorization provided for in Article 18, 1, 3, *a*1, of these laws without objection, to those who find themselves under the obligation of requesting it.

Such appears to be the conclusion to be derived from our exchange of views with the American Government.²⁵

²⁵ No further correspondence on this matter prior to the outbreak of World War II has been found in Department files.

CZECHOSLOVAKIA

NEGOTIATIONS RESPECTING A TRADE AGREEMENT BETWEEN THE UNITED STATES AND CZECHOSLOVAKIA¹

611.60F31/192

The Department of State to the Czechoslovak Legation

AIDE-MÉMOIRE

It will be recalled that on March 29, 1935, a temporary commercial arrangement between Czechoslovakia and the United States was arrived at by an exchange of notes.²

Subsequent to the exchange of notes which constitute the present temporary commercial *modus vivendi* between the United States and Czechoslovakia, proposals were made by the Czechoslovak Legation to the end that negotiations might be undertaken looking to the conclusion of a trade agreement which would involve mutual reduction in the barriers to Czech-American commerce. As a result of the close study given to these proposals, the American Government felt that there were certain features of the Czechoslovak commercial policy which required clarification before a decision could be reached. Consequently, on November 27, 1935, an *aide-mémoire* was presented to the Czechoslovak Minister in Washington,³ in which certain considerations were set forth.

It is now apparent that the considerations presented in that *aide-mémoire* have in the main been clarified. The American Government notes with satisfaction the improvement which the Czechoslovak Government has made in its treatment of American trade and the assurances which it has given that certain practices which have caused this Government concern will be modified.

In the meantime, the American Government, animated by a sincere desire to accede to the wish of the Czechoslovak Government to proceed with the negotiation of a trade agreement, has been giving serious study to the possibilities of an agreement which would offer opportunities for a substantial expansion of trade between the two coun-

¹ For previous correspondence respecting trade relations between the United States and Czechoslovakia, see *Foreign Relations*, 1936, vol. II, pp. 24 ff.

² *Ibid.*, 1935, vol. II, p. 145.

³ *Ibid.*, p. 160.

tries. It considers that the time is now opportune for the initiation of negotiations for such an agreement.

This Government feels, however, that such a trade agreement should contain more specific provision than is contained in the present *modus vivendi* with respect to the preferential treatment which may be accorded by Czechoslovakia to the trade of certain countries of south-eastern Europe. As the Czechoslovak Government has already been informed, the American Government considers the provisions of the present *modus vivendi* regarding preferences to certain countries unsatisfactory as a permanent basis for its relations with Czechoslovakia. This Government would, therefore, appreciate an indication from the Czechoslovak Government whether, during the course of negotiations for a trade agreement, the latter Government will be disposed to define and limit the preferences it may wish to reserve the right to accord in derogation of most-favored-nation treatment, using as a basis for discussion the principles enumerated in the *aide-mémoire* of November 27, 1935.

During the course of the negotiations the United States will propose the inclusion in the trade agreement of certain general provisions different from the ones in the *modus vivendi* on matters other than those having to do with the preferences to southeastern European countries.

Furthermore, it may be appropriate to acquaint the Czechoslovak Government with the procedure which the United States now follows in the negotiation of a trade agreement under the Trade Agreements Act.⁴ Exploratory conversations such as those which are now being carried on between Czechoslovakia and the United States precede a preliminary public announcement that the negotiation of a trade agreement is contemplated. Such an announcement includes the statement that at a later date public announcement will be made in this country of the articles under consideration as subjects for concessions to be granted to the other country. This second announcement constitutes a formal invitation to our domestic interests to submit briefs with respect to the listed articles and sets a date for public hearings before the Committee for Reciprocity Information. Meanwhile, it is expected that negotiations will be actively proceeding with respect to the general provisions as well as the reciprocal concessions with a view to the conclusion of an agreement as soon as practicable following completion of the above mentioned public hearings in this country, which the Trade Agreements Act requires. The foregoing, of course, involves only our own procedure here and does not involve this Government's making public announcement, prior to the con-

⁴ Approved June 12, 1934; 48 Stat. 943.

clusion of an agreement, of the products on which we would seek concessions from the other country.

If the Czechoslovak Government is disposed to accept the proposed basis for discussion of the Danubian preferences and has no objection to the procedure followed by the United States in the negotiation of a trade agreement, as briefly outlined above, the Government of the United States will be prepared to initiate conversations and to make preliminary announcement that the negotiation of a trade agreement is contemplated, to be followed as soon as possible by formal announcement of intention to negotiate accompanied by a list of products under consideration as subjects for concession to Czechoslovakia.

WASHINGTON, March 27, 1937.

611.60F31/192

*Memorandum by the Chief of the Division of Trade Agreements
(Hawkins)*

[WASHINGTON,] March 27, 1937.

Conversation: Mr. Otakar Kabeláč, Chargé d'Affaires of the Czechoslovak Legation
Mr. Sayre⁵
Mr. Culbertson⁶
Mr. Hawkins

Mr. Kabeláč came in by appointment and was given the attached *Aide-Mémoire*⁷ proposing the initiation of negotiations for a trade agreement. In discussing the matter with him Mr. Sayre called particular attention to the request on page 3 for an indication from the Czechoslovak Government whether it would be prepared to negotiate on the basis of the general principles relating to Danubian preferences which were outlined in this Government's *Aide-Mémoire* of November 27, 1935.^{7a}

Mr. Kabeláč said that he was doubtful as to what his Government's attitude would be on the Danubian preference question. He said that his Government had been inclined to feel, when the same question was raised some time ago, that it would be necessary to retain its freedom to develop the preferential system further.* Mr. Kabeláč also said that he would like to discuss the question with us further, with a

⁵ Francis B. Sayre, Assistant Secretary of State.

⁶ Paul T. Culbertson, Assistant Chief of the Division of European Affairs.

⁷ *Supra*.

^{7a} *Foreign Relations*, 1935, vol. II, p. 160.

* This does not conform to our understanding of the position previously taken by the Czechoslovak Government. [Footnote in the original.]

view to getting in mind more precisely the nature of the provisions pertaining to Danubian preferences which we would want to include in the agreement. Mr. Sayre stated that we would be glad to discuss the matter again, and suggested that Mr. Kabeláč get in touch with Mr. Hawkins next week. In the course of the discussion it was made clear to Mr. Kabeláč that it is not our intention to work out the Danubian preference provisions in any detail preliminary to announcing negotiations; that this would be left for the negotiations themselves. The only thing we had in mind now was getting the assent of the Czechoslovak Government to basing the negotiations on the general principles laid down in our *Aide-Mémoire* of November 27, 1935.

611.60F31/185 : Telegram

The Minister in Czechoslovakia (Wright) to the Secretary of State

PRAHA, March 30, 1937—4 p. m.

[Received March 30—12:40 p. m.]

16. Your telegram No. 6, March 27, 2 p. m.⁸ Proposal for undertaking of trade agreement negotiations discussed today with Minister for Foreign Affairs⁹ and Chief of Economic Section Foreign Office and copy of *aide-mémoire* given to each. Czech Legation has reported receipt of your note and immediate consideration of matter is promised.

WRIGHT

611.60F31/186 : Telegram

The Minister in Czechoslovakia (Wright) to the Secretary of State

PRAHA, April 1, 1937—4 p. m.

[Received April 1—1:05 p. m.]

17. My 16, March 30, 4 p. m. Proposal discussed yesterday with Stangler¹⁰ who promises early consideration. He inquires whether information is now available regarding the general provisions whose inclusion we intend to propose referred to in last paragraph page 3 of *aide-mémoire* and will probably instruct Czech Legation to inquire. I think that such information as may properly be given me on this point will expedite action here.

WRIGHT

⁸ Not printed.

⁹ K. Krofta.

¹⁰ Alois Stangler, of the Economic Section of the Czechoslovak Foreign Office.

611.60F31/187: Telegram

The Minister in Czechoslovakia (Wright) to the Secretary of State

PRAHA, April 8, 1937—11 a. m.
 [Received April 8—9:10 a. m.]

19. My 16, March 30, 4 p. m., and 17, April 1, 4 p. m. *Aide-mémoire* from Foreign Office dated April 7 states that this Government is "disposed to proceed with the negotiations for a reciprocal trade agreement with the Government of the United States". It has taken note of our procedure in such negotiations and is of the opinion that even before formal announcement of intention to negotiate it might be possible "to deal with the wording of the treaty and chiefly its stipulations concerning the preferential treatment in regard to the Danube countries as well as other general provisions of the treaty". It will therefore shortly submit "a proposal for an arrangement of the said Danube preferential system as originally mentioned in the *aide-mémoire* dated March 30 [27], 1937". As regards wording it is willing to accept text of such other trade agreements which "both in regard to the customs tariff questions and import license system might be best suitable to the economic conditions prevailing in Central Europe". Czech Legation will be telegraphically informed. Text by mail.¹¹

I still believe that information suggested in my 17 will facilitate preparatory study here.

WRIGHT

611.60F31/191: Telegram

The Secretary of State to the Minister in Czechoslovakia (Wright)

WASHINGTON, April 12, 1937—7 p. m.

9. Your 17, April 1, 4 p. m., and 19, April 8, 11 a. m. Most of the general provisions which we shall propose for negotiation are identical with those found in trade agreements already concluded, copies of which the Czechoslovak Government doubtless has. A few standard articles such as that relating to exchange have recently been revised. Sets of standard provisions will be forwarded to you at an early date and furnished at the appropriate time to the Czechoslovak Legation here.

On April 9 we informed the Czechoslovak Chargé d'Affaires that it is not desirable at this stage to attempt to work out in detail the language of the general provisions but only to arrive at an understanding of the general principles which will govern the negotiations.

¹¹ Not printed.

We stated that the Czechoslovak Government must be aware of the general provisions which have been included in our other trade agreements and that similar provisions would have to be included in a trade agreement with Czechoslovakia.

In regard to the Danubian preference question we stated that all that seemed to us to be necessary prior to making public announcement was acceptance by Czechoslovakia of the broad principles laid down in our *aide-mémoire* of November 27, 1935, the chief of which was that preferences accorded to Danubian countries should be specified and limited. The amount of preferences to be accorded would be a subject of negotiation. We stated that a reply merely accepting the above-mentioned principles as a basis for discussion would be adequate from our standpoint.

We explained that the reasons for not attempting to work out the provisions of the agreement in any detail prior to announcement of negotiations are (1) the desirability of launching these negotiations before our program of negotiations with other countries becomes too crowded and (2) the undesirability from a domestic standpoint of proceeding too far with the negotiations in advance of public announcement. We also pointed out that the *modus vivendi* is only temporary and if we allow matters to drift too long without placing our relations on a more satisfactory basis we are likely to encounter increasing criticism in this country.

Please convey the sense of the above to the Czechoslovak authorities and attempt to elicit from them a satisfactory answer to our *aides-mémoire* of November 27, 1935 and March 27, 1937.

HULL

611.60F31/194 : Telegram

The Minister in Czechoslovakia (Wright) to the Secretary of State

PRAHA, April 14, 1937—5 p. m.

[Received April 14—2:40 p. m.]

22. Substance of your 9, April 12, 7 p. m., communicated on 13th instant to Stangler supported by *aide-mémoire*. He informed me orally that the wording of the *aide-mémoire* of Foreign Office of April 7, while perhaps not as exactly worded as it might have been was intended to convey willingness to define and limit the preferences it may wish to reserve the right to accord in derogation of most favored nation treatment, using as a basis for discussion the principles enumerated in the *aide-mémoire* of November 27, 1935, within the meaning and intent of that sentence of the aforesaid *aide-mémoire* reading "such comment as the Czechoslovak Government may offer in refer-

ence to the foregoing considerations will be received with interest and will be given careful consideration". The text of this portion of this telegram has been submitted to and confirmed by Stangler in writing.

He informs me confidentially that an example of the reason for invoking this proviso with regard to the principles contained in the 1935 *aide-mémoire* is the inability of his Government at present to fulfill the undertaking that all measures shall be "publicly announced" because in such cases as the treaty with Austria,¹² other governments parties to agreements will not consent to publication although this Government is willing at all times to do so. He said, however, that this was not to be interpreted as any lack of desire or intention to make all such agreements known to us and that if a trade agreement should be concluded upon such general principles his Government would undertake so to inform us.

WRIGHT

611.60F31/199 : Telegram

The Secretary of State to the Minister in Czechoslovakia (Wright)

WASHINGTON, April 29, 1937—2 p. m.

13. My 12, April 20, 5 p. m.¹³ Your 19, April 8, 11 a. m., 22, April 14, 5 p. m., and despatch No. 675, April 8.¹⁴

On the basis of your telegram 22 and the Czechoslovak *Aide-Mémoire* of April 7¹⁵ enclosed with your despatch 675, we have informed the Czechoslovak Legation here that we are disposed to proceed with the preliminary announcement that the negotiation of a trade agreement with Czechoslovakia is contemplated, and that we wish to make this announcement during the first week of May. When the Legation informs us that this is agreeable to the Czechoslovak Government the exact date can be determined¹⁵ and the Legation here and you will be informed. We have requested that until the date of the announcement, the Czechoslovak Government refrain from giving any publicity to the impending negotiations.

We explained to the Legation that the purpose of the preliminary announcement is to afford American interests an opportunity to present any views which they may have as to the products to be covered so that when formal announcement is made, a list of the items on which the United States will consider granting concessions can

¹² Commercial agreement supplement to Agreement of May 4, 1921, signed April 2, 1936; League of Nations Treaty Series, vol. CLXXX, p. 51.

¹³ Not printed.

¹⁴ Despatch No. 675 not printed.

¹⁵ Having been informed by telegram No. 23, April 30, 1937, from the Minister in Czechoslovakia that the date was agreeable to the Czechoslovak Government, the Department issued a preliminary announcement on May 7, 1937; see Department of State, *Press Releases*, May 8, 1937, p. 317.

be published in connection therewith. We have expressed to the Legation the hope that the Czechoslovak Government would immediately begin the formulation of a list of the products on which it would request concessions from the United States, and explained in this connection that the Czechoslovak Government need not at this stage decide upon the exact nature of the concessions to be requested, but only upon the list of products which it will probably want to have considered in the course of the negotiations.

HULL

611.60F31/251

Memorandum by Mr. David Williamson of the Division of European Affairs

[WASHINGTON,] July 16, 1937.

Mr. Kabeláč, Secretary of the Czechoslovakian Legation, left the attached list of the commodities which the Czechoslovakian Government wishes to discuss during the trade agreement negotiations.¹⁶

He made the interesting remark that the Czechoslovakian Government appreciated our difficulties in reducing the tariff on shoes and that his Government would be willing to have the present duty bound on Mackay and cemented shoes. On rubber-soled footwear with fabric uppers (1530 (e) of the tariff), the Czechoslovakian Government requests "foreign valuation" instead of "American valuation", and if possible a reduction in duty.

I handed Mr. Kabeláč a list of items on which the United States will request concessions from Czechoslovakia.¹⁷ In accordance with the instructions of the Trade Agreements Committee, Mr. Kabeláč was informed that we expect the general provisions to contain suitable safeguards with reference to the treatment of American products (not on the list of desiderata) which are not now subject to import permit requirements.

611.60F31/262

Memorandum by the Assistant Chief of the Division of European Affairs (Culbertson)

[WASHINGTON,] August 2, 1937.

Mr. Kabeláč came in this afternoon to discuss certain questions with regard to the forthcoming trade agreement negotiations. He left with me the attached list of items¹⁸ with the request that the first

¹⁶ List not printed.

¹⁷ List not attached to file copy.

¹⁸ Not printed.

four be omitted from the published list, and that the last two items be included. He stated that all of these items are on the list which was presented to him by the Department some time ago.

He asked what decision if any had been reached with regard to the Czech request on beer and two or three other items. I told him that I had just returned this morning and would have to look into that question.

Mr. Kabeláč said that a list of commodities on which we would seek concessions from Czechoslovakia had been received in Prague, and that he had just this morning received a telegram from Stangler indicating that Stangler was rather confused with regard to this list and wondered whether we could indicate to the Czechs at least the nature of the concession we would seek with regard to each individual item. I told Kabeláč that our studies so far made were only preliminary, but that I would see whether it might not be possible to give his Government such indications. He also suggested that his Government might wish some of these commodities left off the list just as we had asked them to omit some of the items which they had included in their list. I told Kabeláč that the situation would seem to be a little different in that we were under obligation to publish the list of commodities which we were considering, but I did not believe that his Government was under such an obligation.

Mr. Kabeláč then inquired what my ideas were with regard to procedure in negotiations. I told him that I felt that we might, prior to the conclusion of the public hearings, undertake sessions with regard to the general provisions and also with regard to the question of Danubian preference. His inquiries with regard to the general provisions were enough to indicate that he had not even read the mimeographed draft which I gave him some weeks ago. I told him that his Government should consider this mimeographed draft as our proposal, and that it should study the draft in that light, accepting as many of the provisions as it can, and preparing counter-proposals on any articles with which the Czech Government finds difficulty.

P[AUL] T. C[ULBERTSON]

611.60F31/258

Memorandum by Mr. William P. Cochran of the Division of Trade Agreements

[WASHINGTON,] August 12, 1937.

Conversation: Mr. Kabeláč, Secretary of the Czechoslovak Legation.
Mr. Culbertson, European Division.
Mr. Cochran, Division of Trade Agreements.

Six questions were discussed, as follows:

1. Mr. Culbertson carefully reviewed the proposed draft general provisions, with Mr. Kabeláč, article by article, explaining the general objectives of each clause. He emphasized the importance of the articles on quantitative restrictions, exchange control, monopolies, et cetera. After asking several questions, Mr. Kabeláč declared himself satisfied (a) that he understood the reasons for the various clauses, and (b) that he would be able to explain our general position to the Foreign Office in Prague.

2. Mr. Culbertson then discussed the question of Danubian preferences, commenting especially on the fact that recognition of such preferences by us would constitute a definite exception to our general and well-established policy of unrestricted and unconditional most-favored-nation treatment. He repeated that we hoped preference was a temporary situation, and stated that our recognition thereof held no permanent policy connotations. Following the outline of the attached memorandum, he then elaborated a little on the various portions thereof to be sure that Mr. Kabeláč understood our approach to the problem. A copy of the memorandum was given to Mr. Kabeláč, with the definite understanding that it was wholly informal and that it involved no commitment, as our policy has not yet been decided.

3. Mr. Kabeláč was then presented with a copy of the list of articles¹⁹ which it is hoped to publish at the time of the public notice of intention to negotiate a trade agreement with Czechoslovakia. Mr. Kabeláč is to take this list to Prague and telegraph to his Legation in Washington his Government's reaction.²⁰ If there is no objection to the list on the part of Czechoslovakia, public notice will be issued as soon as possible.

Mr. Culbertson called attention to the fact that beer is included in the list. He voiced his fear that its inclusion might be misinterpreted by the brewing interests in Czechoslovakia, and asked Mr. Kabeláč to make it very plain in Prague that such publication did not mean that a concession would necessarily be granted. Mr. Culbertson explained that the Secretary had tentatively approved its inclusion, but that the whole list was subject to change if necessary; assuring Mr. Kabeláč, however, that any changes in the list itself would be telegraphed to Prague for discussion with the Government of Czechoslovakia prior to publication.

Mr. Culbertson also remarked that the wording of the first page, in particular, was still subject to change, but that any such changes would not affect the substance of the paragraph.

¹⁹ Department of State, *Press Releases*, September 4, 1937, p. 197.

²⁰ The Czechoslovak Legation informed the Department on August 25 that the Czechoslovak Government agreed to the public announcement of intention to negotiate and to the publication of the list.

It was pointed out that the wording of the list itself is that approved, and considered necessary, by our Treasury Department experts.

4. Referring to Mr. Kabeláč's previously expressed desire for some indication regarding the nature of our requests or Schedule I articles (a list of which has already been furnished the Czechoslovak Legation), Mr. Culbertson said that we planned to present our commodity studies and digests to the Trade Agreements Committee for approval in the near future; and to ask authorization to present to the Czechs a tentative list of our requests on the various products in question, such list to be subject to revision as a result of hearings before the Committee for Reciprocity Information. He added that we hoped to be able to send this list to Prague, through our Legation, for submission to Dr. Stangler during Mr. Kabeláč's stay in Prague.

5. Mr. Kabeláč then asked what dates had been set for hearings. It was explained that no dates could be set until the date of the public notice was known; but that we hoped to issue the announcement of intention to negotiate during the week of Mr. Kabeláč's arrival in Prague (August 23-28), and that if this were done oral hearings would be held sometime in October. Mr. Kabeláč asked when the Czechoslovak delegation should arrive, and Mr. Culbertson said that while he believed Mr. Kabeláč would be back in time to discuss that detail, he thought they should plan to come some time in October.

6. Mr. Kabeláč said that it appeared that the Czechoslovak delegation might be rather large, mentioning four members (including representatives of the Ministry of Commerce and the National Bank) and asked our opinion on the subject. Mr. Culbertson said that the size of the delegation was of course a matter for Czechoslovakia to decide, adding that he and Mr. Cochran would attend all of the meetings during the negotiations, being assisted from time to time as necessary by experts from the Tariff Commission, the Treasury Department, et cetera, and that Mr. Hawkins would also take part in the negotiations as far as his time permitted.

[Annex]

Memorandum by Mr. William P. Cochran of the Division of Trade Agreements

[WASHINGTON,] August 12, 1937.

Subject: Danubian Preferences

1. The entire commercial policy of the Government of the United States is based on the principle of unrestricted and unconditional

most-favored-nation treatment. Its acceptance of any derogations of this principle which may appear justifiable on economic grounds, must be considered as a temporary policy without permanent implications.

2. The Department's general position is still as outlined in its *aide-mémoire* of November 27, 1935.

3. The Committee on Regional Preferences has not yet rendered its detailed report. Consequently, it is not possible for us to take any definite position at this time.

4. It is, however, tentatively suggested that discussions of Danubian preferences, within the limits of the general principles set forth in the *aide-mémoire*, might begin on the basis of four lists of products, as follows:

(a) Commodities of which the United States is a predominant supplier, on which the United States would desire to accede to no preference.

(b) Commodities supplied primarily by the Danubian countries and of little interest to us, on which we would expect no commitment relative to preference, leaving Czechoslovakia a free hand. It might be better to do this by omission, or by indirection through List (d).

(c) Commodities supplied in appreciable proportion by both the United States and the Danubian countries, on which preference, if granted, would have to be specified and limited.

(d) On all other commodities, we should like to be consulted before preference is granted. (It is not our intention to object to such action except where our interests are involved.)

5. As regards List (c), in particular, preferences would have to be specific and limited; that is, granted only on certain specified products, to certain designated countries, by clearly defined measures.

6. It would seem, therefore, that Czechoslovakia might prepare the following:

(a) List of countries to whom it is planned to grant preferential treatment.

(b) List of products on which she expects to grant preferences to the Danubian countries. ("Preference" means any variation from unconditional most-favored-nation treatment.)

(c) Indicate the type or method of preference under consideration. It is understood that Czechoslovakia grants preference, not by means of special tariff duties, but through the preferential allocation of import quotas. If this is the system of preference to be used in the future, List B above would include those products on which Czechoslovakia may desire not to grant us "fair and equitable treatment." ("Fair and equitable treatment" with regard to import quotas has been defined as a proportion of the total quota equivalent to the share enjoyed during a previous representative period.)

(d) Indicate the amount of preference it is desired to concede to the Danubian countries.

[For text of public announcement of intention to negotiate a trade agreement with Czechoslovakia, issued by the Department of State on August 31, 1937, see Department of State, *Press Releases*, September 4, 1937, page 195. For text of supplementary announcement, issued September 9, 1937, see *ibid.*, September 11, 1937, page 224.]

611.60F31/526a : Telegram

The Secretary of State to the Minister in Czechoslovakia (Carr)

WASHINGTON, December 10, 1937—7 p. m.

48. The first session of the trade agreement negotiations was held yesterday. We presented to the Czech delegation a list of our requests and a list of the Czech commodities on which we are prepared to grant concessions. The actual concessions were included in the list handed to the Czechs. It was explained to the Czech delegation that the offers which we are now making must in all circumstances be kept strictly confidential, and that under no circumstances should information with regard to these proposals be allowed to leak so as to reach the hands of outside private parties. It was pointed out that if for instance our proposals in connection with shoes and certain other items should become public at this stage the whole agreement would be placed in jeopardy. I am sure that the Czech delegation will make every effort to abide by our wishes in this matter. However, I think it might be helpful for you to call on the Minister for Foreign Affairs and explain to him that you had been requested to call and emphasize the importance of keeping our offers strictly confidential.

HULL

611.60F31/538a

The Department of State to the Czechoslovak Legation

MEMORANDUM

The Trade Agreements Program of the Government of the United States is designed to bring about the reduction and elimination of excessive barriers to international trade. It is a part of a major conception looking to world peace and harmony. The cooperation of other Governments is essential in the realization of the good thus envisaged.

The American Government has offered to the Czechoslovak Government a liberalization of its present trade restrictions. There are no restrictions on Czechoslovak trade with the United States other than non-discriminatory customs duties, and the American Government is prepared to reduce the duties on certain products of particular

interest to Czechoslovakia. The American Government in its request of the Czechoslovak Government has proposed the suppression of quantitative restrictions on a limited number of articles imported into Czechoslovakia. Without such suppression, it will not be possible for trade to develop naturally, nor for products of particular interest to the United States to be imported into Czechoslovakia on a basis comparable to that on which all Czechoslovak products are permitted to be imported into the United States. That such a request would be made was indicated in the memorandum which accompanied the preliminary American request list which was submitted in August. The American Government does not request that the Czechoslovak Government make this change in its entire system of trade-control, but the American Government does feel justified in requesting that with respect to the very limited number of products indicated in its proposals the Czechoslovak Government will eliminate quantitative restrictions and thus take a small step in the direction of returning trade to normal competitive channels. In return for such a step on the part of the Czechoslovak Government the Government of the United States has offered and is prepared to give substantial benefits in the American market to Czechoslovak exports.

WASHINGTON, December 11, 1937.

611.60F81/530a : Telegram

The Secretary of State to the Minister in Czechoslovakia (Carr)

WASHINGTON, December 12, 1937—4 p. m.

49. Our list of requests for concessions by Czechoslovakia in the proposed trade agreement was presented to the Czechoslovak delegation last Thursday.²¹ We have asked for suppression of import permit requirements and quantitative limitations on the items appearing on our list. Many of these are already free from such restriction or limitation. In spite of the fact that the memorandum which accompanied our preliminary request list of last August²² stated that requests for suppression of quantitative restrictions on certain products would be made the Czechoslovak delegation has expressed complete surprise at our requests as now presented and states that it is not authorized to negotiate on that basis. We have asked that the delegation put the matter before the Czechoslovak government for consideration and decision.

The Czechoslovak delegation has taken the position that because of the restrictive systems maintained by other European countries Czech-

²¹ December 9.

²² Not found in Department files.

oslovakia cannot change her protective system to the extent of completely abolishing quantitative restrictions. We have pointed out the broad underlying principles of our program which looks to the breaking down or removal of excessive barriers and that we feel fully justified in expecting Czechoslovakia to take a partial step in this direction at this time. We have stressed the fact that we are not asking Czechoslovakia to abandon her whole system of quantitative restrictions. Our requests cover a very limited part of Czechoslovakia's total import trade and involve commodities of direct interest to the United States. Out of the thousands of products covered by the Czechoslovak tariff we are requesting the abolition of quantitative restrictions on only 25 or 30 items and since these are products of primary interest to the United States, Czechoslovakia's trade in these products with third countries would in many cases be affected only in a relatively minor degree.

We are not asking Czechoslovakia to take this step gratuitously. We have offered and are prepared to grant to Czechoslovakia substantial concessions on 49 items. What we will ultimately give is necessarily contingent on the nature and extent of Czechoslovakia's concessions to us.

Please discuss this matter with the appropriate Czechoslovak authorities in the above sense, stressing the fact that our requests for the suppression of quantitative restrictions refers to a very limited number of products and hence in no sense implies any revolutionary changes in this respect in Czechoslovakia's trade control system as a whole.

HULL

611.60F31/531 : Telegram

The Minister in Czechoslovakia (Carr) to the Secretary of State

PRAHA, December 14, 1937—4 p. m.

[Received December 14—2:21 p. m.]

73. Your 49, December 11 [12], 4 p. m. Last night I called on the Chief of the Economic Section of the Foreign Office, presented him an *aide-mémoire* embodying the substance of your telegram and adding oral explanations and arguments in favor of granting your request for suppression of import permit requirements and quantitative limitations upon certain products. Minister Friedmann referred to the three groups in your preliminary list of August and said he understood our demands for quantitative restrictions would revolve around the point of determining quotas for American commodities involved and that his delegation had full authority to negotiate on that basis. I pointed out that a cardinal principle in your policy was the gradual

removal of artificial trade barriers and that you desired Czechoslovakia to make a contribution by modification of her import permit requirements and suppression of quantitative restrictions on a limited number of articles. He replied that in principle he favored this but in practice it was impossible in view of the economic position of Czechoslovakia's neighbors mentioning Germany and the central and southern European countries which necessitates trade being conducted on a controlled exchange basis through import permits and quantitative restrictions. Hence, he said it was absolutely out of the question for Czechoslovakia to give up this system. He had no report from the delegation and if none comes will telegraph for one today.

Your telegram relates to suppression of import permits and quantitative limitations whereas confidential memorandum enclosed with your 209 of September 15, 1937,²³ seems to relate to suppression of import permits on certain items but not to suppression of quantitative limitations. Foreign Office view except as to permits does not therefore conflict with confidential memorandum as we understand. Please clarify.

CARR

611.60F31/533 : Telegram

The Minister in Czechoslovakia (Carr) to the Secretary of State

PRAHA, December 18, 1937—1 p. m.

[Received 1:55 p. m.]

74. My No. 73, December 14, 4 p. m. At his request I discussed with Minister Friedmann yesterday report just received from Czechoslovak delegation. He confirmed surprise of delegation at changes which they claim United States has injected into negotiations amounting to cancellation of part of original demands and substitution of others. He said this Government had assumed that only matters to be considered were Czechoslovakia's original list and that of the United States with memorandum of August 9, 1937,²⁴ in which commodities were divided into three groups according to treatment to be requested. This view was further strengthened by refusal of the Department to include for negotiation new demands of Czechoslovak industrialists submitted in September by Legation in Washington. He feels now that if change in the American demands prove to be substantial, Czechoslovakia will find it necessary to review her entire position and possibly enlarge her original demands. The report of the delegation is not sufficiently lucid to enable him to decide upon course to be followed and further report has been requested.

²³ Instruction not printed; memorandum not found in Department files.

²⁴ Memorandum not found in Department files.

Minister Friedmann reiterated his statement that a general suppression of import permit and quantitative restrictions (which he regards as together constituting a single method of quantitative limitation) is impossible since 67 percent of Czechoslovakia's export trade goes to countries which regulate their foreign trade through that control system. Nevertheless, and subsequently adhering to this principle, Czechoslovakia is in sympathy with your policy and anxious to do all in its power to moderate and remove trade barriers and hence it would be willing to inspect and study the problem of suppressing import permit requirements and quantitative restrictions on individual items in the light of three important and inter-related factors:

1. The degree to which removal of such restrictions would affect the "life interests" of Czechoslovakia.
2. The amount of pressure which the United States would exert on Czechoslovakia to obtain duty concessions on those specific items which might also come into consideration in connection with the removal of import permit requirements and the suppression of quantitative restrictions and,
3. The degree to which Czechoslovakia's demands of the United States are complied with particularly concessions which might be made in connection with the problem of Danubian preference.

This seems to indicate slight favorable change in position though the conditions mentioned may make it of little value. It is of utmost importance in my opinion to convince the delegation that they are not engaged in horse trading such as is practiced in Europe.

Specific mention of Swiss and Netherlands agreements without suppression of quantitative restrictions implies that the Minister believes that Czechoslovakia is being requested to make a concession not exacted of other European governments. Suggest delegation's minds be fully disabused of this idea.

Friedmann voluntarily made a long exposition of central European policy and necessity of promoting economic welfare of central European and Danubian area. I pointed out that we recognized that situation in according limited Danubian preferences in *modus vivendi* and considering them in present negotiations. He expressed appreciation and said inclusion of certain Danubian preferences in the new agreement would set an admirable example to other powers and that benefits would be not only economic but pacific. Belief is that this question is regarded here as politically important.

Throughout my conversations I have made it clear that all negotiations are conducted in Washington and that my function is merely to help to maintain clear understanding between the Department and the authorities here.

611.60F31/531 : Telegram

The Secretary of State to the Minister in Czechoslovakia (Carr)

WASHINGTON, December 20, 1937—noon.

52. Your telegram 73, December 14, 4 p. m., last paragraph. The memorandum enclosed with despatch 209 of September 15 was meant to cover both import licenses and fixed quantitative restrictions. While we regret that there may have been confusion in the minds of the Czechoslovaks with regard to just what we had in mind, it seems evident to us that there is no great distinction between fixed quantitative allocations, that is fixed quotas, and the arbitrary restriction and control of trade through an import permit system. Under a fixed quantitative allocation American exporters know just how much of any commodity they may export to Czechoslovakia within a given period. Where there is no fixed quantitative allocation the American exporter has no idea how much of a given commodity may be exported. Either system involves quantitative limitation, otherwise the system of import permits has no purpose.

HULL

DISCONTINUANCE BY CZECHOSLOVAK GOVERNMENT OF PAYMENT OF BOUNTIES ON CERTAIN EXPORTS TO THE UNITED STATES FOLLOWING REPRESENTATIONS BY THE AMERICAN GOVERNMENT

611.60F8/1 : Telegram

The Secretary of State to the Chargé in Czechoslovakia (Chapin)

WASHINGTON, April 13, 1937—1 p. m.

10. The Treasury has official information that the Government of Czechoslovakia may pay or bestow bounties or grants on exports from that country as follows: barley 30 crowns; malt 40 crowns; rye 38 crowns; oats 36 crowns per 100 kilograms. The information shows that exporters of malt now receive certificates from the Czechoslovak Government which entitle them to the remission of customs duties on the importation into Czechoslovakia of certain designated articles, and it appears likely that exporters of the other commodities may receive such certificates in the future. It is considered that the remission of customs duties upon imports in consideration of the exportation of the commodities mentioned involves a payment of a bounty or bestowal of a grant upon exportation within the purview of Section 303 of the Tariff Act of 1930,²⁵ and a declaration of bounty pursuant to that Section is in contemplation.

²⁵ 46 Stat. 590, 687.

You are requested to inform the Czechoslovak authorities that while we are extremely anxious to make it possible to avoid the publication of a declaration of bounty, such a declaration is mandatory under our law. Hence in order to avoid a declaration of bounty and imposition of additional duty it is necessary that the practice described above be discontinued so far as exports to the United States are concerned. You should emphasize the mandatory nature of our law on export bounties and grants and make it clear that no trade agreement or other negotiation can relieve the Secretary of the Treasury from the obligation of imposing countervailing duties.

Our imports from Czechoslovakia of the products in question other than malt are negligible. Our imports from Czechoslovakia of malt, though significant, are not large. Hence it is hoped that Czechoslovakia may be able, without material loss to its agricultural interests, to discontinue the issuance of certificates on exports to the United States.

We learn informally from Treasury that they will refrain from making a declaration of bounty for a few weeks pending the outcome of your conversations with the Czech authorities.

HULL

611.60F8/3 : Telegram

The Chargé in Czechoslovakia (Chapin) to the Secretary of State

PRAHA, June 7, 1937—3 p. m.
[Received June 7—1:15 p. m.]

31. Your No. 10, April 13, 1 p. m. Practice of issuance of certificates based upon local legislation. Foreign Office states that situation is being studied by Council of Ministers and that means are being sought to meet Treasury representation by Ministerial decree with consideration to application of law to other countries. Hope is expressed that Treasury will not make declaration of bounty pending study here which I am assured will be expedited.

CHAPIN

611.60F8/8

The Czechoslovak Minister (Hurban) to the Secretary of State

WASHINGTON, July 9, 1937.

EXCELLENCY: I have been instructed to inform Your Excellency that the Czechoslovak Government will discontinue, as far as the United States is concerned, the use of import certificates in connection with the export of Czechoslovak rye, barley, oats, and malt to the United States.

The use of import certificates is specified in the Czechoslovak Law of June 5, 1930, Number 73 of the Collection of Laws and Decrees.

Accept [etc.]

V. I. HURBAN

611.60F8/10: Telegram

The Secretary of State to the Chargé in Czechoslovakia (Chapin)

WASHINGTON, August 17, 1937—5 p. m.

30. Your 41, July 9, 11 a. m.²⁶

1. Is Department correct in assuming that Czechoslovak Government discontinued issuing certificates on June 28, the date of its confidential note on the subject?

2. What steps will be taken by Czechoslovak Government to preclude issuance of certificates in connection with exports to third countries which may reach the United States in the form in which exported or in some altered form?

HULL

611.60F8/12: Telegram

The Chargé in Czechoslovakia (Chapin) to the Secretary of State

PRAHA, September 9, 1937—noon.

[Received September 9—9:38 a. m.]

51. Department's 30, August 17, 5 p. m. Note received last evening from Foreign Office indicates that date of decision reached to abolish issuance of certificates by Cabinet was on June 24, notice of which was communicated to the Legation in a note June 28. Present note states,

"Appropriate steps have been taken for the certificates issued after the said 24th of June, 1937, not to be applied in connection with the exportation of malt to the United States. The exportation of grain from Czechoslovakia to the United States does not come into consideration."

After pointing out that this Government cannot safely assure that barley or malt will not be reexported to the United States and that therefore no effective steps can be taken to preclude issuance of certificates, Foreign Office note states further as follows:

"Reexports would hardly be possible in view of the fact that the production and export of malt in Czechoslovakia are governed by a syndicate; according to the rules of this syndicate malt and barley must be sold to direct customers only, that is malt only to breweries and barley only to malt factories or breweries. The syndicate rules prohibit strictly any reexport of barley or malt."

Full text by mail.

CHAPIN

²⁶ Not printed.

611.60FS/14

The Secretary of State to the Minister in Czechoslovakia (Carr)

No. 4

WASHINGTON, October 20, 1937.

SIR: Reference is made to the Legation's despatch No. 760 of September 9, 1937,²⁷ relative to the bounty paid to exporters of certain grains from Czechoslovakia. The Department is in receipt of a letter from the Treasury Department dated October 12, 1937,²⁷ stating that in view of the action taken by the Czechoslovak Government in respect to exportations to the United States, the Treasury Department will defer further action in this matter until such time as it is established that the bounty-fed grains or products thereof are actually being imported into the United States.

Very truly yours,

For the Secretary of State:
FRANCIS B. SAYRE

²⁷ Not printed.

ESTONIA

DESIRE OF THE ESTONIAN GOVERNMENT FOR MODIFICATION OF THE COMMERCIAL TREATY OF 1925; PRELIMINARY DISCUSSIONS REGARDING A TRADE AGREEMENT¹

611.60131/51a

*The Secretary of State to the Minister in Estonia (Lane)*²

No. 10

WASHINGTON, February 16, 1937.

SIR: You are instructed to proceed to Tallinn at the earliest date possible for the purpose of delivering to the Estonian Minister for Foreign Affairs³ a signed note, the text of which is contained in the enclosure to this instruction, containing the reply of this Government to the proposals of the Estonian Government⁴ for modification of the present Treaty of Friendship, Commerce, and Consular Rights between the United States and Estonia.⁵

Before you deliver the note you will of course desire to familiarize yourself with the reports and the discussions relating to treatment of American trade in Estonia and the proposals for the modification of the existing treaty that have been made by the Estonian Government. It is assumed that the First Secretary of the Legation at Tallinn⁶ will go over the record with you, and that he will accompany you when you call upon the Minister.

In your conversation with the Minister you should apologize for the delay which has taken place in replying to the proposals that have been made by the Estonian Government. You should explain that the delay was occasioned in part by the very careful study which your Government has given to the proposals, and in part by the great volume of work devolving upon the Department in connection with the carrying out of the trade agreements program.

In amplification of the note which you will hand to the Minister you should state orally to him that your Government regrets exceedingly that the suggestions made by the Estonian Government do not

¹ Continued from *Foreign Relations*, 1936, vol. II, pp. 66-72.

² The Minister was accredited to Estonia, Latvia, and Lithuania, with residence at Riga, until August 9, 1937. A separate Minister was appointed to Lithuania on August 23, 1937.

³ Dr. Fr. Akel.

⁴ *Foreign Relations*, 1935, vol. II, p. 199.

⁵ Signed December 23, 1925, *ibid.*, 1925, vol. II, p. 70.

⁶ Walter A. Leonard.

appear to provide a basis for an agreement between the two countries embodying tariff concessions, but that it hopes that its position in this regard will not be interpreted as indicating any lack of appreciation of the difficulties inherent in the circumstances in which Estonia finds itself. You should make it clear that your Government shares the Estonian Government's desire to increase commerce between the two countries and is hopeful that notwithstanding these difficulties a basis may be found for bringing about an augmentation of American-Estonian trade.

You should state further that should the Estonian Government find it possible to include in an agreement guarantees of substantially non-discriminatory treatment for American trade, the United States Government would be disposed to consider the negotiation of a limited trade agreement containing concessions on some of the items in which the Estonian Government has expressed an interest and of which Estonia is an important, even though not a first supplier. Should the Minister ask you what commodities this Government has in mind, you may reply that while you have not been furnished with a list of the commodities which your Government considers as constituting a possible basis for discussion, you believe that from material which has been furnished you, it seems likely that potato alcohol and vodka are included.

It is hoped that you will be able to make arrangements for a discussion of the matter, after you have seen the Minister, with Mr. Edward Wirgo, Director of the Foreign Trade Bureau of the Estonian Foreign Office, along the lines of your conversation with the Minister.

Please report fully the result of your conversations with both officials and inform the Department promptly of any information you may obtain which would indicate the treatment that the Estonian Government intends to accord to American trade subsequent to May 22, 1937.

Very truly yours,

For the Secretary of State:
FRANCIS B. SAYRE

[Enclosure]

Draft of a Note to the Estonian Minister for Foreign Affairs

My Government has given careful study to the note of the Estonian Government dated December 20, 1935, containing proposals with regard to revision of the Treaty of Friendship, Commerce, and Consular Rights between the United States and Estonia. It desires to express its appreciation of the frankness with which the Estonian Government has set forth the considerations which influence the formu-

lation of its foreign commercial policy. My Government fully understands these considerations and is not insensible of the limitations that are imposed on Estonia's freedom of action within the sphere of foreign trade by the commercial policies pursued by countries which are the principal buyers of Estonian goods.

As was pointed out in the memorandum⁷ which the American Chargé d'Affaires at Tallinn delivered on September 27, 1935, to the Acting Minister for Foreign Affairs, the American Government is engaged in a program under the Trade Agreements Act⁸ looking, on the one hand, to the reduction of excessive tariff barriers and other governmental impediments to trade and, on the other hand, to the progressive elimination of the many discriminatory and arbitrary practices which divert and obstruct trade. This program is based upon the principle of equality of opportunity and treatment; a principle to which the Estonian Government has declared itself unable to give full adherence except under conditions which may not soon be fulfilled. The Estonian Government will doubtless appreciate that the successful carrying out of my Government's program would be jeopardized should the American Government agree to any substantial exception in the application of this basic principle, for such an agreement would necessarily involve tacit approval of the very practices which the United States is seeking to eliminate. The United States could not enter into a trade agreement which did not provide substantial equality of treatment for American trade.

My Government has noted with sympathetic interest the desire expressed by the Estonian Government to expand Estonian exports to the United States and is prepared to afford every facility compatible with its general policies that would contribute to realization of that desire. The Estonian Government has suggested that this expansion can be achieved only if the United States is prepared to offer tariff concessions to Estonian products, and it has expressed its desires in this connection with regard to certain specific commodities.

These desires, and the suggestion of the Estonian Government that certain quotas be established for which reduced tariff rates would be granted, have been examined with great care by my Government. I must, however, point out that, as the Estonian Government is aware, it is my Government's policy to grant concessions in general only to the principal or an important supplier of a given commodity. On the basis of information available to my Government, Estonia does not appear to be the principal or even an important supplier of most of the articles for which reduced customs duties in the United States are suggested, and in some instances it does not participate in the

⁷ *Foreign Relations*, 1935, vol. II, p. 190.

⁸ Approved June 12, 1934; 48 Stat. 943.

trade at present. Six of the commodities with respect to which the Estonian Government has proposed tariff concessions have already been made the subject of concessions in trade agreements with countries which are the principal sources of imports into the United States. The benefits of these concessions are extended to Estonia at the present time by virtue of existing treaty provisions. In the case of certain other products in which the Estonian Government has expressed an interest, Estonia is among the major sources of supply of United States imports. These commodities might furnish a basis for discussion of trade concessions of limited scope should it be possible to arrive at an agreement respecting provisions of a general nature guaranteeing substantially non-discriminatory treatment by each country of the commerce of the other.

My Government wishes again to draw the attention of the Estonian Government to the fact that Estonia is now receiving the benefit of tariff and other concessions granted by the United States to countries with which it has concluded trade agreements. Estonia will continue to receive these benefits and the benefits of concessions in any new agreements which may be concluded by the United States, provided it accords substantially nondiscriminatory treatment to American trade.

The Government of the United States is heartily in accord with the desire of the Estonian Government to seek additional means for the expansion of trade between the two countries and will give sympathetic consideration to any further suggestions which the Estonian Government may wish to make to this end.

611.60131/54

The Minister in Estonia (Lane) to the Secretary of State

No. 112 (Diplomatic)

TALLINN, February 27, 1937.

[Received March 25.]

SIR: I have the honor to refer to the Department's cablegram of May 21, 1936, 11:00 a. m. [noon] ⁹ concerning the withdrawal of the Estonian Government's notice of May 21, 1935 to terminate as of May 22, 1936, the Treaty of Friendship, Commerce and Consular Rights between the United States and Estonia, and the prolongation of this Treaty in its present form until May 22, 1937. The Department will have in mind that a period of but three months remains before the date of expiration of such prolongation.

While there still exists the basis of the Estonian Government's desire to terminate the Treaty, namely the consistently unfavorable trade

⁹ *Foreign Relations*, 1936, vol. II, p. 68.

balance which that country has encountered in its commercial interchange with the United States, a trend toward a more equalized trade occurred in 1936 when Estonian shipments to the United States were exceeded in value by American imports by \$1,050,000 as contrasted with \$1,310,000 in 1935. This condition was due to a combination of circumstances: an appreciable increase in American purchases of Estonian products (40.3% in relation with those for 1935), and a perceptible tightening of exchange and import license restrictions for goods of United States origin, total Estonian imports from all countries in 1936 having increased by 26.3% in comparison with those for the previous year whereas United States exports to Estonia rose but 1.7%.

Considering that Estonia has been fairly successful in keeping down imports from the United States while her exports to it have augmented appreciably; that the Estonian Government realizes the "most favored nation" clause would no longer be applicable to merchandise of Estonian origin after the termination of the present Treaty and as a consequence [the] United States might raise the import duties on Estonian products by 50%; and that the Legation has been informally approached relative to Estonia's desire to effect a substantial decrease in the war debt services owing in the United States now in default,¹⁰ it is possible that the Estonian Government may not be as anxious, as was the case during 1935 and 1936, to terminate the Treaty with the United States, and that it may therefore be possible to bring about some adjustment of this matter before May 22, 1937.

The Department's instructions are respectfully requested.

Respectfully yours,

ARTHUR BLISS LANE

611.60131/53 : Telegram

The Minister in Estonia (Lane) to the Secretary of State

TALLINN, March 17, 1937—2 p. m.

[Received March 20—7 a. m.]

3. Department's instruction No. 10, February 16. Note presented to Minister of Foreign Affairs on March 15 and oral statement made pursuant to instructions. From conversation with him, Rei,¹¹ Wirgo, and Selter,¹² we understand Estonian point of view to be substantially as follows:

(1) Estonia is prepared to negotiate trade agreement provided the general provisions thereof approximate those of our trade agreement

¹⁰ See vol. I, pp. 847-848.

¹¹ August Rei, Estonian Assistant Minister for Foreign Affairs.

¹² Karl Selter, Estonian Minister of Economic Affairs.

with Sweden.¹³ Specifically it is requested that draft article No. 8 as submitted to Estonian Government be amended to conform with article No. 8 of our trade agreement with Sweden. It is possible that Estonia will withdraw objection to draft article No. 18.

(2) Estonia requests 50% tariff reductions on vodka from topaz potatoes, potatoes, butter, cheese, canned fish, chocolate and candy, flax and homespun handicraft goods; and 25% reduction on plywood, chair seats.

(3) Estonia anxious to export shale oil to the United States. At present, according to Selter and Wirgo, importation prohibited by us on the ground that shale oil is "poisonous", they claim this is the discrimination against an Estonian product competing with our domestic products.

(4) In case treaty not concluded by May 22, 1937, present Treaty of Friendship, Commerce and Consular Rights may be extended by exchange of notes until such time as new treaty concluded.

(5) Foreign Office will shortly submit to the Legation a new draft of treaty.

We have been at considerable disadvantage in our conversations due to the apparent failure of Legation to have made for the files a copy of enclosure (5) to the Department's memorandum with instruction No. 36 of September 9, 1935¹⁴ the original of which was apparently transmitted to the Foreign Office. So that we may not be forced to continue to depend on copy furnished by Foreign Office will the Department kindly furnish Legation with copy of general provisions for inclusion in trade agreements.

Will the Department likewise please telegraph to this Legation its comments on the foregoing numbered paragraphs (1) to (3) inclusive.

Am returning to Riga this afternoon.

LANE

611.60131/53 : Telegram

The Secretary of State to the Minister in Estonia (Lane)

WASHINGTON, March 30, 1937—3 p. m.

18. Your No. 3, March 17, 2 p. m., from Tallinn.

1. The following comments on your numbered paragraphs (1) to (3) may be communicated to the Estonian Government.

Your (1). The Department is very gratified with this information and awaits with interest full statement of present Estonian position which we assume will accompany the new draft referred to in your (5).

Your 2. While this Government will gladly examine any proposals which Estonia may wish to make regarding tariff reductions on

¹³ See *Foreign Relations*, 1935, vol. II, pp. 739 ff. For text of agreement, signed May 25, 1935, see Executive Agreement Series No. 79 or 49 Stat. 3755.

¹⁴ *Foreign Relations*, 1935, vol. II, p. 188.

specific items, it is unlikely that concessions could be granted to Estonia on some of the products mentioned because of Estonia's rank as a supplier.

Your (3). The Department knows of no prohibition on imports of shale oil. You should ascertain exact nature of Estonian complaint and inform the Department by mail.

2. For your information, with regard to the possible extension of the present treaty with Estonia Dep[artmen]t sees no reason for departing from the procedure used last year which would involve the withdrawal by the Estonian Government on some date prior to May 21, 1937, of its notice of intention to modify the treaty as notified in its note of April 22, 1936,¹⁵ followed by a new notice of intention to modify the treaty. Instructions regarding this matter subsequently will be sent to you.

3. Copies of the general provisions for inclusion in trade agreements will be sent to Riga and Tallinn.

4. Legation at Tallinn should inform Department by cable immediately draft mentioned in your paragraph (5) is received, stating date on which it will be mailed.

HULL

611.60131/60

The Chargé in Estonia (Leonard) to the Secretary of State

[Extract]

No. 142 (Diplomatic)

TALLINN, April 3, 1937.

[Received April 17.]

SIR: I have the honor to refer to Minister Lane's despatch No. 481 of March 31, 1937 from Riga,¹⁶ acknowledging the receipt of the Department's telegram No. 18 regarding negotiations for a trade agreement with Estonia. In this connection, reference is also made to Minister Lane's despatch No. 128 of March 16, 1937 from Tallinn and to my despatch No. 132 of March 18, 1937.¹⁷

After receiving a copy of Minister Lane's despatch No. 481 together with a copy of the Department's telegram No. 18, I immediately made arrangements to see Minister Selter and Mr. Wirgo, when I conveyed orally the substance of paragraph No. 1 of the Department's telegraphic instruction No. 18. I indicated to Mr. Wirgo and to Minister Selter that the Department was gratified to learn that Estonia was prepared to negotiate a trade agreement with the

¹⁵ See telegram No. 4, April 22, 1936, 4 p. m., from the Chargé in Estonia, *Foreign Relations*, 1936, vol. II, p. 67.

¹⁶ Not printed.

¹⁷ Neither printed.

United States and that the tentative draft of the Treaty as well as a statement of the Estonian position would be awaited with interest.

I was informed that Mr. Mickwitz of the Treaty Division had begun on April 1, 1937, the drafting of a treaty, which would probably be ready within ten days or a fortnight, at which time it was hoped a statement could also be furnished of Estonia's position relative to a treaty with the United States.

Relative to my inquiry concerning the alleged prohibition of the importation of Estonian shale oil into the United States, I was informed that Minister Selter would confer with certain shale oil interests and that I would be later informed on this point.

In making a brief call on Mr. Wirgo at noon today (Saturday, April 3), I was informed that the alleged classification of shale oil as "poisonous" by the American authorities, and hence refusal of entry into the United States, had proved to be incorrect. Mr. Wirgo informed me that it was due to a misunderstanding on the part of an agent who contemplated exporting Estonian shale oil to the United States. Mr. Wirgo stated that shale oil had not been exported directly from Estonia to the United States, but that it had been shipped largely to Germany, and also to Latvia, Finland, and the Scandinavian countries. I was also informed that the production of shale oil in Estonia was less than 100,000 metric tons during 1936, but that during 1937 it would probably be 125,000 tons and that the Estonian production of shale oil would be considerably increased if a bigger market could be found in the United States. Mr. Wirgo stated that it was his understanding that shale oil came under the United States Tariff classification of coal tar oil, and hence is free of duty into the United States. He further stated that it would interest the Estonian authorities to be assured that shale oil would remain on the free list, a feature they would like to have incorporated in the treaty with the United States.

The Department will be informed by cable as to the date when the Estonian draft is received at the Tallinn Legation and when it will be mailed to the Department.

Respectfully yours,

WALTER A. LEONARD

611.60i31/61a : Telegram

The Secretary of State to the Chargé in Estonia (Leonard)

WASHINGTON, April 23, 1937—6 p. m.

3. Department desires from you suggestions by telegraph with respect to tariff concessions that this Government should, in your

opinion, request of the Estonian Government in the course of negotiation of a trade agreement on products of which the United States is an important supplier. Your suggestions should be justified briefly by data with regard to the Estonian market for each commodity concerning which you make a recommendation and to the principal competitors of the United States in that market. Your telegraphic report should be supplemented by a more complete discussion by despatch which should contain such recommendations as you may care to make with regard to any provisions which in your opinion should be incorporated in an agreement with Estonia. In any necessary contacts with the Estonian authorities or the trade you should avoid disclosing the purpose underlying your inquiries.

HULL

611.60131/61 : Telegram

The Secretary of State to the Chargé in Estonia (Leonard)

WASHINGTON, April 26, 1937—6 p. m.

4. It is apparent that it will be impossible to conclude and bring into force a treaty amending the Treaty of Friendship, Commerce, and Consular Rights between the United States and Estonia, on or before May 22, 1937, the date upon which that treaty will terminate as a result of the action notified by the Estonian Government in its note of April 22, 1936, to the Legation at Tallinn. You are therefore requested to approach the Estonian Government with a view to having it withdraw on some date prior to May 21, 1937, its notice of intention to modify the treaty as notified in its note of April 22, 1936, and, if it so desires, give a new notice of intention to modify the treaty on May 22, 1938, thereby extending the life of the treaty for 1 year.

When you present your note at the Foreign Office you should say that your Government has been reluctant to request the Estonian Government to withdraw for a second time its notification of intention to modify the existing treaty but that it is obvious that there will not be sufficient time prior to May 22, 1937, to give adequate consideration to the draft treaty which Mr. Wirgo on March 15, 1937, informed Mr. Lane would be submitted by the Estonian Government. You will have in mind, of course, that possible further prolongation of the life of the treaty has been envisaged by both Governments and that it was discussed by Mr. Lane and Mr. Wirgo last month.

HULL

611.60131/62 : Telegram

The Chargé in Estonia (Leonard) to the Secretary of State

TALLINN, April 27, 1937—10 a. m.

[Received April 28—7 a. m.]

[5.] In reply to Department's telegram 3, April 23, 6 p. m., tentative suggestions as follows:

(1) Slight possibility removal of present 10 senti per kilo duty on cotton of which 70% comes from United States representing \$1,300,000 value in 1936 being 60% of all imports from the United States;

(2) Consolidation of sulphur on the free list;

(3) Twenty-five percent reduction on automobiles of American horse power cars to equalize lower duty on small cars specified in British treaty, Germany and England principal competitors in an \$800,000 market;

(4) Duty reduction automobile parts total market \$30,000; United States share nearly half, chief competitors Germany and England;

(5) Removal of the 1½ senti duty per kilo on rosin, United States furnishing \$25,000 being over 80%, Russia remainder;

(6) Automobile tires and tubes, United States furnishing only 12% in a \$23,000 market, Germany and England principal competitors;

(7) Typewriters reduction from 3 crowns per kilo to possibly half in an \$11,000 market, share of the United States being about 40%, Germany and England principal competitors, and

(8) Internal combustion engines now largely imported from Germany but formerly from the United States. Requests for reductions on gasoline, kerosene and lubricating oils would seem to be futile in view of Shell arrangement with the Standard Oil Company in Estonia and desire to protect the local shale oil industry. Chief obstacle to import of American goods is not the customs tariff but Estonian import license system which tends to equalize trade bilaterally. Supplementary telegram and despatch will be sent after return of Wirgo from Finland May 1st, when I will also take up with the Foreign Office renewal of commercial treaty expiring on May 22nd.

LEONARD

611.60131/63 : Telegram

The Chargé in Estonia (Leonard) to the Secretary of State

TALLINN, April 28, 1937—5 p. m.

[Received April 30—6:40 a. m.]

6. With reference to the Department's telegram No. 4, April 26, 6 p. m. relative to the extension of the Treaty of Commerce. Note

suggested by the Department delivered today and will be given consideration by the Foreign Office after Mr. Wirgo returns shortly from Finland.

LEONARD

6601.116/40

*Report by the Vice Consul at Tallinn (Trimble)*¹⁹

[Extract]

No. 52

TALLINN, April 30, 1937.

[Received May 19.]

II. SUMMARY OF CONCLUSIONS

Owing to the necessarily voluminous character of a report of this nature, it would appear advisable to insert at this point a brief summary of the conclusions reached. Because of the excessively one-sided nature of the mutual trade between United States and Estonia (the balance of trade being greatly in favor of the United States) the efforts of the Estonian Government to direct its imports, by means of the exchange control and import license systems, toward nations which are extensive purchasers of Estonian products, have curtailed to a marked degree the volume of American shipments to this country. Conversely, the exportation to Estonia of goods originating in the United Kingdom and Germany, the United States' principal competitors in this market, has been assisted materially. While these restrictions have always hampered the ability of American firms to export goods to Estonia, their effect has been even more severe in the past 16 months. This condition has arisen out of the unfavorable balance of Estonia's foreign trade resulting from a partial harvest failure in 1936 which has been accompanied by renewed efforts on the part of the Estonian Government to balance its foreign trade on a bi-lateral basis. Thus while total Estonian imports in 1936 showed an increase in value of 26.3% in comparison with those made in the previous year, the importation of American goods in the same period exhibited a gain of but 1.7%. Furthermore, although the total importation from all countries in the first quarter of the current year rose 18.3% over that for the corresponding period in 1936, purchases of United States goods declined in value by 27.7%.

The character of the American export trade with Estonia has been undergoing a change during the past several years. Manufactured goods, which can generally be purchased elsewhere, are being imported

¹⁹ Prepared in accordance with instruction No. 19, April 3, to the Minister at Riga; not printed.

from the United States in steadily diminishing amounts with the consequence that raw products, such as cotton, sulphur, and rosin, now comprise over three-quarters by value of all American shipments to this country. If this trend continues unabated, it follows that the United States will eventually be able to export to Estonia only such raw commodities as are essential to the Estonian economic welfare and which are not obtainable in countries possessing equalized or unfavorable trade balances with Estonia.

The one favorable note in this necessarily pessimistic outlook lies in the fact that American manufactures, because of their quality, are generally preferred in the Estonian market to those made in other countries. This is especially true as regards automobiles and motor trucks, tractors, typewriters and calculating machines, and miscellaneous types of machinery. Thus any concession tending toward a relaxation in the import-license and exchange-control restrictions as affecting American goods, which might be obtained in the present Trade Agreement negotiations with Estonia, should immediately result in an increased importation of United States products. In this connection it should be noted that tariff concessions would be purely barren unless accompanied by assurances of more favorable treatment in the matter of import license and exchange restrictions.

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611.60131/65 : Telegram (part air)

The Chargé in Estonia (Leonard) to the Secretary of State

TALLINN, May 15, 1937—1 p. m.
[Received May 15—6:05 a. m.]

7. With reference to Department's telegram No. 4, April 26, 6 p. m., and my reply of April 28, 5 p. m. The Estonian Foreign Office has today communicated the following:

“Being desirous to meet the requests of the Government of the United States the Estonian Government agree to withdraw their proposal as far as it concerns the expiration of the treaty as determined in the note of the Minister of Foreign Affairs to the American Legation of April 22nd, 1936, number 43-V. At the same time the Estonian Government, referring to the stipulations of article 29 of the existing treaty, confirm their desire to modify the existing treaty on May 22nd, 1938, at the latest.”

LEONARD

611.60i31/65 : Telegram

The Acting Secretary of State to the Chargé in Estonia (Leonard)

WASHINGTON, May 25, 1937—4 p. m.

5. Your No. 7, May 15, 1937. If you have not already done so, please acknowledge Foreign Office's note of May 15, 1937, and say that the Government of the United States accepts the note as a withdrawal of the Estonian proposal of April 22, 1936, insofar as that proposal would have operated to terminate the treaty of friendship, commerce and consular rights between the United States and Estonia on May 22, 1937, thereby continuing the treaty in force until May 22, 1938. At the same time you may again express this Government's appreciation of Estonia's courtesy.²⁰

WELLES

611.60i31/77 : Telegram

The Secretary of State to the Minister in Estonia (Lane)

WASHINGTON, July 14, 1937—6 p. m.

46. Your No. 91, July 10, 1 p. m.²¹ Estonian informal proposals²² are being given careful study but it is not probable that the Department will be in a position to submit its comments with regard to them until several weeks hence.

HULL

611.60i31/85

The Secretary of State to the Chargé in Estonia (Leonard)

[Extracts]

No. 26

WASHINGTON, December 22, 1937.

SIR: Reference is made to the Legation's despatches Nos. 179 and 180 of May 27, 1937, and No. 236 of August 19, 1937,²³ and to previous correspondence relative to the possible negotiation of a trade agreement between the United States and Estonia.

The proposals submitted by the Estonian Government and transmitted to the Department with the despatches referred to above have been given careful study by the interdepartmental trade-agreement

²⁰ The Chargé in Estonia reported in his despatch No. 178 (Diplomatic), May 26, that this instruction had been embodied in a note handed by him to the Estonian Acting Minister for Foreign Affairs on the same day (611.60i31/72).

²¹ Not printed.

²² The Estonian informal proposals and comments relative to a reciprocal trade treaty were contained in despatch No. 180 (Diplomatic), May 27, from the Chargé in Estonia (611.60i31/74).

²³ None printed.

organization. These studies have revealed that the commodity trade between the two countries is such as to make a trade agreement between the two countries feasible. However, it appears that the position thus far taken by the Estonian Government on certain aspects of the general treatment to be accorded to American commerce (particularly with reference to quotas and exchange control) does not assure us that on its part that Government is willing to grant us substantially non-discriminatory treatment, an essential condition to the conclusion of a trade agreement. The interdepartmental Committee on Trade Agreements has, therefore, approved the continuation of discussions with the Estonian Government looking toward the initiation of formal negotiations, provided that a satisfactory understanding can be reached with Estonia on the basis for the negotiations. As has been indicated in previous instructions to you, such an understanding would necessarily be based upon the principle of non-discriminatory treatment.

There are enclosed for your information and guidance two copies of a report²⁴ submitted to, and approved by, the Committee on Trade Agreements with reference to the possible negotiation of a trade agreement with Estonia. The conclusions and recommendations expressed in the report are only of a preliminary character, since the final form and content of a trade agreement would have to be determined by the extent to which Estonia is willing to meet our viewpoint and by any relevant facts which may be brought out in briefs and oral statements submitted by interested parties to the interdepartmental trade-agreements organization prior to the initiation of formal negotiations. It is believed, however, that the report will be useful to you as an indication of what, in general outline, would be considered as a satisfactory agreement by this Government. You will, of course, wish to use some of the material contained in the report in your discussions with the Estonian officials. However, you should bear in mind that, in this preliminary stage of discussions, our objective is primarily to work out an understanding on fundamentals and that matters of detail should, in general, be left to be worked out in the formal negotiations.

In taking up the subject of a trade agreement with the Estonian authorities, you should say that the Government of the United States has given the most careful consideration to the Estonian proposals and that an exhaustive study has been made of Estonian-American commercial relations. You should express the Department's appreciation of the courtesy of the Estonian Government in deferring its notice of intention to modify the present commercial treaty in order

²⁴ Not attached to file copy of instruction.

to permit the completion of these studies, and the Department's regret that it has not been possible to reply to the Estonian proposals at an earlier date. The delay in making a reply has been occasioned by the fact that the Department has been concurrently studying the possibility of undertaking negotiations with a considerable number of other countries.

The Department desires that you convey the following observations to the Estonian authorities with specific reference to the proposals made by the Estonian Government.

The Government of the United States shares the desire of the Estonian Government that the trade between the two countries be expanded as much as possible. To that end, it would be willing to enter into negotiations with Estonia for the reciprocal exchange of commercial concessions in a trade agreement, provided that an understanding can be reached prior to the initiation of formal negotiations as to the general treatment which will be accorded in each country to the commerce of the other. The Department has, therefore, authorized you to conduct the necessary discussions with a view to arriving at such an understanding.

GENERAL PROVISIONS

From the viewpoint of the United States, the most important aspects of the general treatment to be provided for in a trade agreement would be those concerned with unconditional most-favored-nation treatment in customs matters and with the application of the principle of equality of treatment to quotas, and exchange control. While the Government of the United States does not consider it necessary that the exact text of provisions regarding these matters be agreed upon during preliminary conversations, it does desire that an understanding be reached as to the general basis upon which the negotiations will proceed and believes that the Estonian Government is probably of the same view.

By way of introduction to a discussion of these subjects, you should point out that the United States at present accords to Estonia all of the advantages given to the most-favored-nation, the Republic of Cuba excepted, and that it is the policy of the United States to continue extending these advantages to Estonia, regardless of whether the present treaty continues in force, provided that Estonia accords non-discriminatory treatment to the commerce of the United States. The rates of duty specified in the fifteen trade agreements, the benefits of which are extended to Estonia, apply to goods accounting for approximately 20 percent of total dutiable imports into the United States. These benefits, coupled with the fact that the United States imposes no quantitative restrictions upon the admission of Estonian goods nor

restrictions upon the transfer of payments therefor, provide a broad basis for the development of a market in this country for Estonian goods.

The Government of the United States appreciates that the Estonian Government is not now in a position to permit unrestricted imports and it desires, in general, only a guarantee that such restrictions and regulations as the Estonian Government may see fit to impose upon imports will not operate to the disadvantage of this country as compared with third countries.

It is, of course, highly desirable that an agreement be concluded, if possible, prior to May 22, 1938. Therefore, if it appears at all possible that a satisfactory understanding on basic principles can be reached with the Estonian Government as a result of your preliminary discussions, you should consult the Department by telegraph with reference to the details of any counter-proposals made by the Estonian authorities. If, on the other hand, the Estonian Government displays little willingness to meet the Department's views on the points which have been indicated as essential, it may be preferable for you to transmit to the Department by mail any counter-proposals which are made to you. In determining which procedure to follow, you should bear in mind that a complete understanding with regard to possible concessions is not essential to the issuance of a preliminary announcement that negotiations are under contemplation. However, the Department would not wish to make such an announcement unless discussions with Estonia had progressed sufficiently to indicate substantial possibility of successful negotiations.

Very truly yours,

For the Secretary of State:
FRANCIS B. SAYRE

FRANCE

REPRESENTATIONS RESPECTING FRENCH IMPORT CONTROL MEASURES IN ALLEGED VIOLATION OF TRADE AGREEMENT¹

611.5131/1674: Telegram

The Ambassador in France (Bullitt) to the Secretary of State

PARIS, January 15, 1937—11 a. m.

[Received January 15—10 a. m.]

64. Bastid, Minister of Commerce, asked me to call on him and I did so yesterday. He said that he and the French Government had been greatly shocked because our Government in Washington had rejected almost with contempt a French proposal to inaugurate further conversations for mutual reduction of tariff barriers.

I replied that I knew of no special conversations on this subject except the one between Assistant Secretary of State Sayre and de Laboulaye² on December 30 and asked Bastid if he were referring to that conversation or to another. He was unable to specify.

He then went on to ask why we were displeased with the working of the trade agreement. I replied that we thought the trade agreement was working excellently for France but not so well for the United States and pointed out some of the obvious effects of French devaluation following the line of Sayre's conversation with de Laboulaye as reported to us in your telegram 557, December 30, 2 p. m.³

Bastid then asked me if there were any specific complaints which were especially irritating. I replied that I had not come to him prepared with any full and detailed list of complaints; that I knew my Government was very much disappointed with the working of the agreement with regard to a number of matters.

Merely as an example I could refer to the . . . procedure of the French Government with respect to licenses for apples and pears . . . I called his attention to the fact that under numbered paragraph 7 of the protocol France had agreed "voluntarily to facilitate, so far as lies within its province, the full utilization of the quotas at present allotted to or which may be allotted hereafter to the United States."

¹ For text of reciprocal trade agreement between the United States and France, signed at Washington, May 6, 1936, and related notes, see Department of State Executive Agreement Series No. 146, or 53 Stat. 2236; for correspondence, see *Foreign Relations*, 1936, vol. II, pp. 85 ff.

² Andre de Laboulaye, French Ambassador.

³ *Foreign Relations*, 1936, vol. II, p. 98.

He said that he entirely agreed with me that the license system had given rise to very great abuses and promised that he would look into the matter immediately.

I said that my Government had a whole series of other complaints which could be given to him in detail by our excellent Acting Commercial Attaché, Mr. Reagan.

Bastid then quoted a number of figures which he asserted showed that the agreement was working more to the advantage of the United States than to the advantage of France.

He then said that he was most anxious to work out all difficulties with the United States as soon as possible and to enlarge the scope of our trade agreement. He asked me if I thought it advisable to discuss these matters in Paris or in Washington. I replied that while Mr. Reagan was exceedingly able I felt that I was so ill equipped to handle discussions of this nature compared to the Department of State that I believed it would be desirable to carry on the conversations in Washington. I pointed out to him that his Commercial Attaché in Washington, Monsieur Garreau-Dombasle, was an especially able man with a perfect understanding of the possibilities and impossibilities of negotiations with America.

Bastid then went on to say that what interested him most at the present time was not the somewhat picayune question of working out small obstacles to the functioning of the satisfactory settlement but the large question of whether or not the United States would agree in principle to participate in a plan to provide economic outlets for Germany if the French Government should be disposed to develop a large scale comprehensive plan for this.

I replied that it was a fixed practice of the United States never to accept vague commitments in principle but to deal only with concrete proposals. He continued to press me for a reply and I ended our conversation by saying that Americans were not in the habit of promising to get married until they had seen the face of the lady.

BULLET

611.5131/1696

The Chargé in France (Wilson) to the Secretary of State

No. 412

PARIS, March 8, 1937.

[Received March 17.]

SIR: I have the honor to enclose herewith a copy of a note,⁴ dated February 20, 1937, which, in accordance with the authorization contained in the Department's telegram No. 62 of February 4, 9 p. m.,⁴

⁴ Not printed.

the Embassy has addressed to the Ministry of Foreign Affairs, pointing out certain items in the new French tariff, issued in conformity with Articles 8 and 13 of the Fiscal Reform Law, the rates upon which appear to have been increased in contravention of the provisions of the Franco-American Trade Agreement.

Although the fiscal reform law itself, and informal inquiries which the Embassy has made, appear to indicate that these increases are the result of the inclusion in the tariff rate of taxes which were formerly collected separately, and do not, in fact, increase the total charges upon the American products imported into France, the Embassy has felt that we were at least entitled to some explanation of the action of the French Government in increasing rates of duty which had been bound in the Trade Agreement.

The Embassy's note therefore represents an effort to give the Ministry an opportunity to give such an explanation.

A further report will be made to the Department when a reply has been received from the Ministry of Foreign Affairs.

Respectfully yours,

EDWIN C. WILSON

611.5131/1700

The Chargé in France (Wilson) to the Secretary of State

No. 521

PARIS, April 8, 1937.

[Received April 20.]

SIR: I have the honor to refer to the Embassy's despatch No. 412 of March 8, 1937, pointing out certain items in the new French tariff the rates upon which appeared to have been increased in contravention of the provisions of the Franco-American Trade Agreement, and to enclose herewith a copy and translation of a note from the Ministry of Foreign Affairs of April 6, 1937,⁵ in reply to the Embassy's representations in this regard.

The Department will note the statement of the Ministry of Foreign Affairs to the effect that the object of the Fiscal Reform Law was the suppression, by inclusion in the customs tariff, of the statistical, customs and stamp taxes ("taxes de statistique, des formalités douanières et de timbre") which had previously been collected separately at the time of importation. The idea behind this reform was that all taxes due at the time of importation might be paid at one time to one agent rather than several times to several agents. The Ministry maintains that as a matter of fact the total charges imposed upon American products on importation into France have not been increased above those imposed at the time of the signature

⁵ Not printed.

of the Franco-American Trade Agreement, and that for this reason the French Government did not feel that the provisions of Article 1, paragraph 5, of the Agreement need be taken into consideration.

Informal inquiry made by the Commercial Attaché indicates that the taxes in question, which have been suppressed and consolidated, that is, the "taxes de statistique, des formalités douanières et de timbre," as established by the Customs Code of 1934, were formerly levied at the rate of 1 franc per ton or fraction of a ton, but in no case at a rate of less than 2% ad valorem, on all commodities cleared through the customs. He found that in view of the fact that these taxes were calculated on either a weight or an ad valorem basis, in order to merge them with the customs duties which are mostly on a specific duty basis, the customs authorities were obliged to compute entirely new tariff rates. It appears that this was done on a basis of actual returns during 1936, by calculating the percentage relationship between the amount of the statistical taxes collected and the amount of the duties collected. Apparently this relationship worked out at 2.5%. Accordingly, in computing the new tariff rates, each former rate was increased by 2.5% rounded out for convenience.

In view of these facts and in the absence of any complaints from the American exporters, the Embassy would be inclined to acquiesce without protest in the position taken by the French Government in the premises.

Respectfully yours,

EDWIN C. WILSON

611.5131/1722 : Telegram

The Secretary of State to the Ambassador in France (Bullitt)

WASHINGTON, July 20, 1937—1 p. m.

354. Your 936, July 7, 10 p. m.⁶ Phillips of the Apple Association today represented to me the importance of early settlement of questions at issue. The new pear crop will soon begin moving from the Pacific Coast and the new apple crop will be ready shortly afterwards.

I am deeply concerned that the French have failed to remedy this situation. In view of the Minister of Agriculture's statement that he would have an immediate study made of license utilization, would you not consider that you would be justified while asking him the results thereof to impress once more on him the deep importance I attach to the fulfilment of French obligations under the trade agreement. In particular, an effective method of license distribution should be worked out and the licenses tax question disposed of. Since the law prohibiting license transfer has been voted, it appears that

⁶ Not printed.

Monnet ⁷ has all the necessary authority to make adequate arrangements.

I appreciate that you have done everything that you could possibly do in this matter and that you have lost no occasion to keep these questions before the French Government. Yet in view of two French devaluations and of France's failure to make suitable arrangements for the fruit quotas to be filled, the pressure on the Department from our fruit exporters is mounting and a most regrettable situation may develop unless you can persuade the French to remedy matters before the shipping season begins on the West Coast.

HULL

611.5131/1733 : Telegram

The Ambassador in France (Bullitt) to the Secretary of State

PARIS, July 27, 1937—9 p. m.
[Received July 27—7:35 p. m.]

1062. Reference your 354, July 20, 1 p. m. We had a conference with the Minister of Agriculture yesterday afternoon which we regard as anything but satisfactory.

In the first place the study which he had assured us on July 7 (see our 936 July 7, 9 [10] p. m.⁸) would be made immediately as to the proportion in which old importers and national groups had utilized their licenses for real imports has not been completed. The only figures available and these are incomplete are for the last quarter of 1936. These figures purport to show that while only 65 per cent of the total licenses issued for the quarter had been utilized practically all the national groups had utilized fully their licenses. The Minister stated that he would have this study actively pursued and would advise us as soon as it had been completed. The Minister also stated that he intended to have a meeting personally within the next few days with representatives of the national groups in order to obtain from them exact information as to the manner in which they used their licenses. We pointed out that the value of information received from these sources would be doubtful since obviously they would desire in order to protect their position regarding licenses to present their case in the most favorable possible light.

During this discussion the Minister again mentioned the possibility of turning over the distribution of licenses to the Government of the United States or to some properly qualified organization approved by the two Governments (see our 358, March 13, 1 p. m.⁸).

⁷ French Minister of Agriculture.

⁸ Not printed.

We have noted from your 146, March 24, 6 p. m.⁹ that Phillips stated that he would, in consultation with his association, further consider this question. We would be interested in knowing what views were developed by Phillips' organization regarding this proposal and we would be glad to receive any instructions on this point which you might wish to give us. In this connection the Minister in our discussion yesterday indicated that if he found it impossible to work out a system for the distribution of licenses satisfactory to both Governments he might consider the possibility of establishing some form of Government import monopoly.

As regards the question of the license taxes the Minister made the statement that when estimates are available as to the size and price of the next French crop if these estimates should show that French fruit would be sold at a price so low as to make it impossible for American fruit to compete then he would do everything possible to suspend again the license taxes on apples and pears. He stated, however, that the estimates regarding the French crop would not be available before late October and that therefore there could be no question of suspending the license taxes before that time. He called attention to the fact that apples and pears are the only commodities on which the license taxes have not been restored to the level of October 1, 1936.

It is our considered opinion in which the Acting Commercial Attaché joins that the primary obstacle to the sale of American apples and pears on the French market, is not the existing system of distribution of licenses but rather the wide spread between the cost of American fruit cleared in France and the cost of French fruit. For instance last year American apples had to be sold in France at 75 to 80 francs a box against a price of approximately 65 francs for comparable French apples. The trade now estimates that for the coming season American apples will have to be sold at approximately 90 francs a box if the present charges are retained. It is likely that the price of French apples will not be appreciably higher than last year. In view of this situation it is obvious that there can be no interest or profit in trafficking in licenses and therefore under present conditions the license distribution system becomes only a secondary obstacle to the sale of American fruit here.

In considering the various factors which have brought about the wide differential in the cost of American and French fruit, it is evident that two successive devaluations of the franc have played an important role. It would even seem doubtful whether with the elimination of the license taxes we will be able to utilize fully our quota for apples and pears during this coming season.

⁹ Not printed.

While the foregoing was being dictated, the Acting Commercial Attaché reported that he was called on the telephone by Alphan, Director of Commercial Accords at the Ministry of Commerce, who told him that the last word in this matter did not rest with the Ministry of Agriculture, that the Ministry of Commerce was actively working on it with the National Economic Council and that they hoped to be able to find some solution satisfactory to our fruit people. Reagan is calling on Alphan at the latter's request late this afternoon and we will report further following this conversation.

BULLITT

611.5131/1736: Telegram

The Ambassador in France (Bullitt) to the Secretary of State

PARIS, July 28, 1937—3 p. m.

[Received July 28—1:07 p. m.]

1063. Reference last paragraph our 1062, July 27, 9 p. m., the Director of Commercial Accords stated to Reagan that in his view the primary requirement under present conditions for the marketing of American fruit here is the suspension of the license tax while of course at the same time efforts should be made to correct the license system so as to place the licenses in the hands of the real importers. He stated that for political reasons it would be impossible for the Minister of Agriculture to suppress immediately and permanently the license taxes. He believed that the best solution would be for the French Government to suspend the license taxes on apples and pears as from a specified period this fall until the conclusion of the current season, that is until June 30. He indicated that the dates of October 31 for pears and November 30 for apples might be utilized as an "out" for the Minister of Agriculture vis-à-vis local agricultural and political pressure on the argument that the agreement permits him to increase these taxes by 50% from July 1 until the dates cited; that while he had not employed this power he had under consideration the taxes at the actual level during these periods and that having afforded this protection to the French producers during the most urgent period of their marketing he would be justified in suspending the taxes thereafter in order to facilitate the utilization of this quota thereby preventing a repetition of last year's fiasco. At the same time the French Government should give definite assurance to our Government that the licenses will be distributed among those who are qualified as real importers. He stated that he intended to recommend the foregoing program immediately to the Minister of Commerce and to the Minister of Finance.

I request that the foregoing be kept as strictly confidential.

BULLITT

611.5131/1748: Telegram

The Ambassador in France (Bullitt) to the Secretary of State

[Extract]

PARIS, August 21, 1937—2 p. m.

[Received August 21—10:31 a. m.]

1188. Reference our 1164, August 16, 5 p. m.¹⁰ I have today received a letter dated August 19 from the Ministry of Foreign Affairs signed by Leger in the absence of Delbos of which the following is a translation:

“Mr. Ambassador: Following the exchange of views between the representatives of your Embassy and those of the French Government relative to the importation of American apples and pears into France, I have the honor to inform your Excellency that the French Government will take the following measures concerning the license taxes and the delivery of import authorization for apples and pears. These measures which will be applicable until September 30, 1938, will go into effect on the date upon which this letter and the reply from Your Excellency will be published in the *Journal Officiel*.

1. License taxes. As an indication of its good will and following the representations made by the representatives of the American Government, the French Government will reduce by 50% for the entire season 1937-1938 the license taxes assessed upon the importation of apples and pears. Accordingly, the maximum license taxes assessable during this entire period will be 16 francs per quintal for apples and 24 francs per quintal for pears.

Moreover, the French Government undertakes not to impose upon the importation of apples and pears any license tax of a protectionist character. The established license taxes have no other basis than to assure the payment to the Treasury of a part of the difference in price between the national products and the imported products. In the absence of such a measure this difference would in effect [be] gained by the private importers. As a result these taxes will be subject to a new decrease if the differences in prices mentioned should justify such decrease.

2. Distribution of licenses. The French Government has undertaken a careful investigation among the beneficiaries of licenses to determine to what extent these licenses are actually being utilized. It undertakes in the future to deliver licenses only to those importers likely to utilize them to the maximum in order to guarantee in conformity with the trade agreement as complete utilization as possible of the quota for apples and pears allotted to the United States.

To assure the maximum utilization of these licenses, the French Government will accord import authorizations only to those having import rights who have undertaken irrevocable commitments for the importation of fruit or who have contracted with a dealer or agent having himself irrevocable commitments. These commitments will be proved by production of irrevocable bank credits.

¹⁰ Not printed.

In view of the fact that the allotment to the United States for the importation of apples and pears for each quarter is specified under the trade agreement and to credit the maximum use of the quota the French Govt. undertakes to deliver the licenses within the first 10 days of quarter.

I should be glad if your Excellency would be kind enough to let me know if the preceding arrangements meet with the approval of the American Government". End of letter.

I believe that this proposal is satisfactory and I hope that you will cable me your approval as soon as possible so that I may send my letter of acceptance.¹¹

The French Government plans, if we agree, to publish between the 1st and 15th of September the exchange of letters putting these measures into force as well as the necessary decree effecting the stipulated reduction in license taxes. Pending such publication the French Government has agreed, as soon as we have accepted this proposal, that we may notify discreetly but not through published notification, the interested American exporters and French importers of the measures agreed upon but the French Government requests, in view of pressure from certain European countries for a commitment from the French Government to engage itself to issue licenses for other products immediately after the first of each quarter, not to specify the exact engagement made with the United States, namely, that licenses will be issued within the first 10 days of each quarter but merely to state that the French Government will do everything in its power to issue these licenses at the earliest possible date after the beginning of each quarter.

BULLITT

611.5131/1756 : Telegram

The Ambassador in France (Bullitt) to the Secretary of State

PARIS, September 11, 1937—11 a. m.

[Received September 11—11 a. m.]

1274. Reference our 1212 August 28, noon.¹² Bousquet of the Commercial Section of the Foreign Office has just telephoned a member of my staff and confirmed that the decree reducing the license taxes on apples and pears in accordance with our recent exchange of letters

¹¹ On August 25 Ambassador Bullitt addressed a note to the French Minister for Foreign Affairs informing him of the approval of the Government of the United States (611.5131/1764).

¹² Not printed.

will be published by September 15th at the latest and that the terms of the letters exchanged will become effective on the date of the publication of this decree.

Bousquet stated, however, that although the Ministry of Agriculture had previously agreed to the publication of these letters in the *Journal Officiel* it is now insisting that no publication be made of these letters as it fears it will have to accord some or all of the terms therein to other countries with whom it is now conducting commercial negotiations. We pointed out informally that in view of our most favored nation treatment policy it was our opinion that our Government would not object to the generalization of the terms of these letters to other countries and furthermore that during the discussions leading up to this exchange of letters we had understood from the French officials that the terms contained in these letters would be generalized to other countries.

We pointed out further that even if the Department agreed to the nonpublication of these letters two difficulties resulting from the nonpublication would have to be overcome: first, when the trade was notified verbally here it was with the reservation set forth in section 3 of our 1188, August 21, 2 p. m., but if this agreement is to be fully effective the trade must be informed of the guarantee of the French Government to deliver licenses within the first 10 days of each quarter; and second it would not appear that the trade can work with full confidence if it does not have the exact terms of the accepted French proposal in writing since it had, in agreement with the French Government officials, been informed that the terms of these letters would be published in the near future.

Bousquet concluded by stating that his Government would have no objection to our informing the trade, after the publication of the decree under reference, of the French Government's guarantee as to the date of the issuance of licenses. As to the question of making available to the trade the exact terms of the agreement, in writing, Bousquet stated that since the publication in the *Journal Officiel* had previously been agreed upon by all of the interested Ministries including Agriculture he could not see how his Government could object to the transmission of the precise terms of this agreement in writing by the Embassy to the importers' groups here and by the Department in Washington to the interested American export group.

I should appreciate instructions by telegraph as to what reply should be made to Bousquet's request.

BULLITT

611.5131/1756 : Telegram

The Secretary of State to the Ambassador in France (Bullitt)

WASHINGTON, September 13, 1937—7 p. m.

484. Your 1274, September 11, 11 a. m. By terms of the notes themselves the French Government agreed to bring the arrangement into effect by publication of the exchange of notes in the *Journal Officiel*. From a legal viewpoint therefore it would appear essential that such publication take place. In addition, however, the Department cannot think of any valid reason for the desire of the Ministry of Agriculture to avoid publication. With the exception of the license tax reduction, the notes merely implement the Trade Agreement in accordance with the undertakings of the French Government in that Agreement, and basis for the license tax reductions may be found in the continued devaluation of the French franc. There would appear to be no reason why the French Government should not be willing to generalize the undertaking to issue the licenses during the first 10 days of each quarter where the total amount of the quota is fixed as in this case, unless the Ministry of Agriculture desires to obstruct importations by delaying the issuance of licenses.

Unless you perceive reasons to the contrary, therefore, the Department suggests that you reply to Bousquet to the above effect and inform him that we will expect the French Government to carry out in good faith its undertakings in this matter.¹³

HULL

DISCUSSIONS BETWEEN THE UNITED STATES AND FRANCE CONCERNING AN ADDENDUM TO THE DOUBLE TAXATION CONVENTION OF APRIL 27, 1932¹⁴

811.512351Double/362

The Chargé in France (Wilson) to the Secretary of State

No. 390

PARIS, March 2, 1937.

[Received March 10.]

SIR: I have the honor to refer to the Embassy's despatch No. 96 of November 10, 1936,¹⁵ enclosing a report of the conversations had at Paris with officials of the Ministry of Finance by Mr. Eldon P. King,

¹³ On September 14 the American Embassy obtained the promise of the French Government that the text of notes would be published in *Journal Officiel*. This was done on September 17.

¹⁴ For previous correspondence, see *Foreign Relations*, 1936, vol. II, pp. 99 ff.; for text of convention, see *ibid.*, 1932, vol. II, p. 268.

¹⁵ *Ibid.*, 1936, vol. II, p. 120.

Special Deputy Commissioner of Internal Revenue, Department of the Treasury, on the subject of double taxation.

There are now enclosed a copy and translation of a note from the Ministry of Foreign Affairs, dated February 19, 1937,¹⁶ which refers to those conversations and proposes the commencement of negotiations upon certain fiscal questions the solution of which it is felt should be sought as rapidly as possible, namely, 1) the tax on stock exchange operations of American firms receiving in France orders to be executed on American exchanges, 2) the exemption from the general income tax of American governmental employees residing or domiciled in France, 3) the taxation in the United States of non-resident aliens, and 4) administrative assistance and cooperation with a view to curbing fiscal fraud.

The Department will note that the Ministry has failed to include one of the questions considered by Mr. King as of importance, namely, the extraterritorial effect of the *patente* tax as applied to branches in France of American banks. (See Department's instruction No. 1504 of October 13, 1936, file 851.5123 Guaranty Trust Company/20 [21]¹⁷ and the Embassy's reply No. 105 of November 12, 1936.¹⁸)

The Ministry of Foreign Affairs is being informed that its note has been referred to the Department for consideration by the competent authorities of the Government.

Respectfully yours,

EDWIN C. WILSON

811.512351Double/366

The Secretary of State to the Ambassador in France (Bullitt)

No. 249

WASHINGTON, April 24, 1937.

SIR: The Department refers to the Embassy's despatch No. 390 of March 2, 1937, and previous correspondence concerning the possible conclusion of an addendum to the Double Taxation Convention between the United States and France, and now encloses copies of a letter¹⁹ of March 29, 1937, and the enclosures thereto, received from the Treasury Department in further relation to this matter. The enclosures consist (1) of a draft addendum to the Convention on Double Taxation between the United States of America and France, of April 27, 1932; (2) of a protocol annexed to the foregoing addendum; and (3) of a commentary on the proposed draft.

It is suggested that you transmit the substance of the information contained in the letter of the Treasury Department, together with the

¹⁶ Not printed.

¹⁷ *Foreign Relations*, 1936, vol. II, p. 115.

¹⁸ *Ibid.*, p. 124.

¹⁹ Letter not printed.

copies of the enclosures enumerated above, to the Foreign Office for the consideration of the appropriate French authorities.

In transmitting these documents to the Foreign Office you may state that the draft might serve as a useful basis for further informal discussions between officials of both countries, and that, should the Foreign Office so desire, the Department will be pleased to ascertain from the Treasury Department whether it will be agreeable to have Mr. Eldon D. King, or such other person or persons as the Treasury Department may wish to designate, participate in such informal discussions.

Very truly yours,

For the Secretary of State:
R. WALTON MOORE

[Enclosure 1]

Provisional Draft

ADDENDUM TO THE CONVENTION ON DOUBLE TAXATION BETWEEN THE UNITED STATES OF AMERICA AND THE FRENCH REPUBLIC, SIGNED AT PARIS ON APRIL 27, 1932

Being desirous of further reducing the barriers to the flow of commerce between the two countries which result from conflicting principles and methods of taxation, the High Contracting Parties have agreed to the following provisions:

ARTICLE I

The first paragraph of Article I of the Convention of April 27, 1932 is amended to read as follows:

An enterprise of one of the contracting States shall not be subject to taxation in the other contracting State on the basis of:

(a) industrial and commercial profits and other income unless directly derived from sources within its territory and, in the case of industrial and commercial profits, allocable in accordance with the articles of this Convention to a permanent establishment in the latter State;

(b) gains or other income realized upon dissolution or merger except such income directly attributable to a permanent establishment in the latter State;

(c) property or capital except property situated or capital employed within its territory and, in the case of movable property or capital, allocable to a permanent establishment in the latter State.

ARTICLE II

1. For the purposes of this Convention, the term "industrial and commercial profits" shall not include the following:

- (a) Income from immovable property;
- (b) Income from mortgages, from public funds, bonds (including mortgage bonds), loans, deposits and current accounts;
- (c) Dividends and other income from shares in a corporation;
- (d) Rentals or royalties arising from leasing personal property or from any interest in such property, including rentals or royalties for the use of, or for the privilege of using, patents, copyrights, secret processes and formulae, goodwill, trade marks, trade brands, franchises and other like property;
- (e) Profit or loss from the casual purchase and sale of immovable or movable property.

2. Notwithstanding the provisions of paragraph 1 above, the term "industrial and commercial profits" shall include, in so far as banking and financial enterprises are concerned, all items which, in conformity with the laws in force governing national enterprises, enter into the computation of profit and loss; it shall not, however, include the following:

- (a) Income from immovable property;
- (b) Income from mortgages.

3. In determining industrial and commercial profits there shall be excluded with the above-mentioned items of income the related expenses (including general overhead) and charges.

4. Such items of income shall be taxed separately or together with industrial and commercial profits, in accordance with the laws of the contracting States, the applicable provisions of the Convention of April 27, 1932, and the present Convention.

ARTICLE III

Article II of the Convention of April 27, 1932 is replaced by the following:

1. If an enterprise of one of the contracting States has a permanent establishment in the other contracting State, there shall be attributed to such permanent establishment the net industrial and commercial profit which it might be expected to derive if it were an independent enterprise engaged in the same or similar activities under the same or similar conditions. Such net profit will, in principle, be determined on the basis of the separate accounts pertaining to such establishment. Subject to the provisions of this Convention and the Convention of April 27, 1932, such net profit shall be taxed in accordance with the legislation of the contracting State in which such establishment is situated.

2. The fiscal authorities of the contracting States shall, when necessary, in execution of the preceding paragraph, rectify the accounts produced, notably to correct errors or omissions, or to re-establish the prices or remunerations entered in the books at the value which would prevail between independent persons dealing at arm's length.

3. If an establishment does not produce an accounting showing its own operations, or if the accounting produced does not correspond to the normal usages of the trade in the country where the establishment is situated, or if the rectifications provided for in the preceding paragraph cannot be effected, or if the taxpayer agrees, the fiscal authorities may determine empirically, the net industrial and commercial profit by applying a percentage to the turnover of that establishment. This percentage is fixed in accordance with the nature of the transactions in which the establishment is engaged and by comparison with the results obtained by similar enterprises operating in the country.

4. The property or capital which is allocable to the permanent establishment shall be determined on the basis of the separate accounts pertaining to such establishments, and, subject to the provisions of this Convention, shall be taxed in accordance with the legislation of the contracting State in which such establishment is situated. The fiscal authorities of the contracting State shall make such rectifications of such accounts as are necessary to reflect the property situated within such State and such capital as corresponds to the permanent capital the establishment would have if it were an independent enterprise engaged in the same or similar activities under the same or similar conditions.

ARTICLE IV

1. The net income of banking and financial enterprises shall be determined in conformity with the principles laid down in Article III.

2. Where a permanent establishment of an enterprise in one contracting State is in the position of a creditor or debtor in relation to a permanent establishment of such enterprise in the other contracting State, the following provisions shall apply:

(a) If a permanent establishment in one State (creditor establishment) supplies funds, whether in the form of an advance, loan, overdraft, deposit, or otherwise, to a permanent establishment in the other State (debtor establishment), for tax purposes interest shall be deemed to accrue as income to the creditor establishment and as a deduction from gross income to the debtor establishment, and such interest shall be computed at the interbank rate for similar transactions in the currency used.

(b) Contrary to the provisions of the preceding paragraph, from the interest accruing as income to the creditor establishment and deductible from gross income by the debtor establishment there shall be excluded the interest corresponding to the permanent capital allotted to the debtor establishment whether in the form of advances, loans, overdrafts, deposits, or otherwise.

ARTICLE V

Income from maritime shipping and air navigation enterprises shall be taxable only in the State to which the enterprise belongs as provided, respectively, with regard to shipping enterprises, in the exchange of notes between the United States of America and the French

Republic of June 11 and July 8, 1927,²⁰ and, with regard to air navigation enterprises, in Article III of the Convention of April 27, 1932.

ARTICLE VI

Article VI of the Convention of April 27, 1932, is replaced by the following:

An American corporation shall not be subject to the obligations prescribed by Article 3 of the Decree of December 6, 1872, by reason of any participation in the management or in the capital of, or any other relations with, a French corporation. Except as otherwise provided in this Convention the tax on income from securities continues to be levied, in conformity with French legislation, on the dividends, interest and all other products distributed by the French enterprise; but it is moreover exigible, if the occasion arises, and subject to the measures of appeal applicable in the case of the tax on income from securities, on the profits which the American corporation derives from the French corporation under the conditions prescribed in Article IV.

ARTICLE VII

Compensation paid by one of the contracting States to its citizens for labor or personal services performed in the other State is exempt from tax in the latter State.

ARTICLE VIII

Transactions initiated in one contracting State and effected on stock, security or commodity exchanges in the other contracting State shall be taxable only in the latter contracting State.

ARTICLE IX

Mutual administrative assistance in preventing tax evasion. (The scope and language of this article to be left for discussion between representatives of the two governments)

ARTICLE X

This Convention shall be ratified and the instruments of ratification exchanged at Paris as soon as possible.

This Convention shall be effective as of the date on which the Convention signed April 27, 1932 became effective, namely January 1, 1936, and shall remain effective for the same period, namely, five years, and thereafter until twelve months from the date on which either contracting Party gives notice of its termination.

American corporations which prior to May 1, 1930 have not had their liability to tax under Article 3 of the Decree of December 6, 1872, finally determined by the court of last resort shall not be subject to the

²⁰ *Foreign Relations*, 1927, vol. II, pp. 705-707.

application of said article for any years preceding the coming into force of this Convention.

In witness whereof, the respective Plenipotentiaries have signed the above articles, both in English and French languages, and have hereunto affixed their seals,

Done in duplicate at, on

[Enclosure 2]

Protocol

At the moment of signing the present Convention, concluded on this day's date between the United States of America and the French Republic, the undersigned Plenipotentiaries, duly authorized by their respective Governments, have made the following declarations, which shall form an integral part of the said Convention:

1. The taxes referred to in this Convention include the following:

(a) for the United States:

— in Article 1, paragraphs (a) and (b), the Federal income and excess profits taxes, except that paragraph (a) does not exempt from tax (1) compensation for labor or personal services performed in the United States; (2) income derived from real property located in the United States, or from any interest in such property, including rentals and royalties therefrom; (3) dividends; (4) interest; and paragraph (c), the Federal capital stock tax.

— in Articles II, III, IV, V, and VII, the Federal income tax and the Federal excess profits tax where applicable.

— in Article VIII, the Federal stamp tax.

(b) for France:

— in Article 1, paragraphs (a) and (b), the tax on industrial and commercial profits, the tax on income from securities and other income taxes; and paragraph (c), the *patente* tax.

— in Articles II, III, IV, V, VI, and VII, the tax on industrial and commercial profits, the tax on income from securities, the tax on wages and salaries, and any other taxes appropriate to the type of income specified in said articles.

— in Article VII, the general income tax.

— in Article VIII, the taxes on transactions on the stock, security and commodity exchanges and stamp taxes.

2. The provisions of this Convention shall not be construed to affect in any manner any exemption, deduction, credit or other allowance accorded by the laws of one of the contracting States in the determination of the tax imposed by such State, or any exemption granted by the Convention of April 27, 1932.

3. As used in this Convention:

(a) The term "enterprise" includes every form of undertaking, whether carried on by an individual, partnership (*société en nom collectif*), corporation (*société anonyme*), or any other entity.

(b) The term "enterprise of one of the contracting States" means, as the case may be, "American enterprise" or "French enterprise".

(c) The term "American enterprise" means an enterprise carried on in the United States by a citizen of the United States or by an American corporation or other entity; the term "American corporation or other entity" means a partnership, corporation or other entity created or organized in the United States or under the law of the United States or of any State or Territory of the United States.

(d) The term "French enterprise" is defined in the same manner, *mutatis mutandis*, as the term "American enterprise".

(e) The American corporations mentioned in Article VI are those which, owing to their form or organization, are subject to Article 3 of the Decree of December 6, 1872.

(f) The term "permanent establishment" includes branches, mines and oil-wells, plantations, factories, workshops, warehouses, offices, agencies, installations, and other fixed places of business of an enterprise, but does not include a subsidiary company.

When the term "permanent establishment" is used with reference to a particular State, it includes all the permanent establishments, whatever their form, which are situated within such State.

The fact that an enterprise of one of the contracting States has business dealings in the other contracting State through an agent of genuinely independent status (e. g., broker, commission agent, or custodian) shall not be held to mean that it has a permanent establishment in the latter State.

When an enterprise of one contracting State regularly has business relations in the other contracting State through an agent established there who is authorized to act on its behalf, it shall be deemed to have a permanent establishment in the latter State.

A permanent establishment shall, for instance, be deemed to exist when the agent established in the State:

(1) Is a duly accredited agent (*fondé de pouvoir*) who habitually enters into contracts for the enterprise for which he works; or

(2) Is bound by an employment contract and habitually transacts commercial business on behalf of the enterprise in return for remuneration from the enterprise; or

(3) Is habitually in possession, for the purpose of sale, of a depot or stock of goods belonging to the enterprise.

As evidence of an employment contract under the terms of (2) above may be taken, moreover, the fact that the administrative expenses of the agent, in particular the rent of premises, are paid by the enterprise. A broker who places his services at the disposal of an enterprise in order to bring it into touch with customers does not in his own person constitute a permanent establishment of the enterprise, even if his work for the enterprise is to a certain extent continuous or is carried on at regular periods. Similarly, a commission agent (*commissioinaire*), who acts in his own name for one or more enterprises and receives a normal rate of commission, does not constitute a permanent establishment of any such enterprise.

A permanent establishment shall not be deemed to exist in the case of commercial travellers not coming under any of the preceding categories.

(g) The term "United States", when used in a geographical sense, includes only the States and the Territories of Alaska and Hawaii, and the District of Columbia.

(h) The term "France" when used in a geographical sense, indicates the country of France, exclusive of Algeria and the Colonies.

Done in duplicate at , the

[Enclosure 3]

Commentary on the Proposed Draft of a Convention to supplement the existing convention relative to double taxation between the United States of America and the French Republic, signed at Paris on April 27, 1932

The attached draft was proposed as a result of the suggestion of the French Government²¹ that an addendum to the double taxation convention of April 27, 1932 be concluded to be effective as of January 1, 1936.

The draft embodies most of the points raised in the informal discussions which took place in Paris October 29 [30?]–November 3, 1936²² between French officials and American officials, as well as a few other provisions which appear to be useful in clarifying and extending the existing treaty so as to prevent conflicts in jurisdiction and thereby reduce friction and encourage commerce between the two countries. Other points are left for further discussion.

Since the existing treaty was negotiated in the summer of 1930,²³ there has been a marked development in treaties of this nature and in the model conventions concerning double taxation prepared by the Fiscal Committee of the League of Nations.

The draft convention for the allocation of business income between States for tax purposes, originally contained in the 1933 report of the Fiscal Committee (Official No. C.399.M.204.1933.II.A., F./Fiscal.76.) and published again in slightly amended form in the 1935 report of the Fiscal Committee (Official No. C.252.M.124.1935.II.A., F./Fiscal.83.), has been studied by this Government, which has indicated its willingness to the Secretariat of the League of Nations to employ it, with certain minor modifications, as a basis for the negotiation of agreements with other countries.

²¹ See despatch No. 2238, October 14, 1935, from the Chargé in France, *Foreign Relations*, 1935, vol. II, p. 251.

²² See despatch No. 96, November 10, 1936, from the Ambassador in France, *ibid.*, 1936, vol. II, p. 120.

²³ See *ibid.*, 1930, vol. III, pp. 6 ff.

The draft convention for the allocation of property and capital between States for the purposes of taxation contained in Annex II of the 1936 report of the Fiscal Committee (Official No. C.450,M.266. 1936.II.A., F./Fiscal.91.) also appears to be a useful basis for negotiations. Consequently, it has seemed appropriate, in formulating a draft convention between the United States and France, to take as a framework the draft convention for the allocation of business income, using the articles which supplement advantageously the existing treaty with slight amendments in language where necessary, and adding thereto other articles which embody the principles of the draft convention for the allocation of property and capital between States for the purposes of taxation, as well as articles which supplement or clarify the existing treaty.

Briefly, the purposes of the various articles are as follows:

Article I extends reciprocally the principle of territoriality, contained in Article I of the existing treaty with regard to the tax on industrial and commercial profits, to other taxes, with a view to precluding the extraterritorial application and conflicts of jurisdiction.

Article II is based on Article II of the draft convention for the allocation of business income, with necessary references to the convention of April 27, 1932 and the proposed convention.

In Article III the first three paragraphs are based on Article III of the draft convention for the allocation of business income and the fourth paragraph is added to prescribe allocation criteria for the principle concerning property and capital enunciated in Article I, paragraph (c).

Article IV is copied from the draft convention for the allocation of business income.

Article V follows Article V of the draft convention for the allocation of business income in confirming existing arrangements between the two countries for reciprocal exemption of shipping and air navigation profits.

Article VI is intended to bring Article VI of the existing convention in line with equivalent provisions in the French treaties with Belgium, Italy and Germany. Inasmuch as these treaties were negotiated subsequently to the negotiations between the United States and France and do not require a declaration similar to that provided for in paragraph 1 of Article VI of the existing convention, it is proposed that Article VI of the existing convention be amended so as to omit the declaration requirement in paragraph 1 and consequently render unnecessary paragraphs 2 and 3 of that article.

Article VII reproduces Article VII of the present convention with a view to making it clear in the protocol that this exemption applies

to the French general income tax, as well as to the tax on wages and salaries.

Article VIII extends the principle of territoriality to transactions on stock, security and commodity exchanges.

Article IX. Inasmuch as the question of mutual administrative assistance in preventing tax evasion involves consideration of the laws and policies of the two countries, it is left open for discussion between their representatives.

Article X meets the French request that this additional convention be made applicable as from January 1, 1936 in order to tie it to the existing convention. The removal of the declaration requirement in Article VI of the convention of April 27, 1932 would involve a removal of the reference thereto in the third paragraph of Article X of such convention and therefore no reference is made thereto in the third paragraph of Article X of the present draft. Furthermore, it is proposed that the third paragraph of Article X of the existing convention be clarified so as to permit the dismissal of all claims against American corporations arising under Article 3 of the decree of December 6, 1872, which are still pending, and especially those claims which arose subsequently to May 1, 1930, when the negotiations of the existing convention were begun and would therefore not have arisen if the American corporations had been able to enjoy the benefits of the convention at that time. This involves recognition of the fact that the words "finally determined" mean final determination of liability to tax, whether in principle or as to amount, after all possibility of recourse to judicial tribunals has been exhausted. It is also necessary to acknowledge the fact that under Article VI of the existing convention the tax on income from securities is applicable to diverted profits only as from January 1, 1936.

The protocol is modeled after the protocol of the existing convention and that of the draft convention for the allocation of business income with appropriate changes in language where necessary or desirable to clarify or amplify provisions in the protocol of the existing convention.

811.512351 Double/385

The Ambassador in France (Bullitt) to the Secretary of State

No. 1165

PARIS, October 22, 1937.

[Received November 2.]

SIR: I have the honor to refer to the Department's instruction No. 467, dated September 24, 1937,²⁴ announcing approaching visits to

²⁴ Not printed.

Paris of Mr. Eldon P. King, Special Deputy Commissioner of Internal Revenue, in connection with his journey to and from the meeting of the Fiscal Committee of the League of Nations in Geneva, and suggesting that, as it appeared possible that the French authorities who are considering the draft addendum proposed for the Franco-American Double Taxation Convention of April 27, 1932, might welcome an opportunity informally to discuss this matter with him, they be informed of Mr. King's passage through Paris. The Department added that Mr. King believed that the most appropriate time for such discussions would be during the period October 18 to 20, inclusive, and preferably October 18, so that if a supplemental conference were found desirable it could be arranged before October 21.

The Embassy found the appropriate officials of the Ministry of Finance, who were first approached through the Foreign Office in the usual way, most desirous of conferring with Mr. King. After discussing the matter with the latter on his way through Paris on October 8, it was decided that the first informal meeting should occur on the afternoon of October 18 and that further conferences might, if necessary, take place on October 20.

Mr. Cochran²⁵ and Mr. Fullerton²⁶ of the Embassy accompanied Mr. King to the Ministry of Finance at three o'clock on the afternoon of October 18, where they were received by the following officials of the Ministry:

- Mr. Georges Mer, General Secretary of the Ministry of Finance, assisted by Mr. Guillet, Chief of the General Secretary's office;
- Mr. Bizot, Counselor of State, General Director of Direct Taxation, assisted by Mr. Barrau, Administrator of Direct Taxation, and Mr. Pierre, Head of Bureau at the General Direction of Direct Taxation;
- Mr. Pelegry, Counselor at the Court of Audits, Director General of the Registration, Domain and Stamp Service, assisted by Mr. Guinard, Administrator, and Mr. Revol, Assistant Chief of Bureau at the General Direction of Registration, Domain and Stamp.

The discussions were resumed on October 20 at ten o'clock and continued, with suitable intermission, until eight o'clock in the evening, an officer of the Embassy being present at all times.

Mr. King will, of course, make a detailed and technical report of the discussions to the Treasury Department, a copy of which will, it is understood, be made available to the State Department. The Em-

²⁵ H. Merle Cochran, First Secretary of Embassy.

²⁶ Hugh S. Fullerton, First Secretary of Embassy.

bassy will, under the circumstances, refrain from a close review of the conferences, but the following observations may be of interest to the Department.

It was evident from the outset that the French were primarily interested, and very much interested, in the insertion of provisions, in the contemplated addendum to the existing convention or in a new convention to replace the present vehicle, which would establish administrative cooperation between the two countries in the exchange of fiscal information. In the course of the earlier discussions Mr. King and the Finance experts studied together, and point by point, the proposals for the addendum as drafted by the Treasury Department. The proposals of the French Government had apparently not been formulated, or, if so, they were at any rate not produced.

During the sessions of October 20 the officials of the Ministry of Finance invited analysis of the Franco-Swedish conventions of December 24, 1936, relating to double taxation and reciprocal assistance with regard to fiscal evasion.²⁷ They seemed to favor the drafting of a new Franco-American convention along similar lines rather than an addendum to the existing convention, but it was evident that they would not press this point.

Mr. King found opportunity to bring up in a general way several pending claims which have arisen under the French law and decree of 1872, such as those against the Boston Blacking Company and the Durham Duplex Razor Company, as well as the Guaranty Trust Company "patente" tax case, and it appeared that it might be the disposition of the French Government to agree to dismiss these pending cases in the fabric of the proposed addendum or replace-convention in return for an acceptable "quid pro quo". It was intimated that the French Government would propose that the withholding rate on dividends paid to nonresident French corporations be reduced from the present 10 per cent to 5 per cent, as in the case of Canada²⁸ and as possible for other countries contiguous to the United States.

The officials of the Ministry of Finance indicated to Mr. King that the French draft proposals would be transmitted to the United States Government for consideration within a period of a few weeks.

Respectfully yours,

For the Ambassador:

EDWIN C. WILSON

Counselor of Embassy

²⁷ League of Nations Treaty Series, vol. CLXXXIV, p. 35.

²⁸ Article 1a of Convention Between the United States and Canada on Income Taxation, signed at Washington, December 30, 1936; for text, see Department of State Treaty Series No. 920, or 50 Stat. 1399; for correspondence, see *Foreign Relations*, 1936, vol. 1, pp. 790 ff.

NEGOTIATIONS WITH FRANCE FOR THE SUPPRESSION OF LIQUOR
SMUGGLING INTO THE UNITED STATES FROM ST. PIERRE-
MIQUELON²⁹

811.114 St. Pierre-Miquelon/443 : Telegram

The Secretary of State to the Ambassador in France (Bullitt)

WASHINGTON, January 25, 1937—7 p. m.

37. Your No. 1275, December 18, 3 p. m.³⁰ Treasury Department believes it would be mutually helpful if it could receive an outline of proposed decree to replace one now in effect at St. Pierre-Miquelon before it is finally adopted. Please endeavor to obtain and telegraph desired information if you can properly do so.

HULL

811.114 St. Pierre-Miquelon/454 : Telegram

The Ambassador in France (Bullitt) to the Secretary of State

PARIS, January 30, 1937—2 p. m.

[Received 3:45 p. m.]

132. Department's 37, January 25, 7 p. m. Foreign Office has now received a reply from the Ministry of Colonies wherein the latter insists upon the promulgation of two decrees, one approving the resolution of the Administrative Council of the Islands of September 29, 1936, prohibiting the importation of foreign spirits, and one abrogating decree of April 9, 1935,³¹ except as concerns foreign alcohol now there in storage (see enclosures to Department's mail instruction No. 18, October 28, 1936³²).

The Ministry of Colonies gives assurances, however, that a close watch will be kept on imports of alcohol into the islands and that if it appears that importations are exceeding the normal requirements of the islands adequate measures will be taken to restrict them to normal requirements. The Ministry of Colonies also gives assurances that it will not permit the establishment of distilleries.

Foreign Office has promised to endeavor to have the term "foreign" omitted from the second decree and to have prohibition of the establishment of distilleries included in the decree. It says that "alcool de traite" is common alcohol without trade name. It has promised

²⁹ For previous correspondence, see *Foreign Relations, 1936*, vol. I, pp. 428 ff.

³⁰ *Ibid.*, p. 436.

³¹ See note of March 15, 1935, from the French Embassy and telegram No. 344, April 17, 1935, noon, from the Ambassador in France, *ibid.*, 1935, vol. I, pp. 412 and 414, respectively.

³² Not printed.

also to obtain a ruling on the Department's inquiry contained in the penultimate sentence of its 475, November 23, 7 p. m., 1936.³³

The Foreign Office has given oral assurances which it has proposed later to embody in a letter to the effect that if we find that smuggling has increased under the proposed decree it will be prepared to urge additional modification upon the Ministry of Colonies. Foreign Office feels, however, that the Ministry of Colonies has ample power to restrict importations to normal requirements and that it will do so. Foreign Office was requested to withhold its reply to Colonies until we could communicate with the Department and it has promised to do so.

When Bonnet³⁴ called on me the other day he asked if there were any unsettled questions which we had up with the French Government as he desired to straighten out any difficulties which might exist before he leaves for Washington. I told him of this matter and of the importance which we attach to preventing smuggling from St. Pierre-Miquelon. He said that he would take the matter up and try to prevent the abrogation of the decree of April 9, 1935.

BULLITT

811.114 St. Pierre-Miquelon/454: Telegram

The Secretary of State to the Ambassador in France (Bullitt)

WASHINGTON, February 5, 1937—7 p. m.

67. Your No. 132, January 30, 2 p. m. Since "alcool de traite" apparently means ethyl alcohol of type commonly handled in bulk and similar to that which has in past been shipped from St. Pierre, could not second decree be changed to read "The decree of April 9, 1935, governing the exportation of alcohol from the Islands of St. Pierre-Miquelon is abrogated except insofar as concerns the exportation of 'alcool de traite', [""] provided our understanding of "alcool de traite" is correct? This would include alcohol now in warehouses and would not affect shipments of alcoholic beverages such as those mentioned your telegram No. 1194, December 4, 5 p. m.³³ We presume you have explained to French authorities distinction we make between straight alcohol and alcoholic beverages. Since there is probably very little legitimate trade in straight or raw alcohol at St. Pierre it does not seem unreasonable to insist that exportation of this commodity be prohibited or that it be exported only in compliance with provisions of present decree. If French cannot agree to either, importation should

³³ *Foreign Relations*, 1936, vol. I, p. 434.

³⁴ Georges Bonnet, appointed French Ambassador to the United States.

be restricted to normal requirements by imposition of quota or effective tax.

Treasury Department is gratified to note assurances given by Ministry of Colonies that it will not permit establishment of distilleries, as well as assurances by Foreign Office regarding additional modification, if necessary.

We are happy to note that you have explained the matter to Bonnet. Perhaps he might be able to persuade the authorities to prohibit or restrict the exportation of straight alcohol if you think it wise to ask him to do so.

HULL

811.114 St. Pierre-Miquelon/459 : Telegram

The Ambassador in France (Bullitt) to the Secretary of State

PARIS, February 13, 1937—2 p. m.
[Received February 13—9:50 a. m.]

204. Department's 80, February 13 [12], 5 p. m.⁸⁶ The Embassy has now received a formal note from the Foreign Office giving the assurances outlined in the Embassy's 132, January 30, 2 p. m., and indicating that the decree will be issued without modification. The Foreign Office was requested to endeavor to have the promulgation of the decree delayed until the Treasury Department's further representation had been received. The Foreign Office would only promise to endeavor to have the issuance of the decree delayed until next Wednesday.

BULLITT

811.114 St. Pierre-Miquelon/460 : Telegram

The Ambassador in France (Bullitt) to the Secretary of State

PARIS, February 13, 1937—6 p. m.
[Received February 13—2:45 p. m.]

206. In supplement to my 204, February 13, 2 p. m. I saw Blum⁸⁷ this afternoon and expressed our views amicably but vigorously. He promised to look into the question personally at once.

BULLITT

⁸⁶ Not printed.

⁸⁷ Léon Blum, President of the French Council of Ministers.

811.114 St. Pierre-Miquelon/460: Telegram

The Secretary of State to the Ambassador in France (Bullitt)

WASHINGTON, February 15, 1937—4 p. m.

85. Your 206, February 13, 6 p. m. We are glad that you have taken the matter up with Blum. In view of the past record of the Islands and the smuggling which has taken place even under the present decree, we believe it is not unreasonable to insist that the exportation of raw alcohol be prohibited or at least restricted. We would certainly regard any situation which might make possible the resumption of alcohol smuggling as a very serious matter.

In this connection the following message has been received from the Treasury Department:

“Secretary of the Treasury most vigorously protests any modification of present decree which would allow unrestricted importation and/or exportation of bulk alcohol (*alcool de traite*) at St. Pierre regardless of country of origin. Treasury calls attention to fact that by reason of prohibitive duties there is no legitimate market in this hemisphere which could be supplied with bulk alcohol from St. Pierre and that therefore any alcohol exported from St. Pierre is certain to be for smuggling trade. The Treasury gives it as its opinion that unless the French Government is willing to continue substantially the restrictions of the present decree prohibiting the exportation of all bulk alcohol from St. Pierre in vessels of less than 200 tons and prohibiting any exportation except under bond and landing-certificate provisions smuggling operations based upon St. Pierre are bound to be resumed. This will not only mean great loss of revenue to the United States but will necessitate the expense of a substantially increased enforcement effort.”

We wish you would convey the above message to Blum and inform him also that any resumption of smuggling operations from St. Pierre will completely nullify the favorable impressions created in this country by the action taken by the French Government which resulted in the promulgation of the present decree in May 1935.

Commander Thompson, Special Assistant to the Secretary of the Treasury, is sailing for Paris on Wednesday on another matter and you may wish to ask Blum to have final action postponed until you have had a chance to talk to Thompson, if you so desire.

For our information please telegraph whether the production and exportation of alcohol is a monopoly in France. What are the possibilities that bulk alcohol originating in France or French possessions might be imported into St. Pierre and freely exported thereafter?

HULL

811.114 St. Pierre-Miquelon/462 : Telegram

The Ambassador in France (Bullitt) to the Secretary of State

PARIS, February 17, 1937—1 p. m.
[Received February 17—10:15 a. m.]

226. Department's 85, February 15, 4 p. m., last paragraph. The importation, production, distribution and sale of alcohol in France is so closely regulated in the interest of national defense and revenue as to amount to a monopoly although it does not legally go by that name. (See decrees on indirect taxes in *Journal Officiel* December 28, 1934, page 12857 and November 7, 1936 page 11622).

Under the proposed decree therefore nothing to prevent bulk alcohol originating in France or French possessions from being imported into St. Pierre and freely exported from there except the assurances of the Ministry of Colonies that importations into the islands will be restricted to actual consumption needs. The exportation of alcohol from France is controlled by bonding system (article 100 page 12864 [12863] *Journal Officiel* December 28, 1934) which should enable the Ministry of Colonies to restrict exportation to St. Pierre.

BULLITT

811.114 St. Pierre-Miquelon/463 : Telegram

The Ambassador in France (Bullitt) to the Secretary of State

PARIS, February 17, 1937—11 p. m.
[Received February 18—1:55 p. m.]

234. Last night I communicated to Delbos³⁸ the substance of your 85 of February 15, 4 p. m. This morning Blum, to whom I had already spoken, telephoned and asked me to have a conversation with the Minister of Colonies who called on me this evening accompanied by his expert in the affairs of St. Pierre-Miquelon, Monsieur Merat, Director of Economic Affairs at the Ministry of Colonies. Merat, who stated that he had been in St. Pierre-Miquelon in 1935-36, conducted most of the conversation in behalf of the Minister of Colonies.

He asserted that when he had been in St. Pierre-Miquelon he had discussed the question of suppressing the contraband trade with our Consul, Mr. Gunsaulus, and that Mr. Gunsaulus had approved fully of the measures which the French Government now proposes to adopt. He suggested that our Government should communicate with Gunsaulus. He said he was confident that Gunsaulus would agree with

³⁸ Yvon Delbos, French Minister for Foreign Affairs.

him that the new method devised by the French Government for suppressing the contraband trade would be more effective than the method now in force.

He and the Minister state that their sole desire was to suppress completely the contraband from St. Pierre-Miquelon to the United States.

They said that with this object in view they had asked the Assembly at St. Pierre-Miquelon to vote a law forbidding the importation into St. Pierre-Miquelon of all alcohol except French alcohol; the law had been voted.

In return the inhabitants of St. Pierre-Miquelon had requested that they should be treated in the same manner as inhabitants of all other French colonies; that is to say the regime of export under bond should be suppressed.

The Minister and his expert both stated that the French Government was prepared to promise that no *alcool de traite* would be exported from France to St. Pierre-Miquelon.

They were further prepared to promise that if the American Government should find reason to object to the new regime in St. Pierre-Miquelon they would establish a quota for importation of alcoholic beverages to St. Pierre-Miquelon.

They stated further that one of their chief reasons in desiring to change the law was the wish to reduce the expenses of the French Government in maintaining St. Pierre-Miquelon.

They asserted that the revenues of the islands now amounted to approximately 1,000,000 francs and asserted expenses of the islands amounted to 8,000,000 francs which required an annual contribution by the French Government of about 7,000,000 francs. They wished to reduce the number of customs inspectors at St. Pierre-Miquelon in order to reduce the expenses of the French Government.

The expert of the Minister of Colonies there said that they would be very glad to put on more customs inspectors if the United States should be prepared to pay for them. I asked him if he were speaking seriously as we were willing to go to great lengths to prevent this traffic. He replied that of course the French Government would have to select and pay the agents with our money.

They finally said that if the new regime should be established and the American Government should find objections thereto they were prepared to reintroduce the regime now in force.

I asked if they would hold up the new decree and they said they could hold it up for a few days. The difficulty was that the law passed by the Assembly of St. Pierre-Miquelon forbidding the importation of alcohol except of French origin was now due to take effect. They had secured the passage of this law by promising that the regime of export under bond would be suppressed. Moreover, the bonding

system was of doubtful legality. It would therefore be more embarrassing for them to delay the suppression of the bonding system. I asked why it would be embarrassing and they repeated that the colonists of St. Pierre-Miquelon had demanded to be treated on the same footing as all other French colonists.

I said that I did not believe that the French Government had to be too particular about the finer feelings of a lot of smugglers.

I said further that we did not believe the system they proposed to install would prevent the importation into St. Pierre-Miquelon of alcohol from other countries than France under false French labels and under false French certificates. I added that we did not believe that exports from France would be controlled properly and stated that we believed the only purpose of the new decree was to permit smuggling. After a vigorous discussion I was again assured that the only desire of the French Government was to put an end once and for all to smuggling from St. Pierre-Miquelon.

BULLITT

811.114 St. Pierre-Miquelon/464: Telegram

The Ambassador in France (Bullitt) to the Secretary of State

PARIS, February 17, 1937—midnight.
[Received February 18—10:15 a. m.]

235. Supplementing my 234, February 17, 11 p. m. I finally elicited the information requested from the Minister of Colonies that Delbos after my conversation with him last night had flatly forbidden the issuance of the new decree until our Government should be satisfied.

I attribute to this intervention by Delbos the concessions offered this evening by the Minister of Colonies:

- (1) that no *alcool de traite* would be exported to Saint Pierre-Miquelon,
- (2) that a quota for alcoholic beverages would be established if necessary,
- (3) that if the new regime should not prove to be satisfactory the present regime would be reintroduced.

. . . I doubt that our Consul at St. Pierre-Miquelon ever favored the plan of control now proposed. It would be most valuable to me to have any expressions of opinion which Gunsaulus may have sent to the Department with regard to this proposal.

I venture to renew my recommendation that both you and the President should speak about this matter emphatically to Bonnet. I can see no reason why it is not possible both to forbid the importation of alcohol into St. Pierre-Miquelon from all countries other than France and to continue at the same time the system of exportation in bond.

It was obvious throughout the conversation outlined above that the Minister of Colonies knew nothing whatsoever about the question but was acting solely on the advice of Merat. . . .

As I shall see Delbos and Blum tomorrow I should appreciate immediate instructions.

BULLITT

811.114 St. Pierre-Miquelon/465 : Telegram

The Ambassador in France (Bullitt) to the Secretary of State

PARIS, February 18, 1937—6 p. m.
[Received February 18—3:10 p. m.]

238. Referring to Department's telegram No. 85, February 15, 4 p. m. The Ministry of Foreign Affairs now expresses the willingness to issue four decrees on this subject: 1, abrogating the present bonding system except as concerns alcohol and alcoholic beverages of whatever origin now in stock in St. Pierre-Miquelon; 2, prohibiting the importation of all alcohol and alcoholic beverages of foreign origin, no derogations being permitted; 3, prohibition of the manufacture of alcohol in the islands and; 4, prohibition of the importation of all "alcool de traite" of whatever origin into the islands. Foreign Office now says that "alcool de traite" includes all alcohol and alcoholic beverages other than those entitled to an "appellation d'origine" or having a trade name.

If the American Government finds that there has been a revival smuggling under the new regime the Foreign Office and the Ministry of Colonies have both agreed that the decree of April 9, 1935 will be reenacted and written assurances to that effect will be given.

The Foreign Office in this connection requests that the Department again give consideration to the French Ambassador's proposals of 1935³⁹ that the United States Lines be induced to arrange cruises to St. Pierre-Miquelon.

BULLITT

811.114 St. Pierre-Miquelon/465 : Telegram

The Secretary of State to the Ambassador in France (Bullitt)

WASHINGTON, February 18, 1937—10 p. m.

97. Your telegrams Nos. 234, 235 and 238, last dated February 18, 6 p. m. Treasury Department advises they have no substantial objec-

³⁹ See note of March 15, 1935, from the French Embassy, *Foreign Relations*, 1935, vol. I, p. 412.

tion to first three proposed decrees. Regarding fourth decree Treasury points out that bulk alcohol commonly smuggled into United States from Europe via St. Pierre and otherwise usually has a trade name such as "Hand Brand", "Swan Brand", et cetera. Treasury fears that this proposed limitation would therefore not prove effectual against resumption of smuggling. They urge that either present bonding system be continued with respect to all exports of bulk alcohol of whatever origin from St. Pierre or that the importation of bulk alcohol, even though having a trade name, be controlled through a quota system or an import tax. Treasury assumes that words "having a trade name" in your telegram No. 238 apply equally to "alcohol" and "alcoholic beverages". Is this correct?

Treasury advises further that it is common gossip in the underworld in this country that smuggling operations based on St. Pierre will soon be resumed and urges that no loop-hole be left through which bulk alcohol could lawfully be exported from St. Pierre.

For Gunsaulus' views see Department's instruction No. 18, October 28, 1936,⁴⁰ and telegram No. 453, November 10, noon.⁴¹ He also stated in commenting on your telegram No. 1194, December 4, 5 p. m.,⁴²

"Believe the suggested provision to prohibit the exportation of all alcohols should be included if possible even though present decree to that effect has not proved entirely satisfactory; failing that either quota system or import tax on French alcohols such as rums and cognacs should be of assistance provided French authorities exercise strict control. There is a possibility, of course, that an import tax might further antagonize the people and cause smuggling. The above is based upon the assumption that present decree continue in effect, that the importation of all foreign alcohols would be prohibited and that the French Government would strictly enforce all decrees relating to alcohol."

We greatly appreciate the earnest efforts which the French Government is apparently making to meet our wishes, as well as your own indefatigable labors in this regard.

HULL

811.114 St. Pierre-Miquelon/467: Telegram

The Ambassador in France (Bullitt) to the Secretary of State

PARIS, February 19, 1937—4 p. m.
[Received February 19—1:55 p. m.]

243. Your 97, February 18, 10 p. m. The Ministry of Foreign Affairs informs us that the fourth decree mentioned in the first para-

⁴⁰ Not printed.

⁴¹ *Foreign Relations*, 1936, vol. I, p. 433.

⁴² *Ibid.*, p. 434.

graph of Embassy's 238, February 18, 6 p. m., is intended to prohibit the importation of bulk alcohol which might be used in smuggling even though such alcohol may possess a trade name.

The Ministry of Foreign Affairs suggests that the question raised by our Treasury Department might be met by defining "alcool de traite" in the decree itself and suggests that our Treasury Department itself should propose the definition of "alcool de traite".

If you find this arrangement satisfactory the French Government as a matter of form proposes to issue the decrees in the following manner: decrees 1 and 2 as given in our 238, February 18, 6 p. m.; decrees 3 and 4 to be consolidated into one decree which would:

(a) prohibit the importation of "alcool de traite" into St. Pierre-Miquelon;

(b) define "alcool de traite";

(c) prohibit the installation of any distillery of alcohol in the islands of St. Pierre-Miquelon.

I should greatly appreciate a reply at your earliest convenience.

BULLITT

811.114 St. Pierre-Miquelon/467: Telegram

The Secretary of State to the Ambassador in France (Bullitt)

WASHINGTON, February 19, 1937—6 p. m.

99. Your No. 243, February 19, 4 p. m. Treasury Department considers arrangement outlined satisfactory subject to the acceptance of substantially the following definition of term "alcool de traite":

"The term 'alcool de traite' means ethyl alcohol from whatever source or by whatever process produced, including dilutions or mixtures thereof, but not including beverages, perfumes, pharmaceuticals, flavoring extracts, and similar substances or preparations, when bottled and packaged by reputable manufacturers and labeled as such under appropriate trade or brand names."

Please express our thanks to the French Government for their cooperation in this matter, adding that we will again bring the matter of cruises to the attention of the United States Lines although, as you correctly informed them, we have no control over the United States Lines.

HULL

811.114 St. Pierre-Miquelon/470: Telegram

The Ambassador in France (Bullitt) to the Secretary of State

PARIS, February 22, 1937—4 p. m.
[Received February 23—9:05 a. m.]

255. Department's 99, February 19, 6 p. m. Foreign Office, at the instance of the Ministry of Colonies, suggests modification of proposed definition of "alcool de traite" as follows—in place of "when bottled and packaged by reputable manufacturers" it suggests "when bottled or casked by reputable manufacturers" and in place of "and labelled as such under appropriate trade or brand names", it suggests "and bearing certificate of origin". The Foreign Office adds that certificate of origin would be issued by the French liquor exporter and visaed by the French Customs authorities at the post of exportation. The Ministry of Foreign Affairs states that these changes in phraseology are desired to permit the importation of rum from Martinique.

I should appreciate a reply at your earliest convenience.

BULLITT

811.114 St. Pierre-Miquelon/470: Telegram

The Secretary of State to the Ambassador in France (Bullitt)

WASHINGTON, February 23, 1937—7 p. m.

103. Your No. 255, February 22, 4 p. m. Treasury Department objects to suggested modifications in definition of "alcool de traite" since they feel these would open the way for traffic in neutral spirits or plain alcohol in bulk containers. They call attention to fact that rum if imported in quantity into St. Pierre from Martinique would undoubtedly be for smuggling purposes, although conceding that smuggling of rum as such from St. Pierre would probably be directed at the maritime provinces of Canada rather than at the United States where the market for this beverage is comparatively small. They feel strongly that there would be no unfairness to the people of St. Pierre if the French should restrict the importation of alcohol and alcoholic beverages to such as are bottled and packaged under trade or brand names by reputable manufacturers, as contemplated by suggested definition.

They say, however, that if the French Government should insist upon an amendment of the proposed definition so as to permit the importation of rum into St. Pierre in bulk containers, this can more safely be done by preserving the definition as originally submitted and adding the following: "and not including rum when bottled or casked by reputable manufacturers and bearing justification of origin". (*Quaere*: Should word "justification" your telegram be "appellation"?)

HULL

811.114 St. Pierre-Miquelon/471: Telegram

The Ambassador in France (Bullitt) to the Secretary of State

PARIS, February 24, 1937—7 p. m.

[Received February 24—6:11 p. m.]

271. Your 103, February 23, 7 p. m. After consideration of your telegram under reference, the Ministry of Colonies and the Ministry for Foreign Affairs have come to the conclusion that instead of attempting further to agree upon the proposed definition it is preferable to abandon the proposal to abrogate the present bonding system. In other words, they now propose to leave the decree of April 9, 1935, regarding the bonding system for the exportation of alcohol from St. Pierre, in full force and effect.

In addition the Ministry for Foreign Affairs states that if there should be any continuance of smuggling they will be prepared to re-examine the situation. Furthermore, that the administration of St. Pierre will receive special instructions from the Ministry of Colonies to supervise the importation of alcohol into the islands so that, if necessary, measures may be taken to prevent the building up of new stocks.

We have attempted with the support of the Ministry for Foreign Affairs to obtain in addition to the retention of the decree of April 9, 1935, a new decree prohibiting the importation of foreign alcohol into the islands. We have pointed out that the Administrative Council has submitted for the approval of the Ministry of Colonies a resolution of September 29, 1936, prohibiting the importation of foreign alcohol and that all that would be necessary would be for the Ministry of Colonies to give its consent. The Ministry of Colonies, however, states that at the same time as the foregoing resolution was submitted it was understood between the Administrative Council and the Administrator of St. Pierre that the present bonding system would be suppressed. The Ministry of Colonies, therefore, takes the position that if they are now to maintain in effect the present bonding system they cannot, in view of the foregoing understanding, approve the resolution which would prohibit the importation of foreign alcohol. The Ministry of Colonies furthermore states that so long as the decree of April 9, 1935, governing exportations is in effect, there is no necessity for prohibiting foreign alcohols.

Inasmuch as the present bonding system is to remain in force, the French Government, instead of issuing a decree prohibiting the manufacture of alcohol in the islands, renews to us through the Foreign Office its assurances that the manufacture of alcohol in the islands, in fact, will not be permitted.

I should appreciate a reply at your earliest convenience.

BULLITT

811.114 St. Pierre-Miquelon/471: Telegram

The Secretary of State to the Ambassador in France (Bullitt)

WASHINGTON, February 25, 1937—8 p. m.

109. Your No. 271, February 24, 7 p. m. Treasury Department considers proposal to leave the decree of April 9, 1935, in full force and effect satisfactory. While there has been a gradual escape of alcohol from St. Pierre-Miquelon in violation of the present decree, on the whole it has worked out fairly well and is in line with similar bonding regulations in effect in other places adjacent to the coast of the United States, such as Newfoundland, Canada, the British West Indies and Mexico.

Treasury Department believes that any modification of present decree, even though surrounded with apparently satisfactory safeguards, would be interpreted by smugglers as a change in the restrictive policy which has been in force since the promulgation of the present decree and might lead to increased illegal activity.

We are happy to note that the Administration at St. Pierre-Miquelon will receive instructions to supervise the importation of alcohol in order to prevent the building up of new stocks and that the manufacture of alcohol in the Islands will not be permitted.

Secretary Morgenthau asked me specially to express to you his very great appreciation of your fine cooperation and helpfulness in this matter.

HULL

811.114 St. Pierre-Miquelon/487

The Secretary of State to the Vice Consul at St. Pierre-Miquelon (Gunsaulus)

WASHINGTON, March 23, 1937.

SIR: There is enclosed for your information a copy of a despatch⁴³ from the American Embassy at Paris, France, together with a translation⁴⁴ of the decree of January 21, 1937, rejecting the resolution of the Council of Administration prohibiting the importation of foreign alcohols into the islands of St. Pierre-Miquelon.

In this connection there is also enclosed for your information a copy of a previous telegram from the Embassy⁴⁵ reporting that the French Government had decided to leave the decree of April 9, 1935, in effect. In our telegraphic acknowledgement of February 25, 8 p. m., the Ambassador was informed that the Treasury Department

⁴³ Despatch No. 403, March 3, not printed.⁴⁴ Not printed.⁴⁵ Telegram No. 271. February 24, 7 p. m., p. 309.

was satisfied with the proposal to leave the present decree in effect as it was believed that any modification, even though surrounded with apparently satisfactory safeguards, would be interpreted by smugglers to indicate a change in the restrictive policy which has been in force since the decree became effective and might lead to increased illegal activities.

Furthermore, the present decree is in line with similar bonding regulations operative in other places adjacent to the coasts of the United States, such as Canada, Newfoundland, the British West Indies and Mexico.

There is also enclosed a copy of Executive Agreement Series No. 99 which is a recent agreement between the United States and France for the suppression of customs frauds.⁴⁶ It is believed that this agreement will prove helpful in your relations with the authorities at St. Pierre-Miquelon in connection with the exchange of information relating to smuggling.

Very truly yours,

For the Secretary of State:
R. WALTON MOORE

STATUS UNDER FRENCH LAW OF AMERICAN CITIZENS OF FRENCH ORIGIN WITH RESPECT TO LIABILITY TO MILITARY SERVICE IN FRANCE⁴⁷

351.117/456.

The Ambassador in France (Bullitt) to the Secretary of State

No. 345

PARIS, February 10, 1937.
[Received February 23.]

SIR: In continuation of my despatch No. 243 of December 30, 1936,⁴⁸ furnishing information regarding questions arising out of dual nationality, with particular regard to difficulties encountered by American citizens at the hands of the military authorities when visiting France, I have the honor to convey herewith further information on the subject.

I—ARTICLE 9 (1) OF THE NATIONALITY LAW OF AUGUST 10, 1927

The Embassy has received from the Foreign Office a note dated January 11, regarding the interpretation of Article 9 (1) of the Nationality Law of August 10, 1927. It would appear from this note that a French citizen automatically loses his French citizenship,

⁴⁶ Effected by exchange of notes, December 10 and 12, 1936; entered into effect December 15, 1936.

⁴⁷ Continued from *Foreign Relations*, 1936, vol. II, pp. 132-139.

⁴⁸ *Ibid.*, p. 137.

as a result of his naturalization in the United States without the authorization of the French Government, only if his naturalization takes place after the running of the ten-year period mentioned in Article 9 (1).

This interpretation of the note in question is confirmed by information previously furnished by the Foreign Office. (See last paragraph on page 5 of despatch No. 166 of December 2, 1936,⁴⁹ and page 4 of despatch No. 243 mentioned above.⁵⁰)

A copy and translation of the Foreign Office note are enclosed herewith.⁵¹ A copy of the Embassy's communication of December 15, 1936, to which the note is a reply, is also transmitted herewith to complete the Department's files.⁵¹

It appears further from the Foreign Office note of January 11 that a person naturalized before the end of the ten-year period, can not divest himself of French nationality unless he obtains during that period the authorization of the French Government. In other words, if that person does not apply for and obtain the required authorization before the termination of the period in question, he "can not legalize his status by an authorization received after this period". Moreover, this interpretation of the last sentence of the note has been orally confirmed by the Foreign Office.

II—DECREE-LAW OF OCTOBER 30, 1935

It will be recalled that this Decree-Law provides for exemption from military service for French citizens residing in certain regions outside of France. (Enclosure 17 to despatch 166 of December 2, 1936.⁵²) The Embassy has long been endeavoring to procure information as to the formalities a person residing in the United States must fulfil in order to visit France for the period set forth in the Decree-Law. Although a second note on the subject, dated December 31, 1936, has been received from the Foreign Office, it does not furnish the information sought (Section I-*b* of enclosure 19 to despatch 166), merely stating that, insofar as the United States is concerned, the exemption in question "is full and complete".

However, an official of the Foreign Office today orally advised the Embassy in the sense desired. He stated that any resident of the United States who is at once of American and French nationality and who is entitled to benefit by the provisions of this Decree-Law, should apply to the competent French consulate for a letter to be carried with

⁴⁹ *Foreign Relations*, 1936, vol. II, p. 136, paragraph beginning, "In reply to these questions."

⁵⁰ *Ibid.*, section entitled "Article IX (1) of the Nationality Law of August 10, 1927."

⁵¹ Not printed.

⁵² Enclosures to despatch 166 not printed.

him when in France. The letter should set forth the fact of the residence in the United States of the person concerned for the required period; and state in substance that, being exempt from military service under the Decree-Law of October 30, 1935, he may return to France for the length of time provided by that enactment, without apprehension of encountering difficulties at the hands of the military authorities. Since the length of the visit permitted in France varies according to the circumstances (see the Decree-Law), it would be well for the letter to mention the exact period of sojourn authorized, in order to avoid misunderstanding and possible serious difficulties.

The Foreign Office official added that such a letter is not to be considered as a *sauf-conduit*, the latter document being issued to none other than a person having an irregular military status, whereas a person proceeding to France for a visit under the provisions of the Decree-Law in question is in good standing.

Respectfully yours,

For the Ambassador:
EDWIN C. WILSON
Counselor of Embassy

351.117/458

The Chargé in France (Wilson) to the Secretary of State

No. 422

PARIS, March 6, 1937.
[Received March 19.]

SIR: In continuation of my despatch No. 345 of February 10, 1937, regarding questions arising out of dual nationality, with particular reference to liability to French military service of American citizens of French origin, I have the honor to advert to the conversation reported in despatch No. 243 of December 30, 1936 (Section III),^{52a} at which time the competent Foreign Office official stated that any French citizen naturalized abroad after the running of the ten-year period mentioned in Article 9 (1) of the Nationality Law of August 10, 1927, if in good standing with the military authorities, automatically loses French citizenship under French law, as a result of such naturalization.

There is now transmitted herewith a copy and translation of a further note from the Foreign Office, dated March 2,⁵³ confirming the above interpretation that such loss does not take place in the case of one who failed to answer his call to the colors. The note states that such a person is not included in either of the two categories mentioned

^{52a} *Foreign Relations*, 1936, vol. II, p. 138, paragraph beginning, "Referring to the partial interpretation."

⁵³ Not printed.

in Article 9 (1) of the law of 1927; that therefore the ten-year period referred to therein does not commence to run for him so long as his delinquency continues; and that he can not lose French nationality until he is fifty-three years of age, at which time military defaulters may return to France without encountering difficulties.

It also appears from the note that the ten-year period in question does not begin to expire for a person who may have been omitted from the recruiting lists (presumably through error or fraud), until such omission has been rectified, since neither induction into the army nor exemption from service can take place as long as the omission lasts.

Respectfully yours,

EDWIN C. WILSON

851.117/465

The Secretary of State to the Ambassador in France (Bullitt)

No. 422

WASHINGTON, August 18, 1937.

SIR: The Department has received from your office despatches Nos. 166 of December 2, 1936,⁵⁴ 243 of December 30, 1936,⁵⁵ 345 of February 10, 1937, and 422 of March 6, 1937, setting forth the results of your efforts to clarify certain provisions of the French Nationality Law and containing new information as to the French military service requirements. Prior to the receipt of the last two despatches above-mentioned the Department had revised Paragraph No. 48 covering the French military service requirements in the *Notice to Bearers of Passports*, and such revision was contained in the edition of February 1, 1937. Two copies of the pamphlet just mentioned are enclosed herewith. A call has recently been made at the Department by Mr. Eslinger who it is understood for a time handled military service matters at your Embassy and the matter of the French military service requirements was orally discussed with him. A further revision of Paragraph 48 of the pamphlet has been made in the light of such discussion and of the above-mentioned despatches of February 10, 1937, and March 6, 1937, for possible use in the next reprint of the booklet. A copy of the proposed new Paragraph is enclosed.

The Department understands that the decree of October 30, 1935, applies to persons who reach the French military service age after the effective date of the decree, that is, October 31, 1935, but not to persons who reached the military service age before that date. It would appear that the latter persons, unless for some reason they should be specially exempted from military service, would become liable for such service automatically, regardless of the place of their residence. In

⁵⁴ *Foreign Relations*, 1936, vol. II, p. 134.

⁵⁵ *Ibid.*, p. 137.

other words, it is the Department's understanding that the decree does not apply to persons who by reason of not having complied with French military service obligations had become delinquent prior to October 31, 1935. You will notice that this interpretation of the decree is set forth in the last paragraph of the enclosure.

The Department requests that you examine the revised Paragraph 48 and state whether in your opinion it is correct.

Very truly yours,

For the Secretary of State :
G. S. MESSERSMITH

[Enclosure]

Revised Paragraph No. 48 of "Notice to Bearers of Passports"

48. FRANCE.—The Department of State has been advised by the French Government that American citizens of French origin who visit France, and who under the laws of that country are regarded as French citizens, have the following status with regard to a possible change of their nationality and with regard to their military obligations in France:

A. RECOGNITION BY THE FRENCH GOVERNMENT OF THE NATURALIZATION
ABROAD OF A FRENCHMAN

Article IX (1) of the French nationality law of August 10, 1927, reads:

"French nationality is lost by: A Frenchman who is naturalized abroad or who, on his own request, acquires a foreign nationality by operation of the law after he is 21 years old.

"However, until 10 years have gone by, counted from either enlistment in the active Army or the entry on the military liability list in case he is excused from active service, he who has become a foreign subject does not lose his French citizenship except under special authorization by the French Government."

Persons naturalized in their own right.—It is understood that article IX (1) above quoted means that a French citizen naturalized abroad before the expiration of the 10-year period, whether or not at the time in good standing with the military authorities, will not automatically lose French nationality as a result of the mere running of the 10-year period and that such a person will not lose his French citizenship until he is authorized by decree to do so. It is also understood that if the French Government's authorization is not obtained within the 10-year period French nationality will be retained indefinitely, if the naturalization occurred within such period, and that the mere expiration of the 10-year period will not in such cases end this irregular status.

However, with regard to French citizens naturalized in the United States *after* the running of the 10-year period mentioned in article

IX (1), it is understood that if in good standing with the French military authorities, they automatically lose French citizenship under French law as a result of such naturalization. In such cases it is understood that the 10-year period is considered as beginning to run from the time of enlistment in the active army, or, in the cases where the person concerned is excused from active service, from the entry of his name on the military liability list. Loss of French citizenship cannot take place after the 10-year period in the case of a person who has failed to answer his call to the colors. The French Government has stated that such a person is not included in either of the two categories mentioned in article IX (1) of the law; that, therefore, the 10-year period does not begin to run for him so long as his delinquency continues; and that while thus delinquent he cannot lose French nationality until he is 53 years of age, at which time military defaulters may return to France without encountering difficulties. The French Government has also stated that the 10-year period in question does not begin to expire for a person who may have been omitted from the recruiting lists (presumably through error or fraud) until such omission has been rectified, since neither induction in the army nor exemption from service can take place as long as the omission lasts.

Persons naturalized through the naturalization of a parent.—It is understood that the status of a person who has acquired American citizenship during his minority as a result of the naturalization of his parents varies accordingly as the naturalization of the parents has or has not been authorized by the French Government. If the parents have remained French citizens under French law, the child also remains French. If, on the other hand, the French Government has given its authorization to the renunciation of French citizenship on the part of the parent, the minor child also loses French citizenship provided such minor child is not delinquent under the French military service laws. It is assumed that if the parents were naturalized as citizens of the United States after the 10-year period and automatically lost French nationality, as stated above, and if their minor children who acquire American citizenship through the naturalization of their parents are not delinquent under the French military service law, such children would also lose that nationality.

B. RENUNCIATION OF FRENCH CITIZENSHIP BY PERSONS BORN IN THE UNITED STATES OF FRENCH PARENTS

Article IX (3) of the French nationality law of August 10, 1927, reads:

“French nationality is lost by: Any Frenchman, even though he be under age, who holding, by operation of the law and without any expressed will on his part, a foreign nationality, is authorized, on his request, by the French Government to maintain it.”

The Department has been informed that persons born in the United States of French parents who wish to retain their American citizenship and renounce their French citizenship under the provisions of article IX (3) of the French nationality law of August 10, 1927, may do so by addressing a petition to the French Ministry of Justice. It is understood that in such a case the person concerned can be released from French nationality only by means of a decree. It appears that under article IX (3), above quoted, such persons need not have reached their majority. Inquiry should be made at a French consulate as to the procedure which should be followed in making the petition. It is understood that the appropriate application may be made (1) by the interested person himself if he is over 21 years of age; (2) by the person concerned, with the permission of his legal representative, if he is less than 21 years old and over 16; or (3) by the legal representative of the interested minor in the latter's name if he is less than 16.

C. DOCUMENTATION OF AMERICAN CITIZENS WHO ARE LIABLE TO MILITARY SERVICE IN FRANCE

The Department understands that under article 99 of the French recruitment law of March 31, 1928, persons born in the United States of French parents will in time of peace be permitted by the French Government to pay a visit to France without being compelled to perform military service there, provided they carry certificates stating that military service is not obligatory in the United States. Such certificates may be obtained from the French Embassy in Washington, D. C., and French consulates in the United States, and also from the American Embassy in Paris and American consulates in France.

Safe conducts.—The Department understands that safe conducts will be issued only to French military delinquents domiciled in the United States who have a dual nationality, independently of their volition, provided the offense of delinquency with which they are charged was committed before January 1, 1927, and provided that they have not been sentenced by default by a French military tribunal. Consequently, safe conducts cannot be issued to the following classes: (1) men declared delinquent after December 31, 1926; (2) men delinquent before January 1, 1927, who have not acquired abroad a dual nationality independently of their volition; or (3) men delinquent before January 1, 1927, who, having acquired a dual nationality independently of their volition, have been sentenced by default by a French military tribunal. The French Foreign Office has stated that it is disposed to give a very liberal interpretation to the phrase "independently of their volition" in the cases of children naturalized through the naturalization of their parents, but that the circumstances in each case will be taken into consideration in reaching a decision.

No safe conduct can, however, be granted to such persons whose delinquency arose after December 31, 1926. Persons coming within the categories to whom safe conducts may be issued should, before proceeding to France, apply for such a document at a French Consulate in the United States or the French Embassy in Washington, D. C. Safe conducts are generally valid for a period of three or four months. The period mentioned in the safe conduct should be scrupulously observed and the bearer should refrain from performing any act which may be considered as an express or implied waiver of the rights and advantages granted by the safe conduct.

American citizens of French origin visiting France should understand that a French visa of their passport does not relieve them from any military or other obligations in the country to which they may be liable. The visa cannot be regarded as a safe conduct. Safe conducts are always separate documents.

D. EXEMPTION OF AMERICAN CITIZENS OF FRENCH ORIGIN FROM MILITARY OBLIGATIONS IN FRANCE UNDER THE DECREE LAW OF OCTOBER 30, 1935

Under the French decree law of October 30, 1935, which became effective October 31, 1935, the date of its promulgation, those French citizens who proceeded for residence to countries outside of Europe and not bordering on the Mediterranean, before the commencement of the formalities incident to the calling of their class to the colors, are exempt from military service, provided there is no French military unit sufficiently near to the place of residence into which such persons can be incorporated. It is understood that the United States is one of the areas in which the exemption is effective. However, if before reaching the age of 30 years, the persons concerned should, by reason of change of residence, no longer be in a position to take advantage of this exemption, they are bound to perform the period of active service due by their recruiting class. It is understood that persons entitled to exemption from military service under the provisions of the decree law of October 30, 1935, may be authorized to visit France for a period of three months each year, which period is cumulative but ordinarily will not be permitted to exceed one year. American citizens who may be entitled to the privilege of visits to France without fear of molestation under the decree law of October 30, 1935, should before departure for that country request the French consul to whom they apply for a visa to furnish them with a written statement of their exemption from military service and of the period for which they may safely visit France.

It is the understanding of the Department that the benefits of the decree of October 30, 1935, do not apply to persons who had attained French military service age and become delinquent prior to October 31, 1935, but that its provisions do apply to persons attaining French military service age after that date.

GERMANY

PERSECUTION OF JEWS IN GERMANY¹

862.4016/1662a : Telegram

The Secretary of State to the Ambassador in Germany (Dodd)

WASHINGTON, April 26, 1937—7 p. m.

39. Refer to my telegram April 23, 6 p. m. to Consul General.² Press correspondence from Berlin states reports are current that forcible dissolution of B'nai B'rith lodges in Germany were precipitated by a resurgence in the United States of anti-Nazi propaganda as manifested by La Guardia incident.³

I would like your views and any comment as to the reasons behind this step and whether the attack on cultural and charitable phases marks a new departure in German Government policy. Keep me advised as to developments.

HULL

862.4016/1665

The Ambassador in Germany (Dodd) to the Secretary of State

No. 3437

BERLIN, April 26, 1937.

[Received May 4.]

SIR: Referring to the Embassy's despatch No. 3419 of April 16, 1937,² I have the honor to report that the renewed anti-Jewish drive noted therein has been advanced by the suppression throughout Germany of the organization known as the B'nai B'rith, which, as the Department may be aware, is the Jewish benevolent society corresponding roughly to the Catholic Knights of Columbus in the United States.

These steps were taken last Monday, April 19, by the Secret Police who visited the homes of various officers and workers of the Society in Berlin and after confiscating all documents and funds ordered them to report to the organization's headquarters on the Kleiststrasse. There the investigation was continued and after the passports of all the

¹ Continued from *Foreign Relations*, 1936, vol. II, pp. 192-205.

² Not printed.

³ See pp. 367 ff.

Jews present had been taken up, the assembly consisting of some 200 persons was permitted to disperse in groups of 20, this procedure evidently being enforced with the idea of avoiding undue excitement or disturbance on the street. In Berlin the action of the police was carried out in orderly and courteous fashion in contrast it is understood to unpleasant experiences suffered by officers and members of the lodge in some of the provincial towns.

No formal charge appears to have been made against the Society but according to one Jewish authority the police gave the impression of being interested in uncovering possible infractions of the foreign exchange laws. This same authority stated that the funds confiscated in Berlin amounted in all to about RM 400,000. Unless some of this money is released in the near future it is foreseen that considerable hardship may be caused among the poorer members of the Jewish community as the Society has been active in promoting charity and welfare work.

It is now learned that the general ban upon meetings of Jews mentioned in the Embassy's despatch referred to above, has been extended to apply to the foreign language courses attended by Jews who are anticipating emigrating from Germany. The so-called *Umschulung* training designed to fit Jews for agricultural avocations, principally in Palestine, has already been progressively restricted as the prospects for migration to that country have declined.

Incidentally the repressive measures of the Nazi authorities in what would appear to be their other favorite field of activity, namely, among the Catholic clergy, are being intensified. In addition to the high treason trial of the Rhineland youth leaders against whom the public prosecutor has demanded sentences varying from 15 to 5 years penal servitude (see Embassy's despatch under reference), the State is apparently considering reopening the long series of foreign exchange and immorality cases against members of the Catholic orders. The *Berliner Tageblatt* of April 25 reports the conviction of two priests in provincial towns on homosexual charges.

Respectfully yours,

WILLIAM E. DODD

862.4016/1664 : Telegram

The Ambassador in Germany (Dodd) to the Secretary of State

BERLIN, April 29, 1937—10 a. m.

[Received 10:30 a. m.]

90. Department's 39, April 26, 7 p. m., Embassy's despatch 3419 of April 16, section 7.⁵ According to supplementary details now

⁵ Latter not printed.

available the recent suppression of the B'nai B'rith by the secret police involved the closing of 80 central lodges throughout Germany and the sequestration of 1,500,000 marks in cash and investments and another 2,000,000 in real property. The society had a total membership of about 85,000. Funds are said to include a gift of \$20,000 donated for pensions by the American branch in 1920 as well as an additional \$40,000 donated for general charity work. Within the last 3 years 86,000 marks have been received from the United States and more recently this has been coming in at the rate of 12,000 marks monthly. The some 190 inmates of the B'nai B'rith Old Age Home are being permitted to stay but their maintenance costs are thrown upon the Jewish community.

The suppression of the B'nai B'rith appears to have been activated by the desire to retaliate against foreign anti-Nazi agitation to deliver another blow at the freedom of association of Jews and finally to carry out a profitable raid upon independent Jewish funds. Generally speaking the charity work of the Jewish communities or Gemeinden has not been interfered with. However, their already heavy burden which results from the exclusion of impoverished Jews from the Nazi Government Winter Help Fund will be increased by the necessity of providing for those persons hitherto cared for by the B'nai B'rith. With respect to Jewish cultural activities these have already been concentrated for a long time in the Jewish "culture league" which has been put under the supervision of the Propaganda Ministry with a view to segregating them as completely as possible from "German culture".

According to a high Jewish source 40 leading members of the "Reichsvertretung" or the central organization of German Jewish communities were summoned last Monday, April 26, to the Berlin secret police headquarters and were told they were being given a last chance to stop anti-Nazi propaganda abroad, particularly in the United States. One of the group remonstrated that it was inconceivable that the Jews in Germany should be party to steps which could only worsen their position. The meeting concluded with another warning and the passports of those present were taken up.

It is generally accepted here that the recent incidents in New York have been a contributory cause of the renewed repressive measures against the Jews. Reference is made to the statement of the Propaganda Ministry mentioned in section 7 of the Embassy's despatch under reference, page 3, which was sent as a news report by the United Press and has remained uncontested. The Hirsch case⁶ has also probably played a role and it is possible that if his attempt had

⁶ See pp. 395 ff.

succeeded or his plans had been directed against Hitler's person the consequences might have been far worse. With the termination of the so-called Olympic games truce of last year the radical Nazis now seem anxious to apply Hitler's threat delivered at the Party Congress of 1935 that he would in effect hold the Jews in Germany as hostages for the good behavior of fellow members of their race abroad. The extremists are said to be agitating for a plan which would call for complete dissolution of all Jewish organizations as well as the infliction of a number of petty annoyances such as the segregation at the various post offices of all mail addressed to Jews. Apart from the malevolent motives of the radical Nazis it would seem that they are really inspired by a naive belief that Germany is threatened by "world Jewry" and that retaliation constitutes their best means of defense.

In our opinion the present action is not so much a new departure as a logical evolution of a policy of anti-Semitism which we consider permanent. A new aspect brought out by present developments is possibly that the tempo of this evolution is likely to be influenced by outside circumstances.

It is understood that a representative of certain Jewish organizations in America is now in Berlin and is seeking an interview with Heydrick, Deputy Chief of the Secret Police, in order to clarify the situation and place American-Jewish relationships in their proper perspective.

DODD

862.00 P.R./221

*Extract From Political Report of the Ambassador in Germany
(Dodd)*⁷

3. *No More Doctors Degrees for Jews.* The Reichs Minister for Education,⁸ in agreement with the Führer's Deputy, has just issued a decree ordering that German Jews are no longer to be admitted to examinations for doctors degrees at German universities, a measure that is apparently an outgrowth of the present renewed anti-Jewish campaign and one which is likely to create a discrimination of some importance in view of the fact that the degree in Germany is regarded as the emblem of a secondary education. "Jews" in the sense of this order are those described as such by the executory ordinance to the Reichs Citizenship Law of September 1935, namely, persons with three, or more, Jewish grandparents; so-called "Jewish crossbreeds,"

⁷ Transmitted to the Department by the Ambassador in his despatch No. 3467, May 12; received May 21.

⁸ B. Rust.

or persons with one, or two, Jewish grandparents, are not affected by the decree.⁹ Henceforth all German university students shall be required to submit complete data concerning their parentage, such as that contained in the "Ancestral Pass" described in a previous report from the Embassy (see despatch No. 3040 of September 16, 1936).¹⁰

Temporary exceptions are to be made in favor of Jewish students who have already submitted their doctors thesis or who, having completed the courses for the various doctorates, shall announce themselves for the final examination within three months following the issuance of the order. Furthermore, a rather curious privilege is granted Jewish candidates for doctors degrees in medicine or dentistry; inasmuch as no new Jewish doctors are being admitted to practice, the candidates will not be granted degrees as long as they remain in Germany but should they emigrate abroad and find permanent employment there, their degrees will be made retroactively valid.

A somewhat anomalous situation would seem to result from the fact that while a limited number of Jews are admitted to the universities under the *numerus clausus*, they will now be deprived of recognition for their academic work. Presumably the new measure will discourage still further the attendance of Jewish students.

The press states that the existing provisions as regards foreign students remain unaffected. From a competent source it has been learned that this means that as heretofore no restrictions are placed on the attendance of foreign Jewish students at German universities or upon their receiving degrees for their courses.

811.00 Nazi/293 : Telegram

The Chargé in Germany (Gilbert) to the Secretary of State

BERLIN, September 4, 1937—1 p. m.
[Received September 4—11:20 a. m.]

220. Supplementing my 216, September 3, 4 p. m.,¹⁰ the stenographic report on Goering's speech reveals that he exhorted German firms not to have Jewish representatives abroad and further that should the Jews renew the boycott "the damage which arises for Germany will be solely paid for by the Jews in Germany."

As Goering has not been particularly prominent in anti-Jewish activity for some time, this threat to take counteraction against the boycott seems significant and may foreshadow intensified economic pressure on the Jews in Germany.

GILBERT

⁹ See *Foreign Relations*, 1935, vol. II, pp. 406 ff.

¹⁰ Not printed.

862.00 P.R./228

*Extract From Political Report of the Chargé in Germany (Gilbert)*¹²

3. *The Anti-Jewish Campaign.* Though unattended by spectacular developments, the anti-Semitic campaign is being perpetuated by the infliction of petty annoyances upon the Jews and by measures designed to make their lives as difficult as possible.

The *Völkischer Beobachter* of August 19 gleefully reported the decision of a local court at Remscheid which held that a husband cannot be held legally responsible for the debts of his wife to Jewish stores. The hope is expressed that this judgment will discourage Jews from granting credit and will put a stop to wives buying in Jewish stores, a matter, it is pointed out, which often leads to marital strife. The *Völkischer Beobachter* stresses that the court decision applied to the case of the household of an ordinary citizen and not to the family of a Party member or government official which *ipso facto* are forbidden to patronize Jews.

The *Berliner Börsenzeitung* of September 1 reported that the National Socialist Lawyers League had completed its "world catalog" of Aryan lawyers in foreign countries. German business men were exhorted to consult this list in order to bring to an end the representation of German interests abroad by Jewish advocates. The *Berliner Tageblatt* of September 3 reported that on the basis of a decision given by the Führer's Deputy and the Minister of the Interior, the National Socialist Lawyers League will proceed to exclude from its membership all lawyers who have a quarter or more Jewish blood. It is explained that the special permission of the Führer's Deputy and the Minister of the Interior was necessary for this ruling in view of the provision in the executory ordinances to the Nuremberg Citizenship Law of 1935 prohibiting various associations and organizations to set up stricter requirements for racial purity than those provided in the Citizenship Law itself which disqualified as Jews persons having three or more Jewish grandparents. It does not appear that expulsion from the Nazi Lawyers League will exclude the cross-breed Jewish lawyers from practicing at the bar but it will unquestionably deprive them of the privileges attaching to membership in the legal professional organization. The drive against the Jewish lawyers was carried a step further in the announcement in the press of the same date that German legal apprentices who worked in Jewish law offices would be disqualified from taking the regular bar examinations.

¹² Transmitted to the Department by the Chargé in his despatch No. 3636, September 4; received September 21.

Attention may finally be called to the passage in Göring's Stuttgart speech of September 2 (reported in the Embassy's telegrams No. 216 of September 3, 4 p. m.,¹³ and No. 220 of September 4, 1 p. m.) in which he exhorted German firms to cease having themselves represented by Jews abroad and in which he warned that should the boycott be renewed, "the damage which arises for Germany will be solely paid for by the Jews in Germany."

862.4016/1685a : Telegram

The Acting Secretary of State to the Chargé in Germany (Gilbert)

WASHINGTON, October 21, 1937—4 p. m.

111. Your despatch 2994 August 19, 1936, annex 2.¹⁴ Ascertain if practicable and cable confidential information regarding rumored decree that German Jews will not be permitted to leave or return to Germany.

WELLES

862.4016/1686 : Telegram

The Chargé in Germany (Gilbert) to the Secretary of State

BERLIN, October 25, 1937—5 p. m.

[Received October 25—2:02 p. m.]

252. Department's 111, October 21, 4 p. m. Information received from Jewish sources is that since October 10 new passports have been refused to Jews in Berlin except under the following two conditions:

(1) For single journeys abroad indorsed by the economic authorities as being in the interest of German business; upon his return the Jewish traveler must surrender his passport and submit a report on his activities and the individuals he has met while abroad.

(2) For permanent emigration provided that there exist certain prospects of immigration to a particular country.

This action is believed to be effected by a general order to the local police who still handle all applications although passports are issued in the name of the Reich. Hitherto (apparently since the spring of this year) Jewish passports have been limited to 6 months validity (see despatch No. 1520 of May 4, 1937, from the Consulate General in Berlin¹⁵). The reason for these restrictions is apparently the Government's fear of the alleged danger of currency smuggling and the dissemination of anti-Nazi reports abroad by Jews.

¹³ Not printed.

¹⁴ Annex not printed; for an extract from the despatch, see *Foreign Relations*, 1936, vol. II, p. 201.

As regards reentry into the Reich, for German Jews who are considered to have emigrated [they?] have for some time been refused readmission.

The Consulates are being circularized for further information concerning practice in other parts of Germany which will be transmitted with that received from official sources if available.

GILBERT

862.4016/1687 : Telegram

The Chargé in Germany (Gilbert) to the Secretary of State

BERLIN, October 28, 1937—5 p. m.
[Received October 28—12: 53 p. m.]

256. Embassy's 252, October 25, 5 p. m. Information obtained informally today from an official of the German Foreign Office in effect confirms the situation described in the Embassy's telegram under reference, namely that German Jews will be furnished passports only for short business trips or for emigration. In connection with applications for passports for emigration purposes my informant stated that the proper German authorities contemplate requiring the Jewish emigrant to provide evidence that he will be received as an immigrant in a particular country. No mention was made of the possible bearing of such a requirement upon current American immigration practice and naturally I did not raise that point.

GILBERT

862.4016/1686 : Telegram

The Acting Secretary of State to the Chargé in Germany (Gilbert)

WASHINGTON, November 1, 1937—1 p. m.

113. Your 252 October 25, 5 p. m. and 256 October 28, 5 p. m. Since it appears that German Jews who are considered by the German Government to have emigrated from Germany will be denied permission to return to that country you are requested to obtain information concerning the conditions or circumstances which are likely to be considered as establishing that such an alien has emigrated from Germany. In the cases of German Jews who proceed from Germany to the United States with non-immigrant visas as distinguished from immigration visas is there any danger that they will be considered as having emigrated before the expiration of their German passports? If so, what precautions may be undertaken to safeguard the return to Germany of German Jews visiting the United States? See last

paragraph of Note 36, Supplement A, Consular Regulations,¹⁶ and consult Consul General.

WELLES

UNSATISFACTORY TRADE RELATIONS BETWEEN THE UNITED STATES
AND GERMANY¹⁷

611.623/257

The Acting Secretary of State to the Ambassador in Germany (Dodd)

No. 724

WASHINGTON, January 4, 1937.

SIR: With reference to the Department's instruction No. 711 [710], dated December 11, 1936,¹⁸ transmitting copies of two notes addressed to the German Embassy December 8, 1936,¹⁹ there are transmitted for your information copies of the translation of the German Embassy's reply, dated December 16, 1936,²⁰ and of a statement released to the press December 23, 1936, by the Treasury Department, concerning the application of Section 303 of the Tariff Act of 1930,²¹ in connection with imports from Germany.

The Department's note of December 8, 1936, transcribing to the German Embassy a statement by the Treasury Department, stated that it was believed that on receiving the German Government's confirmation of the transcribed statement of the Treasury's understanding of the German Government's intentions, the Treasury Department would wish to make public the contents of the Department's note to the German Embassy, since the subject matter is of interest to many persons. It will be observed, however, that the statement issued to the press December 23, 1936, omits certain parts of the Treasury statement communicated December 8, 1936, notably the following:

"It is further understood by the Treasury Department, that the German Government will not permit, in respect of German products which are to be exported directly or indirectly to the United States pursuant to agreements entered into after August 2, 1936, and which are subject to ordinary duties upon entry into this country, the use of

¹⁶ Instruction was that when an application was made for a visa as a temporary visitor to the United States, care should be taken to ascertain that alien intended to leave voluntarily at end of visit and that he would be able to proceed to some other country when he did depart. No visa was to be granted to a nonimmigrant, under section 3 (2) of Immigration Act of 1924, whose passport or other travel document was not valid for his entry into some country other than the United States.

¹⁷ Continued from *Foreign Relations*, 1936, vol. II, pp. 210-256.

¹⁸ Not printed.

¹⁹ *Foreign Relations*, 1936, vol. II, p. 254.

²⁰ *Ibid.*, p. 256.

²¹ 46 Stat. 590, 687.

any currency other than foreign currency or reichsmarks freely usable within Germany without legal restrictions for all commercial purposes, except as above specified, and that the application of bond and scrip procedures, or the direct or indirect allowance of any form of public or private subsidy will not be permitted in any instance. Moreover, the use of controlled mark credits or direct two-party barter will be permitted, as above specified, only when the German Government has assured itself that any sale of American goods which may be involved in the transaction and the purchase of the German goods involved have been effected at the current fair German open-market prices for such goods in the quantities involved, and that any direct barter of American exports for German goods will be on the basis of such German market prices."

The Department of State is not informed of the reasons for the omission from the public statement of parts of the statement communicated to the German Government.

However, the Current Information Division of the Department of State summarized as follows the press treatment of the Treasury press release:

"According to the press the foregoing ruling was issued on the basis of inquiries received by the Treasury Department and was designed to be a guide to others who have similar problems. It was said, however, that officials here had declared themselves unable to estimate to what extent these privileges would be availed of. It was thought that the information would be conveyed to the German Government from its Embassy in Washington and that the former would modify its laws, which at present prohibit the use of other than free gold exchange marks or free inland marks in trade with the United States."

The press articles apparently contain no mention of recent correspondence with Germany on the subject, although certain earlier press articles had referred to such correspondence and there have been widespread rumors throughout the country, emanating in part from German sources, that some agreement permitting resumption of barter trade was imminent.

The Embassy is requested to inform the Consulate General fully concerning this matter for its information and guidance.

Very truly yours,

For the Acting Secretary of State:

FRANCIS B. SAYRE

611.6231/879

Memorandum by the Secretary of State

[WASHINGTON,] January 25, 1937.

The German Ambassador²² called, presumably to pay his respects only. I inquired about conditions in Germany and the Ambassador

²² Hans Luther.

replied that they were much better economically and proceeded to emphasize and elaborate on the improved conditions in his country. I then said that I assumed from his remarks that the German Government would not be concerned about getting behind our broad program for world economic rehabilitation, with which the Ambassador was very familiar, but would pursue its own course economically and maybe otherwise. He rather promptly thought to contradict this remark and to assure me that the German Government was very desirous of seeing our program carried forward to a successful conclusion everywhere. He then brought up and reviewed the German proposal of last spring for a trade agreement with the United States and urged that this matter be revived. I replied that, of course, we were interested in bilateral trading agreements with his and other countries alike, but that our big objective and our big fight thus far had been to preserve the rule of equality as the basis for the program for satisfactory and permanent world economic rehabilitation; that the preservation of the integrity of this rule is deemed far more important than mere bilateral agreements alone; and that it is my hope that we can gradually secure enough support from other nations to enable an increasing number of countries to go forward with this program of bilateral trade agreements combined with the principle of equality of treatment or the favored-nation doctrine; that this would include Germany if and when the conditions and essentials could be worked out and agreed upon; and I promised him that I would, during coming weeks, look over the record of the German trade proposal of last spring with a view to seeing whether and what additional steps at an early date might be feasible from our viewpoint.

C[ORDELL] H[ULL]

611.6231/929

The Consul General at Berlin (Jenkins) to the Secretary of State

No. 1491

BERLIN, April 15, 1937.

[Received April 27.]

SIR: I have the honor to report the statement of Reichsbank Direktor Rudolf Brinkmann made to Vice Consul Fox to the effect that the German Government is not now in a position equitably to negotiate a trade agreement with the United States.

The German Government, of course, would welcome an agreement very favorable to them at this time, but in the opinion of Reichsbank Direktor Brinkmann, who, it may be briefly recalled, is a close collaborator of Dr. Schacht's and one of the three general advisers in the Ministry of Economics, a fair agreement could not yet be entered

into between the Government of the United States and the Government of the Reich.

Direktor Brinkmann admitted his recognition of the fact that the United States is not merely desirous of exporting cotton alone to the Reich, as under present conditions. In the informal conversation that ensued between Herr Brinkmann and the drafter of this despatch,²³ it was pointed out that the United States, even when solely considering the agricultural point of view, had other interests besides cotton; grains, pork products, and fruits were also items which America would profitably like to deliver to German markets.

Herr Brinkmann agreed on these desires in principle, and said in fact that he was at present working with the agricultural authorities to see if some way could not be found to admit such goods from the United States. He claimed that the recent mal-prognostications of the German Government with regard to the food supply* had weakened the formerly strong position of Argentine born Minister of Agriculture Darre, and had strengthened the hand of those who wished to regularize, in the long run, Germany's imports of foodstuffs. In this connection, he stated that not too much faith should be placed in the plans of General Goering substantially to increase Germany's home grown food supply.†

The chief cause for the Government's inability to enter into a trade agreement was the weakness of the German economic position. Reichsbank Direktor Brinkmann affirmed that with the recent amnesty and with other hidden means, the present shortage of grains and foodstuffs could be made good through special imports. This, however, was but a temporary matter and in his opinion, which he claimed was that of other high officials of the Ministry of Economics including Dr. Schacht, the real German crisis would not be reached until the latter part of 1938 (in the absence, of course, of any unforeseen "break"). It was therefore not feasible for the Government to undertake commitments towards the United States in the present state of flux.

Direktor Brinkmann preferred to take the long range point of view when considering trade with the United States. He therefore asserted that the chief aim at present of the German Government should be not to lose contact with officials of the United States. To be sure, stop-gaps such as the present cotton barter (which he hoped to expand

²³ Vice Consul Hugh C. Fox.

*See, for instance, the Consulate General's report No. 774 of March 9, 1937, entitled Admixture of Corn Meal in Wheat Flour Made Obligatory in Germany as a Measure Against Scarcity. [Footnote in the original; report not printed.]

†See the Consulate General's report No. 794 of April 6, 1937, entitled Announcement of Important Measures Intensifying the Drive To Increase Agricultural Production Under the "Four Year Plan" in Germany. [Footnote in the original; report not printed.]

slowly to include other products) could be discussed and carried on. But it was chiefly essential to maintain governmental contact so that when the position of Germany did resolve itself, more comprehensive matters could be gone into, and a treaty negotiated that would really restore trade on a large scale.

It was with this in mind that he hoped to make a trip to the United States in the fall months of 1937, not basically to negotiate, but rather to keep acquainted with American officials and American conditions. He added that he hoped by this time to have reached some agreement with the Reich Nutrition authorities so that a beginning would have been made toward a program for the import into Germany of fruits and pork products.

In this connection it may be of interest to note that Reichsbank Direktor Dr. Blessing, holding a position in the Government analogous to that of Reichsbank Direktor Brinkmann, recently informed Vice Consul Fox that his views on the trade situation between the two countries were substantially still those which he privately outlined in a former conversation with Mr. Darlington²⁴ of the State Department on the latter's last trip to Berlin, and that he would be ready at all times to accept a treaty on the basis informally discussed at that time. This is interesting in view of Herr Brinkmann's statement regarding the ability of the government of the Reich to enter into a fair and worthwhile treaty that would restore trade, from a long range point of view.

Very respectfully yours,

DOUGLAS JENKINS

611.6231/944

Memorandum by the Secretary of State

[WASHINGTON,] May 13, 1937.

Dr. Luther called to say goodbye. Nothing new was discussed except a sort of general résumé of economic conditions. The Ambassador did, two or three times, inquire whether I fully realized the earnestness of the desire of the German Government to cooperate in support of an economic program such as ours. His qualification was that we did not have enough conditions attached to our favored-nation policy of equal treatment. My reply was that if we had announced a wide and flexible list of exceptions and qualifications before other important countries had shown a real disposition to move steadily and consistently away from the policy of discriminations and toward the objective of equality of treatment, we would have simply discredited the favored-nation policy.

C[ORDELL] H[ULL]

²⁴ Charles F. Darlington, Jr., economic analyst in the Division of Trade Agreements.

600.0031 World Program/123 : Telegram

The Ambassador in Germany (Dodd) to the Secretary of State

BERLIN, May 21, 1937—10 a. m.
[Received May 21—8:50 a. m.]

111. In a brief talk I had yesterday with Dr. Schacht one or two statements were made that may be of value.

1st. He insisted that the present economic condition of Germany and the Western world is really dangerous. The greatest cause of this he said was extravagant war preparation and the second cause was international trade barriers. He also insisted that he agreed with Secretary Hull's policy as a remedy even better than disarmament which would be dangerous if not carefully managed by all the greater nations.

2d. Contrary to these statements came another in which he insisted that Germany would only make bilateral treaty agreements for some years to come. He then said that Secretary Hull had told the Brazilian Government that the United States Government would stop her purchases of copper [*coffee*] in case that country made concessions to Germany. I could hardly accept this but he insisted that his information was correct.

When I mentioned the fact that so much of the American criticism of Germany was due to treatment of churches and universities he at once added: and also the Jews. But he insisted that this was due to the revolution of 1933 and tried to maintain that such things followed the French revolution of 1789. I could not agree to this as a rule of Western countries since 1789.

I had thought Dieckhoff might have definite instructions to negotiate a commercial treaty with us but this conversation gave no indications to that effect.

Dodd

600.0031 World Program/123 : Telegram

The Acting Secretary of State to the Ambassador in Germany (Dodd)

WASHINGTON, May 25, 1937—4 p. m.

51. Your 111, May 21, 10 a. m. Dr. Schacht has apparently received a most inaccurate report of our discussions with the Brazilians. These discussions have naturally taken place since the time is approaching when consideration may be given to the question of reopening negotiations with respect to the Brazilian-American Trade Agreement.²⁵

²⁵ For text of Agreement signed February 2, 1935, see Department of State Executive Agreement Series No. 82, or 59 Stat. 3838; for correspondence regarding negotiation of the Agreement, see *Foreign Relations*, 1935, vol. iv, pp. 300 ff.

1. The Brazilian Government has been informed that this Government in no way wishes to seek a limitation of German-Brazilian trade so long as it is based on the regular lines of economic interchange and does not subject the trade of other countries such as United States to exceptional and uneconomic competition. On the contrary it welcomes the expansion of Brazilian commerce with other countries on a sound basis and accordingly hopes that Brazil will endeavor to conclude a trade agreement with Germany based on liberal principles.

2. Extraordinary competition from German goods has resulted in displacement of American trade even in lines where American products have proven themselves able to hold the field against all ordinary competition. Therefore it was suggested to Brazil that in any commercial agreement into which it should enter it should seek to discourage subsidized imports, particularly in those lines which are customarily supplied to Brazil by other countries.

3. No threat of the character conveyed in your communication was made (Department assumes that the reference to our purchases of "copper" was intended to be purchases of "coffee").

The Department believes you should correct Dr. Schacht's impression.

The impact of such bilateral arrangements as Germany has compelled other countries to enter as the price of entry into the German market presents a difficult problem of adjustment for American commercial policy.

WELLES

611.6231/971a

The Under Secretary of State (Welles) to the German Ambassador (Dieckhoff)

AIDE-MÉMOIRE

The German Ambassador on June 30, acting on instructions from his Government and referring to an invitation extended him by the Under Secretary of State to discuss with him the nature of the conversations which officials of the United States Government were carrying on in Washington with the Brazilian Ambassador and the Brazilian Minister of Finance, made oral representations to the Under Secretary²⁶ raising the question whether these conversations did not involve unwarranted and unfair interference on the part of the United States in trade relations between Germany and Brazil. The Ambassador stated that Germany during recent years had been endeavoring to rebuild its exports to Brazil, which had fallen to low levels after the

²⁶ Memorandum of conversation not printed.

World War, and that it had only recently succeeded in doing so and in fact in somewhat exceeding its pre-war percentage in Brazilian importations. This he said did not constitute a threat or jeopardy to American commercial interests in Brazil and the increased trade had not been derived at the expense of the United States. The Ambassador said that his Government was most heartily in accord with the principles maintained by the Government of the United States as to the necessity of unconditional most-favored-nation treatment and as to the need for the elimination of trade barriers, and that the autarchic policies now pursued by Germany were intended only to obtain for German exports the same advantages which had accrued to the exports of the United States and of other great commercial nations through the devaluation of their currencies. He concluded by saying that his Government reserved complete liberty of action to take such measures as it might find necessary in case activities of the Government of the United States should lead Brazil to limit its trade with Germany.

An oral reply was at once made to the Ambassador's representation. It is now desired to confirm and amplify this reply.

The Ambassador has said that the German Government is in hearty accord with the principles maintained by the Government of the United States as to the necessity for most-favored-nation treatment and the removal of trade barriers. The Government of the United States does indeed attach great importance to the principle of equality of treatment in international commerce as the most satisfactory basis upon which a healthy international trade can be reconstructed as a permanent foundation for peace.

The Government of the United States has been endeavoring to promote the restoration of international trade through the immediate reduction of excessive trade barriers and has adopted as the most practical means to this end a program of negotiating bilateral trade agreements with individual countries while extending to all countries which do not discriminate against its trade the benefit of the tariff reductions and other trade advantages it grants any country (Cuba always excepted). The United States has also urged on other countries, and especially on the great commercial countries which exercise a preponderant influence on the commercial policies of the world, the adoption and active execution of similar principles and policies, and the abandonment of policies and practices which conflict with and threaten to thwart the movement for restoration and liberalization of world trade.

Unlike the policy of countries which by clearing and compensation arrangements make access to their markets depend upon the obtaining from other countries of special terms of payment which require purchase of their exports, and do not therefore permit the full and ordinary action of international competition, the commercial policy of the

United States imposes no such requirement on the export trade of other countries and involves no economic coercion. The United States seeks equality of commercial opportunity for its trade in other countries, subject to certain reasonable and recognized exceptions. It gives other countries equality of opportunity to buy and sell in the United States, subject only to the requirement that countries which receive non-discriminatory treatment from the United States shall not discriminate against the United States, and to the historical and recognized exception in favor of Cuba. It is not a narrow policy of seeking advantage for the United States and it will in part have failed if it does not serve to promote a general increase in the volume and value of international trade from which the United States and the world will receive greater benefit than would be possible from any cumulation of special advantages under discriminatory trade régimes.

It must be manifest that such a policy is not motivated by hostility to or jealousy of the commercial expansion of any country nor does it seek unfair advantage over the trade of any country. The United States does not impute such motives to any country. It does believe, however, that certain types of commercial policies of other countries, for whatever reasons they may have been adopted, may tend to hamper and thwart its own more liberal policy and its broad objectives, and it feels fully warranted in discussing this problem with any government in whose territories it may arise and in seeking a mutually satisfactory solution.

The Government of the United States welcomes the German Government's repeated expression of approval of the principle of most-favored-nation treatment and of the removal of trade barriers. Certain aspects of current German commercial policy would appear to make more difficult the application of these principles rather than to advance them.

German trade with most of the countries of Europe and with some in other parts of the world is governed by compensation arrangements under which the proceeds of the sale in Germany of the products of the soil or industry of the other party are required to be spent, with limited exceptions, for German goods for export to and use in the territory of the other party. With some other countries the same result is brought about without a compensation arrangement by German regulations limiting the use of the proceeds of their exports—the system of compensation marks. Restrictions on the transfer and on the use in Germany of funds payable to non-residents on indebtedness and other accounts not directly connected with current international trade have been used for the same purpose. It is argued that this is intended to obtain for German exports only the same advantages which other countries have obtained by devaluing their currencies. It is none the less clear that where the sale of the products

of a country or the effective possession of property of its nationals can be attained only by the importation of German goods in corresponding value, equality of opportunity for exporters of other countries to compete with German exporters vanishes. With the refinements of practice devised by the German exchange control authorities for purposes of commercial policy, German compensation mark practices become in fact effective weapons for obtaining advantage [over?] competitors of non-German residence. The restrictions on the use of the bank deposits in Germany which are designated as compensation marks result in the transfer of such marks among residents of other countries at prices much lower than the official parity of the Reichsmark with gold. The highest legal adviser of the United States Government, after careful consideration of procedures of this kind as used in German trade with the United States in 1936, ruled ²⁷ that they constituted the payment or bestowal of a bounty or grant calling for the imposition of countervailing duties under the laws of the United States.

Germany is not the only country fostering exports by compensation arrangements or by permitting its currency to be sold at depreciated prices to certain non-residents for restricted uses, although it is outstanding among such countries. Its exports, however, receive one distinctive advantage, inconsistent with a régime of equal competition, through provision for massive but selective direct subsidies. In the form of voluntary self-aid, German industries subscribe annually to an export subsidy fund which is reputed to amount during the current year to 1,000,000,000 Reichsmarks. This would permit a uniform subsidy on all German exports of more than 20 percent of their value. Naturally, however, the actual direct subsidization is selective and, while the facts are not officially published, it is understood that subsidies as high as 50 percent and even 60 percent of invoice value have in some instances been paid to enable German exporters to meet competition in foreign markets.

The effect of trade methods such as have been described appears to be manifest in shifts in trade too extensive to be ascribed to any normal change in competitive conditions. Thus Brazilian statistics show the following percentages of participation of Germany in supplying Brazilian imports:

1934	Germany 14.02%	United States 23.67%	Others 62.31%
1935	Germany 20.44%	United States 23.36%	Others 56.20%
1936	Germany 23.50%	United States 22.12%	Others 54.38%
1st Quarter			
1937	Germany 26.03%	United States 21.02%	Others 52.95%

²⁷ 38 Op. Atty. Gen. 489.

The problem which such subsidizations present to the exporters of other countries, including those of the United States, must be appreciated. By the use of subsidy procedure every field of trade, no matter how reasonable the price of the commodity offered, no matter how well-established the business connection, may be disturbed by some administrative decision to subsidize a competing product sufficiently to disturb the business. Competition so directed seems to this Government to be contrary to the principle of equality to which the German Government declares itself to be attached. Furthermore, it takes the determination of trade movement out of the ordinary competitive circumstance and places it into the hands of Government officials whose calculations need not correspond to those of competitive cost. Against the possibility of competition open to such direction it would seem plain that competition of private business, dependent solely on itself, needs safeguarding. Without such safeguard both the principles embodied in the trade agreement between the United States and Brazil and the trade benefits to be expected therefrom are brought into jeopardy. In return for the trade opportunities granted to Brazil under the Agreement, American trade was pledged corresponding opportunity. Trust was placed solely in the operations of those private business calculations which have built up Brazilian-American trade in the past, to extend that trade if tariff barriers were lessened. All these expectations would be invalidated if American trade were dispossessed as a result of the use of a system of compensation procedures and governmental subsidies. The German Government surely realizes the problems created by the use of these procedures; their continued effect would be to weaken any commercial treaty arrangements based on other principles unless safeguards were taken against them; and with the weakening of these commercial treaty arrangements the underlying principles themselves will become inoperative.

There is no basis for statements, or implications that the Government of the United States has been influencing the Brazilian Government in its trade relations with Germany by threats of coercion. A trade agreement based on the principle of most-favored-nation treatment was concluded between the United States and Brazil two and a half years ago and Brazil was the first American power to join the United States in its policy of reconstructing international trade on the basis of equality of treatment. Both Governments are directing their efforts to assure that the principles underlying this Agreement shall be sustained, and that the anticipated benefits be realized in their mutual trade relations.

WASHINGTON, July 21, 1937.

632.6231/261

Memorandum by the Under Secretary of State (Welles)

[Extract]

[WASHINGTON,] October 21, 1937.

The German Ambassador called to see me. He handed me a memorandum from his Government ^{27a} which he said was in reply to the memorandum given to him by the Department of State last July, which dealt with the subject of German and American trade relations with Brazil. The Ambassador asked if I would study this memorandum myself with "sympathetic consideration" and if I would likewise please make an effort to read not only the lines but between the lines as well. He said this memorandum was the result of his own conversations with his Government in Berlin when he was recently there and was due to his efforts to try to prepare the ground for a more favorable understanding by the German Government of the policy of the United States with regard to a more liberal trade tendency. The Ambassador said that he thought perhaps this memorandum would prepare the way for a further exchange of views between the two Governments, which he hoped would be constructive and lead to a more normal trade relationship between Germany and the rest of the world.

I told the Ambassador that, of course, I would give the memorandum every possible consideration and that the Department would study it attentively. I said I trusted that his Government might in fact be prepared to reconsider its present policy and that if that were the case, we would of course have every disposition to cooperate insofar as circumstances might make that possible.

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S[UMNER] W[ELLES]

611.6231/987

The German Embassy to the Department of State ²⁸

[Translation]

AIDE-MÉMOIRE

I. The German Government shares the opinion expressed in the *Aide-Mémoire* of the Department of State of July 21 of this year that the most favored nation treatment is the best and safest foundation of international trade. The German Government has advocated and ad-

^{27a} *Infra.*

²⁸ Handed to the Under Secretary of State by the German Ambassador on October 21, 1937.

hered to this opinion for decades. The application of the principle of most favored nation treatment, however, finds its limitation in the necessity of self-preservation of the nation. If Germany to-day, in her international trade practice, does not put this principle into effect fully it is not because she desires to replace it by a better, so-called "bilateral system"; it is because the German Government against its desire, has been compelled to take recourse to emergency measures the drawbacks of which it fully realizes and the detrimental effects of which have repeatedly and clearly been pointed out by Reichsbankpräsident Dr. Schacht, the author of the so-called "New Plan". Moreover, a fundamental conflict between the "bilateral system" supposedly pursued by Germany and the system of most favored nation treatment does not exist. There can be no such conflict if for no other reason than that Germany has not abandoned the system of most favored nation treatment with tariff stipulations applied also by the United States by virtue of the Act of June 12, 1934.²⁹ In trade agreements with more than fifty countries Germany, even to-day, is still bound to the principle of unconditional most favored nation treatment, and this is true also in the case of those States with which Germany has concluded clearing and compensation agreements. It need not be discussed whether the opinion according to which the most favored nation treatment extends also to the allotment of foreign exchange—if only within a percentage of a so-called "representative period"—is or is not in conformity with the concept of unconditional most favored nation treatment as it presents itself to-day according to its historical development in science and practice. In fact, the United States itself, in all of the trade agreements concluded since June 1934, has not insisted upon an unrestricted application of most favored nation treatment, within this meaning. In her present economic emergency Germany also, notwithstanding her recognition of the principle of a representative period, could not make contractual promises concerning foreign exchange certificates without restricting this principle.

The causes of the present emergency are known to the Government of the United States. They lie, first of all, in the disastrous consequences of the Versailles Treaty forced upon Germany, which deprived Germany of important bases of her raw material supplies and at the same time imposed upon her unbearable financial obligations. To these political payments was added the pressure of those governments of other countries which were willing to open their markets for German goods only under special conditions. This was the case principally with countries with which Germany had a favorable trade balance

²⁹ 48 Stat. 943.

and which now exercised pressure for the purpose of satisfying their capital demands out of the German export surplus. It was under this pressure that the clearing agreements originated which resulted in binding those amounts which Germany had formerly been able to use for making purchases in countries with which it had an unfavorable trade balance, as for instance the United States. The systems of quotas, which are to-day universally applied, of clearings, compensation etc. were not invented by Germany but were forced upon her. The German Government is entirely willing to adjust its trade policy to the principle of free exchange of goods as soon as the necessary pre-requisites have been established in the other parts of the world, namely, within the field of general currency stabilization, solution of the debt problem, and equal access to raw materials. The pre-requisites cannot be produced by Germany in her present financial and economic situation. They must be brought about by those States that have disturbed the equilibrium within the other spheres.

II. The German Government regrets that the United States up to now has not seen its way to co-operate in finding an interim solution which would have furnished a practical contribution to the realization of its repeatedly-declared intention of increasing international exchange of goods.

With regard to the statement in the *Aide-Mémoire* that equal opportunity is granted in the United States to the trade of other countries, provided these countries, on their part, do not discriminate against the United States, the German Government calls attention to the fact that Germany does not discriminate against the United States. Germany is ready and willing to accord to the United States the same favorable treatment as it does to any other country. Moreover, with respect to the allotment of free foreign exchange Germany, even now, and almost throughout, accords to the United States more favorable treatment than to other countries.

On the other hand, however, Germany considers itself discriminated against by the United States. The United States grants most favored nation treatment to certain other countries which likewise impose restrictions upon their imports and payments abroad; and these countries, on their part, have not been obliged to bind themselves to an unlimited application of the principle of most favored nation treatment insofar as it refers to the allotment of foreign exchange within a percentage of a representative period. The German Government cannot comprehend why the United States, only in its relation to Germany, makes the granting of most favored nation treatment dependent upon Germany's putting this principle into effect at once and without restriction.

The German Government which has expressed far-reaching acknowledgment of the principles of American trade policy, has repeatedly endeavored to place the trade relations between Germany and the United States upon a new foundation guaranteeing the extension of their mutual exchange of goods. Following its suggestions of March 1936,³⁰ and lastly of May 31, 1936,³¹ the German Government in its reply³² to a questionnaire³² submitted by the American Government made constructive proposals to which it has up to now received no reply. These proposals are still being considered by the German Government as a basis for negotiations.

III. With regard to the statement in the *Aide-Mémoire* that a system to further exports such as the German one interferes with normal competition it should not be forgotten that international competition primarily was disturbed by the devaluation of currencies undertaken by several governments. If, however, it is said in the *Aide-Mémoire* that the German Government is in a position to place any merchandise on markets of third countries on a competitive basis by discriminate, direct subsidies and thereby to disturb the business of other countries on these markets, attention is again called to the following facts: The means which are raised through the voluntary self-aid action of German industry and commerce serve the purpose of equalizing partially the currency advantage; an advantage which from the very viewpoint of equality of competitive conditions is unjustified. It was from this point of view that the self-aid action came into existence, and in this sense it is applied in practice. In individual cases the seller of German merchandise may have utilized the self-aid method, and at the same time the buyer of the merchandise may have taken an advantage which, for instance, he obtained by paying with Ask-Marks, upon the quotation of which the German Government unfortunately has no influence. Through the combination of these two factors a reduction of the price of the German merchandise may have been brought about which exceeded the currency advantage of the country of the buyer or that of a third country competing with the German merchandise. The German Government, however, has endeavored to follow these cases—which unquestionably are difficult to control—and to take appropriate steps for their immediate discontinuance. In any case, it is the German Government's earnest concern that the self-aid action of German commerce and industry retain the character of a contribution to overcome the cur-

³⁰ See memorandum from the German Embassy, March 30, 1936, *Foreign Relations*, 1936, vol. II, p. 222.

³¹ Not found in Department files.

³² See memorandum from the German Embassy, June 24, 1936, *Foreign Relations*, 1936, vol. II, p. 236.

rency advantages of other countries brought about by devaluation, and that it does not go beyond that scope.

IV. With respect to the statistics concerning the exports of the United States, Germany and other countries to Brazil, the following observations are to be made:

The exports of the United States to Brazil, as a whole, have increased since 1934, even if the percentage share of the United States in the total imports of Brazil has become somewhat smaller. If in the case of individual goods imports from the United States have decreased, this decrease was not caused by an increase of German imports into Brazil but rather by an increased import of these goods on the part of other countries with which, it may be mentioned, the United States has most favored nation agreements. This, for instance, is the case with sewing machines from Canada, railroad equipment, locomotive engines and railroad cars from Great Britain and Belgium. Moreover, more than half of the total imports of Brazil from the United States consists of goods which Germany does not export to South America at all or, at most, only in comparatively limited quantities. While the United States exports to Brazil automobiles, gasoline, petroleum, mineral oils, rubber materials, radio sets, tin plates, fruits, fruit and vegetable juices, tar, wheat, etc., German exports to Brazil comprise quite different categories of goods, as coal, pharmaceutical preparations, oats, hops, skins, leather, aniline dyes, etc.

The figures quoted in the *Aide-Mémoire* with respect to the percentage share of the German Reich and the United States in Brazilian imports, alone, do not present a correct picture, inasmuch as they start only with the imports since 1934. In order to determine the question whether German competition, in fact, has forced back American imports to Brazil it is important to consider also the import figures of Brazil during the years preceding the World War. They present the following picture:

SHARE OF GERMANY AND THE UNITED STATES IN BRAZILIAN IMPORTS IN PERCENTAGES OF TOTAL IMPORTS:

	<i>Germany</i>	<i>U. S. A.</i>
1907	15, 3	12, 8
1908	14, 9	12, 1
1909	15, 6	12, 4
1910	15, 9	12, 8
1911	16, 8	13, 3
1912	17, 2	15, 6
1913	17, 5	15, 7.

Within the seven years before the World War Germany's share in Brazilian imports therefore was always larger than that of the United

States. Only as the result of the World War and the conditions existing during the post-War period were German imports forced back, and it was only gradually that they again increased. Contrasting the German-Brazilian exchange of goods during 1913, when they amounted to approximately 447 Million Marks with that of 1936 amounting to approximately 265 Million Reichsmarks, it is readily seen that there can be no mention of an inappropriate increase of German foreign trade with Brazil.

V. The German Government has noted with regret that German economic activity in Latin-American countries is constantly subjected to attacks and insinuations both in the American Press and by private economic organizations which attacks have no foundation in fact. The German Government believes to be in accord with the Government of the United States that a just balance of the economic interests of Germany and the United States on the markets of third countries must be counted among those factors which can serve international economic development and the establishment of universal peace, and that this balance will be achieved if the economic competition of the two peoples is guided by fairness and mutual respect.

611.6231/1002

The Ambassador in Germany (Dodd) to the Secretary of State

No. 3777

BERLIN, December 15, 1937.
[Received December 23.]

SIR: I have the honor to submit an account of the negotiations which have been in progress during recent weeks between the German subsidiaries of certain American oil companies and the competent German officials relative to the extension of the system of special inland accounts for cotton barter with the United States to include importation of American oil. Through various despatches from the Consulate in Bremen, the Consulate General in Berlin, and the Embassy, the Department has been informed of this procedure as well as of the German Government's position in refusing to apply it to imports of commodities other than cotton on the ground that if such treatment were permitted on a large scale it could not be sufficiently controlled to eliminate the possible occurrence of practices which might violate the specifications laid down in the Treasury Department's ruling of December 23, 1936. It was feared that in the event of such an occurrence the entire procedure for the importation of cotton might be disrupted.

It now appears, however, that as a result of the reasonably smooth operation of the arrangement as applied to cotton, the German author-

ities are ready to open it to other goods—at the present juncture, oil—provided they receive assurance that the procedure contemplated would meet with the approval of the competent American officials.

The companies concerned in the project under reference are the Deutsch-Amerikanische Petroleum Gesellschaft, the Deutsche Vacuum Öl A. G., and the Atlantic Refining Company of Germany, G. m. b. H., subsidiaries respectively of the Standard Oil Company of New Jersey, the Socony Oil Company of New York, and the Atlantic Refining Company of Philadelphia, which are the principal American companies now doing business in Germany. The actual conversations with the German authorities have been carried on in the main by Mr. Archdeacon, European representative of The Bankers Trust Company of New York, and by Mr. Rohdewald, a director of the Reichskredit-Gesellschaft, of which banks the oil companies are clients.

In broaching the question of extending the system of cotton barter to oil, the companies appear to have been motivated by the liquidation as of the end of this year of their Aski accounts over which they had hitherto been importing oil. This has been possible since the contracts had been concluded, it is understood, prior to July 11, 1936, the date after which all Aski contracts and/or compensation business was prohibited. Unless some other method were devised of transferring their accounts receivable created by oil importation, the companies were faced by the alternative, according to their own statements, of withdrawing completely from Germany, thus sacrificing in large part their considerable investments here and also relinquishing the market to their English, Dutch, and other foreign competitors, who through the clearing or payment agreements between Germany and their respective governments are able to continue to obtain payment for oil imports.

The background and terms of the proposal advanced by the oil companies as well as the conditions stipulated by the German authorities upon which their acceptance is made contingent are set forth in the four enclosures to this despatch.³³ The first enclosure is an excerpt from a letter written by Mr. Archdeacon to the Embassy, explaining the interest of the oil companies in adopting an arrangement for oil imports similar to that established for cotton. The second is a copy of a memorandum, prepared by Mr. May, the Treasury Attaché, for his department and forwarded by the Embassy with his approval, describing in concise language the essential practical nature of the plan in contrast to that in effect for cotton. The third is a translation (prepared by Mr. Archdeacon) of the formal written proposal submitted by The Bankers Trust Company and the Reichskredit-Gesellschaft to the appropriate officials of the Ministry of Economics for

³³ None printed.

their consideration and reply. The final enclosure is the German text and translation (made by the Embassy) of the Ministry of Economics' response signed by Dr. Landwehr, the chief of that section of the Reichsstelle für Devisenbewirtschaftung having to do with foreign exchange in so far as it concerns trade.

In view of the self-explanatory character of these communications and inasmuch as their perusal seems in any event necessary in order to obtain a full understanding of the negotiations to date, it is not considered desirable to enter into a detailed outline of their contents. For purposes of convenience, however, it may be stated in brief summary that the German authorities have expressed their willingness to permit the importation of oil by the companies named above in accordance with a procedure corresponding closely to that laid down for cotton barter, provided that the American authorities give assurances that such transactions would not lead to the invocation of the anti-dumping clauses of the Tariff Act. It is understood in principle that the same treatment would also be extended subsequently to such other oil companies as might wish to participate in this business.

It will be observed that the proposed oil barter plan differs from the cotton arrangement in three principal respects. First, unlike cotton, there is no world market price for oil. In the opinion of the interested oil companies and also apparently of the German Government, a uniform price basis can nevertheless be established through utilization of the German price control mechanism on the one side and on the other through submission of export price lists by the American Oil companies to the Bureau of Customs in Washington accompanied by the guarantee that these prices will be strictly adhered to.

Secondly, although it is proposed to render the same discount of about 25% in the reichsmark, the method contemplated of arriving at the amount to be paid over the price at which the American seller disposes of the oil in Germany varies somewhat from that followed for cotton, according to which a uniform increase of 33 $\frac{1}{3}$ % is added to the world market price.

Finally, contrary to the circumstances surrounding cotton, the American oil producers would sell oil to the American merchants desiring to import German goods on the express condition that it be resold only to the respective German subsidiaries of the oil companies. It will be noted that Mr. May has raised the question in his memorandum whether or not such transactions would constitute valid sales to American importers of German goods rather than simply the purchase by them of blocked credits in Germany.

Comparing the reply of the German authorities with the companies' proposal, it will be noted that the principal change in the suggested procedure is to be found in connection with the measures to be adopted

to prevent any infringement of the opportunities for bartering German goods against cotton which might arise from admitting another commodity to this special treatment. The oil companies suggested that no American importers already participating in cotton barter deals be permitted to establish special oil inland accounts, a measure which it was thought would preclude all possibility of diverting business from cotton to oil. The German authorities, however, elected to impose limitations on the basis of the commodities against which oil may be imported. They are of the opinion, it is understood, that if importers who had engaged in cotton transactions were excluded, the number eligible for the oil accounts would be reduced to such an extent as to make oil barter unnecessarily difficult, if not quite impracticable. They therefore decided to prohibit exchange of oil for certain types of goods which were being exported against cotton, and to put this into effect stated that two clearly defined lists of commodities would be compiled for cotton and oil barter respectively. This appears to have the additional advantage of broadening the base of German exports to the United States.

The oil companies welcome, of course, this alteration of their plan, seeing in it the possibility of widening their scope of business. They attached particular importance to the third to last paragraph of Dr. Landwehr's letter (enclosure 4) in which, following the principle common in Germany's system of economic control, he says that when after careful investigation circumstances seem to warrant it, he would be prepared to make exceptions to the rule regarding commodity lists and to permit in specified cases the export of goods on the cotton commodity list through the use of oil inland accounts, or vice versa. The oil companies' representatives maintain that opportunities for export of a number of items on the list of goods for which it has hitherto been permitted to barter cotton have been exploited either insufficiently or not at all. They state further that they have been given to understand that Dr. Landwehr is ready to exercise his discretionary power in their favor in such instances.

During the course of these negotiations, Mr. Archdeacon has several times called to talk over the matter with Mr. May and with various members of the Embassy. He was assured that the Embassy is, of course, ready to render him every possible assistance by way of informal discussion of the different aspects of his project. At the same time occasion was more than once taken to point out that whereas, in so far as the Embassy is aware, the Treasury Department's ruling of December 23, 1936, was not restricted to any one commodity but was general in application, the decision as to whether or not the suggested oil barter arrangements complied with the terms of that ruling appeared to rest with the appropriate officials of the Treasury

Department. It seemed, therefore, that the matter should be placed before these officials by representatives of the American oil companies in Washington. Mr. Archdeacon showed full understanding of these circumstances and said that the oil companies would approach the Treasury Department probably during the month of January. He expressed the view, however, that it might be helpful if the appropriate authorities in Washington were informed through the Department of State of the background of the proposed plan for oil barter and were familiar with the position of the German Government in this regard.

With this purpose in mind, Mr. Archdeacon arranged a luncheon several weeks ago at which in addition to the Counselor of Embassy and one of the secretaries, the following were present:

Director Brinkmann, of the Reichsbank.

Ministerialrat Dr. Landwehr, of the Reichsstelle für Devisenbewirtschaftung within the Ministry of Economics.

Dr. Davidsen, of the Commercial-Political Section of the Foreign Office.

Herr Raab, Head of the Control Board for Mineral Oil (Mineralölüberwachungsstelle).

Director Engelbrecht and Herr von Puttkammer, of the Deutsche Vacuum Oel A. G., Hamburg.

Director Spangenberg, of the Deutsch-Amerikanische Petroleum Gesellschaft, Hamburg.

Mr. Frysinger, of the Atlantic Refining Company of Germany G. m. b. H., Hamburg.

Director Rohdewald, of the Reichs-Kredit-Gesellschaft, Berlin.

The main points touched upon during the course of the discussion between the guests at the luncheon are embodied in the different enclosures to this despatch. It is of interest to note, however, that in contrast to the more optimistic outlook voiced by the oil companies' representatives, the German officials seemed to be of the opinion that by far the major proportion of exports to be made against oil would consist of products for the own requirements of the oil companies—such as drums, special types of machinery, etc.—which it appear have been imported regularly by the oil companies in the past and which are said to represent considerable business. They were quite candid, however, in indicating their impression that under present conditions the American market was not ready to absorb German goods to any appreciable extent beyond the current level of exports. They nevertheless expressed approval of the proposed oil barter arrangement as the only method by which imports of American oil could be maintained at all.

In general, those present seemed confident that the arrangement under consideration would not conflict with the Treasury Department's ruling. At the same time, the German officials were explicit

in their declaration that under no circumstances would they take definite action until they were presented with definite confirmation of this belief from the appropriate authorities in Washington. Mr. Gilbert once again took the opportunity to make the Embassy's position clear, repeating the observations already consistently conveyed to Mr. Archdeacon. While they expressed recognition of this attitude, the German officials said that it would be appreciated if the Embassy would transmit to the Department for background purposes a description of the negotiations thus far undertaken and of the German Government's position which they had thus informally explained. At their suggestion, a copy of Dr. Landwehr's reply to Mr. Archdeacon's memorandum was given by him to the Embassy.

It is hoped that the Department will agree with the line followed by the Embassy in this matter. In view of the circumstances outlined above, any information concerning the course of developments in Washington would be most helpful and it would be appreciated if the Department should find it feasible to give the Embassy the benefit of its reaction.

Respectfully yours,

WILLIAM E. DODD

NEGOTIATIONS FOR A SETTLEMENT OF THE DRIER CLAIM AND THE SABOTAGE CLAIMS OF THE UNITED STATES AGAINST GERMANY³⁴

462.11L5232/830

The German Ambassador (Luther) to the Secretary of State

[Translation]

WASHINGTON, April 5, 1937.

MR. SECRETARY OF STATE: I have the honor to communicate the following to you by direction of my Government:

In connection with an inquiry of the State Department, the German Embassy in Washington informed the State Department on June 17, 1936,³⁵ that the German Government, for which the Foreign Office was acting, entertained the wish to conduct negotiations, apart from the proceedings now pending before the German-American Mixed Commission, in which the so-called sabotage cases are involved. In that connection it was stated that the American negotiators to be sent to Germany would be welcome to the Foreign Office and the other German Government offices concerned. Thereupon the American Government sent its Agent before the Mixed Commission, Mr. Robert

³⁴ Continued from *Foreign Relations*, 1936, vol. II, pp. 256-284.

³⁵ Memorandum of conversation held in the Department June 17, 1936, not printed.

W. Bonyngé, and his legal adviser, Mr. Harold H. Martin, to Germany. The American plenipotentiaries did not take advantage of the opportunity to call at the Foreign Office. But in Munich they held discussions with Captain von Pfeffer,³⁶ the results of which are set down in various documents that were exchanged during the days from July 1st to 10th, 1936.

During the discussions conducted at Munich, a settlement of the proposal for re-opening [the case],³⁷ submitted to the Mixed Commission by the parties complaining of sabotage, was contemplated, whereby the Commission was to promise them certain sums the numerical amount of which was, however, not yet determined. It was to be the prerequisite for such a settlement that it was to be the first step in a thorough-going improvement in the relations between the two countries and that it was by no means to be made to appear as if the German Government were willing to accept any responsibility whatever for the claims made in the complaint. The aim striven for therein was to settle definitively all claims cases still pending before the Mixed Commission, so that an end could be made to that whole matter.

As far as the proceedings before the Commission are concerned, the sole importance of the result of the discussions conducted in Munich was that of forming the preparation of a basis for official steps, which the German Government could, if necessary, cause to be taken before the Commission by its Agent.

To the regret of the German Government, it has, however, been found in the meantime that by the course contemplated the prerequisites of the settlement could not be fulfilled nor could the desired goal be attained. Among other things, a number of holders of awards made previously by the Commission have protested to the American Government against the outcome of the Munich discussions. The American Government has directed its Agent to submit this protest to the Commission and to agree to the proposals in which the intervenors requested a hearing before the Commission. Thus there is no assurance that the ending of the Commission proceedings will be reached in the way contemplated at Munich. Rather must it be taken into account that the Commission proceedings will possibly be continued in the form of a suit between the parties complaining of sabotage and their opponents.

In view of this state of affairs, the German Government does not intend to continue on the course the way for which was opened by the discussions conducted at Munich, and direct its Agent to get into

³⁶ Hauptmann von Pfeffer, German Special Agent; for account of the discussions, see *Foreign Relations*, 1936, vol. II, pp. 266 ff.

³⁷ Brackets appear in the file translation.

contact with the American Agent in order to bring about the submission of joint claims for the making of awards by the Commission. The German Government rather wishes to continue the cases pending before the Commission in the status in which they were before the beginning of the conversations at Munich.

The German Government has found, to its surprise, that the American Agent has considered it proper to submit to the Commission the documents that were exchanged at Munich and to propose that the Commission make decisions against Germany on that ground. The German Government calls attention to the fact that the Commission, however, under its rules of procedure, to which reference was specifically made at Munich, cannot make a decision not based upon examination of claims on their merits unless the Agents of both countries propose it, jointly. It is the business of the Commission to examine the claims that are made on the basis of the Berlin Agreement³⁸ with regard to the facts and to decide on them; on the other hand, it does not lie within its powers to investigate and appraise negotiations that have been conducted outside the proceedings of the Commission. The German Government takes the stand that no questions of any kind, of a factual or legal nature, that may arise out of the Munich discussions are left to the Commission for decision. The German Government has therefore directed its Agent before the Commission not to enter into the proposals made by the American Agent, which aim at the putting into effect of the results of the Munich conversations.

Accept [etc.]

LUTHER

462.11L5232/834

The Secretary of State to the German Ambassador (Luther)

WASHINGTON, April 8, 1937.

EXCELLENCY: I have the honor to acknowledge the receipt of your note of April 5 regarding the attitude of your Government with respect to the so-called sabotage claims pending before the Mixed Claims Commission, United States and Germany, and to state that a copy of your note has been transmitted to the American Agent with the request that he lay it before the Commission for its consideration.

Accept [etc.]

For the Secretary of State:
[File copy not signed.]

³⁸ For text of agreement, see League of Nations Treaty Series, vol. CVI, p. 121.

462.11D831/263

*The German Embassy to the Department of State*³⁹

In an exchange of notes of May 7, 1934⁴⁰ both Governments agreed to leave to the Commission the decision in the petition for a rehearing filed in the Drier case. Thereupon the Commission through the Umpire rejected said petition as well as two further motions for a reopening of the case.

The Foreign Office transmitted to the American Embassy in Berlin with a *Note Verbale* of May 16, 1936⁴¹ various items of documentary evidence from which it appears that in the proceedings before the Commission the claimant had availed herself of objectionable methods. The German Government therefore regrets that it is not in a position to agree to a further award to be rendered by the Commission in favor of Mrs. Drier.

As regards Mrs. Drier's precarious financial situation which has been emphasized by the American Embassy⁴² it seems appropriate to point out the hardships resulting to German claimants out of the Harrison Act⁴³ against which the German Embassy had at the time protested in vain. The German Government is of the opinion that the situation in the case of the Deutsche Bank and Disconto Gesellschaft is particularly unfortunate. As will be remembered said funds were first withheld from being returned under the War Claims Settlement Act⁴⁴ through an injunction by the firm of Sprunt. In order to bring about the withdrawal of said injunction which the Disconto-Gesellschaft considered as entirely unjustified, the German Government assumed considerable sacrifices in the agreement in the Sprunt cases before the Commission. These sacrifices were of no avail because shortly thereafter the return of the funds of the Deutsche Bank & Disconto-Gesellschaft was barred by the Harrison Act.

462.11W892/2778

The Secretary of State to the German Ambassador (Luther)

WASHINGTON, May 1, 1937.

MY DEAR MR. AMBASSADOR: No doubt you are aware of the intense interest that is being manifested in this country in regard to the claims

³⁹ Left at the Department April 12, by the Counselor of the German Embassy.

⁴⁰ *Foreign Relations*, 1934, vol. II, pp. 492-493.

⁴¹ Not printed; see telegram No. 153, May 19, 1936, 6 p. m., *ibid.*, 1936, vol. II, p. 266.

⁴² In telegram No. 16, March 12, 3 p. m., the Secretary of State had instructed the Ambassador in Germany to advise the Foreign Office that favorable instructions on this case would be very much appreciated in view of the claimant's precarious condition both physically and financially (462.11D831/249).

⁴³ Joint Resolution approved June 27, 1934; 48 Stat. 1267.

⁴⁴ Approved March 10, 1928; 45 Stat. 254.

of individuals who sustained property losses and personal injuries during the World War but whose claims were not presented to the Department in time to permit their consideration by the Mixed Claims Commission under the agreements of August 10, 1922,⁴⁵ and December 31, 1928.⁴⁶ This interest has not only been manifested by the individuals themselves, who are constantly importuning the Department to endeavor to obtain the consent of the German Government to the adjudication of these late claims, but has also been evidenced by the introduction in the Congress from time to time of legislation proposing that some arrangements be arrived at to take care of the claims. The latest proposed legislation, as you doubtless know, requests the President to enter into an agreement with the German Government for the adjustment of these claims either by the present Commission, or by the creation of a new Commission, or by the payment of a lump sum to be distributed among the claimants by such method and in such manner as might seem best to this Government.

The matter of reaching an agreement between the two Governments that would provide for the final disposition of these late claims has been discussed on a number of occasions with the German Government, mostly through the German Embassy at this capital, and the Department has all along felt, from the tenor of the discussions, that some method would eventually be arrived at which would take care of this large group of small claims by people who because of their vocations and their lack of knowledge of the existence of an arrangement for the adjudication of claims failed to file them within the time agreed upon. The claims for the most part are those of seafaring men to whose misfortune we can not fail to be sensible. A settlement whether by adjudication or by a lump sum arrangement would not unduly increase the financial obligations of Germany to the United States under the Treaty of Berlin with respect to World War Claims,⁴⁷ and it would be most gratifying to this Government as well as to these unfortunate claimants. It is obvious that while these claims remain unsettled the efforts of the two Governments to make a final and complete adjustment of outstanding claims will not have been realized and these claimants and their friends will always feel, whether rightly or wrongly, that they have been denied the relief that was available to others more fortunately situated.

In all the circumstances, I am impelled to bring this matter again to the attention of the German Government through your Embassy, with a view to a further exploration of the subject, in the hope that a friendly discussion thereof may result in the adoption of one of the proposed methods of adjustment of the claims. A survey of the so-

⁴⁵ See *Foreign Relations*, 1922, vol. II, pp. 240 ff.

⁴⁶ See *ibid.*, 1928, vol. II, pp. 894 ff.

⁴⁷ Signed August 25, 1921, *ibid.*, 1921, vol. II, p. 29.

called late claims by the Department discloses a total number of approximately 2,700, with a probable recovery value of approximately \$7,500,000.

I shall appreciate it if you will be good enough to ascertain and inform me of the attitude of your Government, and especially as to whether it would be willing to enter into friendly discussions looking to an adjustment of what presumably will soon be the only remaining war time claims.

I am [etc.]

CORDELL HULL

462.11L5232/880

Memorandum by the Legal Adviser (Hackworth)

[WASHINGTON,] June 1, 1937.

Mr. Moore⁴⁸ and Mr. Hackworth discussed with the German Ambassador⁴⁹ (who called at the request of Mr. Moore) and Dr. Paulig, the German Agent before the Mixed Claims Commission, the matter of the sabotage claims. Mr. Moore opened the conversation by referring to the recent agreement reached between the sabotage claimants and the awardholders⁵⁰ under which the latter are to withdraw their opposition to the carrying out of the Munich settlement. He pointed out that the American Agent and his counsel had gone to Germany at the suggestion of German officials and that they had negotiated the agreement which has since been the subject of discussion before the Commission and otherwise; that the Commission had been in operation since 1922 and for the past several years had been prevented from closing its work because of the pendency of these claims; that the awardholders who had objected to the Munich settlement were now ready to withdraw their objection and apparently the only obstacle to having the Munich settlement receive favorable consideration by the Commission is the lack of approval of that settlement by the German Government. He expressed the hope that that approval might be given and the claims now pending before the Commission might be closed. He pointed out that of course the matter would have to be handled independently of any other questions that might be pending between the two Governments.

The Ambassador stated that he knew about the arrangement between the sabotage claimants and the awardholders; that he wanted

⁴⁸ R. Walton Moore, Counselor of the Department of State.

⁴⁹ Hans Heinrich Dieckhoff.

⁵⁰ Agreement of May 19, 1937; in this agreement the sabotage claimants agreed to set aside from awards entered in their favor by the Commission a certain part to be used for benefit of awardholders. In return the awardholders were to withdraw all opposition to any further proceedings the sabotage claimants might take in prosecution of their claim.

to preface his remarks by a brief statement of the background, which was to the effect that the claims situation actually had its origin with the Treaty of Peace; that it had been composed of a German Commissioner, an American Commissioner, and a Presiding Commissioner who had all along been an American national; that his Government felt it had been very fair in the whole claims situation, particularly in having the Commission composed of two Americans and one German. He thought that the claims work should have been closed in March 1930, prior to which time there had been a decision against the sabotage claimants, and that the prolongation of the life of the Commission for the past seven years has resulted from the petition of the sabotage claimants for a new hearing; he thought that the weakness of the contentions of the sabotage claimants was reflected in their efforts to effect a compromise settlement; that if they were certain of their ground they would not be interested in making a compromise settlement. He also stated, with the concurrence of Dr. Paulig, that in February and March Dr. Paulig had suggested that the two opposing groups should endeavor to arrive at a satisfactory arrangement, but that since nothing had come of that within a reasonable time the German Government had decided that the cases should proceed before the Commission in the regular way and thereupon the German Ambassador sent to the Department the note of April 5, 1937. Dr. Paulig stated that the Commission was to meet on June 14 to resume consideration of the cases, and that on that date steps would be taken to have certain witnesses appear before the Commission. The Ambassador remarked that the German Foreign Office expected Mr. Bonyng and Mr. Martin to come to Berlin for a discussion of the claims but that they did not see fit to do so. He thought that any compromise settlement of the sabotage claims would be interpreted as an admission on the part of Germany of guilt regardless of the phraseology employed. Finally he stated that while he could not speak for his Government he felt that there would be no chance of giving effect to the Munich settlement unless it were upon a definite understanding that the payments made from the present fund in the German special deposit account would terminate Germany's liability toward the claimants.

As to the failure of the American Agent to go to Berlin, Mr. Hackworth explained that this was due to no decision on the part of the Agent or his counsel but rather to the fact that the German negotiators had suggested that they should have their discussions in Munich in order to avoid possible publicity that might attend such a meeting in Berlin. The Ambassador stated that they were not making any special point of that. He thought that there should be a definite decision on the question whether Germany's liability to the claimants

would cease with the payments from the funds now in a special deposit account before the matter is taken up with his Government. He thought that this would be an indispensable condition to further consideration of a compromise settlement.

Mr. Moore stated that this would be discussed with the American Agent and the counsel for the claimants and that he would inform him of the results.

462.11L5232/882

The Department of State to the German Embassy

MEMORANDUM

This is to confirm what was stated to His Excellency the German Ambassador when he called at the Department on June 1, 1937, with respect to the sabotage claims.

The Department of State strongly hopes that the work of the Mixed Claims Commission may be speeded and perhaps brought to a conclusion on the basis of the agreement recently entered into by American claimants who were given awards by the Commission and the so-called sabotage claimants, which the Ambassador has seen, that agreement involving an approval of the Munich settlement. The Department, of course, has in mind what the Ambassador stated relative to the finality of any decision the Commission may render.

WASHINGTON, June 7, 1937.

462.11L5232/887

Memorandum by the Assistant to the American Agent to the Mixed Claims Commission, United States and Germany (Martin)

[WASHINGTON,] June 9, 1937.

The German Agent and I had a conference about 11:30 today in relation to the settlement agreement of May 19 between the awardholders and the sabotage claimants.

The German Agent said in substance that he was just in receipt of a cable from Berlin to the effect that after giving full consideration to the terms of this agreement the German Government did not feel that it was in a position to accept the terms thereof unless there was a firm waiver by the awardholders and the sabotage claimants under which (1) the awardholders would give up the entire unpaid balance of their awards now owing; namely, approximately \$60,800,000 as of March 31, 1937, this in consideration of their receiving from the sabotage claimants under the terms of the agreement of

May 19 some \$11,000,000 out of the proceeds of the contemplated awards to the sabotage claimants (the contemplated awards to the sabotage claimants would produce a present theoretical payment to them of about \$22,000,000) ; and (2) that the sabotage claimants would give up all unpaid amounts remaining after the payments on the contemplated awards. This would imply a giving up on the part of Class III sabotage claimants of some \$22,300,000.

The German Agent further said that he had had recent conversations with Mr. Morris, representing the awardholders, and Mr. McCloy, representing the sabotage claimants, and had been told by these gentlemen that their clients were not in a position to consider giving up more than about 50% of the unpaid amounts on the above basis. This information the German Agent said he had cabled to the Foreign Office.

The German Agent further said that he had been informally furnished with a copy of the agreement of May 19 on May 21 and had cabled the substance thereof to Berlin and had also forwarded a copy thereof by mail. He also said that he had been furnished with an official copy of the agreement with my letter of May 24. In this situation the German Agent said that Berlin was fully advised as to all the circumstances before they made their recent decision.

In addition to the difficulties heretofore suggested by the German Agent he pointed out to me today the further difficulty arising out of the protests by German nationals against the final consummation of the agreement.

I told the German Agent that late yesterday afternoon I received a letter from Mr. McCloy and that this morning I received a letter from Mr. Morris advising me in substance as he had already been advised informally by the two groups of claimants as to their willingness to waive 50% of the so-called expectancies. This waiver, I said, implied a definite abatement of Germany's financial obligations to the United States on account of the awards of the Commission in the amount of approximately \$41,500,000, which amount, I said, represented to my mind a definite and substantial reduction in Germany's financial obligations. I further said that it also contemplated a prompt winding up of the Commission that, as I understood, was desired by both Governments.

I pointed out to the German Agent that if the agreement of May 19 were not finally consummated it would mean another year or more of work on the part of the Commission, and that personally I felt satisfied that we would eventually receive a favorable decision that would imply further financial obligations on the part of Germany in an amount in excess of \$50,000,000, and that to my mind the consum-

mation of the agreement of May 19 represented a very substantial saving to the German Government.

The German Agent replied to this in a jocular way that of course this was a matter that the two Agents were in disagreement on and suggested that from his study of the awards of the Commission even if we were successful in the sabotage claims the awards would probably be materially under the amount claimed. In support of this he pointed particularly to the situation in the Lusitania claims, where he said the awards in most instances were materially under the amounts claimed. In reply to this I said that of course claims for damages arising out of deaths were on an entirely different basis from claims for damages to property, and said that in our ship claims, that involved property damage only, we in many instances recovered substantially the entire amount claimed. With particular respect to the sabotage claims I said that in the case of the largest single claim our damages are made up of the value of the property destroyed in substantially the amount as fixed by the Interstate Commerce Commission in its valuation of railroad properties; that other large items of this claim represented amounts recovered by various injured parties in court proceedings from the railroad company; that another large claim represented the contract price for the property destroyed; and that in so far as the underwriters were concerned, whose claims represent a substantial item, the damages are merely the out-of-pocket losses of the various underwriters after making deduction for the foreign re-insurance recovered. In this situation I said that I felt confident that if we were eventually successful we would recover substantially the amounts claimed as very few of the items going to make up these amounts are capable of any material reduction.

The German Agent said that he would call Mr. Bonyne in New York and advise him of the situation. He thought it was preferable that he talk directly with Mr. Bonyne in order to avoid any misunderstanding as to just what he was saying. I told him this was perfectly satisfactory to me and suggested that he might call Mr. Bonyne over my telephone. The German Agent, however, said that he had several notes that he would like to refer to in his talk with Mr. Bonyne and would call him up as soon as he returned to his office. The German Agent just called me back and said that on returning to his office he found that it would be impossible for him to call Mr. Bonyne before sometime between 3:30 and 4:00 p. m., Washington time, as he found it necessary to leave the office immediately.

The German Agent then told me that he had had a telephone inquiry from the American Commissioner in relation to the issuance of subpoenas in case the agreement of May 19 was not acceptable to the

German Government. He suggested that it would be well for the two of us to see the American Commissioner in order to discuss with him the procedural situation and furnish him with the names and addresses of the parties each side desired be called. I told him this was agreeable to me and that I would see the American Commissioner with him at any time that was convenient to himself and the American Commissioner. The German Agent then said that he would endeavor to make an appointment with the American Commissioner for 11:30 tomorrow. As I gather the German Agent is particularly interested in having the subpoena to Stein⁵¹ require him to produce his office record book containing the alleged adverse opinion bearing date June 10, 1931, which opinion was read to the American Agent and certain of the sabotage attorneys at the time these gentlemen called at Stein's office on or about November 5, 1932.

Following my talk with the German Agent I saw Mr. Moore in the Department of State and told him the substance of the conversation as above noted.

Mr. Moore told me that from his conversations with the German Ambassador he was reasonably well satisfied that the Ambassador wants to close up the work of the Commission and that he is not really interested in extended negotiations for a settlement.

Mr. Moore further suggested that I write Mr. Morris and Mr. McCloy in relation to this matter and ascertain definitely to what extent the various parties in interest are willing to go in giving up their expectancies. This information is desired for use in the note that the Department contemplates writing to the German Ambassador. Mr. Moore also said that he would himself write a letter to Mr. Polk along these lines.

H. H. MARTIN

462.11L5232/892

Memorandum by the Legal Adviser (Hackworth)

[WASHINGTON,] June 17, 1937.

The German Ambassador and Dr. Paulig called this morning by request of the Department and discussed with Mr. Moore, Mr. Hackworth, and Mr. Martin the proposed settlement of the sabotage claims.

Mr. Moore explained that the meeting was pursuant to our previous discussion of a few days ago with the Ambassador. (At that time

⁵¹ Elbridge W. Stein, one of the American experts who was a witness in sabotage cases and accused of being in collusion with a German expert to discredit the authenticity of a certain bit of evidence which had been used to favor American claimants.

he stated that his Government would not be willing to give effect to the Munich agreement unless both the sabotage claimants and the present awardholders would be willing to regard payment of funds now in the German special deposit account as a complete satisfaction of all private claims.)

At Mr. Moore's request Mr. Hackworth explained that the claimants and the awardholders could not see their way clear to surrender all future expectancies but would be willing to meet the Ambassador half way by surrendering 50 percent of such expectancies on awards; that this would amount to a saving to the German Government of some forty-two million dollars on its obligations to the United States, which was believed to be a very liberal concession. Dr. Paulig replied that if awards were entered by the Commission pursuant to the Munich settlement Germany's obligation would in fact be increased by eight million dollars, notwithstanding the 50 percent surrender on expectancies. He stated that under the Munich settlement the sabotage claimants were to waive all right to any future payments after the special deposit account had been exhausted. Mr. Martin observed that this statement was based upon the assumption that in the absence of such a settlement there would be no awards in the sabotage claims, and that Dr. Paulig was mistaken in thinking that the claimants by the Munich settlement waived future expectancies. He stated that this had been made very clear to the German negotiators at Munich at different times during those discussions. The Ambassador stated that he felt that his Government would not accept anything less than a complete cancellation, after exhaustion of the special deposit account, of all future rights of private claimants; that it was his view that the claims should proceed before the Commission in the regular way; that his Government felt confident that the situation had not changed since the decision of the Commission in 1930 and that the next decision, like that one, would be in favor of his Government; that any compromise settlement however worded would leave the impression that Germany was guilty of the acts of sabotage complained of and that his Government could not make such a sacrifice without a like sacrifice on the other side. Mr. Martin stated that the Commission had found that acts of sabotage had been committed by Germany in the United States but had not found that the acts here complained of had been so committed. The Ambassador stated that was the point he had in mind and that he felt that the position of his Government was impregnable. Mr. Moore remarked that the idea was to carry out the Munich arrangement and that he wondered what the Ambassador thought of the possibility of the Commission's recognizing that agreement and whether the proposed compromise settlement would not be more favorable to

Germany. The Ambassador reiterated his statement that he felt it would be better to go on with the hearing before the Commission regardless of the length of time required and take the chances of the decision going against the German Government, which he thought would not be as detrimental to his Government as an implied admission by that Government.

Mr. Hackworth inquired whether, considering the circumstances under which the Munich settlement was negotiated, i. e. that German officials had requested that we send representatives to Germany to discuss a compromise, that such representatives had been sent and an agreement reached, and considering also the fact that the claimants and awardholders were now willing to make concessions of some magnitude, his Government might not feel that it should go forward with the proposed arrangement. The Ambassador made no commitment but stated that he would promptly communicate the proposal to his Government and would advise us of the results.

Mr. Moore asked Mr. Martin to advise Mr. Morris, representing the awardholders, the representatives of the sabotage claimants, and Mr. Bonyngé of the results of the conversation.

462.11L5232/893

*The German Ambassador (Dieckhoff) to the Counselor of the
Department of State (Moore)*

[Translation]

WASHINGTON, June 19, 1937.

MY DEAR JUDGE MOORE: I have the honor to recall the interview with you last Thursday,⁵² in which you informed me, with reference to the agreement concluded on May 19th between the American award holders and the sabotage claimants, that these two groups of interested American parties are not prepared, in case of the relinquishment of the German special deposit account, to abandon their claims to the remaining balances, but are only disposed to reduce them by 50 percent.

In the name of my Government, I have the honor to advise you that it cannot consider the assumption of the great sacrifices which the settlement of the sabotage claims on the basis proposed by the sabotage claimants would require, without a full waiver by the award holders and the sabotage claimants of their claims to the remaining balances.

Please accept [etc.]

DIECKHOFF

⁵² June 17.

462.11L5232/898

The Counselor of the Department of State (Moore) to the German Ambassador (Dieckhoff)

WASHINGTON, June 23, 1937.

MY DEAR MR. AMBASSADOR: I have received your note of June 19, 1937, with further reference to the agreement concluded on May 19, 1937, between the American awardholders and the sabotage claimants, wherein you state that your Government cannot consider the assumption of the sacrifices which the settlement of the sabotage claims on the basis proposed by the claimants would require, without a full waiver by the awardholders and the sabotage claimants of their claims to the remaining balances.

I will thank you to advise me for my own information whether I can understand that if the awardholders and the sabotage claimants should be willing to waive the remaining balances, your Government would be prepared promptly to go through with the settlement without further conditions.

I am [etc.]

R. WALTON MOORE

462.11L5232/899

The German Ambassador (Dieckhoff) to the Counselor of the Department of State (Moore)

[Translation]

WASHINGTON, June 28, 1937.

DEAR JUDGE MOORE: I have the honor to confirm the receipt of your letter of the 23rd instant, in which you ask for a statement, for your own information, as to whether, in the matter of the sabotage proceedings, the German Government would be ready to carry out the agreement if the award holders and the sabotage claimants waive all their remaining balances.

As the information at hand from Berlin does not suffice to reply to this question, which is of a hypothetical character, I have submitted the content of your letter to my Government, with a request for a statement of its position. As soon as a reply on this point has been received, I shall not fail to advise you without delay of the view of my Government.

As the German Agent advises me, the Commission intends to hear a number of witnesses on July 8th and the following days, who have been summoned by the serving of subpoenas, as the date of June 22nd originally set for that purpose had to be changed. I should like to avail myself of this opportunity to remark that I am of the opinion that the hearings should by no means be postponed once more, because

a new question has been raised by your inquiry of the 23rd instant, to which a definitive answer cannot be given until after the receipt of information from Berlin; the proceedings before the Commission should, in my opinion, quietly continue to follow their [regular]⁵³ course in the meantime.

Accept [etc.]

DIECKHOFF

462.11L.5232/903

*Memorandum by the Counselor of the Department of State (Moore)*⁵⁴

Although the note of the German Ambassador of April 5, 1937, regarding the so-called sabotage claims pending before the Mixed Claims Commission, United States and Germany, has been acknowledged, in view of the present situation it seems desirable that some reference should be made to the statements therein contained, as follows:

1. That Mr. Robert W. Bonyngé, the American Agent before the Mixed Claims Commission, and Mr. Harold H. Martin, his Counsel, who were sent to Germany, did not "choose to call at the Foreign Office" but instead had their discussions at Munich with Hauptmann von Pfeffer;

2. That the Munich settlement presupposed that it was to be the first step in an energetic effort to improve the relations between the two countries; and

3. That the effect aimed at was finally to dispose of in their entirety all claims still pending before the Mixed Claims Commission, but that it has become apparent in the meantime that the presuppositions on which the settlement was based cannot materialize and reference is made in this relation to the protests lodged with this Government by the holders of earlier awards by the Commission against the outcome of the Munich discussions, which protests this Government had instructed its Agent to submit to the Commission and to acquiesce in the requests of the awardholders to be heard by the Commission.

As to the first of the numbered paragraphs it should be remarked, as has previously been explained to the present German Ambassador, that Messrs. Bonyngé and Martin did not call at the German Foreign Office for the reason that on reaching Germany they were met by a representative of the German Government, Mr. von Deichmann, and were advised by him that the negotiations would be held in Munich with Herr von Pfeffer. Messrs. Bonyngé and Martin state that they at no time received any intimation that they should call at the German Foreign Office.

⁵³ Brackets appear in the file translation.

⁵⁴ Copies of the memorandum were given to Mr. Thomsen of the German Embassy and to Mr. Martin of the Mixed Claims Commission.

As to the second of the numbered paragraphs it should be said that the correspondence exchanged between the Department of State and its Embassy in Berlin and between the Embassy and officials of the German Government makes it perfectly clear that the settlement of the sabotage claims was not in anywise to be conditioned upon the discussion or settlement of other matters. The pertinent parts of this correspondence have been filed with the Mixed Claims Commission by the American Agent.

With respect to the third of the above-mentioned points raised in the note of April 5 it should be remarked that, in view of the protests made by the awardholders against the Munich settlement, and inasmuch as that settlement required action by the Commission, it was thought only proper that the whole situation should be considered by the Commission; hence the instruction to the American Agent that he should not oppose the petitions of the awardholders to be heard. This matter, however, has now become academic in view of the recent arrangement between the awardholders and the sabotage claimants by which their conflicting interests and views have been reconciled.

WASHINGTON, July 3, 1937.

462.11L5232/909

*The German Ambassador (Dieckhoff) to the Counselor of the
Department of State (Moore)*⁵⁵

[Translation]

NEW YORK, August 10, 1937.

MY DEAR JUDGE MOORE: I beg to refer to your letter of June 23 last, in which you asked, in a hypothetical form, the question whether the German Government would be prepared to enter into a compromise settlement of the so-called sabotage claims, if the American award holders and the so-called sabotage claimants should be willing to waive the remaining balance of their claims. Upon instruction from my Government I have the honor to advise you as follows:

A compromise settlement as contemplated by the American Government as well as by the award holders and the sabotage claimants involves that the German Government would have to give up in full the share of German nationals in the "German Special Deposit Account" notwithstanding the fact that this share is considerably larger than that of American nationals. The German Government is willing, however, to consider assuming these far-reaching sacrifices provided

⁵⁵ The Department made no reply to this note. It took the position that the Drier claim was within the jurisdiction of the Mixed Claims Commission, United States and Germany, and that the Department could not judiciously take any action regarding the matter. (462.11D831/298,353)

that the American Government is ready on its part to meet the desires of the German Government in a matter directly connected with the claims settled in the proceedings before the Commission.

In the case of a compromise settlement, the distribution of the funds available in the German Special Deposit Account would result in all claims of the award holders and sabotage claimants being satisfied and all private mixed claims being finally disposed of. To the German Government it is a fundamental condition, pre-requisite to a compromise, that said effect be brought about. At the same time, however, there would no longer remain any reason for the American Government to continue withholding those portions of the property of German nationals, the return of which has been prevented since June 1934 by the Harrison Act. The German Government, therefore, must make it a further condition, pre-requisite to a compromise settlement of the so-called sabotage claims, that the American Government declares its willingness to return unconditionally and immediately to the persons entitled thereto the balance of the amount of the seized property, and to undertake, under the Harrison Act, the steps necessary for this purpose. The German Government feels certain that this proposition will find the assent of the American Government which has recognized, by the War Claims Settlement Act of 1928, the principle of the inviolability of private property and which certainly cannot desire this principle to be disregarded in respect of a very small group of German nationals, whose property for technical reasons was not returned prior to 1934.

The German Government considers it as a matter of course that, should a compromise settlement be reached, the question of responsibility will be disposed of in a satisfactory manner; it should be clearly expressed therein that the agreement is in the nature of an amicable settlement which the German Government was prepared to enter into in the spirit of good-will and reconciliation, (*aus dem Geiste . . . freundschaftlichen Entgegenkommens*) by which it has always been motivated. Everything would, therefore, have to be averted that might be construed as an admission of responsibility for the destructions or as an admission of the charge that the Commission was misled.

The German Government believes that on the basic conditions set forth above it will be in a position to enter into a compromise settlement disposing of the so-called sabotage claims and also of the claim of Mrs. Katherine McNider Drier and resulting in the final termination of the proceedings of the Commission.

In view of the involved nature of the subject-matter and in view of certain characteristics of the proceedings through which a compromise settlement would have to be carried out, it would become

necessary to clarify various points of technical nature. Furthermore, the suggestions contained in the agreement of the award holders and the sabotage claimants of May 19 last would require certain alterations in technical respects. The German Government is of the opinion, however, that it would be expedient to reserve for future discussions all of these questions which are not directly connected with its attitude on the basic issue.

Accept [etc.]

DIECKHOFF

462.11L5232/940

Memorandum by the Legal Adviser (Hackworth)

[WASHINGTON,] December 14, 1937.

Mr. Moore, Dr. Thomsen, Counselor of the German Embassy, Dr. Paulig, Agent for Germany before the Mixed Claims Commission, Messrs. Bonyngé and Martin representing the United States before the Commission, Mr. McCloy representing the sabotage claimants, and Mr. Roland S. Morris representing the awardholders, and the undersigned, conferred in Mr. Moore's office this afternoon regarding a possible settlement of the claims pending before the Commission satisfactory to the claimants and the present holders of awards against Germany. The discussions revolved around the German Embassy's note of August 10, 1937 on the subject.

Mr. Martin read a letter which had been addressed to Mr. Bonyngé under date of December 7 by the law firm of Cravath, DeGersdorff, Swaine & Wood, New York City, in behalf of the sabotage claimants and one of the same date addressed to Mr. Bonyngé by Mr. Roland S. Morris in behalf of the awardholders, copies of which letters are in the Department's files.⁵⁶ There was also read a letter⁵⁷ addressed to Mr. Moore by Katz & Sommerich of New York City with respect to two claimants who had received awards from the War Claims Arbiter.

Mr. Moore pointed out that the purpose of the conference was to explore the situation with a view to determining whether the proposals made by the claimants and the awardholders would be in substantial compliance with the suggestions contained in the German Government's note of August 10, leaving to later consideration the arrangement of details and the other conditions stated in the German note.

After some discussion of the proposed plan, Mr. Bonyngé raised the question whether it was the purpose of Germany to waive the claims of German nationals who hold awards from the War Claims Arbiter

⁵⁶ Neither printed.

⁵⁷ Not printed.

which have not been completely satisfied. It was suggested that these amounted to about \$60,000,000 and that the unsatisfied American awards are in about the same amount. Dr. Thomsen and Dr. Paulig stated that the German Government could not waive the German claims since those awards were in behalf of the individual claimants, but indicated that the most they could do would be to use their good offices if such seemed to be necessary or desirable.

Messrs. Bonyng and Martin observed that if the Deposit Account should be absorbed by the American claimants, the German nationals would have no recourse since it was understood at the time of the enactment of the Settlement of War Claims Act that the awards of the War Claims Arbiter were to be paid only from that Account.

Mr. Hackworth stated that whatever the understanding might have been at that time the fact remained that these awards were against the United States, were given by a domestic tribunal pursuant to an Act of Congress, and, regardless of whether the Deposit Account should be exhausted, would still remain in the nature of judgment against this Government. It was then suggested by Messrs. Bonyng, Martin and McCloy that if the Commission gave an award which had the effect of absorbing the Special Deposit Account, the German claimants would have nothing to say regarding their failure to participate in the distribution of the fund.

It was generally agreed that if the settlement should take that course, that is to say, an award rendered in favor of the sabotage claimants in such an amount as to exhaust the fund under the priority provisions of the Settlement of War Claims Act, the German awardholders would probably have no grounds for complaint, but Mr. Moore and Mr. Hackworth expressed the view that, in any event, so long as these awards remain unsatisfied there will be efforts made to put the United States under some obligation or duty to make payment; also, that as the situation now stands the American awardholders will be giving up some forty to sixty million dollars in expectancies while the German awardholders will be giving up nothing, but that if this is what the American claimants desire to do, there is no apparent reason why the Department should raise any objection.

Mr. Moore pointed out that whatever is done should be subject to the approval of the Commission, and that the Department's only desire is to be helpful in bringing the Commission's work to a close at the earliest possible date. It was tentatively agreed on the part of Dr. Thomsen and Dr. Paulig, subject the approval of the German Ambassador, that a further meeting should be held by the two Agents with representatives of the two groups of American claimants for the purpose of determining whether any method of settlement can be agreed upon and, if so, the working out of the details thereof.

Mr. Moore also brought up the question of the so-called late claims against Germany, referring in that connection to our unanswered notes of May 1 and July 24⁵⁸ to the German Ambassador. After some little discussion of the subject it was our understanding that we might expect a communication from the German Embassy on the subject.

GREEN H. HACKWORTH

INFORMAL REPRESENTATIONS BY THE GERMAN GOVERNMENT REGARDING DEROGATORY REMARKS ABOUT CHANCELLOR HITLER BY MAYOR LA GUARDIA OF NEW YORK

862.002 Hitler, Adolf/107

Memorandum by the Chief of the Division of Western European Affairs (Dunn) to the Secretary of State

[WASHINGTON,] March 4, 1937.

MR. SECRETARY: The Counselor of the German Embassy, Dr. Thomsen, came in this morning, and stated that under instructions from the German Government to the Embassy he desired to call the attention of the Secretary to the remarks made by Mayor La Guardia yesterday at a luncheon attended by one thousand women of the Women's Division of the American Jewish Congress at the Hotel Astor in New York.

I am attaching hereto a copy of an article from the New York *Herald Tribune* of today's date⁵⁹ reporting the remarks by Mayor La Guardia, in which he makes derogatory references to the Hitler Government and to the head of the German State.

Dr. Thomsen stated that his Government would like to know what the Secretary could do with regard to the insulting references to the German Government and the head of the German State by Mayor La Guardia.

The Counselor went on to say that participation in the New York Fair would, of course, be made very difficult in view of the antagonistic attitude of the Chief Executive of the City of New York toward the German Government and the Chief of the German State.

I told the Counselor that I would immediately report his message to you, and that I had no doubt that you yourself considered it most unfortunate that a city official should express himself in terms which might cause offense to a foreign government, and that on similar occasions you had always so expressed yourself.

Upon being informed by Mr. McDermott⁶⁰ that you had replied to inquiries on the part of the press in the matter of Mayor La

⁵⁸ Letter not printed.

⁵⁹ Not reprinted.

⁶⁰ Michael J. McDermott, Chief of the Division of Current Information.

Guardia's remarks in New York at the luncheon of the American Jewish Congress, I telephoned Dr. Thomsen of the German Embassy and told him that you had replied to these press inquiries and that you had desired me to inform him as to the general language you had used in these replies.⁶¹ Dr. Thomsen stated that he had already seen the form of the statement you had made, and that he thought it was very satisfactory and appreciated very much your prompt response to inquiries from the press in this regard. He pointed out that you had indicated in your response that you had not yet received the text of the Mayor's remarks other than as reported in the press, and had seemed to indicate that you would pursue the matter further. I told Dr. Thomsen that you would of course pursue the matter in any manner in which you properly could within the limitations of the lack of the authority which existed here to repress or control any free expression of opinion. Dr. Thomsen said he appreciated this phase of the situation, and while expressing full appreciation for what you had done, would be glad to be informed at any later time in the event that you found it possible to pursue the matter further.

Dr. Thomsen then called my attention to the fact that when Mayor La Guardia was informed by the press in New York this morning that the German Government had officially protested to the State Department regarding his remarks of yesterday, he had taken occasion to launch forth further insulting references to the German Government and its Chief of State.

J[AMES] C[LEMENT] D[UNN]

862.002 Hitler, Adolf/116

The Ambassador in Germany (DodD) to the Secretary of State

No. 3339

BERLIN, March 8, 1937.

[Received March 19.]

SIR: Confirming the Embassy's telegrams No. 40 of March 5, 1:00 p. m. and No. 42 of March 6, 1:00 p. m.,⁶² relative to the German press reaction to the speech which Mayor La Guardia of New York made before the Women's Division of the American Jewish Congress on March 3, 1937, I have the honor to transmit herewith copies of certain articles⁶³ which represent the leading attacks not only against La Guardia personally as a result of his remarks, but against the United States people as a whole. These articles are taken from *Der Angriff*, Dr. Goebbels' ⁶⁴ organ through which he undertakes officially

⁶¹ For substance of replies, see Department of State, *Press Releases*, March 6, 1937, p. 133.

⁶² Neither printed.

⁶³ Not reprinted.

⁶⁴ Joseph Goebbels, German Minister for National Enlightenment and Propaganda.

the responsibility of "public enlightenment", and from the *Völkischer Beobachter*, the medium through which Rosenberg,⁶⁵ as high priest of "kultur" and Nazi ideology, conveys his conception of human relationships.

No translations of these articles have been made as they are submitted for record purposes only, and, furthermore, summaries thereof have been telegraphed to the Department. Nor would it seem necessary to explain the statements therein made further than to add that it is to be expected that anything Mr. La Guardia might have to say regarding Germany, in view of the background of differences of opinion between him and Nazi policy, would be met by the full force of the German press ire. Indeed, such a clash would also furnish an opportunity not to be overlooked to attack his ancestry and American Jewry in general.

What does appear puzzling and totally unjustified, however, is the direct attack made in conjunction therewith against the American Government, officials, people, and institutions in general. Naturally, the relations between the United States and Nazi Germany have not been a source of complete satisfaction to the latter, and our attitude has periodically been the subject of critical pronouncements both by the press and prominent officials.

The most plausible explanations seem to be that the Nazi press cannot or will not understand that freedom of speech is a constitutional right in the United States, in contrast to the system prevalent under National Socialism, and that any official on any given occasion may not be a national or government spokesman. Such incidents also furnish means for indicating to the German public the alleged great advantages of their own form of government over true democracies. The view suggests itself, and this has been corroborated by German observers, that the stress placed on the La Guardia incident was largely for the purpose of diverting attention from the evil impression made abroad by Ribbentrop's⁶⁶ Leipzig Fair speech, particularly the passages on colonies. At the same time it has been noted that this government finds it convenient to assume, in connection with certain displeasing action taken by the British Government in the past, notably rearmament, that the British public is not always in harmony with the thoughts expressed by its own officials. Similarly, even Rosenberg went to great pains to explain that the French Communist Deputy Thorez, in a recent speech at Strasbourg when he attacked Germany, was not speaking for the French people, and it has also been noted that Hitler himself has made it quite clear that the Bolshevik government is to be distinguished from the Russian people, for whom Germany has always had great friendliness and respect.

⁶⁵ Alfred Rosenberg, Head of the Foreign Political Office of the Nazi Party.

⁶⁶ Joachim von Ribbentrop, Special Ambassador at Large for Adolf Hitler.

In any event and whatever the reason may be for such a totally uncalled for and libelous attack on the United States, one must view with amazement the language with which the attack was implemented. When one considers that this is the official language of a "new-born Germany" and reads in it a revolting contrast between the noble and cultured civilization of Goethe, Kant, Beethoven, and Dürer, with which, according to history at least, National Socialism has had but little to do, and the "gangster civilization" of the United States couched in billingsgate terminology, one may well pause to think. It may be said that at least one branch of science, still, presumably, endowed with the characteristics of culture, is being furthered by the Ministry of Propaganda and Public Enlightenment. That science is philology—even though it may be limited to philology of the invective and the obscene. There would also appear to be reason to believe that in transplanting the word "gentleman" from the original English into other languages, the connotations thereof become varied indeed.

While the Embassy cannot stress too greatly the point of difference between the German press, which is the mouthpiece of the government and represents its views, being dissimilar in presentation style and make-up only, and the American press which represents only sections and individuals, it must be said in all justice that, according to reliable information, the Foreign Office held a conference with the Propaganda Ministry on Saturday, March 6th, with a view to muzzling the *Angriff* on its American publicity. At any rate, the journalistic organ of the Foreign Office, the *Deutsche Diplomatisch-Politische Korrespondenz*, refrained from all comment on the incident. Furthermore, there has as yet appeared no press gloating over the regrets expressed by the Department in reply to the protest against the La Guardia speech.

Respectfully yours,

WILLIAM E. DODD

862.002 Hitler/102 : Telegram

The Secretary of State to the Ambassador in Germany (Dodd)

WASHINGTON, March 10, 1937—2 p. m.

15. Department's No. 13, March 5, 7 p. m.⁶⁷ As reiterated in my oral statement to the German Embassy on March 5, concerning the La Guardia remarks, copy of which was handed to the press, we have emphatically maintained our policy of conducting official relations with other nations upon a basis of complete and mutual respect for the rights and sensibilities of each other while stressing our Constitutional guarantee of the right of freedom of speech to every indi-

⁶⁷ Not printed.

vidual. Concurrently reports have been reaching us indicating the existence of a campaign of publishing vilifying statements concerning matters here in the allegedly Government controlled German press.

I consider it desirable that you seek an early interview with Foreign Minister von Neurath personally, and call his attention to the press articles as reported in your cables Nos. 40 and 42, March 5 and 6, respectively,⁶⁸ and particularly to the *Angriff* front page article reported in your cable No. 40 of March 5.

You should say that the American Government is wholly unable to account for or the American people to understand any justification for such sweeping vituperative and wholly unfounded statements and attacks upon American womanhood and American institutions in language which is probably without a parallel in its coarse and wholly indecent character and implications and which is both staggering and shocking to all decent minds. There could be no human provocation which would justify such language.

Please cable promptly details of your conversation which should be entirely oral without leaving any written memorandum.

HULL

862.002 Hitler/104 : Telegram

The Ambassador in Germany (Dodd) to the Secretary of State

BERLIN, March 12, 1937—7 p. m.
[Received March 12—3 : 20 p. m.]

45. Pursuant to your telegram No. 15, March 10, 2 p. m., I just saw Neurath⁶⁹ as in my telegram No. 44, March 12, noon,⁷⁰ and called to his attention the subject matter of the instruction in the terms thereof.

He replied that he had already on his own initiative taken the matter up with Propaganda Minister Goebbels who had thereupon, subsequent to the appearance of the *Angriff's* March 5 article, rebuked the editor. In reply to a direct question Neurath could not state that any other paper had been rebuked or that retraction had been published. By way of extenuation, Neurath insisted that the German public, incapable of distinguishing between American federal and municipal officials, had been genuinely indignant and that their reaction as indicated in the press had been "spontaneous".

While not expressing any formal regret Neurath's attitude was distinctly understanding and sympathetic. His statement regarding

⁶⁸ Neither printed.

⁶⁹ Konstantin von Neurath, German Minister for Foreign Affairs.

⁷⁰ Not printed.

Goebbels' rebuke to the *Angriff* editor may be regarded as corroborated by the fact that the press on and after March 6 played down the incident and comment was largely confined to *La Guardia* personally.

DODD

862.002 Hitler, Adolf/108 : Telegram

The Ambassador in Germany (Dodd) to the Secretary of State

BERLIN, March 13, 1937—5 p. m.

[Received March 13—3 p. m.]

46. With further reference to your No. 15, dated March 10, 2 p. m., the following translated press communiqué, the tone of which does not seem to be particularly contrite, was issued today for publication abroad only:

"The American Ambassador Dodd yesterday brought to the attention of the Foreign Office the comment of certain German newspapers on the notorious speech of the New York Mayor, *La Guardia*. As one assumes in political circles here, the reply was made to the American diplomat that the slander expressed by *La Guardia* was bound to call forth understandable general indignation in Germany. If indeed the language of certain German newspapers went perhaps a little too far, this is simply attributable to that excitement. An insult to the American nation was not intended. Moreover, one probably does not err in assuming that the attention of the American diplomat was directed to the continued spiteful attitude of a large part of the American press (not mentioned in fact) contrary to truth vis-à-vis German problems."

It is understood from the Foreign Office that there is to be no mention made of my conversation with Neurath in the German press and that this Government now considers the matter closed.

Rumors have reached me that certain American press has quoted me as giving a statement of Neurath's reply to me yesterday. These are false as I have consistently refused to comment on his attitude and I have given to the press only the substance, not to be quoted, of my oral remarks to him.

DODD

862.002 Hitler/130

The Ambassador in Germany (Dodd) to the Secretary of State

No. 3353

BERLIN, March 15, 1937.

[Received March 29, 1937.]

SIR: In confirmation of the Embassy's telegrams Nos. 40, 42, 44,¹¹ 45 and 46, and in continuation of my despatch No. 3339 dated March

¹¹ Telegrams Nos. 40, 42, and 44 not printed.

8, 1937, I have the honor to report that according to a statement made to the Embassy by the Foreign Office, the German Government, with the issuance of the press communiqué transmitted in translation in my telegram No. 46, March 13, 5 p. m., considers the La Guardia incident and its emanations as closed.

To the account of my conversation with Neurath given in my telegram No. 45 of March 12, 7 p. m., it may be added that he readily recognized the indecency of the German press language, and in deprecation of its tone, added that "If I had been writing the articles, I would have employed entirely different language and avoided any apparent slur on the American people."

Since one must identify the German press with the German Government, Neurath's remarks may be taken as another interesting indication of his position in the Government but outside the Party.

The unity of the German press in this affair is documented by the attached selection of clippings from the provincial press of March 5th, transmitted for record purposes.⁷²

With reference to the last sentence in my telegram No. 45 of March 12, 7 p. m., there is also transmitted herewith as an enclosure an article in point from the *Angriff* of March 12, 1937.⁷²

Respectfully yours,

WILLIAM E. DODD

862.002 Hitler, Adolf/122

Memorandum by the Secretary of State

[WASHINGTON,] March 17, 1937.

The German Ambassador called upon his own request at 3:00 o'clock this afternoon. He proceeded to detail and to emphasize the deep-seated feeling aroused among German officials and the German people at the utterance of Mayor La Guardia at a mass meeting in New York on the night of March 15th. He said that the particular word used by Mayor La Guardia and applied to Chancellor Hitler was unimaginably offensive in Germany and that he could not begin to describe the full significance, in its odious aspects, of this term. It is comprised of about 23 letters, mainly consonants. The Ambassador concluded with an earnest request that this Government make a strong and definite apology and offer new and special regrets, etc., etc.

I first suggested that we talk a little about the background, in a wholly individual and unofficial way, to which the Ambassador readily agreed. I then reminded him that during the last campaign President Roosevelt even was duly subjected to epithets and denunciations by numerous critics as bad or worse than any that had been expressed or uttered in this case; that the real difficulty in this instance arose

⁷² Not reprinted.

from the fact that this country had freedom of speech and of the press, while Germany had neither; that recent events had demonstrated one thing for certain, and that was, that nothing could be more unwise than for our two Governments to allow themselves to be drawn into this sort of a controversy; that my Government had defined its attitude on March 5th, in response to a similar German complaint; that that attitude was applicable now, as it would be until the mayoralty election in New York was over, provided the German Government continued to make daily or periodical complaints, and that in such event it was reasonably certain that politicians and others in New York would find sufficient epithets of increasing strength and offensiveness to continue over a period of months. I said that if the German Government desired to make itself a tremendous factor in electing high officials in the United States, it could easily do so by cooperating with politicians who were candidates for office in the manner that his Government was now proposing to cooperate—by taking serious notice of what individuals or candidates should say of an objectionable nature and coming to the United States Government with complaints; that I earnestly hoped the Ambassador could make his Government see and clearly understand this situation and the serious mistake it was making. I elaborated somewhat along these lines and indicated to the Ambassador what the President had in mind in connection with this present stage of the situation; also that the President had been directing each of these utterances and actions by the United States Government, beginning with the first German complaint on March 4th; and I added that the President, as well as myself, was deeply anxious to preserve suitable relations between our countries and our governments, but that it presented an impossible situation when the German Government took seriously every objectionable utterance of politicians and others of this country who were not under the control of the Federal Government, and then added to the repetition of such utterances by making complaints to this Government.

The statement, the substance of which I made known to the Ambassador, was virtually what I am giving out today and of which a copy is attached hereto.⁷³ The Ambassador seemed pleased with this statement and expressed himself as in accord with my ideas as to how the whole matter should be dealt with. He repeatedly said that he would do his very best to induce his Government to understand the conditions and the viewpoint which I had expressed and hence to refrain from injecting the Government into such affairs as the La Guardia affair.

C[ORDELL] H[ULL]

⁷³ For statement, see Department of State, *Press Releases*, March 20, 1937, p. 157.

862.00 Hitler/112 : Telegram

The Ambassador in Germany (Dodd) to the Secretary of State

BERLIN, March 17, 1937—7 p. m.
[Received March 17—3:25 p. m.]

50. I called at the Foreign Office this afternoon at 6 o'clock at the request of Dieckhoff ⁷⁴ who thereupon expressed the hope while fully appreciating the American principles of freedom of speech that our Government might find some means whereby La Guardia and other similar American officials and persons could be persuaded to cease their anti-German public statements and particularly to stop their depreciatory and contemptuous remarks regarding the Chancellor.

He added that Luther ⁷⁵ had been instructed to protest against certain statements made at Madison Square Garden on March 15th.

A more detailed telegraphic report follows tomorrow.

DODD

862.002 Hitler/113 : Telegram

The Ambassador in Germany (Dodd) to the Secretary of State

BERLIN, March 18, 1937—1 p. m.
[Received March 18—9:40 a. m.]

51. In continuation of my No. 50, March 17, 7 p. m. Dieckhoff seemed quite a bit troubled about the La Guardia episode and asked whether I could recommend that the President or the Secretary of State could stop the Mayor's talk about Germany and the Chancellor. I was surprised that he should ask such a question as he was Counsellor of Embassy in Washington for 4 or 5 years.

I told him there was nothing anyone could do against freedom of speech or press. Since he seemed to be speaking upon the advice of his Government contrary to his own real attitude, I referred to certain of Germany's policies and acts that had produced so much criticism in all democratic countries and emphasized the denial of religious press and university freedom; and especially stressed the kind of speeches that had been made at Nuremberg last September.

Dieckhoff did not disagree and acknowledged the effects of the Nuremberg performances. He repeated the request that I make some effort to stop La Guardia. I repeated your former statement and added: "If the German press wish to see La Guardia reelected Mayor of New York on a huge majority, they have only to continue taking notice of what he says and is free to say".

DODD

⁷⁴ Hans Dieckhoff, head of the Political Division of the German Foreign Office.

⁷⁵ Hans Luther, German Ambassador in the United States.

862.00/3663

Memorandum by the Secretary of State

[WASHINGTON,] August 5, 1937.

The Ambassador called by request before sailing for Germany for a vacation. He said he desired first to express his appreciation of the courtesies and kindnesses which he had uniformly received from everybody, and especially the officials of the Government, during his stay here; that he desired to say that German visitors to this country for one purpose or another have all expressed their same experience as to the kindness and courtesy and friendliness of the American people with whom they came in contact.

I replied that for some generations large numbers of German people came to this country and made a splendid contribution to the task of building the nation,—materially, politically and in all other respects; that they made a uniformly favorable impression, especially on the Anglo-Saxons and similar groups who were such outstanding factors in founding and building the nation. I then remarked that as to the present period, there are, of course, certain things taking place in Germany, especially as they relate to the religious strife, which do not meet with the approval by any means of everybody in this country or of any considerable number of people (in fact of people in the same country, who very radically disagree at times); that also, while more or less regional, the repercussions from the racial strife are noticeable. I added that, of course, I was not referring to the merits of any of these occurrences. I said that the more intelligent and thinking people of this country look upon these racial and religious occurrences more as a matter of temporary abnormality or the outcroppings of highly wrought-up emotions, especially in view of the past history of the German people and of our experience of old in this country; that the people here still prefer to think of his people as the German people of the days of Schiller and Goethe and of the other famous philosophers and teachers and leaders of the past, rather than in terms of what they conceive to be the temporary abnormal situation of the present day; that people here are, therefore, still hoping and believing that the old German type will reassert himself in Germany; and that, in the circumstances, I was expressing in a spirit of frankness my unqualified personal opinion as to the public mind of this country in the foregoing respects.

The Ambassador expressed his gratification for my statement and showed no disposition to take issue,—in fact, one could well have suspected that he appraised the situation in the same manner, although I am not so intimating.

The Ambassador, in commenting, said he realized that we have freedom of the press, but that he had had considerable difficulty in

getting his Government to fully appreciate all the phases of the matter. He then said that since the President was elected so overwhelmingly in 1936, with virtually the entire press of America bitterly opposing him, he, the Ambassador, was in a better position to get his views effectively before his Government. I reminded him that no person has been more bitterly attacked by the American press than the President of the United States and that the German Government might well keep this in mind in connection with our law allowing freedom of the press. The Ambassador seemed to have all of these phases clearly in mind, so that I believe he will remedy the recent practices of the German Foreign Office in taking seriously criticism of the Chancellor by individuals and newspapers of this country.

[Here follows paragraph printed as extract, *infra*.]

C[ORDELL] H[ULL]

INFORMAL REPRESENTATIONS BY GERMANY WITH RESPECT TO CERTAIN UTTERANCES OF AMBASSADOR DODD; CHANGE OF AMERICAN AMBASSADORS TO GERMANY

862.00/3663

Memorandum by the Secretary of State

[Extract]

[WASHINGTON,] August 5, 1937.

The Ambassador ⁷⁶ said he felt a delicacy in referring to a news report of today which was sent to Berlin in some form, and to an inquiry which came back to him this morning about the reported utterances at Norfolk of Ambassador Dodd,⁷⁷ who had just landed on his return from Berlin, in which utterances the German Government is reported to have been singled out and seriously criticized by the Ambassador. I replied that I had not seen any copy of the authorized statement of Dodd; that it is true he has almost an obsession on the question of peace and democracy and that on his former visits back home he has constantly called attention to the trend of the world towards more highly centralized governments; that he deeply feels that the more highly centralized a government is the stronger is the tendency against peace and towards militarism; and that he does frequently make statements on this trend of the world situation, but never, so far as I knew, singling out Germany and personating her; that I was sure he would know better, in any event, than to make a

⁷⁶ German Ambassador, Hans Heinrich Dieckhoff.

⁷⁷ In his speech of August 4, 1937, at Norfolk, Dodd made a statement to the effect that the basic objective of some of the powers in Europe was to frighten and even destroy democracies everywhere.

personal attack on the government to which he is accredited; that I said this for the reason that his whole mind is on the broad world tendencies. The Ambassador said nothing further on the subject.

C[ORDELL] H[ULL]

862.00/3668 : Telegram

The Chargé in Germany (Gilbert) to the Secretary of State

BERLIN, August 25, 1937—1 p.m.

[Received August 25—10:05 a. m.]

201. A formal invitation has been received from the Reich Chancellor addressed to the American Chargé d'Affaires to attend the Reich Party rally at Nuremberg from September 6 to September 13.

Developments in this matter since the Embassy's telegram 194, August 11, 5 p.m.,⁷⁸ have been as follows:

In conversation with the French and British Ambassadors we learn that they are both under instructions, if it could be so arranged, to attend for a minimum period and that they would obtain assurances from the Foreign Office that no untoward or embarrassing speeches or demonstrations take place during the period they are in attendance. The two Ambassadors have accepted the invitation stipulating that they will arrive in Nuremberg on the evening of September 9 and leave at noon September 11. It is understood that the program for September 10 will be a tea given by the Diplomatic Corps to the Chancellor and on the morning of September 11 some "harmless" youth parade.

From general conversations we gather that the Italian, the Japanese and the majority of other representatives including presumably all of the Latin American will accept for the whole period. I understand, however, that certain representatives including the Dutch, the Swiss and some at least of the Scandinavian will accept to arrive the evening of September 9 remaining through September 13. The invitation was accompanied by a Foreign Office *note verbale* which, in addition to general directions regarding accommodations, contains the following:

"In case any one of the Chiefs of Mission who has accepted should be unable to be present at the 1937 Reich Party rally from the beginning the compartments reserved for him in the sleeper train will, nevertheless, be held for him during the entire time. In such a case it is requested kindly to inform the Protocol Section of the Foreign Office by the 25th of this month what day he will arrive in Nuremberg".

The question has been discussed in diplomatic circles as to how it would be possible under international courtesy and usage to "limit"

⁷⁸ Not printed.

an acceptance extended by the head of state to a chief of a diplomatic mission. The note from the Foreign Office obviously solves this problem. It is clearly evident to us that the stipulation in the note which I have cited was "negotiated" by the British and French with the Foreign Office to meet that difficulty.

We have refrained from approaching the Foreign Office in any way in the matter or of discussing our possible action with my colleagues. We have, nevertheless, noted three chief preoccupations entertained by all of our colleagues who have expressed themselves in this connection :

(1) The established usage rendering it virtually incumbent upon a representative present in the country to accept an invitation from the head of a state to which he is accredited.

(2) In this case, in view of the apparently possible unanimous acceptance, a refusal on the part of a representative might place him in the position of being the sole exception or perhaps of being in the public view unwarrantably associated with some other power in such action.

(3) A refusal might invoke retaliatory action of a similar character on the part of the German representative in the state concerned.

We note the Department's desire to have us deal with the situation in the light of its local and international implications with the minimum of embarrassment to the Government (Department's 95, August 23 [19], 4 p. m.⁷⁹). Responsive to this and having in mind the preoccupations indicated above we have given the matter most careful consideration. As a result I have today transmitted a formal acceptance for the minimum period, i. e. that selected by the British and French described above. Whether any other representatives will accept under the same terms I am unable to say.

As of more general interest the British Ambassador took care to impress on us that in this he was not acting in any way jointly with the French. He asserted that while there must be solidarity with France in the West the British could not undertake common action with France in the East and that the principal fundamental policy was that all British-German relations must be independent and bilateral. Henderson⁸⁰ is now here. It is evident that this is his personal policy which he will endeavor to carry out. He nevertheless spoke of "difficulties" with London and whether this represents considered British policy may be a different matter. On the other hand Poncet⁸¹ endeavored to convey the impression that in the Nuremberg matter and by inference in a more general sense British and French policy was concerted.

GILBERT

⁷⁹ Not printed.

⁸⁰ Neville Henderson, British Ambassador to Germany.

⁸¹ André François-Poncet, French Ambassador to Germany.

862.00/3696

*Memorandum by the Chief of the Division of European Affairs
(Moffat)*

[WASHINGTON,] September 7, 1937.

Dr. Thomsen the German Chargé d'Affaires called at my office this morning. He said that he had been highly perturbed to read the press accounts of Doctor Dodd's attitude concerning the acceptance by Mr. Gilbert of Hitler's invitation to attend the Nuremberg Congress.⁸² He explained that he had as yet received no instructions on the matter from his Government but felt that he would have to make some sort of report and hoped that he might be able to prevent what he feared would be an embarrassing situation. Of course if Dr. Dodd had decided that he was not returning to Berlin it would be perfectly normal for him to speak freely, but Dr. Dodd had said that he was returning which put a different complexion on the matter. I said that as far as I knew he was returning to Berlin. Dr. Thomsen went on that speaking personally it was hard to see how he could usefully go on with his mission,—that this was not the first occasion on which he had expressed himself to the embarrassment of the Government to which he was accredited: for instance, his letter of last Spring to the Senators⁸³ was a case in point and some interviews he had given. Dr. Thomsen could not help wondering what would be our attitude if the roles were reversed and a German Ambassador accredited here refused an invitation, or even counseled the refusal of an invitation from the President, on the ground that he did not like his political views.

I replied that we had greatly regretted any publicity given in the matter of our authorization to Gilbert to attend the Nuremberg Congress; that we always worked on the theory that every one was free to give what advice he pleased on the understanding that this was confidential and that the final decision reached represented the American stand. This was the same principle followed in the British Cabinet and in many other organizations. Mr. Gilbert's acceptance of the invitation had been authorized and the basis on which the decision was reached had no outside interest. Hence the less said the sooner mended.

⁸² Ambassador Dodd is reported to have urged Secretary Hull to advise Mr. Gilbert not to accept Hitler's invitation.

⁸³ Ambassador Dodd in a letter to Senator Carter Glass in support of the President's plan to reorganize the Supreme Court cited several cases in history when the minority thwarted the majority's will. He said that there were men of great wealth in the United States who wished a dictatorship, and that there were politicians who thought they might gain powers like those exercised in Europe. There were no references in the letter to the German or any other foreign government.

Dr. Thomsen agreed but wondered whence and for what reason the information had reached the press.

The conversation then turned to the Secretary's statement of Saturday as to the undivided loyalty to the United States of naturalized Americans of German birth.⁸⁴ Dr. Thomsen said he welcomed this statement which entirely coincided with the official German point of view. He felt that it would clear the air.

PIERREPONT MOFFAT

123 Dodd, William E./187

*Memorandum by the Chief of the Division of European Affairs
(Moffat)*

[WASHINGTON,] September 20, 1937.

Dr. Thomsen, German Chargé d'Affaires called this morning on Mr. Hugh Wilson⁸⁵ at the latter's request. Mr. Wilson referred to a conversation which Dr. Thomsen had had with Mr. Moffat on September 7 in which he had inquired whether Dr. Dodd was returning to his post in Berlin. Mr. Moffat had then replied that so far as he knew Dr. Dodd was returning to his post. Since then Mr. Wilson had made various inquiries and had now learned that while it was true that Dr. Dodd was returning about October 1st it would be for a relatively short period only and that he was planning to retire early in the year.

Dr. Thomsen at once said that this would unquestionably ease a situation which was causing his government concern, and added that he assumed that he might convey this information to Berlin as official. Mr. Wilson said yes, but explained that he felt it essential that neither the Germans nor ourselves refer to any conversations being held between us on the subject of Dr. Dodd's future plans. Dr. Thomsen agreed. Mr. Wilson continued that no public announcement would be made but that he did not think the information would long be kept confidential.

PIERREPONT MOFFAT

123 Dodd, William E./182½

Memorandum by the Under Secretary of State (Welles)

[Extract]

[WASHINGTON,] October 1, 1937.

The German Ambassador called upon me this morning at my request. I told the Ambassador that I had informed the Secretary of

⁸⁴ See Department of State, *Press Releases*, September 4, 1937, p. 211.

⁸⁵ Assistant Secretary of State.

State of the conversation I had had on the steamer returning to the United States in the course of which the Ambassador had stated that he (Dodd) bore with him instructions to advise officially the Secretary of State that owing to the statement which he had made upon his arrival at Norfolk and owing to the telegram⁸⁶ he had sent protesting against the visit of Mr. Gilbert to Nuremberg at the time of the Nazi anniversary celebration, the German Government felt that Ambassador Dodd would have so difficult a position in Berlin should he return to Germany that his relations with the officials of the German Government could not be relations of confidence and friendship, with resultant detriment to good understanding between the two governments. The Ambassador had added in his conversation with me that his Government did not request the recall of Mr. Dodd but desired to make it plain that the German Government did not feel that he was *persona grata*. I further said to the Ambassador that I had told the Secretary of State of the very courteous and friendly way in which the Ambassador had told me that he did not desire to carry out these instructions and to make these representations to the Secretary of State unless Mr. Dodd were returning to Germany permanently or at least for an indefinite period as Ambassador.

I then said to the Ambassador that the Secretary of State had authorized me to let him know informally and for the confidential information of his Government that while Mr. Dodd was returning to Berlin, he was returning for the purpose of closing his mission and would in all probability leave Berlin definitely shortly after the beginning of the new year. I said there was also the possibility, although I could not make any authoritative statement in this sense, that Mr. Dodd, before leaving the United States, would let it be known through the press that he was returning to Berlin only for a short time and would retire in the not distant future.

The Ambassador expressed his very deep appreciation of our courtesy in giving him this information and said that under these circumstances he would of course make no communication whatever concerning Mr. Dodd to the Secretary of State. He said he hoped that I would permit him to say that on his recent visit to Berlin he had been very much struck at the Foreign Office with the exceedingly agreeable personal relations which existed between the Secretary of State of Foreign Affairs and the other high officials of the German Foreign Office and the French and British Ambassadors; that both of these Ambassadors had the high regard and confidence of Baron von Neurath⁸⁷ who is accessible to them at any time and that he was so interested in promoting better relations between the United States and

⁸⁶ Not found in Department files.

⁸⁷ German Minister for Foreign Affairs.

Germany that he could not refrain from expressing the belief that any Ambassador of the United States in Berlin who possessed these relations with the high officials of the German Government would be very helpful in furthering that objective.

S[UMNER] W[ELLES]

123 Dodd, William E./215: Telegram

The Secretary of State to the Ambassador in Germany (Dodd)

WASHINGTON, November 22, 1937—1 p. m.

117. The President has requested me to inform you that he desires to appoint Hugh Gibson, at present Ambassador to Belgium, to succeed you as Ambassador to Germany.⁸⁸ Mr. Gibson's biography may be found in the last edition of the Register of the Department of State. Please advise the Foreign Office immediately of the President's desire and ascertain whether Mr. Gibson's appointment as Ambassador to Germany will be agreeable to the German Government, and telegraph the Department accordingly.

The President desires me further to say that he appreciates deeply the services which you have rendered this Government during the time you have been Ambassador in Berlin.

Because of the complications with which you are familiar, and which threaten to increase, much as the President regrets any personal inconvenience which may be occasioned to you, he desires me to request that you arrange to leave Berlin, if possible, by December 15th and, in any event, not later than Christmas.⁸⁹

I should like personally to add the expression of my own regret because of the situation which has arisen and which must be solved in this manner and my own personal appreciation of the services you have rendered the Government.

HULL

123 Dodd, William E./213: Telegram

The Chargé in Germany (Gilbert) to the Secretary of State

BERLIN, January 13, 1938—2 p. m.
[Received January 13—11:10 a. m.]

12. The Chief of the American Section of the Foreign Office asked me to come to see him yesterday and showed me a number of press

⁸⁸ Mr. Gibson declined the appointment and Ambassador Dodd was succeeded by Mr. Hugh Wilson.

⁸⁹ Mr. Dodd relinquished his post and departed from Germany on December 29, 1937.

clippings, chiefly from the *London Times*, carrying accounts of statements adverse to Germany made by Ambassador Dodd upon his return to the United States.

Freytag said that in view of Mr. Dodd's position these press accounts were very distressing to the Foreign Office. He stated that while the German Government was not making any formal protest the Foreign Minister nevertheless wished Washington to know how he felt about the matter and that he hoped the American authorities could see their way clear to prevent if possible by some means Mr. Dodd employing his official stay in Germany as a basis for attacks on Germany in any speeches or publications which he might have in prospect.

I feel it also incumbent upon me to report that certain prominent Germans here have in view of these press accounts expressed to me privately their apprehensions that remarks critical of the regime which they had made to Mr. Dodd might, in some manner through inadvertence, be repeated or referred to by him which might result in subjecting them to serious difficulties.

I am sure that the Department will appreciate that the transmission of the foregoing is to me personally a most unwelcome but at the same time in my view an inescapable duty.

GILBERT

123 Dodd, William E./227

Memorandum by the Secretary of State

[WASHINGTON,] January 14, 1938.

The German Ambassador came in upon his own request. He was very prompt to say that he came on his own initiative, and without instructions, to speak very earnestly about the utterances the night before of former Ambassador William E. Dodd, in which among other things he accused Chancellor Hitler of killing as many people in Germany as were killed by Charles II. The Ambassador then launched into a very strong statement about the injury to the relations between our two governments which such an utterance would inevitably cause. The fact, he said, that Dodd had been recognized until recently as Ambassador at Berlin and of his returning here and at once engaging in such serious attacks upon Chancellor Hitler was wholly unjustifiable from every standpoint and would be given more weight by reason of his recently having been ambassador; that, therefore, he felt this Government should say that it disapproved what

Dr. Dodd had said. These are the principal points he made. It is possible that I proceeded to talk before he had reached a stage of asking for apologies and regrets, although I cannot say whether this was in his mind. I proceeded to say that, of course, regardless of what might be thought of various forms of government, including this government, we do have under our Constitution and Bill of Rights freedom of speech, from the results of which there is no recourse except under the law of libel and slander, which includes criminal liability; that we who are engaged in the public service in this country are subjected to what we often consider the most outrageous criticisms and insults; that of course the Ambassador knows Dr. Dodd and is acquainted with his ideas and his disposition to give expression to them wherever he goes; that I have very little personal or official influence with Dr. Dodd so far as I was aware, although this latter phase was neither here nor there and was not intended to be a governing or material phase of what I was saying. I then stated that Dr. Dodd, having recently resigned as Ambassador and now being a private citizen, does not in his utterances represent the views of this Government. I then inquired of the Ambassador as to how many men Charles II killed. The Ambassador replied that he did not recall. In fact, neither of us did at the moment. We were not certain that Charles II was especially notorious in this regard.

The Ambassador brought up some phase of the controversy between dictatorship and democracies and indicated his displeasure at the way this debate was being carried on. I said to him that naturally and inevitably the one supreme issue or question is whether the principles which underlie the structure of international law and order shall be preserved or whether the doctrine of force and militarism and aggression and the destruction of all international law and order should prevail; that in support of the first proposal each of the sixty-five nations alike can, with perfect consistency, join in, no matter what their form of government might happen to be. I said this program contemplates that the road to permanent peace is based upon these principles which in turn rest upon the solid foundation of economic restoration.

C[ORDELL] H[ULL]

[With reference to this conversation, in reply to a question at the press conference on January 14, 1938, the Secretary stated again that Mr. Dodd was a private citizen and that his remarks did not represent the views of the Government.]

DISCUSSIONS WITH THE GERMAN GOVERNMENT REGARDING RIGHT
OF CONSULAR OFFICERS TO CORRESPOND DIRECTLY WITH AU-
THORITIES ON CERTAIN PROTECTION MATTERS

362.1121/20

The Ambassador in Germany (Dodd) to the Secretary of State

No. 3155

BERLIN, November 20, 1936.

[Received December 4.]

SIR: I have the honor to call the Department's attention respectfully to a point of procedure in the relations between American Consular officers and certain German officials, which has been raised by the Foreign Office in a note dated November 5, 1936. A copy and translation of the note, together with two enclosures, are transmitted herewith.⁹⁰

The facts in this case appear to be as follows:

In complying with a circular instruction from the supervising Consul General in Berlin,⁹¹ the Consular officers at Dresden and Bremen addressed communications to the "Sächsische Stattskanzlei in Dresden" (State Chancery of Saxony at Dresden) and "Oberstaatsanwalt, Oldenburg" (Chief Attorney-General, Oldenburg) respectively, in which they requested the names and other information regarding all American citizens who might be sentenced or imprisoned in their districts. It appears further that these communications were not answered but were referred to the Foreign Office and the note mentioned above was the result.

The Foreign Office transmits copies of the communications of the Consular officers mentioned with the suggestion that "as in the opinion of the Foreign Office these inquiries do not seem suited for direct business communications between an American Consular representative and the supreme authority of a State, they be presented through diplomatic channels", the term "State" applying not to the German national State but to the "Gau" or provinces of Saxony and Oldenburg. The individual or office addressed in these instances may be considered as national in the sense that according to the administrative organization of Germany at present practically every official or organization having to do with German government is national in character.

The important point is whether or not Consular officers, in the pursuit of their duties in protecting American citizens, should be required to address themselves to German authorities via the Embassy and the Foreign Office, with the possible exception of the local police and a few minor local officials. (It would be interesting to know the precise distinction which is made).

⁹⁰ Not printed.

⁹¹ Douglas Jenkins.

Reference is made to the provisions of the Treaty of Friendship, Commerce and Consular Rights dated December 8, 1923, Article 21,⁹² a portion of which reads as follows:

"consular officers, nations of the state by which they are appointed, may, within their respective consular districts, address the authorities, national, state, provincial or municipal, for the purpose of protecting their countrymen in the enjoyment of their rights accruing by treaty or otherwise."

The above provisions were brought to the attention of the Embassy in the Department's telegram No. 129 November 14, 6 p.m., 1934,⁹³ in connection with the desire of the American Consul General in Berlin to communicate with the Undersecretary in the Prussian Ministry of Justice regarding the Steele and Roiderer⁹⁴ cases. In this telegram the Department pointed out that the treaty stipulations do not provide for proceeding through the diplomatic representative. At that time apparently the Embassy's discussion of the matter with the Foreign Office resulted in the Embassy's telegram No. 216 of November 15, 12 noon, 1934,⁹⁵ which outlined the conversations, and requested instructions from the Department on the point as to whether or not a protest should be made against the refusal of the authorities to permit the Consul General to communicate with the official mentioned. No instructions were received.

The case outlined is similar to the one now under consideration except that the official with whom contact was desired at that time was probably more national in character than those in the provinces with whom Consular officers now desire to communicate.

Apparently the Foreign Office does not question the specific treaty rights of Consular officers in this regard. It does however question the procedure, and the procedure is not specifically set forth in the treaty. In other words, whereas the United States Government might well assume from the wording of the treaty that Consular communication may be made directly, the German interpretation apparently now presupposes communication via the mission in certain important cases. Such an attitude is intensified by increasing centralization in administrative matters and furthermore, there is always the formalistic viewpoint of the German Foreign Office to be considered.

From various inquiries among our diplomatic colleagues, it appears that the general disposition at the moment is to place the protection of individuals as much as possible in the hands of the diplomatic missions, which, after cases have been prepared by Consular officers, may take them up with the Foreign Office. Such disposition appar-

⁹² *Foreign Relations*, 1923, vol. II, pp. 29, 41.

⁹³ Not printed.

⁹⁴ Isabel Steele and Richard Roiderer, American citizens, arrested in Germany and charged with spying.

ently makes for quicker and more effective action. At the same time the Consul General, with whom the matter has been discussed, feels that it is quite important that no right provided by treaty or otherwise should be foregone, especially in view of the conditions existing in Germany at present, and the Embassy is naturally in total agreement.

It would be of assistance in connection with any discussions which the Embassy may find necessary with the Foreign Office regarding these Consular rights, to be informed as to what American national and state authorities German consular officers are permitted to correspond with directly and without question as a treaty right, such as United States District Attorneys, Governors, et cetera, in the pursuit of their protection duties, and if the Department feels that the German Government's position is untenable, to authorize the Embassy to suggest, if necessary, the possibility of imposing similar limitations on German consular officers in the United States.

The matter is therefore placed before the Department with the request that the Embassy be instructed specifically as to its attitude and/or action and that such instruction be transmitted telegraphically.

Respectfully yours,

WILLIAM E. DODD

362.1121/20 : Telegram

The Acting Secretary of State to the Ambassador in Germany (Dodd)

WASHINGTON, December 23, 1936—7 p. m.

152. Your despatch No. 3155 of November 20. The Consul General's cable of November 16, 3 p. m. (1934)⁹⁵ indicated that the Under Secretary in the Ministry of Justice had promised to receive him and it was then deemed unnecessary to supplement instruction No. 129 of November 14, 6 p. m. (1934).⁹⁵

In view of the recent communication from the Foreign Office you are now directed to hand to the appropriate Foreign Office official a third person note incorporating therein the following:

"In the *note verbale* from the German Foreign Office to the American Embassy at Berlin dated November 5, 1936, referring specifically to two communications from American Consular Officers to German State Officials within their respective consular districts, it is submitted by the Foreign Office 'that as in the opinion of the Foreign Office these inquiries do not seem suited for direct business communications between an American consular representative and the supreme authority of a State, they be presented through diplomatic channels.'

"Article 21 of the Treaty of Friendship, Commerce, and Consular Rights between the United States and Germany signed December 8,

⁹⁵ Not printed.

1923, specifically states: 'Consular officers, nationals of the state by which they were appointed, may within their respective consular districts, address the authorities, National, State, Provincial, or Municipal, for the purpose of protecting their countrymen in the enjoyment of their rights accruing by treaty or otherwise'.

"Since no treaty stipulations are required to enable consular officers to communicate through diplomatic channels, application of the procedure submitted by the Foreign Office in its communication to the Embassy would render illusory the specific treaty stipulations and in the circumstances it would appear that the necessary steps should be taken to the end that the appropriate German officials may be advised of the propriety and stipulations under the Treaty of their receiving inquiries addressed to them by American consular officers."

In your conversation at the Foreign Office, you should bear in mind the considerations expressed on pages 4, 5, and 6 of instruction No. 696 of November 24, 1936.⁹⁶

You may mention that there appears to be no record in the State Department of any complaint having been received to the effect that German consular officers in the United States have had difficulties in addressing American state and federal authorities regarding the protection of the rights of their countrymen in accordance with the treaty stipulations but should such an instance arise, this Department would be glad to be informed of the complaint and to point out the pertinent treaty stipulations to the appropriate American authorities.

Please cable developments.

MOORE

362.1121/22

The Ambassador in Germany (Dodd) to the Secretary of State

No. 3282

BERLIN, February 1, 1937.

[Received February 9.]

SIR: I have the honor to refer to the Embassy's despatch No. 3155, of November 20, 1936, and the Department's telegraphic instruction replying thereto, sent via London, No. 152, of December 23, 7 p. m., regarding a note from the Foreign Office dated November 5, 1936, which calls attention to certain communications addressed to German authorities by American consular officers requesting information relative to American citizens in their districts who might be in prison or under arrest, and states that as such communications do not seem suited for direct address to the supreme authority of a State they be presented through diplomatic channels. Reference is also made to the Embassy's telegram No. 21, of January 29, 6 p. m.,⁹⁶ giving the

⁹⁶ Not printed.

Department a digest of a further note from the Foreign Office dated January 22, 1937,⁹⁷ in reply to the Embassy's note of December 29, 1936,⁹⁸ based on the instructions of the Department telegraphically transmitted, as noted above.

Further details in the case are as follows:

At the time the Embassy's note was handed to the appropriate Foreign Office official, the matter was discussed at length, keeping in mind the consideration expressed on pages 4, 5 and 6 of instruction No. 696 of November 24, 1936,⁹⁷ as well as the attitude of American authorities in similar cases arising in the United States.

At that time the official in question expressed the opinion, later brought out in the official reply, that the German Government did not question the right of Consular officers to discuss individual cases with any authority in their respective districts, but that questions of a general character involving matters of policy or those having some "fundamental significance" could not properly be put, he thought, by Consular officers. He did not wish to go into details on the point until the Embassy's note had been studied, and he added that the reply which would be made might not embody the same opinion. In view of this attitude, the case was not argued, but an endeavor was made to impress him with the thought that the inquiries in question did not appear to involve any consideration whatever except a desire on the part of the Consuls to carry out their normal protection duties in accordance with their rights as specifically set forth in the Treaty.

The opinion of the Foreign Office as expressed in its last note, dated January 22, 1937, copy and translation of which are transmitted herewith, seems to call for certain observations.

In the first place, and apparently for the first time since the signing of the Treaty of 1923—and perhaps even before—a distinction is being made by the Foreign Office as regards direct communication between Consular officers and German authorities on matters involving the "discussion of individual cases" and those which may involve questions of policy having some "fundamental significance". Such classification or distinction, especially in view of the rather broad terms of the Treaty provisions, is not entirely clear.

Second, with a view to determining, if possible, any reasonable grounds on which such an interpretation might be made, the Consular inquiries questioned were again carefully studied. It may be noted that in the case of the letter addressed by Consul General Thomson at Dresden, dated October 5, 1936, to the State Chancery of Saxony in Dresden, he requested (in translation) that "the Consulate would further very much appreciate being informed of any

⁹⁷ Not printed.

⁹⁸ Not found in Department files.

arrest or sentence of an American citizen in the future." It is possible that exception might be taken to such a request, inasmuch as neither by Treaty provision nor under international law, comity, etc., would it appear incumbent upon the authorities of the receiving state to notify Consular representatives of the sending state of the arrest or detention of one of the latter's citizens; the duties of the receiving state's authorities would seem to begin only when the arrested citizen requests permission to communicate with his Consul.

"Incommunicado", which throws the responsibility on the receiving state's authorities, begins only when such a request is refused. If the matter is viewed in this light it might be possible to question not only the specific request mentioned but the general tenor of both of the Consular letters involved in this case, and they therefore could be regarded as inappropriately endeavoring to place a responsibility and a duty upon German authorities. In other words, if the Consul does not have direct knowledge of any and all citizens under arrest in his district it might be presumed that it is because certain of the arrested individuals have not requested that he be informed. This might at least be the theory of such a line of reasoning, and such a theory takes on material form when it is remembered that a discussion of "individual cases" is not questioned, the presumption therein being that the Consul has been informed previously.

Third, it is possible that some political consideration is being read into these Consular inquiries. The present day situation in Germany—much different from that in 1923 when the Treaty was signed—has led practically every other country to look askance at Germany's methods of justice, and, in turn, it has developed a psychology in the average German official which leads him to look with suspicion on every inquiry touching upon those methods. The "fundamental significance" may therefore involve, in the opinion of the Germans, matters such as a desire to check up on concentration camps, isolation, lack of faith in German penal systems, and, in general, an unnecessary prying into the activities of the German secret police.

In an endeavor to obtain as much light as possible on all angles to the question, the Embassy has consulted several diplomatic colleagues in connection with the "opinion" of the Foreign Office. It appears that as far as the British Embassy is aware, none of their Consular officers had addressed provincial authorities with protection questions except in individual cases. The British Service does not operate on treaty arrangements. On the other hand, a treaty of Consular Rights exists between Germany and France, according to which, apparently, a distinction is made between purely civil and criminal cases under the heading of "état civil" and cases involving political considerations. A French Consular officer recently inquired into an

individual case which the German authorities seemed to consider as having political angles, and the inquiry was promptly referred to the Foreign Office which, in turn, took it up with the French mission. After this case was submitted to Paris, the Embassy itself was instructed to approach the German Foreign Office informally for whatever data was needed. According to this information our treaty stipulations relative to Consular Rights are textually stronger than those of the French, but the matter is mentioned for whatever assistance it may be in judging as to the merits of the case in hand.

It is true that the German-American treaty does not specify that consular communications with the authorities mentioned "for the purpose of protecting their countrymen" shall be limited in any manner whatsoever. Furthermore, if the German Government desires to take upon itself the prerogative of deciding in a given instance upon the method and manner of procedure thereof, then the German Government might be considered as assuming to determine how American officials should carry out their duties in this regard. Nevertheless, it is possible that the mere fact that the prerogative is not more closely defined, the stipulation could be interpreted to apply only to specific or "individual cases", and that questions wherein general information is desired, for example, for the United States Government (see Consul Benton's letter), could be considered only when taken up through diplomatic channels.

This matter has been dwelt upon in some detail, not only because it is considered important, but with a view to assisting the Department as far as possible in determining the attitude it may adopt in the future.

Any instructions deemed necessary as a result of information herein contained will be awaited with interest and will, of course, be closely followed.¹

Respectfully yours,

WILLIAM E. DODD

INFORMAL REPRESENTATIONS REGARDING WARNING BY THE GERMAN GOVERNMENT TO AMERICAN MOTION PICTURE PLAYERS AGAINST ACTING IN PICTURES DECLARED INIMICAL TO GERMAN INTERESTS

811.4061 Road Back/4

Memorandum by the Chief of the Division of Western European Affairs (Dunn)

[WASHINGTON,] April 19, 1937.

At my request the Counselor of the German Embassy, Dr. Hans Thomsen, came in this morning. I showed Dr. Thomsen the orig-

¹ No further instructions were given.

inal of a letter which had been sent by the German Consul in Los Angeles, Mr. George Gyesling, to about sixty members of the cast of "The Road Back" now being made in Hollywood. This letter of the German Consul, which he states is written under the direction of the German Government, calls the attention of the individual actors in the cast to the German law which states that any film in which an actor has participated who has previously taken part in a film which has been declared inimical to German interests, may not be granted a permit for exhibition in Germany.

I told Dr. Thomsen that this matter had been brought to our attention, that I had discussed it with the Secretary and with Mr. Hackworth² and Mr. Ralph Hill³ and that I had been directed to call the matter to the attention of the Embassy here.

I asked Dr. Thomsen whether it was true that the Consul in Los Angeles was acting under the direction of the German Government in writing this letter to the individual actors of the cast. He said that that was true. I then told Dr. Thomsen that I was sure he would agree in our opinion that the writing of such a letter to individuals in this country was to say the least highly inadvisable and furthermore, in my own opinion, it was an activity which we decidedly did not approve. The question of the availability of the film for admission into Germany was a matter entirely between the German Government and the film producing company. As far as the actors were concerned, if the Consul were asked for any information with regard to their participation in the film or the effect such part might have upon any possible future career in Germany, it was perfectly legitimate for a foreign Consul to give advice to such inquirers with regard to the laws obtaining in his own country. I went on to say, however, that the addressing of letters to individual actors with regard to activities those Americans were carrying on in this country and which had nothing whatever to do with nor any connection with Germany as far as their present activities are concerned was entirely uncalled for and was not within the proper functions of a foreign consular officer.

Dr. Thomsen said that he himself, when he saw the instructions of his Government along these lines, had questioned the correctness of such procedure and had in his own mind considered the effect of what a similar action by American Consuls in Germany would be. He then brought up the matter of what our Customs Inspectors and Treasury representatives carry on in foreign countries. I immediately pointed

² Green H. Hackworth, Legal Adviser.

³ Assistant to the Legal Adviser.

out that this was not a similar case as the activities of the Customs and Treasury investigators with regard to cost investigations in foreign countries were never carried on without the consent of the Government of the country in which they are operating. He admitted this to be the case and said that he thought it would be well to refer the whole matter to Berlin and obtain the attitude of his Government with regard to such activities. I said that this was exactly what we wanted done and that we would consider the whole matter to have been discussed only through this informal approach, which I had made to the Counselor here, and that until we had heard further from him we would take the position that we are looking into the matter and that my conversation with him was not considered to be a protest but was rather to be considered as calling the attention of the Embassy to the Consul's activities and desiring to have an informal discussion of the matter in the hope that we might avoid any necessity for taking it up in a more formal manner.

He asked if it could be understood therefore that this would not be considered a protest for the moment and that if the Secretary were asked anything about the matter in the meantime, until he had been able to report further to me, that the Secretary might say that the Department was looking into the matter of these letters which had been called to its attention. I said that I felt sure the Secretary would be glad to conform to that explanation of the part the Department had taken in the situation up to the present.

J[AMES] C[LEMENT] D[UNN]

811.4061 Road Back/13

The German Ambassador (Dieckhoff) to the Under Secretary of State (Welles)

WASHINGTON, June 9, 1937.

MY DEAR MR. SECRETARY: With reference to the conversation which we had yesterday, I should like to point out that, as soon as the talk between Messieurs Dunn and Thomsen had taken place on April 19, my predecessor Dr. Luther instructed the German Consul in Los Angeles to refrain from issuing further warnings to American citizens in connection with the production of plays which we regard as unfriendly towards Germany.

I now take pleasure in informing you that my Government fully endorses the instruction given by my predecessor and, consequently, I hope we may consider the incident as satisfactorily settled.

Believe me [etc.]

DIECKHOFF

REPRESENTATIONS IN BEHALF OF HELMUT HIRSCH, AN AMERICAN
CITIZEN SENTENCED TO DEATH IN GERMANY

362.1121 Hirsch, Helmut/14 : Telegram

The Secretary of State to the Ambassador in Germany (Dodd)

WASHINGTON, April 21, 1937—6 p. m.

31. Your number 77, April 20, 4 p. m.⁴ Investigation shows that Helmut Hirsch is an American citizen. You are authorized to communicate this information to the German officials, and do whatever is possible to prevent any injustice to the party.

HULL

362.1121 Hirsch, Helmut/29

*Memorandum by the Special Assistant to the Secretary of
State (Dunn)*

[WASHINGTON,] April 26, 1937.

Acting under the Secretary's instructions, I called upon the German Ambassador yesterday (Sunday) morning at 10 a. m., with regard to the case of Helmut Hirsch, who is now under sentence of death in Germany as a result of conviction on a charge of treason and the use of high explosives in an attempt against the lives of high German officials. The Counselor of the Embassy, Dr. Hans Thomsen, was also present with the Ambassador, Dr. Luther explaining to me that as he was leaving Washington within a few days he had Dr. Thomsen present in order to provide for any future discussions of the case which might arise.

I stated to Dr. Luther that the Secretary had asked me to come to see him in order that the German Embassy here might be informed of the Secretary's views regarding the Hirsch case. I said that we had been in communication with our Embassy in Berlin which in turn had taken the matter up with the German authorities but that the Secretary also desired Dr. Luther and the Embassy here to be kept currently informed.

I explained to the Ambassador that although Helmut Hirsch's grandfather, Salomon Hirsch, and his father, Siegfried Hirsch, and he himself had continuously claimed American citizenship, there had been complications arising from various phases of their claims for nationality which had required a very thorough and painstaking investigation both here and abroad in order to determine whether Helmut Hirsch, the young man now under sentence to death, was en-

⁴Not printed.

titled to American citizenship and the protection and assistance of this Government as such a citizen. I said that unfortunately it had not been possible to arrive at the definitive conclusion with regard to his nationality until a few days ago when the Department had decided definitely that Helmut Hirsch was entitled to American citizenship. This decision was reached after Hirsch's trial and after sentence upon him had been passed; that immediately upon reaching this determination of his citizenship, the Department had taken steps to inquire through our Embassy in Berlin as to the nature of the charges which had been brought against Hirsch and had sought and obtained an interview with him. I stated to the Ambassador that the objective of my visit was to explain the nature of the delay in our Government's entering the case and to ask him, in the event of his feeling disposed to do so, to convey these explanations to the German Government and to ask that any final action or disposition of the case be postponed for sufficient time to permit the Secretary to inform himself of all of the facts connected with the case and to communicate with the German Government in the premises. I further said that we had been informed that Hirsch's legal counsel had presented a plea for clemency which we understood could only be acted upon by the Reichschancellor and that our Embassy in Berlin already had instructions to support the German counsel in his plea for clemency. I stated that if the Ambassador also felt so disposed, we would be glad to have him transmit to his Government our hope that Hirsch's plea for clemency be granted, thus paving the way for a commutation of the sentence.

The Ambassador treated me with every consideration in receiving me thus on Sunday morning and in listening to the statements and explanations I made to him. Upon my having delivered this message from the Secretary to him, he stated that in his opinion this case, although he was without any information on it directly from his Foreign Office, was one related to the commission of a crime for which the punishment provided by German law was extremely severe. He said that the law providing for such punishment was not new but had existed for many years in Germany; he said that, according to his information, the punishment for a similar crime in this country would be equally drastic and severe just as it would in many countries. He also referred to the Hauptmann case and recalled that although the German Embassy and authorities had followed closely every phase of the arrest, trial and conviction of Bruno Hauptmann, the man who was convicted of implication in the kidnapping of the Lindbergh baby and executed therefor, they had after due deliberation decided not to make any representations whatever as they considered the matter to be one of due process of law following the commission of a crime against the laws of this country.

The Ambassador stated that he would be very glad to transmit immediately to Berlin the Secretary's representations as conveyed by me.

JAMES CLEMENT DUNN

362.1121 Hirsch, Helmut/17 : Telegram

The Ambassador in Germany (Dodd) to the Secretary of State

BERLIN, April 26, 1937—3 p. m.

[Received April 26—11:55 a. m.]

85. Our 84, April 24, 3 p. m.⁵ We have just sent the following note to the Foreign Office:

"The Embassy of the United States of America has the honor to inform the Ministry for Foreign Affairs that an American citizen, Mr. Helmut Hirsch, has been condemned to death by the Peoples Court for preparation [*perpetration?*] of an act of high treason.

The crime for which the Embassy is informed this young man has been convicted is of a most reprehensible nature and there can be no sympathy for acts of this character. Quite apart from the foregoing the Embassy acting as representative of the Government of which Mr. Hirsch is a citizen considers it proper to invite the Ministry's attention to the fact that Mr. Hirsch was only in his 20th year and may well have been misled by older and more experienced minds whose influence may have been primarily responsible.

In all these circumstances the Embassy ventures to hope that the Ministry may feel that this constitutes a basis for the exercise of Chancellor's gracious clemency."

We have taken this action after as careful consideration of the circumstances and as complete an inquiry into the situation as time permits. We were told this morning that any effort towards clemency should be made at once.

We are of course not giving out to the press the text of this note and in reply to any questions they may put we expect to confine ourselves to the statement that we have brought certain humanitarian aspects to the attention of the Foreign Office with a view to consideration of clemency.

DODD

362.1121 Hirsch, Helmut/18 : Telegram

The Secretary of State to the Ambassador in Germany (Dodd)

WASHINGTON, April 26, 1937—5 p. m.

38. Your 84, April 24, 3 p. m.⁵ The action taken thus far in the Hirsch case by the Embassy and Consulate General is approved and

⁵ Not printed.

we are watching with interest the further developments you may report.

The lawyer for Hirsch's relatives here called at the Department today and expressed appreciation on the part of the family for the action taken in behalf of Hirsch. We might add confidentially that the lawyer stated that he has an idea that Hirsch is a fanatical idealist. You might consider the expediency of suggesting an examination of Hirsch to determine whether he is in a normal state of mind. The lawyer stated that he could give assurances that Hirsch's family and friends here are doing all they can to prevent the case from being made a cause for public clamor. There have been so far no instances of any undue exaggeration here of the reports of developments in connection with the case.

I took occasion yesterday to convey to the German Embassy here an explanation of the reason for the delay in our entering the case caused by the necessity for a thorough investigation here and abroad of the complicated circumstances surrounding the question of American citizenship involved and expressed the hope that no further action would be taken by the German authorities until we had had an opportunity to obtain all the facts in the matter, that you were being instructed to support the plea for clemency presented by Hirsch's counsel and the hope that the German Ambassador would feel disposed also to support this plea with his own Government. I desire you to support to the fullest extent you properly may the plea for clemency presented by Hirsch's counsel.

HULL

362.1121 Hirsch, Helmut/19: Telegram

The Ambassador in Germany (Dodd) to the Secretary of State

BERLIN, April 27, 1937—5 p. m.

[Received April 27—1:10 p. m.]

89. Our 85, April 26, 3 p. m., and Department's 38, April 26, 5 p. m. Following up our note to the Foreign Office we discussed the matter with them again this morning bringing to their attention Hirsch's excellent past record, the fact that he was not a Communist and that there was every indication of his being strongly influenced by agitators in Praha to the point of being their tool. Meanwhile the Consulate General at our instance is taking similar steps with the Ministry of Justice.

The Foreign Office as always evidences a sympathetic and helpful attitude. We noted, however, a pessimistic impression this morning on their learning from the German Embassy at Washington that

Simpson⁷ had been lecturing in the United States in a fashion derogatory to the German Government. Simpson's action may prevent an exercise of clemency of which in our opinion there was otherwise a fair chance. It would be helpful for us to learn that Simpson had abandoned any such activities.

Both the Consulate General and ourselves doubt the desirability of suggesting an examination of Simpson [*Hirsch?*] to determine whether he is in a normal state of mind. Geist,⁸ who saw the prisoner, felt there was no foundation for such action. Both he and ourselves also believe that it would not be wise as we feel that the general humanitarian plea is the only one which could have a chance of success. Furthermore, the Department may observe in our note to the Foreign Office (Embassy's telegram 85, April 26), that we did not mention Simpson's [*Hirsch's?*] own plea for clemency. This was done purposely on what we consider the best advice, the idea being that the American Government should take action entirely on its own.

DODD

362.1121 Hirsch, Helmut/46: Telegram

The Ambassador in Germany (Dodd) to the Secretary of State

BERLIN, June 1, 1937—noon.

[Received June 1—9: 10 a. m.]

123. Referring to my telegram No. 120, May 29, 6 p. m. and 21 [121], May 31, 11 a. m.⁹ An interview yesterday with von Neurath¹⁰ revealed the fixed purpose of Hitler to execute Hirsch in a day or two and to publish evidence afterwards. I reminded him that Hirsch was an American citizen and that public opinion would be affronted by an execution of one who had not been caught actually endeavoring to commit the crime charged; and I emphasized the wisdom of published evidence before conviction and of moderate treatment of a 20 year old fellow who had not performed the act that was charged. I stressed the fact that our State Department had kept the press quiet for a month and that the press people here had also reported none of the conflicting stories which had come to them from Praha. Neurath said there was no hope even though it involved German-American relations but he promised to report my conversation to the Chancellor to whom I had made appeal on April 30th. There is a possibility of a few days delay.

DODD

⁷ For correspondence on the Simpson case, see *Foreign Relations*, 1936, vol. II, pp. 291 ff.

⁸ Raymond Geist, Consul at Berlin.

⁹ Neither printed.

¹⁰ Konstantin von Neurath, German Minister for Foreign Affairs.

362.1121 Hirsch, Helmut/48: Telegram

The Secretary of State to the Ambassador in Germany (Dodd)

WASHINGTON, June 1, 1937—5 p. m.

52. Your telegrams 120, 121¹¹ and 123. We fully approve your actions and trust that you will continue to exert every effort to secure commutation of sentence. The matter is being kept confidential here.

HULL

362.1121 Hirsch, Helmut/50: Telegram

The Ambassador in Germany (Dodd) to the Secretary of State

BERLIN, June 2, 1937—6 p. m.

[Received June 2—2:45 p. m.]

126. Department's 52, June 1, 5 p. m.; and Consul General's telegram of 5 p. m. today¹² stating that Hirsch execution is set for Friday morning, June 4.

I have had no word from Neurath to whom I wrote this morning recalling our conversation of May 31 (see first paragraph my 125, June 2, 11 a. m.¹²) I have also seen Staatssekretaer Meissner with whom I had had previous communication on the subject. He has promised to see Hitler in the morning and place before him the international aspects of the matter. Meissner will communicate with me afterwards.

As a last resort you may wish to call in Dieckhoff¹³ at once and explain to him the desirability of a commutation of sentence. Hirsch would be the first American executed under the National Socialist political legislation and with the exception of Vanderlubbe (of Reichstag fire fame) the only foreigner as far as we know.

While naturally it is a matter for your judgment whether to limit yourself in conversation with Dieckhoff to humanitarian and international aspects, you may wish to refer to the fact that we have not seen the evidence in the case.

DODD

362.1121 Hirsch, Helmut/52: Telegram

The Secretary of State to the Ambassador in Germany (Dodd)

WASHINGTON, June 2, 1937—6 p. m.

53. Your 125, June 2, 11 a. m. and Jenkins June 2, 5 p. m.¹¹ Delay would of course not be a solution but is imperative to permit further

¹¹ Neither printed.

¹² Not printed.

¹³ Hans Dieckhoff, German Ambassador in the United States.

efforts in his behalf. Continue every practicable effort to secure commutation or at least stay of sentence and communication to you of the evidence for consideration by the Department.

HULL

362.1121 Hirsch, Helmut/54 : Telegram

The Ambassador in Germany (Dodd) to the Secretary of State

BERLIN, June 3, 1937—6 p. m.

[Received June 3—2:38 p. m.]

129. Department's 54, June 2, 7 p. m.¹⁴ Every possible effort has been made to prevent execution. Secretary Mackensen reported to me at 5:30 that von Neurath had advised the Chancellor on Tuesday morning that Secretary Meissner had done the same this morning and had repeated my advice against execution this afternoon. All in vain; no attention paid to our Government's wishes. The man is to have his head chopped off tomorrow morning at sunrise. No evidence has as yet been given to us.

DODD

362.1121 Hirsch, Helmut/56

Memorandum by the Secretary of State

[WASHINGTON,] June 3, 1937.

The German Ambassador called upon my invitation in order that I might make a final appeal to him and his government either for a commutation of the death penalty imposed upon Helmut Hirsch, who is sentenced to be executed in Berlin on tomorrow, June 4, 1937, or, to secure a delay of the execution in order that this government might have an opportunity to become more fully acquainted with the record in this case. I rested my appeal on several grounds, but on two in particular,—first, the youth and inexperience and highly nervous and emotional temperament of Hirsch, and, second, that the penalty is unusually and unnecessarily severe. In the event of adverse action on this appeal for clemency, the request was repeatedly emphasized for a delay in the execution for the purpose aforesaid. I emphasized my view at the outset that, of course, the German Government has the fullest and unquestioned right and privilege to enact and administer its own laws pertaining to its security and safety; that it is not my purpose to make any unreasonable request in the instant case or a request that would in the least interfere with the proper course of security and justice as administered by the German Government. I

¹⁴ Not printed.

emphasized also the righteous condemnation I and my government feel towards deliberate criminals who thus deliberately plot or conspire to injure a government; and that it is in the light of all the circumstances and facts, to the extent that they are known to me, and of this feeling that I ventured to make this final appeal to the German Government. I need not elaborate the numerous detailed statements intended to support my appeal.

The Ambassador said that he is thoroughly familiar with the case; that it had been up before he left the Foreign Office recently to come to Washington. He said that Hirsch is a very intelligent person; that he deliberately associated himself with an organization in Prague which had for its purpose the destruction of the German Government from beyond the boundaries of the latter; that he deliberately brought from Prague to Stuttgart a valise filled with dynamite and other explosives; that he had freely admitted his purpose was to use these explosives in blowing up government buildings and injuring government officials; that he was given a fair trial by a thoroughly competent and properly conducted court; that to this date he has admitted his guilt on all occasions; that the law he violated prescribes the offense of treason and makes it a capital offense; and that he, the Ambassador, sees no reasonable occasion or opportunity for further favorable action by the German Government; that if anything at all could be done it would be more effectively come through contacts with the German Government by the United States Embassy at Berlin.

The Ambassador then reverted to the recent case of the American communist Simpson, who was pardoned upon the request of this Government, and who since has been busy traveling over this country denouncing the German Government; that, therefore, it is more calculated to hurt than to help relations between the two countries for deliberate criminals to be pardoned and set free. He also referred to the Hauptmann case, in which the latter, a German citizen, was tried in our courts and executed without complaint by the German Government. I offered some comment to the effect that the cases and the situations were very different and that, of course, whatever could and should properly be done in the instant case should be governed solely by the facts and circumstances of this case alone. It is due the Ambassador to say that he cited these cases in reply to some remark of mine to the effect that world conditions and relations are very unsettled and peoples are on tenterhooks in many respects, so that it would not in the least contribute to the improvement of these relationships among nations to have a secret trial and conviction and execution without the other government interested being given a chance at least to become familiar with the entire record.

C[ORDELL] H[ULL]

862.1121 Hirsch, Helmut/55 : Telegram

The Consul General at Berlin (Jenkins) to the Secretary of State

BERLIN, June 4, 1937—10 a. m.

[Received June 4—7 a. m.]

Helmuth Hirsch was executed, beheaded, at 6 o'clock this morning in the Ploetzense prison. Yesterday afternoon I requested authorities to permit me and Geist to see Hirsch immediately after he had been informed of forthcoming execution and chief prosecuting attorney arranged to meet us last evening at prison at 7:15. However, when he arrived he informed me Ministry of Justice could only permit me to see Hirsch if Hirsch expressed a desire to see me. I said, nevertheless, I maintained my request as I desired to know if Hirsch had any message for family. Geist and I then remained at prison awaiting possible request from Hirsch but none came. Nearly 2 hours later the prosecuting attorney came out and informed us that Hirsch had not expressed a desire to see me, that he had asked for a cup of coffee and permission to write to parents and several others which requests were granted. Prosecuting attorney also said that Hirsch was calm and that a Jewish Rabbi was with Hirsch and would remain throughout night. Consulate General has informed Hirsch's parents in Prague and is arranging cremation of body.

JENKINS

862.1121 Hirsch, Helmut/57 : Telegram

The Ambassador in Germany (Dodd) to the Secretary of State

BERLIN, June 4, 1937—3 p. m.

[Received June 4—12:35 p. m.]

131. Embassy's 129, June 3, 6 p. m., Consulate General's telegram of June 4, 10 a. m. Neurath and Mackensen in Foreign Office, and Meissner in the Chancellor's office gave every indication of wanting to be helpful and of being desirous of commutation of Hirsch's sentence. In fact Meissner saw Hitler twice on the matter yesterday in connection with your telegram asking for postponement and an opportunity to examine the evidence. I have nothing to complain of on that score.

On the other hand I do feel that we were not shown a proper consideration with regard to seeing the evidence in the case when I officially requested it on the Department's instruction. In brief an American citizen has been executed for treason in the face of repeated requests for clemency by our Government and without an opportunity for the American Government to see a line of documentary evidence.

The Consul General informs me that according to German law in cases of this character the evidence must be kept secret in order to

prevent information leaking out to other members of the above referred to conspiracy. While this is no doubt the law it would seem that in a case involving an American citizen where the Government has shown as much interest as in Hirsch's case some exception should be made. It is true that the Ministry of Justice, stretching its authority, did give the Consul General recently oral indications of the alleged plot. It is also a fact that in Hirsch's letter to his family, copy of which was given to the Consul General by Hirsch's lawyer and transmitted to the Department, he admitted his original intention of participation in the alleged plot as he did in conversation with the Consulate General, in the presence of the prosecuting attorney however. Despite all of this and the German law on the matter we deplore the fact that in the case of an American citizen condemned to death representatives of his Government should be denied access to the evidence prior to execution.

The Consul General's request to see Hirsch yesterday evening was refused on the basis that Hirsch had not asked to see him and permission for such a visit could only be given if this were the case. The prosecuting attorney even refused to inform Hirsch that the Consul General was at hand and had a message from his family. Likewise as regards the evidence, we were told we would be shown this after the execution. If it was not considered harmful to the interests of the German Government for us then to be shown the evidence it is difficult to see why it could be considered harmful for us to see the evidence 48 hours or so earlier. The refusal of the visit and of access to the evidence before execution and Hitler's original order that we were not to be informed of his denial of clemency until after execution (this came to us in strict confidence) all naturally invite suspicions which might easily have been avoided by a more intelligent handling of the case by the German authorities.

I am not sufficiently familiar with our own legislation on this subject to make a definite recommendation to the Department that it protest energetically to the German Government on this question of a refusal to postpone execution and make the evidence available to us but I feel strongly that if the Department considers the facts warrant it such action should be taken immediately.

DODD

362.1121 Hirsch, Helmut/63 : Telegram

The Ambassador in Germany (Dodd) to the Secretary of State

BERLIN, June 9, 1937—2 p.m.
[Received June 9—12:10 p.m.]

132. Department's 57, June 7, 6 p. m.¹⁵

¹⁵ Not printed.

(1) American Government authorities were never officially informed exact provisions of the law under which Hirsch was convicted but the German press announcement published after his execution stated that it was section 83 of the penal code. For a translation of this paragraph the Department is referred to the Embassy's despatch number 864 of May 23, 1934.¹⁶

(2) As to Hirsch's admission of guilt there is the statement of the German Ministry of Justice that he confessed. Then there are the circumstantial inferences to be drawn from the Berlin Consul General's interview with him as well as from Hirsch's letter to his family (see Consul General's despatch number 1537 of May 12¹⁶). There is also the testimony set forth on page 6 of despatch number 819 of April 19¹⁶ from the Consul General in Stuttgart. The understanding upon which the Consul General Berlin was permitted to see Hirsch, namely, that the interview should take place for purely "humanitarian" purposes precluded a discussion of the case with Hirsch himself. Conversations with Hirsch's attorney proved to be of little value in clarifying the case.

(3) Please see last paragraph of my telegram 131, June 4, 3 p.m. We feel strongly that it would be inadvisable to leave the Hirsch case without indicating to the German Government certain aspects of the matter with special reference to having the record clear for the future. Quite apart from the technicality of Hirsch's citizenship and the apparent legality of his trial and conviction we consider that the developments of the few days prior to Hirsch's execution showed a failure on the part of Hitler to understand and act in accordance with the procedure and usage to be expected in normal relations between governments.

As has frequently happened in the past in international dealings with Germany the point of view here differs radically from that in the United States and other countries. It is believed that the intervention of American officials in the Hirsch case has been deeply resented by the German authorities. From their point of view he was a "traitor" and his name to be execrated. Having acted with considerable energy in carrying out the Department's instructions the Embassy may well find itself embarrassed unless our Government brings its own point of view with special reference to the question of postponement of execution and availability of evidence formally and vigorously to the attention of the German Government.¹⁷

DODD

¹⁶ Not printed.

¹⁷ No further representations were made to the German Government.

GREECE

PRELIMINARY NEGOTIATIONS BETWEEN THE UNITED STATES AND GREECE FOR A PROVISIONAL COMMERCIAL AGREEMENT

611.6831/176

*The American Minister in Greece (MacVeagh) to the Greek Minister
for Foreign Affairs (Metaxas)*¹

ATHENS, June 11, 1937.

EXCELLENCY: On numerous occasions I have had the honor of discussing with Your Excellency the value to Greece of her American contacts, and particularly of her American trade contacts, with their possibilities of expansion and their lack of any embarrassing political background. If Your Excellency has a moment to consider a few more remarks of mine on this subject, I should like to make them here. They express feelings which lie very close to my heart, and are timely, as Your Excellency will not fail to perceive.

I am informed that the Government at Washington is now very carefully studying the question of trade relations between the United States and Greece. What is the picture which it has before it? What does this study reveal?

It reveals, I am sorry to say, that out of the deficit which the United States showed last year in its total balance of payments with the world, over fifteen percent was accounted for by Greece alone. It shows that whereas the United States adheres to the most-favored-nation principle in its treatment of imports from Greece, her exports to this country are hampered and restricted by import quotas and licenses operating in opposition to this principle. It shows that dollars flow in millions unimpeded into this country to be spent in almost any other way than in the purchase of American goods. It shows that the balance of trade is against the United States and that there is nothing on the Greek side to offset the enormous "invisible" items of Greek revenue from America—14 million dollars (1,540,000,000 drachmas) in immigrant remittances alone last year, another million two hundred thousand dollars (132,000,000 drachmas) in Veterans' payments, not to mention tourist expenditures and lavish gifts for archaeological, medical, educational, and philanthropic purposes. Indeed,

¹ Copy transmitted to the Department by the Minister in Greece in his letter of June 9; received July 6.

the picture shows that America is good to Greece. I think Your Excellency will agree to this. Would it not be a better picture if it revealed more reciprocity? Would not such reciprocity encourage further exchanges to increased advantage on both sides? I am sure that at least it would not discourage American interest in Greece as the present picture is bound to do.

Your Excellency, I feel that the Government in Washington, after taking careful stock of the present situation, is going to wish for a more liberal treatment of American trade than Greece has recently given it, in return for the liberal treatment which the United States has given and desires to continue to give to the trade of Greece. I am very conscious, and unhappily so, of the unfavorable picture it is seeing now. But I am comforted by Your Excellency's own realization, expressed to me on several occasions, of the advantages offered by trade with America where the markets for Greek products are so vast and where the American spirit has already reached out so much more than half way to meet Greek enterprise. And I want to say once more, if Your Excellency will permit me, that I hope for the sake of Greece, to which I am so devoted, that she will no longer refrain from availing herself of these advantages, uniting as they do to a unique degree the benefits of progress with security.

The Commercial Attaché of this Legation^{1a} is taking up with the Minister of National Economy some pressing matters of vital importance to importers of American products here, and Your Excellency's views will doubtless be decisive in the issue. But what I am chiefly concerned with at present includes much more than these matters and extends to the whole matter of economic exchanges between our two countries, which is the study of my Government today.

With Your Excellency's permission [etc.]

[File copy not signed.]

611.6831/174a

The Assistant Secretary of State (Sayre) to the Minister in Greece (MacVeagh)

No. 392

WASHINGTON, May 24, 1937.

SIR: Upon careful consideration of the facts relating to the present state of our trade relations with Greece, the Department has concluded that an effort should be made to replace the exchange of notes between the United States and Greece, of December 9, 1924,² which provides for unconditional most-favored-nation treatment in customs

^{1a} Karl L. Rankin.

² *Foreign Relations*, 1924, vol. II, pp. 279-281.

matters, with an agreement calculated to assure equitable treatment in respect of all forms of trade control.

Accordingly, there is enclosed the text of a note which it is desired that you address to the Greek Minister for Foreign Affairs at an early date. As you will perceive, the note explains the salient features of the commercial policy of this Government under the Trade Agreements Act of June 12, 1934,³ and proposes that the exchange of notes of December 9, 1924, be replaced by a *modus vivendi* embodying the liberal principles of this policy.

The draft *modus vivendi* to be submitted with this note is also enclosed, as are several copies of the publication of the United States Tariff Commission entitled *Changes in Import Duties Since the Passage of the Tariff Act of 1930*. Copies of this publication should accompany the note to the Minister for Foreign Affairs.

Your attention is drawn to the provision on exchange control which is contained in the paragraph numbered 5 of the *modus vivendi* and which differs from the provisions on exchange control contained in other agreements relating to trade which this Government has recently made with foreign countries. The new provision is intended to prevent exchange control from being used in such a way as to render the most-favored-nation and quota provisions in our agreements and treaties ineffective. It has recently been decided to include in our trade agreements and commercial treaties, wherever possible, an article which provides, in effect, that the country which establishes or maintains exchange control shall (1) satisfy promptly all applications for exchange to pay for imports admitted into the country and originating in the other country and (2) accord unconditional most-favored-nation treatment in respect of exchange rates and fiscal charges affecting payments for imports from the other country. It has been decided, however, to use a less stringent provision in the proposed *modus vivendi*. It is believed that the latter provision would be sufficient to use as a basis for protest in case Greece should grant less favorable treatment, with respect to exchange, to payment for importation of any American product than is granted to payment for a similar product of any third country.

It is believed that, apart from the provision on exchange control, both the note and the *modus vivendi* are self-explanatory and therefore require no comment by the Department at this time. If either document contains passages that are obscure to you, or statements or provisions which in your opinion should be altered, you should withhold action and consult with the Department by telegraph.

³ 48 Stat. 943.

Immediately upon presenting the note to the Minister for Foreign Affairs you should inform the Department of your action by telegraph so that it may transmit a copy of the communication and of its enclosures to the Greek Minister at Washington.

There is also enclosed, for your strictly confidential information, a copy of a preliminary survey⁴ with respect to the possibility of a reciprocal trade agreement with Greece, in connection with which your attention is called to the implication in the first sentence of the final paragraph of the note that Greece may have proposals of its own to make on this subject. While it is not anticipated that this Government will in the near future take the initiative in the matter of such an agreement, it was recently decided to carry out the recommendation to create a country committee for Greece and Turkey, and such a committee, composed of experts representing the Departments of State, Treasury, Agriculture and Commerce, and the Tariff Commission, has been constituted. This committee will function as a subcommittee of the interdepartmental committee on trade agreements and is charged with the responsibility of doing the technical work in preparation for eventual trade agreement negotiations.

Very truly yours,

FRANCIS B. SAYRE

[Enclosure 1]

Note To Be Addressed to the Greek Minister for Foreign Affairs

EXCELLENCY: I have not failed to inform my Government of the contents of the Royal Ministry's *Note Verbale* No. A/22175, of November 18, 1936,⁴ relative to the trade relations between Greece and the United States.

My Government has noted the statement that the Royal Hellenic Government is disposed to accord every facility of a nature to contribute to the development of trade between the two countries to the extent that the financial situation of Greece, from the viewpoint of foreign exchange, will permit. I have been instructed to assure you in reply that it is the earnest desire of the Government of the United States to foster and to extend the mutual trade interests of our two countries.

My Government has, at the same time, instructed me to explain to Your Excellency the salient features of the commercial policy of the Government of the United States and to lay before you a proposal which is in harmony with this policy and with the mutual desire of our two Governments to protect and to extend the trade relations

⁴Not printed.

which have helped to unite Greece and the United States in friendship for so many years.

On June 12, 1934, the Congress of the United States enacted legislation authorizing the President to enter into reciprocal trade agreements with other countries. During the intervening period agreements have been made with sixteen countries. Only recently, this legislation was renewed by the Congress.

The commercial policy of the United States Government, which is expressed in the sixteen agreements concluded under the Trade Agreements Act of June 12, 1934, has a twofold objective. On the one hand, it aims to reduce tariff barriers and the many other impediments against which international commerce in recent years has been forced to struggle. On the other hand, it seeks to reduce and progressively to eliminate the maze of discriminatory and arbitrary practices which now distort and strangle trade and to substitute in their stead an order based upon the principle of equality of treatment.

It is now more than seven years since the onset of the world crisis. During this period Governments have piled one trade obstruction on another and have created one discrimination after another until commerce between nations has been reduced to only an insignificant fraction of what man's productive ability on the one side and his wants on the other would make possible under a different order.

The United States Government has engaged itself in a determined effort to reverse this trend. It is convinced that the commercial policies pursued by nations in recent years can never lead to a workable international system, but only to permanently large unemployment and to a lowered standard of living. It is convinced that in the critical situation in which the world is today enmeshed, peace and the spiritual and material welfare of the nations depend more than on any other development upon a lowering of trade barriers and a return to liberal commercial policies.

The method which the United States Government has adopted in its attack on the restrictions and discriminations choking trade consists in the conclusion of commercial agreements with individual countries. In each of these agreements the United States grants to the other country reductions in its rates of duty on a selected list of products in which that country is particularly interested in return for a liberalization by that country of its tariff and other restrictions bearing upon a selected list of products of primary interest to the United States. That the reductions which the United States is making in its tariff schedules in connection with these reciprocal trade agreements are by no means merely nominal is evidenced by the fact that many

have amounted to 50 percent of the existing rates, the maximum reduction authorized by the Trade Agreements Act.

Moreover, these reductions are not confined to a few products. The products on which the United States has reduced its duties in connection with the sixteen agreements already signed amount to 30 percent of its total dutiable imports. Thus, it should now be evident that the United States, by means of its trade agreements program, is making a contribution to the liberalization of world trade which is really substantial, and is engaged in a sincere attempt to provide leadership in the course which it is advocating not through exhortation alone but through the force of its own example.

A list of the changes in the import duties of the United States since the passage of the Tariff Act of 1930, most of which have come into being by virtue of trade agreements concluded under the act of Congress of June 12, 1934, is enclosed for the information of the Royal Hellenic Government.

In conformity with this policy, reductions in duties proclaimed under trade agreements with foreign countries are extended immediately to the like articles of all countries in return for nondiscriminatory treatment of American commerce. Such proclaimed duties are withheld only from countries which discriminate substantially against American trade. To such countries a standing offer is extended to accord to them the benefits of the duties proclaimed under the trade agreements if they agree not to discriminate or in fact cease to discriminate against American trade in respect of all forms of trade-control measures.

The reduction of trade barriers, however, cannot be expected of itself to re-establish conditions in which world trade can again prosper. Of equal importance in the eyes of the United States Government is that the trading nations of the world should cease from the many discriminatory practices which have brought international trade and payments to their present disordered state.

The United States considers that the experience of recent years has demonstrated unmistakably that the granting and seeking of exclusive preferences and the employment of devices to curtail or divert imports or to force exports, whether by agreements or by unilateral, arbitrary action, can never be made into a satisfactory system for the conduct of international trade. Through the discrimination which is their inevitable counterpart, these methods always invite and often compel retaliatory or defensive action, with the result that the expansion of trade which they may serve to obtain in one quarter is frequently offset by the losses which they entail in other quarters. Moreover, even the immediate advantages which they have appeared to hold out in practice have often proven illusory. Thus when the bal-

ance is cast, these methods are found to have conferred upon the trade of the nation or nations employing them no benefit whatever, or at best advantages which are meager and transitory, to compensate for the serious disadvantages and dangers which they comport.

In the opinion of the United States Government, the gravity of the dangers inherent in these narrow policies can hardly be exaggerated. Exclusive preferences and special advantages, whether obtained through agreement or by unilateral action, tend to force international commerce in the direction of bilaterally balanced exchanges. Thereby so-called "multiangular" trade, which is a natural result of diversities in the economic resources and structures, the stages of development and the consuming tastes of individual nations, is not only prevented from expanding in response to improved conditions within different countries but is forcibly reduced. An increasing share of the world's commerce is thus forced to flow in uneconomic channels under the influence of artificial restrictions on the one hand and of artificial stimuli on the other. Uneconomic sources of supply are developed at the expense of sources from which like goods could be obtained more cheaply, the cost of imports is raised, standards of living are lowered and not only is the total volume of world trade diminished but the far-reaching dislocations effected in production and demand make its restoration increasingly difficult.

A striking example of how certain of these policies disturb the established channels of trade is to be found in the recent purchase, at the port of Bremen, of Greek tobacco in the amount of 500,000 pounds by an American firm that has long maintained a purchasing agency in Greece.

Grave as are the economic results of the anarchic conditions now prevailing in international commerce, the effect of current commercial policies on international relations generally is a cause for even greater alarm. Exclusive preferences, special advantages and the host of current discriminatory practices, through the irritating and often ruinous disadvantages at which they place the producers and traders of the nations discriminated against and through the adverse effect which they have upon employment, wage levels and standards of living, constitute one of the most important sources of international resentment and ill-will, progressively undermining the structure of peace.

The commercial policy of the United States Government is founded on the unshakeable conviction that for world trade to be restored, discriminatory practices must give way to equality of opportunity and treatment. The advantages to trade of the right to compete in all markets under conditions of equality were recognized in the formulation of the most-favored-nation clause which for three-quarters of a century has been incorporated in the commercial treaties of almost

every nation. Even today, notwithstanding the anarchy into which international trade has fallen, the nations of the world are to be found still clinging to the principle of equality in their international treaties, a fact evidenced by the great number of most-favored-nation treaties now in existence and by the frequency with which the most-favored-nation clause is inserted in new treaties.

Yet the recognition which this great and abiding principle today receives is largely nominal and too often fails to reflect itself in practice. During the course of the depression there have come into use many new devices for restricting and diverting trade, either directly or through the control of the means of payment therefor, with the result that in many countries which formerly based their commercial policy on the most-favored-nation principle and which still employ the most-favored-nation clause, equality of commercial opportunity and treatment does not, in fact, exist. The claim has been advanced by some that since the most-favored-nation clause was developed and many of the existing most-favored-nation obligations were assumed in a time when tariffs were practically the only restriction placed upon trade, it can be considered as applicable in the main only to tariffs. Without seeking here to discuss the historical or legal bases for this view, the Government of the United States cannot help but feel that such a construction, by in fact denying equality of treatment, denies the fundamental purpose for which the most-favored-nation clause was formulated.

While the United States is fully aware of the difficulty of attempting under present conditions to establish for universal acceptance rigid definitions of the treatment which, under the various types of trade control other than customs duties, may properly be considered as constituting equal, or most-favored-nation, treatment, the United States is prepared, as a matter of policy, to accept the following arrangements as a substantial equivalent of non-discriminatory treatment in the application of the more important types of non-duty trade controls:

Quotas. With respect to quantitative restrictions on imports, an allotment to United States trade of a share of the total quantity of any article permitted to be imported equivalent to the proportion of the total importation of the article which the United States supplied during a previous representative period. By the term "representative period" is meant a series of years during which trade in the particular article under consideration was free from quantitative restrictions and discriminations and was not affected by unusual circumstances.

Exchange control. The United States Government believes that any form of control of foreign exchange in connection with commercial transactions should be administered in such a way as not to impair the operation of the principles of most-favored-nation treatment and quota allocation set forth above.

Payments, Clearing and Compensation Arrangements. The Government of the United States feels that arrangements of this nature are essentially inimical to the principle of equality of treatment and to the spirit of the most-favored-nation clause, and it hopes that nations, being agreed upon the adverse effects of such arrangements upon world trade as a whole, will make every effort to eliminate them as quickly as possible when the compelling motives which may have caused resort to them shall have disappeared. In the meantime, the United States believes that the nations participating in these arrangements should apply their provisions in such a manner that they will disturb as little as possible the natural flow of international commerce.

Monopolies. If a government establishes or maintains a monopoly for the importation or sale of a particular commodity or grants exclusive privileges to an agency to import or sell a particular commodity, the United States believes that this monopoly or agency should not discriminate against the commerce of any nation but that it should accord to every nation a fair and equitable share of the market, as nearly as may be determined by consideration of price, quality, et cetera.

The application of this policy to existing conditions of trade between Greece and the United States suggests the desirability of a new agreement between the two States which would replace the exchange of notes of December 9, 1924. My Government therefore has the honor to propose the conclusion at this time of a *modus vivendi* embodying the liberal principles in support of which the commercial policy of the United States under the Act of Congress of June 12, 1934, was formulated.

Such an agreement, a draft of which is submitted herewith for consideration by the Royal Hellenic Government, would assure equitable treatment to the commerce of each State in the territory of the other, and thus would facilitate the presentation of any further proposals looking to the expansion of the trade between our two countries that either State might wish to suggest. For these reasons, and also because of considerations of broader import, which have been outlined above, it is the earnest hope of the Government of the United States that this proposal will prove acceptable to your Government and that it may be possible for our two countries to enter into a new commercial accord at an early date.

Accept [etc.]

[Enclosure 2]

Draft Modus Vivendi Between the United States and Greece

SIR: I have the honor to make the following statement of my understanding of the agreement reached through recent conversations

held at Athens by representatives of the Government of the United States of America and the Government of the Kingdom of Greece with reference to the treatment which the United States of America shall accord to the commerce of the Kingdom of Greece and which the Kingdom of Greece shall accord to the commerce of the United States of America.

These conversations have disclosed a mutual understanding between the two Governments which is that:

1. In respect of import, export and other duties and charges affecting commerce, as well as in respect of transit, warehousing and other facilities, the United States of America will accord to the Kingdom of Greece and the Kingdom of Greece will accord to the United States of America, its territories and possessions, unconditional most-favored-nation treatment.

2. Accordingly, it is understood that with respect to customs duties or charges of any kind imposed on or in connection with importation or exportation, and with respect to the method of levying such duties or charges, and with respect to all rules and formalities in connection with importation or exportation, and with respect to all laws or regulations affecting the sale or use of imported goods within the country, any advantage, favor, privilege or immunity which has been or may hereafter be granted by the United States of America or the Kingdom of Greece to any article originating in or destined for any third country, shall be accorded immediately and unconditionally to the like article originating in or destined for the Kingdom of Greece or the United States of America, respectively.

3. In the event either country establishes or maintains import or customs quotas, or other quantitative restrictions, the share of the total permissible importation of any product of the other country shall be not less than the share in the trade in such product which such other country enjoyed in a previous representative period.

4. Neither the United States of America nor the Kingdom of Greece shall regulate the total quantity of importations into its territory or sales therein of any article in which the other country has an interest, by import licenses or permits issued to individuals or organizations, unless the total quantity of such article permitted to be imported or sold, during a quota period of not less than three [*six*] ⁶ months, shall have been established, and unless the regulations covering the issuance of such licenses or permits shall have been made public [at least one month] ⁶ before such regulations are put into force.

5. If either country establishes or maintains any form of control of the means of international payment, such control shall be administered so as not to influence to the disadvantage of the other country the competitive relationships between articles originating in such other country and similar articles originating in third countries, and so as not to impair the operation of any other provision of this Agreement.

⁶ Change recommended by the Minister in Greece in telegram No. 49, June 22, noon, and approved in Department's reply No. 32, July 7, 3 p. m.

6. The advantages now accorded or which may hereafter be accorded by the United States of America or the Kingdom of Greece to adjacent countries in order to facilitate frontier traffic, and advantages resulting from a customs union to which either the United States of America or the Kingdom of Greece may become a party, shall be excepted from the operation of this Agreement.

7. It is understood that the advantages now accorded or which may hereafter be accorded by the United States of America, its territories or possessions, the Philippine Islands, or the Panama Canal Zone to one another or to the Republic of Cuba shall be excepted from the operation of this Agreement.

8. Nothing in this Agreement shall be construed as a limitation of the right of either country to impose on such terms as it may see fit prohibitions or restrictions (1) imposed on moral or humanitarian grounds; (2) designed to protect human, animal or plant life; (3) relating to prison-made goods; (4) relating to the enforcement of police or revenue laws; or (5) relating to the control of the export or sale for export of arms, ammunition, or implements of war, and, in exceptional circumstances, all other commodities.

9. The present agreement shall replace the exchange of notes between the Government of the United States of America and the Government of the Kingdom of Greece of December 9, 1924, and shall become operative on this day of, and shall continue in force until superseded by a more comprehensive commercial agreement or by a definitive treaty of commerce and navigation, or until denounced by either country by advance written notice of not less than thirty days.

Accept [etc.]

611.6831/181

The Chargé in Greece (Shantz) to the Secretary of State

No. 1876

ATHENS, September 20, 1937.

[Received October 5.]

SIR: I have the honor to confirm the Legation's telegram No. 55 of July 19, 1937,⁷ informing the Department that Minister MacVeagh presented to Prime Minister Metaxas the note and draft *Modus Vivendi*⁸ enclosed with the Department's Instruction No. 392 of May 24th, the draft having been amended in accordance with the second and third paragraphs of the Legation's telegram No. 49 of June 22, 1937.⁹

The Prime Minister's reply to the Legation's note has just been received and is enclosed, together with a translation. In this reply the Greek Government expresses its perfect accord with the principles set forth in the Legation's note, explains how its present situation

⁷ Not printed.

⁸ Dated July 19, 1937.

⁹ Not printed. Changes are indicated in text of draft printed *supra*.

arose, and states that it is ready to undertake the necessary negotiations for the conclusion of an agreement to replace the exchange of notes of December 9, 1924. The reply does not, however, make any comment on the specific provisions of the draft *Modus Vivendi*.

A possibly significant statement in the reply is that "it would not be possible, in the opinion of the Greek Government, to consider solely the free exchange of the results of production, that is to say, of merchandise, while neglecting the factors of production, namely labor and capital." It appears from this that the Greek Government, in its negotiations, may bring in the subject of American immigration restriction and the opening of American financial markets to Greek loans. The question of immigration quota restrictions is apparently one which weighs heavily on the Prime Minister's mind as he has made more than one reference to it in his public speeches.

I have not had an opportunity to discuss the reply with Mr. A. Argyropoulos, Director of Conventions and Commerce at the Foreign Ministry, who drafted the note prior to his departure for Berlin to take part in trade negotiations with the German Government.

Respectfully yours,

HAROLD SHANTZ

[Enclosure—Translation]

The Greek Minister for Foreign Affairs (Metaxas) to the American Chargé (Shantz)

No. 15815

ATHENS, September 16, 1937.

MR. CHARGÉ D'AFFAIRES: I have not failed to receive the letter, under No. 220, that His Excellency Mr. Lincoln MacVeagh kindly addressed to me on July 19, last, concerning the commercial relations between the United States and Greece and including a proposal for an agreement to serve as a basis of negotiations between our two countries.

I have not failed to take into serious consideration the contents of this note and in reply I have the honor to bring to the attention of Your Excellency that which follows:

The Greek Government appreciates the considerations contained in the statement that the Legation of the United States was good enough to present to it in the name of its Government, the more since it is in perfect accord with the principles therein set forth as concerns the necessity for a more liberal regulation of international trade, with a view to the recovery of economic activity in the world.

In fact, Greece, because of its economic structure, has always felt the need for such freedom of trade to safeguard her interests, which were the first to be injured, following the economic crisis of 1931, by

the introduction of restrictive systems in various countries. Thus it is only in self-defense that she was led in turn to pursue the line of restrictions of trade and means of payment at the moment when, the majority of the countries having adopted restrictive measures, she saw her export trade and invisible resources which in the past permitted her to cover her commercial deficit, strongly compromised by the measures under consideration. For a long time she struggled to avoid introducing into her economic relations with the countries in question anti-economic regulations restraining trade. But the results of this struggle proved particularly deceptive for her. In fact, she found herself, in the spring of 1932, driven into the position of being unable to maintain the payment of the value of the merchandise imported into the country, and in order to bring an end to the accumulation of overdue commercial obligations which dangerously compromised the value of her national currency and her credit abroad, she was forced to proceed resolutely to the establishment of import quotas and to the adoption of measures for the protection of her money.

Law No. 5422 of April 26, 1932, established the foundation of this policy, which has since developed on the basis laid down by this law. It provided for the introduction of a control of foreign exchange and the regulation of the importation of foreign merchandise within the limits of the means of payment available to the country. It provided for the settlement in free foreign exchange of the entire value of merchandise having to be imported from abroad within the framework of the general import quotas, authorized by the law and subsequently imposed by Ministerial decision No. 29624 of May 7, 1932. It provided further for the transfer in free foreign exchange of semi-annual instalments on overdue commercial debts which had not been settled up to the date of its promulgation, as well as on the moratorium interests connected therewith; thanks to which, these debts toward foreign countries can already be considered as practically liquidated. It authorized, finally, the settlement in free foreign exchange of certain non-commercial obligations contracted abroad.

That is to say, that while imposing on import trade certain general quantitative limitations in conformity with the diminished purchasing power of the impoverished country, this law assured on the one hand the full payment in free foreign exchange for merchandise imported within the above-indicated limits, and on the other, a complete freedom, within the same limits, of international activity and competition. In this way an improvement was shown in the internal market.

But unfortunately, countries with economic power incomparably superior to that of Greece and which had always constituted the prin-

cial outlets for her products, subsequently began to block the value of Greek merchandise exported to them. This is notably the case with Germany, which represented one of the principal countries where Greece normally possessed a highly favorable export trade. Thereafter the situation became considerably more complicated and the new and important gap in the means of payment of Greece which resulted, compelled her to take defensive measures, which had become unavoidable, and forcibly brought about her adoption of the method of clearings and of measures intended to control even the origin of imported merchandise.

This policy has never constituted for Greece anything but a means of defense against a situation that she was the last to cause or even to encourage. Thus the Greek Government is entirely in accord with the Government of the United States in its declaration that it is only by a return to more liberal principles of trade and by a progressive removal of the obstacles which are now strangling international economic life, that the world economy can be restored to health and directed toward the desired recovery. For this purpose it is incontestably highly desirable to bring about a freer play of economic factors. Nevertheless, in envisaging this problem it is important not to lose sight of the ensemble of these factors in considering only a certain number of them. Thus, if one wishes to arrive at lasting practical results in the domain of world economy, it would not be possible, in the opinion of the Greek Government, to consider solely the free exchange of the results of production, that is to say of merchandise, while neglecting the factors of production, namely, labor and capital. It is in the play of all these factors together that the Royal Government sees the means of overcoming the economic difficulties which now weigh upon international life. Thus, so long as the problem is not attacked in all of its aspects, the results sought could only be partial and precarious.

In these circumstances and so long as the majority of the countries continue to practice the policy of restrictions, Greece, despite her earnest desire to see a normalization of the situation brought about by a return to more liberal principles which, it is well understood, would correspond to her interests, is not in a position to return alone to freedom of trade. Her restricted means would allow her to do so only within the framework of an international movement, intended to re-establish in its ensemble the free play of the factors which govern the economic life of the world.

Nevertheless, the Greek Government, appreciating particularly the importance which the market of the United States holds for Greek products, and attaching a special value to the development of the economic relations between the two countries, has exerted every effort to

the end that the system of control, often troublesome, which it has been forced to apply to trade, should be applied in such a manner as to avoid, as much as was practicably possible, its resulting in a disadvantageous treatment of American trade; and the more because it recognizes that the relations of close friendship which have always existed between the great American Nation and Greece have always been, for the latter, a source of profit.

The Greek Government is consequently moved by a desire to see that the system of quotas in force in Greece should not operate in a discriminatory manner with respect to American interests. The Royal Government would even be happy to see American imports into Greece increase to the full extent that the Government of the United States should find the means, on its part, to assure an outlet for a number of Greek products which are at present directed toward countries practicing a policy of restriction of payments and which compel it, by that very fact, to have recourse to their markets to a greater extent than it would have wished, in order to guard against an accumulation of blocked credits.

Thus the Hellenic Government is disposed to consider all means which in the actual circumstances would be of a nature to eliminate as much as possible the inconveniences resulting from the exceptional conditions to which trade is subjected and to favor its development between the United States and Greece. Therefore, it is ready to undertake the necessary negotiations for the conclusion of an agreement to replace the provisional agreement resulting from the exchange of notes dated December 9, 1924, at present in force.

Please accept [etc.]

J. METAXAS

611.6831/183

The Chargé in Greece (Shantz) to the Secretary of State

No. 1892

ATHENS, October 4, 1937.

[Received October 19.]

SIR: I have the honor to refer to the Legation's despatch No. 1876 of September 20, 1937, transmitting the Greek Government's reply to the Legation's note proposing a *Modus Vivendi* to replace the exchange of notes of December 9, 1924.

On October 2, 1937, I called upon Mr. A. Argyropoulos, Director of Conventions and Commerce at the Foreign Office, who is the officer mainly responsible for negotiating trade agreements, and asked him for the Greek Government's views on the specific provisions of the draft *Modus Vivendi*, since this subject was not covered in the Government's reply to the Legation's note.

Mr. Argyropoulos answered by reiterating the difficulties of Greece's position and the anxiety of Greece to have all the freedom of trade

advocated by the United States. But, he said, Greece could not accept our proposals without fundamentally changing its entire foreign trade framework. Under our proposals Greece would have to adopt quota contingents by countries instead of as at present by articles. It could not do so without granting similar treatment to other countries. Holland has already made proposals similar to ours, and Great Britain has indicated its desire for an arrangement of this nature. But Greece does not consider such a change practicable. If we persist in negotiating a *Modus Vivendi*, it is certain that definite progress cannot be made this year nor even the first half of next year.

Meanwhile, he said, Greece is more than anxious to do everything in its power to meet the wishes of the United States. In other words, Greece desires to give the United States all the practical advantages that the latter would obtain from the *Modus Vivendi* without agreeing to any theoretical or "doctrinaire" principles. We only have to state the particular instances in which we feel we are receiving unjust treatment and they will be very pleased to negotiate. The President of the Council, the Vice Governor of the Bank of Greece (Mr. Vavaresos, the Premier's principal financial adviser), and the Minister of National Economy are all equally desirous of doing everything feasible to meet the wishes of the United States, but practically, and without any treaty changes.

I said I would transmit his views to the Government, and then asked him whether anything more was to be published on the German trade agreement. He smilingly replied that the communique already published said nothing. "Yes," he continued, "in five or six days the *Official Gazette* will publish the text of a new clearing agreement and of changes in the Greco-German commercial treaty. But frankly, there is a third agreement which will not be published because Germany insists that it be confidential."

Under this agreement all of Greece's present credits with Germany are placed in a Class B account. This account will be entirely liquidated by orders already placed for (1) the Government's military requirements and (2) merchandise amounting to 10 million marks. Payments for future exports from Greece will be placed in a Class A account, the total of which is not to exceed Greece's normal requirements for German goods. Exports to Germany are to be limited to specified contingents. For example, Germany has been buying the entire export from Greece of raw materials such as skins and certain ores. The production of these is limited and Greece is well able to sell them to other countries for free exchange. Consequently Greece will limit its future export of these to Germany in order to avoid excessive credit balances which could only be liquidated in the past by forcing merchants to buy from Germany, sometimes at prices 20% greater than they would have had to pay elsewhere.

The views expressed by Mr. Argyropoulos are transmitted for the Department's information, and may safely be considered as authoritative.

As to the extent to which the United States is at present failing to receive most-favored-nation treatment, the Department is referred to the Commercial Attaché's special report No. 14 of August 23, 1937, entitled "A Statistical Analysis of Greek Imports from the United States",¹⁰ which also indicates that the constant efforts of the Legation and the Commercial Attaché to increase the United States' share of Greek imports have met with some success. There is reason to hope that further progress in this direction may be anticipated.

Respectfully yours,

HAROLD SHANTZ

611.6831/181 : Telegram

The Secretary of State to the Chargé in Greece (Shantz)

WASHINGTON, October 9, 1937—2 p.m.

38. Your mail despatch No. 1876, September 20. It is desired that the Minister, as soon as possible after his return, convey either to Mr. Metaxas or an appropriate official of the Foreign Office an oral expression of this Government's pleasure in learning of the readiness of the Greek Government to undertake the early negotiation of an agreement which would replace the exchange of notes of December 9, 1924 and of that Government's desire to see that the system of trade control in force in Greece should not operate in a discriminatory manner with respect to American interests.

The Minister should explain, however, that as his note of July 19 presented a definite proposal by the Government of the United States in the form of a draft *modus vivendi* the Department was surprised by the absence from the Greek reply of any observations with respect to that concrete proposal, that under the circumstances the Department is somewhat at a loss as to how to proceed and that it is therefore hoped that the Greek Government's observations on the draft *modus vivendi* will be communicated, either orally or in writing, at a very early date.

The Minister may add, if he thinks it expedient, that he is certain, should the Greek Government have proposals of its own to suggest, that his Government would be prepared to give them sympathetic consideration, within the limits of the commercial policy outlined in the note of July 19, if submitted in precise terms.

Keep Department informed briefly by telegraph.

HULL

¹⁰ Not printed; a copy was enclosed with despatch No. 1932, November 29, from the Minister in Greece.

611.6881/182 : Telegram

The Secretary of State to the Minister in Greece (MacVeagh)

WASHINGTON, November 16, 1937—2 p.m.

40. Your 67, October 16, 1 p.m.¹¹ Please convey the following to the Foreign Minister orally, with such amplification as you may think desirable:

1. This Government regrets that the Greek Government is not prepared at the present time to enter into a *modus vivendi*, on the basis proposed by the United States, to replace the exchange of notes of December 9, 1924.

2. This Government will not press at the present moment for the conclusion of a *modus vivendi* provided the Greek Government will take prompt and effective steps, such as was suggested on October 2 by Mr. Argyropoulos to the Chargé d'Affaires to alleviate the adverse effect of the present Greek restrictions on those products imports of which into Greece have been diverted from the United States to other countries. This Government believes that the Greek Government should extend to American products the fullest equality of opportunity.

3. The Greek Government will understand that, in not subscribing to the *modus vivendi* which we have proposed, it is postponing the time when the basis of Greek-American commercial arrangements may be broadened. The conclusion of a comprehensive agreement calculated to provide for a mutual expansion of the trade of the two countries, must await the time when Greece is prepared to undertake formally to grant to American trade equality of treatment in respect of all forms of trade and payments control. It is for this reason in particular that the United States Government regrets that Greece is not now willing to enter into a *modus vivendi* along the lines proposed.

In connection with the above numbered paragraph 2 it is suggested that you supply the Minister informally with the substance, or in your discretion with copies, of Rankin's Special Report No. 14, August 23 and Economic and Trade Notes No. 70, August 6.¹² In the event you adopt this suggestion you should make it clear to the Minister that while the material does not constitute an adequate basis upon which to formulate this Government's desiderata with respect to any possible future trade agreement negotiations it is nevertheless indicative of the disquieting effects of Greek commercial policy on Greco-American trade.

With respect to paragraph numbered 3 you may make such use as you consider desirable of the fact that on November 3 the Acting Secretary of State made preliminary announcement of trade agreement negotiations with Turkey. As Greek and Turkish exports to the

¹¹ Not printed; this telegram repeated the substance of despatch No. 1892, October 4, p. 420.

¹² Report No. 14, August 23, not printed; trade notes No. 70, August 6, not found in Department files.

United States are composed largely of similar products the significance to Greece of this announcement should be apparent to the Foreign Minister, especially in view of the policy of the United States of withholding trade agreement benefits from countries which discriminate substantially against American trade. If the opportunity is afforded please point out that the initiative with respect to the present negotiations with Turkey was taken by the Turkish Government.

HULL

611.6831/188

*The Greek Minister for Foreign Affairs (Metaxas) to the American Minister in Greece (MacVeagh)*¹³

[Translation]

No. 26458/γ/7/λ

ATHENS, December 18, 1937.

MR. MINISTER: Following our interview of November 29 last, on the subject of the commercial relations between the United States of America and Greece, Your Excellency was good enough to leave an *Aide-Mémoire*,¹⁴ summarizing the communications made in the course of the said interview.

In the *Aide-Mémoire* in question, reference is made, first of all, to the proposals presented on July 19 of this year in the name of the Government of the United States, for the conclusion of a *Modus-Vivendi* between the two countries to replace the provisional commercial agreement concluded by exchange of Notes on December 9, 1924, as well as to the reply made thereto by the Greek Government by the Note of the Royal Ministry of Foreign Affairs dated September 16 last, and, finally, to the subsequent conversation on this subject which took place between the Chargé d'Affaires of the United States and the competent Director of the Ministry of Foreign Affairs, Mr. Argyropoulos.

With reference to these exchanges of views, the Greek Government considers that it should once more emphasize its desire that trade with the United States should develop as much as possible and that American trade should not suffer any injury by reason of the system of control of foreign trade in Greece imposed by circumstances. It is in this sense that it would be prepared to consider the granting of special facilities calculated to eliminate in practice any discrimination which might eventually be found at the expense of American importation in Greece.

¹³ Transmitted to the Department by the Chargé in Greece in his despatch No. 2009, December 23, 1937; received January 13, 1938.

¹⁴ Not printed; for substance, see numbered paragraphs in telegram No. 40, November 16, 2 p. m., to the Minister in Greece, *supra*.

That this method of procedure is of a nature to lead to satisfactory results is proved by the fact that already a series of measures taken by the Greek Government has favored American imports, by giving satisfaction in concrete cases to the points of view of the Government of the United States.

Thus it may be noticed that each time that the Legation of the United States has been good enough to submit to the examination of the competent services concrete cases which were resulting in an inequality of treatment to the detriment of American interests, the necessary steps have been taken with a view to satisfying its representations as far as possible.

On the other hand, it may be pointed out that certain special merchandise (for example, cereals) could not be imported from the United States in recent years for reasons independent of the will of the Greek Government, arising from their high price on the American market or from the increase in the cost of transportation of the merchandise; that is, for reasons of international competition and not because of the internal system of restrictions.

As to the importation of a number of industrial products from countries with a credit balance toward Greece, which has been made for the purpose of liquidating such balance (notably supplies for the State), this cannot be considered as injuring American interests, in view of the fact that the importation of these articles could not have been effected otherwise, due to the impossibility of furnishing the necessary foreign exchange to pay for them. But with the improvement of this situation, as appears to be the case at the present time, a greater portion can be turned to American imports.

In addition, since the statistics annexed to Your Excellency's *Aide-Mémoire* were prepared, the trade relations between the two countries have improved considerably and show promise of a still greater development of a nature to satisfy American interests.

The preceding statements indisputably establish the fact that at no time has the policy of the Greek Government tended to create conditions for American trade less favorable than those affecting the trade of any other country whatsoever.

Indeed, as concerns the allusion contained in Your Excellency's *Aide-Mémoire* with respect to the negotiations now in course between the United States and Turkey, the Greek Government believes it has a right to count on the fact that the trade agreement which may result therefrom could not favor Turkish exports to the detriment of exports to the United States of similar Greek products by the establishment of a discrimination of any kind at their expense, in consideration of the fact that Greece, by reason of its position and the structure of its economy, is and will remain in reality the best Balkan client of the American market.

Furthermore, without prejudice to the foregoing, as concerns the special facilities which the Greek Government would be prepared to consider in order to eliminate any possible discrimination injuring American importation into Greece, it may be added, as has already been indicated in the last paragraph of the Note of the Royal Ministry of Foreign Affairs of September 16th, that the Greek Government is entirely prepared to undertake without delay negotiations looking toward the conclusion of a *modus vivendi* destined to replace the provisional Commercial Agreement now in force between the United States and Greece. In the latter case, it would be important, in the opinion of the Greek Government, not to limit the freedom of the negotiations undertaken by the establishment in advance of certain general principles which, rigidly applied, might subsequently prove disadvantageous to our reciprocal interests; while, in the course of the negotiations, it would be possible to find the means of attaining the desired end by practical solutions calculated to favor the common interests.

In awaiting the kind communication that Your Excellency will wish to address to it on this subject, the Greek Government sincerely hopes that the Government of the United States will be good enough to give the attention which they deserve to the considerations set forth above, and to maintain with respect to Greece the favorable attitude which it has never failed to manifest up to the present time.

Please accept [etc.]

J. METAXAS

611.6831/186 : Telegram

The Secretary of State to the Minister in Greece (MacVeagh)

WASHINGTON, December 31, 1937—7 p.m.

48. Your mail despatch No. 1982, November 29.¹⁵ If Foreign Office has not yet communicated any observations to you with respect to the *aide-mémoire* of November 29, and with particular reference to the statistical analysis handed to Metaxas at that time and to Argyropoulos' statement of October 2 promising practical methods of assuring fair treatment to American goods, please impress upon appropriate officials the need for some convincing evidence that serious consideration is being given to this Government's views. In this connection you may state that the Department is somewhat puzzled by the fact that the Greek Legation here appears to be of the opinion, based on quite recent instructions, that its Government is still prepared to negotiate in accordance with the statement made in the final two paragraphs of the Greek note of September 16 and the fact that the discussions in Athens fail to materialize into anything definite.

Please keep the Department informed by telegraph.

¹⁵ Not printed.

HULL

CONCLUSION OF A PROTOCOL BETWEEN THE UNITED STATES AND GREECE INTERPRETING ARTICLE I OF THE EXTRADITION TREATY OF MAY 6, 1931; AND WITHDRAWAL BY THE UNITED STATES OF NOTICE OF ABROGATION OF THE TREATY GIVEN NOVEMBER 5, 1933¹⁶

211.68/144

The Secretary of State to the Minister in Greece (MacVeagh)

No. 239

WASHINGTON, November 15, 1935.

SIR: Reference is made to the Department's telegram No. 55 dated November 4, 1933, and to your telegram No. 114 dated November 9, 1933,¹⁷ concerning the abrogation of the Treaty of Extradition concluded on May 6, 1931, between the United States and Greece.¹⁸

Consideration has been given recently to the matter of withdrawing the notice of abrogation in order that the treaty may be continued in force. You no doubt will recall that the notice of abrogation resulted from the determination by the Greek courts that under the treaty they are required to examine into the question of the guilt of the fugitive whose extradition is sought and that they are not limited merely to ascertaining whether the evidence submitted by the United States is sufficient to justify the apprehension of the accused and his commitment for trial.

The opposing view taken by this Government finds support in the practice followed by substantially all other nations in interpreting similar treaty provisions with the United States. It is possible that after further consideration the Greek authorities may be disposed to adopt a similar view, especially as it is stated in your telegram referred to that with the exception of the one with Great Britain all other extradition treaties concluded by Greece are based on the principle that it is not permissible for the court considering the request for extradition to inquire into the basis of the charges preferred against the accused.

Unless the Greek authorities are disposed to interpret the treaty with respect to which you gave notice of abrogation, in the same manner in which it is interpreted by this Government, it appears that little useful purpose would be served in withdrawing the notice of denunciation. With a view to determining whether the notice should be withdrawn it is desired that you discuss the matter informally with the Greek authorities and report concerning their attitude toward the proposed action.

It may be pointed out in this relation that the Department would

¹⁶ For previous correspondence relating to the abrogation of the extradition treaty, see *Foreign Relations*, 1933, vol. II, pp. 552 ff.

¹⁷ Neither printed.

¹⁸ For text of treaty, see *Foreign Relations*, 1931, vol. II, p. 378.

not be disposed to withdraw the notice in the absence of a formal assurance by the Greek Government that it accepts the interpretation of this Government with respect to the extent of the hearing to be accorded a person charged. This could perhaps best be accomplished by the conclusion of a protocol. I attach a draft of such a protocol which you are permitted to use in your discussions if the occasion presents itself. If the Greek authorities are disposed to accept the views of this Government and to set forth their concurrence in a protocol, doubtless the withdrawal of the notice of abrogation and the signature of the protocol would take place simultaneously.

Very truly yours,

For the Secretary of State:
R. WALTON MOORE

[Enclosure]

Draft Protocol

Whereas a difference has arisen between the Government of the United States of America and the Government of Greece with respect to the proper interpretation of Article I of the Treaty of Extradition concluded on May 6, 1931, between the United States and Greece, and in particular, with respect to the final clause of such Article which reads as follows:

“Provided That such surrender shall take place only upon such evidence of criminality as according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial if the crime or offense had been there committed. . . .”

Whereas it is desirable that such differences should be resolved, it is agreed as follows:

The final clause of Article I of the Treaty of Extradition concluded on May 6, 1931, between the United States and Greece, shall, from and after this date, be understood to mean that the court or magistrate considering the request for extradition shall examine only into the question of the sufficiency of the evidence submitted by the demanding Government to justify the apprehension and commitment for trial of the person charged; or in other words, whether the evidence discloses probable cause for believing in the guilt of the person charged. It is further understood that the quoted treaty provisions do not signify that the court or magistrate is authorized to determine the question of the guilt or innocence of the person charged.

In faith whereof the undersigned plenipotentiaries have signed the present protocol and affixed thereto their respective seals.

Done in duplicate at Athens, Greece, the day of
19 . . .

211.68/148

The Minister in Greece (MacVeagh) to the Secretary of State

No. 1505

ATHENS, January 22, 1937.

[Received February 6.]

SIR: I have the honor to refer to the Department's instruction No. 239 of November 15, 1935, concerning the abrogation of the Treaty of Extradition concluded on May 6, 1931, between the United States and Greece. In this connection the Department suggested that the notice of abrogation of this treaty to the Greek Government might be withdrawn upon the basis of formal assurance that the Greek authorities are now disposed to interpret the treaty in the same manner in which it is interpreted by the American Government, and enclosed a proposed draft of a protocol calculated to achieve the desired interpretation.

As reported in my despatch No. 1007 of January 20, 1936,¹⁹ the question was immediately discussed informally with the Minister for Foreign Affairs and an *Aide-Mémoire* left on that occasion was referred to the Trade and Treaty Division of the Foreign Office, and later to the Ministry of Justice, where it lay apparently dormant despite the Legation's repeated attempts to secure action. At length, on October 30, 1936, at the request of the Acting Chief of the Treaty Division the proposed draft of the protocol was submitted by the Legation for the consideration of the Greek authorities. Finally, on January 5, 1937, the whole matter was discussed at some length with Mr. Argyropoulos, Chief of the Treaty Division, who had returned to his desk after considerable absence from Athens.

Mr. Argyropoulos stated that the Hellenic Ministry of Justice raised no objections to the proposed protocol, and that the Greek Government is willing to agree to any desirable interpretation of the Treaty. However, he said that in the opinion of the Hellenic Foreign Ministry the proposed protocol would not provide a solution, because the Greek courts would interpret it exactly as they had interpreted the original treaty in the Insull case.²⁰ Incidentally he expressed himself as believing that the courts had correctly interpreted the language of the final clause of Article I of the Treaty in that instance, not going beyond a sufficient examination of the evidence of criminality to determine whether it would have justified the apprehension and commitment for trial of the accused if the crimes had been committed in Greece.

¹⁹ Not printed.

²⁰ For correspondence relating to the Insull case, see *Foreign Relations*, 1933, vol. II, pp. 552 ff., and *ibid.*, 1934, vol. II, pp. 566 ff.

Consequently, fearing future misunderstandings, the Foreign Office does not consider it advisable to proceed to the conclusion of the protocol as proposed. Mr. Argyropoulos suggested instead that Article I of the Treaty be changed by replacing the final clause with one giving the courts the right only to examine questions of identity and the legality and sufficiency of the papers presented in connection with the request for extradition, no judicial consideration being given to the question of the guilt of the person accused, i. e., to the substance of the case.

In this connection he stated that there are only two types of extradition possible under Greek law. The first is exemplified by the Greco-Belgian Extradition Treaty of June 26, 1901, and the Greek Extradition Law of February 7, 1904, Article 4 of which reads as follows:

The Council of the Court of Appeals meets publicly, unless the accused asks for a closed session, or will not appear before the Council.

The Council of the Court, after the examination of the accused person, if he appeared, and after having heard the prosecuting attorney as well as the accused or his counsel, renders its opinion with explanatory reasons on the request for extradition.

The Council of the Court decides:

- 1) On the identity of the person requested with the arrested;
- 2) On the existence of the justificatory documents required by the treaty;
- 3) On the question whether the individual arrested and the infraction with which he is charged are those for which extradition may be granted;
- 4) On the question whether there exists according to Greek law provision for penal action or penalty.

However, it is not permitted to the Council of the Court to examine the (*bien-fondé*) bona fides [*sic*] of the infraction with which the accused is charged.

Copy of the decision in every case is transmitted without delay to the Ministry of Justice through legal channels, accompanied by all the documents relating thereto.

The other type is exemplified by the Greco-British Extradition Treaty of September 24, 1910, and Greek Extradition Law No. 4031, applying to treaties of this type. Article 3 of this law reads as follows:

Article 4 of the Law of February 7, 1904, is hereby amended as follows, in regard to this treaty.

The Council of the Court of Appeals meets publicly unless the accused asks for a closed session or will not appear before the Council. The Council of the Court of Appeals after the examination of the accused person, if he appeared, and after having heard the prosecuting attorney as well as the accused or his counsel, renders its opinion with explanatory reasons on the request for extradition.

The Council of the Court of Appeals decides:

- 1) On the identity of the person requested with the arrested;
- 2) On the existence of the justificatory documents required by the treaty;
- 3) On the question whether the person arrested and the crime committed by him are among those for which extradition may be granted;
- 4) On the question whether there exists according to Greek law provision for penal action or penalty.

The Council of the Court of Appeals in addition proceeds to the examination of the bona-fides [*sic*] of the infraction attributed to the accused on the basis of the evidence officially presented by the State asking for extradition to verify that these proofs would allow the arrest and trial in Greece of the person whose extradition is requested if the crime were committed on Greek soil, or (in the event extradition was asked by virtue of a condemnatory decision) that the crime or misdemeanor for which he was sentenced, is such as to have caused his extradition at the time of his conviction. It is to this extent only and in each case that the Council of the Court of Appeals may proceed to the substantial examination of the infraction attributed to the arrested.

A copy of the decision in every case is forwarded without delay to the Ministry of Justice through legal channels accompanied by all the documents relating thereto.

It may be observed that the procedure specified in the latter law, No. 4031, is that governing in the case of the present Extradition Treaty between the United States and Greece, and was that applied by the Greek Court in the Insull case, according to that Tribunal's own interpretation. Actually the text of the law appears to correspond closely to the language of the existing treaty. The misunderstanding arises from the fact that according to the American interpretation of the text, the Court exceeded its legal powers in its examination of the Insull case.

The alternatives for the maintenance of some agreement on the subject of extradition between the United States and Greece accordingly appear to be:

- 1) The treaty can be so altered, as suggested by the Hellenic Foreign Ministry, as to bring it definitely into the category administered under the provisions of the Greek Extradition Law of February 7, 1904; this would of course imply a reciprocal obligation for American courts to follow an equivalent procedure with respect to applications for extradition made by the Greek Government.

- 2) The notice of abrogation may simply be withdrawn in the hope that the Greek courts would in future cases show themselves to be more reasonable in the extent to which they insist upon pressing their examinations.

Respectfully yours,

LINCOLN MACVEAGH

211.68/150

The Secretary of State to the Minister in Greece (MacVeagh)

No. 379

WASHINGTON, March 29, 1937.

SIR: Reference is made to your despatch No. 1505, of January 22, 1937, reporting your discussion of the proposed protocol of interpretation of the final clause of Article I of the Treaty of Extradition between the United States and Greece with the Chief of the Treaty Division of the Greek Foreign Office.

The Department has noted Mr. Argyropoulos' opinion that the protocol would not achieve the desired interpretation of the Treaty by the Greek courts and, incidentally, that the courts had correctly interpreted the language of the final clause of Article I in the Insull case.

While the Department cannot, of course, insist upon acceptance by the Greek Government of the protocol, neither is it in a position to agree to an alteration of the Treaty so as to bring it in harmony with the provisions of the Greek Extradition Law of February 7, 1904, which applies to procedure under treaties of the type of the Extradition Treaty between Greece and Belgium, nor does it desire merely to withdraw the notice of abrogation in the hope that the Greek courts will in future cases apply the Treaty in a manner more satisfactory to the Department than was done in the Insull case.

Furthermore, the Department is impressed with the fact that the Greek Ministry of Justice has raised no objection to the proposed protocol.

Under these circumstances, it is desired, if you perceive no serious objection to such a course, that you explain to the Foreign Office that, as it is impossible to harmonize the extradition procedure in the United States with Greek procedure under the Law of February 7, 1904, it is the opinion of your Government that the proposed protocol, despite such misgivings as Mr. Argyropoulos may have as to the manner in which its language might be interpreted by the Greek courts, constitutes the best compromise arrangement available and therefore that your Government would be pleased to enter into this arrangement and trusts that the Greek Government will find its way to do so.

Very truly yours,

For the Secretary of State:
R. WALTON MOORE

211.68/153 : Telegram

The Chargé in Greece (Shantz) to the Secretary of State

ATHENS, August 2, 1937—2 p. m.
[Received August 2—1:45 p. m.]

59. Department's instruction No. 379, March 29. Greek Government has accepted proposed protocol of interpretation of Extradition Treaty without change and has submitted Greek translation which has been carefully examined and found to be in full agreement with original. Please instruct.

SHANTZ

211.68/154 : Telegram

The Secretary of State to the Chargé in Greece (Shantz)

WASHINGTON, August 9, 1937—5 p. m.

34. Your 59, August 2, 2 p. m. You are authorized to sign protocol, transmitting one of signed copies to Department.

HULL

211.68/156 : Telegram

The Chargé in Greece (Shantz) to the Secretary of State

ATHENS, September 2, 1937—2 p. m.
[Received September 2—9:45 a. m.]

63. Department's telegram No. 34, August 9, 5 p. m. Protocol signed today.²¹

SHANTZ

211.68/158 : Telegram

The Secretary of State to the Chargé in Greece (Shantz)

WASHINGTON, September 29, 1937—5 p. m.

36. Your 63, September 2, 2 p. m. In view of signing of protocol you should, if you have not already done so, withdraw notice of abrogation given pursuant to Department's 55, November 4, 1933, 11 a. m.²²

HULL

²¹ Printed as Department of State Executive Agreement Series No. 114. Text identical with draft protocol, p. 428. In despatch No. 2185, March 28, 1938, the Minister in Greece reported that the Greek Government had ratified the interpretative protocol by Emergency Law No. 1115 of February 26, 1938, making it legally effective as of the date of its signature (211.68/167).

²² Not printed.

211.68/159

The Chargé in Greece (Shantz) to the Secretary of State

No. 1887

ATHENS, September 30, 1937.

[Received October 19.]

SIR: In reference to the Department's telegram No. 36 of September 29, 1937, I have the honor to report that I have today addressed a Note ²³ to His Excellency John Metaxas, President of the Council and Minister for Foreign Affairs, formally withdrawing the notice of abrogation of the Extradition Treaty of May 6, 1931, between the United States and Greece, which was delivered to the Greek Government on November 6, 1933,²⁴ pursuant to the Department's telegraphic instruction No. 55 of November 4, 1933.²³

Respectfully yours,

HAROLD SHANTZ

²³ Not printed.

²⁴ Note dated November 5, 1933, *Foreign Relations*, 1933, vol. II, p. 565.

ITALY

NEGOTIATIONS RESPECTING A NEW TREATY OF FRIENDSHIP, COMMERCE, AND NAVIGATION BETWEEN THE UNITED STATES AND ITALY;¹ TEMPORARY COMMERCIAL ARRANGEMENT SIGNED DECEMBER 16, 1937²

711.652/85 : Telegram

The Ambassador in Italy (Phillips) to the Secretary of State

ROME, February 8, 1937—noon.

[Received February 8—9:15 a. m.]

50. My despatch No. 126, December 18, 1936.³ A report has reached me originating in the exchange control office of the Foreign Office that there is disappointment in Italian circles on account of the delay in proceeding with negotiations for the new Treaty of Friendship, Commerce and Navigation and also on account of our failure to respond to the Italian suggestions for a trade agreement transmitted in my despatch 126, December 18, 1936. Italian officials are aware, it appears, of the Department's satisfaction at the joint denunciation of the 1871 treaty⁴ and an impression seems to be current that the Department attaches more importance to the denunciation of the old treaty than to the conclusion of new arrangements for the improvement of trade between the two countries.

In order to avoid any further suspicions of this nature I should be very grateful if the Department would send me the necessary instructions as promptly as possible. In addition it would be helpful if I could be placed in a position through telegraphic instructions to advise Count Ciano⁵ of the Department's impression of the Italian proposals in respect to the treaty as well as of the Italian suggestions looking towards a trade agreement.

PHILLIPS

¹ Continued from *Foreign Relations*, 1936, vol. II, pp. 340-360.

² The original draft prepared by the United States was modeled on the commercial treaty between the United States and Norway, signed June 5, 1928, with the provisions regarding consular relations omitted; *Foreign Relations*, 1928, vol. III, p. 646.

³ Not printed, but see telegram No. 533, December 16, 1936, 6 p. m., from the Ambassador in Italy, *ibid.*, 1936, vol. II, p. 358.

⁴ See *ibid.*, pp. 340 ff.; for text of the Treaty of Commerce and Navigation, February 26, 1871, see William M. Malloy (ed.), *Treaties, Conventions, etc., Between the United States of America and Other Powers, 1776-1909* (Washington, Government Printing Office, 1910), vol. I, p. 969.

⁵ Count Galeazzo Ciano, Italian Minister for Foreign Affairs.

711.652/85 : Telegram

The Secretary of State to the Ambassador in Italy (Phillips)

WASHINGTON, February 17, 1937—1 p. m.

16. Your 50, February 8, 1937. The Department regrets that there should be any misapprehension on the part of the Italian Government in regard to our intentions in connection with the negotiations for the Treaty of Friendship, Commerce and Navigation. There is no desire whatsoever on our part to delay proceedings and Mr. Sayre⁶ so informed the Italian Ambassador on February 1st, adding that he hoped that negotiations might be concluded in time to permit the new treaty to be submitted to the Senate before Congress adjourned next summer.

The report to which you refer may have had its origin in a despatch from Ambassador Suvich to his Government with respect to Mr. Sayre's testimony before the House Ways and Means Committee when extension of the trade agreements act⁷ was under consideration to the effect that negotiations with Italy were inactive. Suvich on instructions from his Government called on Mr. Sayre about this February 1, 1937, and Mr. Sayre explained to him that his testimony had reference to trade agreement negotiations and not to treaty negotiations, that we were anxious to go ahead with treaty negotiations, and that we expected to make a counter proposal within the near future.

We feel that as we are now in process of negotiating a basic treaty, we should confine our efforts to those negotiations. You should, therefore, discourage any discussion of the trade agreement. We are anxious to reach an understanding with regard to the fundamental principles underlying the regulation of Italo-American trade and in attaining this end, it becomes of first importance that we reach a satisfactory agreement in respect of Article 8 of the proposed treaty.

Far from being indifferent to the substitution of new arrangements for the present treaty, this Government is anxious to work out such arrangements well ahead of the time when the old treaty shall terminate when this Government might find itself under the necessity of suspending the generalization of our trade agreement concessions to Italian products. Moreover, since the success of trade agreement negotiations will depend upon the extent to which the commercial policies of the two countries can be reconciled, successful negotiations for the new commercial treaty will pave the way for effective trade agreement negotiations.

A decision with reference to a counter proposal to the Italian draft of Article VIII has been somewhat delayed on account of extra work

⁶ Francis B. Sayre, Assistant Secretary of State.

⁷ The Trade Agreements Act of June 12, 1934, was extended by Joint Resolution, March 1, 1937; 50 Stat. 24.

in connection with renewal of the trade agreements act, but we expect shortly to forward instructions in this regard. In this connection, it should be noted that the Italian proposal has been in the Department only since the first of January whereas the Italian Government did not reply to our proposal until the expiration of over 2 months.

From a tactical standpoint, we do not deem it feasible or practicable to give any indication of the Department's impression of the Italian treaty or trade agreement proposals as a whole. With regard to the Italian suggestions looking to a trade agreement transmitted with your despatch No. 129 of December 21, 1936,⁸ it was not the Department's understanding that any expression of opinion by the Department was required and therefore no adequate study of the Italian suggestion to that end has so far been made here.

You are authorized to use any of the foregoing in your conversations with the Italian authorities.

HULL

711.652/82

The Secretary of State to the Ambassador in Italy (Phillips)

No. 56

WASHINGTON, March 17, 1937.

SIR: Reference is made to the Italian draft of the proposed new Treaty of Friendship, Commerce and Navigation enclosed with your despatch No. 126 of December 18, 1936, and to your despatch No. 129 of December 21, 1936,⁹ enclosing a draft of proposed trade agreement.

We concur with your view that apparently one of Italy's principal interests in treaty negotiations is in laying the foundation for a trade agreement to which it attaches more immediate importance than to the commercial treaty; and we are pleased to note that, nevertheless, the Italian delegation has agreed to the principle that commercial treaty negotiations shall precede trade agreement negotiations and be conducted apart therefrom. In view of this and the fact that the fundamental principles upon which we hope to base our commercial relations with Italy are those expressed in Article VIII of the proposed commercial treaty, we deem it of first importance, as indicated in my telegram No. 16 of February 17, 1937, to reach a satisfactory agreement in respect of that article. Accordingly, a redraft of Article VIII, with the exception of the paragraph relating to exchange which will be forwarded to you as soon as possible, has been prepared and is enclosed herewith for presentation to the Italian Government.

In presenting the draft you may say that study is being given to the other articles of the Italian proposal, but that because of the im-

⁸ Not printed.

⁹ Neither printed.

portance of Article VIII to future trade relations we are hopeful that it may have first consideration.

There is also enclosed a memorandum which analyzes in detail the differences between our original draft and the Italian draft of Article VIII and explains the treatment accorded those differences in our counter proposal. In several instances, specific suggestions are made in the memorandum with respect to action to be taken by the Embassy. You are requested to consider such suggestions as if they were part of this instruction. Otherwise, the Embassy may make such use of the memorandum as it may deem appropriate and expedient.

Our proposal in respect of Article VIII is the result of diligent effort to find a way whereby the foreign trade policies of the two countries can be reconciled and we are hopeful that it may be acceptable to Italy.

Very truly yours,

For the Secretary of State:
FRANCIS B. SAYRE

[Enclosure 1]

Redraft of Article VIII

With respect to (1) the amount and collection of customs duties or charges of any kind, including any accessory or additional duties or charges, coefficients or increases imposed on or in connection with importation, exportation, temporary importation, temporary exportation, or warehousing or transit; (2) the method of levying or collecting such duties, charges, coefficients or increases; (3) all rules and formalities in connection with importation or exportation; and (4) all laws or regulations affecting the sale, taxation, or use of imported goods within the country; any advantage, favor, privilege or immunity which has been or may hereafter be granted by either High Contracting Party to any article originating in or destined for any third country, shall be accorded immediately and unconditionally to the like article originating in or destined for the territory of the other High Contracting Party.

Neither of the High Contracting Parties shall establish or maintain any import or export prohibition or restriction on any article originating in or destined for the territory of the other High Contracting Party, which is not applied to the like article originating in or destined for any third country. Any abolition of an import or export prohibition or restriction which may be granted by either High Contracting Party in favor of an article originating in or destined for a third country shall be applied immediately and unconditionally to the like article originating in or destined for the territory of the other High Contracting Party.

If either High Contracting Party establishes or maintains any form of quantitative restriction or control of the importation, sale, or exportation of any article in which the other High Contracting Party has a considerable interest, including the regulation of importations, sales or exportations thereof by licenses or permits issued to individuals or organizations, the High Contracting Party taking such action: (1) shall establish the total quantity of any such article permitted to be imported, sold, or exported during a specified period, (2) shall immediately communicate to the other High Contracting Party the provisions adopted together with complete details with respect to the administration thereof, and (3) in the case of imports, shall allot to the other High Contracting Party for such specified period a proportion of such total quantity equivalent to the proportion of the total importation of such article which the other High Contracting Party supplied during a previous representative period, and (4) in the case of exports, shall allot to the other High Contracting Party for such specified period, a proportion of such total quantity equivalent to the proportion of the total exportation of such article which was supplied to the other High Contracting Party during a previous representative period, unless it be mutually agreed to dispense with such import or export allotment.

[The provisions relating to exchange are omitted pending further consideration of the Italian proposal on this subject. A new draft of these provisions is expected to be ready shortly.]¹⁰

In the event that either High Contracting Party establishes or maintains a monopoly for the importation, production or sale of a particular product or grants exclusive privileges, formally or in effect, to one or more agencies to import, produce or sell a particular product, the High Contracting Party establishing or maintaining such monopoly, or granting such monopoly privileges, shall, in respect of the foreign purchases of such monopoly or agency, accord the commerce of the other High Contracting Party fair and equitable treatment. In making its foreign purchases of any article such monopoly or agency shall be influenced solely by competitive considerations such as price, quality, marketability, and terms of sale. Either High Contracting Party shall supply such information with respect to the foreign purchases of every such monopoly or agency as the other Party may at any time request.

The High Contracting Parties will consult with each other in respect of any matter presented by either Party relating to the application of the provisions of this article.

¹⁰ Brackets appear in the original.

[Enclosure 2]

*Memorandum on the Proposed Treaty of Friendship, Commerce and Navigation Between the United States and Italy***A COMPARATIVE ANALYSIS OF THE ITALIAN COUNTER PROPOSALS OF DECEMBER 15, 1936 IN RESPECT OF ARTICLE VIII AND EXPLANATION OF A PROJECTED SECOND PROPOSAL BY THIS GOVERNMENT**

The important broad differences between the Italian proposal and our original draft of Article VIII are in the provisions relating to quantitative restrictions and foreign exchange (Italian Par. (d)—U. S. Par. 3).

Under the terms of our original draft, neither country could establish or maintain any import prohibition or restriction in respect of any article unless it admitted from the other country a proportion of the total quantity of such article permitted to be imported from all sources equivalent to the proportion supplied by the other country during a previous representative period. That is to say, Italy would be required to admit the restricted goods from the United States on the basis of the proportionate share formula, and vice versa.

The Italian proposal differs sharply from the foregoing in that it does not require that an allotment based on the proportionate share formula or any other formula be accorded to the United States in respect of imports subjected to quantitative restrictions. It provides in effect that in case the Italian Government chooses to establish the restriction upon the basis of a share of the total importation for a fixed period of time either a proportionate share shall be accorded to the United States—albeit the Italian Government having within its discretion the choice of the base period—or the two Parties shall come to an agreement with respect to the quantity of goods to be admitted.

The Italian proposal also omits reference to customs quotas and licensing restrictions and relates to exports as well as imports. Other less fundamental differences with respect to quantitative restrictions are analyzed elsewhere in this memorandum.

As regards exchange, our original draft requires that exchange control shall be administered in such manner as to insure fair and equitable treatment in the allotment of exchange, and provides that the Party administering the control shall be guided by the principle that the share of total funds made available for settlement of commercial transactions which is allotted to the other Party shall not be less than the share employed for the settlement of commercial obligations to the nationals of such other Party during a representative period prior to the establishment of exchange control.

The Italian proposal accepts in general the proposition that exchange control shall be administered so as to insure fair and equitable treatment in the allotment of exchange. But in lieu of our provision which sets up the basis for allotment, the Italian proposal provides that if either Party considers that exchange restrictions may damage its interests as compared with the manner in which interests of third countries are treated, "it may demand the initiation of conversations in order to agree upon suitable measures to insure the transfer of sums paid by purchasers as the price of its importations effected within the agreed upon limits." Judging from the character of Italy's recent commercial agreements with other countries and from the background of trade agreement negotiations, the wording of this provision seems clearly to envisage the negotiation of agreements or arrangements which would have as their objective the balancing of trade between the two countries. Considering the present policy of this Government, it seems clear that we could not agree to a definitive treaty provision which would permit the conduct of commercial relations upon the basis of this principle.

711.652/89 : Telegram

The Ambassador in Italy (Phillips) to the Secretary of State

ROME, April 24, 1937—4 p. m.
[Received April 24—3:40 p. m.]

180. Department's instruction 56, of March 17. The Director General of Commercial Affairs in the Foreign Office has informed me this morning that after giving very careful study to the redraft of article VIII of the proposed treaty of commerce the Italian authorities have reached the conclusion that it is impossible for them to resume discussions in regard thereto until the paragraph relating to exchange can be received and the article considered as a whole. It was also said that it would likewise be preferable to have the American suggestions regarding remaining articles of the proposed treaty.

The Foreign Office emphasized that it was anxious to expedite the treaty negotiations and therefore hoped it would be possible to receive these texts as soon as possible.

PHILLIPS

711.652/82 : Telegram

The Secretary of State to the Ambassador in Italy (Phillips)

WASHINGTON, May 1, 1937—11 a. m.

73. Department's instruction No. 56 of March 17, 1937. Our counter proposal relating to foreign exchange is embodied in the following

provisions which should be inserted between the third and fourth paragraphs of our redraft of Article VIII:

“If either High Contracting Party establishes or maintains, directly or indirectly, any form of control of the means of international payment, it shall, in the administration of such control:

(a) Impose no prohibition, restriction, or delay, on the transfer of payment for imports of articles the growth, produce, or manufacture of the other High Contracting Party, or on the transfer of payments necessary for and incidental to the importation of such articles;

(b) With respect to rates of exchange, and taxes or surcharges on exchange transactions, in connection with payments for or payments necessary and incidental to the importation of articles the growth, produce, or manufacture of the other High Contracting Party, accord unconditionally treatment no less favorable than that accorded in connection with the importation of any article the growth, produce, or manufacture of any third country; and

(c) With respect to all rules and formalities relating to exchange transactions in connection with payments for or payments necessary and incidental to the importation of articles the growth, produce, or manufacture of the other High Contracting Party, accord unconditionally treatment no less favorable than is accorded in connection with the importation of the like article the growth, produce, or manufacture of any third country.

With respect to non-commercial transactions each High Contracting Party shall apply every form of control of foreign exchange in a non-discriminatory manner as between the nationals of the other High Contracting Party and the nationals of any third country.”

It will be noted that the last paragraph of Article VIII relating to consultation would apply in respect of the foregoing exchange provisions.

Inasmuch as prohibitions and restrictions on the transfer of payments are employed by some countries as a means of limiting imports, recent deliberations have led us to the conclusion that in order to render the most favored nation and the quota provisions in our trade agreements and treaties effective, and to discourage the accumulation of blocked commercial debts which usually lead to the diversion of trade through clearing and payments agreements, it is necessary to revise substantially our policy relating to exchange control.

Accordingly, we have formulated a policy which, broadly speaking, is that we shall endeavor to have other countries agree (a) to act favorably and promptly upon all applications for exchange to pay for imports of American goods which are admitted into the other country and (b) to accord unconditional most favored nation treatment in respect of exchange rates and fiscal charges affecting payments for imports from the United States. As a standard expression of that policy

we have adopted the language contained in the first sentence of our counter proposal quoted above. As long as exchange control is employed to limit imports, we shall endeavor to have the same language incorporated in all future treaties and trade agreements.

We recognize that in certain circumstances Italy and other countries may desire to protect their currencies by limiting the amount of exchange which can be used for commercial payments to the United States. Such limitation can be accomplished by Italy under our counter proposal, not by placing prohibitions or restrictions on the transfer of payments but by limiting the amount of imports within the formula relating to quotas, licensing, etc., set out elsewhere in Article VIII.

Further, the operation of the provisions contained in the first sentence of our exchange proposal would not impose any obligation upon Italy in respect of that exchange which may be employed for purposes other than for payment for imports from the United States and for payments necessary and incidental to such importations. The provisions in the second sentence relating to non-commercial transactions, which have already been accepted by Italy, would govern other exchange payments. The second sentence has been amended slightly by substituting the word "every" for the word "any" where "any" first appears.

In presenting our counter exchange proposal to Italian officials, the Embassy may utilize such of the foregoing information as it may deem appropriate and expedient.

HULL

711.652/93 : Telegram

The Ambassador in Italy (Phillips) to the Secretary of State

ROME, May 31, 1937—9 p. m.
[Received May 31—6:45 p. m.]

256. Department's instruction No. 56 of March 17, 1937, and telegram No. 73, May 1, 11 a. m. The Director of Commercial Affairs of the Foreign Office has handed me a memorandum concerning article 8, of which the following is a translation:

"1. There is no objection to the acceptance of the American text of article 8 except that at the end of the first sub-paragraph of the paragraph relating to exchange regulations the following addition is proposed 'which are not applied to third countries'.

2. The text of the other articles of the agreement must be examined as a whole before a final reply can be given.

3. As regards article 21 it is desired to maintain the period of 6 months for the suspension of the provisions of article 8.

4. According to the agreements of the Stresa Conference,¹¹ Poland, Austria, Hungary, Czechoslovakia, Rumania, Yugoslavia, and Bulgaria are included as Danubian countries.

5. It will be necessary to receive some indication as to the views of the American Government concerning the supplementary protocol. There would, however, be no objection to its signature at a later date subsequent to the signature of the principal agreement.”

Giannini¹² again stressed the hope that it would be possible to receive the Department's comments on the remaining articles as soon as possible in order that the treaty may be signed in time to be submitted to Congress before its adjournment. He also emphasized the importance which the Italians attached to their proposals for a trade agreement and stated he hoped it would be possible to learn whether they were considered suitable as a basis for further discussions.

When may I expect to receive remaining articles of the treaty?

PHILLIPS

711.652/93 : Telegram

The Acting Secretary of State to the Ambassador in Italy (Phillips)

WASHINGTON, June 23, 1937—6 p. m.

111. Your 256, May 31, 1937. Following are the Department's views with respect to the points discussed in the Foreign Office memorandum:

1) The Italian amendment of sub-paragraph (a) of our exchange proposal constitutes a vital change and would so radically alter the provision that it would fail to accomplish the objectives of this Government in respect of the transfer of commercial payments. This leads us to believe that perhaps the Italian Government has not envisaged clearly the meaning and import of the provisions in reference.

By way of further explanation, we would point out that the underlying purpose of sub-paragraph (a) as proposed by this Government is to supplement the most-favored-nation and import restriction provisions of Article 8 in such manner as will render those provisions effective and assure that American traders in Italy will in fact enjoy the kind of treatment stipulated. In this connection, it would seem obvious that if American traders can not receive payment for their goods exported to Italy or be certain that no prohibitions or restrictions will be placed upon the transfer of commercial payments, trade would be restricted and channelized effectively even though it may be entitled to most-favored-nation treatment in tariff matters and fair and equitable treatment in respect to import restrictions as defined

¹¹ See British Cmd. 4880, Misc. No. 2 (1935): *Joint Resolution of the Stresa Conference, including the Anglo-Italian Declaration and the Final Declaration*, Stresa, April 14, 1935.

¹² A. Giannini, Director of Commercial Affairs of the Italian Foreign Office.

in the Article. Of course, the Article would afford Italian exporters exactly the same safeguards in the United States, should by any chance restrictions be imposed here. Currently, of course, we have no exchange restrictions whatsoever on the transfer of normal commercial payments.

This Government has given very careful consideration to the question of an exchange provision which will assure effective operation of the other provisions of Article 8 relating to treatment with respect to tariff matters and quotas. It has concluded that probably the provisions of our exchange proposal are the only solution. The provisions of sub-paragraph (a) preclude the imposition of prohibitions or restrictions on the transfer of payments for imports and thus assure that all permitted imports will be paid for. But at the same time these provisions in no way prevent the state from taking such action as may be deemed necessary, under certain circumstances, to protect its currency by limiting the amount of its total imports in accordance with the provisions of the Article relating to quantitative restrictions and thus limiting the amount of exchange which would be necessary to pay for permitted imports.

Under the Italian proposal, the only advantage that would be guaranteed would be that prohibitions or restrictions on transfers of payments for commercial transactions would not be imposed against American goods unless they were also imposed against the goods of other countries. But this would in no way protect us from a total prohibition of transfers to us or from discrimination against us in the allocation of whatever exchange may be granted by the control authorities.

Considering the foregoing, we hope the Italian Government, in the same cooperative spirit which has prevailed throughout the negotiations, will give further careful consideration of our exchange proposal of May 1, 1937. If after such reconsideration the Italians still find the language of our proposal unacceptable, this Government would appreciate receiving a counter proposal from the Italian Government which would have the effect of assuring that American exporters can receive prompt payment in foreign exchange for permitted importations of their goods into Italy.

For your information, should the Italians fail to present an exchange provision which is satisfactory to this Government, we are considering the advisability of dropping Article 8 from the negotiations and concentrating on the conclusion of a general treaty of friendship, commerce and navigation which would contain no provisions relating to subjects of that Article. The problems involved in Article 8 might then be left for later negotiations.

2) Final consideration is being given the Italian proposals with respect to the other articles of the treaty and it is expected that our counter proposals will be forwarded to the Embassy within about 2 weeks.

3) Reduction of the period during which Article 8 may be terminated to 3 months is a very vital part of our counter proposal of March 17, 1936, and is necessary, we feel, because of (1) the concessions accorded Italy in that article, and (2) the changing character of present trade control methods. If the period be extended as now proposed by Italy, we feel that it would be necessary to revise again the text of Article 8.

4) The Italian amendment of Article 19 as proposed on December 15, 1936,¹³ is so broad in its terms that it would nullify to a large extent the effectiveness of Article 8. It is therefore unsatisfactory to this Government. We are disposed to agree, however, to the inclusion of qualified exceptions in respect of Danubian countries and Albania, but in order that we may give the subject appropriate consideration, it is necessary that the Italian Government supply this Government with information in respect of the following in writing:

a) Which countries does Italy desire to be included in the amendment?

b) Precisely, what are the advantages now accorded to such countries which conflict with the provisions of the treaty? As regards trade matters, what are the specific tariff, tax, quota, exchange and other advantages now accorded these countries?

c) Are the advantages in reference intended to come within the purview of recommendations of the Stresa Conference, the Rome Protocols, or any other European scheme for economic assistance to Central and Eastern Europe?

5) We are not clear as to what is meant by "the supplementary protocol". Does this have reference to the questions involved in Article 20 relating to the territorial application of the treaty?

With reference to the Italian proposals for a trade agreement, studies are being made, as you are aware, of the commodities entering into trade between the two countries and of the possible concessions to be requested or granted. These studies are not as yet sufficiently advanced for the Department to make fully considered comment on the Italian proposals.

You may bring the foregoing information and inquiries to the attention of the Foreign Office in such manner as you may deem appropriate and at the same time express this Government's appreciation of the friendly spirit in which the negotiations are being con-

¹³ Article 19 provided for certain exceptions to the treaty. The Italians proposed that the stipulations of the treaty not extend to the advantages then accorded by Italy to countries of the Danubian Basin and to Albania.

ducted. It is still our hope that they may be concluded in time to permit the treaty to be presented to the Senate before the adjournment of Congress.

WELLES

711.652/99 : Telegram

The Ambassador in Italy (Phillips) to the Secretary of State

ROME, July 10, 1937—11 a. m.
[Received July 10—8:45 a. m.]

320. My 318, July 7, 2 p. m.¹⁴ In a further conversation with Senator Giannini today he stated that the Italian Government would now be prepared to accept the American exchange proposals contained in article 8 of the proposed conventions provided it could receive some assurance regarding the possibilities of subsequently concluding a trade agreement. Senator Giannini again stated that he hoped that it would be possible to obtain further information regarding the American views with respect to the Italian suggestions for a trade agreement. He added that while he himself would be absent from Rome for the next 3 weeks he would return if necessary to conclude the negotiations.

PHILLIPS

711.652/101 : Telegram

The Ambassador in Italy (Phillips) to the Secretary of State

ROME, July 14, 1937—6 p. m.
[Received July 14—3:40 p. m.]

329. In the hope that the negotiations for the treaty of friendship and commerce are nearing the point of successful conclusion, may it not be possible at the present time to give consideration to the two points with respect to which discussion has up to now been reserved for the reasons set forth in my 533, December 16, 6 p. m.,¹⁵ namely, the preamble and article 20?

With respect to the first of these it is my understanding that both the United States and Italy signed the multilateral convention concluded at Montreux in May of this year for the abolition of capitulations in Egypt¹⁶ and I presume that in this connection no difficulty was raised if the title "King Emperor" was used in the designation of

¹⁴ Not printed.

¹⁵ *Foreign Relations*, 1936, vol. II, p. 358.

¹⁶ See pp. 615 ff.; for text of convention signed May 8, 1937, see Department of State Treaty Series No. 939, or 53 Stat. 1645.

the Italian plenipotentiary.¹⁷ Furthermore, would there be any legal distinction between the acceptance by the United States Government of the credentials of the Italian Ambassador in Washington made out in the name of the King Emperor and the signature of a treaty which the American representative signs on behalf of the President and the Italian representative on behalf of his?

Should it be considered that article 20 which extends the provisions of the treaty to include all territories over which the parties respectively claim and exercise dominion as sovereign may give rise to questions involving recognition; might it not be possible to omit this article from the present treaty and at some subsequent date conclude a separate agreement relating to the colonies and dominions?

I should appreciate the Department's preliminary views on the foregoing point for possible use in the event that the Foreign Office brings them up for discussion.

PHILLIPS

711.652/101 : Telegram

The Secretary of State to the Ambassador in Italy (Phillips)

WASHINGTON, July 16, 1937—7 p. m.

125. Your 318¹⁸ and 320 of July 7 and 10, 1937. We are very much gratified that the Italians have indicated a disposition to accept our text of Article 8 including the exchange provision. However, we do not consider that an agreement has been reached in respect of that Article in the absence of a definite understanding on the important related question of the exceptions proposed by Italy in Article 19 (preferences to Danubian countries) concerning which certain information was requested of the Embassy last March (Instruction No. 56 of March 17, 1937) and again in the Department's telegram No. 111 of June 23, 1937. Until such information is received we are not in position to give final consideration to this question, since if this were left open to arbitrary interpretation the exceptions which the Italians might invoke thereunder could conceivably nullify the effect of the provisions of the article.

As the Embassy is doubtless aware, it was decided some months ago that in these cases in which negotiations have been inactive for a considerable time formal public announcement of the intention to resume negotiations would be made, in the event negotiations are resumed, in order that interested persons might have an opportunity again to present their views. Also, the country committee will re-

¹⁷ For correspondence with regard to the matter of the title "King Emperor", see *Foreign Relations*, 1936, vol. III, pp. 219 ff.

¹⁸ Not printed.

quire considerable time to bring up to date the statistical information prepared in 1935 and to prepare appropriate desiderata and examine thoroughly the Italian proposals.

Considering the large amount of work which these activities would involve, we hesitate to place the necessary machinery in operation until an agreement has been reached in respect of Article 8 and the vitally related question of the exceptions proposed by Italy in respect of Danubian countries. Once such an agreement has been reached, we would be ready to proceed at once to take all the necessary steps to enter into trade agreement negotiations and to give consideration to all important products entering into the trade between the two countries.

It will be readily seen that any expression of our views with respect to the Italian trade agreement proposals which would be of practical value would involve a statement of our possible objections thereto and a presentation of counter proposals. The presentation of such a statement to the Italians, obviously, would amount to entering into negotiations at a time when a final agreement has not been reached in respect of Article 8.

Although it is not at all our intention to delay trade agreement discussions, we would not like to have such discussions slow up negotiations for the commercial treaty which we are particularly anxious to expedite and, if possible, to complete in time to present to the Senate at the present session of Congress.

Instructions with respect to all of the remaining articles of the proposed treaty of commerce and navigation are being circulated for initial.

HULL

711.652/108a

The Secretary of State to the Ambassador in Italy (Phillips)

No. 163

WASHINGTON, August 9, 1937.

SIR: With reference to your despatches Nos. 126 and 134 of December 18 and 24, 1936,¹⁹ and the Department's instruction No. 56 of March 17, 1937, there are enclosed our counter proposals in respect of all of the remaining Articles of the proposed new Treaty of Friendship, Commerce and Navigation.²⁰

In order that you may have complete information in respect of the points at issue, there is enclosed a memorandum ²¹ in which the several treaty provisions, the significant differences between our original proposal and the Italian draft, and the treatment accorded those differ-

¹⁹ Neither printed.

²⁰ Counterproposals not printed.

²¹ Not printed.

ences in our counter proposals are analyzed and discussed in detail. It will be noted that in a number of instances specific suggestions are made in the memorandum with respect to action to be taken by the Embassy. These suggestions should be complied with as if they were a part of this instruction.

It would seem advisable to incorporate important explanatory statements of our position in respect of the several changes in the treaty provisions proposed by Italy in a note and transmit it to the Foreign Office together with the counter proposals. However, the Embassy may exercise its discretion in this regard. It is not necessary that the precise language of the memorandum in respect of the explanatory statements be employed, but care should be taken that no inaccurate meaning or construction be placed upon any of the treaty provisions.

As regards the several instances in which the Embassy is requested to obtain information, it is within your discretion as to whether the inquiries should be made of the Italian Government or of other sources. In the event that inquiries are made of the Italian Government and the information supplied by it is inadequate, effort should be made to secure the information from such other sources as the Embassy may have at its command. The Department has been handicapped to some extent in the preparation of its counter proposals by the lack of information in respect of certain Articles.

In your discussion of Article I of the Italian proposal, you indicate that the Italian delegation is desirous of obtaining information with respect to any distinction made in the United States by the provision of local or State laws between the treatment of nationals and the treatment of aliens in the exercise of any of the activities under reference in that Article. In response to this request, there are enclosed memoranda entitled "The Rights of Aliens With Respect to the Acquisition of Real Property in the United States" and "Requirements of the Legislation of Certain States of the United States With Respect to the Occupations of Aliens",²² both of which you may present to the Italian Government if you perceive no objection thereto.

As regards the last mentioned memorandum, it should be explained to the Italians that the data has been compiled from the work of a writer who is not employed by this Government but that it is, nevertheless, believed to be accurate as regards State laws in force in 1933.

All written communications from the Italian Government should be translated very closely and copies of such communications as they appear in the Italian language should be transmitted to the Department together with the translations thereof.

Very truly yours,

For the Secretary of State:
SUMNER WELLES

²² Neither printed.

611.6531/375

*Memorandum by the Chief of the Division of Trade Agreements
(Hawkins)*

[WASHINGTON,] August 25, 1937.

Referring to my memorandum of August 23, 1937,²³ Mr. Capomazza²⁴ called again in regard to the question of the status of Italo-American commercial relations in the interval between the signing of the pending commercial treaty and its coming into force after approval by the Senate. Mr. Capomazza said that he needs to cable his Government as to what we would be in a position to do in regard to this matter. In reply to my inquiry he stated that he was assuming that a mutually satisfactory treaty would have been worked out and signed, and that the question he now raises pertains only to the situation following the actual signature of the treaty and prior to its coming into force.

He said that the Ambassador had obtained the impression from Mr. Sayre some time ago that an exchange of notes might be entered into prolonging the effectiveness of the old Treaty of 1871 pending the coming into force of the new one. I told him that I was not sure that Mr. Sayre had in mind that the exchange of notes would take precisely this form; that there might be some legal obstacle to prolonging a treaty by an executive agreement, but that if this is so, some other arrangement might be worked out. Mr. Capomazza said that the Embassy would like to reply by telegraph to the inquiry received from Rome on this subject, and asked whether we could give him any more definite indication of what might be done to meet the situation to which he refers. I told him I would submit the matter to the appropriate officers of the Department and see whether we could not tell him something more definite in the course of a few days. He said that he would greatly appreciate it if we could let him know by next Monday.

Mr. Capomazza indicated in the course of the discussion that what the Italian Government is concerned with is the President's letter of instructions to the Secretary of the Treasury under which the application of our trade agreements rates to Italian products would be suspended as soon as the present treaty obligations lapse.

HARRY C. HAWKINS

²³ Not printed.

²⁴ Nobile Benedetto Capomazza, Secretary of the Italian Embassy.

711.652/120

*Memorandum by the Chief of the Division of Trade Agreements
(Hawkins)*

[WASHINGTON,] September 2, 1937.

Mr. Sayre today handed to Don Marcello del Drago²⁵ the attached memorandum²⁶ in response to the question raised by the Italian Embassy concerning the status of Italo-American commercial relations in the interval between the signing and the coming into force of the new treaty of commerce and navigation. In the course of the discussion, Mr. Sayre emphasized the hope that the new treaty could be signed before the old one lapses, and that pending the coming into force of the new treaty the Italian Government would be in a position to apply the provisions for non-discriminatory treatment and thus make it possible for the United States to continue to extend to Italy the benefit of our trade-agreement rates. Don Marcello del Drago inquired as to the prospects of signing the new treaty before the old one lapses and was informed by Mr. Sayre that we will do everything we can to expedite the negotiations, but that, whether the agreement can be concluded in the time indicated, depends on whether Italy will find it possible to agree to the provisions which we consider indispensable.

611.6531/378

The Chargé in Italy (Reed) to the Secretary of State

No. 570

ROME, September 17, 1937.
[Received September 22.]

SIR: With reference to the Department's Instruction No. 167 of August 17, 1937,²⁶ I have the honor to report that Mr. Henry Grady, a member of the United States Tariff Commission, arrived in Rome on September 15 and remained until September 17.

The Embassy arranged appointments for Mr. Grady with Mr. Felice Guarneri, Undersecretary for Trade and Foreign Exchange; Senator Giannini, Head of the Commercial Department of the Foreign Office, and Mr. Emanuele Grazzi, Chief of the Transoceanic Department of the Foreign Office. In his conversations with these officials Mr. Grady discussed informally with them matters of interest bearing upon trade between Italy and the United States and explained for their benefit the fundamental principles governing United States foreign trade policy.

²⁵ First Secretary of the Italian Embassy.

²⁶ Not printed.

A copy of a memorandum prepared by the Embassy's Commercial Attaché of Mr. Grady's conversation with the Undersecretary for Trade and Foreign Exchange on September 16 is transmitted herewith at Mr. Grady's request. Mr. Grady considers this the most important and significant of the various conversations in which he engaged here. Furthermore, it covered fully all the points which were discussed in his subsequent talks at the Foreign Office.

When calling on Mr. Guarneri, Mr. Grady was accompanied by Mr. Livengood, the Embassy's Commercial Attaché, while Mr. Reber, Second Secretary, was present at his interviews with Messrs. Giannini and Grazi.

The Embassy is very decidedly of the opinion that Mr. Grady's visit to Rome has been extremely helpful in clearing up any doubts and misunderstandings which the competent Italian authorities may have had concerning our foreign trade policy and in reassuring them of our sincere desire to cooperate to the fullest extent possible in mutual efforts to improve commercial relations between the two countries.

Respectfully yours,

EDWARD L. REED

[Enclosure]

Memorandum by the Commercial Attaché in Italy (Livengood)

ROME, September 16, 1937.

At Prof. Guarneri's invitation, Dr. Grady called at the Undersecretariat at 6.30 on September 15, and a general discussion was held with regard to certain basic principles and procedure followed by the United States in the Trade Agreements program. At the conference with Prof. Guarneri were Gr. Uff. Manlio Masi, Director General for Commerce (of the Undersecretariat) and Ing. Da Gignano Bonaini, who is concerned with American affairs in the Treaty office of the same Undersecretariat. The Commercial Attaché accompanied Dr. Grady.

Dr. Grady referring to special concessions accorded by Italy to Danubian countries, said that we desired to know the commodities in which these concessions are granted, their amount and kind, and the countries concerned. Moreover, we wished to be assured (1) that these concessions would not be a means by which American trade in products of proper interest to us could be injuriously affected, and (2) that we should be kept informed in case new concessions should be contemplated in the future.

Prof. Guarneri replied that the questions had already been received, and replies supplying the desired information would be given the Embassy. The special concessions applied to Austria and Hun-

gary. They were accorded by Italy in a period of "dramatic need" on the part of those two countries, when wheat and livestock prices were excessively low. The concessions were not reciprocal, as Italy received no countervalue. The conditions which led to the concessions have now greatly changed, and Italy's policy is not to add to them, but is in the opposite direction. "We would gladly donate these countries to you", said Prof. Guarneri.

Guarneri declared that he was very desirous that a Trade Agreement be concluded between Italy and the United States, that he attached such importance to the realization of this that in the general clauses of the Treaty now under negotiation, he had consented to the suppression of various Italian objections to the American text.

Dr. Grady explained that under the Trade Agreement policy American tariff concessions on a given product are given to the country which is a principal, or at least an important supplier to the United States; that under this principle no product of which Italy is a leading supplier would be excluded from consideration for possible tariff reduction—although the result of the consideration would of course be determined by the negotiations. For commodities in which Italy has a secondary interest, the most-favored-nation clause would assure to Italy any tariff concessions granted to other nations.

In various Trade Agreements, the United States has already accorded reductions on over 500 tariff items, and as there is every intention to push the Trade Agreements program vigorously forward, the benefits which should accrue to Italy by virtue of the most-favored-nation clause should be important. In this connection, agreements are envisaged with Great Britain and various British Dominions, and the concessions which would be involved should be of material interest to Italy.

Up to the present, the advantages to Italy of American tariff reductions have been less in evidence than they would have been had it not been for the suspension of negotiations with Spain—with which country it had been contemplated that negotiations would be carried forward simultaneously with the Italo-American negotiations.

While in granting tariff reductions, the United States expects a *quid pro quo*, the spirit guiding the decisions taken is a generous one. When a Trade Agreement with Italy was under discussion over two years ago, a preliminary survey was made of concessions which might be made to Italy, and the American officials were of the opinion that these concessions, if granted, would make possible a very substantial increase in Italian exports to the United States.

At this point Prof. Guarneri remarked: "What was not done then, can be done now".

Dr. Grady explained clearly that notwithstanding Italian quota restrictions, monopoly purchases, exchange control, etc., the United

States must demand for its products as large a proportionate participation in the Italian market as had been enjoyed before the system of controls was initiated. This proportionate participation must apply to all forms of control including the allocation of foreign exchange.

Prof. Guarneri stated that this principle had been acceded to by Italy in connection with the treaty now under negotiation. He also recognized the principle of making tariff reductions to principal suppliers of the relative articles, a principle which, he said, Italy also followed.

Ing. Bonaini remarked that a list of tariff concessions desired by Italy had been submitted, but that no reaction from the American side had been received. Prof. Guarneri added that it was desirable for Italy to know what concessions could be had, since, if the resulting increase in exports should be sufficiently large, it might enable him to suppress the system of quotas and controls.

Dr. Grady explained that the question of concessions was one which it was desirable to take up apart from the treaty. When the treaty is signed, the way will be cleared for negotiating a trade agreement, in which matters of the kind referred to would be involved.

Throughout the conversation, Prof. Guarneri indicated a most earnest desire that negotiations for a trade agreement be started as soon as possible. He stated, incidentally, that he was by training and economic theory against the system of trade restrictions, but that under present conditions Italy had no choice but to follow such a policy. "With our small gold reserve, we can not take the chance of eliminating the control at present".

In the course of the conversation, he declared most emphatically that in case the franc should be further revalued, the lira would not follow. Regarding a tripartite monetary agreement, he said that the peculiar circumstances affecting Italy prevented Italy's participation at this time. (Possibly his meaning was that Italy was not prepared to participate in guaranteeing the franc).

(In a conversation having no connection with the conference reviewed above, Comm. C. Ruggieri, representative in Italy of the Chase National Bank, in discussing Italian financial matters with Dr. Grady, expressed the opinion that there would be no devaluation of the lira in the near future. Ruggieri seemed to think that for perhaps five years stability in the exchange relationship of the lira could be logically expected. On the other hand, the progressive cumulation of the national debt may be followed eventually by some form of drastic capital levy by which a percentage of the value of national bonds would be wiped out through governmental action. This, in Ruggieri's opinion, would be purely of internal application, and the lira would not be affected in its exchange value).

711.652/110 : Telegram

The Chargé in Italy (Reed) to the Secretary of State

ROME, September 23, 1937—6 p. m.
[Received September 23—4: 05 p. m.]

425. Department's instruction No. 163, August 9. At a full meeting of the Italian Commercial Treaty Commission yesterday, at which Commercial Attaché and I were present, Giannini handed me a memorandum replying to the Embassy's memorandum which accompanied our counterproposals. The memorandum and Giannini's explanatory comments thereon are in effect substantially as follows:

Article 1, paragraph 1. The Italian Government agrees to eliminate mention of agricultural and maritime work. With respect to Department's inquiry regarding construction of words "local law", it is stated that this term is intended to mean the law applicable territorially (that is, throughout Italy but not in the colonies) and consequently as far as concerns Italy the term refers to the Italian laws and in the United States to the laws in force in the individual states as well as the federal laws.

With respect to the professions which can be exercised in Italy, it is pointed out that Italian legislation prohibits foreigners from engaging in the professions of notary, lawyer, procurator and accountant. Italian legislation permits, but only on a reciprocal basis, the exercise by foreigners of medical and agricultural professions as well as those of engineer, architect, chemist, land surveyor and industrial expert.

No particular observations are made with regard to the other paragraphs of this article and the memorandum states in conclusion that "Italy accepts the draft of article 1 except for the limitation qualifying the most-favored-nation clause as Italy cannot admit that such clause apply only to favors subsequent to the conclusion of the treaty, and the phrase proposed by the United States is contrary to the application which has hitherto been made of the clause in question which, moreover, by its very nature does not permit of a different application".

Articles 2 and 3 are accepted without change.

Article 4, paragraph 1. The word "procuratori" is the Italian equivalent of the English phrase "those acting for them". Giannini explained that there was no other suitable equivalent of this phrase in the Italian language. This article and article 5 are accepted without change.

Article 6. The Italian observations regarding this article read textually as follows:

"The text proposed by the American Government cannot be accepted by the Italian Government because it adheres exclusively to the law of the United States. Respecting the previous Italian pro-

posal it is observed that that proposal relates to the provision of the Italian law which in certain cases requires the citizen naturalized foreigner to perform military obligations. In case the American Government should not wish to accept the Italian proposal thus explained it is proposed to return to the provision in article 3 of the existing treaty to be revised to read as follows:

'Italian citizens in the United States of America and citizens of the United States in Italy shall be exempt from any obligation of military service.

They shall likewise be exempt from any requisition or service (*prestazione*) such as forced loans and any special extraordinary contribution imposed in time of war or because of any other exceptional circumstances.

Exception is made of charges connected with the possessing and leasing of real property as well as military services (*prestazioni*) and requisitions to which the nationals and citizens of the most-favored-nation may be subjected as proprietors, tenants or lessors of real property.'

In case the foregoing is not acceptable it is suggested that the article be suppressed entirely."

Article 7. The American formula is accepted. It is pointed out in every particular that "freedom" cannot refer to "territories" but can only refer to the "high contracting parties."

While not insisting on the point Giannini said that the Italian Government would prefer to eliminate the words "the territories of" from the first line of this article.

Articles 8 to 13 (*b*) inclusive are accepted without change and the Italian Government agrees to withdraw articles 13 (*c*) and 13 (*d*).

Our proposed revision of article 13 (*e*) is accepted. Giannini, however, said he hoped that Italian fishing vessels complying with article 12 would not be considered as excluded from the benefits of this article by the provision contained in article 19.

The Italian Government withheld article 13 (*f*) and accepts our revision of article 13 (*g*).

Articles 14 to 18 inclusive are accepted without change.

Article 19. Italy insists upon the inclusion of provision reading: "The stipulations of this treaty do not extend to the advantages now accorded or which may hereafter be accorded by Italy to countries of the Danubian basin and to Albania".

Otherwise our counter-draft of article 19 is accepted, Giannini stating that his Government would be glad to receive as soon as possible our suggestions for the revision of the first paragraph.

In response to our request for information concerning present preferences granted by Italy which Italy desires to exempt for the application of the treaty provisions the memorandum states "since negotiations are already in progress for suppressing the preferential regimes the Italian Government considers that it would be useless to furnish the explanations requested." Enlarging on this statement Giannini said that it was expected that practically all of the existing preferential arrangements would be done away with by January 1,

1938 although it was possible that some would remain in effect thereafter either in their present form or with modifications. He added that as negotiations to this end were now going on, any information which Italy might submit in response to the Department's inquiry would probably be out of date by the time it reached the Department.

Article 20. The Italian comment on this article reads as follows: "Up to the present there has been no discussion of the extension of the treaty to the colonies. If the question is raised by the American Government it will have to be subjected to study. In every particular it should be pointed out in a preliminary way that the extension of the treaty to the colonies would have to be governed by special regulations as a full extension of the treaty to the colonies is impossible." In explanation of this statement Giannini observed that the provisions of no general commercial treaty could be extended to the Italian colonies until after certain measures had been determined upon and put into effect. He mentioned specifically in this connection the matter of fixing import contingents for the colonies and certain restrictions applying even to the activities of Italians in the colonies which were still being studied.

Articles 21 and 22 accepted without change.

Copy of memorandum will be forwarded by tomorrow's pouch.²⁸

REED

711.652/110: Telegram

The Secretary of State to the Ambassador in Italy (Phillips)

WASHINGTON, October 19, 1937—5 p. m.

168. Your 425, September 23, 1937, and Reber's memorandum of conversation with Matoli,²⁹ August 30, 1937.³⁰

1. You should inform the Italian authorities that we are gratified with the progress thus far made in these negotiations and appreciative of the spirit of cooperation shown by the Italian Government. You should say further that this Government is prepared to cooperate to the end that the treaty may be signed and the provisions of Article VIII be brought into operation at an early date; and thereafter to begin discussions concerning the basis for a trade agreement.

2. An outstanding question to be settled before treaty negotiations can be concluded or, in any case, before trade-agreement negotiations can be formally instituted, is that presented by the Italian proposal

²⁸ The memorandum was transmitted to the Department by the Chargé in his despatch No. 579, September 24; neither printed.

²⁹ Of the Commercial Section of the Italian Foreign Office.

³⁰ Not printed.

for broad exceptions to the most-favored-nation clause in respect of preferences to Albania and countries of the Danubian Basin. This proposal would permit preferential treatment to eight countries representing a considerable part of the territory of Europe with no limit whatsoever on the products which could be affected or on the extent of the disadvantage to which competing American products might be subjected in the Italian market. It is understood that several of the countries covered by the proposed exception are not now receiving preferential treatment in Italy. Thus, under a treaty which would require the United States to continue to extend to Italy duty reductions under existing and future trade agreements, with the sole exception of the one with Cuba, American trade might be subjected to new competitive handicaps in the Italian market of very considerable importance. In view of these considerations and of the importance which this Government attaches to the most-favored-nation clause as a basic principle of commercial policy, the Italian authorities will doubtless fully appreciate the difficulties presented by their proposal.

3. It is not our intention to object to the granting of all preferences of the kind in question, but we feel that the products on which, and the countries to which such preferences may be granted in derogation of the most-favored-nation clause should be specified, and that the character and degree of preference accorded on these products should be agreed upon and stated. In the case of products of any considerable interest to the United States, the degree of preference should not be such as to exclude the American products from the Italian market nor to prevent them from participating substantially therein. Our several requests for information as to the preferences now granted were made in order to facilitate the formulation of proposals along the lines above indicated. You should advise the Italian authorities in this sense and suggest that in lieu of providing the information heretofore requested, they may wish to submit, as a basis for discussion, a list only of the products on which they desire to grant preferential treatment, indicating for each product the nature and amount of the proposed preference and the country or countries to which it would be granted. You may say that if such a list could be submitted in the near future, it might be possible to reach agreement on the provision to be included on this subject in the treaty now under negotiation in time to permit its signature before the old treaty expires.

4. In the same spirit of accommodation which has characterized the negotiations thus far we do not, however, wish to take any position which would delay the conclusion of the treaty unduly and are ready to adopt any procedure, consistent with attaining a satisfactory adjustment of the matter above discussed, which will facilitate the early conclusion of the treaty. Accordingly, if it appears that the

negotiations in respect of preferences cannot be completed within the time indicated, we would be prepared to consider including in the treaty suitable provisions of a temporary character and to leave the final disposition of the Danubian preference problem for settlement in connection with subsequent trade-agreement negotiations. If it should be necessary to adopt this procedure, the treaty might provide that, as a temporary measure pending the negotiation of a trade agreement or other suitable arrangement, this Government would not invoke the provisions of Article VIII in respect of customs tariff preferences now granted to specified countries in the Danubian area. However, it would be necessary in order to determine whether such an arrangement would be feasible to have the information previously requested regarding the preferences now accorded. The information is desired also for possible use in connection with obtaining Senate approval of the treaty. Our definitive treaties are not ratified except upon the advice and consent of the Senate. The Senate accords such treaties very close scrutiny and should the Executive be unable to supply full information, he may be subjected to embarrassment and the treaty may fail to receive Senate approval.

5. If the plan under 4 above were adopted, we would be prepared after the treaty has been concluded, to enter into confidential discussions embracing the subject of Danubian preferences as a preliminary to the initiation of trade agreement negotiations. However, in any event, it would be necessary to find a satisfactory solution of the preference problem before trade agreement negotiations could be formally instituted.

6. For your information and appropriate use, the word "embracing" in the preceding paragraph is used advisedly. In any discussions you may have with the Italian authorities, you should make it clear that we are not, of course, committing ourselves to proceed with definitive trade agreement negotiations before the general bases have been explored and we are sure that the negotiations would not break down following announcement on other grounds than those discussed in this cable. If it seems desirable you may orally cite as an example that prior to announcement of trade agreement negotiations, we would need to arrive at an understanding that Italy would not have as one of its objectives the alteration of the balance of trade, but would agree that any agreement should result in a roughly equivalent expansion of trade in both directions.

7. Department wishes to be assured that its understanding and the understanding of the Italian Government of the main provisions of Article VIII is identical. Will you therefore at a suitable point in the discussion ask the Italian authorities orally to confirm the Department's understanding that the provisions of Article VIII such

as the obligation to allocate proportional quotas to the United States will apply to Italy's total imports of the commodities concerned, including those from countries with which it may have special trade arrangements such as compensation and clearing agreements (leaving out of account the limited Danubian exceptions which are specially discussed), and that any adjustments necessary to bring these arrangements into conformity with Article VIII will be made.

HULL

711.652/117: Telegram

The Ambassador in Italy (Phillips) to the Secretary of State

ROME, November 8, 1937—7 p. m.

[Received November 8—2: 50 p. m.]

471. Department's 168, October 19, 5 p. m. The Foreign Office has now replied in respect of the question of preferences granted to Albania and the Danubian countries stating

"The Italian Government confirms that it must reserve the right to make exception in principle to the application of the most-favored-nation clause as regards the Danubian countries and Albania just as the United States makes similar exception with respect to Cuba and the Panama Canal Zone.

The Italian Government, however, states that in fact almost all of the preferential treatments, now granted only to Albania, Austria, Bulgaria, Yugoslavia and Hungary will cease to be in force on December 31, 1937. The Italian Government will, within 30 days after that date, communicate such of the preferences as remain in force, their extent and the period of their validity.

In any event the Italian Government is prepared to postpone to the trade agreement negotiations a reciprocal settlement of the question and the final determination of its concrete terms upon the understanding that until that time neither of the two Governments will advance any objections with respect to the present preferential concessions."

In view of the present Italian negotiations both with Austria and Hungary for a reduction in the amount of preferential treatment granted them by Italy it might appear reasonable to await the conclusion of these negotiations before requiring full information regarding the extent of the preferences which in any event will be modified by the negotiations now under way.

Therefore, I believe that the commitment assumed by the Italian authorities to communicate the full extent of all preferences in force after December 31, 1937, might afford the basis for inclusion of temporary provisions in the commercial treaty in order that it may be signed and its other provisions brought into operation at the earliest

possible date. The final settlement of the Danubian and Albanian preferences could then be left for subsequent negotiations next year presumably in connection with the trade agreement discussions.

The Foreign Office is anxious to conclude the present negotiations as soon as practicable and in any case before December 15 and thus would appreciate an early reply to this as well as to the other questions pending in connection with the draft treaty, see Embassy's telegrams 425, September 23, 6 p. m.; and 329 July 14, 6 p. m.; and despatch No. 579, September 24, 1937.³¹

PHILLIPS

711.652/119

The Assistant Secretary of State (Sayre) to the Ambassador in Italy (Phillips)

WASHINGTON, November 19, 1937.

DEAR BILL: I have just received your cable of November nineteenth,³² with respect to the Italian commercial treaty. I have had the whole matter very much in mind ever since you left and such delay as has occurred has not been due to any inactivity on our part.

As you know, the whole international situation has been the cause of grave concern to the Secretary. A few days ago he called me into his office and told me that in view of the existing international situation he feels that it would be unwise to bind our hands by entering into a treaty with Italy at least for the present. His feeling is that any eventuality might take place; and he does not want, at this critical juncture, to bind our own hands by a treaty agreeing to most-favored-nation treatment to Italy. He instructed me therefore not to arrange for the signature of an Italian treaty during the next two months. His thought is to let matters hang fire and await clarification of the present international situation, and then to determine our course accordingly. In view of this, we shall not unduly hurry our official reply to the Italian Government.

On the other hand, I quite understand your own desire not to drive Italy into the camp of Germany and Japan. Yet we believe that these three countries are even now tied together as closely as possible. Under all the circumstances, it would seem that our wisest course of action would be to send an official reply to the Italian Government in the near future, standing upon our position and not relaxing the conditions which we have originally set forth. We might be a little more deliberate than usual about framing replies. In the

³¹ Despatch No. 579 not printed.

³² Not printed.

meantime, we could inform the Italian Government that if the new treaty is not signed by December fifteenth, we will hope to bridge the interval before the new treaty comes into force by working out some arrangement covering the question of generalizing trade agreement rates for Italian products.

I have wanted you to know the Secretary's mind so that you could understand the true situation and deal with the matter accordingly. If there are paramount considerations against the suggestions I have made, please do not hesitate to let me hear from you.

[The last paragraph, purely personal in nature and unrelated to the commercial treaty, is not printed.]

Ever sincerely yours,

FRANCIS B. SAYRE

711.652/119 : Telegram

The Secretary of State to the Ambassador in Italy (Phillips)

WASHINGTON, November 20, 1937—2 p. m.

176. Your 481, November 19, noon.³³ From Sayre. I suggest if you see no objection that you inform the Italian Government that we are now at work on a reply but that if, as seems likely, the new treaty is not signed by December 15 we hope to bridge the interval before the new treaty comes into force by working out some arrangement covering the generalizing of trade agreement rates to Italian products. Personal letter follows giving further particulars.³⁴ [Sayre.]

HULL

711.652/121 : Telegram

The Ambassador in Italy (Phillips) to the Secretary of State

ROME, November 22, 1937—4 p. m.

[Received November 22—12:25 p. m.]

484. The announced intention of the American and British Governments to negotiate a trade agreement³⁵ has apparently created some concern in the German press which has been echoed by Italian newspapers to the effect that the announcement was made for political purposes and to give the impression of solidarity as a counterbalance to the so-called bloc of authoritarian states. For this reason I should like, in communicating the information contained in Department's telegram No. 176, November 20, 2 p.m., to the Italian authorities, to be able to give more assurances that we will be prepared to bridge the

³³ Not printed.

³⁴ See letter of November 19, *supra*.

³⁵ See pp. 1 ff.

interval before the coming into force of the new treaty by extending the generalization of trade agreement rates to Italian products. Should it only be possible at this stage of the negotiations to state that "we hope" to bridge this interval by working out some arrangement and considering there has already been so much delay on our part I am doubtful of the result of any such communication.

In the circumstances may I not give a more definite commitment?

PHILLIPS

711.652/119 : Telegram

The Secretary of State to the Ambassador in Italy (Phillips)

WASHINGTON, November 22, 1937—8 p. m.

177. Department's 176 of November 20, 2 p.m. There is quoted below a memorandum of Mr. Sayre's conversation with the Italian Ambassador on November 22, 1937, concerning the commercial treaty negotiations now in progress between the United States and Italy.

"The Italian Ambassador came in to see me this morning to say that he had received a cable from his Government asking whether anything could be done to hasten our reply to Rome with regard to the commercial treaty now under negotiation. The Ambassador pointed out that the date of expiration of the present treaty is nearing and that the Italian Government is very anxious to have the new treaty signed before the old treaty expires.

"In reply, I said that I quite realized the time element. I said that we were having difficulty in framing our reply because of the fact that the Italian Government has not yet been able to define the extent of the preferences which Italy is now extending to the Danubian countries. I went on to say that it would put us in an extraordinarily difficult position if we submitted to the Senate for ratification a treaty exempting from its most-favored-nation provisions relations with the Danubian countries and were unable to define to the Senate how great those exemptions were or exactly what is their nature. I said that we could not very well sign a treaty with so much in the dark and hope to secure its ratification.

"In view of the shortness of time until December 15th, when the old treaty expires, I suggested to the Ambassador that perhaps the Italian Government could best be protected by entering into some kind of an arrangement with the United States whereby the Italian Government would assure the United States that it would cease discriminations and extend to the United States most-favored-nation treatment as defined in Article VIII of the proposed new treaty. I said that the United States could then say to the Italian Government in return that, in view of its assurances to accord most-favored-nation treatment to the United States and as long as it continues in fact to do so, the United States will be glad to give to Italy the benefit of all concessions made in existing or future trade agreements to other countries.

"The Ambassador said that he understood our situation and was apparently favorably impressed with the suggested arrangement."

The foregoing is sent to you for your information. It constitutes rather a tentative suggestion than a definitive offer. Department is now studying the suggestion as to details of procedure and the precise substance of the arrangement. We will cable you further with respect to proposed arrangement within the next few days. It may be that Italian Government after Suvich's conversation with Sayre will itself make proposals.

Does this not answer your telegram No. 484 of November 22, 4 p. m.
HULL

711.652/122 : Telegram

The Ambassador in Italy (Phillips) to the Secretary of State

ROME, November 23, 1937—5 p. m.
[Received November 23—1:20 p. m.]

485. Department's telegram November 22, 8 p. m. Inasmuch as the negotiations for the abolition of preferences granted by Italy to Danubian countries have now reached a stage which will enable the Italian authorities to furnish information concerning such minor preferences as will remain in effect after December 31st the Foreign Office feels there will be no reason to delay the negotiations on this account and is now preparing an *aide-mémoire* setting forth the information desired by the Department concerning the extent of the preferences which will remain in force.

Under these circumstances may I urge that instructions concerning any other points which may still be at issue be prepared in order that as soon as the information concerning preferences is furnished negotiations may be resumed and the treaty signed if possible before December 15th.

PHILLIPS

711.652/124 : Telegram

The Ambassador in Italy (Phillips) to the Secretary of State

ROME, November 24, 1937—3 p. m.
[Received November 24—12:30 p. m.]

487. Department's No. 178, November 23, 6 p. m.³⁸ The Foreign Office has promised to furnish me today with the details concerning preferences upon which the Department has been insisting. This completes the entire information which has been requested of the Italian Government.

³⁸ Not printed.

While I appreciate there may be other elements in the situation tending to cause delay in the conclusion of the new treaty of friendship, commerce and navigation I cannot too strongly urge the importance of making every effort to expedite these negotiations. It should not be forgotten that they were initiated at my insistence and that the Italian Government agreed to the denunciation of the old treaty with great reluctance and only because in their opinion it paved the way to a definite improvement in Italo-American commercial relations. Should we now at this last minute raise new objections and obstacles, it would not only be very embarrassing for me personally and in my relations with the Foreign Office but would convince the Italian Government that for reasons other than commercial the United States does not wish to proceed to the completion of a treaty with Italy at this time.

The delays which have hitherto occurred in the negotiations have already given the Italians the impression that the United States is reluctant to conclude the treaty and to proceed to trade agreement discussions. Should further difficulties now be raised the impression will be strengthened that in our efforts to expand world trade we are interested only in improving our relations with Great Britain and other so-called democratic countries thus lending encouragement to the view that the United States has aligned itself with one group of powers as opposed to another group with contrasting political ideas and injecting a political element into a situation which ought to be predominantly commercial in character.

Sayre's letter will not arrive in Rome before December 6th at the earliest which leaves only 9 days before the old treaty expires. If it is not considered possible to conclude the treaty by that date would it not be advisable to inform the Italian authorities now of the obstacles to which Sayre refers in order that discussions may immediately be begun for the purpose of concluding some such provisional arrangement as was suggested by the Department to the Italian Ambassador.

PHILLIPS

711.652/125 : Telegram

The Ambassador in Italy (Phillips) to the Secretary of State

ROME, November 24, 1937—6 p. m.

[Received November 24—1:22 p. m.]

488. My telegram No. 485, November 23, 5 p. m. The Foreign Office has now informed the Embassy in writing that with the exception of Austria all preferences which have hitherto been extended by Italy, namely, those granted to Albania, Austria, Bulgaria, Hungary and Yugoslavia have been abrogated as of December 31, 1937. As regards

Austria, the Embassy has been furnished a list of the preferential duties which will remain in force after January 1, 1938, together with a list of supplementary preferences which may be granted after July 1, 1938, all of which are, however, restricted to definite quotas. Translations of these lists which include 138 separate items are now being prepared. Does the Department wish me to telegraph them?³⁷

Giannini's letter continues as follows:

"I believe that with the foregoing information, the American Government will have at its disposal all the necessary data upon which to reach a positive decision regarding the conclusion of the treaty.

Meanwhile, I beg you kindly to inform the Department of State that on Italy's part it is considered desirable to hasten the conclusion of this treaty before the old treaty expires, there now being no reason for the temporary arrangement".

The temporary arrangement referred to is that discussed with Suvich by Sayre.

PHILLIPS

711.652/126 : Telegram

The Ambassador in Italy (Phillips) to the Secretary of State

ROME, November 26, 1937—1 p. m.

[Received November 26—8:30 a. m.]

489. For the Secretary. My 487, November 24, 3 p. m. I am really disturbed about the possibility that the Department feels unable to proceed with the completion of the general treaty of friendship, commerce and navigation. The Italians have agreed to all our demands and it would really be most unfortunate if a little over 2 weeks before the expiration of the old treaty we should now have to inform them that we are not in a position to proceed with the completion of the new treaty. You will readily understand the misinterpretations that the Italians would give to any such announcement. May I most earnestly ask for your help?

PHILLIPS

611.6531/388

Memorandum by the Adviser on Political Relations (Dunn)

[WASHINGTON,] November 26, 1937.

The Italian Ambassador, at his own request, came in to see Mr. Sayre this afternoon at 3:30. Mr. Sayre had with him Mr. Dunn and Mr. Leap.³⁸

³⁷ Lists were transmitted to the Department in telegram No. 492 of November 29 (711.652/129).

³⁸ Melvin L. Leap of the Treaty Division.

The Ambassador stated that he had been informed by his Foreign Office that the Italian Government had made a declaration to the American Ambassador in Rome to the effect that after December 31, 1937, Italy would terminate the preferences now in force with regard to products from the Danubian countries with the exception of Austria, and that his Government had furnished to the American Embassy in Rome a list of the preferences which Italy would grant to Austria after December 31, 1937. The Ambassador further stated that his Government expressed the hope that negotiation of the new Treaty of Friendship, Commerce and Navigation between Italy and the United States would be concluded in time for the treaty to be signed and ratified before December 15 next, the date of the expiration of the old treaty.

Mr. Sayre said that we also had been informed by our Ambassador in Rome of this declaration of the Italian Government and that our Embassy in Rome had received a list of the preferences to be granted to Austria by Italy after December 31, 1937, and that we had asked our Ambassador to cable us this preference data. Mr. Sayre expressed the gratification of this Government upon hearing that the Italian Government had desired to furnish us with the information we had for some time requested with regard to preferences granted by that Government to the Danubian countries and stated that in his opinion there was no reason why the negotiations for the new treaty should not proceed as rapidly as possible with the particular view of endeavoring to have the treaty signed before December 15. Mr. Sayre then went on to point out that there were several reasons which would make it impossible to accomplish the ratification of the treaty by December 15, giving as instances the fact that there are some matters involved in the treaty upon which further clarification will be necessary before the treaty is ready for signature, among them, the following points:

- (1) The article relating to military service.
- (2) Article 8; clarification of the provisions of that article.
- (3) Article 19 (that part of the article which contains the safeguarding clause for the protection of the right to act under neutrality legislation).
- (4) Article 20, relating to the territorial application of the treaty.

Mr. Sayre further mentioned the fact that the Senate required, before they would consent to consider the ratification of any treaty, an original copy, which would require the time necessary for the treaty to arrive in Washington after its signature, presumably in Rome, and in view of the fact that the Senate Committee on Foreign Relations, which considered ratifications of treaties in the first instance, had no set time for meeting, it was never possible to know when consideration by the Senate Foreign Relations Committee would be undertaken after a treaty was laid before them by the President.

Mr. Sayre stated that we, on our part, would do everything we could to make possible the signature of the treaty before the 15th of December, and that the ratification would ensue as soon thereafter as the Senate might be willing to take appropriate action with regard thereto. With regard, however, to any interim period which might occur between the expiration of the old treaty and the ratification of the new treaty, Mr. Sayre said that we were still prepared to consider the suggestion he made to the Italian Ambassador in their last conversation, which was to provide some arrangement whereby Italy would continue to receive the benefits of reductions in American tariff rates brought about by trade agreements entered into by this country up to the present time and in the future, on condition that the Italian Government grant to us the treatment provided for in Article 8 of the treaty now under discussion and did, in fact, not discriminate against American products.

After some informal discussion of the possibilities of signature of ratification of the new treaty by the 15th of December, the Ambassador expressed himself as entirely satisfied with Mr. Sayre's statements with regard to the treaty situation in its present stage, and the provision for any interim period before it came into effect after the expiration of the old treaty, and said that he would report this present conversation with Mr. Sayre immediately to his Government.

During the conversation the Italian Ambassador asked whether it would be possible to extend the old treaty for a period beyond the expiration date of December 15. Mr. Sayre said that such an extension could not be authorized on the part of our Government without ratifying action of such extension by the Senate which would of course be subject to the same delays referred to with respect to ratification of the new treaty, and therefore would probably not be of any help in the present circumstances. The denunciation of the old treaty had been in accordance with the provisions of that treaty and our Government had therefore been able to take action in that regard without further reference to the Senate, but that any extension now would be subject to ratification by that body.

JAMES CLEMENT DUNN

611.6531/339

Memorandum by the Under Secretary of State (Welles)

[Extract]

[WASHINGTON,] November 26, 1937.

The Italian Ambassador called to see me this afternoon. The Ambassador told me of his earlier conversations with Mr. Sayre and Mr. Dunn with regard to the signing of the new commercial treaty between

the United States and Italy. He explained to me that the Danubian preferences would be abolished as of January 1 next, with the exception of the Austrian preference, and that, on this basis, he believed that all obstacles to the signing of the treaty had been removed. He told me that he had been informed by the Department that, owing to the time required for receiving in Washington a signed copy of the treaty from Rome and the time needed for ratification by the United States Senate, it would be materially impossible for the treaty to be ratified by the Senate here by the 15th of the coming month of December, and that it had consequently been arranged that the two Governments by means of an exchange of notes would tide over the period until the new treaty became operative. He appeared to be entirely satisfied with the arrangements proposed and said he was strongly recommending to his Government that the exchange of notes procedure be agreed to.

The Ambassador then said that, once this step had been taken, he hoped that negotiations for a trade agreement between the United States and Italy could be commenced. He said that on his recent trip to Italy this autumn he had obtained the agreement of the Minister of Foreign Trade, Signor Guarneri, to the commencement of negotiations, and that he had made it clear that Italy would have to agree to the importation of American manufactured products, such as automobiles, in return for concessions on our own part. He told me of a conversation he had recently had with Mr. Henry Ford, who was interested in the trade agreement negotiation, and of his own—the Ambassador's—regret that the efforts of Mr. Ford to establish a factory in Trieste some years ago had not proved successful owing to the opposition of the domestic Italian automobile interests.

The Ambassador then went on to say that he felt that the autarchic system was a system which was highly detrimental to economic stability and to enhanced prosperity in his own country. I said that this would seem to be most evident when one realized how thoroughly uneconomic it was for Italy to devote man power and wealth to the manufacture of synthetic gasoline in Italy, not only of inferior quality but at a cost far superior to imported gasoline, when the public and internal communications could be benefited by the free importation of natural gasoline at low prices and the human energy and wealth now devoted to the production of bad synthetic gasoline at high prices could be devoted to the manufacture of goods which Italy could export in return for natural gasoline. The Ambassador said that this was a perfect illustration of what he had in mind, and that for that reason he believed that liberal trade policies were the only sure policies in

the long run. He said that Italy had been forced into an autarchic system two years ago as a result of sanctions, and that a certain measure of self-dependence for a nation like Italy, which possessed no natural resources, was probably desirable, but that if carried to excess, it was a ruinous policy.

S[UMNER] W[ELLES]

711.652/126 : Telegram

The Secretary of State to the Ambassador in Italy (Phillips)

WASHINGTON, November 26, 1937—7 p. m.

180. Your 487 and 488, November 24, and 489, November 26. We are very much gratified that the Italian Government has stated that preferences heretofore accorded will be abolished in respect of all countries except Austria as of December 31, 1937, and has supplied full information with respect to preferences which will be granted after January 1, 1938. We suggest that all information made available to you regarding preferences be transmitted by cable.

In view of your telegrams above referred to and of the disposition of the Italian Government now to furnish the data on preferences, we see no reason why the discussions on the commercial treaty should not proceed with a view to signing the treaty at the earliest possible moment that full agreement on all points is obtained.

The following major points still require agreement or clarification :

- (1) The use of the Sovereign's title in the preamble.
- (2) Article 6 relating to military service.
- (3) Article 8. For purposes of clarity and to ensure a common understanding we plan to submit to Italian Government a memorandum defining our understanding of the meaning of provisions of Article 8.
- (4) Article 19. The safeguarding clause to protect the right to act under neutrality legislation.
- (5) Article 20 relating to the territorial application of the treaty.

A further telegram of instructions upon all unsettled points will be sent you within a day or two.

Since it will be obviously impossible to exchange ratifications by December 15th, a provisional arrangement to provide for most-favored-nation treatment of commerce will be necessary. We hope to send you a telegram tomorrow proposing the text of such an arrangement.

HULL

711.652/127a : Telegram

The Secretary of State to the Ambassador in Italy (Phillips)

WASHINGTON, November 27, 1937—6 p. m.

183. Department's 154³⁹ and 177 of September 2, and November 22. In order that traders may be relieved of uncertainty as to the customs treatment of imports from Italy after December 15, we feel that it is imperative to work out some temporary arrangement immediately which will govern Italo-American commercial relations during the interval between the date on which the treaty of 1871 terminates and the date on which the proposed new treaty comes into force.

Accordingly, if you perceive no objection you are requested to address a note to the Minister of Foreign Affairs in the following language:

"Inasmuch as the treaty of commerce and navigation between the United States and Italy, signed at Florence, February 26, 1871, which will terminate on December 15, 1937, in consequence of the joint notice of denunciation of December 15, 1936,⁴⁰ provides for most favored nation treatment in customs matters and negotiations for a new treaty to replace it have not been completed, it seems desirable that steps be taken now to determine the treatment which will be accorded by each country to the commerce of the other during the interval between the date on which the treaty of 1871 will terminate and the date on which the proposed new treaty will come into force.

"In the course of the negotiation of the proposed new treaty, the Governments of the two countries have tentatively agreed upon the provisions of Article VIII thereof which deals with customs duties, import prohibitions and restrictions, import licenses, exchange control, and monopolies affecting imports and is annexed hereto.

"If the Government of Italy will in fact apply the provisions of Article VIII of the proposed new treaty on and after December 15, 1937, the Government of the United States will continue to accord to articles the growth, produce or manufacture of Italy the benefits of the minimum rates of the American tariff as established in its trade agreements with other countries (Cuba excepted), until 30 days after notice by either party of its intention to discontinue such treatment.

"It is understood that the advantages which Italy now accords to Austria, and until December 31, 1937, those which it now accords to Albania, Bulgaria, Hungary and Yugoslavia, are excepted from the operation of the provisions of Article VIII during the continuance of this arrangement."

A transcript of Article VIII as it appears in the enclosure to instruction no. 163 of August 9, 1937, should accompany your note as an annex.

Please also inform the Italian Government that in order to assure that the two Governments have a fully identical understanding of

³⁹ Not printed.

⁴⁰ See *Foreign Relations*, 1936, vol. II, pp. 340 ff.

the meaning in application of the provisions of Article 8, you will submit for its consideration within the next few days a memorandum of interpretation. The Department will cable you this memorandum early next week.

The receipt of a satisfactory reply, after affirmation on the part of the Italian Government that our understanding of Article 8 is identical will constitute an adequate temporary arrangement for governing commercial relations between the two countries during the period specified in your note.

HULL

711.652/128 : Telegram

The Ambassador in Italy (Phillips) to the Secretary of State

ROME, November 29, 1937—noon.

[Received November 29—8:12 a. m.]

491. Department's telegram No. 183, November 27, 6 p. m. In discussing the terms of the temporary arrangement with the Italian authorities this morning they agree in principle to the arrangement but request a delay of a few days before proceeding to the exchange of notes in order that it may be determined whether it will be possible to sign the treaty this week or early next week. In that event they would prefer to enter into the temporary arrangement at the same time which would require a slight modification in the wording of our note.

They are most anxious to resume negotiations on the treaty points still remaining at issue and hope that the Embassy will shortly receive instructions on these points.

PHILLIPS

711.652/127b : Telegram

The Secretary of State to the Ambassador in Italy (Phillips)

WASHINGTON, November 30, 1937—6 p. m.

184. Department's 183, November 27. In order to prevent any possible misunderstanding concerning the meaning of certain provisions of Article VIII of the proposed treaty please discuss the matter orally with the appropriate officials of the Italian Government explaining the understanding of this Government as set forth in the following Précis and ascertain whether the understanding of the Italian Government on these points is the same as our own. Please give to the Italian officials a copy of the Précis:

Paragraph 3. The total amount of any permitted import, of which a share is to be assigned by either country to the other, shall include all imports of the regulated article, including such imports as may be made through public or private clearing, compensation, or payment arrangements.

"If the authorities of either country permit imports additional to the amount of any quota which has been established by establishing a supplementary quota, in that event an equitable share of such supplementary quota is to be assigned unconditionally to the other country.

"It is also to be understood that the 'representative' base period should be one in which the trade of the other country was not being impaired by discriminations and was not seriously affected by conditions of an unusual and temporary character.

Paragraph 4, subparagraph (a). To impose the condition that payment for the importation of any article must be made in compensation would be to impose a 'restriction' on the transfer of payment.

Paragraph 4, subparagraph (b). In determining most-favored-nation treatment with respect to rates of exchange it is suggested that a suitable criterion would be cross rates of exchange in some free market. If, for example, exchange control were in force in Italy which prevented complete freedom of action on the part of importers having payments to make to the United States, the rate of exchange between the dollar and the lire should not be such as to result in a higher cost in lire to the importer than it would be if he were free to purchase the currency of any third country (including compensation currencies) at a rate which applies to any imports from that third country and then to exchange this third currency for dollars at the rate prevailing in some free market."

When the Italian Government confirms to you that this Précis represents also their understanding of the provisions of Article VIII therein discussed you are authorized, as soon as we have received your telegram defining Danubian preferences and telegraph you that it is satisfactory, to conclude the temporary arrangement set forth in Department's telegram No. 183 of November 27.

If you perceive objections to the foregoing procedure we would appreciate receiving your comments and suggestions.

HULL

711.652/131a : Telegram

The Secretary of State to the Ambassador in Italy (Phillips)

WASHINGTON, December 2, 1937—2 p. m.

186. Your 425, September 23, and despatch No. 579, September 24.⁴¹ Following is this Government's comment with respect to the Italian counter proposals enclosed with your despatch in reference.

Preamble. As a possible solution of the problems involved, you

⁴¹ Latter not printed.

may propose the following language in lieu of that contained in this Government's original proposal:

"The United States of America and Italy, desirous of strengthening the bond of peace which happily prevails between them, and of promoting friendly intercourse between their governments and peoples, have resolved to conclude a Treaty of Friendship, Commerce and Navigation and for that purpose their duly authorized plenipotentiaries have agreed upon and signed the following Articles:"

Article 1. With reference to the Italian objection to the clause "the nation hereafter to be most favored by it" appearing near the end of paragraph 1, you may propose the phrase "the most favored nation" in lieu thereof.

As regards the term "local law", it is the view of this Government that it relates to law applicable in any territory of either High Contracting Party to which the treaty applies by its own terms.

It is understood that Italy accepts the text of Article 1 as last proposed by this Government in all other respects.

Article 2. Italy has accepted the American draft as last proposed by this Government.

Article 3. The United States has accepted the changes in punctuation proposed by Italy and the two Governments are in agreement in respect of this Article.

Article 4. Italy has accepted the English language text of the American draft as last proposed by this Government.

In view of the statement by the Italian Government that the word "procuratori" in paragraph one of the Italian language text is translated by the phrase "others acting for them" the United States does not insist upon another equivalent. You might suggest, however, that in the treaty of 1871 the same phrase appearing in Article 22 is translated into the Italian by the words "per mezzo d'altri che agiscano in loro nome."

Please report whether the Italian language draft of the last paragraph of this Article has been adjusted so to include the word "therein" as a modifier of the word "interests" wherever the phrase "interests therein" occurs throughout the paragraph.

Article 5. Italy has accepted the American draft as last proposed by this Government.

Article 6. Separate instructions with respect to this Article will be cabled within a day or two.

Article 7. The Italian Government states "freedom cannot refer to territories, but to the High Contracting Parties."

This Government, on the contrary, considers that the Article deals with rights in respect of commerce and navigation between all territories of the High Contracting Parties not specifically excepted by its own language or by exceptions provided for elsewhere in the treaty.

Article 8. Separate agreement has been reached on the text of this Article. It is understood that the text included in the draft treaty provisions enclosed with the Department's instruction No. 163 of August 9, 1937, is the text agreed upon. Confirmation is awaited that the Italian Government is in accord with the Department's exposition of certain points in the Article, as presented in Department's 184 of Nov. 30.

Article 9. Italy has accepted the American draft as last proposed by this Government.

Article 10. Agreement has already been reached on the text of this Article.

Articles 11, 12 and 13. Italy has accepted the American drafts as last proposed by this Government.

Article 13 (b). Italy has accepted the American redraft.

Articles 13 (c) and 13 (d). Italy has agreed to omit these two articles.

Article 13 (e). Italy has accepted the American redraft.

Article 13 (f). Italy has agreed to omit this Article.

Article 13 (g). Italy has accepted the American redraft.

Articles 14 and 15. Italy has accepted the American drafts as last proposed by this Government.

Article 16. Italy has accepted the American draft.

Articles 17 and 18. Italy has accepted the American drafts as last proposed by this Government.

Article 19. The Department has now formulated treaty provisions to conform with new legislation respecting neutrality. Accordingly, you are requested to propose that the following sentence be added to paragraph 1: "And it is agreed, further, that nothing in this Treaty shall be construed to prevent the adoption or enforcement of measures relating to neutrality".

For your information and use, if necessary, we are proposing this additional sentence as a precaution against a possible feeling on the part of the Senate that the provisions of the Neutrality Act of May 1, 1937⁴² would not be adequately safeguarded without it.

With respect to the Italian proposal concerning preferences to countries of the Danubian Basin and Albania, you are being instructed in a separate telegram.

Article 20. As regards the Italian comment concerning this Article, it is pointed out that the language of the Article automatically raises the question of the territorial application of the treaty. Up to now the Italian Government has not offered a counter proposal to the original American draft. Therefore, as a possible solution of the problems involved, you may propose the following change in the

⁴² 50 Stat. 121.

language of the Article as originally proposed by this Government: Strike out the words "dominion as sovereign thereof" and insert in lieu thereof the word "jurisdiction." The last clauses of the Article will then read "claim and exercise jurisdiction, except the Panama Canal Zone."

For your personal information, it is our intention on the one hand that the language of the Article as thus amended shall not recognize Italian sovereignty over Ethiopia, but on the other hand requires that the treaty provisions shall be applied there.

Article 21. Italy has accepted the American draft as last proposed by this Government.

It is, however, necessary to raise the question of the omission of the last paragraph of this Article in view of the fact that the provision is not applicable to the situation existing since the joint notice of termination of the treaty of 1871 was given.

Article 22. Italy has accepted the American draft.

The Department suggests that the words "For the United States of America" and "For Italy" be used at the end above the signatures of the plenipotentiaries.

HULL

711.652/131b : Telegram

The Secretary of State to the Ambassador in Italy (Phillips)

WASHINGTON, December 2, 1937—7 p. m.

187. Your telegram No. 492, November 29, 6 p. m.⁴³ The Department is prepared to accept the exemption from the provisions of article VIII of the preferences to Austria set forth in list A,⁴⁴ but it is unwilling to accept exemption of those set forth in list B.⁴⁵

Hence you are requested to make the following counter proposal: Add the following sub-paragraph to the last paragraph of Article 19.

"(4) Tariff advantages now accorded by Italy to Austria, and until December 31, 1937, advantages now accorded by Italy to Albania, Bulgaria, Hungary, and Yugoslavia".

You are requested to seek from the Italian Government a confirmation that their understanding of the meaning of the word "now" is the same as ours, namely, that it limits the preferences to those set forth in list A. In the event that the treaty should not be signed before

⁴³ Not printed.

⁴⁴ List A sets forth the preferences granted to Austria by Italy to be continued in effect after January 1, 1938, listed according to description of merchandise, percentage of reduction in duty, and customs quotas in quintals.

⁴⁵ List B sets forth the preferences which the Italian Government reserved the right to grant Austria after July 1, 1938.

the end of the year, everything following the word "Austria" should of course be deleted, and the words "accorded by Italy to Austria on January 1, 1938" substituted for "now accorded by Italy to Austria."

Since the quotas set forth in list A are customs quotas and not absolute quotas, it is our understanding that the proposed treaty provision would render the provisions of the third paragraph of article VIII inapplicable to these customs quotas, but would not affect their application to absolute quotas or to additional customs quotas. Hence the United States would not be entitled to claim any share of the amount of any article enumerated in list A which is admitted from Austria at the preferential rate of duty. But if there is also an absolute limitation on the total amount of imports of such an article, then the United States would be entitled to a share, determined in accordance with article VIII, of the total permitted amount of such imports, including all imports from Austria. On the other hand, if, in addition to the limited amount of such an article which may be imported at the preferential rate, an unlimited amount should be permitted to be imported from Austria at the general rate, then imports of such article from the United States would likewise be exempt from quantitative limitation. In order to avoid any possible misunderstanding on this matter, the word "tariff" has been inserted. You are requested to make this clear to the Italian authorities.

HULL

711.652/132 : Telegram

The Ambassador in Italy (Phillips) to the Secretary of State

ROME, December 3, 1937—noon.

[Received December 3—8:40 a. m.]

497. Department's No. 186, December 2, 2 p. m., article XX. From the beginning of the negotiations the Italian authorities have maintained the point of view that the matter of extension of the treaty to the Italian colonies should form the subject of a separate and subsequent agreement when their studies concerning the new colonial regime and special arrangements for the colonies have been completed. Furthermore, the Italian memorandum quoted in the Embassy's telegram No. 425, September 23, and despatch No. 579, September 24, states that "Full extension of the treaty to the colonies is impossible". I also understand that no other recent general Italian commercial treaty includes the colonies, even those which have been concluded with powers which have recognized Italian sovereignty over Ethiopia. In this connection it may be recalled that the Japanese negotiations

concerning the extension of the Italo-Japanese treaty⁴⁶ to Ethiopia have been in process for at least a year and I understand have not yet been concluded.^{46a}

Although I shall make every effort to secure agreement to the Department's suggestion concerning article XXII that "the words 'for the United States of America', and 'for Italy' be used at the end above the signatures of the plenipotentiaries" it is probable that the Italians will insist upon the formula now established by law in Italy and used as I recall in Suvich's credentials, namely, that the Foreign Minister will sign on behalf of the King of Italy and Emperor of Ethiopia. In this eventuality have I your permission to accept the above formula?

Department's telegram No. 187, December 2, 7 p. m. The treaty with Austria was signed last night including list B. If the Department is unwilling to accept these exemptions it will be equivalent to requiring that these preferences granted Austria on account of its special position be extended as well to the United States. The Department's telegram No. 168, October 19, 5 p. m., stated that it was not the intention of the American Government to object to the granting of all preferences of the kind in question but it was felt that the products on which, and the countries to which such preferences should be granted should be specified and the degree of preference agreed upon and stated. These preferences are now limited in their application to one country and have been specified by the Italian Government which is granting them to Austria in connection with its general policy with respect to aid to that country just as the United States has exempted its commercial relations with Cuba from the application of the most favored nation principle.

Before discussing this point with the Italian authorities may I request reconsideration of the Department's position as regards the second list of preferences list B.

PHILLIPS

711.652/132 : Telegram

The Secretary of State to the Ambassador in Italy (Phillips)

WASHINGTON, December 4, 1937—4 p. m.

188. Your 497, December 3. As regards Article XX, we are not clear as to the basis for the statement that from the beginning of

⁴⁶ Treaty of Commerce and Navigation signed at Rome, November 25, 1912; for French text, see *British and Foreign State Papers*, vol. cvI, p. 1080.

^{46a} As a result of these negotiations, an Additional Agreement to the 1912 treaty was signed at Rome, December 30, 1937; for text, see *British and Foreign State Papers*, vol. cxLI, p. 1098.

negotiations the Italian authorities have maintained the point of view that the matter of extension of the treaty to the colonies should form the subject of a separate and subsequent agreement. Our original proposal automatically raised the question and you reported in your 533 of December 16, 1936,⁴⁷ that the Italians were studying the subject but no conclusion had been reached. This was the status of the matter on August 9, 1937, when it was indicated in instruction No. 163 of the same date that we understood Italy would submit a counter proposal. The Italian memorandum of September 22 seems to be the first formal Italian comment we have had to the effect that full extension of the treaty to the colonies is impossible. Considering the foregoing it appears to the Department that the procedure most conducive to an early agreement with reference to Article XX would be for the Italian Government to submit a counter proposal.

With respect to the concluding language of the treaty the suggestion as to the words to be used above the names of the plenipotentiaries was made because we are unwilling that the words "Emperor of Ethiopia" or the word "Ethiopia" appear in the treaty, namely, in any instrument signed on behalf of the United States. If the suggestion is not acceptable to the Italian authorities, you may propose as an alternate that no language at all appear over the signatures of the plenipotentiaries and that the names and titles of the plenipotentiaries be inserted in the preamble as follows:

After the word "plenipotentiaries" insert a comma and the following "namely, William Phillips, Ambassador Extraordinary and Plenipotentiary of the United States of America at Rome, and Count Galeazza Ciano di Cortellezza, Minister of Foreign Affairs of Italy". Then will follow the words "have agreed upon and signed the following articles".

We have reconsidered the question of preferences included in list B, and would, if necessary, agree that they be excepted from the operation of the Treaty. Accordingly, you should not seek the understanding mentioned in my 187 of December 2 with respect to the meaning of the word "now". On the other hand, in order that we may have the Italian viewpoint, you should make the counter proposal in respect of a new sub-paragraph to the last paragraph of Article XIX set forth in the telegram in reference and await comment from the Italian Government thereon.

Interpretation of list A in Department's No. 187 would remain pertinent.

HULL

⁴⁷ *Foreign Relations*, 1936, vol. II, p. 358.

711.652/133 : Telegram

The Ambassador in Italy (Phillips) to the Secretary of State

ROME, December 6, 1937—5 p. m.
[Received December 6—2:06 p. m.]

503. Department's 188, December 4, 4 p. m. As regards article 20, the Italian authorities suggest that their point of view would be taken care of by the addition of the phrase "and the Italian possessions and colonies" after the phrase "except the Panama Canal Zone" in the original American draft of this article. They also inquire whether under this condition the American Government would later wish to exclude its possessions and colonies.

PHILLIPS

711.652/131c : Telegram

The Secretary of State to the Ambassador in Italy (Phillips)

WASHINGTON, December 6, 1937—7 p. m.

189. Department's 186 of December 2. We have been concerned because of the lack of progress so far made during the negotiations in respect of a satisfactory solution of the problems involved in Article 6.

In instruction No. 163 of August 9, 1937, it was pointed out that we were not at all clear as to the meaning of the first Italian counter proposal and the Embassy was requested to obtain from appropriate Italian officials a full explanation of its purpose and intent, including some indication of the rights which in the opinion of the Italians would be accorded thereunder. The statement in Italian memorandum of September 22 that the first Italian counter proposal relates to the provision of the Italian law which in certain cases requires the citizen naturalized abroad to perform military obligations does not throw sufficient light upon the extent, if any, to which the Italian Government is prepared to go in order that a solution of the problems involved might be worked out. The language of the second Italian counter proposal (Italian memorandum of September 22) is clearer but it offers no assurances whatever with respect to the question of which persons are included within the term "citizens of the United States in Italy" and "Italian citizens in the United States of America".

In view of our uncertainty and lack of information with respect to whether or not the Italian Government is prepared to make any concessions whatever to the end that a solution of the question might be worked out, we think it would be futile to attempt to formulate a new proposal.

On the other hand, it is our view, and no doubt you will agree, that this long standing problem is one that ought to be satisfactorily adjusted in the new treaty if that is at all possible. The necessity for a satisfactory adjustment becomes more apparent when it is considered that the treaty may remain in force for many years. Indeed, inasmuch as many Senators are familiar with the problem due to the complaints of their constituents, there is the possibility, too, that the treaty may be opposed in the Senate should it fail to contain satisfactory provisions relating to drafting for compulsory military service.

You are requested, therefore, again to take the matter up with the appropriate officials on the basis of the original proposal of this Government with the additional paragraph hereinafter indicated.

Since our original proposal was made, it has come to the Department's attention that the Italian Ministry of Foreign Affairs has taken the position that an Italian citizen naturalized in the United States does not lose his Italian citizenship unless he complies with Article 2, paragraph 3, and Article 5 of the Italian Royal Decree No. 2560 of December 28, 1919, which provides that an Italian citizen naturalized abroad inform the Officer of Civil Status in the Commune of his birth of his foreign naturalization in order that it may be transcribed in the Register of Citizenship. This is in addition to the two requirements for the loss of Italian citizenship specified in paragraph 1 of Article 8, of Law No. 555 of June 13, 1912, concerning Italian Citizenship, and in Italian Regulatory Decree No. 949 of August 2, 1912, namely, voluntary acquisition of a foreign citizenship and transfer of residence abroad. (See Italian Note Verbale to Embassy, dated July 20, 1936, in foreign exchange case of Attilio Taraboletti, also case of one Biagio Mataluni.) The Department contests the interpretation indicated in the cases cited above which imposes compliance with Royal Decree No. 2560 as an additional requirement for the loss of Italian citizenship. The purpose of Royal Decree No. 2560 as stated in its preamble is to coordinate the Civil Status regulations relating to the Register of Citizenship and Italian Law No. 555 of June 13, 1912, concerning Italian Citizenship, approved by Royal Decree No. 949, of August 2, 1912. It is not stated in Royal Decree No. 2560 that non-compliance therewith in any way affects the loss of Italian citizenship. To prevent, therefore, this apparently arbitrary interpretation of Royal Decree No. 2560 for the purpose of establishing that naturalized Americans of Italian birth never lost Italian citizenship and accordingly are subject to Italian military service in category of dual citizens, you are requested to propose that Article 6 of the original American draft be amended by adding the following new paragraph:

"Natives of the Party drafting for compulsory military service who have become nationals of the other High Contracting Party by naturalization according to its laws and have not declared an intention to acquire or resume the nationality of the country of their birth may not be drafted for compulsory military service by the latter country and shall not be denied at any time the privilege of departing from its territories: Provided, however, that they do not permanently reside in such territories."

You may in your discretion make use of any of the information set forth in this cable and also emphasize in any other way you may deem appropriate our reluctance to leave the problem in reference without a satisfactory solution.

HULL

711.652/134 : Telegram

The Ambassador in Italy (Phillips) to the Secretary of State

ROME, December 8, 1937—noon.

[Received December 8—7:57 a. m.]

505. On the basis of the Department's telegram No. 189, December 6, 7 p. m., the Embassy has again taken up the matter of article VI with the Foreign Office and has emphasized the Department's desire to obtain a satisfactory solution.

Subject to a further study to be undertaken immediately the Italian authorities, however, seem inclined to consider that it will not be possible even with the best will on their part to meet the Department's point of view, to reconcile in a general treaty the two divergent systems of nationality laws. They recall the unsuccessful efforts made in the past to achieve an agreement which would be satisfactory to both parties and add that while the Italian Government is at all times prepared to discuss individual cases it seems difficult if not impossible to find a formula which would be generally applicable. Therefore they suggest provisionally that if their further studies should not result in an agreement on the lines of the American proposal the article might be omitted from the treaty.

Ciano has signified his wish to discuss with me the question of the practicability and the use of the sovereign's title. Owing to the pressure of public engagements in connection with the visit to Italy of the Yugoslav Prime Minister, Ciano has been obliged to postpone for a few days the meeting scheduled for last Monday.

PHILLIPS

711.652/133 : Telegram

The Secretary of State to the Ambassador in Italy (Phillips)

WASHINGTON, December 9, 1937—7 p. m.

190. Your 503, December 6. As we understand your telegram, the Italians have proposed that the possessions and colonies of Italy be excepted from the operation of the treaty and have inquired whether under this condition the Government of the United States might wish to make exceptions in respect of its territories and possessions. In other words, it appears that the Italians have in mind reciprocal exceptions in respect of the application of the treaty to the possessions and colonies of each of the Contracting Parties.

It is not the policy of the United States to except its territories and possessions from the operation of its definitive treaties of commerce and navigation and such exceptions do not appear in our modern treaties. It would be neither practicable nor desirable from the standpoint of this Government to change this established policy by amending the proposed treaty with Italy so that it would apply only to continental United States. Moreover, even if such change of policy were desirable, we would be confronted with almost insurmountable technical and procedural difficulties were we to attempt to make the change effective.

On the other hand, we feel that since it is necessary to have the treaty apply to the territories and possessions of the United States, it should likewise apply to the Italian overseas possessions. Italy has already made certain of its treaties with other countries applicable to its overseas possessions and, hence, we do not understand why it would be impossible to have the proposed treaty with this country apply to Italian possessions.

You are requested to present the foregoing views to the appropriate authorities in such manner as you may deem appropriate and report fully the Italian reply.

HULL

711.652/135 : Telegram

The Ambassador in Italy (Phillips) to the Secretary of State

ROME, December 10, 1937—7 p. m.

[Received 7:47 p. m.]

509. A meeting of the representatives of Italian Ministries interested in the commercial treaty was held yesterday afternoon at the Foreign Office to discuss the remaining points at issue, the result of which have been communicated to the Embassy as follows:

Article 6. The Italian authorities state that although further efforts have been made to reconcile the Department's proposal (Department's No. 189, of December 6, 7 p. m.) with the provisions of Italian law it has not been possible to harmonize the two divergent systems of nationality. They state, however, that they might be prepared to consider separate and subsequent negotiations on this question. In the meanwhile they propose to omit article 6 from the present treaty.

Article 8. The Italian officials accept substantially the Department's interpretation of article 8. A memorandum to this effect is being forwarded by pouch which reads in part as follows:

"The interpretation of paragraph 3 is accepted and as far as Italy is concerned the 'representative period' will be 1934.

Paragraph 4, sub-paragraph (a) accepted.

The wording of the first sentence of the interpretation of paragraph 4 (b) is accepted. The official Italian quotation of the dollar is on a par with the unrestricted Italian lira quotation in New York and corresponds thereto, save for negligible variations in lira quotations on various world markets. However, the example which follows said first sentence does not appear to accord with the preceding assumption in view of the fact that since an exchange monopoly exists in Italy private individuals may apply only for the foreign currency in which the debt to be paid has been stipulated, and not a third currency which the interested party may negotiate in a third country to obtain therefrom the exchange actually required for the payment.

It should be further noted that it would be inaccurate in any case to extend this example to compensation currencies inasmuch as in the first place these are definitely restricted for use in payments expressly contemplated in clearing agreements and inasmuch as compensation currencies are as a rule determined with a certain precision by agreement between the two clearing institutes responsible for the operation of the respective accords and may therefore be temporarily more susceptible of a certain appreciable discrepancy in relation to the quotations of unrestricted exchanges".

Article 19. The Department's addition concerning "neutrality" is acceptable in principle to the Italian authorities. Inasmuch as Italy has no neutrality law the Italians desire to reserve the right to modify or suspend on a reciprocal basis those provisions which might be affected by the application on the part of the United States of neutrality measures. Accordingly, they propose the following formula to be added at the end of the first paragraph of this article:

"In the event that one of the High Contracting Parties should apply measures relating to neutrality which modify or suspend in whole or in part any of the provisions of this treaty, it is further agreed that the other High Contracting Party upon a reciprocal basis may likewise modify or suspend the obligations assumed in the said provisions".

With respect to the exception for Austrian preferences the wording of the Department's suggestion is acceptable to the Italian authorities upon the understanding that the word "now" includes lists A and B contained in my telegram No. 492 of November 29, 6 p. m.^{47a}

In order to prevent any possible subsequent misunderstanding with respect to tariff preferences which have been exempted a memorandum is being prepared by the Foreign Office relating to the wheat revaluation agreement with Hungary which in the opinion of the Italian Government does not constitute a preference. It desires, however, to bring the terms of the agreement to the attention of the American Government before concluding the treaty. It is hoped that this memorandum can be forwarded by telegram tomorrow.

Article 20. The Foreign Office states that the reasons which prevent the extension of the treaty at this time to the Italian colonies relate to the special regime at present existing in the Italian colonies in all matters referring to entry and the exercise of commerce and professions on the part of Italian nationals, as well as to the special regulations and restrictions imposed upon the said nationals in the exercise of maritime trade and other activities. Such regulations involve a special procedure (corporative organization) which is applied to nationals but which cannot be automatically extended to foreign citizens. It is for the foregoing reason that the matter of extension of commercial treaties to the colonies has been the subject of separate agreements with other countries. The Italians state they would be prepared subsequently to enter into negotiation for this separate agreement but I am of the opinion that it would be difficult to envisage any negotiations referring specifically to the colonies which would not raise the question of recognition of Ethiopia.

The Temporary Arrangement. The Italian Government is now prepared to reply accepting the proposal contained in the Department's telegram No. 183 of November 27 but would greatly appreciate an amendment of form, namely, that the third paragraph of the American note be modified to read as follows: "It is agreed that while on its part the Government of Italy will in fact apply the provisions of article 8 of the proposed new treaty on and after December 15, 1937, the Government of the United States will on its part continue to accord . . ." If this suggestion is acceptable to the Department the Italian Government would like to proceed to a formal exchange of notes before Wednesday of next week.

With respect to the preamble Count Ciano has been absent from Rome for the last few days in the company of the Yugoslav Prime Minister and it will not be possible to discuss the preamble with him until Monday at the earliest when I have requested an appointment.

^{47a} Not printed.

In connection with the use of the sovereign's title in the preamble, may I again recall to the Department the multilateral treaty signed at Montreux for the abolition of capitulations in Egypt, in which document appears the use of the title "King of Italy and Emperor of Ethiopia" which as I understand was not construed at that time to involve recognition by any of the signatories of the Italian conquest of Ethiopia. This treaty has now been promulgated in Italy.

Throughout the recent discussions and in fact during the entire period of negotiations there has been a manifest desire on the part of the Italian authorities to do whatever might be possible to meet the Department's views with respect to the various articles of the treaty. This is particularly the case with regard to article 8. Where it has not been possible to accept the American suggestions this has in a large measure been due to the fact that these suggestions would be contrary to existing provisions of Italian law which have formed the basis of treaties with other countries on [*in*] that they might on the most-favored-nation principle extend to countries other than the United States privileges which Italy is not prepared as yet to accord. This is particularly the case with respect to article 6 where it was explained that if the United States alone were involved it might be easier to reach a satisfactory solution.

I should appreciate instructions on as many points as possible prior to next Monday.

PHILLIPS

711.652/136 : Telegram

The Ambassador in Italy (Phillips) to the Secretary of State

ROME, December 11, 1937—7 p. m.
[Received December 11—3:30 p. m.]

510. Embassy's telegram No. 509, December 10, 7 p. m. In order that no possible misunderstanding might arise in connection with the wheat revaluation arrangement with Hungary the Italian Government has furnished the Embassy with the following oral explanation:

When Hungarian wheat is purchased by Italian importers the purchase price is set in relation to the price prevailing on the world market for that particular quality of wheat and an additional amount is paid by the importer who receives facilities from the Italian Government to that end. The example cited by the Italian authorities is that if wheat of a specified grade is purchased the price prevailing for the next higher grade is paid. It was further explained that the arrangement which is primarily of a political nature and does not

constitute a formal agreement between the two governments does not require the purchase of any specified quantity of wheat but operates only when purchases are made. The existence of this arrangement is not made public but it is entered into between the Hungarian exporters and the Italian importers directly.

In the opinion of the Italian officials it does not constitute a preference but they desired frankly and confidentially to acquaint the Department with its terms.

PHILLIPS

711.652/137 : Telegram

The Ambassador in Italy (Phillips) to the Secretary of State

ROME, December 14, 1937—noon.

[Received December 14—7 a. m.]

515. My 509, December 10, and Department's 183, November 27. The Foreign Office is most desirous of proceeding tomorrow at the latest to an exchange of notes putting into effect the "temporary arrangement" and has asked whether the Embassy could request immediate instructions to cover this point. This would involve only a reply to the Italian memorandum concerning the Department's interpretation of article 8 and consideration of the proposed amendment of form. The Foreign Office would appreciate it if a reply could be sent so as to reach the Embassy this evening to allow time to prepare for the exchange of notes tomorrow.

I hope to see the Minister again this afternoon with respect to the preamble.

PHILLIPS

711.652/140

Memorandum of Conversation, by Mr. Melvin L. Leap of the Treaty Division

[WASHINGTON,] December 14, 1937.

Participants: Signor Fulvio de Suvich, Ambassador of Italy, Mr. Sayre, Mr. Dunn, Mr. Tittman and Mr. Leap.

The Italian Ambassador called on Mr. Sayre at 12 o'clock noon today at his own request. He said he had received a telegram from his Government asking him to inquire at the State Department as to whether there was anything that could be done to expedite signature of the temporary arrangement which had been proposed by this Government for governing commercial relations between the two countries during the interim between the date on which the treaty of 1871 ex-

pires, i. e., December 15, 1937, and the date on which the proposed new treaty comes into force. He added that unless the temporary arrangement were signed on December 15 there would be a period during which commercial relations would not be based upon treaty provisions. Mr. Sayre said a telegram covering certain points which remained to be settled before the temporary arrangement could be signed had been prepared and was ready for transmission to our Embassy in Rome. He said these points arose in connection with the Précis of interpretation of certain provisions of Article VIII, and he felt that a complete understanding between the two Governments in respect of that article should be reached before the temporary arrangement was signed. Mr. Sayre indicated that the differences between the two Governments in respect of the Précis were such that they probably could be worked out without much difficulty. He said the two major points at issue were (1) the question of what is meant by a "representative period" and (2) the question of what constitutes most-favored-nation treatment in respect of rates of exchanges. He mentioned several other minor differences but said he thought there would be no disagreement on these. Mr. Sayre expressed the hope that the Italian Foreign Office would find itself in agreement with our views on the two major points and that the temporary arrangement could be signed on December 15.

The Ambassador said it was his understanding that if the temporary arrangement were not signed on December 15th, it would be necessary for the President to issue a proclamation withholding generalization of customs duties to imports from Italy and he expressed considerable concern about this. Mr. Sayre reiterated that he was hopeful the agreement could be signed on December 15, but indicated rather clearly that if it were not signed on that date this Government would hesitate to take any action during the few days following which would alter the present status of trade relations. He then referred to the friendly relations between the two countries and went on to point out that the Department fully realized the difficulties involved in reaching an agreement within the short time that remains.

The Italian Ambassador expressed gratification over this statement and said he would cable his Government at once the substance of what Mr. Sayre had told him and say that every effort was being made by this Government to have the temporary arrangement signed before the old treaty expires. Mr. Sayre said he would have the telegram transmitted immediately and would also send a flash to the Embassy advising of its coming. The Italian Ambassador seemed to be fully satisfied with the statements made by Mr. Sayre.

711.652/135: Telegram

The Secretary of State to the Ambassador in Italy (Phillips)

WASHINGTON, December 14, 1937—1 p. m.

192. Your 509, December 10. We do not desire to conclude the temporary arrangement until complete agreement has been reached with respect to the interpretation of certain provisions of Article VIII. If the treaty is signed and transmitted to the Senate for advice and consent to ratification, it will be necessary also to transmit to the Senate the Précis which contains the interpretation in reference. Hence, the best procedure from the standpoint of this Government is to have the language of the Précis express in itself the interpretative understanding.

It is understood that the language of the first two paragraphs of the Précis is satisfactory to Italy.

As regards the Italian comment with respect to "representative period", we do not agree to a specification in the Précis that the phrase means that a particular year shall be representative of past trade in all products. Paragraph 3 of Article VIII deals with quantitative limitations on the importation of individual products and the formula laid down in the Article is based upon that past period of trade in any individual product which was in fact representative. Thus the language of the paragraph anticipates that a period of trade which might be representative in respect of one product may not be representative in respect of another product. Moreover, it is often necessary to consider the trade over a period of more than 1 year in order to determine a period which is representative. In view of the foregoing, this Government does not agree to any change in the language of the third paragraph of the Précis.

It is understood that all of the language of paragraph 4 of the Précis is satisfactory to Italy.

Italy has accepted the language of the first sentence of paragraph 5 of the Précis. It appears, however, that the Italians have misconstrued the thought which we intended to convey by the term "cross rates of exchange". By this term is meant the relative value of two currencies calculated from their values in terms of some third currency as expressed in their rates of exchange on that third currency. Hence, the Embassy should explain further that under the terms of the first sentence in paragraph 5, an Italian importer would not be required to produce more lire to pay for an article imported from the United States than he would have to produce should he buy exchange of any third country and exchange it for dollars. To illustrate: the lira was worth 5.26½ cents and the Reichsmark 40.33 cents in New York on December 10. Hence, the cross rate of exchange of the Reichsmark on the lira was approximately 7.66 lire per Reichsmark.

Should the cost of the Reichsmark to Italian importers be reduced below this figure, the cross-rate in New York remaining unchanged, we would be entitled, under our understanding of the terms of paragraph 4 of Article VIII, to an equivalent reduction in the cost of the dollar to Italian importers. It is not, of course, the intention to require the importer actually to purchase the currency of a third country and convert it into dollars. The provisions of paragraph 5 of the Précis relate only to the method of computing the required rate for the purchase of dollars. It is not the intention of this Government, however, to seek to apply the provisions of subparagraph (b) of paragraph 4 of Article VIII in respect of compensation currencies, except where American trade is materially affected. If the Italian Government accepts this interpretation we agree to omit the second sentence of paragraph 5 of the Précis.

In order that we may be fully informed you are requested to cable immediately all parts of the Italian memorandum regarding Article VIII which were not transmitted with your 509 of December 10. We are hopeful that the Embassy can report the Italian reaction to the foregoing and that agreement can be reached on the Précis in time to authorize signature of the temporary arrangement on December 15.

For your information and use at the proper time, the Italian proposal with respect to the third paragraph of the temporary arrangement is satisfactory, but it is suggested that it be amended to read as follows:

“It is agreed that on its part the Government of Italy will in fact apply the provisions of Article VIII of the proposed new treaty on and after December 15, 1937, and that the Government of the United States will on its part continue to accord . . .”

Also the last paragraph of the temporary arrangement should be amended to read as follows:

“It is understood that the stipulations of this temporary arrangement do not apply to—

(a) Preferential advantages which Italy accords to Albania, Austria, Bulgaria, Hungary, and Yugoslavia between December 15, 1937 and December 31, 1937, or to

(b) Preferential tariff advantages which Italy accords to Austria after December 31, 1937, under the terms of the treaty between Italy and Austria signed at on December 2, 1937.”

Before proposing the foregoing change in the last paragraph, the Embassy should satisfy itself that the treaty between Italy and Austria of December 2 accords only the advantages set forth in Lists A and B as telegraphed to the Department in your 492 of November 29.^{47b}

HULL

^{47b} Not printed.

711.652/138 : Telegram

The Ambassador in Italy (Phillips) to the Secretary of State

ROME, December 14, 1937—8 p. m.

[Received December 14—6 p. m.]

516. My 515, December 14, noon. After consultation with the Duce, Ciano sent for me this evening and informed me that neither of the Department's suggested preambles is acceptable and that therefore the treaty could not be signed. To accept either preamble would, he said, be unconstitutional from the Italian point of view which requires the Sovereign's name and title in the preamble as the appointing power and furthermore to sign without the full title would raise a political issue. In the circumstances Count Ciano feels that the contemplated exchange of notes carrying on provisionally the present commercial relations between the two Governments is the best solution. Accordingly he is prepared to proceed with the exchange contemplated and would even be willing to extend this provisional arrangement to cover as many of the points covered in the treaty as may be possible.

PHILLIPS

711.652/139 : Telegram

The Ambassador in Italy (Phillips) to the Secretary of State

ROME, December 15, 1937—1 p. m.

[Received December 15—8:35 a. m.]

517. Department's 192, December 14, 1 p. m. Italian authorities state that insofar as the "representative period" is concerned the year 1934 was only specified in their comment as an indication of a year which was not affected by special conditions and do not propose any definite years for all products.

With respect to paragraph 5 of the précis of interpretation the explanation contained in the Department's telegram under reference is acceptable to the Italian Government on the understanding that a discrepancy of less than 3 per cent in the rates of dollar exchange as compared with the rate of exchange of compensation currencies would not be considered as prejudicial to American commerce.

The first part of the Italian memorandum of comment regarding article 8 reads as follows:

"With reference to the memorandum presented by the United States of America concerning the interpretation to be given to certain parts of the said article, paragraph (a) the interpretation of paragraph 3 is accepted. Insofar as Italy is concerned the 'representative' period will be the year 1934.

(b) Paragraph 4 sub-paragraph (a) is accepted.

(c) The wording of the first sentence of the interpretation of paragraph 4 (b) is accepted. The official Italian quotation of the dollar is in fact entirely on par with the unrestricted Italian lira quotation in New York and corresponds thereto save for negligible variations in lira quotations on the various leading world markets."

The remainder is as quoted in my 509 of December 10th.

Definite assurances have been given to the Embassy that the treaty between Italy and Austria accords only the conditions set forth in lists A and B. The other amendments contained in the Department's telegram with respect to the temporary arrangement are accepted by the Italian authorities. Under the circumstances the Italian authorities request that authorization to sign the temporary arrangement be transmitted to the Embassy immediately.

Should the signature be deferred beyond today the Italian Government is prepared if the arrangement can be concluded within the next 2 days to consider it effective as of December 15th.

PHILLIPS

711.652/139 : Telegram

The Secretary of State to the Ambassador in Italy (Phillips)

WASHINGTON, December 16, 1937—1 p. m.

194. Your 515 and 517, December 14 and 15. The statement of the Italian authorities with respect to the phrase "representative period" is satisfactory.

For the purposes of paragraph 5 of the Précis, this Government will not, during the continuance of the temporary arrangement consider that a discrepancy of less than 3 percent in the rates of dollar exchange as compared with the rates of compensation currencies would be materially prejudicial to American commerce. Hence, it appears that the two Governments are in agreement with respect to all of the language and contents of the Précis as it relates to the temporary arrangement.

It is noted that the amendments suggested by the Department with respect to the last two paragraphs of the temporary arrangement are satisfactory to Italy, and that the treaty between Italy and Austria accords only the advantages set forth in lists A and B.

Upon presentation of the foregoing to the appropriate authorities and upon the understanding that the text of Article VIII as enclosed with Department's instruction No. 163 of August 9 remains as transmitted and the text of the précis is as submitted in telegram No. 184 of November 30, except that within your discretion the second sentence of paragraph 5 may be omitted, you are authorized to effect the temporary arrangement by an exchange of notes. It is of course understood that the text of the précis will be a part of the temporary

arrangement. Immediately upon signature please report and state whether the notes were dated December 15.

We have noted with regret the statement of the Italian Government that neither of the Preambles proposed by this Government are acceptable and that therefore the proposed treaty can not be signed.

If you perceive no objection, please present the foregoing to the Foreign Office orally or in writing in your discretion.

HULL

[For text of Temporary Commercial Arrangement between the United States and Italy, signed December 16, 1937, together with Annex and Précis, see Department of State Executive Agreement Series No. 116, or 51 Stat. 361.]

711.652/144 : Telegram

The Ambassador in Italy (Phillips) to the Secretary of State

ROME, December 18, 1937—11 a. m.

[Received December 18—9:27 a. m.]

522. My 521, December 17, 8 p. m.⁴⁸ At the time of exchange of notes last night the Italian officials expressed the hope that some way might be found to conclude a similar arrangement which would bring into operation the other articles of the proposed commercial treaty which have been tentatively agreed upon in the recent negotiations. They consider that the two Governments are in substantial agreement with respect to nearly all of the proposed treaty provisions and that only the difficulty in connection with the preamble and the use of the Sovereign's title prevents an early signature.

Accordingly, the Italian Government proposes that discussions be immediately inaugurated looking to the conclusion of a *modus vivendi* between the Governments of the United States and Italy which would embody as many of the articles of the proposed commercial treaty as the Department would be willing to include. Such an arrangement might take the form of an exchange of notes similar to those signed yesterday and might be operative for a period say of 6 months to be renewable for like periods if in the meanwhile it has not been possible to conclude a formal treaty.

Although it was explained that certain difficulties with respect to American constitutional procedure might arise in connection with such a proposal the Italian authorities, nevertheless, request that it be given careful study and would appreciate an early indication whether the Department would be willing to consider an arrangement of this nature.

PHILLIPS

⁴⁸ Not printed.

711.652/143 : Telegram

The Ambassador in Italy (Phillips) to the Secretary of State

ROME, December 18, 1937—noon.
[Received December 18—7:44 a. m.]

523. My 522, December 18, 11 a. m. In view of approaching holidays could you give me your views as to whether the immediate negotiations suggested are practicable.

PHILLIPS

711.652/143 : Telegram

The Secretary of State to the Ambassador in Italy (Phillips)

WASHINGTON, December 18, 1937—3 p. m.

196. Your 523, December 18, noon. Although under our Constitution the President may by an executive agreement embodied in an exchange of notes promise reciprocal most-favored-nation treatment, the attempt to include in such an exchange general provisions going far beyond this would raise very serious questions both as to the constitutionality and expediency of such an agreement. Department is giving careful consideration to this problem, which will require considerable study before a definite conclusion can be reached. In my own personal view immediate negotiations such as suggested are therefore not practicable.

HULL

711.652/136 : Telegram

The Secretary of State to the Ambassador in Italy (Phillips)

WASHINGTON, December 18, 1937—4 p. m.

197. Your 510, December 11. Italian oral explanation of wheat arrangement with Hungary states "an additional amount over world market price is paid by the importer, who receives facilities from the Italian Government to that end." These "facilities" would appear to involve Government supported bonusing of wheat imports from Hungary and therefore to be preferential in effect.

Unless you perceive some objection, you should communicate the following to the Italian authorities in writing.

"My Government is of the opinion that the treatment which Italy accords in connection with the importation of Hungarian wheat constitutes a preference, is similar in its economic effects to a tariff preference, and hence is contrary to the purposes and intent of Italy's obligation under the temporary arrangement. Nevertheless the Government of the United States will not seek to have the provisions of the temporary arrangement applied in respect of the particular ar-

rangement in reference but reserves the right to object if Italy should accord a similar preference in respect of any other product imported from Hungary or in respect of any product imported from any other country."

HULL

711.652/143 : Telegram

The Secretary of State to the Ambassador in Italy (Phillips)

WASHINGTON, January 12, 1938—7 p. m.

3. Your 522 and 523 of December 18, and Department's 196 of December 18. Aside from the Constitutional question presented, which is still being studied, we have concluded that it would be inexpedient from a domestic standpoint to attempt at this time to enter into second *modus vivendi* which would include other articles of the proposed commercial treaty. The publicity attending the signing of the temporary arrangement of December 16, 1937, indicated that the arrangement was intended to bridge the gap between the termination of the old treaty and the signing of the proposed new treaty. If a second temporary arrangement embodying proposed treaty articles should be signed within the near future, we might be placed in an awkward position to explain the reasons therefor and there may be opposition in the Senate on the ground that we were attempting to accomplish by executive agreement that which, on the face of the record, was originally intended to be accomplished by treaty.

HULL

**PROPOSALS FOR A CONVENTION TO SUPERSEDE THE EXISTING
CONSULAR CONVENTIONS BETWEEN THE UNITED STATES AND
ITALY**

711.6521/223a

The Secretary of State to the Ambassador in Italy (Phillips)

No. 780

WASHINGTON, December 7, 1936.

SIR: Referring to the last paragraph on page 5 of its communication dated September 8, 1936,⁴⁹ addressed to you in care of the S. S. *Manhattan*, the Department sends you herewith a draft of a consular convention with Italy⁵⁰ which you are requested to present to the Italian Government, at such time as you may deem appropriate. The proposed convention is intended to supersede the present consular convention between the United States and Italy, signed May 8, 1878,⁵¹

⁴⁹ *Foreign Relations*, 1936, vol. II, p. 344.

⁵⁰ Not printed.

⁵¹ William M. Malloy (ed.), *Treaties, Conventions, etc., Between the United States of America and Other Powers, 1776-1909* (Washington, Government Printing Office, 1910), vol. I, p. 977.

as amended by the supplemental convention signed February 24, 1881,⁵² and by negotiations in 1915-1917⁵³ effecting the cancellation of the supplemental convention and Article XIII of the Convention of 1878. A copy of each of those conventions is enclosed.

The present draft is based upon the consular provisions of the treaty of friendship, commerce and consular rights with Norway, signed June 5, 1928.⁵⁴ A copy of this treaty is enclosed. There has been some slight rearrangement of the articles in order to bring related articles together.

In Article I of the draft, which corresponds to Article XVI of the Norwegian treaty, there are only two changes, both minor ones, namely, the substitution of the word "government" for "governments" at the beginning of the third paragraph and the substitution of the word "convention" for "treaty" at the end of that paragraph.

In the second and third paragraphs of Article II of the draft which corresponds to Article XVII of the Norwegian treaty, the word "court" has been substituted for the words "the trial" as being technically more correct.

The first paragraph of Article III of the draft which corresponds to Article XVIII of the Norwegian treaty, does not contain the phrase "levied upon their persons or upon their property" which appears in the treaty. For your information it may be pointed out that this phrase has been interpreted by the Treasury Department as requiring the payment of excise taxes on liquor imported by foreign consular officers. In order to accord the complete exemption which is desired it is necessary to eliminate the phrase. The omission will make the draft conform to the corresponding provisions in the treaty of friendship and general relations with Spain, signed July 3, 1902.⁵⁵

You will observe that a new stipulation appears in the draft of Article III. It is desired to obtain exemption from taxation on the official compensation of Treasury and Agricultural Attachés and other officers of the Government stationed abroad. Free entry privileges for such officers are included in the next Article.

At the end of the first paragraph of Article III of the draft, in speaking of the exemption of salaries, fees or wages of consular officers, the phrase "and not engaged in any profession, business or trade" is eliminated. It is felt that compensation for official services should be exempt from taxation even though the consular agent may be engaged in private business. This is in accordance with most existing consular conventions of the United States.

The third and fourth paragraphs of Article III relating to the right to acquire and own land and buildings for governmental pur-

⁵² Malloy, *Treaties*, 1776-1909, vol. I, p. 983.

⁵³ See *Foreign Relations*, 1915, pp. 3 ff., and *ibid.*, 1917, pp. 18 ff.

⁵⁴ *Ibid.*, 1928, vol. III, p. 646.

⁵⁵ *Ibid.*, 1903, p. 721.

poses and exemption of such land and buildings from taxation are also contained as Article XVIII in the draft of the treaty of commerce and navigation, which was sent to you with the Department's instruction of September 8, 1936. If these provisions be included in the treaty of commerce and navigation they should, of course, be eliminated from the consular convention before it is signed.

Article IV of the draft, which corresponds to Article XXVI of the Norwegian treaty, makes more explicit the stipulation that free entry is to be accorded to consular officers and their families at any time during the incumbency of the post. The last sentence of the first paragraph of Article XXVI of the Norwegian treaty has been entirely eliminated. It is felt that it is better to accord the right of free entry without regard to most-favored-nation treatment.

Article V of the draft is changed so as to guarantee that officers may place the arms of their state on official automobiles. The word "fly" has been substituted for "hoist" in relation to the display of the flag. In place of the second and third paragraphs of the corresponding article in the Norwegian Treaty, Article XIX, a single shortened paragraph has been substituted which is more satisfactory.

The first paragraph of Article VI of the draft is practically identical with the first paragraph of Article XX of the Norwegian treaty. Provisions have been added guaranteeing the right of consular officers to visit their countrymen who have been imprisoned or arrested.

Article VII of the draft, which corresponds to Article XXI of the Norwegian treaty, has been slightly edited so as to read more smoothly; it covers among other things the authentication of signatures.

In Article VIII, which corresponds to Article XXIII of the Norwegian treaty, the word "locality" has been substituted for "territory" in the first paragraph, and the second paragraph has been omitted as being unnecessary. The treaty with Norway is the only consular convention of the United States which contains this provision.

Article IX of the draft corresponds to Article XXIV of the Norwegian treaty. In the first paragraph the word "mandate" has been replaced by the phrase "power of attorney".

The sole change in Article X of the draft, which corresponds to Article XXII of the Norwegian treaty, appears in the last sentence, where, in place of the clause "and rendering such assistance as may be permitted by the local laws", there is substituted the clause "or of rendering assistance as an interpreter or agent."

Article XI of the draft is an entirely new article designed to guarantee the right of a consular officer to visit his imprisoned countrymen.

Article XII of the draft is identical with Article XXV of the Norwegian treaty.

Article XIII of the draft, which corresponds to Article XXVII of the Norwegian treaty, does not contain a provision in the first paragraph permitting a person other than a consul to direct the salvage of the wreck. This stipulation was introduced into the Norwegian treaty at the request of the Norwegian Government and does not appear in other treaties of the United States.

The remaining two articles deal merely with territorial application of the convention and the customary provisions relating to ratification, termination, et cetera.

Very truly yours,

For the Secretary of State:
WILBUR J. CARR

711.6521/224: Telegram

The Ambassador in Italy (Phillips) to the Secretary of State

ROME, January 4, 1937—6 p. m.

[Received January 4—1:08 p. m.]

5. Before submitting to the Foreign Office the draft consular convention transmitted with the Department's instruction of December 7th, I consulted the Consul General in Naples⁵⁷ and desire to submit his observations.

(1) It would seem that the second paragraph of article III literally interpreted would grant to United States Government officials in Italy, other than Consuls, no tax exemptions except from the payment of income tax on their salaries alone. By its operation the career medical officers of the Public Health Service and officials of the Department of Labor stationed at Consulates would be required to pay the apartment tax, lease tax, circulation tax and others, while American clerks in the Consulate would be exempted. Such discrimination against career officers of other departments seems to Du Bois undesirable and might be eliminated from the treaty by the omission of the words "so far as they relate to official compensation".

(2) Article X may also offer certain difficulties in handling American shipping interests in Italy. The last sentence of its first paragraph gives consular officers jurisdiction over wage disputes and controversies over terms of shipping articles on American ships in Italian ports but admits that the jurisdiction of the captain of the port "shall not be excluded" if local law confers authority on him to concern himself with wage disputes on foreign ships in his port, which it does in this case unless other treaty provision is made. By paragraph 2 of this article the Consul may not exercise jurisdiction in the case of an

⁵⁷ Coert du Bois.

assault on board which, by Italian law, constitutes a crime. Would it not be preferable to embody existing practice and leave to the Consul's jurisdiction all troubles on ships which do not disturb the peace of the port. Those which do would come under local police regulations but no arrests could be made on board unless the Consul's consent has been asked which has always been given.

PHILLIPS

711.6521/224 : Telegram

The Secretary of State to the Ambassador in Italy (Phillips)

WASHINGTON, January 15, 1937—7 p. m.

5. Your No. 5, January 4, 6:00 p. m.

(1) You are authorized to eliminate the words "so far as they relate to official compensation" in paragraph 2 of article 3.

(2). The proviso recognizing the jurisdiction of local authorities in wage disputes seems necessary under the Seamen's Act of 1915.⁵⁸ Provisions in conflict with that Act in the Consular Conventions of 1878 and 1881 were terminated by Agreement with Italy. See *Foreign Relations of the United States* for 1915 and 1917. That Act represents the settled policy of the United States with reference to jurisdiction in the United States. It is deemed unwise to attempt to change that act by treaty, and of course this Government can not ask for greater jurisdiction of its own consular officers over American ships or seamen in foreign ports.

(3). In respect of acts constituting crimes according to the law of a State of the Union, committed on board vessels when within the limits of such State, it has heretofore been the Department's policy not to seek to interfere by treaty with State jurisdiction. It is deemed to be undesirable to change this policy.

HULL

711.6521/227

The Chargé in Italy (Kirk) to the Secretary of State

No. 342

ROME, April 29, 1937.

[Received May 12.]

SIR: With reference to the Embassy's despatch No. 176 of January 25, 1937⁵⁹ concerning the submission to the Italian Minister for Foreign Affairs of the draft of the Consular Convention to be negotiated between the United States and Italy, I have the honor to inform the

⁵⁸ 38 Stat. 1164.

⁵⁹ Not printed.

Department that the Italian Foreign Office has now prepared a memorandum of observations with respect to the draft convention. This memorandum was accompanied by a model treaty which is the form usually followed by the Italian Government in similar negotiations. A translation of the memorandum of observations is enclosed together with the pertinent articles of the model treaty,⁶⁰ which in certain cases have been suggested in substitution for articles of the American draft.

In the discussion which took place between a member of the Embassy staff and officials of the Italian Foreign Office concerning the draft convention and the Italian observations, the latter explained that the American draft with respect to Articles III and IV relating to Tax Exemptions and Customs Exemptions would probably give rise to the greatest difficulty inasmuch as existing legislation in Italy would not permit any deviation from the recognized policy of accord- ing certain limited exemptions only to foreign consular officials, and, moreover, that the Ministry of Finance had been very insistent that this policy should not be altered. It was, however, pointed out to them that the American draft, in conformity with all recent American consular conventions, was intended to broaden mutual consular amenities, and that there would be little improvement over the exist- ing treaty should the tax exemptions be restricted to exemptions from direct taxes and limited to career consular officers and should the customs privileges be granted only to principal officers at the Con- sulates. In this case subordinate consular officers and members of the consular staffs would be subject to approximately the same treat- ment as all foreigners entering Italy. The Italian officials replied that they recognized this difficulty and promised to resubmit the articles to the Ministry of Finance in order to ascertain whether it might not be possible to find some compromise but admitted that they were not hopeful of securing consent to any important modifica- tion in the terms of their alternate proposal.

It will be noted that the Italian memorandum requests clarifica- tion of certain phrases in the American draft. Among these is the phrase "officials who are duly appointed to exercise governmental functions in the territory of the other High Contracting Party," which appears both in Articles III and IV. The Italian officials point out that it will be necessary to ascertain more specifically to what officials it is intended the exemptions will apply and, as an ex- ample, cite the case of the functionary appointed by the Italian Minis- try of Finance who is at present in New York for the purpose of purchasing tobacco in behalf of the Government tobacco monopoly.

⁶⁰ Neither printed.

They ask whether such a person is to be considered an official exercising governmental functions and raise the same question in connection with the appointment by the Ministry of Press and Propaganda of persons serving in the Italian state tourist offices in the United States.

They also state, in connection with the appointment of these officials, that Paragraph 2 of Article III of the American draft provides that the State appointing them shall indicate to the other State satisfactory evidence of their appointment and shall specify the character of the services performed, but is silent with respect to consent to be obtained by the other State before the said officials shall be permitted to exercise their duties. The Italians consider that this point should be clarified in any future convention.

With respect to paragraph 3 of Article III, the Italian officials inquire whether this provision guarantees the right of a foreign government to acquire lands in each of the States of the United States, as it was their understanding that certain States prohibit foreign governments from owning property within their limits. It is said, in this connection, that the Italian Government experienced difficulty in acquiring its consulate general in New York since the State of New York maintained such a prohibition in its legislation.

There is also enclosed for the information of the Department a copy of the memorandum⁶¹ prepared by the Consul General at Naples with respect to the Italian observations, in which suggestions the Embassy concurs.

It will be noted that, with the exception of Articles III and IV above referred to, the only other major difficulty relates to the Italian suggestion respecting Article XI. It is proposed to add to this article a phrase "within the limits of the laws and regulations in force within the country in which he exercises his functions." Such addition would appear so to modify the sense of this article as to render it of doubtful value inasmuch as it would be possible for either country to pass such laws as to prohibit consular officers of the other state from communicating at all with their Nationals. When this point was brought to the attention of the Italian authorities, they stated in reply that the Italian penal code provides that a judge within his discretion is authorized under certain conditions to prevent an accused person from communicating with any one pending trial, and that it would be difficult to modify this provision of law solely for the purpose of the treaty under discussion. It was agreed, however, that the question would again be referred to the Ministry of Justice for further study.

The Italian authorities express the hope that it will be possible to obtain an early reply to their observations in order that the nego-

⁶¹ Not printed.

tiations relating to this treaty may be concluded in time to permit the American Senate to give its consent to the ratification of the new accord during the present session of Congress. Accordingly, the Embassy would be glad to have a telegraphic reply to the points raised, as outlined above.

Respectfully yours,

ALEXANDER KIRK

711.6521/231 : Telegram

The Ambassador in Italy (Phillips) to the Secretary of State

ROME, July 7, 1937—8 p. m.

[Received July 7—6:50 p. m.]

319. In a further discussion today with the Foreign Office officials concerning the draft consular convention they state that the Ministry of Finance is not prepared to depart to any great extent from the Italian draft of articles 3 and 4 contained in the memorandum submitted with the Embassy's despatch No. 342 of April 29. While exemptions from direct taxes might be accorded to "regular" consular officials to include service employees, nationals of the state by which they are appointed, but not temporary or foreign employees, the Ministry is unwilling to extend customs courtesies or other tax exemptions beyond their draft formula. Although it is recognized that existing contrary legislation could be superseded by the provisions of the new treaty it is nevertheless the opinion of the Finance Ministry that under the existing most-favored-nation clauses customs privileges granted to American consular officials on a reciprocal basis would have to be extended to consular officers of other states which would be contrary to Italian practices or desiderata.

We against [*again?*] explained that there would be little improvement over existing treaty provisions should this position be maintained and that the extension of mutual consular amenities was the underlying principle of all recent American conventions and to abandon it would constitute a recession move in American practice. Foreign Office officials expressed considerable regret that they had been unable up to the present to bring about any change in the position taken by the Ministry of Finance and stated that it might be helpful in this connection if they could be furnished a list of existing American treaties in which provisions similar to those contained in our draft articles 3 and 4 appear. They offer, however, little hope of altering the views of the Ministry of Finance and ask whether under these circumstances the Department would be willing to continue the examination of the other articles.

A telegraphic reply would be appreciated.

PHILLIPS

711.6521/231 : Telegram

The Secretary of State to the Ambassador in Italy (Phillips)

WASHINGTON, July 12, 1937—7 p. m.

123. Your 319, July 7, 8 p. m. Provisions similar to Articles 3 and 4 of our draft, except that they do not include provisions relating to officers, such as Public Health officers, appear in Articles 19 and 27 of the Treaty of Friendship, Commerce and Consular Rights with Germany, 1923; Articles 18 and 27 of the corresponding Treaty with Estonia, 1925; Articles 16 and 22 with Hungary, 1925; Articles 18 and 26 with Honduras, 1927; Articles 19 and 27 with Latvia, 1928; Articles 16 and 25 with El Salvador, 1926; Articles 15 and 21 with Austria, 1928; Articles 18 and 26 with Norway, 1928; Articles 17 and 18 with Poland, 1931; Articles 21 and 27 with Finland, 1934.⁶²

It will thus be seen that provisions similar to Articles 3 and 4 appear in all treaties of the United States relating to the consular establishment concluded since 1923.

The Department would be disposed to accept the limitation of the exemption from taxation to direct taxes, if the Italian Government insists upon it, but with respect to its proposal as to free entry for consular officers it must insist upon some material broadening of the rights now granted to American consular officers in Italy, in the direction of the proposals made in its draft.

HULL

711.6521/232 : Telegram

The Ambassador in Italy (Phillips) to the Secretary of State

ROME, October 27, 1937—4 p. m.

[Received October 27—2:02 p. m.]

457. Department's telegram 104, June 16, 6 p. m.,⁶³ last paragraph, and Embassy's 319, July 7, 8 p. m. The Foreign Office has now informed the Embassy that with respect to article IV of the draft consular convention the Ministry of Finance has been forced to confirm the opinion already expressed despite the efforts of the Foreign Office to surmount the difficulties presented.

In connection with paragraph 3 of article IV, the Ministry of Finance has declared that it cannot agree to exempt from customs inspection shipments of goods to the consular offices since introduction into Italy of foreign goods is always subject to preliminary customs verification whether they are to be admitted duty free or not.

⁶² For texts of treaties listed above, see appropriate country sections of the annual volumes of *Foreign Relations*.

⁶³ Not printed.

Although in a previous communication (see Embassy's No. 342 of April 29, 1937) the Foreign Office had stated that the free entry of all objects destined for the official use of consular offices would be authorized, the Finance Ministry now proposes to limit customs exemption of objects destined for the official use of consular offices to the period of original installation of such offices. This discrepancy has been called to the attention of the Foreign Office which agreed to reopen the subject with the Finance Ministry but considers that the latter's decision against the extension of customs exemption to consular officers, for objects imported for personal use after the period of their first installation, is final. It is explained that the chief obstacle to such exemption lies in the fact that it would be contrary to the treatment established not only by Italian legislation but also by the numerous agreements that have been concluded between Italy and various foreign countries. The Ministry states that it is indeed true that the privileges requested by the United States would be also granted on the basis of reciprocity to Italy; but similar exemptions would automatically and as time goes on be requested by other states even though on the basis of reciprocity which might in more than one instance redound against the fiscal interests of the country.

In conclusion the Foreign Office has, however, expressed the hope that the American authorities will find it possible to reconsider their point of view with respect to this article and that the consular convention may none the less be concluded.

PHILLIPS

711.6521/232 : Telegram

The Secretary of State to the Ambassador in Italy (Phillips)

WASHINGTON, November 23, 1937—7 p. m.

179. Your 457, October 27, 4 p. m., and 481, November 19, noon.⁶⁴

(1) The Department desires you to inform the Italian Foreign Office orally or in writing in your discretion that this Government regrets that it is not in a position to proceed with the negotiations on the basis of initial free entry only set forth in your telegram under reference. You should express the hope that the Italian Government may, at some future time, be in a position to reopen the negotiations upon the broader basis set forth in the Department's draft convention.

(2) If a convention on the basis of the Italian proposals were concluded it would materially minimize the chances of this Government concluding consular conventions with other countries upon the broader basis. While a consular convention on the narrow basis

⁶⁴ Latter not printed.

would be entirely out of line with other consular conventions now in course of negotiation, it is possible that the conclusion of these pending negotiations with other countries may facilitate a reopening of negotiations with the Italian Government on a basis more in line with its proposals.

(3) While paragraph 2 is for your information, you may, in your discretion, communicate all or part of it to the Italian Foreign Office.

(4) In expressing the regret of this Government that the negotiations for a consular convention must be suspended for the time being, you should indicate your appreciation of the cordial and sympathetic cooperation afforded by the officers of the Italian Foreign Office in exploring the situation.

(5) For the further information of the Embassy only. The Department does not consider it worth while in this connection to enter into a new consular convention which is not broader than the treaty of 1878 and fails to grant more rights than are now accorded by Italian legislation.

HULL

711.6521/233

The Ambassador in Italy (Phillips) to the Secretary of State

No. 682

ROME, December 2, 1937.

[Received December 14.]

SIR: In compliance with the Department's telegraphic instruction No. 179 of November 23, 7 p. m., I have the honor to report that the Embassy communicated in writing with the Foreign Office to the effect that it would not be possible to proceed with the negotiations of the proposed consular convention between the United States and Italy on the basis of initial free entry only for consular officers.

The receipt of the Embassy's communication has now been acknowledged by the Foreign Office, which takes note of this decision and adds that the present Consular Convention therefore will remain in force.

Respectfully yours,

WILLIAM PHILLIPS

LITHUANIA

REPRESENTATIONS REGARDING ALLEGED DISCRIMINATION AGAINST AMERICAN TRADE IN LITHUANIA¹

660M.116/20

*The Minister in Lithuania (Lane)*² to the Secretary of State

No. 427

RIGA, March 2, 1937.
[Received March 23.]

SIR: Referring to my despatch No. 141 of February 18, 1937 from Kaunas,³ in the last paragraph of which I referred to my conversation on that date with the Minister for Foreign Affairs, Mr. Stasys Lozoraitis, I have the honor to state that one of the basic reasons for my call on the Minister was to discuss with him the report which had reached the Legation that the allotted number of American automobiles imported into Lithuania would not be increased by the Lithuanian Government despite the substantial reduction in the Lithuanian tariff on automobiles.

I pointed out to Mr. Lozoraitis that in previous years the United States had been able to import into Lithuania between 30 and 50 per cent of the total number of automobiles marketed in Lithuania each year. This total, however, had been small.* Owing to the reduction in the Lithuanian automobile tariff, the Legation was informed that perhaps over 500 automobiles would be imported during the present year, many of which would be used for government purposes. I stated that we had been given to understand that the United States would receive a quota of only 30 automobiles out of the total number to be imported. I contended that this seemed to be entirely out of reason: Lithuania has a favorable trade balance of 2,300,000 lits with the United States; furthermore, many remittances to Lithuania from Lithuanians residing in the United States increase this balance. Not only from the point of view of equity, I argued, but also from that of comity, (considering the interest which Lithuania must have in a country where almost a million Lithuanians reside), the United States

¹ Continued from *Foreign Relations*, 1935, vol. ix, pp. 566-578.

² The Minister was accredited to Estonia, Latvia, and Lithuania, with residence at Riga, until August 9, 1937. Mr. Owen J. C. Norem was appointed Minister to Lithuania, only, on August 23, 1937.

³ Not printed.

*1934-180; 1935-150; 1936-231. [Footnote in the original.]

should have at least equal treatment with that accorded to other nations.

I expressed my understanding that Germany had made representations under cover of its trade agreement with Lithuania of 1936⁴ to secure for German automobile manufacturers virtually the entire Lithuanian automobile market.

Emphasizing that I was speaking personally and not under instructions, I said that I was broaching this matter to the Minister for Foreign Affairs, so that he might make an investigation and take such steps as to avoid creating what would in effect be an unfair discrimination against American interests. I added that in my opinion many unpleasant situations might be avoided in diplomacy if the subject were discussed personally and informally, before the situation became acute. Then if the facts justified it, measures might be taken to obviate the necessity of making formal diplomatic representations.

The Minister for Foreign Affairs said that he would take up the matter immediately with the Minister of Finance and ascertain the facts and then discuss the matter with the Chargé d'Affaires, Mr. Kuykendall. I am sending a copy of this despatch to Mr. Kuykendall with the request that he supplement it with any further information which may come to his attention.

Respectfully yours,

ARTHUR BLISS LANE

660M.116/20

The Secretary of State to the Minister in Lithuania (Lane)

No. 103

WASHINGTON, April 13, 1937.

SIR: The Department has received and read with much interest your despatch No. 427, March 2, 1937, in which you report your conversation on February 18, 1937, with the Lithuanian Minister for Foreign Affairs with regard to the quota in Lithuania for American motor cars.

The Department has noted with gratification and approval your alertness in following developments likely to affect American trade and the effort made by you to obtain for that trade an equitable share in the Lithuanian market. It is hoped that your conversation with the Minister will have the effect it was designed to produce.

In connection with the treatment accorded to American trade in Lithuania, it should be borne in mind that the concessions granted by the United States to other countries in agreements concluded under the Trade Agreements program are at present generalized to Lithuania. Generalization of these concessions will continue provided that Lithuania does not discriminate against American trade. Should,

⁴ Signed August 5, 1936; *Reichsgesetzblatt*, Jahrgang 1936, Teil II, p. 248.

however, discrimination by Lithuania be established, the President may suspend the application of such concessions to the products of that country. These facts might well be brought to the attention of the Lithuanian authorities should it again become necessary to discuss with them threatened or actual discrimination against American trade.

It may be added for your information that nondiscriminatory treatment of the commerce of the United States with respect to quantitative restrictions on imports is considered by this Government to require, without reference to the allotments to other countries, the allotment to the United States of a share of the total quantity of any article permitted to be imported equivalent to the proportion of the total importation of the article which this country supplied during a previous representative period. By the term "representative period" is meant a series of years during which trade in the particular article under consideration was free from quantitative restrictions and discriminations and was not affected by unusual circumstances.

A copy of this instruction is being sent to the Chargé d'Affaires ad interim at Kaunas for the files of the Legation at that capital.⁵

Very truly yours,

For the Secretary of State:
FRANCIS B. SAYRE

660M.116/22

The Minister in Lithuania (Lane) to the Secretary of State

No. 191 (Diplomatic)

KAUNAS, May 5, 1937.

[Received May 14.]

SIR: With reference to my despatch No. 427 of March 2, 1937, from Riga, and to the Department's instruction, in reply, to Riga, No. 103 of April 13, 1937 (File No. 660M.116/20), regarding the Lithuanian quota for importation of American automobiles, I have the honor to state that this morning I had a further conversation with the Lithuanian Minister for Foreign Affairs on this subject.

I expressed to Mr. Lozoraitis the gratification of my Government and of myself that the conversation which I had with the Minister on February 18, 1937, had apparently borne fruit: according to information which I had received from certain Lithuanian officials, American motor cars would be imported on the basis of our imports in the years prior to the establishment of import restrictions,—in other words, approximately 60 percent of Lithuanian automobile imports would come from the United States. I expressed the hope that the information which we had received from the above mentioned officials

⁵ This instruction was sent to the Minister at his residence in Riga, Latvia.

is correct.* The Minister stated that we had been correctly informed; that, following my talk on February 18th, he had taken up the subject of our conversation with the appropriate officials; and that we might rest assured that there would be no discrimination against American imports of automobiles or of other products from the United States.

Taking advantage of Mr. Lozoraitis' use of the word "discrimination" I proceeded to define to him, in accordance with the fourth paragraph on Page 2 of the Department's instruction No. 103,⁵ our interpretation of what constitutes discriminatory treatment of commerce of the United States.

In connection with the general subject of Lithuanian-American trade, I expressed the hope to the Minister that, along the lines of conversations which I had had with Government officials in Latvia and Estonia,⁶ the United States would be given equality of treatment and pointed out that we did not desire preferential consideration but merely an opportunity to compete on equal terms with European nations. I expressed the opinion that due to the tendency in certain countries in Europe to insist upon the bilateral balancing of trade, pressure has been brought upon Lithuania, Latvia and Estonia to purchase products from certain European countries under the threat of those countries discontinuing purchases from the respective Baltic States. I added that I had reason to believe that sometimes political pressure is brought to bear to induce the countries in this region to buy in a certain market. On the other hand, often-times an endeavor is made to obtain certain political concessions through the application of economic force by larger countries against smaller countries.†

I stated to Mr. Lozoraitis that it is of course obvious that the United States has no political ambitions whatever in Europe; consequently, there is no fear from us on that score. Furthermore, I added, in accordance with the principles of President Roosevelt's foreign commercial policy we have been insisting, in the negotiation of trade agreements, on the recognition of a multi-angular trade policy as contrasted

*Mr. Kuykendall was informed on March 24, 1937, by Mr. Jonas Norkaitis, Director of the Economic Department of the Lithuanian Ministry for Foreign Affairs, and by Dr. Dovas Zaunius, Chairman of the Foreign Exchange Committee, that it had been determined on March 23, 1937, to permit the importation of American motor cars in the proportion of such imports in the years prior to the depression, which would mean that American motor cars would constitute 60 percent of the imports of automotive vehicles into Lithuania. [Footnote in the original.]

⁵ The paragraph beginning "It may be added for your information", p. 509.

⁶ See pp. 259 ff.

†See Despatch No. 132 of March 18, 1937 from Legation at Tallinn and despatch No. 513 of April 17, 1937 from Legation at Riga (Pages 4 and 5 of enclosure No. 1 dealing with conversation with President Ulmanis on April 14, 1937). [Footnote in the original; despatches not printed.]

with the bilateral principle which is unfortunately in use between the Baltic States and certain European countries.

Mr. Lozoraitis expressed entire concurrence in my expression of views and added that Lithuania had been the last of the three Baltic countries to be forced to adopt the bilateral balancing of trade. He stated that the present import restrictions here have been considerably relaxed and expressed the hope that we would not have occasion for any complaint regarding discrimination against the United States.

The subject of Lithuanian butter exports to the United States was also discussed and is being reported in despatch No. 192 of today's date.⁷

Respectfully yours,

ARTHUR BLISS LANE

660M.116/25

The Chargé in Lithuania (Kvykendale) to the Secretary of State

No. 218 (Diplomatic)

KAUNAS, June 30, 1937.

[Received August 11.]

SIR: I have the honor to refer to the Department's instruction No. 66, dated February 8, 1937, and to the Department's telegram No. 19 of April 3, 1 p. m., 1937, both addressed to the American Legation at Riga,⁸ and in compliance therewith to submit a Memorandum on the Basic Legislation Underlying the System of Foreign Trade Control in Lithuania and the Application in Practice of This Control to Imports From the United States, prepared by Vice Consul Basil F. Macgowan.⁷

The attached study would seem to indicate that the import and foreign exchange restrictions have not been openly invoked against the United States, with minor exceptions notably in connection with the refusal of licenses in 1935 for the importation of kerosene, gasoline and gasoil by the former (now liquidated) local branch organization of the Standard Oil Company of New Jersey. However, there would seem to be no doubt but that the United States has been adversely affected as a result of the imposition of import restrictions and the Government's policy instituted in 1933, of conducting its foreign trade on the basis of bilateral balances of trade and compensatory trade agreements. In order to fulfil its commitments under these agreements, the Lithuanian Government has resorted to the allotment of secret quotas and contingents, which, although allegedly not fixed on American commodities, necessarily confines within certain limits the total quantity that may be imported from the

⁷ Not printed.

⁸ Neither printed.

United States and from other countries with which a compensatory agreement has not been concluded. In order to assure that a quota on a specific commodity will be completed the authorities have on occasion not hesitated to change the intended country of origin indicated in the license application or to inform the importer verbally of the Government's desires.

It is believed that if no restrictions had been imposed the importation of phosphate rock, for instance, which in 1932 comprised 16 percent of the total imports from the United States, would have shown a marked increase in 1936 since the demand for superphosphate has risen considerably during the past eighteen months. Instead, imports of phosphate rock from the United States ceased entirely. The United States supplied 44 percent of the total imports of this commodity in 1932 and 63 percent in 1935. The absence of imports in 1936 may of course be due to other factors of which the Legation has no knowledge.

It is also believed that if no restrictions had been imposed the United States would have participated to a much larger extent in the supply of raw cotton into Lithuania, as at the time the spinning mill was established in Klaipeda¹⁰ in 1934, the local agent informed the Legation that the factory intended to use American long staple cotton almost exclusively. The statistics show, however, that the imports of American cotton, although on the increase, have declined from 35 percent of the total imports of raw cotton into Lithuania in 1934 to 19 percent of the total in 1936. British India supplied 60 percent of the total imports in 1936 and Great Britain (representing it is believed imports from the Sudan) 19 percent. Whether or not pressure was brought to bear on the Klaipeda spinning mill to purchase British cotton in preference to American can only be surmised, but since the Lithuanian authorities have made strenuous attempts to equalize the trade balance with Great Britain, it is believed unlikely that such an important commodity would have been left to take its normal course. The mere fact that an import license has been required for the importation of this commodity since February 6, 1935 would seem to indicate as much. A member of the staff of this office questioned the owner of the Klaipeda spinning mill in this respect in the summer of 1936 but beyond eliciting the fact that no license had been refused in writing for the importation of American cotton, no information was forthcoming.

In conclusion it may be stated that the Lithuanian Government has indeed been reluctant in refusing licenses in writing for the importation of American commodities, in view of the very favorable balance of trade and payments accruing to Lithuania, but it would seem that the Government has not hesitated in the past in employing, to attain

¹⁰ Memel.

its objectives, extra-legal methods, the exact extent of which can of course not be gauged, and will not hesitate in the future in resorting to similar methods should the necessity arise.

Respectfully yours,

C. PORTER KUYKENDALL

660M.116/26 : Telegram

The Minister in Lithuania (Norem) to the Secretary of State

KAUNAS, December 13, 1937—noon.
[Received December 13—10:55 a. m.]

43. I have been advised informally by Director of Economic Department of Ministry for Foreign Affairs that henceforth American automobiles assembled in Denmark shall not be permitted entry into Lithuania outside of current Danish-Lithuanian compensatory trade agreement as heretofore. Danish Chargé d'Affaires confirmed this information on December 10th and requested Legation's assistance inasmuch as Danish Government is reluctant to include such vehicles within the provisions of new trade agreement for next calendar year now being negotiated, these vehicles not being entirely of Danish manufacture. Refusal of license for imports of Danish Buicks already reported. Matter urgent in view of probable reintroduction import duties on automotive trucks on January 1 and desire of dealers to acquire stocks before that date. Would respectfully request telegraphic instructions as to attitude of the American Government towards American automotive vehicles assembled in Denmark accompanied by Danish certificate of origin.

NOREM

660M.116/26 : Telegram

The Secretary of State to the Minister in Lithuania (Norem)

WASHINGTON, December 16, 1937—6 p. m.

14. Your no. 43, December 13, noon. In view of the difficulty of establishing the American identity of American type motor cars assembled in Denmark, particularly when such cars are accompanied by Danish certificates of origin, you should not make any representations in this matter. Should a convenient opportunity present itself you may, however, evidence a friendly interest in it and make informal inquiry as to its present status.¹¹

HULL

¹¹ In despatch No. 177 (Diplomatic), June 25, 1938, the Minister in Lithuania reported that the Lithuanian authorities were including within the framework of the unpublished Lithuanian-Danish compensatory trade agreement of February 9, 1938, those automobiles "assembled in Denmark from parts manufactured in America and shipped to Lithuania accompanied by Danish certificates of origin." (660M.116/27)

[There was no change in the general status of trade relations between the United States and Lithuania prior to the outbreak of war in Europe in 1939. No further representations were made with respect to alleged trade discriminations except such efforts as the American Legation could exert locally to facilitate American exports.]

TREATY OF NATURALIZATION, DUAL NATIONALITY, AND MILITARY SERVICE BETWEEN THE UNITED STATES AND LITHUANIA, SIGNED OCTOBER 18, 1937¹²

711.60M4/10

The Chargé in Lithuania (Kuykendall) to the Secretary of State

No. 40 (Diplomatic)

KAUNAS, August 28, 1936.

[Received September 8.]

SIR: I have the honor to report, with reference to the Department's instruction of July 12, 1935, (File No. 711.60M4/5 [7]), and to this Legation's despatch No. 389 of December 23, 1935,¹³ that the Lithuanian Ministry for Foreign Affairs has given an expression of opinion concerning the proposed treaty of naturalization and military service between the United States and Lithuania. The delay in the reply has been due to the detailed consideration given to the draft of the treaty¹⁴ by the Lithuanian State Council.

I was called to the Foreign Office this morning to discuss with Mr. Juozas Kajeckas, Chief of the Division of Western Affairs of the Ministry for Foreign Affairs, the attitude of the Lithuanian Government regarding the proposed treaty. In principle, the State Council approved the draft of the treaty, but found that the first two Paragraphs of Article One were in contradiction to Article Ten of the Lithuanian Constitution. This particular Article reads as follows:

"No one may be at the same time a Lithuanian citizen and a citizen of another State.

"Nevertheless, a Lithuanian citizen does not lose the rights of his nationality by becoming a citizen of a State of America if he fulfils certain duties determined by the law."

The State Council will give further consideration to Article One of the proposed draft, but a request was made to ascertain if an agreement could not be reached without including these paragraphs in the treaty.

With regard to military service on the part of naturalized American citizens, it was agreed that it would be advisable to make specific

¹² For previous correspondence, see *Foreign Relations*, 1928, vol. I, pp. 500-505; *ibid.*, 1929, vol. I, pp. 449-451.

¹³ Neither printed.

¹⁴ For the text of the draft, see *Foreign Relations*, 1928, vol. I, p. 503.

reference in Article Two that naturalized citizens would not be subject to military service upon returning to the country of former nationality. This point was brought up in view of the provisions of the new Lithuanian Military Service Law, which was published in the *Official Gazette* of June 30, 1936, and which was forwarded to the Department with despatch No. 39 of August 25, 1936.¹⁵ Article Eight thereof provides that persons who have renounced their Lithuanian citizenship shall be exempted from military service.

These proposals have been submitted by the Foreign Office for the consideration of the Department and will be subject, naturally, to the final approval of the State Council.

Respectfully yours,

C. PORTER KUYKENDALL

711.60M4/10

The Secretary of State to the Chargé in Lithuania (Kuykendall)

No. 10

WASHINGTON, October 29, 1936.

SIR: The receipt is acknowledged of the Legation's despatch No. 40 (diplomatic) of August 28, 1936, stating that the Lithuanian State Council approves in principle the draft of a treaty of naturalization and military service submitted by this government but asks whether an agreement could not be reached without including the first two paragraphs of Article I.

The Department would prefer that agreement be reached on the basis of the present draft. It is noted that the State Council will give further consideration to Article I, but if it develops that agreement can not be reached on the basis of the present draft, you are authorized to submit the enclosed revised draft¹⁶ to the Foreign Office.

It will be observed that there does not appear in the new draft the stipulation that naturalization in one country is deemed to have terminated the original nationality. In eliminating this provision the Department does not intend to abandon its traditional position with respect to termination of the original nationality by naturalization in another country. You are requested to make this observation to the Foreign Office upon presenting the enclosed draft.

There have been a number of changes of language from the previous draft to assure greater uniformity and precision of expression.

Very truly yours,

For the Secretary of State:

R. WALTON MOORE

¹⁵ Not printed.

¹⁶ Not printed. The revised draft was transmitted by the Chargé to the Lithuanian Minister for Foreign Affairs on April 15, 1937. The text is practically identical with that of the final treaty.

711.60M4/11 : Telegram

The Chargé in Lithuania (Kuykendall) to the Secretary of State

KAUNAS, August 12, 1937—noon.
 [Received August 12—10:10 a. m.]

22. Lithuanian Minister for Foreign Affairs has advised me that the Lithuanian Government is ready to proceed with the signing of the Treaty of Naturalization and Military Service, the exact wording of which was transmitted with Department's instruction No. 10 of October 29, 1936. Please telegraph instructions.¹⁷

KUYKENDALL

711.60M4/15

The Chargé in Lithuania (Kuykendall) to the Secretary of State

No. 278 (Diplomatic)

KAUNAS, October 21, 1937.
 [Received November 3.]

SIR: I have the honor to report, with reference to the Department's instruction No. 28 of September 20, 1937,¹⁸ that the Treaty of Naturalization and Military Service between the United States of America and Lithuania was signed on October 18, 1937, after the full powers had been exhibited. The Lithuanian Minister for Foreign Affairs, Mr. Stasys Lozoraitis, signed for the Republic of Lithuania, and I signed in the name of the United States of America. The original intended for the Government of the United States is enclosed for transmission to the President for his ratification, subject to the advice and consent thereto of the Senate of the United States.

The Minister for Foreign Affairs desired to make minor changes in the Lithuanian text which were reported to the Department in this Legation's telegram No. 32 of October 18, 10 a. m., and which were approved by the Department in its telegraphic instruction of October 20, 6 p. m.¹⁹ It will be noted that the exchange of ratifications is to take place at Washington, inasmuch as it is the practice in the case of treaties signed in Kaunas to have the exchange of ratifications take place at the other capital.

Respectfully yours,

C. PORTER KUYKENDALL

[For text of treaty between the United States and Lithuania regarding Liability for Military Service and Other Acts of Allegiance of Naturalized Persons and Persons Born with Double Nationality, signed October 18, 1937, see Department of State Treaty Series No. 936, or 53 Stat. 1569.]

¹⁷ The Department telegraphed on August 21, 1937, that full powers were being prepared.

¹⁸ Not printed.

¹⁹ Neither printed.

NORWAY

PRELIMINARY DISCUSSIONS RESPECTING A TRADE AGREEMENT BETWEEN THE UNITED STATES AND NORWAY¹

611.5731/159

*Memorandum by Mr. Hugh S. Cumming, Jr., of the Division of
European Affairs*

[WASHINGTON,] January 7, 1937.

The Norwegian Minister² called on Mr. Sayre³ this afternoon. Mr. Cumming was present during the conversation.

Mr. Morgenstierne said that he had now received from his government an indication of the nature of the agricultural concessions Norway would consider granting us should it be found possible to proceed with the negotiation of a trade agreement. He added that he wished he had been informed of these concessions at the time of his conversation with Mr. Sayre on November 18, 1936.⁴

Mr. Sayre replied that he did not think our attitude would have been changed in any fundamental way if we had been informed earlier of Norway's possible concessions to us; and that he was still of the opinion that it would not be well advised to make any public move at this time with regard to a trade agreement with Norway, but we should await the passage by Congress of the new Trade Agreement Act.⁵

Mr. Morgenstierne thought that it was now too late to conclude even a partial agreement before the end of the whaling season in May, and that his government would, therefore, prefer to wait until later in the year before taking any further steps. It could then re-examine the whole situation in the light of conditions obtaining at that time.

It was finally agreed by Mr. Sayre and Mr. Morgenstierne that it would be best for each government to mark time pending at least the passage of the new Act, and then at a suitable time subsequent the question could be reopened and a decision reached according to the circumstances.

Mr. Sayre added that negotiations, if eventually decided upon, might be facilitated if in the meantime the Norwegian Government continued exploratory studies on their desiderata.

¹ Continued from *Foreign Relations*, 1936, vol. II, pp. 396-401.

² Wilhelm Munthe de Morgenstierne.

³ Francis B. Sayre, Assistant Secretary of State.

⁴ Memorandum of conversation not printed.

⁵ Trade Agreements Act of June 12, 1934, as extended by Joint Resolution of Congress, March 1, 1937; 50 Stat. 24.

In reply to a further inquiry from Mr. Morgenstierne, Mr. Sayre said that he was doubtful of the chances of success of an attempt to remove the whale oil tax by legislation, but that the State Department would follow any legislation introduced with the same interest as it had in the past.

611.5731/165

The Minister in Norway (Harriman) to the Secretary of State

No. 29

OSLO, September 10, 1937.
[Received September 22.]

SIR: I have the honor to inform the Department that from what I have learned in confidence from a strictly reliable source, I believe that the Norwegian Government is now prepared, if invited, to commence negotiations for a limited trade agreement.

It is, I think, a fact that much of the opposition of the Industrial Association (which is the most active opponent of a general agreement) might be eliminated if Norway were asked to reduce its tariff on, say, three articles only, for example automobiles, radios, and fruits. There seems to be apprehension that a general reduction would cover too large a field.

In partial explanation of their attitude, I am informed that when the Norwegian Government received the American Government's invitation in September, 1934, to study the possibility of a reciprocal trade agreement,⁶ the Norwegian authorities felt that the excise tax on whale oil should be repealed before negotiations were opened, that is, that they should start on the basis of things as they were before this tax was imposed. Now, however, they are prepared not to insist on repeal of the tax. Renewal of the invitation to a trade agreement, though, must come from the United States, through repeating the offer of 1934.

For tactical reasons it would be difficult for the Norwegian Government to take the initiative because, as indicated above, very important industrial interests are against any such negotiations. Any move made first on the part of the Norwegian Government would subject it to severe criticism by those antagonistic to a Treaty.

Accordingly, in my view, this would seem to be the moment for us to make another move which would probably be welcomed, not rebuffed, and which might lead to a helpful modification of the commercial relations of the United States and Norway.

Respectfully yours,

FLORENCE J. HARRIMAN

⁶ See telegram No. 12, July 19, 1934, 6 p. m., to the Minister in Norway, *Foreign Relations*, 1934, vol. II, p. 650.

611.5731/169

Memorandum by the Assistant Secretary of State (Sayre)

[WASHINGTON,] October 12, 1937.

Mr. Morgenstierne came in to pay his respects and, in the course of a friendly conversation, brought up the subject of a possible Norwegian-American trade agreement. During the conversation he said that, apart from whale oil, there were very few commodities as to which Norway would like to improve the commercial treatment accorded it by the United States. He felt, therefore, that if a trade agreement were negotiated between the two countries it should cover only a limited number of and comparatively few commodities. I said to Mr. Morgenstierne, as I had told him on several occasions previously, that in our experience a limited trade agreement seemed inadvisable. A limited trade agreement would cost, to all practical intent, as much time, effort and political burden as a comprehensive and thorough-going trade agreement. I therefore expressed it, as my own personal opinion, that if a trade agreement between the two countries should be entered into it should be of a comprehensive nature, embracing all those matters as to which adjustment was sought and on which agreement could be reached. I added, however, that I expressed this as my personal opinion and that, before venturing an official opinion, I would want to have further study made of the present trade relationships between our two countries.

I then went on to speak of Mr. Koht's⁷ approaching visit to Washington. I asked Mr. Morgenstierne whether he would want to discuss trade agreement matters and said that, if he did, in order not to waste his time, we ought to be prepared and ought to be having a study made of Norwegian-American trade before his arrival. Mr. Morgenstierne said that he did not know whether Mr. Koht would desire to discuss these matters or not. I suggested that Mr. Morgenstierne might want to make inquiry so that if Mr. Koht should desire to enter into general discussions as to whether or not there is ground for a trade agreement between the two countries we could be fully prepared. Upon Mr. Morgenstierne's inquiry, I said that we were not urging conversations but merely wanted to be prepared in case Mr. Koht should desire to discuss these matters. Mr. Morgenstierne promised to find out and let me know.

F[RANCIS] B. S[AYRE]

⁷ Halvdan Koht, Norwegian Minister for Foreign Affairs.

611.5731/168

Memorandum by the Assistant Secretary of State (Sayre)

[WASHINGTON,] October 14, 1937.

The Norwegian Minister came in to see me to say that he had cabled to his Government, in connection with the approaching visit of Mr. Koht, the Minister of Foreign Affairs of Norway, in accordance with his promise of a few days ago, to inquire whether or not Mr. Koht would desire to enter into general conversations concerning a possible trade agreement. He said that he had just received a reply from Mr. Koht to the effect that neither the time nor the circumstances seemed to permit entering into formal discussions concerning a trade agreement but that he would like to discuss with entire informality the "necessary preliminaries" for such an agreement. The Norwegian Minister was a little uncertain how to translate the cable but interpreted it as meaning that Mr. Koht would not want to enter into technical or detailed discussions but would like to ascertain our point of view about the entering into possible negotiations looking toward a trade agreement.

I thanked the Minister and said that we should be very happy to follow Mr. Koht's desires upon his arrival.

F[RANCIS] B. S[AYRE]

611.5731/172

Memorandum of Conversation, by Mr. John C. Ross of the Division of Trade Agreements

[WASHINGTON,] October 28, 1937.

Participants: Dr. Halvdahn Koht, Foreign Minister of Norway
Mr. Sayre.

Also Present: Mr. Morgenstjerne, Norwegian Minister to the U. S.
Mr. Cumming, European Division, and
Mr. Ross, Division of Trade Agreements.

Mr. Sayre opened the conversation by indicating that this Government has been thinking for some time of the possibility of a trade agreement between Norway and the United States. He stated that for political as well as economic reasons it is thought that such a trade agreement would be desirable. This is particularly true in view of the closeness of relations between the Scandinavian peoples and the people of the United States. Mr. Sayre said that as a result of preliminary studies which have been made there would appear to be an economic basis for a trade agreement between the two countries and that it was thought that this basis would exist even if whale oil were not considered.

Dr. Koht said that, of course, the Norwegian Government had been primarily interested in the possibility of a trade agreement from the point of view of a possible concession on whale oil, and that the Norwegian Government had been particularly interested in the possibility of securing the removal of the excise tax on whale oil by Congressional action. He expressed his disappointment that this had not proved to be possible.

Mr. Sayre said that the attitude of this Government with regard to the excise tax on whale oil was well known to the Norwegian Government and that the Department of State had exerted itself to the utmost to secure the removal of the tax. Since this has proved to be impossible, this Government shares the disappointment of the Norwegian Government. Mr. Sayre then stated that it might be possible for this Government to reduce the duty and tax on whale oil in a trade agreement to an extent which would tend to bring that commodity into a more favorable competitive position with the principal foreign fats and oils, such as palm oil and tallow. Mr. Sayre referred to the fact that the tax on palm oil now amounts to 3¢ per pound, the duty and tax on tallow amount to 3.5¢ per pound, while the duty and tax on whale oil amount to 3.8¢ per pound.

Dr. Koht said that his Government was aware of the efforts that had been made by the Department of State to have the excise tax on whale oil repealed and that these efforts were appreciated. He went on to say that the effects of any reduction on whale oil in terms of the competitive position of that commodity with other foreign fats and oils depended to a large extent upon the price relationships between these fats and oils and, indeed, of all fats and oils generally.

Mr. Sayre pointed out that while, of course, this is true to a certain extent, nevertheless it may be considered that palm oil and tallow are the principal competitors of whale oil for use in making soap. He went on to say that in considering a possible reduction on whale oil in a trade agreement, consideration might be given to the fact that whale oil is subject to the hydrogenation process which, of course, increases the cost of that commodity.

Dr. Koht then stated that he believed that there were no commodities of which the United States is the principal supplier to Norway. He stated that in the past the United States had been the principal supplier of automobiles, but that importations of American-make automobiles from assembly plants in Denmark far exceeded importations of automobiles from the United States. He suggested for possible future consideration the possibility of establishing assembly plants in Norway for American-make cars.

At this point, Mr. Sayre referred to certain political aspects and implications of the American trade agreements program. He stated that in his opinion there may be considered to be two conflicting eco-

conomic policies in the world, namely, the policy of equality of treatment characterized by the American trade agreements program and the policy of narrow bilateralism characterized by preferential arrangements and compensation agreements. The first, it is believed by this Government, is the necessary basis for peace. The second could only lead ultimately to war. It would seem desirable, therefore, for democratic countries animated by a sincere desire to maintain peace, to cooperate in the policy of commercial equality. In this connection it was brought out in general conversation that the United States has already concluded trade agreements with four of the signatories of the Oslo Convention,⁸ namely, Finland, Sweden, Belgium, and the Netherlands, and Mr. Sayre stated that this Government would be very glad to have Norway also included in this group.

Mr. Sayre then went on to say that active discussions were being pursued with regard to the possibility of a trade agreement with the United Kingdom⁹ and that this Government hoped that it would be possible to conclude such an agreement. Dr. Koht interjected that, of course, his Government was aware of these discussions and believed that if a trade agreement with the United Kingdom proved to be the result, it would be a good thing for the world.

Dr. Koht then inquired as to the procedure under which trade agreements were negotiated. Mr. Sayre explained to the Minister the procedure of preliminary discussions, public notice and hearings, and the negotiations as such, and then referred once more to the belief of this Government that an economic basis for a broad trade agreement exists. Mr. Sayre then showed to Dr. Koht and Mr. Morgenstjerne the "List of Commodities of which Norway was the Principal Supplier of Imports", prepared by the Tariff Commission, and indicated that the items on this list, which accounted for 61% of the total imports into the United States from Norway in 1936, appeared to provide a good basis for an agreement. Dr. Koht evinced considerable interest in this list and indicated that while, of course, he could not make any commitment to enter into trade agreement discussions, it was his intention to take up the subject with his colleagues in the Government immediately upon his return to Norway. He stated that he thought it might be possible for the Norwegian Government to be prepared fairly soon to enter into preliminary discussions.

Before the conversation closed Mr. Morgenstjerne mentioned the anti-dumping duties levied on Norwegian matches and asked if it might be possible to consider such questions in trade agreement negotiations. Mr. Sayre replied that under certain conditions of fact the Treasury was required by law to impose anti-dumping duties, and that such questions could not be considered during trade agreement negoti-

⁸ Signed December 22, 1930, League of Nations Treaty Series, vol. CXXVI, p. 341.

⁹ See pp. 1 ff.

ations. Mr. Sayre added that this Government would be very glad, however, to consider the problem as a separate matter if the Norwegian Government so desired. Dr. Koht stated that the sales policy of an international match cartel in which Norwegian producers participated is an important factor in the situation and that it is not certain that this subject is one which should be considered officially by the two Governments.

611.5731/170

Memorandum by Mr. John C. Ross of the Division of Trade Agreements

[WASHINGTON,] October 28, 1937.

During the conversation on October 28, 1937, between Dr. Koht, Foreign Minister of Norway, and Mr. Sayre, on the subject of the possibility of a trade agreement between Norway and the United States, Dr. Koht referred to the position of countries like Norway in relation to countries like Germany and Italy. He stated that his country found itself in the unfortunate position of being between two mill stones and that it was forced to follow a policy in its commercial relations with such countries which is contrary to Norway's general commercial policy. In this connection, Dr. Koht mentioned in strict confidence that very recently Germany had made overtures to the Norwegian Government with a view to adhering to the Oslo Convention.

Ross

611.573 Whale Oil/230

Memorandum by the Assistant Secretary of State (Sayre)

[WASHINGTON,] October 30, 1937.

Dr. Koht, accompanied by Mr. Morgenstierne, came in to see me for a few minutes this morning. He left with me the accompanying memorandum¹⁰ concerning the whaling industry which he said had been prepared by Professor Bergersen, the President of the Whaling Council. Dr. Koht said that he is much concerned about the danger of extermination of whales.

The main object of his visit was to ask clarification concerning our position with respect to whale oil in a possible Norwegian trade agreement. He said that he had always understood that we would be willing to reduce the duty on whale oil by 50 per cent, and that the position which I took in our conversation the other day—of granting a reduction on whale oil only to the extent necessary in order to put whale

¹⁰ Not printed.

oil on a proper competitive basis with tallow and with palm oil—was a surprise and would distinctly disappoint Norwegian whaling interests. I said, in reply, that since the original conversations, taxes had been levied on the competitive oils and that if we would restore the *status quo ante* we would have to consider the changed conditions. I said that the fairest thing seemed to me to seek to place whale oil on a true competitive basis with these other interchangeable commodities. I added that how great a cut we could make in the whale oil duty would depend upon the result of our studies if and when we undertake actual negotiations.

F[RANCIS] B. S[AYRE]

POLAND

PRELIMINARY DISCUSSIONS RESPECTING A TRADE AGREEMENT BETWEEN THE UNITED STATES AND POLAND

611.60C31/161

*Memorandum of Conversation, by the Chief of the Division of Trade
Agreements (Hawkins)*

[WASHINGTON,] February 3, 1937.

[Participants:] Mr. Witold Wankowicz, Counselor, Polish Embassy;
Mr. Sayre;¹
Mr. Kelley;²
Mr. Hawkins.

Mr. Wankowicz called to discuss the possibility of trade agreement negotiations. Mr. Sayre outlined to him the essential principles upon which the negotiation of trade agreements by the United States must be predicated. He pointed out that it is our policy to negotiate only on bases which would promote the two objectives of the trade agreements program: 1) the reduction of trade barriers, and 2) the removal and prevention of discrimination. He said that Poland's compensation and quota practices are, from our standpoint, discriminatory, and outlined what the principle of no discrimination means to the United States as applied to such measures and quotas, compensation systems and exchange controls. In regard to reciprocal reductions in trade barriers, Mr. Sayre pointed out that we operate on the basis of granting concessions only on products of which the other country concerned is the chief or major source of imports into the United States; that Poland is the chief source of very few products. This means that the list of duty concessions that the United States could offer Poland in a trade agreement would be rather restricted. However, Poland is a secondary supplier of a considerable number of products and as the United States, in pursuance of its trade agreements program, makes concessions to other countries on such products, Poland would receive the benefit as long as we continue to generalize to them in accordance with the most-favored-nation principle. Mr. Sayre pointed out, however, that we can only continue to gen-

¹ Assistant Secretary of State.

² Chief of the Division of Eastern European Affairs.

eralize to Poland if Poland ceases to discriminate against American commerce.³

Mr. Wankowicz replied that his Government is equally anxious to bring about a reduction in trade barriers. In regard to quotas, he pointed out that Poland has a flexible quota system and cannot agree to grant to the United States a proportionate share of total permitted importations in accordance with the formula which we customarily include in our trade agreements. Poland could, however, deal in fixed quantities, i. e., would specify for each product the minimum quantity which would be permitted to be imported from the United States. He said that the fixed quotas granted by Poland are usually in excess of actual imports, since this helps to keep internal prices down and insures the better quality resulting from competition. In regard to exchange allotments, Mr. Wankowicz said that this was not done on a proportionate basis in accordance with provisions such as we include in our trade agreements; that the amount of imports and the amount of exchange allotted are made dependent on each other. With reference to compensation trade, he said that if we solved the quota and exchange problems, the compensation system would probably take care of itself; that Poland would probably be able to do away with the requirement that importers provide certificates showing equivalent exports to the United States. This would be possible because the agreement could be made to provide for sufficient exports from Poland to pay for imports from the United States and the application of the compensation system, shipment by shipment, would, in his opinion, be unnecessary.

Mr. Sayre pointed out that Poland's market in the United States cannot be as great as our market in Poland because Poland needs so many of our raw materials. He reminded Mr. Wankowicz in this connection that trade cannot, economically, be made to balance between each pair of countries; that trade is naturally triangular or polyangular. Mr. Wankowicz agreed with this. He said that trade between the United States and Poland could not be promptly and artificially brought into balance, but that Poland expects us to help it increase its exports to this country. He gave the impression that Poland would seek to make the trade balance as far as practicable. However, in response to questions, Mr. Wankowicz stated that, in his view, the chief object of the negotiations would not be to bring the trade between the two countries more nearly into balance.

In response to a further question regarding the compensation system, Mr. Wankowicz said there is reason to believe it might be abandoned

³ For correspondence concerning Polish discrimination against American trade, see *Foreign Relations*, 1935, vol. II, pp. 629 ff.; and *post*, pp. 543 ff.

for all products when the trade agreement was concluded, not merely for products specifically covered in the agreement.

On the question of quota allotments, the discussion brought out the point that Poland's main interest is to avoid openly agreeing to allot quotas on a proportionate basis by name. Poland might consider a formula which would provide that, with reference to products on which specific quantities were allocated in the agreement and on which the global quota might be increased, the American quota would be increased correspondingly.

Mr. Wankowicz then stated that his Government is anxious to avoid the application of our countervailing duties. Mr. Sayre replied that we could not change Section 303 of the Tariff Act,⁴ as this provision of the law is mandatory and allows the Executive no discretion.

Mr. Wankowicz stated that he would call on Mr. Hawkins later to discuss further the bases for negotiations.

611.60C31/159 : Telegram

The Secretary of State to the Ambassador in Poland (Cudahy)

WASHINGTON, February 15, 1937—6 p. m.

11. Your 13, February 10, 6 p. m.⁵ Informal discussions have taken place at the initiative of the Polish Embassy between the Embassy and the Department with a view to ascertaining whether there is any basis for entering into negotiations for the conclusion of a trade agreement with Poland. No decision has yet been reached by the Department with regard to the opening of negotiations.

HULL

611.60C31/162

Memorandum of Conversation, by the Chief of the Division of Trade Agreements (Hawkins)

[WASHINGTON,] February 17, 1937.

[Participants:] Mr. Witold Wankowicz, Counselor of Polish Embassy;
Mr. Sylvester Gruszka, Consul General of Poland;
Mr. Harry C. Hawkins.

In accordance with the arrangement made at the meeting in Mr. Sayre's office on February 3, Mr. Wankowicz and Mr. Gruszka called

⁴ Approved June 17, 1930; 46 Stat. 590, 687.

⁵ Not printed.

to discuss further the basis for trade agreement negotiations. The discussion related to the nature of our General Provisions and the extent to which the Polish Government might be in a position to agree to them. Both Mr. Wankowicz and Mr. Gruszka felt that it might be possible to accept our General Provisions in substance. I suggested to them that the best way of explaining our position on the principles which should govern the negotiations would be to send copies of our trade agreements with other countries to their Government and supplement them with the explanations which we had given to them in the course of our discussions. I reminded them that we are not in a position to set in motion the machinery for preparing material on the schedules until the Trade Agreements Committee has authorized negotiations and has set up the interdepartmental country committee to do the necessary work; but that if the Polish Government should find itself in a position to negotiate on the basis of the principles embodied in our General Provisions, the Trade Agreements Committee doubtless would give favorable consideration to entering into definitive negotiations. Mr. Wankowicz said that he would take up the matter with his Government in the manner above suggested.

In the course of the discussion, Mr. Wankowicz said that his Government was much concerned with the matter of countervailing duties and that if a trade agreement were negotiated it would like to have us specify either in the agreement or in connection therewith precisely the circumstances and conditions under which our countervailing duties would, and would not, be imposed. I informed him that this was a matter entirely within the competence of the Treasury Department and that that Department would have the final decision regarding any stipulations of the kind suggested. I said that, in my opinion, the Treasury Department would not agree to describing the general nature of measures which would and which would not be made the occasion for applying countervailing duties, but that it might consider specifying whether specific measures applied by Poland would necessitate the application of such duties. However, this was a matter for the Treasury Department to decide and that Department would be consulted at the appropriate time.

Mr. Wankowicz also said that Poland is interested in obtaining assurances that agricultural products should be either free of duty or that existing duties should not be raised. In this connection, I referred him to the provisions of the Trade Agreements Act⁶ which impose a 50 percent limit on duty reductions by the United States.

⁶ Approved June 12, 1934; 48 Stat. 943.

611.60C31/170

*Memorandum by the Chief of the Division of Trade Agreements
(Hawkins)*

[WASHINGTON,] May 27, 1937.

Mr. Wankowicz, Counselor of the Polish Embassy, called today in regard to the visit to this country on June 7 of Mr. Mieczyslaw Sokolowski, Under Secretary, Ministry of Commerce and Industry, to discuss the basis for a trade agreement. He said that Mr. Sokolowski would be here for about ten days and would like to devote most of the time to discussing the above subject with a view to obtaining as complete an understanding as possible as to the general provisions of the agreement as well as the scope of the concessions which each country might be able to grant to the other.

Mr. Wankowicz said he and his Government realize that no final decisions can be reached as to the provisions of the agreement in view of the necessity of obtaining approval by our interdepartmental committee. He hoped, however, that it might be possible to reach an *ad referendum* understanding as to the probable scope of the concessions and possibly even a definite decision as to the text of the general provisions. I told him that I was doubtful whether final decisions on any of the provisions of the proposed agreement could be reached while Mr. Sokolowski was here, as it takes considerable time to clear such matters through the interdepartmental organization, but that we would go as far as we could in trying to reach a tentative understanding with him as to the probable scope and content of the agreement.

Mr. Wankowicz then asked that he be given copies of memoranda of our two previous discussions⁷ so that he could bring Mr. Sokolowski up to date as soon as he gets here. He also asked for an outline of our new procedure with respect to public announcements and hearings and for copies of our standard general provisions. He said he would like to have this material by Wednesday, June 2, if possible. I said that memoranda of discussions are prepared only for Departmental use and are not usually given out but that I would be glad to send him at least an outline of the points covered in the memoranda, and also the other material which he requested.

[Mr. Mieczyslaw Sokolowski arrived in Washington for exploratory conversations with officials of the Government of the United

⁷ The memoranda of February 3 and 17, pp. 525 and 527.

States, which were held from June 8 to 14, 1937, regarding the possible basis for a reciprocal trade agreement between the United States and Poland. In its press release of June 15, 1937, the Department of State declared that the question had not yet "reached the stage where any announcement of negotiations can be made." See Department of State, *Press Releases*, June 19, 1937, page 422.]

611.60C31/183b

The Secretary of State to the Polish Chargé (Wankowicz)

WASHINGTON, August 17, 1937.

SIR: I have the honor to refer to the exploratory conversations which took place in Washington, D. C., from June 8 to June 14, 1937, inclusive, between representatives of the Government of the United States of America and the Republic of Poland, respectively, concerning the possibility of a trade agreement between the two countries, and to express my appreciation of the opportunity offered by Mr. Sokolowski's visit to this country for the representatives of each of the two Governments to gain a sympathetic and clearer understanding of the problems and policies of the other Government in respect of international trade relations.

The results of the conversations as recorded in the memoranda thereof,⁸ copies of which have been supplied to the Polish Embassy in Washington, have been given careful consideration and, except for one point discussed below, to which further consideration is being given, it is desired to confirm the tentative views expressed by the American representatives on behalf of this Government with respect to the various issues raised in the course of the discussions and, in particular, the position taken by them in regard to the provisions of a possible trade agreement with Poland in respect of quotas and related forms of trade control. It is sincerely hoped that the Government of Poland will give careful and serious consideration to the possibility of providing in this respect treatment based on the unconditional most-favored-nation principle; in other words, treatment in respect of quotas and related forms of trade control which would assure each country an opportunity to supply a fair and equitable share of the importations into the other country as might be determined by the share supplied by such country in a previous representative period. Inasmuch as the unconditional most-favored-nation principle is fundamental to the commercial policy of the United States, an understanding between the

⁸ None printed.

American and Polish Governments in regard to its application to quotas would seem to be essential to the determination of a basis upon which the two countries might enter into trade-agreement negotiations.

In regard to the several questions raised by the Polish representatives for consideration by this Government and the list of products indicated by Mr. Sokolowski as being of special interest to Poland in connection with possible trade-agreement negotiations, I desire to present the following views and information:

As to the provisions pertaining to sanitary measures referred to in the conversations, the Government of the United States would be prepared in trade-agreement negotiations with Poland to give consideration to inserting in such provisions an introductory phrase similar in substance to the following, suggested by Mr. Sokolowski and recorded in the memorandum of the conversations of June 10, 1937, 3:30 p. m.:

"Inasmuch as the Government of neither country desires sanitary measures more restrictive than is required for sanitary purposes . . ."

On further consideration of the proposed most-favored-nation reservation by Poland in respect of the Baltic countries⁹ doubts have arisen as to whether this Government could agree to the proposed exception. However, further careful study is being given to this matter, and, when the position of this Government has been formulated, a decision on this point will be communicated to the Government of Poland.

As was pointed out in the conversations, the proposals suggested by Mr. Sokolowski in regard to the anti-dumping and countervailing duties of the United States and the valuation of imports for customs purposes involve questions falling within the jurisdiction of the Treasury Department, and, in the event that an understanding should be reached with the Polish Government in regard to a basis for entering into trade-agreement negotiations, the matter would have to be referred to that Department for consideration.

The list of commodities which, it was indicated by Mr. Sokolowski, would be of special interest to Poland in connection with trade agreement negotiations has been examined in some detail. Although this Government is not, of course, prepared at this time to give any com-

⁹ In the conversation of June 8, 1937, Mr. Sokolowski indicated that Poland had recently adopted the policy of excepting trade with the Baltic countries of Finland, Latvia, Estonia, and Lithuania from the most-favored-nation provisions in its treaties with other countries. The balance of trade with these countries was greatly in favor of Poland. In consequence, on June 11, Mr. Sokolowski proposed the following reservation: "The advantages now accorded or which may hereafter be accorded by Poland to Latvia, Estonia, Finland, or Lithuania shall be exempted from the operation of this agreement so long as they are not accorded to any third country." (611.60C31/180)

mitment whatsoever with respect to the granting of concessions on the commodities involved, it may nevertheless be appropriate to give some tentative indication as to what consideration might be given to the commodities listed should negotiations be instituted. For this purpose, the commodities contained in the Polish list have been divided as follows into three principal groups, according to the possibilities which, on the basis of preliminary study, they would appear to offer for concessions:

[Here follows an itemized list of tariff schedules in three groups: (I) items which it would appear possible to consider for granting concessions to Poland; (II) items on which any concession would appear to be doubtful; and (III) items on which it did not seem that concessions in an agreement with Poland would be possible.]

The possibility of granting concessions on a number of the items contained in Group III, above, are being considered in connection with other possible trade-agreement negotiations. The unconditional most-favored-nation pledge would, of course, assure Poland the benefits of any concessions made in trade agreements with other countries. It may be noted that no reference is found in the above list to paragraphs 1009, 1011, 1013, 1014, 1016, 1017, and 1519 of the Tariff Act of 1930, with respect to which it was indicated in the Polish list that the items involved would be defined later. It may also be noted that certain corrections of the Polish list have been made in the above list in the references to the paragraphs of the Tariff Act of 1930 covering glue, mufflers, knitted gloves, and hens' eggs. It is believed that the references as given above were those intended.

As was explained by the American representatives in their conversations with Mr. Sokolowski, this Government, in its trade-agreement negotiations, must in general reserve concessions on particular products to countries which are the principal or an important source of the imports thereof into the United States. This rule of principal or important supplier was, of course, taken into account in making the groupings in the above list.

I hope that the information presented above will serve as a basis for further studies with a view to finding a mutually satisfactory basis for trade-agreement negotiations.

It is hoped that the contents of this communication will be held strictly confidential by the Polish Government.

Accept [etc.]

CORDELL HULL

611.60C31/197

*The Polish Minister for Foreign Affairs (Beck) to the American Ambassador in Poland (Biddle)*¹⁰

[Translation]¹¹

No. P.II.SZ.82/1/38

WARSAW, January 12, 1938.

MR. AMBASSADOR: On August 17, 1937, His Excellency the Secretary of State, Mr. Cordell Hull, handed a note to the Chargé d'Affaires a. i. of Poland, in which he presented in detail the point of view of the United States Government concerning negotiations aiming at a commercial convention between our two countries.

The Polish Government has carefully examined the suggestions of the United States Government contained in the above mentioned note, and it has the honor to reply to that note as follows:

As concerns the system mentioned in the beginning of the note and applied in Poland in the field of the regulation of imports, the Polish Government, after a detailed examination of this problem, has the honor to inform that a modification of the system according to the principles suggested by His Excellency the Secretary of State, Mr. Hull, would not conform with the principles of Polish commercial policy, the Polish Government would, nevertheless, be willing to facilitate the realization of an agreement as concerns the basic problem. Following this principle the Polish Government suggests that a provision be made in the proposed convention between the two countries, which would permit the correlation between the amount of American imports to Poland and the capacity of absorption of the Polish market for the import of various products at appropriate periods. It is in this spirit that the Polish Government would authorize its delegation to work out in common the technical details of an eventual agreement.

As concerns the problems of sanitary clauses which were brought up during the sojourn in Washington of Mr. Sokolowski, the Under Secretary of State in the Polish Ministry of Industry and Commerce, and which have again been raised in the above mentioned note, the Polish Government wishes to express its great satisfaction at the willingness of the United States Government to regulate this matter in accordance with the proposals considered; it is understood that the final details will be worked out in the course of direct negotiations.

The Polish Government welcomes with satisfaction the understanding which the United States Government has shown for the special

¹⁰ Copy transmitted to the Department by the Ambassador in his despatch No. 308, January 15, 1938; received January 25.

¹¹ File translation revised by the editors.

character of the interests existing between Poland and the Baltic countries, based on the "Baltic clause"; the Polish Government awaits therefore a final favorable decision of the United States Government in this respect.

In regard to the proposition made by Mr. Sokolowski concerning the "anti-dumping" question and the "countervailing duties", the Polish Government feels that this question, to the positive solution of which it attaches a particular importance, could, prior to negotiations, be the object of a favorable examination on the part of the United States Department of Finance. A favorable attitude of the Department of Finance in this matter would constitute an element enabling the Polish Government to arrive at a positive decision with regard to negotiations as a whole. The viewpoints expressed by Mr. Sokolowski and the wishes which he has expressed, although they refer to the interpretation of Federal laws, concern one of the essential problems of the regulation of Polish exports to the United States.

The Polish Government has the honor to take note of the results of the examination, which has taken place so far, of the lists of articles, and it feels that in the course of direct negotiations the Polish delegation will be able to supply additional explanations as concerns various particular points. This will no doubt facilitate to the United States Government the adoption of a more favorable attitude in regard to points in which, according to the note of August 17, 1937, it appeared difficult to satisfy Polish demands.

At the same time the Polish Government would appreciate it if it could obtain from the United States Government with the shortest possible delay the wishes of the United States Government in customs matters in order to be able to examine their scope with care.

In the hope that the foregoing will contribute to a further *rapprochement* of the viewpoints of both Governments on matters which are to be the object of future negotiations, the Polish Government desires to receive at the earliest possible date the opinion of the United States Government as concerns the possibility of commencing commercial negotiations between our two friendly countries as well as the eventual date thereof. On its part the Polish Government is ready to start these negotiations beginning in the month of April 1938.

With reference to the last paragraph of the note of the United States Government, the Polish Government is ready to insure the confidential character of the note of August 17, 1937, and on its part has the honor to request that the propositions contained in the present note be treated confidentially.

Please accept [etc.]

BECK

[There was some further inconclusive discussion during 1938 and 1939 between the American and Polish Governments regarding the opening of negotiations for a trade agreement. These discussions were discontinued after the invasion of Poland on September 1, 1939.]

DISCRIMINATION AGAINST AMERICAN BONDHOLDERS IN CONNECTION WITH PARTIAL DEFAULTS AND SUSPENSIONS OF PAYMENTS ON VARIOUS POLISH OBLIGATIONS¹²

860C.51/1098 : Telegram

The Ambassador in Poland (Cudahy) to the Secretary of State

WARSAW, January 7, 1937—6 p. m.

[Received January 7—3:20 p. m.]

1. This morning I called on Minister for Foreign Affairs and protested against non payment of debts to Americans while provision was made for payment of Italian, French and British obligations. I have just come from a long meeting with the Minister of Finance during which we discussed the whole question of American obligations. Minister admitted discrimination but said it was due to favorable trade balances and existing credits in countries favored. He expressed impossibility [of] providing dollar exchange for American payments, directing attention to unfavorable balance of trade which with present requirements on obligations makes necessary nearly \$30,000,000 in annual payments to the United States. Stated he would consider my proposal that dollar exchange from American immigrant remittances be impounded creating a fund to be employed for interest payments on American obligations.¹³ Despatches follow tomorrow.¹⁴

CUDAHY

860C.51/1118 : Telegram

The Secretary of State to the Ambassador in Poland (Cudahy)

WASHINGTON, February 11, 1937—6 p. m.

9. My No. 6, February 5, 2 p. m.¹⁵

(1) The Department is informed that negotiations between the Polish Financial Mission¹⁶ and the Foreign Bondholders Protective

¹² Continued from *Foreign Relations*, 1936, vol. II, pp. 414-420.

¹³ In telegram No. 1, January 14, 1937, to the Ambassador, the Department replied that it was "inadvisable for you to take any position with regard to the allotment of dollar exchange as between competing American interests such as bondholders, exporters, bankers, industrial investors, et cetera."

¹⁴ Neither printed.

¹⁵ Not printed.

¹⁶ The members of this mission, who were endeavoring to reach new arrangements with regard to Polish bonds held by American investors, were Adam Krzyzanowski, professor at the University of Cracow; Janusz Zoltowski, Financial Counselor of the Polish Embassy in Washington; and Jozef Rucinski, Counselor of the Polish Ministry of Finance.

Council¹⁷ are in danger of terminating without agreement as to a plan of action satisfactory to both parties. The Council has definitely informed the Mission that it cannot recommend to the favorable consideration of the bondholders the Polish offer of 35 per cent interest service,¹⁸ and in support of its request that a better offer than this be made it has submitted to the Mission data indicating Poland can well afford to pay more than 35 per cent.

(2) The Council has made to the Mission the following counter-suggestion :

1. The payment in cash of 50 per cent of the full interest service provided for in the bond contracts,¹⁹ for a period of 18 months (covering 3 half-yearly coupons of consecutive maturity) beginning with the first coupon remaining unpaid in consequence of the suspension of payments by Poland.

2. Or in the alternative, at the option of the bondholders, a 20-year 4 per cent funding bond for the full interest service.

3. The Polish Government shall carry in its budget in the regular normal manner the full service, interest and sinking fund, on all of its dollar bond obligations.

All budget sums not needed to make the 50 per cent cash service on the original bonds and the full cash service on the funding bonds shall be held in the Polish Treasury during the operation and until the end of this temporary plan and then used in accordance with an arrangement then to be made in consultation with the Council.

(3) According to data compiled by the Council, payment of full interest on Polish dollar bonds at present held in the United States would require transfer of slightly more than 4 million dollars per annum. The Council contends that payment of 50 per cent of this amount, or a little more than 2 million dollars annually, is well within Poland's capacity.

(4) It is understood that the Polish Mission stated, in reply to the Council's counter-suggestion, that it already had presented the maximum offer of the Polish Government (i. e., the offer reported in the Department's telegram No. 6, February 5, 2 p. m.), that it had repeatedly taken up the matter with Warsaw, and that it would be embarrassing for it to make any further representations to the Polish Government. The head of the Mission states that he must sail for Poland on February 20.

¹⁷ A non-profit, semi-public organization incorporated on December 18, 1933, formed at the request of the Secretary of State, the Secretary of the Treasury, and the Chairman of the Federal Trade Commission of the United States for the protection of the rights and interests of American holders of public securities of foreign states and other governmental sub-divisions. See *Foreign Relations*, 1933, vol. I, pp. 934 ff.

¹⁸ For text of the Polish offer as published on February 24, 1937, see Foreign Bondholders Protective Council, Inc., *Annual Report, 1936* (New York, 1937), p. 702.

¹⁹ For detailed descriptions of the various issues of Polish bonds referred to here and hereafter, see *Annual Report, 1937* (New York, 1938), pp. 580 ff.

(5) You are requested to bring most informally to the attention of the appropriate Polish authorities the benefit to Poland's future credit in the United States of obtaining favorable recommendation by the Council of the terms that may be submitted to it, and the unfortunate effect of the alternative of the termination of the negotiations without an offer which the Council could recommend to the bondholders. You should express the hope that the Polish Government will make every effort to submit an offer that would avoid the latter development and you may say that this Government would be happy to see the conclusion of a settlement satisfactory to both parties.

HULL

860C.51/1120 : Telegram

The Ambassador in Poland (Cudahy) to the Secretary of State

WARSAW, February 16, 1937—6 p. m.
[Received February 16—4:05 p. m.]

20. Your telegram No. 9, February 11, 6 p. m. Have just finished meeting with Minister of Finance. He [I] told me [him] that my Government had been informed that negotiations between Polish Financial Mission and Foreign Bondholders Protective Council were in danger of ending without agreement; that offer reported made by Mission was unsatisfactory to Council which had indicated counter suggestions set forth in paragraphs 2 and 3 of your No. 9.

I reiterated importance for credit of Poland to have favorable recommendation by Council and unfortunate effect if Council and Mission could reach no agreement stating my Government would be happy to see settlement satisfactory to both parties.

Minister stated maximum offer he could authorize was interest funding bonds covering a period of 20 years bearing interest at 3%, or payment [of] 35% cash on coupons now due; also on next two coupons as they become due. This offer in either alternative could be accepted at option of bondholders.

The Minister stressed that he had originally intended to offer only funding interest bonds but had been persuaded by Embassy's attitude (despatch No. 1443, January 7, 1937²⁰) to make cash offer. If this were unacceptable Professor Krzyzanowski, head of the Mission, would be instructed to leave for Poland on the 20th. Minister stated foreign exchange would be set aside to make payments required by this offer. Said he could not risk greater commitment and had prevailed upon Council of Ministers against strong opposition in making this offer.

²⁰ Not printed.

Embassy does not recommend acceptance or rejection but is convinced this is best offer forthcoming and there is nothing which indicates it will be raised.

CUDAHY

860C.51/1129a : Telegram

The Secretary of State to the Chargé in Poland (Johnson)

WASHINGTON, March 5, 1937—1 p. m.

19. Department confidentially informed that British Government is informing the Polish Government that they consider that it could and should maintain full service of all *tranches* of the Stabilization Loan and that if reductions were made on the sterling *tranche* the British Government would take steps to protect British holders of sterling bonds.

Please verify and ascertain the attitude of the Polish Government, in view particularly of its commitments under the offer to the American bondholders announced February 24.

HULL

860C.51/1132 : Telegram

The Chargé in Poland (Johnson) to the Secretary of State

WARSAW, March 8, 1937—6 p. m.

[Received 7:47 p. m.]

34. Your telegram No. 19, March 5. My telegram No. 33, March 7.²² Informed at Ministry of Foreign Affairs that in spite of British pressure commitment will be lived up to. Coupons sterling issue due April 15 will be paid in full but as regards other coupons Polish proposal to British [is] identic with proposal made American bondholders. Confirmed this information Ministry of Finance.

JOHNSON

860C.51/1204 : Telegram

The Secretary of State to the Ambassador in Poland (Biddle)

WASHINGTON, September 18, 1937—1 p. m.

67. Your despatch No. 146, August 23, 1937.²² The Department has made an oral statement to the Polish Chargé d'Affaires here referring to the commitment concerning non-discrimination in the announcement of February 24, 1937, to the assurance reported in Embas-

²² Not printed.

sy's 34, March 8, 6 p. m., and to reports received from various quarters concerning present negotiations with the British. After reference to other complaints of alleged discrimination, he was told that the Department has not ceased to follow developments in the matter with very great interest and that it expects that in case more favorable treatment than that proposed February 24 shall be accorded by Poland to any one of its outstanding external obligations, then the same treatment shall be extended to all Polish obligations as promised by the proposal announced by the Foreign Bondholders Protective Council on February 24.²³ Stress was laid both on the insistence that there should be no discrimination against American holders of Polish bonds and on the objections to and the detrimental effects of bilateral payments agreements with single creditor countries.

Please discuss in similar sense with Polish authorities.

HULL

860C.51/1219 : Telegram

The Ambassador in Poland (Biddle) to the Secretary of State

WARSAW, September 28, 1937—5 p. m.

[Received September 28—2:30 p. m.]

117. Your 67, September 18, 1 p. m.; my [113,] September 25, noon.²⁴ Following new developments with respect to Polish currency obligations have just come to my attention.

(1) Immediately after my call on Friday,²⁵ the British Ambassador saw Acting Minister of Foreign Affairs and left on behalf of his Government a strong memorandum insisting that British holders of Polish obligations be accorded on October 15 next as favorable treatment as bondholders of any other nationality.

(2) These representations, together with my own, have evidently aroused the serious concern of the Polish authorities who called conferences of all interested Polish agencies to consider the situation.

(3) Ambassador Potocki, who was consulted with respect to my representations, informed me that the Polish Government is planning to authorize a representative in the United States to issue in the near future a reassuring statement addressed to American bondholders.

(4) Representatives of the Standard Car Finance Corporation have just signed contract with Ministry of Finance providing for full pay-

²³ For the text of this statement by the Council, see *Annual Report, 1936*, p. 705.

²⁴ Letter not printed.

²⁵ September 24.

ment with interest rate reduced to 4¼%.²⁶ Payment including defaulted interest to be resumed this fall and extended for 15 years in all. Settlement apparently based on Ulen²⁷ and Swedish settlements.²⁸

BIDDLE

860C.51/1236

Memorandum by the Assistant Adviser on International Economic Affairs (Livesey)

[Extract]

[WASHINGTON,] October 13, 1937.

Conversation: Mr. Zoltowski, Financial Counselor, Polish Embassy;
 Mr. Ruczynski, Ministry of Finance, Warsaw;
 Mr. Feis;²⁹
 Mr. Nielsen;³⁰ and
 Mr. Livesey.

Mr. Feis said that the conversation of yesterday³¹ had been carefully considered and discussed in the Department and finally had been briefly discussed with the Secretary. As a result Mr. Feis had jotted down a little note on the position. He gave Messrs. Zoltowski and Ruczynski copies as follows:

²⁶ The Standard Car Finance Corporation, with principal offices in Wilmington, Delaware, by agreements of December 6, 1929, and February 5, 1930, had acquired from the Society of Mechanical Plants "Lilpop, Rau and Loewenstein, Ltd.," of Warsaw, the notes of the Treasury of the State of Poland, in excess of a principal amount of 10 million dollars, issued as rental for the construction and use of a large number of freight and passenger railroad cars. Beginning with October 1, 1936, the Polish Treasury had defaulted in the payments on account of principal and interest at 7 percent due on these notes. Definitive legislation, effective on July 26, 1938, for the agreement here mentioned, provided for the issuance and delivery of 4¼ percent certificates of the Polish State Treasury in the principal amount of \$5,669,036.98, their payment to be completed by October 1, 1951. (860C.51/1199, 1227, 1361)

²⁷ Ulen and Company, of New York City, owned 8 percent Sinking Fund Gold Bonds in two issues (1925 and 1926) of the National Economic Bank of Poland, unconditionally guaranteed by the Polish Government. These bonds had been received in payment for extensive public works undertaken by the Company in 10 different cities of Poland. Defaults began on these issues in 1936. For the text of the full provisions of the two Extension Agreements of May 26, 1937, by which interest was reduced to 3 percent and maturity prolonged to 1967, see *Annual Report, 1937*, pp. 639 ff., and 653 ff.

²⁸ This temporary plan concerned the 6½ percent External Secured Sinking Fund Gold Bonds of 1930, issued by the Republic of Poland to the Swedish Match Interests, pursuant to a match monopoly agreement. According to the permanent plan of December 7, 1938, interest was to be paid at the rate of 4¼ percent, and sinking fund payments were to be resumed on April 1, 1939. It was believed that none of these bonds was held within the United States. See *Annual Report, 1938*, p. 847.

²⁹ Herbert Feis, Adviser on International Economic Affairs.

³⁰ Orsen N. Nielsen, of the Division of European Affairs.

³¹ Memorandum of conversation not printed.

"In the light of the fact that many important details of the negotiation between the Polish Government and the Foreign Bondholders Protective Council in the United States, and between the Polish Government and the Council of the Corporation of Foreign Bondholders in Great Britain still appear to be unsettled, the Department does not feel itself in a position at this moment to indicate whether the settlements under discussion would involve any serious question of discrimination."

Mr. Zoltowski said that Mr. Ruczynski and he had twice been in telephone conversation with Warsaw during the day, after having telegraphed a report of yesterday's conversation last night.

It had been rather hard to hear all particulars over the telephone from Warsaw, but it appeared that as time was so short before the October 15 coupons on the Stabilization loan become payable in New York and London, the Finance Minister had decided, subject to approval by the Polish Cabinet, that Poland should pay coupons due beginning October 1 at the rate of $4\frac{1}{4}\%$ of the principal instead of at the rate of 35 percent of the coupons as announced in Poland's February proposal. That is, the October 1 coupon of the 6s of 1920, a dollar loan, will be paid at the $4\frac{1}{4}\%$ rate instead of the 2.10% rate (35 percent of 6 percent), and the October 15 coupons of the Stabilization Loan (both sterling and dollars) at the $4\frac{1}{4}\%$ rate instead of the 2.45% rate (35 percent of seven percent).

Mr. Zoltowski said that in view of the British attitude, this unilateral decision of Poland to pay British holders less than the British had demanded and to pay American holders the same rate although it was higher than the rate proposed [to] Americans, as announced by the Foreign Bondholders Protective Council last February without adverse recommendation, was an evidence of how far Poland is going in order to avoid discrimination.

Messrs. Zoltowski and Ruczynski were leaving for New York by the first train after their present conference with the State Department. They expect to receive a cable tomorrow morning giving particulars in time for them to get an announcement into the evening newspapers. They expect also to see the Foreign Bondholders Protective Council during the day. The Council would hardly be in a position to express disapproval of terms better than those it had passed on to bondholders last February without expressing disapproval.

Mr. Feis suggested that this disposition of October coupons would give the Poles more time to negotiate for a permanent settlement. They said that it would extend the time for negotiations, which it had been impossible to conclude before the October 15 due date, largely because of the London attitude.

Mr. Feis asked whether they had made any written offer to the Foreign Bondholders Protective Council. They said they had not done so. They needed first to work out some formula acceptable to

the British and American authorities in respect of non-discrimination and then it would not take long to present detailed proposals together with justifications for the proposals.

Mr. Feis reiterated the importance which the United States attaches to non-discrimination. The Poles said they understood the United States point of view on this and had cabled Warsaw of yesterday's conversation. Mr. Feis assured them that we also understand their difficulties, and that he was sure the Secretary would wish him to express his appreciation of the work the Polish representatives had done in this matter and their action in fully informing the Department and discussing the problem with it.

The Poles said they were not too optimistic as to the task of obtaining acceptance by London of terms which could also be extended to American bondholders. The British were no longer holding out for full payment of the Stabilization Loan coupons, but had said in the negotiations for permanent settlement that they would not accept a lower rate than something between 5 and 6%, which was the cost of other Polish credits in London. In reply to a question, Mr. Ruczynski said that he thought there would also be some reduction in the interest rate on the British industrial credits to Poland.

After the Poles had left, Mr. Feis telephoned Mr. Francis White,³² in confidence, regarding the conversation. Mr. White seemed rather taken aback by the new development and the return of the Poles to a 4 $\frac{1}{4}$ % rate after a 4 $\frac{1}{2}$ % rate had been offered orally. He suggested that an adjustment covering the next three years might be negotiated. Mr. Feis assured him that the Polish representatives expected to continue negotiations for a permanent settlement and that it appeared that their unilateral tender of 4 $\frac{1}{4}$ % rate for current coupon payments might represent a desire to test the British position.

F[REDERICK] L[LIVSEY]

860C.51/1268

Memorandum by the Assistant Adviser on International Economic Affairs (Livesey)

[WASHINGTON,] November 29, 1937.

I telephoned Mr. Zoltowski at his New York office and told him that Mr. Rucinski on November 26 had informed the Department through the Embassy at London³³ that the Polish Government has decided to offer the British *tranche* of the Polish stabilization loan the extension

³² Executive Vice President and Secretary of Foreign Bondholders Protective Council, Inc.

³³ Mr. Rucinski's information was contained in telegram No. 737, November 26, 1937, from London (860C.51/1262).

of the multiple exchange clause and a minimum guarantee, and indicated that this would be offered as the basis for a long term settlement. I said that this differed from what Mr. Zoltowski had told Mr. Feis on the same day.³⁴

Mr. Zoltowski said that it did, of course, differ. However, what he had told Mr. Feis was what he had been told in a telegram from London which he had received Thursday, November 25. He very much regretted that he had made erroneous statements to Mr. Feis. He said that there must have been some change in the position after the telegram which he received November 25. On receiving it he had immediately telegraphed London that he was leaving for Washington. He supposed therefore that Mr. Rucinski had perhaps gone to the American Embassy to tell them of the changes so that the Department might be informed through the Embassy since it was too late to reach Mr. Zoltowski before he came to the Department.

I told him that the new information destroyed the basis on which we had talked on the 26th.³⁵ In view of it we could only say that we would see with extreme regret any steps taken which would result in less favorable treatment for American bondholders than for non-American bondholders, and withhold all further comment.

Mr. Zoltowski reiterated his regret and his explanation and I said I would make them of record in the Department.

F[REDERICK] LIVESEY

INFORMAL REPRESENTATIONS REGARDING POLISH DIRECT SHIPMENT REQUIREMENT IN APPARENT VIOLATION OF TREATY OF JUNE 15, 1931³⁶

660C.116/197

The Consul General at Warsaw (Bevan) to the Secretary of State

No. 745

WARSAW, October 7, 1936.

[Received November 3.]

SIR: I have the honor to invite the Department's attention to the enclosed letter of September 25, 1936,³⁷ addressed to the Bremen rep-

³⁴ Memorandum of conversation not printed. Mr. Zoltowski had then believed that the Polish offer was probably temporary. It would contain the multiple currency provision, allowing payment of interest in several foreign currencies, which might have more favorable exchange rates. The inclusion of a minimum guarantee provision, not contained in the American *tranche*, would ensure that this currency exchange provision would never work out in effect at less than a 5½ percent payment in sterling. (860C.51/1266. See also *Annual Report, 1937*, p. 582.)

³⁵ Then assuming that the Polish offer was only temporary, Dr. Feis had said to Mr. Zoltowski that "the Department of State would probably not go so far as to make a public statement" regarding discriminatory treatment of American bondholders (860C.51/1266).

³⁶ For previous correspondence regarding alleged Polish discrimination against American trade, see *Foreign Relations, 1935*, vol. II, pp. 629 ff. For text of the Treaty of Friendship, Commerce, and Consular Rights, see *ibid.*, 1931, vol. II, p. 938.

³⁷ Not printed.

representative of George H. McFadden and Brother, the American cotton exporters, regarding the intention of the Polish Government to require imports into Poland of cotton of American origin to be transported by direct steamers from the United States. A similar letter was sent to the Bremen office of Anderson, Clayton and Company on September 26, 1936, in reply to its request of two days previously. Both firms had requested the Consulate General to intervene, which it did, with the appropriate authorities to secure either a postponement or a cancellation of the requirement.

On October 1, 1936, the Consulate General was able to inform both firms in Bremen that the Ministry of Industry and Commerce had postponed the effective date of the direct-shipment requirement to November 1, 1936, and today (October 7th) it notified them of a further postponement to December 1st.

In reply to the final paragraph of the Consulate General's letter of September 25th, the McFadden representative has stated that "the amount of cotton we shall be unable to clear through Customs before November 1st will not be very great" and that "the prolongation (to November 1st) will probably enable us to avoid any unfortunate situation". No reply to the same paragraph has yet been received from the other firm, although both have expressed willingness to ship direct if adequate facilities should become available. A better opportunity to evaluate the situation will be provided by the McFadden representative's expressed intention of coming to Warsaw in order to discuss with the Consulate General ways and means of reducing his firm's outstanding Polish cotton credits.

An unusually well-informed trade contact of the Consulate General in Lodz has told this office that the real reason behind the requirement is pressure from direct steamship lines in an attempt to secure more cargo. The Manager in Poland of the American-Scantic Line, a Polish citizen, has openly expressed satisfaction at the move because of long-continued efforts on his and his company's part to induce American exporters to use the company's combined Gulf-New York-Gdynia services, with trans-shipment at Philadelphia. Similar through facilities could easily be arranged by the Polish Gdynia-America Line.

The Lodz informant states, however, that the spinners have protested vigorously against the measure, mainly because of the present too infrequent direct sailings from Gulf ports and of a desire to continue to have access to the main European cotton ports in case of urgent need. It should be pointed out, of course, that the Polish Government maintains that storage and other facilities at Gdynia have now been brought to the point where they are adequate for the spinners' needs. In the light of past experience with Polish shipping and

foreign trade policy, it is difficult to believe that the Government will continue to postpone the direct-shipment requirement once adequate shipping facilities become available, despite the resulting further infraction of the ninth paragraph of Article VI of the American-Polish Commercial Treaty.

The Consulate General will continue to report important developments in the matter as they occur.

Respectfully yours,

THOMAS H. BEVAN

660C.116/197 : Telegram

The Acting Secretary of State to the Chargé in Poland (Johnson)

WASHINGTON, December 1, 1936—5 p. m.

87. Consulate General's No. 745, October 7. Please report whether direct shipment requirement has been imposed on American cotton. If postponement has occurred report date on which requirement is to be enforced.

Has there come to attention of Embassy or Consulate General any case in which Polish Government has enforced direct shipment requirement on a commodity of American origin other than cotton?

MOORE

660C.116/199 : Telegram

The Chargé in Poland (Johnson) to the Secretary of State

WARSAW, December 3, 1936—5 p. m.
[Received December 3—1:02 p. m.]

141. Your No. 87, December 1, 5 p. m. Consul General states that Ministry of Industry and Commerce informed him today that direct shipment requirement on American cotton has been in force since December 1st and that requirement applies to all shipments of American goods irrespective of nature with exception of goods of insignificant value and those imported for national defense purposes. Commercial Attaché requests that above information be repeated to Department of Commerce.

JOHNSON

660C.116/199 : Telegram

The Acting Secretary of State to the Ambassador in Poland (Cudahy)

WASHINGTON, December 29, 1936—3 p. m.

96. Embassy's No. 141, December 3, 5 p. m. Department desires you to seek an early interview with the Minister for Foreign Affairs and

to take up with him the application of the direct shipment requirement to commodities of American origin, with particular reference to raw cotton.

You should state that your Government considers the application of this requirement to be in direct violation of the ninth paragraph of Article 6 of the treaty of June 15, 1931, with Poland (which you should cite), and that in view of the unambiguous language of the treaty it is at a loss to understand the action of the Polish Government in imposing the direct shipment requirement upon articles of American origin. You should say that your Government expects that the Polish Government will promptly take steps to accord to merchandise of American origin which enters Poland by an indirect route the treatment to which it is entitled under the provisions of the treaty.

Please report briefly by cable and fully by despatch the result of your representations.

MOORE

660C.116/200: Telegram (part air)

The Ambassador in Poland (Cudahy) to the Secretary of State

WARSAW, January 7, 1937—1 p. m.
[Received January 11—6:40 a. m.]

2. Your telegram 96, December 29, 3 p. m. Interviewed Minister for Foreign Affairs stating that United States Government considered application of direct shipment requirement in direct violation of Friendship and Commerce Treaty and stated that my Government expected that the Polish Government would promptly take steps to accord merchandise of American origin entering Poland by indirect route the treatment it is entitled to under provisions of Treaty. Foreign Minister professed ignorance and promised to investigate matter without delay. Despatch follows.³⁸

CUDAHY

660C.116/204: Telegram (part air)

The Ambassador in Poland (Cudahy) to the Secretary of State

WARSAW, February 13, 1937—11 a. m.
[Received February 15—12:30 p. m.]

16. My despatch No. 1440, January 7th.³⁹ Have just received note from Foreign Office dated February 9th. Translation pertinent portion reads as follows:

³⁸ Despatch No. 1440, January 7, not printed.

³⁹ Not printed, but see the Ambassador's telegram No. 2, January 7, 1 p. m., *supra*.

"Despite the attitude adopted by the interested organizations in the question of direct importation of cotton no disposition has been taken by the authorities relative to the direct importation and without transshipment of cotton.

It is similarly pointed out that the permits of importation concerning other merchandise coming from the United States are delivered by the authorities just the same in the cases where this merchandise is routed indirectly, that is to say, with transshipment.

As it results from the foregoing, the competent authorities have no intention to violate the stipulations of article 6, paragraph 9 of the Treaty of June 15, 1931."

Above assertions are contradictory to verbal statements made to Consul Malige by competent officials of Ministry of Industry and Commerce. Consul General informs me that there is no doubt in his mind that direct shipment requirement has been enforced in the past and that he will watch carefully for future infringements.

Commercial Attaché states same verbal statements were made to him and he concurs with Consul General that best present plan is to watch for future violations. He adds that it must now be assumed that direct shipment requirements no longer exist and he asks that Department of Commerce be informed accordingly.

If above assumption proves unjustified and violation of article 6 recurs, Embassy will inform Department and if so instructed make further protest basing it not only on article 6 but on statement of fact in Foreign Office note.

CUDAHY

660C.116/222

The Consul General at Warsaw (Bevan) to the Secretary of State

No. 1588

WARSAW, July 15, 1937.

[Received July 27.]

SIR: I have the honor to refer to the memoranda from this Consulate General enclosed with the Embassy's despatch No. 1504, February 13, 1937,⁴⁰ in which it was stated that careful watch would be made for future infringements by the Polish authorities of the direct shipment clause of the American-Polish Treaty of Commerce dated June 15, 1931. In this connection, the Department will be interested in the enclosed photographs⁴¹ of import permits for American goods, all of which were issued after the Polish Foreign Office's *Note Verbale* of February 9, 1937, disclaiming any intention to impose the direct shipment requirement, but all of which are nevertheless stamped with that requirement. As this office has previously maintained, de-

⁴⁰ Not printed, but see the Ambassador's telegram No. 16, February 13, *supra*.

⁴¹ Six photographs not reproduced.

spite the Foreign Office's denials, the enclosures confirm a long-standing practice of the Ministry of Industry and Commerce, one moreover that the Foreign Office itself communicated to the Embassy by *note verbale* of October 23, 1933.⁴²

The Consulate General has examined several other permits for American goods issued since February 9, 1937, and bearing the direct-shipment clause, but has either been unable to borrow them long enough for photographing or been refused permission to have them photographed. . . .

With regard to the previously reported statement by an official of the Ministry of Industry and Commerce that import permits for shipments of small value would not be stamped with the direct shipment clause, an official of the section that actually issues the permits recently informed the Consulate General that permits for shipments of ordinary merchandise weighing less than 100 kilograms did not bear the clause in question. In this connection, the Consulate General recently examined an import permit for 15 kilograms of American leather which was not stamped with the clause.

The aspect of this entire matter that has most impressed this office is the unanimity with which importers other than of cotton regard the direct shipment clause with favor. Some even go so far as to oppose its abolition and in their cases the Consulate General has actually met with resistance in efforts to obtain information from them in the matter. One of their arguments is that it prevents inferior German goods from entering Poland under the guise of having been produced in the United States. All importers consulted in recent months have stated that they would ship direct whether the permit was so stamped or not, because the existing direct steamship facilities are adequate, besides being the cheapest in the end.

The second above-quoted official has informed the Consulate General that in practice permits are stamped with the clause because importers usually answer affirmatively the question in their applications as to whether they will ship direct or not, the latter consideration being confirmed by numerous importers in statements to this office. Still disregarding cotton, it may be added that the only requests to this office for the clause's removal occurred a year or more ago and resulted from the failure of American exporters to comply with the Polish buyer's specific instructions to ship direct.

With respect to raw cotton, that product is exempted from the requirement of an import permit. The quantity imported is regulated by autonomous quotas fixed by the Ministry of Industry and Commerce in consultation with the spinners, who are entrusted with the

⁴² Not printed.

repartition of the quotas among themselves and clear their shipments on the basis of duty-reduction certificates issued by the Ministry of Finance. Although these certificates specify that in order to enjoy the reduced duty the cotton must enter Poland by sea, they do not preclude transshipment in any port outside the United States. This is the situation as gathered from importers and officials in recent months and confirmed today by a responsible official (Counsellor Rybicki) of the Ministry of Industry and Commerce.

In summary, therefore, it appears that American goods fall under two categories for the purpose in mind: (1) Raw cotton, national-defense goods and shipments of small value, and (2) all other articles. The first category may be transshipped at an intermediate port, while the second may not, although importers do not object thereto and either desire the requirement maintained or would ship direct in any case.

Respectfully yours,

THOMAS H. BEVAN

660C.116/215

The Secretary of State to the Ambassador in Poland (Biddle)

No. 19

WASHINGTON, July 19, 1937.

SIR: The Department is in receipt of your despatch No. 8, June 9, 1937,⁴³ with regard to the application to American goods imported into Poland of the direct shipment requirement.

The Embassy is requested to discuss informally with the competent Polish officials the matter of the application of the direct shipment requirement to imports of American products. In this discussion the views and practice of the Polish Government should be ascertained. In particular the Embassy should endeavor to ascertain, should the question arise out of the Polish point of view, whether the Polish Government regards the requirement, in the first instance, of a direct shipment endorsement for imports of American products and its later cancellation upon documentary proof that such shipment is not feasible, as constituting a practice consonant with the provisions of Article 6 of the Treaty of Friendship, Commerce, and Consular Rights between the United States and Poland.

The Embassy should make it clear to the Polish officials with whom this matter is discussed that any practice which would delay the importation of indirect shipments of American products, or which otherwise would burden importation of indirect shipments as compared with direct shipments, would be regarded by this Government as conflicting with the provision of Article 6 of the Treaty of Friendship,

⁴³ Not printed.

Commerce, and Consular Rights that no distinction shall be made between direct and indirect shipments.

Upon the receipt from the Embassy of a report of its conversations with the Polish authorities the Department will give further consideration to the matter.

Very truly yours,

For the Secretary of State:
R. WALTON MOORE

660C.116/235

The Ambassador in Poland (Biddle) to the Secretary of State

No. 260

WARSAW, November 27, 1937.
[Received December 9.]

SIR: With reference to the Department's instruction No. 19 of July 19, 1937 concerning the direct shipment requirement on American goods imported into Poland, I have the honor to report that the following information in the premises has been obtained through informal discussions with the competent officials of the Polish Foreign Office and discreet inquiries in other interested circles:

1. The Foreign Office definitely regards the application, with or without subsequent cancellation, by officials of the Ministry of Industry and Commerce of the direct shipment requirement on imports of American goods as in contradiction to the applicable provisions of the American-Polish Treaty of Friendship, Commerce and Consular Rights and has endeavored unsuccessfully to persuade the Ministry to abandon its practice of endorsing by a rubber stamp such a requirement on import permits covering American goods.

2. The Ministry of Industry and Commerce apparently bases its refusal to accept and act upon the Foreign Office's views in the matter on the assertion that the policy and obligations of the Ministry necessitate the endorsement of the requirement on all import permits issued covering goods of American origin. It is understood that the Ministry was compelled some time ago "by heavy pressure from two sources" to apply informally the requirement to American imports. The two sources exercising the pressure are believed to be the Gdynia America Line and the Administration of the Port of Gdynia. Officials of the Ministry also allege to the Foreign Office that the provisions of Polish clearing and payment agreements with several other countries are such as to require in the protection of Polish Foreign exchange holdings the continuation of the practice in question. No explanation of the basis of this allegation is available to the Embassy beyond the statement that the complicated arrangements contained in such agreements make it necessary for the Ministry to apply the requirement. The Ministry insists to the Foreign Office that it can not in any circumstances forego its present policy of endorsing all permits when originally issued with the requirement.

3. The Ministry of Industry and Commerce, however, offers to and now follows the practice of removing the requirement from any permit issued covering American goods immediately upon the request for such action by the importer concerned. The Foreign Office was informed in October that the Ministry was "giving the necessary instructions to remove without any difficulties the requirement of direct shipment at every request of an importer of goods from the United States." The Foreign Office and the Ministry of Industry and Commerce, while not in agreement with regard to the validity of the application in the first instance of the requirement, are of the opinion that the present practice avoids any real hardship or delay on American trade. In other words, if the question of the treaty provision is not raised formally, the present practice which the Ministry of Industry and Commerce insists to the Foreign Office is the only concession that it is in a position to make, would apparently operate to remove any burden or hardship that might be worked on American trade by the application of the requirement.

The Embassy has observed in two cases which came up during the course of the discussions that the requirement was removed upon the request of the importer. Both of these cases concerned the importation of sulphur from the United States. The Foreign Office, in connection with the practice now followed by the Ministry of Industry and Commerce, is now taking up strongly with that Ministry any case brought to its attention in which delay or difficulty is experienced in bringing about the cancellation of the requirement.

After a careful examination of the present situation, particularly with reference to the best interests of American export trade with Poland, I am of the opinion that the present practice of the Ministry of Industry and Commerce with respect to the cancellation of the direct shipment requirement should, from the American point of view, be given a trial for a sufficient period of time to determine whether American trade can, without suffering any hardship or delay, be carried on thereunder with Poland. The Embassy will continue to observe closely the operation of the practice and will inform the Department promptly of any changes in the situation as reported herein. It will, of course, endeavor to facilitate in every appropriate manner efforts of importers to obtain permits allowing them to import American goods by indirect as well as direct shipment. In the meantime, the Department should, in my opinion, give further consideration to this matter in connection with any conversations which may take place with respect to general matters affecting American-Polish trade.

Respectfully yours,

A. J. DREXEL BIDDLE, JR.

ANTI-SEMITISM IN POLAND AND CONSIDERATION OF JEWISH
EMIGRATION AS A POSSIBLE SOLUTION

860C.4016/470

Memorandum by the Secretary of State

[WASHINGTON,] June 4, 1937.

The Polish Ambassador ⁴⁴ came in, having just returned from a few weeks' visit to Poland. He said he desired to acquaint me with some of his observations while on his trip. He went on to say that economic conditions have very much improved in Poland; that political conditions are somewhat more stabilized; that it is not thought that there will soon be war in Europe; that they do have the Jewish problem in Poland, in a more acute form, in that it is now a part of an anti-Semitic movement in addition to the original economic cause; that, unusual as it is, the movement against the Jews this time seemed to start among the lower classes and rural persons, who are seeking to come into the towns and cities and take over that commerce with which the Jews are more or less connected; that much thought is being given to the question of some emigration of Jews to suitable settlements elsewhere; that this is true, notwithstanding the Jews have been natives of Poland for many centuries; and that he, the Ambassador, has contacts with leading Jews in this country, including such persons as Mr. Warburg ⁴⁵ and Mr. Baruch, ⁴⁶ with whom he consults from time to time; that he expects to confer with Mr. Baruch tomorrow (Saturday).

The Ambassador said that he stopped in Berlin and Paris and had had talks with the two United States Ambassadors; ⁴⁷ that the Germans really desire to reach a position of understanding and friendliness with the British; that they, of course, have not sufficient food-stuffs and raw materials. He said Ambassador Bullitt stated to him that conditions in France were sound and all that was needed was some group or individual to take hold of the situation, carry it forward and develop it.

The Ambassador concluded by saying that Poland, to a most noticeable extent, is looking to the United States for leadership, in Europe as well as throughout the world, and has confidence that such leadership with a program will be forthcoming when the time is ripe; that the people of Poland are reading the utterances of the President and myself and associates to a surprising extent and are gradually embracing the views thus expressed.

C[ORDELL] H[ULL]

⁴⁴ Count Jerzy Potocki.

⁴⁵ Felix M. Warburg, banker, New York, N. Y.

⁴⁶ Bernard M. Baruch, New York, N. Y.

⁴⁷ William E. Dodd and William C. Bullitt were the American Ambassadors in Germany and France, respectively.

860C.4016/486 : Telegram

The Ambassador in Poland (Biddle) to the Secretary of State

WARSAW, July 16, 1937—1 p. m.
[Received July 16—12: 05 p. m.]

86. Polish press today prominently features reports of Jewish delegation's call on Secretary Hull,⁴⁸ its anti-Polish memorandum,⁴⁹ Ambassador Potocki's subsequent call on Secretary, and latter's press statement.⁵⁰ *Gazeta Polska*, leading pro-Government newspaper, contains on front page editorial comment generally accepted as Foreign Office statement warning Jewish leaders, presumably American Jews, against meddling in Polish internal affairs if they seek Poland's help in Jewish efforts concerning Palestine.

The editorial follows in full:

"The above news, aside from a natural and impulsive revulsion which any attempt of undesirable elements to meddle in the internal affairs of the Republic must awaken in Poland public opinion, cannot but cause astonishment at the strategic blindness of the Jewish politicians. On the one hand, in connection with the fate of the future Palestinian State which is being decided upon now, they wish to obtain diplomatic help from Poland; on the other hand, they proclaim in Poland anti-emigration slogans and, at the same time, they institute an anti-Polish agitation outside the borders of Poland.

We do not believe that the Jewish policy if it is to follow this line will accomplish its purposes".

BIDDLE

860C.4016/489

The Secretary of State to Dr. Stephen S. Wise, President of the American Jewish Congress

WASHINGTON, July 20, 1937.

MY DEAR DR. WISE: With reference to the communication which you left with me on July 12, 1937,⁴⁹ when you called with other members of a Committee from the American Jewish Congress for the purpose of making a declaration with regard to the situation of the Jews of Poland, I desire again to assure you that this Government has a sympathetic understanding of the natural concern of American Jews in matters affecting the Jewish population in other countries.

⁴⁸ A committee headed by Rabbi Stephen S. Wise, representing the American Jewish Congress, called upon the Secretary of State on July 12, 1937, in behalf of the situation of the Jewish population of Poland.

⁴⁹ Not printed.

⁵⁰ Reference is apparently to the Secretary's statement, released July 16, 1937; for text, see vol. I, p. 699.

With full appreciation of your solicitude in the situation which is set forth in your letter I have most carefully considered the entire question but I still do not find that that situation affords a basis on which this Government can properly make representations to the Government of Poland. In this field our duty is to offer full and effective protection to American citizens and direct American interests and I fear that any deviation from this policy could not be other than prejudicial.

I am forwarding a copy of your letter to our Ambassador at Warsaw for his information.⁵²

Sincerely yours,

CORDELL HULL

860C.4016/507 : Telegram

The Secretary of State to the Ambassador in Poland (Biddle)

WASHINGTON, September 24, 1937—6 p. m.

69. Department informed by Dr. Stephen Wise⁵³ that during past 4 days physical violence unrestrained by adequate police measures has been directed against Jews and Jewish business in Warsaw.

For assistance in reply to Dr. Wise Department requests immediate brief telegraphic report on situation.⁵⁴

HULL

860C.4016/508 : Telegram

The Ambassador in Poland (Biddle) to the Secretary of State

WARSAW, September 25, 1937—3 p. m.

[Received September 25—12:45 p. m.]

114. Your 79 [69], September 24, 6 p. m. Situation in Warsaw in summary as follows:

1. Wave of anti-Semitic activities of young students and workingmen commenced 3 weeks ago and culminating last Sunday in numerous street beatings and window breaking, occasioning grave anxiety in Jewish circles. Monday and Tuesday conditions improved somewhat. Polish press Tuesday forbidden under threat of suspension to publish details, but foreign correspondents sent out stories.

2. Wednesday, Warsaw authorities issued and posted throughout city warning of 1 to 10 years imprisonment for individuals partici-

⁵² Sent with instruction No. 22, July 27, not printed.

⁵³ By telegram of September 23, not printed.

⁵⁴ A reply, not printed, was sent to Dr. Wise on October 1, following receipt of telegram No. 114, September 25, from the Ambassador, *infra*.

pating in beatings and damaging property. Numerous extra police brought to Warsaw same day and are patrolling streets and parks where beatings took place with the result that beatings have not been as great since then. Seventeen persons, including at least 3 Jews, reported being held for trial as participants.

3. While situation appears cleared up at present time, the Embassy cannot say that activities will not be renewed, particularly in early October when universities reopen.

Despatch follows.⁵⁵

BIDDLE

860C.4016/511

Memorandum by Mr. Bernard Gufter of the Division of European Affairs

[WASHINGTON,] September 27, 1937.

Mr. Wankowicz⁵⁶ began the conversation by remarking that he had heard rumors to the effect that the Treasury Department was studying Polish exports to the United States with the thought that it might take action against them under the section of the Tariff Law authorizing the imposition of countervailing duties. He added that the rumors were exceedingly faint ones and that he was hopeful that there was no foundation for them since in his opinion it would be unfortunate if at the present time, while both Governments are considering whether there may be grounds for beginning negotiations for a trade agreement,⁵⁷ were the Treasury Department to impose countervailing duties on imports into the United States from Poland.

Mr. Wankowicz stated that the Polish Embassy had received a telegram from Dr. Stephen S. Wise, President of the American Jewish Congress, protesting against the anti-Jewish disturbances which had recently occurred in Warsaw and requesting the Polish Government to impose martial law in that city. The Embassy had also been informed that Dr. Wise had requested the Secretary of State to protest to the Polish Government.

Mr. Wankowicz gave the appearance of being considerably disturbed by Dr. Wise's protest. He stated that he desired to inform the State Department of the real nature of the disturbances referred to by Dr. Wise. He had been fully informed by his Government with regard thereto and although he said he had not been instructed to call, it was apparent that he was anxious to tell his story and concerned that the Department might have been misinformed by Dr. Wise. The

⁵⁵ Not printed.

⁵⁶ Witold Wankowicz, Polish Counselor of Embassy and Chargé.

⁵⁷ See pp. 525 ff.

disturbances were minor ones, involving beatings on the street and the breaking of windows. No one was seriously injured and there were absolutely no fatalities. The police now have the matter under complete control and the authorities have announced their intention of prosecuting offenders vigorously. Mr. Wankowicz added that the Voivode of Warsaw had caused notices to be posted throughout the town warning the people of the penalties of one to ten years imprisonment for street rioting and damaging property. He said that this action was an indication of the intent of the authorities to be vigorous in their action against anti-Semitism since they would have to enforce the order posted by them in order to maintain the prestige of governmental authority in Poland. He expressed the hope that the difficult situation existing in Poland and the determination of the Polish Government to maintain order without the imposition of martial law would be appreciated and understood in the United States.

Just before he left Mr. Wankowicz asked whether action was being taken on the Polish proposal for reciprocal exemption of consular officers from the payment of taxes on motor vehicle fuels and oils. Mr. Gufler informed him that the matter had been referred to the appropriate federal and state authorities who still had it under consideration.

SEPTEMBER 28, 1937.

Mr. Wankowicz telephoned this morning to say that yesterday afternoon he had received from his Government telegraphic instructions to inform the Department of the latest developments in the situation of the Jews in Poland and that he had called on Mr. Wilson, Assistant Secretary of State, and had informed him of the situation both as regards the recent disturbances in the city of Warsaw and the basic economic and social causes of the tension between Poles and Jews.

Mr. Wankowicz also stated that he intended to acknowledge Dr. Wise's telegram without comment and to inform him that it had been forwarded to the appropriate authorities in Poland.

B[ERNARD] G[UFLER]

880C.4016/513

The Ambassador in Poland (Biddle) to the Secretary of State

[Extracts]

No. 195

WARSAW, October 7, 1937.

[Received October 19.]

SIR: In continuation of the series of despatches submitted by this Embassy on significant developments affecting the Jewish popula-

tion of Poland, I have the honor to inform the Department that the opening of the present academic year in Poland was marked by the definite establishment by official action of the so-called ghetto in institutions of higher education with the result that Christian and Jewish students are now required to occupy distinctly separate sections in class and lecture rooms.

The Department will recall, particularly from the university situation described in my predecessor's despatch No. 1599 of April 15, 1937,⁵⁸ that anti-Semitic students had been endeavoring for some time to establish the "ghetto" in Polish universities. These efforts had met during the past 2 years with firm resistance on the part of Jewish students and the authorities were compelled on several occasions to close individual institutions for fairly long periods in order to put an end to student disturbances arising in connection with anti-Semitic activities of nationalistic student organizations. However, these organizations were able despite substantial opposition from the authorities fairly effectively to enforce the physical separation of Christian and Jewish students during periods when the schools were actually in session.*

I have been informed that the rectors of the several Polish universities and other higher educational institutions decided at a meeting held some time in September to establish by institutional regulations the separation of Christian and Jewish students. This action was taken with the consent of if not actually directed by the central authorities and ostensibly was based on the desire to end the disturbances which had occasioned the suspension of work on several occasions during the past few years in many institutions.† The regulations issued under the authority of the rectors of the individual institutions which have so far come to the attention of the Embassy make no speci-

⁵⁸ Not printed.

* The Christian students followed the practice of locking arms in order to obtain exclusive occupancy of the benches on the right hand side of lecture halls and class rooms in the endeavor to force the Jewish students to occupy the benches on the left side. The Jewish students definitely refused to accept voluntarily any such arrangement and numerous disturbances took place. They solved their problem by following the practice of standing in the aisles and at the rear of the room thus leaving the "ghetto" benches on the left side completely vacant. It is reported that Jewish students have stood through all class room exercises and lectures in this fashion for the past two years. Numerous of the younger Jewish students have not sat down during their entire university careers. [Footnote in the original.]

† The Warsaw *Goniec Warszawski* of October 6, 1937, states in this regard "The Cabinet of Premier Składkowski decided lately: . . . (2) Instructions issued by Rectors of Universities dividing the seats between Poles and Jews. Polish circles welcome the instructions issued by Rectors of Universities ordering a distribution of seats separating Jews and Poles. This will greatly contribute to the pacification of youth and the restoration of the proper atmosphere of study at the Universities. Since this instruction is parallel to the reduction of the percentage of Jews at schools—there is no doubt that it will have a calming effect on the excited youth, which had a fatal effect on their study." [Footnote in the original.]

fic mention of the intent to separate Jewish and Christian students but simply provide in various manners for the designation by the school authorities of the seats to be occupied by the individual students or student groups. . . .

Jewish student groups are no more inclined to accept the present regulations than they were willing to comply with the unofficial efforts of anti-Semitic students to enforce in the past few years an unofficial "ghetto" arrangement. They have protested strenuously to the educational authorities and have encountered no difficulty in enlisting the active support of important Jewish organizations in appealing for the cancellation of the regulations to the central authorities. † . . .

The Embassy does not think it likely that the protest of Jewish organizations will be of much avail in this matter. As stated above, the decision to create the "ghetto" was sanctioned, if not actually directed by the Polish Government, and it is quite unthinkable that this action would be reversed, particularly in view of the fact that it has met with almost universal approval in the racially Polish press. In fact, the Minister of Cults and Public Instruction in a nation-wide radio address delivered yesterday on the occasion of the new school year pointed out that "quiet in the institutions of higher education is a condition essential to the future development of Poland" and added that in the exercise of his responsibility for the normal conduct of the educational activities of the country he is "forced to use means to which recourse would not willingly be taken" except to avoid the spread of confusion and anarchy.

On the other hand, it is pertinent to point out that the issue involved is greater than that of the separation of Christian and Jewish students in the schools. I am informed that leading Jewish circles are convinced that the successful establishment of the "ghetto" in the schools will soon bring a strong demand on the part of anti-Semitic elements in Poland for the extension of the system to other fields of life. They anticipate in particular that pressure will be brought on the authorities to provide "ghetto" accommodations on public transportation facilities, special sections in theaters for Jewish spectators, and a general separation of the Jewish and Christian elements in many other fields of activity. It is in order to avoid encouraging such demands by easy compliance with this first step that Polish Jewry

† According to information obtained from Jewish sources, the Jewish Senators and Deputies have promised to use every resource at their command in opposing the University ghetto. They intend to raise the constitutional question in their discussions with the authorities by claiming that these regulations deny to Jewish students the equal treatment guaranteed therein to all Poles. [Footnote in the original.]

is organizing a strong resistance to the establishment of the "ghetto" in the universities and other institutions of higher education.

Numerous nationalistic Poles take it for granted that the extension of the ghetto system in Poland is both desirable and inevitable as time passes and greet with satisfaction movements such as the one under discussion in that direction. Anti-Semitic circles, naturally, express great satisfaction with any new development tending further to segregate the Jews in Poland, and I am attaching hereto as indicative of that feeling a translation of an article⁶⁰ entitled "The University Ghetto" which appeared in the Warsaw *Warszawski Dziennik Narodowy* of October 6, 1937. §

Respectfully yours,

A. J. DREXEL BIDDLE, JR.

860C.4016/516

The Ambassador in Poland (Biddle) to the Secretary of State

[Extracts]

No. 209

WARSAW, October 20, 1937.
[Received November 2.]

SIR: Supplementing my despatch No. 187 of October 1⁶⁰ and earlier despatches from this Mission reporting developments affecting the Jewish situation in Poland, I have the honor to inform the Department that it is apparent at Warsaw that the higher officials of the Polish Government are becoming gravely concerned at the reaction in foreign countries, particularly the United States and Great Britain, to the recent increase in the number and seriousness of anti-Semitic incidents in Poland.

In several conversations Colonel Beck⁶¹ has given me the very definite impression that he was well aware of the force and significance of the reaction abroad to anti-Jewish activities in Poland, and I have

⁶⁰ Not printed.

§The official Polish Telegraph Agency P. A. T. released the following statement on October 8, 1937, which indicates that the Government initiated the action of the rectors: "The Minister of Cults and Public Education received on the 7th of this month a delegation of Jewish members of the Diet and Senate, senators Schorr and Trockenheim and members of the Diet Gottlieb, Minberg, Rubinstein and Sommerstein.

The Minister stated that during the last meeting of the Rectors of the Universities he appealed to them that, keeping within the University laws and regulations that empowers the rectors to take certain measures to preserve peace and order, they should use all the means there are at their disposal to prevent acts of violence taking place.

The regulations issued by the rectors have this aim. By reserving separate seats for individual students or for the members of the various university associations, the rectors have made an attempt to keep order at the universities and prevent fights for seats from taking place." [Footnote in the original.]

⁶¹ Jozef Beck, Polish Minister for Foreign Affairs.

readily observed that he is not personally inclined towards anti-Semitism but, in fact, displays, either as a matter of principle or good politics, a spirit of tolerance and helpfulness in his contacts with Jews. He informed me that his recent trip to Geneva was based to a large extent on a desire to demonstrate as prominently as possible the genuine importance which the Polish Government ascribes to the Jewish problem and its eagerness to find a solution for it by increased emigration. . . .

The Prime Minister, General Sławoj-Sładkowski [*Skladkowski*], spoke⁶² strongly in a soldierly manner against public disorder and anarchy in the streets, emphasizing that civil violence directed against any one section of the population might, if allowed to develop unchecked, easily be turned against constituted authority and the general order of the country. He went on to stress the necessity of maintaining order and guarding the safety of all citizens in order to ensure the internal and external security of Poland. His remarks were followed, according to my informant, by a strong statement on the part of Eugenjusz Kwiatkowski, Vice Prime Minister and Minister of Finance:

"I am satisfied with the progress that we were making in the economic development of the country. We set for ourselves difficult achievements but the efforts of the people were bringing great results. If peace and unity are maintained at home, we can and will accomplish much. But the disorders, primarily the anti-Jewish activities and the peasant difficulties, have proven very costly to our economy, and I am no longer positive that we can continue to make progress. In the peasant regions the entire field of economic activity has been gravely injured.

"The anti-Semitic activities have threatened our prospects at home and abroad. Tax collections in Jewish districts have declined greatly. The receipts at Brześć Litewski⁶³ have declined by nearly 70 per cent. since the riots there last May and in many important regions the average decline has been nearly 30 per cent. Our tax income is dependent to a large extent on trade which is controlled by Jewish hands and Jews are avoiding more than ever the payment of taxes since the excesses have become more prevalent. I cannot tell you how difficult it has become for us to facilitate exports, to negotiate on financial matters, and to obtain necessary credits or a foreign loan, particularly with the Anglo-Saxons. Jewish circles in those countries refuse to deal with us as long as these excesses take place. If the present situation continues, I shall find it necessary to resign, since my program has been endangered to a point where success soon will no longer be possible."

High officials of the Roman Catholic Church in Poland, including the Papal Nuncio, Cardinal Hlond, and other members of the hier-

⁶² In a formal meeting of the Polish Cabinet.

⁶³ Brześć nad Bugiem, or Brest-Litovsk.

archy, have likewise become concerned with the situation. Since numerous members of the lower clergy, particularly in the so-called Corridor region, have been more or less active leaders in anti-Semitic activities, the attitude of the church authorities is of genuine importance in preventing a continuation of the excesses. I understand that foreign circles brought to the attention of the church at Rome the desirability and even necessity of the Polish hierarchy's acting in the matter. The present Pope,⁶⁴ who was for some time Nuncio at Warsaw, is fully conversant with conditions in Poland and is reported to take a deep personal interest in the welfare of the country. The efforts of the church are apparently directed now at restraining anti-Semitic activities and endeavoring to facilitate a long time solution through emigration.

While there is abundant evidence that foreign support of Polish Jewry has brought home to the leaders of Polish life the fact that consideration must be given to the reaction abroad to anti-Semitic activities in Poland, I am not convinced that those leaders are or will be in a position effectively to control the mass feeling against Jews which has been permitted to develop virtually unchecked, if not actually encouraged, since the death of Marshal Pilsudski. The mass of the Polish people, including many of the more intelligent and better informed among them, are too prone to ascribe the ills of the country to an alleged malevolent influence of the Jews to allow foreign influence, an anathema in itself to most Poles, to sway them from an adopted course. And to the rabid or professional anti-Semite in Poland, the exercise of foreign pressure in behalf of Polish Jewry, unless made effective in a completely unobtrusive manner, is likely to serve as an invitation for renewed and more bitter activity. Nevertheless, I feel that the realization on the part of Polish leaders of the importance of considering foreign reaction to excesses in Poland is one of the most hopeful signs in the present situation.

Respectfully yours,

A. J. DREXEL BIDDLE, JR.

860C.56/235

Memorandum by the Under Secretary of State (Welles)

[WASHINGTON,] October 25, 1937.

The Polish Ambassador called to see me this morning. He said that the President had asked him, during a recent conversation which the President had had with the Ambassador,⁶⁵ to come to see me with regard to the problem of Jewish emigration from Poland.

⁶⁴ Pius XI.

⁶⁵ On October 21.

The Ambassador stated that from the conversations which Colonel Beck had recently had with the leaders of the Zionist movement at Geneva, prospects for canalizing emigration from Poland to Palestine were discouraging, and that, while Poland would still continue to try to work out some plan for continued Polish emigration to Palestine as the basis for their present policy, his Government was very anxious to find other fields where Jewish emigrants from Poland could be settled. He said that the Polish Government had sent commissions to Madagascar, South Africa, East Africa and Australia, but had been able to find no willingness on the part of those governments to encourage Polish-Jewish immigration. The President had mentioned to the Ambassador the possibility that certain Latin American republics might be willing to encourage the immigration of Polish Jews, and it was on this point that the Ambassador particularly wished to consult me.

I told the Ambassador that it was my impression that in recent years many of the South American republics, notably Argentina, Uruguay and Brazil, had imposed stringent restrictions on foreign immigration of all kinds and that I doubted if the moment was propitious for undertaking negotiations of the character he had in mind. I said, however, that I thought that some of the northern South American republics, some of those in Central America and in the Caribbean, might be willing to encourage immigration of Polish Jews, provided it were solely for agricultural purposes, in order that government lands might be developed.

I told the Ambassador, however, that the question of financing would naturally immediately arise inasmuch as none of the governments which I had mentioned were in a position at this time to devote public funds in any considerable quantity towards getting the immigrants started in the agricultural field after their arrival. The Ambassador said he did not think this problem would present much difficulty since he had talked with several prominent American Jews in New York and had received assurances from them that they would undertake at least partial financing of the Polish immigrants.

I suggested to the Ambassador that he let me have about a week's time in order to go into the situation more thoroughly, since the matter was one on which I was definitely not informed, and that after I had had the opportunity of collecting such information on this subject as we might have in the Department, I would be happy to talk with him again in the matter.

S[UMNER] W[ELLES]

800.51W89 Poland/157

Memorandum by the Secretary of State

[WASHINGTON,] December 8, 1937.

The Polish Ambassador called on no particular business, except to hand me a letter, copy of which is attached,⁶⁸ in which the Polish Government declines to make any payment on their debt.

The Ambassador incidentally expressed renewed interest in the Jewish problem in Poland and his deep interest in endeavoring to help solve it. He concluded by saying that he believed the acute nature of the problem would subside very soon.

C[ORDELL] H[ULL]

⁶⁸ Department of State, *Press Releases*, December 11, 1937, p. 435.

SPAIN

THE SPANISH CIVIL WAR

(See volume I, pages 215 ff.)

564

SWITZERLAND

INFORMAL REPRESENTATIONS RESPECTING SWISS MEASURES FOR THE CONTROL OF IMPORTS IN ALLEGED VIOLATION OF THE RE- CIPROCAL TRADE AGREEMENT¹

611.5431/548

The Secretary of State to the Minister in Switzerland (Wilson)

No. 3870

WASHINGTON, January 26, 1937.

SIR: The Department has given careful study to the reports from the Legation and from the consular offices in Switzerland with regard to certain matters concerning the operation of the trade agreement which have been the subject of discussion with the Swiss Government. Reference is made in particular to the Swiss stamp-tax on customs receipts (Despatch No. 4595, September 23, 1936²), the measures adopted for the control of lard imports (Despatch No. 4592, September 22, 1936³) and the régime applicable to imports of Douglas fir plywood (Despatch No. 4551, August 28, 1936²).

The replies made by the Swiss Government to the Legation's representations on these subjects reveal an attitude on the part of the Swiss Government which the Department is unable to regard as other than unsatisfactory, not only from the point of view of a more liberal commercial policy which it was confidently expected would result from the trade agreement, but also in view of the specific commitments in the trade agreement. Since the lard and plywood cases will be treated in separate instructions, the Department wishes in this instruction to emphasize its general concern regarding the apparent failure of the Swiss Government to recognize its obligations under the agreement in these instances. The cases to which reference is made are not individually of far-reaching importance but the Department is loath to see an accumulation of small issues of this nature which have the effect of interfering with the operation of the agreement, or to allow certain Swiss contentions with regard to the interpretation of the agreement to go unchallenged.

¹ Continued from *Foreign Relations*, 1936, vol. II, pp. 804-815. For text of the reciprocal trade agreement between the United States and Switzerland, signed January 9, 1936, see Department of State Executive Agreement Series No. 90, or 49 Stat. 3917.

² Not printed.

³ *Foreign Relations*, 1936, vol. II, p. 812.

Among these matters is the four percent stamp tax levied by the Swiss Government on customs receipts. The question of the validity of this tax directly concerns the scope of the Swiss commitments with respect to the products listed in Part A of Schedule I. The Department has carefully examined the Swiss note of September 19, 1936.⁴ It is unable to find in that note any statement which would lead it to a different conclusion than it has previously expressed, namely, that the imposition of this tax on the products listed in Part A of Schedule I is in contravention of the obligations assumed by the Swiss Government in Article I of the trade agreement.

The Department is compelled to reject the Swiss view that the provisions of Article 25 of the Customs Law of October 1, 1925, are mandatory within the meaning of Article I. It is not believed that it will be necessary or desirable to enter into a discussion with the Swiss as to the meaning of the phrase "donne lieu à la perception de taxes speciales" in the law of October 1, 1925, which constitutes the only ground upon which a mandatory reading of the law could possibly be based. For your own information, however, the Department regards the Swiss position as untenable both in the light of the words themselves and of the sense of the entire Article. "Donne lieu" may be rendered into English as "gives rise to" or "results in". The provision in its entirety appears to provide a means for establishing, by executive regulation, appropriate charges and penalties to compensate the customs authorities for special services rendered in connection with the execution of the customs laws. The only previous use made of this provision, in the ordinance of the Federal Council of August 24, 1926, establishes charges for such services as clearance of goods after normal business hours or at other than established customs clearing points, certification of previous clearance, copying of documents, and the like. A tax such as the present one, the amount of which is established as a percentage of the total import duties paid, is clearly not related to the cost of performing services in connection with the work of the customs authorities, but is in fact an additional import duty, and as such may not, under the terms of Article I of the agreement, be imposed on American products enumerated and described in Part A of Schedule I.

In reply to the Swiss allegation that the provisions of Article 25 of the law of October 1, 1925, are mandatory within the meaning of Article I of the trade agreement, it is believed that it will be sufficient to point out that the Swiss authorities have not given a mandatory effect to these provisions in actual practice. Even if there were a reasonable question as to whether the fees might be collected, or were required to be collected, as the Swiss Government claims, the failure

⁴ *Foreign Relations*, 1936, vol. II, p. 813.

of the Swiss authorities to levy the fees over a period of ten years raises a strong presumption for a non-mandatory reading of the provision. This fact is further emphasized by the exemption from the four percent tax of certain classes of goods. The order of the Direction Générale des Douanes of February 3, 1936, exempts from the tax goods admitted free of duty and certain classifications of benzine and leaf tobacco. It also establishes a classification of goods on which the tax is fixed at two percent.

You are requested to take this matter up again with the competent Swiss authorities and to re-state the opinion of this Government, in the sense of the Department's instruction No. 3640 of July 25, 1936⁵ and the foregoing paragraph, that the four percent tax contravenes the provisions of Article I of the trade agreement when applied to the articles listed in Part A of Schedule I, and to request that these articles be exempted from the tax.

The Department has taken note of the Swiss contention that the action requested by this Government can only be taken by the Federal Assembly. In view of the exemptions from the tax which are specified in the order of the Direction Générale des Douanes of February 3, 1936, it is difficult to understand why similar facilities cannot be provided with respect to the trade agreement items. While this may be pointed out to the Swiss authorities, you should make it clear that this Government does not regard the fact that the tax was provided for in a measure passed by the Federal Assembly as in any way modifying the obligation of the Swiss Government to accord to the products in question the treatment provided for in the trade agreement.

For your information there is attached hereto a copy of a note addressed to the Swiss Minister at Washington⁶ at the time the trade agreement was signed, indicating what sort of laws the Government of the United States considered as covered by the words "required to be imposed under laws of the United States of America in force on the day of the signature of this Agreement". In the discussions of this provision of Article II and of the exactly corresponding provision of Article I, it was made clear to the Swiss negotiators that the only exception to the commitment not to levy charges on importation higher than those in force on the day of signature of the agreement was the exception for special charges which mandatory laws in force on that day required to be imposed under given circumstances.

Separate instructions are being transmitted to you regarding the lard import control system and the Swiss treatment of American plywood.

Very truly yours,

For the Secretary of State:
FRANCIS B. SAYRE

⁵ *Foreign Relations*, 1936, vol. II, p. 805.

⁶ Not attached to file copy.

654.116 Lard/21

The Secretary of State to the Minister in Switzerland (Wilson)

No. 3872

WASHINGTON, January 26, 1937.

SIR: Reference is made to your despatch No. 4592, of September 22, 1936,^{6a} enclosing a copy of an informal note from Dr. Stucki⁷ of September 19, 1936, with regard to the measures adopted by the Swiss Government for the control of lard imports, and to the Department's instruction No. 3660 of August 7, 1936,⁸ and your previous despatches on this subject.

The Department is unable to agree with the views expressed in Dr. Stucki's communication, which has been given careful study. However, in view of Dr. Stucki's statement that the tax and the quota have been abolished, it is not believed necessary for you to continue the discussion with the Swiss Government as to whether the system previously in effect was in violation of the trade agreement. It is believed desirable, nevertheless, that you reaffirm the Department's position set forth in its instruction of August 7 with regard to its interpretation of the obligations of the Swiss Government in this matter.

The Department must reserve judgment regarding the import monopoly system described in paragraph (6) of Dr. Stucki's note until it has had an opportunity to observe its functioning. It has noted with appreciation, however, the assurance of the Swiss Government of its intention to observe the provisions contained in the lard note under the new system.

It is requested that you convey the Department's views on this matter to the competent Swiss authorities. You are also requested to furnish the Department with information as to the manner in which the monopoly operates and with any observations which you can make on its effect on imports of American lard, particularly in view of the statement made by Dr. Hotz⁹ to Mr. Bigelow,¹⁰ reported in your confidential despatch No. 4619, of October 12,¹¹ that increased quantities of lard would be permitted to be imported.

For your own information, the Department's views on the contentions made by Dr. Stucki in the note under reference are summarized below. He did not reply directly to the first of the Department's contentions, namely, that no quota for lard imports from the United

^{6a} *Foreign Relations*, 1936, vol. II, p. 812.

⁷ Walter Stucki, Foreign Trade Delegate of Swiss Federal Council.

⁸ *Foreign Relations*, 1936, vol. II, p. 807.

⁹ Jean Hotz, Director of Commercial Division of Swiss Federal Department of Public Economy.

¹⁰ Donald F. Bigelow, Second Secretary of Legation.

¹¹ Not printed.

States was established, as required by the note to item 95 in Part B of Schedule I. The Department is fully aware of the statement in writing made by the Swiss Government at the time of signature of the agreement that it would only be able to admit small quantities of lard. This understanding in no way compromised the obligation assumed by the Swiss to assign a definite annual quota to the United States, divided into equal calendar quarter quotas. Furthermore, the Department is entirely unable to agree with the interpretation of paragraph 2 of Article VII made by Dr. Stucki. Nothing in the paragraph referred to supports the Swiss view that the assurance of fair and equitable treatment with respect to quotas applies only to new quotas. The words, "any article in which the other country is interested" are not qualified by an exception, either express or implied, in this paragraph or elsewhere in the agreement, in regard to commodities the importation of which was restricted at the time of signature or entry into force of the agreement.

The reply of the Swiss Government with respect to the tax on imported lard was likewise unsatisfactory. Dr. Stucki's contention that the tax did not constitute an import tax in the sense of Article I, but rather a contribution by which the importer of lard might be relieved of the obligation to make compensatory exports, is inconsistent with the agreement in two respects. In the first place, whatever appellation was given to the tax, it was levied only on imported lard and must therefore be regarded as a charge imposed "on or in connection with importation." Furthermore, it was not imposed or required to be imposed by laws in force in Switzerland on the day of signature of the agreement, and nothing contained in Article I warrants the substitution of a tax for requirements of an administrative nature which might have been in effect at that time.

Furthermore, the Department cannot agree with the view that the requirement to make compensatory exports was to continue after the importation of lard was authorized in accordance with the note to item 95. Prior to the signature of the trade agreement the importation of lard into Switzerland was entirely prohibited except in connection with compensation transactions. It is obvious, therefore, that the undertaking of the Swiss Government to "authorize the importation of lard" from the United States involved a commitment to remove this condition with respect to the quota to be assigned to the United States.

Very truly yours,

For the Secretary of State:

FRANCIS B. SAYRE

654.116 Lard/23

The Minister in Switzerland (Wilson) to the Secretary of State

[Extracts]

No. 4925

BERN, April 26, 1937.

[Received May 15.]

SIR: With reference to the Department's instruction No. 3872 of January 26, 1937, relative to the control of lard imports by the Swiss Government, I have the honor to submit the following report on recent action taken by the Legation regarding this matter.

In conformity with the Department's instruction, I have communicated with Dr. Walter Stucki, Delegate of the Swiss Federal Council for Foreign Trade, and re-affirmed the position of the United States Government in this matter, as had previously been set forth in the Legation's letter of August 19 (despatch No. 4534, August 19, 1936).¹² My letter to Dr. Stucki, dated March 20, 1937 (copy enclosed),¹³ added that the American authorities reserve their judgment regarding the present Swiss import monopoly system and are interested in the meantime in learning of the manner in which it is working.

Under the terms of the Trade Agreement, the Swiss Government is, of course, free to allot as small or as large a quota to the United States as it desires, and it is questionable, I believe, whether it is desirable to press for the establishment of a fixed quota which almost inevitably, in my opinion, would be set at a minimum figure, i. e. a quantity far less than what would under certain livestock market conditions in Switzerland suffice for local needs. While it is true that if a small definite quota were fixed, it would be possible for the Government to grant extra quota allotments at its discretion, I am inclined to feel that insistence upon any definite quota might result in a situation still less favorable for the American exporters than the one now prevailing.

Respectfully yours,

HUGH R. WILSON

611.5431/610

The Chargé in Switzerland (Bigelow) to the Secretary of State

No. 5052

BERN, July 21, 1937.

[Received July 31.]

SIR: I have the honor to refer to the Department's instruction No. 4090 of July 1, 1937,¹³ and to report that to date no indication has been received from the Swiss authorities as to when a reply may be

¹² *Foreign Relations*, 1936, vol. II, p. 810.¹³ Not printed.

expected to the Legation's note of March 25, 1937,¹⁴ in regard to the Swiss stamp tax on customs receipts.

Nothing further has been heard from Mr. Stucki in regard to this matter since he spoke to me and to Mr. Wilson on the subject last September, as reported in the Legation's despatch No. 4595 of September 23, 1936.¹⁴ The Department will recall that, at that time, Mr. Stucki expressed regret that the difficulty had arisen; he admitted quite frankly that a mistake had been made by the Swiss Government and he sincerely hoped, he said, that in view of the "relative slight importance of the material aspects of the case" the United States Government would not find it necessary to oblige the Swiss Government to ask Parliament to take steps to amend the Act in question. In conversation with the Minister a few days later, he repeated substantially the same remarks, adding that he would be willing to give an undertaking that no further imposition of this tax would be made.

I may add that I know it to be Mr. Wilson's feeling that this matter should not be pressed too hard, unless there is complaint in regard thereto from American business. We feel that the figures of Swiss imports from the United States are gaining in a satisfactory way, that the Swiss authorities are showing themselves in cooperative mood, that a mistake was avowedly made in imposing this tax so far as the United States is concerned, but that it would be embarrassing to the Swiss Government to readjust their financial system, which would be necessary in excepting American products from the operation of the tax and making the same exemption to other nations under the operation of the most-favored-nation arrangements, and that assurances have been given that there will be no increased imposition of the tax.

In view of the foregoing I prefer not to push the matter further unless the Department feels strongly that the Legation should take further action in regard to its note of March 25, 1937 (despatch No. 4891 of March 31, 1937¹⁴), and cares so to advise me, perhaps by telegram.

Respectfully yours,

DONALD F. BIGELOW

654.113 Automobiles/28

The Minister in Switzerland (Harrison) to the Secretary of State

No. 65

BERN, October 22, 1937.

[Received November 2.]

SIR: I have the honor to refer to the Department's instruction No. 4140 of August 16, 1937, enclosing a copy of a letter dated August 9,

¹⁴ Not printed.

1937,¹⁶ from Mr. Charles R. Weaver of the Automobile Manufacturers Association, of Washington, D. C., concerning alleged inequality of treatment on the part of the Swiss Government in the matter of automobile imports in bond.

In compliance with the Department's instruction, the Legation has investigated this matter and ascertained that discrimination does, in fact, exist in the treatment of automobiles shipped to Switzerland for uncertain sale. According to a communication dated October 8 from the Inspector General of Customs (copy and translation enclosed),¹⁷ automobiles shipped from certain countries, on consignment to dealers in Switzerland, may be entered under bond, valid for one year, provided the country of origin grants reciprocal treatment to Swiss goods. Such reciprocity, the Legation was informed, is accorded by Germany, Austria, France, Hungary, the Netherlands, Czechoslovakia and Turkey. The Inspector General's letter added that the entry of automobiles of American origin under similar conditions could not be contemplated unless Swiss merchandise were accorded the same treatment by the American customs authorities.

With regard to applicability of most-favored-nation clause in Article X of the trade agreement between Switzerland and the United States, it was claimed that this clause had relation only to customs duties and other customs charges, method of collection of duty, formalities and charges levied in connection with customs clearance, and that the most-favored-nation clause had never been applied to goods entering temporarily.

I replied to this communication by addressing an informal note to Doctor Hotz, Director of the Commercial Division of the Federal Department of Public Economy, on October 12, in which I called attention to the letter which Mr. Bigelow, Chargé d'Affaires, had written to him on June 25, 1936, concerning the temporary free entry of automobile tractors (Legation's despatch No. 4513 of August 8, 1936¹⁷). I stated that I hoped that the considerations set forth in that letter, irrespective of the interpretation of Article X of the trade agreement, will be regarded by the Swiss authorities as constituting substantially such reciprocal treatment as would permit the Swiss Government to give the same treatment to American automobiles as to automobiles imported on a consignment basis from France, Germany and certain other countries. A copy of my note to Doctor Hotz is also enclosed,¹⁷ as well as a copy of the Legation's original inquiry in this matter, dated September 3, 1937.¹⁸

¹⁶ Neither printed.

¹⁷ Not printed.

¹⁸ Not attached to file copy.

As soon as I have received a reply to my note of October 12, I will repeat the contents of the reply to the Department for its consideration.

Respectfully yours,

LELAND HARRISON

611.5431/610

The Secretary of State to the Minister in Switzerland (Harrison)

No. 80

WASHINGTON, November 11, 1937.

SIR: Reference is made to the Legation's despatch No. 5052 of July 21, 1937, and to previous correspondence with regard to the four percent tax on customs receipts levied by the Swiss Government.

The Department has noted the view expressed by the Legation in the despatch under reference, that it would not be desirable to press further upon the Swiss Government the Department's opinion that the tax cannot properly be collected upon articles included in Section A of Schedule I of the reciprocal trade agreement. The Department has given careful consideration to the factors mentioned in this connection in the Legation's despatch. In view of Mr. Stucki's assurances that there will be no increased imposition of the tax; the relationship of the tax to the Swiss budgetary necessities; and the fact that there has been no continued complaint from American firms with regard to the tax; the Department shares the Legation's reluctance to press the matter further.

The Department maintains its position, however, that collection of the tax upon the articles in question is in direct contravention of the trade agreement. From a legal standpoint the Department does not consider that it can properly acquiesce in a modification of the terms of a trade agreement relating to the treatment of American trade by the other Government.

The Department understands, however, that the Swiss tax on customs receipts is due to expire at the end of the present calendar year, and if this is so, the question will automatically be resolved at that time, provided the tax is not further continued without exemption for the products included in Section A of Schedule I of the trade agreement. This would appear to provide a solution to the question without embarrassment to the Swiss Government.

Since the Legation, by its note of March 25, 1937,^{12a} has set forth clearly the view of this Government that the tax, when imposed upon the articles in question, is in conflict with the agreement, in refutation of the views on the subject expressed in the communication of Sep-

^{12a} Not printed.

tember 19, 1936, from the Swiss Federal Department of Public Economy,^{18b} it is believed that the Department's position is adequately expressed on the formal record of this case. The Department desires, however, to obtain confirmation of its understanding that the tax will lapse at the end of the present calendar year. You are therefore requested to bring the Department's position and views in the matter, as expressed in this instruction, informally to the attention of the appropriate Swiss authorities on an early occasion with a view to obtaining assurances that the tax will lapse, in so far as it is in conflict with the terms of the trade agreement, at the close of the present calendar year.

Very truly yours,

For the Secretary of State:
FRANCIS B. SAYRE

654.113 Automobiles/24 : Telegram

The Secretary of State to the Minister in Switzerland (Harrison)

WASHINGTON, November 17, 1937—4 p. m.

70. Despatch 65 of October 28 [22]. The Department considers that the words "rules, formalities and charges imposed in connection with the clearing of goods through the customs" in paragraph 1, and the whole of paragraphs 2 and 4, of Article X are definitely applicable to this case. In particular, it cannot admit Hausermann's contention that the above quoted clause applies only to formalities and charges imposed "at the time of customs clearance." The Department regards the Swiss position as being inconsistent with not only the broad purposes of the most-favored-nation clause, but the specific language of the agreement as well.

The Department also considered Article X applicable to the tractor case (despatch 4513 of August 8, 1936¹⁹) but saw no purpose in then pressing its interpretation as satisfaction had already been granted the American interests involved. While desiring not to prejudice the efforts already made by you to settle the present case, the Department wishes you to make its views clear to the competent Swiss authorities in whatever manner you deem most advisable. Should the reply to your letter of October 12 to Hotz²⁰ be unfavorable you should urgently request reconsideration on the basis of the Department's opinion as to the applicability of Article X.

HULL

^{18b} *Foreign Relations*, 1936, vol. II, p. 813.

¹⁹ Not printed.

654.113 Automobiles/25

The Minister in Switzerland (Harrison) to the Secretary of State

No. 130

BERN, December 8, 1937.
[Received December 15.]

SIR: I have the honor to refer to the Department's telegram No. 70 of November 17, 4 p. m., and to previous correspondence concerning inequality of treatment on the part of the Swiss Government in the matter of automobiles shipped on consignment, under bond, to dealers in Switzerland.

Since the Swiss authorities are taking more time to reach a decision on the representations made by the Legation than I had anticipated, in view of the favorable tenor of Dr. Hotz's acknowledgement of my letter of October 12,^{19a} I think it well to report to the Department at this time concerning the present status of this case.

At first I wish to say that when deciding to address my letter of October 12 to Dr. Hotz (despatch No. 65, October 22), I was fully mindful of the importance of not giving any indication that we in any way agreed with or accepted the Swiss contention that Article X of the trade agreement was not applicable to imports in bond. It was with the thought of adequately reserving our position as to the interpretation of Article X that I included in my letter to Dr. Hotz the phrase "irrespective of the point raised in the final paragraph of the letter of October 8^{19a} as regards interpretation of Article X of the trade agreement". My decision to write to Dr. Hotz along the lines of my letter of October 12 was motivated chiefly by a desire to have this specific case of discrimination settled with as little delay as possible.

On November 23, by my direction, Mr. Bigelow called on Dr. Hotz. He reminded him that a definite reply had not yet been received to my letter of October 12 and expressed the hope that the Legation would soon be able to report to its Government a satisfactory settlement of the matter. Dr. Hotz made it clear that the Division of Commerce of the Federal Department of Public Economy was in favor of giving satisfaction to the American Government, but that they were having some difficulty with the Direction General of Customs. Mr. Bigelow took occasion to inform him of how strongly the American Government felt as regards the applicability of Article X to the case under consideration, and of its complete disagreement with the customs authorities' view that Article X cannot be invoked in a case involving merchandise imported in bond.

Dr. Hotz has again urged the Direction General of Customs to reconsider the matter, and we are now awaiting the results of the Commercial Division's latest intervention.

Respectfully yours,

LELAND HARRISON

^{19a} Not printed.

654.113 Automobiles/26

The Minister in Switzerland (Harrison) to the Secretary of State

No. 153

BERN, December 21, 1937.

[Received January 4, 1938.]

SIR: Referring to the Department's instruction No. 4140 of August 16, 1937, enclosing a copy of a letter dated August 9, 1937,²⁰ from Mr. Charles R. Weaver of the Automobile Manufacturers Association, of Washington, D. C., concerning alleged inequality of treatment on the part of the Swiss Government in the matter of automobiles shipped on consignment, under bond, to dealers in Switzerland, and in further reference to my last report on this subject as set forth in my despatch No. 130 of December 8, 1937, I have the honor to enclose herewith a copy, with English translation, of a note dated December 17, 1937,²¹ from Dr. Hotz, Director of the Commercial Division of the Federal Department of Public Economy, in reply to my informal note of October 12 last,²¹ a copy of which was enclosed with my despatch No. 65 of October 22, 1937. While maintaining the view that "the conventional most-favored-nation clause does not apply to customs regulations covering temporary importation for uncertain sale, the principle of reciprocity being mandatory for this kind of trade," Dr. Hotz in his reply informs me that subject to cancellation "in case of imperious necessity," authorization has now been given to the customs bureaus to grant *passavants* valid for six months in favor of automobiles imported from the United States into Switzerland for uncertain sale.

Subsequent to the despatch of my last report in this case, Dr. Hotz telephoned me and asked me to call upon him on Friday last, December 17, at the same time saying that he would have a favorable reply for me in response to my letter of October 12, and that he also desired to speak to me further with regard to the four percent tax on customs receipts, with respect to which I am reporting in a separate despatch of this date.

At our interview Dr. Hotz handed me his reply to read and then stated that if, in practice, it should be found desirable to extend the period for which *passavants* are to be valid, and if I were to bring the matter to his personal attention, he felt confident that it would be possible to make the necessary arrangements.

Dr. Hotz went on to emphasize his personal desire to make our commercial agreement an effective instrument for the enhancement of our trade to our mutual advantage and benefit as also his intention and wish to do his part in ensuring its successful operation. He had been happy, he said, in finding in this instance also a willingness to cooperate and a desire to accommodate on the part of the Direction

²⁰ Neither printed.

²¹ Not printed.

General of Customs. He hoped that his reply would give us satisfaction. I expressed my appreciation of his interest in the matter and said that I would avail myself of his kind offer to consider extending the period set for the validity of the *passavants* in the event that this should prove to be desirable.

Respectfully yours,

LELAND HARRISON

611.5431/649

The Minister in Switzerland (Harrison) to the Secretary of State

No. 155

BERN, December 21, 1937.

[Received January 10, 1938.]

SIR: I have the honor to refer to the Department's instruction No. 80 of November 11, 1937, and to report the action taken in compliance with the directions therein with regard to the four percent tax on customs receipts levied by the Swiss Government.

On receipt of the Department's instruction under reference, and after careful review of the record and all available information regarding this matter, it appeared that no intimation with respect to the eventual application of the tax had been given to the Legation by the Swiss authorities other than the informal offer by Dr. Stucki to Mr. Wilson, during their conversation at Geneva in 1936, to confirm in writing his assurance that the tax would not be increased. Also, it appeared that provision for the continuance of the tax had been incorporated in the Budget of the Confederation for 1938, which was submitted to the Federal Assembly on October 29, 1937, and is due for consideration and passage by the Swiss Parliament during the current month.*

In the absence of Dr. Stucki, I called upon Dr. Hotz, Director of the Commercial Division of the Federal Department of Public Economy, and after referring to the correspondence on the subject, of which he took note, I explained the Department's understanding that the tax was due to expire at the end of this year; also its desire to be assured that the tax would lapse at that time. In reply, Dr. Hotz referred to the fact that the new Budget provided for continuance of the tax in 1938. As to the duration of the tax, he could only suggest that possibly the hope might have been expressed that with a general vote of the people this year concerning the Government's present emergency powers in the field of economic legislation the tax would have been discontinued. However, in all frankness he personally questioned the expediency or desirability of putting such an im-

*Adopted by the Federal Assembly on December 21, 1937. The section concerning the "Customs Administration" contains an item of 8,500,000 francs as the estimated return for 1938 from the "stamp tax on customs receipts (*droits de timbres sur les quittances de douanes*)". [Footnote in the original.]

portant question to a general vote, all the more so at this time when financial and economic questions were so complex and difficult. He could, however, assure me that the tax would not be increased. Furthermore, he said, except for the Netherlands, the import duties of Switzerland were the lowest in Europe; their average amounted to about six percent. With the tax included, this meant an average duty of 6.24 percent. Thus, in itself the tax could not, he claimed, be considered as constituting a barrier to trade; neither had there been any such desire or intimation when it had been enacted by Parliament.

Subsequently, when on December 17 he handed me his answer to my note of October 12 with regard to the treatment of American automobiles shipped on consignment, under bond, to dealers in Switzerland (please see my despatch No. 153 of December 21, 1937), Dr. Hotz referred to our previous conversation with respect to the four percent tax on customs receipts and recalled the particular circumstances under which the tax had been enacted. It had, he said, been included in the financial program for 1936 which should have been passed by Parliament during December 1935; that this was, and is, the regular procedure; that by reason of some delay at the last moment, which the newly elected Federal Councillor Meyer hesitated forcefully to overcome, the bill had been carried over into the January session of the Parliament and had been enacted in its original form subsequent to the signature of our commercial agreement; that this sequence of events had been most unfortunate and regrettable, and that he hoped that the Department would understand the very difficult situation in which they were placed. I had the impression that Dr. Hotz had probably discussed the matter with Dr. Stucki, who has recently returned to Bern, and that he was, in fact, begging us not to press the matter and thus spare the Government considerable embarrassment.

In view of all the circumstances of this case, as well as the fact that there appear to have been no protests recently against the tax in question by American importing interests, and particularly in view of the extremely receptive and cooperative attitude of Dr. Hotz and the Commercial Division of the Federal Department of Public Economy in general, I would respectfully recommend that the matter be not pressed and that for the time being we await developments.

Respectfully yours,

LELAND HARRISON

611.5431/649

The Secretary of State to the Minister in Switzerland (Harrison)

No. 172

WASHINGTON, January 31, 1938.

SIR: Reference is made to the Legation's despatch No. 155 of December 21, 1937, with regard to the four percent tax levied by the Swiss Government on customs receipts.

The Department has given careful attention to Dr. Hotz' reply to your informal representations on this subject and to your recommendation, and the bases therefor, contained in the last paragraph of the despatch under reference. While the Department does not wish to embarrass the Swiss Government by insisting that the tax be removed on articles included in Section I of the trade agreement, it cannot view as other than unsatisfactory the continued imposition of the tax.

You are accordingly instructed to inform the appropriate Swiss authorities informally of the Department's disappointment over the incorporation in the 1938 budget law of a provision for the continuation of the tax and to express the hope of your Government that the tax, insofar as it applies to articles included in Section A of Schedule I of the trade agreement, will be removed at the earliest possible opportunity.

Very truly yours,

For the Secretary of State:
FRANCIS B. SAYRE

[No further correspondence of any consequence on this subject has been found in Department files.]

**CONVENTION BETWEEN THE UNITED STATES AND SWITZERLAND
RELATIVE TO MILITARY OBLIGATIONS OF CERTAIN PERSONS
HAVING DUAL NATIONALITY, SIGNED AT BERN, NOVEMBER 11, 1937²²**

711.544/20

The Minister in Switzerland (Wilson) to the Secretary of State

No. 4902

BERN, April 6, 1937.
[Received April 17.]

SIR: I have the honor to invite the Department's attention to instruction No. 3399 of February 19, 1936,²³ and other correspondence respecting a draft of a proposed convention between the United States and Switzerland relative to military obligations of persons having dual nationality.

Inasmuch as there had been a long delay on the part of the Swiss in replying to our suggested draft, I called on Mr. Bonna, Chief of the Division of Foreign Affairs, to talk the matter over with him. I urged him to tell me whether the delay meant that they were dissatisfied with the text or whether it meant that they were uninterested in the whole negotiation. Mr. Bonna replied that they were really interested in achieving something with us.

²² For previous correspondence, see *Foreign Relations*, 1935, vol. II, pp. 775 ff.

²³ *Ibid.*, p. 789.

The facts were, he explained confidentially, that the Foreign Office had been favorably impressed with our text, that they had then discussed the matter with the Military Department, but had encountered there a flat refusal to accept any contractual obligation by which Swiss nationals, born in Switzerland of Swiss parents, could eliminate their nationality and escape the obligations of military duties. Thus, said Mr. Bonna, the text in the form in which we submitted it could not be accepted. He added, however, that he did not see why we could not agree upon a text similar to the one which the United States had accepted in respect to Norway.²⁴

I told Mr. Bonna that I could not be sure that my Government still desired to ratify treaties in the form in which we had already done so with Norway, but that it seemed worth while to examine this proposal; would he, therefore, answer my note of March 8, 1937 (copy enclosed),²⁵ explain to me why they could not accept our proposition, and make the suggestion formally which he had just made informally. Mr. Bonna stated that he would be happy to do so.

Under date of March 23 the Foreign Office sent a note (copy and translation enclosed) together with an annex,²⁶ being a counter suggestion for a text. Inasmuch as this counter suggestion showed certain variations from the text of the American treaty with Norway, under my direction Mr. Bigelow²⁷ discussed the matter with various members of the Swiss Foreign Office. Mr. Bigelow made it entirely clear that we were not authorized by our Government to enter any agreement, that what he was doing was merely using his best knowledge to bring about a text which he thought would be as acceptable as possible to us.

I append herewith a copy of a text which the Swiss Government has now proposed.²⁸ This should be considered as an annex to their note of March 23. This text is a close approximation to the text of our treaty with Norway, is the result of rather laborious discussions between the Foreign Office and ourselves, and I entertain the hope that the Department will find it acceptable.

Respectfully yours,

HUGH R. WILSON

²⁴ For treaty with Norway signed November 1, 1930, see *Foreign Relations*, 1930, vol. III, p. 713.

²⁵ Not printed; it repeated the proposals made to the Swiss pursuant to Department's instruction No. 3399, February 19, 1936.

²⁶ Neither printed.

²⁷ Donald F. Bigelow, Second Secretary of Legation.

²⁸ Not printed.

711.544/21

The Chargé in Switzerland (Bigelow) to the Secretary of State

No. 5067

BERN, July 31, 1937.

[Received August 16.]

SIR: I have the honor to refer to the Legation's despatch No. 4902 of April 6, 1937, transmitting a copy of a note from the Federal Political Department submitting a counter-proposal for an agreement between Switzerland and the United States relative to exemption from military service of certain persons having dual nationality, resembling provisions of the Convention of November 1, 1930, between the United States and Norway on the same subject.

I have lately received from the Department copies of Treaty Series No. 913 containing the text of the Protocol concluded at the Hague in 1930 between the United States of America and other Powers, relative to military obligations in certain cases of double nationality, which entered into force between ten States on May 26, 1937.²⁹ The entry into force of this Protocol, I considered, afforded me an opportunity to inquire informally whether the Swiss authorities were likely to adhere to the Protocol, although, as reported in despatch No. 4902 of April 6, they had previously stated that Article I of the treaty text proposed by the United States—similar to Article I of the Protocol—was not acceptable to them.

I decided to make such an informal inquiry with the thought that a further conversation at this time might enable me to obtain information as regards the Swiss attitude which would be helpful to the Department in connection with consideration of the Swiss counter-proposal. I have ascertained, as a result, that there is no change in the attitude of the Swiss authorities. I was told that they have no intention of ratifying the Protocol in question, and the point was made that it has not been adhered to by any of the States adjoining Switzerland.

Without desiring to express an opinion as regards the acceptability to the United States of Article I of the Swiss counter-draft, I believe, however, that an agreement in some such form would serve a very useful purpose, not only at this time but especially in the event of any general mobilization of persons subject to Swiss military service. As a result of my inquiries here, I am of the opinion that further discussion of the matter between representatives of the two Governments will not induce the Swiss authorities to enlarge the scope of Article I of their proposed draft, and I might add that they impress me as being entirely indifferent as to whether their counter-proposal, which they say was drawn up wholly in a spirit of accommodation, is acceptable, or not, to the Government of the United States.

Respectfully yours,

DONALD F. BIGELOW

²⁹ Protocol signed at The Hague, April 12, 1930, *Foreign Relations*, 1930, vol. I, p. 224.

711.544/21

The Secretary of State to the Chargé in Switzerland (Bigelow)

No. 4165

WASHINGTON, September 8, 1937.

SIR: The Department acknowledges the receipt of the Minister's despatch No. 4902 of April 6, 1937, and of your despatch No. 5067 of July 31, 1937, concerning a proposed convention between the United States and Switzerland relating to military obligations of certain persons having dual nationality.

The Department commends you on your skillfulness in conducting these negotiations and authorizes you to sign a convention identical with that denominated as "Final Swiss Counter-Proposal", transmitted with the Legation's despatch of April 6, 1937. A full power for that purpose is enclosed herewith.³⁰

Very truly yours,

For the Secretary of State:
HUGH R. WILSON

[For text of convention signed November 11, 1937, see Department of State Treaty Series No. 943, or 53 Stat. 1791.]

³⁰ The Convention was actually signed by Mr. Harrison as Minister, as he had assumed charge of the Legation before the document was signed and had been given full authority for signature.

UNION OF SOVIET SOCIALIST REPUBLICS

(See *Foreign Relations*, The Soviet Union, 1933-1939,
pages 357-503.)

YUGOSLAVIA

LIABILITY OF AMERICAN CITIZENS HAVING DUAL NATIONALITY FOR MILITARY SERVICE WHEN VISITING YUGOSLAVIA¹

711.60H4/31

The Minister in Yugoslavia (Wilson) to the Secretary of State

No. 672

BELGRADE, January 22, 1937.

[Received February 6.]

SIR: Referring to the Legation's despatch No. 585 of September 15, 1936,² and previous correspondence concerning the proposed Naturalization Treaty between Yugoslavia and the United States, I have the honor to report that I yesterday again inquired of Mr. Andritch, Chief of the Diplomatic Section of the Ministry of Foreign Affairs, how the matter stood at the present time. He replied that not much progress had been made since our last conversation in overcoming the aversion of the military elements to the conclusion of such a treaty. This state of affairs, if I remember correctly, was explained to the Chief of the Division of Near Eastern Affairs during my visit in Washington in October last by Mr. Fotitch, Yugoslav Minister at Washington, who, as the Department knows is personally strongly in favor of the treaty. Recently also Mr. Yankovitch, former Yugoslav Consul General at New York was in Belgrade, on his way to his new post as Yugoslav Minister at Tirana, and he urged very strongly upon the Foreign Office the advisability and desirability, from the point of view of both countries, of concluding a Naturalization Treaty with the United States. Mr. Andritch also told me that recently the Foreign Office had received a number of petitions from certain Yugoslav organizations in the United States urging the early conclusion of such a treaty, and that the Foreign Office would accordingly again shortly approach the Ministry of War and try to overcome its opposition. At the Ministry of Foreign Affairs he said everyone was in favor of the proposed treaty and that the opposition of the military elements was alone responsible for its being held up.

As I have reported previously, in a country like Yugoslavia the military elements are very powerful and other Departments of the Government take great care not to antagonize them in any way.

Respectfully yours,

CHARLES S. WILSON

¹ Continued from *Foreign Relations*, 1936, vol. II, pp. 831-837.

² *Ibid.*, p. 835.

860H.012/24

The Chargé in Yugoslavia (Reed) to the Secretary of State

No. 71

BELGRADE, December 21, 1937.

[Received January 13, 1938.]

SIR: I have the honor to report that the Yugoslav Minister of Interior is understood to have issued an order, in the nature of a notification to the Yugoslav Ministry for Social Welfare and Public Health, which, when officially decreed, will be of highest importance in regulating the status in Yugoslavia of American citizens of Yugoslav origin.

In brief the order reads that within a period of three years from December 22, 1936, American citizens of Yugoslav origin may relinquish their Yugoslav citizenship by filing a declaration of renunciation of citizenship. This extension to December 22, 1939, will permit the relinquishment of Yugoslav citizenship by those who failed to do so under the application of Article 31 of the Law relating to Citizenship. The order also provides that American citizens of Yugoslav origin who arrive in Yugoslavia with an American passport, and having a regular Yugoslav visa, shall not be molested for any reason but shall be granted an exit visa upon their request. This injunction against molestation would appear to free such American citizens of the possibility of being inducted into the Yugoslav army—or assessed a tax for having failed to adjust their military obligations in Yugoslavia.

The order, a translation of which is attached herewith,³ appeared in the *Iseljenik*, a publication of the Association of Emigrants, Zagreb. As soon as it shall be verified that the order is official and is in the nature of a decree the Department will be notified. A translation of the Decree of the Minister of Interior, III No. 44889/36 of December 22, 1936, was transmitted to the Department by despatch No. 666 of January 14, 1937.⁴

Respectfully yours,

CHARLES S. REED 2d

[The American Minister informed the Department in his despatch No. 151, March 3, 1938, that the order of the Minister of Interior relative to Yugoslav citizenship had been placed in effect on June 22,

³ Not printed.

⁴ Not printed. The Minister had reported in this despatch his belief that this decree would "clarify the situation as regards certain classes of naturalized American citizens, hitherto considered to be of Yugoslav origin, and will in a number of instances entirely avoid the possibility that these naturalized American citizens may be called upon for military service in Yugoslavia." (860H.012/21)

1937, the date on which it had been signed by the Minister of Interior and communicated to the Ministry of Social Welfare and Public Health, which had supervision over emigration matters, although it had only been brought to the attention of the Legation in December 1937. While this order, as well as the decree of December 22, 1936, was not entirely free from ambiguity and confusion, they were apparently drafted to regulate American-Yugoslav relations concerning the dual nationality of certain persons and the detention of American citizens of Yugoslav origin for military service or for taxation as an alternative to it.

The Assistant Chief of the Legal Section of the Yugoslav Foreign Office, Dr. George Kolombatovich, informed the Minister in substance that "the responsibility of preventing persons of American-Yugoslav dual nationality, from visiting Yugoslavia and rendering themselves liable for military service, lies with the Yugoslav consular or diplomatic officers in the United States. In other words, if a Yugoslav consul or diplomatic officer mistakenly gives a Yugoslav visa on the American passport of a person who is liable for military service and fails to warn this person that he may be seized for military service in Yugoslavia, the American citizen, after visiting Yugoslavia, will be permitted to leave this country without molestation." (860H. 012/27)]

**PROPOSALS FOR THE REGULATION OF COMMERCIAL RELATIONS
BETWEEN THE UNITED STATES AND YUGOSLAVIA ***

611.60H31/42

*Memorandum by the Assistant Chief of the Division of Near Eastern
Affairs (Barnes)*

[WASHINGTON,] February 8, 1937.

The Yugoslav Minister ⁶ called by appointment on Mr. Sayre ⁷ at eleven o'clock this morning.

The Minister regretfully informed Mr. Sayre that his Government had concluded that it could not accept the *modus vivendi* offered in our note of December 17, 1936.⁸ The Minister stated that he had received telegraphic instructions to this effect in which he had been directed to communicate the information to the Department and to state that his Government accepted in principle the alternative proposal to set aside temporarily the most-favored-nation provisions

* For previous correspondence, see *Foreign Relations*, 1936, vol. II, pp. 817 ff.

⁶ Constantin Fotitch.

⁷ Francis B. Sayre, Assistant Secretary of State.

⁸ *Foreign Relations*, 1936, vol. II, p. 825.

with respect to trade of the Treaty of 1881.⁹ The Minister added that he expected to receive detailed instructions by mail which presumably would clear the way to the early signature of the alternative proposal.

The Minister explained that it was with great regret that he had learned of his Government's choice and he expressed the opinion that those who had taken the decision no doubt regretted it as much as he did. However, with the proceeds of more than 400,000,000 dinars of Yugoslav exports blocked in Germany and with 150,000,000 blocked in Italy (about 15 percent of his country's total annual exports), it was quite clear that his Government had no other course than to bow to the exigencies of the moment. The Minister said that he had been instructed to make it clear that even after the most-favored-nation provisions with respect to trade of the 1881 Treaty had been formally set aside his Government would continue to apply its import regulations in the most favorable manner to American commodities.

Finally, the Minister mentioned that it had been stated in his telegraphic instructions that his Government was working on a clearing or compensation arrangement with respect to trade with the United States which it would soon have in shape to propose to us. The Minister seemed much puzzled by this feature of his instructions in view of the fact that our note of December 17, 1936, had explained in great detail that our policy was expressly directed against the extension of all the devices of controlled trade.

Mr. Sayre expressed regret that the Yugoslav Government had concluded that it could not accept the proffered *modus vivendi*. He said that he of course realized the practical effect of German trade practices on such countries as Yugoslavia and that it was just such situations that we hope to correct in time through our trade agreements policy. Under these circumstances we of course are not in a position to consider offers of clearing or compensation agreements, such agreements being in fact part and parcel of the evil which it is our hope will be checked and ultimately uprooted by the determination of certain nations at least to retain the most-favored-nation principle as the basis of their trade relations.

Mr. Sayre expressed the hope that the Minister would receive his detailed instructions shortly so that the agreement to set aside certain of the Articles of the 1881 Treaty may be concluded in time to obtain the Senate's consent to ratification before the end of this session of the Congress. The Minister seemed of the opinion that his instructions would reach him within the next week or two.

⁹Convention of Commerce and Navigation between the United States and Servia; William M. Malloy (ed.), *Treaties, Conventions, etc., Between the United States of America and Other Powers, 1776-1909* (Washington, Government Printing Office, 1910), vol. II, p. 1613.

611.60H31/47

The Yugoslav Minister (Fotitch) to the Secretary of State

WASHINGTON, April 6, 1937.

MR. SECRETARY: With reference to your letter of December 17, 1936, I have the honor to transmit to Your Excellency, by the order of my Government, two alternative proposals for the regulation of our commercial relations.

The Royal Government has given detailed consideration to the view expressed in the abovementioned letter and by its present proposal, desires to meet, to the utmost, the proposals made for the regulation of that part of American exports into Yugoslavia which is limited by the recent regulations regarding the control of imports and which my Government had to adopt reluctantly, owing to the general economic situation in Central Europe. The Royal Government is making this proposal, (in spite of the fact that for the national economy it represents a great effort) in order to maintain the application of the most favored nation clause in our mutual relations, which corresponds also to the policy of the United States and is the basis on which the economic relations could be developed and improved.

I avail myself [etc.]

CONSTANTIN FOTITCH

[Enclosure]

*Yugoslav Proposals for the Regulation of Commercial Relations
Between the United States and Yugoslavia*

1) The importation of controlled articles from the United States would have to be adjusted in relation to a percentage established in the year 1935, that being the last year before the control of importation was put into effect and in which year the entire importation of controlled articles from the United States into Yugoslavia amounted to 30,920,000 dinars. We are willing to accord also to the United States the same treatment as we did to England (with whom our situation was more favorable), that is to say 50% of the importation of the controlled articles in 1935, which means that we would import in this year the above mentioned articles to the amount of 15.5 million dinars. The system which was accorded to England could be retained in this instance, i. e. to permit to every importer of the controlled articles from the United States an importation to the extent of 50% of his importation of the same article in 1935.

This system excludes compensations, i. e. the necessity that the importers of American articles should find exporters of our products. According to this plan, this system is very much simplified. It has, however, the drawback for us that it might, in case of a disadvanta-

geous development of our exports to the United States in relation to the year 1935 lead to a situation in which we would allow a larger importation of controlled articles from America than that which existed in the year 1935. We can, therefore, only propose this system with the reservation that the ratio of our export to our import (in our relations with the United States of America) in the year 1937 and thereafter will be the same as that existing in 1935 or in any case not worse. In such a case we would have to ask for a revision of the import percentage from the year 1935.

2) The import of controlled articles from the United States is established on the ratio of our export to the United States. In other words, the amount of our importation of controlled articles would depend on the amount of our export. Here the export of copper would have to be excluded, as we do not participate in the profit of the export of that metal, as copper is the product of the Bor Mines, which are the property of a French company, registered in Paris. The credits established for the exported copper, therefore, do not belong to us but to the French company.

The import of controlled articles from the United States would have to represent 25% of our export to the United States (excluding copper), on the ratio of the last yearly quarter. We have to propose this ratio of 25% for the reason that our import of uncontrolled articles (cotton and raw materials) from the United States is much larger than the import of the controlled articles, which represent only 10% of our imports.

In the meantime, independently of the amount of our export, we propose to guarantee, in any case, the import of controlled articles to the amount of 50% of the importation of such articles in 1935. (The total import of controlled articles in 1935 amounted to 30,000,000 dinars).

One example will give a good illustration of this:

For every hundred units of value of our exports into the United States (copper not included) an amount of 25% of the import of controlled articles is allowed (the import of uncontrolled articles is completely free).

In 1936 our export into the United States amounted	
to	214 mil. din.
From that sum was applicable to copper	118 mil. din.
	<hr/>
Remaining	96 mil. din.

According to the above formula the import of controlled articles into the United States would amount, in the year 1937, to 25% of the 96 million dinars, i. e. 24 million dinars or 80% of the imports in the year 1935.

If our exports to the United States should rise to 120 million dinars, the import of controlled articles would reach a total of 100% of the import for the year 1935. Naturally, if this percentage should be exceeded the import would be larger than in 1935.

As will be seen, this system also excludes compensation and is now applied to England with very satisfactory results for both sides. The general standard of exchange has greatly increased.

611.60H31/51

Memorandum by the Assistant Chief of the Division of Near Eastern Affairs (Barnes)

[WASHINGTON,] June 4, 1937.

The Yugoslav Minister called at the Division this morning to leave his Government's reply to our latest note on Yugoslavia's war-time indebtedness to the United States.¹⁰ The opportunity was taken to read to the Minister the attached memorandum outlining our position with respect to the trade proposals communicated by his note of April 6, 1937. The Minister had previously been advised orally that neither of his Government's two proposals was sufficiently in harmony with our trade policy as to make it likely that we could give a favorable reply with respect to either.

The discussion which followed the reading of the memorandum indicated that the Minister would comment favorably to his Government upon its contents. It was clear to the Minister that the memorandum contained a counter proposal to those of his Government. He was supplied with a copy of the document and said that he would send it to Belgrade by mail with his comment on June 9.

It was explained orally to the Minister that if the year 1935 as a base year seemed disadvantageous from the Yugoslav point of view the Department would probably have no objection to the choice of a more representative period for the application of the formula suggested in paragraph one of the memorandum.

[Annex]

Memorandum Concerning Yugoslav Trade Proposals

JUNE 4, 1937.

(1) This Government cannot accept any restrictions on Yugoslav imports of American goods which do not conform broadly to the principles of equality of treatment outlined in the note which was handed to the Yugoslav Minister on December 17, 1936.^{10a} This Gov-

¹⁰ Department of State, *Press Releases*, June 12, 1937, p. 407.

^{10a} *Foreign Relations*, 1936, vol. II, p. 825.

ernment is therefore able to accept a limitation of imports of any article produced in the United States to a given percentage of the imports from the United States of such article in a given period only if the global amount of such imports from all countries is similarly restricted, and the percentage applying to imports from the United States is not less than that applying to the global amount of imports of the article in question.

The principle described above is illustrated by the following figures, which are purely hypothetical:

	<i>Imports into Yugoslavia in base period</i>	<i>Proposed imports into Yugoslavia in 1938</i>
From all countries	100	80
From the United States	25	20

Assuming that imports of any restricted article from all countries are reduced to 80 percent of the amount imported in the base period, then the Yugoslav Government would be required by the above formula to be prepared to grant permits for the importation from the United States of an amount of the restricted article equal to not less than 80 percent of the amount imported from the United States in the base period.

It should be observed that the United States would not under this formula, require that the percentage applied to imports from the United States be as favorable as that applied to any individual country, but only that it be as favorable as that applied to all countries in the aggregate.

(2) In general, this Government holds that quantitative restrictions applied in accordance with the formula indicated above should be applied separately to each article and in terms of the physical quantity of imports of each article. In view, however, of the peculiar difficulties faced by Yugoslavia at the present time, this Government would be prepared to accept temporarily the application of the formula to the total value of imports of each of the controlled articles, should the Yugoslav Government consider this preferable.

(3) This Government will be prepared to give careful consideration to any proposals which the Yugoslav Government may make with a view to giving exceptional treatment to any particular controlled article or articles. If examination of the economic circumstances affecting trade in such an article should make it appear that in the absence of quantitative restrictions Yugoslav imports of such an article from the United States would in all probability bear a smaller ratio to imports in any previous period than would total imports of that article, then this Government would be prepared to accept an appropriate modification of the formula indicated above, with respect to the article in question.

(4) In view of the close economic relations which exist between Yugoslavia and those other countries of which a large and substantial part was formerly included in the Austro-Hungarian Empire, this Government would be ready to give sympathetic consideration to any proposals which the Yugoslav Government may make concerning special favors it may desire to accord to the trade of these countries in derogation of the formula indicated in paragraph (1) above.

(5) However, this Government is ready to give sympathetic consideration to any further proposals which the Yugoslav Government may wish to make, bearing in mind the essentials of this Government's commercial policy as set forth above, and in the note which was delivered to the Yugoslav Minister in Washington on December 17, 1936.

611.60H31/68

*The Yugoslav Minister (Fotitch) to the Secretary of State*¹¹

WASHINGTON, November 11, 1937.

MY DEAR MR. SECRETARY: With reference to your memorandum of June 4, 1937, with which you had the kindness to send me the proposals of your Government for the regulation of commercial relations between our two countries, I have the honor to send you herewith enclosed the proposals of the Yugoslav Government. At this occasion I would like to point out that the Royal Government, in drawing up these proposals, was animated by the desire to meet the wishes of the American Government to the utmost, in order to bring about the improvement and strengthening of commercial relations between our two countries.

Accept [etc.]

CONSTANTIN FOTITCH

[Enclosure]

*Yugoslav Proposals for the Regulation of Commercial Relations
Between Yugoslavia and the United States*

The Yugoslav Government is willing to allow for the year 1938 the import from the United States of all those articles which in Yugoslavia are subject to permits of import, to the value of 32 million dinars or to the extent to which the export of those articles amounted in 1935, at the time when restrictions did not exist and which year has been the most favorable for the export from the United States into Yugoslavia.

The distribution of that sum on individually controlled articles would be the same as in 1935. According to that, for instance, the

¹¹ Handed to the Under Secretary of State on November 12.

import of automobiles from the United States would amount in the year 1938 the same as in 1935, namely about 18 million dinars. The same would apply to other controlled articles. These import permits would be issued quarterly, without taking into consideration the trade balance between Yugoslavia and the United States and will be allowed even in the case of an adverse trade balance for Yugoslavia. The import of the non-controlled articles, naturally, is free and is not subject to compensation on this basis. The import of the controlled articles in the aforementioned relation, and also all the other articles from the United States, whose import in Yugoslavia is not subject to any control, would be paid in free foreign exchange. Finally, the compensations which today are required for the import of the controlled articles from the United States would also be dispensed with.

[Here follows table giving value of controlled articles imported from the United States in 1935.]

611.60H31/70a

The Department of State to the Yugoslav Legation

MEMORANDUM

The Government of the United States has given consideration to the proposal presented by the Yugoslav Government on November 12, 1937, and is gratified to find that this proposal would involve substantially more favorable treatment to American trade in the controlled articles than is now accorded by Yugoslavia. Should the Yugoslav Government be prepared to accord to American trade in all controlled articles the treatment indicated in its proposal with some such modifications as are suggested below, the United States Government would be prepared to continue the Treaty of Commerce and Friendship [*Navigation*] between the two countries in effect until further notice, and hence, among other things, to continue to grant most-favored-nation treatment to the trade of Yugoslavia.

The United States would consider this arrangement to be of a temporary and transitory character for the reason that the imposition on imports from the United States of restrictions which are not imposed on imports from certain other countries, albeit the products involved form only a small proportion of the total trade, cannot be considered as being in harmony with the principle of most-favored-nation treatment. The United States is ready to accept it only because it believes that by such an arrangement the treatment accorded to American trade can be made to approximate the treatment which would be accorded under a more formal adherence to the most-favored-nation principle. It hopes, however, that ultimately it may be possible for the Govern-

ments of Yugoslavia and the United States to arrive at a broad settlement and one more strictly in accordance with the unconditional most-favored-nation principle in respect of all forms of trade-control measures.

The following modifications are suggested:

1. With respect to most of the controlled articles, quotas equal to the amounts imported in 1935 would in general be satisfactory for the proposed temporary arrangement. Since, however, a large number of minor items is involved, the imposition of a fixed quota on each separate item would appear to be unduly inflexible. In some cases the imports from the United States during the year 1935 are likely to have been unusually large or unusually small as a result of conditions of a purely temporary nature. The proposed system of quotas could be made more flexible if it were provided that any unused amount of the quota on any of the controlled articles in one quarter could be used for imports of any of the controlled articles in the following quarter.

2. The list of quotas attached to the memorandum which was presented by the Yugoslav Government does not indicate the amounts of the quotas for certain minor items of which very small amounts were imported from the United States in the year 1935, including: single strand cotton yarn (tariff No. 274), cotton velvet, plush and similar articles (tariff No. 278), cork products (tariff No. 439), thick silk textiles (tariff No. 331-1), aluminum, wrought or rolled, (tariff No. 590). It is the understanding of this Government that these articles, and some others, are included among the controlled articles. If this understanding is correct, a single quota for all of the controlled articles for which separate quotas have not been listed in the Yugoslav memorandum would be acceptable.

3. The United States Government feels that, with respect to all of the controlled articles except automobiles, the modifications suggested above would be sufficient. In the event that there should be a demand in Yugoslavia for a larger amount of imports from the United States of any of the controlled articles (other than automobiles) than was imported in 1935, the carry-over of unused quotas of other articles, as provided for in the first modification, might be sufficient to satisfy at least a part of such additional demand.

With respect to automobiles, however, the case is different. Total imports of automobiles, including trucks, into Yugoslavia, have greatly increased since 1935. In view of this large increase, and also in view of the fact that automobiles account for more than half of the imports of controlled articles from the United States, the proposal of the Yugoslav Government, even if modified as suggested in numbered paragraph 1 above, cannot be considered as fully accept-

able since a limitation of imports from the United States to the amount imported in 1935, although it would involve a considerable improvement over the present unsatisfactory treatment, would nevertheless fall considerably short of restoring to the United States the relative share in the trade which it enjoyed in 1935. Hence it is felt that the quota on automobiles should be increased substantially in such manner that the United States may enjoy more nearly the same relative share of the trade as it enjoyed in 1935.

The Government of the United States would appreciate sympathetic consideration of these suggestions by the Yugoslav Government.

In connection with these proposals the Government of the United States invites attention to the fact that under the arrangement suggested by the Government of Yugoslavia American exports of controlled articles would be rigidly limited. Yugoslavia on the other hand now enjoys full opportunity to participate in the expanding market of the United States, an expansion which is likely to be increasingly great as the comprehensive trade-agreements program on which this Government has embarked continues to develop.

WASHINGTON, December 15, 1937.

THE NEAR EAST AND AFRICA

AFGHANISTAN

GRANTING BY AFGHANISTAN OF AN OIL CONCESSION TO THE INLAND EXPLORATION COMPANY

890H.6363/72

The Ambassador in Germany (Dodd) to the Secretary of State

No. 3112

BERLIN, October 24, 1936.

[Received November 6.]

SIR: I have the honor to report that information has recently come into the possession of the Embassy respecting the granting of an oil concession in Afghanistan to American interests. While the Department may already be aware of this matter, it has been learned that the negotiations for this concession have been recently carried on in Berlin between the American interests involved and the Afghan Minister for Foreign Affairs, the latter having come here subsequent to the sessions of the League Assembly in Geneva. Without being informed in any way concerning the background of this matter, I present the following information for what it may be worth:

Several days ago Mr. Charles C. Hart, former American Minister to Albania and Iran, in conversation with a member of the Embassy staff stated that he was on the point of coming to an agreement with the Minister of Foreign Affairs for Afghanistan, at present in Berlin, respecting the granting of an oil concession in Afghanistan to an American syndicate. The agreement in question, I understand, has been drafted in final form and Mr. Hart intimated that it would be signed in the near future.

The American interests involved in this matter are, according to Mr. Hart, the Seaboard Oil Company, the Texas Oil Company, Case and Pomeroy, and Fisher Brothers. They are represented in the negotiations with the Afghan authorities by Mr. Hart and Mr. Frederick G. Clapp, Petroleum Adviser to the Imperial Government of Persia in 1927.

From the information available through Mr. Hart, the terms of this agreement will grant the syndicate exclusive oil rights in five Afghan provinces, the choice of provinces to be made within a year. It is further stipulated that the ownership must remain American or Afghan. Mr. Hart explained that a "few shares" might be allocated

to Afghan ownership but that the control would be vested in American interests. He further revealed that the Afghan Government did not desire that either German or Italian influence should penetrate into the concession.

With respect to the method of exploitation of whatever fields may be eventually chosen, Mr. Hart said that the syndicate contemplated constructing a pipe line through Iran to the town of Shiraz, a distance of approximately four hundred miles. This development, however, is dependent upon permission of the Iranian authorities and is also dependent upon a possible oil concession which the same interests contemplate negotiating with the Iranian Government. If these negotiations are not successful, an alternative route for the pipe line through Baluchistan is under consideration. Mr. Hart also asserted that the interests he represents are on good terms with the Anglo-Persian Oil Company and that no difficulties were envisaged from that quarter with respect to Iran. He implied that the Anglo-Persian Oil Company had no objection to the development of Afghan fields by American capital, the more so because it did not desire to have German or Italian interests involved in this area. Mr. Hart intends to depart soon for Teheran and eventually to go to Kabul.

The foregoing is reported for such interest as it may offer, with the additional explanation that as the agreement has not been seen, there may be other terms of which the Embassy is not aware. Mr. Hart has been the sole source of information on this matter.

Respectfully yours,

WILLIAM E. DODD

890H.6363/77

The Consul General at Berlin (Jenkins) to the Secretary of State

No. 1252

BERLIN, November 20, 1936.

[Received December 4.]

SIR: I have the honor to report as being of possible interest to the Department that an agreement was signed in Berlin this morning concerning the oil concessions in Afghanistan for which negotiations, of which the Department is no doubt already aware, have been carried on during the past six months by the Inland Exploration Company of Delaware.

Final stages of the negotiations were conducted by His Excellency the Afghan Minister for Foreign Affairs, who is now temporarily in Berlin, and the two vice-presidents of the Inland Exploration Company, Mr. Frederick G. Clapp, geologist, and the Honorable Charles C. Hart, former American Minister at Teheran. The agreement was signed at the Afghan Legation in Berlin by the Afghan Minister for Foreign Affairs on behalf of Afghanistan and by Mr. Clapp and

Mr. Hart on behalf of the Company, in the presence of one of the officers of the Consulate General who had been requested to execute certificates of acknowledgement for the American signers. It will become effective after formal ratification by the Government of Afghanistan and the Inland Exploration Company.

Under its terms surveys must be made in five provinces and at least one well must be in operation within a year, according to Mr. Clapp. Pipe-line rights through the neighboring countries remain to be secured during the next six months but negotiations for them have already been initiated and only the amount of the royalties to be charged for them remains unsettled.

Mr. Clapp expects to call at the Department to inform it of details of the agreement when he returns to the United States. Meanwhile, although he does not regard the matter as one of absolute secrecy, at least as far as official quarters are concerned, he wishes to avoid having it become generally known and especially to prevent its appearance in the newspapers until ratification has been completed some time in January.

Very respectfully yours,

DOUGLAS JENKINS

890H.6363/85

Memorandum by Mr. Raymond A. Hare of the Division of Near Eastern Affairs

[WASHINGTON,] January 28, 1937.

The Legation in Teheran transmits a copy of the agreement between the Inland Exploration Company and the Afghan Government.¹ The agreement is modeled closely after the A. I. O. C. agreement of 1933,² so much so in fact that in many cases the language is identical. The following is a summary of the most important provisions:

1. The Company must secure pipe line privileges from an adjoining country (unspecified) within eight months after ratification of the concession.
2. No more than a year after such transportation rights have been secured the Company undertakes to begin exploration.
3. Before the expiration of the first year of exploration the Company will select five provinces in which to continue exploration.
4. Upon failure of the Company to comply with the foregoing the Afghan Government may give notice of cancellation which shall take effect a year later unless the Company is able in the meantime to show that the concession has been complied with.

¹ Not printed.

² Anglo-Iranian Oil Company concession signed at Teheran, April 29, 1933. For text, see League of Nations, *Official Journal*, December 1933, p. 1653.

5. Within one year following the selection of the five provinces the Company will commence at least one well.

6. In the event of the discovery of oil in sufficient quantity to warrant commercial exploitation (the Company being the sole judge) the Company agrees to continue development without delay and endeavor to reach an ultimate production of 6,000,000 tons per annum. (Note: The A. I. O. C. did not reach this production level until 1930.)

7. If any province or provinces do not prove productive after the first twenty years of the concession, one such province shall be surrendered, and similar surrender of unproductive provinces one at a time shall take place at five year intervals.

8. The establishment by the Company of railway, telephone, telegraph, radio or aviation services shall be conditioned on prior consent of the Government.

9. The Company will pay the Afghan Government a royalty of four shillings per ton on petroleum sold in Afghanistan or exported. (Note: Same rate as paid under new A. I. O. C. agreement.) Detailed steps to be taken in case of currency fluctuation are prescribed.

In addition the Company agrees to pay the Afghan Government a sum equal to 20% of the distribution to common stock shares of the Inland Exploration Company in excess of distributions equal to 5% on the invested capital. (Note: Same as A. I. O. C. agreement.)

Regardless of the status of operations the Company guarantees that payments to the Afghan Government shall not go below £250,000 for the second five year period following ratification and that subsequently the minimum shall be £450,000. (The A. I. O. C. minimum is £750,000 under the above headings.)

10. During the first fifteen years of the concession the Company, in exchange for tax exemption, shall pay the Afghan Government nine pence per ton on oil produced up to 6,000,000 tons, and six pence per ton thereafter, and during the following fifteen years one shilling and nine pence, respectively, under the same conditions. After thirty years a new rate shall be established by agreement between the contracting parties. (Note: This is exactly the same as in the A. I. O. C. agreement as regards rates but omits any reference to a minimum such as is stipulated in the case of A. I. O. C. in the amount of £300,000.)

11. Provision is made for facilitating the acquisition of property needed by the Company.

12. Sale of gasoline, kerosene and fuel oil in the country shall be at a basic rate fixed by the f. o. b. price of Rumanian or Gulf oil minus 25% for sales to the Government and minus 10% for sales to an Afghan company to be designated by the Afghan Minister of Trade. (Note: Identical with A. I. O. C. agreement as regards price of sale.)

13. Goods for the staff may be imported freely upon payment of usual duties and taxes. Medical equipment and materials for the Company may be imported free of duty.

14. The Afghan Government promises to lend its moral support in securing the consent of any foreign government through whose territory it may be desired to export oil.

15. No restriction shall be placed on the import or export of funds of the Company or its personnel.

16. The Government has the right to inspect the technical activity of the Company and to appoint foreign specialists for the purpose. (Note: The A. I. O. C. contract does not use the word "foreign".)

17. The Government may appoint a "Delegate" who will represent the Afghan Government at the Company's headquarters.

18. Afghan nationals shall be used to the extent possible. If foreigners are needed they must be American. (The A. I. O. C. contract does not contain such a stipulation.) After the beginning of exportation the Company shall furnish \$50,000 annually for the technical education of Afghan students in the United States. (VD³ does not perceive any visa difficulty in this connection.)

18. [*sic*] The concession is for seventy-five years. The Company may renounce it upon six months notice during the first ten years and thereafter upon two years notice. At the conclusion of the concession all property of the Company reverts to the Afghan Government.

19. All differences shall be subject to arbitration.

20. Any transfer of the concession shall be subject to ratification by the Afghan Government.

21. The concession may not be cancelled or abrogated by the Government.

22. The concession was signed in English subject to translation into Persian. The English text shall always prevail.

Considering that the A. I. O. C. concession, with which this one is approximately identical, was considered to be severe, the Inland agreement would appear to be doubly hard in view of the little that is known regarding the oil resources of Afghanistan and the great distance over which pipe lines have to be built. There is a certain compensation, however, in the fact that minimum payments are much lower in the case of the Inland agreement, i. e., £750,000 for royalties and £300,000 for tax exemption in the case of A. I. O. C. as compared to £250,000 (later to be raised to £450,000) for royalties and no minimum specified for tax exemption in the case of Inland.

890H.6363/86

The Vice Consul at Karachi (Riggs) to the Secretary of State

No. 662

KARACHI, March 12, 1937.

[Received March 29.]

SIR: I have the honor to refer to Consul Groeninger's Strictly Confidential despatch No. 573 of February 18, 1936,⁴ bearing on the acquisition of certain sections of land in Afghanistan, said by geologists to cover extensive and valuable oil deposits.

In the above connection I have to inform the Department that Mr. Frederick G. Clapp, Head Geologist of the Inland Exploration Com-

³ Visa Division.

⁴ Not printed.

pany, a well-known consulting geologist, arrived in Karachi last week en route to Kabul.

Mr. Clapp telegraphed from Baghdad that he was most desirous of meeting me and upon his arrival I sent my car to the Airfield to meet him. He spent two days in Karachi discussing his contracts, his difficulties in obtaining personnel and restrictions put on Indian labor. He was extremely frank in his conversation and requested my help in assisting him to recruit Indian labor. I assured him that I would do anything in my power to assist him, consistent with my duties as a Vice Consul.

Mr. Clapp informed me that he was just returning from Berlin where he had signed the concession agreement with the Afghan Minister for Foreign Affairs. He informed me in strict confidence, that the German Foreign Office and the Russian Embassy in Berlin did everything they possibly could to hamper the final negotiations for the Concession. Apparently the Afghan Minister in Berlin was most antagonistic towards Mr. Clapp and did everything he possibly could to further the aspirations of the Germans and the Russians. Mr. Clapp informed me that he was called to the hotel of the Afghan Foreign Minister who said that he desired to sign the Afghan Concession agreement immediately, inasmuch as he was thoroughly annoyed at the interference of his own Minister and that of the German Foreign Office and Russian Embassy. The agreement was duly signed and Mr. Clapp left Berlin for Teheran, Iran, en route to Kabul.

The Concession obtained by Mr. Clapp calls for the beginning of operations immediately upon the promulgation of the treaty by the Afghan Parliament. He has already arranged for American specialists, engineers and drillers. The Concession stipulates that labor employed by the Company must be either American or Afghan. In view of the great sparsity of technically educated Afghans, it is expected that the Inland Exploration Company will be called upon to employ several hundred Americans at the beginning of the operations.

During Mr. Clapp's short stay in Iran, he successfully negotiated a Concession⁵ with the Iranian Government for oil exploitation over an extended area in Eastern Iran. This Concession has been signed by the Shah of Iran and ratified by the Iranian Parliament, and operations are to begin immediately.

The Afghan Concession stipulates that any oil piped out of Afghanistan must be piped through Iran as they do not care to have their oil resources piped through British India.

Mr. Clapp informed me, in confidence, that it was the intention of his Company, when work is started on the Afghan and Iranian Concessions, to pipe the Afghan oil to a point in Iran in the vicinity

⁵ See pp. 734 ff.

of Birjand, a few miles from the Baluchistan Frontier. He plans to have the Afghan-Iranian pipe lines to meet at this junction and from Birjand, the oil from both Concessions will be piped to the Persian Gulf. The Inland Exploration Company, it is stipulated, will build their own port on the Persian Gulf at a place a few miles from the city of Gwador. The Inland Exploration Company has undertaken to build and operate in Afghanistan a refinery to supply the needs of Afghanistan in fuel oil, lubricating oil, grease and petrol.

Four days after Mr. Clapp signed the Inland Exploration Company Concession, the Afghan Minister of Commerce and Industry died suddenly in Kabul. Mr. Clapp and the Minister for Foreign Affairs of Afghanistan had depended upon the Minister of Commerce and Industry to push the Concession through the Afghan Parliament. Mr. Clapp seemed to feel that the successor of the Minister of Commerce and Industry of Afghanistan would be the head of the Afghan National Bank, who has apparently been hostile to the Concession negotiations of the Inland Exploration Company. However, Mr. Clapp seemed to feel that the Minister for Foreign Affairs, upon his return to Kabul, would be able to see the Concession through Parliament, although certain amendments to the Concession are anticipated.

Mr. Clapp informed me that Russian emissaries, realizing that it was impossible to block the Concession, made a final appeal to the Afghan Government to grant to them a small strip of territory on the Afghan-Russian Frontier. As stated above, this appeal was entirely disregarded by the Afghan Minister for Foreign Affairs, and the Concession was signed by him as originally drawn up.

The Afghan Concession calls for a royalty of 20 percent of the market value of all oils piped out of Afghanistan. I understand the Iranian Concession is considerably more favorable to the Iranians than the Afghan Concession is to the Afghans, inasmuch as the Iranians have demanded that the Concession just granted conform in every respect to that of the new agreement between the Iranian Government and the Anglo-Persian Oil Company.

Mr. Clapp further informed me that it is the intention of his Company, upon the successful exploitation of the Afghan Concession, to build a railroad to cover the oil-fields and hopes to eventually prevail upon the Iranian Government and the Afghan Government to assist in building a railroad to the Persian Gulf. However, this plan is in the distant future and as soon as work is started the transportation of the Inland Exploration Company will be entirely vehicular and automotive.

Mr. Clapp stressed to me the urgent necessity of the assignment of a signing consular officer resident at Kabul. He stated that it was the intention of his Company in New York to ask that a Consul

or Vice Consul be stationed at Kabul when their work gets under way, to look after the interests of the several hundred Americans who will be employed on the Inland Exploration Company's Concession. Mr. Clapp told me that the Foreign Minister had complained to him in Berlin that the only American Consul or Diplomatic Officers that they saw in Kabul were those passing through on a mere visit. He stated that the Foreign Minister told him that they were holding the so-called "house of the 40 columns", three miles outside of Kabul, in the hope that the Government of the United States would eventually open a Consular office in Kabul.

Mr. Clapp asked me if I had any information regarding the intention of my Government as regards opening an office in Kabul. I told him that I was without any information whatsoever on the subject. He asked me if it were not true that I had at one time been assigned to Kabul prior to the recognition of Afghanistan by the Government of the United States. I told him that I had at one time, prior to the recognition of Afghanistan, been ordered to Kabul, but that this order had telegraphically been cancelled by the Department of State. I also informed him that at the present time, in addition to my assignment as Vice Consul at Karachi, I also had the assignment of Vice Consul to Afghanistan.

Mr. Clapp also informed me that his office or the office of the Inland Exploration Company would shortly be communicating with the Department with regard to representation in Afghanistan.

The conclusion of the Afghan oil Concession by the American Inland Exploration Company has brought forth considerable comment in British official and commercial circles, especially the refusal of the Afghans to permit the Company's Concession oil to be piped through Baluchistan and the building of a pipe line through Iran.

Respectfully yours,

LLOYD E. RIGGS

890H.6363/90 : Telegram

The Chargé in Iran (Merriam) to the Secretary of State

TEHERAN, April 24, 1937—noon.

[Received April 24—11:25 a. m.]

18. Hart confirms that petroleum concession has been ratified by the Afghan Parliament.⁶

MERRIAM

⁶ In telegram No. 74, June 21, 1938, 9 p. m., the Chargé in Iran reported to the Department that on June 19, 1938, Mr. Hart had given the Afghan Government written notice of the cancellation of this concession (890H.6363/104).

CONSIDERATION BY THE DEPARTMENT OF STATE OF PROPOSALS TO ESTABLISH DIPLOMATIC REPRESENTATION IN AFGHANISTAN

124.90H/29

Memorandum by the Chief of the Division of Near Eastern Affairs (Murray)

[Extract]

[WASHINGTON,] June 22, 1937.

Mr. John M. Lovejoy, President of the Seaboard Oil Company, accompanied by Mr. Frederick G. Clapp who is associated with that company, called on me today prior to an appointment to see the Secretary, regarding recent concessions acquired by subsidiaries of the above-mentioned company in both Afghanistan⁷ and Iran.⁸

The principal purpose of the call from the two above-mentioned officials appears to have been to press upon the Department of State their desire for the establishment of resident diplomatic representation in Kabul. Mr. Clapp conveyed to the Secretary a personal message from the Prime Minister of Afghanistan expressing the earnest hope that an American legation would soon be established in the Afghan capital and stating that an appropriation had been carried for some time in the Afghan budget for the establishment of an Afghan legation in Washington.

Messrs. Lovejoy and Clapp were informed that the Department had been giving consideration to the question of its representation in Afghanistan for some time but that no early decision could be taken. It was pointed out that at the present time American interests in Afghanistan would hardly warrant the great expense that would be incurred in establishing any appropriate form of diplomatic representation in Kabul. It was made clear to the two officials that inadequate representation would be far worse than none at all and the Department was fully informed of the extensive outlay that would be necessary in case of affirmative action in this matter. As a great power represented in Kabul, where we have no political interests whatsoever and where economic interests are only just beginning to develop, we should have to maintain an establishment comparable to that of the British Government which has a vital political interest in all that happens to Afghanistan. It is known to the Department that in view of the primitiveness of the country the British Legation has to maintain several trucks plying constantly between Afghanistan and India in order to obtain the necessary supplies. There is the further question of protection for an eventual American diplomatic mission in Afghanistan, and this is a question which, in view

⁷ See pp. 597 ff.

⁸ See pp. 734 ff.

of our experiences in Addis Ababa during the siege,⁹ cannot be ignored. Since we, unlike the British, could not call upon Indian troops to guard our Legation, we should be under the necessity of maintaining a considerable native guard, whose loyalty might be doubtful in the case of a crisis.

Mention was also made of the . . . administration of justice in . . . a Moslem country as Afghanistan, where foreigners have no capitulatory rights. The presence in large numbers of American nationals in Afghanistan in connection with the newly acquired oil concessions would, of course, raise this question acutely and it would have to be solved. It is clear, however, that the mere presence of an American minister in Afghanistan would not necessarily serve as a protection for American nationals who might fall into the toils of Afghan law as the Italian Legation there learned to its sad experience in 1924 in the notorious Piperno case, referred to elsewhere in the Department's records.

Messrs. Lovejoy and Clapp admitted that their concession in Iran was rather meager in comparison with their original aspirations and covered only a fraction of the territory envisaged in the Sinclair concession of 1924 [1923].¹⁰ Mr. Lovejoy stated, however, that they hoped to extend their concession in due time.

[The remainder of this memorandum pertains to other matters.]

WALLACE MURRAY

124.90H/30 : Telegram

The Chargé in Iran (Engert) to the Secretary of State

TEHERAN, July 15, 1937—10 a. m.

[Received 1:15 p. m.]

50. During calls exchanged with the Afghan Minister of Foreign Affairs Faizy Mohammed, who is spending some 10 days in Teheran in connection with the four-power pact,¹¹ he repeatedly spoke of the sincere desire of the Afghan Government to cultivate friendliest possible relations with the United States. The Department will recall that he was a member of the Afghan Mission to Washington in 1921¹² and although he laughingly refers to several misunderstandings which occurred on that occasion he says that he never forgot the tremendous impression America made on him. He felt then and still feels that the world could learn much from us especially as regards international

⁹ See *Foreign Relations*, 1936, vol. III, pp. 254 ff.

¹⁰ See *ibid.*, 1923, vol. II, pp. 711 ff. and *ibid.*, 1924, vol. II, pp. 539 ff.

¹¹ The Saadabad Treaty signed July 8, 1937, by Afghanistan, Iran, Iraq, and Turkey; for text, see League of Nations Treaty Series, vol. cxc, p. 21.

¹² See *Foreign Relations*, 1921, vol. I, pp. 258 ff.

conduct and he hoped his country would also be able to profit from our great experience in technical matters. It was in this spirit that the recent agreement had been made with an American company.

But he added in order to make intercourse between Afghanistan and the United States really fruitful it was absolutely essential that we open a legation at Kabul in which case he would at once establish one in Washington. He therefore requested me most earnestly to reiterate to the Secretary of State his desire that consideration be given to the matter in the near future. He begged me to make it clear that the question of prestige did not enter into it but that it had become one of sheer necessity. Almost every day some problem affecting American business or travelers presented itself and he did not wish to see our interests prejudiced but he often found it difficult to make a fair decision without being able to consult with an American representative.

ENGERT

124.90H/30

*Memorandum by the Chief of the Division of Near Eastern Affairs
(Murray)*

[WASHINGTON,] July 27, 1937.

AMERICAN DIPLOMATIC REPRESENTATION IN AFGHANISTAN

Background

An Afghan mission first visited the United States in July 1921 and was received by the President and the Secretary of State. Recognition of Afghanistan as an independent state by the United States is considered to have been given at that time. One of the requests put forward by the Afghan mission in 1921 was for the establishment of American diplomatic and consular representation at Kabul. The Secretary of State explained that the establishment of diplomatic representation in the Afghan capital would be contingent upon a congressional appropriation and that consequently no immediate answer could be made to the proposal.

In 1925 the Afghan Government again commenced to seek American representation at Kabul.¹³ During the succeeding 10 years Afghan representatives in foreign capitals (Paris, London, Moscow, Tokyo, Teheran and Istanbul) continually approached our diplomatic representatives and endeavored, through those channels, to obtain American representation in Afghanistan.

In 1929 King Amanullah was overthrown and was eventually succeeded by King Nadir Shah who, in turn, was assassinated in 1933 and his son, King Zahir Shah, came to the throne. Following these polit-

¹³ See *Foreign Relations*, 1926, vol. 1, pp. 557 ff.

ical upheavals numerous informal and indirect efforts were made by the Afghans to obtain the recognition of the new regime by the United States. In response to these informal attempts we finally intimated to the Afghan Ambassador in Teheran that the proper approach was for the Afghans formally to notify this Government of the succession of Zahir Shah to the throne. This was eventually done and recognition was accorded to the regime in Afghanistan on October 31 [*August 21*], 1934.¹⁴

The Afghans immediately began to make further attempts to obtain American representation in Kabul and eventually the Department decided that the problem could best be met by accrediting to Afghanistan the American Minister at Teheran, Mr. William H. Hornibrook. Mr. Hornibrook proceeded to Afghanistan in the spring of 1935 and presented his credentials as the first American Minister to Afghanistan on May 4 of that year. During Mr. Hornibrook's visit at Afghanistan authorities again urged that permanent American diplomatic representation be established in the capital. We have continued since 1935 to receive through various channels further requests from the Afghans for such representation. The latest of these is the attached telegram from the Chargé d'Affaires at Teheran.¹⁵

Reasons for Enlarging our Representation in Afghanistan

On November 19, 1936, the Afghan Government granted an important oil concession to the Inland Exploration Company,¹⁶ which is affiliated with Case, Pomeroy and Company, and work on the concession will start in a short time after ratification which, however, has not yet taken place. In accordance with the plans of the company, its work in Afghanistan will bring eventually into that country several hundred American oil workers.

The presence of any large number of American citizens in a country like Afghanistan will immediately present the problem of protection which this Government must face. Afghanistan is . . . Moslem country in which turbulent disorders in the past have been not uncommon. During such periods of disorder the question of protection has been a very serious one for governments maintaining missions in that country and having any considerable group of nationals there. During the most recent revolution which occurred in 1929 all foreigners had to be evacuated to India by British airplanes and, thanks to the good offices of the British in that instance, only a few foreigners were killed, chiefly Germans.

It should be borne in mind that despite the almost non-existent system of justice, in the Western sense of the word, in Afghanistan,

¹⁴ See *Foreign Relations*, 1934, vol. II, pp. 747 ff.

¹⁵ *Supra*.

¹⁶ See pp. 597 ff.

foreigners enjoy there no capitulatory rights and are subject to Afghan laws and justice, such as they are. There have been tragic instances in recent years of foreigners falling into the toils of Afghan law—an Italian in one case and a German in another—in which their governments were powerless to accord them adequate protection.

In view of the above circumstances, I think this Government has been well advised in the past to refrain from establishing diplomatic and consular representation in Afghanistan, which would have hastened the entry of American interests into that precarious region of the world. However, now that such interests have entered the Afghan field without any encouragement on our part, and in view of the fact that a certain number of American citizens will in all likelihood be proceeding to that country by another year, I feel that we must face the realities of the situation and consider the advisability of a suitable increase in our representation there.

What Form of Representation Is Desirable

In view of the foregoing it seems hardly necessary to emphasize the necessity of selecting with the greatest care the diplomatic representative of the United States in Afghanistan. The post at Kabul will be a very delicate one and is most emphatically not one to be entrusted to an amateur if possible disaster in the future is to be avoided.

I am firmly of the opinion that the best interests of this Government would be served by sending to Kabul a Minister Resident rather than a Minister Plenipotentiary for the reason that Ministers Resident are selected from the most experienced and competent senior officers of the American Foreign Service.

Bearing in mind all the circumstances of the situation I am convinced that it would be wise to consider the eventual assignment of Mr. Cornelius Van H. Engert as Minister Resident at Kabul. Mr. Engert is now assigned as Counselor of Legation at Teheran and in the event that our relations with Persia should continue to improve, as seems quite possible, the need for Mr. Engert there would have ceased and he might then appropriately proceed to Kabul. As you may know, Mr. Engert is not a stranger to Afghanistan since he was sent there by the Department on a special mission in 1922 and prepared what is still the authoritative government handbook on that country.

Even if it should be decided not to utilize Mr. Engert in the above-mentioned capacity, it should be remembered that no Minister Plenipotentiary could be sent to Afghanistan in the absence of an appropriation by Congress for the Minister's salary and could only be accomplished at the earliest by July 1, 1938. Appropriate recommendations have been made to the Budget Office for inclusion in the budget proposals for the fiscal year 1938-39 of a recommendation for the establishment of a Legation at Kabul.

Cost of Representation

In view of the unusual situation in Kabul the cost of representation there is unusually large. Thus we were informed by a despatch from the American Consulate General at Calcutta in 1933 that the British Legation in Afghanistan costs about three-quarters of a million rupees a year (approximately 275,000 dollars at the then existing rate of exchange). The high cost of representation in Kabul is due to several factors. For example, it is essential to retain an adequate legation guard. All of the legations established in Kabul also have their own motor trucks which make weekly or more frequent trips to Peshawar, India, in order to obtain supplies which are unobtainable in the country. Bearing in mind our recent experience in Ethiopia¹⁷ and the criticism to which the Department was subjected in some congressional circles, I believe it is particularly important that in the event a legation is established in Afghanistan an adequate number of armed guards be provided. Even if that precaution is taken we probably should have to rely, in case of emergency, upon the British for evacuation of our legation personnel by airplane. It is difficult to make any definite estimate of the cost of representation but roughly I should think it would not be less than 125,000 dollars per annum.

Conclusion

Bearing in mind the continued requests of the Afghan authorities for American representation in Kabul, including the most recent request referred to in the attached telegram from Teheran, and bearing likewise in mind the probable imminent entry into Afghanistan of a considerable number of American nationals, I do not see how we can avoid much longer establishing a permanent legation at the Afghan capital. It seems to me, however, that it would be difficult to obtain the necessary funds to set up even the absolute minimum representation prior to July 1, 1938. To establish a representation at Kabul prior to that date would involve a very heavy draft on the Department's existing appropriations but it may be that we shall be obliged to go ahead prior to July 1, 1938, particularly if, as a result of the recent petroleum concession, a large number of American nationals enter the country. In this connection we must bear in mind that if American nationals enter Afghanistan in large numbers and encounter difficulties with the local authorities, as may well be the case, we shall probably be criticized for our failure to establish American representation.

WALLACE MURRAY

¹⁷ See *Foreign Relations*, 1936, vol. III, pp. 254 ff.

123En3/560 : Telegram

The Secretary of State to the Chargé in Iran (Engert)

WASHINGTON, September 4, 1937—3 p. m.

43. Personal for Engert from Murray. Your 76, September 3, 10 a. m.¹⁸ Since Consul General White¹⁹ has only just completed his annual visit to Kabul no further visit from an American official would seem advisable at this moment.

You might inform the Afghan Foreign Minister that in view of the fact that you have taken charge such a short time ago in Teheran and are carrying on at the Legation more or less alone it would not be practicable for you to be absent at this time.

You may at the same time inform him in confidence that the Department has under consideration the advisability of my visiting Afghanistan during a possible tour of my area which, however, in all probability could not take place before early next year. It would be my intention to visit Teheran at the same time. In case it is not possible for me to make the visit to Kabul it is hoped that by that time you will be able to go. It is furthermore possible that the Department might desire us to proceed there together in connection with certain important matters that must be discussed. [Murray.]

HULL

124.90H/30

*Memorandum by the Chief of the Division of Near Eastern Affairs
(Murray) to the Under Secretary of State (Welles)*

[WASHINGTON,] October 21, 1937.

Referring to my memorandum of July 27, 1937, on the subject of diplomatic representation in Afghanistan, it is thought that you may be interested in the following developments in that connection:

1. In accordance with standing instructions from the Department, Consul General White spent a month in Afghanistan both in 1936 and 1937 with a view to keeping the Department informed of current developments. In his despatch of August 11, 1937,¹⁸ reporting on his visit this year, Mr. White remarked that the insistence of the Afghans in their demand for an American Legation in Kabul was particularly emphatic and that the Afghan Foreign Minister, professing to "view the situation with alarm," had stressed the danger of leaving a large investment and numerous nationals without protection by this Government (a reference to the Inland Exploration Company's activities). The Foreign Minister added that he would not countenance represen-

¹⁸ Not printed.

¹⁹ J. C. White, Consul General at Calcutta.

tation of American interests by diplomatic establishments of other countries.

In this latter connection the British Minister, who had agreed on the occasion of Mr. Hornibrook's visit in 1935 to lend his good offices in the event that American nationals should become involved in difficulty, frankly told Mr. White this year that he could no longer be counted on for such assistance.

2. In order to get together all available information in the Department on the question of the status of foreigners in Afghanistan a memorandum, dated September 3, 1937,²⁰ was prepared. This memorandum is attached in the thought that you may wish to look through it.

3. The preparation of the memorandum having made clear the lack in the Department of accurate and up-to-date information on the administration of justice in Afghanistan, we have written to the Consulate General at Calcutta and the Embassies at Paris and London in the quest of such additional information as may be obtained informally from the appropriate officials of the Indian, French and British Governments.

4. On August 23, 1937, the late Ogden Mills, who was one of the participants in the Inland Exploration Company, wrote the Department²¹ bespeaking its sympathetic consideration in the matter of the establishment of a Legation at Kabul.

The opinion was expressed in the Secretary's reply of September 1, 1937,²⁰ that our present representation in Afghanistan through the Legation in Teheran, the Consulate General at Calcutta and the Consulate at Karachi seemed adequate for the time being. On the other hand, the Secretary stated that the Department is closely following the development of American interests in Afghanistan and will be prepared to consider appropriate revision of our representation in the event of the materialization there of American interests of importance and permanence requiring diplomatic or consular services which cannot be adequately rendered under the present system. In this connection it was stated that the Department welcomes and is prepared to give sympathetic consideration to any information such as that furnished in Mr. Mills' letter descriptive of the development of American activity in Afghanistan.

More recently, we have written to Mr. Lovejoy,²¹ President of the Inland Company, referring to Mr. Mills' letter and suggesting the advisability of the Company's keeping the Department informed with regard to its personnel in Afghanistan.

²⁰ Not printed.

²¹ Letter not printed.

5. We have just received a report²² from the Consul at Karachi to the effect that there are now four Inland representatives in Afghanistan and that they expect to be joined before winter by Mr. Frederick G. Clapp, in charge of field operations, accompanied by his wife, daughter and an assistant, and Dr. Schenck, a paleontologist, both of whom will also spend part of their time in Iran. According to this information it would appear that for the time being the size of the American colony in Afghanistan will vary between the limits of four and nine.

6. As matters stand at the present there is no particular urgency as to such decision as we may take on the question of our representation in Afghanistan. On the other hand, it is felt that if and when the occasion arises for a revision of our representation we should have our plans as clearly formed as possible in advance, and with that thought in mind consideration is being given to having a representative from the Department or the field visit Afghanistan this coming spring for the purpose of studying the situation and submitting appropriate recommendations. In the meantime we shall, of course, continue to follow this matter with a view to making the necessary revision of our plans should the occasion arise.

In view of the budgetary angle of this matter I am furnishing a copy of this memorandum to Mr. Messersmith in supplementation of information previously submitted recommending that provision be made in the 1939 budget for the possible establishment of a legation in Kabul.

WALLACE MURRAY

124.90H/40 : Telegram

The Chargé in Iran (Engert) to the Secretary of State

TEHERAN, December 27, 1937—11 a. m.

[Received 1:10 p. m.]

131. Personal for Murray. Arrival of new Afghan Ambassador here would afford suitable opportunity to mention to him third paragraph of your 43, September 4, 3 p. m., provided your plans are taking shape.

I have not yet referred to your proposed visit to Teheran as it would undoubtedly be interpreted as in the nature of a special mission.

ENGERT

²² Not found in Department files.

124.90H/40 : Telegram

The Secretary of State to the Chargé in Iran (Engert)

WASHINGTON, January 12, 1938—1 p. m.

3. Personal for Engert from Murray. Your 131, December 27, 11 a. m. Since it now seems impracticable for me to make my proposed trip to the Near East this spring, I would suggest that you merely mention to the new Afghan Ambassador that you hope to be able to visit Afghanistan sometime this year. Letter follows. [Murray.]

HULL

EGYPT

CONFERENCE AT MONTREUX FOR THE ABOLITION OF THE CAPITULATIONS IN EGYPT, APRIL 12—MAY 8, 1937

783.003/146 : Telegram

The Minister in Egypt (Fish) to the Secretary of State

CAIRO, January 16, 1937—1 p. m.

[Received January 16—10:15 a. m.]

4. I have just received from the Foreign Office formal invitation dated today in which the Egyptian Government "invites the American Government to participate, by the sending of one or more delegates furnished with the necessary powers, to the conference which will be held at Montreux April 12, 1937, for the purpose of concluding a convention between the interested powers on the one hand and Egypt on the other hand regarding the questions set forth" in the invitation. A translation of the note which is of some 400 words is being sent tomorrow by air mail to be telegraphed from London unless the Department desires it to be telegraphed direct. No mention is made of the presentation of more detailed proposals prior to the conference but I shall take up this question with the Minister for Foreign Affairs.

FISH

783.003/149 : Telegram (part air)

The Minister in Egypt (Fish) to the Secretary of State

CAIRO, January 17, 1937—10 a. m.

[Received January 21—3:30 p. m.]

5. My telegram No. 4. The following is the translation referred to therein.

"Mr. Minister: In spite of a modern political, administrative and economic organization Egypt remains the only country in which there still exists a regime for foreigners based on privileges which were accorded them gratuitously during the 16th century for reasons which have entirely disappeared. Now that the Capitulatory Powers have accepted elsewhere and notably in Turkey¹ and Iran² the abolition

¹ See *Foreign Relations*, 1923, vol. II, pp. 879 ff.

² See *ibid.*, 1927, vol. III, pp. 567 ff.

of the capitulations, this regime, contrary to the principles of modern law, has continued in Egypt up to the present time impeding the evolution and progress of the country and constituting an obvious infringement of the sovereignty of the state and the dignity of the nation.

Such a singular situation must come to an end. The Royal Government is convinced that the immediate return to a common justice by the abolition of the capitulations can be received in no other way than favorably by the Capitulatory Powers: the spirit of justice which animates them, the clear comprehension of the interests involved, the tolerance of which they have given proofs in the solution of similar cases, the traditional friendship which unites them with Egypt, are guarantees thereof.

With the abolition, the Royal Government will necessarily resume, with respect to foreigners residing in its territory its full sovereignty in legislative matters.

The Royal Government moreover desires to declare that it intends to continue to follow in some of the matters applicable to foreigners the principles generally adopted in modern legislation and that especially as regards legislation of a fiscal character it will make no discrimination either against foreigners or foreign firms.

The abolition of the capitulations should likewise permit the suppression of the exceptional jurisdictions functioning as regards foreigners on Egyptian territory and the exercise of full jurisdiction by the National Tribunals.

However, the Royal Government is disposed to admit of the establishment of a provisional regime of a duration to be fixed and which would allow the maintenance of the Mixed Tribunals under a revised organization and jurisdiction and the transfer to the Mixed Tribunals of the jurisdiction at present exercised by the Consular Tribunals.

Anxious not only to maintain a close cooperation between foreigners and Egyptians but desirous of developing this cooperation, of rendering it easier and more fruitful of execution henceforth within the normal framework of the rules of common law established by the right of modern people, the Royal Government has the honor to propose for the adherence of the Powers the recognition of the abolition of the capitulations as well as the establishment of a provisional regime during a transitory period at the expiration of which the Mixed and Consular Tribunals will cede to the National Tribunals the part which they hold in the administration of justice in Egypt.

Consequently the Royal Government invites the American Government to participate, by the sending of one or more delegates furnished with the necessary powers, at the conference which will be held at Montreux, April 12, 1937, for the purpose of concluding a convention between the interested powers on the one hand and Egypt on the other hand regarding the questions set forth above.

I should be grateful to you, Mr. Minister, if you would be so good as to bring the foregoing to the attention of your Government and to request it to give its answer in due time.

I seize this occasion, et cetera." Signed by the Minister for Foreign Affairs.

FISH

783.003/149 : Telegram

The Secretary of State to the Minister in Egypt (Fish)

WASHINGTON, January 29, 1937—6 p. m.

8. Your 5, January 17, 10 a. m. It is observed that the Egyptian Government proposes to terminate the capitulatory régime by the conclusion of a multilateral convention. You will appreciate it would probably be impossible to negotiate such a convention and obtain the approval of the Senate thereto during the present session of Congress, and that at least a year would elapse before the convention could be brought into force in so far as the United States is concerned. Yet the second paragraph of your despatch 878, December 28,³ appears to indicate that the Egyptian Government contemplates the termination of the capitulations as early as May 1, 1937.

Possibly the Egyptians have in mind including in the convention a provision by which certain articles, or even the whole convention, would enter into force upon the date of signature and prior to the exchange of ratifications, as was done in the case of the Straits Convention signed at Montreux last summer by Turkey and other Powers.⁴ Any such provision would be difficult, if not impossible, for this Government to accept.

On the other hand, the Egyptians may envisage the early surrender by the Powers, by executive action, of limited portions of their capitulatory rights, such as the financial capitulations, it being understood that the judicial capitulations would not be altered until the proposed convention entered into force after due exchange of ratifications.

In any case the Department wishes to avoid being placed in a position of appearing to be obstructive at the forthcoming conference and desires to take such steps as may be necessary to enable its delegation to meet any reasonable proposals that may be made by the Egyptian Government in so far as that is possible within the framework of our constitutional limitations.

The Department would appreciate receiving at your earliest convenience any information you may be able discreetly to obtain, without consulting the Egyptian authorities, concerning Egyptian intentions in this regard in order that plans may be made, if necessary, to obtain any legislative enactments that may be required.

Upon receipt of this information the Department will instruct you further with respect to the nature of the reply to be made to the Egyptian invitation.

HULL

³ Not printed.

⁴ For correspondence, see *Foreign Relations*, 1936, vol. III, pp. 28 ff.; for text of convention, see League of Nations Treaty Series, vol. CLXXIII, p. 213.

783.003/154 : Telegram

The Minister in Egypt (Fish) to the Secretary of State

CAIRO, February 3, 1937—11 a. m.

[Received 1 p. m.]

12. Department's 8, January 29, 6 p. m. It is improbable that the Egyptian Government expects to conclude a treaty to go into effect immediately upon signature at Montreux but they hope that ratifications will be exchanged within a few months and have in mind October 15 as the latest date for the abolition of the capitulations.

The Egyptian Government appears to envisage the abolition of financial and judicial capitulations at the same time.

I do not believe that the procedure followed in the case of the Straits Convention has been discussed by the British and Egyptians as a precedent. I understand that Beckett has in view the signature at Montreux, in addition to and aside from the general convention, of an instrument regulating the Mixed Courts regime. This instrument would contain provisions bringing it into effect on October 15th even if the general convention shall not have been ratified by a majority of the powers at that time. Beckett has returned to London and the method by which this is hoped to be accomplished has not been made clear to me.

FISH

783.003/155 : Telegram

The Minister in Egypt (Fish) to the Secretary of State

CAIRO, February 3, 1937—noon.

[Received 1:10 p. m.]

13. My telegram No. 6, January 18, 1 p. m.⁵ Supplementary Egyptian note received this morning. Full translation about 800 words is being telegraphed through London today. The note deals only with the Mixed Courts regime.

As anticipated the Egyptians have requested more than they hope to obtain. Childs⁶ is acquainted with the minimum Egypt will accept and to which Great Britain will consent. However, Beckett advised me that one change occurred subsequent to Childs' departure. It is with reference to the substitution of Egyptian judges in the Mixed Courts of First Instance to which Great Britain will consent, the details of which will be communicated to the Department by the British Embassy in Washington.

FISH

⁵ Not printed.

⁶ J. Rives Childs, Secretary of Legation in Egypt, recently assigned to the Department.

783.003/156 : Telegram

The Minister in Egypt (Fish) to the Secretary of State

CAIRO, February 3, 1937—1 p. m.

[Received 1:40 p. m.]

14. My telegram No. 13, February 3, noon. Following is the full text in translation of the note⁷ received from the Egyptian Foreign Office this morning regarding the proposals to be submitted by the Egyptian delegates at the Montreux Conference :

“Mr. Minister : In continuation of my circular letter of January 16, 1937, No. 2 cir.,⁸ I have the honor to inform you of the essential principles which should form the basis of the transitional regime of which the Egyptian Government is willing to admit the establishment.

1. Civil and commercial suits between foreigners of the same nationality which now fall within the competency of the Consular Courts shall be referred to the Mixed Courts.

2. The jurisdiction which is exercised over penal matters by the Consular Courts shall be transferred in full to the Mixed Courts. In view of the transfer, the Egyptian Government will promulgate a new penal code and a code of criminal procedure, the text of which will be made known to the Powers.

3. The questions of personal status over which the Consular Courts now have jurisdiction shall be transferred to the Mixed Courts, which shall apply, in such questions, the principle of the laws of personality (national law).

4. The increase of personnel which may be necessary to meet this extension of competency shall be envisaged.

5. For the purpose of the future jurisdiction of the Mixed Courts, it shall be understood that the word ‘foreigner’ in the regulations of judicial organization shall have the same meaning in penal matters as in civil, commercial or personal status matters. It shall include the nationals of the 12 present Capitulatory Powers as well as those of the following 8 countries : Germany, Austria, Hungary (former Capitulatory Powers), Switzerland (whose nationals have always enjoyed capitulations), Poland, Czechoslovakia, Rumania, Yugoslavia (states of which the territory or a portion of territory formed part of a country which was formerly a Capitulatory Power). In the opinion of the Egyptian Government, the term ‘nationals’ should only be understood to mean, for the purposes of the convention to be established, nationals who possess the status of citizen but not the nationals who have only the status of protégé or subject (*subditi*).

6. It shall be specified that the competency of the Mixed Courts shall henceforth be determined in civil, commercial and personal status matters solely by the nationality of the parties actually concerned without regard to the mixed interests which might be indirectly involved.

7. The establishment of a foreign identity, the transfer of a right to a foreigner or the implication of a foreigner shall not give competency to the Mixed Courts when such establishment, transfer, or

⁷ Dated February 3.

⁸ See telegram No. 5, January 17, 10 a. m., from the Minister in Egypt, p. 615.

implication is for the purpose of depriving the National Courts of authority over such disputes.

8. The change of nationality of a party during the course of a suit shall not modify the competency of the court regularly seized of the case. The disappearance in the course of a trial of the foreign element which gave competency to the Mixed Courts shall render them incompetent.

9. The Mixed Courts and the National Courts may each assume jurisdiction in actions which, by virtue of the preceding articles, would be within the competence of the other jurisdiction when such actions are accessory to a principal action within their competence. However, the tribunal seized of the principal action may refer the accessory action to the tribunal which is normally competent, when it shall judge such reference to be preferable for the proper administration of justice and conforming to the interest of the parties concerned.

10. The National Courts may exercise their jurisdiction in civil and commercial matters with respect to any foreigner who consents to submit himself thereto, either expressly or tacitly. The act of submitting to the jurisdiction of a Court of First Instance shall imply submission to the jurisdiction of the corresponding courts of higher degree.

[11.] The Mixed Courts shall not be allowed to take cognizance, either directly or indirectly, of acts of sovereignty, nor may they pass on the validity of the application to foreigners of a law or a decree made by the Egyptian Government. Without being able to interpret an administrative act or to stop its execution, they shall be, however, competent to recognize: (1) in civil and commercial matters, all disputes concerning personal or real property between foreigners and the Government; (2) any action involving civil responsibility brought by a foreigner against the Government by reason of administrative measures taken in violation of laws or regulations.

12. The competency of the Mixed Courts in penal matters is entirely determined by the nationality of the accused. However, the National Courts shall have over foreigners the same competency that the Mixed Courts have over persons under the jurisdiction of the National Courts, for crimes and misdemeanors committed directly against magistrates and officers of justice or against the execution of sentences or warrants as defined in articles 7 and 8 of title II of the present regulations of judicial organization. The Mixed and National Courts shall also have authority over infractions committed by witnesses regularly summoned before them, whatever the nationality of these witnesses may be.

13. The judgments and decrees of the mixed jurisdictions shall be drawn up in Arabic and in one other judicial language. For this purpose a corps of translators shall be attached to the Mixed Courts.

14. Regarding the composition of the Mixed Courts: (a) No distinction shall be made based on the nationality of the judges so far as concerns either the composition of the chambers or the assignment to different posts of the judicial organization, including the presidency of the tribunals and the chambers. Sec. (b) As soon as vacancies shall occur through retirement, death or resignation, the foreign judges shall be replaced by Egyptian judges. (c) In case the presidency of the Court of Appeals or of the courts devolves upon a foreign judge, the vice-presidency shall fall upon an Egyptian judge and vice-

versa. The adoption of these principles will necessitate changes in the present regulations of judicial organization, the revised text of which will be submitted to the examination of the conference. I should be grateful if you would be good enough to bring the foregoing to the attention of the Government of the United States of America, and I seize this occasion, Mr. Minister, to renew to you the assurance of my high consideration.

Wacyf Boutros Ghali, Minister of Foreign Affairs”.

The original text of the above note is being forwarded by air mail.

FISH

783.003/156 : Telegram

The Secretary of State to the Minister in Egypt (Fish)

WASHINGTON, February 13, 1937—2 p. m.

13. Your 4, January 16, 1 p. m. and 14, February 3, 1 p. m. Please address the following note to the Minister for Foreign Affairs:*

“I am directed by my Government to acknowledge the receipt of your note of January 16, 1937, setting forth the views of the Royal Egyptian Government respecting the termination of the capitulatory régime and the eventual transfer to the Egyptian courts, following a transitional period, of the jurisdiction now exercised by the Mixed Tribunals and the Consular Courts.

My Government has noted with particular satisfaction the declaration made in Your Excellency's note that the Royal Egyptian Government intends to continue to follow, in legislative matters applicable to foreigners, the principles generally adopted in modern legislation, and that, especially as regards legislation of a fiscal character, it will make no discrimination either against foreigners or foreign companies. While my Government entertained no doubt that such would be the attitude of the Egyptian authorities, it is, of course, gratified to have Your Excellency's specific assurances in this regard.

With respect to your courteous invitation to my Government to participate at a conference to be held at Montreux on April 12, 1937, for the purpose of concluding a convention between Egypt and the interested Powers regarding the questions set forth in your note, I am instructed to assure you that the Government of the United States will be pleased to be represented at the proposed conference. I hope to be able to communicate to Your Excellency in the near future the composition of the American delegation.

I also have the honor to acknowledge the receipt of your note of February 2 [3], 1937, setting forth the views of the Egyptian Government with respect to the proposed transitional régime of the Mixed Courts. In this connection I am instructed to reiterate the importance which my Government attaches to receiving at the earliest possible moment the text of the proposed new penal code and code of criminal procedure as well as other details of the proposals which the Egyptian Government intends to put forward at the forthcoming conference.”

HULL

* This note was delivered to the Egyptian Minister for Foreign Affairs on February 17.

783.003/234

The British Embassy to the Department of State

AIDE-MÉMOIRE

In the Anglo-Egyptian Treaty of Alliance¹⁰ which was signed on the 26th August last (Article 13 and its annex) His Majesty's Government in the United Kingdom and the Egyptian Government agreed to certain arrangements with a view to bringing about without delay the abolition of the capitulations in Egypt and to instituting a transitional régime for a reasonable and not unduly prolonged period. (A copy of the Treaty is attached for convenience of reference). The Egyptian Government accordingly issued invitations to the Governments of the capitulatory Powers to take part in a conference to open at Montreux on the 12th April next for the purpose of bringing about by negotiation the changes foreshadowed in the Anglo-Egyptian Treaty. The Department of State announced in a communiqué dated the 16th February¹¹ that the United States Government were accepting the invitation to participate in this conference.

His Majesty's Government have promised to support the Egyptian Government in persuading the capitulatory Powers to agree to the abolition of the capitulations in Egypt on condition that a transitional régime is set up in accordance with the scheme outlined in the Treaty, and they earnestly hope that the United States Government will receive proposals in conformity with the Treaty scheme with the greatest sympathy. His Majesty's Government agree entirely with the view which has been expressed by the Egyptian Government that it is an anachronism that Egypt should continue under modern conditions to be fettered to the extent that she is at present by the capitulations.

It is understood that the Egyptian Government propose to issue shortly a further circular note to the Powers concerned making detailed proposals for the above-mentioned transitional régime, and it should be explained in this connexion that His Majesty's Government, though committed to the scheme in the annex to Article 13 of the Treaty, are not necessarily committed on all points of detail in this further Egyptian note.

The United States Government will be aware that there is a strong desire in Egypt to abolish the capitulations unilaterally and that moreover the Egyptian Government are convinced that they have a sound legal right to do so. While there can be no doubt that Egypt possesses the legal right to terminate the Mixed Courts at one year's notice, His Majesty's Government reserve for the present their atti-

¹⁰ League of Nations Treaty Series, vol. CLXXIII, p. 401.

¹¹ Released to the press February 17; Department of State, *Press Releases*, February 20, 1937, p. 102.

tude with regard to the unilateral abolition of the capitulations, both on the political and on the legal side of the question, since the Egyptian Government are committed by their Treaty with the United Kingdom not to attempt to denounce either the Mixed Courts or the capitulations until after the holding of the capitulations Conference and its eventual failure. His Majesty's Government, however, feel it their duty to intimate confidentially and without delay to the United States Government that it is by no means clear that the Egyptian Government could not make a good legal case for a right to abolish the capitulations unilaterally. In these circumstances, His Majesty's Government feel certain that the Governments of the capitulatory Powers will receive sympathetically the laudable willingness of the Egyptian Government to deal with the matter by negotiation and to offer a transitional régime giving guarantees to foreigners and affording a necessary period of transition from the capitulatory to the non-capitulatory era. It appears to His Majesty's Government incontestable that more will be achieved by a sympathetic reception of the Egyptian proposals than by an attitude of obstruction.

WASHINGTON, February 20, 1937.

783.003/233

Memorandum by the Assistant Chief of the Division of Near Eastern Affairs (Alling)

[WASHINGTON,] February 23, 1937.

Mr. Mallet, Counselor of the British Embassy, called today to communicate orally and confidentially a statement from the British Embassy in Cairo. Mr. Mallet explained that at the time the Embassy in Cairo had furnished Mr. Childs, Secretary of the American Legation in that city, with information concerning the proposed reorganization of the Mixed Courts, it had been stated that during the first half of the proposed interim period vacancies occurring among the foreign judges would be filled by the appointment of new foreign judges. The Egyptian Council of Ministers, however, objected to this arrangement and held out for an arrangement under which vacancies among the foreign judges from the beginning of the interim period would be filled by Egyptian appointees. The Council of Ministers agreed that it would recede from its demand that vacancies among the foreign judges on the Court of Appeals be filled by Egyptian judges if the British would agree to the replacement of foreigners by Egyptians in the lower courts. The Egyptian Council of Ministers also offered to guarantee to suspend this arrangement in the event that the proportion of foreign judges on the Courts of First Instance should at any time be reduced below one-third. In order to obtain

the consent of the Council of Ministers to other safeguards which were considered more important, the British finally agreed to the Egyptian proposal, the effect of which is to give the Egyptian Government eventually the same majority on the Courts of First Instance that the foreign Powers now enjoy. It is felt, however, that this concession is adequately safeguarded by continuing a majority of foreign judges on the Court of Appeals.

At the time of his call Mr. Mallet left the attached document¹² which he stated required no acknowledgment.

PAUL H. ALLING

783.003/177a : Telegram

The Secretary of State to the Ambassador in the United Kingdom (Bingham)

WASHINGTON, March 3, 1937—2 p. m.

66. The Legation at Cairo reports that the British and Egyptian Governments have in view the signature at Montreux by the Conference "in addition to and aside from the general convention, of an instrument regulating the Mixed Courts régime". It is reported that the latter would contain provisions for its entrance into effect on October 15th while the former would become effective only after ratification by the signatory Powers.

The Department would appreciate receiving at your earliest convenience any information you may be able to obtain informally from the Foreign Office concerning the British views in this regard as well as any other information having to do with the means envisaged for the implementing of the accords which may be reached by the Conference.

The Department wishes to avoid being placed in a position of appearing to be obstructive at the forthcoming Conference and desires to take such steps as may be necessary to enable the delegation to meet any reasonable proposals that may be made by the Egyptian Government so far as that is possible within the framework of our constitutional limitations.

HULL

783.003/178 : Telegram

The Ambassador in the United Kingdom (Bingham) to the Secretary of State

LONDON, March 6, 1937—2 p. m.
[Received March 6—11:45 a. m.]

124. Your 66, March 3, 2 p. m. Foreign Office states the British have in view the signature at Montreux of an instrument regulating

¹² *Supra.*

the Mixed Courts regime which although to be an annex to the general convention will be an integral part thereof. It is proposed that this "statute for the organization of the Mixed Courts" shall be drawn up in the French language only to which the Foreign Office anticipate no objection. It is particularly desired that it become effective on October 15 whether or not the general convention has by that date been ratified and come into force. In order to effect this a special protocol is proposed to provide that the statute for the organization of the Mixed Courts shall be effective provisionally on October 15 pending ratification of the general convention. In this connection the Foreign Office query whether the United States would be willing to sign such a protocol; and if the United States will not be able to sign the protocol whether it will object to its signature by the other interested powers. It was stated that Ambassador Lindsay has been instructed by mail to discuss this question in detail with the Department.

The British will endeavor to have the conference adopt English and French only as the official languages for the general convention. If any considerable opposition, however, should develop in the endeavor to have other languages likewise used as official texts the British will not press the matter and will be willing to have French only as the official text. To this it is believed there would be no objection.

BINGHAM

783.003/179a : Telegram

The Secretary of State to the Minister in Egypt (Fish)

WASHINGTON, March 8, 1937—5 p. m.

21. The Department would appreciate any information it may be possible for you to obtain regarding the proposed organization of the Capitulations Conference including in particular the language or languages of the Conference, the choice of a presiding officer and the provisions which the Egyptian Government proposes to make for an adequate corps of interpreters. The Department desires to receive also any recommendations you may offer with regard to these questions. In any discussions you may have on the subject with the appropriate Egyptian authorities you may stress the desirability of the recognition of English as an official language of the Conference as well as the importance of the organization of the Conference in order to make readily and promptly available English texts of the records of its proceedings.

HULL

783.003/236

Memorandum by the Assistant Chief of the Division of Near Eastern Affairs (Alling)

[WASHINGTON,] March 11, 1937.

Mr. Mallet, Counselor of the British Embassy, called today to furnish certain observations of the British Government respecting the proposed termination of the capitulations in Egypt. Reading from a Foreign Office instruction Mr. Mallet stated that, as we knew, the British and Egyptian Governments had come to an agreement with respect to certain aspects of the termination of the capitulatory régime. The points upon which agreement had been reached had been communicated to Mr. Childs, Secretary of the American Legation at Cairo. The instruction went on to say that His Majesty's Government would not be so frank in communicating its attitude to other governments. Continuing to read Mr. Mallet stated that the Egyptian circular note of February 3, 1937,¹³ had set forth the Egyptian demands respecting the termination of the capitulations. It would of course be left to the capitulatory Powers to state at the Conference the guarantees and assurances which they in turn would ask. The Egyptian note of February 3 set forth certain points, but not all, upon which the British and Egyptians had come to an agreement during conferences at Cairo. It was to be observed, however, that the Egyptian note stated these points in more general and more vague terms than had been agreed upon in the Cairo conferences.

The Foreign Office had learned of a conversation between the American Minister at Cairo and Mr. Kelley, Counselor of the British Embassy at that capital, regarding possible difficulties which the United States Government might encounter in agreeing to the institution of a new régime in Egypt prior to the ratification of the proposed convention respecting that régime. It was the understanding of the Foreign Office that the present session of Congress might end in June and that it would be difficult, if not impossible, for the United States Government to submit the proposed treaty to the Senate and obtain the advice and consent of that body during the present congressional session. The British Government sincerely hoped that such ratification by the United States Government could be obtained during the coming summer but it was fully realized that that might be impossible.

The British Government felt that the proposed convention should contain a provision for its entrance into force upon its ratification by a certain number of Powers, it being understood that the conven-

¹³ See telegram No. 14, February 3, 1 p. m., from the Minister in Egypt, p. 619.

tion would enter into force only as between those Powers which had ratified. In this connection the British Government felt that the Egyptian Government would have a good case politically and possibly even legally (although no final decision had been reached by the Foreign Office on this latter point) for the unilateral termination of the capitulatory régime if one or more Powers proved obstructive during the coming Conference. In this connection the Foreign Office called attention to paragraph 4 of the Annex to Article 13 of the Anglo-Egyptian Treaty. As a matter of convenient reference the paragraph in question is quoted as follows:

“It is understood that in the event of its being found impossible to bring into effect the arrangements referred to in paragraph 2, the Egyptian Government retains its full rights unimpaired with regard to the capitulatory régime, including the Mixed Tribunals.”

Mr. Mallet went on to say that it had been contemplated that in the event of the failure of a certain number of Powers to ratify the convention and thus bring it into force as respects such Powers, a protocol would be signed, not subject to ratification, and that such protocol would bring the proposed new judicial régime into force provisionally and pending ratification of the convention. The Foreign Office inquired whether the United States Government would be in a position to sign such a protocol and if not whether it would raise objection to signature by other Powers.

The instruction went on to state that in the event the United States Government showed its good will by signing the convention but proved to be unable to ratify because Congress was not in session arrangements could probably be made without great difficulty for a continuation for a short period of American consular jurisdiction. It was desired, however, if at all possible, to bring the proposed new judicial régime into operation on October 15, 1937 so that it could be applied at the beginning of the new Egyptian judicial year.

It was pointed out to Mr. Mallet that consideration was now being given to certain of the questions which he raised and that as soon as any decision had been reached we should be glad to communicate with him. At the same time it was pointed out that it would be most helpful to this Government if the Foreign Office could find it possible to furnish the Department with any drafts, even tentative or provisional, of proposed new articles for the *Règlement d'Organisation Judiciaire*. Mr. Mallet made note of this request and said that he would take up the question with the Foreign Office.

P[AUL] H. A[LLING]

783.003/185 : Telegram

The Minister in Egypt (Fish) to the Secretary of State

CAIRO, March 13, 1937—3 p. m.
[Received March 13—11:40 a. m.]

26. Department's telegram No. 21, March 8, 5 p. m. The Minister for Foreign Affairs assured me this morning that :

1. English and French will be official languages of the conference.
2. Arrangements are being made by Egypt to obtain efficient interpreters from the League of Nations and,
3. The presiding officer has not been chosen but will be agreed upon before the Egyptian delegation leaves Egypt and will probably be a delegate from one of the lesser Capitulatory Powers. The Foreign Minister indicated that the presiding officer would not be Italian, French, British or Egyptian. Besly¹⁴ states that even if objections were raised to English as an authoritative language of the treaties to be signed the British "cannot give in on this point".

One of the principal discussions at the conference will probably center around the charter of the Mixed Courts, a draft revision of which will be submitted in French to the conference at an early meeting and can probably be translated in half a day.

FISH

783.003/239

The Secretary of State to President Roosevelt

WASHINGTON, March 19, 1937.

MY DEAR MR. PRESIDENT: Pursuant to your authorization, the Government of Egypt has been informed that the Government of the United States will be officially represented at the Conference called by the Government of Egypt to meet at Montreux, Switzerland, on April 12, 1937, for the purpose of concluding a convention to provide for the termination of the capitulatory or extraterritorial rights which the United States and its nationals, in common with the governments and nationals of eleven other countries, now enjoy in Egypt. The principal capitulatory rights now enjoyed by the United States in Egypt are :

1. Exclusive jurisdiction of American consular and ministerial courts over American nationals, in accordance with the laws of the United States, in the following categories of cases :

- (a) All cases in which American nationals are charged with crimes or offenses, except (1) minor police offenses; (2) fraudulent bankruptcy, and (3) offenses against judges and other officers

¹⁴ Legal Adviser to the British Embassy in Egypt.

of the Mixed Courts of Egypt, or directed against the execution of the Courts' functions. The three excepted classes of cases are within the jurisdiction of the Mixed Courts.

(b) All civil cases in which all parties are American nationals.

(c) All suits against American nationals involving questions of their personal status, including marriage, divorce, decedents' estates, guardianship, et cetera.

2. Inviolability of domicile. Prohibition against search of houses of American nationals without first notifying the American Consul and giving him opportunity to be present during the search.

3. Exemption of American nationals from all direct taxes without the consent of the Government of the United States.

4. Right of the Government of the United States to request reconsideration of any Egyptian law which has been approved by the legislative Assembly of the Mixed Court of Appeals as applicable to capitulatory nationals.

The first two rights listed above, namely, the judicial capitulations and the inviolability of domicile were derived originally from the Treaty of Commerce and Navigation concluded on May 7, 1830,¹⁵ between the United States and the former Ottoman Empire, of which Egypt was then a part. The right of inviolability of domicile was reaffirmed in a protocol between the United States and Turkey signed on August 11, 1874.¹⁶ While the Treaty of 1830 is no longer in force between the United States and Turkey, that treaty and the protocol of 1874 are still in effect between the United States and Egypt, at least so far as concerns the capitulatory rights in question, and it would seem therefore that the termination of those rights on the part of the United States should be effected by a formal treaty, with the advice and consent of the Senate, or by an act of Congress approved by the President. The third and fourth rights listed above, however, are not based on treaty and their relinquishment by this Government would appear to be within the discretion of the President.

From information which the Department has obtained informally from the Egyptian and British Governments, it seems probable that an effort will be made at the Conference to conclude (1) a convention providing specifically for the termination of the capitulatory régime and the transfer to the Mixed Courts of Egypt of all jurisdiction now exercised by the consular courts, with such guarantees or safeguards for the protection of former capitulatory nationals as may be agreed upon; (2) an annex to the convention, but forming an integral part thereof, revising the regulations of the Mixed Courts to provide for their enlarged jurisdiction and their eventual transition to the status of native courts of Egypt, and (3) a separate protocol to provide that

¹⁵ William M. Malloy (ed.), *Treaties, Conventions, etc., Between the United States of America and Other Powers, 1776-1909* (Washington, Government Printing Office, 1910), vol. II, p. 1318.

¹⁶ *Foreign Relations, 1874*, p. XXII.

the revised regulations of the Mixed Courts shall become effective not later than October 15, 1937, without regard to whether the convention shall have entered into force at that time.

If the plan outlined above should be carried out, the Governments who sign the proposed protocol will have surrendered their principal capitulatory rights without waiting for the ratification of the convention. Since that course would be equivalent to a declaration by the signatories of the protocol that ratification of the convention is not essential to their acquiescence in the termination of their principal capitulatory rights in Egypt, it is apparent that the Government of the United States would not be warranted in signing the proposed protocol, since the capitulatory rights of the United States derived from treaties could be relinquished only by a formally ratified treaty or by an act of Congress.

The Department is of the opinion, however, that if the other principal capitulatory powers should sign the proposed protocol, this Government would be fully authorized legally to declare that, while the United States could not sign the protocol, it would be prepared to give practical effect to its provisions, pending formal ratification of the convention by the United States, by suspending the jurisdiction of the American consular and ministerial courts in Egypt and permitting their jurisdiction to be transferred to the Mixed Courts of Egypt.

This opinion is based on the fact that the President is now authorized by the Act of Congress approved March 23, 1874,¹⁷ to suspend the exercise of the judicial functions of American consular and diplomatic officers in Egypt

“whenever the President of the United States shall receive satisfactory information that the . . . Government . . . of Egypt has organized other tribunals on a basis likely to secure to citizens of the United States in their domains the same impartial justice which they now enjoy there under the judicial functions exercised by the minister, consuls, and other functionaries of the United States pursuant to the Act of Congress approved the 22nd of June, 1860,¹⁸ entitled ‘An Act to carry into effect provisions of the treaties between the United States . . . and other countries giving certain judicial powers to ministers and consuls or other functionaries of the United States in those countries and for other purposes[.]’”

By virtue of the authority contained in the Act of 1874, President Grant issued a proclamation on March 27, 1876,¹⁹ the pertinent part of which reads as follows:

“And whereas satisfactory information has been received by me that the Government of Egypt has organized other tribunals on a basis likely to secure to citizens of the United States in the dominions

¹⁷ 18 Stat. (pt. 3) 23.

¹⁸ 12 Stat. 72.

¹⁹ 19 Stat. 662, or *Foreign Relations*, 1876, p. 1.

subject to such Government the impartial justice which they now enjoy there under the judicial functions exercised by the minister, consuls or other functionaries of the United States pursuant to the said Act of Congress approved June 22, 1860:

“Now, therefore, I, Ulysses S. Grant, President of the United States of America, by virtue of the power and authority conferred upon me by the said Act approved March 23, 1874, do hereby suspend during the pleasure of the President the operation of the said Act approved June 22, 1860, as to the said dominions subject to the Government of Egypt in which such tribunals have been organized, so far as the jurisdiction of said tribunals may embrace matters now cognizable by the minister, consuls, or other functionaries of the United States in said dominions, except as to cases actually commenced before the date hereof.”

The tribunals referred to in the above quoted proclamation were the Mixed Courts of Egypt, which were established in 1875 by agreement between the Government of Egypt and the capitulatory powers, including the United States.²⁰ Since the jurisdiction of the Mixed Courts at the time of their establishment included only a small part of the jurisdiction theretofore exercised by the consular courts, the jurisdiction of the latter was suspended by the proclamation quoted only “so far as the jurisdiction of said tribunals may embrace matters now cognizable by the minister, consuls, or other functionaries of the United States in said dominions, except as to cases actually commenced before the date hereof.” The proposed protocol, however, will provide for the transfer of all the remaining judicial jurisdiction of consular and diplomatic officers in Egypt to the Mixed Courts, in accordance with the revised regulations to be incorporated as an annex to the convention. Assuming that the protocol will become effective, the Mixed Courts of Egypt will then be vested with all of the jurisdiction now exercised by American consular courts. There would accordingly appear to be no doubt of your authority under the Act of March 23, 1874, to suspend the American consular jurisdiction now exercised in Egypt, such suspension to continue during your pleasure and to be converted into a definite relinquishment of the judicial capitulatory rights of this Government upon the formal ratification of the proposed convention.

The Department is of the opinion that every reasonable effort should be made to cooperate with the Egyptian Government and the other capitulatory powers for the realization of the Egyptian Government's desire to be freed from the burden of the capitulatory régime, since such cooperation would be thoroughly in accord with our good neighbor policy. For that reason and in order to avoid the raising of any question as to the legal right of the Egyptian Government unilaterally to terminate the capitulatory régime,—a right which the Egyptian

²⁰ See *Foreign Relations*, 1874, pp. 1126–1192, *passim*.

Government appears to have reserved by the terms of the Anglo-Egyptian Treaty of August 26, 1936,—it is respectfully recommended that I be authorized to instruct the American Delegation to the Conference, which plans to leave Washington on March 30, 1937, to give to the Egyptian Delegation assurances in the sense of the views expressed herein.²¹

Faithfully yours,

CORDELL HULL

783.003/193a

The Chief of the Division of Near Eastern Affairs (Murray) to the Minister in Egypt (Fish)

WASHINGTON, March 23, 1937.

DEAR JUDGE FISH: I trust that the official instructions²² which have been prepared for your use at the Conference will prove helpful and that you will find answered therein a good share of the questions which are likely to arise. Of course, we realize that some points are likely to come up which will not be fully covered by the instructions, but we hope that even in these cases the general nature of our policy will enable you to work out a satisfactory answer to the problem.

As you know, the information which the British Embassy in Cairo was good enough to furnish us in strict confidence has been of great assistance to us in understanding the general background of the situation with which we shall be confronted at the Conference. This information has been supplemented by additional oral statements made to us by the British Embassy here in Washington, acting on instructions from the Foreign Office. We in turn have considered it desirable to acquaint the British Embassy here with the general background of our policy with respect to the more important questions which are likely to arise at the Conference, and I see no reason why this exchange of information should not be continued at the Conference itself. For example, I can see that it might be advantageous for our delegation to acquaint certain of the British experts, such as Besly and Beckett, with some of our ideas. I believe that none of our proposals would be unacceptable to the British and that by a frank exchange of views we might be able to induce them to get behind certain of our ideas. Please feel free, therefore, to discuss with the British representatives such matters affecting our mutual interests as you consider proper and helpful.

I wish you the fullest measure of success during the deliberations of the Conference and you may be sure that we shall ever be ready to help you in any way we can.

Sincerely yours,

WALLACE MURRAY

²¹ Marginal note: "C. H. Approved, F. D. R."

²² *Post*, p. 634.

783.003/194 : Telegram

The Minister in Egypt (Fish) to the Secretary of State

CAIRO, March 26, 1937—3 p. m.

[Received 4: 17 p. m.]

34. Department's 30, March 23 [24], 6 p. m.²³ The British Embassy handed me yesterday afternoon a draft in French of the proposals relative to the Mixed Courts which the Egyptians will submit to the conference for inclusion in the general convention to be signed there and a complete draft in French of the new charter of the Mixed Courts. The convention proposals included:

(1) the transitional period to begin on October 15, 1937, and to end on October 14, 1949;

(2) the number of judges of the various Mixed Courts will be specified at the conference but may be subsequently changed with the consent of the Court of Appeals;

(3) foreign vacancies in the Court of Appeals will be filled throughout the transitional period by foreign judges from the Courts of First Instance but all vacancies in the Courts of First Instance will be filled by Egyptians, although the number of foreign judges in each Court of First Instance must always be not less than one third of the judges of that court;

(4) no distinction based on nationality shall be made in the composition of the chambers or the presidencies of any of the courts;

(5) the Procurer General and one assistant must be foreigners;

(6) the Procurer General shall have supervision of all prisons for foreigners;

(7) personnel of the Mixed Courts and Mixed Parquet in the service on October 14, 1937 shall be retained.

All vacancies in the Mixed Courts will be filled by Egypt acting independently.

Important changes proposed in the charter of the Mixed Courts are as follows:

(1) decisions shall be rendered in Arabic or any other judicial language, English, French, or Italian;

(2) the word foreign is defined as in Egyptian note of February 3;

(3) personal status matters shall come within the competence of the Mixed Courts;

(4) the National Courts may exercise jurisdiction over all who expressly or tacitly consent thereto;

(5) mixed interests do not in general give competence to the Mixed Courts;

(6) Egyptian corporations with serious foreign interests shall be subject to the Mixed Courts unless they have accepted the jurisdiction of the National Courts;

(7) the Mixed Courts shall have competence in bankruptcy cases if one of the creditors is a foreigner;

²³ Not printed.

(8) all criminal jurisdiction over foreigners is transferred to the Mixed Courts;

(9) cases pending on November 1, 1937, shall remain in the court where begun and all decrees pronounced prior to that date shall be enforced;

(10) a suggested translation of revised article 11 is as follows: The Mixed Courts may not entertain jurisdiction directly or indirectly over acts of mediation. They may neither pass on the validity of the application to foreigners of Egyptian laws or regulations nor judge whether Egyptian legislation is incompatible with the principles generally adopted in modern legislation or whether such legislation establishes a discrimination against foreigners. Moreover, they may not give decisions affecting the ownership of the public domain. But without power to interpret an administrative act or stop its execution they shall nevertheless be competent to recognize:

(1) in civil and commercial matters all suits between foreigners and the state involving movable or immovable property; and

(2) all actions in civil responsibility instituted by a foreigner against the state by reason of administrative measures taken in violation of the laws or regulations.

The British appear to have agreed to the convention proposals but not to all of the charter proposals.

The texts and suggested translations of the two drafts are being forwarded by air mail.

FISH

783.003/197

The Secretary of State to the Minister in Egypt (Fish)

WASHINGTON, March 30, 1937.

SIR: 1. Referring to previous instructions regarding your designation as American Delegate at the Conference for the Revision of the Capitulations in Egypt to be held at Montreux beginning April 12, 1937, I take pleasure in informing you of the general nature of this Government's policy with respect to the proposed termination of the capitulatory régime in Egypt.

2. First of all I conceive it to be self-evident that the capitulatory régime in Egypt is an institution which we must acknowledge to be no longer in accordance with the spirit of the times nor essential for the effective protection of legitimate American interests in Egypt. The termination of that régime, under proper provisional safeguards, is moreover in accordance with the fixed policy of this Government, often repeated, of establishing its relations with foreign countries on a basis of friendship, in accordance with the precepts of modern international law, and without seeking to obtain for American nationals or interests any special privileges or favors.

3. In approaching the problems which will be raised at the Conference I desire you, therefore, to adopt a sympathetic and liberal attitude toward the aspirations of the Egyptian Government. At the same time you will, of course, endeavor to obtain such guarantees and safeguards as may be considered essential for the proper protection of American interests, particularly with respect to the proposed reform of the Mixed Tribunals. It is my view, however, that the American Delegation should avoid taking the lead in discussing the various problems which will arise at the Conference. I am sure that this policy will commend itself to you since it is strictly in accordance with the attitude which this Government has long adopted with respect to Egyptian matters and is in consonance with the relative unimportance of American interests in Egypt. The maintenance of such a policy, taken in conjunction with the known absence of American political interests in Egypt, will, I believe, place the American Delegation in a position to assist in reconciling divergent points of view and thus contribute to the successful termination of the Conference.

4. At some appropriate moment during the early meetings of the Conference you may make a statement along the lines of the attached draft (Enclosure A), making such minor alterations therein, without changing materially the substance, as may be required by the atmosphere of the Conference and current developments.

5. It is my understanding that an effort will be made at the Conference to provide for the use of English as one of the official languages. You will, of course, give such a proposal your full support.

6. Of the strictly capitulatory privileges which the Egyptian Government desires to terminate one of the most important is that which requires the formal consent of the Capitulatory Powers to the taxation of their nationals. The treaty basis for this privilege appears to be vague and it seems probable that the Powers acquired the right, to a large extent, by custom and usage. Moreover, on several occasions this Government has consented to the application to American nationals of specific taxation by the Egyptian Government. In view of these circumstances no objection is perceived to the surrender by this Government, at the same time similar surrender is made by all the other Capitulatory Powers, of the privilege of requiring that its consent be obtained before Egyptian taxes are levied upon American nationals. At the appropriate moment during the proceedings of the Conference you are authorized to make a declaration to that effect. A draft of such declaration is enclosed (Enclosure B) for your use. In the event the Egyptian Delegation expresses a desire to receive a written statement covering this point you are authorized to furnish such a statement in accordance with the attached draft.

7. In connection with the proposed surrender of the right of American nationals to exemption from Egyptian taxation except upon the consent of this Government, your attention is invited to paragraph 6 of the Annex to Article 13 of the Anglo-Egyptian Treaty of August 26, 1936, wherein the Egyptian Government gave its assurance that no Egyptian legislation made applicable to foreigners, with particular reference to legislation of a fiscal character, would discriminate against foreigners or foreign corporate bodies. You will recall that a similar assurance was contained in the Egyptian Circular Note of January 16, 1937, and referred to in the Department's telegram of February 13, 1937, accepting the invitation of the Egyptian Government to attend the Conference at Montreux. Particular importance is attached to obtaining a further reaffirmation of this assurance by incorporating it in the proposed multilateral convention, and I desire you to exert your best efforts to that end.

8. Another capitulatory right which the Egyptian Government is understood to be desirous of terminating is that with respect to the domiciliary visit of capitulatory nationals and inviolability of the capitulatory national's domicile. American nationals long enjoyed this privilege under the most-favored-nation clause of the American-Ottoman Treaty of 1830 and the right was specifically reaffirmed by the American-Ottoman Protocol of August 11, 1874. According to Scott (*The Law Affecting Foreigners in Egypt*, James Harry Scott, Edinburgh, 1908; pp. 155-156), this privilege is granted most clearly in Article 70 of the French Capitulation of 1740,²⁴ reading in translation as follows:

"Agents of justice and officers of my Sublime Porte, as well as police, may not, except in case of necessity, enter by force a house where a Frenchman resides; and in case such entry is required, the ambassador or the consul will be advised, in those places where there are such officials, and the place in question will be visited with the persons delegated on their behalf; and if anyone contravenes this provision, he will be punished."

9. Inasmuch as the right of inviolability of domicile is derived from our treaty with Turkey it cannot be definitely surrendered except by a formal treaty with Egypt. It is assumed that provision for such surrender will be made in the proposed multilateral convention. However, if the Egyptian Government insists upon the suspension of such right pending the entrance into force of the proposed convention, and under such safeguards as may be agreed upon (as, for example, an arrangement that the foreigner's domicile may be visited only by the proposed judicial police) you are authorized to declare that the

²⁴ For text, see Le Baron I. de Testa, *Recueil des traités de la Porte Ottomane avec les puissances étrangères depuis le premier traité conclu, en 1536, entre Suléyman I et François I jusqu'à nos jours* (Paris, 1864), vol. I, p. 186.

United States will suspend its right in this regard until such time as the proposed Convention has come into force, upon the understanding that a similar suspension, or a complete surrender of the right, will be made simultaneously by all the other Capitulatory Powers. A draft declaration in this sense is enclosed for your use (Enclosure C). In the event the Egyptian Delegation requires this declaration to be made in written form you are authorized to furnish such a written statement.

11. [*sic*] It is assumed that the Egyptian Government will propose the abrogation of the Khedivial Decree of January 31, 1889,²⁵ and the Law of November 11, 1911,²⁶ conferring certain legislative powers on the General Assembly of the Mixed Court of Appeals and upon the so-called Legislative Assembly of that body. You are authorized to state that your Government will raise no objection to the abrogation of these acts, insofar as the United States is concerned, to the extent that, and at the same time as, similar abrogation is agreed upon by the other Capitulatory Powers.

12. In the event the question should be raised as to the termination or suspension of other capitulatory rights, derived not from treaties but from custom and usage, you are authorized to declare the willingness of the United States Government to suspend the exercise of such rights, pending the entrance into force of the multilateral convention, to the extent that, and at the same time as, those rights are suspended or terminated by the other Capitulatory Powers.

13. From reports received from the Legation at Cairo as well as from the Embassy at London and other sources, it appears to be the intention of the Egyptian Government to propose the signature at Montreux of an instrument regulating the Mixed Court régime, which, though it will be an annex to the proposed multilateral convention, will be an integral part thereof. It is apparently the desire of the Egyptian Government that this proposed "statute for the organization of the Mixed Courts" become effective on October 15, 1937, whether or not the multilateral convention of which it forms an annex has by that date been ratified and come into force. In order to accomplish this it is proposed that a special protocol be signed providing that the statute for the organization of the Mixed Courts shall be effective provisionally on October 15, 1937, pending the ratification of the multilateral convention.

14. It is apparent that the signature by the United States of such a protocol would bring into force an integral portion of the multilateral convention. Such action, if taken prior to the entrance into

²⁵ For French text, see J. A. Wathelet and R. G. Brunton, *Codes Egyptiens et Lois Usuelles en vigueur en Egypte* (4th ed., 1936), p. 25.

²⁶ Law No. 17 of 1911, or article 12 of the Civil Code for the Mixed Courts, *ibid.*, p. 39.

force of the latter instrument, would be clearly contrary to American constitutional practice. Although this Government has no objection to the signature of the proposed protocol by the other Powers, it cannot authorize you to sign such an instrument.

15. Although this Government is obliged to take the position outlined it is anxious to avoid appearing obstructive in this matter or of giving an excuse to other Powers, not similarly bound by constitutional restrictions, to insist upon a delay and thus possibly jeopardize the successful outcome of the Conference. Under the circumstances it is proposed to meet the exigencies of the situation, insofar as American nationals are concerned, in a practical manner. Accordingly, the approval of the President has been obtained to the temporary suspension, pending final action on the proposed multilateral convention, of extraterritorial jurisdiction over American nationals by American consular officers in Egypt and the transfer of such jurisdiction, under such arrangements as may be made at the Conference, to the Mixed Courts. This action would be taken under the authority conferred on the President by the Act of March 23, 1874. Accordingly, at the appropriate time you are authorized to inform the Egyptian Delegation that, if and when substantially similar action is agreed upon by the other Powers, this Government is prepared to suspend the exercise of extraterritorial jurisdiction over American nationals by American consular and diplomatic officers in Egypt, to the extent that such extraterritorial jurisdiction is abridged or terminated in accordance with the decisions of the Conference. If a written assurance in this matter is requested by the Egyptian Delegation you may furnish such assurance in accordance with the enclosed draft (Enclosure D).

16. With respect to the attitude to be adopted by the American Delegation toward the proposals outlined in the Egyptian Government's circular note of February 3, 1937, you will be guided by the considerations set forth in the accompanying memorandum (Enclosure E).²⁷ This memorandum will also furnish you guidance on other questions likely to arise at the Conference respecting the alteration and amendment of the *Règlement d'Organisation Judiciaire* and certain other matters of a subsidiary nature. If questions arise in connection with other matters of an important character, not covered by the present instruction or by the accompanying memorandum, you will of course seek the Department's views before taking any final action.

17. You are authorized to sign on behalf of this Government the proposed multilateral convention with the annexed revised *Règlements d'Organisation Judiciaire*, provided those documents embody the

²⁷ Not printed.

essential provisions set forth in the present instruction and accompanying memoranda, or in such further instructions as may subsequently be given to you.

18. I am confident that you will use your best endeavors to bring the Conference to a successful conclusion and that the results of your negotiations will serve further to increase the friendly relations existing between the United States and Egypt.

Very truly yours,

CORDELL HULL

[Enclosure A]

Draft Statement

On behalf of the President of the United States I take great pleasure in expressing to His Excellency the Chairman of the Delegation of the Royal Egyptian Government the satisfaction with which my Government responded to the invitation of the Royal Government to participate in a Conference of the Capitulatory Powers for the revision of the extraterritorial régime in Egypt, including provision for the institution of a transitional period for the Mixed Court régime.

My Government accepts it as a happy augury for the success of this Conference that the Royal Egyptian Government, as one of its first international acts following the exchange of ratifications of the Anglo-Egyptian Treaty of Friendship and Alliance, chose to seek a revision of its international obligations through friendly negotiation with the interested Powers.

In conformity with that purpose the Royal Egyptian Government graciously extended an invitation to my Government and the Governments of the other Powers exercising capitulatory rights in Egypt to be represented at this Conference to consider the revision of those rights. The Royal Government has proposed specifically the establishment of a provisional régime for the Mixed Tribunals at the conclusion of which the jurisdiction now exercised by them, as well as that which it is proposed to transfer to them, will be delegated to the National Courts. Such a gradual transfer of jurisdiction as is proposed is, in the opinion of my Government, likely to cause the minimum of disturbance and unsettlement to the Egyptian and other interests which will be affected.

The policy of the Good Neighbor which the President of the United States has announced as that which my Government would pursue in its international relationships would in itself have disposed my Government to regard most sympathetically the announced purposes of the Royal Egyptian Government. When to these considerations there is added, in evidence of the Royal Egyptian Government's attachment to the orderly processes of international law, the resort of that Govern-

ment to friendly negotiation for the revision of obligations which have come to bear more and more heavily upon it, the Government of the United States is prompted to give the most unequivocal assurances of the sympathy with which it regards the aims and purposes of this Conference.

In conformity with that spirit I am authorized by the President of the United States to announce to the Delegation of the Royal Egyptian Government, and my colleagues of the Delegations of the Capitulatory Powers, that the Government of the United States will seek in the revision of the extraterritorial régime in Egypt, including the establishment of a transitional period for the Mixed Courts, no exclusively national interests. It will have regard rather for the mutual interests of all the Powers concerned, including in particular, of course, those of the Government most concerned, Egypt.

As regards the Mixed Courts, it should be manifestly in the interest of Egypt, as of the Capitulatory Powers, that in the agreement to be concluded provision be made for a transitional régime for those Courts which will occasion the least disturbance to Egyptian, no less than to the foreign, interests involved. My Government's paramount interest is in the insurance of the competent administration of justice which has characterized the Egyptian Mixed Courts since their foundation.

The American Delegation will be guided in its proposals and in its discussions solely by the considerations which I have set forth. It is in this spirit that the American Delegation approaches the work of the revision of the extraterritorial régime in Egypt, confident that the work of the Conference will be brought to a successful conclusion.

[Enclosure B]

Declaration Concerning Financial Capitulations

The Government of the United States declares that pending ratification on its part of the Convention, it will refrain from exercising its right to object to the taxation by the Egyptian Government of American nationals and corporations in Egypt, provided such taxes shall not be different or higher than those that are exacted of and paid by Egyptian nationals and corporations, and provided further that such taxes shall be applicable to all foreigners and foreign corporations on the basis of absolute equality.

[Enclosure C]

Declaration Concerning Domiciliary Visits

The Government of the United States declares that pending ratification on its part of the Convention, it will refrain from exercising

its right to object to domiciliary visits of its nationals in Egypt by agents of the Egyptian Government provided such agents shall be members of the judicial police set up in accordance with Article . . . of the Convention and such visits shall take place under the conditions specified in Article . . . of the amended Statute of the Courts and provided further that all other foreigners in Egypt without exception shall be subject to such domiciliary visits.

[Enclosure D]

Declaration Concerning Consular Jurisdiction

The Government of the United States declares that pending the ratification on its part of the Convention it will suspend the extra-territorial jurisdiction of its consular and diplomatic officers in Egypt over American nationals and corporations provided the other Capitulatory Powers agree at the same time and under the same conditions to suspend the extraterritorial jurisdiction in Egypt of their consular and diplomatic officers over their nationals and corporations.

783.003/202 : Telegram

The Secretary of State to the Chairman of the American Delegation to the Capitulations Conference (Fish)

WASHINGTON, April 19, 1937—2 p. m.

1. Cairo despatch No. 958, March 26.²⁸ The Department observes that Article 5 of the proposed Charter of the Mixed Courts provides that the salaries of the judges shall be fixed by law but there is no reference either in the proposed Convention or Charter to any undertaking by the Egyptian Government to maintain the present salaries of the judges.

It is suggested that consideration be given to obtaining such an undertaking from the Egyptian Government in the possible form of an agreed minute or protocol to the Convention. In this connection it may be desirable to consult with your British colleagues to ascertain whether in the event a formal undertaking is deemed inexpedient some informal assurance on the subject may not be obtainable.

HULL

²⁸ Not printed.

783.003/209 : Telegram

The Chairman of the American Delegation (Fish) to the Secretary of State

MONTREUX, April 21, 1937—7 p. m.

[Received April 21—6:35 p. m.]

1. Article 9 of the draft of convention provides as follows:

“Any dispute between the High Contracting Parties regarding the interpretation or application of the provisions of the present convention which they have been unable to settle by diplomatic means shall, at the request of one of the parties to the dispute, be submitted to the Permanent Court of International Justice.”

We submitted the following addition based on article 25 of Narcotics Convention of July 13, 1931:²⁹

“If all the parties to the dispute are parties to the Protocol of December 16, 1920,³⁰ relating to the statute of that Court and, if any of the parties to the dispute is not a party to the Protocol of December 16, 1920, to an arbitral tribunal constituted in accordance with the Hague Convention of October 18, 1907,³¹ for the pacific settlement of international disputes”.

This addition is not acceptable to the British because it will not bind Egypt to go before the Permanent Court of International Justice before it is a member thereof. Does the Department approve the following substitute proposal which takes into account the remote contingency that the arbitration treaty between the United States and Egypt might lapse during the life of Montreux Convention:

“If any of the High Contracting Parties has a present existing treaty of arbitration with Egypt providing for another tribunal, this tribunal shall, during the life of this Convention, be substituted for the Permanent Court of International Justice for the purposes of this article, even though such treaty of arbitration may cease to exist for other purposes.”

FISH

783.003/209 : Telegram

The Secretary of State to the Chairman of the American Delegation (Fish)

WASHINGTON, April 23, 1937—noon.

2. Your No. 1, April 21, 7 p. m.

1. You will bear in mind that, in view of the present attitude of Congress respecting the World Court, any provision in the Convention

²⁹ *Foreign Relations*, 1931, vol. I, p. 675.

³⁰ *Ibid.*, 1920, vol. I, p. 17.

³¹ *Ibid.*, 1907, pt. II, p. 1181.

involving this Government in World Court procedure might compromise the Convention in obtaining the advice and consent of the Senate to its ratification.

2. The text of the substitute proposal contained in the final paragraph of your telegram under reference is objectionable for the reason that, in the event of the lapsing of our Arbitration Treaty with Egypt, disputes involving the United States would, according to your proposal, be submitted to the World Court.

3. Your proposal would, however, be acceptable to the Department with modifications as follows:

“If any of the high contracting parties has a present existing treaty of arbitration with Egypt providing for another tribunal, this tribunal shall, during the life of this Convention, be substituted for the Permanent Court of International Justice for the purposes of this Article, even though such treaty of arbitration may cease to exist for other purposes.”

4. The Department would likewise be willing to accept as an alternative the text of Article 9 of the draft Convention as set forth in the first paragraph of your telegram under reference, provided it be expanded to contain the following provision:

“In the case, however, of a dispute involving a High Contracting Party which has, prior to the signature of this Convention, declined to ratify the Protocol of December 16, 1920, relating to the statute of the Permanent Court of International Justice, and which is unwilling to submit to the jurisdiction of that Court, such dispute shall be submitted to an arbitral tribunal constituted in accordance with the Hague Convention of October 18, 1907, for the pacific settlement of international disputes.”

5. The Department assumes that either of the above proposals would meet the objections of the British Delegation to your original proposal based on Article 25 of the Narcotics Convention of July 13, 1931.

HULL

783.003/252

The Chairman of the American Delegation (Fish) to the Secretary of State

MONTREUX, May 12, 1937.

[Received May 21, 1937.]

SIR: I have the honor to refer to the Department's instruction of March 30, 1937, setting forth the attitude to be adopted by the American Delegation at the Conference for the Revision of the Capitulatory Régime in Egypt and to submit herewith a report of the deliberations of the Conference and of the results attained.

I. Personnel of the American Delegation:

Mr. Bert Fish, Envoy Extraordinary and Minister Plenipotentiary of the United States of America at Cairo, Chairman of the Delegation.

Mr. Paul H. Alling, Assistant Chief of the Division of Near Eastern Affairs, Department of State, Adviser.

Mr. Francis Colt de Wolf, Treaty Division, Department of State, Legal Adviser.

Mrs. Lucille Snyder, Division of Near Eastern Affairs, Department of State, Clerk.

The American Delegation arrived at Montreux on Sunday, April 11, 1937, and attended the opening meeting of the Conference on April 12, 1937.

II. Representation at the Conference:

The following countries participated in the Conference: United States of America, Belgium, British Commonwealth of Nations (including the United Kingdom, the Union of South Africa and the Irish Free State, each of which was represented by one or more delegates, while the Chairman of the United Kingdom Delegation also represented Australia, India and New Zealand), Denmark, Egypt, Spain, France, Greece, Italy, Norway, Netherlands, Portugal and Sweden.

III. Organization of the Conference:

The Conference was organized as follows:

President of the Conference, Moustapha El-Nahas Pasha, President of the Council of Ministers of Egypt.

Honorary President of the Conference, Mr. G. Motta, President of the Swiss Federal Council.

Secretary General, Mr. Th. Agnides, Chief of the Disarmament Section of the League of Nations.

The work of the Conference was divided among the following committees:

1. General Committee, President, Mr. N. Politis, Greece, and all delegates of other countries.

2. Committee on the Mixed Court Charter, President, Mr. Michael Hansson, Norway, and all delegates of other countries.

3. Drafting and Coordination Committee, President, Mr. N. Politis (and in his absence Mr. Hansson) and representatives of the United Kingdom, Egypt, France, Greece and Italy. From time to time representatives of other countries, including the United States, formed a part of the Drafting Committee when questions were being considered in which such countries had expressed a particular interest.

IV. *Sessions of the Conference:*

A. Opening:

The Conference was opened by Mr. G. Motta, President of the Swiss Federal Council. At the first meeting Moustapha El-Nahas Pasha was elected President of the Conference. The actual work of the Conference, however, was divided among two committees, the General Committee, under the presidency of Mr. N. Politis, Chairman of the Greek Delegation, and the Committee on the Mixed Court Charter under the Presidency of Mr. Michael Hansson, Chairman of the Norwegian Delegation. At the request of the Chairman of the British Delegation I proposed Mr. Hansson for the post of Chairman of the Mixed Court Charter Committee. Mr. Hansson was particularly well qualified for this position in view of his experience of twenty-five years on the Egyptian Mixed Courts, including a period when he was President of the Court of Appeals. I should add that the appointment of Messrs. Politis and Hansson to these important positions appeared to me to be quite in line with the Department's instructions (Memo.—paragraph 40).²² I did not oppose the election of Moustapha El-Nahas Pasha as President of the Conference, despite the fact that the Department had suggested that it would be preferable to have as a presiding officer a representative of some country other than Great Britain or Egypt, because I learned that the position of President was to be more or less of an honorary nature and that the actual work of the Conference was to be done by the two committees under the chairmanship of Messrs. Politis and Hansson. I should add that these two gentlemen made admirable presiding officers in the committees. To complete the picture of the organization of the Conference, it may be permissible to explain here, that after the preliminary work of the Conference was accomplished a further committee, known as the Drafting and Coordination Committee, was appointed under the Chairmanship of Mr. Politis, with Mr. Hansson acting in the former's absence. This important committee, which acted in the nature of a steering committee, was composed, in addition to the Chairman, of the technical representatives of Great Britain, Egypt, France, Greece and Italy. Members of other delegations, including the American delegation, attended meetings of this committee when matters were being discussed in which they were particularly interested.

At the first meeting of the Conference it was possible to accomplish only the general organization outlined above. At the second meeting of the full Conference, held on April 13th, an opportunity was afforded the presidents of the various delegations to present the general viewpoint of their respective governments. At this meeting I read

²² Not printed.

the statement transmitted as Enclosure A of the Department's instruction.³³ A report of this meeting, with copies of the statements made by the presidents of the various delegations, appears in Document C.C.M./C.R. 2.

Following the two opening plenary meetings of the Conference, the work was taken up in the two Committees referred to above. These Committees held one or more meetings daily, attended by practically all members of all delegations, beginning on April 14th and continuing through April 24th, at which point the Drafting and Coordination Committee began its work.

B. General Course of the Meetings :

At the opening meeting of the General Committee the Egyptian Government furnished copies of a proposed draft Convention (Document C.C.M./4). This draft furnished the basis of discussion and each article was considered at great length. Following these discussions each article was adopted at first reading either in its original form or in a form amended as the result of the discussions, or was sent to a special *ad hoc* sub-committee, or to the Drafting and Coordination Committee for further consideration with a view to meeting conflicting viewpoints that developed during the discussions.

A similar procedure was followed in the Committee on the Mixed Court Charter with respect to a draft (Document C.C.M./3) which had likewise been presented by the Egyptian Government.

C. Attitude of the Various Powers :

In the early meetings it became apparent that the French Delegation was prepared to make extensive demands of the Egyptian Government with a view to protecting the important interests which France had built up in Egypt during the past century. In the early meetings France received the support of the Italian Delegation as well as that of the Greek Delegation. The French demands, particularly with respect to the length of the transitional period, for which they originally pressed for eighteen years, gradually began to appear excessive to the other Delegations. Consequently Italian support for this proposal was withdrawn and thereafter the Italian Delegation was noticeable particularly for the favorable consideration which it gave to Egyptian proposals. The smaller Powers, with the exception of Greece and Belgium, both of which countries have important interests in Egypt, took a comparatively inactive part in the deliberations, knowing that their relatively minor interests would undoubtedly be protected by the guarantees obtained by the larger Powers.

The two points in which France was particularly interested were (a) the length of the transitional period referred to above, and (b) the definition of the term "foreigner", for the purposes of the

³³ *Ante*, p. 639.

jurisdiction of the Mixed Courts. In the early meetings of the Committees when it became apparent that these two matters could not be settled to the mutual satisfaction of the French and Egyptian Delegations, the questions were withdrawn from general discussion while the two Delegations made an effort to come to an agreement. Eventually, after practically all other questions were settled, M. de Tesson, President of the French Delegation, departed for Paris to seek new instructions with regard to the length of the transitional period. After an absence of several days, which caused the Egyptian Delegation considerable annoyance, M. de Tesson returned, and in a meeting of the General Committee announced that he had been authorized to agree to a transitional period of twelve years. It was naturally assumed that prior to making this announcement he had come to an understanding with the Egyptian Delegation with regard to the definition of the term "foreigner". It developed during the course of the meeting of the General Committee, however, that some misunderstanding had arisen with respect to the supposed agreement on this term. It was not until after M. de Tesson had made another trip to Paris that announcement was made, just forty-eight hours prior to the time fixed for the signature of the Convention, that a satisfactory solution had been found regarding the definition of the term "foreigner". The difficulty was that the Egyptians continued to press for their original definition which would have excluded from the jurisdiction of the Mixed Courts all capitulatory nationals who were either "subjects" or "protégés". This definition would, of course, have excluded certain French colonial subjects and protected persons in Africa—a concession which the French insisted vigorously they were unable to make. This question was also of interest to the United Kingdom, Netherlands and South African Delegations, all of whom had certain nationals in the category of "subjects" or "protégés" whom they did not wish to turn over to the jurisdiction of the National Tribunals. Eventually the matter was adjusted by a formula which, though retaining some of the original Egyptian proposals, gave adequate satisfaction to the views of the French and other interested delegations. It was quite apparent, however, that the general attitude of France was most displeasing to the Egyptian Delegation and reports appearing in the Egyptian press confirm the impression received at the Conference that the French lost much of the good will which they had built up in Egypt.

The attitude of the British Delegation was, as might be expected from a country in alliance with Egypt, most friendly and helpful to the Egyptian cause. As the Department is aware, the British and Egyptian Governments had agreed, some time prior to the convening of the Conference, on the general outline of the concessions which

each was prepared to make the other. Of course, the concessions which the Egyptians had agreed to make did not appear in the first drafts of the Convention and of the Mixed Court Charter, but from day to day the British Delegation submitted amendments which after only minor discussion were accepted by the Egyptian Delegation. Thus gradually the Convention and the Mixed Court Charter began to take a form which became acceptable to the Capitulatory Powers. Whenever differences arose between the Egyptian Delegation and other delegations the British made a noticeable effort to effect a satisfactory solution and in this they were generally most successful.

So far as the position of the American Delegation is concerned, the Department is aware that we had been furnished by the British Embassies in Cairo and Washington, in strict confidence, prior to the convening of the Conference, detailed information as to the extent which the British Government was prepared to go in surrendering its Capitulatory rights. Since these matters had been worked out in conferences between the British and Egyptian authorities in Cairo, we were fully aware in advance of the concessions which the Egyptians were prepared to make. It was therefore without difficulty that the American Delegation was able to follow the Department's instructions to avoid taking a lead in the discussions, for with respect to most questions of importance we knew in advance just how much or how little in the way of concessions the Egyptians were prepared to make. This knowledge permitted the American Delegation to refrain from pressing for certain concessions which it knew in advance were sure to be sought and obtained by the British as a result of previous agreement with the Egyptians. There were, however, certain matters, notably with respect to Article 12, concerning consular archives, Article 13, with reference to arbitration of disputes, and Article 15, regulating the date of the entrance into force of the Convention, with respect to which the American Delegation was obliged to press for amendments in the original texts. The Delegation also submitted, at the request of the British Delegation, proposals which were later incorporated into Articles 22, 47 and 49 of the General Judicial Regulations. The general nature of these proposals had already been approved by the Department and it was considered quite within the spirit of the Department's instructions to take the lead in submitting the proposals since we knew in advance that they would be accepted by the Egyptian Delegation. The British Delegation also requested certain of the other delegations to submit certain proposals which were known in advance to be agreeable to the Egyptian Government. The reason for taking this course of action was to avoid giving the impression in Egypt that it was only the British Government which was requesting concessions from the Egyptian authorities.

The most important statement which I made during the Conference was during the meeting of the General Committee held on April 15th ³⁴ (Document C.C.M./C.G./P.V. 2, pages 14-15). At that time I urged that the Committee accept the Egyptian proposal for a transition period of twelve years. I took this action because I was reliably informed that this was one point on which the Egyptian Delegation would not make any concession since it had promised a Parliamentary Committee that it would not agree to a longer transitional period. It seemed to me altogether desirable to support this Egyptian proposal not only because I knew that a longer period could not be obtained, but also because a period of twelve years was within the ten to fifteen year limit which the Department had authorized me to accept. I fully believe that my statement, delivered at such an early stage of the Conference, helped to clarify the atmosphere and to pave the way for the successful solution of the numerous other problems with which the Conference was concerned. Information from the Legation at Cairo indicates that my support of the Egyptian proposal (which I should add was likewise supported by the British and Portuguese Delegations) was gratefully received in Egypt and that a considerable amount of good will was built up there to the advantage of the United States. Furthermore, the President of the Egyptian Council of Ministers and other Egyptian cabinet ministers who formed the Egyptian Delegation, assured me of their own accord on several occasions of their lively appreciation of my support in this matter.

It may be of minor interest to record that Mr. Raymond Wong, Secretary of the Chinese Legation at Berne, at one of the early meetings of the Conference requested permission to attend the sessions as an unofficial observer. This permission was refused by the Egyptian Delegation but Mr. Wong continued to remain at Montreux throughout the course of the Conference with a view to obtaining information for his Government to be used presumably in connection with the desire of the Chinese Government to rid itself of extraterritorial jurisdiction.

The attitude of the Albanian Government regarding the question of its nationals appearing before the Mixed Courts appears in Document C.C.M. 7. A copy of the Albanian statement ³⁵ was sent to the American Delegation which merely acknowledged its receipt.

In connection with the attitude of the Powers toward the problems of the Conference, it is pertinent to mention here the problem raised

³⁴ For French text, see *Actes de la Conférence des capitulations, Montreux, 12 avril-8 mai 1937; Compte Rendu des Séances plénières de la Conférence et Procès-Verbal des Débats de la Commission Générale et de la Commission du Règlement d'Organisation Judiciaire*, p. 70.

³⁵ For French text, see *Actes de la Conférence*, p. 117.

by the Italian Delegation in styling in the final acts of the Conference the Chief of State of Italy as "King of Italy, Emperor of Ethiopia." This matter was discussed in the Delegation's telegram No. 2, May 7, noon, and in the Department's telegram of May 7, 6 p. m.³⁶ As reported in the Delegation's telegram, Mr. Politis, as Chairman of the Drafting and Coordination Committee, in the two final sessions of that Committee stressed the fact that the titles given to the various chiefs of state, delegates, et cetera, by each delegation engaged only the responsibility of the delegations concerned and in no way involved the responsibility of the other delegations. A verbatim report of Mr. Politis' remarks in the meetings of May 5 and May 6, is quoted below ³⁷ (C. C. M./C. G./P. V. 8, pp. 2-3 and C. C. M./C. G. /P. V. 9, pp. 4-5)

"The Chairman stated that he had a general observation to make regarding the Preamble with which the text of the Convention opened, and he asked each delegation to take note of it. In that preamble, in accordance with custom, a list was given of the Heads of the States which had taken part in the negotiations, and afterwards of the delegates whom the Governments concerned had sent to the Conference. The titles and qualifications of the Heads of State, Plenipotentiaries, deputy-delegates and experts were given therein according to the information which had been supplied by each delegation, in so far as it was concerned, and for which it alone assumed responsibility. In order to avoid any possible mistake on the part of the Secretariat, each delegation was requested carefully to review the entries concerning it, with a view to making certain whether they were in order and, in the event of there being any omission or error, to bringing the latter to the notice of the Secretary-General of the Conference."³⁷

"The Chairman had two observations to make.

"The first was that each delegation was its own judge of the number of persons it wished to name in the document. Some delegations were very numerous. If they wished to mention all their members, they were entitled to do so. If they wished to mention only a few of the members of the delegation other than the Plenipotentiaries, they were equally entitled to do so. The Chairman said that because the Secretariat could not itself undertake to choose between the persons whose names appeared in the list of delegations, each delegation would therefore say what names it wished to appear at the head of the Final Act. Furthermore, the same observation applied in regard to the names of the members of delegations given at the head of the Act which the Committee had approved yesterday, namely, the Convention concerning the Abolition of Capitulations.

"The President's second observation was that the titles and qualifications which would be given in respect of the authorities mentioned would be those which each delegation indicated solely on its own responsibility. Each delegation was accordingly asked to supply the Secretariat as soon as possible with a list of the persons whose names were to appear in that document with their titles and qualifications.

³⁶ Neither printed.

³⁷ For French texts, see *Actes de la Conférence*, pp. 129, 137.

The Chairman added that after the previous meeting, various delegations had asked him what meaning should be attached to the expressions which he had used and which he had just repeated to the effect that each delegation assumed the sole responsibility for the information it supplied to the Secretariat. The reply was very simple. It was self-evident. It was that the other delegations assumed no responsibility in that matter."

As I reported in the telegram referred to above, the issue of the title of King of Italy was not raised by any delegation and Mr. Politis' statements were tacitly accepted as a proper exposition of the situation. In this connection it is of interest to record that the Italian Delegation would itself have been greatly embarrassed if any one had raised the issue, for presumably the Italian Delegation then would have had to consider whether, by signing an international instrument with representatives of the Spanish Republic, Italy was according recognition to a Spanish government other than that of General Franco. Happily neither question was brought up in public discussion, and I think I am correct in assuming that the signature of the Convention, wherein the King of Italy is also described as "Emperor of Ethiopia", has absolutely no relation to the question of the recognition of Italian sovereignty over Ethiopia.

V. Results of the Conference:

As a result of the Conference the Capitulatory Powers agreed by the Convention signed on May 8, 1937,^{37a} to surrender their Capitulatory Rights in Egypt. Accordingly, upon the entrance into effect of the Convention all foreigners in Egypt, including American citizens (upon the ratification of the Convention by the United States) will be subject to Egyptian laws including criminal, civil, commercial and fiscal matters. It was generally recognized, however, that a régime such as the Capitulations, which had existed for centuries, could not be abruptly terminated without difficulty and hardship to all concerned. Provision was therefore made for a transitional period of twelve years during which foreigners, as defined in the Convention, will be subject, not to the Egyptian national tribunals, but to the Mixed Courts.

The Mixed Courts will therefore continue, as in the past, to try civil suits between foreigners of different nationalities and between foreigners and Egyptian nationals. In addition these courts will take over the jurisdiction now exercised by the foreign consular courts—namely, civil suits between foreigners of the same nationality and all penal matters involving foreigners. Provision is made, however, for the retention during the transitional period, if the Governments concerned so desire, of jurisdiction in personal status matters by the foreign consular courts.

^{37a}Department of State Treaty Series No. 939, or 53 Stat. 1645.

The Convention contains an important provision that Egyptian legislation, during the transitional period, will not discriminate, especially in fiscal matters, against foreigners, including foreign corporations and Egyptian corporations with substantial foreign interests. In a separate declaration the Egyptian Government announced its willingness to conclude treaties of establishment and friendship with all of the ex-Capitulatory Powers.

In an exchange of letters, annexed to the Convention, the Egyptian Government assured the American, British, French, Italian, Greek, Netherlands and Spanish Delegations, that all educational, medical and charitable institutions depending upon the Government of the aforementioned Powers, might continue freely to carry on their activities in Egypt. Furthermore, assurance was given that freedom of worship would continue to be accorded to these institutions. The original of the note addressed to me regarding these matters is enclosed herewith.³⁸

Other guarantees embodied in the Convention or in the revised Charter of the Mixed Courts annexed thereto include the right of foreigners under arrest to communicate with their consul and their lawyer, the provision that domiciliary visits of foreigners should be made only by the judicial police, and that the Procurator General (who is to be a foreigner) shall be consulted with respect to executions and pardons.

I am happy to report that the guarantees obtained afford, in my opinion, ample protection for American interests in Egypt and that the Acts of the Conference include not only all of the important points covered in the Department's above-mentioned instruction but also guarantees on numerous other matters which had not been considered absolutely essential for the safeguarding of American nationals and interests in Egypt. These guarantees are contained in the following documents, copies of which are attached hereto.³⁹

1. Multilateral Convention
2. Revised Mixed Court Charter (Règlement d'Organisation Judiciaire)
3. Protocol
4. Declaration of the Egyptian Government
5. Exchanges of Letters.

All of these documents except the Mixed Court Charter appear in both English and French in the enclosed pamphlets. An English translation of the Mixed Court Charter, as prepared by the official translators, is also enclosed.⁴⁰ Important interpretative comments on these documents are contained in the report of the Drafting and

³⁸ Department of State Treaty Series No. 939, p. 69, or 53 Stat. 1705.

³⁹ For texts of documents listed, see Department of State Treaty Series No. 939.

⁴⁰ For an English translation, see Department of State Treaty Series No. 939, p. 36.

Coordination Committee, a copy of which is likewise enclosed.⁴¹ One copy each of the Mixed Code of Criminal Procedure and of the Penal Code are also enclosed.⁴² The documents are also discussed in detail from the American viewpoint in the accompanying memorandum.^{42a} A complete set of the documents of the Conference in mimeographed form, including original proposals, amendments, minutes, et cetera, is being forwarded to the Department under separate cover.

VI. *Conclusion*

In conclusion, I should like to report that in accordance with the Department's instructions I handed to the Egyptian Delegation on May 8th a note based on Enclosures B, C, and D of the instruction of March 30, 1937. A copy of the note is enclosed herewith. I did not ask the Egyptian Delegation to acknowledge this note since it was a unilateral declaration on the part of the United States, and I feared furthermore that if the Egyptian Delegation were requested to acknowledge the note it might ask for certain alterations therein.

I invite the Department's attention to the provisions of Article 9 of the Convention under which the Contracting Parties are given the option of retaining Consular Courts for the purposes of personal status jurisdiction. From the information that was obtained from the various delegations at Montreux it is my opinion that the majority of the Powers will continue to retain this jurisdiction at least for the first few years. The British Delegation stated definitely that it would retain such jurisdiction for the early period of the transitional period. After the Department has had an opportunity to consider the matter I suggest that appropriate instructions be sent to the Legation at Cairo in order that the Egyptian Government may be informed of the intentions of the United States in this respect prior to the opening of the Mixed Courts on October 15, 1937.

I also invite the Department's attention to the provisions of the final paragraph of the Note addressed to me on May 8, 1937,⁴³ by the Egyptian Delegation, concerning guarantees for American institutions in Egypt. That paragraph provides that a list of such institutions shall be drawn up in consultation between the American and Egyptian Governments as soon as possible. I assume that the Department will wish in due course to take up this matter through the Legation at Cairo.

Very respectfully yours,

BERT FISH

⁴¹ Not reprinted.

⁴² Neither reprinted.

^{42a} Not printed.

⁴³ For text, see Department of State Treaty Series No. 939, p. 69, or 53 Stat. 1705.

[Enclosure]

*The Chairman of the American Delegation (Fish) to the President
of the Council of Ministers of Egypt (Nahas)*

MONTREUX, May 8, 1937.

EXCELLENCY: I have the honor to inform you that I have been authorized by my Government to give you the following assurances respecting the exercise of the capitulatory rights enjoyed by the United States in Egypt:

1. The Government of the United States declares that pending ratification on its part of the Convention signed this day, it will refrain from exercising its right to object to the taxation by the Egyptian Government of American nationals and corporations in Egypt, provided such taxes shall not be different or higher than those that are exacted of and paid by Egyptian nationals and corporations, and provided further that such taxes shall be applicable to all foreigners and foreign corporations on the basis of absolute equality.

2. The Government of the United States declares that pending ratification on its part of the Convention signed this day, it will refrain from exercising its right to object to domiciliary visits of its nationals in Egypt by agents of the Egyptian Government provided such agents shall be members of the Egyptian judicial police and provided such visits shall take place under the conditions set forth in Article 47 of the amended Statute of the Courts (the text of which is annexed to the Convention signed this day), and provided further that all other foreigners in Egypt without exception shall be subject to such domiciliary visits.

3. The Government of the United States declares that pending the ratification on its part of the Convention signed this day it will suspend the extraterritorial jurisdiction of its consular and diplomatic officers in Egypt over American nationals and corporations to the same extent that, and at the same time and under the same conditions as, the other Capitulatory Powers agree to abridge or suspend the extraterritorial jurisdiction in Egypt of their consular and diplomatic officers over their nationals and corporations.

4. The Government of the United States declares that it will raise no objection to the abrogation of the Khedivial Decree of January 31, 1889, and the Law of November 11, 1911, conferring certain legislative powers on the General Assembly by the Mixed Court of Appeals and the Legislative Assembly of that body, to the extent that, and at the same time as, similar abrogation is agreed upon by the other Capitulatory Powers.

Accept [etc.]

[File copy not signed]
*President of the Delegation
of the United States of America*

783.003/270a

The Secretary of State to the Minister in Egypt (Fish)

No. 238

WASHINGTON, July 3, 1937.

SIR: There is enclosed for the Legation's files a copy of your despatch of May 12, 1937, containing a report of the activities of the Capitulations Conference which met at Montreux, Switzerland, between April 12 and May 8, 1937, as well as of your own activities at that Conference in the capacity of American Delegate.

The Department has been gratified to observe that the Delegation was successful in obtaining, in accordance with its instructions, the guarantees which were regarded as essential to the safeguarding of American interests in Egypt. The Department is pleased to commend you and the Technical Advisers of the Delegation for the work accomplished in this respect.

It is noted from the concluding paragraphs of your despatch and from your comment under Article 11 of the Capitulations Convention that certain questions remain for consideration by this Government in connection with the instruments signed at Montreux. These include:

(1) The option left to the High Contracting Parties under Article 9 of the Convention with regard to the exercise by their respective Consular Courts of jurisdiction in matters of personal status;

(2) The redefinition in a Consular Convention of the immunities assured consular officers under Article 11 of the Convention. It is understood that the immunities which they possess at present "in respect of consular premises and in the matter of taxes, customs duties and other public dues" are granted them only until Consular Conventions are concluded and in any case during three years as from May 8, 1937;

(3) The drawing up, in agreement between this Government and the Royal Egyptian Government, of a list of the American educational, scientific, medical and charitable institutions referred to in the letter to you of May 8, 1937, from the President of the Egyptian Delegation, as entitled, during the life of the Capitulations Convention or until the conclusion of a subsequent agreement, to the free exercise of their activities subject to certain stipulated conditions.

The Department is giving careful consideration to the question of the continued exercise after October 15, 1937, of the right given it under Article 9 of the Capitulations Convention to retain American Consular Courts in Egypt for the purposes of jurisdiction in matters of personal status, and the eventual negotiation of a Consular Convention⁴⁴ and of a Treaty of Establishment. It is desired that you

⁴⁴ See pp. 665 ff.

communicate at an early date an expression of your views on these subjects, together with information concerning the intentions in respect of them of the other interested Powers so far as it may be possible for you to ascertain them from your colleagues. It may be added for your information that consideration is likewise being given to the negotiation shortly of an Extradition Treaty with Egypt.⁴⁵

With regard to the final paragraph of the letter of May 8, 1937, addressed to you by the President of the Egyptian Delegation, the Department desires that you enter into early discussions with the Egyptian Minister of Foreign Affairs looking to the preparation of the contemplated list of American institutions in Egypt. You will, of course, understand that the list must receive the Department's final approval before it may be considered definitive. In order that this list may be as inclusive as possible it is suggested that you may wish to consult not only with the American Consul General in Alexandria with that in view but also with the American representative on the Egypt Inter-Mission Council, American archaeologists resident in Egypt, as well as with representatives of the American Mission, the American University at Cairo, the Rockefeller Foundation, and any other American educational, scientific, medical and charitable institutions established in Egypt.

Very truly yours,

For the Secretary of State:
SUMNER WELLES

783.003/272 : Telegram

The Minister in Egypt (Fish) to the Secretary of State

ALEXANDRIA, July 21, 1937—7 p. m.
[Received July 22—5:39 a. m.]

59. Egyptian Parliament approved ratifications of the Montreux Convention last night.

FISH

783.003/299

The Minister in Egypt (Fish) to the Secretary of State

No. 1072

BULKELEY, RAMLEH, September 10, 1937.
[Received October 9.]

SIR: I have the honor to refer to the Legation's despatch no. 1055 of August 18, 1937⁴⁶ regarding the Montreux Capitulations Convention,

⁴⁵ See pp. 672 ff.

⁴⁶ Not printed.

in which it was stated that a list of the American educational, medical and charitable institutions in Egypt was being prepared by the Legation in accordance with the letter dated May 8, 1937 from the President of the Egyptian Delegation to the President of the American Delegation at Montreux. The Legation has now completed the draft of a tentative list, which is included in the enclosed *Aide-Mémoire*. This list has been compiled from information submitted by the three American consular officers in Egypt, supplemented by information obtained from prominent American scientific and educational leaders.

The list has not been submitted to the Foreign Office, nor has any discussion with the Foreign Office taken place regarding the details of the list or of any specific institutions to be contained therein. However, on the occasion of my visit to the Acting Minister of Foreign Affairs yesterday I discussed the question in general. The Acting Minister of Foreign Affairs (Makram Ebeid Pasha) stated that no definitive list had yet been filed by any Signatory Power to the Montreux Convention, and in answer to a question from me, he said that he perceived no reason why the lists must be filed immediately, and that it was not necessary that they be filed before October 15th.

It will be observed that in the list given in the enclosed *Aide-Mémoire* a total of forty-five educational institutions are specifically mentioned. A paragraph is added stating that there are 139 schools maintained by the Evangelical Synod of the Nile under the supervision of the American Mission in Egypt. The inclusion of these synodical schools has been discussed at length by the Legation with the leaders of the American Mission in Egypt. The Evangelical Synod of the Nile is an entirely Egyptian organization. It is the governing body of the Protestant Egyptian churches in Egypt, and although these churches have been developed as a result of and under the aegis of the American Mission in Egypt, they are entirely self-sustaining and legally independent. The synodical schools are maintained by the various Egyptian Protestant churches throughout the country. The leaders of the American Mission in Egypt have informed the Legation that while the American Mission does not at present give any financial aid to the schools, there are numerous ways by which it contributes directly and indirectly to their organization and administration. For convenience of the administration of these schools, Egypt is divided into four regions, in each of which there is a school committee, the Chairman of which is an American. The committee inspects the schools and advises the teachers. There is a national school committee, composed of the Chairman of each of the four regional committees and one Egyptian from each region. The Chairman of the Committee is an American inspector of synodical

schools for all Egypt. The national committee is therefore composed of five Americans and four Egyptians. The Chairman is elected by the Synod of the Nile, an Egyptian organization. The Chairman (now Dr. A. A. Thompson) gives practically his full time to inspecting and visiting the schools, but he is the only American who gives his full time to the schools, and his salary is the only direct financial assistance which the schools obtain from the United States.

The Mission leaders appear to be somewhat uncertain regarding whether they should support strongly the inclusion of the synodical schools. The principal reasons why the Mission has submitted the names of these schools are: (1) the Mission leaders desire to impress upon their Egyptian followers that the Mission is not neglecting the schools; and, (2) the Mission leaders have some fears that if the synodical schools are not included as American institutions under the Montreux Convention, they may soon be legislated out of existence as a result of the Egyptian Government's effort to enforce compulsory government school attendance in the provinces and to take children away from the private institutions. The Mission leaders claim that the religious and cultural rights of the Christian minorities are not sufficiently respected in the government schools, where the study of the Koran requires a large percentage of the time of Christian and Moslem students alike.

On the other hand, the American Mission authorities desire to encourage the independence and self-support of their Protestant protégés in Egypt. Furthermore, the Mission authorities are considerably more interested in their own directly controlled schools than in these synodical schools, and have requested that no action be taken which might in any way jeopardize the inclusion of the regular Mission schools on the list of American institutions.

In view of the above considerations, the Legation is inclined to the opinion that the list of American institutions should not be discussed with the Egyptian Foreign Office until some of the other major powers, particularly France, has settled with Egypt the question of what type of institutions are to be included. Should the Egyptians take a strong position and insist that only purely foreign institutions be included, the Legation would recommend that no mention of the synodical schools be made.

Even if it should appear likely that the Egyptian Government might accept the synodical schools as American institutions, there is the question concerning whether it would be desirable for the American Government to assume sponsorship for them. In a letter to the Legation dated August 28, 1937, the secretary of the American Mission in Egypt submitted the list of the synodical schools with the following statement:

"I am sending a list of the schools conducted by the Synod of the Nile. The Mission has received an official request from the Synod that we present this list to you along with the American Mission list and request you to present it to the Government along with ours for recognition as affiliated with the Mission. You will recall our conversation on the subject. If you find it possible to do so, I am sure that both the Mission and the Synod will be very grateful."

The situation seems to be as follows: The Synod of the Nile, an Egyptian association, has requested the American Mission in Egypt to present the list of synodical schools to the Legation with a request that it be included in the list of American institutions to be submitted to the Egyptian Government. The Mission adds that it will be very grateful if the Legation finds it possible to include the synodical schools. Should the Department consider that the synodical schools should not be classed as American institutions even though the Egyptian Government might be disposed to accept them as such, the Legation will appreciate instructions from the Department to this effect. It is thought, however, that the Department may possibly desire that a definite position be deferred until the type of institutions to be included in the lists of other Signatory Powers has been ascertained.

It will be observed in the enclosed *Aide-Mémoire* that following the lists of educational, medical, and charitable institutions, there is added a list of the six American religious organizations existing in Egypt. This additional list has been included in accordance with the Legation's understanding of the practice being followed by the British Embassy in drawing up its list. Although no list of religious institutions as such is specifically provided for in the letter annex to the Montreux Convention, the tentative lists submitted by the French and Greek Delegations at Montreux included churches and other purely religious institutions. Most of the foreign religious organizations in Egypt support subsidiary educational, medical or charitable institutions, and their inclusion in a separate list by the various Foreign Powers is merely in an effort to safeguard the purely religious as well as the educational, medical and charitable activities of these organizations.

Respectfully yours,

BERT FISH

[Enclosure]

Draft of Aide-Mémoire Regarding American Educational, Scientific, Medical, and Charitable Institutions Existing in Egypt on May 8, 1937

SEPTEMBER 3, 1937.

In a letter dated May 8, 1937, from the President of the Egyptian Delegation at the Montreux Capitulations Conference to the Presi-

dent of the Delegation of the United States of America, and included as an Annex to the Montreux Capitulations Convention, the President of the Egyptian Delegation stated that the Royal Egyptian Government was prepared to assure the President of the American Delegation that pending the conclusion of a subsequent agreement, or in any case until the end of the transitional period, all of the American educational, medical and charitable institutions (associations or foundations) of the United States of America in Egypt actually existing in Egypt on May 8, 1937, might continue freely to carry on their activities in Egypt, whether educational, scientific, medical or charitable, subject to certain conditions. The letter added that a list of the institutions referred to therein should be drawn up as soon as possible in an agreement between the Egyptian Government and the Government of the United States of America.

Following is a list of the American educational, medical and charitable institutions existing in Egypt on May 8, 1937.

EDUCATIONAL (Total 45)

1. "Harvard-Boston Expedition," Harvard Camp, Pyramids P. O., Cairo. (Archaeological.)
2. "University of Chicago Expedition," Chicago House, Luxor. (Archaeological.)
3. "Metropolitan Museum of Art Expedition," Luxor. (Archaeological.)
4. "Mt. St. Katherine Observatory," (of the Smithsonian Institute, Washington, D. C.) Gebel El-Tor, Egypt. (Astronomical.)

The following thirty-nine schools are maintained by the "American Mission in Egypt":

Secondary

5. Assiut College for Boys.
6. Assiut College for Girls. (P. M. I.)
7. Ezbekia—Cairo, Boys.
8. American College for Girls, Cairo.
9. Tanta Girls College.
10. Ezbekia—Cairo, Girls.

Sub-secondary

11. Luxor Girls.
12. Fayoum Girls.
13. Alexandria Girls.
14. Zagazig Girls.

Primary

15. Luxor Boys.
16. Beni Suef Girls.
17. Benha Girls.

18. Mansura Girls.
19. Alexandria Boys.
20. Minet el Gamh.
21. Estanha.
22. Mehella Kubra.
23. Dessouk.
24. Sombat.
25. Birket es Saba.
26. Mit Yaish.
27. Benha Boys.
28. Mansura Boys.
29. Karmuz, Alexandria, Girls.
30. Sheblanga.
31. Zagazig.
32. Kafr Sheikh.
33. Tamia.

Sub-primary

34. Ashment.
35. Abshawai.
36. Simbellawein, Girls.
37. Zerbe.
38. Luxor Village, Girls.
39. Abbassia Orphanage, Cairo, Girls.

Special Schools

40. Alexandria Commercial.
41. Experimental Village School, Edmu.
42. Bible Women's Training School, Tanta.
43. Schutz School for Missionary Children, Alexandria.

The following school is maintained by the "Pentacost Faith Mission in Egypt":

44. The Pentacostal Church and American School, 192 Sharia el Teraa El Bulakia, Shubra, Cairo.

The following school is maintained by the "Peniel American Mission":

45. Primary School for Girls, Rue Kitchener, Port Said, Egypt.

In addition there are 139 schools maintained by the Evangelical Synod of the Nile under the supervision of the "American Mission in Egypt."

MEDICAL (Total 4)

1. "Rockefeller Foundation," Ministry of Public Health, Cairo.

The following medical institutions are maintained by the "American Mission in Egypt":

2. Assiut Hospital.
3. Tanta Hospital.
4. Husseineya Welfare Center, Cairo.

CHARITABLE (Total 9)

The following charitable institutions are maintained by the "American Mission in Egypt":

1. Assiut Orphanage, Assiut.
2. Fowler Orphanage for Girls, Abbassia, Cairo.
3. Community Center, Benha.
4. Community Center, Beni Suef.
5. Community Center, Mansura.
6. Community Center, Tanta.

Additional American charitable institutions are:

7. Near East Relief Circle, care of Victoria Hotel, Cairo.
8. Y. M. C. A. in Egypt, 60 Sharia Ibrahim Pasha, Cairo.
9. Pentacostal Faith Mission Orphanage, Bulkeley, Ramleh, Alexandria.

In the letter of the President of the Egyptian Delegation above referred to, it is stated that, "Within the limits of the customs recognized in Egypt regarding religions other than the State religion, freedom of worship shall continue to be assured to all religious institutions of the United States of America on condition that there is no offence against public order or morals."

RELIGIOUS (Total 6)

The American religious institutions existing in Egypt are as follows:

<i>Name of Institution</i>	<i>Address of Headquarters</i>
1. "The American Mission in Egypt," ...	Ezbekia, Cairo.
2. "The Pentacost Faith Mission,"	192 Sharia el Teraa el Bulakia, Shubra, Cairo.
3. "The Apostolic Church of God,"	49 Sharia el Teraa el Bulakia, Shubra, Cairo.
4. "Egyptian Mission of the Arabic Union of Seventh-day Adventists,"	Mataria, Cairo.
5. "The American Church,"	Ezbekia, Cairo.
6. "The Church of God Mission,"	1 Naucratis Street, Camp de Cesar, Alexandria.

783.003/297 : Telegram

The Chargé in Egypt (Allen) to the Secretary of State

ALEXANDRIA, October 5, 1937—11 a. m.

[Received October 5—8:55 a. m.]

77. Department's telegram No. 64, September 24 [25], 2 p. m.⁴⁷
Ratifications have been deposited by Egypt, Belgium, Greece, Italy

⁴⁷ Not printed.

and Sweden. British ratification en route. No other ratifications expected before October 15. The Egyptian Government has recently requested France to give an undertaking "similar to that of the United States" to suspend consular jurisdiction on October 15th. No reply yet received from Paris.

There seems little reason to believe that any signatory power will fail to ratify within 2 or 3 months. Norway alone is reported to be considering relinquishing personal status jurisdiction.

ALLEN

788.003/298 : Telegram

The Chargé in Egypt (Allen) to the Secretary of State

ALEXANDRIA, October 11, 1937—1 p. m.

[Received October 11—8:15 a. m.]

80. Legation's No. 77, October 5, 11 a. m. Ratification of Denmark has now arrived. The Ministry of Justice said to me informally last night that the Egyptian Government hoped that the American Government would suspend its Consular Courts in Egypt on October 15th in spite of the fact that some countries would not have ratified by that time.

ALLEN

788.003/299a : Telegram

The Secretary of State to the Minister in Egypt (Fish)

WASHINGTON, October 11, 1937—6 p. m.

68. The President signed on October 9 a proclamation⁴⁸ suspending "effective October 15, 1937, during the pleasure of the President, the judicial functions now exercised by the minister, consuls or other functionaries of the United States in Egypt, except as to cases actually commenced before October 15, 1937, and except as to matters involving the personal status of citizens of the United States as defined in articles 28 of the Règlement d'organisation judiciaire" annexed to the Montreux Convention of May 8, 1937.

Please bring this action formally to the attention of the appropriate Egyptian authorities, referring in this connection to the assurances furnished to the President of the Egyptian Delegation on May 8, 1937, by the American Delegate to the Montreux Conference, and also invite attention to the fact that under the terms of the President's proclamation American consular officers in Egypt will retain jurisdiction in matters involving the personal status of American citizens.

Please inform consuls.

HULL

⁴⁸ 53 Stat. 1729.

783.003/299

The Secretary of State to the Chargé in Egypt (Morris)

No. 265

WASHINGTON, October 25, 1937.

SIR: The Department has received the Legation's despatch No. 1072 of September 10, 1937, submitting for the Department's consideration a list of the American institutions which may be entitled to the free exercise of their activities in Egypt. This list is conformable with the terms of the letter of May 8, 1937, addressed to the American Delegate to the Capitulations Conference by the President of the Egyptian Delegation.

The Department has noted your observations in respect of the Evangelical Synod of the Nile and particularly the statement that the Synod is an entirely Egyptian organization and legally independent of the American Mission in Egypt. In view of these considerations it is not apparent that the schools of the Evangelical Synod of the Nile may properly be considered as within the purview of the assurances of the President of the Egyptian Delegation at Montreux relating to "the educational, medical and charitable institutions (associations and foundations) of the United States of America in Egypt." For this reason, as well as for others, the Department is not disposed to raise with the Egyptian Government the question of the inclusion of such schools in the list under consideration.

It is believed that it would be, on the whole, desirable to defer the drawing up of a definitive list of American institutions for the purposes of the letter of May 8, 1937, of the President of the Egyptian Delegation, until other Powers, including in particular France and Great Britain, have reached agreement with the Egyptian Government concerning the lists of their respective institutions. Accordingly, the Department desires that you take no action in respect of the drawing up of a final list of American institutions in agreement with the Egyptian Government until the lists of those Governments have been completed. In the event you may be approached on the subject by the Foreign Office you may state that a tentative list may be furnished the Egyptian Government under reservation of the right of this Government to revise it pending the framing of a final and definitive list. Should the Egyptian Government express a desire for the submittal of such a tentative list you are authorized to present the list enclosed in your despatch under acknowledgment with the omission of any reference to the schools maintained by the Evangelical Synod of the Nile and with an explicit indication of the list as a wholly tentative one.

You will, of course, keep the Department currently informed of the progress made by the other interested Powers in the compilation

of the lists of their institutions in Egypt so far as such information may come to your knowledge, including, in particular, the lists finally agreed upon with the Egyptian Government.

Very truly yours,

For the Secretary of State:
HUGH R. WILSON

CONSIDERATION OF ADVISABILITY OF PROPOSING THE NEGOTIATION OF A CONSULAR CONVENTION BETWEEN THE UNITED STATES AND EGYPT

711.8321/11a

The Secretary of State to the Minister in Egypt (Fish)

No. 260

WASHINGTON, October 11, 1937.

SIR: You will recall that Article XI of the Convention Regarding the Abolition of the Capitulations in Egypt signed May 8, 1937,⁴⁹ looks forward to the eventual negotiation of a consular convention between the United States and Egypt. While existing immunities in respect of consular premises, taxes and duties are guaranteed by the final paragraph of that article during a period of three years as from May 8, 1937, it seems appropriate to give consideration now to the draft of such a convention.

The Department has not definitely decided whether to propose negotiations in the near future or to await the outcome of negotiations for consular conventions between Egypt and Great Britain, France, Italy, Greece and Belgium. The Department invites your comment on this point.

You are requested to ascertain discreetly the intentions of the most interested powers in connection with the negotiation of consular conventions with Egypt. Four copies of a draft consular convention⁵⁰ are herewith enclosed. It is believed that you will wish to submit one copy each to the Consulates at Cairo, Alexandria and Port Said for study and comment. The draft is identical with drafts recently proposed by the United States to several other countries and is based upon the consular provisions of the Treaty of Friendship, Commerce and Consular Rights between the United States and Norway, signed June 5, 1928 (Treaty Series No. 852).⁵¹ Four copies of this treaty are enclosed.

The differences between the enclosed draft and the treaty with Norway are largely the result of rearrangement and editing, but two variations from the treaty with Norway are especially worthy of note.

⁴⁹ See pp. 615 ff.; for text of convention signed at Montreux, see Department of State Treaty Series No. 939, or 53 Stat. 1645.

⁵⁰ Not printed.

⁵¹ *Foreign Relations*, 1928, vol. III, p. 646.

Article III of the draft treaty, which corresponds to Article XVIII of the treaty with Norway, does not contain the phrase "levied upon their person or upon their property" which appears in the Norwegian treaty. Since this phrase has been interpreted by the Treasury Department so as to prevent the exemption from the payment of taxes including excise taxes on liquor imported by foreign consular officers, it is necessary to avoid its use in order to accord the full exemption which is desired.

Article III of the draft treaty, which corresponds to Article XVIII and IV of the draft. This is to give effect to the Department's desire to obtain exemption from taxation and free entry privileges for such officers of this Government as medical officers of the United States Public Health Service, and representatives of the Department of Labor who are occasionally assigned to American consulates to assist in carrying on regular consular functions. The exemption which the Department seeks for such officers would, of course, be accorded to the corresponding officers of foreign governments.

Very truly yours,

For the Secretary of State:
HUGH R. WILSON

711.8321/12

The Chargé in Egypt (Morris) to the Chief of the Division of Near Eastern Affairs (Murray)

ALEXANDRIA, December 8, 1937.
[Received January 4, 1938.]

DEAR WALLACE: I am preparing an answer to the Department's instruction no. 260 of October 11 relative to the question of negotiating a consular convention between the United States and Egypt. I expect to forward it to you in the next pouch. In the meanwhile I enclose a memorandum prepared by Allen of his conversation with Bedaoui Pasha.⁵²

Allen had prepared this as an enclosure to a despatch in answer to the instruction above cited. As the instruction did not contemplate a discussion of this nature I considered it more discreet to send it to you informally. It certainly is an interesting discussion and I am sure you will find it helpful. The last paragraph is of course the most important. I have examined the text of the convention carefully and I think Bedaoui Pasha is right in his contention that Article 11 does not bind Egypt to conclude consular conventions.

After the receipt of my despatch, if you should conclude that the Legation ought to propose the negotiation of a convention, your in-

⁵² An official in the Egyptian State Legal Department.

struction will no doubt furnish guidance as to whether the formal proposal should hinge upon Article 11 or whether it should be without any reference to the convention. From what I understand Bedaoui Pasha is the one person who can make or mar the negotiations. Therefore if we can approach him in the manner that he likes we would apparently get off to a better start. Even though the Department may hold an opinion contrary to Bedaoui's respecting Egypt's obligation under Article 11, might we not still propose the negotiation of a convention without referring formally to Article 11, and then if later on obstacles arose which might require the citation of Article 11, could it not be invoked then?

Yours sincerely,

LELAND MORRIS

[Enclosure]

Memorandum by the Third Secretary of Legation in Egypt (Allen)

At my interview today with Bedaoui Pasha regarding the Extradition Treaty (file no. 200), I mentioned the subject of a consular convention, and said that although the Legation had not been instructed to institute negotiations looking to the conclusion of such a convention, I would like informally to inquire whether any other power had broached the subject with Egypt. He said that no country had yet approached the Government in the matter, although he supposed such negotiations might be requested soon.

I said that M. Garreau, one of the French delegates at Montreux, was of the opinion that an understanding had been reached at Montreux by which Egypt would institute the negotiations with the various powers regarding consular treaties, in order to prevent Egypt's being overwhelmed by too many negotiations at once. Bedaoui said that he was not aware of any such understanding, and that furthermore Egypt might find that it was not interested in negotiating any new consular treaties. He said that since Egypt is a country where large numbers of foreigners reside and since there are relatively few Egyptian colonies abroad, foreign consular establishments in Egypt are in general much larger than Egyptian consular establishments abroad. On a basis of reciprocal treatment for consular officers therefore, Egypt would generally lose. For this reason Egypt might not be willing to agree even to strict reciprocity in fiscal matters regarding consuls. He said that the second paragraph of Article 11 of the Montreux Convention constituted itself the essentials of a consular treaty, and that nothing further was absolutely needed.

I asked whether he interpreted the third paragraph of Article 11 as obligating Egypt, at least morally, to enter into negotiations within three years with any of the former Capitulatory Powers that might

request consideration of a consular treaty. Bedaoui Pasha replied vehemently, "Not in the least. Article 11 does not obligate us to consider any request for the negotiation of a consular treaty if we do not find it in our interest to do so. The three-years provision of Article 11 applies only to fiscal matters, and at the end of three years all consular fiscal privileges will cease definitely unless a bilateral consular convention shall have been concluded in the meantime. We will have to examine each case carefully to determine whether it would be in our interest to conclude bilateral consular conventions, and if we do not find such to be the case, we shall not be interested in negotiating consular conventions".

To this I replied, in all good humor, "Do you mean to say, Sir, that if one of the signatory powers to the Montreux Convention should approach you tomorrow with a request to negotiate a consular convention, you might reply that you were not interested in such negotiations?"

"Exactly", said Bedaoui Pasha. "I do not mean to say that our refusal would be as abrupt as that, but we did not bind ourselves at Montreux either technically or morally to entertain consular convention negotiations with anybody."

I said that while Article 11 did not expressly provide that Egypt undertook to entertain such negotiations, I believed that it was generally interpreted among the Diplomatic Corps in Cairo to imply that Egypt was willing to negotiate consular conventions and expected in general to do so within three years unless, of course, a basis of agreement could not be reached.

Bedaoui Pasha replied that the Montreux Convention did not imply any obligations on Egypt that were not expressly stated in the wording of that Convention.

I asked, then, whether, placing all considerations of the Montreux Convention aside, he did not think Egypt might be assuming considerable responsibility under international practice if it should flatly refuse to negotiate a consular convention with a friendly power. I suggested that in the case of any two members of the family of nations, taking England and Norway for example, if one of the powers should approach the other with a request for the negotiation of a consular convention and the power approached should flatly refuse, even to discuss the subject, the latter country would doubtlessly feel called upon to justify its refusal.

Bedaoui Pasha said, "Ah, but that is an entirely different matter. If any Power should approach Egypt on a basis of entire equality and express a desire to conclude a consular convention, without claiming that Egypt was bound to do so under the Montreux Convention, Egypt would be very pleased to undertake the negotiations."

GEORGE V. ALLEN

711.8321/13

The Chargé in Egypt (Morris) to the Secretary of State

No. 1156

CAIRO, December 23, 1937.
[Received January 22, 1938.]

SIR: I have the honor to refer to instruction No. 260 dated October 11, 1937, relative to the Department's desire to give consideration to the draft of a consular convention between the United States and Egypt, and instructing the Legation to ascertain discreetly the intentions of the most interested powers in connection with the negotiation of consular conventions with Egypt.

The draft convention forwarded by the Department was submitted to the consular offices in Egypt and copies of the letters received from the Consulate at Port Said and the Consulate at Cairo containing the observations of the officers in charge at those posts are enclosed.⁵³ From the Consulate General at Alexandria there was received a lengthy comparative analysis of the draft convention made by Vice Consul Daniel Gaudin, Jr., who studied existing consular conventions between the United States and other countries and particularly the German and Norwegian conventions. A copy of Mr. Gaudin's memorandum is enclosed together with my own comments.⁵³

With respect to the intentions of the other most interested powers I have ascertained the following:

Mr. Besly, Legal Adviser to the British Embassy, told Secretary Gordon P. Merriam that the British Government has not taken any action and has not yet given thought to the subject. Some of Mr. Besly's thoughts and interpretations in respect to the negotiation of a consular convention with Egypt and the stipulations which it should contain are summarized in an extract from a memorandum⁵⁴ prepared by Mr. Merriam, a copy of which is enclosed with this despatch.

The First Secretary of the French Legation said that his Government is not taking any action at present looking towards the negotiation of a consular convention and it is not contemplating action in the near future.

An official at the Italian Legation said that the consular judge at Cairo was engaged in the study of the question. This study will be submitted to the Italian Minister at Cairo who will presumably forward it to the Foreign Office at Rome.

The Greek Chargé d'Affaires told me that when he left Athens early in October informal discussion had arisen at his Foreign Office where the responsible officials thought it would be advantageous to Greece to propose to Egypt to retain the personal status and privileges

⁵³ Neither printed.

⁵⁴ Not printed.

of consular officers just as heretofore on a basis of full reciprocity. The Greek Foreign Office officials were apparently going to set about to obtain the consent of their own Finance Department to this proposal but they were not at all certain that the Finance Department's cooperation could be counted upon. They hoped the consent of the Finance Department to this proposal might be obtained in view of the fact that Greece would benefit considerably by such an arrangement as there are decidedly more Greek consular officers in Egypt than there are Egyptian consular officers in Greece. The Greek Chargé d'Affaires expressed doubts of the acceptance of such a proposal by the Egyptian Government. In any case these discussions were informal and may come to nothing. Officially the Greek Legation has not taken any action and is not expecting any immediate instructions to do so.

The Department invites comment as to whether negotiations should be proposed in the near future or deferred to await the outcome of negotiations of other principal powers with Egypt. I am of the opinion that negotiations undertaken promptly have the best chance of being brought to a satisfactory conclusion. In principle it seems to me desirable to take advantage of the good feeling engendered by the conclusion of the Montreux Convention. This feeling exists at the present time in respect of the former Capitulatory Powers. The Egyptian officials who successfully negotiated the Montreux Convention have continued at the head of the Government. It is a reasonable assumption that they would be well disposed towards negotiations proposed by one of the powers which had shown such friendly disposition towards Egypt by giving consent to the termination of important rights and had thereby incidentally enhanced their personal prestige. If power should pass to the hands of other Egyptians who did not directly participate in the Montreux negotiations, their viewpoint might be entirely different. It is not unlikely that anything connected with or resulting from the activities of the Government which negotiated at Montreux might, as a matter of principle, be carped at and criticized by their successors, and ill founded but none the less active opposition might be encountered tending to defeat or at least to delay unreasonably the object of the negotiations for reasons of interior politics alone.

Furthermore, apart from the foregoing considerations, an important advantage might lie in the fact of being the first to propose negotiations. The Egyptian officials would more likely deal with the negotiations in a prompter and more elastic fashion than if already wearied and with the edge of their interest blunted by several similar previous contacts. Again, to await the outcome of other negotiations might risk the acceptance by other powers of less advantageous

conventional stipulations not of so much interest to them but, on the other hand, of greater concern to the United States.

If anything further is learned in the meanwhile as to the intentions of other powers in respect to the subject matter, the Department will be promptly informed thereof.

Respectfully yours,

LELAND B. MORRIS

711.8321/12

*The Chief of the Division of Near Eastern Affairs (Murray) to the
Chargé in Egypt (Morris)*

[WASHINGTON,] January 3, 1938.

DEAR LELAND: I have read with much interest your letter of December 8, 1937, enclosing a memorandum of a conversation between Mr. Allen and Bedaoui Pasha, of the Egyptian State Legal Department, concerning the negotiation of a consular convention between the United States and Egypt.

There is nothing to be found in the Acts of the Capitulations Conference (a copy of which is no doubt available to you) which would support the view that the Egyptian Government is under any obligation, under the terms of the Capitulations Convention, to negotiate consular conventions with interested Powers. Moreover, I agree with you that there is nothing in the specific provisions of Article 11 of the Convention which binds Egypt in that respect.

From the mention of consular conventions in Article 11 it may be reasonably concluded, however, that Egypt is not averse to the negotiation of consular conventions in conformity with international practice.

In view of Bedaoui Pasha's expressed attitude on the subject and in consideration of the natural susceptibilities of the Egyptian authorities generally to anything suggestive of a derogation of their sovereign rights, I see no reason why we should not approach the Egyptian Government in the matter of the negotiation of a consular convention, when the appropriate moment arrives, in the same manner in which we would approach any other government without any reference to the Capitulations Convention.

Meanwhile we shall be awaiting with interest the receipt of your formal views on the possible desirability of proposing at an early date the negotiation of such a convention.⁵⁵

Sincerely yours,

WALLACE MURRAY

⁵⁵ See despatch No. 1156, December 23, *supra*. Apparently no further action was taken regarding the proposed convention.

RENEWED PROPOSALS BY THE UNITED STATES REGARDING THE
NEGOTIATION OF AN EXTRADITION TREATY WITH EGYPT⁵⁸

283.11/43

The Secretary of State to the Minister in Egypt (Fish)

No. 243

WASHINGTON, July 27, 1937.

SIR: The Department refers to the following declaration made in the letter which you, as President of the Delegation of the United States of America at the Conference for the Revision of the Capitulatory Regime in Egypt, addressed on May 8, 1937, to His Excellency Moustapha El Nahas Pasha, President of the Council of Ministers of Egypt:

"The Government of the United States declares that pending the ratification on its part of the Convention signed this day it will suspend the extraterritorial jurisdiction of its consular and diplomatic officers in Egypt over American nationals and corporations to the same extent that, and at the same time and under the same conditions as, the other Capitulatory Powers agree to abridge or suspend the extraterritorial jurisdiction in Egypt of their consular and diplomatic officers over their nationals and corporations."⁵⁷

The Department assumes that in accordance with the quoted declaration the authority conferred upon American consular officers in extraterritorial countries by the Act of Congress of March 22, 1934,⁵⁸ to extradite to the United States fugitives from its justice will be suspended, insofar as Egypt is concerned, as of October 15, 1937. This being so, it becomes desirable to conclude an extradition treaty between the two countries at an early date, and therefore the Department desires you to institute negotiations to this end, using as a basis therefor the draft of such a treaty which was sent to your Legation in the Department's instruction of June 4, 1931.⁵⁹

The direction for the resumption of negotiations is predicated upon the assumption that you will share the Department's view that the following statement contained in Section 5 of the Declaration by the Royal Egyptian Government⁶⁰ made at the Conference mentioned does not require incorporation in the proposed treaty, and that no reference thereto need be made in the treaty, since the statement merely relates to a matter of procedure dealing with matters of extradition in Egypt involving a foreigner charged with being a fugitive from justice:

⁵⁸ For previous correspondence, see *Foreign Relations*, 1933, vol. II, pp. 841 ff.

⁵⁷ For text of letter, see p. 654.

⁵⁸ 48 Stat. 454.

⁵⁹ *Foreign Relations*, 1933, vol. II, p. 841.

⁶⁰ May 8, 1937; for text, see Department of State Treaty Series No. 939, p. 65, or 53 Stat. 1701.

"In conformity with the practice generally adopted in regard to extradition, the Royal Egyptian Government intends to adopt judicial procedure in this matter. It will therefore be necessary for the Mixed Tribunal to pronounce upon the regularity of the request for extradition when such request relates to a foreigner within the jurisdiction of the said Tribunal."

Should you be of the opinion that the quoted language of the Declaration should be incorporated in the treaty or referred to therein you will please so inform the Department before beginning negotiations, stating your grounds for such opinion.

Very truly yours,

For the Secretary of State:
R. WALTON MOORE

283.11/45

The Minister in Egypt (Fish) to the Secretary of State

No. 1066

BULKELEY, RAMLEH, August 31, 1937.
[Received September 24.]

SIR: I have the honor to acknowledge the receipt of the Department's instruction No. 243 of July 27, 1937, instructing the Legation to institute negotiations looking to the conclusion of an extradition treaty between the United States and Egypt, using as a basis therefor the draft treaty which was sent to the Legation by the Department on June 4, 1931.

There is enclosed herewith a copy of the Legation's Note to the Foreign Office, dated August 30, 1937, transmitting anew the draft treaty received in 1931 and expressing the hope that early consideration might be given to the conclusion of such a treaty.

The Legation will not fail to transmit to the Department any reply which may be received to this Note, and will endeavor to obtain an answer at an early date.

Respectfully yours,

BERT FISH

[Enclosure]

The American Minister (Fish) to the Egyptian Minister for Foreign Affairs (Boutros Ghali)

No. 428

BULKELEY, RAMLEH, August 30, 1937.

EXCELLENCY: I have the honor, acting under instructions from my Government, to transmit a draft of a comprehensive extradition treaty between the United States of America and the Royal Egyptian Government, to the conclusion of which it is hoped early consideration may be given.

Your Excellency's attention is invited to the fact that the enclosed draft is the same as that submitted to the Royal Ministry by this Legation in its Note No. 100, of June 27, 1931, at which time the Legation requested that consideration be given to the conclusion of an extradition treaty. The former negotiations were terminated in 1933. In view of the changed conditions now existing in Egypt, it is hoped that Your Excellency may concur in my Government's belief that the conclusion of an extradition treaty between the two countries at an early date becomes desirable.

I have [etc.]

BERT FISH

283.11/49

The Chargé in Egypt (Morris) to the Secretary of State

No. 1119

CAIRO, November 15, 1937.

[Received December 10.]

SIR: I have the honor to refer to the Legation's despatch no. 1075 of September 15, 1937,^a enclosing a translation of a note from the Foreign Office acknowledging the receipt of a draft copy of an extradition treaty which the United States hoped might be concluded with Egypt.

Last week Third Secretary Allen called at the Foreign Office to inquire regarding the status of the case. He was informed that the draft treaty had been referred to Bedaoui Pasha, the Legal Adviser to the President of the Council of Ministers. Mr. Allen asked whether it might be appropriate for him to call on Bedaoui Pasha in order to ascertain what consideration was being given to the treaty and how soon a reply might be expected. The Foreign Office thought that the negotiations might be hastened by such a visit and arranged an interview for Mr. Allen with Bedaoui Pasha.

There is enclosed herewith a memorandum of the conversation which took place at this interview.

Respectfully yours,

LELAND B. MORRIS

[Enclosure]

Memorandum by the Third Secretary of Legation (Allen)

CAIRO, November 10, 1937.

I called this evening, by appointment made through the Foreign Office, on Badaoui Pasha, Legal Adviser to the President of the Council of Ministers, to inquire regarding the draft extradition treaty, which had been submitted to the Egyptian Government on August

^a Not printed.

30, 1937. Badaoui Pasha said that the draft had been sent to his office to study several weeks ago, and apologized for the fact that his assistants had not referred the matter to him sooner. He said that he had just obtained the file, as a result of the Legation's request for an interview.

During our conversation, discussion was based largely on the five points raised by the Egyptian Government during the negotiations of 1931-1933 (Legation's despatch no. 604 of November 22, 1932⁶²). Badaoui Pasha stated that the first observation made by the Egyptian Government in 1932, regarding certain special provisions which might be necessary in the Treaty because of the capitulatory régime then in force could now be entirely disregarded and the Treaty negotiated without consideration of any limitations on Egyptian sovereignty.

In 1932 the Egyptian Government suggested that to include in the Treaty a list of extraditable crimes (Article 2) would be to risk incompleteness. Egypt preferred a general formula providing for extradition in case of crimes involving a year's imprisonment or more. Badaoui Pasha was inclined to believe that the Egyptian suggestion was still valid. I pointed out to him that although he would understand that I was not in a position to discuss the details of the Treaty and had called principally for the purpose of finding out the status of the case, I might say that in examining most of the recent extradition treaties the United States had negotiated, including one in 1932 [1931] with Great Britain,⁶³ I had observed that a list of extraditable crimes was usually included in the Treaty, and that experience must have proved that there was a valid reason therefor. I suggested that the criterion of a year's imprisonment might not be satisfactory due to the wide divergence of penalties in different countries, and that there was an obvious advantage to be gained from having all of our extradition treaties on the same general plan. I said that the United States had been one of the foremost countries interested in the matter of extradition, and that I would presume that uniformity in our treaties was desirable in order that advantage might be taken of the great body of judicial interpretations which had doubtlessly developed in the United States regarding the treaties already in force.

Badaoui Pasha said that he could appreciate the argument for uniformity, particularly as regards judicial interpretations. He said that in the only full extradition treaty which Egypt has yet attempted to negotiate, that with Palestine a few years ago, the formula of crimes involving one year's imprisonment had been decided upon, but he indicated that the Egyptian Government might be brought to appreciate the advantage of including a specific list of crimes in the Treaty with us.

⁶² Not printed.

⁶³ Signed at London, December 22, 1931, *Foreign Relations*, 1931, vol. II, p. 353.

(The Palestine Treaty was never ratified.)

In 1932 the Egyptian Government suggested that the American formula for political crimes (Article 3) was not sufficiently inclusive in its exemption of attempts against the person of the King. Badaoui Pasha asked if I could say anything on this point. I replied that I could only say that the provision regarding political crimes in our recent treaty with Great Britain, also a constitutional monarchy, appeared to make no exemptions whatsoever regarding attacks against the head of the State. Badaoui Pasha said that he would be very interested to see the British Treaty.

In 1932 the Egyptian Government pointed out that our draft (Article 5) provides that there shall be no grounds for extradition if, according to the laws of the country within the territory of which the crime was committed, the fugitive could not be prosecuted or punished because of lapse of time. Badaoui Pasha thought that the statute of limitations in both the country applying for extradition and the country applied to should be taken into consideration. I replied that I was not in a position to make any observations on this point.

In 1932 the Egyptian Government had objected to the provision in article 11 of our draft making the treaty applicable to all territory under the control of the high contracting parties. Badaoui Pasha stated that the question of the Sudan was still in the minds of the Egyptians, and that the method of making treaties applicable to the Sudan had still not been entirely established. He said that in the past the British Government has made treaties applicable to the Sudan and has simply notified the Egyptian Government of its action. He said that as a result of the recent Anglo-Egyptian Treaty of Alliance,⁶⁴ the former method of making treaties applicable to the Sudan might not be sufficient. He said that he presumed that in the present instance the American Government was primarily interested in an extradition treaty with Egypt and that if the Egyptian Government did not desire to enter into the question, at the present time, of the negotiation of treaties applicable to the Sudan, it might be supposed that the American Government would prefer a treaty applicable to Egypt alone rather than no treaty at all. I said that I felt confident that the American Government desired to have all parts of the world covered by an extradition treaty, and suggested that Egypt might sign a treaty applicable to all territory under Egyptian control, it being naturally understood that such a treaty would run to the same extent and degree as Egyptian sovereignty. Badaoui Pasha said that the question would be given most careful consideration and that he felt

⁶⁴ Signed at London, August 26, 1936, British Cmd. 5360, Egypt No. 6 (1937) : *Treaty of Alliance*.

sure that the question of the Sudan would not prevent the conclusion of the proposed treaty.

In 1932, the Egyptian Government expressed its inability to understand why a difference was made in Article 7 of the draft treaty regarding the period of time within which extradition documents should arrive after provisional arrest. (The draft provides that Egyptian extradition documents must arrive in the United States within two months after the date of commitment, and that American documents must arrive in Egypt within two months after the date of arrest). Bedaoui Pasha said he still did not understand the divergence. I suggested that the Egyptian interpretation of the term "commitment" might not be correct, since "commitment" as used in Article 7 might not refer to the commitment of the crime, as the Egyptian Government had interpreted it, but to some legal meaning of the term, such as "commitment to jail". I reiterated the fact that my discussion of these points was entirely unofficial so far as the American Government was concerned, and that I had no background regarding the terminology of the treaty.

Bedaoui Pasha expressed full appreciation for the visit, and said he was glad that the Legation had reminded him of the negotiations, which the Government, now freed from consideration of capitulatory problems, would actively pursue. He said that no other power had yet approached Egypt regarding an extradition treaty, but that there was no country better than the United States with which to begin their negotiations. In answer to a question, he said that he saw no reason why our treaty should not be proceeded with now to its conclusion and that the Egyptian Government would not have to wait until it had received proposals from other powers. He asked me if I would let him have copies of two or three of our more recent extradition treaties, including that with Great Britain and at least one with a country following the Civil Code legal system, such as France or Italy. I agreed to send the copies to him.

GEORGE V. ALLEN

233.11/50

The Secretary of State to the Chargé in Egypt (Morris)

No. 287

WASHINGTON, December 20, 1937.

SIR: The Department has received your despatch no. 1119 of November 15, 1937 in relation to an interview regarding the negotiations for the conclusion of an extradition treaty between the United States and Egypt had by Third Secretary Allen, of your Legation, with the Legal Adviser to the President of the Council of Ministers.

It appears from Mr. Allen's memorandum of this interview that a statement in writing will be forthcoming at a later date regarding the views of the Egyptian Government upon the draft of such a treaty which was submitted by the United States.⁶⁵ In the meanwhile, for the information of the Legation and as bearing upon points raised in the interview, the Department advises you that all of the extradition treaties negotiated by the United States, whether or not of a recent date, contain a list of extraditable offenses. For the sake of definiteness and since the penal provisions in force in different countries often provide penalties of a character which vary from country to country, this Government would not desire to enter into a treaty of extradition which merely provided that there should be surrender for offenses the penalty for the commission of which would be a certain term of imprisonment.

So far as concerns the exemption contained in the American draft from the non-liability to surrender in the case of political offenses, it may be observed that such provision is in accord with the usual provision contained in treaties of the United States. However, the Department would give careful consideration to any provision on this point which might be suggested by the Egyptian Government.

The Department would have no serious objection to compliance with the apparent desire of the Egyptian Government that it be provided in the treaty that there should be no obligation to extradite after the statute of limitations in regard to the particular offense had run in the requested country.

Mr. Allen was correct in his suggestion that the term "commitment" contained in Article 7 of the American draft does not refer to the commitment of the crime, but to the commitment of the prisoner by the extradition magistrate to the custody of a marshal or jailer following the provisional arrest of the fugitive.

Very truly yours,

For the Secretary of State:

R. WALTON MOORE

⁶⁵ No record of a reply by the Egyptian Government has been found in Department files. Apparently the project was dropped.

ETHIOPIA

WITHDRAWAL OF AMERICAN DIPLOMATIC AND CONSULAR REPRESENTATIVES FROM ETHIOPIA¹

765.84/5184 : Telegram

The Minister Resident in Ethiopia (Engert) to the Secretary of State

ADDIS ABABA, February 19, 1937—4 p. m.

[Received February 21—12: 15 a. m.]

45. An attempt on the life of the Marshal was made at the palace at about 1 p. m. today by one or more natives with hand grenades and he is said to have been wounded. How seriously is not yet known. Other prominent Italians reported to have been wounded are the general commanding air forces and the chief of the *carabinieri*.

Italian authorities at once took drastic action machine gunning and beating natives indiscriminately and burning their huts. Bombing planes have been acting with incendiary bombs in the outskirts of the city and at this writing a good deal of rifle and even field gun fire is audible throughout the city. All natives have been driven off the streets and the Italians including civilian laborers seem thoroughly alarmed and go about heavily armed.

By an odd coincidence the Marshal and Madame Graziani were at their own suggestion to have come to tea at this Legation this afternoon.

ENGERT

765.84/5181 : Telegram

The Minister Resident in Ethiopia (Engert) to the Secretary of State

ADDIS ABABA, February 19, 1937—9 p. m.

[Received February 21—12: 22 a. m.]

46. Official communiqué states about 10 hand grenades were thrown wounding some 30 persons among whom Marshal Graziani, Vice Governor General Petretti, General Liotta, General Garibaldi, General Armando, Governor Siniscalchi, Chief of Cabinet Mazzi and Archbishop Kyrillos. Condition of Marshal stated satisfactory. Liotta lost one leg.

ENGERT

¹ For previous correspondence, see *Foreign Relations*, 1936, vol. III, pp. 330 ff.

765.84/5182 : Telegram

The Minister Resident in Ethiopia (Engert) to the Secretary of State

ADDIS ABABA, February 20, 1937—11 a. m.

[Received February 22—9:30 a. m.]

47. My 45 and 46, February 19th. Yesterday afternoon and all last night the Italians by way of reprisals set fire to hundreds of native houses including some in the immediate vicinity of this Legation which necessitated our taking special precautions to prevent our buildings from catching too. If there had been a strong wind it would probably not have been possible and I have this morning pointed out the danger to the authorities.

The Italians have, as was to have been expected after their incendiaries last July and August, completely lost their heads. Undisciplined bands of Black Shirts and laborers armed with rifles, axes or clubs have since the incident been roaming the streets killing all natives in sight even women amidst scenes of revolting savagery. Many natives whose huts were burning were either shot as they tried to escape or were forced to perish in the flames. Not since the Armenian massacres have I seen a display of such unbridled brutality and cowardice. Besides there have been mass executions in batches of 50 or 100 all over town of wretched people who by no stretch of the imagination could have had anything to do with the incident.

French Minister informs me a band of Black Shirts rushed into his compound yesterday afternoon, set fire to three huts in his servants quarters and chased away four of the native servants. He agrees with me that for the last 24 hours the Italians have been acting like raving maniacs which bodes ill for the future.

Desultory firing continues in the city and on my way back from the French Legation I saw several fresh corpses strewn along the road while large trucks were carting away those killed earlier in the morning.

ENGERT

365D.1163/51 : Telegram

The Minister Resident in Ethiopia (Engert) to the Secretary of State

ADDIS ABABA, February 20, 1937—2 p. m.

[Received February 23—6:45 p. m.]

48. Duncan Henry of the American Presbyterian Mission in Addis Ababa was brutally assaulted this morning by an Italian *carabiniere* who dragged him out of his car in front of a shop and struck him several times with his rifle on the head, shoulder, and arm, causing a scalp wound which bled profusely and severe bruises on his body. He

also slapped his face and hit his throat. He then handcuffed him and when an Englishman who was with Henry tried to explain the situation he too was handcuffed and shackled to Henry.

It so happened that at that precise moment I was passing in my car and of course stopped to inquire what the trouble was. The two *carabinieri* chiefly responsible for the outrage were very incoherent and claimed Henry had "refused to move on." This Henry denied categorically and proved it by the fact that he was being assaulted while his servant was cranking his car. We all went to the nearest police station where I complained to the officer in charge of the ill treatment this American had suffered. He said there must have been a misunderstanding and ordered both Henry and the Englishman released at once. I then took Henry in my car to the Legation and after some first aid I accompanied him to his Mission.

I later made a verbal protest to the Acting Chief of Cabinet and the chief of the *carabinieri* which I shall follow up tomorrow with a written one.

ENGERT

765.84/5187 : Telegram

The Minister Resident in Ethiopia (Engert) to the Secretary of State

ADDIS ABABA, February 21, 1937—9 a. m.

[Received February 23—10:20 p. m.]

49. My 47, February 20, 11 a. m. I respectfully suggest that the Department telephone to Rome in the following sense:

1. This Legation has for 2 days been needlessly exposed to grave dangers from fire and stray shots due to the activities of the Italian military who have been setting fire to houses and have been shooting down natives in the immediate vicinity of our compound.

2. This first happened the night before last and although I immediately requested the authorities to take steps to prevent a recurrence, Italian soldiers brazenly informed employees of this Legation yesterday afternoon that the remaining houses adjoining our compound would be burnt that night. I again appealed in person twice to the Commandant of *Carabinieri* and once to the Chief of Cabinet who both assured me they would not permit it and that a guard would be sent to protect the Legation.

3. Despite these promises the burning of huts and shooting of natives close to the Legation were resumed after sunset and continued practically all night. Again if the wind had been stronger our buildings might well have caught fire. Not a single Italian soldier appeared either to prevent the fires or to stop them from spreading

or to protect the Legation in any other manner. On the contrary we saw the Italians themselves set fire to the very houses which endangered ours.

[4?]. It seems quite obvious that as all the highest officials are wounded, including the two just mentioned, the Black Shirts and armed laborers have run amuck and are unwilling to obey orders. (The French Minister tells me half a company of Italian regulars were powerless to prevent outrages in his Legation grounds because they were afraid to offend the Black Shirts.)

5. An inevitable and perfectly logical result of Italian administration has been that several hundred natives including women and children inhabiting the burning huts surrounding this Legation came into our compound. As they climbed over the fences during the night in order to save their lives I was of course powerless to stop them. However, even had I been able to keep them out I should not have done so because I felt that the most elementary dictates of humanity and decency required that they be permitted to seek refuge in the only place available to them. I merely insisted that they be unarmed. Most of them are relatives or friends of our servants and had been absolutely loyal to the Legation during the disturbances of last May. So far the Italians are hardly aware of their existence but should they request that they leave our compound I shall first demand a definite assurance from the authorities that they will not be hunted down like wild beasts.

ENGERT

765.84/5189 : Telegram

The Minister Resident in Ethiopia (Engert) to the Secretary of State

ADDIS ABABA, February 22, 1937—10 a. m.

[Received February 24—2:25 p. m.]

51. Supplementing my 49, February 21, 9 a. m., I report as follows:

1. The mother of one of our servants was shot through the head and her body was brought to the Legation by Italian soldiers without explanation. She appears to have been killed as she was running out of her burning hut. The mother of another is missing and although I personally accompanied her daughter on search we failed to find her. Her son is missing, too.

2. One of our messengers was on his way home when he was savagely attacked by Italian soldiers who knocked him down and beat him with clubs and tore his coat. His back and shoulders show severe contusions. He wore the Legation's uniform whose belt has a brass plate with "American Legation Addis Ababa" in large letters to which he

pointed when he was attacked. He also had identification paper issued by the Italian authorities to all Legation servants. However, soldiers paid no attention to either and shot three other natives in his presence.

3. Italian authorities finally sent one white soldier and one Askari to guard front gate of the Legation at 8 o'clock last night. They would of course have been entirely useless in a serious emergency but they informed me that orders have been issued to the Black Shirts not to burn any more houses. None were in fact burnt in our immediate neighborhood but further away several big blazes were clearly visible and the shooting continued for several hours during the first half of the night.

4. Chief interpreter of the British Legation, an Ethiopian subject, was arrested and has so far not been released. Likewise some 50 British subjects mostly Arabs and Indians.

5. Thirty-eight native servants of the French Legation who had been forcibly removed from its compound on Friday have not yet returned.

6. It is conservatively estimated that at least 3,000 harmless natives have been killed in and near Addis Ababa during the last 3 days and that 2,000 houses have been destroyed. Moreover thousands of trees which this treeless region could ill afford to lose have perished in the flames.

ENGERT

765.84/5188 : Telegram

The Minister Resident in Ethiopia (Engert) to the Secretary of State

ADDIS ABABA, February 22, 1937—3 p. m.

[Received February 24—9:50 a. m.]

53. My 51. I just happened to be the eye witness of a revolting scene: I was driving in my car when one in front of me suddenly stopped obliging me to stop too. An Italian colonel jumped out and for no apparent reason rushed at an elderly native and two women [apparent omission] had overtaken a moment before. With oaths and shouts of "I'll make you beasts crawl in the dust before me" he began belaboring the man's face with his horse whip until he was covered with blood and prostrated himself before him and with outstretched arms begged for mercy. The colonel then turned on the women who were already kneeling and was beginning to strike them with his whip when I blew the horn of my car (as if wishing to pass his) so loudly that he stopped and noticing the two American flags on my car he looked embarrassed and drove off. In his blind fury he had evidently not seen my car and realized too late that I must have witnessed the entire performance.

Scenes such as this and many much worse and typical scenes have been going on for 4 days to impress the natives with the civilizing mission of Fascist Rome.

ENGERT

765.84/5190 : Telegram

The Minister Resident in Ethiopia (Engert) to the Secretary of State

ADDIS ABABA, February 23, 1937—3 p. m.

[Received February 24—3:05 p. m.]

55. Please see paragraph 5 of my 49, February 21, 9 a. m.

Although the Italian authorities have entirely ignored the presence of the native refugees in our compound, I deemed it best this morning to call on Colonel Mazzi, Chief of Cabinet, who has sufficiently recovered to transact business, to inform him that I had between four and five hundred of them and of course wished to get rid of them as soon as possible. I explained the circumstances which had brought them to the Legation and said that as things had quieted down considerably since yesterday I was prepared to send out all those who still had their own homes or could be taken care of by relatives. But I could do so only on condition that he assured me formally that no harm would be done to them and that if possible food, et cetera, be provided temporarily for those who were destitute. Colonel Mazzi, with whom I have always been on the friendliest terms, said at once he appreciated my coming to him and that he would issue the most emphatic orders that none of the refugees from the American Legation should be touched. He then called in the acting commandant of the *carabinieri* and instructed him to that effect in my presence, adding that food should be provided and homes found for those needing them and that anybody molesting them should be severely punished.

I expect that by tomorrow night most of the natives will have left our compound.

ENGERT

765.84/5182 : Telegram

The Secretary of State to the Minister Resident in Ethiopia (Engert)

WASHINGTON, February 23, 1937—7 p. m.

24. Your 47, February 20, 11 a. m. In view of the conditions described in your telegram we feel that it may be undesirable to continue to maintain our present representation at Addis Ababa. Such conditions, taken in conjunction with questions such as those referred

to in your 44, February 18, 2 p. m.,² are likely to involve us in embarrassing if not dangerous incidents which are not of any vital concern to this country.

Since American missionaries in the interior are now safe and since you have done everything for them that could properly be expected, we feel that perhaps no useful purpose would be served by maintaining our representation. Under the circumstances we incline to believe that you should depart on leave prior to March 1, as previously planned, and that Hughes³ should arrange to close the office and withdraw with American personnel as soon after your departure as he conveniently can.

Please submit your definite views, stating date of your departure and earliest date on which Hughes could withdraw if that should be finally determined.

HULL

765.84/5185 : Telegram

The Ambassador in Italy (Phillips) to the Secretary of State

ROME, February 24, 1937—noon.

[Received February 24—9:25 a. m.]

70. My 65, February 20, 1 p. m.² According to statements from Addis Ababa published here yesterday and the previous day, 2000 natives were arrested following the bomb incident. A few hundred who had been able to prove their innocence were released while all persons found in possession of arms on their persons or in their huts were shot; investigations of those still under arrest are continuing. Squads of Fascists have "cleaned up certain suspect quarters" of the city. While the population was reported calm it was added that 30,000 national troops were guarding the city. The statement issued day before yesterday stated that all culprits would be executed "under orders from Rome".

PHILLIPS

765.84/5187 : Telegram

The Secretary of State to the Ambassador in Italy (Phillips)

WASHINGTON, February 24, 1937—6 p. m.

20. Following is text of Engert's 49, February 21, 9 a. m. received late last night:

[Here follow numbered paragraphs of telegram No. 49, printed on page 681.]

² Not printed.

³ Morris N. Hughes, Consul at Addis Ababa.

Please bring this situation urgently to attention of Foreign Office in such manner as you think appropriate and ask that instructions be sent immediately to authorities in Addis Ababa to render prompt and effective protection to Legation and its personnel.

With reference to paragraph 5 of above quoted telegram, the Department is instructing Engert as follows:

[Here follows second paragraph of telegram printed *infra*.]

HULL

765.84/5187 : Telegram

The Secretary of State to the Minister Resident in Ethiopia (Engert)

WASHINGTON, February 24, 1937—6 p. m.

26. Your 49, February 21, 9 a. m. received late last night. The situation is being brought to the attention of the Embassy at Rome which is to request that the necessary instructions be sent to the authorities at Addis Ababa to take prompt and effective steps to protect the Legation and its personnel.

While the Department, for humanitarian reasons, does not desire to instruct you regarding the natives who have taken refuge in the compound, it is obvious that the presence of these persons adds greatly to the danger of you and your staff. It is hoped that you will be able to take steps to remove such refugees as soon as you can do so without placing them in danger of their lives.

Please reply as quickly as possible to our cable of yesterday⁴ and report situation to date.

HULL

765.84/5197 : Telegram

The Minister Resident in Ethiopia (Engert) to the Secretary of State

ADDIS ABABA, February 25, 1937—4 p. m.

[Received February 26—3:15 p. m.]

61. My 55, February 23, 3 p. m. The last of the refugees left the Legation last night and have not been molested. Food has been provided by the authorities as promised.

By actual count 700 Ethiopians had taken refuge in the Legation between February 19 and 23 of whom 243 [were] men, 262 women and 195 children. Before leaving, a delegation from them very touchingly expressed their gratitude to the United States Government "for saving our lives".

ENGERT

⁴ Telegram No. 24, February 23, 7 p. m., p. 684.

765.84/5194 : Telegram

The Ambassador in Italy (Phillips) to the Secretary of State

ROME, February 25, 1937—5 p. m.

[Received February 25—2 p. m.]

73. Your 19, February 24, 1 p. m.⁵ and 20, February 24, 6 p. m. I have already sent a note to Count Ciano describing the dangerous situation affecting the American personnel and property in Addis Ababa and asking that immediate steps be taken to afford effective protection. I am also seeking a personal interview with him.

I welcome your instruction to Engert in which you state your belief that he should depart on leave prior to March 1st. To me the situation does not yet require the withdrawal of Hughes. Of course if we could withdraw the American personnel altogether and place American interests in Ethiopia under the American Consul General in Naples it would be a happy solution. This step has already been taken by the Turkish Government under the Turkish Consul at Bari, by the Peruvian Government under the Peruvian Consul General at Genoa and by the Polish and the Swiss Governments under their respective Consuls at Rome. However, this would presumably require recognition at this time by us of the new situation in Ethiopia.

In the present circumstances a simultaneous withdrawal of all the American personnel might be looked upon as passing judgment upon a situation regarded here as one of domestic concern. I would favor less abrupt action and am inclined to think therefore that it would be better for Hughes not to withdraw at the present moment unless of course his life and the lives of his staff are in positive danger.

For the Department's information there has been no hint as yet in the Italian press of the seriousness of the situation beyond that reported in my 70, February 24, noon. An official communiqué this afternoon announces the capture and execution of Ras Desta which the press interprets as an important factor in pacification.

PHILLIPS

765.84/5196 : Telegram

The Ambassador in Italy (Phillips) to the Secretary of State

ROME, February 26, 1937—1 p. m.

[Received February 26—8:45 a. m.]

79. My 75, February 25, 7 p. m.⁶ Count Ciano informed me this morning that instructions had been telegraphed immediately to Addis

⁵ Not printed; it quoted text of Department's telegram No. 24, February 23, 7 p. m., to the Minister Resident in Ethiopia, p. 684.

⁶ Not printed.

Ababa by the Ministry of the Colonies to give prompt and effective protection to the American personnel and property. I expressed our concern at the reports which we had received indicating that the situation in Addis Ababa had got out of hand; that fires had been set deliberately to property adjoining our buildings which during an entire night had been in constant danger of conflagration from the neighboring fires; that in spite of the appeals to the commandant of the *carabinieri* and to the Chief of Cabinet there had been no effort whatsoever to come to the assistance of our staff.

Count Ciano assured me that the situation was now absolutely quiet. Even after the bombs had been thrown as a result of which four of the higher Italian officers had been injured, one seriously the others less so, the native population had remained entirely tranquil. On the other hand there had been groups of persons hostile to the Italian administration which had sought to make trouble and it had been found necessary to take police measures in certain sections of the town and he thought that it may have been that these measures had been taken in the neighborhood of the American property. He added that with the capture and execution of Ras Desta reported in my 73, February 25, 5 p. m., absolute quiet prevailed and that there was not the slightest cause for any further concern.

While Count Ciano would not admit the existence of the occurrences as described by Engert in his telegram number 49, February 21, 10 [9] a. m., I felt that it was wise to let him know that we were fully aware of the manner in which the Italians had conducted themselves.

PHILLIPS

124.84/137 : Telegram

The Minister Resident in Ethiopia (Engert) to the Secretary of State

ADDIS ABABA, February 27, 1937—9 a. m.

[Received February 27—3:15 a. m.]

62. Your 24, February 23, 7 p. m., received yesterday. I am in hearty agreement with the conclusions reached by the Department.

I am leaving March 5 as I was unable to obtain any passage from Djibouti before March 9. I suggest, and Hughes agrees, that the consular office be closed about March 30. He requests inform Macy's, New York, cancel recent order drapes and groceries, also instruct despatch agent ship nothing.

Shall I give notice to the landlord? Rent only paid to April 30 under terms of lease. I am much concerned about the fate of our non-American personnel and respectfully recommend they be kept as caretakers until April 30 too.

Should the Department desire to sell any or all of the Government-owned furniture including furnishings bought for radio personnel good prices can be obtained at the present moment. Please instruct also re disposal of codes, archives and stationery, seals, et cetera. I suggest library be shipped to Washington and that certain articles be stored at the British Consulate General pending final disposal.

To insure prompt and more accurate transmission before my departure the Department may wish to communicate with me via British Legation radio which is still functioning for receiving purposes.

ENGERT

124.84/142a : Telegram

The Secretary of State to the Minister Resident in Ethiopia (Engert)

WASHINGTON, February 27, 1937—3 p. m.

29. Your 62, February 27, 9 a. m. The Department approves your recommendation that Consular Office be closed March 30 and your plan to depart March 5.

Announcement of closing will be made later by the Department after Hughes has been instructed to notify Americans and to make such arrangements as may be possible for the protection of those who choose to remain in the country. Your recommendation as to what these arrangements should be will be appreciated. Until announced by the Department keep this instruction strictly confidential.

Detailed instructions concerning termination of lease, disposition of records and property and the future of the personnel will be sent Hughes at an early date.

Macy's is being requested to cancel order.

HULL

124.84/142c : Telegram

The Secretary of State to the Ambassador in Italy (Phillips)

WASHINGTON, March 2, 1937—7 p. m.

25. It is the Department's intention to issue a statement to the press on Friday, March 5, for publication on that day along the following lines:

"Mr. Cornelius Van H. Engert, American Minister Resident and Consul General at Addis Ababa, is departing from his post today on leave of absence. Upon Mr. Engert's departure Mr. Morris Hughes, American Consul, will assume charge of American interests until the end of March, at which time the office will be closed.

"All American nationals in the interior have now been accounted for and several of these nationals have established themselves at Addis Ababa or have withdrawn from the country entirely. Inasmuch as

our representatives have done all that is possible for the protection of the American nationals who remain in the country, and since there are no present or prospective American business transactions in Ethiopia, no reason any longer exists for the maintenance of American representation at Addis Ababa."

We would appreciate as quickly as possible any suggestions that you may have on the form or substance of the above statement.

HULL

124.84/144: Telegram

The Minister Resident in Ethiopia (Engert) to the Secretary of State

ADDIS ABABA, March 3, 1937—10 a. m.

[Received 8 p. m.]

66. Department's 29, February 27, 3 p. m. After mature reflection I feel that the only definite recommendation I can make at this time regarding arrangements for the protection of American citizens and properties after closing our consular office is to suggest that the British Government be asked whether it would be willing to look after American interests as it had done in the past when we had no representation here.

However, as the majority of the American citizens in Ethiopia are likely to remain for at least 6 months or a year longer, *id est* the time estimated it will take to liquidate mission affairs, I strongly recommend that a vice consul or consul be temporarily assigned to Djibouti so as to be in a position if necessary actively to assist in the protection of our interests.

ENGERT

124.84/143: Telegram

The Ambassador in Italy (Phillips) to the Secretary of State

ROME, March 3, 1937—noon.

[Received March 3—8:15 a. m.]

83. Your 25, March 2, 7 p. m. I have no comment to offer on the first paragraph. In my opinion the second paragraph raises considerations which might lead to unnecessary complications in the future and not only would be misunderstood here but might well be regarded as an affront. In its place I suggest the following:

"The Department's action in this respect is in accordance with its usual practice of terminating consular activities in any district where American interests no longer require such services."

I should welcome the Department's authorization to communicate this decision orally to the Minister for Foreign Affairs before public announcement is made but if there is not sufficient time the Department might care to communicate it orally to Ambassador Suvich.

PHILLIPS

124.84/143 : Telegram

The Secretary of State to the Ambassador in Italy (Phillips)

WASHINGTON, March 3, 1937—5 p. m.

26. Your 83, March 3, noon. Department will issue the statement to the press late tomorrow afternoon, but will substitute as second paragraph the phraseology suggested in your 83, March 3, noon.

You may communicate this decision to the Minister for Foreign Affairs on the understanding that no publicity will be given the matter prior to publication in the United States.

HULL

124.84/145a : Telegram

The Secretary of State to the Minister Resident in Ethiopia (Engert)

WASHINGTON, March 3, 1937—5 p. m.

30. Department's 29, February 27, 3 p. m. Department will issue to press late tomorrow afternoon the following statement:

"Mr. Cornelius Van H. Engert, American Minister Resident and Consul General at Addis Ababa, is departing from his post tomorrow on leave of absence. Upon Mr. Engert's departure Mr. Morris Hughes, American Consul, will assume charge of American interests until the end of March, at which time the office will be closed.

"The Department's action in this respect is in accordance with its usual practice of terminating consular activities in any district where American interests no longer require such services."

As soon as statement has appeared in American press Hughes should notify American nationals of the decision to close the office and should warn them that there will be no American Government representative in Ethiopia after March 31.

HULL

124.84/152

The Ambassador in Italy (Phillips) to the Secretary of State

No. 249

ROME, March 4, 1937.

[Received March 17.]

SIR: I have the honor to refer to my telegram No. 79 of February 26, 1 p. m., concerning the assurances given by the Italian Minister

for Foreign Affairs that adequate protection would be afforded the premises of the Legation at Addis Ababa and to transmit herewith a copy in translation of Count Ciano's note, confirming these assurances and stating that the appropriate measures had been taken.

Respectfully yours,

WILLIAM PHILLIPS

[Enclosure—Translation]

The Italian Minister for Foreign Affairs (Ciano) to the American Ambassador (Phillips)

206843/21

ROME, March 3, 1937.

MY DEAR AMBASSADOR: In reply to your letter of February 25, 1937, I have the honor to inform Your Excellency that I immediately advised the Ministry of Colonies of the information furnished by you and that the said Ministry in turn informed me that it had immediately communicated for this purpose with the Vice-Regal Government. I must therefore believe that appropriate steps have already been taken to guarantee the safety of the premises of the former Legation of the United States in Addis Ababa.

Kindly accept [etc.]

CIANO

124.84/144 : Telegram

*The Secretary of State to the Minister Resident in Ethiopia (Engert)*⁷

WASHINGTON, March 4, 1937—1 p. m.

32. Your 66, March 3, 10 a. m. We feel that the assignment of an officer to Djibouti would in effect contradict the reasons for withdrawal given in a statement quoted in Department's 30, March 3, 5 p. m. Furthermore, it seems obvious that an officer at Djibouti could not accomplish any useful work with respect to Ethiopia.

We are asking the Embassy at London, unless it perceives some objection, to request the Foreign Office orally and informally to continue to furnish us as it has done during the past few months with any available information regarding welfare of American nationals in Ethiopia. We feel that this is as far as we should go.

Naturally any questions relating to American nationals or interests in Ethiopia which arise after closing of consulate will be taken up with the Italian Foreign Office by the Embassy at Rome. Press statement not being issued now.

HULL

⁷ Quoted in telegram No. 29, March 4, 4 p. m., to the Ambassador in Italy.

124.84/145 : Telegram

*The Ambassador in Italy (Phillips) to the Secretary of State*ROME, March 4, 1937—2 p. m.
[Received March 4—9:25 a. m.]

87. Your 26, March 3, 5 p. m. I have shown Count Ciano your proposed press statement regarding withdrawal of our representation from Ethiopia. He expressed concern that it would be misunderstood in the foreign press, especially in the French press and that at this moment any such misinterpretation would be embarrassing.

Does the Department feel the necessity of issuing our statement before the office in Addis Ababa is closed?

PHILLIPS

124.84/145 : Telegram

The Secretary of State to the Ambassador in Italy (Phillips)

WASHINGTON, March 4, 1937—3 p. m.

30. Your 87, March 4, 2 p. m. The only purpose of the Department in proposing the issuance of the press statement was to avoid possible misunderstandings, but if Count Ciano feels that such a step would create rather than prevent such misunderstandings, the Department will refrain from issuing the statement.

It is obvious, however, that in proceeding administratively to closing the office, through termination of the lease et cetera, and in connection with other matters that may arise, such as the warning of Americans who may wish to proceed to Ethiopia that there will be no American Government representatives there after March 31st, the fact of closing will become known in Addis Ababa or elsewhere. If inquiries are made here as a result of press reports, the Department will reply in the sense of the proposed statement.

HULL

123EN3/523 : Telegram

The Secretary of State to the Ambassador in the United Kingdom (Bingham)

WASHINGTON, March 4, 1937—3 p. m.

68. Engert is departing from Addis Ababa on March 5 and instructions have been issued to close the office entirely on March 31. Unless you perceive some objection please advise the Foreign Office orally and informally that we should be appreciative if it would continue to furnish us, as has been done during recent months, with any available information regarding welfare of American nationals in Ethiopia.

HULL

124.84/146 : Telegram

The Ambassador in Italy (Phillips) to the Secretary of State

ROME, March 5, 1937—1 p. m.
[Received March 5—8:55 a. m.]

93. Your No. 30, March 4, 3 p. m. I informed Count Ciano that we would not now issue any formal statement and he expressed satisfaction.

In view of the reference contained in the last paragraph of your 29, March 4, 4 p. m.,⁸ to the effect that after the closing of the Consulate at Addis Ababa questions relating to American interests will be taken up through the Embassy at Rome, it occurs to me that possibly you might care to consider the inclusion of some representations against reference in any information which may be given out by the Department. In this connection I hope that any impression that the British are in any way to be responsible for the protection of our interests in Ethiopia may be avoided.

PHILLIPS

124.84/151

Memorandum by the Chief of the Division of Western European Affairs (Dunn)

[WASHINGTON,] March 6, 1937.

The Italian Ambassador came in this morning by appointment and stated that he had been instructed by his Foreign Office to inquire whether there was any new reason for our decision to close our offices at Addis Ababa. He said that the Italian Minister for Foreign Affairs, Count Ciano, had understood the arrangement with Mr. Phillips to be that we would make no announcement with regard to the withdrawal of our representation for the present.

I informed the Ambassador that the decision of the Department to close the offices in Addis Ababa had been under contemplation for some months and that it was finally decided upon entirely as an administrative measure because all of the Americans in Ethiopia have been accounted for and as there were no commercial relations between Ethiopia and the United States there seemed to be no warrant for maintaining a representative of any character there at the present time.

I explained to the Ambassador that we had told Mr. Phillips that upon the departure of Mr. Engert, our Minister, on March 5 on leave we contemplated announcing his departure on leave and the fact that Mr. Hughes would remain in charge of the Consulate until the end of this month when the office would be closed. I said that Mr. Phillips

⁸ See footnote 7, p. 692.

had reported that Count Ciano had asked that the statement not be made before Hughes's departure, whereupon we had replied that we would accede to the Foreign Minister's wishes in that regard, but that the news of the withdrawal of our offices would no doubt become public by reason of the necessity to give notice of termination of the lease and to arrange for the packing of all the effects and also the necessity for notifying those few Americans who remained in Ethiopia that there would no longer be any Government offices there after the departure of Mr. Hughes. We had told Mr. Phillips that in response to any inquiries on the part of the press as a result of our intentions becoming known we would make reply in the sense of the statement which we had expected to give out before Engert's departure. That statement merely said that because there were no commercial relations between Ethiopia and the United States and as the Americans in that country were all accounted for the offices were being closed.

The Ambassador said that the Italian Government had hoped that we might have been induced to delay the departure of the Consul and that we might eventually have adopted a course similar to that followed by Great Britain and France, that is, withdraw our diplomatic representation and leave a consular officer there to represent us. He also asked whether our action in withdrawing our offices entirely was to be construed with having any relationship with the question of recognition of Italian authority over Ethiopia.

I told the Ambassador that the position of the French and British Governments was quite different from our own as we had no commercial interests in Ethiopia and both Governments had not only commercial interests but other interests by reason of having colonies or mandated territories adjacent to Ethiopia. I further said that our action in closing the offices in Addis Ababa had no effect upon the question of recognition.

I further pointed out that at the same time we had arranged to close the offices in Addis Ababa we had put into effect arrangements for closing our consular offices at Kingston, Sault Ste. Marie (in Canada), and our consulate at Tripoli.

The Ambassador appeared to find satisfactory the answers which I put to the questions he had brought up.

JAMES CLEMENT DUNN

765.84/5211 : Telegram

The Chargé in Ethiopia (Hughes) to the Secretary of State

ADDIS ABABA, March 14, 1937—10 a. m.

[Received March 15—5 : 20 p. m.]

79. Local situation has been superficially quiet for 2 days but there is feeling of pessimism and gloom among Italians and foreigners.

Desultory night shooting by sentries persists and daily arrests and some executions of so-called suspects continue. Reliable informants state that nearly all prominent Ethiopians apparently have been executed or taken abroad in groups for internment. According to British and other foreign sources among those secretly executed recently were: two sons of Martin, Ethiopian Minister to London, George Herouy, son former Foreign Minister, the son of late Ras Nassibu and [apparent omission] former Finance Director who was graduate American University. Also informed six other "young Ethiopians" arrested and taken abroad secretly by military plane several nights ago. Apparently reports are well-founded that Italian policy is to eliminate all educated and prominent Ethiopians, considering them potential inciters of rebellion.

Competent foreign observers estimate that from ten to twenty thousand Ethiopians have quietly left the city in spite of authorities stern refusal all exit permits. Semi-deserted streets indicate clearly exodus of thousands. Several Italians have expressed concern over departure natives. It is possible they realize they have gone too far and as danger of rainy season approaches are now faced with problem scanty markets, scarcity native domestics and laborers and menace to outposts and convoys of thousands of homeless urban natives driven to banditry.

It is reported that French troops have now evacuated Direedawa, that action probably of no especial significance. However, frequent clashes reported Djibouti between Italians and Ethiopians assisted by Somalis. Informed curfew law enforced and heavy patrols numerous.

HUGHES

765.84/5197 : Telegram

The Secretary of State to the Chargé in Ethiopia (Hughes)

WASHINGTON, March 25, 1937—6 p. m.

40. Your 61, February 25, 4 p. m. Please comment on press reports that refugees were attacked and otherwise mistreated after leaving the Legation.

HULL

765.84/5222 : Telegram

The Chargé in Ethiopia (Hughes) to the Secretary of State

ADDIS ABABA, March 27, 1937—10 a. m.

[Received March 28—7 p. m.]

85. Department's 40, March 25, 6 p. m. Associated Press representative informed me last night of press reports. This office knows of

no case of attack or mistreatment after refugees departed. They remained from 3 to 5 days after shooting subsided partly because of fear and partly because many of their homes burned.

Upon Italian advice to them that they could return to homes they consulted this Legation. Engert obtained promise from Chief of Cabinet, Mazzi, that refugees would not be molested. Mazzi also promised an issue of food for them. Some flour was issued at least 1 day and former refugee spokesman stated this morning that none of them had been molested to date.

HUGHES

123H875/245 : Telegram

*The Chargé in Ethiopia (Hughes) to the Secretary of State*⁹

ADDIS ABABA, April 8, 1937—6 p. m.

[Received April 10—6:05 a. m.]

90. Departing for Djibouti tomorrow early with Hunter and Colquitt.¹⁰ . . .

HUGHES

REPRESSIVE MEASURES BY THE ITALIAN AUTHORITIES AGAINST
FOREIGN MISSIONARY ACTIVITIES IN ETHIOPIA¹¹

365D.1163/45 : Telegram

The Minister Resident in Ethiopia (Engert) to the Secretary of State

ADDIS ABABA, February 9, 1937—2 p. m.

[Received 5:05 p. m.]

40. Please see last paragraph of my 690, December 22, 3 p. m.¹² Within the past few days the Italian authorities have again been making active preparations to take over the mission property. I have advised the mission to present to the authorities a statement as to the value of all its movable and immovable properties together with a complete inventory.

Has the Department any instructions beyond those contained in its 398, December 8, 5 p. m.?¹³

ENGERT

⁹ This is the last message from the Legation at Addis Ababa. The Legation and Consulate were closed and all official American representatives were withdrawn.

¹⁰ Robert L. Hunter and Adrian B. Colquitt, Vice Consuls.

¹¹ Continued from *Foreign Relations*, 1936, vol. III, pp. 319-330.

¹² *Ibid.*, p. 327.

¹³ *Ibid.*, p. 325.

365D.1163/45 : Telegram

The Secretary of State to the Minister Resident in Ethiopia (Engert)

WASHINGTON, February 15, 1937—2 p. m.

20. Your 40, February 9, 2 p. m. Sudan Interior Mission Council at Brooklyn has advised the Department that while the Mission is an international enterprise the Brooklyn office is regarded as headquarters for Abyssinian work, and that although properties were acquired in their own names by Lambie and Rhoad because of Ethiopian prejudice against using mission name, such properties were always understood to belong to the Mission. Further information from Lambie transmitted by Brooklyn office indicates that American contributions provided largely or wholly for headquarters building, for main hospital of Leprosarium, for all buildings at Jimma, and for residences at Soddu. Other properties paid for largely by Canadian gifts. Rhoad is an American citizen but Lambie lost his citizenship upon his naturalization as an Ethiopian.

The above is for your information. The Department feels that it can add nothing to instructions in its 298 [398], December 8, 5 p. m.,^{13a} requesting you to endeavor to obtain for American interests a fair appraisal and prompt compensation in case Italian authorities take over Mission property.

HULL

365D.1163/45 : Telegram

The Secretary of State to the Minister Resident in Ethiopia (Engert)

WASHINGTON, February 15, 1937—6 p. m.

21. Your 40, February 9, 2 p. m. Sudan Interior Mission has advised Duff¹⁴ that reimbursement alone is insufficient and to ask for alternate sites for leprosarium and headquarters.

You may lend Duff appropriate informal assistance in his endeavor to obtain sites as partial reimbursement for requisitioned properties.

HULL

365D.1163/70

The Chargé in Ethiopia (Hughes) to the Secretary of State

No. 7

ADDIS ABABA, March 22, 1937.

[Received May 1.]

SIR: I have the honor to refer to the Department's telegram No. 32 dated March 4, 1 [6] p. m.¹⁵ concerning the status and future of

^{13a} *Foreign Relations*, 1936, vol. III, p. 325.¹⁴ Clarence W. Duff, Deputy Field Director of the Sudan Interior Mission at Addis Ababa.¹⁵ Not printed

American missionaries in Ethiopia, and to submit the following discussion of recent developments with pertinent observations.

There are known to be now 50 American missionaries and 11 children in Ethiopia, of whom 36 adults and 8 children are in Addis Ababa and 14 adults and 3 children are in other parts of the interior. Many of those who were forced to come to Addis Ababa during the war have subsequently made repeated attempts to return to their distant posts. However, the Italian authorities have been so reluctant to give them permits to leave this city that only one or two have succeeded in returning. The Italians' objections are based on the grounds that there is no safe means of transportation for more than part of the way to the various missionary posts; that because certain districts are not yet completely free of small parties of roving bandits, the authorities do not want either the missionaries to risk their lives and property or the responsibility of protecting them that would accrue from the issuance of an exit permit; and that certain land and buildings now occupied (indication of ownership was expressly avoided) by foreign missionaries may have to be expropriated by the Government—it being understood that remuneration for property taken over would be forthcoming. Mission heads have informed me that several of their stations in the interior have been occupied by Italian troops for many months, and that no rent has been offered nor has the Government made any move either to buy or to vacate the properties occupied.

During the past few months the mission heads in the Capital have repeatedly sought an expression of policy regarding their future from the authorities, but without success. The Chief of Cabinet, Lt. Col. Mazzi and his assistant, Lt. Col. Colpani, have been as helpful as they could be, but their replies have always been to the effect that there were no instructions from Rome regarding policy. In individual cases the authorities have sent communications by air for the missionaries, and have on separate occasions evacuated two American families from inaccessible points, bringing them to Addis Ababa by plane without charge. In both cases the need for medical attention was the reason for departure.

After dinner at this Legation a few nights ago I had an opportunity to discuss the missionary question with Lieutenant Colonels Mazzi and Colpani. I asked them to give me some idea of what the Government has decided or may decide to do about American missionaries. They both expressed their willingness to tell me anything they knew, but told me frankly that Rome had thus far given them no instructions.

Indirectly they implied that Rome had purposely not expressed a policy toward foreign Missionaries here in order that the local authorities would not be able to embarrass the home Government by any

overt act, and also because Rome wants to avoid offending the American and British Governments and public opinion.

From subsequent conversations with the Cabinet heads I received the intimation that the Sudan Interior Mission members would soon have to leave (See Legation's telegram No. 84, March 25, 8 p. m.¹⁷) The reason appears to be that certain indiscreet statements discovered in letters from some of them—mostly British—have caused the authorities to consider the Mission, if not undesirable, at least out of favor. Moreover, their valuable property seems to be desired by the Government. At the same time the Assistant Chief of Cabinet stated that there was nothing known against the American Mission or the Seventh Day Adventists Mission, and that he saw no reason why they could not "remain for awhile longer".

Pressure upon the Sudan Interior Mission to close will affect 31 adults and 6 children, all Americans. Of that number 13 missionaries and 3 children are now at interior stations. However, the Government has not intimated that members of the Sudan Mission will be asked to leave in the immediate future. As nearly as can be guessed it would appear that they would have ample time to prepare their effects and dispose of their property to the Italian Government.

All mission heads have asked my advice regarding how to press their various claims against the Government after the closing of this office. I have advised them to interview the cabinet officials and report to their home boards. At the same time I suggested that they might ask the aid of the British Consul General, but warned them that he might have no instructions to act in their behalf, although he would doubtless do anything he could for them within his power. He has assured me personally that he will help American citizens in any way he can after my departure.

The American missionaries here generally feel that they will have to leave after some months. A few of them have stated that they intend remaining until they are forced to leave, but most of them indicate that they will gradually prepare for departure, and go as soon as they are sure that further delay will avail them nothing. It is believed that before the end of this year all but a few will have departed.

Respectfully yours,

MORRIS N. HUGHES

365D.1163/62: Telegram

The Ambassador in Italy (Phillips) to the Secretary of State

ROME, April 9, 1937—6 p. m.
[Received April 9—3:45 p. m.]

152. Commenting on the reports of the *News Chronicle* regarding the expulsion from Ethiopia of seven Protestant missionaries the Gov-

¹⁷ Not printed.

ernment spokesman this evening writes that many of the missionaries in Ethiopia are either spies, swindlers, or dangerous fanatics who have become *agents provocateurs* among the native populations. It must be clearly understood, he says, that Italy, who has promised peace to the natives, intends to bring order into the country and will not hesitate to expel all undesirable foreigners. After eliminating banditry and perpetual civil war, he adds, "the natives have no need of further division through religious sects and quarrels introduced by foreign propagandists". The Lekemti massacre for example was perpetrated and the Addis Ababa outrage participated in by graduates of the Swedish Protestant schools. Gayda then mentions the following "insignificant and suspect" Anglo-Saxon missions which have been dealt with by the Italian authorities:

The American Bible Missionary Society "proved so unimportant that when the American authorities intervened in its defense they themselves had a great deal of trouble in identifying and justifying it". Gayda describes the society in derogatory terms and adds that Ruth Shippey, Bertha Domermuth and Elena French, who, with little regard for religious work, taught languages in Ethiopia, were expelled when found to be in close contact with Colonel Sandford, a British officer actively engaged in espionage.

The *News Chronicle* report refers to members of the British Bible Churchman's Missionary Society and British and Foreign Bible Society who were "mixed up in many mysterious enterprises". These missionaries' religious work was of no use either to the church or the converts. "But to interfere with the religious conscience of the natives by giving money tips and by quarreling with other missions means creating spiritual and political disorder and calling for just and salutary repression by the Italian authorities".

PHILLIPS

365D.1163/63 : Telegram

The Ambassador in Italy (Phillips) to the Secretary of State

ROME, April 9, 1937—7 p. m.
[Received April 9—3: 34 p. m.]

153. My 152, April 9, 6 p. m. This afternoon I drew Count Ciano's attention to the Gayda article with regard to the expulsion of three American missionaries from Ethiopia on the ground of espionage, et cetera. Ciano had not then read the article but did so in my presence. He admitted his entire ignorance of the affair which he said came within the jurisdiction of the Colonial Ministry. He promised, however, at once to investigate and to advise me. I told him that while I had no knowledge of the facts and had received no

communications from the missionaries themselves or from any other source an article such as Gayda's would make a most unfavorable impression in the United States and did not help good relations.

Ciano admitted somewhat reluctantly it seemed to me that the policy of the Colonial Ministry was to discourage the continuance of foreign missions in Ethiopia. He said, however, that when we had any cases of American missionaries awaiting permission to return to Ethiopia he would be glad to have me take up each case individually with him which I agreed to do.

PHILLIPS

365D.1163/63 : Telegram

The Secretary of State to the Ambassador in Italy (Phillips)

WASHINGTON, April 10, 1937—4 p. m.

54. Your 152, April 9, 6 p. m. and 153, April 9, 7 p. m. The Department approves of your prompt action in this matter and trusts you will be able to obtain at the earliest possible moment a full report on the situation. This is all the more necessary in view of the fact that many rumors regarding the incident, some probably inaccurate, have already reached this country and will doubtless be given considerable publicity in the press in the absence of a satisfactory official statement of the facts. You may wish to inform the Foreign Minister in this sense.

You should in any case make it clear to Count Ciano that in the event these American citizens have not already been expelled from Ethiopia, this Government expects that they will be shown every proper consideration and given ample time to settle their affairs. You should add that in any future cases of this kind it would be in the best interest of both governments if this Government received prior notification of the intentions of the competent Italian authorities and the reasons therefor.

HULL

365D.1163/66 : Telegram

The Ambassador in Italy (Phillips) to the Secretary of State

ROME, April 14, 1937—7 p. m.
[Received April 14—4:09 p. m.]

159. This afternoon I gave Count Ciano the substance of your telegram No. 54, April 10, 4 p. m. and asked him whether he could now furnish me with a full report in regard to the expulsion of the three members of the American Bible Missionary Society. I emphasized that if they had not already left Ethiopia they should be given ample

time to settle their affairs. In my presence Ciano called the Minister of the Colonies on the telephone and asked whether he had as yet received any detailed report from Addis Ababa. From the conversation it was apparent that nothing further had yet been received but the Minister of the Colonies assured Ciano that he would send a despatch this evening to the Viceroy requesting that the report be forwarded immediately and also requiring him to give ample time to the three missionaries concerned in the event that they had not already left.

Ciano then resumed his conversation with me and referred to the future of missions in Ethiopia. He said that he could now assure me that the Italian Government had adopted a policy of no discrimination against missions or against religions, that Protestant missions and Protestant missionaries were welcome in Ethiopia provided they refrained from political propaganda or any anti-Italian attitude. The expulsion orders therefore were against persons for individual activities and were not directed against the operation of the missions themselves.

Inasmuch as the representatives of the American press here have been pressing for information, I have with Ciano's approval informed them briefly of the above.

Ciano also inferred that new missionaries to replace those who had left would be welcome.

PHILLIPS

365D.1163/67

*Memorandum by the Chief of the Division of Near Eastern Affairs
(Murray)*

[WASHINGTON,] April 15, 1937.

In Mr. Phillips' telegram No. 159 of April 14, 7 p. m., recounting a conversation with Count Ciano, the Italian Foreign Minister, regarding the expulsion of American women and missionaries from Ethiopia, Count Ciano told Mr. Phillips that he "could now assure him that the Italian Government had adopted the policy of no discrimination against missions or against religions; that Protestant missions and Protestant missionaries were welcome in Ethiopia provided they refrained from political propaganda or any anti-Italian attitude."

It is pertinent to recall in this connection Mr. Engert's strictly confidential telegram of December 23, 10 a. m.,¹⁸ informing us that during a conference with Marshal Graziani the day before in connection with the requisition of the Sudan Interior Mission property the Marshal

¹⁸ *Foreign Relations*, 1936, vol. III, p. 329.

had given him certain papers to peruse among which was inadvertently included a telegram from the Italian Minister of the Colonies, the substance of which was as follows:

“It is becoming increasingly evident that all missionaries in Ethiopia are hostile to Italy. With the progress of our operations in the West you should therefore make every effort to eliminate missionaries, both Europeans and Americans, as quickly as possible. We cannot tolerate hostile elements in the Empire.”

In view of the above it is evident that whatever the policy of the Italian Government may be “now” regarding the presence of Protestant missionaries in Ethiopia, the policy of that Government last December was certainly the reverse. It seems safe to assume, furthermore, that, despite the present assurances of Count Ciano, ways and means will be found to force the Protestant missionaries out of the country in the not very distant future.

WALLACE MURRAY

365D.1163/69

The Ambassador in Italy (Phillips) to the Secretary of State

No. 319

ROME, April 15, 1937.

SIR: Referring to and supplementing my telegram No. 152 of April 9, 6 p. m. and subsequent telegrams, I have the honor to submit the following additional information in connection with the reported expulsion of American missionaries from Ethiopia.

The general question of the status of American missionaries in Ethiopia was recently brought to the attention of the Embassy through the receipt of information to the effect that the applications for visas of certain American members of religious missions in Ethiopia in order to enable them to return to that territory, which had been filed at the Italian Consulate General at Alexandria, had been held in suspense for several months and that although repeated inquiries on the matter had been made by the applicants at the Consulate General, no reply had been obtained. I had accordingly requested an appointment with the Minister for Foreign Affairs to ask that decision on these applications might be expedited, and as the report of the expulsion of American missionaries from Ethiopia, which was reported in my telegram No. 152 of April 9, 6 p. m., appeared in the *Giornale D'Italia* on the day on which I was calling at the Ministry, I drew this article to Count Ciano's attention. As stated in my telegram No. 153 of April 9, 7 p. m., Count Ciano informed me that he had not yet seen the article which he then read in my presence. The Minister stated that this was the first news he had received of the matter, which came entirely within the jurisdiction of the Colonial Ministry, and added

that, after causing an investigation to be made, he would communicate with me further. I pointed out that a newspaper article such as the one referred to above, if given publicity in the American press, would arouse widespread adverse comment and stated that I would appreciate information as to whether the Italian authorities were planning to close all foreign missions in Ethiopia or whether they were merely endeavoring to eliminate some of those individual missionaries who were believed to be more sympathetic to the Ethiopian cause than to the Italians. I added that if the latter were true, it would be possible for the missions to be restaffed by a new element, presumably more sympathetic to the Italians. Count Ciano replied, with apparent reluctance, that the policy of the Colonial Ministry was to eliminate all foreign missions in Ethiopia as they were no longer needed there under Italian occupation, but that he would discuss the matter further at a later date. I then mentioned the fact that three or four American missionaries are now in the Sudan awaiting permits to re-enter Ethiopia, that they had been waiting for several months, and that it seemed only fair to notify them as to whether or not they would be permitted to return. Count Ciano asked me to communicate to him the names of these individuals and that in all other instances of individual American missionaries seeking to return to Ethiopia he would be glad if I would submit each case to him for investigation. I subsequently submitted to the Minister a list of these visa applicants.

On the following day the British Ambassador called to ask what action my Government contemplated taking with regard to the expulsion of the Missionaries, as reported in the *Giornale D'Italia* on the day previous, and I informed him of the attitude of the Department as outlined in its telegram No. 54 of April 10, 4 p. m. The Ambassador told me that the instructions from his Government implied more drastic action and that he had protested formally against the expulsion of British missionaries, without, however, having all the facts in hand. Sir Eric added that, although he did not have complete knowledge of the details in each case, possibly some of the British missionaries who were alleged to have been expelled, might, due to long residence in Ethiopia, be deemed unsympathetic to the Italian regime and therefore undesirable in Ethiopia from the Italian standpoint.

As the Ambassador stated that he expected to discuss the matter further with Count Ciano, I called upon the British Ambassador on April 14th. He allowed me to read a telegram which he had sent to his Government following his talk with the Italian Foreign Minister on the evening of April 12th. From this telegram it would appear that Drummond raised three questions with Count Ciano: The first question dealt with the Sudan Interior Missions' stations in Southern Ethiopia which had been ordered to close, and of which the personnel

had been requested to leave the country. The second point referred to the question as to whether the Central Station of the Sudan Interior Mission at Addis Ababa would be allowed to acquire the property of the Swedish Mission which had just been vacated and which that Mission wished to dispose of to the Sudan Mission. To both of the foregoing inquiries the Foreign Minister replied that he had no information but would cause an investigation to be made. The third matter concerned the personnel of the Bible Churchmen's Society, one of the two British missions mentioned in the article of the *Giornale D'Italia*, and in that instance Ciano insisted that the Italian Government had in its possession strong evidence of anti-Fascism on the part of the personnel of this Mission, and read to the Ambassador a statement alleged to have been made by two members of the Mission which, while rather harmless in itself, indicated a lack of sympathy toward the Italians. The Ambassador thereupon asked whether those missionaries who had been expelled from Ethiopia could be replaced, and Count Ciano assured him that this could be done and that it would not, therefore, be necessary to close the Mission.

In connection with the question of Swedish missions in Ethiopia, the Chargé d'Affaires of the Swedish Legation in Rome called at the Embassy to request information regarding the attitude of the American Government concerning the expulsion of missionaries. He stated that several Swedish missions had been expelled a few months ago and that, although inquiries had been made at the Italian Foreign Office as to whether the Swedish societies themselves were objectionable to the Italian authorities or merely the individuals representing the societies, he had been unable to receive a definite answer. The Chargé added that the Italian authorities had refused to allow the re-establishment of Swedish missions regardless of their personnel in either Eritrea or Italian Somaliland. He also said that the Swedish Government had been in communication with the British Government with regard to the Swedish missions in Ethiopia.

Following the receipt of the Department's telegram of April 10, I requested a further appointment with the Foreign Minister. The appointment was made for April 14th when I called in order to obtain such information as he might have gathered relating to the expulsion of three members of the American Bible Missionary Society. The substance of my conversation with Count Ciano is contained in my telegram to the Department, No. 159 of April 14, 7 p. m. Count Ciano repeated to me the assurance that he had given the British Ambassador, namely, that new missionaries to replace those who had left would be welcome to Ethiopia.

In addition to Gayda's article, which was inspired by the publication in the *News Chronicle* of certain statements by Doctor Bartlett,

member of the British Religious Society, relating to the expulsion from Ethiopia of certain American missionaries, several other articles have appeared in the Italian press. The *Tribuna*, for example, in an editorial on April 9th takes occasion to comment bitterly upon the lack of desire of the British Government to control the British press and the disastrous effect which this policy was having on Italo-British relations.

The representatives of the American press here have been anxious to obtain information regarding this situation and accordingly I have kept them informed, with Count Ciano's approval, of the steps being taken to obtain authoritative information on the subject.

Respectfully yours,

WILLIAM PHILLIPS

365D.1163/73 : Telegram

The Chargé in Italy (Kirk) to the Secretary of State

ROME, May 5, 1937—3 p. m.

[Received May 5—11:55 a. m.]

200. Embassy's 159, April 14, 7 p. m. Foreign Office informs me that Ministry of Colonies has ascertained that the report of the expulsion of the three members of the American Bible Missionary Society, referred to in paragraph 2 of the Embassy's telegram 152 of April 9, 6 p. m., is unfounded and that the missionaries in question are still in Addis Ababa.

KIRK

365D.1163/82 : Telegram

The Ambassador in Italy (Phillips) to the Secretary of State

ROME, June 11, 1937—11 a. m.

[Received June 11—9:20 a. m.]

272. My 159, April 14, 7 p. m. I was told day before yesterday by the British Ambassador that Count Ciano had just informed him that a new policy had been adopted against all foreign missions and missionaries in Ethiopia. This policy would require the withdrawal of all missionaries and missions including American. Drummond added that the Italian decision would become public on Monday next as the result of a question and answer in the House of Commons.

I immediately sought an interview with Ciano who received me yesterday afternoon and confirmed the above information. The missionaries are to leave and the mission property is to be appraised and the societies indemnified.

I remonstrated strongly against this decision saying that in my opinion it would be very badly received throughout the United States inasmuch as the work of American missions abroad was widely and generously supported in all communities. It seemed a pity, I added, that just at a time when so many international difficulties and problems required adjustment the Italian Government should adopt a course which would antagonize at once so many people and be open to so many unfavorable constructions.

Ciano replied that he himself had done everything he could to avoid this step which, however, had been taken by the Duce himself acting with all the pros and cons before him. He said it was the Duce's desire that teaching by foreigners in Ethiopia should cease.

PHILLIPS

365D.1163/83 : Telegram

The Ambassador in Italy (Phillips) to the Secretary of State

ROME, June 13, 1937—11 a. m.
[Received June 13—7:59 a. m.]

274. My 272, June 11, 11 a. m. The British Ambassador has just received a written communication from Count Ciano confirming the decision that the educational work of the foreign missionaries in Ethiopia must cease, that the missionaries would be withdrawn and the mission properties taken over by the Italian Government. The letter continued that in so far as the purely humanitarian and social work of the missionaries was concerned this phase might again be considered after recognition of the Empire.

It is understood that the new order will apply to all foreign units including American, British, Swedish and a small French Catholic mission.

PHILLIPS

365D.1163/82 : Telegram

The Secretary of State to the Ambassador in Italy (Phillips)

WASHINGTON, June 14, 1937—3 p. m.

102. Your 272, June 11, 11 a. m. The Department fully approves of your statement to Count Ciano.

Inasmuch as publicity was given to the assurances formerly given you that American missionaries would be permitted to remain in Ethiopia it will of course be necessary, in view of the general public interest in the matter, to make announcement of the changed situation. You may if you consider it desirable inform Count Ciano, who will

doubtless appreciate that the reversal of Italian policy with respect to American missionaries cannot fail to leave an unfavorable impression upon many people in this country. In any case you should seek an early occasion to advise the Foreign Minister that your Government has noted his statements respecting compensation for mission property and that your Government will fully support its nationals in their claims for adequate compensation, including the necessary facilities to transfer payments.

HULL

365D.1163/88

The Ambassador in Italy (Phillips) to the Secretary of State

No. 433

ROME, June 17, 1937.
[Received June 29.]

SIR: In compliance with the Department's telegraphic instruction No. 102 of June 14, 1937 relating to the decision of the Italian Government to close all foreign mission schools in Ethiopia and to take over the mission properties, I have the honor to inform the Department that I called upon the Italian Minister for Foreign Affairs on June 16th and explained to Count Ciano that I had not failed to report the information he had given me regarding the aforesaid decision to my Government, which had instructed me to inform him that it had taken note of this decision with regret and would lend its full support to claims for adequate compensation including facilities necessary for the transfer of payments, which might be submitted by its nationals in return for properties taken over by the Italian Government. I added that the Secretary of State wished to be assured that the money paid to the missions on account of properties taken over would be transferred to them and left with Count Ciano an *aide-mémoire* to this effect, a copy of which is enclosed.

Count Ciano read it carefully and said that he would do his utmost to meet the wishes of the American Government in this respect. Ciano felt that, while it was the Duce's desire that teaching by foreigners in Ethiopia must cease, arrangements might later be made by means of which missions which did not give instruction would be allowed to remain.

In a conversation afterwards with the British Ambassador, he told me that he had not yet discussed with the Foreign Minister the question of compensation for British missions. He had been informed that the Sudan mission had taken up this matter with the Italian authorities at Addis Ababa and had been satisfied with the amount of compensation which the Italians had expressed a willingness to make.

In so far as he was aware, the question of the transfer of Italian currency had not, however, been discussed by the Sudan mission. Sir Eric added that he could at a moment's notice secure from London instructions to present a demand similar to the one which I had presented with regard to compensation but he thought on the whole that it would be wiser for him to refrain from doing so at the present moment in order to avoid giving Count Ciano the impression that the British and American Governments were acting jointly in this matter.

Respectfully yours,

WILLIAM PHILLIPS

[Enclosure]

The American Embassy to the Italian Ministry for Foreign Affairs

AIDE-MÉMOIRE

With reference to the decision of the Royal Italian Government that teaching by foreigners in Ethiopia must cease and that in consequence all foreign missions will be closed and the missionaries required to withdraw, the American Government has noted this decision with regret since it cannot fail to create an unfavorable impression among many persons in the United States. The American Government will lend its full support to claims for adequate compensation including facilities necessary for the transfer of payments, which may be submitted by its nationals in return for properties taken over by the Italian Government.

ROME, June 16, 1937.

365D.1163/85 : Telegram

The Ambassador in Italy (Phillips) to the Secretary of State

ROME, June 21, 1937—1 p. m.

[Received June 21—8:45 a. m.]

291. Referring to my conversation concerning the expulsion of foreign missions from Ethiopia (see my 272, June 11, 11 a. m.), I have received a written communication dated June 18th from Count Ciano confirming the Duce's decision to close all foreign mission schools in Ethiopia. The note continues "if the said missions, outside the educational field, intend to carry on work of humanitarian and philanthropic character any requests will in due time be examined when the juridical question of recognition of the Empire has become an accomplished fact.

As regards the property of foreign missions already established in Italian East Africa instructions have been given to the respective colonial governments to see that these missions receive fair indemnity;

and on my part I shall not fail to use my good offices to facilitate if necessary the transactions and formalities involved in the liquidation of such indemnities”.

PHILLIPS

365D.1163/85 : Telegram

The Secretary of State to the Ambassador in Italy (Phillips)

WASHINGTON, June 22, 1937—4 p. m.

109. Your 291, June 21, 1 p. m. Please keep Department informed of developments in connection with its telegram No. 102, June 14, 3 p. m.

HULL

365D.1163/86 : Telegram

The Ambassador in Italy (Phillips) to the Secretary of State

ROME, June 23, 1937—11 a. m.

[Received June 23—9 a. m.]

294. Department's telegram 109, June 22, 4 p. m. For my information, I would be grateful to receive a list of American mission properties now in Ethiopia together with an approximate estimate of their extent and value as well as any information which may be obtainable concerning measures taken by mission societies to receive compensation for properties.

PHILLIPS

365D.1163/86 : Telegram

The Acting Secretary of State to the Ambassador in Italy (Phillips)

WASHINGTON, June 26, 1937—noon.

113. Embassy's 294 June 23, 11 a. m. According to information compiled in April 1936 by Consulate Addis Ababa, the estimated investments of American missionary societies in Ethiopia were as follows:

United Presbyterians, 3 stations, \$200,000; Seventh Day Adventists, 6 stations, \$300,000; Sudan Interior Mission, 10 stations, \$250,000; 2 independent schools in Addis Ababa with small estimated investments.

Sudan Interior Mission has not clearly established its legal status as an American enterprise, although its directing personnel is apparently American.

Consul Hughes reported in despatch of March 22, 1937, that missionaries stated they had received no offer of payment for rent or purchase of properties already occupied by Italians.

WELLES

365D.1163/96

The Ambassador in Italy (Phillips) to the Secretary of State

No. 473

ROME, July 8, 1937.

[Received July 21.]

SIR: With reference to my despatch No. 433 of June 17, 1937, regarding the closing of foreign mission schools in Ethiopia, I have the honor to report that Monsignor Joseph P. Hurley, American Attaché to the office of the Secretary of State of the Holy See, called upon me this morning evidently at the request of the Holy See and for the purpose of communicating the following to the Department of State. Recently there has come to the attention of the Holy See the fact that an impression was gaining ground in high circles to the effect that the expulsion of foreign missionaries from Ethiopia had been furthered in some way by the influence of the Catholic Church. Monsignor Hurley called, he said, to tell me the actual situation. Immediately following Mr. Eden's statement in the House of Commons on June 14th,¹⁹ in which he announced the decision of the Italian Government that all foreign teaching in Ethiopia should cease, the Holy See addressed a written communication to the Italian Government pointing out the Vatican's historic rights in the matter of selection of their own teachers in any part of the world. In this case, therefore, the Holy See reserves its right to send to Ethiopia any Catholic missionaries which they desire, whether they may be French, English, or American catholics, or any other nationality. In the same communication the Holy See pointed out the dangers involved to the Catholic Church in the matter of reprisals by other governments: that there were at least ten important catholic missions in India with many Italian members; there were also important missions in Africa, also with Italian membership. The Italian Government was at the same time reminded that the Apostolic Delegate in Washington, Monsignor Cicognani, was an Italian who had always received the utmost courtesy and consideration from the American authorities.

There has been no reply as yet from the Italian Government to this note. In conclusion, Monsignor Hurley emphasized that the above communication from the Holy See to the Italian Government

¹⁹ United Kingdom, *Parliamentary Debates*, House of Commons, 1936-37, vol. 325, col. 4.

had been made immediately following the Eden speech and not as a result of the impression created by the erroneous reports in circulation that there was some form of collusion between the Vatican and the Italian Government with respect to foreign teaching in Ethiopia.

Respectfully yours,

WILLIAM PHILLIPS

365D.1163/99

The Secretary of State to the Chargé in Italy (Reed)

No. 183

WASHINGTON, September 15, 1937.

SIR: The Department has been informed by the Board of Foreign Missions of the United Presbyterian Church of North America, Schaff Building, 1505 Race Street, Philadelphia, Pennsylvania, that its Mission properties at Sayo and Gore, in Western Ethiopia, comprising buildings with hospital equipment and supplies and various furnishings, were occupied by the Italian military authorities in November 1936, shortly after the withdrawal of the missionary staff.

The Board states that no communication has been received from the Italian authorities as to the terms on which these properties are being held and that efforts on the part of the Board's representative at Addis Ababa, Mr. D. C. Henry, made before the closing of the American Legation at Addis Ababa, to obtain a statement in this regard from the Italian authorities were without results. The Board adds that in June, 1937, the Italian authorities definitely refused permission to two of its missionaries to return to Sayo and Gore.

Under these circumstances, and in view of the assurances given to the Ambassador in writing by Count Ciano on June 18, 1937, which were reported in the Embassy's telegram No. 291, June 21, 1 p. m., it is desired that the statements of the Board be brought informally to the attention of the appropriate Italian authorities and that inquiry be made as to what steps looking to a settlement of this matter with the Board are contemplated by the Italian Government. It should be explained that this inquiry is being made at Rome in view of the absence of American official representation at Addis Ababa.

As of possible assistance to the Embassy in discussing this matter informally with the appropriate Italian authorities, there are enclosed copies of two letters²⁰ on this subject received by the Department from the Board. Enclosed with the Board's letter of April 12, 1937, was a list of the properties claimed. A copy of this list is also transmitted herewith.²⁰

Very truly yours,

For the Secretary of State:
[File copy not signed]

²⁰ Not printed.

365D.1163/104

The Ambassador in Italy (Phillips) to the Secretary of State

No. 668

ROME, November 26, 1937.

[Received December 7.]

SIR: I have the honor to transmit the following information which has been furnished me in confidence by a representative of the British and Foreign Bible Association concerning the present situation surrounding Protestant missions in Ethiopia. My informant desires that his name should be omitted.

The problem confronting the missions has been the subject of discussion for a number of months between the American, British, and Swedish societies. On its part, the British and Foreign Bible Association has persuaded the Italian authorities here that it functions as a business organization rather than as a missionary society, inasmuch as its sole activity is the selling of Bibles, and has, therefore, been permitted to continue its activities. It has a distributing center in Addis Ababa and a new representative of the society, by the name of Ronchi, is just going out to continue the sale of the Bibles.

One of the smallest of the Protestant missions in Ethiopia is that representing the Waldensian Church, one of the American leaders being Robert Anthony, whose address is the American Waldensian Society, 156 Fifth Avenue, New York. Mr. Anthony has been persuaded that the Italians would be willing to allow the Waldensian Mission in Ethiopia to act as the agents for all foreign Protestant missionary work in that country, and he has returned to America to further this idea among the other American Protestant groups. However, according to my informant, the Waldensian mission is in fact subsidized by the Italians, notably by the payment of the salary of its principal representative in Addis Ababa, and that therefore it would not be wise for the other Protestant societies to associate themselves with the society in the manner suggested. My informant is of the opinion that the society in question is actually controlled and restricted by the Government. Furthermore, he thinks that the idea of a governmentally controlled Waldensian mission may be a Catholic idea designed to break up the Protestant coordination and weaken the effectiveness of Protestantism without incurring the displeasure of the world by officially destroying the work of Protestant missions in Ethiopia.

In these circumstances, a plan has been worked out by the English and Swedish churches, along the following lines,—the set-up in Rome of a group of four or five Protestant laymen representing the various Protestant interests and concerns in mission work in Ethiopia. This group would act as an “advisory committee” and as a go-between

between foreign missions and their field of operations in Ethiopia. This advisory committee, of course, would only be able to function if authorized by the various foreign denominations. The idea behind the suggestion lies in the belief that the Italian Government would feel that they could keep in close touch with the activities of the Protestant churches through this local committee and might, therefore, be willing to permit it to function. In any event, according to my informant, it would be better than direct negotiations between the churches and the Italian Government, which must continue to be wholly unsatisfactory. The English group, which has already accepted the plan of an advisory committee, comprises the Bible Churchmen Missionary Society, the London Mission to the Jews, and the English branch of the Sudan Interior Mission. The Swedish Evangeliska Fosterlands Stiftelsen has also accepted it. On the other hand, the approval of the American missions has been withheld and they have not as yet offered any encouragement. They are understood to be waiting for some event which would of itself solve the problem, but which has not yet appeared on the horizon.

The so-called "advisory committee", before being able to function, must apply to the Italian authorities for the necessary permit. This application, however, cannot be made until the committee has been asked to operate by Edinburgh House, which is the clearing house of all Protestant missionary work and of which Dr. John R. Mott is the actual president. In order to show the Italian authorities a united front, it is, according to my informant, highly desirable to include the American Protestant missionary groups in the plan. He thinks there may be an idea among the American groups that they would be in a better position than the others vis-à-vis the Italian authorities in Ethiopia because they are representative of a non-sanctionist country and he suggests the possibility that this idea has been fostered by the Catholics with the design of preventing a unanimity of opinion and action.

In brief, the English and the Swedish groups are ready to proceed now to the formation of the "advisory committee in Rome" and are anxiously awaiting word of the cooperation of the American groups.

With regard to the actual conditions of the remaining missionaries in Ethiopia, my informant said that all the Protestant missionaries some time ago had been called to Addis Ababa. Some of them had been expelled, some allowed to remain, while a few of those with permission to carry on their work had voluntarily left. He had found it impossible to obtain any accurate information regarding the conditions under which those remaining were permitted to function. His last information on the subject came from an Italian pastor who is a member of the Waldensian society, who had informed him that

the missionaries were permitted to carry on their work "quietly" but nowhere except in Addis Ababa.

Further information had come to him through the London mission to Jews to the effect that Mr. Heintze, who had been in charge of the work in the Lake Tsana region and who had left Ethiopia "on the advice of the Italian Consul", has not only been trying in vain to return but has been endeavoring to send money to the Ethiopian convert left in charge of the mission. While this money has been forwarded through an Italian in Gondara, Mr. Heintze has not as yet received any word as to whether the money has been actually received by the mission.

The object of my informant's call upon me seems to have been to enlist the Embassy's assistance in obtaining favorable action on the proposed plan for an "advisory committee" by the American missionary groups. He expressed the hope that possibly I might be able to take some action along these lines. Without giving him any assurance in this respect, I expressed my appreciation of his visit and my interest in the whole problem.

Respectfully yours,

WILLIAM PHILLIPS.

865D.00/26

The Vice Consul at Aden (Chiperfield) to the Secretary of State

[Extract]

No. 108

ADEN, December 13, 1937.
[Received January 8, 1938.]

SIR: . . .

American missionaries are slowly leaving Ethiopia, as are the missionaries of all nations. They are unwelcome in the country, though the Italians cannot be said to have treated them discourteously or unjustly. The Italians have reserved the right to educate the natives themselves, but Mr. Duff informs me that his mission has continued with its ecclesiastical teaching and services entirely unmolested. The Italians have been appreciative of the hospital and medical work now being carried on by the missionaries, but it is known that as soon as the Italians are prepared to take over all this work themselves, they will do so. One of the works of Mr. Duff's mission has been the establishment of a leper hospital, which now has about eighty inmates. The new cases delivered to the hospital by the Italians after their occupation of Addis Ababa, are adequately supported by funds from the Italian authorities. There are now 25 American missionaries in Addis Ababa; none are known to be elsewhere in Ethiopia.

There is transmitted as an enclosure a list of these Americans²¹ as supplied by Mr. Duff. They are believed to be the only Americans now in Ethiopia.

The chief difficulty being experienced by the missionaries is that their property is being taken over by the Italians, but in each case a fair price is being paid, usually the first figure asked by the mission itself. Thus the missionaries are being slowly pushed from the country, and Mr. Duff predicts that within one year all the Americans will probably have left. Five of the Americans mentioned above have planned to leave the country on or about December 10, 1937, and it is presumed that they have now departed. Most of the missionaries upon leaving will go into the Anglo-Egyptian Sudan or Kenya Colony. The missionaries have, of course, been disheartened because their activities in the interior have been completely stopped, as no civilians are now allowed to reside outside the cities. These regulations, of course, apply to all civilians, and the missionaries have made no complaints to the authorities.

Respectfully yours,

C. B. CHIPERFIELD

²¹ Not printed.

IRAN

RELUCTANCE OF THE UNITED STATES TO APPOINT A MINISTER TO IRAN; CONTINUED ABSENCE OF IRANIAN REPRESENTATION IN THE UNITED STATES¹

701.9111/616a

*The Chief of the Division of Near Eastern Affairs (Murray) to the
Chargé in Iran (Merriam)*

WASHINGTON, January 18, 1937.

MY DEAR MR. MERRIAM: I think you may be interested to know that while the Secretary was in Buenos Aires during the recent Pan-American Conference there² Nadir Arasteh, the Iranian Minister at that post, called upon the Secretary and made every effort to show his friendly attitude. The conversation naturally turned to the present strained relations between the United States and Iran and the Minister expressed his emphatic view that Iran could not afford to go on, as at present, without proper representation in this country. The Secretary concurred in the Minister's views and added that he had done everything in his power to prevent the present impasse. The Secretary furthermore told the Minister that he had the impression that the true facts of the case had never reached His Majesty's ears. Otherwise it was impossible to believe that all of the Secretary's conscientious endeavors to remove His Majesty's misgivings would have been in vain. The Minister said he was of the same view and that he contemplated making an early trip to his country at which time he would make a further effort to clear up the misunderstanding.

During the course of conversation the Minister referred somewhat vaguely to the desirability of our making some "gesture" in order to smooth matters over. I gathered that the Secretary did not pursue that phase of the matter and apparently left the Minister under the impression that we had made all the gestures that could properly be expected of us under the circumstances.

While you might, if you think it would be helpful and if the occasion presents itself, make reference to the fact that a conversation took place between the Secretary and the Iranian Minister in Buenos Aires

¹ For previous correspondence, see *Foreign Relations*, 1936, vol. III, pp. 342 ff.

² The Inter-American Conference for the Maintenance of Peace, December 1-23, 1936.

regarding the present state of our relations with Iran, it would seem undesirable to refer to any of the details of the conversation, which will doubtless be reported fully by Mr. Arasteh.

Sincerely yours,

WALLACE MURRAY

124.91/55 : Telegram

The Chargé in Iran (Merriam) to the Secretary of State

TEHERAN, January 21, 1937—10 a. m.

[Received 9 p. m.]

4. I venture to suggest that the Department consider at this time the appointment of a Minister at Teheran.

1. In view of past experience it seems entirely possible that American publications, in providing color and background for articles on the finally accepted concessions³ will make statements which will be resented here and thus jeopardize the contract. Request for *agrément* prior to arrival of clippings would tend to offset them and to safeguard the concessions. That the Shah is as sensitive as ever to the printed word is evidenced by the recent recall of the Iranian Minister at Paris as a protest against certain French press articles. On the other hand, His Majesty is influenced by diplomatic "front". The large and relatively unworked staff of the British Legation forms in itself a splendid safeguard for British interests and relations against the occasioned [*occasional?*] serious lapses of the English press.

2. Iranians generally are surprised and delighted at the signing of the concessions and hope this means restoration of normal relations. Their granting constitutes in fact a remarkable gesture when the present status of the diplomatic relations is considered and the moment seems opportune to consolidate and enlarge the situation. Soheily⁴ intimated on the 19th that he felt at a loss how to commence and we are perhaps in somewhat the same position. Our request for *agrément* would afford additional proof of the friendliness of our Government and people of which the President's message of sympathy⁵ and the remarks of the Secretary of State to the Iranian Minister at Buenos Aires are recent examples. It would be exceptional gesture coming immediately after the President's re-inauguration and in view of the present lack of any Iranian representative to our Government, which we could hope would be followed by the restoration of normal relations. Moreover, while we realize that the concessions are purely a business arrangement between the Iranian Government and private

³ For correspondence concerning the Amiranian oil concessions, see pp. 734 ff.

⁴ A. Soheily, Iranian Undersecretary of State for Foreign Affairs.

⁵ Regarding floods and earthquakes in northern Iran; see telegram No. 34, August 8, 1936, noon, to the Chargé in Iran, *Foreign Relations*, 1936, vol. III, p. 373.

American interests, we are not unmindful of the confidence thereby implied in Americans and American methods. These considerations could be made clear to the Foreign Office when the *agrément* is requested.

3. It would be advisable to request *agrément* as soon as possible, well before arrival of clippings, and not to await ratification of the concessions which might conceivably be delayed. If the Shah should be incensed, ratification would hardly prevent him from nullifying concessions in some way or from worsening diplomatic relations unless the shock is cushioned in advance.

4. Legation has leaned backwards to an extent that has been painful at times to Hart⁶ in order to make it crystal clear to the Iranian Government that the concessionaires are entirely unconnected with and independent of the United States Government which is not backing them in any way. Soheily has informed me of his own accord that he quite understood this. I have not, of course, mentioned subject of this telegram to the Foreign Office or to Hart and doubt if the latter is fully aware of the effects which the press may have upon his projects.

MERRIAM

124.91/55 : Telegram

The Secretary of State to the Chargé in Iran (Merriam)

WASHINGTON, January 25, 1937—3 p. m.

1. Your 4, January 21, 10 a. m. The Department of course welcomes any indication of improvement in our present relations with Iran and has been at all times prepared to assist in any appropriate way to that end. The Department does not, however, consider that there is any proper connection between the recently concluded oil and pipeline concessions and the appointment of a Minister to Teheran.

It is clear furthermore that the granting of the concessions in question was in no way impeded by the absence of Iranian representation in this country nor by the character of our present representation in Teheran. The transaction was purely a business one and concluded by the Iranian authorities because they considered it in their best interest to do so. The same will doubtless prove to be the case with respect to ratification. It may be added in this connection that, up to the present, press comments on the recent concessions appear to have contained nothing that could possibly prove objectionable to the Iranian Government.

⁶ Charles C. Hart, representative of the Amiranian Oil Company in Iran.

The essential problem in our relations with Iran remains, namely the extreme sensitiveness of the Shah to all American press comment however trivial that he may regard as derogatory to himself. In view of our own experience and the recent one of the French it would not appear that the mere request for an *agrément* at this moment would solve the problem. It will be recalled in this connection that the Shah's decision to terminate all Iranian representation in this country was taken while Mr. Hornibrook was still at his post. The Department has furthermore been under the impression that the Shah might actually resent the request for an *agrément* under present conditions.

While, therefore, the Department is not prepared at this time to consider the appointment of a new minister, it does contemplate, in view of your desire for home leave, raising the rank of its representation in Teheran by the assignment of Mr. C. Van H. Engert as Counselor of Legation and Chargé d'Affaires pending the eventual appointment of a minister which it is hoped will not be long delayed. Such an increase in the rank of our representation would be an intermediate step to the appointment of a minister and thus in line with your present recommendations. It is expected that Mr. Engert will reach Teheran about the middle of May. As he is well and favorably known to Iranian officials by reason of his previous service in Iran, the Department suggests that this might be a favorable moment to advise the Foreign Office informally of Mr. Engert's early assignment and the above stated reasons therefor.

In this connection you are informed that the Iranian Minister at Buenos Aires in the course of a conversation at that capital with the Secretary of State remarked that he was endeavoring to find some means of breaking the present impasse and that for that purpose he contemplated returning to Iran during the month of February. Such being the case, it seems possible that the Iranian authorities may discover some way out of their difficulty by that time.

HULL

124.91/60

The Chargé in Iran (Merriam) to the Secretary of State

[Extract]

No. 988

TEHERAN, February 6, 1937.

[Received April 2.]

SIR: I have the honor to refer to my telegrams No. 4 of January 21, 10 a. m., and No. 5 of February 2, 11 a. m.,⁷ and to the Department's telegrams No. 1 of January 25, 3 p. m., No. 2 of January 29, 7 p. m., and No. 3 of January 29, 8 p. m.,^{7a} all of 1937.

⁷ Latter not printed.

^{7a} Nos. 2 and 3 of January 29, not printed.

In my telegram No. 4 above-cited, suggesting that the Department might wish to give consideration to the appointment of a Minister at Teheran, I felt it proper to state the possibilities arising from American press comments on the Hart concessions in the most pessimistic terms, feeling that the Department, with such a statement before it of the worst that might be expected would be in a good position to decide whether to cover all the possibilities or to take a more optimistic view and to act according to the pleasanter possibilities which also, undeniably, exist.

A few observations touching the Department's telegram No. 1 of January 25, 3 p. m., suggest themselves at this point. As regards the statement that there would appear to be no proper relation between the concessions and the appointment of a Minister, it seems to the Legation that so long as these concessions are legally incomplete it is quite unjustified in supporting them or connecting itself with them in any manner. However, once the concessions have been signed, ratified and promulgated, they would appear to constitute a legitimate private American interest on the same footing with our trading, missionary and archaeological interests which we should be justified in protecting in every legitimate way permitted by policy. In this country one cannot blink the fact that all the activities and interests, private and official, of each and every separate foreign country, are inextricably interwoven. This situation arises from the fact that all power is concentrated in the Shah, consequently any factor which affects a private interest in any foreign country is bound to react, through His Majesty, upon the official interest of that country, and vice versa. In this connection it may be said that the American missionaries, who know the country extremely well, would not have been in the least surprised if following the Djalal incident and with the withdrawal of the Iranian representatives from the United States, they in their turn had been requested to depart from Iran. In fact, again, diplomatic relations between the United States and Iran became strained not because of any act of our Government but owing to the American press, a wholly private and unassociated interest. From an American point of view, missionary work is unrelated to diplomatic relations, just as diplomatic relations are unrelated to the press. But in Iran they are all tied more or less tightly in the same knot.

To cut the discussion of this particular point short, it appeared to the Legation that, given the interaction of all sorts of factors within the Shah (as within Iranians generally)—an inescapable fact and condition, however contrary it may be to American methods and traditions—the legitimate interest constituted by the Hart conces-

sions, when in full legal force, would be best protected by the appointment of a Minister. All other American interests would also, of course, be benefited.

The suggestion that this appointment be made promptly, without awaiting the ratification of the concessions, arose from the consideration that this might be delayed until clippings from the American press should begin to arrive in Iran, and not with any view to encouraging ratification, which has been a foregone conclusion, everything being equal.

The Legation does not apprehend bad results from straight news articles relating to Iran in the leading daily newspapers so much as the poor taste and inaccuracies which so frequently get into the background and color with which these items are decorated in the weekly news magazines and Sunday supplements.

The Legation feels that the Department has accurately stated the problem in our relations with Iran as that of the sensitivity of the Shah to anything which by any scope of the imagination could be regarded as derogatory to himself. Indeed, to the best of its knowledge, there is no representative at Teheran of any country where the press can be regarded as free who has not been faced with the same difficulty to some degree. The problem, so far as one can see, is insoluble during the Shah's life. It cannot be met directly, but only indirectly, by such means as suggest themselves as appropriate from time to time. It seemed to the Legation that the appointment of a Minister would harmonize with this line of action.

Respectfully yours,

GORDON P. MERRIAM

701.9111/621

*Memorandum by the Chief of the Division of Near Eastern Affairs
(Murray) to the Secretary of State*

[WASHINGTON,] March 26, 1937.

MR. SECRETARY: As the result of a lengthy conversation which I had yesterday with Major Ibrahim Arfa, an Iranian army officer now officially in this country, I have reason to believe that a means may soon be found to induce the Shah of Iran to restore Iranian diplomatic and consular representation in this country at a not too distant date.

Major Arfa, who is a person of keen intelligence and perception and who has, only recently, been fully restored to the Shah's favor, had the following to say with regard to the possibilities of modifying the Shah's hitherto relentless opposition to maintaining any sort of representation in the United States so long as this Government

is unable to prevent the publication in the American press of any articles regarded by the Shah as derogatory to himself:

Major Arfa states that in his opinion the Shah would be profoundly impressed if he were made familiar with the details of the fruitless endeavor of the German Government to suppress criticism in this country directed at the German Chief of State.⁸ Particularly valuable, in the opinion of Major Arfa, is the fact that the suggestion is reported to have been made by the rigidly controlled German press that despite Constitutional guarantees of freedom of speech and press in this country, this Government should take the necessary steps to render impossible further attacks upon Mr. Hitler or any other foreign chief of state and that no notice was taken by this Government of this presumably inspired suggestion; and that, in withdrawing its present Ambassador in the United States, Mr. Hitler is sending to this country a new ambassador high in his confidence.

With the example of Germany's action in the above incident and bearing in mind the profound admiration which the Shah has for remilitarized Germany and its autocratic leader, Major Arfa believes the Shah will be quick to realize that he has made a mistake in attempting to force the United States to his way of thinking and will act accordingly.

When I questioned him as to how such a presentation of the German situation could be brought to the attention of His Majesty, Major Arfa furnished me with the interesting and new information that at present in Iran all of His Majesty's subjects are permitted to communicate, either by telegraph or by letter, directly with him and that there is no interference in the delivery of such communications. Such being the case, Major Arfa proposed to lay the full situation, in due time, before His Majesty in the form of a written communication.

I think it might be desirable if you care at sometime to receive Major Arfa, who is an officer of the highest integrity and who can, I believe, be of valuable assistance to us in terminating the present abnormal situation of our relations with the Iranian Government.

WALLACE MURRAY

124.91/64 : Telegram

The Chargé in Iran (Engert) to the Secretary of State

TEHERAN, June 12, 1937—8 a. m.

[Received 11:45 a. m.]

34. I have now met most of the more important Persian Government officials several of whom including the Prime Minister and the Min-

⁸ See *Foreign Relations*, 1935, vol. II, pp. 482 ff.

ister of Foreign Affairs held office when I was here in 1920 and 22. Although I had known the Shah as Minister of War and he had dined at my house and had lent me polo ponies I have purposely made no allusion to that fact and have expressed no desire to renew our acquaintance. So long as His Majesty remains sensitive regarding his less exalted past I for one have no intention of reminding [him] of it.

However, in my conversation with Government officials especially those who have the Shah's ear such as the Premier whose son recently married a daughter of the Shah—I have taken the line that the relations between the United States and Persia are intrinsically perfectly normal and friendly. I made light of any difficulties and misunderstandings to which they themselves referred and told them that if any existed it was their business and mine to iron them out. I assured them that I was personally animated by the most cordial feelings towards Persian Government and people and that I knew these sentiments were fully shared by the American Government and people or I would not have been sent here. They could therefore count upon me to the utmost to assist in interpreting the one to the other.

So far all officials have been scrupulously correct in their manner towards me but I doubt whether there will be any marked [apparent omission] of coolness until perhaps some of the things I have let drop have had a chance to penetrate to the Shah. They are all waiting to take their cue from him.

In the meantime I am quietly and largely informally, as if dealing with matters of routine rather than controversial subjects, keeping before the Foreign Office the stupid and irritating question of the non-delivery of second class mail⁹ as well as the desirability in the interest of harmonious intercourse of negotiating extradition¹⁰ and trade agreements. I shall of course report from time to time any appreciable progress made in those directions and should welcome any specific instructions you may wish to issue for my guidance.

ENGERT

124.91/64 : Telegram

The Secretary of State to the Chargé in Iran (Engert)

WASHINGTON, June 18, 1937—5 p. m.

26. Your 34, June 12, 8 a. m. We feel that it is difficult to take any concrete steps, beyond those already taken, which are likely to improve our relations with Iran and that improvement in those relations will

⁹ See pp. 728 ff.

¹⁰ See *Foreign Relations*, 1936, vol. III, pp. 391 ff. No further progress regarding negotiation of an extradition treaty was made in 1937.

come about largely as a result of passage of time. We believe therefore that while it is proper to endeavor to settle such subsidiary problems as non-delivery of second class mail in the purely routine manner which you have adopted, it would be best to proceed most cautiously in discussing larger issues, such as extradition.

So far as a trade agreement is concerned we consider that the initiative should, for the present at least, be left entirely to the Iranians.

HULL

124.91/66 : Telegram

The Chargé in Iran (Engert) to the Secretary of State

TEHERAN, July 6, 1937—5 p. m.

[Received July 7—4:56 a. m.]

44. Some 15 high ranking Persian Government officials attended the Legation's Fourth of July reception. Among them Minister for Foreign Affairs who stayed over an hour, several other Cabinet Officers and the President of the Parliament. They explained that others had been unavoidably detained by signing of treaty with Iraq¹¹ same afternoon and by preparations for official dinner same evening. I gained the impression that the Government had definitely decided to resume normal friendly relations with this Legation.

ENGERT

123En3/568 : Telegram

The Chargé in Iran (Engert) to the Secretary of State

TEHERAN, November 17, 1937—noon.

[Received 2:11 p. m.]

109. My despatch No. 1118, August 28.¹² Foreign Minister returned last week and received me this morning.

He volunteered the information that he was about to recommend to the Shah that their Legation in Washington be reopened in the near future. He said he would tell me more about it by the end of the month as His Majesty was at present in Resht.

ENGERT

¹¹ For the treaty and protocol between Iran and Iraq regarding boundary, signed at Teheran, July 4, 1937, see League of Nations Treaty Series, vol. cxc, p. 241.

¹² Not printed.

701.9111/641 : Telegram

The Chargé in Iran (Engert) to the Secretary of State

TEHERAN, December 20, 1937—1 p. m.

[Received December 21—2 p. m.]

128. Since my 109, November 17, noon, the Foreign Minister has twice referred to his efforts but I gather he has encountered difficulties. Apparently the Shah is still hoping that a special mission might first be sent here. In the case of France he had evidently insisted on it but when he got it (see Legation's despatch 1114, August 20th¹³) and still no Iranian Minister was appointed to Paris the French Minister who came in April left on leave of absence November 29th utterly disgusted with what he called the duplicity of the Iranian Government. Immediately after his departure several articles violently attacking the French were permitted to appear in the local papers (see Legation's despatch 1183, December 10,¹³ which left here December 18).

With all this in mind but without of course referring to it I did not encourage the Minister for Foreign Affairs in any expectations of a similar mission from the United States in the immediate future.

This morning the Director General of the Foreign Office sent for me and asked me on behalf of the Minister whether the Government of the United States would be prepared to appoint a minister to Iran soon after the Iranian Legation in Washington had been reopened by a chargé d'affaires. I replied that it was of course impossible for me to commit my Government in a matter of this kind without first inquiring. Speaking purely personally I said it was extremely likely that sooner or later a minister would be sent here and the reopening of the Iranian Legation in Washington might possibly help to expedite such a decision.

If the Department is in agreement with the last sentence or were willing to make it more definite I believe the question of a special mission would be dropped.

ENGERT

701.9111/641 : Telegram

The Secretary of State to the Chargé in Iran (Engert)

WASHINGTON, December 23, 1937—7 p. m.

62. Your 128, December 20, 1 p. m. As you are doubtless aware from the Department's 22, April 30, 7 p. m.,¹⁴ and 24, May 15, 5 p. m. 1936,¹⁵ it was not considered advisable to give further consideration

¹³ Not printed.¹⁴ *Foreign Relations*, 1936, vol. III, p. 361.¹⁵ *Ibid.*, p. 363.

to the proposal of sending a special mission to Iran and the Department has regarded the matter as closed. Developments since that time have tended to confirm the Department in its belief that such a mission would serve no useful purpose. You will therefore discreetly discourage any contrary suggestions from Government officials.

As for the matter of the reopening of the Iranian Legation in Washington and the rank of our representative in Iran you may inform competent officials of the Iranian Government that this Government has no objection to the reopening of the Legation by a Chargé d'Affaires and that the Department will recommend the appointment of an American Minister to Teheran as soon thereafter as practicable. The Iranian Government is doubtless aware that nominations by the President of Ministers and Ambassadors require confirmation by the Senate and that this procedure necessarily entails at times a certain amount of delay.

You may add that this Government of course assumes that His Majesty will in due time, in order that his prestige in the United States may not be lessened, wish to be represented in Washington by a full envoy extraordinary and minister plenipotentiary.

HULL

RESUMPTION BY IRAN OF DELIVERY OF SECOND CLASS MAIL FROM
THE UNITED STATES AFTER FURTHER INQUIRIES BY THE UNITED
STATES¹⁶

891.711/38

The Chargé in Iran (Merriam) to the Secretary of State

[Extracts]

No. 1003

TEHERAN, February 26, 1937.

[Received April 2.]

SIR: I have the honor to acquaint the Department with further developments concerning the delivery of second-class mail matter in Iran. The situation is very confused at the moment, but an attempt will be made to give as accurate an account of it as now seems possible.

Speaking by and large, the Legations at Teheran have received but little mail if any of this kind since early in January, and what has been received gives evidences of having been opened and censored. Until recently nothing came through at all, but no one was especially concerned because the passes to the west and to some extent to the north were blocked for several weeks. As soon as the roads were reopened, however, it soon became obvious that some other explanation was required.

¹⁶ For previous correspondence, see *Foreign Relations*, 1936, vol. III, pp. 375 ff.

It so happened that the post office was choked with mail which had just come in from the passes at the time of the death of Davar, the Minister of Finance. It is possible, therefore, that the Shah desired to prevent the dissemination in this country of printed matter dealing with this occurrence. It is also possible that when the Shah became angry with the French owing to articles in the French press that were considered offensive, he recollected that he had had similar trouble with the American press and to some extent also with the Egyptian press, the British press, the Swedish press, the Iraqui press and, some years ago, with the German press, and decided that the western press was hopeless and that the only thing to do was to cut it off altogether.

.
 At the same time, if the corps as a whole should prove to feel strongly about the question, it would be difficult for us not to go along in view of the fact that our provocation is greater than that of the other members: our mail matter has been held up for ten months, theirs a month and a half only.

The foregoing states the situation in its simplest terms: the prohibition against the delivery of second-class matter from the United States has been extended to that coming from all countries, except that some of it is delivered after being opened and censored.

Respectfully yours,

GORDON P. MERRIAM

891.711/44

The Chargé in Iran (Merriam) to the Secretary of State

No. 1023

TEHERAN, March 26, 1937.

[Received May 13.]

SIR: I have the honor to refer to the Legation's despatch No. 1003 of February 26, 1937, with respect to the delivery of second-class mail matter in Iran.

The general prohibition against delivery lasted for about two weeks only. At the end of that time publications were again received from all countries but the United States. The situation thus reverted to the pre-French crisis status with the exception that while American publications which had been mailed out from various European and Near Eastern countries were delivered prior to the French trouble, after it they were no longer delivered. Apparently the Imperial Police had discovered this method of evading the restriction. As a consequence, the Legation has not been receiving Departmental and other

second-class mail matter forwarded by our Despatch Agent in London since the early part of January.

In this treatment of French mail and British mail, as contrasted with the treatment accorded American mail, there is manifest discrimination. By any impartial standard it seems obvious that the American press during the past year has given no more cause for complaint than the French or the British press. The American press has produced nothing, for example, to compare, in general offensiveness, with *Innocence and Design*, a book which appeared under a London imprint, and with which the Department is acquainted.

Under the circumstances, it seemed that representations to the Foreign Office of some sort were clearly indicated at an early moment while the facts giving rise to the discrimination were still fresh. On the other hand, the Legation did not feel that the matter justified expenditure for a long telegram of explanation to the Department in order to obtain authorization to protest. Accordingly, the expedient was adopted of formulating the approach as an inquiry, a request for information which would necessarily be laid before the Department. The conversations which have been held on the subject are enclosed herewith in the form of memoranda. The reply of the Foreign Office, however, cannot be expected prior to the return of the Shah, which is expected on March 27th, from his journey in the south.

It may be added that it seemed best to take advantage of the favorable atmosphere now existing due to the recent consummation of the Hart concessions.¹⁷ It would have been unfair to Mr. Hart to inject a delicate element of this sort before his concessions were legally completed on the Iranian side, but now that they are complete this objection has lost its force.

Admittedly, the whole question is one to be handled with caution. But the French have now been tarred with the same brush as ourselves; they received a very thin coating, quickly removed, whereas we have been wearing a very thick one for a long time. To the Legation it has seemed justifiable at this time to ask the simple question: "Why?"

Respectfully yours,

GORDON P. MERRIAM

[Enclosure 1]

Memorandum of Conversation Between the American Chargé (Merriam) and the Chief of the Third Political Division of the Iranian Foreign Office (Massoud-Ansari), March 16, 1937

The Chargé d'Affaires, accompanied by the Legation interpreter, called on M. Massoud-Ansari for the purpose of reminding the Foreign

¹⁷ See pp. 734 ff.

Office of our proposal for an extradition treaty. After this matter had been disposed of, the Chargé said that he wished to speak of the situation which had existed for some time of the non-delivery in Iran of American second-class mail. This was a matter which the Legation has been observing with attention, and in view of recent developments the Chargé found that he would be obliged to submit a report to his Government. There were several circumstances for which he could not find a satisfactory explanation; consequently, before sending in his report, he had thought it well to ask the Foreign Office about them.

The Chargé went on to say that there had been a pretty complete ban on American second-class mail for eleven months. During this period of time the Legation had watched items appearing upon Iran in the American press and in the press of other countries where expression was free, and it had come to the conclusion that the American press was not more at fault than the press of some other countries.

He added that recently a certain Government had had difficulties over the press, that the publications of that country had been stopped for only two weeks, and that delivery had now been resumed. The Chargé emphasized at this point that it was not his purpose to make trouble for anyone else. But the truth was that, although the facts were similar, the delivery of American publications had been withheld for eleven months, whereas those of another country had been withheld for two weeks. He could not explain why this should be, and would appreciate receiving an explanation from the Foreign Office. The United States postal authorities had addressed several inquiries about the matter to the Iranian Posts and Telegraphs and had not even received the courtesy of a reply.

M. Massoud-Ansari said that the matter would receive his earnest attention and that he would discuss it at his next meeting with the Foreign Minister. He quite understood that it was not the Chargé's purpose to make trouble for others.

The Chargé asked what possible interest, for example, the Iranian Government could have in not delivering such a magazine as *Yachting*, which had never published a word about Iran and probably never would. He pointed out that with perhaps one or two exceptions American publications, despite the fact that they had been barred in Iran, had remained thoroughly friendly in tone and attitude toward this country and it seemed that they should be rewarded for this, not penalized. The situation had in some respects become absurd. For instance, the American College had ordered some textbooks from the United States which were required reading for the Government examinations. They had not been delivered. The position was therefore that the Government prohibited the importation of books which it required to be read. The College had not requested the Chargé to do

anything about the matter; he merely spoke of it to show the absurdity of the situation.

M. Massoud-Ansari, who had been taking notes, promised again to make inquiries.

The Chargé then drew his attention to the fact that two second-class mail communications from the Department, marked "Official Business," had been opened before delivery. They contained official forms and copies of the *Congressional Record*. Most of the material sent out by the Department by second-class mail had latterly not been delivered at all.

The Chargé concluded by saying, smilingly but emphatically, that if all the remarks in the American press which had given offense to Iran during the past ten years, and all the remarks which would give offense during the next ten years were added together, he felt sure they would not equal in offensiveness the anti-American campaign in the Teheran press of a year ago.

[Enclosure 2]

Memorandum of Conversation Between the American Chargé (Merriam) and the Chief of the Third Political Division of the Iranian Foreign Office (Massoud-Ansari), March 24, 1937

M. Massoud-Ansari called at the Legation and after the subject of his visit had been concluded, the Chargé referred to their previous conversation on the subject of American second-class mail matter. He said that it had just that morning come to his attention that the Consulate had no income tax forms. The Department of State sent these by second-class mail and they had apparently been stopped like everything else. The result was that Americans residing in Iran, unless they obtained the forms in some other way, could not submit their returns and were liable to penalties under the law.

M. Massoud-Ansari replied that he had submitted a full report on the matter to the Foreign Minister and that he would inform the Chargé of the latter's instructions as soon as they were issued.

891.711/42

Memorandum by Mr. Raymond A. Hare of the Division of Near Eastern Affairs

[WASHINGTON,] April 28, 1937.

Mr. Russell of the International Postal Service of the Post Office Department telephoned on April 26 to say that the Post Office Department had at long last received a reply from the Iranian Postal

Administration with regard to the non-delivery in Iran of American second-class mail.

It appears that in taking up this matter with the Iranian Postal Administration, the Post Office Department had made specific reference to the case of the *National Geographic Magazine*. In its reply therefore the Iranian Postal Administration, making reference only to the specific case of *National Geographic*, asked that it be supplied with the names and addresses of subscribers who had not received the magazine to the end that an appropriate investigation might be made. No reference whatsoever was made to the general subject of restrictions on second-class mail.

In making this reply the Iranian Postal Administration was obviously side-stepping the whole issue of restrictions on second-class mail, and as a result the whole question is left completely up in the air.

It may be observed in this connection that the original communication of the Post Office Department to the Iranian Postal Administration was dated September 15, 1936. It was followed up by subsequent communications on the subject dated November 9, 1936, January 26, 1937, and March 22, 1937. In the case of the communication of March 22, 1937, Mr. Russell stated that the inquiry had been of a general nature and had not mentioned any specific publication.

When inquiry was made as to what action the Post Office Department contemplated taking in the matter, Mr. Russell stated that they intended to communicate with *National Geographic* for the purpose of securing the names and addresses of Iranian subscribers who had not received their copies of the *National Geographic*, and that this information would be transmitted to the Iranian Postal Administration in accordance with its suggestion. He seemed to be of the opinion that there was little that could be done for the relief of subscribers in Iran of American publications as long as the Iranian Government maintains its present adamant position.

891.711/52 : Telegram

The Chargé in Iran (Engert) to the Secretary of State

TEHERAN, July 14, 1937—10 a. m.

[Received 10:45 a. m.]

47. Legation's 40, June 22, 8 a. m.¹⁸ I am now unofficially informed that at the last meeting of the Cabinet it was decided to permit delivery of second-class mail from the United States to all addresses in Iran excepting only publications which have used objectionable language in the past. Considering that the Iranian Government has

¹⁸ Not printed.

recently been fully preoccupied with the Asiatic Pact¹⁹ and other important problems this step may be regarded as a distinct gesture of good will towards us.

In advising the Post Office Department informally of the above the Department may wish to add confidentially that I have had several conversations with the Director General of Posts in an attempt to salvage as much as possible of the large quantities of books, magazines, et cetera, which have not been delivered during the past 16 months. He informs me most of the material has been destroyed including registered matter. When I expressed astonishment he implied it was due to a mistake on the part of a minor official. I then said I hoped that any claim for lost registered articles would be promptly paid, to which he agreed at once.

ENGERT

891.711/53 : Telegram

The Chargé in Iran (Engert) to the Secretary of State

TEHERAN, August 24, 1937—9 a. m.

[Received 9:45 a. m.]

69. Legation's telegram No. 47, July 14, 10 a. m. I am glad to be able to report that as a result of further informal representations the local post office is now digging up old mail matter which was at first believed to have been destroyed. The Legation and American nationals have recently been receiving periodicals dated March, April, etc., 1936, and I am hopeful that more will be forthcoming.

Please inform Post Office Department but not for publication.

ENGERT

GRANT OF AN OIL CONCESSION BY THE IRANIAN GOVERNMENT TO
THE AMIRANIAN OIL COMPANY²⁰

891.6363 Amiranian/1 : Telegram

The Chargé in Iran (Merriam) to the Secretary of State

TEHERAN, December 16, 1936—noon.

[Received 3:36 p. m.]

62. Charles C. Hart expects to sign an oil concession with the Iranian Government on December 20th on behalf of the Amiranian

¹⁹ Treaty signed at Teheran, July 8, 1937, by Afghanistan, Iran, Iraq, and Turkey; for text see League of Nations Treaty Series, vol. cxc, p. 21.

²⁰ For previous correspondence regarding an oil concession in Iran, see *Foreign Relations*, 1924, vol. II, pp. 539 ff.

Oil Company of New York. He describes this as an independent concern backed by the same group which is interested in the Inland Exploration Company.²¹ Concession will include Khorasan and one other province either Astrabad, Mazanderan or Semnan. He also expects to conclude agreement shortly thereafter permitting construction of pipe line from Afghanistan through Iranian territory to Chahbar, where a port will be developed. A separate company will be formed to construct and operate this line. Present phase of the negotiations which have proceeded smoothly thus far was begun December 2d.

MERRIAM

891.6363 Amiranian/3 : Telegram

The Acting Secretary of State to the Chargé in Iran (Merriam)

WASHINGTON, December 23, 1936—6 p. m.

50. Your 62, December 16, noon. Hart telegraphed on December 20 that he was ready to sign but that Iranian law required him and Clapp to produce power of attorney. Hart added that Iranian Government, however, asked only that Legation state he and Clapp were authorized to sign.

In this connection Lovejoy, President of Seaboard Oil Company, has advised Department that Seaboard Oil Company, Case, Pomeroy and Company, and Ogden Mills are prepared to form Amiranian Oil Company and Amiranian Pipeline Company upon advice from Hart to do so. In that case Lovejoy states boards of new corporations would by proper resolutions authorize Hart and Clapp to sign concession agreements for them. Lovejoy adds that such resolutions will be forwarded to the Department as soon as companies have been formed.

In case Iranian authorities make inquiry on this matter you may, provided you perceive no objection, furnish informally the information contained in foregoing paragraph. You will of course avoid taking any part in the negotiations in which Hart is engaged.

MOORE

891.6363 Amiranian/5 : Telegram

The Chargé in Iran (Merriam) to the Secretary of State

TEHERAN, January 4, 1937—9 a. m.

[Received 1:05 p. m.]

1. My 62, December 16, noon, and the Department's 50, December 23, noon [6 p. m.]. Yesterday Hart and Clapp and the Iranian

²¹ Which had been granted a concession in Afghanistan; see pp. 597 ff.

Government signed two concession agreements, one relating to oil exploration and development, the other to construction and operation of pipe line. Will telegraph brief summary later.

It proved unnecessary to act on paragraph 3 of No. 50. Crain²² was present in a purely notarial capacity.

MERRIAM

891.6363 Amiranian/7: Telegram

The Chargé in Iran (Merriam) to the Secretary of State

TEHERAN, January 11, 1937—noon.

[Received 3:30 p. m.]

2. My No. 1, January 4, 9 a. m. Hart states that owing to misunderstanding of the Shah's wishes on the part of his Ministers the oil exploration and development agreement has had to be modified with the effect of reducing the area and creating neutral zone with respect to operations of the Anglo-Iranian Oil Company. These alterations have now received the assent of both parties. As modified the 60-year concession covering 200,000 square miles includes Gorgan, most of Khorasan, northeast Kerman, all of Sistan and northern Mokran. Territory later will be reduced by approximately one-half through the elimination of all unproductive areas.

Hart expects the foregoing and the pipe-line agreements to be transmitted shortly to the Majlis for ratification.

MERRIAM

891.6363 Amiranian/8: Telegram

The Chargé in Iran (Merriam) to the Secretary of State

TEHERAN, January 18, 1937—9 a. m.

[Received January 18—7:43 a. m.]

3. My No. 2, January 11, noon. The two concessions were presented to the Mejlis yesterday. Ratification procedure is expected to occupy about 2 weeks. The texts are being published in the local press.

MERRIAM

891.6363 Amiranian/20

The Chargé in Iran (Merriam) to the Secretary of State

No. 981

TEHERAN, January 28, 1937.

[Received April 2.]

SIR: I have the honor to transmit herewith five copies of a map²³ published in the *Journal de Teheran* on January 24, 1937, defining

²² Earl T. Crain, Third Secretary of Legation.

²³ Not reproduced.

the limits of the concession of the Amiranian Oil Company. As the Department is aware from the wording of the Protocol to the agreement submitted under cover of despatch No. 967 of January 13, 1937,²⁴ the limits of the concession are: the Caspian Sea, the frontiers of Soviet Russia, Afghanistan and British Baluchistan, and a line passing through Bandar-i-Shah, Kurd-Mahalleh, Damghan, Reshm, Jandak, Ourdib, Hovze-Miantak, Baabad, Kashit, Fehraj, Irafshan, to the frontier.

Respectfully yours,

GORDON P. MERRIAM

891.6363 Amiranian/12: Telegram

The Chargé in Iran (Merriam) to the Secretary of State

TEHERAN, March 6, 1937—noon.

[Received 12:10 p. m.]

8. Hart states that the Prime Minister has just informed him that the Shah has signed oil and pipe line concessions although public announcement may not be made for several days. Agreements were finally ratified by the Majlis February 4 and 8 respectively. Signature by His Majesty hung in the balance owing to article in *Time* which was cabled anonymously to the Palace from the United States. Fortunately the article might have been worse, consequently Hart was able to furnish an interpretation which although specious apparently proved adequate.

MERRIAM

891.6363 Amiranian/13: Telegram

The Chargé in Iran (Merriam) to the Secretary of State

TEHERAN, March 10, 1937—9 a. m.

[Received 10:05 a. m.]

9. My No. 8, March 6, noon. Persian press of last night and this morning carried in substance the following:

Law granting oil concession to Amiranian Oil Company which was recently signed by the Shah has been communicated by the Cabinet of the Prime Ministry to the Minister of Finance for execution.

No such announcement has yet appeared respecting pipe line concession.

MERRIAM

²⁴ Not printed.

891.6363 Amiranian/34

The Chargé in Iran (Merriam) to the Secretary of State

No. 1018

TEHERAN, March 18, 1937.

[Received May 13.]

SIR: I have the honor to enclose herewith a memorandum of a conversation with M. Kartachov, the Counselor of the Soviet Russian Embassy on March 14, 1937. As a consequence thereof, he and Mr. Charles C. Hart met at the Legation on March 17. The latter furnished information and explanations concerning the concessions which he thought would be of interest to the Russian Embassy and M. Kartachov was afforded an opportunity to ask questions. I acted solely as interpreter.

From his questions, it was evident that the Russians are greatly interested in discovering what if any non-American participation in the companies exist at present or may possibly exist in the future.

Mr. Hart explained that there was no present non-American participation of any kind. Neither he nor any other person connected with his companies had had any contact with the Anglo-Iranian Oil Company, nor with the Germans. In fact, Mr. Hart had avoided calling on any of the foreign Legations at Teheran. Only two Ministers were left at Teheran whom he had previously known: the Polish and the Dutch, and he had not even called on them. At the present time all of the stock of the companies was held by a group of from ten to fifteen persons, all of them Americans who were well-known. Mr. Hart wrote down for M. Kartachov the names of the American groups who are interested.

He continued by saying that the stock would continue to be so held for two or three years, after which it would be offered to the general public and listed on the New York Stock Exchange. It was true that foreigners would be able to purchase shares on the Exchange. That could not be prevented, for it was necessary to place the shares on the open market in order to give them a value. However, only a small minority of shares would be available there for sale. The Afghans had wished a notation to be placed on the reverse of each certificate to the effect that if it was found in the possession of any person not an Afghan or an American it would be confiscated. Mr. Hart, however, had pointed out to the Afghans that it would be impossible to enforce such a provision in any country other than the United States or Afghanistan and that the rules of the Exchange would prevent the shares from being listed if they carried such a provision. As a consequence, the Afghan Government did not insist on the point. He added that, of course, the name of every stockholder was listed in the books of the companies and that the books were

always open to the inspection of the Iranian and Afghan Governments, as the case might be. It was provided in the concessions that a majority of the shares must be held by either Americans or Iranians/Afghans, consequently if this provision should not be met the concession could be cancelled.

Mr. Hart described the German attitude towards the concessions and German propaganda in Teheran against them at some length.

He said that an Iranian official, whom he did not name, had told him that at an official function a short time ago one member of the German Legation had approached him and said that the British participated in the Iranian concession to the extent of 50 per cent. A little later on the same occasion another German had said to him that the Russians participated to the extent of 60 per cent. That made 110 per cent. and Mr. Hart felt that the Germans would do well to coordinate their propaganda a little better.

He added that when the Afghan concession was in its final stages in Berlin, a certain counselor to the Afghans, an Afghan subject who had been educated in Germany, had done everything possible to prevent it from being signed. This man was shown marked consideration by the Germans, was wined and dined by the Foreign Minister, given opera tickets, and so on, but made the mistake of being thoroughly ostentatious about his connection with German officials. In the end, after these tactics had delayed signature for two weeks, the Afghan Prime Minister took cognizance of the situation, dismissed the counselor, and the agreement was signed.

Mr. Hart thought that the disappointment of the Germans was due in part to the fact that they believed Dr. Schacht had made arrangements when he visited Teheran in recent months for the Germans to develop Iranian petroleum resources. Dr. Schacht had evidently made it possible for the German Legation to believe that definite commitments in this sense had been given by the Iranian Minister of Finance. Mr. Hart considered, however, that M. Davar had done nothing of the kind, but that he had merely been hospitable and made polite remarks which were misinterpreted by Dr. Schacht.

Mr. Hart went on to say that there was no reason to believe that the Germans were in a position to participate even if they wanted to, for they lacked the capital and their laws prevented them from exporting what they had. The American company would spend \$200,000,000 before they began to get any return. Capital of this magnitude could be found only in the United States and in England.

M. Kartachov asked when operations would commence and from where the engineers would come. Mr. Hart replied that they would begin to arrive in from six weeks to two months and that they would all come from New York.

M. Kartachov asked whether it had not been necessary to reach some kind of an arrangement with the Anglo-Iranian Oil Company whereby the petroleum would be permitted to come out by the Persian Gulf. Mr. Hart replied that no such arrangement had been made and none was necessary. The Iranian Government took the position that it was entirely free to grant the company an outlet, and the Shah would in fact have been incensed had the company shown any doubt about it by discussing any arrangement of the sort with the Anglo-Iranian. Mr. Hart added that in point of fact the petroleum would not be brought out through the Persian Gulf but through the port of Shahbar [*Chahbar*], on the Indian Ocean.

Respectfully yours,

GORDON P. MERRIAM

[Enclosure]

Memorandum by the Chargé in Iran (Merriam)

Having heard reports to the effect that the Soviet Russian Government was seriously concerned over the granting of a petroleum and pipe-line concession to American companies, the Chargé d'Affaires availed himself of an opportunity offered on March 14, 1937, after a luncheon at the Danish Legation, to ask the Counselor of the Russian Embassy point-blank how the concessions were regarded in Russia.

M. Kartachov immediately became serious and replied that there were two ways of looking at the concessions. First, part of the concession area, Gorgan, was located in the old Russian sphere of influence. It was true that the Russians had voluntarily given up this sphere, but upon condition that if Iran ever granted rights there, it would do so only after consulting the Russian Government. It was true that the Iranians had not accepted this condition, but Russia was nevertheless interested in what happened in that area.

Second, Russian relations with Iran were good; Russian relations with the United States were also good. Iran was a weak country and Russia desired to see it become strong. To become strong it was undoubtedly necessary that Iran should have to resort to foreign capital and, this being the case, Russia would prefer that this capital be American. But Russia would be absolutely opposed to participation therein of capital from any other foreign country. He said he would like to put a question to the Chargé d'Affaires in his turn, and then asked whether there was foreign participation in the company.

The Chargé d'Affaires replied that he desired first of all to make it absolutely clear that the companies concerned were private and

that the United States Government was not interested in them and had no connection with them. It had been at considerable pains to make this clear to the Iranian Government. What he could say on the subject was, therefore, simply what he knew from his contacts with Mr. Hart. So far as the Chargé d'Affaires knew the companies were purely American and there was no foreign participation.

M. Kartachov asked whether there was not British participation. The Chargé said that there was not, so far as he knew. He added that he thought the previous history of the negotiations of various American groups for oil concessions in Iran had demonstrated that no American company could hope to obtain a concession if it was connected with British interests in any way. It seemed evident that the Iranian Government felt the British had enough, and would have nothing to do with a company which was associated with them.

M. Kartachov asked whether there was German participation. The Chargé replied that there was none that he knew of. He thought, in fact, that the Germans had been quite surprised by the granting of the concessions.

The Chargé added that what he was saying was derived from his contacts with Mr. Hart and that, since the companies were private concerns, he could give no official assurances in their regard. If M. Kartachov desired to have authoritative information, he would do well to secure it directly from Mr. Hart, who was the representative in Iran of the companies.

M. Kartachov said that he would be greatly pleased if the Chargé would make it possible for him to meet Mr. Hart.

The Chargé replied that he would be glad to ask Mr. Hart to meet him. He was then in Baghdad, but the Chargé would get in touch with him upon his return. A meeting was later arranged at the American Legation on March 17, and at M. Kartachov's request the Chargé was present as interpreter.

891.6363 Amiranian/18: Telegram

The Chargé in Iran (Merriam) to the Secretary of State

TEHERAN, March 26, 1937—10 a.m.

[Received 2 p.m.]

14. My No. 9, March 10, 9 a.m. Law granting pipe line concession has also been communicated by the Shah for execution. It was promulgated in the *Official Journal* of the Ministry of Justice of March 10. Law according oil concession was similarly promulgated on March 9. Contracts thus appear to be in full legal effect.

Russian Government is maintaining before the Foreign Office the

validity of the Koshtaria concession²⁵ as a matter of principle and is also worried over the possibility of British capital participation now or in the future. Hart has endeavored to satisfy the Russians as to the latter and I gather that the Foreign Office is sticking to its guns on both points.

MERRIAM

891.6363 Amiranian/36

The Chargé in Iran (Merriam) to the Secretary of State

No. 1025

TEHERAN, March 27, 1937.

[Received May 13.]

SIR: I have the honor to refer to the Legation's despatch No. 1018 of March 18, 1937, relating to certain anxieties apparently felt by the Russian Government with respect to the Hart concessions.

In this connection it is of interest to relate that Mr. A. Massoud-Ansari, Chief of the Third Political Division of the Foreign Office, called at the Legation on March 24, 1937, on another matter. When this had been concluded, he referred to the question of the publication in *Foreign Relations*, 1922, of material relating to the northern oil concessions, and said that the written reply of the Foreign Office to the request of the Legation, as to whether or not there was objection to the reprinting of this matter, would withhold consent but would not state the reason.²⁶ That reason was, he continued, that the question of the Khoshtaria concession was still open. This question is of course one of the subjects dealt with in the material in question.

Now, M. Massoud-Ansari is ordinarily close-mouthed. He had already vouchsafed this information over the telephone, consequently his voluntary repetition of it seemed to indicate that this matter weighed somewhat heavily on his mind.

I said, therefore, that I assumed the Khoshtaria question had no effect whatsoever, from the point of view of the Iranian Government, upon the validity of the petroleum concession that had just been granted to an American company.

He replied that it had none, but added that "certain interested Governments" had activated the question as a matter of principle, and that it was therefore still open.

²⁵ For text of Khoshtaria concession, March 9, 1916, see *Foreign Relations*, 1920, vol. III, p. 351.

²⁶ With despatch No. 1030, April 3, 1937, the Chargé in Iran enclosed a translation of a note of March 31 from the Iranian Ministry for Foreign Affairs asking that the documents referred to should not be printed in *Foreign Relations* (026 Foreign Relations/1168). In deference to the wishes of the Iranian Government the documents were omitted from *Foreign Relations*, 1922. A number of the 1922 documents on oil concessions in Persia are, however, printed in Senate Document No. 97, 68th Cong., 1st sess., "Oil Concessions in Foreign Countries".

Knowing that the meeting at the Legation on March 17, reported in despatch No. 1018 of March 18, 1937, between Mr. Kartachov, the Counselor of the Russian Embassy, and Mr. Hart would be made known to the Iranian Government in one way or another, I told M. Massoud-Ansari quite frankly that, having heard rumors to the effect that the Russians were opposed to the concessions, I had taken advantage of an opportunity offered at a recent luncheon to ask a member of the Russian Embassy directly how the Russians felt about them. As his reply indicated that the Russians were particularly worried over the possibility of British participation in the companies, I had, at the request of this Russian, arranged a meeting between him and Mr. Hart at the Legation to afford an opportunity to Mr. Hart to furnish clarifications.

M. Massoud-Ansari asked what Mr. Hart had said as to the possibility of non-American participation, whereupon I repeated the substance of Mr. Hart's explanation of the point as given in the memorandum submitted with despatch No. 1018.

M. Massoud-Ansari commented somewhat dolefully that this was substantially what the Foreign Office had been saying to "interested Governments."

Piecing things together, the situation would appear to be somewhat as follows:

The Russians are worried over the possibility of non-American, and particularly British, participation, if not now then at some time in the future. The fact that stock will be offered for sale on the open market would of course make it possible for British interests to acquire shares, the number of which cannot be definitely stated at present, even though assurance has been given by Mr. Hart that the quantity would be unimportant. A share of stock is of course an evidence of ownership, of partnership, which in an ordinary corporation carries with it (theoretically, at least) a proportional though indirect voice in the management. This is not the legal case for the Amiranian Oil Company as respects shares owned by neither Americans nor Iranians, for the board of directors consists of Americans and Iranians and none other. The Russians might well argue on grounds of economic determinism, however, that those who own the shares, be they of whatever nationality, will control the directors.

The Russians may, therefore, be maintaining the validity of the Khoshtaria concession as a matter of principle to be utilized in case, now or later, it is learned that the British or the Germans are participating in the company.

In any case, the suspicion and dislike with which the Russians are regarded by the Shah are not likely to be lessened by their present attitude.

On the other hand, the Russian Ambassador should feel better disposed personally toward the whole question (whether he does or not, I do not know) because he has been placed in direct contact with the representative of the American company concerned, and can thus report to his Government with a direct knowledge of facts and factors which he did not previously possess. If it be true that the signing of the concessions caught him unawares and he has been blamed for it, he has been given a boost which he badly needed.

It would appear that the Iranian Government is supporting the concessions to the full and that it will continue to do so.

Respectfully yours,

GORDON P. MERRIAM

891.6363 Amiranian/30

Memorandum by Mr. Raymond A. Hare of the Division of Near Eastern Affairs

[WASHINGTON,] April 5, 1937.

The following is a summary of the essential provisions of the agreement signed on January 3, 1937, between the Amiranian Oil Company and the Iranian Government. The agreement was ratified by the Majliss on February 4, 1937, and promulgated by the Shah on March 9.

1. *Exploration*: Exploratory study must be begun within six months following promulgation (i. e. by September 9 of this year) and must be completed within three years (i. e. by March 9, 1940).

2. *Area*: At the termination of the three-year exploration period the Company shall choose two provinces within the concessionary area for further exploration and final choice of an area not to exceed 100,000 square miles.

(This area is the same size as that which the A. I. O. C.²⁷ will have after December 31, 1938. The Amiranian agreement as originally signed provided for an area of about 200,000 square miles but this was reduced by the Shah first to 170,000 and then to 100,000 square miles and Hart consented to the change.)

3. *Drilling*: Within eighteen months after ratification (i. e. by September 9, 1938) one drilling outfit shall be put into operation. Within five years after ratification (i. e. by March 9, 1942) at least three drilling outfits shall be in operation and this number shall be increased to six if oil is struck in commercial quantities. Furthermore, in the latter event, development shall be stimulated with a view to reaching an annual production of at least 6,000,000 tons.

(The A. I. O. C. did not reach this production figure until 1930. Production during the first eleven months of 1936 amounted to 7,489,000 tons as compared to 6,771,000 during the same period in 1935.)

²⁷ Anglo-Iranian Oil Company.

4. *Payments to Iranian Government:* The Company will pay the Iranian Government a royalty of four shillings per ton on petroleum sold in Iran or exported. In addition the Company agrees to pay the Iranian Government a sum equal to 20% of the distribution to common stock shares of the Amiranian Oil Company in excess of distributions equal to 5% of the invested capital, which latter sum shall not exceed £300,000.

The total amount which the Iranian Government will receive under the above two headings shall not be less than £300,000 during the second five-year period following ratification; £500,000 during the third five-year period; and £600,000 for the remainder of the term of the concession.

(The rates of payment specified above are the same as in the case of the Afghan²⁸ and the A. I. O. C. concessions.²⁹ In the former, however, the eventual minimum payment is £450,000 and in the latter £750,000.)

At the expiration of the concession or in the event of its renunciation by the Company the latter shall pay to the Government 20% of the total reserves of the Company and 20% of the balance reported by the Company at the time.

(A similar provision is included in the Afghan and A. I. O. C. concessions.)

During the first twenty-five years of the concession the Company, in exchange for tax exemption, shall pay the Iranian Government nine pence per ton on oil produced up to 6,000,000 tons and six pence per ton thereafter. After twenty-five years a new rate shall be established by agreement between the contracting parties. Such payments shall not be less than £50,000 annually during the second five-year period after ratification and £75,000 thereafter.

(Similar stipulations are contained in the Afghan and A.I.O.C. concessions, except that the former makes no specification of a minimum payment whereas the latter provides for a minimum of £250,000 for the first fifteen years and £300,000 for the second fifteen years, during which also a higher rate of one shilling per ton is specified, as is also the case in the Afghan concession.)

6. [*sic*] Provision is made for facilitating the acquisition of property needed by the Company.

7. Goods for the staff may be imported without special license upon payment of the usual customs duties and taxes. Medical equipment and materials for the use of the Company may be imported free of duty. No export duty or taxes shall be levied.

(Same as A.I.O.C. and Afghan concessions.)

²⁸ For summary of important provisions of concession, see p. 599.

²⁹ For text, see League of Nations. *Official Journal*, December 1933, p. 1653.

8. The Company is not obliged to exchange any part of its funds into Iranian money and its personnel may export freely moneys received as salary.

(Essentially the same as A.I.O.C. and Afghan concessions.)

9. The Government has the right to inspect the technical activity of the Company and to appoint experts for the purpose.

(Same provision in A.I.O.C. concession. The Afghan is also the same except that it specifies "foreign" specialists.)

10. The Government may appoint a "Delegate" who will represent it at the Company's headquarters; his salary to be paid by the Company.

(Same provision in A.I.O.C. and Afghan concessions.)

11. Iranian nationals will be used exclusively for unskilled labor and as far as possible for skilled work.

(Same stipulation in A.I.O.C. concession. The Afghan contains the additional specification that foreign employees must be American.)

Following the beginning of exportation the Company shall furnish £10,000 annually for the training of Iranian students for the petroleum industry in the United States.

(Same stipulation in A. I. O. C. and Afghan concessions.)

12. Sale of gasoline, kerosene and fuel oil in the country shall be at a basic rate fixed by the f. o. b. price of Rumanian or Gulf oil minus 25% for sales to the Government and 10% to other consumers.

(Same as A.I.O.C. and Afghan.)

13. The concession is for a period of sixty years. It may not be abrogated or changed by the Government except in the case that the Company does not live up to its commitments during the exploration period. It may, however, be abrogated by the Company upon giving six months notice during the first seven years and two years notice thereafter. Annulment may also be accomplished by a decision of the Arbitration Tribunal under certain specified conditions. At the conclusion of the agreement all property of the Company resorts to the Government.

(The A. I. O. C. concession was also for sixty years, the Afghan for seventy-five. Provisions for renunciation are similar in all three concessions, except that in the cases of the Amiranian and Afghan concessions a preliminary period is specified during which movable property may be removed by the Company in the event of renunciation.)

14. Differences shall be settled by an Arbitration Tribunal.

(Same in A. I. O. C. and Afghan concessions.)

15. Not later than sixty days after ratification (i. e. by May 9, 1937) the Company shall select an office in Teheran and designate its representative.

(Not stipulated in the Afghan concession. Clearly indicates desire of Iranians to get the affair under way as soon as possible.)

16. Any transfer of the concession shall be subject to the consent of the Iranian Government and the majority of the shares of the Company shall never fall into the hands of non-Americans or non-Iranians.

(Same as A. I. O. C. and Afghan concessions with regard to transfer. A. I. O. C. makes no specification with regard to majority ownership of stock; Afghan does.)

a) An exchange of letters (confidential) of the same date as the signature of the concession provides:

1. That payments provided in the Iranian concession are not and shall not be less favorable than those in the Afghan.

2. That the route of principal pipe lines will not leave Iranian territory.

3. That petroleum exported will always use the facilities of the Amiranian Pipe Line Company.

b) Another exchange of letters of the same date interprets certain aspects of *force majeure*.

c) A letter from the Minister of Finance of the same date, referring to the Afghan concession and stating that the propositions of the Amiranian Company with regard to minimum payments are unacceptable but that if amounts proposed by the Iranian Government are guaranteed liberal terms will be given for the pipe line concession. Thus far, however, we have no information as to whether this contention of the Iranian Government was maintained.

891.6363 Amiranian/26

*The Chief of the Division of Near Eastern Affairs (Murray) to
Mr. Cornelius Van H. Engert*³⁰

WASHINGTON, April 15, 1937.

DEAR MR. ENGERT: I presume you will have arrived in Teheran by the time this letter reaches you. In the light of your experience in the Near East it may not be surprising to you to be confronted, so soon after your arrival, with questions with which you were so actively occupied in Teheran upon your previous assignments there.

I refer to the Khoshtaria oil concessions on which subject I am enclosing for your confidential information a memorandum³¹ which

³⁰ Formerly Minister Resident in Ethiopia, en route to Teheran to assume new assignment as Counselor of Legation in Iran.

³¹ Not printed.

has been prepared recently in the Division incident to the granting of the Amiranian oil concession.

It would be appreciated if, at your early convenience and without encroaching upon the current work of the Legation, you would let me have your general and particular observations on this memorandum. Among the questions concerning which the Division desires, in particular, to be informed are the following:

1. To what extent, if any, does the Amiranian oil concession trespass upon the Khoshtaria concessions? On the basis of the information available to us the only conflict would appear to be in the extreme northwestern portion of the area included in the former which appears to be inclusive of the eastern part of the province of Astrabad. This province, you will recall, was included in the area granted Khoshtaria by the Iranian Government on March 9, 1916.

2. If the Amiranian concession does conflict in part with the Khoshtaria concessions has any protest been made by the British Legation or the Anglo-Iranian Oil Company on the grounds of its infringement of proprietary rights of the North Persia Oils, Limited?

3. If no protest has been made is the absence of such a protest to be interpreted as an abandonment by the Anglo-Iranian Oil Company of the claim of validity previously maintained on behalf of the Khoshtaria concessions acquired by the North Persia Oils, Limited?

4. Have any representations been made to the Iranian Government by the Soviet Embassy incident to the granting of the Amiranian oil concession and, if so, on what basis?

It may perhaps be well for me to enter into a brief explanation of the two last-mentioned questions in order to afford you some guidance in your replies to them.

You will observe that the statement is made in the concluding paragraph of the enclosed memorandum that as late as July, 1934, the validity of the Khoshtaria concessions was being maintained by the British interests concerned. It seems reasonable to suppose that the statement, which I understand to have been made in answer to an inquiry in casual conversation, represents a more or less perfunctory expression of opinion advanced in order to keep the record clear. I do not consider that it need be interpreted as implying that the Anglo-Iranian Oil Company would at this date, in the light of all that has occurred in its relations with the Iranian Government in these last years, be disposed to contest actively the granting of any concession for the northern provinces on the ground that such concession was in violation of existing rights acquired from Khoshtaria by the North Persia Oils, Limited.

Concerning Question 4 reference is made to the Legation's telegram of March 26, 1937,³² that the "Russian Government is maintaining

³² See telegram No. 14, March 26, 10 a. m., from the Chargé in Iran, p. 741.

before the Foreign Office the validity of the Khoshtaria concession as a matter of principle". I am wondering whether this is an accurate expression of the view of the Soviet Embassy. In this connection you will note the observation of the enclosed memorandum³³ on page 21 that if the Khoshtaria rights were originally valid "they had been transferred prior to the signature of the Soviet-Persian Treaty³⁴ to a British company and could not, therefore, be said to have been affected by that Treaty unless the Soviet Government might maintain that the Khoshtaria concessions had reverted to the Persian Government by the declaration, previously quoted, of Bravine of June 19, 1918,³⁵ to the Persian Government or that the notice of the Persian Minister of Public Works of July 24, 1918,³⁶ had made invalid any transfer of the Khoshtaria concessions to the British company". It seems to me that if the Soviet Embassy has made any recent observations to the Iranian Government on the subject of oil concessions in the northern provinces they have probably had to do with such considerations as those mentioned, taken in conjunction with the provisions of Articles 12 and 13 of the Soviet-Persian Treaty of February 26, 1921.

In any case I would appreciate any further enlightenment you may be able to offer on this subject as well as on the specific questions I have raised, including any other observations on the memorandum which may appear to you to be pertinent.

It is, of course, entirely possible that you may consider it inadvisable to pursue at this time inquiries of the nature of those outlined which, however discreetly made, might be misinterpreted. I fully recognize the possible obstacles in the way of obtaining much, if not all, of the specific information requested. Accordingly, if in your judgment it appears wiser to defer a complete reply until the necessary investigations can be made without any possible misconstruction of the motives actuating your inquiries I shall fully appreciate the reasons contributing to the delay. In such a case a preliminary reply might be made

³³ Not printed.

³⁴ Signed February 26, 1921; for text, see League of Nations Treaty Series, vol. ix, p. 383.

³⁵ A published statement to the Persian Foreign Office by the Soviet Diplomatic Agent in Teheran (Bravine) stated, in translation: "The Ministry is hereafter at liberty to consider all former concessions which the late Russian régime obtained for itself in Persia, including mineral, fishing, and transportation concessions (secured through the use of the bayonet or powerful men of Persia) as no longer under the protection of the Russian Republic."

³⁶ This notice declared all concessions void which had been obtained from the Persian Government "in the absence of the Majlis or by duress and force" and also that owners of concessions had no right to establish corporations or to transfer their concessions to foreigners or Persian subjects without permission of the Persian Government. See also decree of July 27, 1918, *Foreign Relations*, 1921, vol. II, p. 646, and despatch No. 758, November 16, 1921, from the Chargé in Persia, *ibid.*, p. 647.

on the basis of the accumulated knowledge of the Legation, while leaving for subsequent discussion the information to be gained from such discreet casual conversations as may be found possible in the future.

Sincerely yours,

WALLACE MURRAY

891.6363 Amiranian/31

*Memorandum by Mr. Raymond A. Hare of the Division of
Near Eastern Affairs*

[WASHINGTON,] April 19, 1937.

Mr. B. H. Faulkner, Secretary-Treasurer of the Amiranian Oil Company and the Iranian Pipe-Line Company, called on April 14th to leave the attached synopses⁸⁷ of agreements between these Companies and the Iranian Government. The Department had received the full texts several weeks previously from the Legation in Teheran. No mention was made of this, however, in thanking Mr. Faulkner for his courtesy.

It has been noted that the synopses give March 5th as the date of promulgation of both Agreements, whereas the Legation gave March 9th as the date of promulgation of the Amiranian Oil Company concession and March 10th of the Iranian Pipe-Line concession. Presumably the information furnished by the Legation is correct.

In commenting on the negotiation of the Amiranian concession, Mr. Faulkner remarked that the Russians had for a time evidently failed to appreciate the significance of what was transpiring and that, when they finally did so, by intercepting radio messages sent in commercial code, they had sought to bring pressure upon the Iranian Government to prevent conclusion of the Agreement. Apparently, however, this Russian intervention had had exactly the opposite effect intended inasmuch as the Shah, on hearing of it, was said to have been so furious that he gave orders to conclude the matter immediately. Mr. Faulkner observed that what had thus had the aspect of a serious complication actually proved to be a boon inasmuch as up until that time the issue of negotiations was somewhat in doubt.

When questioned as to whether the objection of the Russians was based on legal grounds or on some political consideration, Mr. Faulkner stated that he was not aware of the specific nature of the Russian argument but merely understood that they had asserted some alleged pre-emptive right.

Quite the opposite of the Russians, Mr. Faulkner said that the British were very pleased with the granting of the concession as was evidenced by the very assuring statements of Sir John Cadman⁸⁸ in

⁸⁷ Not printed.

⁸⁸ Chairman of the Anglo-Iranian Oil Company.

the course of his recent visit to this country. In this connection, Sir John had evidently stressed the following two points:

1. The fact that the new concession is modeled so closely upon the A. I. O. C. concession would indicate the Iranian Government has adopted a stable policy with regard to oil concessions. This is reassuring to the A. I. O. C.

2. With another company now entering on the scene, the A. I. O. C. will cease to be the single object of critical attacks and, as a consequence, it will not be in the position of constantly defending its every move.

By April 27 two exploration units will be ready to commence work as provided by the contract. These units will consist of two Company engineers and two natives, furnished with six-wheel Chevrolet cars. The number of exploring units will be increased to six within a year.

661.00251/4

The Chargé in the Soviet Union (Henderson) to the Secretary of State

No. 532

Moscow, September 3, 1937.

[Received September 21.]

SIR: I have the honor to report that the following recent informal conversations which I have had with officials of the People's Commissariat for Foreign Affairs relating to the possibility of the Amiranian Oil Company, the American firm which recently was granted certain oil concessions in Iran and Afghanistan, being permitted to ship across Soviet territory machinery and supplies destined for Iran and Afghanistan, I have been informed by those officials as follows:

- (1) Since the Soviet Government has no treaty with Afghanistan providing for the shipment of transit goods destined for, or emanating from, that country across the territory of the Soviet Union, it is unable to grant permission to American firms or to any foreign firms to send merchandise to Afghanistan across Soviet territory.

- (2) The Soviet Government does have a treaty with Iran providing for the shipment across the territory of the Soviet Union of transit goods destined for that country. Only certain countries which have clauses in their commercial agreements relating to transit traffic have the right, however, to send their products across the Soviet Union to Iran. Nevertheless, as a gesture of international amity, the Soviet Government sometimes permits the products of countries which do not have commercial agreements with the Soviet Government possessing such clauses to be sent in transit across Soviet territory. The Soviet Government as a friendly gesture is willing to permit the Amiranian Oil Company to ship through the Soviet Union to the Iranian frontiers supplies and machinery destined for Iran.

Since the circumstances which resulted in the above statement are somewhat peculiar and are indicative of the interest with which the Soviet Government is regarding the operation of the American concessions in Central Asia, I feel that I should furnish them in some detail to the Department.

Shortly after the world press had announced the granting of the concessions, the Afghan Ambassador informed me that he had heard that the Soviet authorities were displeased that the Afghan and Iranian Governments should have made such important agreements with a foreign firm without first discussing the matter with the Soviet Government. He said that although no Soviet official had dared to mention the matter to him in view of the brusque manner with which he is accustomed to reply to any Soviet inquiries which might imply that the Soviet Union has any special interests in Afghanistan, he had heard that officials of the Commissariat for Foreign Affairs had reproached the Iranian Ambassador for the failure of the Iranian Government to notify the Soviet Government in advance of its intentions to grant the concession.

Several days later a member of the Iranian Embassy informed me that it was quite true that officials of the Commissariat for Foreign Affairs had expressed their annoyance that Iran would complete so important and far reaching a business transaction without first discussing it with the Soviet Union.

In the spring of the present year, Mr. Stomaniakov, the Assistant People's Commissar for Foreign Affairs, during the course of a conversation on another subject, referred to the concessions. He said that the Soviet Government had no objection to an American firm operating oil concessions in northern Afghanistan and Iran provided the firm was controlled by American capital only and provided its members and employees were American citizens. He pointed out that his Government did have a certain amount of concern, however, lest German capital, or capital of some other country the interests of which in Central Asia were opposed to Soviet interests, might gain control over the firm and might subsequently make use of the concession for political purposes.

I told him that I was not fully informed regarding the persons who were the financial backers of the Company but that I was confident, from such information as happened to be in my possession, that the Company was not in any way under the influence of non-American capital and that there was no danger that it would in the future fall under the control of non-Americans. He told me that he would appreciate it if I would make informal inquiries in this connection and let him know the results thereof.

Before the pressure of other business of the Mission would permit me to make inquiries on behalf of Mr. Stomaniakov to the Department, the Embassy received copies of despatches No. 1018 of March 18, 1937, and No. 1025 of March 27, 1937, from the American Legation at Teheran. I observed from these despatches that the Soviet Embassy in Teheran had been informed fully regarding the American and non-political character of the concessions. I thereupon told Mr. Rosenblum, the Chief of the Economic Division of the People's Commissariat for Foreign Affairs, who was aware of the substance of Mr. Stomaniakov's remarks to me, that, according to my understanding, the Soviet Embassy in Teheran had already been placed in possession of the information desired by Mr. Stomaniakov and asked if, in view of that fact, Mr. Stomaniakov desired me to pursue the matter any further. Mr. Rosenblum replied that the information received by the Soviet Embassy in Teheran was of so satisfactory a nature that there seemed to be no longer any reason for me to make inquiries relating to the subject.

On July 17, 1937, Mr. Linn M. Farish, a representative of the Amiranian Oil Company, called at the Embassy for the purpose of discussing the possibility and probability of making use of the Soviet railways in transporting materials and supplies for the company across Soviet territory to Afghanistan and Iran. Mr. Farish had already been in the Soviet Union for several days in his capacity as a delegate to the International Geological Congress which was convening in Moscow. He said that the experiences which he had already encountered while in the Soviet Union had tended to confirm the feeling which he had before coming to that country, namely, that it would be preferable for his Company to endeavor to build up a line of communications to the scenes of operation which would render it absolutely independent of the Soviet Government. He added that he would appreciate it, nevertheless, if the Embassy would endeavor to make an appointment for him with some Soviet official who would be able to inform him what the Soviet attitude might be in case his Company should desire to make use of the Soviet railways in transporting certain types of material to Iran and Afghanistan.

During the course of the conversation Mr. Farish said that he would appreciate any suggestions that I might be able to give him which, in my opinion, might be useful to him or to his Company. I replied that I assumed that his Company had already been advised regarding the extreme delicacy of the problems which lay before it. I said that his Company was probably already aware of the fact that the Soviet Government was inclined to view the activities of foreigners in Central Asia adjacent to Soviet territory with suspicion; that it seemed to me that his Company should use every reason-

able care to prevent any incident from taking place which would arouse the hostility of Soviet officials towards the concessions since undoubtedly the Soviet Government with its numerous ramifications in Central Asia would be able, in case it seriously set out to do so, to cause the concessionaires considerable difficulty. I added that in order to quiet Soviet fears and to lessen the likelihood of the development of political complications of an unpleasant nature, the Company might find it advisable to adopt the following policies:

(1) Select with the greatest care every person to be despatched to Iran and Afghanistan regardless of the type of work which he was expected to perform;

(2) Make sure that only American citizens and, preferably, only native born American citizens without European ties be selected;

(3) Send no person not of a high grade of intelligence or a high moral character;

(4) Give all employees, before their departure from the United States, a careful training in the manner in which they are to conduct themselves. It should be impressed upon them, in particular, that they are not to engage in political discussions of any kind or to show any interest in political matters.

(5) Give all employees to understand that they would be discharged immediately if it should be found that they were making disparaging remarks regarding any of the countries bordering on Afghanistan or engaging in any other acts reflecting an unfriendly attitude towards those countries.

Mr. Farish stated that his Company already realized the importance of its personnel problem and had made it a rule to send to Central Asia only American citizens of good character and high intelligence. He said that if I should perceive no objection thereto, I might in conversation with Soviet officials state that he had told me that the Company would immediately discharge any employee if it should find that he had been guilty of engaging in political activities directed against the Soviet Union or any other neighbor of Afghanistan or Iran.

Several days later I discussed the matter with Mr. Rosenblum of the Commissariat for Foreign Affairs. I asked Mr. Rosenblum if it would be possible for him to arrange for Mr. Farish to discuss the transit problem with the appropriate Soviet officials. During the course of the conversation I told Mr. Rosenblum what Mr. Farish had said to me regarding the policy which his Company had adopted towards political activities on the part of its employees and of the measures which his Company would take in case it should find any of its employees had engaged in such activities. Mr. Rosenblum replied that there was no need for Mr. Farish to discuss the transit question with the Soviet authorities since the matter was one to be settled between the American and Soviet Governments rather than between

a representative of a private firm and Soviet railway officials. He said that after he had taken the question up with the appropriate Soviet officials he would be in a better position to discuss it with me.

Mr. Rosenblum added that he was very much interested in what I had to say regarding the determination of the Company not to permit any of its employees to engage in political activities directed against countries bordering on Afghanistan and Iran. Frankly, he said, the Soviet Government had been somewhat apprehensive lest some Power unfriendly to the Soviet Union might endeavor to introduce agents into the service of the Company. He wondered if I would object to writing him a letter stating that I had been assured by the Company that it would discharge any employee found guilty of engaging in activities unfriendly to the Soviet Union. I replied that I could not for a single moment consider writing a letter of that kind; that such a letter might be construed as some sort of a promise made by the Company through the American Government; that such remarks as I had made to him had been made merely for the purpose of furnishing him with background with respect to the policies of the Company and that I hoped he would not construe them as any undertaking on behalf of the Company or of the American Government. I added that the Company was a purely private organization not connected in any way with the American Government and that the interest which the American Government had in the Company was precisely that which it would have in any private American enterprise engaged in doing business abroad. Mr. Rosenblum said that he had not suggested a letter with the idea that it was to be in the nature of a pledge. He had mentioned it because he felt that it would help to quiet the apprehension of the authorities charged with promoting Soviet interests in Central Asia. He then asked me if in my opinion the Company would be willing to discharge one of its employees in case the Soviet Government would adduce convincing evidence to the effect that he was carrying on political activities of a nature hostile to the Soviet Union. I replied that I had no authority to speak for the Company but that it was my personal opinion, gained from my conversation with Mr. Farish, that if the Company should become satisfied that one of its employees was engaging in such activities it would immediately ask him to leave its service. Mr. Rosenblum then asked me if, in case the Soviet Government should ascertain that one or more of the Company's employees were engaging in political activities of an anti-Soviet nature and should inform the Embassy of its findings, the Embassy would have any objection to conveying the information imparted to it to the officials of the Company. I replied that I had no instructions whatever from

my Government to discuss matters of this kind with him and that therefore I could give him no reply except one based on my own personal opinion. On that basis, I said, I could see no objection to the Embassy in Moscow conveying informally to officials of the Company such messages as the Soviet Government might desire to send to them.

When I reported a portion of my conversation with Mr. Rosenblum to Mr. Farish, the latter informed me that he was sure that his Company would appreciate it if the Embassy would convey to its officials any information which might come to it from the Soviet authorities regarding improper political activities on the part of the Company's employees in Central Asia.

It was not until the middle of August, subsequent to the departure from Moscow of Mr. Farish, that Mr. Rosenblum informed me that if I would call at the Commissariat for Foreign Affairs he would give me a reply to the questions raised by Mr. Farish. Upon my arrival at the Commissariat I found both Mr. Rosenblum and Mr. Weinberg, Acting Chief of the Third Western Political Division, awaiting me.

Mr. Rosenblum opened the conversation by stating that since the American Government had no treaty with the Soviet Government which contained transit traffic provisions and since it was not even entitled to most-favored-nation privileges with respect to transit traffic, he felt that he should make it clear that American products had no rights whatever insofar as transit traffic through the Soviet Union was concerned. The Soviet Government, he continued, during the course of the recent commercial agreement negotiations³⁹ had offered to grant American products most-favored-nation treatment, but for some reason the American Government had rejected the offer.

I replied that although the American Government did not have most-favored-nation right by treaty, I was nevertheless certain that the Soviet Government did not desire to embark upon a policy of discrimination against American products, particularly after the American Government during the recent commercial treaty negotiations had demonstrated most clearly its earnest desire to discriminate in no way against Soviet products. Furthermore, I added, it was my understanding that the United States had already been classified by the Commissariat for Foreign Trade as being among the "commercial treaty countries" insofar as transit traffic privileges were concerned.

Mr. Rosenblum asked me upon what I based my understanding and I showed him the article which I had with me on the subject of transit of foreign goods through the U. S. S. R., written by Mr. Rabinovich of

³⁹ See *Foreign Relations, The Soviet Union, 1933-1939*, pp. 405 ff.

the People's Commissariat for Foreign Trade and published in *Foreign Trade* No. 13, of 1936.* It will be recalled that this article lists the United States as being among the countries which enjoy the greatest privileges with respect to transit traffic through the Soviet Union. Mr. Rosenblum stated that Mr. Rabinovich's views had been discredited and that the United States was classified among those countries which had normal diplomatic relations with the Soviet Union but which had no agreements granting rights with respect to transit traffic. He then proceeded to make the formal statement to be found in the opening paragraph of this despatch. I thanked him for the information which he had given to me and told him that I would convey it to my Government which in turn would convey to the Amiranian Oil Company such portions of it as might interest that Company.

Several days subsequent to this conversation, the Afghan Ambassador returned to Moscow after a month's sojourn abroad. He had heard of the visit to Moscow of Mr. Farish and inquired regarding the situation with respect to transit traffic. I told him that the Soviet authorities seemed unwilling to permit the Company to ship materials and supplies through the Soviet Union to Afghanistan. He replied that he had expected this answer since the Soviet Union in its endeavor to force Afghanistan to enter into a commercial treaty extremely disadvantageous to the latter country was permitting no transit merchandise to go to or to come out of that country. He said that in any event he earnestly hoped that the concessionaries would not make any plans based on the use of the Soviet railways. He felt that they should endeavor to build up a transportation system which would be entirely independent of the Soviet Union, and that it would be much wiser to invest in the building of roads and to pay for long hauls than to endeavor to economize with respect to time or money in arranging routes across the Soviet Union which would give the Soviet Government a means for exerting pressure upon the concessionaries whenever it might see fit.

I am inclined to feel that the advice of the Afghan Ambassador is sound. Conversations which I have had during the last three years with various members of the Afghan, Iranian, and Chinese Missions in Moscow have convinced me that it would be definitely unwise for the Amiranian Company to place itself in such a position as to make it dependent upon the good-will of the Soviet Union for the successful exploitation of its concessions.

Respectfully yours,

LOY W. HENDERSON

* See Embassy's despatch No. 2073 of November 17, 1936. [Footnote in the original; despatch not printed.]

891.6363 Amiranian/57

The Chargé in Iran (Engert) to the Chief of the Division of Near Eastern Affairs

[Extracts]

TEHERAN, December 24, 1937.

DEAR WALLACE: I should not be surprised if by now you felt that I had completely forgotten your personal letter of April 15, 1937, regarding the oil concessions, which arrived here shortly after I did. The contrary is, however, the case for it has been constantly on my mind and I have for many months been engaged in gradually assembling such fragmentary information as I have been able to collect without appearing to be unduly interested.

The following observations are therefore conclusions arrived at (almost instinctively!) as a result of a number of conversations with the persons mentioned above, as well as with a few others not directly interested but who seemed to have some knowledge of what took place behind the scenes last spring:

1. *The British.* As a matter of general policy the British Government welcomed the advent of American capital in Iran on a large scale. In the first place, because if British interests could not themselves obtain the concessions in question there is no other country in the world they would rather see here than the United States. And secondly, because—looking, as is their custom, beyond the immediate future—they still foresee the possibility of fruitful cooperation (however informal) between British and American oil interests in Iran. In fact, they seem convinced that unless the Anglo-Iranian and the Amiranian companies evolve some kind of a tacit working agreement the Iranians will constantly try to play one against the other to the detriment of both. And they realize that such a tacit arrangement, based upon mutual advantage, good will and confidence, would not be possible with the interests of any other nationality.

Although at the Iranian Ministry of Foreign Affairs they try to give one the impression that the Iranian Government (or rather His Majesty) very obligingly handed the concessions over to the Americans in the teeth of the most violent opposition and protests from Great Britain and Russia, this is a slight exaggeration which must be discounted. I feel personally quite certain that the British Government did not make an official protest. Apart from the fact that the British Minister (Horace Seymour) told me so—and I have, of course, no reason to doubt his word—the statement appears corroborated from other sources.

On the other hand, I feel equally certain that the Anglo-Iranian Oil Company did formulate some kind of representations. Not only has the General Manager (L. C. Rice) been most evasive in all his replies, but the British Minister himself hinted at something like that when he told me once that he did not, of course, know what "the company" might have done about it. From other remarks I have been led to believe that the company made reservations of a general nature merely to keep the door open in the event that, at some future date, the American interests should withdraw and the British should desire to revive the claims of the North Persia Oils, Ltd. To this extent it is even possible that the British Minister may, informally and orally, have associated himself with the company in informing the Iranian Government that British acquiescence in the recent granting of an oil concession to an American company must not be construed as an abandonment of whatever rights the North Persia Oils, Ltd. may have had in the northern provinces.

Technically, therefore, the position would seem to be that while neither the British Government nor the Anglo-Iranian Company have the slightest present intention of questioning the validity of the American company's title, they did not wish to go on record as having for all time abandoned rights which they once felt had been legally acquired by a British concern.

2. *The Russians.* As far as I have been able to ascertain from the Soviet Ambassador (Tchernikh) and the present Chargé (Kartashov) the granting of oil concessions in North Persia is viewed by Moscow from a purely political angle. The Soviets evidently still like to think of certain parts of Iran and of Afghanistan as coming within their sphere of Bolshevist influence and they are reluctant to assume the rôle of disinterested spectators. The Ambassador put the whole thing in a nutshell when he said to me "We felt it would have been more courteous if the Iranian Government had consulted us before granting oil concessions so near our frontier". They were piqued because they were ignored, and it was chiefly for this reason that they decided to lodge a formal protest against the granting of these concessions. Kartashov told me that the protest was based on Article 13 of the Russo-Persian Treaty of 1921 and, more generally, on the fact that Soviet Russia, in return for its willingness to abstain from claiming anything for itself, expected its neighbors to confer with Moscow regarding matters which were obviously of interest to it. Both the Ambassador and the Chargé have been very emphatic in stating to me that their Government raised no objection whatever because the interests which acquired the concession were American. On the contrary, they felt that as "the relations between the United States and the Soviet Union were now so friendly" Moscow was rather glad that

we got the concession instead of some other Power. Kartashov, on another occasion, said to me very significantly and in all seriousness "If the Germans had been given the oil concessions we would not have permitted it"! He also said that if, for example, German "or non-American" capital were to be allowed to participate in the Amiranian exploitations his Government might have to revise its attitude towards the whole affair.

At the Ministry of Foreign Affairs I was once told by the Under Secretary (Mostafa Adl) that the Soviets had been very angry and that they had tried by "all sorts of intrigues" to block the deal. He implied that they were jealous of American achievements in the petroleum industry and pointed out that although Russia possessed some of the richest oilfields in the world they had been so mismanaged that last year there was not only no surplus of gasoline for export but Russia actually had to import a considerable quantity from Rumania. Adl thought this was a disgraceful exhibition of inefficiency and could not understand how a country like that dared interfere in the affairs of a neighbor.

Whenever I tried to find out how the Russians felt about the validity of the Khoshtaria concession I received an evasive reply from both Ambassador and Chargé. They usually said something like this: "Quite apart from the Khoshtaria concession, the Iranian Government should have consulted us etc. etc." Which was not very helpful. Incidentally, although the American concession only covers a small corner of the old Khoshtaria concession in the province of Astarabad (now Gorgan), it happens to be geologically one of the most promising oil-bearing districts of the entire area.

The Iranian Foreign Office, of course, has been perfectly consistent throughout in denying the validity of the Khoshtaria concession. Only a month or so ago when I mentioned it to the Minister of Foreign Affairs (Enayatollah Samiy) he waved it aside contemptuously and said "We have told the Soviet Embassy and the British Legation that this concession never could, and cannot now, give rise to any claims whatsoever. And that is final".

Summing up my general impressions I should say that, for the present, the Amiranian interests have nothing to fear from either the British or the Russians. In other words, so long as our relations with Great Britain and the Soviet Union remain more or less normal and friendly neither government has any intention of attacking the title of the American concession. But probably both feel that in these troublous times no one can predict how suddenly the world situation may change, and they did not want deliberately to sign away rights which they might find it useful to invoke, at least for bargaining purposes, at some future time. Should such a contingency

arise we may perhaps be able to persuade all parties to submit the question of the Khoshtaria concession to arbitration, and—unless there are documents in existence of which we have no knowledge—the American claims should have a very fair chance of prevailing.

Please do not hesitate to let me know if there are any other points which I may be able to help clear up.

Very sincerely yours,

C. VAN H. ENGERT

REPRESENTATIONS BY THE UNITED STATES REGARDING DISCRIMINATION AGAINST AMERICAN TRADE RESULTING FROM THE GERMAN-IRANIAN CONVENTION FOR THE REGULATION OF PAYMENTS OF OCTOBER 30, 1935⁴⁰

662.9131/27

The Chargé in Iran (Merriam) to the Secretary of State

No. 1013

TEHERAN, March 11, 1937.

[Received April 16.]

SIR: I have the honor to refer to my despatch No. 947 of December 9, 1936,⁴¹ informing the Department of the Legation's communication to the Minister of Foreign Affairs, on the same date, of the Department's views with reference to the apparent discrimination against American trade with Iran which arises from Article 17 of the Irano-German Convention of October 30, 1935.⁴²

There is enclosed herewith a memorandum of an interview between the Chargé d'Affaires and M. Massoud-Ansari, Chief of the Division handling American affairs, at which the Legation interpreter was present, during which M. Massoud-Ansari undertook to answer the objection that had been raised.

The Iranian position contains in effect two lines of defense:

1. While a percentage of the value of the goods imported from Germany is not charged as in the case of goods imported from other countries, this is counterbalanced by the fact that exporters of Iranian goods to Germany do not receive the bounty which exporters receive when sending goods to other countries.

2. Even if the foregoing explanation is not acceptable, there is no discrimination because Iran is prepared to enter into a similar clearing agreement with the United States.

Whatever may be thought of the first argument, the Foreign Legations at Teheran who have received the second argument in answer to their protests have considered it as theoretically valid,

⁴⁰ Continued from *Foreign Relations*, 1936, vol. III, pp. 395-400.

⁴¹ *Ibid.*, p. 399.

⁴² For text, see Iran, Administration des Douanes, *Statistique Commerciale de l'Iran en 1314-1315 (22 juin 1935-21 juin 1936)*, p. 364.

whether or not their Governments were prepared to negotiate a clearing convention.

The main interest of the Legation in making the protest was to ascertain whether, in view of the certain tension existing in the diplomatic relations of the two countries, the Foreign Office would offer to negotiate a clearing convention with us as it had done in the case of other countries. Should such an offer be forthcoming, an opportunity would be afforded of saying to the Foreign Office that while we were uninterested in a clearing convention, we had proposed the negotiation of a reciprocal trade agreement⁴³ and were still awaiting a reply.

During past months the Department's unfavorable attitude toward compensation or clearing conventions has become so clear through the speech of the Secretary of State at Buenos Aires⁴⁴ and other pronouncements that, when confronted with the reply of the Foreign Office, it seemed a waste of time to put the question to the Department whether or not it desired to negotiate such an agreement. Moreover, M. Massoud-Ansari's remark that it was his personal opinion that clearing conventions were unsound (incidentally he was a member of the Iranian delegation which went to Berlin to negotiate the agreement with Germany) indicated that the Foreign Office is unhappy about the German convention and would be unenthusiastic about negotiating an additional agreement of the kind. Negotiations begun under such circumstances would have little hope of success.

In view of these considerations, I ventured to give at once my personal view that my Government would be disinclined to enter into a clearing agreement with Iran, and to remind M. Massoud-Ansari that our proposal to enter into negotiations with a view to concluding a reciprocal trade agreement was still before the Iranian Government. He was unfamiliar with the matter since he did not, when this question was forward, occupy his present position, and has agreed to examine it.

Respectfully yours,

GORDON P. MERRIAM

[Enclosure]

Memorandum by the Chargé in Iran (Merriam)

The Chargé d'Affaires called on M. Massoud-Ansari by appointment on March 6, 1937, to discuss the publication of certain documents in *Foreign Relations*. When this subject had been concluded, the latter referred to the note of the Chargé d'Affaires to the Foreign

⁴³ For previous correspondence, see *Foreign Relations*, 1935, vol. I, pp. 909 ff.

⁴⁴ For the opening address by the Secretary of State at the Inter-American Conference for the Maintenance of Peace, December 5, 1936, see Department of State, *Press Releases*, December 5, 1936, p. 432.

Minister of December 9, 1936, calling attention to the apparent discrimination involved in the Irano-German Compensation Agreement of October 30, 1935.

M. Massoud-Ansari said he was instructed by the Foreign Minister to say that there was no discrimination against American trade because, while import permits are not required in the case of Germany, the advantage is offset because export certificates, which involve a bounty to Iranian exports, are not exacted. In any event, there was no discrimination because Iran was prepared to negotiate a similar clearing convention with the United States—a reply which had been made to all the other Legations which had protested. He personally thought, however, that such clearing conventions were not sound.

The Chargé d'Affaires replied that the question whether the disadvantage of the requirement of export certificates was counterbalanced by the advantage of import permits would have to be studied by the experts of the Department of State. He did not think, speaking personally, that his Government would be interested in negotiating a clearing convention. Its program was embodied in fifteen reciprocal trade agreements which had been negotiated within the last few years. This program contemplated the general revival of trade through the mutual lowering of tariffs on the commodities of chief interest in the trade between the United States and individual countries. Under the most favored nation principle, these tariff concessions were generalized. The result was a general increase in trade as contrasted with the uneconomic funnelling of trade which resulted from compensation agreements.

Mr. Massoud-Ansari said that he did not understand, if the tariff concessions were generalized, what inducement there was for additional countries to enter into reciprocal trade agreements with us.

The Chargé d'Affaires answered that it had been found by experience that if the trade of any two countries is analyzed, the bulk of the trade is made up of comparatively few commodities, which are of interest to other countries in a minor degree only. When, therefore, mutual tariff concessions are made on the principal commodities, the effect on the trade of the other countries to which they have been generalized is so slight that they are willing to negotiate agreements with us dealing with the commodities of chief interest to them.

Mr. Massoud-Ansari asked, supposing the Iranian duty on American automobiles were reduced 10%, what competition would remain?

The Chargé d'Affaires replied that if the duty on American automobiles were reduced by 10%, this reduction would be generalized under the most favored nation principle to Germany, England, Russia and to all the other countries supplying Iran with automobiles. The competitive basis would therefore remain exactly what it had been, but

because automobiles would cost 10% less, presumably more would be sold. We should not mind the generalization of the concession because the share of other countries in the automobile trade was slight.

Mr. Massoud-Ansari then repeated what he had said at first.

The Chargé d'Affaires said again that this answer would be studied in the Department. He thought he could go so far as to say that Mr. Massoud-Ansari's personal opinion regarding the unsoundness of compensation agreements was the official view of his own Government. He supposed that the Foreign Minister's reply would later be communicated in writing and asked whether, before it was sent, the Foreign Office would not reconsider the question of negotiating with us a reciprocal trade agreement. The Foreign Office had been on the point of giving a favorable answer to this question at the time certain difficulties arose.

Mr. Massoud-Ansari did not commit himself beyond promising to look it up and to reexamine the question of a reciprocal trade agreement.

In an effort to acquaint Mr. Massoud-Ansari further with the nature of a reciprocal trade agreement as contrasted with the nature of a clearing convention, the Chargé d'Affaires spoke of the trade of the United States with Brazil. The United States bought tremendous quantities of coffee from Brazil, and exported lesser values of manufactured goods to that country. If a compensation agreement should be concluded between the two countries, American coffee imports from Brazil would be greatly reduced, causing economic distress in Brazil. On the other hand, we should have to make up our requirements in coffee elsewhere, and be compelled to pay higher prices for an inferior product.

He added that while fifteen agreements were in effect, and all the tariff reductions had been generalized to Iran, actually Iran had not benefitted at all because the duties on the principal exports of Iran to the United States had not been touched.

He continued by saying that we had had considerable experience with reciprocal trade agreements and that they had worked well. While it was impossible to say what portion of the trade increase resulted from the conclusion of such agreements, and what portion resulted from general economic improvement, the fact was that, generally speaking, trade with the countries with whom we had agreements had improved, in some instances markedly so. The reciprocal trade agreement program was generally well regarded by traders and economists as a sound and courageous program, and had been described in such terms by the economic experts of the League of Nations. The Secretary of State, Mr. Hull, had always been interested in tariff matters as a Senator, and the whole program was the result of his familiarity and long experience with them.

662.9181/29

*Memorandum by Mr. Raymond A. Hare of the Division of
Near Eastern Affairs*

[WASHINGTON,] April 21, 1937.

The main points covered in this despatch⁴⁵ have to do with (1) reasons advanced by the Iranian Foreign Office to explain that the Irano-German clearing agreement does not constitute discrimination against American trade under the terms of the Provisional Agreement of 1928,⁴⁶ and (2) the reviving of the idea of a reciprocal trade agreement with Iran.

In attempting to show that the clearing agreement with Germany was not discriminatory, the Foreign Office official argued (a) that the agreement embodies certain disadvantages to German goods which counterbalance the advantages, and (b) that, in any event, there would be no discrimination inasmuch as Iran would be prepared to enter into a similar agreement with the United States.

With regard to the first of these arguments, it was the Department's view, as expressed in its instruction of July 20, 1936,⁴⁷ which was in turn based on TA's⁴⁸ memorandum⁴⁹ on the subject, that the Irano-German agreement appears to place German goods in a more favored position than those of the United States and it is believed that a case could doubtless be worked up in support of this contention. On the other hand, viewing the matter in connection with our trade relations in general, it seems more than likely that our commercial interests would best be served by not pressing the matter at this time. In any event, we would probably wish to defer further action until a formal reply is received.⁵⁰

Coming to the second Iranian argument regarding their willingness to negotiate a similar agreement with us, it would appear that this explanation might be acceptable if we had a conditional m[ost]-f[favored]-n[ation] agreement with Iran. It would not appear, however, to constitute a valid argument in the light of the fact that our agreement with the Iranians is of the unconditional type.

As regards the action of the Chargé d'Affaires in reminding the Foreign Office official that our proposal to negotiate a reciprocal trade agreement still remains unanswered, it might appear at first glance that the gesture was rather pointless in view of the fact that all of the important bases for concessions by the Iranians which were originally

⁴⁵ *Supra*.

⁴⁶ Agreement effected by exchange of notes, May 14, 1928, *Foreign Relations*, 1928, vol. III, pp. 724-728.

⁴⁷ *Ibid.*, 1936, vol. III, p. 398.

⁴⁸ Division of Trade Agreements.

⁴⁹ Not printed.

⁵⁰ No record of a subsequent Iranian reply has been found in Department files.

stipulated by us have been removed by various intervening acts of the Iranian Government. This does not necessarily mean, however, that satisfactory bases for an agreement might not be worked out under the existing situation, and in that event it would surely be highly desirable to have the Iranians take the initiative. If the action of the Chargé d'Affaires should have this effect, it might turn out to be a very helpful gesture.

The views of the Foreign Office official in question with regard to the unsound nature of clearing agreements are of particular interest in view of the fact that he was Chief of the Division of Economics of the Foreign Office for four years prior to being made Chief of the Geographic Division handling American Affairs.

IRAQ

NEGOTIATIONS BETWEEN THE UNITED STATES AND IRAQ REGARDING PROPOSED TREATY OF COMMERCE AND NAVIGATION¹

711.90G2/7

The Secretary of State to the Minister Resident in Iraq (Knabenshue)

No. 242

WASHINGTON, January 18, 1937.

SIR: Pursuant to its telegram No. 14 of June 29, 1936, 5.00 p. m.,² the Department sends you herewith a draft of a treaty of commerce and navigation between the United States and Iraq. In accordance with the suggestion you made in a conference in the Department on September 14, 1936, the draft follows very closely the treaty of commerce and navigation between the United States and Turkey signed at Ankara October 1, 1929.³ Three copies of that treaty are also enclosed.

A slight change has been made in Article I by substituting in the first line the phrase "the method of levying such duties" for the phrase "including surtaxes and coefficients of increase". The substituted phrase is believed to be more comprehensive. At the end of the first article the exceptions to the most-favored-nation provision in respect of commerce have been elaborated and clarified.

Article II, paragraph 2, of the draft herewith enclosed amplifies and clarifies the stipulation for most-favored-nation treatment in respect of quotas. It is the view of the Department that most-favored-nation treatment in respect of quotas and exchange control require that the allocations made under quotas or exchange control will be equal to the share of the trade in a particular commodity enjoyed in a previous representative period.

Article III of the enclosed draft is similar to the corresponding article of the treaty with Turkey except that a number of exceptions stipulated in the treaty with Turkey are omitted as inapplicable in the case of Iraq. Article IV is more elaborate than the corresponding article in the Turkish treaty but differs very little in substance.

Article V of the enclosed draft which provides for most-favored-nation treatment in respect of civil aircraft merely confirms the advantages now guaranteed under the existing tripartite convention.⁴

¹ For previous correspondence, see *Foreign Relations*, 1936, vol. III, pp. 401 ff.

² *Ibid.*, p. 405.

³ *Ibid.*, 1929, vol. III, p. 838.

⁴ The convention signed at London, January 9, 1930, by the United States, Great Britain, and Iraq, *ibid.*, 1930, vol. III, p. 302.

Article VI defines the relationship between the proposed treaty and the tripartite convention.

You are requested to inform the Department by telegraph as to the attitude of the Iraqi Government towards the enclosed draft. If accepted as drafted the Department will send you full powers. You should make preparations to have the final text translated into Arabic and engrossed at Baghdad.

Very truly yours,

For the Secretary of State:
R. WALTON MOORE

[Enclosure]

Draft of Treaty of Commerce and Navigation Between the United States of America and the Kingdom of Iraq

PREAMBLE

The United States of America and the Kingdom of Iraq, taking cognizance of the provisions of Article 7 of the Convention, signed at London, January 9, 1930, to which the United States of America, Great Britain, and Iraq are Parties, whereby on the termination of the special relations existing between His Britannic Majesty and His Majesty the King of Iraq, negotiations shall be entered into between the United States and Iraq for the conclusion of a treaty in regard to their future relations, have resolved to conclude a treaty of Commerce and Navigation and for that purpose have appointed as their plenipotentiaries;

The President of the United States of America:
and His Majesty the King of Iraq:

Who, having communicated to each other their full powers found to be in due form, have agreed upon the following articles:

ARTICLE I

In respect of import and export duties, all other charges imposed on or in connection with importation or exportation, and the method of levying such duties and charges, as well as in respect of transit, warehousing and customs formalities, and the treatment of commercial traveler's samples, the United States of America will accord to Iraq and Iraq will accord to the United States of America, its territories and possessions, unconditional most-favored-nation treatment.

Therefore, no higher or other duties shall be imposed on the importation into or the disposition in the United States of America, its territories or possessions, of any articles the produce or manufacture of Iraq than are or shall be payable on like articles the produce or manufacture of any other foreign country.

Similarly, no higher or other duties shall be imposed on the importation into or the disposition in Iraq of any articles the produce or manufacture of the United States of America, its territories or possessions, than are or shall be payable on like articles the produce or manufacture of any other foreign country;

Similarly, no higher or other duties shall be imposed in the United States of America, its territories or possessions, or in Iraq, on the exportation of any articles to the other or to any territory or possession of the other, than are payable on the exportation of like articles to any other foreign country;

Any advantage, of whatsoever kind, which either High Contracting Party may extend to any article, the growth, produce or manufacture of any other foreign country shall simultaneously and unconditionally, without request and without compensation, be extended to the like article the growth, produce or manufacture of the other High Contracting Party.

The stipulations of this Treaty regarding the treatment to be accorded by each High Contracting Party to the commerce of the other do not extend:

(a) to the advantages now accorded or which may hereafter be accorded by the United States of America, its territories or possessions or the Panama Canal Zone to one another or to the Republic of Cuba. The provisions of this paragraph shall continue to apply in respect of any advantages now or hereafter accorded by the United States of America, its territories or possessions or the Panama Canal Zone to one another, irrespective of any change in the political status of any of the territories or possessions of the United States of America.

(b) to any advantages in customs matters which Iraq may grant to goods the produce or manufacture of Turkey, or of any country whose territory was in 1914 wholly included in the Ottoman Empire in Asia;

(c) to any advantages which are, or may in the future be accorded by either Party to purely border traffic within a zone not exceeding ten miles (15 kilometers) wide on either side of the customs frontier;

(d) to any advantages in customs matters which are, or may in the future be accorded to States in customs union with either High Contracting Party so long as such advantages are not accorded to any other State.

ARTICLE II

In all that concerns matters of prohibitions or restrictions on importations and exportations each of the two countries will accord, whenever they may have recourse to the said prohibitions or restrictions, to the commerce of the other country treatment equally favorable to that which is accorded to any other country.

In the event either country establishes or maintains import or customs quotas, or other quantitative restrictions, or any system of

foreign exchange control, the share of the total permissible importation of any product or of the total exchange made available for importation of any product of the other country shall be equal to the share in the trade in such product which such other country enjoyed in a previous representative period.

ARTICLE III

Vessels of the United States of America will enjoy in Iraq and Iraqi vessels will enjoy in the United States of America the same treatment as national vessels.

The coasting trade of the High Contracting Parties is exempt from the provisions of this Article and from the other provisions of this Treaty, and is to be regulated according to the laws of each High Contracting Party in relation thereto. It is agreed, however, that vessels of either High Contracting Party shall enjoy within the territory of the other with respect to the coasting trade the most-favored-nation treatment.

ARTICLE IV

Nothing in this Treaty shall be construed to prevent the adoption of measures prohibiting or restricting the exportation or importation of gold or silver, or to prevent the adoption of such measures as either High Contracting Party may see fit with respect to the prohibition, or the control, of the export or sale for export, of arms, ammunition, or implements of war, and, in exceptional circumstances, of all other commodities.

Nothing in this Treaty shall be construed to restrict the right of either High Contracting Party to impose, on such terms as it may see fit, prohibitions or restrictions designed to protect human, animal, or plant health or life, or regulations for the enforcement of revenue or police laws.

ARTICLE V

The aircraft of the United States of America shall continue to receive in Iraq the most-favored-nation treatment; provided that the benefit of this provision cannot be claimed in respect of any matter in regard to which the aircraft of Iraq does not receive in the United States of America the most-favored-nation treatment.

ARTICLE VI

The present Treaty shall, from the day on which it comes into force supplant Article 7 of the convention between the United States of America and Great Britain and Iraq signed at London January 9, 1930, in so far as commerce and navigation are concerned.

ARTICLE VII

The present Treaty shall take effect in all of its provisions on the day of the exchange of ratifications, and shall continue in force for the term of three years from that day.

If within one year before the expiration of three years from the day on which the present Treaty shall come into force, neither High Contracting Party notifies to the other an intention of terminating the Treaty upon the expiration of the aforesaid period of three years, the Treaty shall remain in full force and effect after the aforesaid period and until one year from such a time as either of the High Contracting Parties shall have notified to the other an intention of terminating the Treaty.

ARTICLE VIII

The present Treaty shall be ratified, and the ratifications thereof shall be exchanged at as soon as possible.

In witness whereof the respective Plenipotentiaries have signed the present Treaty and have affixed their seals thereto.

Done in duplicate, in English and Arabic, of which texts, in case of divergence, the English shall prevail, at Baghdad this day of, 193 . .

711.90G2/16 : Telegram (part air)

The Minister Resident in Iraq (Knabenshue) to the Secretary of State

BAGHDAD, April 14, 1937—1 p. m.
[Received April 20—5:20 a. m.]

6. Referring to the Department's instruction number 242, January 18, 1937, enclosing draft Treaty of Commerce and Navigation, the Iraq Government suggests the following amendments.

Article 3 paragraph 1 amended to read:

"Vessels of the United States of America will enjoy in Iraq, and Iraq vessels will enjoy in the United States of America treatment not less favorable than the treatment of the vessels of the most favored nation".

This amendment is desired because of the definite Iraqi policy of granting only most favored nations treatment to foreigners in all respects and not privileges equal to those granted Iraqi subjects.

Article 5 redrafted to read in its entirety as follows:

"The aircraft of the United States of America shall receive in Iraq and the aircraft of Iraq shall receive in the United States of America treatment not less favorable than the aircraft of the most favored nation".

Article 7 to be amended as follows:

"The present treaty shall take effect in all its provisions 30 days after exchange of ratifications".

This is intended to give interested parties sufficient time for readjustments. Second paragraph amended as follows:

"If neither High Contracting Party notifies the other at least 1 year in advance an intention of terminating the treaty upon the expiration of the aforesaid period of three years, et cetera".

Article 8 shall provide for ratification at Baghdad, and third paragraph amended to read:

"Done in duplicate, in the English and Arabic languages which have the same value and will have equal force, et cetera".

This amendment was inspired by similar provision in American-Turkish Treaty and is equally justifiable.

Article 2 last paragraph is, for certain legal considerations, still to be considered by the Council of Ministers but it is not anticipated that it will present difficulties.

In the circumstances and in order to save time it is respectfully suggested that full powers be sent so that treaty may be signed as soon as Department's final approval on all points is received.

KNABENSHUE

711.90G2/18: Telegram (part air)

The Minister Resident in Iraq (Knabenshue) to the Secretary of State

BAGHDAD, June 2, 1937—1 a. m.

[Received June 7—6:22 a. m.]

11. In continuation of my telegram number 6, April 1 [14], 1 p. m., regarding negotiations commercial treaty, the Iraq Government desires to eliminate entirely the last paragraph article 2 because "the Iraq Government does not wish the inclusion of such a provision in a treaty based on most favored nation treatment and to create a precedent for itself in this respect by accepting the paragraph in question".

The Iraq Government desires a free hand to deal with other nations such as Japan which has flooded Iraq market without importing anything of consequence and which has already caused Iraq to impose trade restrictions against Japan. As trade balance between United States and Iraq is in favor of latter it is extremely unlikely that the elimination of the paragraph in question would prejudice our interest.

The Iraq Government desires also to amend the last paragraph article 4 to read as follows: after the word "life," line 4, as follows "or national treasures of artistic historical or archaeological value or

regulations for the enforcement of revenue or police laws, or prohibitions or restrictions applied to products which as regards prohibition or trade are or may in the future be subject within the country to state monopoly or monopolies exercised under state control".

If for any reasons amendments suggested by Iraq Government are not acceptable please telegraph counter proposals in order that negotiations may be expedited. In the meantime I respectfully recommend that my full powers be sent by air mail so as to enable me to sign treaty before my departure on leave early in July which is essential for reasons of health.

KNABENSHUE

711.90G2/21

The Minister Resident in Iraq (Knabenshue) to the Secretary of State

No. 820—Diplomatic

BAGHDAD, July 7, 1937.

[Received August 5.]

SIR: With reference to the Department's instruction No. 242 of January 18, 1937 (File No. 711.90G2/7) transmitting a draft of a treaty of commerce and navigation between the United States and Iraq, and to my telegrams No. 6 of April 1 [14], 1 p. m. and No. 11 of June 2, 11 [1] a. m., 1937, in reply thereto, I have the honor to enclose copies of note No. 6857 dated June 26, 1937* from the Foreign Minister submitting certain amendments to the Department's draft. It will be noted that these are described by Dr. Naji al-Asil as "minor amendments which I trust will find no difficulty of acceptance". The original signed note was in Arabic but the translation, of which a copy is enclosed, was forwarded by the Foreign Office as an enclosure.

The Department will observe that the Iraq Government suggests amendments in addition to those mentioned in my telegram No. 11, of June 2, 11 [1] a. m. It will also observe that the Arabic text of the Treaty as amended was enclosed with the note from the Foreign Minister with a proposal that it have equal force with the English text.

In this connection and in connection also with the last sentence of the Department's instruction No. 242 of January 18, 1937, I have had the Arabic text of the Treaty checked by the well-known Arabic scholar Dr. John Van Ess, an American citizen. He has informed me that the translation is in general very good. He did, however, find a few typographical errors and one incorrect translation. These corrections can, of course, be taken up with the Foreign Office after the Department has determined whether or not it can accept the amendments suggested by the Iraqi Government.

Respectfully yours,

P. KNABENSHUE

* Not printed.

711.90G2/18

The Secretary of State to the Minister Resident in Iraq (Knabenshue)

No. 261

WASHINGTON, July 19, 1937.

SIR: The receipt is acknowledged of your telegrams No. 6 of April 14, 1 p. m., and No. 11 of June 2, 1 a. m., relating to the negotiation of a treaty of commerce and navigation with Iraq. The Department desires you to make another effort to obtain the agreement of the Iraq Government to the retention of Article III of the draft enclosed with its instruction of January 18, 1937. The policy of national treatment of shipping was laid down in an Act of Congress of March 3, 1815.⁶ That policy has been in force between the United States and Great Britain for more than one hundred years, as evidenced by Presidential Proclamation of October 5, 1830,⁷ and Order-in-Council of November 5, 1830.⁸ Provisions for national treatment of shipping are in force between the United States and many maritime powers (see commercial treaty with Germany of 1923,⁹ Italy 1871,¹⁰ and Norway 1928).¹¹ A similar provision is to be found in the treaty of commerce and navigation with Turkey of 1929.

Article V of the draft under reference relating to air navigation merely duplicated corresponding provisions of the second paragraph of Article VII of the tripartite convention. The Department has carefully reconsidered this matter in consultation with the Department of Commerce and has concluded that, in view of the complex and rapidly evolving nature of air navigation, it would be preferable to negotiate separate agreements on the subject, such as those relating to airworthiness certificates and pilots' licenses. Since negotiation on such technical aspects of air navigation would involve complicated and lengthy discussions, it is believed better to negotiate these agreements as the particular need arises. In these circumstances, the omission of Article V is suggested.

All changes suggested in Articles VII and VIII are acceptable.

The Department regards the principle stated in the last paragraph of Article II as an important part of the proposed treaty and, therefore, desires that it be retained. The growth of import quotas and restrictions on transfers of payment has been so significant in recent years that the inclusion of provisions guaranteeing non-discriminatory treatment with respect to such matters is regarded by this Govern-

⁶ 3 Stat. 224.

⁷ 4 Stat. 817.

⁸ *British and Foreign State Papers*, vol. xvii, p. 893.

⁹ Signed at Washington, December 8, 1923, *Foreign Relations*, 1923, vol. ii, p. 29.

¹⁰ Signed at Florence, February 26, 1871; William M. Malloy (ed.) *Treaties, Conventions, etc., Between the United States of America and Other Powers*, 1776-1909 (Washington, Government Printing Office, 1910), vol. i, p. 969.

¹¹ Signed at Washington, June 5, 1928, *Foreign Relations*, 1928, vol. iii, p. 646.

ment as essential to the satisfactory regulation of our commercial relations with other countries.

Provisions similar to those included in the second paragraph of Article II, but considerably more detailed, are included in the reciprocal trade agreements concluded by the United States and in all commercial treaties now under negotiation. These provisions are considered to be a necessary complement to the provisions for non-discriminatory treatment in respect of customs duties and similar matters embodied in the most-favored-nation clause. While the Department does not, of course, anticipate that either country will discriminate against the other in the matter of import quotas and exchange control, it would not be disposed, in view of the fact that the important principle embodied in the paragraph is customarily included in all recent trade agreements and draft treaties, to accede to the omission of that paragraph in the present treaty. In conveying the foregoing to the Iraq Government, you should point out that the provision in question, since it relates only to trade between the United States and Iraq, does not obligate the Iraq Government to extend similar treatment to other countries except as such extension might be required by treaties or agreements to which Iraq is a party.

For your information, the Department does not consider the question of restriction of Japanese imports as particularly relevant in this connection, since it is understood that Iraq has no treaty or agreement with Japan providing for most-favored-nation treatment and since the Iraq Government is now applying special restrictive measures to imports from Japan.

The additional reservations suggested by the Iraq Government for insertion in the last paragraph of Article IV are acceptable to the Department, subject to the inclusion of a guarantee of non-discriminatory treatment with respect to the matters covered by the paragraph and with regard to the foreign purchases of monopoly organizations. The paragraph in question would be acceptable to the Department in the following form:

Subject to the requirement that, under like circumstances and conditions, there shall be no arbitrary discrimination by either High Contracting Party against the other High Contracting Party in favor of any third country, nothing in this Treaty shall be construed to restrict the right of either High Contracting Party to impose (1) prohibitions or restrictions designed to protect human, animal, or plant health or life or national treasures of artistic, historical, or archeological value; (2) prohibitions or restrictions applied to products which as regards prohibition or trade are or may in the future be subject to state monopoly or monopolies exercised under state control; or (3) regulations for the enforcement of revenue or police laws.

Each of the High Contracting Parties agrees that, in respect of the foreign purchases of any state monopoly for the importation, production, or sale of any commodity or of any agency having such monopoly privileges, the commerce of the other High Contracting Party shall receive fair and equitable treatment, and that, in making its foreign purchases, such monopoly or agency will be influenced solely by those considerations which would normally be taken into account by a private commercial enterprise interested solely in purchasing goods on the most favorable terms.

Very truly yours,

For the Secretary of State:
R. WALTON MOORE

711.90G2/24

The Minister Resident in Iraq (Knabenshue) to the Secretary of State

No. 909—Diplomatic

BAGHDAD, December 8, 1937.

[Received December 22.]

SIR: I have the honor to refer to the Legation's despatch no. 860 of August 28, 1937,¹² reporting that it had in a note dated August 24 presented to the Foreign Office the Department's observations on and suggested changes in the amendments submitted by Iraq to the draft Treaty of Commerce and Navigation under negotiation between our two Governments.

I have now received from the Foreign Office in reply a note dated November 27, 1937, having as its enclosure a draft of the Treaty incorporating the proposals already agreed upon between the two Governments and in addition those amendments proposed in the accompanying note. The note and the draft Treaty were both submitted in Arabic. However, an English text of the Treaty was also enclosed and the English of the accompanying note (the language in which it was drafted) was furnished the Legation by the courtesy of the Legal Adviser of the Foreign Office. Copies of the English texts of this note and the draft Treaty are enclosed herewith.

The Department will note from the enclosures that the Iraqi Government has now accepted Article II with the addition of an introductory clause and that in Article III the clause concerning the treatment of national vessels has been re-phrased. The phrase "within the country" has again been inserted by Iraq in clause 2, paragraph 2 of Article IV. In place of the original Article V, the omission of which at our suggestion is accepted, Iraq has submitted a new Article reserving to itself the right, should measures taken or maintained by the United States seriously affect its chief exports, to request the United States to open negotiations and if agreement be not reached

¹² Not printed.

within three months from its request, to terminate the Treaty immediately.

It is believed that all the changes proposed by Iraq can be accepted with the possible exception of Article V. If acceptable as submitted, there are a few errors of punctuation and spelling in the present draft which can be corrected in the final draft. In this connection, it is believed that the Department will desire to change the word "traveler's" as used in the first paragraph of Article I of the text originally submitted by us, to the plural form of the word. The Department's attention is also called to the substitution in this draft of the word "production" in clause 2, paragraph 2 of Article IV for the word "prohibition" between the words "which as regards" and "or trade are". The word "prohibition" was first submitted to the Department in my telegram no. 11 of June 2, 11 [1] A. M., but it was changed to "production" in the draft submitted with my despatch no. 820 of July 7, 1937.

Subsequent to the submission of the Legation's note of August 24 to the Foreign Office, the Legation inquired from time to time as to the progress that was being made. On September 22, the Legal Adviser, Mr. Archibald McDougall, inquired of Mr. Satterthwaite, then Chargé d'Affaires, whether there was anything in our file which would assist in the interpretation of the sentence regarding Article II in the Legation's note to the Foreign Office of August 24 reading as follows:

"In conveying the foregoing to the Iraqi Government, I have been instructed to point out that the provision in question, since it relates only to trade between the United States and Iraq, does not obligate the Iraqi Government to extend similar treatment to other countries except as such extension might be required by treaties or agreements to which Iraq is a party."

Mr. McDougall was informed that no additional comment on this particular point could be found in the file. However, the following paragraph from the Department's instruction no. 242 of January 18, 1937 was read to him:

"It is the view of the Department that most-favored-nation treatment in respect of quotas and exchange control requires that the allocations made under quotas or exchange control will be equal to the share of the trade in a particular commodity enjoyed in a previous representative period."

The following paragraph of the Department's instruction no. 261 of July 19, 1937, was also read to him:

"For your information, the Department does not consider the question of restriction of Japanese imports as particularly relevant in this connection, since it is understood that Iraq has no treaty or agreement with Japan providing for most-favored-nation treatment

and since the Iraq Government is now applying special restrictive measures to imports from Japan.”

It was only after long and extended conferences among various officials and advisers of the Iraqi Government that they finally agreed to accept Article II substantially as submitted by the Department. Mr. McDougall informed Mr. Satterthwaite on September 29 that he had brought Mr. Hogg, the English adviser of the Ministry of Finance, around to his point of view on Article II and that the latter was at last willing to accept it, provided another Article be inserted in the Treaty embodying Iraq's statement to the League of Nations concerning most-favored-nation treatment contained in Article XI (1) of its Declaration of May 30, 1932.¹³ The Legation later learned that subsequent to a final meeting on October 11, concrete proposals in reply to ours had been drafted for presentation to the Council of Ministers.

In view of the fact that this new Article proposed by Iraq as Article V is unilateral rather than bilateral, the Legation inquired of the Legal Advisor of the Foreign Office whether this phase of the matter had been fully discussed and whether the Iraq Government would entertain serious objections to making it bilateral. Mr. McDougall replied that this point had in fact been carefully considered and that, as stated in the Foreign Office note of November 27, it was inserted in order that the United States should not have a more favored position vis-à-vis Iraq than the members of the League of Nations, with respect to whom it is of course unilateral. He understands, however, that the United States might possibly claim a more favored position, since the Convention of January 9, 1930, was signed more than two years previous to Iraq's Declaration to the League of Nations of May thirty, 1932. He added that the new Article would not have been proposed had it not been for our insistence on retaining Article II in its original form. He gave the impression that the Iraqi Government would be very reluctant and might possibly refuse to accept the Treaty without the inclusion of this new Article.

While discussing the Treaty on September 29, Mr. McDougall observed that there had been considerable discussion among the experts as to the possible benefits which Iraq might obtain by a relaxation of the duties and sanitary restrictions imposed by the United States on dates, especially those of a cheaper quality. The experts who had discussed the matter with him had suggested that Iraqi date exporters would benefit greatly if our tariff on dates were changed from a specific to an ad valorem basis, and that they would also benefit if the rule excluding shipments containing more than 10%

¹³ For text of Declaration, see League of Nations document No. A.17.1932.VII: *Request of the Kingdom of Iraq for Admission to the League of Nations*, p. 3.

of wormy dates were relaxed to 15%. As Sayid Ibrahim Kamal, the Minister of Finance, raised this same point during a conversation which I had with him on November 30, Mr. Satterthwaite discussed this point again in his last conversation with Mr. McDougall concerning the Treaty, pointing out that this was a question which could not properly be dealt with in the Treaty itself. As, however, it could probably be considered in the negotiation of a reciprocal trade agreement, Mr. McDougall requested the Legation to obtain the views of the Department as to the suggested change in the tariff on dates, and also to inquire whether or not the Department would be interested in discussing the negotiation of a trade agreement. This request is, of course, entirely informal and does not come from the Foreign Minister. In view of the fact, however, that Mr. McDougall is familiar with our trade agreement program and that his advice would in all probability be accepted, I should be glad to receive the Department's observations on these points.

As to the Treaty itself, if the latest proposals of the Iraqi Government are acceptable to the Department, arrangements can probably be made for its signature within a short time after the receipt of my full powers.

Respectfully yours,

P. KNABENSHUE

[Enclosure 1—Translation]

The Iraqi Minister for Foreign Affairs (Towfik As-Suwaidi) to the American Minister Resident (Knabenshue)

No. 12832/7/41

BAGHDAD, November 27, 1937.

EXCELLENCY: I have the honour to refer to the Note 394 of August 24th, 1937, which was addressed to the Acting Minister for Foreign Affairs by Mr. J. C. Satterthwaite as Chargé d'Affaires ad interim, concerning the draft Treaty of Commerce and Navigation which is under discussion between our two Governments. The proposals of the United States Government contained in that Note have now been carefully considered by my Government and I am happy to inform Your Excellency that, subject to the amendments set out below, these proposals are acceptable.

2. The amendments referred to above are as follows:

(1) In Article II, insert at the beginning of the Article the words "Having regard to the volume and nature of the trade between the two countries, it is agreed that" and at the end of the first paragraph of the Article the words "and that" the whole Article thus reading as one sentence. Subject to these amendments, which are dictated by Iraq's extensive most-favoured-nation obligations, Article II is acceptable.

(2) In the first paragraph of Article III, substitute for the words "the same treatment as national vessels" the words "treatment not less favourable than that accorded to national vessels or the vessels of the most favoured nation."

This amendment gives full effect to the desire of the United States Government to retain in the Article the principle of national treatment of shipping, and at the same time it renders the Article more intelligible having regard to the special circumstance that Iraq possess no mercantile marine and has strictly speaking no national standard of treatment for shipping.

(3) In clause (2) of the second paragraph of Article IV, insert between the word "subject" and the words "to state monopoly" the words "within the country."

These words were employed in the amendment proposed in the Ministry's Note No. 685 [6857] of June 26th, 1937,¹⁴ and are to be found in Article 4 (8) of the International Convention for the Abolition of Import and Export Prohibitions and Restrictions, signed at Geneva on November 8th, 1927,¹⁵ on which the amendment was based.

(4) In the place of Article V, the omission of which is acceptable, substitute a new Article as follows:

ARTICLE V

"Notwithstanding the provisions of Article VII of this Treaty, should measures taken or maintained by the United States of America seriously affect the chief exports of Iraq, Iraq reserves to itself the right to request the United States of America to open negotiations, and if agreement be not reached by negotiation within three months from its request, to terminate this Treaty immediately."

This new Article is based upon Article 11 (1) of Iraq's Declaration to the League of Nations of May 31st [30th], 1932, and its object is that Iraq should not be in a less favourable situation vis-à-vis the United States than vis-à-vis the Members of the League. It is believed that it has never been the policy of the United States Government to seek a better position in relation to Iraq than the Members of the League themselves enjoy. The Iraqi Government attach importance to the acceptance of this Article, especially in view of their acceptance of Article II, and it is hoped that the United States Government will find no difficulty in accepting the Article now proposed as Article V.

3. I have the honour to enclose completed drafts in English and in Arabic giving effect to the proposals on either side already accepted

¹⁴ Not printed, but see despatch No. 820-Diplomatic, July 7, 1937, from the Minister Resident in Iraq, p. 773.

¹⁵ Department of State Treaty Series No. 811, p. 7.

by our two Governments, and also to the amendments now proposed in this Note, and I shall be prepared to proceed to the signature of the Treaty at Your Excellency's convenience.

I avail myself [etc.]

TOWFIK AS-SUWAIDI

[Enclosure 2—Translation]

Iraqi Draft of Proposed Treaty of Commerce and Navigation

PREAMBLE

The United States of America and the Kingdom of Iraq, taking cognisance of the provisions of Article 7 of the Convention, signed at London January 9, 1930, to which the United States of America, Great Britain, and Iraq are Parties, whereby on the termination of the special relations existing between His Britannic Majesty and His Majesty the King of Iraq, negotiations shall be entered into between the United States and Iraq for the conclusion of a treaty in regard to their future relations, have resolved to conclude a treaty of Commerce and Navigation and for that purpose have appointed as their plenipotentiaries:

The President of the United States of America:

and

His Majesty the King of Iraq:

Who, having communicated to each other their full powers found to be in due form, have agreed upon the following articles:

ARTICLE I

In respect of import and export duties, all other charges imposed on or in connection with importation or exportation, and the method of levying such duties and charges, as well as in respect of transit, warehousing and customs formalities, and the treatment of commercial traveler's samples, the United States of America will accord to Iraq and Iraq will accord to the United States of America, its territories and possessions, unconditional most-favored-nation treatment.

Therefore, no higher or other duties shall be imposed on the importation into or the disposition in the United States of America, its territories or possessions, of any articles the [growth,] produce or manufacture of Iraq than are or shall be payable on like articles the [growth,] produce or manufacture of any other foreign country.

Similarly, no higher or other duties shall be imposed on the importation into or the disposition in Iraq of any articles the [growth,] produce or manufacture of the United States of America, its territories or possessions, than are or shall be payable on like articles the [growth,] produce or manufacture of any other foreign country.

Similarly, no higher or other duties shall be imposed in the United States of America, its territories or possessions, or in Iraq, on the exportation of any articles to the other or to any territory or possession of the other, than are payable on the exportation of like articles to any other foreign country.

Any advantage, of whatsoever kind, which either High Contracting Party may extend to any article, the growth, produce or manufacture of any other foreign country shall simultaneously and unconditionally, without request and without compensation, be extended to the like article the growth, produce or manufacture of the other High Contracting Party.

The stipulations of this Treaty regarding the treatment to be accorded by each High Contracting Party to the commerce of the other do not extend:

(a) to the advantages now accorded or which may hereafter be accorded by the United States of America, its territories or possessions or the Panama Canal Zone to one another or the Republic of Cuba. The provisions of this paragraph shall continue to apply in respect of any advantages now or hereafter accorded by the United States of America, its territories or possessions or the Panama Canal Zone to one another, irrespective of any change in the political status of any of the territories or possessions of the United States of America;

(b) to any advantages in customs matters which Iraq may grant to goods the produce or manufacture of Turkey, or of any country whose territory was in 1914 wholly included in the Ottoman Empire in Asia;

(c) to any advantages which are, or may in the future be accorded by either Party to purely border traffic within a zone not exceeding ten miles (15 kilometres) wide on either side of the customs frontier;

(d) to any advantages in customs matters which are, or may in the future be accorded to States in customs union with either High Contracting Party so long as such advantages are not accorded to any other State.

ARTICLE II

Having regard to the volume and nature of the trade between the two countries it is agreed that in all that concerns matters of prohibitions or restrictions on importations and exportations each of the two countries will accord, whenever they may have recourse to the said prohibitions or restrictions, to the commerce of the other country treatment equally favorable to that which is accorded to any other country and that in the event either country establishes or maintains import or customs quotas, or other quantitative restrictions, or any system of foreign exchange control, the share of the total permissible importation of any product or of the total exchange made available for importation of any product of the other country

shall be equal to the share in the trade in such product which such other country enjoyed in a previous representative period.

ARTICLE III

Vessels of the United States of America will enjoy in Iraq and Iraqi vessels will enjoy in the United States of America treatment not less favourable than that accorded to national vessels or the vessels of the most favored nation.

The coasting trade of the High Contracting Parties is exempt from the provisions of this Article and from the other provisions of this Treaty, and is to be regulated according to the laws of each High Contracting Party in relation thereto. It is agreed, however, that vessels of either High Contracting Party shall enjoy within the territory of the other with respect to the coasting trade the most-favored-nation treatment.

ARTICLE IV

Nothing in this Treaty shall be construed to prevent the adoption of measures prohibiting or restricting the exportation or importation of gold or silver, or to prevent the adoption of such measures as either High Contracting Party may see fit with respect to the prohibition, or the control, of the export or sale for export, of arms, ammunition, or implements of war, and, in exceptional circumstances, of all other commodities.

Subject to the requirement that, under like circumstances and conditions, there shall be no arbitrary discrimination by either High Contracting Party against the other High Contracting Party in favor of any third country, nothing in this Treaty shall be construed to restrict the right of either High Contracting Party to impose (1) prohibitions or restrictions designed to protect human, animal, or plant health or life or national treasures of artistic, historical or archaeological value; (2) prohibitions or restrictions applied to products which as regards production or trade are or may in the future be subject within the country to state monopoly or monopolies exercised under state control; or (3) regulations for the enforcement of revenue or police laws.

Each of the High Contracting Parties agrees that, in respect of the foreign purchases of any state monopoly for the importation, production, or sale of any commodity or of any agency having such monopoly privileges, the commerce of the other High Contracting Party shall receive fair and equitable treatment, and that, in making its foreign purchases, such monopoly or agency will be influenced solely by those considerations which would normally be taken into account by a private commercial enterprise interested solely in purchasing goods on the most favorable terms.

ARTICLE V

Notwithstanding the provisions of Article VII of this Treaty, should measures taken or maintained by the United States of America seriously affect the chief exports of Iraq, Iraq reserves to itself the right to request the United States of America to open negotiations, and if agreement be not reached by negotiation within three months from its request, to terminate this Treaty immediately.

ARTICLE VI

The present Treaty shall, from the day on which it comes into force supplant Article 7 of the convention between the United States of America and Great Britain and Iraq signed at London January 9, 1930, in so far as commerce and navigation are concerned.

ARTICLE VII

The present Treaty shall take effect in all its provisions on the thirtieth day after the exchange of ratifications, and shall continue in force for the term of three years from that day. If neither High Contracting Party notifies to the other at least one year in advance an intention of terminating the Treaty upon the expiration of the aforesaid period of three years, the Treaty shall remain in full force and effect after the aforesaid period and until one year from such a time as either of the High Contracting Parties shall have notified to the other an intention of terminating the Treaty.

ARTICLE VIII

The present Treaty shall be ratified and the ratifications thereof shall be exchanged at Baghdad as soon as possible.

In witness whereof the respective Plenipotentiaries have signed the present Treaty and have affixed their seals thereto.

Done in duplicate in the English and Arabic languages, which have the same value and shall have equal force, at Baghdad this day of 1937, of the Christian Era, corresponding with the day of 1356, of the Hijra.

LIBERIA

PROPOSED NEW TREATY OF FRIENDSHIP, COMMERCE AND NAVIGATION BETWEEN THE UNITED STATES AND LIBERIA

711.822/6

Memorandum by Mr. Hugh S. Cumming, Jr., of the Division of Western European Affairs

[WASHINGTON,] June 21, 1937.

The reasons for proposing a new treaty of commerce and navigation with Liberia are:

1. To do away with the expressly conditional most-favored-nation treatment prescribed by the Treaty of 1862¹ and put our commercial relations with Liberia on an unconditional most-favored-nation basis.
2. To make a quiet but effective display of the continuance of our traditional friendly interest in the Republic and of our satisfaction with the orderly progress now being made there, by concluding a modern treaty of friendship, commerce and navigation. (In line with this policy we are now negotiating our first extradition treaty² with Liberia and have a consular convention³ almost ready for proposal).
3. To do away with the obligations imposed on the United States by Article 8 of the Treaty of 1862⁴ as being inconsistent with the present policies of the United States.

The first two sentences of Article 8 read as follows:

"The United States Government engages never to interfere, unless solicited by the Government of Liberia in the affairs between the Aboriginal inhabitants and the Republic of Liberia in the jurisdiction and territories of the Republic. Should any United States citizen suffer loss in person or property, from violence by the Aboriginal inhabitants and the Government of Liberia should not be able to bring the aggressor to justice, the United States engages, a requisition having been first made therefor by the Liberian Government, to lend such aid as may be required".

In practice, I believe that it would be to Liberia's ultimate advantage to abrogate the Article in question. In the present unsettled condition of the world, particularly with regard to the Colonial aspirations of

¹ Signed at London, October 21, 1862; William M. Malloy (ed.), *Treaties, Conventions, etc., Between the United States of America and Other Powers, 1776-1909* (Washington, Government Printing Office, 1910), vol. I, p. 1050.

² See p. 811.

³ See pp. 804 ff.

⁴ For further information regarding article 8, see John Bassett Moore, *A Digest of International Law*, vol. v, p. 769.

certain Powers, it is not inconceivable that Liberia might, at some time, be placed in such a situation as to determine her to call on the United States for armed assistance, basing her call as in the past, on Article 8 of the Treaty of 1862. Should we decline to furnish assistance, as is likely, our refusal, no matter on what proper grounds it might be based, would undoubtedly weaken Liberia's defensive position against whatever menace faced her. Moreover, our refusal to go to her assistance with our armed forces would undoubtedly create a certain amount of embarrassment to this Government, vis-à-vis the large element of our Negro population, who have a strong sentimental interest in Liberia. On the other hand, the negotiation of a new treaty at this time would be in line with our present policy towards Liberia to strengthen the Republic's prestige and international position in every proper way with a view to minimizing the possibility of foreign aggression against her and thus avoiding the necessity of a call on us for active assistance, either diplomatic or by use of our armed forces. Should Liberia express during the negotiations of the new treaty her unwillingness to abrogate Article 8 of the Treaty of 1862, I believe that the question can be ironed out by friendly discussion between the two Governments. I do not anticipate any particular difficulty in explaining to Liberia, should the question arise, our conviction that in the long run it will be in her interest to abrogate Article 8. Nor do I believe, in view of the close relations now existing between the two countries, that Liberian officials would wish to complicate the negotiations or run the risk of marring their friendship with this Government by appealing directly to individuals in the United States.

711.822/5a

The Secretary of State to the Minister in Liberia (Walton)

No. 43

WASHINGTON, June 22, 1937.

SIR: There are enclosed herewith for transmission to the Liberian Government at such time as you deem appropriate, a proposed note and a draft treaty of friendship, commerce and navigation.

It is believed that the note explains sufficiently the purpose of the draft treaty, but if there is any point with regard to the note or draft treaty concerning which you are in doubt you should communicate with the Department by cable.

If the proposal to negotiate on the basis of the enclosed draft meets with the approval of the Liberian Government, the Department wishes you to proceed at once to conduct the negotiations, asking for such additional instructions as may be required. You should report all developments promptly by mail, using the telegraph also when to

do so promises to save substantial amounts of time without substantial increase in your normal expenditure for tolls.

The Department expects shortly to send to you, likewise for proposal to the Liberian Government, the draft of a consular convention between the United States and Liberia. It is desired that the consular relations between the two countries shall also be regulated by modern and comprehensive treaty provisions.

Very truly yours,

CORDELL HULL

[Enclosure 1]

Draft of Proposed Note to the Liberian Government *

EXCELLENCY: Acting on instructions from my Government I have the honor to recall to your Excellency that nearly seventy-five years have elapsed since the existing Treaty of Commerce and Navigation between the United States and the Republic of Liberia was negotiated and signed in London. This has been a period marked by great advances in communications and transportation and by far-reaching developments in international trade throughout the world which have affected our two nations.

During the World War and particularly in the unhappy years of world depression, innumerable obstacles to commerce were devised by many countries which have not failed to have a harmful effect on the normal flow of international commerce. My Government recognizing the seriousness of the situation has therefore from time to time during recent years re-examined the Treaties of Commerce and Navigation between the United States and other countries with a view to modernizing its international economic relationships and thus contributing to a freer and more mutually profitable trade between nations.

While trade between the United States and Liberia fortunately is relatively free from the more acute problems, my Government nevertheless feels that the Treaty signed October 21, 1862, is no longer adequate to meet the needs of its parties. For example, Articles IV and VI of the Treaty in providing for expressly conditional most-favored-nations treatment in customs matters are not in harmony with the present policy of the Government of the United States, or it is believed, with modern enlightened international practice.

For these and other reasons, my Government has instructed me to communicate to Your Excellency the enclosed copy of a draft treaty on the basis of which it desires to negotiate, if agreeable to the Government of Liberia, an entirely new treaty of friendship,

* Presented to the Liberian Secretary of State, July 19, 1937.

commerce and navigation more nearly responsive to the present-day needs of the two countries.

I may observe in the foregoing connection that the provisions of the draft treaty follow those now used in American treaties of this kind, save the draft provisions respecting quotas, exchange control and monopolies (Articles IX, X and XI). Practically the same provisions in respect of quotas and monopolies (Articles IX and XI) appear in many of the recent trade agreements of the United States, and the provision (Article X) concerning foreign exchange control is now the subject of trade agreement negotiations between the United States and certain other countries.

At a later date my Government would like to propose an additional article⁷ to be inserted at a convenient place in the treaty for the purpose of dealing with the exploration and exploitation of the mineral resources on the public domain of the respective countries.

It is understood, of course, that either Government would be free at any time during the course of negotiations to propose further changes.

In closing, my Government instructs me to reiterate to Your Excellency that, in view of the marked progress made by Liberia during the past three years and the more prominent place which Liberia has thus made for herself among the family of nations, and especially from the point of view of the traditional friendship existing between the United States and Liberia, it is felt that this is an appropriate time to bring the treaty relations between the two Governments into harmony with modern practice.

Accept [etc.]

[Enclosure 2]

*Draft Articles of Proposed Treaty of Friendship, Commerce and Navigation*⁸

ARTICLE I

The nationals of each of the High Contracting Parties shall be permitted to enter, travel and reside in the territories of the other; to exercise liberty of conscience and freedom of worship; to engage in professional, scientific, religious, philanthropic, manufacturing and commercial work of every kind without interference; to carry on every form of commercial activity which is not forbidden by the local law; to own, erect or lease and occupy appropriate buildings and to

⁷ See instruction No. 56, October 16, to the Minister in Liberia, p. 797.

⁸ Only the articles about which there were subsequent negotiations are printed here. The remaining draft articles are the same as the final text except for a few incidental changes.

lease lands for residential, scientific, religious, philanthropic, manufacturing, commercial and mortuary purposes; to employ agents of their choice, and generally to do anything incidental to or necessary for the enjoyment of any of the foregoing privileges upon the same terms as nationals of the State of residence or as nationals of the nation hereafter to be most favored by it, submitting themselves to all local laws and regulations duly established.

The nationals of either High Contracting Party within the territories of the other shall not be subjected to the payment of any internal charges or taxes other or higher than those that are exacted of and paid by nationals of the State of residence.

The nationals of each High Contracting Party shall enjoy freedom of access to the courts of justice of the other on conforming to the local laws, as well for the prosecution as for the defense of their rights, and in all degrees of jurisdiction established by law.

The nationals of each High Contracting Party shall receive within the territories of the other, upon submitting to conditions imposed upon its nationals, the most constant protection and security for their persons and property, and shall enjoy in this respect that degree of protection that is required by international law. Their property shall not be taken without due process of law and without payment of just compensation.

Nothing contained in this Treaty shall be construed to affect existing statutes of either of the High Contracting Parties in relation to emigration or to immigration or the right of either of the High Contracting Parties to enact such statutes, provided, however, that nothing in this paragraph shall prevent the nationals of either High Contracting Party from entering, traveling and residing in the territories of the other Party in order to carry on international trade or to engage in any commercial activity related to or connected with the conduct of international trade on the same terms as nationals of the most favored nation.

ARTICLE III

The dwellings, warehouses, manufactories, shops, and other places of business, and all premises thereto appertaining of the nationals of each of the High Contracting Parties in the territories of the other, used for any purposes set forth in Article I, shall be respected. It shall not be allowable to make a domiciliary visit to, or search of any such buildings and premises, or there to examine and inspect books, papers or accounts, except under the conditions and in conformity with the forms prescribed by the laws, ordinances and regulations for nationals of the state of residence or nationals of the nation most favored by it.

ARTICLE IV

Where, on the death of any person holding real or other immovable property or interests therein within the territories of one High Contracting Party, such property or interests therein would, by the laws of the country or by a testamentary disposition, descend or pass to a national of the other High Contracting Party, whether resident or non-resident, were he not disqualified by the laws of the country where such property or interests therein is or are situated, such national shall be allowed a term of three years in which to sell the same, this term to be reasonably prolonged if circumstances render it necessary, and withdraw the proceeds thereof, without restraint or interference, and exempt from any estate succession, probate or administrative duties or charges other than those which may be imposed in like cases upon the nationals of the country from which such proceeds may be drawn.

Nationals of either High Contracting Party may have full power to dispose of their personal property of every kind within the territories of the other, by testament, donation, or otherwise, and their heirs, legatees and donees, of whatsoever nationality, whether resident or non-resident, shall succeed to such personal property, and may take possession thereof, either by themselves or by others acting for them, and retain or dispose of the same at their pleasure subject to the payment of such duties or charges only as the nationals of the High Contracting Party within whose territories such property may be or belong shall be liable to pay in like cases. In the same way, personal property left to nationals of one of the High Contracting Parties by nationals of the other High Contracting Party, and being within the territories of such other Party, shall be subject to the payment of such duties or charges only as the nationals of the High Contracting Party within whose territories such property may be or belong shall be liable to pay in like cases.

ARTICLE VIII

With respect to customs duties or charges of any kind imposed on or in connection with importation or exportation, and with respect to the method of levying such duties or charges, and with respect to all rules and formalities in connection with importation or exportation, and with respect to all laws or regulations affecting the sale, taxation, or use of imported goods within the country, any advantage, favor, privilege or immunity which has been or may hereafter be granted by either High Contracting Party to any article originating in or destined for any third country, shall be accorded immediately and unconditionally to the like article originating in or destined for the other High Contracting Party.

With respect to the amount and collection of duties on imports and exports of every kind, each of the two High Contracting Parties binds itself to give to the nationals, vessels and goods of the other the advantage of every favor, privilege or immunity which it shall have accorded to the nationals, vessels and goods of a third State, whether such favored State shall have been accorded such treatment gratuitously or in return for reciprocal compensatory treatment. Every such favor, privilege or immunity which shall hereafter be granted to nationals, vessels or goods of a third State shall simultaneously and unconditionally, without request and without compensation, be extended to the other High Contracting Party, for the benefit of itself, its nationals, vessels, and goods.

ARTICLE IX

Neither of the High Contracting Parties shall establish or maintain any import or export prohibition or restriction on any article originating in or destined for the territory of the other High Contracting Party, which is not applied to the like article originating in or destined for any third country. Any abolition of an import or export prohibition or restriction which may be granted even temporarily by either High Contracting Party in favor of an article originating in or destined for a third country shall be applied immediately and unconditionally to the like article originating in or destined for the territory of the other High Contracting Party.

If either High Contracting Party establishes or maintains any form of quantitative restriction or control of the importation or sale of any article in which the other High Contracting Party has an interest, or imposes a lower import duty or charge on the importation or sale of a specified quantity of any such article than the duty or charge imposed on importations in excess of such quantity, the High Contracting Party taking such action shall, upon request, inform the other High Contracting Party as to the total quantity, or any change therein, of any such article permitted to be imported or sold or permitted to be imported or sold at such lower duty or charge during a specified period, and shall allot to the other High Contracting Party for such specified period a proportion of such total quantity as originally established or subsequently changed in any manner equivalent to the proportion of the total importation of such article which the other High Contracting Party supplied during a previous representative period, unless it is mutually agreed to dispense with such allotment. Neither of the High Contracting Parties shall regulate the total quantity of importations into its territory or sales therein of any article in which the other High Contracting Party has an interest by import licenses or permits issued to individuals or organizations, unless

the total quantity of such article permitted to be imported or sold during a quota period of not less than three months shall have been established, and unless the regulations covering the issuance of such licenses or permits shall have been made public before such regulations are put into force.

ARTICLE X

If either High Contracting Party establishes or maintains, directly or indirectly, any form of control of the means of international payment, it shall, in the administration of such control:

(a) Impose no prohibition, restriction, or delay on the transfer of payment for imported articles the growth, produce, or manufacture of the other High Contracting Party, or of payments necessary for and incidental to the importation of such articles;

(b) Accord unconditionally, with respect to rates of exchange and taxes or surcharges on exchange transactions in connection with payments for or payments necessary and incidental to the importation of articles the growth, produce, or manufacture of the other High Contracting Party, treatment no less favorable than that accorded in connection with the importation of any article whatsoever the growth, produce, or manufacture of any third country; and

(c) Accord unconditionally, with respect to all rules and formalities applying to exchange transactions in connection with payments for or payments necessary and incidental to the importation of articles the growth, produce, or manufacture of the other High Contracting Party, treatment no less favorable than that accorded in connection with the importation of the like articles the growth, produce, or manufacture of any third country.

With respect to non-commercial transactions, each High Contracting Party shall apply any form of control of the means of international payment in a non-discriminatory manner as between the nationals of the other High Contracting Party and the nationals of any third country.

ARTICLE XI

In the event that either High Contracting Party establishes or maintains a monopoly for the importation, production or sale of a particular commodity or grants exclusive privileges, formally or in effect, to one or more agencies to import, produce or sell a particular commodity, the High Contracting Party establishing or maintaining such monopoly, or granting such monopoly privileges, agrees that in respect of the foreign purchases of such monopoly or agency the commerce of the other High Contracting Party shall receive fair and equitable treatment. To this end it is agreed that in making its foreign purchases of any product such monopoly or agency will be influenced solely by those considerations such as price, quality, marketability, and terms of sale, which would ordinarily be taken into

account by a private commercial enterprise interested solely in purchasing such product on the most favorable terms.

ARTICLE XIV

The vessels and cargoes of one of the High Contracting Parties shall, within the territorial waters and harbors of the other Party in all respects and unconditionally be accorded the same treatment as the vessels and cargoes of that Party, irrespective of the port of departure of the vessel, or the port of destination, and irrespective of the origin or the destination of the cargo. It is especially agreed that no duties of tonnage, harbor, pilotage, lighthouse, quarantine, or other similar or corresponding duties or charges of whatever denomination, levied in the name or for the profit of the Government, public functionaries, private individuals, corporations or establishments of any kind shall be imposed in the ports of the territories or territorial waters of either country upon the vessels of the other, which shall not equally, under the same conditions, be imposed on national vessels.

ARTICLE XVII

Limited liability and other corporations and associations, whether or not for pecuniary profit, which have been or may hereafter be organized in accordance with and under the laws, National, State or Provincial, of either High Contracting Party and which maintain a central office within the territories thereof, shall have their juridical status recognized by the other High Contracting Party provided that they pursue no aims within its territories contrary to its laws. They shall enjoy free access to the courts of law and equity, on conforming to the laws regulating the matter, as well for the prosecution as for the defense of rights in all the degrees of jurisdiction established by law.

The right of corporations and associations of either High Contracting Party which have been so recognized by the other to establish themselves in the territories of the other Party or to establish branch offices and fulfill their functions therein shall depend upon and be governed solely by the consent of such Party as expressed in its National, State, or Provincial laws.

ARTICLE XIX

(Article regarding development of mineral resources to be supplied later.)

ARTICLE XXI

There shall be complete freedom of transit through the territories including territorial waters of each High Contracting Party on the routes most convenient for international transit, by rail, navigable

waterway, and canal, other than the Panama Canal and waterways and canals which constitute international boundaries, to persons and goods coming from, going to or passing through the territories of the other High Contracting Party, except such persons as may be forbidden admission into its territories or goods of which the importation may be prohibited by law or regulations. The measures of a general or particular character which either of the High Contracting Parties is obliged to take in case of an emergency affecting the safety of the State or vital interests of the country may, in exceptional cases and for as short a period as possible, involve a deviation from the provisions of this paragraph, it being understood that the principle of freedom of transit must be observed to the utmost possible extent.

Persons and goods in transit shall not be subjected to any transit duty, or to any unnecessary delays or restrictions, or to any discrimination as regards charges, facilities, or any other matter.

Goods in transit must be entered at the proper customhouse, but they shall be exempt from all customs or other similar duties.

All charges imposed on transport in transit shall be reasonable, having regard to the conditions of the traffic.

Nothing in this Article shall affect the right of either of the High Contracting Parties to prohibit or restrict the transit of arms, munitions and military equipment in accordance with treaties or conventions that may have been or may hereafter be entered into by either Party with other countries.

ARTICLE XXII

Civil aircraft of the United States of America shall receive, in all respects, in Liberia the most-favored-nation treatment; provided that the benefit of this provision may be withheld in respect of any matter in regard to which the authorities of the Government of the United States of America should be unwilling to grant a similar privilege in respect of civil aircraft of Liberia.

ARTICLE XXIII

Nothing in this Treaty shall be construed to prevent the adoption of measures prohibiting or restricting the exportation or importation of gold or silver, or to prevent the adoption of such measures as either High Contracting Party may see fit with respect to the control of the export or sale for export of arms, ammunition, or implements of war, and, in exceptional circumstances, all other military supplies.

Subject to the requirement that, under like circumstances and conditions, there shall be no arbitrary discrimination by either High Contracting Party against the other High Contracting Party in favor

of any third country, the stipulations of this Treaty shall not extend to prohibitions or restrictions (1) imposed on moral or humanitarian grounds; (2) designed to protect human, animal, or plant life or health; (3) relating to prison-made goods; (4) relating to the enforcement of police or revenue laws.

The stipulations of this treaty do not extend to advantages now accorded or which may hereafter be accorded to neighboring States in order to facilitate short frontier traffic, or to advantages resulting from a customs union to which either High Contracting Party may become a party so long as such advantages are not extended to any other country.

The stipulations of this Treaty do not extend to advantages now accorded or which may hereafter be accorded by the United States of America, its territories or possessions or the Panama Canal Zone to one another or to the Republic of Cuba. The provisions of this paragraph shall continue to apply in respect of any advantages now or hereafter accorded by the United States of America, its territories or possessions or the Panama Canal Zone to one another, irrespective of any change in the political status of any of the territories or possessions of the United States of America.

711.822/8

The Minister in Liberia (Walton) to the Secretary of State

MONROVIA, August 14, 1937.

[Received August 26.]

SIR: I have the honor to refer to the Department's instruction No. 43, June 22, and my telegraphic despatch No. 40, August 13, 9 a.m.⁹ regarding a draft treaty of friendship, commerce and navigation under negotiation by the United States of America and the Republic of Liberia. I am submitting herewith for the Department's approval the following proposed changes, deletions and additions:

Article III After the word "other" on the fourth line insert the word "lawfully."

Article IV After the allowance of the term of 3 years to dispose of real property as contemplated under this article, what are the circumstances under which a further prolongation would seem desirable, and what additional period would be regarded a reasonable prolongation?

Article VIII Except such treaties for reciprocal trade as have been made or may in future be made with any third state; and treaties to facilitate the payment of foreign debts.

⁹ Latter not printed.

Article IX Page 2—fourth line—after the word “period” add “provided one of the High Contracting Parties shall accord to the other High Contracting Party similar reciprocal considerations as may be granted by any third country.[”]

For the sake of clarity it is suggested that page 2—sixth line, after the word “shall” on the sixth line add “by import licenses” and after the word “interest” on ninth line delete all that follows up to the word “unless” on tenth line.

Article X What does the term “non-commercial transactions” denote? See second line from bottom of sheet.

Article XIV Approved to word “cargo” on eighth line. Delete thereafter. Apart from the fact that this article would appear to be in violation of the most favoured nation clause in treaties entered into by this Country with other countries, it tends to infringe existing Loan Agreement relative to this Government not undertaking any obligation tending to decrease current revenues. Port and harbor dues appreciably contribute to the country’s revenues.

Article XVIII It is suggested that in lieu of the draft submitted in respect of limited liability and other Corporations and Associations, the following be substituted—“the juridical status of limited liability and trading corporations including industrial, financial, insurance, traffic and transport corporations, which have been or which may hereafter be organized in accordance with the laws of either High Contracting Party, and having their head office within the territory of either of the High Contracting Parties, shall be recognized by the other High Contracting Party. They shall be entitled to exercise their business and rights within the territory of either of the High Contracting Parties, provided they pursue no aims within its territory contrary to its laws or detrimental to the State. They shall enjoy free access to the courts of justice on complying with the laws regulating the matter, as well for the prosecution as for the defense of their rights.”

Article XXI Tenth line after the word “Territories” add “or such areas as may be excluded from visit by law, military order or other regulations.”

Paragraph 2, after the word “matter” on fourth line add “higher than that imposed upon the most favoured nation.”

Paragraph 3, should be substituted by the following—“It is understood that all goods in transit through the territory of Liberia and all goods in transit through the territory of the United States of America when warehoused or otherwise stored shall be subject to storage charges.”

Suggested additions by the Liberian Government

Article XXVI Should any dispute arise as to the interpretation or application of the present Treaty, the matter shall at the request of either High Contracting Party be submitted to a court of arbitration for settlement. This shall apply also to the preliminary question of whether the dispute refers to the interpretation or the application of the Treaty. The decision of the court of arbitration shall have binding force.

For every case of dispute the court of arbitration shall be formed in the following manner:—each of the High Contracting Parties shall

appoint one of its nationals as one of the arbitrators, and the two High Contracting Parties together shall select as chairman a national of a third State. Should the High Contracting Parties fail to agree upon the selection of the chairman within four months after the request for settlement by arbitration has been received they shall together request the President of the Administrative Council of the Permanent Court of Arbitration at the Hague to appoint a chairman of a neutral nationality.

The High Contracting Parties reserve to themselves the right to come to an agreement from the outset and for a definite period as to whom shall be the chairman.

Note:—Article XXVI in the original draft should be numbered article XXVII.

Article XXVII Ratification of the present Treaty shall be exchanged at Monrovia.

Respectfully yours,

LESTER A. WALTON

711.822/11

The Secretary of State to the Minister in Liberia (Walton)

No. 56

WASHINGTON, October 16, 1937.

SIR: With reference to the Department's instruction no. 43 of June 22, 1937, transmitting a draft treaty of friendship, commerce and navigation between the United States and Liberia, your attention is again invited to Article XIX which contains the statement that the article regarding the development of mineral resources would be supplied later.

The Department requests you to propose the following article on mineral resources to be included in the treaty now in course of negotiation:

"The nationals, including corporations and associations, of either High Contracting Party shall enjoy in the territories of the other Party, upon compliance with the conditions there imposed, most favored nation treatment in respect of the exploration for and exploitation of mineral resources; provided that neither Party shall be required to grant rights and privileges in respect of the mining of coal, phosphate, oil, oil shale, gas and sodium on the public domain, or in respect of the ownership of stock in domestic corporations engaged in such operations, greater than its nationals, corporations and associations receive from the other Party.

"It is understood, however, that neither High Contracting Party shall be required by anything in this paragraph to grant any application for any such right or privilege if at the time such application is presented the granting of all similar applications shall have been suspended or discontinued."

Very truly yours,

For the Secretary of State:
FRANCIS B. SAYRE

711.822/8

The Secretary of State to the Minister in Liberia (Walton)

No. 61

WASHINGTON, November 15, 1937.

SIR: The receipt is acknowledged of your unnumbered despatch of August 14, 1937, transmitting the Liberian counter proposals for a treaty of friendship, commerce and navigation between the United States and Liberia.

The Department has examined these counter proposals in a spirit of friendly cooperation and has endeavored to accept as many of them as possible. Its comment follows:

Article III

This Government accepts the proposal of the Liberian Government to insert the word "lawfully" after the word "other" in the fourth line of this article. The revised article would read as follows:

"The dwellings, warehouses, manufactories, shops, and other places of business, and all premises thereto pertaining of the nationals of each of the High Contracting Parties in the territories of the other, lawfully used for any purposes set forth in Article I, shall be respected. It shall not be allowable to make a domiciliary visit to, or search of any such buildings and premises, or there to examine and inspect books, papers, or accounts, except under the conditions and in conformity with the forms prescribed in the laws, ordinances and regulations for nationals of the state of residence or nationals of the nation most-favored by it."

Article IV

The Liberian Government inquires under what circumstances a further prolongation would seem desirable of the three-year period which would be allowed to nationals of one of the High Contracting Parties to dispose of real property in the territory of the other which they would inherit were they not barred on the ground of alienage from inheriting such land. The Liberian Government also asks what additional period would be regarded as a reasonable prolongation.

To both questions it must be answered that the circumstances of the particular case would control. It may happen that an estate is involved or so encumbered by liens that the period of three years may not be a sufficiently fair period of time in which to dispose of the property. An acutely depressed market for the sale of real property may in certain circumstances also be a ground for further prolongation of the period, within the discretion of the appropriate court.

Article VIII

The Liberian Government suggest an exception to the most-favored-nation clause providing that it does not apply to "such treaties for

reciprocal trade that have been made or may in future be made with any further state; and treaties to facilitate the payment of foreign debts”.

The Department cannot agree to such sweeping exceptions to the scope of the most-favored-nation clause. Indeed, it is a cardinal principle of the present commercial policy of the Government to extend to all countries which do not discriminate against it, the concessions and duties and other import restrictions made in trade agreements.

The Department wishes to emphasize the fundamental importance of the most-favored-nation principle as an effective instrument for the reduction of barriers to trade. The Liberian Government is no doubt fully aware of the disastrous consequences which have resulted from the growth of trade barriers since 1929. The continued existence of severe restrictions on trade and particularly the existence of discriminations still gravely retards economic recovery. The consequences of these restrictions and discriminations are serious for the trade of all countries and especially so for small nations which are still striving to recover from the financial difficulties which developed during the depression.

This Government is now engaged in a program of reduction of trade barriers through trade agreements and commercial treaties. These instruments are broadly of two types :

1. Under the trade agreements, concessions relating to tariff duties and other restrictions upon specified products are made by both parties to each agreement. These concessions are accompanied by an undertaking by each party to give unconditional most-favored-nation treatment to the trade of the other. It follows that if either party to the agreement should make any concessions to a third country, such concessions would also be extended to the other party. Fifteen agreements have already been made on this basis.

2. The second type of agreement contains mutual pledges of unconditional most-favored-nation treatment without concessions relating to particular commodities. Through commercial treaties and agreements of this type the United States guarantees to the other country that concessions made by the United States to third countries in agreements of the first type will be extended to the other party. An exception is made by the United States only in the case of concessions to Cuba. In return, the United States receives similar assurance with regard to agreements which the other party may make with third countries, sometimes with minor exceptions.

It is for this reason that the United States has proposed the inclusion of the unconditional most-favored-nation clause in the proposed treaty with Liberia. Clearly the exceptions proposed by the Liberian Government are of so sweeping a nature that they would render the clause largely ineffective in its application to the trade between the two countries.

There are commercial treaties or agreements in force between the United States and twenty-nine other countries containing the unconditional most-favored-nation clause. A list describing them appears on pages 18-21 of the enclosed copy of *Treaty Information Bulletin* No. 95, August, 1937. None of these treaties or agreements contains an exception such as has been proposed by the Liberian Government.

It is manifest that concessions generalized through the most-favored-nation clause will result in a far greater reduction of trade barriers generally than would result from concessions made exclusively to one country or a limited group of countries. There could be no doubt that widespread acceptance and application of the unconditional most-favored-nation principle is essential to the removal of those obstacles to trade which are now impeding world recovery.

The United States is endeavoring to secure the cooperation of all other countries in its program for the removal of all discriminations and the liberalization of trade barriers generally. A practical contribution toward that end by the United States has been made by duty reductions, effected through trade agreements, on imports constituting approximately 25 to 30% of total dutiable imports into the United States.

This Government would be happy to have the Liberian Government associated with it in the broad program of the liberalization of measures affecting international trade. It is felt that the acceptance by the Liberian Government of the unconditional most-favored-nation clause, without sweeping exceptions, would be a valuable contribution toward that program.

Article IX

The Liberian Government suggests the addition to the provision that quotas are to be allocated on the basis of a representative period of the condition "provided one of the High Contracting Parties shall accord to the other High Contracting Party similar reciprocal considerations as may be granted by any third country".

This Government believes that quotas should be allocated without condition on the basis of a previous representative period. To require the payment of "equivalent compensation" for equitable treatment in the matter of quotas is to render the provision nugatory. There are sixteen trade agreements now in force between the United States and other countries and in so far as they deal with quotas they embody the principle of unconditional allocation on the basis of imports in a previous representative period.

The changes in phraseology suggested for the last sentence of Article IX are acceptable.

Article X

The Liberian Government requests a definition of the term "non-commercial transactions used in connection with the article concerning the transfer of foreign exchange".

Commercial transactions may be taken to mean payments for goods, and payments incidental to the transportation of goods, such as freight and insurance. Non-commercial transactions refer to all other payments, for example, payments for loans, the interest on loans, and payments of the proceeds of estates.

Article XIV

The Liberian Government suggests the deletion of the second sentence of the article which provides specifically for national treatment of shipping in connection with tonnage and other taxes. It must be pointed out that the second sentence adds little to the principle enunciated in the first sentence which is apparently acceptable to the Liberian Government. The Department does not understand the objection to the second sentence if the first be acceptable. Moreover, it does not see that a guarantee of national treatment with respect to tonnage taxes will decrease current revenues and instructs you to inquire whether port and harbor dues are now higher on foreign than national vessels.

The principle of national treatment of shipping was laid down in an act of Congress of March 3, 1815.¹⁰ That policy has been in force between the United States and Great Britain for more than one hundred years as evidenced by Presidential Proclamation of October 5, 1830,¹¹ and Order in Council of November 5, 1830.¹² It is embodied in a great number of treaties among the maritime powers and has been invariably included in the modern treaties of the United States touching navigation—(see, for example, commercial treaty with Germany 1923,¹³ Italy 1871¹⁴ and Norway 1928¹⁵). It is to be hoped that the Liberian Government will subscribe to so widely accepted a principle.

Article XVII

This Government has examined with care the Liberian counter proposal for an article dealing with the juridical personality of corporations and associations. It is noted that the Liberian proposal restricts such recognition to commercial companies and associations.

¹⁰ 3 Stat. 224.

¹¹ 4 Stat. 817.

¹² *British and Foreign State Papers*, vol. xvii, p. 893.

¹³ Signed at Washington, December 8, 1923, *Foreign Relations*, 1923, vol. II, p. 29.

¹⁴ Signed at Florence, February 26, 1871, Malloy, *Treaties, 1776-1909*, vol. I, p. 969.

¹⁵ Signed at Washington, June 5, 1928, *Foreign Relations*, 1928, vol. III, p. 646.

You are, of course, aware of the very great assistance afforded to the Republic of Liberia by American missionary agencies particularly in educational and medical activities. It would seem appropriate to recognize the juridical personality of missionary and other non-profit societies in a treaty covering the basic relations between the two countries. You are instructed, therefore, to point out to the Liberian authorities the lively interest which this Government takes in these matters and to endeavor to secure agreement to the original proposal which, by its very nature, could not be burdensome to either Party.

Article XXI

The Liberian Government suggests the addition of the words "or such areas as may be excluded from visit by law, military order or other regulations" after the word "territories" in the tenth line of the first paragraph.

The Department agrees in principle with this change but desires to have it expressed in the following form:

"There shall be complete freedom of transit through the territories including territorial waters of each High Contracting Party on the routes most convenient for international transit, by rail, navigable waterway, and canal, other than the Panama Canal and waterways and canals which constitute international boundaries, to persons and goods coming from, going to or passing through the territories of the other High Contracting Party, except such persons as may be forbidden admission into its territories or goods of which the importation may be prohibited by law or regulations, provided that the foregoing shall not be construed to prevent either High Contracting Party from excluding aliens from special areas within its territories closed to visit by law, military order or regulations."

The Liberian Government desires that the second paragraph of this article read as follows:

"Persons and goods in transit, shall not be subjected to any transit duty, or to any unnecessary delays or restrictions, or to any discrimination as regards charges, facilities or any other matter higher than that imposed upon the most favored nation".

It is suggested that it may be preferable to word the paragraph as follows:

"Persons and goods in transit shall not be subjected to any transit duty, or to any unnecessary delays or restrictions, or to treatment as regards charges, facilities or any other matter less favorable than that accorded to the most favored nation".

In lieu of the existing fourth paragraph of this article which provides that transit charges shall be reasonable, the Liberian Government proposes a statement recognizing that goods in transit, when

warehoused or otherwise stored, shall be subject to storage charges. It would seem desirable to have both provisions and accordingly the Department authorizes you to accept the Liberian proposal followed by the original sentence constituting the fourth paragraph of this article.

Article XXVI

The Liberian Government suggests the inclusion of arbitration provisions in this treaty. This Government has not heretofore included arbitration provisions in its treaties of friendship, commerce and navigation. It would seem, moreover, that the arbitration convention between the United States and Liberia signed at Monrovia February 10, 1926,¹⁶ which is still in force, would be adequate to govern the situation. The Department, of course, would be glad to consider proposals for the revision of that convention if it is deemed necessary.

Article XXVII

The Department agrees to the proposal that the exchange of ratifications take place at Monrovia.

Very truly yours,

CORDELL HULL

711.822/15: Telegram

The Minister in Liberia (Walton) to the Secretary of State

MONROVIA, December 16, 1937—5 p. m.

[Received December 16—2:30 p. m.]

75. Department's telegram No. 37, December 11, 3 p.m.¹⁷ In connection with the Department's instruction No. 61, November 15, Liberian Government accepts counterproposals but desires to know whether or no article 14 implies to waive port and harbor dues on American vessels calling at Liberian ports and vice versa. If it does not, Liberian Government is ready to conclude and sign commercial treaty.

In connection with Department's telegram No. 29, Nov. 18,¹⁷ Liberian Government has accepted counterproposals.¹⁸ I am awaiting instructions.

WALTON

¹⁶ *Foreign Relations*, 1926, vol. II, p. 597.

¹⁷ Not printed.

¹⁸ Regarding consular convention. See undated telegram No. 72 from the Minister in Liberia, p. 811.

711.822/15 : Telegram

The Secretary of State to the Minister in Liberia (Walton)

WASHINGTON, December 18, 1937—3 p. m.

41. Your no. 75, December 16, 5 p. m. Article 14 does not require the waiving of port and harbor dues. It requires that such dues in the ports of each country shall be the same on vessels of the other country as on its own vessels.

The Department will engross final texts of commercial and consular treaties and forward them as soon as practicable.

HULL

PROPOSED CONSULAR CONVENTION BETWEEN THE UNITED STATES
AND LIBERIA

711.8221/1

The Secretary of State to the Minister in Liberia (Walton)

No. 45

WASHINGTON, July 7, 1937.

SIR: With reference to the Department's mail instruction No. 43 of June 22, 1937,²⁰ there are enclosed two copies of a preliminary draft of a consular convention between the United States and Liberia. The draft is identical with drafts recently proposed by the United States to several other countries and is based upon the consular provisions of the Treaty of Friendship, Commerce and Consular Rights between the United States and Norway, signed June 5, 1928 (Treaty Series No. 852).²¹ Two copies of this treaty are enclosed.

The differences between the enclosed draft and the treaty with Norway are largely the result of rearrangement and editing, but two variations from the treaty with Norway are especially worthy of note.

Article III of the draft treaty, which corresponds to Article XVIII of the treaty with Norway, does not contain the phrase "levied upon their person or upon their property" which appears in the Norwegian treaty. Since this phrase has been interpreted by the Treasury Department so as to prevent the exemption from the payment of taxes including excise taxes on liquor imported by foreign consular officers, it is necessary to avoid its use in order to accord the full exemption which is desired.

You will also observe that a new stipulation occurs in Articles III and IV of the draft. This is to give effect to the Department's desire to obtain exemption from taxation and free entry privileges for such officers of this Government as medical officers of the United States

²⁰ *Ante*, p. 786.

²¹ *Foreign Relations*, 1928, vol. III, p. 646.

Public Health Service, and representatives of the Department of Labor who are occasionally assigned to American consulates to assist in carrying on regular functions. The exemption which the Department seeks for such officers would, of course, be accorded to the corresponding officers of foreign governments.

Very truly yours,

For the Secretary of State:
WILBUR J. CARR

[Enclosure]

*Draft Articles of Proposed Consular Convention*²²

ARTICLE I

Each of the High Contracting Parties agrees to receive from the other, consular officers in those of its ports, places, and cities, where it may be convenient and which are open to consular representatives of any foreign country.

Consular officers of each of the High Contracting Parties shall, after entering upon their duties, enjoy reciprocally in the territories of the other all the rights, privileges, exemptions and immunities which are enjoyed by officers of the same grade of the most favored nation. As official agents, such officers shall be entitled to the high consideration of all officials, national or local, with whom they have official intercourse in the State which receives them.

The Government of each of the High Contracting Parties shall furnish free of charge the necessary exequatur of such consular officers of the other as present a regular commission signed by the chief executive of the appointing State and under its great seal; and they shall issue to a subordinate or substitute consular officer duly appointed by an accepted superior consular officer with the approbation of his Government, or by any other competent officer of that Government, such documents as according to the laws of the respective countries shall be requisite for the exercise by the appointee of the consular function. On the exhibition of an exequatur, or other document issued in lieu thereof to such subordinate, such consular officer shall be permitted to enter upon his duties and to enjoy the rights, privileges and immunities granted by this Convention.

ARTICLE III

Consular officers, including employees in a consulate, nationals of the State by which they are appointed, other than those engaged in private occupations for gain within the State where they exercise

²² Only the articles about which there were later negotiations are printed here. The remaining articles are the same as the final text except for incidental changes.

their functions, shall be exempt from all taxes, National, State, Provincial and Municipal, except taxes levied on account of the possession or ownership of immovable property situated in, or income derived from property of any kind situated or belonging within the territories of the State within which they exercise their functions. All consular officers and employees, nationals of the State appointing them, shall be exempt from the payment of taxes on the salary, fees or wages received by them in compensation for their consular services.

The exemptions of the foregoing paragraph shall apply equally to officials who are duly appointed by one of the High Contracting Parties to exercise essential governmental functions in the territory of the other High Contracting Party, provided that such officials shall be nationals of the State appointing them and shall not be engaged in private occupations for gain within the country to which they are accredited. The State appointing them shall communicate to the other State satisfactory evidence of the appointment and shall indicate the character of the service of the officials to whom the exemptions of this Article are intended to apply.

The Government of each High Contracting Party shall have the right to acquire and own land and buildings required for diplomatic or consular premises in the territory of the other High Contracting Party and also to erect buildings in such territory for the purposes stated subject to local building regulations.

Lands and buildings situated in the territory of either High Contracting Party, of which the other High Contracting Party is the legal or equitable owner and which are used exclusively for governmental purposes by that owner, shall be exempt from taxation of every kind, National, State, Provincial and Municipal, other than assessments levied for services or local public improvements by which the premises are benefited.

ARTICLE IV

Each of the High Contracting Parties agrees to permit the entry free of all duty and without examination of any kind, of all furniture, equipment and supplies intended for official use in the consular offices of the other, and to extend to such consular officers of the other and their families and suites as are its nationals, the privilege of entry free of duty of their baggage and all other personal property whether accompanying the officer, his family or suite, to his post or imported at any time during his incumbency thereof; provided, nevertheless, that no article, the importation of which is prohibited by the law of either of the High Contracting Parties, may be brought into its territories.

The exemptions of the foregoing paragraph shall apply equally to officials who are duly appointed by one of the High Contracting Parties to exercise essential governmental functions in the territory of the other High Contracting Party, provided that such officials shall be nationals of the state appointing them and shall not be engaged in private occupations for gain within the country to which they are accredited. The state appointing them shall communicate to the other satisfactory evidence of the appointment and shall indicate the character of the service of the officials to whom the exemptions of this Article are intended to apply.

It is understood, however, that this privilege shall not be extended to officers who are engaged in any private occupation for gain in the countries to which they are accredited, save with respect to Governmental supplies.

ARTICLE VI

Consular officers of either High Contracting Party, nationals of the State by which they are appointed, may, within their respective consular districts, address the authorities concerned, National, State, Provincial or Municipal, for the purpose of protecting their countrymen in the enjoyment of their rights accruing by treaty or otherwise. Complaint may be made for the infraction of those rights. Failure upon the part of the proper authorities to grant redress or to accord protection may justify interposition through the diplomatic channel, and in the absence of a diplomatic representative, a consul general or the consular officer stationed at the capital may apply directly to the Government of the country.

Consular officers shall have the right to interview, to communicate with, and to advise their countrymen within their consular district; to visit any of their countrymen who are imprisoned or detained by authorities of the State in which they exercise their consular functions; to assist them in proceedings before or relations with such authorities; and to inquire into any incidents which have occurred within the consular district affecting the interests of their countrymen.

Nationals of either of the High Contracting Parties shall have the right at all times to communicate with the consular officers of their country.

ARTICLE XII

All proceedings relative to the salvage of vessels of either High Contracting Party wrecked upon the coasts of the other shall be directed by the consular officer of the country to which the vessel belongs and within whose district the wreck may have occurred. Pending the arrival of such officer, who shall be informed immediately of the occurrence, the local authorities shall take all necessary measures

for the protection of persons and the preservation of wrecked property. The local authorities shall not otherwise interfere than for the maintenance of order, the protection of the interests of the salvors, if these do not belong to the crews that have been wrecked and to carry into effect the arrangements made for the entry and exportation of the merchandise saved. It is understood that such merchandise is not to be subjected to any customhouse charges, unless it be intended for consumption in the country where the wreck may have taken place.

The intervention of the local authorities in these different cases shall occasion no expense of any kind, except such as may be caused by the operations of salvage and the preservation of the goods saved, together with such as would be incurred under similar circumstances by vessels of the nation.

ARTICLE XIV

The present Convention shall be ratified and the ratifications thereof shall be exchanged at The Convention shall take effect in all its provisions thirty days from the day of the exchange of ratifications and shall remain in full force for the term of ten years thereafter.

If within six months before the expiration of the aforesaid period of one year neither High Contracting Party notifies to the other an intention of modifying, by change or omission, any of the provisions of any of the Articles in this Convention or of terminating it upon the expiration of the aforesaid period, the Convention shall remain in full force and effect after the aforesaid period and until six months from such a time as either of the High Contracting Parties shall have notified to the other an intention of modifying or terminating the Convention.

In witness whereof the respective Plenipotentiaries have signed this Convention and have affixed their seals thereto.

Done in duplicate, at this day of in the year one thousand nine hundred and thirty-seven.

711.8221/3

The Minister in Liberia (Walton) to the Secretary of State

No. 137

MONROVIA, October 17, 1937.

[Received October 30.]

SIR: Referring to my telegram No. 45, October 12, 11 a. m.,²³ I have the honor to transmit herewith changes suggested by the Liberian

²³ Not printed.

Government in the draft Consular Convention between the United States of America and the Republic of Liberia.

For the sake of clarity it is asked that substitutions be made on page 2,²⁴ article 1, paragraph 3, lines 1-11, also for the same reason on page 4, article 3, paragraph 2, and page 6, article 4, paragraph 2. In connection with page 6, article 4, paragraph 2, the Liberian Government wishes it specifically understood while exemptions will be allowed consular officers, that under no circumstances are citizens of the United States serving as Liberian officials, such as specialists and fiscal officers, to be accorded these privileges.

On page 10, article 6, paragraphs 1 and 2 are phrased by the Liberian Government with a view to imposing limitations on the consul, making it incumbent for him in his efforts to protect the rights of his nationals, to pursue all remedies provided by law before he resorts to intervention through diplomatic channels.

On page 20, article 14, paragraph 1, the Liberian Government is desirous that the Convention shall remain in force for the term of 5 years instead of 10 years and refers to the treaty with Norway which is for 3 years. It is assumed that in paragraph 2 of this article, second line, "one year" is a typographical error and was intended to read "10."

Respectfully yours,

LESTER A. WALTON

[Enclosure]

Changes Suggested by the Liberian Government in the Draft Consular Convention

Page 2, Article I Paragraph 3, lines 1-11 should be substituted by the following—"No subordinate or substitute Consular Officers appointed by a Superior Consular officer by either high Contracting Parties [*Party*] shall exercise their functions except they be authorized thereto by such documents as according to the laws of their respective countries shall be requisite for the exercise by the appointee of the Consular functions.

Page 4, Article III Paragraph 2—After the word "exercise" on line 3 add "in its behalf" except clarification is made of the word "official" as employed in said paragraph.

Page 6, Article IV Paragraph 2—After the word "exercise" on line 3 add "in its behalf" except clarification is made of the word "official" as employed in said paragraph.

²⁴ Page numbers refer to pagination of original instruction.

Page 10, Article VI Paragraph 1—It must be recalled that the remedy provided by law should be pursued up to the tribunal of last resort before interposing through diplomatic channel.

Paragraph 2—After the word “district” and the semicolon on the third line add “and upon notification to the appropriate authority.”

Page 18, Article XII Not in harmony with our Statutes relating to wrecks. See section 880 of Revised Statutes of Liberia. It is however suggested that the following be substituted:

Wrecks Treaty of Norway, Page 24, Art. XXVII: ²⁵—

“All proceedings relative to the salvage of vessels of either High Contracting Party wrecked upon the coasts of the other shall be directed by the consular officer of the country to which the vessel belongs and within whose district the wreck may have occurred, or by some other person authorized thereto by the law of that country. Pending the arrival of such officer, who shall be immediately informed of the occurrence, or the arrival of such other person, whose authority shall be made known to the local authorities by the consular officer, the local authorities shall take all necessary measures for the protection of persons and the preservation of wrecked property. The local authorities shall not otherwise interfere than for the maintenance of order, the protection of the interests of the salvors, if these do not belong to the crews that have been wrecked and to carry into effect the arrangements made for the entry and exportation of the merchandise saved. It is understood that such merchandise is not to be subjected to any customhouse charges, unless it be intended for consumption in the country where the wreck may have taken place.

The intervention of the local authorities in these different cases shall occasion no expense of any kind, except such as may be caused by the operations of salvage and the preservation of the goods saved, together with such as would be incurred under similar circumstances by vessels of the nation.”

Page 20, Article XIV Paragraph 1—It is suggested that the word “ten” on the sixth line be substituted by the word “five.”

Paragraph 2—In lieu of the word “one” on the second line substitute the word “five.”

711.8221/3 : Telegram

The Secretary of State to the Minister in Liberia (Walton)

WASHINGTON, November 18, 1937—5 p. m.

29. Your despatch no. 137 of October 17, 1937. Page 2, Article 1. The Department is reluctant to accept Liberian Government's proposal since it is not clear as to what objections they have to our draft. Department believes that lines 1 to 5 (up to semicolon) are indispensable. It asks for reconsideration by the Liberian Government of its position

²⁵ *Foreign Relations*, 1928, vol. III, p. 659.

as to lines 5 to 11. If their objection is based on the idea that they should not be obliged to issue an exequatur or similar document to a consular officer of this Government who is personally objectionable to them, you are authorized to state that nothing in the treaty requires either High Contracting Party to grant an exequatur or similar document to a person who is *persona non grata*. This statement may be made in writing if the Liberian Government so desires.

Department accepts all other changes made in pages 4, 6, 10, 18 and 20. It also accepts the clarification made with respect to the word "official" and states that it did not intend to obtain customs or tax exemptions for American citizens employed by the Liberian Government.

Page 10, Article 6. The Department concurs in the statement of the Liberian Government, since it is well understood that, under normal conditions, and subject to exceptions recognized in international law, the remedy provided by law should be pursued up to the tribunal of last resort before interposition through diplomatic channels is justified. You should state this in a note to the Liberian Government.

The Department relies upon you to assure that the final text is in exact accordance with agreement reached and to advise it when complete agreement has been reached. Full power being prepared and will be sent by air mail. You will postpone signature until it reaches you or you are further instructed.

HULL

711.8221/6: Telegram

The Minister in Liberia (Walton) to the Secretary of State

MONROVIA [undated].

[Received December 12, 1937—5:20 p. m.]

72. Your 37, December 11, 3 p. m.²⁶ Liberian Government has accepted all counter proposals relative to consular convention. Expect to secure similar action with respect to commercial treaty.²⁷ I have never had any intention of concluding and signing treaties unless I strictly adhered to the Department's instructions.

WALTON

**TREATY OF EXTRADITION BETWEEN THE UNITED STATES AND
LIBERIA, SIGNED AT MONROVIA, NOVEMBER 1, 1937**

[For text of treaty, see Department of State Treaty Series No. 955, or 54 Stat. 1733.]

²⁶ Not printed.

²⁷ See pp. 785 ff.

**REPRESENTATIONS BY THE UNITED STATES REGARDING LIBERIAN
CUSTOMS REGULATIONS AFFECTING FREE ENTRY PRIVILEGES FOR
MISSIONARIES AND DIPLOMATIC OFFICERS**

382.1163/44: Telegram

The Secretary of State to the Minister in Liberia (Walton)

WASHINGTON, February 4, 1937—4 p. m.

6. Please submit full report by mail on recent Executive Order revoking privileges of free entry for personal and other effects hitherto, according to Department's information, granted American missionaries in Liberia.

HULL

382.1163/46

The Minister in Liberia (Walton) to the Secretary of State

No. 86

MONROVIA, March 6, 1937.

[Received April 3.]

SIR: I have the honor to acknowledge receipt of the Department's telegram No. 6, February 4, 4 p. m., requesting a full report by mail on the recent Executive Order revoking privileges of free entry for personal and other effects granted American missionaries in Liberia.

In this connection I first wish to state that the present misunderstanding primarily exists because of the obvious ambiguity of the present tariff law dealing with mission importations under Schedule 35 (*d*) passed by the Liberian Legislature in 1935. This law was drawn up by the Economic Adviser. The only reference contained therein to the subject herein discussed reads: "Free gifts missionary and charitable". No corollary follows setting forth explicitly and definitely when missionaries are not to enjoy the privileges of free entry.

Previously the Government operated under the Customs Tariff Act of 1922-23, relating to materials for school houses, colleges and churches, and reads: "Materials, clothing for free gifts for missionary purposes. Note: Separate entries are required for goods imported for the use of the Government of Liberia. Such entries will be attested by head of the Department for which the goods are intended. Similar conditions apply to the importation of goods for educational establishments and churches. Goods for the personal use of missionaries, principals and teachers of colleges and schools are not free of duty." (the underscoring is mine).

Following the passage of the new tariff act of 1935, because of its lack of clarity relative to missionaries, interpretations varied as to the full import of: "Free Gifts, missionary and charitable." It might

have meant: (1) Gifts to individual missionaries, regardless of use to which they were to be put; (2) gifts to Missions, whether for general use or for personal consumption by missionaries; (3) gifts by Missions to Liberians in connection with schools, hospitals, et cetera.

The Collector of Customs at the Port of Monrovia was of the opinion that since salaries and all funds for missions are gifts from churches and individuals, even though such funds come through a Mission Board, all importations for missions and missionaries were free of duty regardless of whether articles were for personal use or for general mission purposes. This ruling, later declared too broad and inclusive, especially in the light of previous legislation on the subject, occasioned much rejoicing among missionaries. At other ports in the country, however, different interpretations were rendered resulting in inevitable inequality of treatment.

This lack of uniformity of interpretation created so much confusion for all directly concerned that the Financial Adviser was appealed to for clarification. In March 1936, he held that goods for general mission purposes will be admitted free; that gifts to individual missionaries would be admitted free, but that goods ordered by individuals were dutiable and to be paid for from their personal funds.

This ruling was productive of numerous unforeseen complications between Collectors of Customs and missionaries, and in December, 1936, the Acting Financial Adviser was called on for further elucidation. His views, in the main, were similar to those of the Financial Adviser. However, before issuing written instructions he deemed it advisable to secure the approval of the President of Liberia, who was implacable in his maintenance that all articles for personal use of missionaries, whether gifts or purchases, should be dutiable.

In conformity with the President's ruling, the Acting Financial Adviser issued Administration Circular No. 5, which is enclosed herewith.

The circular aroused a storm of protests from American missionaries, some of whom called on me and registered their emphatic disapproval. The head of one educational institution at Monrovia threatened to resign, and I persuaded him, before taking such a step, to communicate with his Board of Trustees in the United States, and I gave assurance I would engage in conversations with the representatives of the Liberian Government regarding the circular. Another missionary pointed out to me that \$94.62 had been recently paid to the Collector of Customs at the Port of Monrovia for food-stuffs received, of which amount \$48.06 was for duty under Schedule 35 (*d*) and \$46.56 for emergency tax; and that on a quilt sent as a gift \$6.40 had been paid.

In consequence of these and other protestations, I consulted the Acting Financial Adviser, who was good enough to explain fully the situation.

It can be said without fear of successful contradiction, that Administrative Circular No. 5 is also lacking in perspicuity. It is difficult to determine whether certain articles, such as groceries, are for general mission use or for the personal use of the staff. When the head of the mission declares that groceries, building material, school supplies, medicine and hospital supplies are for general use, they are entered free. Even Customs officials at times are puzzled as to the entry of medicine. Most of the hospitals charge fees; however, it is reasoned by the authorities that such small fees are collected, they do not change the general character of the hospitals as charitable institutions.

The unalterable position assumed by the Liberian Government, at least since 1922, is that goods for the personal use of individual missionaries are dutiable. I am cognizant of the President's intransigency on this moot issue. Under the circumstances, I question the advisability and the opportuneness of missionaries pressing their claim for a more favorable interpretation of the Custom Law.

Respectfully yours,

LESTER A. WALTON

[Enclosure]

Liberian Administrative Circular No. 5—1936

Subject: Tariff Interpretation of Section (d) of Article 35 of the Tariff Act of 1935, relating to importation of Mission goods.

1—The above mentioned provision shall be interpreted as follows:

(a) Goods for general Missionary purposes, not for sale or exchange, are free of duty. Goods for the personal use and consumption of Missionaries, or for exchange, are subject to duty.

(b) Gifts from churches and societies to individual Missionary or Missionaries are dutiable.

(c) Goods ordered by individual Missionaries for their personal consumption or which are to be paid for from their personal funds are dutiable.

2—This circular cancels all previous circulars, orders, or interpretations on this subject. It is not retroactive.

(signed) JOHN A. DUNAWAY
Acting Financial Adviser, R. L.

Approved:

(Sgd.) EDWIN BARCLAY,
President of Liberia.

382.1163/49

The Secretary of State to the Minister in Liberia (Walton)

No. 46

WASHINGTON, July 30, 1937.

SIR: The Department has received your despatch No. 86 of March 6, 1937, reporting the circumstances which prompted the issue of the Liberian Executive Order No. 5, 1936, revoking the privilege of free entry for personal effects as previously enjoyed by American missionaries in Liberia.

It is a matter of regret to the Department that the Liberian Government should have given to Schedule 35 (*d*) of the tariff law of 1935 an interpretation which seems to place an additional hardship upon American nationals whose sole purpose in going to Liberia is to devote themselves to the welfare of the people of that country and whose services are given at great personal sacrifice. These services are, as the Liberian Government is no doubt aware, accompanied also by very substantial contributions in money from the various missionary societies in the United States.

In view of these circumstances and also of the fact that the wording of the tariff law of 1935 apparently admits a more liberal interpretation than has been put upon it by Executive Order No. 5, the Department would be very pleased to learn that the Liberian Government is disposed to reconsider its action and to afford American missionaries a measure of relief from the new burden placed upon their very limited personal resources. Especially as regards the importation of food, clothing, household goods and other necessities which the missionaries are unable to procure locally, the Department entertains the hope the Liberian Government may find it possible to relax the effect of the present interpretation of the law.

You are requested, therefore, to discuss this matter informally with the Secretary of State and to inform him of the views of the Department. You may suggest to him, moreover, that special customs exemptions for religious and philanthropic missions are by no means exceptional, and that only recently this Government has arranged with the French Government a modification and liberalization of the customs regulations which apply to American missions in Syria.²³

The Department will await with interest the report of your discussion of this matter with the Liberian authorities.

Very truly yours,

For the Secretary of State:
SUMNER WELLES

²³ See *Foreign Relations*, 1936, vol. III, pp. 460 ff.

382.1163/49

*The Chief of the Division of Near Eastern Affairs (Murray) to the
Minister in Liberia (Walton)*

WASHINGTON, July 30, 1937.

MY DEAR MR. MINISTER: An instruction²⁹ is going forward by next pouch regarding the revocation of customs exemptions enjoyed in the past by missionaries in Liberia, a matter about which you reported at length in your despatch of March 6, last.

Dr. Jones of the Phelps-Stokes Fund has recently written to Mr. McBride³⁰ expressing again the concern and keen disappointment of the Advisory Committee on Education in Liberia at the action of the Liberian Government in placing so heavy a strain upon the modest salaries of missionaries.

It is my own belief that the Liberian Government should not be unmindful of the very generous contributions in services and money which are being made by Americans to Liberia. Nine missionary organizations, for which facts are available, have contributed in the past year \$133,000, for work in Liberia. They expect to increase that sum substantially when circumstances permit. They also maintain at present in Liberia 66 American workers, besides three or four times as many Liberians. Three other missionary societies, for which figures are not available, also make substantial contributions and maintain a considerable number of American and Liberian teachers and workers. It seems to me that these facts (not to mention the proposed gift of \$8,000 worth of motor buses) constitute a genuine claim upon the Liberian Government for its considerate treatment of Americans living in Liberia.

There is also another very important consideration which ought not to be ignored, namely that the nine mission boards mentioned above represent an adult membership of American citizens numbering almost eleven million persons. It is these people who take the most lively interest in Liberia and are most active in keeping unimpaired the traditional American friendship for Liberia. It would be a great pity if their strong sympathies for Liberia should be alienated by inconsiderate treatment of American nationals.

In the official instruction which will go forward at the same time as this letter reference is made to the arrangements recently made with the French Government regarding customs exemption for American missionary, educational and philanthropic institutions in Syria. Under that arrangement, and the regulations issued in connection therewith, individuals and institutions are permitted to bring in free

²⁹ *Supra.*

³⁰ Harry A. McBride, Assistant to the Secretary of State.

of duty all classes of merchandise, including food and clothing, required for the functioning of their organizations, but a maximum limit is set for each class of institution. Thus in the case of institutions of higher learning such as the American University of Beirut, the maximum amount on which free entry is permitted is twenty-five Syrian Pounds per year per student. (A Syrian Pound equals twenty French francs or approximately \$0.75 at the present rate of exchange.) Since the University has over a thousand students it is evident that the total customs exemption permitted amounts to a considerable sum. Again, in the case of missionaries a maximum limit is set to the amount which they may import free of duty annually. These various limits are high enough to permit the American institutions and their personnel in Syria to carry on their work without hardship. At the same time the maximum amount set prevents excessive importations and protects the Government's revenues. It occurs to me that it might be possible for you to work out a compromise along the lines of the precedent set in Syria. Thus each missionary and member of his immediate family might be given customs exemption on food-stuffs, wearing apparel, et cetera, to the extent of, say \$200 per annum, or whatever amount might appear to be reasonable and fair to all concerned.

I am offering these personal views for your consideration in the hope that you may find them useful in preparing to bring this matter informally to the attention of the Liberian Government.

Sincerely yours,

WALLACE MURRAY

882.1163/55

The Minister in Liberia (Walton) to the Chief of the Division of Near Eastern Affairs (Murray)

MONROVIA, September 7, 1937.

MY DEAR MR. MURRAY: Your letter of July 30, relative to Liberia's revocation of privileges to American missionaries of free entry for personal effects was received and read with interest. In accordance with instructions, I am taking up this matter with Secretary of State Simpson, acquainting him with the Department's views and also arrangements in Syria to which you refer.

I sought to make clear in my despatch No. 86 of March 6, 1937, that at no time has it been the intention of the Liberian Government to extend missionaries privilege to receive their personal effects in this country duty free; and that for only a time in 1936, due to a misinterpretation of the new revenue act, was such consideration shown them by some Liberian customs collectors.

In former conversations with Liberian officials on behalf of American missionaries it was pointed out to me that the Liberian Government if disposed, could demand reimbursement of missionaries for what they termed "duty arrears" due the Government in 1936.

For quite a number of years I have been closely associated with my good friend, Dr. Thomas Jesse Jones of the Phelps-Stokes Fund, and members of the Advisory Committee on Education in Liberia. I am sincerely interested in doing all in my power to serve American missionaries in every way possible.

Unfortunately, high Liberian officials do not always share the same views as you and I with respect to the value of services rendered by missionaries. I am doing all I can to counteract this attitude.

May I take this opportunity to express the hope that the Republic of Liberia, now in your division, will continue to progress and live up to the expectation of our Government.

Sincerely yours,

LESTER A. WALTON

682.00241/2

The Minister in Liberia (Walton) to the Secretary of State

No. 147

MONROVIA, November 17, 1937.

[Received December 7.]

SIR: I have the honor to report that Administrative Circular No. 5 issued August 23, 1937 by the Financial Adviser, Republic of Liberia, with respect to free entry privileges granted diplomatic officers at Monrovia has been the subject of controversy.

Under Regulation 2b of this circular, for the information of the Diplomatic Corps, notice was given that the following certification on entry form shall be signed by the chiefs of mission:

"I hereby certify that the goods, wares and merchandise herein described are imported for the use of the Legation of (name of country), or officials thereof, and such goods, wares and merchandise will not be sold, exchanged or transferred to persons who are not entitled to free entry privileges.

(Signature) _____
(Title)"

Regulation 1 of this circular reads:

"All importations for which free entry privilege is granted must be consigned to the entity for whom imported. Ocean bills of lading and Consular or other invoices must demonstrate proof of such consignment. Unless importations are consigned as required by this Administrative Circular, free entry privileges will not be authorized."

At a meeting of the Diplomatic Corps in Liberia held Monday, September 6, a resolution was adopted advising the Liberian Govern-

ment that Regulation 1 of Administrative Circular No. 5, 1937 would, if enforced, prove a great inconvenience and sometimes hardship to those representatives of foreign powers who enjoy the privilege of free entry at Liberian ports. The American Minister, as *Doyen* of the Diplomatic Corps, transmitted the resolution to the Secretary of State.

A few days later the American Minister informally discussed with President Barclay the objections which the members of the Diplomatic Corps raised against the regulation in question. At the time the President admitted that the argument advanced by me contained merits and asked if I would incorporate my views in an informal note and send to Secretary Simpson. This was done. A copy of the communication is enclosed.³¹

Two months have elapsed since I transmitted this note to the Department of State. Upon inquiring what disposition the Liberian Government had made of the Diplomatic Corps' protest, I have been repeatedly informed that the matter is still under advisement.

On October 26, there was brought to Monrovia by an English mail boat 13 volumes of the League of Nations Treaty Series for the American Legation. When a representative of the American Legation presented the signed entry slip on which was typed: "I hereby certify that the above goods are for the American Legation or for my personal use" signed by me and bearing the official seal, the Collector of Customs refused to release the books stating that it would be necessary to sign the new regulation as provided by Administrative Circular No. 5, 1937.

The American Minister took the position that the old phraseology was sufficient; he saw no reason why he should certify that the books "would not be sold, exchanged or transferred to persons who are not entitled to free entry privileges." He accordingly transmitted a formal note to the Department of State on the subject.

The following day the American Legation was informed by the Parcel Post Clerk that the Customs Department waived the certification on the baggage slip. Thereupon the Legation received books without making any certification whatsoever.

On November 3, an English cargo boat brought to Monrovia four cases of official stationery for the American Legation which had been transmitted by the Department of State at Washington. The American Minister signed the certificate to the effect that the goods were for the Legation or for his use. Upon presentation of entry the Collector of Customs refused to turn over the goods, declaring he had received explicit instructions from the Financial Adviser that the American Minister would have to sign the new regulation.

³¹ Not printed.

On November 5, I transmitted a formal note to the Department of State registering emphatic protest against insistence that I certify official stationery sent by the Department of State to the American Legation "would not be sold, exchanged or transferred to persons who are not entitled to free entry privileges."

I have been implacable in my contention that the phraseology couched in Regulation 2*b*, Administrative Circular No. 5, 1937 is a reflection on the veracity of a diplomatic officer and that the wording of the old regulation is adequate. Following several informal conversations with Secretary Simpson, on November 9, the official stationery was turned over to the American Legation in pursuance to instructions from the Department of State. No certification was made by the American Minister pending settlement of subject at issue.

A formal note was received from Secretary of State Simpson on November 9, in reply to my note of October 25, in which he advised that the new customs requirements are equally specific in regard to Cabinet officers of the Government and that the Department of State has ascertained that the heads of the British and German representations have complied with the requirements of Administrative Circular No. 5, Regulation 2*b*, without question or protest.

In informally thanking Secretary Simpson for kindly interest shown in releasing the stationery, the American Minister asked to be informed what motivated the Financial Adviser to issue Regulation 2*b*, Administrative Circular No. 5, 1937.

I pointed out that I did not take exceptions to Regulation 2*b* as *Doyen* of the Diplomatic Corps, but as the American Minister. Hence the attitude of other foreign representatives at Monrovia in the premises had no connection whatsoever with that assumed by the American Minister.

I herewith enclose for the Department's information copies of letters exchanged between the Foreign Office and the American Legation.³²

Respectfully yours,

LESTER A. WALTON

682.00241/3 : Telegram

The Minister in Liberia (Walton) to the Secretary of State

MONROVIA, December 10, 1937—3 p. m.

[Received December 10—12: 55 p. m.]

69. Legislature passed bill allowing missionaries free entry on personal effects up to \$150 yearly.

WALTON

³² Not printed.

682.00241/5

The Minister in Liberia (Walton) to the Secretary of State

No. 159

MONROVIA, January 3, 1938.

[Received January 29.]

SIR: I have the honor to refer to my despatch No. 147, November 17, 1937, relative to Administrative Circular No. 5, dated August 23, 1937, paragraph 2*b*. In conversation with the President I was advised informally that instructions had been given the Supervisor of Customs to change the phraseology which had given offense.

Copies of recent correspondence on the subject are herewith enclosed.³³

Respectfully yours,

LESTER A. WALTON

CONCERN OF THE UNITED STATES REGARDING RUMORED POLISH
AMBITIONS IN LIBERIA ³⁴

882.01/73

*Memorandum by the Chief of the Division of Western
European Affairs (Dunn)*

[WASHINGTON,] January 9, 1937.

During a conversation just before lunch at the Hungarian Legation today, Mr. Kulikowski, Second Secretary of the Polish Embassy, brought up the subject of Liberia. He said that during his tour of duty in Geneva he had become interested in the Liberian problem and had maintained this interest both because of past Polish support of Liberia before the League of Nations, and because of the presence of Polish Advisers and colonists in Liberia at this time. He asked me whether it was true that Liberia was very apprehensive of her security at this time, particularly in view of the recent Italian action in Ethiopia and current reports of the possibility of some colonial settlement being made with Germany. In this last connection he said that he felt sure that Great Britain and Germany had discussed the possibility of Liberia being placed under a German mandate, but he wondered what effect the recent recognition of President Barclay by the British ³⁵ would have on this possibility.

I told Mr. Kulikowski that probably it was true that Liberia was nervous about her future just as sometimes in the past she had been fearful of her British and French neighbors—she was a small, weak country with great potential wealth and a somewhat hectic history.

³³ Not printed.

³⁴ For previous correspondence, see *Foreign Relations*, 1936, vol. III, pp. 406 ff.

³⁵ December 16, 1936; see *ibid.*

I added that the progress Liberia had made during the past two years was most creditable in every way and in my opinion was of such a positive character as to entitle her to being allowed to continue working out her own destiny unmolested by outside interference.

Mr. Kulikowski volunteered the statement that Poland's only interests in Liberia were sentimental, due to the former connection between the two countries at Geneva, and commercial, because of the Polish Maritime and Colonial League's colony in Liberia.

He asked me what the United States would do if some threat were made against Liberia's independence. I told him that that was a question which could only be answered by my superiors if and when such a situation arose, but that I personally felt that any direct threat against Liberia would arouse a storm of protest on the part of a large group of the American people who had always maintained a keen interest in Liberian affairs.

882.01/74

Memorandum by the Secretary of State

[WASHINGTON,] January 19, 1937.

After talking with the Polish Ambassador on another subject during his call, I then proceeded to emphasize the importance of rehabilitation policies for the purpose of both economic and military disarmament, particularly in Europe, stressing what had been said and done at Buenos Aires.³⁶ The Ambassador said that his Government was rendering considerable service for peace just now, in view of its geographical situation and position, to prevent different countries from getting in too close proximity. I expressed my keen interest and appreciation of this and requested him to say so to Foreign Minister Beck.

I then added that there is more or less suspense in many parts of the world, for the reason that nations everywhere do not yet know whether important countries, of Europe in particular, will definitely and permanently pursue a course of narrow, cut-throat trade policies, increasing armaments, militarism, and, ultimately, inevitable catastrophe either military or economic, and probably both,—or whether these governments would finally make up their minds to turn to a peaceful course of readjustment and settlement of economic and peace problems in accordance with the preachments of the 21 American Republics and other countries. I said that many backward and small countries in isolated regions are speculating from time to time about

³⁶ The Inter-American Conference for the Maintenance of Peace, December 1-23, 1936; see *Foreign Relations*, 1936, vol. v, pp. 3 ff.

the possibilities of being attacked and captured with a view to being kept as colonies for some larger country; that we have some ten million colored people in the United States who take great pride and have a tremendous personal interest in Liberia; who feel that that country is now sufficiently on its feet and sufficiently stable to go forward beyond question; that Liberia has always been looked upon as a sort of ward of this country, and interest in its progress in this country has been correspondingly existent; that any reports of its colonization immediately arouse tremendous interest and concern here; and that this is a sample of some similar conditions elsewhere in the world. I then said that at Buenos Aires we had preached for the restoration of the sanctity of agreements and urged against unilateral abandonment of them; that we had urged that if and when an agreement was not satisfactory it should be made so in a peaceful way, either by modification or abandonment under legal procedure, and not unilaterally; that likewise any other questions relating to the definite rights and interests or grievances of nations, present problems which must be approached and worked out in a spirit of peace and of law and of good faith, whether relating to territorial questions or others.

The Ambassador, without appearing to feel that I was speaking more than theoretically or academically, expressed his approval. He spoke highly of the work at Buenos Aires.

C[ORDELL] H[ULL]

882.01/78

Memorandum by the Chief of the Division of Eastern European Affairs (Kelley)

[WASHINGTON,] January 27, 1937.

In the course of a conversation with Mr. Wankowicz³⁷ upon the occasion of his call at the Division in connection with various matters, I inquired if he knew whether the Secretary had mentioned to the Ambassador, during his call at the Department a few days ago, our interest in developments in Liberia. He said that so far as he knew the Secretary had not mentioned the matter to the Ambassador, because when the Ambassador returned to the Embassy he had discussed with him his conversation with the Secretary and made no mention of Liberia. I then took the opportunity to say that recent press stories relative to Liberia which had come out of Geneva were causing concern in the United States, particularly among the colored people, who have always taken great pride and personal interest in the welfare

³⁷ Witold Wankowicz, Counselor of the Polish Embassy.

of that country. I said that the United States had always taken a great deal of interest in developments in Liberia, and that we have been greatly pleased with the gratifying progress which that country has been making in recent years. We believed that Liberia is now sufficiently stable to move forward, and we felt that that country was entitled to be allowed to work out her destiny in her own way. Consequently, press reports with regard to the ambitions of other countries in Liberia, although vague in general and not specific, were calculated to arouse strong feeling and considerable concern in the United States.

Mr. Wankowicz stated, in reply to an inquiry on my part, that he had noted some of these press reports in connection with colonial and raw material discussions in Geneva, and that he understood our interest in the matter. He said that he would bring the matter to the attention of the Ambassador as soon as he returned to the Embassy.

ROBERT F. KELLEY

123 Brown, James E/13

Mr. Hugh S. Cumming, Jr., of the Division of Western European Affairs to the Minister in Liberia (Walton)

[Extract]

WASHINGTON, February 4, 1937.

MY DEAR MR. MINISTER:

We have been giving very serious thought to Mr. Wharton's despatch No. 63, dated November 24, 1936,³⁸ reporting a conversation which he had with President Barclay on the Polish attitude towards Liberia. It is, of course, not possible for us to answer President Barclay's hypothetical question as to what our attitude would be in the event of a foreign aggression against Liberia. Moreover the question is a particularly awkward one to answer because of our neutrality policy and the widespread opposition among our people to participation in any activities abroad which might in any way involve us in hostilities. I think it is safe to assume, however, that, while if aggressive acts were taken against Liberia there would be a storm of protest from a large block of our public opinion which might lead to complications, there is little or no likelihood of our ever undertaking military measures in Liberia's aid. It follows, therefore, that the obvious policy for us to adopt at this juncture is to attempt to forestall future aggressive action by a quiet but steady display of our friendly interest in Liberia in the hope that certain other countries will be

³⁸ Not printed.

deterred thereby from any plans they may have for colonial expansion at the expense of Liberia. This policy is already unfolding:

1. Acting Secretary Moore's statement to the press³⁹ expressing gratification over the recognition of Liberia by Great Britain.

2. The President's statement to the press on Liberia's recent progress.⁴⁰

3. The announcement of the approval of funds for the construction of our new Legation building in Monrovia.⁴¹

4. The Secretary's recent statement to the Polish Ambassador, a conversation which I had with one of the Secretaries of the Polish Embassy, and a conversation which Mr. Kelley, Chief of the Division of Eastern European Affairs, had with the Polish Counselor.

5. The Secretary will probably make a statement to the German Ambassador similar to that made to the Polish Ambassador.

6. We are now preparing a statement to the press based on the recently adopted 1937 budget, as reported by you.

7. We are trying to arrange with the Navy Department for the friendly visit of a naval vessel to Liberia in November or December of this year. We earnestly wish to keep this possibility strictly confidential for the time being, and no intimation whatsoever should be given to the Liberian Government until we have completed the arrangements and we inform the Legation officially. I should be very glad to receive any observations which you may care to make on the desirability of such a visit at the time mentioned.

It is obvious, however, that a policy on our part such as that sketched above can accomplish little unless Liberia does her part. In the final analysis Liberia's security must depend on the esteem in which she is held by the public opinion of the world. Her recent progress has gone a long way towards gaining her this esteem, but for years to come, particularly in the present world situation, she should take especial care to see that her policies, external and internal, are such as to commend them to public opinion. If on the one hand she continues to improve her internal administration, her financial position, her transportation system, her sanitation and public health, et cetera, and on the other hand while scrupulously observing such foreign engagements as she may have entered into, refrains from entering into further engagements which may prove politically embarrassing, and refrains from arbitrary acts which might antagonize those who are trying to help her, then I believe there will be little likelihood of her independence being endangered. . . .

Sincerely yours,

HUGH S. CUMMING, JR.

³⁹ December 17, 1936; Department of State, *Press Releases*, December 19, 1936, p. 529.

⁴⁰ December 29, 1936.

⁴¹ January 4, 1937; Department of State, *Press Releases*, January 9, 1937, p. 18.

882.01/81

The Consul at Geneva (Gilbert) to the Secretary of State

No. 2063 Political

GENEVA, March 9, 1937.

[Received March 19.]

SIR: I have the honor to refer to the Department's confidential telegraphic instruction No. 150 dated November 30, 2 p.m., concerning possible German or Polish designs on the independence of the Republic of Liberia and to my despatch No. 1971 Political dated December 8, 1936,⁴³ in response thereto.

As I stated in my despatch under reference, no question relating to Liberia is in any way active before the League. I nevertheless find that in the light of what may be termed the "colonial question" the situation of Liberia is to a definite degree being watched. In the course of an informal conversation with the official of the Political Section of the League Secretariat concerned with Liberian affairs I learn that he is chiefly engaged in studying clippings from the international press dealing with Germany's position respecting colonization which may carry implications respecting German designs on Liberia. He let me have two such clippings which he said he felt were particularly interesting—one from the *Argentinisches Wochenblatt* of Buenos Aires carrying a Berlin date line of October 23 last and the other from the *Action Française* of Paris dated December 14 last. Translations of these clippings are enclosed.⁴³

He also gave me a copy of a memorandum dated August 24, 1936, addressed to Mr. Walters, Under-Secretary-General, which deals with an interview by *La Mer*, a Polish monthly publication, with Mr. Brudzinski, an advisor of the Liberian Government, who visited Warsaw last year. In giving me this he told me incidentally that Mr. Walters displayed a very great interest in any Liberian matter. I enclose a copy of this memorandum.⁴⁴

The official in question did not broach the question of possible Polish preoccupations respecting Liberia nor did I do so for the reason, sufficient to me, of his being a Polish national. I nevertheless, stating that I was merely expressing my own views, took occasion to inform him of the nature of public opinion in the United States respecting Liberian independence. In doing so, I followed the general line elaborated in the Department's confidential instructions dated January 29, 1937, and February 9, 1937,⁴⁵ respectively, which I had studied with great interest.

Respectfully yours,

PRENTISS B. GILBERT

⁴³ Neither printed.⁴⁴ Not printed.⁴⁵ Neither printed; these instructions transmitted copies of memoranda of conversations of January 19, p. 822, and of January 27, p. 823.

882.01/82

The Chargé in Poland (Johnson) to the Secretary of State

No. 1547

WARSAW, March 10, 1937.

[Received March 23.]

SIR: With reference to my despatches No. 1357 of November 3, and No. 1386 of December 3, 1936,⁴⁶ I have the honor to report that Mr. Wiktor Podoski, Chief of the Anglo-Saxon Division of the Ministry of Foreign Affairs, telephoned to the Embassy this morning to request that a letter of introduction to the American Minister in Liberia be given to his brother Mr. Stanisław Podoski who is proceeding at once to Liberia as a representative of the Liga Morska i Kolonjalna.* I suggested that Mr. Podoski should call at the Embassy and on the occasion of his visit I gave him a letter of introduction to Minister Walton, a copy of which I enclose.⁴⁷

Mr. Podoski informed me that he is going to Liberia as a special delegate of the Executive Committee of the Liga Morska i Kolonjalna in order to see how the development of Polish plantations in that country is proceeding. He will remain there some three months and temporarily take the place of Mr. Paprzycki, a permanent representative of the League who is returning to Poland for a vacation. He stated that at the present time there are three groups of Polish plantations in Liberia in charge of four Polish planters and that it is not expected materially to increase the land now under cultivation. It would be too costly to do so on a large scale.

Mr. Podoski added that there is no hope of encouraging Polish emigration to Liberia because his compatriots can not live permanently under tropical conditions and officials, planters, and merchants can live there only temporarily. He was emphatic on the question of emigration and stated that the purpose of the present plantations in Liberia was to facilitate the study of tropical products which are imported into Poland.

In reply to a question regarding the Colonial and Maritime League Mr. Podoski said that this organization was of a non-political character and had no political aims; it was rather a propaganda organization the object of which was to teach the value of the sea and over-seas trade to Poles. It was desired to import what was required in Poland in Polish ships and to buy these imports from Poles residing abroad. Liberia exports goods to Poland and Poland needs men with special training as regards the character and quality of these goods.

He inferred that one desire of the League was to train Poles in tropical planting in order to have men available wherever an opportunity should offer an occasion for their employment.

⁴⁶ Neither printed.

* Colonial and Maritime League. [Footnote in the original.]

⁴⁷ Not printed.

As regards the League itself Mr. Podoski alleged that it meets its expenses by the dues paid by its members and that it receives no Government subsidy.—I have no means of disproving the latter part of his statement but it is generally believed that the League receives a certain support from the Polish Government.—

Mr. Podoski admitted that one purpose of the League was to encourage emigration to Brazil but stated more than once that, on account of the climate, emigration to Liberia could not be thought of.

At the conclusion of our conversation I referred to the interest which the people of the United States have in Liberia and the concern which recent newspaper despatches from Europe relative to Liberia has caused in the United States—Department's confidential instruction No. 351 of February 9 last.⁴⁸—Mr. Podoski said that these despatches were unfounded, incomprehensible and laughable from the Polish point of view.

Respectfully yours,

HALLETT JOHNSON

882.01/86

*Memorandum by the Assistant Chief of the Division of
European Affairs (Nielsen)*

[WASHINGTON,] November 16, 1937.

When Mr. Wankowicz called this afternoon to discuss a number of matters he took occasion to refer to a conversation we had had on July 28, 1937⁴⁹ (882.01/84), in the course of which he had stated that his Embassy had reported to Warsaw two conversations (between the Secretary and the Polish Ambassador, and between Mr. Robert F. Kelley and Mr. Wankowicz)⁵⁰ with regard to Liberia. The Embassy very recently had obtained from the Polish Foreign Office "a reaction" which contained information which might be of interest to the American Government.

Mr. Wankowicz then stated that there had been published in the *Pittsburgh Courier* of July 15, 1937, and copied by certain British newspapers, an article to the effect that Poland had approached the League of Nations with the suggestion or request that Poland be given Liberia as a mandate, thus contributing to a solution of the Polish Government's long-standing emigration problem. When this story came to the attention of his Government it instructed the Polish Consul at Monrovia to address to the Liberian Government a written, categorical denial. This the Polish Consul has done.

⁴⁸ Not printed.

⁴⁹ Memorandum of conversation not printed.

⁵⁰ For memoranda of conversations of January 19 and 27, see pp. 822 and 823, respectively.

In conclusion Mr. Wankowicz said that he was reminded of the story of a Pole who fell in with a clairvoyant while on a business trip and who was persuaded by the latter to listen to a reading. When the reading was concluded the business man paid much more than the fee demanded by the clairvoyant, explaining that the latter had given him a most excellent idea which otherwise never would have entered his mind. "So it is with the idea attributed to Poland by the Pittsburgh newspaper," said Mr. Wankowicz with a smile. "I think it an excellent idea but we ourselves never even thought of it, much less discussed or advanced it."

ORSEN N. NIELSEN

CONCERN OF THE DEPARTMENT OF STATE REGARDING POSSIBILITY OF GERMAN FINANCIAL INTEREST IN PROPOSED DUTCH MINERAL CONCESSION (NEEP) IN LIBERIA

882.6351/1 : Telegram

The Minister in Liberia (Walton) to the Secretary of State

MONROVIA, December 24, 1936—8 a. m.

[Received 8:40 a. m.]

47. For McBride.⁵¹ Japanese Government and a Dutch syndicate are negotiating with Liberian Government concessions to develop Republic's rich iron deposits. Proposals contemplate building railroads and harbors.

Manager of Dutch diamond syndicate which is operating here returned last week from Europe; he has opened negotiations on behalf of his nationals. A representative clothed with power to make definite and specific commitments is expected to arrive on the next Dutch vessel January 15.

In his absence Barclay has delegated Secretary of the Treasury Dennis to engage in preliminary discussions. Practicability of Liberian Government granting concessions to both applicants, allocating mineral land in different sections of the country, is under consideration.

WALTON

882.6351/1 : Telegram

The Acting Secretary of State to the Minister in Liberia (Walton)

WASHINGTON, December 31, 1936—noon.

33. Legation's 47, December 24, 8 a. m. We appreciate very much your informing us of the desire of certain interests to obtain conces-

⁵¹ Harry A. McBride, Assistant to the Secretary of State.

sions in Liberia and the confidence which your informant has shown in this government in conveying these facts to you. While unwilling to make any official commitments of any kind whatsoever in such a matter we are desirous of rendering such assistance to the Liberian Government as may be proper. We suggest, therefore, that should your opinion in the premises be requested by Secretary Dennis or President Barclay you might in your personal capacity reply orally basing your comment on the observations reported in latter half of the Legation's No. 33, September 16, noon, 1935,⁵² and the introductory and numbered paragraphs of the Department's telegram No. 24, September 26, noon, 1935.⁵²

MOORE

[The Chargé in Liberia, Hibbard, informed the Department in telegram No. 33, September 16, 1935, noon, (882.6347 Consolidated African Selections Trust/1) that President Barclay of Liberia had requested his opinion of the agreement proposed by the Consolidated African Selections Trust, Limited, a British concern headed by Chester A. Beatty, to the Liberian Government for the exclusive exploitation, production, and marketing of diamonds for a period of 99 years within the Republic of Liberia. Hibbard reported as follows:

"After studying the agreement carefully I told him

- (1) That I could only give my personal opinion on the question; I could not commit my Government as I did not know whether it would wish to give an opinion but certainly not without knowledge of the agreement;
- (2) As far as I could observe there was no political commitment contained in the agreement, however, if rich mineral deposits were found they might be a temptation to any colonial power in Africa unless Liberia were strong enough to protect herself;
- (3) The agreement seemed to me too inclusive and binding on the Government. I felt it unwise to commit the mineral resources of the entire country over such a long period of time; if deposits of great value were found friction would inevitably ensue;
- (4) The agreement did not provide adequate compensation to the Government for such exclusive rights.

"The President has now returned the agreement to me with a request that I ask your advice on the matter. He says his entire present policy is based on the advice and assistance of the United States Government and that he does not wish to take such a step without your opinion. I realize that such a request may be embarrassing but it has been put to me in such a way that I could not refuse without offense. . . ."

⁵² See bracketed note, *infra*.

In telegram No. 24, September 26, 1935, noon, (882.6347 Consolidated African Selections Trust/2) the Department gave the following instructions:

"The Department appreciates the confidence and trust which Barclay holds for this Government as conveyed to you through the Secretary of Treasury. On its part this Government desires to be of assistance to the Liberian Government when it may render such assistance in all propriety. The present request, however, would appear to come within this reservation and consequently you should inform Barclay that officially the Department regrets that it is unable to comply with his request in this case in so far as making specific comments on the agreement is concerned.

"As a personal observation, however, in negotiating the terms of any concession, it occurs to me that there are several cardinal considerations which should be kept in mind.

"1. In order to avoid possible international complications it is desirable to limit the territory of a concession to specific areas which will not overlap the interests of another concession and that these areas should be restricted in themselves to a moderate size in reasonable proportion to the area of the country.

"2. The minerals to be extracted should also be limited to specific items and not cover the whole range of a nation's mineral resources.

"3. The financial responsibility of the firm or organization to whom the concession is granted should receive particular examination and the very limit of financial return obtained in the terms to the government granting the concession."]

882.6351/2

The Minister in Liberia (Walton) to the Secretary of State

No. 83

MONROVIA, February 1, 1937.

[Received March 8.]

SIR: I have the honor to refer to my telegram No. 47, December 24, 8 a.m. and the Department's telegram No. 33, December 31, 12 noon, relative to the unofficial, confidential information that the Government of Japan and private Dutch interests are separately negotiating with the Liberian Government for concessions to develop rich iron deposits near Cape Mount.

I have carefully noted the Department's suggestion with respect to me expressing orally in my personal capacity, an opinion, if requested, predicated upon the observations referred to; and I wish to state no comment has been made owing to President Barclay's absence from Monrovia. Negotiations are only in the preliminary stages, and the decision of the President will be the determining factor as to their consummation or non-consummation.

While there appears to be little likelihood that serious consideration will be given any gesture made by the Japanese Government, the Secretary of the Treasury maintains a distinctly favorable attitude toward the proposal submitted by the manager of the Holland Mining Syndicate on behalf of the company he represents, whose stockholders are said to be principally of his (Dutch) nationality.

In January there arrived in Monrovia from Europe the mineralogist of the Holland Syndicate who discovered iron deposits while searching for diamond in Liberia. He was accompanied by a German mineralogist sent by the Dutch interests seeking the concession to verify the claims that the iron deposits are of such high quality as to warrant exploitation on a large scale. The work of assaying is now in progress.

The manager of the Holland Mining Syndicate recently conferred with the Firestone legal representative from the United States temporarily in Liberia, to ascertain what would be the attitude of the Firestone Company toward the mining of iron in the Republic by European capital, and if the building of a port and railroad would be regarded as running counter to the Loan Agreement.⁵³

The legal representative was in no position to make a commitment to the manager of the Holland Mining Syndicate as to Firestone's position, and promised to take up the matter in detail with his principals upon his return to Akron, Ohio.

One proposal provides that the Liberian Government reimburse the company for the construction of harbors and railroad out of the royalties received. The consensus is that such an arrangement conflicts with the temporary Loan Agreement which provides that two-thirds of all Government revenues above \$450,000 shall be applied toward amortization. This tentative arrangement expires at the end of 1937; however, the terms in the Loan Agreement committing the Government to meet payments on its external debts through assessed revenues will continue in force.

Another proposal of the Dutch company, in the hope of circumventing the Loan Agreement, is that there be no money transactions conducted between the Liberian Government and the company during the life of the lease; that is to say, no royalties or pecuniary emoluments be received whatsoever by the lessor from the lessee, with the understanding that the lessor ultimately come in possession of the harbor and railroad. In the interim, the economic benefits to be derived by Liberia from the project would be in wages to native labor and customs revenues.

In conversation with the manager of the Holland Mining Syndicate, who is officiating in the role of a promoter, and well known for

⁵³ Agreement between Liberia and the Finance Corporation of America, signed March 16, 1935; *Foreign Relations*, 1935, vol. I, p. 925.

his frankness in his business dealings, I was informed that he considered it far better strategy to seek the good will and cooperation of the Firestone Company at this time than subsequently incur pronounced opposition and find the Loan Agreement an obstruction and a source of much trouble and large expense.

The Department will be advised accordingly of future developments in the matter and of the sentiments expressed relative thereto by the President of the Republic of Liberia.

Respectfully yours,

LESTER A. WALTON

882.635 Neep/5

The Minister in Liberia (Walton) to the Secretary of State

No. 126

MONROVIA, September 7, 1937.

[Received September 28.]

SIR: Referring to my telegram No. 42, August 30, 10 a. m.⁵⁴ I have the honor to transmit herewith full text of the agreement entered into by the Liberian Government and the Noord Europeesche Erts En Pyriet Maatschappy.

The agreement, which is to be submitted to the Liberian Legislature when it convenes in October, has been the subject of much discussion. Mr. D. Caffé, Director of the Holland Syndicate, who has been an active and conspicuous figure in promoting the project, has left Monrovia for the Gold Coast. After spending a short time there looking after his company's interests he will proceed to Amsterdam, home office of the Noord Europeesche Erts En Pyriet Maatschappy, to confer with the principals. He expects to return to Monrovia early in November.

President Barclay, in an informal discussion of the agreement with me, stated that for some time criticism has been directed against Liberia for not developing its mineral resources. He felt that in this move Liberia would prove to the world that this accusation is unwarranted.

The attitude of the Firestone Plantations Company toward the granting of a concession to the Noord Europeesche Erts En Pyriet Maatschappy is not known at Monrovia. However, representatives here manifest deep concern over the future labor situation in the event the Noord Europeesche Erts En Pyriet Maatschappy enters Liberia.

American, British and French diplomatic representatives at Monrovia have informally made known to the Secretary of State that they do not look with favor on the building of a harbor near their respective Legations. Assurance has been given that no harbor will be near enough to their sites to be deemed by them objectionable.

Respectfully yours,

LESTER A. WALTON

⁵⁴Not printed.

[Enclosure]

Agreement Between the Government of the Republic of Liberia and the Noord Europeesche Erts En Pyriet Maatschappy

This Agreement made and entered into at the city of Monrovia in the Republic of Liberia this twenty-third day of August in the Year of Our Lord Nineteen Hundred and Thirty-seven by and between The Government of the Republic of Liberia, hereinafter styled "the Government," represented by Gabriel L. Dennis, Secretary of the Treasury, R. L., and the Noord Europeesche Erts En Pyriet Maatschappy, a company organized and existing under and by virtue of the laws of the Netherlands, with principal offices established at Amsterdam, Holland, hereinafter styled "Neep," represented by D. Caffé, Director Holland Syndicate.

WITNESSETH :—

ARTICLE I

Section A. That the Government hath agreed and by these presents doth agree to grant to Neep for a period of three years and six months (3½ years) computed from the date on which notice is given to Neep by the Government that this Agreement has been ratified by a law of the Republic of Liberia the sole and exclusive right and license to explore and prospect for the research of iron ore and other ore, with the exception of platinum, diamond and gold, through the Western Province including the Bong Mountains area in the Central Province of said Republic, excluding only such areas as shall prior to the date hereof have been granted to third parties; all of such excluded areas Neep may neither explore nor prospect.

Section B. That the Government undertakes to grant to Neep such assistance as may enable the experts and other technicians sent by Neep to carry out their task in the best and most efficient manner.

Section C. In consideration of the exploration and prospecting rights hereby conferred, Neep will expend from its own resources the full costs of such exploration and prospecting and place at the disposal of the Government copies of all surveys and other maps which may be the result of their work. Of the maps placed at the disposal of the Government under the terms of this section, all maps of a geographical nature shall become the unrestricted property of the Government whilst all maps and plans of a technical nature shall be treated as confidential and remain the exclusive property of Neep.

ARTICLE II

Should Neep before the expiration of the period of Three (3) Years and Six (6) Months mentioned in Article I, Section A. of this Agreement notify the Government that Neep is of the opinion that the working of one or more of the mining areas explored and pros-

pected is justifiable from an economic point of view, then the Government hath agreed and by these presents doth agree to grant, demise and let unto Neep for a period of Eighty (80) Calendar Years, commencing on the date that notice is given to Neep by the Government that this Agreement has been ratified by a law of the Republic of Liberia, an area or areas of land within the Republic of Liberia aggregating Six Thousand Five Hundred (6500) Acres or any lesser area or areas that may be selected by Neep from time to time within said period of Eighty (80) Years; such lands to be suitable for mining iron ore and/or other ore with the exception of platinum, diamonds and gold.

Nevertheless, should any particular area of land so leased by Neep be subsequently found useless at any time before the expiration of the lease period and Neep so desires, they shall have the right to give one (1) Year's notice to the Government in writing and in that case shall be entitled to a cancellation of the lease for that particular area. But should Neep within One (1) Year after the execution of the first lease of land under the conditions herein expressed fail to commence operations in Liberia towards the development of its enterprises, the obligations of the Government under this Agreement shall be discharged and ended.

ARTICLE III

The Government in consideration of (1) the establishment of Neep's enterprises in the Republic of Liberia and (2) the payment of the royalty for which provision is made in Article IV, Section C. hereof, agrees that during the life of this Agreement Neep shall have and enjoy the following additional rights and exemptions:—

Section A. Neep shall have the exclusive right to take by mining or any similar operation and in any manner which Neep may deem fit, the iron and/or other ore contents of the subsoil of the leased lands as well as the iron and/or other ore contents occurring on the surface of the leased lands, except platinum, diamonds and gold.

Section B. Neep shall during the life of this Agreement be entitled to make such importations as may be directly necessary for the operation, development and maintenance of its mines and enterprises and to export without restriction the iron ore contents thereof and freely to transport such exports and imports by land or water within the Republic. Neep shall submit to the Government before starting importations, a list of the articles which may be directly necessary for the operation, development and maintenance of its enterprises and mines in Liberia. This list shall be binding upon both parties after mutual agreement thereon.

Section C. Neep shall during the life of this Agreement be wholly free and exempt from the payment of any duties, imposts and excises

on machinery, tools, things and substances to be used directly by Neep for the operation, development and maintenance of its mines and enterprises in Liberia, and to the free exportation of machinery, equipment, iron ore and iron; such imports as are hereby exempted from duty shall in no instance be sold, bartered or exchanged by Neep, except directly to the Government of Liberia.

Section D. Neep shall have the unrestricted right to construct and establish at its own expense a harbour basin and likewise to construct and operate therein such harbour facilities as Neep may deem necessary for the efficient exportation of its ore and shall be exempt from the payment of harbour dues, wharfage dues and light dues in respect of such harbour during the life of this Agreement, provided however, that said harbour basin shall be located either in the vicinity of Monrovia, Liberia, or in the vicinity of Cape Mount, Liberia, and the final choice between locations to rest with the Government; said choice to be made within Six (6) Calendar Months after the date of this Agreement. The Government shall notify Neep of its decision in writing.

Section E. Neep shall have the right to lease a strip of public coastal land, adjacent to the harbour basin constructed and established under the provisions of Section D. of this Article, provided however, that said strip shall not extend back from high water a distance of more than Two Hundred and Seventy-five (275) feet; and Neep shall have free and unrestricted use of the said land including the right to establish quarries thereon and to use the contents thereof for the construction of its harbour basin and harbour facilities and all other constructions which Neep may deem directly or indirectly necessary for the operation, development and maintenance of its enterprises in Liberia. Furthermore Neep shall have the right to lease such areas of land adjacent to the above mentioned strip of coastal land as will be necessary to establish railway-yards and coal dumping-space and to erect such other constructions as Neep may deem necessary for the efficient operation, development and maintenance of its enterprises in Liberia.

Section F. Neep shall have the exclusive right and privilege upon the lands selected under this Agreement to construct highways, roadways, waterways, railways and cableways for the efficient operation and development and maintenance of its enterprises.

Section G. Neep shall have the free right to construct, establish, maintain and use at its own expense lines of communication such as highways, roadways, waterways, railways and cableways outside the lands selected under this Agreement, such lands to be free of rent. Such routes may be so located by Neep as to best serve the purpose of efficient operation and coordination of its mines and harbour facili-

ties. All highways and roadways mentioned in this section shall, upon completion, become public property without expense to the Government, with the exception of future costs of maintenance. It is further understood and agreed upon, that when constructing any railroad under the terms of this section, Neep shall have an exclusive right-of-way of Two Hundred and Twenty (220) feet. Neep shall refund to the Government the cost of expropriating any private lands for the purpose of this section of Agreement.

Section H. Neep shall have the free right to construct, establish, maintain and operate lines of communication for the purpose of more efficiently operating its mines and enterprises, such as telegraph lines and telephone lines upon the lands selected and held under this Agreement and beyond the confines thereof and to the extent necessary for such purposes may use, without the payment of rent for such lands, any Government lands not already devoted to some other use.

Section I. Neep shall have the right to cut all timber upon the leased lands covered by this Agreement. It is further agreed and understood that Neep shall have the right to lease under the terms and conditions of this Agreement land for the special purpose of cutting timber and to freely transport such timber by land or water within the Republic to its mining areas and enterprises, provided the number of acres shall not be in addition to nor exceed the number provided in Article II of this Agreement. The timber so cut shall not exceed Fifty (50) Per Cent of the standing forest. The use of such timber by Neep shall be restricted to the purpose of construction and/or buildings which Neep may deem necessary for the efficient operation, development and maintenance of its mines and enterprises in Liberia and may also be used by Neep as fuel, but shall not be sold, bartered, exchanged or exported.

Section J. During the life of this Agreement, upon application of Neep therefor, the Government shall detail from time to time a police detachment not exceeding Fifty (50) Men including Officers, to serve as a protective force or as guards and escorts during the construction, development and maintenance of Neep's enterprises in Liberia. The cost of maintenance of such detachments shall be refunded to the Government by Neep monthly upon presentation of authenticated vouchers. It is understood that the cost of maintaining such a force shall be limited to pay, uniforms, equipment and subsistence.

Section K. The Government warrants to Neep the Title to all lands selected by Neep under the terms and conditions of this Agreement upon which the Government shall accept the rental or compensation as herein provided and will defend and protect such Title for the benefit of Neep.

Section L. The Government further agrees that it will encourage, support and assist the efforts of Neep to secure and maintain an adequate labour supply.

ARTICLE IV

Neep, in Consideration of the Covenants Herein Made by the Government Hath Agreed and by These Presents Doth Agree as Follows:—

Section A. That upon taking possession of lands under this Agreement, Neep shall pay the Government rent at the rate of Fifty (50) Cents per acre yearly and every year in advance, calculated at the rate of 4.80 Dollar to the Pound Sterling or Four Shillings and Two Pence to One Liberian Dollar. Such payment shall be made to the Secretary of the Treasury of Liberia or to such other officer as may be by law provided, in coin current in Liberia; it is to be understood and agreed that the rent herein provided to be paid by Neep shall be due to be paid by it to the Government upon all leased areas of land selected by it as and when such areas are selected.

Section B. Should the rent reserved for any piece or parcel of land selected by Neep be behind or unpaid on any day of payment whereon the same ought to be paid as herein provided, or should any default be made in any of the covenants hereinbefore contained on the part of Neep to be paid, kept or performed, and if such default in the payment of rent or otherwise shall continue after Six (6) Months written notice of the existence of such default served by the Government upon Neep, then the Government shall have the right to cancel this lease as to that piece or parcel of land the rent for which is in default or in respect of which piece or parcel any default exists as specified in such notice, and reenter into and upon the said demised premises and to again repossess and enjoy the same. But if Neep shall, within said period of Six (6) Months after the written notice, as aforesaid, make good the default complained of in said notice, no right of cancellation shall thereafter exist because of such default. The notice required to be served on Neep shall be delivered to the representative of Neep in Liberia and a duplicate thereof shall be simultaneously sent by registered mail to the Managing Director of Neep at its Head Office in Amsterdam, Holland. Neep shall promptly notify the Government of any change in the location of its Head Office and thereafter any such notice shall be addressed accordingly.

Section C. Neep shall pay to the Government annually a royalty equivalent to Four (4) Cents per ton of iron ore exported from its mines in Liberia; said royalty to be calculated as provided in Section A. of this Article. It is further agreed upon that whenever

Neep applies for the right to export from Liberia any ore as a result of its mining operations, other than iron ore, the Government and Neep will come to an agreement as to the conditions upon which such ore or ores may be exported. During the first quarter of each Calendar Year Neep shall submit to the Secretary of the Treasury of Liberia or to such other Officer as may be by law provided, a statement showing the computation of royalty due for the preceding Calendar Year. The royalty herein provided shall become due and payable for each preceding Calendar Year, between the first day of April and the thirtieth day of June of each succeeding year.

Section D. Neep, during the life of this Agreement, shall maintain in a satisfactory state of upkeep and repair such harbour basin and harbour facilities as Neep shall, under the provisions of this Agreement, construct and establish as necessary for the efficient operation, development and maintenance of its enterprises.

Section E. Neep will not import unskilled labour for the carrying out of any operations, developments or maintenance undertaken by virtue of this or any other grant except in the event the local labour supply shall prove inadequate to the needs of Neep. In the event that the local labour supply should prove inadequate as aforesaid, Neep undertakes to import only such foreign unskilled labour as shall be acceptable to the Government. It is understood and agreed that Neep shall not have in its employ in Liberia more than (300) white employees at any one time. The white employees employed by Neep under contract or otherwise, shall be permitted to reside and work in the Republic and to enter and depart therefrom, and they shall be subject to the payment only of such direct or personal taxes as hereunder enumerated, now or hereafter authorized, levied or imposed by the Government of Liberia; that is to say, General Property Taxes, Income Taxes, Permit of Residence Tax, Street and Light Tax or Custom Duties; provided however that the rate of such taxes shall not exceed those levied upon Liberian Citizens. Should an income tax law be enacted by the Legislature of Liberia, the payments to be made thereunder by the foreign employees of Neep shall be governed by the provisions of such treaty in respect of double taxation as may be concluded between the Government of Liberia and the Government of the Country of which such employees shall be subject or citizen.

Section F. It is further agreed that Neep shall, after commencement of their exploitation of the areas hereby granted, provide such medical inspection and attention as shall be necessary to safeguard the health and well-being of its Native employees.

Section G. Neep shall install such safety devices and observe such adequate safety precautions as are provided and observed by mining

enterprises of a similar nature or in accordance with the General Laws of Liberia.

Section H. Should the operations of Neep under this agreement cease for a period of Ten (10) consecutive years, for reasons other than *Force Majeure* or for reasons other than through the fault of Neep, then the Government shall have the right to cancel such leases which Neep may hold on mining areas not actually under exploitation and from which no ore has been exported at the expiration of the Ten (10) consecutive years mentioned in this Section. Should Neep decide to cease mining operations for a period longer than Ten (10) consecutive years, for reasons other than *Force Majeure* or for reasons other than through the fault of Neep, it is agreed that Neep shall pay to the Government for every year by which the above mentioned Ten (10) consecutive years are extended, an annual sum of Fifteen Thousand (\$15,000) as indemnity against the Government's deprivation of royalty after such period, provided nevertheless, such extension shall not exceed Five (5) consecutive years. The indemnity herein provided shall become due and payable for such preceding Calendar Year between the first day of January and the thirty-first day of March of each succeeding year. In case Neep should fail to pay this indemnity in any one year when the same shall become due under this Section H. of Article IV of this Agreement, then all and singular the rights hereunder shall become extinguished and void and this Agreement shall become of no effect. But in no case shall Neep be relieved of its obligations contained in the provisions of Article IV, Section D. above; and should Neep cease to perform its maintenance operations for a period exceeding Five (5) consecutive years, for reasons other than as a result of *Force Majeure* or for reasons other than through the fault of Neep, then the harbour basin becomes property of the Government without charge or condition.

Section I. The rights of this Agreement granted to Neep shall not be sold, transferred or otherwise assigned by Neep to any person, firm, group, corporation or trust without the written consent thereto of the Government of the Republic of Liberia previously had and obtained.

Section J. Neep shall have the right to develop for its own use such natural water power and hydro-electric power as may be capable of development upon the tracts of land selected by Neep under this Agreement and Neep shall have the right to construct and maintain power lines over any Government land in order to convey power so developed from one tract of land selected by Neep to another.

Section K. It is further agreed that at the expiration of the life of this Agreement or the cancellation thereof by mutual consent of

both parties or other sooner determination thereof, such railways, harbour basin, and harbour facilities, constructed and established by Neep in Liberia for the furtherance of its enterprises shall, with the exception of machinery, become the property of the Government without charge, cost or condition; and the provisions of this Section shall apply equally to such buildings erected by Neep upon the lands selected hereunder, which buildings shall be surrendered in such condition that the further use and enjoyment thereof will not necessitate fundamental repairs.

Section L. It is further agreed that railway bridges constructed outside the confines of Neep's tracts of land selected hereunder, shall be so constructed as to provide a roadway suitable for vehicular traffic, which roadway shall be available for free public use. The Government undertakes to connect these bridges with roadways suitable for vehicular traffic concurrently with construction of said railroad and bridges.

Section M. The plans and specifications of all roadways, railways, waterways and harbour basin to be constructed by Neep shall be submitted to the Government prior to the commencement of construction work. Such plans and specifications shall be treated by the Government as confidential and remain the exclusive property of Neep.

Section N. Wherever in this Agreement the Government grants to Neep the right to build and operate a railroad or to operate telephones and telegraphs, or to use the highways and waterways, it is understood that Neep is not seeking and is not granted public utility or common carrier rights and the same are not intended to be conveyed to it.

Section O. It is further agreed and understood that any harbour basin and harbour facilities constructed and operated by Neep under the provisions of this Agreement shall not be utilized by Neep for gain or otherwise as a commercial harbour for the accommodation of general shipping, without the written consent of the Government, but shall serve Neep only for the purpose of furthering its mining enterprises.

Section P. It is further agreed that any harbour basin constructed by Neep in the vicinity of Monrovia, Liberia, under the provisions of this Agreement shall be of sufficient size and area to provide for the possibility of construction and operation of a commercial dock in addition to the harbour facilities required by Neep. If, however, under the provisions of this Agreement said harbour basin is constructed in the vicinity of Cape Mount, Liberia, Neep will endeavour to build such harbour basin similar to the harbour basin above mentioned, but will be neither obligated nor bound to do so.

ARTICLE V

It is further mutually agreed that the right is reserved to the Government to check the weight of all ores which may from time to time be exported from the Republic by Neep in virtue of the provisions of this Agreement or any other Agreement which may in future be entered into between the contracting parties hereof. Neep is prohibited from making any local or other dispositions of the quantity of ores or minerals, other than iron ore mined by Neep or other than iron produced by Neep, without the consent of the Government in writing previously had and obtained, provided, however, that Neep shall have the right if it so desires, to produce in Liberia iron and/or other products from the ores won from its mines. The provisions stipulated in Section B. and Section C. of Article III of this Agreement shall also apply to such iron and/or other products. Any violation of the provisions of this Article by Neep shall entitle the Government to cancel this Agreement and the Deeds of Lease executed in virtue thereof, anything to the contrary herein contained, notwithstanding.

ARTICLE VI

Section A. All and any question in dispute arising out of this Agreement between the Government and Neep which cannot be harmonized or adjusted by Neep and the Government shall be referred to the Liberian Circuit Court for arbitration on application of either party. Said Court shall make appointment of Three (3) arbitrators, technically qualified, one of whom shall be nominated for such purpose to the said Court by the President of the Republic of Liberia and one of whom shall be nominated for such purpose by the representative of Neep in charge of Neep's affairs in the Republic of Liberia; these two to agree upon and choose a third arbitrator whom they shall nominate for such purpose to said Court. The arbitrators so appointed as aforesaid shall render their decision on the question or questions in dispute in writing and file same with the Clerk of the Circuit Court, together with a copy of testimony taken and statements of proceedings had, within Ninety (90) Days after their appointment as aforesaid. Unless an application for further arbitration, as hereinafter provided, be made by either party within a period of Six (6) Months after said decision is given, said decision shall be a definite settlement of the question or questions in dispute and shall be binding upon both parties, their Agents or Assigns, and the Government of Liberia agrees to make said decision operative. Should, however, either party feel aggrieved at the decision of the arbitrators, then the Government and Neep agree that the question or questions at issue shall be submitted to a sole arbitrator to be agreed upon or failing agreement to be nominated by the President of the International Chamber of Commerce and such

arbitration shall be carried out in accordance with the arbitration regulations of the Republic of Liberia, provided, however, that in the case of such further arbitration each party shall bear its own respective costs; and provided further that the procedure of such further arbitration shall be as follows:—

Written notice of desire for further arbitration shall be given by either party to the other within Six (6) Months after the written decision of the arbitrators in the first instance has been filed with the Clerk of the Liberian Circuit Court; thereupon both parties shall prepare and file with the Clerk of the Circuit Court within Sixty (60) Days after service of the notice, written statements of the question or questions in dispute, and these statements together with a copy of the testimony and proceedings of the arbitrators together with a copy of their decision, shall be certified by the Clerk of the Circuit Court and delivered within Five (5) Days after receipt of said papers in his office to the Secretary of State of Liberia who will thereupon promptly arrange with the President of the International Chamber of Commerce for further arbitration of the question or questions in dispute in the manner as stated above, the decision of which arbitration shall be final and binding upon both parties to this Agreement.

It is understood and agreed that the final decision shall become effective Thirty (30) Days after such final decision has been rendered and shall not be retroactive.

It is also understood and agreed that during the period of arbitration, Neep shall be permitted by the Government to carry on without interference, all operations under this Agreement, including the operations involved in the subject matter of dispute, which Neep had undertaken, and, being undertaken, had not been objected to by the Government prior to the dispute arising. It is understood, however, that the fact there was no objection on the part of the Government shall not prejudice its rights in the subject matter of dispute.

Section B. It is hereby expressly understood and agreed that the arbitration procedure provided for herein does not apply to any civil or criminal proceedings which might be brought by or against employees of Neep in Liberia.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals the day and year first above written.

DE NOORD EUROPEESCHE ERTS EN PYRIET MY.

THE GOVERNMENT OF LIBERIA

D. CAFFE: *Director, Holland Syndicate*

882.635 Neep/6 : Telegram

The Secretary of State to the Minister in Liberia (Walton)

WASHINGTON, October 13, 1937—6 p. m.

24. Personal for the Minister from McBride. Your despatch 126, September 7 regarding Neep concession. The following questions occur to me personally in connection with the indicated sections of the agreement.

Article 3, Section D. In order to spread development through various sections of the country rather than concentrate improvements in Monrovia, it might seem in the best interest of Liberia to select Cape Mount as the location for the proposed harbor basin.

Article 4, Section C. It might appear to be more advantageous for Liberia to provide for royalties on percentage basis of sales value or of profits, in accordance with the provisions of Section 3, Article 1 of the Liberian Executive Order No. 6 of July 20, 1936, rather than to stipulate for a fixed royalty. In as much as Liberian iron ore is understood to be of high quality, it would seem that royalties on a percentage basis, along the lines provided for in the above-mentioned executive order, might give the Liberian Government a higher return than that proposed by the agreement.

Article 4, Section E. In view of the relatively small acreage which Neep proposes to lease, 300 white employees appears to be unduly large and out of proportion to the character and extent of the work to be undertaken. The potential disadvantages inherent in admitting an unnecessarily large number of employees of other nationalities will doubtless not have escaped the Liberian authorities.

Article 4, Section I. Although the purposes which the Liberian Government had in mind in inserting this article are clear, the question arises as to whether those purposes will be accomplished by the present wording. For example, what is to prevent the sale or transfer of Neep shares with the result that control of the company would pass to interests which might be unfriendly to Liberia?

In the event that your opinion is requested regarding the terms of the contract, you may feel it proper to offer your personal views along the lines of the foregoing. If changes are to be made in the contract I assume that it would be better to make the alterations before the agreement is submitted to the Legislature. [McBride.]

HULL

882.635 Neep/7 : Telegram

The Minister in Liberia (Walton) to the Secretary of State

MONROVIA, October 18, 1937—10 a. m.

[Received 7:45 p. m.]

47. Your telegram No. 24, October 13, 6 p. m. For McBride. Suggestions regarded as most helpful and timely by President Barclay.

Legislature will change article IV section C to provide a 25 per cent royalty on selling price of ore rather than fixed royalty. Information is sought as to the normal selling price when armament races are not in progress.

The legislature will change article IV section E limiting employment to 150 white employees.

Upon my suggestion, Judge Fisher now here will be asked to cooperate to insure accomplishment of purposes desired in article IV section I. Please advise if section I of article IV were amended by the addition "nor shall any of the shares of Neep, or any interest therein, without such consent, be transferred to or held by other than Netherlands nationals" would this infringe rights under existing treaties of nationals of other treaty powers not so authorized to hold shares?

Selection of Cape Mount instead of Monrovia as site for proposed harbor basin is a moot question, on which I have hesitated to raise with the President until now, although I have freely expressed my view to Secretary Simpson⁵⁵ and Secretary Dennis, also to Messrs. Saben⁵⁶ and Caffé, both of whom favor Monrovia. The President agreed with my contention that a Government-property basin would not be desirable in front of the Legation site. However, he thinks Monrovia offers more advantages in the development of export trade because of its geographical location and it is a focal point of roads tapping the interior. When asked if a new Legation site would be agreeable I replied in the negative, stating architect's plans have been largely influenced by topography and if new blueprints had to be made there was no telling when Legation would be ready for occupancy. I referred to my reluctance to live in present quarters much longer.

My belief is that with strong objections registered by the three countries directly concerned, United States, Great Britain and France, a final decision could be reached to build harbor at Cape Mount.

WALTON

882.635 Neep/9: Telegram

The Secretary of State to the Minister in Liberia (Walton)

WASHINGTON, October 23, 1937—3 p. m.

25. Personal for the Minister from McBride. Your 47, October 18, 10 a. m.

1. In years 1929 to 1936 base selling price of iron ore at Lake Erie docks ranged between \$4.50 and \$4.80 per gross ton depending upon grades. No accurate information available regarding selling prices of iron ore in foreign countries.

⁵⁵ Clarence L. Simpson, Liberian Secretary of State.

⁵⁶ Maxwell Saben, administrative specialist employed by the Liberian Government.

2. Proposed change in Article IV Section E, reducing to 150 the number of employees of foreign nationality which Neep may engage in Liberia, might appear still to leave to the concessionaire privileges which might be regarded as disproportionate to the proposed lease of 6500 acres. The Firestone Agreement, which applies to a potential lease of one million acres, provides for no more than 1500 foreign employees.

3. The purposes of the Liberian Government might perhaps be accomplished by adding some such provision as the following to Section I of Article IV:

“Neep agrees that at least 60 percent of its stock shall be retained at all times in Dutch or Liberian control, and that the members of its Board of Directors shall be Dutch or Liberian nationals.”

Similar restrictions were recently accepted by an American company when obtaining a concession in one of the countries of the Near East.⁵⁷

4. Please keep me informed of any decision regarding the site of the proposed harbor basin.

5. These observations and suggestions, which you will appreciate are my own personal views, are offered for your consideration. [McBride.]

HULL

882.635 Neep/8: Telegram

The Minister in Liberia (Walton) to the Secretary of State

MONROVIA, October 24, 1937—3 p. m.

[Received October 24—11:16 a. m.]

49. Dr. R. G. Fuszek, Health Director for Liberia, returned on the *Wadai* October 22nd after a 6 months leave of absence. October 24 at 9:45 a. m., Dr. Fuszek called on me at the Legation, when told by Steward that the Minister was taking his bath the visitor sent his card saying he would wait on the veranda.

After bringing me greetings from Dr. Hermanns, former German Consul General at Monrovia, now in Berlin, and informing me of his efforts while at home in Budapest to counteract unfriendly propaganda against Liberia, Dr. Fuszek brought up Neep concession. Remarked that he hoped Legislature would ratify Agreement but questioned financial ability of promoters to make undertaking a mammoth and successful one. He enthusiastically advocated the inclusion of German capital. Krupp, Garland said, could furnish the necessary machinery and materials for harbor basin, rails and cars and insure the exploitation of Liberia's rich mineral resources not only in the Bong Mountains but elsewhere in the Republic.

⁵⁷ For correspondence regarding the grant of an oil concession by the Iranian Government to the Amiranian Oil Co., see pp. 735 ff.

Dr. Fuszek pessimistically observed that Dutch and English capitalists were promoting Neep. He predicted that if the English investment was large Neep's operations around Cape Mount so near to Sierra Leone would eventually result in England taking possession of Liberia. Germany had no such designs he assured me.

I replied it was the first time I had heard that English capitalists were stockholders and that my Government's only interest in the matter was to see that Liberia developed its natural resources and reaped deserved remuneration.

Further reference by Dr. Fuszek to the desirability of German capital failed to elicit one word of comment from me. Casually stated he understood there was some little opposition to German participation. Dr. Fuszek left the Legation at noon. Obviously he was not paying altogether a social call. On the few previous occasions he has visited me he remained less than 10 minutes.

Shortly before going on leave his American made car was demolished in an accident. He informed me he had been induced in Germany to buy a specially built Mercedes now being shipped.

WALTON

882.635 Neep/11 : Telegram

The Secretary of State to the Minister in Liberia (Walton)

WASHINGTON, October 26, 1937—6 p. m.

26. Personal for the Minister from McBride. Your 49, October 24, 3 p. m.

1. As you know, we have always felt that it was in the best interest of Liberia to develop its natural resources through the introduction of foreign capital, and that it would be preferable not to confine such capital to any one nationality. Accordingly, contracts along the general lines of the Neep concession might appear to be advantageous to Liberia.

2. I understand, however, that the Liberian authorities consider that it would be definitely undesirable to permit the control of foreign enterprises in the country to fall into the hands of interests which might prove unfriendly or definitely dangerous to Liberian sovereignty. The information contained in your telegram might therefore indicate the importance of proceeding cautiously with respect to such matters as those discussed in paragraphs numbered 2 and 3 of my telegram of October 23.

3. In the event your personal opinion is sought you may consider it appropriate, while furnishing to President Barclay such of the information contained in your telegram as may appear desirable to you, to reply along the lines of the foregoing which represents my personal views.

4. I am endeavoring to obtain further information regarding nationality of Neep interests and extent of their resources. [McBride.]

HULL

882.00 General Conditions/5

The Minister in Liberia (Walton) to the Secretary of State

No. 138

MONROVIA, October 27, 1937.

[Received November 17.]

SIR: I have the honor to enclose herewith a report on general conditions in Liberia during the past month.

Respectfully yours,

LESTER A. WALTON

[Enclosure—Extract]

Report on General Conditions in Liberia During September

II. INTERNATIONAL ECONOMIC

1. Germany Offers to Exploit Liberia's Forest Reserves

The Liberian Government has received an unofficial proposal from the German Government in which the latter offers to cooperate in the exploitation of Liberia's valuable timber lands by sending from the German Forestry Division an expert to assume full supervision of this phase of governmental activity.

The German Government is willing to pay the salary of the Forestry expert if the Liberian Government will provide him with quarters and food and a force of 30 laborers.

During the month of July, Mr. Kurt Woermann, one of the proprietors of A. Woermann and Company, visited Liberia. While in Monrovia, he called on President Barclay and discussed the possibility of his firm making large purchases of Liberian products, particularly palm kernels. In the course of the conversation the timeliness of exploiting Liberian timber was mentioned. Mr. Woermann gave the impression that his company would gladly explore the commercial possibilities of a foreign market for Liberian woods.

President Barclay was, therefore, greatly surprised to receive a letter from Mr. Woermann under date of August 26, in which the writer stated he had taken up the matter with the German Government which was prepared to send to Liberia one of its experts from the German Forestry Division. Mr. Woermann further stated that Germany would be pleased to cooperate with Liberia on all economic matters in a spirit of amity, and suggested that President Barclay confer with the German Consul General at Monrovia relative to the forestry proposal.

President Barclay, through his private secretary, acknowledged receipt of the letter, promising to give the matter due consideration.

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882.635 Neep/12 : Telegram

The Acting Secretary of State to the Minister in Liberia (Walton)

WASHINGTON, November 1, 1937—8 p. m.

27. Personal for the Minister from McBride. I have received in confidence the following information regarding Neep:

"Neep joint stock company, incorporated in Amsterdam December 2, 1929, with nominal fully paid in capital florins 50,000 in 50 bearer shares each florins 1000. Four directors, all residing Amsterdam, one of whom Karl Ginsberg, German subject, born Breslau and associates of whom all named Bloch born Upper Silesia, originally German subjects, but naturalized January 4, 1937, as subject[s] of Liechtenstein. Four proxies, all German subjects.

D. Caffe, Netherlander, address Kadegold does not appear as officer or proxy Neep but is said to have been in Monrovia as late as July 20, 1937. He may be authorized representative of Neep in Liberia."

Since the foregoing appears to indicate a complete absence of well established Netherlands interest in Neep, the points made in paragraph numbered 2 of my telegram 26 of October 26 take on added importance. [McBride.]

WELLES

882.635 Neep/13 : Telegram

The Minister in Liberia (Walton) to the Secretary of State

MONROVIA, November 4, 1937—noon.

[Received 1:35 p. m.]

54. For McBride. Your 27, November 1, 8 p. m. Government's confidence in Neep's financial status appreciably weakened. Promoters seek aid from Amsterdamsche Bank, N. V., Amsterdam, Holland, which is unconvinced of project's practicability. New engineers therefore en route to investigate further.

Japanese Ambassador at Paris has proposed to Liberian Minister that Liberia export iron and cotton to Japan to be shipped via South Africa instead of Suez Canal. Japan willing to send experts to teach Liberians cotton culture. Liberian Minister suggests that iron concession be exploited jointly by Dutch, American, Belgian and Japanese nationals. President Barclay confident of American participation.

Exclusion provision submitted to President. Great curiosity in Neep displayed here by undesirable interests.

WALTON

882.635 Neep/15: Telegram

The Minister in Liberia (Walton) to the Secretary of State

MONROVIA, November 19, 1937—3 p. m.

[Received 9:24 p. m.]

61. President today sent message to Legislature asking immediate consideration of initialed Neep Agreement. Gave 11 reasons for favorable action. Said Government first made overtures to company. Numerous amendments expected to be adopted including provisions against undesirable participation. Swedish engineers have arrived with three trucks and machinery. Promoters claim to have secured necessary funds.

WALTON

882.635 Neep/17: Telegram

The Secretary of State to the Minister in Liberia (Walton)

WASHINGTON, November 27, 1937—5 p. m.

33. Personal for the Minister from McBride.

1. Your despatch 138, October 27, page 3. I cannot avoid feeling somewhat disturbed at the offer made regarding the forestry expert, to which the considerations mentioned in paragraph numbered 2 of my 26, October 26, 6 p.m. appear distinctly applicable. In the event that your opinion is requested you may consider it appropriate and expedient to advance discreetly to President Barclay those considerations as representing your personal and unofficial view.

2. Your 61, November 19, 3 p. m. Do you consider that the proposed amendments against undesirable participation in the Neep concession afford adequate safeguards to Liberian interests? Information is being sought regarding Neep claim that it has obtained necessary capital.

3. I should appreciate receiving your opinion as to whether there may not be disturbing implications in the Neep agreement and in the offer of the forestry expert. [McBride.]

HULL

882.635 Neep/18: Telegram

The Minister in Liberia (Walton) to the Secretary of State

MONROVIA, November 30, 1937—4 p. m.

[Received November 30—3:01 p. m.]

65. For McBride. Your telegram No. 33, November 27, 5 p. m. President and I share your apprehension. We have discussed subject on several occasions. I am transmitted [*transmitting?*] by December

12 pouch full report on the situation, which, while disturbing is not now viewed with alarm. Within last 3 months a half dozen visitors of said nationality have arrived ostensibly to paint birds, collect shark liver, hunt big game or on some other pretext to get into the hinterland. Government has just turned down request to permit establishment of bacteriology observatory in the interior. The visitor, believed to be a secret agent who brought forward this proposition, is guest of individual referred to in my telegram No. 49, October 24, 3 p.m. Soon after his arrival he was visited for over an hour by his foreign representative here. The Government has granted suspect permission only to visit Firestone plantations and Lutheran Mission. I am asked to assure you that forestry and all such proposals will receive unfavorable consideration.

President thinks amendment, which provides that 60% of the Neep stock shall always be in control of nationals of the Netherlands or Liberians is adequate to safeguard Liberian interests.

WALTON

882.635 Neep/22 : Telegram

The Minister in Liberia (Walton) to the Secretary of State

MONROVIA, December 3, 1937—11 a. m.

[Received December 3—9:21 a. m.]

66. Neep Agreement ratified by the Legislature. President empowered to settle controversial points at issue, such as sliding scale of from 4 to 6 cents royalty and additional royalty on all other minerals mined apart from iron.

WALTON

882.635 Neep/23 : Telegram

The Secretary of State to the Minister in Liberia (Walton)

WASHINGTON, December 3, 1937—7 p. m.

35. Personal for the Minister from McBride: My 33, November 27, 5 p. m. and your 65, November 30, 4 p. m.

After some difficulty I have been able to obtain in strict confidence from our representatives at The Hague the following definite information regarding Neep: ⁵⁹

“Careful inquiry indicates that Neep cannot itself finance Liberian project and that Netherlands capital cannot be induced to participate in exploiting so contrary to financial practice in this country particularly as no present interests exist here for mining properties. Muller

⁵⁹ The following quotation was taken from telegram No. 107, December 1, 3 p. m., from the Minister in the Netherlands (882.635 Neep/21).

and Company mentioned in memorandum is unquestionably the Netherlands firm of W. G. Muller and Company of Rotterdam which after a period of financial difficulties has recently been reorganized on sound basis with very conservative Netherlands directors who would not consider operating through an organization such as Neep. Muller relinquished iron mining interests in Morocco several years ago and has been endeavoring for some years to dispose of iron mining properties in Spain valued at approximately 2 million florins. Two of the best informed financial personalities both emphatic that no Netherlands capital would participate in Neep project. Neep maintains accounts with Amsterdamsche Bank but it is inconceivable that the latter would consider financially supporting former. The directors of Neep practically unknown in the leading banking circles here but inquiries reveal that they are of good repute although having no large resources here. My investigation conclusively indicates that source of any available capital is foreign to the Netherlands."

I believe that you may consider it desirable to give the sense of this information to President Barclay in strict confidence. At the same time you may find it appropriate to discuss with him the present situation regarding colonial expansion in Africa. As you know, it is the desire of the American Government to see Liberia prosper and progress in every way. Many of our citizens are similarly interested in Liberia's progress and independence and any developments which threaten that independence are naturally of concern to us.

You are of course aware that German leaders have made several public statements recently regarding Germany's colonial ambitions. On October 28 Mussolini made a speech in support of German colonial demands. The German thesis is that her economic problems are inseparable from the colonial problem and that Germany must regain possession of colonial property. German leaders have made it clear in recent discussions, however, that they do not insist upon a return of the specific colonies lost during the war but that they would be agreeable to accepting territory in Africa of equal value.

In view of this situation I feel sure that President Barclay will realize the imperative necessity of giving the closest scrutiny to proposals such as those involved in the Neep concession and in the offer of a forestry expert.

You are aware that the Department has always felt that Liberian resources should be developed, in the best interest of the country, by outside capital representing a diversity of national interests, particularly those whose governments have no territorial ambitions in Africa. However, the Department has also felt that the Liberian Government should avoid granting concessions even to friendly foreign interests unless it is convinced that they are not merely specu-

lators or promoters and that they possess sufficient capital and experience to work the concessions themselves. A great distinction is to be drawn between speculators and promoters who make initial surveys and then attempt to hawk a concession in the open market and serious, experienced concerns with ample capital who intend to operate a concession themselves. Our information appears clearly to indicate that Neep fails to meet the desired requirements in these respects. Furthermore, that information seems to me to leave no doubt that more study and investigation should be made before the granting of the concession is finally concluded. Under the circumstances I assume that President Barclay will conclude that the concession should not be ratified until further investigation satisfies him that Neep actually has sufficient capital and experience, is not affiliated in any way with undesirable interests, and intends itself to work the proposed concession.

If in the face of all the dangers referred to, the Liberian Government should decide to ratify the agreement, I am afraid that the question might arise as to whether the Department could continue to endeavor to assist Liberia in the improvements and reforms which President Barclay has carried out with such conspicuous success. His statesmanlike leadership has brought his country such prosperity and peace that it would be a pity to mar that splendid record by the adoption of a policy which might have unfortunate results. I am fearful also that a question might arise as to whether we should proceed with the construction of our new legation quarters. In any case the expropriation of land for the harbor basin at Monrovia may delay such construction for an indefinite period.

I believe that you would be justified in laying these considerations which are my own personal views before President Barclay, stressing our own disinterestedness and our desire for the continued peace and prosperity of Liberia, and urging upon him, in view of the active colonial demands of certain European countries, the necessity of exercising the utmost caution and consideration before granting concessions or accepting foreign advisers.

Your 66, December 3, 11 a. m., was received just after above was written. Inasmuch as we understand that President Barclay has not yet signed the agreement please bring urgently these matters to his attention so that he may satisfy himself on all points before finally and irrevocably taking action which might have such serious consequences for his country.

Please report promptly result of your conversations. [McBride.]

HULL

882.635 Neep/24 : Telegram

The Minister in Liberia (Walton) to the Secretary of State

MONROVIA, December 6, 1937—5 p. m.

[Received December 7—7:22 p. m.]

67. Your telegram No. 35, December 3, 7 p. m. Conferred with President today as you were aware and really received with due appreciation. Impasse between President and Neep over amendments and failure of Neep to satisfy Government of its financial status, fundamental questions answered vaguely, indefinitely, or not at all. I venture prediction that act will not be approved by the President.

Neep takes emphatic exceptions to provisions in the act: that at least 60 per cent of the shares under the present or any other future authorized capitalization shall be issued only to Netherlands or Liberian nationals, and none or any interest therein shall be transferred *inter vivos* or *mortis causa* to any person, natural or judicial of any other nationality without the prior written consent of the Government thereto; that should Neep decide to produce metals from ores of any kind won from areas granted under agreement, and export or dispose of such metals instead of ores, Government shall be entitled to a royalty on such metals of not less than 15 per cent of value f. o. b. Monrovia; that Neep employ 150 instead of 300 technicians.

Neep has been unable to answer questions satisfactorily relative to its capitalization, number of shares of stock issued and par value of a share, the principal stockholders and how many shares owned by each, if the estimated capital necessary to establish proposed enterprise is between \$6,000,000 and \$7,000,000, has Neep at present unobligated assets sufficient to finance 50 per cent of capital investment and of what do these assets consist.

The Government is informed by D. Caffé, local representative, that Neep's resources are formed from substantial resources of four directors—the three Blochs and K. Ginsberg—there and has opened a revolving credit of 25,000 pounds for 14 months at the Bank of Monrovia. Telegrams signed "Amsterdamsche Bank" sent to President at Caffé's instance stating "company's means are considerable and several times more than nominal capital. Management highly respectable and capable and would not take engagements they could not fulfill. Information is given confidentially and without our responsibility."

It is becoming increasingly apparent to high Government officials that company's financial outlay is negligible for a \$7,000,000 project and that promoters are probably seeking concession as a speculation.

Neep has advised the Government that it intends to divide remaining shares of stock with American and Swedish mining interests but is unable to give names.

President Barclay wishes to assure you that his views are very similar to yours with respect to agitation over African colonies which he follows closely. He appreciates political implications.

I have been asked that you suggest some adequate arrangement making possible the exploitation of Liberia's rich iron ore under desirable financial arrangements. Should Neep's proposal be ultimately rejected, the President does not wish to be criticized abroad nor accused at home of refusing a concession that would have materially contributed to the prosperity of the country. The Legislature has vested the President with broad powers to represent government on controversial issues.

In view of the latest developments I do not think it is necessary to negotiate for new Legation site and that engineer should start for Monrovia as soon as possible. In the December 12 pouch I am transmitting amendments to act and copies of recent correspondence between President and Neep representative.

WALTON

882.635 Neep/26 : Telegram

The Secretary of State to the Minister in Liberia (Walton)

WASHINGTON, December 8, 1937—6 p. m.

36. Personal for the Minister from McBride. Your 67, December 6, 5 p. m.

1. Your message is reassuring and I should be grateful if you would express my appreciation to President Barclay.

2. I am seeking further information regarding Neep's resources and background and its relations with Amsterdamsche Bank and I will advise you further when this is received.

3. We shall give thorough consideration to matter raised in penultimate paragraph of your telegram with a view to seeing whether we cannot make some helpful suggestions. [McBride.]

HULL

882.635 Neep/25 : Telegram

The Secretary of State to the Minister in the Netherlands (Gordon)

WASHINGTON, December 8, 1937—6 p. m.

73. Your 107, December 1, 3 p. m.⁶⁰ Information from Monrovia indicated that Neep has been unable satisfactorily to answer questions relative to its capitalization, number of shares of stock issued and par value of shares, the principal stockholders and number of shares

⁶⁰ See footnote 59, p. 851.

owned by each; also whether it has present unobligated assets sufficient to finance 50 percent of estimated capital investment of 6 to 7 million dollars and of what assets consist. Caffé, Neep's representative in Liberia, has stated that organization relies on substantial resources of four directors, the three Blochs and Ginsberg, and that revolving credit of 25,000 pounds has been opened at Bank of Monrovia. Telegrams signed "Amsterdamsche Bank" sent to Liberian authorities state that Neep's "Means are considerable and several times more than nominal capital; management highly respectable and capable and would not take engagements they could not fulfill. Information is given confidentially and without our responsibility". It is reported from Monrovia that it is becoming increasingly apparent that Neep's financial outlay is negligible for a 7 million dollar project and that promoters are probably seeking concession as a speculation.

Please convey foregoing to Patton and cooperate with him and Commercial Attaché, if you perceive no objection, in endeavoring most discreetly to ascertain information on Neep's background, potential resources and whether above quoted message from Amsterdamsche Bank represents its considered opinion.

HULL

882.635 Neep/28 : Telegram

The Minister in the Netherlands (Gordon) to the Secretary of State

THE HAGUE, December 15, 1937—6 p. m.

[Received December 15—2: 45 p. m.]

114. Department's telegram 73, December 8, 6 p. m. The following is from Patton⁶¹ who called at the Legation today. He had just visited Rotterdam when [*where?*] he was informed by a director of Muller and Company that samples of iron ore accidentally discovered in Liberia by diamond prospectors were submitted in 1935 to that company which endeavored to form exploration syndicate but "could not raise one dollar for that purpose in the Netherlands" whereupon the company's interest ceased. Neep then took up the matter. Confidential report Amsterdamsche Bank to Netherlands Indian Trading Bank practically duplicates former's cablegrams to Monrovia as cited in Department's telegram under reference. Patton feels, however, that direct approach to Amsterdamsche Bank might reveal a somewhat different attitude and wishes to know if the Department would approve such action.

Amplifying report from Patton by next pouch⁶² and Legation is making other investigations.

GORDON

⁶¹ Kenneth S. Patton, Consul General at Amsterdam.

⁶² Not printed.

882.635 Neep/28 : Telegram

The Secretary of State to the Minister in the Netherlands (Gordon)

WASHINGTON, December 18, 1937—4 p. m.

78. Your telegram 114 of December 15, 6 p. m. We greatly appreciate Patton's helpful reports. A direct approach to the Amsterdamsche Bank regarding Neep does not seem advisable, however, at least for the present.

HULL

MOROCCO

PROPOSED ABOLITION OF CAPITULATORY RIGHTS OF THE UNITED STATES IN THE FRENCH ZONE OF MOROCCO

733.003/200 : Telegram

The Ambassador in the United Kingdom (Bingham) to the Secretary of State

LONDON, April 7, 1937—6 p. m.

[Received April 7—3:45 p. m.]

200. In a confidential conversation yesterday between a member of the Embassy staff and an official of the Foreign Office who will be a member of the British Delegation at the forthcoming Montreux Conference,¹ the latter stated that the French doubtless would raise during that Conference the question of the capitulatory regime in Morocco and that the British Government had in fact already been approached by the French Government in the matter. It was pointed out that the British Government under the terms of Anglo-French declaration of April 8, 1904, whereby the two contracting parties bound themselves not to obstruct each other's action in Egypt and Morocco is obligated to renounce capitulatory rights in Morocco when the French make a similar renunciation in Egypt (secret article No. 2 of the Anglo-French declaration published in British Treaty Series No. 24, 1911). The Foreign Office official further stated that they have even drawn up a tentative draft of an agreement with the French on the matter.

While the question of the capitulatory regime in Morocco is technically distinct from economic problems, the Foreign Office official stated that they are entirely aware that renunciation of capitulatory rights will entail reconsideration of existing British treaties with Morocco and reshaping of commercial policy. The French position it was said inevitably will be strengthened by renunciation by Great Britain of her capitulatory rights. Final agreement between the British and French on problems concerning Morocco will not, of course, be effected at Montreux but negotiations to that end apparently will follow any agreement concluded at Montreux with respect to Egypt.

BINGHAM

¹ See pp. 615 ff.

781.003/16: Telegram

The Secretary of State to the Ambassador in France (Bullitt)

WASHINGTON, April 13, 1937—2 p. m.

170. London has been requested to repeat to you by mail its 200, April 7, 6 p. m., which reports an agreement by the British to relinquish capitulations in Morocco. We have, of course, expected this. With the consummation of such an agreement we anticipate that the French will soon approach us, probably through you.

Our essential interest in Morocco is one of trade. We want maintained the existing principles governing Moroccan trade, namely "economic liberty without inequality". This means equality with all, including France. Anything less than equality with France means the dissipation of a large percentage of our existing exports to Morocco. France apparently feels that she and her trade should be in a preferred position. The Act of Algeciras² and other Moroccan treaties have made it impossible for France to obtain this preferred position juridically. Nevertheless through decrees and administrative tactics the Protectorate authorities have sought to obtain this position for French commerce. Decrees and regulations may because of our capitulatory position be applied to American nationals and *ressortissants* only in the event this Government gives its assent. Capitulations in Morocco have therefore become of prime importance in the protection of our trade. This represents our essential interest in the maintenance of capitulations. Any relinquishment of our present capitulatory rights would have to be accompanied by real guarantees for our commerce.

Once the British renounce their capitulations we apprehend that the French will bring insistent pressure to bear on us, the only remaining capitulatory power, to renounce our rights also. If the French approach us we will be obliged to negotiate. We of course do not wish to make the first move. However, the foregoing may be helpful to you in watching developments and particularly in case the French approach you in the matter.

We would welcome any information or ideas you may have along these lines.

HULL

781.003/17: Telegram

The Ambassador in France (Bullitt) to the Secretary of State

PARIS, April 16, 1937—1 p. m.

[Received April 16—12: 50 p. m.]

488. Department's 170, April 13, 2 p. m. You will recall from my 28, January 8, 7 p. m.,³ that Vienot, Undersecretary of State for

² Signed April 7, 1906, *Foreign Relations*, 1906, pt. 2, p. 1495.

³ Not printed.

Foreign Affairs, said to me at that time that he wished to take up the question of capitulations in Morocco. He did not, however, follow up this conversation in any way and nothing more was heard of the matter.

It is of course obvious that when the French come to us with a request to renounce our capitulatory rights these rights will possess a certain nuisance value which we might attempt to capitalize. The British, in giving up their capitulatory rights in Morocco, will have received a *quid pro quo* in the form of French renunciation of capitulations in Egypt. For our part we might conceivably consider requesting in addition to satisfactory guarantees for our commerce with Morocco certain concessions possibly relating to our trade with France or French colonies.

However, in considering this matter it occurs to me, first, that the French Government has been playing the game fairly with us recently (witness their attitude in the Saint Pierre liquor smuggling case ⁴ and in the apple and pear matter ⁵) and, second, there seems to be nothing at this time which we need from the French. Furthermore, I have an idea that despite our nuisance value in this matter we shall find it difficult enough to obtain guarantees for our commerce with Morocco which will prove satisfactory in practice: the French may be expected to press the argument that having developed Morocco at the cost of French lives and money they should be allowed a preferential position; and of course guarantees which look well on paper can always be chiselled away by administrative action.

Therefore, unless at the time the French raise this Moroccan question with us there should be some other matter of interest under discussion between the two Governments it seems to me that the wiser policy will be to deal with the Moroccan question solely on its merits and while insisting on satisfactory guarantees of equality of treatment for our trade with Morocco to fall in line with the policy now being worked out at Montreux regarding the Egyptian capitulations which has already been accepted by the British as regards Morocco.

BULLITT

781.003/23 : Telegram

The Ambassador in France (Bullitt) to the Secretary of State

PARIS, July 24, 1937—4 p. m.

[Received 6:20 p. m.]

1041. An official of the Foreign Office tells us that the negotiations which have been taking place in London regarding the relinquishment

⁴ See pp. 298 ff.

⁵ See pp. 275 ff.

by Great Britain of capitulatory rights in Morocco was initiated by the two delegations yesterday. It is expected that the agreement will be signed some time next week by Eden⁶ and Corbin.⁷

The agreement provides that the relinquishment of the capitulations will be effective on January 1, 1938. Provision is also made for the beginning of negotiations regarding British commercial interests in Morocco.

It may be presumed that upon the signature of the agreement with Great Britain the French Government will transmit to our Government a copy of the agreement at the same time requesting the opening of negotiations for the relinquishment on our part of the capitulations in Morocco.

Copy to London.

BULLITT

781.003/26 : Telegram

The Ambassador in the United Kingdom (Bingham) to the Secretary of State

LONDON, July 30, 1937—1 p. m.

[Received July 30—9:15 a. m.]

512. My 506, July 27, 6 p. m.⁸ Foreign Office informs me that Anglo-French Convention for the Abolition of British capitulations in French Morocco was signed in London yesterday.⁹

BINGHAM

781.003/31 : Telegram

The Ambassador in France (Bullitt) to the Secretary of State

PARIS, August 11, 1937—8 p. m.

[Received August 11—5:35 p. m.]

1143. Monsieur Henri Coursier, Chief of Division at the "Sous-direction de l'Afrique du Nord" at the Foreign Office called on Mr. Tuck¹⁰ yesterday afternoon with regard to the question of the relinquishment by the United States Government of capitulatory rights in Morocco. He reminded Mr. Tuck that he had had an informal talk with Mr. Wilson¹¹ on the subject a short time ago (see Embassy's telegram 1041, July 24, 4 p. m. 1937). He said that it was the inten-

⁶ Anthony Eden, British Secretary of State for Foreign Affairs.

⁷ André Charles Corbin, French Ambassador in the United Kingdom.

⁸ Not printed.

⁹ For text, see British Treaty Series No. 8 (1938), or British Cmd. 5538, Miscellaneous No. 7 (1937): *Convention for the Abolition of Capitulations in Morocco and Zanzibar*.

¹⁰ Somerville P. Tuck, First Secretary of Embassy.

¹¹ Edwin C. Wilson, Counselor of Embassy.

tion of the French Government to begin negotiations with the American Government in the near future looking towards our relinquishing of capitulatory rights in Morocco. He added that he would shortly send for our information a letter containing the text of the Franco-British Agreement signed in London recently. He asked Tuck whether he, Tuck, could inform him as to the intentions of our Government with regard to where such negotiations could be held to the best advantage. Tuck replied that while he was not familiar with the question he presumed that if the French Government intended to bring the matter up it would do so through the French Embassy in Washington. Coursier then told Tuck that the Quai d'Orsay would probably shortly instruct the French Chargé d'Affaires in Washington to suggest negotiations with the Department of State. Coursier expressed personal view that if the American Government consented to such negotiations these could be held to greater advantage in Paris than in Washington since the French Chargé d'Affaires was not familiar with the technicalities of the question.

I have now received the French texts of the French-British Agreement, which is a document of 30 foolscap pages, together with a note saying that it is the intention of the French Government to instruct the French Embassy in Washington to communicate this text to the Government of the United States and to request our efforts to make the same agreement as Great Britain for the abolition of capitulations.

I shall send the text by pouch unless instructed by you to telegraph it.

I venture to suggest once more that it would be in accordance with French diplomatic practice if we were to press for a settlement with regard to the outstanding questions of apples and pears and the Haitian loan ¹² before agreeing to take up the question of our capitulations in Morocco.

BULLITT

781.003/40

The French Chargé (Henry) to the Secretary of State

[Translation]

WASHINGTON, August 26, 1937.

MR. SECRETARY OF STATE: I have the honor to advise Your Excellency that on July 29, 1937, there was signed at London, between the French Government and the British Government, a Convention concerning the abolition of the rights and privileges of a capitulatory character which are enjoyed by Great Britain in Morocco. This Convention was accompanied by an exchange of letters between the French

¹² See vol. v, pp. 670 ff.

Ambassador at London and the British Secretary of State for Foreign Affairs.

The settlement concluded provides that the British consular courts in Morocco will be abolished on the entry into force of the Convention, that is to say, January 1, 1938.

On that date British nationals will become subject to trial in the French courts of the Sheriffian Empire under the same conditions as foreigners belonging to other States which have already renounced the capitulatory régime. Likewise, the right of protection will cease to be exercised by Great Britain over certain subjects of the Sultan of Morocco employed in British Consulates or business firms. Nevertheless, in order to take account of certain acquired rights, the persons concerned, the list of whom will be established by the Residency General of France in Morocco and the Consul General of England at Rabat in the course of the first half of 1938, will be subject, as long as they live, to the jurisdiction of the French courts for all cases not arising from Mohammedan religious law. In accordance with instructions which I have just received, I have the honor to transmit, herewith, to Your Excellency the text of the Franco-Britannic Convention and of its annexes. In proceeding to this communication, I wish to express to Your Excellency the keen interest which my Government would take in the conclusion with the Government of the United States of an agreement similar to that which it has just concluded with the British Government.

The United States enjoys in Morocco the capitulatory régime by virtue of the treaty concluded between the two powers on September 16, 1836.¹³ Article 25 of this Convention reads as follows:

“The present treaty shall be in force, God helping, during fifty years; at the expiration of that term, it shall continue to be binding on the two powers until one of them has notified its intention to depart therefrom by notice twelve months in advance, in which case the effects thereof shall cease at the expiration of the twelve months”.

The above-mentioned Convention between the United States and Morocco not having been denounced, the United States continues to benefit by the capitulatory régime in Morocco. In fact, following the conclusion of the Franco-Britannic agreement it remains today the last power in a position to avail itself of that régime.

In advising Your Excellency of the desire of my Government to conclude with the American Government an agreement which would put an end to this régime, I take the liberty of recalling to Your Excellency that during the Conference of Montreux which ended the

¹³ William M. Malloy (ed.), *Treaties, Conventions, etc., Between the United States of America and Other Powers, 1776-1909* (Washington, Government Printing Office, 1910), vol. I, p. 1212.

régime of the capitulations in Egypt, the representative of the American Government made declarations indicating the conciliatory spirit in which the American Government intended to settle this question. In fact, in the course of the inaugural meeting of this Conference, the delegate of the United States invoked "the good neighbor policy advocated by President Roosevelt", to affirm "the greatest sympathy for the purposes set forth by the Royal Egyptian Government"¹⁴ in view of the abolition of the capitulations in Egypt. These declarations have given my Government reasons to think that, like the British Government, the American Government will be willing to consent to the abolition of the régime of capitulations in Morocco.

Furthermore, in recognizing, some years ago, the French protectorate in Morocco,¹⁵ the Government of the United States has already given to the French Government a proof of its friendship and of the sympathy with which it has welcomed the work undertaken by France in the Sheriffian Empire. This work, which is today consolidated, constitutes one of the principal factors of peace in Africa and in other parts of the world. The French Government believes that for the happy continuation of its task, it is desirable that a state of things signifying unity in all domains be substituted for a régime carrying certain privileges, the maintenance of which may appear as a limitation of its own sovereignty. It would, therefore, appreciate at its true value the new proof of friendship which the American Government would give to it today by consenting to conclude an agreement on the same bases as the Franco-Britannic agreement.

It goes without saying that American nationals would enjoy, like British nationals in Morocco, a régime in agreement with the general treaties and with Sheriffian legislation. For this purpose, I have the honor to send with the present communication the text of the Dahir of August 12, 1913,¹⁶ on the present state of this legislation. This text defines the civil status of Frenchmen and foreigners in Morocco, thanks to a codification of the most liberal rules of international private law.

In the view of my Government, the question of the abolition of the capitulatory régime enjoyed by the United States in Morocco might be settled either by a special Convention to be negotiated on the bases of the Franco-Britannic Convention of July 29, 1937, or by an exchange of letters.

This latter procedure, which would conform to that employed for admitting the United States to the benefit of the régime reserved for States members of the League of Nations in the mandated countries

¹⁴ See draft statement, p. 639.

¹⁵ See note of January 15, 1917, to the French Ambassador, *Foreign Relations*, 1917, p. 1094.

¹⁶ For text, see P.-Louis Rivière, *Traité, Codes et Lois du Maroc*, vol. 3, p. 2.

of Syria and Palestine, would offer the advantage of being more expeditious. The exchange of letters might bear effect beginning with the first of January, 1938. As to the establishment of the list of the ex-American protégés, it might be drawn up within a period of six months by agreement between the Residency General at Rabat and the competent American Consular authority.

In case Your Excellency might agree to the procedure of the exchange of letters, I think I should submit to you, herewith, a draft text.¹⁷

I may add that the Ministry of Foreign Affairs of the Republic is entirely prepared to give to the Embassy of the United States at Paris all supplementary explanations which the Embassy of the United States at Paris might desire to receive regarding the Franco-Britannic negotiations which have just come to a successful conclusion. In fact, it appears that the Franco-American conversations might be carried on more fruitfully at Paris because of the facilities which the American experts would have for coming into touch with the high magistrates and the officials of the protectorate of France in Morocco.

In expressing the hope that the Government of the United States will be good enough to exert itself for the purpose of giving satisfaction to the legitimate desire of my Government to put an end in Morocco to a situation which appears to be incompatible with present conditions, I would be very much obliged to Your Excellency if you would be so kind as to advise me as soon as may be practicable of the reception given to the proposal of Mr. Yvon Delbos.¹⁸

Please accept [etc.]

JULES HENRY

781.003/41

*Memorandum by the Chief of the Division of Near Eastern Affairs
(Murray)*

[WASHINGTON,] August 27, 1937.

Mr. Jules Henry, Chargé d'Affaires of France, called at the Division this morning after being received by the Secretary and left with me a note dated August 26, 1937,¹⁹ referring to the Anglo-French Convention signed on July 29, 1937, at London providing for the termination of Great Britain's capitulatory rights in Morocco. In accordance with his instructions, Mr. Henry left at the same time the text of the Anglo-French Convention together with its enclosures.

Mr. Henry referred briefly to the interest of his Government in

¹⁷ Not printed.

¹⁸ French Minister for Foreign Affairs.

¹⁹ *Supra*.

concluding with this Government an agreement similar to the Anglo-French Convention mentioned above.

I thanked Mr. Henry for furnishing us with the French text of the Convention and stated that we would of course give careful attention to the matters set forth in his Government's note. I at the same time made the observation that our primary concern in this matter is to safeguard for our nationals the equality of economic opportunity in Morocco at present guaranteed by existing treaties and other instruments. I expressed the view that it should not be difficult for us to come to an understanding with the French Government regarding the termination of our capitulatory rights in the French zone of Morocco provided we could be guaranteed absolute equality of treatment in all respects with French and other foreign nationals there. I added that it would of course require study on our part to determine the precise assurances we should wish to request of the French Government for the purpose of safeguarding our present economic rights in Morocco.

Mr. Henry then inquired whether the Department would desire to have the above negotiations take place in Washington or in Paris. In reply I stated that the matter had already been discussed in the Department and that it had been decided that it would be preferable to conduct the negotiations at this end. Mr. Henry observed that, while he himself is not entirely familiar with the subject, he felt sure that the French Commercial Attaché here would be competent to handle any questions of an economic nature that might arise during the course of our negotiations.

WALLACE MURRAY

781.003/25 : Telegram

*The Secretary of State to the Chargé in the United Kingdom
(Johnson)*

WASHINGTON, September 7, 1937—7 p. m.

382. Embassy's despatch 3033, April 27 and Murray's letter to Johnson, July 30,²¹ regarding Morocco.

Inasmuch as the French Government has now proposed negotiations looking toward termination of American capitulatory rights in Morocco, the Department would find helpful any information you may be able to obtain regarding provisions of proposed British-Moroccan commercial treaty referred to in ninth exchange of notes accompanying Anglo-French Convention signed July 29, 1937.

HULL

²¹ Neither printed.

781.008/45 : Telegram

The Chargé in the United Kingdom (Johnson) to the Secretary of State

LONDON, September 25, 1937—1 p. m.
[Received September 25—9:45 a. m.]

608. Embassy's 598, September 18, 2 p. m.²² I had a further conversation yesterday at the Foreign Office regarding the projected agreement for the protection of British commercial rights and interests in Morocco. From this conversation the following points emerged.

1. The British do not consider that any commercial or economic rights which they possessed under previous treaties have been in the legal sense impaired in the slightest degree by the Anglo-French Agreement for Abolition of Capitulations in Morocco.

2. The British recognize, however, that due to the changed conditions brought about by the Capitulations Agreement that there is little practical hope of reaching an agreement in the commercial and economic sphere which will leave unimpaired the old British status in Morocco.

3. Board of Trade has not yet formulated concrete proposals for their negotiations with the French. They contemplate, however, that the institution of some form of quota provisions is only possible way to protect their textile trade in Morocco.

4. They do not know what guarantees the French can give which would be considered as satisfactory in respect to "equality of treatment" of French and English goods. They expect to get at least most favored nation treatment as regards any third power in Morocco but they are not hopeful that they will be able to preserve in fact equality of treatment with French goods. The official expressed no illusion as to the desire of the French to give their own commerce and economic penetration a more favorable position than that of any other country and he is not sure that it will be possible to prevent it.

5. They do not expect to give to the French during these negotiations anything which can possibly be avoided but they are prepared to recognize that abolition of the capitulations has produced a new situation of fact which is bound to operate to the advantage of the French.

6. Foreign Office promised to give me early next week a memorandum²³ setting forth as concretely as may be done at the present time precisely what their proposals will be.

7. I suggested and the Foreign Office official agreed that a frank exchange of information between the two countries in reference to these negotiations might be mutually helpful.

JOHNSON

²² Not printed.

²³ See telegram No. 759, December 7, 7 p. m., from the Chargé in the United Kingdom, p. 872.

781.003/40

The Secretary of State to the French Chargé (Henry)

WASHINGTON, October 19, 1937.

SIR: I have received and given careful consideration to your note of August 26, 1937, proposing the conclusion of an agreement between the United States and France, similar to that concluded between France and Great Britain on July 29, 1937, by which the latter country surrendered its capitulatory rights in the French Zone of Morocco. Your Government suggests that the agreement proposed might take the form either of an exchange of notes or that of a special convention and points out that the former procedure, which it states was followed when the United States obtained certain rights in the mandated territories of Syria and Palestine, would be more expeditious.

I observe that in your note reference is made to Article 25 of the American-Moroccan Treaty of September 16, 1836, which provides for the termination of the Treaty upon one year's notice given by either party. In order that there may be no misunderstanding I think it is pertinent to point out that American capitulatory rights in Morocco are derived not only from the American-Moroccan Treaty of 1836 but also from other treaties, conventions or agreements and confirmed by long established custom and usage. It is unnecessary to enlarge upon this point since it seems to have been recognized by the French Government in the third paragraph of Article 10 and the second paragraph of Article 16 of the Anglo-French Convention of July 29, 1937, in both of which articles reference is made to the jurisdictional privileges enjoyed by the United States in Morocco "under treaties at present in force." Moreover, as you probably are aware, the recognition by the Government of the United States of the Protectorate of France over Morocco was expressly made subject to subsequent negotiation between the United States and France respecting the capitulatory and other rights of the United States in Morocco.

As for the rights of the American Government in Syria and Palestine to which reference is made in your note, it will be recalled that those rights were defined as regards the former territory by the American-French Convention of April 4, 1924,²⁴ and as regards the latter territory by the American-British Convention of December 3, 1924.²⁵ As was explained in the correspondence leading up to the signature of those conventions, notably in a memorandum handed to the French Foreign Office by the American Embassy in Paris on August 9, 1921,²⁶

²⁴ *Foreign Relations*, 1924, vol. I, p. 741.

²⁵ *Ibid.*, vol. II, p. 212.

²⁶ See telegram No. 377, August 7, 1921, 2 p.m., to the Ambassador in France, *ibid.*, 1921, vol. I, p. 822.

this Government was not in a position to agree to the proposed disposition of the territory in question except by the negotiation of an appropriate treaty. Similarly, when the question of the surrender of American capitulatory rights in Morocco arose in 1916, the American Government explained in a note addressed to the French Ambassador in Washington under the date of July 1 of that year,²⁷ that the most practicable procedure of divesting American Consular officers of their judicial functions in the French Zone of Morocco would be through the negotiation of a treaty providing for the surrender by the United States of its right to exercise consular jurisdiction in the French Zone.

Although the American Government is unable, for the reasons previously stated, to acquiesce in the French proposal for the surrender of American capitulatory rights in the French Zone of Morocco through the medium of an exchange of notes, it is quite ready to consider the surrender of such rights through the conclusion of a convention along the lines of the Anglo-French Convention of July 29, 1937.

It is observed that one of the exchanges of notes annexed to the latter Convention, a copy of which you were good enough to furnish, provides for the conclusion of a new treaty establishing the basis of commercial relations between Great Britain and Morocco. As you are aware, there is at present no adequate bilateral agreement defining the commercial relations between the United States and Morocco. The American Government would therefore desire to enter into negotiations for such an agreement in the form of a convention of commerce and navigation simultaneously with the proposed negotiations for a convention relating to capitulatory matters. Upon learning that your Government is in accord with this proposal I shall be glad to prepare and submit drafts of both conventions for its consideration. As was explained to you orally, at the time you left at the Department of State your note under acknowledgment, the American Government would wish to carry on the proposed negotiations in Washington.

During the time that the above-mentioned matters are under consideration by the two Governments I earnestly hope that the French Government will see its way clear to instructing the French Protectorate authorities at Rabat to concert with the American Diplomatic Agent at Tangier in the settlement of certain minor claims which have arisen with respect to American nationals and protégés in the French Zone of Morocco. Some of these claims date back for several years and although none of them, I believe, involves any large sum I am sure that the French Government will agree that the present is a propitious moment for their settlement in order that all outstanding problems

²⁷ *Foreign Relations*, 1916, p. 803.

affecting American interests in the French Zone may be solved to the mutual satisfaction of the two Governments. I expect, therefore, to instruct the American Diplomatic Agent at Tangier to approach the Protectorate authorities in this matter in the near future and I should like to be able in this connection to count upon the benevolent cooperation of the French Government.

Accept [etc.]

CORDELL HULL

781.003/40

The Secretary of State to the Diplomatic Agent and Consul General at Tangier (Blake)

No. 970

WASHINGTON, October 26, 1937.

SIR: With reference to the Department's instruction no. 966 of September 28, 1937,²⁸ transmitting a copy of a note from the French Embassy at Washington,²⁹ proposing the termination of American capitulatory rights in Morocco, I enclose for your information a copy of the Department's reply dated October 19, 1937.³⁰

It is desired that, upon the receipt of this instruction, you telegraph briefly such comments and suggestions as may appear to you to be pertinent, with respect to the question discussed in the final paragraph of the enclosure. Upon the receipt of your telegram the Department will consider issuing appropriate instructions to you with reference to taking up with the French Protectorate authorities at Rabat the settlement of outstanding claims on behalf of American nationals and protégés in the French Zone of Morocco.

Very truly yours,

For the Secretary of State:
HUGH R. WILSON

481.11/1264 : Telegram

The Diplomatic Agent and Consul General at Tangier (Blake) to the Secretary of State

TANGIER, November 15, 1937—4 p. m.
[Received November 15—1:34 p. m.]

12. Department's instruction No. 970 of October 26, 1937. Memoranda on the claims referred to will be found attached to my number 959 of July 19, 1934.²⁸ The pecuniary equivalent of compensation involved in each of the claims has not been determined, it might be

²⁸ Not printed.

²⁹ Dated August 26, 1937, p. 862.

³⁰ *Supra.*

around 2 or 3 thousand dollars each except in regard to claim number 5, *Jacoubi* versus *Meknes Municipality*, which might run much higher. Subsequent to the date of the despatch mentioned there may have arisen some claim of minor importance to be settled at the same time.

For settlement of these claims a brief sojourn at Rabat would be necessary and I should require the technical assistance of Dempster and Elkhazen³¹ there, presume the Department will accord necessary travel and subsistence allowances in this connection.

I suggest that as delegates respectively of the French and American Governments, the Resident General, or his appointed representative, and myself should have full powers to effect binding settlement terms, including faculty to engage service of neutral local arbitrator in event of failure of direct agreement in any particular cases.

BLAKE

481.11/127½ : Telegram

The Secretary of State to the Diplomatic Agent and Consul General at Tangier (Blake)

WASHINGTON, November 19, 1937—5 p. m.

Your 12, November 15, 4 p. m. The Department is of the opinion that the initiative looking to the blanket settlement of American claims in the French Zone should properly emanate at this juncture from the French authorities. Accordingly no further action in the matter is contemplated pending the receipt of a reply from the French Government to the Department's last communication on the subject, a copy of which was transmitted to you as an enclosure to its instruction no. 970 of October 26, 1937.

In the event, as would appear probable, the French Government accedes to the expressed desire of this government for a settlement of these claims it is believed that you might, upon being so informed, communicate with the French Protectorate authorities at Rabat in order to arrange the details which may appear appropriate to you. The Department considers that a simple procedure involving agreement on the part of the French authorities at Rabat to make assessment and payment of the damages in each case and the restoration of any property concerned would meet adequately the forms of the settlement.

Authority for your travel and subsistence expenses and those of Dempster and Elkhazen will be given consideration at the appropriate time.

HULL

³¹ Translator and interpreter, respectively.

781.003/55 : Telegram

The Chargé in the United Kingdom (Johnson) to the Secretary of State

LONDON, December 7, 1937—7 p. m.
[Received December 7—5:32 p. m.]

759. Department's instruction No. 1997, October 26, 1937,³³ and my 608 September 25, 1 p. m. Following confidential memorandum dated December received from the Foreign Office.

"1. During the recent capitulation negotiations between His Majesty's Government and the French Government, the latter argued very strongly that the United Kingdom Commercial Convention of 1856 with Morocco,³⁴ with its provisions under article XIV for revision by common consent, was of a capitulatory nature, and should be canceled on the termination of British capitulations in the French zone of Morocco. His Majesty's Government refused to admit this view of the 1856 Convention but they did agree, in a separate note annexed to the Capitulations Convention of the 29 July last, to enter into negotiations with the French Government to replace the 1856 Convention by a new commercial treaty on a reciprocal basis.

2. His Majesty's Government are therefore committed to enter into commercial negotiations with regard to the abrogation of the 10 per cent limit on customs duties, the modification of the *reglement douanier* provisions, the modification of article XIV of the Commercial Convention of 1856 and the bringing up to date of the provisions of the latter convention in general. The French Government are committed to consider the establishment of conventional duties on imports into Morocco of goods in which the United Kingdom trade is interested, and also to consider safeguards required by His Majesty's Government in respect of internal duties.

3. His Majesty's Government have been given to understand that the French Government are going to revive their former proposal for the imposition of quotas in Morocco and that they propose to introduce such a system if they can, either with or without consultation with His Majesty's Government. In this connection the French Government have in the past referred to two possible interpretations of their obligation under the Act of Algeciras to maintain 'economic liberty without inequality', the one viewing the obligation as involving merely non-discrimination in treatment as between importing countries, and the other regarding it as the absence of any restriction on liberty of import for the individual country. The French Government appear to adopt the first interpretation, that is, that quotas related to the same basic years for all countries are not contrary to the obligations under the Act of Algeciras. As the United States Government will no doubt appreciate, it is clearly better from the point of view of His Majesty's Government that any decision which the French Government may adopt should be reached after consultation with His Majesty's Government.

³³ Not printed.

³⁴ Signed at Tangier, December 9, 1856; *British and Foreign State Papers*, vol. XLVI, p. 188.

4. According to the information of His Majesty's Government the French Government are aiming at tariff autonomy in the French zone and are prepared to consolidate duties on goods of interest to the United Kingdom and to consult the wishes of His Majesty's Government as to quotas. The French proposals on these matters are now being awaited. The United States Government are no doubt aware that the interests of the United Kingdom and those of the United States of America in Morocco relate in the main to different lines of trade. Taking the 1936 figures of the items which accounted for trade worth over half a million francs, the only items in which both countries are interested are lubricating oil, tires and motor vehicles. The major American interest lies in motor vehicles, whereas United Kingdom exports of these goods represent only quite a small proportion of the United Kingdom's total exports to Morocco. As stated in the *aide-mémoire* of the 18th September, 1935,³⁵ which was communicated to the United States Government by His Majesty's Embassy at Washington, His Majesty's Government were then most anxious to assist the United Kingdom cotton trade with Morocco, which has been so seriously damaged by Japanese competition, by means of a system of quotas. His Majesty's Government are still most anxious to reach a satisfactory solution on this point. If the United States Government are likely to change the attitude in this respect set out in their *aide-mémoire* of the 27th April, 1936,³⁶ it would be useful for His Majesty's Government to have this information.

5. Further, if the United States Government have any suggestions as to what might usefully be done by way of collaboration in setting up a new commercial regime in Morocco, His Majesty's Government would be grateful to have an opportunity of considering them."

In a short discussion at the Foreign Office this afternoon on this memorandum, it was stated that they would be glad to answer any question which the Department might like to ask and expressed their appreciation for the information forwarded under cover of the Department's instruction above cited which I conveyed to them informally. I was informed that French representatives will arrive in London on December 13 to negotiate a new commercial treaty to replace the 1856 Convention. The British are not prepared to abandon the principle of equality of treatment although it was stated they are sure they will have to make specific concessions in order to preserve a certain measure of their trade with Morocco. These concessions will be made as a matter of "grace". Specific mention was made of textiles and of the French desire to put them on a quota basis. The British apparently anticipate that the French will bring a draft convention with them and they have not prepared concrete draft proposals to present to the French.

JOHNSON

³⁵ *Foreign Relations*, 1935, vol. I, p. 994.

³⁶ *Ibid.*, 1936, vol. III, p. 417.

781.003/55 : Telegram

The Secretary of State to the Chargé in the United Kingdom
(Johnson)

WASHINGTON, December 11, 1937—3 p. m.

485. Your No. 759 of December 7, 7 p. m. You should present the following memorandum marked confidential to the Foreign Office:

"The United States Government welcomes the opportunity given it by the memorandum of the Foreign Office to outline its views relative to the means by which the United States and Great Britain, signatories of the General Act of Algeciras, may collaborate in preserving in Morocco the principle of equality of treatment which the American Government has always regarded as the cornerstone of that Act.

The Government of the United States, in fact, attaches such importance to the maintenance of the principle of economic liberty without any inequality in Morocco that it contemplates making particular provision for the continued application of that principle in a proposed convention with France having to do with the renunciation of American extraterritorial rights in Morocco. For the better assurance thereof it is proposed to include in that convention a statement of general principles in definition of equality of treatment conforming in its general lines, with such modification as subsequent economic developments have appeared to make necessary, with a similar definition which was accepted by His Majesty's Government, along with the French and Spanish Governments, in 1924⁸⁸ as one of the conditions of the adherence of the American Government to the Tangier Statute.

While the United States Government has not modified its view that the imposition of quotas and the introduction of similar restrictive systems are a hindrance to that normal and free development of international trade most conducive to the upbuilding of world economy, it is willing to take into account those circumstances where the establishment of quotas may be found of a compelling and exceptional nature. In the definition under reference provision has been made for the possible establishment of quotas in Morocco by the following tentative draft paragraph:

'That no import or export prohibition, restriction, or license system, including import or customs quotas and other forms of quantitative regulations affecting the importation, sale or use of imported articles, shall be applied to articles originating in or destined for the United States of America which is other or more burdensome than that applied to the like articles originating in or destined for any other country; and that if a share of the total permitted importations of any article is allotted to any other country, a share equivalent to the proportion of the total permitted importations of such article which was supplied by the United States of America during a previous representative period shall be allotted to the United States of America.'

The French Government has not recently approached the United States Government with any suggestions for the introduction of quotas in Morocco. At the same time, this Government would naturally be interested in and concerned with any arrangements which might be reached relating to quotas in the pending negotiations be-

⁸⁸ See note of July 11, 1924, to the British Chargé, and replies from the British, French, and Spanish Governments, *Foreign Relations*, 1924, vol. II, pp. 459-470.

tween the British and French Governments which might materially affect the trade interests of the United States in Morocco.

His Majesty's Government will doubtless appreciate that within the brief time afforded and in the absence of any concrete proposals from the French Government it is difficult for the Government of the United States to formulate any more definite general policy than that which has been briefly indicated above.

However the United States Government, prompted by the spirit of frankness manifested in the courteous memorandum of His Majesty's Government, is moved to present certain further considerations which it is believed might appropriately be taken into account in the light of any quota proposals which may be made by the French Government in connection with the respective negotiations of the latter with the United States and Great Britain concerning Morocco.

It will be appreciated that the position of the United States Government in respect of quotas in general and with reference to Morocco in particular is different from that of His Majesty's Government. The United States Government, however, has no wish to appear obstructive in the matter. If, notwithstanding the position the United States has assumed in respect of quotas not alone in Morocco but elsewhere in the world, the adoption of a quota system on a limited list of articles is looked upon with favor by other interested governments, the United States would not unnaturally expect to be consulted in connection with the selection of those articles to which quotas are to be applied and with the determination of the representative period to govern commodities in which American trade enjoys an appreciable share.

Moreover, it would appear desirable to consider whether the establishment of different representative periods for the quotas of different commodities entering into Moroccan trade might not better serve the interests of the countries most concerned than the establishment of a single representative period for all commodities in respect of which quotas may be contemplated. In the event different representative periods should be established for different commodities, the principal interest of the United States, in the determination of the period to govern textile or other quotas in which the United States enjoys only a subsidiary share of the trade, would be that of assuring that the United States was not deprived of the share of trade which it has enjoyed in the past or which it might reasonably expect to share in the future. In any case the United States Government would hope to count upon that fruitful collaboration which His Majesty's Government has so courteously proposed and which the United States as warmly welcomes."

In presenting the foregoing to the Foreign Office you may inform the interested officials verbally that the general principle of economic equality which it is proposed to embody in the capitulations convention of this Government with the French Government is expected to be supplemented by a commercial convention, details concerning both of which are being forwarded to you in a few days.

Please keep the Department informed by telegraph of the views of the Foreign Office and of the progress of the negotiations between

the British and French Governments, including in particular the proposals which may be made relative to the establishment of quotas.

HULL

781.003/45

*The Secretary of State to the Chargé in the United Kingdom
(Johnson)*

No. 2065

WASHINGTON, December 14, 1937.

SIR: Reference is made to your telegram No. 608 of September 25, 1937, 1 p. m., and, in particular, to the informal discussions which the Embassy has had with the Foreign Office concerning the safeguarding of economic and other rights and interests in Morocco incident to the abolition of the capitulatory regime in the French Zone of the Shereefian Empire.

The Department has now in preparation the draft of a convention with the French Government for the renunciation of American extraterritorial rights in that zone. It is the Department's intention to submit the draft shortly to the American Diplomatic Agent and Consul General at Tangier for his comments, and it is not contemplated that formal negotiations will be instituted with the French Government pending the receipt of such observations as Mr. Blake may have to make.

With certain particular exceptions which will be noted, the proposed convention for the renunciation of American capitulatory rights is expected to conform in general with the British Convention of July 29, 1937, having the same purpose in respect of British extraterritorial rights in Morocco. An endeavor will be made to obviate the necessity of the various annexes attached to the British instrument by the incorporation in the convention proper of the essential and relevant provisions of those annexes so far as they may be deemed pertinent to the protection of American interests. Article 13 of the British convention is not considered to be a suitable model for use in a treaty of the United States and, accordingly, the Department proposes to suggest in substitution two articles relating to estate cases which are standard in the consular conventions of the United States. Moreover, Article 7 of the British convention will be expanded by the inclusion of an assurance of the maintenance of a regime of economic liberty without any inequality. As forming a part of this assurance there will be included also a definition of economic equality conforming in its general lines, with such modification as subsequent economic developments have appeared to make necessary, with a similar definition which was accepted by the British, French and Spanish Governments in 1924 as

one of the conditions laid down by this Government as prerequisite to its adherence to the Tangier Statute.

The draft of a treaty of friendship, commerce and navigation, which the Department proposes to negotiate concurrently with the capitulations convention, conforms substantially, except for the omission of the articles concerning consular officers, with treaties of friendship, commerce and consular rights now in force between the United States and numerous other countries, of which that with Norway³⁹ may be cited as an example. Copies of the last named are enclosed. The principal modifications which have been introduced in the draft commercial convention with France concerning Morocco, have to do with the addition of references to quotas, monopolies, and exchange control, similar to those now forming part of this Government's standard trade agreement provisions.

You are authorized to acquaint the interested officials of the Foreign Office informally with such of the foregoing as may appear to you to be appropriate.

Very truly yours,

For the Secretary of State:
HUGH R. WILSON

781.003/60 : Telegram

The Chargé in the United Kingdom (Johnson) to the Secretary of State

LONDON, December 16, 1937—7 p. m.
[Received December 16—3:40 p. m.]

782. Your 485, December 11, 3 p. m.

1. The Foreign Office is grateful for the expression of the Department's views and is particularly interested in the definition of quotas.

2. The French representatives arrived in London on December 13. The negotiations have not yet proceeded to the point where there has been any mention of quotas.

3. Reference inquiries in Murray's letter of September 27:⁴⁰

(a) As I understand the view of the Foreign Office, they are willing to give Morocco most-favored-nation treatment in Great Britain on a basis of reciprocity, meaning that they will require most-favored-nation treatment in Morocco on the same basis as France or any other most-favored-nation;

(b) The assumption in Murray's letter that there was no thought in the minds of the British that in signing the Convention of July 29, 1937, they were giving up in any way their capitulatory rights in the Spanish zone is correct.

³⁹ Signed at Washington, June 5, 1928, *Foreign Relations*, 1928, vol. III, p. 646.

⁴⁰ Not printed.

4. The Foreign Office desires permission to inform the French negotiators that they have an expression of the views of the United States Government. It would be appreciated if I might be advised by telegraph as to the extent if any to which the Foreign Office may be authorized to use our memorandum in their conversations with the French.

JOHNSON

781.003/60 : Telegram

The Secretary of State to the Chargé in the United Kingdom (Johnson)

WASHINGTON, December 18, 1937—1 p. m.

496. Your 782, December 16, 7 p. m. You will appreciate that the Department does not wish to be placed in a position where it will be drawn actively into the Anglo-French negotiations for a Moroccan commercial treaty. The eventual American-French negotiations for treaties covering capitulations and commercial rights will cover numerous subjects and it would appear undesirable for us to become involved at this time in subsidiary discussions with the French regarding quotas. However, the Department realizes that there may be advantage in cooperating with the British in the expectation that they will insist upon a definition of economic equality in their treaty in keeping with our own views on the subject.

The Department definitely would not wish to have the Foreign Office show the memorandum to the French Delegation. Before considering whether it would be desirable for the Foreign Office to indicate to the French Delegation our general attitude as expressed therein the Department desires to have you obtain the views of the Foreign Office as to why such action is considered advantageous. After you have obtained those views the Department would like to have your own comments as to the desirability of the suggested action.

In your recent discussions did you receive any impression as to whether the Foreign Office was in general agreement with the principles set forth in the Department's memorandum?

HULL

781.003/61 : Telegram

The Chargé in the United Kingdom (Johnson) to the Secretary of State

LONDON, December 20, 1937—7 p. m.
[Received December 20—3:20 p. m.]

788. Your 496, December 18, 1 p. m., last paragraph. The Foreign Office gave no indication as to whether it was in general agreement

with the principles set forth in the Department's memorandum but merely expressed its great interest in the Department's views. The failure to give any immediate reaction was probably due to the fact that the official with whom the matter was discussed, who is a legal adviser, had not had an opportunity to consult with the Board of Trade officials who are carrying on the active negotiations. I shall endeavor to have a further interview tomorrow and will telegraph.

JOHNSON

781.003/62 : Telegram

The Chargé in the United Kingdom (Johnson) to the Secretary of State

LONDON, December 21, 1937—7 p. m.
[Received December 21—3:20 p. m.]

798. My 788, December 20, 7 p. m. Anglo-French negotiations suspended last night until the end of January when they will be continued in Paris. Embassy will have further informal discussions with Foreign Office based on Department's instruction 2065, December 14, and Murray's letter December 13,⁴ both received today, as soon as possible.

JOHNSON

781.003/65 : Telegram

The Chargé in the United Kingdom (Johnson) to the Secretary of State

LONDON, December 29, 1937—8 p. m.
[Received December 29—3:25 p. m.]

810. My 798, December 21, 7 p. m.; and your 496, December 18, 1 p. m.

1. The Foreign Office states in further conversation that they approve in general the expression of principles set forth in Department's confidential memorandum. In their opinion it would be helpful in negotiating with the French to be able to inform the latter that they have an expression of the United States Government's views and of the general purport of those views. The British are interested in protecting different commodities from those we desire to protect in Morocco but as I understand it we are both working for the establishment of the same principles and as the British negotiations are being conducted in advance of our own, it might be to our eventual benefit to strengthen their hand as much as possible. The British clearly feel that the permission they have requested would be a strategic advantage.

⁴ Latter not printed.

2. I was informed that the Foreign Office wishes to furnish us with full information at once as to their negotiations with the French. This they cannot do without the consent of the French, which was requested of the French delegates when they were here. According to the Foreign Office, the reaction of the principal French delegate was not unfavorable but the British were informed definitely that the French delegates had no authority to give such permission and would have to consult with St. Quentin ⁴² in the French Foreign Office. Whether a reply will be received to this request before the negotiators meet again in Paris at the end of next month is, of course, uncertain.

3. Murray's letter of December 13 ⁴³ and enclosures. The Foreign Office states that they envisage eventually the conclusion of an agreement with Spain for the abolition of capitulatory rights in the Spanish zone in the form of a convention parallel to the one negotiated with France. The Foreign Office concurs in general with the views expressed by Murray in his letter of December 13 to Mr. Maxwell Blake to the effect that the convention with France in no way affected the Spanish or Tangier zones of Morocco and that, with respect to the Spanish zone, an entirely separate agreement with the Spanish Government would be necessary.

4. The information contained in the Department's instruction 2065, December 14, was communicated orally to the Foreign Office, for which they expressed appreciation.

JOHNSON

⁴² Doynel de Saint-Quentin, Assistant Secretary General in the French Foreign Office, subsequently appointed Ambassador to the United States.

⁴³ Not printed.

PALESTINE

INTEREST OF THE UNITED STATES IN BRITISH PROPOSALS FOR THE PARTITION OF PALESTINE BETWEEN ARABS AND JEWS¹

867N.00/450b : Telegram

The Secretary of State to the Ambassador in Turkey (MacMurray)

WASHINGTON, April 27, 1937—6 p. m.

26. Deep concern is felt in important Jewish circles in this country over recommendations believed to be contained in the Report of the Royal Commission of Inquiry² into the recent disorders in Palestine. It is feared that the Report will recommend a complete cessation of Jewish immigration into Palestine or some sort of cantonization of the country. The view has been expressed that a prosperous National Home for the Jews in Palestine will serve as a stabilizing factor in the region of the Eastern Mediterranean and that it would therefore be in the interest of Turkey to give moral support to the development of the National Home.

I would appreciate your considered opinion as to whether views in the above sense would be favorably received by Atatürk³ if you were instructed to seek an audience for that purpose.

HULL

867N.00/450a : Telegram

*The Secretary of State to the Ambassador in the United Kingdom
(Bingham)*

WASHINGTON, April 27, 1937—7 p. m.

155. Personal for the Ambassador. Important Jewish groups in this country are perturbed over rumors that in the forthcoming report to be made by the Royal Commission of Inquiry into the Palestine situation it will be recommended either that Jewish immigration into Palestine entirely cease or else that some system of Arab and Jewish cantons be established.

¹ For previous correspondence, see *Foreign Relations*, 1936, vol. III, pp. 434 ff.

² For the appointment of this Commission and its objectives, see despatch No. 2404, July 31, 1936, from the Ambassador in the United Kingdom, *ibid.*, p. 445.

³ Kemal Atatürk, President of Turkey.

I wish you to see the Minister for Foreign Affairs and to inform him orally and informally in the sense of the above, acquainting him at the same time with the hope of the above Jewish groups that no decisions with regard to the Palestine problem will be taken that may result in working greater hardship upon the Jews who are already suffering under repressive measures in various countries of Europe and are finding it necessary as a result of such measures to seek refuge in other countries.

You might mention that in the opinion of large sections of the Jews of this country the Jews of the world as a whole, by reason of their experience at the hands of certain European governments, have come to be the logical supporters of democratic institutions and naturally look to the democratic governments of the world to accord them fair and equitable treatment.

You may state to the Foreign Minister in conclusion that your Government presumes he would wish to be acquainted with the above views. You will at the same time carefully avoid leaving the impression that your Government is in any way endeavoring to inject itself into administrative matters relating to the Mandate or questions the authority or responsibility of Great Britain for the administration of Palestine.

HULL

867N.00/451 : Telegram

The Ambassador in Turkey (MacMurray) to the Secretary of State

ISTANBUL, April 30, 1937—noon.

[Received 12:25 p. m.]

16. I regret that because of Turkey's special unwillingness to take a position at odds with the Arab peoples (particularly in view of the Sanjak question ⁴), her present policy of close cooperation with Great Britain, her hard-boiled post-war policy with reference to minorities and her sensitiveness towards the idea of intervention in any form on behalf of minority groups, I could not in honesty encourage the hope that the Turkish authorities would receive favorably the views set forth in the first paragraph of your telegram No. 26, April 27, 6 p. m. I apprehend on the contrary that their presentation would be more likely to meet with a humiliating rebuff and impairment of such confidence and good will as our country enjoys in Turkey.

MACMURRAY

⁴The status of the Sanjak of Alexandretta, nominally a port of Syria, was being considered by the Council of the League of Nations as a result of differences between France and Turkey. See League of Nations, *Official Journal*, January, February, May-June, 1937.

867N.01/749½

*The Chief of the Division of Near Eastern Affairs (Murray) to
the Assistant Secretary of State (Moore)*

WASHINGTON, May 10, 1937.

DEAR JUDGE MOORE: In connection with our discussions on the Palestine situation and with particular reference to the matter of Jewish immigration into Palestine, I feel sure you will be interested in noting the attached correspondence⁵ of 1923 between Mr. Hughes, then Secretary of State, and Mr. Slemph, then Secretary to President Coolidge.

In line with what I said this morning, I would point out and emphasize the following statement contained in Mr. Hughes' letter:

"As this Government cannot assume any responsibility for the situation which might be created in case Palestine were open to unlimited immigration, and since we ourselves take the most stringent measures to control immigration, I do not feel that we could properly approach the British Government with a view to any change in their present immigration regulations in Palestine."

WALLACE MURRAY

867N.00/458 : Telegram

*The Secretary of State to the Ambassador in the United Kingdom
(Bingham)*

WASHINGTON, May 12, 1937—5 p. m.

171. Paul Alling, Assistant Chief, Division of Near Eastern Affairs, returning from Geneva, has been directed to stop off at London to consult with Embassy and appropriate British officials concerning developments with respect to Palestine.

Please afford him every assistance to obtain fullest information that British officials may be willing to disclose informally and confidentially. It is anticipated that the Department will be subjected to severe pressure in connection with the report of the Royal Commission of Inquiry.

Alling has been instructed to notify Embassy of date of arrival. Please do utmost to procure moderately priced hotel accommodations for him and his wife.

HULL

⁵ Correspondence not attached to file copy of letter.

867N.00/463 : Telegram

The Ambassador in the United Kingdom (Bingham) to the Secretary of State

LONDON, May 29, 1937—2 p. m.

[Received May 29—9:35 a. m.]

320. Department's 171, May 12, 5 p. m. From Alling. Acting Head of Eastern Department of Foreign Office told me today that Inquiry Commission's report was now being put in final form but would probably not be completed before the middle of June. Thereafter the Government will presumably have to decide whether to accept the report or to reject it in whole or in part. The Government will also have to determine whether to announce its policy with respect to Palestine at the same time the Commission's report is published or to decide upon new policy after there has been time to estimate reaction to the report. It was understood that the Parliamentary opposition was pressing for the latter alternative but that for obvious reasons the former course would probably be followed. In any case it is expected that the report will not be made public before the first part of July. Except in the unlikely event that the report is rejected by the Government, it must of course be published prior to meeting of Mandates Commission about July 26 since there is no disposition to ask for another postponement of that meeting. [Alling.]

BINGHAM

867N.01/748a

Memorandum by the Assistant Chief of the Division of Near Eastern Affairs (Alling) of a Conversation With the Head of the Eastern Department of the British Foreign Office (Rendel)

[LONDON,] June 1, 1937.

After discussing a recent trip which Mr. Rendel had made across Arabia, I stated that I had had instructions from the State Department to stop in while passing through London to discuss the Palestine situation. I explained that from a conversation I had had on Saturday, May 29th, with Mr. Baggallay (then Acting Head of the Eastern Department) I had understood that the Report of the Royal Commission of Inquiry would not be in final form before the middle of June; that it would then be considered by the Government; and that it would probably not be published before the early part of July. I added that it was my understanding that after considering the report the Government would determine whether to announce its policy simultaneously with the publication of the report or to publish the report first and then to determine on policy after an opportunity had been afforded to study public reaction.

Mr. Rendel replied that the above résumé accurately described the situation except that the report would probably not be in final form before June 20th. Furthermore, he considered it altogether probable that, for obvious reasons, the Government would be likely to announce its policy at the same time the report was published rather than to wait until some later date.

I said that as he knew we had a large and influential Jewish population which was greatly interested, financially and sentimentally, in the Palestine problem and that, as he could surmise, this population was taking a particular interest in the present situation. Mr. Rendel stated that he was naturally aware of this interest, that the Jewish population in the United Kingdom was similarly interested. He hoped that the State Department likewise appreciated the position of the British Government which had to consider not only the interests of the Jews but likewise those of the Arabs. Unfortunately Palestine was not an empty country to which unlimited numbers of Jews could be admitted; it was already populated with a considerable number of Arabs who had lived in Palestine for some thirteen hundred years. To turn the country entirely over to the Jews would be much like asking the present inhabitants of Long Island to withdraw from their homes in order that another population might move in. The Arabs were not, as some people appeared to believe, a savage race like the plains Indians of North America; they were a people with a certain culture and civilization who could not be treated as savages.

I said that I was sure that the State Department was fully alive to this aspect of the situation.

Mr. Rendel continued that unfortunately previous British Governments had made promises to the Jews and promises to the Arabs. It was quite apparent that these promises, which were conflicting, could not be carried out with respect to both peoples. It was therefore the logical thing and the fair thing to attempt to find a reasonable compromise and a fair compromise between these conflicting promises and once this settlement had been arrived at to carry it through without fear or favor. He realized that any such solution would raise cries of protest from both Arabs and Jews but that only by such a radical solution could the problem be finally settled.

I said that of course the State Department wished to make it perfectly clear that it was not endeavoring in any way even to attempt to interfere in the administration of Palestine since that was entirely a British problem. All that the State Department wished to do was informally to advise the Foreign Office of the interest of a large group in America in the Palestine problem. I said that I assumed that the Foreign Office would wish to be informed of that interest and that it would presumably be taken into consideration at the same time

that other factors in the situation were being examined. Mr. Rendel replied that the Foreign Office was naturally glad to be told of the interest of American Jews in the Palestine problem. The Foreign Office would of course take into consideration the feeling of Jews in New York just as it would consider the feelings of the Jews in Warsaw and the Arabs and Moslems in countries which were neighbors of Palestine in the Near East.

I asked Mr. Rendel whether he considered it possible that the eventual solution of the Palestine problem would be of such a nature as to require that changes be made in the Mandate—changes which would necessitate the consent of the Council of the League of Nations. He replied that it was altogether possible that the solution finally decided upon would require changes in the Mandate and that naturally any such changes would require the consent of the Council of the League. I then referred to Article 7 of our Palestine Mandate Convention with Great Britain⁷ providing that no changes in the Mandate would affect the rights of the United States, as defined in the Convention, unless such changes had been assented to by the United States. Mr. Rendel replied that the Foreign Office was of course aware of this provision, but he could not conceive that any changes that might be made in the Mandate would in any way affect the rights of the United States. Those rights were to a large extent of an economic character, providing for equality of commercial opportunity, etc. He did not feel that it would be possible to hold legally that the British Government was under any obligation under the terms of the Mandate Convention to obtain the consent of the United States to changes in the Mandate unless those changes affected American rights as defined in that Convention. He did not see how any changes that might be proposed in the Mandate, as a result of the Report of the Commission of Inquiry would be likely in any way to affect those rights. Consequently he could see no basis on which the United States could claim that it should be consulted respecting such changes as it might prove necessary to make in the Mandate.

Finally Mr. Rendel again thanked me for the information I had given him regarding the views of certain Jewish groups in the United States concerning the Palestine problem.

867N.00/473a : Telegram

The Acting Secretary of State to the Ambassador in the United Kingdom (Bingham)

WASHINGTON, June 23, 1937—5 p. m.

256. Upon the forthcoming publication of the report of the Royal Commission of Inquiry the Department foresees the necessity of

⁷ Signed at London, December 3, 1924, *Foreign Relations*, 1924, vol. II, p. 212.

considering a number of questions that may arise as a result of that report and the policy of the British Government with respect thereto.

In the circumstances the Department wishes to be kept advised fully and promptly by telegraph of all important developments including such information as may be discreetly obtainable revealing the views and intentions of competent government, parliamentary, and other circles in Great Britain on this subject.

It would be helpful in this connection to have your views as to the attitude likely to be taken by Parliament and by important Jewish leaders in Great Britain in the event some radical solution of the Palestine problem, such as partition, is recommended by the Commission and supported by the Government, and as to the possible attitude of the Government in case of strong opposition to the proposed solution.

WELLES

867N.01/7604

*Memorandum by the Chief of the Division of Near Eastern Affairs
(Murray)*

[WASHINGTON,] June 25, 1937.

At Judge Moore's suggestion I spoke to the British Ambassador this afternoon with further reference to the Ambassador's conversation with Judge Moore on June 21.³

I recalled Judge Moore's remarks to the Ambassador on the above-mentioned occasion to the effect that, while we were of course at present unaware of the contents of the report to be submitted shortly by the Royal Commission of Inquiry into the Palestine situation, Judge Moore wished to state quite personally, informally and confidentially to the Ambassador that we might find it necessary after the report was published and studied to make representations to the British Government; that in view of the many matters of large importance of mutual concern to our Government and to the British Government we would of course be reluctant to get into any serious dispute with the British Government over Palestine; that, finally and generally speaking, our chief interest in all the mandated territories was the safeguarding of equality of economic opportunity for American nationals in those parts.

I told the Ambassador that Judge Moore desired me to make it entirely clear that his remarks regarding the Palestine situation were not to be taken as indicating in any way that, if and when it became necessary for this Government to make representations after

³ Memorandum of conversation not found in Department files.

the publication of the Royal Commission's report, such representations might be regarded by the British Government as merely *pro forma*, for such was not the case. I emphasized on my own part to the Ambassador that since we were not yet in possession of the findings of the Royal Commission and are not aware of the position that will be taken by the British Government, it is obviously impossible at this time to state what position this Government may take with respect thereto.

The Ambassador said he appreciated the situation fully but was glad to have this further confirmation from me. He then told me that in communicating his conversation with Judge Moore to his Government in strict confidence he had merely stated (1) that a situation might arise after the publication of the Royal Commission's report requiring representations by this Government regarding Palestine and (2) that this Government would regret to see any dispute arise between itself and the British Government at this time in view of the many large mutual interests of the two Governments. The Ambassador said he had made no reference to the matter of equality of economic opportunity. I suggested, and he agreed, that it would be well not to touch upon that matter at present with his Government in view of the fact that no final formulation of a policy in this respect had been reached by the Department and could not of course be reached until it had all the facts of the case in hand.

The Ambassador thanked me again for affording him this further clarification of the situation, which he said was very helpful.

WALLACE MURRAY

867N.00/478 : Telegram

The Ambassador in the United Kingdom (Bingham) to the Secretary of State

LONDON, July 1, 1937—2 p. m.
[Received July 1—10:10 a. m.]

426. Department's 256, June 23, 5 p. m. Colonial Secretary was asked in the House of Commons yesterday "whether it is proposed to consult the Government of the United States of America with regard to the future policy to be pursued in Palestine, in view of the treaty of 3rd December 1924, between Great Britain and the United States by which the latter became a party to the agreement to establish Palestine as the Jewish Homeland, and which included a provision in the first article that any modification in the mandate must be assented to by the United States?"

The Colonial Secretary replied "In considering the future policy to be pursued in Palestine, His Majesty's Government will of course

keep prominently in mind any rights of the Government of the United States of America under the instrument to which the honorable member refers”.

To the further question “Have any representations been received from the Government of the United States of America up to date?” the Colonial Secretary replied “No sir”.

Asked when it is proposed to publish the report of the Royal Commission and to make a declaration of the Government’s policy in connection therewith, the Colonial Secretary replied “It is proposed to release the report in time for its publication with a Command Paper containing a short statement of the policy of His Majesty’s Government on the morning of 8th July and copies of the report and a summary will be available for honorable members in the vote office some time on Wednesday evening”.

BINGHAM

867N.00/474 : Telegram

*The Secretary of State to the Ambassador in the United Kingdom
(Bingham)*

WASHINGTON, July 3, 1937—3 p. m.

277. Your 403, June 24, 5 p. m.⁹ It is the Department’s understanding from Alling’s conversation with the Head of the Eastern Department of the Foreign Office (see penultimate paragraph of Alling’s memorandum of June 1) that American rights under the American British Convention of December 3, 1924, were considered to be “largely of an economic character” and that consequently the British Government would probably not find it necessary to consult this Government with respect to changes that might be proposed in Palestine as a result of the Report of the Royal Commission.

I should appreciate receiving at the earliest possible moment any further detailed elucidation of the official British position in this matter that you can obtain.

HULL

867N.01/767a : Telegram

*The Secretary of State to the Ambassador in the United Kingdom
(Bingham)*

WASHINGTON, July 7, 1937—10 a. m.

281. Please seek an interview with Mr. Eden¹⁰ at earliest possible moment and, after reading the following memorandum, leave a copy with him.

⁹ Not printed.

¹⁰ British Secretary of State for Foreign Affairs.

"As His Majesty's Government is aware, the American Government and large sections of the American public have for many years taken a close interest in the development of the Jewish National Home in Palestine. As early as August 1918, President Wilson expressed publicly¹¹ his satisfaction at the progress which the Zionist movement had made in the United States and in the allied countries as a result of the declaration made on November 2, 1917, by Lord Balfour,¹² on behalf of the British Government, in favor of the establishment in Palestine of a National Home for the Jewish people. Each succeeding President has on one or more occasions expressed his own interest in the idea of a National Home and his pleasure at the progress made in its establishment. It will be remembered likewise that the American Congress adopted, and President Harding signed on September 21, 1922, a joint resolution¹³ favoring the establishment of the National Home. Numerous private organizations in the United States have from time to time expressed their sympathy for such a Homeland. It is perhaps pertinent to mention that the British Government itself has tended to encourage the interest which American nationals have taken in the Jewish National Home and in the general question of Palestine. As one example of this encouragement, reference is made to Lord Balfour's letter of January 13, 1922,¹⁴ to the Secretary of State, a pertinent section of which reads as follows:

"The task which the British Government have undertaken in Palestine is one of extreme difficulty and delicacy. At Paris I always warmly advocated that it should be undertaken, not by Britain, but by the United States of America; and though subsequent events have shown me that such a policy would never have commended itself to the American people I still think that, so far as the Middle East is concerned, it would have been the best. However this may be, the duty has devolved upon Great Britain; and I hope the American Government will do what they can to lighten the load."

When to this general interest there is added the fact that several thousand American nationals have established themselves in Palestine and have made large investments there in agricultural, industrial and philanthropic enterprises, it is not surprising that our people should be deeply concerned with the future of the country.

It seems altogether fitting and proper again to bring this interest and concern to the attention of His Majesty's Government at this time when it is considering what steps should be taken, consistent with its existing obligations, to establish and maintain peace in the Land which is Holy to three great faiths."

HULL

¹¹ In a letter to Rabbi Stephen S. Wise, August 31, 1918; for text of letter, see R. S. Baker and W. E. Dodd (eds.), *The Public Papers of Woodrow Wilson, War and Peace*, vol. I, p. 243.

¹² See *Foreign Relations*, 1917, supp. 2, vol. I, p. 317, footnote 1.

¹³ *Congressional Record*, vol. 62, pt. 10, p. 9799, or 42 Stat. 1012.

¹⁴ *Foreign Relations*, 1922, vol. II, p. 268.

867N.01/768 : Telegram

The Ambassador in the United Kingdom (Bingham) to the Secretary of State

LONDON, July 7, 1937—9 p. m.

[Received July 7—3:45 p. m.]

448. Request contained in the Department's 277, July 3, 3 p. m., was conveyed to the Foreign Office whose reply dated today just received reads:

"With reference to Your Excellency's memorandum No. 2662 of the 6th July,¹⁵ I have the honor to inform you that, in the view of His Majesty's Government in the United Kingdom, the rights of the United States Government and their nationals in regard to Palestine depend on the terms of the 'Convention between the United Kingdom and the United States of America respecting the rights of the Governments of the two countries and their respective nationals in Palestine', which was signed in London on the 3rd December, 1924, and of which the ratifications were exchanged in London on the 3rd December, 1925. The rights of the United States Government and their nationals as regards Palestine are those recited in articles 2 to 6 of the Convention, and in article 7 of the Convention. These rights must remain intact whatever changes may be made in the Mandate for Palestine, unless the United States assent to such a change.

2. In the view of His Majesty's Government, however, these rights are limited to those specified in the articles of the Convention referred to above, and the consent of the United States Government will, therefore, not be required to any change in the Palestine Mandate unless these specific rights in question are thereby affected. Indeed, the United States having assented, by article 1 of the Convention, to the Mandate as a whole, it follows that the United States Government have accepted the provision in article 27 of the Mandate which lays down that the Mandate may be altered with the consent of the Council of the League of Nations. His Majesty's Government in the United Kingdom propose to seek the consent of the Council of the League at its September session for any changes in the Mandate of Palestine which may be required as the result of the Royal Commission's report; but, should any such changes affect any of the United States rights laid down in articles 2 to 6 of the Convention referred to above, His Majesty's Government will immediately inform the United States and seek their consent thereto.

¹⁵ This memorandum, copy of which was transmitted to the Department by the Ambassador in his despatch No. 3178, July 7, reads as follows:

"The American Ambassador presents his compliments to His Majesty's Principal Secretary of State for Foreign Affairs and has the honor to inform Mr. Eden that the United States Government would be glad to receive at the earliest possible moment a detailed elucidation of the official British position, having regard to the terms of the American-British Convention of December 3, 1924, on the question of consulting the United States Government with respect to any changes that may be proposed in Palestine as the result of the Report of the Royal Commission." (867N.01/771)

3. While the foregoing represents the views of His Majesty's Government as to their legal obligations towards the United States Government in the matter, they fully appreciate, and indeed welcome, the interest taken by the United States Government in the question of the solution of the Palestine problem, and it is their intention to keep the United States Government fully informed of any proposals which they may put forward to the Council of the League for the modification of the Mandate. I have, et cetera."

BINGHAM

867N.01/775 : Telegram

The Consul General at Beirut (Marriner) to the Secretary of State

BEIRUT, July 9, 1937—noon.

[Received 2:05 p. m.]

Arabic opinion as expressed in the press here and in Damascus is in general dissatisfied with Royal Commission report on Palestine¹⁶ stating that the "surgical operation" proposed by Great Britain is destined to create confusion, to leave all power on the divide and rule principle to England, and effectively to cut the Arabs away from the coast line and all the richer lands. At the request of the British, the general commanding here assures me that strict measures have been taken for guarding the Palestine frontier to prevent any armed bands from Syria crossing to assist in possible demonstrations. The intention attributed to the Nationalist Party of preparing and arming such bands, allegedly at the request of the Grand Mufti¹⁷ of Jerusalem who recently visited Damascus, has been categorically denied by Nationalist leaders. They state that while they sympathize with the Arabs in Palestine there can be no question of armed intervention.

MARRINER

867N.01/774 : Telegram

The Ambassador in the United Kingdom (Bingham) to the Secretary of State

LONDON, July 9, 1937—7 p. m.

[Received July 9—2:35 p. m.]

456. I saw the Foreign Minister by appointment this morning to deliver to him your 281, July 7, 10 a. m., and took advantage of the occasion to outline to him at some length American interest in the whole Palestine problem. I stressed not only the concern of my Government in the matter but likewise that of the American people. Eden said your message would have every consideration and assured

¹⁶ British Cmd. 5479: *Palestine, Royal Commission Report*, July, 1937.

¹⁷ Haj Amin Efendi al-Husseini.

me that in all Cabinet discussions in connection with the Government's policy on the question of Palestine the attitude of the American Government and that great body of public opinion which is concerned therein was very much in their minds. He also asked me to realize the difficulties of the situation and that every endeavor was being made by the British Government to find an equitable solution among the many factors that must necessarily enter into consideration.

BINGHAM

890F.6363 Standard Oil Co./93

*Memorandum by the Chief of the Division of Near Eastern Affairs
(Murray)*

[WASHINGTON,] July 12, 1937.

Mr. J. A. Moffett, Chairman of the Board of the Bahrein Petroleum Company, Ltd., New York, a subsidiary of the Standard Oil Company of California, called by appointment this morning upon the Under Secretary in connection with his company's interests in Saudi Arabia and the Persian Gulf region. Present also were the Chief of the Near Eastern Division and the Economic Adviser.²⁸

After describing briefly his company's operations in the above-mentioned area, Mr. Moffett stated that while King Ibn Saud had hitherto been regarded as very friendly to American interests, this company's representatives thought they had discerned a certain disposition on the part of the King to be less amenable and co-operative in meeting the company's wishes with regard to operations in Saudi Arabia and more particularly with regard to the expansion of operations in that area. It was felt that while Ibn Saud had in the past been fairly independent in his relations with the British he was showing signs at present of greater friendliness to the British and a disposition to cooperate with them more fully.

Mr. Moffett then stated that the competent officials of his company were fearful that any disposition on the part of this Government to support Jewish claims in the present dispute over the new pronouncement of British policy proposing a partition of Palestine between the Arabs and the Jews might have serious repercussions on American oil interests in Saudi Arabia and might even result in their expulsion. Mr. Moffett emphasized in this connection the truly American character of the oil concessions held by his company in Saudi Arabia and the importance of increasing production wherever possible in order to meet the constantly increasing demands.

²⁸ Herbert Feis.

Mr. Welles told Mr. Moffett he appreciated being kept informed regarding the situation in Saudi Arabia, but added that this Government is not officially concerned in the present Palestine dispute nor had it taken any position with respect thereto.

WALLACE MURRAY

867N.01/784 : Telegram

The Consul General at Jerusalem (Wadsworth) to the Secretary of State

JERUSALEM, July 12, 1937—6 p. m.

[Received July 12—5 p. m.]

Local reaction one of intense interest and feeling but no serious disturbance public security anticipated.

Discussion centers on Commission's finding that mandate is unworkable and consequent recommendation for partition.

All Arabs accept the finding; all Jews repudiate it arguing fault lies with administration.

In both camps divergent views are held on the recommendation. Among Arabs Mufti refuses in principle and declines in practice to consider it; Emir Abdullah¹⁹ urges acceptance on ground realities must be faced but wants modification of proposed boundary and Arab administrations in neutral enclave; Nashashibi²⁰ side-steps principle willing negotiate for favorable modifications. Among joint ownership [*sic*] general Zionists refuse in principle but imply would accept in practice if modifications made to include in Jewish State new Jerusalem and Jordan colonies, afford opportunity to develop Negev and avoid subvention to Arab State; important group of Labor Zionists while urging similar modification reported willing to accept what they can get.

Iraq Government's statement categorically opposing partition believed based on combination sympathy and curiosity, [*sic*] strengthen internal position greatly fortifies Mufti's stand.

WADSWORTH

867N.01/797 : Telegram

The Chargé in Iraq (Satterthwaite) to the Secretary of State

BAGHDAD, July 17, 1937—11 a. m.

[Received July 17—7:32 a. m.]

19. My 18, July 13, 1 p. m.²¹ Iraq Government appears to be taking lead in opposition to Palestine partition scheme and yesterday after-

¹⁹ Abdullah Ibn Hussein of Transjordan.

²⁰ Raghīb Bey au-Nashashibi, ex-mayor of Jerusalem and leader of the National Defense Party.

²¹ Not printed.

noon permitted large public demonstration, committee of which has telegraphed Legation requesting support of the United States Government. Official and popular resentment against Emir Abdula [*Abdullah*] reported increasing.

SATTERTHWAITE

867N.01/800: Telegram

The Secretary of State to the Consul at Geneva (Gilbert)

WASHINGTON, July 21, 1937—8 p. m.

120. Your 244, July 20, noon.²² In as much as the Palestine question is presumably one for consideration at this stage only by the Mandates Commission and the Council; the Department would be interested in learning in what manner it is likely to come before the Assembly.

Is the Department correct in assuming that the protests received by the Secretary General are accorded no official recognition since they are not submitted within the League rules regarding petitions concerning mandated territories?

HULL

867N.01/808: Telegram

The Ambassador in the United Kingdom (Bingham) to the Secretary of State

LONDON, July 22, 1937—noon.

[Received July 22—11:40 a. m.]

498. Department's 283, July 7, 2 p. m., and Embassy's 493, July 21, 2 p. m.²³ In the House of Commons yesterday the Colonial Secretary moved approval of the policy of the Government relating to Palestine. He said the Government was convinced by the arguments of the report and reminded the House that the debate concerned a problem affecting the whole of Jewry and the Moslem world and therefore future relations between East and West. After reviewing the history of the problem, he said that the correct facts were that the pledge to the Jews was a promise not of Palestine but of a home in Palestine, and the pledge to the Arabs was not a promise of Palestine but a general promise to promote their independence. It was indisputable that the continuance of the mandate would make the soreness worse. The chief obstacles were in the mandate itself which forbade joint education of Jews and Arabs. The essence of the problem was the

²² Not printed.

²³ Neither printed.

clash of two vivid nationalisms sharpened by Jewish persecution in Germany and Arab nationalism sharpened by new grant of self government in Syria and the sudden increase of Jewish immigration. He briefly explained that only partition could remove reciprocal fears of domination and only permanent neutral guardianship of the holy places could guarantee peace. He asked for support only for the principle that the case for fundamental changes had been made out and that leave could be granted by the League to formulate a fully detailed scheme. He could not agree to refer the report to a joint select committee which would mean indefinite delay in making application to the League. He gave an optimistic account of the reception of the report.

The Labor opposition speaker subjected the scheme to detailed criticism in order to show that it was unworkable in its present form and suggested reference to a joint select committee.

The Liberal opposition speaker on much the same lines urged that only Jews had legitimate grievances and that it was much too early for the House to make an irrevocable decision.

Mr. Amery, Conservative, led the way toward compromise and thought that joint select committee might be set up at a later stage.

After several other speakers, Mr. Churchill said he would have preferred persevering with the mandate and could not vote for immediate approval of the partition in principle, the virtues or vices of that principle depending on its detailed application and no details had been settled. In view of the desirability of unanimity and the possibility that delay might bring Jews and Arabs together, he suggested as an amendment to the opposition amendment a proposal to send the report forward to the League with a view to the later preparation by the Government after adequate inquiry of a detailed plan in accordance with the policy set out in the Government's comments on the report. After further debate and a modification in the wording suggested by Mr. Lloyd George, Mr. Churchill's motion, which the Government accepted, was carried unanimously except for third [*sic*] independent labor members.

In the House of Lords where the debate was resumed the suggestion was also made that the report should first be referred to a joint select committee. Lord Swinton for the Government argued that such a committee could only do over again the work of the Royal Commission. The debate which had merely been on a motion asking for information was concluded by the withdrawal of the motion.

867N.00/523 : Telegram

The Consul at Geneva (Gilbert) to the Secretary of State

GENEVA, July 22, 1937—4 p. m.

[Received July 22—2 p. m.]

246. Department's telegram 120, July 21, 8 p. m.

1. Although juridically the Council is the competent body for deciding questions relating to mandates, the Assembly in past years has consistently maintained that the functioning of the mandates system is a matter of interest to all League members. Each year a resolution usually introduced by Norway was passed placing mandates on the Assembly's agenda and extensive general discussions thereon have taken place in the Sixth Committee. Matters relative to Palestine have already frequently formed a subject of discussion particularly on the part of the Polish and Iraq representatives. Secretariat officials are convinced that under the present circumstances an extensive discussion on Palestine will take place in the forthcoming Assembly. Although it may be held that such discussion, or resolution if any, would have no juridical force, nevertheless, it would serve to inform the Council of the sentiments prevailing in the Assembly and would undoubtedly influence Council action.

2. The questions of what constitutes a petition is a matter of interpretation in the light of established rules and practice. Secretariat officials are of the opinion that the protests thus far received are not, at least in most cases, petitions in the technical sense. Should any be decided to constitute petitions they will be communicated verbatim to the members of the Mandates Commission and the latter will decide whether they warrant formal consideration. In the case of mere protests it is customary for the Secretariat to make summaries thereof and communicate them to members of the Commission. Full texts are then made available if requested. Thus in the case either of petitions or of protests the Commission is informed and is in a position to decide whether such documents demand or justify consideration as pertinent to the matter in hand.

3. With Iraq and the contemplated procedure as regards Syria as precedents, it is considered that the conversion of a mandated territory into an independent state is predicated on its becoming a member of the League of Nations and likewise in the present case it is presumed that in addition the states concerned would be required to give certain guarantees particularly as regards minorities. Acceptance of League membership and corollary obligations implies agreement between the states concerned and the Council. It is, therefore, suggested that unilateral action on the part of the Council would presumably not be sufficient to carry out the proposals of the Royal Commission. Should

opposition in Palestine prove to be widespread and vehement, particularly if encouraged by the opposition of a group of League states, the Council might be obliged to seek some other alternative, or to continue for an indefinite period the mandatory régime.

GILBERT

867N.01/818 : Telegram

The Ambassador in France (Bullitt) to the Secretary of State

PARIS, July 26, 1937—1 p. m.

[Received 5 p. m.]

1046. In conversation with an official of the Levant section of the Foreign Office concerning the Royal Commission's report on Palestine this official said that while the Foreign Office had not yet had an opportunity to examine carefully the voluminous report he was confident that the French Government would raise no objection to the principle of the partition scheme. The present mandate had proved unworkable he said and only time could tell if the partition scheme would be more workable. He was somewhat skeptical on this point but said that the French Government had had sufficient experience with problems in mandated territories to realize that full scope for working out solutions must be left to the Mandatory Power subject of course to adequate protection being afforded the legitimate interests of other states.

He remarked that France had important interests in Palestine in the way of schools and hospitals and would have to see that these were protected. He also said that the French Government was not informed as to the precise scope of the proposal for conceding on [*to?*] the British a permanent guardianship over the holy places. There are arrangements between the French Government and the Holy See regarding churches in this region and the French Government will desire further information on this aspect of the scheme.

This official said that in reading the report he had been struck by its tendency to encourage Arab unity. This was of course the British fashion of coating the pill for the Arabs. He remarked that during the war the British had done much the same thing in order to gain the assistance of the Arabs and that this had proved later on to be of doubtful wisdom. He felt that conditions in the Arab countries are such as to make it impossible, at least for the present, to realize Arab unity in any appreciable degree and he wondered if by encouraging hopes which would be disappointed the British might not be creating difficulties for the future.

It appears that considerable pressure is being brought on the French Government by Jewish organizations to object to the Palestine report.

The Foreign Office however is taking the position that this is a matter to be dealt with primarily by the Mandatory Power subject to details of execution which will protect French interests.

The official with whom we spoke remarked that when the report comes before the Mandates Commission at Geneva at the end of this month he would not be surprised if action were limited to the appointment of a reporter to examine the question and report to the Commission at a later session.

Copy to Geneva, London.

BULLITT

867N.01/836 : Telegram

The Consul at Geneva (Everett) to the Secretary of State

GENEVA, August 3, 1937—4 p. m.

[Received August 3—2:15 p. m.]

251. Consulate's 246, July 22, 4 p. m.

1. On July 30 the Mandates Commission began its consideration of Palestine²⁴ which has thus far consisted of hearing the statements of the British accredited representative and of drawing up its program. As indicative of the Commission's approach to the problem I quote below a portion of a communiqué issued by the Secretariat on March 2:

"The Commission interrupted its hearing of the accredited representatives this morning to consider its programme of work.

As a result of an exchange of views, it was considered that the task of the Commission should be: (1) to examine the administration of Palestine in the last 2 years. This was thought necessary not only because the Covenant and the mandate imposed this duty, but also because it was calculated to cast light upon the fundamental issue, namely, the modification of the Palestine régime proposed by the Mandatory Power; (2) to ascertain whether the material now before it is sufficient to enable the Council to form an opinion on the problem as a whole, as well as on the various solutions suggested (should it be necessary, the accredited representative will be asked to supplement the information in the course of the session []); (3) to give the Council an account of the advantages and disadvantages of each of the possible solutions to the problem, namely:

- (a) maintenance of the existing mandate;
- (b) modification of the mandate;
- (c) cantonization;
- (d) partition; or
- (e) any other possibility which might arise out of the discussion.

In the course of the examination of the foregoing documentation, it will be necessary to ascertain whether the mandate as drafted in

²⁴ For the full record of these meetings and hearings, see League of Nations, Permanent Mandates Commission, *Minutes of the 32nd (Extraordinary) Session*.

1922 is in itself unworkable, or whether intervening circumstances have made it impossible to contemplate its being carried out without fundamental changes.

It decided to adopt as the basis of its work the 1936 report on the administration of Palestine, while taking account in considering the various matters dealt with in this report of the information and comments on these matters contained in the report of 1935 and in the report of the Royal Commission. The Committee will also consider the petitions sent to it in connection with the disorders and the proposals of the Royal Commission."

2. I learn in confidence from an official who attended the meetings that the British statements thus far have been largely on the lines of the Government's declarations to Parliament on presenting the Royal Commission's report except that in addition confidential details have been imparted concerning the attitude of certain of the Arab leaders.

Ormsby-Gore²⁵ has notified the Commission that he is leaving August 5 but has agreed to return later if his presence is desired.

A member of the Commission referring to paragraph 4 of the Government's statement of policy published as Command Paper 5513²⁶ inquired what were the "other international instruments" alluded to therein. Gore replied that this referred particularly to the treaty of 1924 with the United States and added that when the League had expressed its opinion on the matter it would be necessary to consult the United States. He explained that negotiations with the United States could take place only after the League had expressed an opinion inasmuch as the Mandatory Power was responsible to the League for the mandate. A member inquired whether this did not give the United States a *de facto* power of veto. Gore replied that the juridical status of the United States with respect to the mandate was not clear due to the divergence of opinion resulting from the circumstances that the United States had not technically been at war with Turkey.

3. My informant tells me that the Commission is showing itself unusually independent in its attitude and that it has by no means committed itself by inference or otherwise to any plan.

EVERETT

867N.01/836a : Telegram

The Secretary of State to the Consul at Geneva (Everett)

WASHINGTON, August 3, 1937—5 p. m.

124. The Department would appreciate any information which you can obtain discreetly as to accuracy of statements in Streit's article

²⁵ British Secretary of State for Colonies and accredited representative on the Permanent Mandates Commission.

²⁶ British Cmd. 5513: *Palestine, Statement of Policy by His Majesty's Government in the United Kingdom*, July 1937.

on Palestine in today's *New York Times* in which Ormsby-Gore is reported to have said that his Government agreed that it was necessary under the terms of the American-British Palestine Mandate Convention of 1924 "to get Washington's consent for any changes in the mandate" and that the British hope was that if the League and the United States would agree with Britain on some solution the authority thus obtained would bring both Jews and Arabs around to the plan.

HULL

867N.01/850

The American Ambassador in the United Kingdom (Bingham) to the British Secretary of State for Foreign Affairs (Eden) ²⁷

No. 2744

LONDON, August 4, 1937.

SIR: I have the honor to acknowledge the receipt of your note of July 7, 1937,²⁸ concerning the rights of the United States and its nationals in Palestine, as determined by the American-British Convention of December 3, 1924.

Since the receipt of the above-mentioned note, the Report of the Royal Commission of Inquiry on Palestine has been published and my Government has noted that the Commission proposes that the Mandate for Palestine should terminate and be replaced by a treaty system in accordance with the precedent set in Iraq and Syria. In this general connection, His Majesty's Government will recall that at the time of the termination of the special relations between the United Kingdom and Iraq in 1932, the United States Government set forth in some detail its views regarding its rights relating to the termination of mandatory régimes. At the request of my Government, which was anxious to have its views in this matter receive wide publicity, His Majesty's Government was good enough to transmit copies of that correspondence to the League of Nations, and the text of the correspondence was reproduced in the League of Nations *Official Journal* for January, 1933.²⁹ The attitude of the American Government, as revealed by this correspondence, was summed up in two paragraphs, one of which appeared in a letter dated March 1, 1932,³⁰ from the First Secretary of this Embassy to the Head of the Eastern Department of the Foreign Office, and the other in an *aide-mémoire*, dated

²⁷ Copy transmitted to the Department by the Ambassador in his despatch No. 3265, August 4; received August 14. Department's instruction No. 1869, July 27 (867N.01/776), directed the Ambassador to deliver to the British Foreign Office the text of note here printed.

²⁸ See telegram No. 448, July 7, 9 p.m., from the Ambassador in the United Kingdom, p. 891.

²⁹ See also *Foreign Relations*, 1932, vol. II, pp. 672 ff.

³⁰ *Ibid.*, p. 674.

July 8, 1932,³¹ left at the Foreign Office by this Embassy. For convenience of reference these paragraphs are quoted below :

"Since the termination of a régime in a mandated territory necessarily involves the 'disposition' of the territory and affects the interests of American nationals therein, the right of the United States to be consulted with respect to the conditions under which the territory is subsequently to be administered is on precisely the same basis as its right to be consulted with regard to the establishment of a mandatory régime."

"Accordingly the American Government desires to make a full reservation of its position in this matter and, with a view to avoiding any possible misconception which may arise in the future, to make clear that its action in refraining from insisting upon a fulfillment of its rights in the case of Iraq is not to be construed as an abandonment of the principle established in 1921 that the approval of the United States is essential to the validity of any determination which may be reached regarding mandated territories."

The views of my Government as set forth in the above-mentioned correspondence are, of course, fully applicable to the proposed termination of the Palestine Mandate, and it is pertinent to add that those views were brought to the attention of the French Government in August, 1936,³² during the negotiations between the French Government and a Syrian delegation looking to the termination of the Syrian Mandate. It is hardly necessary, however, to repeat the assurances heretofore communicated to His Majesty's Government that the position of my Government as set forth in the quoted correspondence is based exclusively on its obligation and purpose to provide for the protection of American interests in Palestine on a basis of equality with those of other governments and their nationals.

In expressing satisfaction and appreciation for the assurances furnished that His Majesty's Government intends to keep the United States Government fully informed of any proposals which may be made to the Council of the League of Nations for the modification of the Palestine Mandate, I am instructed to request that these proposals may be communicated to my Government in ample time to enable it to determine what, if any, observations it may desire to make with a view to the preservation of American rights in Palestine.

I have [etc.]

(For the Ambassador)
HERSCHEL V. JOHNSON
Counselor of Embassy

³¹ See *Foreign Relations*, 1932, vol. II, p. 678, footnote 11.

³² See *ibid.*, 1936, vol. III, pp. 496 ff.

867N.01/837 : Telegram

The Consul at Geneva (Everett) to the Secretary of State

GENEVA, August 5, 1937—noon.

[Received August 5—11:59 a. m.]

252. Department's telegram 124, August 3, 5 p.m. I have now been given an opportunity in strict confidence to examine the provisional minutes of the meeting in which the question of consultation with the United States was discussed. I believe that paragraph 2 of my 251, August 3, 4 p.m., summarizes accurately the substance of that discussion. Gore is not recorded as having used the expression "to get Washington's consent for any change in the mandate". He used the expression "confer with the United States Government". I can discover no statement or allusion to the effect that agreement between the United States, Great Britain and the League on some solution would bring both Jews and Arabs around to the plan. Although the provisional minutes may not always record every remark made it seems probable in this instance that Streit drew that inference himself or from his informant.

As regards Gore's remarks on the juridical status of the United States with respect to the mandate as reported in my telegram under reference, he said in addition that he believed it to be an historical fact that the Palestine Mandate was actually conferred not by the Principal Allied and Associated Powers but by the Principal Allied Powers alone.

Full text by mail.

EVERETT

867N.01/840 : Telegram

The Chargé in Iraq (Satterthwaite) to the Secretary of State

BAGHDAD, August 6, 1937—1 p. m.

[Received August 6—6:18 a. m.]

22. My 18, July 13, 1 p. m.³³ The Foreign Minister yesterday outlined to me plan of his Government for the solution of the Palestine problem which he will present to the League personally in September. Plan involves formation of an independent state with a constitution similar to that of Iraq, limitation of Jews to a minority of 30 per cent and an alliance with Great Britain and Iraq. Full report by mail.

SATTERTHWAITE

³³ Not printed.

867N.01/845a : Telegram

The Secretary of State to the Consul General at Zurich (Frost)

WASHINGTON, August 11, 1937—4 p. m.

The Department would appreciate any information which you can discreetly obtain, without consulting American delegates, as to position such delegates have taken in World Zionist Congress on question of authorizing Zionist Executive to negotiate with British Government *ad referendum* on Palestine partition scheme.

HULL

867N.01/848 : Telegram

The Consul General at Zurich (Frost) to the Secretary of State

ZURICH, August 13, 1937—10 a. m.

[Received 10:15 a. m.]

Department's telegram August 11th, 4 p. m. Dr. Stephen S. Wise, American delegation head and a bitter irreconcilable against partition of Palestine, led a small American minority against *ad referendum* resolution to negotiate with British Government on partition scheme approved by Zionist Congress August 11th. Majority American delegates supported Louis Lipsky, who favored negotiations. 300 Congress delegates voted for resolution, 158 opposed. Reliably informed American delegates divided 51 for, 38 against. Divided among the four groups of American delegates the vote was as follows:

Group 1, general Zionists, 16 favored and only 5 backed Wise in opposition;

Group 2, Hadassah Women's Zionist Organization of America of which Mrs. Judith Epstein is President, 14 opposed, 3 favored;

Group 3, entire Mizrahi, conservative orthodox religious group consisting of 18 members voted against;

Group 4, Labor or Socialist Zionists numbering 32 favored.

FROST

867N.01/860 : Telegram

The Consul General at Jerusalem (Wadsworth) to the Secretary of State

JERUSALEM, August 16, 1937—1 p. m.

[Received August 17—9 a. m.]

The Mufti of Jerusalem during a call which I made him yesterday handed me a note on behalf of the Arab Higher Committee based on its understanding of the reports concerning communications exchanged in London between Ambassador Bingham and Mr. Eden with

respect to America's right to be consulted concerning changes in the mandate that might affect American interests. The gist of the note is contained in its penultimate paragraph.

[“] If the United States is upholding the Jews out of sympathy for them it should be remarked that the Arabs are more deserving of that sympathy as they are in the right and are the owners of the country and the victims of aggression. If on the other hand the United States is upholding the Jews on account of their financial influence it should be remarked that the United States enjoys in Arab countries great respect and affection and a moral standing of great value which are a result of the accomplishments of groups of Americans over a great number of years. These are worthy of being safeguarded and developed. The United States has also cultural relations and widely extensive business connections with the Near East and the Moslem world which are also worthy of being safeguarded and developed. It is our belief that these possess no less present and future value than what the United States is likely to reap from supporting the fallacious Jewish cause. In fact it exceeds it by far inasmuch as it embraces far-flung eastern countries”.

Before the Mufti disclosed his intention of making any communication to me or had raised the question of the American attitude in the premises, I had mentioned the exchange of notes in London telling him that this action was similar to that taken or contemplated for all other mandate treaties including those with Iraq,³⁴ Lebanon and Syria.³⁵ I said that our concern in these matters was limited to the American interests involved which in the case of Palestine were as he would readily understand in large measure Jewish.

He was well pleased to discover that the American action was not unique and designed against the Arabs, a point of view which he said was heavily stressed by Jewish propaganda. He said that if the policy of the United States was the same with respect to all mandates, he could see that in this case we were not departing from that impartiality which has for many years characterized the various good works of the United States in the Near East for which the Arabs had every cause to be gratified.

In acknowledging this note do you desire me to make any observations other than those contained in Radio Bulletin No. 188³⁶ received today? August 17, 8 a.m. [*sic*].

WADSWORTH

³⁴ For text of convention signed at London, January 9, 1930, by the United States, Great Britain, and Iraq, see *Foreign Relations*, 1930, vol. III, p. 302; for further correspondence, see *ibid.*, 1932, vol. II, pp. 672 ff.

³⁵ See *ibid.*, 1936, vol. III, pp. 496 ff.

³⁶ Dated August 13, 1937; missing from Department files.

867N.01/860 : Telegram

*The Secretary of State to the Consul General at Jerusalem
(Wadsworth)*

WASHINGTON, August 17, 1937—7 p. m.

Your August 16, 1 p. m. The Department considers that it would be preferable merely to acknowledge the Mufti's note and inform him that you are forwarding it to Washington.

Referring to the last sentence of the third paragraph of your telegram you will appreciate that our concern with respect to the protection of American interests, as opposed to other interests, is not based on any racial or religious considerations. Obviously an equal effort would be made to protect American interests in Palestine, as elsewhere, irrespective of the race or religion of the American nationals concerned.

The Embassy at London is being requested to send you by air mail text of recent correspondence with British Government.

HULL

867N.01/871 : Telegram

The Consul at Geneva (Everett) to the Secretary of State

GENEVA, August 19, 1937—4 p. m.

[Received 8:15 p. m.]

256. The session of the Mandates Commission has terminated. I have had an opportunity privately to examine the Commission's report on the questions raised by the British Government's proposal for the partition of Palestine.³⁷

The report calls attention to the preliminary nature of its opinion, the complexity of the problem, the diversity of views among its members on a number of points and then "formulates in general terms a few conclusions".

Following is a summary of the chief points in these conclusions:

1. After reviewing the inherent causes of the hostility between Arabs and Jews the report states that the very success of the Zionist experiment "aroused the hostility of the chiefs of the Arab movement and even tended to alarm a Mandatory Power which was anxious to maintain good relations with the Moslem world". Intimating that notwithstanding the great difficulties involved the Mandatory Power by a firm policy might have prevented outbreaks of violence, the report states: "The present system became unworkable on the day on which it was publicly declared to be so by a British Royal Commission speaking with the double authority conferred upon it by its impartiality and unanimity and by the Government of the Mandatory Power itself.

³⁷ For text of report, see League of Nations, *Official Journal*, December 1937, p. 1089.

The most optimistic must recognize that the execution of the present mandate well interpreted and vigorously applied would be difficult in the present circumstances." Interpreted as it has been and "applied by Government which has informed its own Parliament and its Palestine subjects that it no longer has any faith in its mission as originally conceived, the present mandate has been made practically unworkable by this fact alone".

2. "The Commission therefore considers that the examination of the advantages and drawbacks of a new territorial solution deserves to be pursued." The report calls attention, however, to the inherent difficulties which abide regardless of the solution adopted and states that "if the partition scheme should be applied its success would depend more on its effects with relations between Arabs and Jews than on the territorial solution adopted."

3. "While declaring itself favorable in principle to an examination of a solution involving the partition of Palestine, the Commission is nevertheless opposed to the idea of the immediate creation of two new independent states." The Commission feels that the projected states could not from their inception fulfill the conditions for independence laid down in 1931 in its report on its 20th session.³⁸

4. The report mentions as a possible solution a régime analogous to that rejected by the Royal Commission under the name of "Cantonization". It also mentions as a possible solution that the two entities resulting from partition might become fully independent of each other but remain under mandate until one or both gave sufficient proof of fitness for self government.

The Commission agreed that in case a scheme of partition were applied Jerusalem should be placed under a special régime.

5. The report terminates with a tribute to the Mandatory Power and an appeal to Jews and Arabs to abate their grievances and rather bear in mind the benefits they have received from Britain and from the mandatory régime.

In view of my knowledge of the discussions in the Commission I wish to make the following comment. It appears evident that the majority of the Commission consider the present mandate as inherently unworkable except under the constant menace of military force but the discussions show that the Commission desired to avoid a categorical statement to that effect in the report in order to leave a bridge for retreat in case the negotiations for a solution through partition or for some other solution should fail. This was stated in so many words by one member. This is the reason that the conclusion regarding the unworkability of the mandate is made to repose expressly on the Royal Commission's report and its approval by the Government. Serious objections to the scheme of partition were raised during the discussions. Some, however, considered such a solution as probably unavoidable. Others leaned rather towards some immediate solution. It was admitted, however, in regard to the whole problem that it was a question of finding the least unsatisfactory solution.

³⁸ League of Nations, *Official Journal*, November 1931, p. 2176.

The British representative during the discussions repeatedly stated that his Government did not expect the Mandates Commission to approve the scheme of partition but desired complete freedom to explore that solution before any other proposals were considered. The report seems to meet that requirement.

Mailing report to Department and London.

EVERETT

867N.01/902: Telegram

The Consul at Geneva (Bucknell) to the Secretary of State

GENEVA, September 16, 1937—11 p. m.

[Received September 16—5:35 p. m.]

305. Consulate's 294, September 14, 8 p. m.³⁹ The Council this afternoon passed a resolution⁴⁰ authorizing the British Government to proceed with a study of the British proposal for the partition of Palestine, it being understood that the British Government would submit a report to the Council and that the Council reserved its position on the substance of the question. Text of resolution will be mailed.

BUCKNELL

867N.01/753½

*Memorandum by the Chief of the Division of Near Eastern Affairs
(Murray)*

[WASHINGTON,] September 17, 1937.

It will be recalled that in the Report of the Palestine Royal Commission it was proposed that the British Government eventually negotiate with the Zionist Organization a treaty regarding the position of the suggested Jewish State. In a previous memorandum we expressed some surprise that such a treaty should be negotiated with the Zionist Organization, since under the Mandate the Jewish Agency is recognized as "a public body for the purpose of advising and cooperating with the Administration of Palestine." Since 1929 the Jewish Agency has been composed of representatives of both Zionists and non-Zionists. Under the circumstances it would have appeared to be more logical if the Commission had recommended that the proposed treaty be negotiated with the Jewish Agency rather than with the Zionist Organization. Moreover, this same point of view was held by the group of American non-Zionists which recently attended the meeting of the Jewish Agency in Zurich. At the time of that meeting Mr. Felix Warburg, leader of the American non-Zionists

³⁹ Not printed.

⁴⁰ League of Nations, *Official Journal*, December 1937, p. 907.

on the Agency, made it clear that no settlement of the Palestine question could be made without the cooperation of the non-Zionists.

We have just observed in a letter written to the London *Times* last month by a Jewish leader in England the following statement:

"There seems some misapprehension regarding the place of the Zionist Congress in the discussions around the prospective settlement of the Palestine problem. The misapprehension was started by the Royal Commission itself, which spoke of a treaty with the Zionist Organization, but the Government quickly corrected this by substituting Jewish Agency for Zionist Organization. Palestine and its future are the concern of the Jewish people, not of any party in it."

We appear to have no confirmation of the assertion that the British Government "substituted" the Jewish Agency for the Zionist Organization in the proposal of the Royal Commission. It seems not unlikely, however, that such was the case and we are seeking confirmation on the point from the Embassy at London.⁴¹ If the report is confirmed it will be of some importance to us for it will affect the domestic Jewish situation. Thus, if the British Government acknowledges that it should negotiate with the Jewish Agency rather than with the Zionist Organization, the latter group in the United States will be unable to assert that its views are representative of American Jewry so far as the Palestine situation is concerned. The representatives of the non-Zionists in this country would therefore be in a position to insist that we give consideration to their views as well as to those of the Zionist Organization.

At the present time the great majority of the Zionists favor partition and the establishment of a Jewish State. A minority is opposed to partition at this time, not because they object to a Jewish State *per se*, but because they want all of Palestine to be included in such a State. They would hope eventually to achieve that end by continuing the present Mandate until the Jews were a majority of the population. The non-Zionists in this country, on the other hand, are opposed to the very idea of a Jewish State, implying as it does Jewish nationality. Louis Lipsky appears to be the leader of the first group, Rabbi Wise of the second, and Mr. Warburg of the third.

In view of this clear division of opinion among the representatives of American Jewry it seems to me that we are in a strong position to request that they come to some agreement among themselves before they approach us with a view to our taking any particular line of action. In other words we seem to be in good position to ask Rabbi Wise to produce some proof that he speaks on behalf of all of American Jewry before we comply with any specific requests that he may make.

WALLACE MURRAY

⁴¹ For Embassy report on this matter, see despatch No. 3532, November 4, p. 913.

867N.01/915a : Telegram

*The Secretary of State to the Consul General at Jerusalem
(Wadsworth)*

WASHINGTON, October 2, 1937—2 p. m.

The Department would appreciate your comments on press reports emanating from Jerusalem regarding the imposition of a strict censorship in Palestine by the British authorities, the removal of the Grand Mufti as head of the Supreme Moslem Council, and action looking to his deportation along with other Arab leaders who are reported as having already been arrested and removed to the British cruiser *Sussex* in Haifa harbor.

The Department would be pleased also to receive from you a general estimate of the present state of public order in Palestine to be followed by reports by telegraph as circumstances warrant so long as the situation may remain in a state of uncertainty.

HULL

867N.01/915 : Telegram

*The Consul General at Jerusalem (Wadsworth) to the Secretary
of State*

JERUSALEM, October 2, 1937—3 p. m.

[Received October 2—11:40 a. m.]

While Arab reaction to drastic action taken by Palestine Government consequent to Arab terrorist assassination of British District Commissioner Galilee District is recognizedly one of bitter resentment, I am assured by highest British officials no general disorder is anticipated. Other well informed observers concur. Some apprehension is however felt that terrorist activities directed primarily against British officials will continue.

British circles view repressive measures as only logical action. Jews naturally express high satisfaction.

Attorney General explains non arrest of Mufti still in Haram area as prompted by apprehension reaction in Moslem world. It is also hoped that having clipped his wings by cutting off most important source propaganda funds he will be forced to retreat from present uncompromising attitude.

WADSWORTH

867N.01/916 : Telegram

The Consul General at Jerusalem (Wadsworth) to the Secretary of State

JERUSALEM, October 4, 1937—9 a. m.

[Received 9:25 a. m.]

My October 27 [2], 3 p. m., crossed Department's October 2, 2 p. m., and I believe answered query except as regards censorship which prohibits telephone calls and censors telegrams to neighboring countries but not to Europe or America.

Local press may publish news but not comment, this being designed to prevent incitement Arab public and inter-racial strife which it is feared would be precipitated were Jewish press further to embitter Arab feeling by exulting over *soi-disant* victory.

Conversations yesterday with Chief Justice, Solicitor General, Staff Intelligence Officer and others convince me current measures are not simply punitive action consequent upon assassination District Commissioner but rather initial moves in new policy of firmness and repression vis-à-vis Arabs, adopted in full accord with home Government to replace last 18 months conciliation policy.

Battalion Black Watch arrived Saturday to replace *Sussex* which will remain pending developments. General officer commanding has informed Merton troops now eight battalions are adequate to control situation which remains substantially as described.

WADSWORTH

867N.01/922 : Telegram

The Consul General at Jerusalem (Wadsworth) to the Secretary of State

JERUSALEM, October 9, 1937—9 a. m.

[Received October 9—8:45 a. m.]

Since sending my October 4, 9 a. m., conversations with officials and others give me no reason substantially to reverse estimate of situation. Acting High Commissioner considers matters well in hand and assures me his rural reports occasion no immediate concern as to public security.

While Arab undercurrents, primarily among Mufti adherents, are reported still characterized by resentment at extensive preventive arrests, deportation leaders and humiliation Mufti, lightening of press censorship and ensuing generally restrained editorial comment have eased tension.

In the circumstances if the Department perceives no objection I shall fly Alexandria Wednesday to meet my wife and return following Monday.

WADSWORTH

867N.01/929 : Telegram

The Consul at Jerusalem (Scott) to the Secretary of State

JERUSALEM, October 16, 1937—3 p. m.

[Received 12 p. m.]

Arab terrorists in concerted action during the night October 14th attacked two Jewish buses, ambushed police cars, derailed and attacked passenger train and fired upon Jewish settlements in various parts of the country. Reported casualties 4 Arabs and 2 British constables killed, 12 Jews slightly injured. Further terrorist activities during the night October 15th included burning temporary buildings Lydda airport. Many arrests made, curfew established in Jerusalem and Government otherwise active in keeping situation under control.

SCOTT

867N.01/941 : Telegram

The Chargé in the United Kingdom (Johnson) to the Secretary of State

LONDON, October 21, 1937—6 p. m.

[Received October 21—1:55 p. m.]

609. The following statement was made in the House of Commons this afternoon by the Secretary of State for Colonies.

"In the light of the resolutions passed by the Council and the Assembly⁴² of the League of Nations last month His Majesty's Government now regard themselves free to undertake the investigations required for the purpose of working out a scheme of tripartite partition in Palestine on the general lines recommended in part 3 of the report of the Royal Commission. It is accordingly proposed to appoint in due course a further special body to submit proposals, after local inquiry in Palestine, for a detailed scheme of tripartite partition. The Council and Assembly of the League will be invited to approve such a scheme . . .⁴³ I am sure the House will agree that the immediate and primary duty of His Majesty's Government is to take the most strenuous measures to conquer terrorism, to protect the lives of British officers and to restore the effective authority of the British civil administration throughout Palestine".

JOHNSON

⁴² September 30, 1937, League of Nations, *Official Journal*, Special Supplement No. 169, p. 140.

⁴³ Omission indicated in the original telegram.

867N.01/943 : Telegram

The Consul General at Jerusalem (Wadsworth) to the Secretary of State

JERUSALEM, October 26, 1937—2 p. m.

[Received October 26—10:22 a. m.]

Reference Consulate's telegram of October 16, 3 p.m., Acting High Commissioner has confirmed to me specifically that "new policy" of firmness in dealing with disorder will be maintained. While recognizing probability of further sporadic attempts at assassination and sabotage by paid terrorists he anticipates continuation repressive measures with emphasis on collective fines and punishments will result in gradual lessening of current disturbances.

Incidents since outbreak of October 14-15 attending Mufti's flight include five further reported instances of shooting at Jewish buses and approximately a dozen each of wire cutting, bombing or attempted bombing, sniping at Jewish settlements or road patrols (all without casualties) and attempted assassination. Toll of latter is two Jews killed and four wounded and apparently through acts of Jewish retaliation three Arabs and one Armenian killed and three Arabs wounded. Success of new policy will be furthered by Arab disinclination to take to the hills with approach of winter weather and fall ploughing and citrus picking season.

WADSWORTH

867N.01/963

The Ambassador in the United Kingdom (Bingham) to the Secretary of State

No. 3532

LONDON, November 4, 1937.

[Received November 12.]

SIR: I have the honor to refer to the Department's instruction No. 1942, September 20, 1937,⁴⁴ directing the Embassy to investigate and report upon the statement made in a letter to *The Times* of August 18 that the treaty which it is proposed to conclude with respect to the Jewish State in Palestine would be negotiated with the Jewish Agency rather than with the Zionist Organization.

The question was discussed with the appropriate official who said that the Foreign Office had no information concerning such an announcement. He added in this general relation that the whole question of the modification of the Palestine mandate now seems much

⁴⁴ Not printed.

farther off than it did at the time the Royal Commission's report was issued and that the whole situation was still so fluid and the future still so uncertain that "we seem no where near the point where the question of negotiating a treaty will arise".

Respectfully yours,

For the Ambassador:
HERSCHEL V. JOHNSON
Counselor of Embassy

867N.55/109

The Consul General at Jerusalem (Wadsworth) to the Secretary of State

[Extract]

No. 344

JERUSALEM, November 10, 1937.

[Received December 10.]

SIR: I have the honor to supplement herewith the brief news items reported in Section IV-1 of my Press Review of October 30, 1937,⁴⁶ regarding local reaction to the Draft Immigration (Amendment) Ordinance published in the official *Palestine Gazette* of October 21, 1937, and designed to effect certain modifications of the Palestine Immigration Ordinance of August 31, 1933.⁴⁷ The provisions of this original, or so-called principal, ordinance were analysed at length in the Consulate General's voluntary report of May 5, 1937, entitled "History of Post-War Jewish Immigration into Palestine."⁴⁸

The new draft ordinance contains only two provisions warranting special attention, the remainder being of relatively unimportant regulatory and routine nature.

Narrower Definition of Dependent.

First, and less important, is the much narrower definition of "dependent" for immigration purposes. The new draft ordinance limits this term to include only wives, children and fatherless grandchildren under 18, and, under certain prescribed circumstances, other relatives who may be found on investigation to be wholly dependent on an immigrant or permanent resident.

The Jewish Agency, I am confidentially informed by Dr. Maurice Hexter, American non-Zionist member of the Agency Executive, is dissatisfied with this definition, considering the deviation from the former broad principle is unwarranted. However, while protesting such deviation as a matter of principle, the Agency Executive, Dr. Hexter explained, accepts the narrower definition as a matter of prac-

⁴⁶ Not printed.

⁴⁷ Robert Harry Drayton, *The Laws of Palestine in Force the 31st Day of December, 1933*, rev. ed. (London, 1934), vol. II, p. 745.

tice and is limiting its present action to urging on the Government a proposal to the effect that the draft definition be enlarged to embrace parents over 55 years of age. In this respect, it is interesting to note that the Royal Commission in Paragraph 84 of its Report recommended a definition in substantial accord with that of the draft ordinance, although they suggested on Page 295 that "it would seem to be not unfair to define dependent immigrants in the case of an immigrant head of a family as wife, children under the age of 18, and old parents, in whose case some such minimum age as 55 might well be fixed". It would seem not unlikely that favorable consideration will be given the proposal of the Jewish Agency in this respect.

Temporary Abandonment of Absorptive Capacity Principle.

The part of the draft ordinance which impels attention by its political implications and because of its strongly unfavorable reception in Zionist circles is the following proposed amendment to Section 5 of the Principal Ordinance:

5. The Principal Ordinance is hereby amended by the insertion immediately after Section 5 of the following new section:—

5A. The High Commissioner may, in his unfettered discretion, by Order in the *Gazette*, exercise all or any of the following powers, that is to say, he may—

(1) prescribe the maximum aggregate number of foreigners to be admitted to Palestine as immigrants during any specified period;

(2) prescribe categories of immigrants and fix the maximum number of persons to be so admitted in respect of any category;

(3) prescribe what proportion of

(a) the maximum aggregate number of immigrants,

(b) the maximum number of immigrants in any category,

may be persons of Jewish race.

Provided that if any question shall arise as to whether a person is or is not of Jewish race it shall be referred to the Director whose decision shall be final.

The purpose of this new section, as explained by the Attorney-General in an accompanying statement, is to give effect to the policy of His Majesty's Government declared in Official Communiqué No. 11/37 dated July 7, 1937, the relevant passage being:

Further, since the period of the current Labour Schedule expires at the end of July, and some provision must be made for the ensuing period, they propose that a total Jewish immigration in all Categories of 8,000 persons shall be permitted for the eight months' period from August, 1937, to March, 1938, provided that the economic absorptive capacity of the country is not exceeded.

This statement of policy, it may be noted, is generally accepted as having been based on a recommendation of the Palestine Royal Commission which, when considering "palliatives" to be adopted in the event that its major recommendation for partition should be rejected, advised (page 306 of Report) :

. . . that there should now be a definite limit to the annual volume of Jewish immigration. We recommend that Your Majesty's Government should lay down a "political high level" of Jewish immigration to cover Jewish immigration of all categories. This high level should be fixed for the next five years at 12,000 per annum, and in no circumstances during that period should more than that number be allowed into the country in any one year. The political maximum having been fixed, the High Commissioner should receive instructions to the effect that he may use his discretion to admit immigrants up to the maximum figure, but subject always to the economic absorptive capacity of the country.

Two questions here suggest themselves. Will the action proposed in the new draft ordinance constitute a departure from the principle of absorptive capacity; and, if so, is it intended that such departure be permanent?

In considering the first question it may be well to review briefly the history of the principle of absorptive capacity. This principle, that is, that immigration into Palestine should not be of such volume as to exceed the economic capacity of the country to absorb new arrivals, was first stated in the well-known Churchill Memorandum of 1922,⁴⁸ i. e., a year prior to the entry into force of the Palestine Mandate. It was not, however, stated in the Mandate itself. The principle was immediately put into effect by the Palestine Administration and has since been repeatedly affirmed by both the Administration and the Mandatory (i. e., British) Government, as being the recognized basis of its immigration policy. It was specifically reaffirmed by the Council of the League of Nations in 1930.⁴⁹

In this latter connection, it is interesting to note that, when referring to the above-mentioned decision of the Mandatory Power to reduce immigration for the eight months beginning August 1, 1937, to an arbitrary figure of 8,000, the Permanent Mandates Commission commented (see Page 233 of Minutes of the 32nd Extraordinary Session, August 1937) as follows:

The Commission does not question that the Mandatory Power, responsible as it is for the maintenance of order in the territory, may on occasion find it advisable to take such a step and is competent to do so,

⁴⁸ British Cmd. 1700: *Palestine, Correspondence With the Palestine Arab Delegation and the Zionist Organisation*, June 1922, p. 17.

⁴⁹ In its resolution of September 8, 1930, approving the recommendations and conclusions of the Permanent Mandates Commission; League of Nations, *Official Journal*, November 1930, p. 1294.

as an exceptional and provisional measure; it feels, however, bound to draw attention to this departure from the principle, sanctioned by the League Council, that immigration is to be proportionate to the country's economic absorptive capacity.

Further indicative of the League's attitude is the following from page 112 of the same minutes:

The Chairman also disclaimed any intention of opening a lengthy discussion on the point; he recalled, however, that in 1930 the Council, on the advice of the Mandates Commission, had accepted the principle put forward by the Mandatory Power itself—namely, that Jewish immigration should be authorized to the extent allowed by the country's capacity of economic absorption.

If the accepted criterion were replaced by that of political possibilities, the result would be to modify the interpretation given up to the present to the Mandatory Power's obligation to encourage by means of immigration the creation of the Jewish National Home.

Further, the Chairman of the Mandates Commission, speaking at the meeting of the League Council held last September, said when referring to the decision of the Mandatory to reduce immigration:

. . . the Commission felt it to be its duty to draw attention to the decision, temporary as we hope, taken by the Mandatory Power, and think it is clear that such a decision cannot become final unless it is sanctioned by a new decision to be taken by the Council reversing the decision already taken in 1930.⁵⁰

Mr. Eden, the British Foreign Secretary, in a speech before the same meeting of the League Council, commented on September 14 as follows:

The Permanent Mandates Commission have drawn attention to the reduction of Jewish immigration to a total of 8,000 persons in the next eight months. That, as the Commission recognized, is a purely temporary measure designed to meet temporary and exceptional conditions. If, as they say, it is a departure from a principle sanctioned by the Council on a former occasion, my colleagues will, I am sure, appreciate the special circumstances in which this decision has been taken. What is to happen when the period of eight months is over, that is to say, after the 31st of March, 1938, must necessarily depend upon the progress made in the meanwhile with the partition scheme.⁵¹

There can be no doubt, therefore, that there has been an abrupt departure, temporary though it may be, from the principle of absorptive capacity.

This brings us to the second and more important question as to whether this departure is designedly only temporary in character. This has now become the crux of the question, since Zionism, acting through the Jewish Agency, has had, perforce, to accept the current

⁵⁰ League of Nations, *Official Journal*, December 1937, p. 899.

⁵¹ *Ibid.*, p. 902.

application of the new restrictive policy. In so doing, however, Dr. Hexter explains, the Agency Executive has expressed surprise that the draft ordinance appears practically to permit the giving of permanent effect to this policy. In this connection stress is laid on the assurances given in Mr. Eden's statement (quoted above) that the measure was "purely temporary" and "designed to meet temporary and exceptional conditions". The Agency Executive has, therefore, officially recommended that the proposed revision of Section 5 be amended by adding a proviso that it shall expire on March 31, 1938—this in spite of the above-cited concluding sentence of Mr. Eden's comment to the effect that future policy must depend upon progress made towards adoption of the partition scheme.

A later statement in the matter is reported by press telegrams to have been made by the British Colonial Secretary, Mr. Ormsby-Gore, in reply to a question in the House of Commons on November 3, 1937.⁵² He is recorded as having admitted that the draft ordinance under consideration involves a departure from the principle of absorptive capacity, while reiterating at the same time Mr. Eden's statement that its measures are of a temporary nature.

In concluding this discussion of the new draft ordinance, I venture to express concurrence in a view frequently heard in informal discussion in British official circles to the effect that the problem of administering this country will be so affected during the next year or so by primary considerations of a political nature as to require the maintenance in force of the current restriction of Jewish immigration to a maximum of not to exceed 12,000 a year.

Respectfully yours,

GEORGE WADSWORTH

867N.55/110

The Consul General at Jerusalem (Wadsworth) to the Secretary of State

No. 353

JERUSALEM, November 17, 1937.

[Received December 28.]

SIR: I have the honor to refer to my despatch No. 344 of November 10, 1937, discussing the political implications of proposed changes in the Palestine Immigration Ordinance and reviewing local reaction thereto.

⁵² United Kingdom, *Parliamentary Debates*, House of Commons, 1937-38, vol. 328, p. 900.

There is attached a copy of this amendment ordinance as finally enacted on November 11, 1937.⁵³

Two changes of importance were made in the original draft ordinance. First, Section 5A was amended to eliminate the provision giving the High Commissioner authority to determine what proportion of foreigners admitted may be of the Jewish race and to omit the proviso giving the Director of Migration authority to decide whether or not a person is of the Jewish race. This change is of little practical importance, since Section 5A still vests in the High Commissioner the right to fix the number of foreigners to be admitted and to regulate the numbers within the various categories. It is, however, of political significance, marking a concession to Jewish opinion, which had bitterly decried the use of the term "persons of the Jewish race" as introducing race discrimination into Palestine legislation for the first time.

The second change is the insertion in Section 5A of a proviso that the section will "expire on March 31, 1938, or at such later date as the High Commissioner in Council with the approval of the Secretary of State by notice in the *Gazette* may appoint". This is a partial concession to the Jewish Agency, which had petitioned the Government to amend Section 5A to provide for its definite termination on March 31, 1938, since, as explained in my previous despatch on the subject, that agency fears the permanent abandonment of the absorptive capacity principle in favor of the new political high level policy.

On two points the final ordinance failed to accede to pressure from the Jewish press and the Jewish Agency. First, the definition of "dependent" was not altered to include aged parents of immigrants or permanent residents. Second, the term "foreigners" as applied to prospective Jewish immigrants was not stricken from Section 5A.

By virtue of the powers vested in the High Commissioner by the new Section 5A, regulations were immediately put into effect carrying out the newly-adopted policy of restriction of immigration. This order, adopted on November 9, 1937,⁵⁴ provides as follows:

(1) The maximum aggregate number of foreigners to be admitted to Palestine as immigrants during the period between the 1st August, 1937, and the 31st March, 1938, shall be 9,600.

(2) The categories of immigrants to be admitted under this Order, and the maximum number of persons to be so admitted shall be as follows:—

⁵³ Not reprinted.

⁵⁴ The regulations were adopted on November 9, 1937, although the law itself is dated November 11, 1937.

	<i>Category as defined in Rule 4 (1) of the Immigration Rules</i>	<i>Maximum number of immigrants</i>
A(1)	persons in possession of and who freely dispose of capital of £P.1,000	900
A(4)	persons with secured income of not less than £P.4 per month, exclusive of earned income	50
B(1)	orphans less than 16 years old whose maintenance in or by a public institution in Palestine is assured until they become self supporting	10
B(2)	persons of religious occupation whose maintenance is assured	250
B(3)	students whose admission into an educational institution in Palestine and whose maintenance are assured until such time as they are able to support themselves	1440
C	persons who have definite prospects of employment in Palestine	2380
D	dependents of permanent residents, of immigrants who belong to the capitalistic category, of persons in the religious category, and of persons who have definite prospects of employment	4570
	Total of all Categories	<hr/> 9600

It is supposed that the Government will adhere to its policy expressed by the British Government in Official Communiqué No. 11/37 dated July 7, 1937, which proposed that Jewish immigration into Palestine be limited to a total of 8,000 for the eight month period from August 1, 1937, to March 31, 1938. It would appear, therefore, that the maximum quota for this period will be 8,000 Jews and 1,600 non-Jews.

The Palestine Government approved on November 9, 1937, a Labor Immigration Schedule of 1780 certificates for the six month period from October 1, 1937, to March 31, 1938, of which 1500 will be delivered to the Jewish Agency for distribution and 280 retained by the Department of Migration. It is understood that these 1780 certificates for the six month period are included in the 2380 approved for immigration under Category C for the eight month period and are not in addition to the total of 9600.

The Government announced in Official Communiqué No. 19/37 of November 10, 1937, that with the approval of this labor schedule the Jewish quota has been filled and no new applications for immigration will be accepted until January 1938. The Department of Migration will decide whether applications already received but not acted upon can be approved within the maximum quota or must be held over until after April 1, 1938.

Respectfully yours,

GEORGE WADSWORTH

867N.01/982

*Memorandum by the Chief of the Division of Near Eastern Affairs
(Murray)*

[WASHINGTON,] December 2, 1937.

The British Ambassador called on me by appointment yesterday to discuss the Palestine situation.

Sir Ronald stated that he was able to obtain anything but a clear impression in the American press as to the present attitude of American Jewry regarding the proposed partition of Palestine, and said he would appreciate any information that the Department was in a position to furnish him.

In reply I recalled the meeting of the World Zionists Organization at Zurich last summer when the American delegation, despite the vigorous opposition of its leader, Rabbi Wise, had joined with the majority of the World Organization in approving negotiations with the British Government on the basis of the partition proposal. Since Rabbi Wise had in the past been the most active spokesman in this country on the questions relating to Palestine it seemed only natural that his activities should be somewhat hampered by the outcome of the Zurich conference.

I also reminded the Ambassador of the position taken by Mr. Felix Warburg, speaking for the non-Zionist members of the Jewish Agency which convened in Zurich shortly after the Zionist congress. Mr. Warburg at that time made an urgent plea against the termination of the mandate and the establishment of a Jewish state, but, for reasons entirely different from those put forth by Rabbi Wise. The Rabbi does not want a restricted Jewish state established such as was proposed by the Royal Commission. Mr. Warburg and other distinguished American non-Zionists, members of the American Jewish Committee, are opposed in principle to the establishment of a Jewish state and separate Jewish nationality on the grounds that such action would seriously prejudice the position of Jews the world over and lead almost inevitably to widespread anti-Semitism.

There was, I said, on the other hand, undoubtedly a considerable portion of American Jewry which, while deploring the necessity for abandoning the present mandate, nevertheless accepted the partition proposal as a basis for negotiation in the hope that much more favorable terms for the establishment of the new Jewish state would result from such negotiations with the British Government.

In conclusion I reminded the Ambassador that American Jewry in general, regardless of undoubted disagreements as to policy, is united in a feeling of profound concern over the present plight of Jews in various European states and, whether Zionist or non-Zionist

in conviction, American Jews had shown themselves prepared to contribute generously toward the amelioration of the situation in which their European co-religionists find themselves and to endeavor by every practicable means to provide a refuge for their co-religionists whether it be in a Jewish national home or in a Jewish state. In this connection I recounted the views of the New Zionist Organization—the former Revisionists and radical wing of the World Zionists Organization—who regard the present plight of the Jews in Central Europe as a grave menace to peace and the establishment of a strong Jewish state embracing all of present Palestine and Transjordan as in the interest of not only Great Britain herself but of all countries of the world concerned in the preservation of peace.

Sir Ronald thanked me for this information and added that, as far as he was able to gather, progress in London with respect to the partition proposal seems to have slowed down and to be attended with some confusion.

WALLACE MURRAY

SYRIA AND THE LEBANON

CONFIRMATION BY THE FRENCH HIGH COMMISSION OF THE CONTINUED APPLICATION OF THE KNABENSHUE-GOURAUD AGREEMENT REGARDING PROTECTION BY THE UNITED STATES OF NATURALIZED AMERICANS OF SYRIAN OR LEBANESE ORIGIN¹

890D.11/49

Mr. George A. Ferris to the Secretary of State

NEW YORK, September 9, 1937.

[Received September 10.]

DEAR MR. SECRETARY: I am addressing this communication to you at the instance of several Arabic newspapers published in this Country and a number of societies, including the Lebanese League of Progress, which organizations are composed of American citizens of Lebanese and Syrian origin.

The problem discussed hereinafter is of vital importance to American citizens of Syrian and Lebanese origin, as well as their descendants who are native born Americans, and I respectfully request that you give this matter the attention that it deserves in order that these American citizens who number perhaps in excess of 300,000, exclusive of their native born children, should know how to proceed in order to protect, first, their status as American citizens, secondly, their rights as such, when and if they visit their native lands and, thirdly, their property rights in Lebanon and Syria.

According to the reliable information received by me and by those whom I represent, Article 34 of the Treaty of Lausanne² provides substantially as follows:

“Turkish subjects over 18 years of age, originating from a territory separated from Turkey by virtue of the present treaty, and who, at the time of the enforcement of this treaty, are residents of foreign lands, have the privilege of voting for the nationality in force in their native territory, if they are united through their race, to the majority of the population of this territory, and if their option is accepted by the government of said territory, this privilege of option must be fulfilled within a period of two years from the date of the enforcement of this treaty.”

¹ Agreement by exchange of notes between the American Consul at Beirut, Knabenshue, and the French High Commissioner, Gouraud, in 1921; see Hackworth, *Digest of International Law*, vol. III, pp. 194-196.

² Treaty of Peace signed at Lausanne, July 24, 1923; for text, see League of Nations Treaty Series, vol. XXVII, p. 11.

This Treaty went into effect on or about the 30th day of August, 1924 and hence, the period of limitation provided for therein expired on the 30th day of August, 1926.

It seems further that by an agreement made in the form of an exchange of letters between the French and the Turkish governments dated May 29th, 1937,³ the following was agreed upon:

“Persons originating from Syria or Lebanon who were residing in a foreign country at the date of August 30, 1924, but who neglected to vote within the specified period stipulated in Article 34 of the Treaty of Lausanne, are authorized to cast their vote within one year from the date on which this agreement was made.”

I am advised that a notice has been sent by the French Consulate General in the City of New York calling attention to the fact that all persons who have not acquired Syrian or Lebanese nationality at the time of the issuance of said notice, including such persons who made a declaration option after August 30th, 1926, or simply had their civil status registered with a French Consulate, or with the civil authorities of their place of birth through the intermediary of relatives residing in Syria or Lebanon, they may now do so by executing a letter in triplicate signed and dated May 29, 1938,—said letter to contain the necessary information as regards their name, first name, date and place of birth, the name and first names, date and place of birth of their parents and signifying their choice of nationality.

The said notice states in conclusion that failing to comply with this procedure before May 29, 1938, Turkish citizens of Syrian or Lebanese origin will be definitely considered as Turks. Said notice further provides that persons who have acquired the nationality of the country of their residence must, in order to obtain recognition in Syria or Lebanon as such nationals, produce the Firman enforced by the Ottoman Law of 1869,⁴ granting the authorization to renounce the Ottoman nationality, or in the event their naturalization was obtained subsequent to the occupation of their country by the Allies, the authorization for acquisition of a foreign nationality which should have been issued to them by the Allies or the French authorities; and, failing to produce either one of these documents, the naturalized emigrant who would have occasion to institute or to be the object of an action trial or lawsuit in his native land or who would temporarily or definitely return to his native country, will be considered as a Turkish subject in conformity with the Treaty of Lausanne, as well as the Franco-Turkish agreement of May 29th, 1937.

I am enclosing herewith the form ⁵ issued by the French Consulate

³ See despatch No. 278, September 13, from the Consul General at Beirut, *infra*.

⁴ Ottoman Nationality Law of January 19, 1869; for French text, see *British and Foreign State Papers*, vol. LXVII, p. 1251.

⁵ Not printed.

General headed: "Application for acquisition of Syrian or Lebanese nationality." An examination of this form demonstrates beyond doubt that any American citizen who executes this document would, in point of fact, be renouncing his American citizenship.

It is evident therefore that American citizens, of either Syrian or Lebanese origin, are faced with one of two alternatives, either to renounce their American citizenship; or to be treated as Turkish subjects with all the consequent disadvantages thereof. In the latter case for instance, I am reliably informed, that under the Turkish law no person of a nationality or citizenship other than Turkish can inherit from a Turkish subject. Assume that a naturalized American citizen who had obtained his naturalization without the Firman required by the Sublime Porte prior to the occupation of the territory in the World War and who did not elect his nationality, pursuant to the notice above referred to, should die in the United States owning real estate and personal property in Syria or Lebanon, he would be deemed a Turkish subject and any descendents born in the United States, hence native Americans, would not be entitled to inherit such property. Many other disabilities of a similar nature would also ensue.

This matter has caused considerable agitation amongst the people affected thereby, as it seems clear that they are impaled on either horn of the dilemma, that is to say, that they must renounce their American citizenship or in the alternative, be deemed Turkish subjects.

It would seem that the only way in which this dubious situation may be cleared up is, by the Department of State taking up for negotiation, a Treaty between the Turkish, French and our Government, having for its object the recognition as American citizens of all persons of Lebanese and Syrian origin who have become naturalized American citizens without the necessity of making any declaration, such as is referred to hereinabove.

The interests of the persons affected are vital and their number are sufficient to justify our Government in taking whatever steps may be necessary to preserve their citizenship status.

I am requested to advise you, Honorable Sir, that this is a burning question with the several hundred thousand American citizens of Lebanese and Syrian origin and that they are prepared to support any move that might be deemed advisable to clear up their status, either through the medium of petitions, publicity or in any other manner that our Government may indicate.

It is respectfully requested that this serious matter be given the earliest consideration and the writer, together with the Arabic press and many representative societies stand ready to do all in our power to assist in the premises.

An early reply will be appreciated.

Respectfully yours,

GEORGE A. FERRIS

890D.11/50

The Consul General at Beirut (Marriner) to the Secretary of State

No. 278

BEIRUT, September 13, 1937.

[Received October 15.]

SIR: I have the honor to enclose copies, with translations,⁶ of letters exchanged, under date of May 29, 1937, between the French Ambassador in Turkey and the Turkish Minister of Foreign Affairs, constituting a revised agreement with regard to option of nationality by natives of detached portions of the former Ottoman Empire.

While this revision was arranged in connection with the negotiations for the liquidation of properties of Syrian and Lebanese citizens in Turkey and of Turkish citizens in the Mandated Territory, the provision of chief interest to Syria and the Lebanon appears to be that which extends for one year, dating from May 29, 1937, the period during which natives of the States under French Mandate, who have previously neglected to do so under the terms of the Treaty of Lausanne, may opt for Syrian or Lebanese citizenship.

The Lebanese Government in particular is planning a widespread appeal to natives of this country to take advantage of this opportunity to acquire the citizenship of their country of origin. Arrangements have been made to give the widest possible publicity through French Consulates, especially in the Americas; an appeal to Lebanese citizens abroad by the President of the Republic has been prepared in English and in Spanish for publication in the United States and Latin America; and the suggestion has been made that a commission be sent to tour these countries for the purpose of establishing contact with Lebanese emigrants.

The Lebanese Minister of Foreign Affairs has stated, both publicly and in personal conversation with me, that the right of option for Lebanese citizenship is to be extended not only to those whose status is uncertain due to their failure to exercise option, but also to persons who may have acquired foreign citizenship. I learn from an official of the French High Commission that the Quai d'Orsay has advised more discretion regarding this phase of the matter, and that it will be given no publicity by French Consulates abroad, as Governments to which the persons concerned now owe allegiance might object to such political proselyting. However, individual inquirers will be informed that their option for Syrian or Lebanese citizenship will be accepted, even though they may have acquired foreign citizenship without the consent of the Government of their former allegiance.

I am informed that the procedure to be adopted in connection with the exercise of option for Syrian or Lebanese citizenship will consist

⁶ Not printed.

of an application in writing to be signed by the person concerned; that this application will be submitted to the competent authorities of the local governments for approval; and that the act of approval will invest the applicant with Lebanese or Syrian citizenship. Thus, although no oath of allegiance will be required, the act of option, and the decision accepting such option, may be considered as tantamount to naturalization.

Under these circumstances, I presume that the American Government will not be inclined to interpose objection to these endeavors to persuade persons who have acquired American citizenship to exercise their right to acquire other nationality. Therefore I do not plan, in the absence of instructions to the contrary, to discuss with the local authorities this policy in so far as it concerns American citizens of Syrian and Lebanese origin.

However, in view of the fact that many naturalized American citizens in this country, especially those resting under an un rebutted presumption of expatriation, may find it desirable to take advantage of this opportunity legally to acquire Syrian or Lebanese citizenship, I am addressing to the French High Commission a request, of which I enclose a copy,⁷ that the Syrian and Lebanese Governments advise the Consulate General of the names and the dates of admission to Syrian or Lebanese nationality, of any persons who, having previously acquired citizenship of the United States, avail themselves of their privilege of opting for citizenship of their country of origin under the accord of May 29, 1937.

Respectfully yours,

THEODORE MARRINER

390D.11/54

The Consul General at Beirut (Marriner) to the Secretary of State

No. 288

BEIRUT, September 22, 1937.

[Received October 30.]

SIR: I have the honor to refer to my despatch No. 278 of September 13, 1937, reporting the extension of the period during which natives of Syria and the Lebanon might opt for Syrian or Lebanese citizenship under Article 34 of the Treaty of Lausanne. In that despatch I enclosed a copy of a note⁷ addressed to the French High Commission, requesting that the Consulate General be notified of any instances in which natives of the Territory under French Mandate, who have acquired American citizenship, might avail themselves of the extended privilege of option for Syrian or Lebanese nationality.

⁷ Not printed.

I now have the honor to enclose a copy, with translation, of the High Commission's note dated September 21, 1937,⁸ promising compliance with the request that reports will be sent to the Consulate General of all cases of options made by persons having claim to American citizenship.

Respectfully yours,

THEODORE MARRINER

890D.11/49

The Secretary of State to Mr. George A. Ferris

WASHINGTON, September 27, 1937.

SIR: The Department has received your letter of September 9, 1937, concerning an exchange of notes of May 29, 1937, between France and Turkey with regard to the nationality of certain persons who emigrated from Syria or the Lebanon.

In the absence of a copy of the agreement in question the American Consul General at Beirut, Syria, is being requested to endeavor to furnish the Department with a copy of the text and also to report any further information available on the subject. Upon receipt of the report from the Consul General the Department will communicate with you again.

In this connection your attention is called to the notes⁹ exchanged between this Government and the French High Commissioner for Syria and the Lebanon, dated November 15 and December 2, 1921, and subsequent notes, in which the right of the American Government to protect naturalized American citizens of Syrian origin while residing temporarily in the mandated territory, who under American law are entitled to such protection, is recognized.

With regard to the effect of the exchange of notes of May 29, 1937, on the question of inheritance you are informed that inheritance and property rights in Syria and the Lebanon are governed by local law. It is the Department's understanding that the laws now in force in that territory permit foreigners to inherit real and personal property there provided that the law of the country of which the foreigner is a national accords the same rights to the nationals of Syria and the Lebanon.

Very truly yours,

For the Secretary of State:
WALLACE MURRAY

⁸ Not printed.

⁹ See Hackworth, *Digest*, vol. III, pp. 194-196.

390D.11/58

Memorandum by the Assistant Chief of the Division of Near Eastern Affairs (Alling)

[WASHINGTON,] October 1, 1937.

Mr. Pierre Dupont, French Vice Consul at New York, who happened to be on leave in Washington, called today to discuss the effect of the above-mentioned Agreement.¹⁰ Mr. Dupont made it clear that he was not authorized to speak on behalf of his Government.

I told Mr. Dupont that this matter had been brought to our attention in several recent communications and that we had sought enlightenment from our Consulate General at Beirut since we appeared to have received no official information regarding the Franco-Turkish Agreement in question. I explained that from our point of view the right of our Government to protect naturalized American citizens of Syrian or Lebanese origin had been recognized by the so-called Gouraud-Knabenshue Agreement effected by exchanges of notes dated November 15 and December 2, 1921, by the French High Commissioner and the American Consul General at Beirut. I showed Mr. Dupont the text of this Agreement as it appears on pages 343-345 of the publication *Les Actes Diplomatiques*, issued by the French High Commission at Beirut. Mr. Dupont, after reading the text, agreed that we had apparently been accorded the right to extend our protection to naturalized Americans of Syrian or Lebanese extraction. He seemed at a loss to understand the somewhat contrary instructions which the French Consulate General in New York had received from the French Foreign Office and from the High Commissioner at Beirut.

I then read to Mr. Dupont the fifth and sixth paragraphs of the letter addressed to the Department on September 9, 1937, by Mr. George A. Ferris, an attorney in New York (a copy of the letter in question was transmitted to the American Consulate General at Beirut under date of September 27, 1937¹¹). After reading these paragraphs Mr. Dupont said that they correctly set forth the situation. I then asked him whether the application blank, a copy of which is attached to the foregoing letter, was an example of the forms which French consular officers in this country were sending to people of Syrian and Lebanese origin. Mr. Dupont said that the present form differed slightly from this example but that the differences were not material. I then asked him to explain the formalities involved in connection with these applications. He said that persons desiring to fill out the blanks filled out three copies and were given a receipt therefor. The forms in question were then transmitted to the High Commission at Beirut which inves-

¹⁰ Franco-Turkish Agreement of May 29, 1937.

¹¹ Instruction of September 27, not printed.

tigated the statements made in the forms with respect to date and place of birth, etc. If the forms appeared to be in good order the High Commission then authorized the Consulate General to enroll the applicant as a Syrian or Lebanese national.

Mr. Dupont confirmed the statement made in Mr. Ferris' letter that persons of Syrian and Lebanese origin who failed to opt for Syrian or Lebanese nationality would be considered as Turkish subjects and that, since the laws of Turkey did not permit aliens to inherit real property, those persons of Syrian or Lebanese origin who had failed to opt for one of those nationalities would be unable to inherit real property in Syria or the Lebanon.

Mr. Dupont then inquired what effect the signature of such an application and the granting of Syrian or Lebanese nationality would have upon persons of Syrian or Lebanese origin who had been naturalized as American citizens. I explained to Mr. Dupont that the Department had not yet taken any formal decision in this matter since we did not yet have full information, but that the nationality expert in the Legal Adviser's Office had expressed the view that the acquisition of Syrian or Lebanese citizenship following the signature of such an application would result in the termination of the American citizenship of a naturalized American of Syrian or Lebanese extraction who returned to Syria. Mr. Dupont stated that he was very much interested in having this informal opinion and that so far as the Consulate General in New York was concerned he would advise persons of Lebanese or Syrian origin to seek legal advice before executing the applications in question. In this connection Mr. Dupont said that the majority of the people who had approached the Consulate General in this matter were actually naturalized American citizens, since those who had acquired such citizenship were the more intelligent among the Syrian and Lebanese population in this country and, being more intelligent, were more likely to have property in Syria or the Lebanon.

Mr. Dupont volunteered the information that the Consulate General in New York had sought instructions from the High Commission at Beirut on certain aspects of this matter. The Consulate General, for example, had inquired whether it was authorized to issue visas good for Syria to naturalized Americans of Lebanese or Syrian origin. They had raised this question because it appeared from instructions they had received that such persons could not be regarded as American nationals unless they had obtained, either from the Ottoman authorities or, after 1919, from the French authorities, permission to acquire American nationality. The High Commission had replied that the Consulate General could until May 29, 1938, visa such American passports, but that such visas would not be considered as recognizing the American nationality of the person concerned.

890D.11/62

Memorandum by the Assistant Chief of the Division of Near Eastern Affairs (Alling) to the Assistant to the Legal Adviser (Flournoy)

[WASHINGTON,] October 4, 1937.

MR. FLOURNOY: You will recall that article 34 of the treaty signed at Lausanne on July 24, 1923, between the Allied Powers and Turkey made the following provision with respect to Ottoman nationals, natives of territory detached from Turkey, who habitually resided abroad.

“Subject to any agreements which it may be necessary to conclude between the Government exercising authority in the countries detached from Turkey and the Governments of the countries where the persons concerned are resident, Turkish nationals of over eighteen years of age who are natives of a territory detached from Turkey under the present Treaty, and who on its coming into force are habitually resident abroad, may opt for the nationality of the territory of which they are natives, if they belong by race to the majority of the population of that territory, and subject to the consent of the Government exercising authority therein. This right of option must be exercised within two years from the coming into force of the present Treaty.”

Apparently few Syrian emigrants took advantage of the provisions of this article during the period allowed and we are informally advised that, with a view to giving such persons another opportunity to acquire Syrian nationality, the French and Turkish Governments entered into an agreement on May 29, 1937, extending for one year from that date the provisions of the above quoted article of the Treaty of Lausanne in so far as persons of Syrian and Lebanese origin are concerned.

We are further informed that in carrying out the provisions of the Agreement of May 29, 1937, the French Consulate General in New York has circulated a statement such as is contained in the fifth and sixth paragraphs of the attached letter from Mr. George Ferris¹² and that application blanks, similar to that enclosed with Mr. Ferris' letter, have been distributed to persons of Syrian and Lebanese origin. The question arises as to what effect the signature of such an application by a naturalized American citizen of Syrian or Lebanese origin, and the subsequent granting to the applicant of Syrian or Lebanese citizenship, would have upon the American nationality of the person concerned.

It will be observed from Mr. Ferris' letter that if persons of Syrian or Lebanese origin, residing habitually abroad, fail to opt for Syrian or Lebanese nationality prior to May 29, 1938, they will be considered as Turkish nationals. Many persons of Syrian or Lebanese origin

¹² Dated September 9, p. 923. Paragraphs under reference, however, are the sixth and seventh.

living in the United States are sorely tempted to opt for Syrian or Lebanese nationality in order that they may be assured of the right to inherit real property in Syria and the Lebanon. In this connection it is understood that foreign nationals are barred from inheriting real property in Syria and the Lebanon unless the laws of the State of which they are nationals permit Syrian and Lebanese nationals to inherit such property. Since the laws of Turkey do not permit foreign nationals to inherit real property in that country, Turkish nationals are of course barred from inheriting real property in Syria and the Lebanon. One can understand therefore why persons of Syrian and Lebanese origin in the United States are anxious to avoid being placed in the position where they will be considered as Turkish nationals.

In connection with this general question I attach copies of notes exchanged in 1921 between the French High Commissioner for Syria and the Lebanon and the American Consul General at Beirut, by which the French authorities recognized the right of the United States to extend protection to naturalized American citizens of Syrian and Lebanese origin until such time as the presumption of expatriation had arisen against such citizens. It may be added that the enjoyment of American protection is of considerable importance in Syria particularly in cases involving litigation before the local courts. Persons enjoying such protection may have their cases heard by the Mixed Courts, on which sit a majority of French judges, rather than by the native courts, which are composed solely of Syrian or Lebanese judges.

We have already had several letters on this general question and we have asked the American Consul General at Beirut to discuss the matter with the appropriate authorities. I expect that we shall have a considerable number of additional letters from persons of Syrian or Lebanese origin in the United States and that the Department may shortly be called upon to rule definitely as to the effect which the granting of Syrian or Lebanese nationality, following the execution of an application for such nationality, may have upon the American citizenship of applicants of Syrian or Lebanese origin.

390D.11/59

The Consul General at Beirut (Marriner) to the Secretary of State

No. 291

BEIRUT, October 5, 1937.

[Received October 30.]

SIR: I have the honor to refer to my despatch No. 278 of September 13, 1937, transmitting copies of the Franco-Turkish exchange of notes dated May 29, 1937, which effect an extension for one year of the

period during which former Ottoman subjects of Syrian or Lebanese origin may opt for Syrian or Lebanese citizenship, and to report that M. Naim Antaki, Syrian Under Secretary of State for Foreign Affairs, recently called and left, for the information of the Consulate General, a French translation of a notice which the Syrian Government intends to bring to the attention of persons of Syrian origin residing abroad. A copy of this statement, with English translation,¹⁸ is enclosed.

The subject matter of chief interest to the Department is that contained in the fifth section of the proclamation, which concerns itself specifically with American citizens of Syrian origin. As an additional inducement to such persons to take advantage of the opportunity to acquire Syrian citizenship, it is pointed out that, although under the terms of the Gouraud-Knabenshue Agreement the American citizenship of persons of Syrian origin naturalized in the United States is recognized by the Syrian Government, there is no legal obligation upon other States to extend like recognition. The especial implication is that such persons, if visiting or residing in Turkey, would probably be considered as Turkish subjects, whereas the Turkish Government would be obligated, under the recent agreement, to recognize them as Syrian citizens provided they had exercised their right of option.

Inasmuch as the Gouraud-Knabenshue Agreement is of course not binding on other succession States of the Ottoman Empire, the Syrians feel that their reasoning is legally sound; and, as stated on page 3 of my despatch No. 278, referred to above, I presume that the Department will not desire to take any official notice of the matter. In fact, it is hardly probable that American citizens of Syrian origin will be inclined to take any steps to acquire Syrian citizenship, except in instances where, due to prolonged residence abroad, the Department no longer recognizes their right to the protection of the American Government.

Respectfully yours,

THEODORE MARRINER

890D.11/58

The Secretary of State to the Consul General at Beirut (Marriner)

WASHINGTON, October 7, 1937.

SIR: Reference is made to the Department's instruction of September 27, 1937,¹⁸ regarding the recent Franco-Turkish Agreement said to have been signed on May 29, 1937, concerning the nationality of Syrian and Lebanese emigrants, and there is enclosed a copy of a memorandum of an informal conversation between an officer of the

¹⁸ Not printed.

Division of Near Eastern Affairs and the French Vice Consul at New York.¹⁵ The information contained in this memorandum appears to confirm certain of the statements made in the letter transmitted to the Consulate General under cover of the above-mentioned instruction. It seems to be clear that it is the intention of the authorities in Syria and the Lebanon not to recognize the American nationality of persons of Syrian or Lebanese extraction unless those persons can prove that they have obtained authorization either from the Ottoman authorities or subsequently from the French authorities to renounce their original Ottoman nationality. If such is the intention of the authorities in Syria and the Lebanon it would appear to be contrary to the assurances furnished the Consulate General at Beirut by the French High Commission under date of November 15, 1921.

It is requested that you discuss this matter with the French High Commission with a view to clarifying the intention of the French authorities in this matter.

Very truly yours,

For the Secretary of State:
R. WALTON MOORE

390D.11/69a : Telegram

The Acting Secretary of State to the Consul at Beirut (Steger)

WASHINGTON, November 1, 1937—5 p. m.

Department's instructions September 27¹⁶ and October 7. In view of numerous inquiries on effect of Franco-Turkish agreement on American citizens of Syrian and Lebanese origin please telegraph comments briefly and report fully by air-mail.

WELLES

390D.11/70 : Telegram

The Consul at Beirut (Steger) to the Secretary of State

BEIRUT, November 2, 1937—noon.

[Received November 2—10 a. m.]

Department's November 1, 5 p. m. In my opinion Franco-Turkish Agreement of May 29 does not in any way affect the rights of American citizens of Syrian origin unless they voluntarily opt for Syrian citizenship. Gouraud-Knabenshue Agreement appears to provide ample assurance. Options [*Opinions?*] expressed by French Vice Consul in New York do not agree with those expressed to me by High Commission officials. See despatch September 13, October 5 and 28.¹⁷

STEGER

¹⁵ *Ante*, p. 929.

¹⁶ Not printed.

¹⁷ Despatch of October 28 not printed.

390D.11/71 : Telegram

The Consul at Beirut (Steger) to the Secretary of State

BEIRUT, November 3, 1937—11 a. m.
[Received November 3—10:34 a. m.]

Department's November 1, 5 p. m. Discussed yesterday with High Commission situation created by Franco-Turkish Agreement and have received strongest verbal assurances that American rights as laid down in Gouraud-Knabenshue Agreement will not be modified and that Foreign Affairs Ministry will be requested to make situation clear in new instructions to consular officers in the United States. Written assurances have been promised for the near future.

STEGER

390D.11/74

The Consul at Beirut (Steger) to the Secretary of State

No. 312

BEIRUT, November 3, 1937.
[Received November 16.]

SIR: I have the honor to refer to the Department's telegraphic instruction of November 1st, 5:00 P. M., and to my telegraphic replies of November 2nd, 12:00 M., and November 3rd, 11:00 A. M., with regard to the effect upon American citizens of Syrian and Lebanese origin of the Franco-Turkish agreement of May 29, 1937. In this connection reference is made also to the Department's instructions of September 27, 1937,¹⁸ and of October 7, 1937.

It is believed that the Consulate General's despatches Nos. 278 of September 13th, 288 of September 22nd, 291 of October 5th, and 307 of October 28th¹⁹ will reach the Department before the present communication, and will contain such comment as may be required upon the effect of the agreement mentioned.

Nevertheless, in view of the apparent misunderstanding of the situation which exists among certain French consular officers in the United States, as described in the Department's instruction of October 7th, I called yesterday afternoon at the French High Commission and discussed the matter at some length with M. de Sandfort, Chief of the Diplomatic Bureau, who is the official directly concerned with the question of options under the agreement of May 29th.

As soon as I described briefly to M. de Sandfort the situation as explained in the Department's instructions referred to above, he declared emphatically that he concurred with my views, and that he did not understand how any consular officer of France in the United

¹⁸ Not printed.

¹⁹ Despatch No. 307 not printed.

States could be ignorant of the fact that the provisions of the Gouraud-Knabenshue Agreement create for American citizens of Syrian origin a situation entirely different from that of Syrian emigrants naturalized in other countries. He gave a categorical statement that the High Commission had every intention of continuing to recognize the American nationality of Syrian-born American citizens, and of assuring to them all rights which may be enjoyed by other citizens of the United States. He furthermore declared that he would report the situation as described by me to the Ministry of Foreign Affairs by the next air mail, and would request that additional instructions be sent to French consular officers in the United States for the purpose of making clear to them the fact that the Gouraud-Knabenshue Agreement guarantees to naturalized Americans of Syrian origin rights which are not recognized in the case of naturalized citizens of other countries.

M. de Sandfort also promised that he will, in the near future, send to the Consulate General an official communication reiterating the assurances which he gave to me verbally.

I trust that this statement will reassure the Department as to the attitude of the French authorities and will, together with the previous despatches mentioned above, constitute an adequate reply to the several instructions received from the Department on this subject.

Respectfully yours,

CHRISTIAN T. STEGER

890D.11/69

Memorandum by the Chief of the Division of Near Eastern Affairs (Murray) to the Assistant to the Legal Adviser (Flournoy)

[WASHINGTON,] November 3, 1937.

MR. FLOURNOY: The attached letter ²⁰ from the Reverend Benjamin Hoffiz raises several question[s] regarding the effect upon American citizens of Syrian or Lebanese origin if they opt for Syrian or Lebanese nationality under the terms of the Franco-Turkish Agreement of May 29, 1937. It will be recalled that the Agreement in question extended for one year from the date of its signature the provisions of Article 34 of the Treaty of Lausanne, between the Allied Powers and Turkey, under which Turkish nationals, natives of territories detached from Turkey, habitually resident abroad, might opt for the nationality of the territory of which they were natives.

Prior to writing the attached letter the Reverend Mr. Hoffiz called at the Department and stated that he was particularly anxious to determine whether opting for Syrian or Lebanese nationality by American citizens of Syrian or Lebanese origin would have any effect upon their American nationality. In order that persons of Syrian

²⁰ Not printed.

origin in this country may have a clear idea as to the effect upon their American citizenship of option for Syrian or Lebanese nationality, it seems desirable to furnish the Reverend Mr. Hoffiz with the Department's opinion in order that he may advise his compatriots. You have already expressed informally the opinion that such option would have no effect upon the American citizenship of the persons in question as long as such persons continue to reside in the United States. It was my understanding, however, that you felt that if, after opting, such persons should take some step to carry their choice of nationality into effect, such as taking up residence in Syria or in the Lebanese Republic, they would automatically lose their American citizenship under the terms of the Act of 1907.²¹

I should be appreciative if you would suggest a paragraph covering this point for incorporation in a letter which we intend to write to Mr. Hoffiz. I attach a rough draft²² of such a letter.

WALLACE MURRAY

890D.11/78

Memorandum by the Assistant to the Legal Adviser (Flournoy) to the Chief of the Division of Near Eastern Affairs (Murray)

[WASHINGTON,] November 9, 1937.

With reference to the attached letters left with me by Mr. Alling,²³ and Miss Holland²⁴ and to my oral discussions with them, I may say that naturalized citizens of the United States of Syrian origin, who inquire concerning the desirability of their opting for Syrian nationality, for the protection of their property, should be advised that the exercise of such option would be inconsistent with the oaths which they took when obtaining naturalization as citizens of the United States, in which they declared allegiance to the United States and renounced allegiance to the state of which they were formerly nationals; also that, by exercising such option, they would endanger their status as citizens of the United States. A similar statement should be made to natives of Lebanon.

While the exercise of the proposed option might not be regarded as having the effect of expatriating the persons in question, under the provision of the first paragraph of section 2 of the act of March 2, 1907, so long as such persons continue to reside in the United States, such would probably not be the case if they should leave the United States and take up their residence in Syria or Lebanon.

R. W. FLOURNOY

²¹ 34 Stat. 1228.

²² Not found in Department files.

²³ October 4, p. 931.

²⁴ Apparently the memorandum by the Chief of the Division of Near Eastern Affairs, *supra*.

390D.11/79

The Consul at Beirut (Steger) to the Secretary of State

No. 316

BEIRUT, November 9, 1937.

[Received November 24.]

SIR: I have the honor to refer to my despatch No. 312 of November 3, 1937, reporting the verbal assurances given by the French High Commission with regard to recognition of the nationality of American citizens of Syrian and Lebanese origin, and to enclose a copy, with translation, of the High Commission's note dated November 5, 1937, which repeats these assurances in writing.

Respectfully yours,

CHRISTIAN T. STEGER

[Enclosure—Translation]

The French High Commission in Syria and the Lebanon to the American Consulate General at Beirut

The High Commission of the French Republic in Syria and the Lebanon presents its compliments to the Consulate General of the United States and, referring to its note of the 2nd of this month and to the conversation which Mr. Steger had on the same date with M. de Sandfort, has the honor to confirm to him that the provisions of the Gouraud-Knabenshue Agreement continue to be applied in Syria and the Lebanon.

Steps have just been taken with a view to having the Department of Foreign Affairs recall the terms of the said agreement to the attention of diplomatic and consular agents of the Republic in the United States.

BEIRUT, November 5, 1937.

(SEAL) HIGH COMMISSION OF THE FRENCH
REPUBLIC IN SYRIA AND THE LEBANON
Bureau Diplomatique

AGREEMENT BETWEEN THE UNITED STATES AND FRANCE REGARDING CUSTOMS PRIVILEGES FOR EDUCATIONAL, RELIGIOUS, AND PHILANTHROPIC INSTITUTIONS IN SYRIA AND THE LEBANON²⁵

[Effected by exchange of notes, signed February 18, 1937; for texts of notes, see Department of State Executive Agreement Series No. 107, or 51 Stat. 279.]

²⁵ For previous correspondence, see *Foreign Relations*, 1936, vol. III, pp. 460 ff.

TANGANYIKA TERRITORY

RESERVATION BY THE UNITED STATES OF ITS RIGHTS AS AFFECTED BY CHANGES OF THE FRONTIER BETWEEN THE MANDATED TER- RITORIES OF TANGANYIKA AND RUANDA URUNDI

748T.62S15/7

The Secretary of State to the British Chargé (Mallet)

WASHINGTON, October 20, 1937.

SIR: The receipt is acknowledged with thanks of your note No. 336 of October 4, 1937,¹ transmitting for the information of the Government of the United States a copy of a treaty between the United Kingdom and Belgium regarding the boundary between Tanganyika Territory and Ruanda Urundi, signed at London on November 22, 1934.²

The Government of the United States takes note of this treaty without prejudice to any rights which it may have in the territory affected, under the convention between the United States of America and Great Britain signed at London on February 10, 1925,³ and the treaty and protocol between the United States of America and Belgium, signed at Brussels on April 18, 1923, and January 21, 1924.⁴

Accept [etc.]

For the Secretary of State:
HUGH R. WILSON

748T.62S15/6

*The Secretary of State to the Belgian Ambassador
(Van der Straten-Ponthoz)*

WASHINGTON, October 20, 1937.

EXCELLENCY: I have the honor to acknowledge with thanks the receipt of your note No. 4224 of September 17, 1937,¹ transmitting a copy of the treaty, with annexed maps, in French and English, signed between the Governments of Belgium and Great Britain delimiting that portion of the boundary between Tanganyika Territory and Ruanda Urundi which is situated along the Kagara River, as defined

¹ Missing from Department files.

² For text, see League of Nations Treaty Series, vol. cxc, p. 95.

³ *Foreign Relations*, 1925, vol. II, p. 203.

⁴ *Ibid.*, 1923, vol. I, p. 433.

by the Council of the League of Nations, with a view to introducing with the consent of the Council of the League of Nations, under Article 12 of the mandate of East Africa and under Article 12 of the mandate of Ruanda Urundi, such minor modifications in the boundary as so defined as might seem desirable in view of the local geographical conditions.

You state that this treaty was submitted to the Council of the League of Nations and was approved by the latter on the approval of the Mandate Commission by a resolution dated September 6, 1935.⁵

The Government of the United States takes note of this treaty without prejudice to any rights which it may have in the territory affected, under the treaty and protocol between the United States of America and Belgium, signed at Brussels on April 18, 1923, and January 21, 1924, and the convention between the United States of America and Great Britain signed at London on February 10, 1925.

Accept [etc.]

For the Secretary of State:

HUGH R. WILSON

⁵ League of Nations, *Official Journal*, November 1935, p. 1147.

TURKEY

PRELIMINARY DISCUSSIONS RESPECTING A TRADE AGREEMENT BETWEEN THE UNITED STATES AND TURKEY

611.6731/191 : Telegram

The Ambassador in Turkey (MacMurray) to the Secretary of State

ANKARA, November 6, 1936—4 p. m.
[Received November 6—3:02 p. m.]

5. Under Secretary of National Economy has informed Commercial Attaché that the Turkish Government desires to enter into negotiations for a commercial treaty along the lines of those previously concluded by you.

Commercial Attaché, who had consulted with me in anticipation of such a suggestion, assured him that any Turkish proposal would receive your sympathetic consideration. I beg to request such instructions as you may have to give me with a view to the formal proposal which the Turkish Foreign Office will probably present to me in the near future.

MACMURRAY

611.6731/191 : Telegram

*The Acting Secretary of State to the Ambassador in Turkey
(MacMurray)*

WASHINGTON, November 19, 1936—6 p. m.

1. Your 5, November 6, 4 p. m. The Department assumes that reference is intended to a trade agreement to be negotiated under the Act of June 12, 1934.¹

If the Turkish Government presents a formal proposal, you should receive it and state that you will bring it to the Department's attention where it will be given most careful and sympathetic consideration with a view to determining what opportunity exists for the negotiation of a useful agreement under the principles established in the trade agreements program.

You should, however, seek to avoid giving the impression that we will be prepared to open negotiations at any early date. The possi-

¹ 48 Stat. 943.

bility of concluding a useful trade agreement depends upon the nature of the trade between the two countries and upon the possibilities of reconciling such conflicts as may exist between their commercial policies. For your confidential information, the Department is studying American trade with Turkey and the commercial policy of the Turkish Government with a view to determining the possibilities of a useful trade agreement but the bilateralistic policies of Turkish trade control and other reasons indicate doubt as to the desirability of initiating negotiations at this time, particularly as there do not appear to be any vital problems pressing for settlement at this time in our commercial relations with Turkey.

MOORE

611.6731/191

The Secretary of State to the Ambassador in Turkey (MacMurray)

No. 144

WASHINGTON, May 3, 1937.

SIR: Referring to your telegram No. 5 of November 6, 1936, 4 p. m., and the Department's telegraphic reply of November 19, 1936, 6 p. m., with regard to the desire of the Turkish Government to enter into negotiations for a trade agreement, there is enclosed for your information a copy of a strictly confidential preliminary survey² with reference to trade agreement possibilities with Turkey.

The recommendation is made in the concluding paragraph of the survey that a "country committee" for both Turkey and Greece be created. A country committee, functioning as a subcommittee of the interdepartmental Committee on Trade Agreements, is charged with the responsibility of doing the technical work in preparation for the negotiation of a trade agreement with a particular country. Each country committee is made up of experts representing the Departments of State, Treasury, Agriculture and Commerce, and the Tariff Commission, and such other governmental agencies as may be in a position to contribute their advice. In view of the fact that it was recently decided to carry out the recommendation to create a country committee for Turkey and Greece, the Department would very much appreciate receiving your considered comment on the possibilities of concluding a trade agreement with Turkey, and suggests that you may find it convenient to use the enclosed survey as a basis for your remarks, without, however, limiting yourself to subject matter covered therein.

You will observe in examining the survey that reference is made to a lack of adequate basic information upon which to appraise prospects

² Not printed.

for the future development of Turkish-American trade, particularly with reference to advantages which might accrue to American trade from the conclusion of an agreement. In this latter connection it would appear that the Embassy is in a particularly favored position to observe the effect of Turkish customs duties, quotas, foreign exchange regulations or other restrictive measures on imports from this country and the Department will be especially interested, therefore, in receiving your detailed observations on this phase of the matter.

Inasmuch as no announcement has yet been made of intention to negotiate with Turkey, you will appreciate the necessity of handling this matter in strictest confidence until such time as you may be specifically instructed to the contrary.

Very truly yours,

For the Secretary of State:
FRANCIS B. SAYRE

611.6731/195 : Telegram

The Ambassador in Turkey (MacMurray) to the Secretary of State

ISTANBUL, May 4, 1937—5 p. m.
[Received May 4—3:55 p. m.]

17. My telegram No. 5, November 6, 4 p. m., from Ankara. I have just received from the Turkish Minister for Foreign Affairs a note proposing the negotiation of an arrangement for reciprocal tariff reductions. I am acknowledging it in accordance with your telegram No. 1, November 19, 6 p. m.

MACMURRAY

611.6731/195 : Telegram

The Secretary of State to the Ambassador in Turkey (MacMurray)

WASHINGTON, May 6, 1937—noon.

29. Your 17, May 4, 5 p. m. If note contains detailed proposals please telegraph summary. If the proposal is merely made in general terms is it your understanding that concrete suggestions will be forthcoming from the Turkish Government shortly?

Since its telegram No. 1, November 19, 6 p. m., the Department's views respecting possible negotiations with Turkey have become sufficiently crystallized to permit of early consideration by it of any concrete proposals which the Turkish Government may have in mind. For tactical reasons, however, the Department still wishes to leave the initiative with respect to detailed proposals entirely with the Turks.

HULL

611.6731/196: Telegram

The Ambassador in Turkey (MacMurray) to the Secretary of State

ISTANBUL, May 8, 1937—5 p. m.

[Received May 8—2:20 p. m.]

18. Your telegram No. 29, May 6, noon.

1. The note reported in my telegram 17 was couched only in general terms. I do not anticipate that the Turkish Government intends to propose anything more concrete until assured of our readiness in principle to negotiate in the near future. I therefore request authorization to advise the Foreign Office that we are prepared to give early consideration to any concrete proposals offered.

2. Unprepared for the delay of the Turkish Government in communicating the proposal first broached last November, Minister of Economy is now anxious to expedite negotiations with a view to the conclusion of an arrangement by September if possible. He would apparently be willing to send a delegation to Washington.

3. I learn that this desire for haste has even raised the question of denouncing our existing commercial treaty³ in order to expedite new negotiations. I suggest the advisability of meeting this desire so far as possible if only in anticipation of the less favorable treatment likely to be accorded to our exports in case present trade tendencies progress so far as to bring about a so-called favorable American balance of trade.

4. Conversations which the Commercial Attaché has had with interested Turkish officials indicate that they contemplate asking tariff reductions on carpets (so specified as to include only Turkish products), wool, mohair, filberts, figs, and raisins and in return would offer reductions on machinery, automobiles, and radios and would consider reductions in a wider range of our products.

MACMURRAY

611.6731/201

Memorandum by the Economic Adviser (Feis) to the Chief of the Division of Trade Agreements (Hawkins)

[WASHINGTON,] June 1, 1937.

MR. HAWKINS: I think the Committee will find that the Turkish-German clearing and compensation arrangements will be a definite factor in determining the outcome of any trade agreement between the United States and Turkey. To cite a concrete example: German purchases of Turkish tobacco and Turkish mohair at a price well

³Treaty of Commerce and Navigation, signed at Angora, October 1, 1929; *Foreign Relations*, 1929, vol. III, p. 838.

above the world price has meant that this trade relative to the Turkish-American trade in mohair has greatly increased. The Turks became possessors of a large volume of blocked marks. The result has been to foster Turkish purchases of German commodities well in excess of the previous purchases and in many instances competitive with American products. The transaction was made possible by the lowered valuation put upon the blocked mark and presumably also by export subsidy in Germany.

A glance at the Turkish trade statistics proves the continual increase and the relative importance of German trade since the inauguration of the clearing and compensation arrangement. In view of these considerations it seems to me that it is highly important to make a study of the clearing and compensation arrangements to which Turkey is a party, to do so urgently, and in any agreement we make with Turkey to consider what safeguards may be necessary.

H[ERBERT] F[EIS]

611.6731/199 : Telegram

The Chargé in Turkey (Shaw) to the Secretary of State

ISTANBUL, June 23, 1937—11 a. m.

[Received June 23—9:20 a. m.]

26. Department's 32, May 10, 7 p. m.⁴ In reply to Embassy's note stating that our Government is prepared to accord sympathetic consideration to any concrete proposals Turkish Government would care to advance, Minister of Foreign Affairs in *note verbale* just received states Turkish delegation will go to Washington at the end of September to negotiate tariff reduction agreement. Recommend I be authorized to inform Turkish Government that we are prepared to negotiate with their delegation in Washington in September. Would Department care to have me suggest to Turks desirability of furnishing us officially with list of commodities on which they desire reductions.

SHAW

611.6731/199 : Telegram

The Secretary of State to the Chargé in Turkey (Washington)

WASHINGTON, July 1, 1937—4 p. m.

49. Your 26, June 23, 11 a. m. It will be roughly 3 weeks before our studies concerning whether a basis exists for entering into trade

⁴ Not printed.

agreement negotiations with Turkey will be far enough advanced for consideration by the interdepartmental committee on trade agreements. If it should be decided as a result of the deliberations of that committee that a basis for negotiations exists, our established procedure for the negotiation of trade agreements, involving a preliminary announcement to the public and a preliminary exchange of desiderata with the other government followed later by formal public notice of intention to negotiate and public hearings, would require at the minimum an additional 14 weeks, making in all 17 weeks from the present until active negotiation of the agreement with the representatives of the Turkish Government could begin.

It will not be possible, therefore, for us to fix a definite date when we would be prepared to meet the Turkish delegation until it has been determined that a basis for a trade agreement exists. If everything proceeds satisfactorily, it may be possible for us to meet the Turkish delegation at the beginning of November, but in any event it could not be earlier than that. In discussing this matter with the Turkish officials you may at your discretion use any of the information given above.

Since we are unable at this time to present a list of our desiderata in connection with the possible negotiation of an agreement with Turkey, we are not in a position to request an official list of commodities on which the Turks desire reductions. You might, however, suggest informally to the Turkish authorities that it would be helpful for us in connection with our studies to have such a list but you should explain that we are not prepared to give a list in return at this time.

HULL

611.6731/207 : Telegram

The Chargé in Turkey (Washington) to the Secretary of State

ISTANBUL, August 9, 1937—5 p. m.

[Received 6 p. m.]

39. Reference Department's telegram No. 49, July 1, 4 p. m. (last paragraph) and Embassy's despatch No. 294, July 13.⁵

The private secretary of the Minister of Economy has handed our Commercial Attaché the following list of commodities on which the Turkish Government is desirous of obtaining tariff reductions from the United States:

1. Figs.
2. Rugs, carpets and kilims.

⁵ Latter not printed.

3. Mohair.
4. Hazelnuts, shelled and unshelled.
5. Walnuts, shelled and unshelled.
6. Pistachio nuts, shelled and unshelled.
7. Pine nuts (kernels), shelled.
8. Olive oil in containers weighing less than 40 pounds and in containers weighing 40 pounds or more.
9. Almonds, shelled and unshelled.
10. Tobacco.

At the same time there was also communicated the following list of articles of American origin and manufacture in which the Turkish Government will grant tariff reductions:

1. Machinery.
2. Motors.
3. Automobiles and trucks.
4. Radios.
5. Typewriters.
6. Rubber goods, including automobile tires, mechanical goods, et cetera.

[File copy not signed]

611.6781/211 : Telegram

The Secretary of State to the Chargé in Turkey (Washington)

WASHINGTON, August 13, 1937—6 p. m.

66. In the light of your discussions with the Turkish authorities and of our studies in progress, we consider a basis exists for trade agreement negotiations. This was determined prior to the receipt of your 39, August 9, 5 p. m.

You should advise the Turkish authorities of this decision, but in so doing obtain confirmation of their position regarding the basis for such negotiations and acquaint them with our procedure. Care should be taken to avoid conveying the impression that the informal lists transmitted in your telegram under reference may serve as an approved basis of negotiations. There has been no opportunity to consider some of the items contained therein.

In advising the Turkish authorities, you should emphasize that the basis for negotiations includes the unconditional most-favored-nation principle in respect of all forms of trade control (an indication of the application of the principle may be found in the general provisions of trade agreements between the United States and other countries, e. g., Switzerland) and also a Turkish understanding that this Government is not in general in a position to grant concessions to Turkey on products of which Turkey is not the principal or an important supplier to the United States.

As indicated in the Department's telegram No. 49 of July 1, our procedure includes a preliminary public announcement by this Government that the negotiation of a trade agreement with the other country is contemplated. The purpose of this announcement is to afford American interests opportunity to present views as to the products to be covered. Such announcement includes the statement that at a later date formal public notice of intention to negotiate will be given. Accompanying the formal notice there is published a list of articles under consideration for concessions to the other country. In order to be in a position to publish such a list in connection with Turkey, it is necessary for us to have a list of products on which the Turkish Government contemplates requesting concessions from the United States. The formal notice constitutes an invitation to our domestic interests to submit briefs with respect to articles included in the published list and sets a date for public hearings here. This Government does not make public announcement, prior to conclusion of an agreement, of products on which we seek concessions from the other country.

In view of our policy and the requirements of our procedure with regard to the publication of a list of articles under consideration for concessions to Turkey to accompany the formal notice of intention to negotiate, the Turkish authorities may wish to reconsider their request list contained in your telegram under reference, particularly bearing in mind the rule of principal or important supplier. The greatest care should be used in the preparation of this list since it will be difficult to consider products not contained in the published list. There is no necessity for the Turkish Government to indicate at this stage the exact nature of the concessions to be requested. There need be included only the description and tariff number of the product, conforming as closely as possible to the United States tariff nomenclature with respect to such product. It is necessary for us to have such a list from the Turkish authorities as soon as possible after the issuance of the preliminary announcement, but in any case not later than 4 weeks after the date of that announcement.

For your confidential information: if the question of a reduction in the duty on cigarette leaf tobacco is referred to, you should state that although it will probably not be possible for this Government to grant such a reduction, consideration could be given to binding the present duty. A duty reduction on tobacco would very likely be of little if any benefit to Turkey and would probably result in a substantial reduction of our customs revenue. See page 17 of the Commercial Attaché's memorandum of June 24, 1937, enclosed with your despatch No. 292 of June 30.*

* Not printed.

As to the list of articles contained in your telegram under reference, on which the Turkish Government will consider granting tariff reductions, you may state that the indications of the Turkish Government's intentions are welcome and point out that when our studies have progressed further, we shall be prepared to submit to the Turkish Government a list of articles which we desire to have considered in the negotiations for concessions by Turkey.

We are disposed to proceed, after confirmation by the Turkish Government of the basis for negotiations, with the preliminary public announcement that negotiation of a trade agreement with Turkey is contemplated. Please say that we prefer that Turkish authorities refrain from giving any previous publicity to the matter.

The Turkish Embassy here has been informed of the general nature of the discussions as to the basis for negotiating a trade agreement and our procedure in this respect. Tobacco has not been mentioned.

Copies of the standard general provisions⁷ for inclusion in trade agreements and of the Country Committee report on Turkey⁸ are being sent you, as well as copies of the preliminary and later announcements made in connection with the negotiations with Ecuador⁹ as examples of the announcements we should expect to make in the case of Turkey.

HULL

611. 6731/215 : Telegram

The Chargé in Turkey (Washington) to the Secretary of State

ISTANBUL, September 21, 1937—noon.

[Received 4:45 p. m.]

56. Department's telegram No. 66, August 13, 6 p. m. On September 11, I sent a note to the Foreign Office explaining briefly the basis for negotiations and our procedure and requesting confirmation of the Turkish position and a list of articles on which concessions are desired. On the same day, Commercial Attaché Gillespie gave a more detailed verbal explanation to the Minister of Economy.

I have now received from the Foreign Office a note transmitting a list identical with the one forwarded in my 39, August 9, 5 p. m., and stating that a reply to the other points raised in my note will be made after the competent Department has been consulted.

⁷ Not printed. These were a revision of the standard general provisions printed in *Foreign Relations*, 1935, vol. I, p. 541.

⁸ Not printed.

⁹ Department of State, *Press Releases*, January 9, 1937, p. 16, and April 10, 1937, p. 208.

In his conversation with Minister of Economy on September 11, Commercial Attaché ascertained that the list had already been transmitted to Foreign Office. During the conversation, however, the Minister realized the need for revising it and expressed the hope that Gillespie would cooperate with him in this task.

With respect to the basis for negotiations, Minister stated that he could give assurances that unconditional most-favored-nation treatment would be granted in respect to customs matters but that he would have to consult his colleagues before being able to give the same assurances with respect to all forms of trade control. Commercial Attaché explained that acceptance of this principle was a fundamental essential.

Commercial Attaché has since ascertained that the Government is considering some form of currency devaluation through the payment of a premium on purchases made with free foreign exchange. This may explain the Minister's reluctance to give assurances and the delay of the Government in confirming its position regarding basis of negotiations.

A memorandum of Commercial Attaché's conversation of September 11 is being forwarded along with copies of the exchange of notes in the pouch which leaves tomorrow.¹⁰

WASHINGTON

611.6731/221 : Telegram

The Chargé in Turkey (Kelley) to the Secretary of State

ANKARA, October 26, 1937—8 p. m.

[Received 9:55 p. m.]

13. Embassy's No. 56, September 21, noon.

1. Embassy received on October 23 a note from Foreign Office (replying to Embassy's note of September 11, 1937) which stated in the first paragraph that "after having studied with the Ministry of Economy the basis proposed by the American Government for the negotiation of the agreement proposed by the Turkish Government, this Ministry has decided to accept the maintenance for American goods of unconditional most favored nation treatment."

Having been informed that the original draft of the Turkish Government's reply stated that unconditional most favored nation treatment could be accorded to the United States only in respect to customs duties, I considered that the above phraseology did not clearly indicate that the Turkish Government had accepted the Department's conception of the scope of unconditional most favored nation treat-

¹⁰ None printed.

ment. After a conversation with the Prime Minister¹¹ and the parliamentary Under Secretary of State for Foreign Affairs¹² and at the suggestion of the latter I addressed yesterday a note to Foreign Office inquiring "whether in accepting the principle of unconditional most favored nation treatment as the basis for the negotiations, the Turkish Government is in accord with the American Government that this principle applies not only to customs matters but to all forms of trade control." I pointed out that all the trade agreements entered into under our trade agreements program are based on the principle of unconditional most favored nation treatment in respect not only to customs duties but to all forms of restriction or control of trade and stated that the Department of State desired assurances that the Turkish Government understands and accepts this basis for the contemplated negotiations.

Embassy received today note from Foreign Office stating the Turkish Government "is in accord with regard to the meaning given in above mentioned note to most favored nation treatment, consequently it accepts as a basis for negotiation of Turkish American commercial agreement most favored nation treatment extending not only to customs duties but to all forms of commercial restriction and control."

For the Department's information it may be stated that the Prime Minister, formerly Minister of Economy, has on two occasions expressed to me his great interest in the conclusion of a trade agreement with the United States and the Under Secretary of State for Foreign Affairs has stated that the Prime Minister has given instructions that everything be done to bring about the conclusion of such an agreement.

2. Embassy has received also a note from the Foreign Office (*a*) requesting that "wool, raisins and meerschaum" be added to the list of goods transmitted with its note of September 17 (enclosure to Embassy's despatch number 357 of September 21¹³) for which the Turkish Government will request tariff reductions, and (*b*) stating that during the negotiations tariff consolidation will be demanded for the following articles: valonia; valonia (*valex*); sheepskins, lambskins and skins of all kinds of wild animals; goatskins and kid skins; canary seed; olive oil (non-edible); emery; animal hair (goat hair, *et cetera*); gun tragacanth; attar of rose; beeswax; carpet wool; gallnuts; sheep casings; chrome and chromite; licorice paste; and paste.

Commercial Attaché informs me that the officials of the Ministry of Economy thoroughly understand that the United States is not in general in a position to grant concessions to Turkey on products of

¹¹ Celal Bayar.

¹² Numan Menemencioğlu.

¹³ Not printed.

which Turkey is not the principal or an important supplier to the United States.

3. A second paragraph to note from Foreign Office received on October 23 states "In acceding thus to the desire expressed by the Embassy of the United States of America the Ministry for Foreign Affairs has the firm hope that the question of the Export Import Bank of Washington granting 5 years' credit will also find a favorable solution."

This question had not been raised in any discussion on the subject of the trade agreement between members of the Embassy and Turkish officials. The Commercial Attaché informs me, however, that ever since the establishment of the Export Import Bank the Turkish Government has been desirous that the bank extend its credit on its purchases in the United States.

KELLEY

611.6731/221 : Telegram

The Acting Secretary of State to the Chargé in Turkey (Kelley)

WASHINGTON, October 29, 1937—7 p. m.

87. Your 13, October 26, 8 p. m. and despatch No. 357, September 21.¹⁴

1. Inform the Foreign Minister that if there is no objection on the part of the Turkish Government, preliminary announcement that negotiations are contemplated will be issued here for publication in morning newspapers Wednesday, November 3.¹⁵

2. The Department has no objection to Gillespie being designated by you to cooperate with the Turkish authorities as requested by Celal Bayar. You should of course follow discussions closely and keep Department fully informed as to their substance.

A copy of the standard general provisions sent with the Department's instruction No. 166 of August 24, 1937,¹⁶ may be presented to and discussed with the Turkish authorities. The Department is mailing certain material prepared in explanation of our quota and exchange provisions for background use in discussions. While it may be possible to reach an understanding on many of the general provisions before the Turkish delegation comes to this country, final agreement on these provisions as well as on the schedules of concessions should await the delegation's arrival here.

3. For your information, the Export-Import Bank has no information regarding a 5-year credit covering sales to the Turkish Gov-

¹⁴ Latter not printed.

¹⁵ No objections were advanced by the Turkish Government. For text of announcement, see Department of State, *Press Releases*, November 6, 1937, p. 356.

¹⁶ Not printed.

ernment as mentioned in your paragraph 3. The Department does not wish to have this matter connected with the contemplated trade-agreement negotiations, but, if you consider it desirable, you may endeavor to obtain from the Turkish Government a fuller statement of their views regarding it.

WELLES

611.6731/241a : Telegram

The Secretary of State to the Chargé in Turkey (Kelley)

WASHINGTON, December 23, 1937—7 p. m.

109. Referring to the Department's telegram No. 104, December 13, 1 p. m.,¹⁷ there is transmitted herewith a list of products in respect of which the United States will consider the granting of concessions to Turkey. The products with their tariff paragraphs are as follows:

[Here follows list of products which are the same as those listed at the end of press release printed in Department of State, *Press Releases*, January 15, 1938, page 108.]

Please bring this list to the attention of the Turkish Government and endeavor to obtain its acquiescence to the publication of it as a list to which consideration of possible concessions by the United States to Turkey will be confined.¹⁸

In transmitting this list to the Turkish Government you should point out (1) that the inclusion of a product on the list for publication does not necessarily mean that a concession will be granted on such a product; (2) that the products with respect to which the Turkish Government has requested concessions which are not included in our list are products of which Turkey is not the principal or a major supplier of imports into the United States; (3) that if concessions should be granted, however, on any of these products as a result of trade agreements with other countries the benefits thereof would of course under the terms of the proposed trade agreement with Turkey be extended to that country. In this connection it should be stated that crude beeswax has been bound on the free list in our trade agreement with Brazil.

You should also state informally to the Turkish authorities that with respect to tariff paragraph 1116 (a), Oriental carpets, rugs, and mats, etc., consideration of a concession will be restricted to those types of Oriental rugs of particular interest to Turkey.

As soon as notice of approval of the above list by the Turkish Government is received, we are prepared to publish the formal notice

¹⁷ Not printed.

¹⁸ The Chargé reported in telegram No. 1, January 7, 1938, 11 a. m., that the "Turkish Government approves publication of list" (611.6731/243).

of intention to negotiate. Please request the Turkish Government, however, to withhold any publicity on this subject until the date on which it is agreed that formal notice and the list will be made public here.

HULL

ADJUSTMENT OF PAYMENTS DUE TO THE UNITED STATES BY TURKEY UNDER THE AGREEMENT OF DECEMBER 24, 1923, AND SUBSEQUENT SUPPLEMENTAL AGREEMENTS¹⁹

467.11/1116b

The Secretary of State to the Chargé in Turkey (Washington)

No. 168

WASHINGTON, September 8, 1937.

SIR: The Department is transmitting under separate cover, for the use and information of the Embassy exclusively, three copies of the Opinions and Report prepared by Mr. Fred K. Nielsen in connection with the American-Turkish claims settlement under the Agreement of December 24, 1923,²⁰ and supplemental agreements²¹ between the United States and Turkey. For convenience of reference there is quoted below the penultimate paragraph of Mr. Nielsen's "General Report", appearing on pages 3-41 of the above-mentioned volume:

"Toward the close of negotiations the Turkish Delegates proposed a settlement in the sum of \$1,200,000. This was considered by the Department of State to be inadequate. The sum originally proposed by the Government of the United States, \$5,000,000, is considerably more than the sum agreed upon in settlement of all claims, \$1,300,000, and much more than the total of the principal sums ascertained by the determination of each of the cases on its merits, \$539,844.13, and, further, much more than that sum and interest which total \$899,338.09. However, it may be confidently stated, without any apprehension of error, that, after a scrupulously careful examination of each case, the total of principal amounts ascertained represents everything that could possibly be awarded as compensation in the light of evidence and by application of controlling rules and principles of substantive law. It may be added that, in accordance with customary procedure in the treatment of evidence in international claims, application has been given to a liberal practice, which inures to the benefit of claimants."

It will be observed that the total amount of the awards made to claimants, plus interest, is \$899,338.09, whereas the Turkish Government, under the terms of the Agreement of October 25, 1934, agreed

¹⁹ For previous correspondence, see *Foreign Relations*, 1934, vol. II, pp. 894 ff.

²⁰ *Ibid.*, 1923, vol. II, p. 1190.

²¹ For text of agreement signed October 25, 1934, see *ibid.*, 1934, vol. II, p. 933; for exchange of notes, signed at Ankara, May 29 and June 15, 1936, see Department of State Executive Agreement Series No. 113, or 51 Stat. 353.

to pay the sum of \$1,300,000 in thirteen annual installments of \$100,000 each in full settlement of claims of American citizens embraced by the Agreement of December 24, 1923. The sum which the Turkish Government has obligated itself to pay thus exceeds by \$400,661.91 the amount required to meet the awards which have been made to American claimants.

It is proposed to relieve the Turkish Government of its obligation to pay this excess sum, and with that end in view you are requested to call on the Minister for Foreign Affairs and to hand him a note reading textually as follows:

[Here follows text of note No. 93, September 23, 1937, from the Chargé in Turkey to the Turkish Acting Minister for Foreign Affairs, printed on page 957.]

In handing the above note to the Minister for Foreign Affairs please request him to consider its contents as strictly confidential.

Very truly yours,

For the Secretary of State:
HUGH R. WILSON

467.11/1120

*Memorandum by the Chief of the Division of Near Eastern
Affairs (Murray)*

[WASHINGTON,] September 10, 1937.

During a call from the Turkish Ambassador this morning I informed him of the substance of the note which our Chargé d'Affaires in Turkey is being instructed to deliver to the Turkish Minister for Foreign Affairs regarding the American-Turkish claims settlement effected on October 25, 1934.

The note sets forth that whereas the Turkish Government had undertaken to pay to the Government of the United States the sum of \$1,300,000 in full settlement of the claims of American citizens which were embraced by the Agreement of December 24, 1923, such payments to be made in thirteen annual installments of \$100,000 each, beginning on May [June] 1, 1936,²² it had been found after careful and impartial inquiry by Mr. Fred K. Nielsen, our Commissioner who has had the claims of American citizens under consideration, that the awards would amount to somewhat less than \$900,000. This Government therefore took pleasure in informing the Turkish Government that under the conditions set forth in the above-mentioned note there would be remitted to the Turkish

²²The date on which annual installments on claims of American citizens were to be paid by the Turkish Government was subsequently postponed from June 1 to June 20, as a result of an exchange of notes dated October 1, and November 3, 1937, between the American Chargé and the Turkish Minister for Foreign Affairs. See Department of State Executive Agreement Series No. 115.

Government, by relieving it of certain final installments, a sum of about \$400,000.

I told the Ambassador that we were all very happy to be able to render this service to the Turkish Government and that the Secretary, although he is of course much occupied these days with serious situations in other parts of the world, has interested himself personally in this matter.

The Ambassador was obviously deeply stirred on being informed of this offer of the American Government. With tears in his eyes he stated that he was at a loss to give adequate expression to his deep feeling of appreciation of the spirit of uprightness, moral integrity and generosity of our Government. "This is" he said, "incomparably the happiest day of my whole career."

I thanked the Ambassador for his kind sentiments and assured him that this Government on its part deeply appreciated the honorable attitude assumed by the Turkish Claims Commissioners during the negotiation of a settlement of our claims against Turkey resulting from the World War and that Mr. Nielsen, who represented this Government during the sessions of the Mixed Claims Commission in Turkey, had more than once expressed his high regard for and appreciation of the courtesy and cooperation shown him by the Turkish members of the Commission.

Referring to the fine work of the Mixed Claims Commission in general, and in particular to the sum agreed upon to be paid to this Government in settlement of the claims of its nationals against Turkey, I emphasized to the Ambassador that the difference between the sum finally awarded to American claimants and the amount which Turkey had agreed to pay was due to Mr. Nielsen's careful and impartial examination of each claim after his return to Washington and the application to those claims of controlling rules and principles of substantive law as is customary with us in such instances. Such being the case I felt confident that, far from questioning in any way the entire good faith of Mr. Nielsen and his Turkish colleagues in reaching the settlement of October 25, 1934, the Turkish Government would be in accord with this Government in believing that the Commissioners of both Governments were motivated by the highest integrity and ethical standards. The Ambassador said he agreed with me heartily and was sure that his Government would do likewise.

In conclusion I explained to the Ambassador that for reasons which he would doubtless appreciate, this Government desired that no publicity whatever should be given to its present offer to the Turkish Government, and I requested him to emphasize this fact in any report of our conversation that he might make to his Government.

WALLACE MURRAY

467.11/1124

*The American Chargé in Turkey (Washington) to the Turkish Acting Minister for Foreign Affairs (Menemencioglu)*²³

No. 93

ISTANBUL, September 23, 1937.

SIR: Your Excellency will recall that under the provisions of the American-Turkish Agreement of October 25, 1934, the Turkish Government undertook to pay to the Government of the United States the sum of \$1,300,000 in full settlement of the claims of American citizens which were embraced by the Agreement of December 24, 1923. The former Agreement further provided that payment was to be in thirteen annual installments of \$100,000, the first installment to be made on June 1, 1936.

A Commission which has had the claims of American citizens under consideration, after careful and impartial inquiry, has made awards which amount to \$899,338.09. I take pleasure in informing Your Excellency that my Government will consider the obligation of the Turkish Government, under the Agreement of October 25, 1934, fully discharged when the annual payments of \$100,000 shall have reached the total amount of the awards, that is, \$899,338.09. Inasmuch as the Turkish Government has already made payment of \$200,000, my Government will expect to receive only the additional sum of \$699,338.09, to be paid in six equal installments of \$100,000 on the agreed upon date in June of the years 1938, 1939, 1940, 1941, 1942 and 1943, and a final installment of \$99,338.09, payable in June, 1944.

Accept [etc.]

S. WALTER WASHINGTON

467.11/1124

*The Turkish Acting Minister for Foreign Affairs (Menemencioglu) to the American Chargé in Turkey (Kelley)*²⁴

[Translation]

[ANKARA,] October 15, 1937.

MR. CHARGÉ D'AFFAIRES: I have the honor to acknowledge the receipt of your communication of September 23 last by which you were kind enough to inform me of the decision of the Government of the United States of America to reduce to \$899,338.09 the amount of \$1,300,000 (claims of American citizens), which latter sum the Turkish Government undertook to pay under the Agreement of October 25, 1934, and in accordance with which it has already made two payments totaling \$200,000.

²³ Copy transmitted to the Department by the Chargé in his despatch No. 377, October 18; received November 2.

²⁴ Transmitted to the Department by the Chargé in his despatch No. 377, October 18; received November 2.

The Government of the Republic is highly appreciative of the impartial sentiments which guided the commission during the course of its deliberations. It desires at the same time to offer its most sincere thanks to the Government of the United States for the friendly and spontaneous gesture with which it made known the conclusions of the commission of review, which have been considered as an affirmation of sympathy toward the Government of the Republic.

Requesting you to bring the foregoing to the knowledge of your Government, I beg [etc.]

N. MENEMENCIOGLU

INDEX

INDEX

- Act of Algeciras (1906), 859, 872, 874
- Afghanistan, 597-614
- British interests in, 605-606, 610
- Diplomatic representation in, U. S. consideration of, 605-614
- Mission to United States (1921), 606, 607
- Oil concession to Inland Exploration Co., granting of, 597-604
- Soviet Union, relations with, 751, 757, 759
- Agreements. *See* Trade agreements; Treaties, conventions, etc.
- Air navigation, arrangement between United States and Irish Free State effected by exchange of notes, *Sept. 29* and *Dec. 4*, 200
- Alaska. *See* Canada: Alaska Highway.
- Albania, attitude toward nationals appearing before Mixed Courts in Egypt, 649
- Alcohol. *See* Liquor smuggling.
- American Jewish Congress, 367, 553, 555
- American-Scantic Line, 544
- Amiranian Oil Co. *See under* Iran.
- Anderson, Clayton, and Co., 544
- Anglo-Iranian (Anglo-Persian) Oil Co. *See under* Iran.
- Anti-Smuggling Act (1935), 107, 114-115, 119, 121, 122; British cooperation in enforcing, 123
- Arab-Jewish conflict. *See under* Palestine.
- Atlantic Refining Co., 344-347
- Australia (*see also* Attitude of Commonwealth countries and Empire preferences *under* United Kingdom: Trade agreement with United States), 136-159
- Currency devaluation, 145
- Immigration of Polish Jews, attitude toward, 562
- Montreux Conference for the Abolition of Capitulations in Egypt, representation at, 644
- Non-aggression pact in Pacific, proposed, 141-142, 144
- Pacific islands claimed by United Kingdom and United States, interest in, 130, 135
- Representation at British Embassy in Washington, 28, 145*n*
- Trade relations with United States, 136-159
- Import restrictions and announcement of intention to abolish, 136, 137, 139, 143-147 *passim*, 150-159 *passim*
- Most-favored-nation agreement, proposed, 137, 157, 159
- Australia—Continued
- Trade relations with United States—Continued
- National elections, importance to trade-agreement discussions, 40, 41, 60, 64, 67, 80, 141, 142, 144, 146, 148, 150-151
- Trade agreement, discussions leading to, 46-47, 61, 63, 88, 139, 140-141, 142, 146, 147, 151, 153, 159
- Trade balance, 136, 145
- Austria, commercial agreement with Czechoslovakia (1921), 244
- Automobile Manufacturers Assn., 572, 576
- Baker Island, 132
- Bankers Trust Co., 344-347
- Belgium, 219-237
- Greece, extradition treaty of 1901, 430
- Montreux Conference for the Abolition of Capitulations in Egypt, 644, 646, 662*n*
- Naturalization convention of 1868, exchange of views with United States respecting interpretation of, 234-237; opinion of U. S. Supreme Court, 237
- Oslo Convention (*May 28*), Belgian position on extension to United States, 225-226
- Ruanda Urundi and Tanganyika Territory, treaty with United Kingdom regarding boundary between (1934), U. S. reservation of its rights, 939-940
- Trade agreement between United States and Belgo-Luxembourg Economic Union (1935): American business interests, action of, 228-229; failure of Belgian authorities to live up to terms of, 227-228, 230-233; remedial action, 227-228, 232, 233; supplementary trade agreement, preliminary discussions respecting, 219-234
- Belgo-Luxembourg Economic Union. *See* Belgium: Trade agreement.
- Boston Blacking Co., 297
- Brazil, 332, 333-334, 336, 337, 338, 342-343
- Burma, 22, 24-25, 48, 49-50, 54, 58
- Canada (*see also* Attitude of Commonwealth countries and Empire preferences *under* United Kingdom: Trade agreement with United States; *also* Liquor smuggling into United States, U. S. efforts to suppress), 160-199

Canada—Continued

- Alaska Highway, U. S. efforts to obtain agreement for construction of, 191-198
- Great Lakes, Niagara Falls, and St. Lawrence Waterway Project, discussions with United States respecting new treaty, 168-176
- Halibut fishing grounds in Pacific Ocean, representations by Canada and United States to United Kingdom respecting projected voyage of British steamer to, 183-191
- Income taxation, negotiations with United States for conclusion of addendum to 1936 convention on, 177-183; signature of new convention and protocol (1942), 183
- Information concerning issuance of radio licenses, exchange of, agreement with United States effected by exchange of notes signed *Mar. 2 and 10, Aug. 17, Sept. 8 and 20, and Oct. 9*, citation to texts, 199
- Trade agreement with United States, informal discussions on possible negotiation of new agreement, 160-168
- Canton Island, 125-129 *passim*, 131, 132, 133
- Capitulations. *See* Morocco: French Zone: Proposed abolition; *and under* Egypt.
- Case, Pomeroy, and Co., 597, 603, 735
- China, 65, 84, 142, 649
- Chrysler Corp., 228
- Churches. *See* Ethiopia: Missionary activities; *and under* Germany.
- Claims. *See under* Germany; Morocco: French Zone: Proposed abolition of U. S. capitulatory rights; Turkey.
- Commercial treaties and agreements. *See* Trade agreements *and under* Treaties, conventions, etc.
- Commissions, committees, etc.:
International Fisheries Commission, 183-186 *passim*
Mixed Claims Commissions: U. S.-Germany, 348-367; U. S.-Turkey, 954-958
Palestine, Royal Commission of Inquiry on Mandate in. *See under* Palestine: United Kingdom.
- Reciprocity Information, Committee for, 239, 248
- Regional Preferences, Committee on, 249
- Conferences:
Capitulations. *See under* Egypt.
Inter-American Conference for the Maintenance of Peace (1936), 762, 822-823
Montreux Conference for the Abolition of Capitulations in Egypt. *See* Egypt: Capitulations.
Stresa Conference (1935), 444
- Consular officers. *See* Diplomatic and consular officers.
- Conventions. *See* Treaties, conventions, etc.
- Cotton, 94, 268, 269, 330-331, 512, 543, 546-549, 589, 594
- Customs privileges. *See* Liberia: Customs regulations; *and under* Syria and the Lebanon.
- Czechoslovakia, 238-258
Austria, commercial agreement of 1921, 244
Bounties on certain exports to United States, success of U. S. representations for discontinuance, 255-258
Trade agreement with United States, negotiations respecting, 238-255
Commodities, 245, 247, 248, 249, 250, 251-252
Danubian preferences, 239, 240-241, 242, 243, 246, 247, 248-249, 254
Modus vivendi (1935), 238, 239, 243, 254
- Denmark, Montreux Conference for the Abolition of Capitulations in Egypt, participation, 644, 663
- Diplomatic and consular officers:
Afghanistan, U. S. consideration of proposal to establish diplomatic representation in, 605-614
Egypt, U. S. consideration of advisability of proposing to negotiate consular convention with, 665-671
Ethiopia, U. S. withdrawal of diplomatic and consular representatives from, 679-697
Germany, discussions regarding right to correspond directly with authorities on certain protection matters, 386-392
Iran, U. S. reluctance to appoint Minister to, 718-728
Italy, proposals for convention to supersede existing consular conventions with United States, 496-506
Liberia: Proposed consular convention with United States, 804-811; representations by United States regarding customs regulations affecting free-entry privileges for diplomatic officers, 818-820, 821; U. S. Legation, erection of new building for, 825, 845, 853, 855
Lithuania, appointment of U. S. Minister to, 259*n*, 507*n*
- Discrimination against United States (*see also* Trade discrimination against United States):
New Zealand, proposed restriction of trade between Australia and New Zealand to British shipping, 95-106

Discrimination—Continued

- Poland: Direct shipping requirements in apparent violation of 1931 treaty, 543-551; partial defaults and suspension of payments to American bondholders, 535-543
- Dodd, William E., 377, 380, 381, 382, 384, 385
- Domermuth, Bertha, 701
- Dual nationality. *See* Nationality.
- Durham Duplex Razor Co., 297

Egypt, 615-678

- Capitulations, Montreux Conference for the Abolition of (*April 12-May 8*), and convention signed *May 8*, 615-665
- Anglo-American exchange of views, 632, 633-634, 641, 648
- Arbitration of international disputes, 642-643, 648
- Attitude and participation of powers: Albania, 649; Belgium, 644, 662; British Commonwealth countries, 644, 647; China, 649; Denmark, 644, 663; Egypt, 616, 618, 619-621, 623, 624, 633-634, 647, 648, 649, 652, 653, 662; France, 644, 646, 647; Greece, 644, 646, 650, 662; Italy, 644, 646, 650, 662; Netherlands, 644, 647; Norway, 644, 663; Portugal, 644, 649; Spain, 644; Sweden, 644, 662; United Kingdom, 622-623, 625, 626-627, 642, 647, 648, 649, 653, 663; United States, 617, 621, 625, 630, 631, 632, 634-641, 642-643, 645, 648, 649, 654, 655-656, 658, 663, 664-665
- Convention signed *May 8*, 652, 656, 662-663
- Discussions concerning—
- Educational, medical, and charitable institutions, 652, 653, 655-662, 664-665
- Financial capitulations, 616, 617, 618, 621, 636, 640, 652
- Judicial capitulations (*see also* Mixed Courts, *infra*), 616, 617, 618, 627, 648; Khedivial decree of 1889 and law of 1911, abrogation of, 637, 654
- Mixed Courts, transitional regime of: Consular courts, retention of rights during, 651, 653; duration of, 616, 622, 646-647, 649; "foreigner," interpretation of, 619, 633, 646-647; regulation of regime, 618, 618-621, 622, 623-624, 625, 627, 629, 631, 633-634, 635, 637, 638-639, 640, 641, 646, 651, 652, 663
- Religion: Missionary activity, 657-662; worship, freedom of, 652, 662

Egypt—Continued

- Capitulations—Continued
- United Kingdom, agreements with Egyptian Government concerning capitulations, 618, 622-623, 624, 626, 627, 632, 634, 648
- Consular convention with United States, advisability of proposing negotiation of, 665-671
- Extradition treaties:
- Palestine, 675-676
- United States, renewal of proposals to negotiate, 672-678; question of applicability to Sudan, 676-677
- Montreux Convention for the Abolition of Capitulations. *See* Capitulations, *supra*.
- Sudan, applicability of extradition treaties to, 676-677
- Enderbury Island, 125, 126
- Epstein, Mrs. Judith, 904
- Estonia, trade relations with United States, 259-274
- Modification of 1925 commercial treaty with United States, Estonian desire for, 259, 260-262, 265, 267, 270, 271
- Trade agreement with United States, preliminary discussions regarding, 260, 261-262, 263, 264, 265, 267, 268, 269-270, 271-274
- Ethiopia, 679-717
- Diplomatic and consular representatives, U. S. withdrawal of, 679-697
- Italian occupation forces, conduct of and native attempts against, 679-684, 685, 689, 695-696, 701
- Missionary activities, repressive measures by Italian authorities against, 697-717
- Non-recognition of Italian sovereignty by United States, 448, 477, 478, 480, 486, 487, 651, 695, 708, 710
- U. S. citizens, protection of, 680-681, 685, 687-688, 689, 690
- Export-Import Bank, 952
- Extradition. *See under* Egypt; Greece; Iran; Liberia.
- Finance Corporation of America, 832, 833
- Finland, 531*n*
- Firestone Plantation Co., 832, 833
- Fisher Brothers, 597
- Ford Motor Co., 228
- Foreign Bondholders Protective Council, Inc., 535-542 *passim*
- France (*see also* Morocco: French Zone; Syria and the Lebanon), 275-318
- American citizens of French origin, status under French law with respect to liability to military service in France, 311-318; revision of paragraph in U. S. *Notice to Bearers of Passports*, 314-318

France—Continued

- Currency: Effect of devaluation, 275, 277-278, 279, 280, 285; stabilization agreement with United Kingdom and United States (1936), 7
- Customs frauds, agreement with United States for suppression of (1936), 311
- Double taxation convention of 1932, discussion with United States concerning addendum to, 285-297
- Draft addendum, protocol, and commentary, 287-295
- Tax evasion, exchange of information with regard to, 290, 295, 297
- Germany, suggestion of plan to provide trade outlets for, 276
- Egypt, Montreux Conference for the Abolition of Capitulations in, 644, 646, 647, 652, 659, 663
- Ethiopia, discontinuation of missionary activity in, 708
- Palestine, interest in, 898-899
- St. Pierre-Miquelon, negotiations for suppression of liquor smuggling into United States from, 298-311
- Sweden, conventions of 1936 relating to double taxation and reciprocal assistance with regard to fiscal evasion, 297
- Trade agreement with United States (1936), U. S. representations respecting import control measures in alleged violation of, 275-285
- Freedom of the press, 374, 375, 376-377, 724
- Freedom of religion, 652, 662
- Freedom of speech, 369, 370, 374, 375, 385, 724
- French, Elena, 701
- General Motors Corp., 228
- Germany, 319-405
- Afghanistan, interest in U. S. oil concession in, 598, 602, 739
- Churches, intensification of repressive measures against, 320, 332
- Citizenship law of *Sept. 1935*, 322-323, 324
- Claims pending before Mixed Claims Commission, negotiations for settlement of, 348-367
- Drier claim, 351, 363*n*, 364
- Late claims, 352-353, 367
- Lusitania* claims, 357.
- Munich discussions and settlement (1936), 349, 350, 353, 354, 355, 359-360, 362-363
- Sabotage claims, 348, 349, 350, 353-365 *passim*
- Colonial ambitions, 821, 826, 847, 852
- Consular officers, discussions regarding right to correspond directly with authorities on certain protection matters, 386-392

Germany—Continued

- Dodd, William E. (U. S. Ambassador), German informal representations with respect to certain utterances by, 377-385 *passim*
- Economic situation (*see also* Trade, *infra*): Four-year economic plan, 330; Schacht, Hjalmar, 332, 339
- Educational institutions, regulations concerning, 322-323
- Hitler, Adolf, 322, 367-377, 384-385
- Iran, interest in U. S. oil concession in, 738, 739, 741
- Jews, persecution of, 319-327, 332; B'nai B'rith lodges, dissolution of, 319-320, 321; business and professional regulations, 324; citizenship law of *Sept. 1935*, 322-323, 324; "culture league," supervision of, 321; educational regulations, 322-323; emigration and re-entry, 320, 325, 326; funds, confiscation of, 320, 321; Goering, activities of, 323, 325; influence of external events, 319, 321, 322, 323, 325; meetings, ban on, 320, 321; passports, confiscation and granting of, 319-320, 321, 325, 326
- La Guardia, Fiorello H. (Mayor of New York), informal representations regarding derogatory remarks about Chancellor Hitler by, 367-377; effects of, 319, 321, 367; official U. S. view, 373-374
- Mixed Claims Commission. *See* Claims, *supra*.
- Motion pictures, informal representations regarding warning to Americans against acting in pictures declared inimical to German interests, 392-394; German film exhibition law, 393
- Nuremberg, Reich Party Rally at (1937), diplomatic representation at, 378-379, 380
- Oslo Convention (1930), interest in adhering to, 523
- Press attack on United States, 368-370, 371, 372, 373, 463
- Schacht, Hjalmar, 332, 339
- Trade relations with—
- Australia, 154
- Greece, 419, 421
- Turkey, clearing and compensation arrangements with, 944-945
- United States, 327-348
- Complaint of U. S. discrimination, 340
- Payment practices, 327-328, 335-337; barter system, 330-331, 343-348
- Trade agreement, discussion of possibility of, 329, 330-331; attitude toward most-favored-nation policy, 331, 334, 335-336, 338-339
- Yugoslavia, 587

Germany—Continued

- U. S. citizen sentenced to death, representations on behalf of, 395-405
- Gilbert and Ellice Islands Colony, 126, 128, 129
- Good Neighbor policy, 631, 639, 864
- Great Britain. *See* United Kingdom.
- Great Lakes, Niagara Falls, and St. Lawrence Waterway project, discussions between United States and Canada respecting new treaty, 168-176
- Greece, 406-434
- Commercial agreement with United States, provisional, preliminary negotiations for, 406-426
- Draft *modus vivendi*, 408, 414-416, 417
- Exchange of notes of *Dec. 9, 1924*, 407
- Greek attitude, 417-422, 424-426
- U. S. view, 409-414, 422-424
- Egypt: Consular convention with, question of, 669-670; Montreux Conference for the Abolition of Capitulations in, participation, 644, 645, 646, 662
- Extradition: Conclusion of a protocol with United States (*Sept. 2*) interpreting treaty of 1931 and withdrawal of notice of abrogation given in 1933, 427-434; Insull case, 429, 431
- Germany, trade relations with, 419, 421
- Immigration quota restrictions by United States, 417
- Guaranty Trust Co., 297
- Hague Convention (1907), 642, 643
- Harrison Act (1934), 351, 364
- Hawaii, 96, 98, 100, 101
- Henry, Duncan, 680-681
- Hirsch, Helmut, 395-405
- Hitler, Adolf, 322, 367-377, 384-385
- Howland Island, 132
- Hull Island, 131, 132, 133
- Income taxation. *See under* Canada.
- India (*see also* Attitude of Commonwealth countries and Empire preferences *under* United Kingdom: Trade agreement with United States): Lithuania, trade with, 512; Montreux Conference for the Abolition of Capitulations in Egypt, participation, 644
- Inland Exploration Co., 597-604, 608, 611, 612, 613, 735
- Insull, Samuel, 429, 431
- Inter-American Conference for the Maintenance of Peace (1936), 762, 822-823
- International Fisheries Commission, 183, 184, 185, 186
- Interstate Commerce Commission, 357

Iran, 718-766

- Amiranian Oil Co., concession to (*Jan. 3*), 598, 602, 603, 719, 720, 721, 722, 723, 730, 734-761; pipeline and concession for, 598, 602-603, 604, 735, 736, 737, 741, 747, 748, 749, 750; provisions, 744-747; signature and ratifications, 720, 735, 736, 737, 750
- Anglo-Iranian (Anglo-Persian) Oil Co., 598, 736, 738, 744-747, 748, 757, 758-759
- Extradition treaty with United States, question of negotiating, 725, 726
- Khoshtaria (Koshtaria) concession, 742, 743, 747-749, 760, 761
- Press, foreign, sensitivity to, 719-724 *passim*, 729-732 *passim*
- Reluctance of United States to appoint Minister, and continued absence of Iranian representation in United States, 718-728
- Resumption of delivery of second-class mail from United States, 728-734
- Representations by United States regarding trade discrimination, 761-766
- Soviet Union, treaty of 1921, cited, 749
- Iraq, 767-784
- Commercial treaty with United States, negotiations regarding, 767-784
- Civil aircraft, 767-768, 770, 771, 774, 778, 780, 784
- Palestine, attitude toward partition of, 894-895, 903
- Quotas and exchange control, 767, 769-770, 772, 774-775, 777-778, 779, 782-783
- Shipping, 770, 771, 774, 776, 780, 783
- Irish Free State: Arrangement with United States for air navigation, effected by exchange of notes signed *Sept. 29* and *Nov. 4*, citation to texts, 200; Montreux Conference for the Abolition of Capitulations in Egypt, participation, 644
- Italy (*see also* Ethiopia), 435-506
- Commercial treaty with United States, negotiations respecting, 435-496
- Aliens, rights and occupations of, 450, 456, 475
- Colonies, Italian, question of extension to, 448, 458, 468, 471, 475, 476-477, 478-479, 480
- Danubian countries, preferences to, 444, 446, 448, 449, 453-454, 457-458, 459-462, 464, 465, 466-467, 468, 470, 471, 472, 476, 479, 486, 487-488, 491, 493, 495-496
- Exchange control, 440-442, 443, 444-445, 447, 448, 455, 474, 485, 489, 490, 492, 493

Italy—Continued

- Commercial treaty with United States—Continued
 - “King Emperor”, question of use of title, 447-448, 471, 474-475, 479, 480, 483, 486-487, 492, 494
 - Military obligations, liability to, 456-457, 468, 471, 481-483
 - Modus vivendi*, Italian proposal of, 494-496
- Most-favored-nation clause, application of, 456, 489
- Neutrality legislation, U. S. concern over effect upon, 468, 471, 476, 485
- Quantitative import restrictions, 438-440, 445, 448, 449, 455, 460-461, 464, 468, 471, 472, 473, 474, 476, 485, 490, 491
- Status of commercial relations between signing and coming into effect of new treaty, question of, 451, 452, 463-464, 469
- Temporary commercial arrangement (*Dec. 16*), 466, 467, 470, 471, 472, 473, 486, 488-489, 490, 491, 493-494
- Consular conventions with United States, proposals for convention to supersede, 496-506
- Montreux Conference for Abolition of Capitulations in Egypt, participation, 644, 646, 650, 652, 662
- Mussolini, Benito, 708, 710, 852
- Japan, 84, 142, 184, 185, 187, 772, 775, 777-778, 829, 831, 832, 849
- Jarvis Island, 132
- Jews. *See* Palestine; Poland: Anti-Semitism; *and under* Germany.
- La Guardia, Fiorello H., 319, 321, 367-377
- Latin America, attitude toward immigration of Polish Jews, 562
- Latvia, 510-511
- League of Nations, hearings and opinions by Mandates Commission regarding Palestine, 884, 895, 897, 898, 899-900, 906-908, 916-917
- Lebanon. *See* Syria and the Lebanon.
- Liberia, 785-857
 - Arbitration convention with United States (*1926*), question of revision, 803
 - Consular convention with United States, proposed, 804-811; draft text, 805-808
 - Customs regulations affecting free-entry privileges for missionaries and diplomatic officers, U. S. representations against, 812-821

Liberia—Continued

- Dutch mineral concession (Neep), proposed, U. S. concern over possibility of German financial interest in, 829-857
 - Financial control of company, 844-857 *passim*
 - Negotiation of concession, 829-830, 831-833
 - Text of agreement (*Aug. 23*), 834-843
- Extradition treaty with United States (*Nov. 1*), citation to text, 811
- Japanese interest in iron deposits, 829, 831, 832, 849
- Loan agreement with Finance Corporation of America, 832, 833
- Missionary activity, 802, 812-818, 820
- Polish territorial ambitions in, rumored, U. S. concern regarding, 821-829
- Treaty of friendship, commerce, and navigation with United States, proposed new, 785-804; arbitration provision, 796-797, 803
- United Kingdom: Financing of Dutch mineral concession, 847; proposed diamond concession, 830-831; territorial interest in, alleged, 847
- U. S. Legation, erection of new building for, 825, 845, 853, 855
- U. S. military measures in aid of, likelihood of, 785-786, 824
- Lipsky, Louis, 904, 909
- Liquor smuggling into United States, U. S. efforts to suppress:
 - Miserinko* incident, 107-124; Anti-Smuggling Act, 107, 114-115, 119, 121, 122, 123
 - St. Pierre-Miquelon, negotiations for suppression of smuggling operations from, 298-311
- Lithuania, 507-516
 - Naturalization, dual nationality, and military service, treaty with United States (*Oct. 18*), 514-516; citation to text, 516
 - Trade agreement with Denmark, 513
 - Trade discrimination, alleged, U. S. representations, 507-514
- London Agreement (*1926*), 109, 110, 111
- Luxembourg. *See* Belgium: Trade agreement.
- Madagascar, 562
- Mandates. *See* Palestine.
- Mataluni, Biagio, 482
- Matson Line, 96-106 *passim*
- McFadden, George H., and Brother, 544
- Merchant Marine Acts of *1920* and *1936*, 99, 101, 103, 211-212
- Middle Eastern (Saadabad) Pact (*July 8*), 606
- Military service, liability of U. S. citizens of dual nationality. *See* Nationality.

- Missionary activities (*see also under* Ethiopia): Egypt, 656-662 *passim*; Liberia, 802, 812-818, 820; Syria and the Lebanon, 816-817, 938
- Montreux Conference and Convention for the Abolition of Capitulations in Egypt. *See* Egypt: Capitulations.
- Montreux Convention for Revision of Straits Regime (1936), 617, 618
- Morocco, 858-880
- French Zone:
- Anglo-French negotiations, 858-868 *passim*, 876; agreement of July 26, 861; declaration of 1904, 858
 - Proposed abolition of U. S. capitulatory rights, 858-880; claims in respect of U. S. nationals and protégés, 863, 869-871
 - Trade with United Kingdom, 866, 867, 872-873, 874-876, 877, 878, 879; with United States, 859-879 *passim*
- Spanish Zone, U. S. capitulatory rights in, 877, 880
- Most-favored-nation principle, 204, 205-206, 247, 248-249, 329, 331, 413-414, 442, 446, 454, 479, 509, 510, 525, 531, 572, 587, 785, 798-800, 947, 950-951; non-application to certain multilateral economic conventions, agreement relative to (1934), 225-226, 227
- Motion Picture Producers and Distributors of America, Inc., 89, 91
- Motion pictures: German warnings to Americans against acting in pictures declared inimical to German interests, U. S. informal representations regarding, 392-394; U. S. representations regarding British legislation concerning, 88-90, 91-93
- Mussolini, Benito, 708, 710, 852
- Nationality, dual, and liability to military service: Belgium, 234-237; France, 311-318; Hague Protocol (1930), 581; Lithuania, 514-516; Norway, 580; Switzerland, convention with United States signed Nov. 11, 579-582; Yugoslavia, 584-586
- Naturalization. *See under* Belgium; Lithuania.
- Netherlands (*see also* Liberia: Dutch mineral concession), Montreux Conference for the Abolition of Capitulations in Egypt, 644, 647, 652
- Neutrality Act, extension of May 1, 476
- Newfoundland, 90, 201-202
- New Zealand (*see also* Attitude of Commonwealth countries and Empire preferences *under* United Kingdom: Trade agreement with United States), 203-218
- Discrimination against American trade in New Zealand mandate of New Zealand—Continued
- Western Samoa, U. S. efforts to secure from British Government solution for problem of, 210-217
 - Discriminatory shipping legislation affecting trade between Australia and New Zealand, U. S. concern over, 95-106
 - Montreux Conference for the Abolition of Capitulations in Egypt, representation at, 644
 - Pacific Islands claimed by United Kingdom and United States, interest in, 130, 135
 - Trade relations with United States, informal discussions regarding possibility of improving, 203-209
- Niagara Falls, Great Lakes, St. Lawrence Waterway project, discussions with Canada respecting new treaty, 168-176
- Non-aggression pact in Pacific, Australian proposal for, 141-142, 144
- Norway, 517-524
- Montreux Conference for the Abolition of Capitulations in Egypt, 644, 645, 663
- Trade agreement with United States, preliminary discussions concerning, 517-524
- Oslo Conventions, 225, 522, 523
- Pacific non-aggression pact, Australian proposal for, 141-142, 144
- Palestine, U. S. interest in British proposals for partition between Arabs and Jews, 881-922
- American Jews, attitude of, 881, 882, 885-886, 904, 908, 909, 921-922
 - Arab-Jewish conflict, 881, 896, 906, 910, 911, 912, 913
 - Egypt, extradition treaty with, 675-676
 - Grand Mufti of Jerusalem, activity of, 892, 894, 904-905, 906, 910, 911, 913
 - Holy places, recommended treatment of, 890, 896, 898, 907
 - Hughes, Charles Evans, attitude as Secretary of State, 883
 - Immigration: Jewish, 562, 881, 883, 896, 914; policy, 883, 885, 914-920; Polish, 562
 - Jewish Agency, 908, 909, 913, 914, 915, 917-921 *passim*
 - Maintenance of U. S. interests and rights, question of, 886-889 *passim*, 891, 901-902, 905, 906
- Mandates, U. S. view, 901-902
- Royal Commission of Inquiry, report of, 881, 883-889 *passim*, 891, 892, 895, 896, 897, 898, 900, 901, 907, 908; attitude of Arabs and of Jews toward, 892, 894, 904-905, 909

- Palestine—Continued
 United Kingdom (*see also* Royal Commission, *supra*), relations with Arabs and with Jews, 885, 890, 895, 898
 World Zionist Congress, 904, 909, 921
 Zionist Organization, 890, 894, 906, 907, 909, 913, 915, 917, 921-922
 Pan American Airways, 135
 Permanent Court of International Justice, 642-643
 Phoenix island group, conflicting British and American claims to sovereignty of certain islands of, 125-135
 Pius XI (Pope), 561
 Poland, 525-563
 Anti-Semitism and consideration of Jewish emigration as possible solution, 552-563
 Direct-shipping requirement, informal U. S. representations regarding, 543-551; commercial treaty with United States (1931), violation of provisions, 543, 546, 547, 549-550
 Economic situation (*see also* Trade agreement with United States, *infra*): Baltic trade, 531, 534; debt to United States, 563; effect of anti-Semitic campaign, 560; peasant difficulties, 560
 Liberia, U. S. concern over rumored territorial ambitions in, 821-829
 Payments on various obligations, discrimination against American bondholders in connection with partial defaults and suspension of, 535-543
 Taxes on motor-vehicle fuel and oil, reciprocal exemption of consular officers from, 556
 Trade agreement with United States, preliminary discussions regarding, 525-535
 Portugal, participation in Montreux Conference for the Abolition of Capitulations in Egypt, 644, 649
 Press, freedom of, 374, 375, 376-377, 724
 Press activity. *See under* Germany; Iran.
 Reciprocity Information, Committee for, 239, 248
 Regional Preferences, Committee on, 249
 Rhodesia, Southern. *See* Southern Rhodesia.
 Rockefeller Foundation, 661
 Roederer, Richard, 387
 Roman Catholic Church (*see also* Vatican): Germany, persecution in, 320; Poland, attitude toward anti-Semitic activities in, 560-561
 Roosevelt, Franklin D. (President): Alaska Highway, interest in, 193, 194; German representations re-
- Roosevelt, Franklin D.—Continued
 guarding Mayor La Guardia's remarks on Hitler, action regarding, 374; Pacific Islands, interest in conflicting British and American claims, 127, 132-133; Poland, suggestion that Jews emigrate to Latin America from, 561, 562; St. Lawrence Waterway, Niagara Falls, and Great Lakes project, interest in, 168, 169, 172, 173
 Ruanda Urundi and Tanganyika Territory, U. S. reservation of rights as affected by frontier changes between, 939-940
 Saadabad (Middle Eastern) Pact (*July* 8), 606
 St. Lawrence Waterway, Niagara Falls, and Great Lakes project, discussion between United States and Canada respecting a new treaty, 168-176
 St. Pierre-Miquelon. *See under* France.
 Samoan Islands. *See* New Zealand: Discrimination.
 Saudi Arabia, reaction to proposed partition of Palestine, 893-894
 Seaboard Oil Co., 597, 605, 735
 Shippey, Ruth, 701
 Shipping, 95-106, 543-552
 Simpson, Lawrence, 399, 402
 Smoot-Hawley Tariff Act. *See* Tariff Act of 1930.
 Smuggling of liquor into United States. *See* Liquor smuggling.
 Socony-Vacuum Oil Co., Inc., 344-347
 South Africa, Union of. *See* Union of South Africa.
 Southern Rhodesia, interest in U. S.-British trade agreement, 24, 25, 27, 49-50, 53
 Soviet Union:
 Citation to additional correspondence, 583
 Iran, treaty with (1921), 749, 759
 Russo-Japanese fishery treaty, 185
 U. S. oil concession in Afghanistan, activity regarding, 602, 603
 U. S. oil concession in Iran, interest in, 738-742, 743-744, 748-749, 750, 759-760; transit rights for machines of, 751-757
 Spain, participation in Montreux Conference for the Abolition of Capitulations in Egypt, 644, 651, 652
 Spanish Morocco, U. S. capitulatory rights in, 877, 880
 Speech, freedom of, 369, 370, 374, 375, 385, 724
 Standard Car Finance Corp., 539-540
 Standard Oil Co. of New Jersey, 344-347, 511
 Steele, Isabel, 387
 Stein, Elbridge W., 358
 Straits Regime, Montreux Convention for Revision of (1936), 617, 618
 Stresa Conference (1935), declarations, 444

- Sudan, applicability of Egyptian treaties to, 676-677
- Sweden:
- Ethiopia, missionary activity in, 701, 706, 708, 714, 715
 - Montreux Conference for the Abolition of Capitulations in Egypt, participation, 644, 663
 - Poland, settlement of bond payments to Swedish match interests, 540
 - Trade agreement with United Kingdom, 56
- Switzerland, 565-582
- Military obligations of certain persons having dual nationality, convention with United States (*Nov. 11*), 579-582; citation to text, 582
 - Montreux Conference for the Abolition of Capitulations in Egypt, participation, 644, 645
 - Trade agreement with United States (*1936*), informal representations respecting control of imports in alleged violation of, 565-579
- Syria and the Lebanon, 923-938
- Customs privileges for U. S. religious, educational, and philanthropic institutions, agreement between France and United States regarding (*Feb. 18*), 816-817; citation to text, 938
 - Franco-Turkish agreement of *May 29*, 924, 926, 928, 929, 932-933, 934, 935, 936
 - Lausanne Treaty of *1923*, 923-924, 926, 931, 936
 - Sanjak of Alexandretta, status of, 882
 - U. S. citizens of Syrian or Lebanese origin, French confirmation of continued application of Knabenshue-Gouraud agreement (*1921*) regarding U. S. protection of, 923-938
 - Citizenship status, 923, 925, 930, 931, 936-937
 - Property rights, 923, 925, 928, 930, 932
 - Rights in native lands, 923, 924, 931
 - U. S.-French convention regarding U. S. rights in (*1924*), 868
- Tanganyika Territory and Ruanda Urundi, U. S. reservation of rights as affected by changes of frontier between, 939-940
- Taraboletti, Attilio, 482
- Tariff Act of *1930*, 12, 19, 116, 139, 255-256, 327-328, 336, 345, 408, 527, 532; countervailing duties required by, 255-256, 327-328, 336
- Taxation:
- Double taxation. *See under France*.
 - Income tax (*see also under Canada*), desire by Newfoundland for an arrangement similar to that accorded Canada, 201-202
- Taxation—Continued
- Tax evasion, cooperation on preventing: U. S.-Canada, 180-181, 182; U. S.-France, 182, 290, 295, 297
- Texas Oil Co., 597
- Time Magazine*, 737
- Trade Agreements, Interdepartmental Committee on, 35, 245, 248, 272, 408, 409, 528, 529, 942
- Trade Agreements Act (*1934*), 224, 239, 261
- Trade agreements between United States and other countries:
- Basic U. S. policy, 1-2, 6, 11-12, 29, 30, 144, 163-164, 204-206, 248-249, 250, 261, 329, 334-335, 409-414, 424, 441, 454, 484, 510-511, 521-522, 525, 591, 762, 763, 764
 - Discussions and negotiations with—
 - Australia. *See under Australia*: Trade relations with United States.
 - Belgium. *See under Belgium*.
 - Canada, 160-168
 - Czechoslovakia. *See under Czechoslovakia*.
 - Estonia. *See under Estonia*.
 - Germany. *See under Germany*: Trade: United States.
 - Iran, 725, 726, 762, 764, 765
 - New Zealand, 61, 63, 88, 205-206, 209
 - Norway. *See under Norway*.
 - Poland, 525-535
 - Turkey, 941-954
 - United Kingdom. *See under United Kingdom*.
- Trade discrimination against United States: Australia, 136, 137, 139, 143-147 *passim*, 150-159 *passim*; Belgium, 227-228, 230-233; France, 275-285; Iran, 761-766; Lithuania, 507-514; Poland, 525, 526; Switzerland, 568-569, 570, 572, 575; Western Samoa, New Zealand Mandate of, 210-217
- Transjordan, attitude toward partition of Palestine, 894
- Treaties, conventions, etc.:
- Act of Algeiras (*1906*), 859, 872, 874
 - Air navigation, arrangement between United States and Irish Free State effected by exchange of notes, *Sept. 29* and *Nov. 4*, citation to texts, 200
 - Anglo-Belgian treaty regarding boundary between mandated territories of Tanganyika and Ruanda Urundi (*1934*), 939-940
 - Anglo-Egyptian treaty of alliance (*1936*), 622-623, 627, 632, 636, 676
 - Anglo-French convention for the abolition of capitulations in Morocco and Zanzibar (*July 29*), 861, 862-863
 - Arbitration convention, U.S.—Liberia (*1926*), 803

- Treaties, conventions, etc.—Continued
- Capitulations (*see also* Egypt: Capitulations), U.S.—Morocco (1836), 863, 868
 - Commercial treaties and agreements:
 - Anglo-Moroccan (1856), 872, 873
 - Denmark-Lithuania (1938), 513
 - Germany-Greece (1937), 421
 - Germany-Lithuania (1936), 508
 - U.S.—Estonia (1925). *See* Estonia: Modification of 1925 commercial treaty.
 - U.S.—Germany (1923), 387, 388-389, 390, 391, 392, 774, 801
 - U.S.—Italy. *See* Italy: Commercial treaty.
 - U.S.—Morocco (1836), 863, 868
 - U.S.—Ottoman Empire (1830), 629, 636
 - U.S.—Poland (1931), 543-551 *passim*
 - Consular rights. *See* Italy: Consular convention.
 - Dual nationality. *See* Military obligations, *infra*.
 - Extradition (*see also under* Greece), U.S.—Liberia (Nov. 1), citation to text, 811
 - France-Ottoman Empire (1740), 636
 - German-Iranian convention for regulation of payments (1935), 761-766
 - Hague Convention (1907), 642, 643
 - Iran-Iraq, treaty of July 4, 726
 - Knabenshue-Gouraud agreement regarding protection of U.S. citizens of Syrian and Lebanese origin (1921). *See* Syria and the Lebanon: U.S. citizens.
 - Lausanne, Treaty of (1923), 923-924, 926, 931
 - Liquor smuggling convention, U.S.—Great Britain (1924), 107, 110, 118, 121, 122
 - Military obligations of persons having dual nationality: Hague protocol (1930), 581; U. S.—Lithuania (Oct. 18), 514-516; U. S.—Switzerland (Nov. 11), 579-582
 - Montreux Convention for the Abolition of Capitulations in Egypt. *See* Egypt: Capitulations.
 - Montreux Convention for Revision of Straits Regime (1936), 617, 618
 - Naturalization. *See under* Belgium; Lithuania.
 - Oslo Conventions (1930 and May 23, 1937), 225, 226, 522, 523
 - Soviet-Persian treaty (1921), 749, 759
 - Taxation:
 - Double taxation, U. S.—France (1932). *See under* France.
 - Income taxation, U. S.—Canada. *See under* Canada.
 - U. S. rights in East Africa, U. S.—Belgian treaty and protocol (1923 and 1924) and U. S.—British convention (1925), cited, 939, 940
- Treaties, conventions, etc.—Continued
- U. S.—Turkey, protocol of 1874, 629, 636
 - War claims, U. S.—Turkey (1923, and supplemental agreements), 954-958
 - Turkey (*see also* Syria and the Lebanon: U. S. citizens), 941-958
 - Capitulations, abolition of, 615
 - Claims settlement, adjustment of payments due United States under agreement of 1923 and supplemental agreements, 954-958
 - Montreux Convention for Revision of Straits Regime (1936), 617, 618
 - Palestine, national home for Jews, attitude toward, 881, 882
 - Sanjak of Alexandretta, status of, 882
 - Trade:
 - Germany, clearing and compensation arrangements with, 944-945
 - Policy, 942, 950
 - United States:
 - Trade agreement, preliminary discussions respecting, 941-954; commodities, 944, 946-947, 951, 953
 - Treaty of commerce and navigation with United States (1929), 767, 774, 944
 - Ulen and Co., 540
 - Union of South Africa (*see also* Attitude of Commonwealth countries and Empire preferences under United Kingdom: Trade agreement with United States), Montreux Conference for the Abolition of Capitulations in Egypt, participation, 644, 647
 - Union of Soviet Socialist Republics. *See* Soviet Union.
 - United Kingdom (*see also* Ethiopia: Missionary activities; Palestine), 1-135
 - Afghanistan, interest and representation in, 605-606, 610
 - Egypt (*see also under* Egypt: Capitulations): Consular convention with, consideration of, 669; Treaty of Alliance with (1936), 622-623, 627, 632, 636, 676
 - Halibut fishery of Northern Pacific Ocean and Bering Sea, representations by Canada and United States against projected voyage of British steamer to, 183-191
 - Iran: Amiranian Oil Co., attitude toward concessions to, 748-749, 750-751, 758-759, 760; Anglo-Iranian Oil Co., 598, 736, 738, 744-747, 748, 757, 758-759
 - Liberia. *See under* Liberia.
 - Morocco, French Zone, trade with, 866, 867, 872-873, 874-876, 877, 878, 879

United Kingdom—Continued

- Motion-picture legislation, U. S. concern over, 88-90, 91-93
- Pacific islands, conflicting British and U. S. claims to various islands, 125-135
- Poland, negotiations regarding payment of obligations to bondholders, 538, 539, 541, 542, 543
- Protest against seizure of motor vessel *Miserinko* by U. S. Coast Guard authorities, 107-124; previous similar cases, 110, 115-116, 119-120, 122
- Shipping, informal discussions with United States on restriction of trade between Australia and New Zealand to British shipping, 95-106
- Tanganyika Territory and Ruanda Urundi, treaty with Belgium regarding boundary line between (1934), U. S. reservation of rights, 939-940
- Trade agreement with United States, preliminary discussions respecting, 1-94
- Attitude of—
- American Government, 1-3, 6-8, 11-13, 15-18, 19-21, 27-32, 37-38, 42-43, 46-48, 62-63, 65-68, 77-78, 83-85
 - British Government, 8-10, 14-15, 18, 21, 22, 23-26, 35-37, 39-40, 41-42, 56-58, 71-72, 73-74, 76-77, 78-80, 81-83, 87-88
 - Commonwealth countries, 10, 15, 32-33, 34-35, 40-41, 44-46, 48-55, 57, 58-62, 63-64, 68, 69, 75, 77, 80, 88
- Commodities, 7, 8, 24, 25, 38, 45, 52-56, 57-58, 64, 74, 76
- British concessions, 16-18, 19, 22, 31, 36, 37, 48, 49, 59, 72, 73, 75, 79, 82, 83, 84, 85, 89-90
 - U. S. concessions, 15-18, 19, 20, 30, 31, 35-36, 37-38, 79, 83, 94
- Empire preferences, question of, 7, 9-10, 12, 13-14, 15, 17-18, 20-21, 22, 25-26, 27-28, 30, 32, 36, 40, 41, 44, 52, 59, 61, 62, 67, 69, 74, 76, 80, 81, 85-88, 90-91
- United States Lines, 305, 307
- U. S. citizens:
- Naturalized citizens of German birth: Contribution to nation, 376; loyalty to United States, press release concerning, 381
 - Protection of (*see also* Nationality, dual; *and* Syria and the Lebanon: U. S. citizens of Syrian or Lebanese origin): Ethiopia, 685, 637-688, 689, 690; Germany, 386-392, 395-405; Protection of Nationals Act (1907), 236, 937
 - U. S. Maritime Commission, opinion on shipping situation in Tasman Sea, 98-103, 106; British reaction to, 104-106
 - U. S. Post Office Department, activity regarding non-delivery of second-class mail in Iran, 732-733
 - U. S. Supreme Court, opinion on U. S.-Belgian naturalization convention of 1868, 237
 - U. S. Treasury Department (*see also* Trade Agreements, Interdepartmental Committee on): Countervailing duties, imposition of, 528; double taxation convention between United States and France (1932), draft addendum, protocol, and commentary, 286-295; German currency policy, opinion on, 327-328, 346, 347; liquor smuggling from St. Pierre-Miquelon, opinion on proposed French decree, 301, 305-306, 307, 308, 310-311; tax policy, 202; U. S.-Norwegian treaty of friendship, commerce, and consular rights, interpretation of, 497
- Vatican (*see also* Roman Catholic Church): Ethiopia, action respecting Protestant missionaries expelled from, 712-713; Palestine, arrangements concerning holy places in, 898; Poland, attitude on anti-Semitic activity in, 561
- Warburg, Felix, 908, 909, 921
- War Claims Settlement Act (1928), 351, 364, 366
- Western Samoa. *See* New Zealand: Discrimination against American trade.
- Whale oil, 518, 521, 523-524
- Wise, Rabbi Stephen S., 553-554, 555, 556, 904, 909, 921
- World Court, 642-643
- Worship, freedom of, 652, 662
- Yugoslavia, 584-596
- Commercial relations with United States, proposals for regulation of, 586-595
 - Most-favored-nation provisions of 1881 treaty, Yugoslav willingness to set aside, 586-587
 - Yugoslav proposals, 588-590, 592-593; U. S. position, 590-592, 593-595
 - Military service, liability of U. S. citizens of dual nationality, 584-586
 - Naturalization treaty with United States, status of proposal for, 584
- Zionist Organization. *See under* Palestine.

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