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TREASURY DEPARTMENT

PROCUREMENT DIVISION

WASHINGTON

OFFICE OF THE DIRECTOR

October 5, 1939

MEMORANDUM FOR THE SECRETARY

On September 21st proposals were issued covering requirements of manila fiber (hemp) to be opened October 23rd.

This afternoon a joint letter from the Assistant Secretary of War and the Acting Secretary of the Navy was received, requesting that inasmuch as the price of hemp has risen considerably, that this proposal be cancelled.

In accordance with this joint request, notices have been sent to those who were furnished with proposals to the effect that they have been cancelled.

L. L. Lewis
Director of Procurement

TREASURY DEPARTMENT

INTER OFFICE COMMUNICATION

DATE October 5, 1939.

TO Secretary Morgenthau

FROM Mr. Cochran

The foreign exchange market was quiet today. Sterling did not maintain the high rate which it reached yesterday and opened in this market 4.04-3/8, later rising to 4.04-5/8, and eased off to close at 4.04.

With regard to my report of yesterday relative to what action the British Control would take if sterling remained above 4.04, the Federal Reserve Bank of New York reported to us that some of the large banks last night sent cables to London which contained bids for approximately £347,000 at the official rate. The bids were accepted by the Control and the price of the sterling to the purchasers was 4.04-1/2. The rate of 4.04-1/2 comprises 4.04 for the fixed price and about 1/8 charge which is made by the London authorized dealers. We understand that when banks wish to purchase sterling from the British Control, it is necessary that this inquiry reach the Control before 3 P.M. London time in order for it to receive consideration. The fact that the Control sold sterling today does not necessarily imply that they have adopted this practice as a matter of policy.

Reporting banks in New York and the Federal Reserve Bank reported sales totaling £680,000, from the following sources:

Commercial concerns.....	£ 276,000
Foreign banks (Europe, South America and Far East)....	£ 354,000
Fed. Res. Bk. (£50,000 for Sweden).....	£ 50,000
Total	£ 680,000

Purchases of sterling amounted to £415,000, as indicated below:

By commercial concerns.....	£ 366,000
By foreign banks (Near East and Europe).....	£ 49,000
Total	£ 415,000

The Bank of Latvia purchased 180,000 belgas in this market.

The National Bank of Belgium sold to us \$2,960,000 gold from their earmarked account.

The Banco do Brasil paid \$3,000,000 to the Federal Reserve Bank of New York for conversion into gold which transaction was effected today. After discussion with the Federal Reserve Bank of New York as to how the account of Banco do Brasil was to be opened, that is as a straight central bank account or as a fiscal agency of the United States account, it was decided that the Federal

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Reserve Bank of New York open a fiscal agency account and that they would take the necessary steps with their Board of Directors and the Federal Reserve Board to open a regular central bank account. When this has been done the gold is to be transferred to this regular central bank account in the name of the Bank of Brazil.

Gold valued at \$60,000 was shipped from Canada to the National City Bank of New York and \$50,000 from England to the Bank Belge pour l' Etranger, New York.

We made two purchases of silver today totaling 200,000 ounces in the New York market under the Silver Purchase Act.

A handwritten signature in dark ink, appearing to be 'B. M. S.', is centered on the page.

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TREASURY DEPARTMENT

INTER OFFICE COMMUNICATION

DATE October 5, 1939

TO Secretary Morgenthau
FROM Mr. Cochran

At 12 noon Mr. Knoke telephoned to ask whether we had been discussing in the Treasury the rise in the pound sterling. He wanted to know whether the Treasury would be as uneasy over a 4.10 rate as over a 3.07 rate. That is, were we looking for an entirely orderly rate? He said that in ordinary times he would bring such sharp fluctuations as were taking place today to the attention of Bolton of the Bank of England by a telephone call. I suggested that this subject should not be brought up from our side. We certainly did not want to protest against this rise in sterling. It remains to be seen whether the British will permit the open rate to go above the official rate or whether the British will sell sterling to bring the market rate down. I did not think that we should take the initiative in suggesting any ironing out of fluctuations. There is much experience to be passed through yet before the rate of sterling, and the policy of the British control, may be determined along anything like definite lines.



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THE *Carlton*
WASHINGTON, D. C.

5

October 5, 1939.

The Honorable Henry Morgenthau, Jr.
Secretary of The Treasury,
Washington, D. C.

Dear Mr. Secretary:

In reference to our conversation yesterday concerning medical aid to China I take pleasure in enclosing herewith for your kind attention a copy of a memorandum on "Five Years Program of Anti-Malaria Work in Yunnan Province recently received through the Chinese Embassy.

With highest regards,

Yours truly,

W. H. Allen

Five-year Program of Anti-Malaria Work in Yunnan Province

The so-called Changchi which proves in general to be subtertian malaria (See No. 21 of Appendix 1) has a remote history in the province of Yunnan. It was definitely referred to in literature written as long ago as 227 A.D. (see No. 21 of Appendix 1). Some localities of the province infected with the disease in a state of hyperendemicity as shown by the spleen index ranging from 50 to 100 are very often encountered (see No. 21 of Appendix 1 and Appendix 2). The disease has not only caused a high morbidity and mortality but also costed the province very seriously in the social and economical condition. Evidences of the evil and devastating effect of the disease are many: of them the vast area which remains uncultivated within the regions highly infected with malaria is one of the most striking features. This has attracted the attention of both the Central and Yunnan Governments. As a result, a fund of 1,524,000 in Chinese National Currency (see Appendix 3) has been recently sanctioned by both Governments for a five-year program of anti-malaria work in the province. To set on foot the new work, an Anti-malaria Committee (see Appendices 4 and 5) under the Yunnan Provincial Government which consists of nine members, four from the National Health Administration of the Central Government and five from the Provincial

Government, has been organized. On August 2, 1939 the Committee had its first meeting, in which the organization of the Anti-Malaria Corps as well as of the Institute for Malaria Research directly under the Committee was passed among a number of other proposals (see Appendixes 6 to 10).

The budget for the work of 1939, the first year of the five-year program is NC\$220,000 (see Appendix 3), which is fixed and will be appropriated by the Central Government. In order to win the people's confidence and to leave a permanent anti-malaria work after the five-year period, the Committee stressed the point that the malaria control work by means of anti-larva measures and treatment of patients should be simultaneously carried out with research and survey. Therefore it was passed at the meeting that in the first-year program, starting from August to December, 1939, four Anti-Malaria Stations will be established under the Anti-Malaria Corps. The total annual budget for the Anti-Malaria Corps is NC\$190,100—\$95,100 as capital expenses and \$95,000 as running expenses, while the annual total budget for the Institute for Malaria Research is NC \$29,900, of which \$15,000 is for capital expense and \$14,900 as running expenses, making a grand total of NC\$220,000. The capital expenses mentioned above are limited only for local purchases.

In weighing the activities to be undertaken by the Institute for Malaria Research, as specified in Article 2 of Appendix 9, and the work of the Anti-Malaria Corps which covers a very large area, it is much to be feared that the sum mentioned above may be too small to carry out the work scientifically and extensively. For this reason, the meeting passed a resolution to send an application to the Government of United States, the Rockefeller Foundation and the League of Nations for financial and technical aids.

With the primary success of cinchona plantation at Ho-kou (see Appendix 11) we here request the help of the Government of United States by sending us:

- (1) one expert on the said plantation, one malarialogist, and one sanitary engineer on mosquito control with Chinese assistants to be engaged locally;
- (2) the necessary instruments for surveying and mosquito control;
- (3) anti-mosquito oil, Paris green and quinine;
- (4) automobile and lorries, and
- (5) ten sets of simple laboratory equipments for Anti-Malaria Stations.

The engineer is requested to work in collaboration with the

divisions of Sanitary Engineering and Chemotherapeutics of the Institute for Malaria Research and a malariologist, preferably one with experience in entomology, to be attached to the Division of Entomology (see Appendix 9). The salaries and travelling expenses of the experts and assistants are to be paid by the Government of United States. As to the material aid mentioned in (2) to (5), amounting to US\$131,000, we request such aid to be given in material rather than in cash (see Appendix 12).

We request the Rockefeller Foundation to send us:

- (1) experts and assistants at Foundation's expenses to work in collaboration with the Divisions of Epidemiology and Entomology of the Institute for Malaria Research (see Appendix 9),
- (2) laboratory equipments, books and journals amounting to US\$26,300 (see Appendices 13 to 15) which due to the restriction of foreign exchange at the present time it is highly hoped may be appropriated in materials instead of cash, and
- (3) to grant to the research program which is planned to last for three years an annual appropriation of US\$25,000 for three years towards the housing of foreign experts, for three years towards the housing of foreign experts, salary of Chinese assistants, purchase of supplies,

travelling and other maintenance expenses.

In our regular collaboration with the League of Nations, we will continue to ask for experts for anti-epidemic work, including a malariologist for anti-malaria work, along Yunnan - Burma Highway. We hope the League will send us an expert on malarial control to work in collaboration with the Anti-Malaria Corps (see Appendices 7 and 8).

List of the Important Literature on Malaria
and Anopheles in China

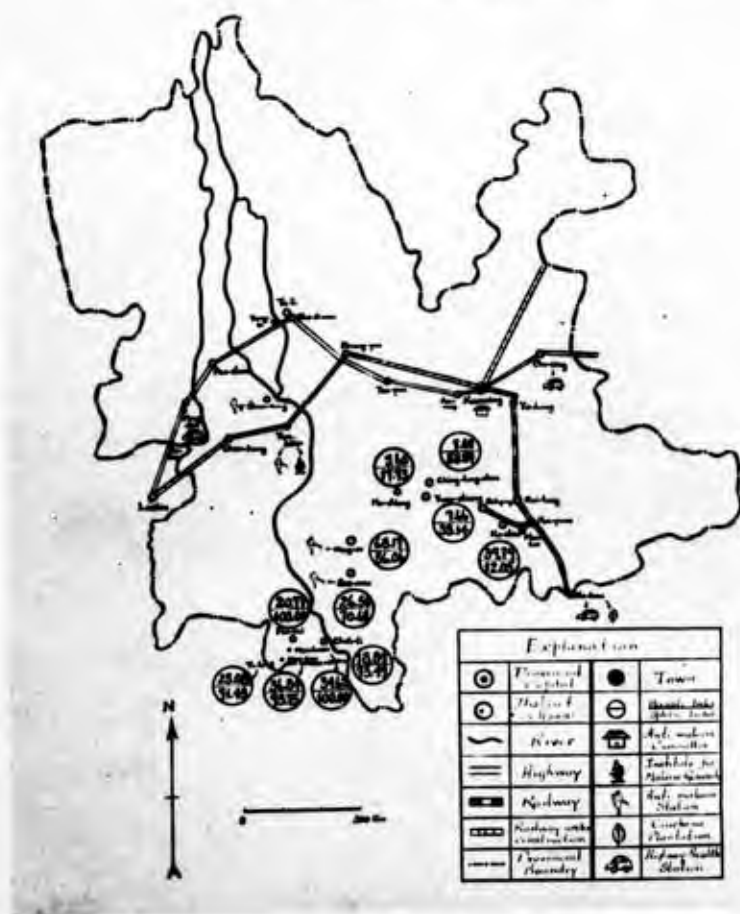
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Appendix 2

Map Showing the Location of Anti-malaria
Organization in Yunnan Province



Appendix 3

Distribution of the Appropriation from the Central Government and Yunnan Provincial Government for the Five Year Program of Anti-Malaria Work in Yunnan

Year	Capital		Running Expenses		Total	
	Central Gov't	Prov. Gov't	Central Gov't	Prov. Gov't	Central Gov't	Prov. Gov't
1st	60,000	0	160,000	0	220,000	0
2nd	60,000	0	304,000	0	364,000	0
3rd	40,000	0	200,000	200,000	240,000	200,000
4th	0	0	100,000	300,000	100,000	300,000
5th	0	0	68,000	332,000	68,000	332,000
Total	160,000	0	832,000	832,000	992,000	832,000
GRAND TOTAL				1,824,000		

Appendix 4

Regulations Governing the Organisation of the Anti-Malaria Committee in Yunnan

Article 1

The Yunnan Provincial Government, for purpose of facilitating anti-malaria work, organizes the Yunnan Anti-Malaria Committee(hereinafter referred to as the Committee) in accordance with the cooperative plan of promoting health work in Yunnan between the Central and Provincial Governments. The Anti-Malaria Corps shall be responsible for conducting field work in malaria control.

Article 2

The Committee shall be composed of nine members, as follows:

- 1) Four members designated by the Yunnan Provincial Government.
- 2) Four members designated by the National Health Administration.
- 3) Director of the Yunnan Provincial Health Administration.

Article 3

The Anti-Malaria Corps shall be responsible for carrying out the resolutions of the Anti-Malaria Committee. The Committee shall recommend the chief and senior technical personnel of the Anti-Malaria Corps to the Yunnan Provincial Government for appointment.

Article 4

The Committee shall be responsible for the following:

- 1) Plan of anti-malaria work in the whole province,

- 2 -

- 2) Directing the anti-malaria work from a technical standpoint,
- 3) Examining into the work according to the anti-malaria program,
- 4) Receiving, distribution and custody of anti-malaria funds provided by the Ministry of Interior and the Yunnan Provincial Government.

Article 5

The Committee shall designate one member each from the representatives of the Yunnan Provincial Government and the Ministry of Interior and the Director of the Yunnan Provincial Health Administration to form a Standing Committee to carry out the routine activities.

Article 6

Office regulations of the Committee shall be separately drawn up.

Article 7

The present regulations shall become effective from date of promulgation.

Appendix 5

Name List of Members of the Anti-Malaria Committee in Yunnan

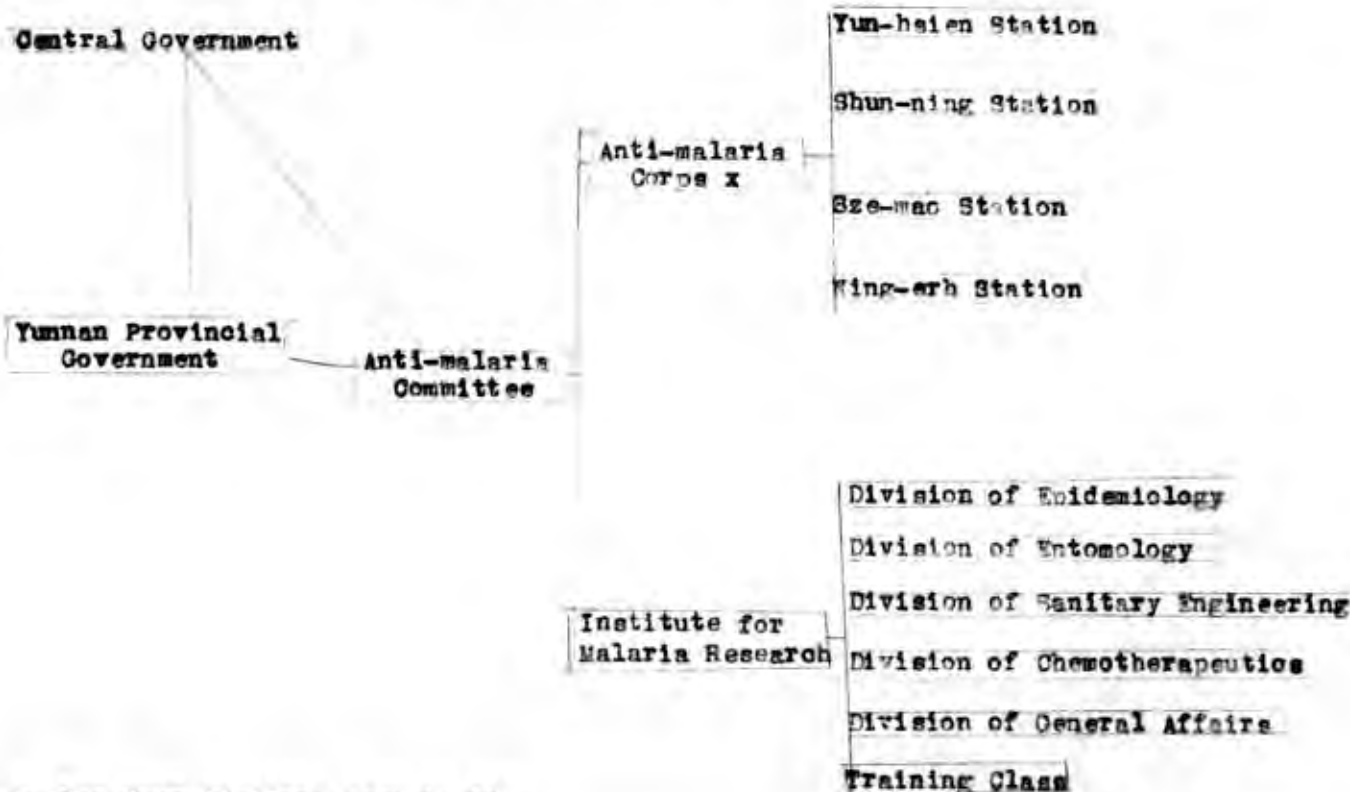
Members;

- Dr. P. Z. King, Vice Director of the National Health Administration of the Ministry of Interior, Central Government.
- Dr. F. F. Tang, Director of the National Epidemic Prevention Bureau, National Health Administration.
- Dr. T. F. Huang, Prof. of Public Health, National Medical College of Shanghai
- Dr. Y. T. Yao, Head of the Department of Parasitology, Central Field Health Station, National Health Administration.
- Mr. B. T. Lee, Commissioner of Civil Affairs, Yunnan Provincial Government
- Mr. P. H. Chang, Commissioner of the Bureau of Reconstruction Yunnan Provincial Government
- Mr. T. Z. Loo, Commissioner of the Bureau of Finance, Yunnan Provincial Government
- Mr. C. M. Miao, Manager of the Yunnan Provincial Bank
- Dr. H. Y. Yao, Commissioner of the Yunnan Provincial Health Administration

Standing Committee

- Mr. C. M. Miao
Dr. H. Y. Yao
Dr. Y. T. Yao

Chart Showing the Organization of Anti-Malaria Work in Yunnan



- x The four Stations seen in the Chart are to be established in the first year but more stations will be extended to the rest of the endemic districts in the succeeding years.

Regulations Governing the Organization of the Anti-Malaria Corps
in Yunnan

Article 1

The Anti-Malaria Corps of the Yunnan Provincial Government (hereinafter referred to as the Anti-Malaria Corps) shall be organized according to Article 1 of the Regulations Governing the Organization of the Yunnan Provincial Anti-Malaria Committee.

Article 2

The Anti-Malaria Corps, under the direction of the Yunnan Provincial Anti-Malaria Committee and the Yunnan Provincial Health Administration, shall establish 10 to 15 anti-malaria stations and may also organize anti-malaria units to carry out field work in malaria control in Yunnan.

Article 3

The Anti-Malaria Corps shall be responsible for the following:

- 1) To carry out the anti-malaria program approved by the Anti-Malaria Committee.
- 2) Matters relating to the organization of anti-malaria stations.
- 3) Planning, supervision, and designating places of work of the anti-malaria Stations.
- 4) Recommendation, appointment, dismissal and examination of work of staff of the Anti-Malaria Corps and anti-malaria stations.
- 5) Budgeting and accounting of the Anti-Malaria Corps and the anti-malaria Stations.

Article 4

The Anti-Malaria Corps shall have one director and one deputy director. The director and deputy director shall be recommended by the Anti-Malaria Committee to the Yunnan Provincial Government for appointment. The director shall be responsible to the Anti-Malaria Committee for the work of the Anti-Malaria Corps, while the deputy director shall assist the director in carrying out all activities of the Anti-Malaria Corps.

Article 5

The Anti-Malaria Corps may appoint 3 to 5 field directors according to need. They shall be responsible to the director and deputy director of the Anti-Malaria Corps for directing and taking charge of all anti-malaria activities in their respective regions. The field directors may act concurrently as head of the anti-malaria stations. The director and deputy directors shall recommend them to the Provincial Government for appointment.

Article 6

The Anti-Malaria Corps shall have 4 to 6 clerks, to be appointed by the director and deputy director and reported to the Anti-Malaria Committee for record. They shall be responsible for correspondence, accounting, medical supplies and routine matters.

Article 7

The Anti-Malaria Corps may engage a number of employees when necessary.

Article 8

Office regulations of the Anti-Malaria Corps shall be separately drawn up.

Article 9

The present regulations may be amended from time to time.

Article 10

The present regulations shall become effective from date of promulgation.

Appendix 8

Regulations Governing the Organization of Anti-Malaria Stations in Yunnan

Article 1

The Anti-Malaria Stations in Yunnan(hereinafter referred to as the Stations)shall be organized according to the regulations governing the organization of the Anti-Malaria Corps of the Yunnan Provincial Government.

Article 2

The Stations shall be responsible to the Anti-Malaria Corps of the Yunnan Provincial Government(hereinafter referred to as the Anti-Malaria Corps)for carrying out anti-malaria activities in regions designated by the Anti-Malaria Corps. When necessary, anti-malaria units may be organized.

Article 3

Each station shall have one head, to be recommended by the Anti-Malaria Corps to the Provincial Government through the Anti-Malaria Committee for appointment. The head of each station shall be responsible for the work of his station.

Article 4

Each station shall have 2 to 4 assistant technical experts, 4 to 6 technical assistants, 2 to 4 technicians, 1 to 3 office assistants, and 4 to 5 assistants. They shall be recommended by the head of station to the Anti-Malaria Committee through the Anti-Malaria Corps for appointment and be responsible to the head of station for

their activities.

Article 5

Each station shall have the following divisions:

- 1) Division of Medical Affairs
- 2) Division of Survey
- 3) Division of Engineering

When necessary, each station may organize a number of anti-malaria units to be responsible for anti-malaria activities in certain designated regions. Each Division shall have one chief of division, and each unit shall have one chief of unit, to be filled by the assistant technical experts.

Article 6

Detailed regulations of the anti-malaria stations shall be separately drawn up.

Article 7

The present regulations may be amended from time to time.

Article 8

The present regulations shall become effective from date of promulgation.

Regulations Governing the Organization of the Institute for
Malaria Research in Yunnan

Article 1

The Institute for Malaria Research (hereinafter referred to as the "Institute") is organized under the auspices of the Anti-Malaria Committee in Yunnan (hereinafter referred to as the "Committee") to take charge of all the researches on malaria and to give the technical advice in anti-malaria work.

Article 2

The Institute has the following functions:

- a) Training of personnel for anti-malaria work
- b) Giving technical assistance to all anti-malaria stations in Yunnan Province.
- c) Malaria and Mosquito surveys: researches on the symptomatology, therapeutics, haematology, pathology, immunology and protozoology of the diseases; and researches on the physiographical, meteorological, economical and entomological factors in influencing its prevalence.
- d) Survey of the physical features of the area where the anti-malaria work is to be carried out.
- e) Experiments on anti-mosquito and anti-larval measures.
- f) publishing papers on malaria researches.
- g) Study on the cinchona plantation.
- h) Recommendation, control and supervision of personnel.

Article 3

The Institute is composed of the following staff:

Director - to be recommended by the Committee and appointed
by Yunnan Provincial Government.

4 Technical Experts and 4-6 Assistant Technical Experts - to be recommended by the Director of the Institute and appointed by the Yunnan Provincial Government

4-6 Technical Assistants, 10-15 technicians and 2-4 business assistants - to be recommended by the Director of the Institute and appointed by the Committee.
Malarialogists, biologists, chemists, agriculturists or hydrographic engineers may be recommended according to their qualifications to be technical experts or assistant technical experts or technical assistants of the Institute.

Article 4

The Institute shall consist of the following divisions:

- Division of Epidemiology
- Division of Entomology
- Division of Sanitary Engineering
- Division of Chemotherapeutics
- Division of General Affairs

The technical experts of the Institute shall be appointed as heads of the first four Divisions while one of the business assistants shall be placed in charge of the Division of General Affairs.

Article 5

Honorary advisers may be recommended by the Director to the Yunnan Provincial Government for appointment.

Article 6

The Director shall take charge of the entire affairs of the Institute under the direction of the Committee. All the staff members of the Institute shall attend to their duties in the Division to which they

belong by the order of their superior.

Article 7

The Institute may employ a number of student technicians whenever necessary.

Article 8

The detailed rules for the administration of the Institute shall be formulated and announced separately.

Article 9

These regulations shall come into force on the date they are approved and officially announced by the Committee.

Name List of Staff Appointed to Take Charge of the Different
Organisations of Anti-Malaria Work in Yunnan

Dr. H.Y. Yao, Director of the Anti-Malaria Corps

Dr. A.T. Miao, Deputy Director of the Anti-Malaria Corps

Dr. Y.T. Yao, Director of the Institute for Malaria Research

Advisors to the Institute for Malaria Research:

Dr. Y.Y. Ying, Prof. of Tropical Medicine, National Medical
College of Shanghai

Dr. K.Y. Ku, Prof. of Pathology, National Medical College
of Shanghai

Mr. P.K. Tao, Prof. of Sanitary Engineering, Southwest
Union University

Dr. L.C. Ling, Chief of the Anti-Malaria Station in Yun-hsien

Dr. C. T. Wang, Chief of the Anti-Malaria Station in Shun-ning

Dr. C. T. Woo, Chief of the Anti-Malaria Station in Sze-mao

REPORT ON THE CINCHONA PLANTATION OF THE TROPICAL
AGRICULTURE STATION OF THE BUREAU OF RECONSTRUCTION
OF HUNAN PROVINCIAL GOVERNMENT AT HO-KOU

Note: In his recent trip to Ho-kou and especially to
investigate into the cultivation of Cinchona,
Dr. Y. T. Yao has taken C. succirubra, C. Ledger-
iana, C. officinalis and the hybrid of the for-
mer two in the plantation.





Appendix 12

List of Anti-malaria and Anti-mosquito Instruments, Chemicals and
Drugs Requested to be appropriated by the Government of United States

1. Instruments

A. For surveying and mosquito control:

Items	Quantity	Unit Price	Total Cost
Current meter with dry cell and wiring	4 pcs.	150.00	600.00
Drawing instruments (Stanley)	5 sets	20.00	100.00
Haversack	20 pcs.	0.50	10.00
K. & E. Engineering transit (24 dia.) 20 secs. with tripod	4 sets	650.00	2,600.00
K. & E. Eranong shield	10 pcs.	0.40	4.00
K. & E. "Y" level (28 dia.) ratio 1:100 with tripod	4 sets	250.00	1,000.00
K. & E. Level rods 2.2 meters to K. & E. 4 meters with target	8 pcs.	22.50	180.00
K. & E. Lookes Hand Level with stadia line	4 pcs.	7.00	28.00
K. & E. Metallic woventape 15 m. and 50 ft.	10 pcs.	6.00	60.00
K. & E. Plain table with alidade with tripod	1 set	500.00	500.00
K. & E. Steel tape 30m. & 100 ft.	5 pcs.	20.00	100.00
Log log Trig. duplex slide rule 10 in.	5 pcs.	14.00	70.00
Knapsack sprayer	20 "	6.00	120.00
Knapsack blower	10 "	6.00	60.00
Mixer	5 "	5.00	25.00
Miscellaneous draughting instruments	1 set		100.00
Rubber boots	20 pairs	2.00	40.00
Screenner	5 pcs.	10.00	50.00
Stanley drawing pen, 6 in.	12 "	1.50	18.00
Surveying miscellaneous	1 set		500.00
Surveying umbrella	4 pcs.	5.00	20.00
T-square Xylonite lined, 42 in.	10 "	5.00	50.00
Xylorite semi-circular protractor, 8 in.	10 pcs.	.50	5.00
Xylorite triangles	20 "	1.00	20.00
Automobile	1	700.00	700.00
Bicycle	20	10.00	200.00
Lorry	4	600.00	2,400.00
Typewriter, portable	4	60.00	240.00

B. For Laboratory:

Items	- 2 - Quantity	Unit Price	Total Cost
Counter, hand	4 pos.	5.00	20.00
Cover glass, round, 18 mm	100 boxes	1.75	175.00
" " square 18 mm	100 "	1.75	175.00
Diluting pipette for R.B.O. and N.B.O.	10 pos. (each)	1.30	26.00
Glass slides, ground edge, non-corrosive, 3x1	500 boxes	1.90	950.00
Hemocytometer	2 sets	16.00	32.00
Hemometer, Sahli	2 "	10.00	20.00
Magnifying lens, double 5x, 10x	5 pos.	5.00	25.00
Microscope, simple dissecting for 30 students	30 pos.	25.00	750.00
Microscope, Spencer binocular	5 sets	150.00	750.00
Microscope, Zeiss routine Ltd with equipment 319L	5 "	300.00	1,500.00
Object holder for entomological work	4 "	10.00	40.00
Ph-apparatus	4 "	40.00	160.00
Balance, 5 kg. with sts.	4 "	15.00	60.00
Centrifuge, hand	4 pos.	12.00	48.00
Clock, Hawkeye, interval timer	4 "	7.50	30.00
Compass	4 "	1.00	2.00
Distilling apparatus, cap. 1 gal per hour	4 sets	48.00	193.00
Forceps, cover-glass	12 pos.	.50	6.00
" , entomological, curved and square tipped	12 "	.60	7.20
" , fine curved	12 "	.50	6.00
" , pinning	4 "	5.00	20.00
" , Straight fine	12 "	.50	6.00
Lamp, alcohol brass, 4 oz.	10 "	.70	7.00
Minuten nadeln	10,000 "	4.00(10,000)	40.00
Needle, dissecting with handle	4 doz.	.50	2.00
Pins, entomological, rustless Nos. 00-5	7,000 pos.	6.00(1000)	42.00
Pins, nickel No. 20	50,000 pos.	4.00(10,000)	20.00
" " No. 16	50,000 "	4.00(10,000)	20.00
Scapel, microscopic	12 "	.60	7.20
" , ordinary	12 "	.50	6.00
Scissors, microscopic	12 "	4.50	48.00
" , ordinary straight	12 "	.70	8.40
" , curved	12 "	.70	8.40
Syringe needles, size assorted	12 doz.	2.00	24.00
Vaccine needles for taking blood	12 "	.20	2.40
Writing diamond	4 "	1.00	4.00
Aquaria, cylindrical cap. 1 gal.	20 pos.	1.85	37.00

Items	Quantities	Unit Price	Total Cost
Beaker, Pyrex, 50 cc.	20 pos.	0.18	3.60
" " " 250 cc.	20 pos.	.25	5.00
" " " 1000cc.	10 pos.	.55	5.50
Bell glass, 15x9 in	5 pos.	5.00	25.00
Bottle, balsam	20 "	.40	8.00
Bottle, cedar wood oil & Xylol	20 "	.65	13.00
" dropping with pipette	50 "	.14	7.00
Burette, cap. 100 c.c.	5 "	1.30	6.50
Calcium chloride tube, 6 in.	5 "	.20	1.00
Centrifuge tubes, plain 15 cc.	5 doz	.80	4.00
Cylinder, Pyrex 5 cc.	10 pos.	.50	5.00
" " " 100 cc.	10 "	.60	6.00
" " " 2000 cc.	4 "	3.20	12.80
Dessicator, 250 mm. dia.	5 "	8.00	40.00
Dish, stender with cover 80x40mm	20 "	.55	11.00
Flask, boiling, 50 cc.	20 "	.17	3.40
" " 250 cc.	20 "	.24	4.80
" " 1000 cc.	10 "	.43	4.30
" bottom, 50 cc.	5 "	.40	2.00
" " 250 cc.	5 "	.60	3.00
" Erlenmeyer 50cc.	20 pos.	.17	3.40
" " 250cc.	20 pos.	.22	4.40
" " 1000cc/	10 "	.42	4.20
" filtering Pyrex with side neck, 500 cc.	5 "	.50	2.50
Funnel, glass 1 in. dia.	10 "	.15	1.50
" " 5 in. dia.	10 "	.40	4.00
Jar, Staining, 20 slides	20 "	.35	7.00
" " 10 "	20 "	.35	7.00
Petri-dishes 100x15 mm.	200 pairs	.50	100.00
Pipette, graduated 1 cc.	20 pos.	.50	10.00
Specimen tube with flat bottom and cork	1,000 "	.02	20.00
Syringe, Luer, 1cc.	10 "	1.70	17.00
" " 2 cc.	10 "	1.30	13.00
" " 5 cc.	10 "	2.00	20.00
" " 10 cc.	10 "	2.50	25.00
Test tube, Pyrex, 150x18mm.	1,000 "	.07	70.00
Watch glass, Syracuse 2 1/2 in. dia.	100 "	.14	14.00
Evaporating dish, 80mm. dia.	20 "	.13	2.60
Mortar with pestle, 96mm. dia.	2 "	.70	1.40
Celluloid sheet, 6x6 in.	20 "	.70	14.00
" vial with cork 13x15 mm.	200 "	.04	8.00
Cork sheet, pressed 4x12x1/4 in.	100 "	.30	30.00

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Item	Quantity	Unit price	Total cost
Rubber bulb, cap. 2 ml.	10 doz	.14	1.40
" " " 1/2 oz	20 pos	.08	1.60
" " " 1/2 oz	20 pos	.10	2.00
" glove, size 14	8 pairs	3.50	28.00
" tubing, thin wall 1/4 in.	50 ft.	.08	4.00
Spot pins, 10 different colors	500 each	.05	25.00
Tap measure, pocket, 3/6 in.	4 pos.	.60	2.40
Tent, 6x7x10 ft.	4 set	50.00	50.00
Tray, enamel 12x7x2 in.	10 pos.	1.30	13.00
Wax pencil, red, yellow, blue and black	20 each	.15	12.00
Miscellaneous equipments			145.90

2 Chemicals

A. For mosquito control

Anti-larva oil	1,000 barrels	30.00	30,000.00
Paris green	10 tons	400.00	4,000.00

B. For Laboratory

Acid, acetic, c.p.	5 lbs.	.40	2.00
" " glacial, c.p.	10 "	.95	9.50
" hydrochloric, c.p.	5 "	.60	3.00
" potassium phosphate, c.p.	4 "	1.00	4.00
Alcohol, absolute	20 "	1.00	20.00
" , ethyl	50 gal.	1.50	75.00
Alcohol, methyl	20 lbs.	1.50	30.00
Asphalt varnish for ring slide	2 "	4.00	8.00
Bromthymolblue	400 cc	1.00	4.00
Calcium chloride, c.p.	10 lbs.	.80	8.00
Canada balsam	4 "	7.50	30.00
Caustic potash, c.p.	5 "	1.00	5.00
Celloidin	10 oz	.60	6.00
Chloroform	20 lbs.	.70	14.00
Chloral hydrate, c.p.	5 lbs.	2.50	12.50
Copper sulphate, c.p.	5 "	1.20	6.00
Cresosote	10 "	1.20	12.00
Ether	20 "	.70	14.00
Euparal	10 oz.	1.50	15.00
Formalin	5 gal.	2.00	10.00
Glycerine, ordinary	10 lbs.	.90	9.00
" distilled	20 "	1.50	30.00
Gum arabic	5 "	1.20	6.00
Iodine	2 "	9.00	18.00
Lithium carbonate, c.p.	4 "	1.50	6.00
Lysol	20 "	.90	18.00

Item	Quantity	Unit price	Total cost
Mercuric chloride, c.p.	4 lbs	3.00	12.00
Naphthaline flakes	10 "	.75	7.50
Oil, cedar wood	4 "	6.00	24.00
Oil, cloves	4 "	6.50	26.00
Plaster of Paris	10 "	.15	1.50
Potassium iodine	2 "	8.00	16.00
Sodium dibasic, c.p.	4 "	1.00	4.00
" sulphate, c.p.	4 "	.80	3.20
" " "	4 "	.80	3.20
Wax, sealing	20 oz.	.50	10.00
Xylol	20 lbs.	.90	18.00
Azur I	25 gms	6.00	6.00
Azur II	30 gms	16.00	16.00
Azur II Eosin	400 "	9.00	36.00
Hematein crystal	100 "	8.00	8.00
Methyl blue	25 "	1.75	1.75
" green	25 "	3.50	3.50
Wright 's stain powder	200 "	17.80	35.60

3. Drugs

Quinine bisulphate	3 tons	20,000.00	60,000.00
Plasmoquine			20,000.00

4. Miscellaneous

Miscellaneous equipments			210.95
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Grand Total U.S. \$131,000.00

Appendix 13 List of Instruments Requested to be Appropriated by
the Rockefeller Foundation

1. Microscopes, optical instruments and other accessories:

Items	Quantity	Unit Price	Total Cost
Anemometer	1 set	US\$40.00	US\$40.00
Barometer, automatic recording	1 set	54.00	54.00
Camera, Leica	1 set	90.00	90.00
" Photomicrographic fitted to Zeiss Micro.	1 set	110.00	110.00
" lucida, Abbe	2 pos.	28.00	56.00
Comparison eyepiece	1 pc.	45.00	45.00
Counter, hand	4 pc	5.00	20.00
Cover glasses, round, 18 mm.	100 boxes	1.75	175.00
" " square 18 mm.	100 "	1.75	175.00
Diluting pipette for R.B.G. and W.B.G.	10 pos. each	1.30	26.00
Drawing table, 2 parts for Abbe drawing apparatus	1 pc.	5.00	5.00
Glass slides, ground edge, non-corrosive, 3x1	500 boxes	1.90	950.00
Glass slides, single cavity 3x1	100 pos.	.20	20.00
Hemocytometer	2 sets	16.00	32.00
Hemometer, Sahli	2 "	10.00	20.00
Hydrometer for both heavy and light liquids	1 pc.	3.00	3.00
Hygrometer	1 "	14.00	14.00
Lantern slide projector	1 set	60.00	60.00
Magnifying lens, double 5x, 10x	5 pos.	5.00	25.00
Microscope lamp	5 "	10.00	50.00
Microscope, simple dissecting for 30 students	30 pos.	25.00	750.00
Microscope, Spencer binocular	5 sets	150.00	750.00
Microscope, Zeiss research L3E with equipments 857L	1 set	500.00	500.00
Microscope, Zeiss routine LTD with equipment 319L	5 sets	300.00	1,500.00
Microscope, Zeiss E80-220 for 30 students	30 sets	130.00	3,900.00
Microscope, travelling No. 124044	5 sets	150.00	750.00
Microtome, hone	1 pc.	9.00	9.00

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Microtome, knife	3 pcs.	10.00	30.00
Microtome, Spencer precision rotary	1 set	220.00	220.00
Object holder for entomological work	1 "	10.00	10.00
Object marker	1 pc.	30.00	30.00
Ocular micrometer	2 pcs.	5.00	10.00
Ph-apparatus	1 set	40.00	40.00
" color disc	4 pcs.	2.00	8.00
Stage micrometer	1 pc.	7.00	7.00
Thermometer, recording Max. & Min.	1 set	70.00	70.00
" 100 C.	10 pcs.	2.50	25.00
" 360 C.	2 pcs.	11.00	22.00
Urinometer, Vogel	1 set	2.00	2.00
Turning table, all metal	5	3.00	15.00

2. Laboratory Instruments

Autoclave	1 set	300.00	300.00
Balance, analytical sensi. 1/10mg	1 "	300.00	300.00
" 5 kg. with wts.	2 sets	15.00	30.00
" platform	1 set	30.00	30.00
Berkfield filter with candles	4 sets	10.00	40.00
Burner, alcohol automatic	4 pcs.	4.00	16.00
" Kerosene, 1 head	6 "	1.50	9.00
" " 2 "	4 "	2.50	10.00
" " 4 "	2 "	5.00	10.00
Caliper micrometer, grad. 0.01mm. lnc.		2.50	2.50
Centrifuge, electric	1 set	75.00	75.00
" hand	2 pcs.	12.00	24.00
Clamp, burette	5 "	1.30	6.50
" condenser	2 "	1.50	3.00
Clock, Hawkeye interval timer	2 "	7.50	15.00
Compass	2"	1.00	2.00
Cork borer, a set of 15	1 set	2.30	2.30
Dissecting instruments, complete	2 sets	15.00	30.00
Distilling apparatus, cap. 1 gal per hour.	1 set	48.00	48.00
Drawing instruments	1 set	10.00	10.00

Drying oven, 10 x 8 - 8 in.	1 set	24.00	24.00
Embedding boxes, 2 L's with metal plate, medium	10 pcs.	0.60	6.00
Embedding table, 14 1/2 x 4 x 6 in.	2 "	4.50	9.00
Forceps, cover-glass	12 "	0.50	6.00
" , entomological, curved and square tipped	12 "	0.60	7.20
" , fine curved	12 "	0.50	6.00
" , Flaming	2 "	5.00	10.00
" , straight, blunted	12 "	0.50	6.00
" , straight fine	12 "	0.50	6.00
Funnel, hot water, copper	1 pc.	6.00	6.00
Generator & accessories, whole set	1 set	1,000.00	1,000.00
Hot air sterilizer	1 "	190.00	190.00
Incubator	2 sets (1)	200.00(?)	200.00
Lamp, alcohol brass, 4 oz.	10 pcs.	0.70	7.00
Melting point apparatus	1 set	18.00	18.00
Minuten nadeln	100,000 pcs.	4.00	40.00
Needle, dissecting with handle	2 doz.	0.50	1.00
Platinum loop	6 pcs.	2.00	12.00
Pins, entomological, rustless, Nos. 00-5	7,000 "	6.00	42.00
Pins, nickel No.20	50,000 "	4.00	20.00
" " no.16	50,000 "	4.00	20.00
Refrigerator	1 set	300.00	300.00
Ruler, pocket folding	5 pcs.	1.00	5.00
Sempel, microscopic	12 "	0.60	7.20
" , ordinary	12 "	0.50	6.00
Scissors, microscopic	6 "	4.00	24.00
" , ordinary straight	6 "	0.70	4.20
" " curved	6 "	0.70	4.20
Section lifter, 6 mm. wide	6 "	0.70	6.70
Sieve, Tyler Standard Screen scale, 8 in.dia. a set of 10, 20, 32, 48, 60, 80, and 100 mesh.	1 set	4.00	28.00
Support, iron rings	5 sets	3.00	15.00
Syringe needles, size assorted	12 doz.	2.00	24.00
Test tube holder	2 doz.	1.40	2.80
Triangular punch	1 pc.	5.00	5.00
Triangle covered with silica 3 in.	10 pcs.	0.65	6.50
Tripod, 9 in. high, 4 1/2 in.dia.	5 "	0.30	1.50
Vaccine needles for taking blood	12 doz.	0.20	2.40
Water bath, 8 in.dia.	2 pcs.	4.00	8.00
Writing diamond	2 "	1.00	2.00

Sanitary Engineering Instruments:

Current meter with dry cell and wiring	4 pcs.	150.00	600.00
Drawing instruments (Stanley)	5 sets	20.00	100.00
Haversack	20 pcs.	0.50	10.00
K. & E. Engineering transit (24 dia.) 20 sec. with tripod	4 sets	550.00	2,600.00
K. & E. erasing shield	10 pcs.	0.40	4.00

E. & E. "Y" level (28 dia.) ratio 1:100 with tripod	4 sets	250.00	1,000.00
K. & E. Level rods 2.2 meters to 8 meters with target	8 pcs.	22.50	180.00
I. & E. Lockes Hand Level with stadia line	4 "	7.00	28.00
K. & E. Metallic woven tape 15m. and 50 ft.	10 "	6.00	60.00
K. & E. Plain table with alidade with tripod	1 set	500.00	500.00
I. & E. Steel tape 30m. & 100 ft. log log Trig. duplex slide rule 10 in.	5 pcs.	20.00	100.00
mapsack sprayer	5 "	14.00	70.00
mapsack blower	20 "	6.00	120.00
fixer	10 "	6.00	60.00
miscellaneous draughting instruments	5 "	5.00	25.00
rubber boots	1 "		100.00
oreometer	20 prs.	2.00	40.00
Stanley, drawing pen, 6 in.	5 pcs.	10.00	50.00
surveying miscellaneous	12 "	1.50	18.00
surveying umbrella	1 set		500.00
square Nylonite lined, 42 in.	4 pcs.	5.00	25.00
Nylonite semi-circular protractor, 8 in.	10 "	5.00	50.00
Nylonite triangles	10 "	0.50	5.00
	20 "	1.00	20.00
Glasswares:			
Jars, cylindrical cap. 1 gal.	20 pcs.	1.85	37.00
" , rectangular cap. 6 gal.	10 "	8.00	80.00
Beaker, Pyrex, 50 cc.	20 "	0.18	3.60
" " , 100 cc.	20 "	0.19	3.80
" " , 250 cc.	20 "	0.25	5.00
" " , 500 cc.	20 "	0.35	7.00
" " , 1000 cc.	10 "	0.55	5.50
" " , 2000 cc.	10 "	0.90	9.00

Bell glass, 15 x 9 in.	5 pos.	5.00	25.00
Bottle, balsam	20 "	0.40	8.00
" cedar wood oil & Xylol	20 "	0.65	13.00
" dropping with pipette	50 "	0.14	7.00
" " with projecting			
lug, 100 c.c.	50 "	0.40	20.00
Burette, cap. 100 c.c.	5 "	1.30	6.50
Calcium chloride tube, 6 in.	5 "	0.20	1.00
Centrifuge tubes, plain 15 c.c.	5 doz.	0.80	4.00
Condenser tube, Pyrex 24 in.	5 pos.	0.70	4.20
Cylinder, Pyrex 5 cc.	10 "	0.50	5.00
" " 50 cc.	10 "	0.50	5.00
" " 100 cc.	10 "	0.60	6.00
" " 500 cc.	5 "	1.30	6.50
" " 2000 cc.	2 "	3.20	6.40
Dessicator, 250 mm. dia.	5 "	8.00	40.00
Dish, stender with cover 80x40 mm.	20 "	0.55	11.00
" " " 100x50 mm.	20 "	0.70	14.00
Evaporating dish, Pyrex flat bottom,			
50 mm. dia.	20 "	0.50	10.00
Flask, boiling, 50 cc.	20 "	0.17	3.40
" " 125 cc.	20 "	0.19	3.80
" " 250 cc.	20 "	0.24	4.80
" " 500 cc.	10 "	0.30	3.00
" " 1000 cc.	10 "	0.43	4.30
" " 2000 cc.	5 "	0.60	3.00
Flask, distilling, Pyrex round			
bottom, 30 cc.	5 "	0.36	1.80
" distilling 50 cc.	5 "	0.40	2.00
" " 125 cc.	5 "	0.50	2.50
" " 250 cc.	5 "	0.60	3.00
Flask, Erlenmeyer 50 cc.	20 "	0.17	3.40
" " 125 cc.	20 "	0.19	3.80
" " 250 cc.	20 "	0.22	4.40
" " 500 cc.	20 "	0.29	5.80
" " 1000 cc.	10 "	0.42	4.20
" " 2000 cc.	5 "	0.60	3.00
Flask, filtering Pyrex with			
side neck, 500 cc.	5 "	0.50	2.50
Flask, kjeldahl, Pyrex, 300 cc.	5 "	0.30	1.50
Funnel, dropping, 60 cc.	5 "	1.00	5.00
" glass 1 in. dia.	10 "	0.15	1.50
" " 2 1/2 in. dia.	10 "	0.24	2.40
" " 5 in. dia.	10 "	0.40	4.00
Funnel, separate Squibb, 250 cc.	5 "	1.90	9.50
Glass block, square with excavation			
and cover 1 1/2 x 1 1/2 in.	50 "	0.35	17.50
Jar, rectangular museum 15 x 8			
x 5 cm.	50 "	0.40	20.00
Jar, screw cap. cap. 1 oz.	10 doz.	1.35	13.50
" " cap. 4 doz.	10 "	1.95	19.50
Jar, staining, 20 slides	20 pos.	0.35	7.00
Petridishes, 100 x 15 mm. Pyrex	200 pos.	0.50	100.00
Pipette, graduated 1 cc.	20 pos.	0.50	10.00
" " 2 cc.	20 "	0.60	12.00

ipette, graduated 5 cc.	20 pcs.	0.75	15.00
" " 10 cc.	10 "	0.90	9.00
Specimen tube with flat bottom and cork	1,000 "	0.02	20.00
Syringe, Luer, 1 c.c.	10 "	0.70	17.00
" " 2 c.c.	10 "	1.30	13.00
" " 5 c.c.	10 "	2.00	20.00
" " 10 c.c.	10 "	3.50	25.00
" " 20 c.c.	5 "	3.00	15.00
Test tube, Pyrex, 150 x 18 mm	1,000 "	0.07	70.00
Tumbler, cap. 7 oz.	20 "	0.18	3.60
Vials, 25 x 8 mm.	1,000 "	0.01	10.00
" 40 x 10 mm.	1,000 "	0.01	10.00
" 50 x 20 mm.	1,000 "	0.02	20.00
" 60 x 25 mm.	1,000 "	0.025	25.00
Watch glass with flat polished bottom, 50 mm. dia.	5 doz.	0.30	1.50
Watch glass, Syracuse 2 5/8 in. dia.	100 pcs.	0.14	14.00
Weighing bottle, 40 mm. dia. 50 mm. high	10 "	0.70	7.00
Weighing bottle, 50 mm. dia. 30 mm. high	10 "	1.00	10.00

Porcelain:

Cheseroles, 30 cc.	10 pcs.	0.30	3.00
" 75 cc.	10 pcs.	0.35	3.50
" 150 cc.	10 "	0.45	4.50
Crucible, 16 cc.	10 "	0.75	7.50
" 30 cc.	10 "	0.80	8.00
" Gooch, 10 cc.	10 "	0.20	2.00
" 25 c.c.	10 "	0.25	2.50
Evaporating dish, 80 mm. dia.	20 "	0.13	2.60
" 100 mm. dia.	20 "	0.27	5.40
Funnel, Buchner, 5 cm. dia.	5 "	0.60	3.00
Mortar with pestle, 95 mm. dia.	2 "	0.70	1.40
" " 6 1/2 in. dia.	2 "	2.00	4.00

Office Equipment:

Automobile	1	700.00	700.00
Bicycle	10	10.00	100.00
Calculating machine	1 set	120.00	120.00
Carry	2	600.00	1,200.00
Typewriter, office	1	100.00	100.00
" portable	4	60.00	240.00

Miscellaneous:

Animal board	2 doz.	6.00	12.00
Asbestos board, size 6 in.	20 "	0.30	6.00
Balsa wood, 20 x 25 in.	100 "	0.08	8.00
Celluloid sheet, 6 x 6 in.	20 "	0.70	14.00
" mosquito netting tube with cork	100 "	0.20	20.00
" vial with cork 13 x 50 mm.	200 "	0.04	8.00

Celluloid vial with cork,
32 x 90 mm.

Cork, No. 0
" No. 3
" No. 6
" No. 9
" No. 12
" No. 16

Cork sheet, pressed 4 x 12 x $\frac{1}{2}$ in.

Filter paper, 100 mm. dia.

Litmus paper, red and blue

Rubber bulb, cap. 2 ml

" " cap. $\frac{1}{2}$ oz.

" " cap. $\frac{1}{4}$ oz.

" glove, size 14

" stopper, Nos. 00, 0, 1-5

" teats, No. 3

" tubing, thin wall $\frac{1}{8}$ in.

" " " " $\frac{5}{16}$ in.

" " " " $\frac{3}{8}$ in.

" " " " $\frac{1}{2}$ in.

Sable brush, No. 0

" " No. 2

Spot pins, 10 different colors

Tap measure, pocket, 36 in.

Tent, 6 x 7 x 10 ft.

Tray, enamel, 12 x 7 x 2 in.

Wax pencil, red, yellow, blue
and black

Miscellaneous equipments

200 pcs.	0.10	20.00
5 bags	0.80	4.00
5 "	1.20	6.00
5 "	1.60	9.00
5 "	2.50	12.50
5 "	3.00	15.00
2 "	6.00	12.00
100 "	0.30	3.00
50 packs	1.00	50.00
100 "	0.10	10.00
10 doz.	0.14	1.40
20 pcs.	0.08	1.60
20 "	0.10	2.00
4 pairs	3.50	14.00
2 lb. each	0.90	12.00
100 pcs.	0.01	1.00
50 ft.	0.08	4.00
50 ft.	0.09	4.50
50 ft.	0.15	7.50
50 ft.	0.18	9.00
5 doz.	0.40	2.00
5 "	0.40	2.00
500 each	0.50	25.00
4 pcs.	0.60	2.40
1 set	50.00	50.00
10 pcs.	1.30	13.00
20 each	0.15	12.00
		145.90

Total US\$23,937.10

Appendix 14

List of Chemicals and Stains requested to be Appropriated by the Rockefeller Foundation

Chemicals:

Items	Quantity	Unit Price	Total Cost
Acetone, c.p.	10 lbs.	US\$0.90	US\$ 9.00
Acetic anhydride, c.p.	2 "	.90	1.80
Acid, Acetic, c.p.	5 "	.40	2.00
" " glacial, c.p.	10 "	.95	9.50
" benzoic, c.p.	2 "	1.00	2.00
" carbolic, c.p.	5 "	1.80	9.00
" chromic, c.p.	2 "	3.50	7.00
" gallic, c.p.	2 "	5.00	10.00
" Hydrochloric, c.p.	5 "	.60	3.00
" Hydrofluoric, c.p.	1 "	3.90	3.90
" Lactic, c.p.	5 "	2.50	12.50
" Nitric, c.p.	5 "	1.10	5.50
" Osmic, c.p.	5 gms.	8.50	42.50
" Phosphoric, c.p.	2 lbs.	.60	1.20
" Picric, c.p.	5 "	2.90	14.50
" Potassium Phosphate, c.p.	2 "	1.00	2.00
" Salicylic, c.p.	2 "	2.00	4.00
" Sulphuric, crude	10 "	.20	2.00
" " c.p.	5 "	.60	3.00
" Tannic, c.p.	2 "	2.50	5.00
Agaragar	5 "	3.00	15.00
Alcohol, absolute	20 "	1.00	20.00
" " amyl	5 "	1.00	5.00
" " ethyl, 98%	50 gal.	1.50	75.00
" " methyl	20 lbs.	1.50	30.00
Aluminum chloride, c.p.	5 "	.90	4.50
" turnings	1 lb.	3.00	3.00
Ammonium acetate, c.p.	2 lbs.	.90	1.80
" alum, c.p.	5 "	.80	4.00
" ferri sulphate, c.p.	5 "	.80	4.00
" hydroxide, c.p.	5 "	.88	4.40
" molybdate, c.p.	2 "	1.50	3.00
" sulphide, c.p.	2 "	.90	1.80
Animal charcoal	2 "	.85	1.70
Asphalt varnish for ring slide	2 "	4.00	8.00
Barium	1 "	1.50	1.50
Barium chloride, c.p.	2 "	.90	1.80
Benzene	5 "	.50	2.50
Benzylaldehyde	2 "	1.00	2.00
Benzyl chloride	2 "	1.00	2.00
Bismuth dioxide	2 "	1.00	2.00
Bleaching powder	10 "	.30	3.00
Borax, c.p.	2 "	.50	1.00
Bromine	1 "	1.00	1.00
Bromthymolblue	400 cc.	1.00	4.00
Calcium carbide	2 lbs.	.40	.80

Calcium chloride, c.p.	10 lbs.	US\$0.80	US\$ 8.00
" oxide, c.p.	2 "	.50	1.00
Canada Balsam	2 "	7.50	15.00
Carbon disulphide	2 "	.90	1.80
" tetrachloride	10 "	.60	6.00
Cautic potash, c.p.	5 "	1.00	5.00
Celliodin	10 oz.	.60	6.00
Chloral hydrate, c.p.	5 lbs.	2.50	12.50
Chloroform	20 "	.70	14.00
Chromium trioxide, c.p.	1 "	1.00	1.00
Cobalt nitrate, c.p.	1 "	1.00	1.00
Copper carbonate, c.p.	2 "	.80	1.60
Copper oxide, c.p.	2 "	1.00	2.00
Copper sulphate, c.p.	5 "	1.20	6.00
Creosol	2 "	.90	1.80
Creosote	10 "	1.20	12.00
Dimethylaniline	1 "	3.00	3.00
Ether	20 "	.70	14.00
Ethyl bromide	1 "	2.00	2.00
Euparal	10 oz.	1.50	15.00
Ferric chloride, c.p.	1 lb.	1.00	1.00
" nitrate	1 "	1.00	1.00
Ferrous chloride	1 "	1.00	1.00
" sulphate	1 "	1.00	1.00
Formalin	5 gals.	2.00	10.00
Gelatin	1 lb.	3.50	3.50
Glucose	5 lbs.	2.00	10.00
Glycerine, ordinary	10 "	.90	9.00
" , distilled	20 "	1.50	30.00
Glycerol	2 "	1.50	3.00
Gum arabic	5 "	1.20	6.00
Hydrogen peroxide	2 "	.80	1.60
Hydroxylaniline hydrochloride	2 "	6.00	3.00
Iodine	2 "	9.00	18.00
Iron powder	1 lb.	1.00	1.00
Lead acetate, c.p.	1 "	1.00	1.00
Lithium carbonate, c.p.	2 lbs.	1.50	3.00
Lysol	10 "	.90	9.00
Magnesium sulphate, c.p.-	2 "	.60	1.20
Manganese chloride, c.p.	1 lb.	1.00	1.00
Methyl iodine, c.p.	1 "	6.00	6.00
Mercuric chloride, c.p.	2 lbs.	3.00	6.00
Naphthalene flakes	10 "	.75	7.50
Nichel nitrate, c.p.	1 lb.	1.00	1.00
Nitrobenzene	1 "	3.00	3.00
Oil, aniline	2 lbs.	1.30	2.60
Oil, cedar wood-	2 "	6.00	12.00
Oil, cloves	2 "	6.50	13.00
Oil, turpentine	5 "	.80	4.00
Oil, wintergreen	5 "	1.30	6.50
Paraffin, 47-49 C.	10 "	.60	6.00
" , 56-58 C.	10 "	.50	5.00
" , liquid	2 "	.60	1.20
Phenolphthalin	1 lb.	3.50	3.50
Plaster of Paris	10 lbs.	.15	1.50
Potassic alum, c.p.	5 "	.30	1.50
Potassium bichromate, c.p.	5 "	.80	4.00

Potassium carbonate, c.p.	2 lbs.	US\$0.80	US\$ 1.60
" cyanide, c.p.	2 "	4.50	9.00
" fluodide, c.p.	2 "	2.00	4.00
" iodide	2 "	8.00	16.00
" Permanganate	2 "	1.40	2.80
Pyridine	1 lb.	4.00	4.00
Quartz powder	1 "	1.00	1.00
Quinine	1 "	2.00	2.00
Resorcinol	1 "	1.50	1.50
Silver nitrate	5 oz.	1.10	5.50
Sodium acetate, c.p.	2 lbs.	.90	1.80
" arsenite, c.p.	2 "	.90	1.80
" bicarbonate, c.p.	2 "	.30	.60
" bichromate, c.p.	2 "	.50	1.00
" bisulphate, c.p.	2 "	.60	1.20
" carbonate, c.p.	2 "	.40	.80
" chloride, c.p.	10 "	.40	4.00
" citrate, c.p.	5 "	.50	2.50
" dichromate, c.p.	2 "	.50	1.00
" hydroxide, c.p.	2 "	1.00	2.00
" metallic	1 lb.	3.00	1.50
" nitrate, c.p.	1 "	.80	.80
" peroxide, c.p.	1 "	.90	.90
" phosphate, anhydrous dibasic,			
c.p.	2 lbs.	1.60	2.00
" sulphate, c.p.	2 "	.80	1.60
" sulphite, c.p.	2 "	.80	1.60
Starch, c.p.	2 "	2.00	4.00
Tin	1 lb.	.30	.30
Toluidine	1 "	1.00	1.00
Uranium nitrate, c.p.	5 oz.	.90	4.50
Urea, c.p.	1 lb.	1.40	1.40
Vaseline	5 lbs.	.20	1.00
Wax, sealing	10 oz.	.50	5.00
Xylol	20 lbs.	.90	18.00
Zinc chloride, c.p.	1 lb.	.50	.50
" dust	1 "	.60	.60

Stains:

Aniline blue, alc. sol.	100 gms.	6.25	6.25
" " , water sol.	100 "	6.25	6.25
Azur I	25 "	6.00	6.00
" II	50 "	16.00	16.00
" II Eosin	400 "	9.00	36.00
Bismarck brown	100 "	4.10	4.10
Bordeaux red	100 "	4.10	4.10
Brilliant cresl blue	25 "	6.00	6.00
Brilliant green	25 "	2.00	2.00
Carmine	100 "	6.00	6.00
" , alum	100 "	6.00	6.00
" , borax	50 "	5.00	5.00
Coc-hineal powder	100 "	1.50	1.50
Congo red	25 "	1.00	1.00
Cresyl violet	25 "	6.00	6.00
Crystal violet (gentian)	50 "	3.50	3.50
Eosin blue	100 "	5.80	5.80
" yellow	100 "	5.80	5.80

Fuchsin, acid	100	gms.	US\$5.90	US\$ 5.90
" , basic	100	"	5.90	5.90
Hamatein crystal	100	"	8.00	8.00
Hematexylin, c.p.	200	"	17.50	35.00
Janus Green	25	"	2.50	2.50
Leishman stain powder	100	"	18.00	18.00
Methyl blue	25	"	1.75	1.75
" green	25	"	3.50	3.50
" orange	25	"	1.00	1.00
" violet	25	"	1.75	1.75
Methylene blue	200	"	6.00	12.00
Neutral red	25	"	1.75	1.75
Orange G.	25	"	1.50	1.50
Pyronin	25	"	3.50	3.50
Safranin O	25	"	2.20	2.20
Sudan III	25	"	1.75	1.75
Toluidine blue	25	"	2.20	2.20
Vital red	25	"	3.50	3.50
Wright's stain powder	200	"	17.80	35.60

Total US\$1062.90

List of books and Journals Requested to be Appropriated by
the Rockefeller Foundation

Note: The total price of the books and journals in this list is estimated to be approximately US\$1,300.00

I. Books

1. Eckert, J.E. Lab. Manual of Parasitology, 1938.
2. Alcock, A. Entomology for Medical Officers, London.
3. Appleyard, F.N. & Lyons, C.J. Practical Pharmaceutical Chemistry 3rd edit, 1937.
4. Ballantyne, F.N. Technique of Section-cutting, 1938.
5. Baylis, H.A. Manual of Helminthology, 1939.
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8. Bensley, R.E. & S.H. Handbook of Histological and cytological Technique, 1938.
9. Bentley & Driver's Textbook of Pharmaceutical Chemistry, 3rd Edit, 1937.
10. Blacklock, T.B. & Southwall, T. Guide to Human Parasitology, 3rd edit, 1938.
11. Bond, C.J. The Leucocyte in Health and Disease, 1934.
12. Boyd, M.F. Introduction to Malariology, 1938.
13. Bray, R.E. Synopsis of Clinical Laboratory Methods, 2nd edit, 1938.
14. Bremer, J.L. Textbook of Histology, (5th edit. of Louis & Stohr), 1936.
15. Brown, C. The Pregnant Woman, 1938.
16. Brumpt, E. (1927). Précis de Parasitologie, Paris, Masson et
17. Buxton, A.A. 1927. Researches in Polynesia and Melanesia. Parts I to IV. Medical Entomology, London.
18. Chalkins, G.H. 1932. The Biology of the Protozoa, 2nd ed. Philadelphia.
19. Caltsoff, F.S. Lutz, F.S. Selch, F.S. and Buchanan, J.C. Culture Methods for Invertebrate Animals, 1937.
20. Castellani, A. Climate and Acclimatization, 2nd edit., 1938.
21. Cecil, R.T. edit. by, Textbook of Medicine, 4th Edit., 1937.
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26. Conn, H.J., Biological Stains, 3rd Edit., 1936.
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28. Craig, C.F. and Faust, E.C., Clinical Parasitology, 1937.
29. Craig, C.F., Parasitic Protozoa of Man, 1936.
30. Curran, C.E. The Families and Genera of North American Diptera, 1934
31. Dilling, W.J. Pharmacology and Therapeutics of the Materia Medica, 15th Edit., 1939.
32. Doflein, F. and Reichenow, E., Lehrbuch der Protocoenkunde, 1928.
33. Downey, H. Handbook of Hematology, 4 vols., 1938.
34. Dunn, C.L., Malaria in Ceylon, 1936.

35. Dyar, H.G., The Mosquitoes of the Americas, Carnegie Inst. Publications No. 387. Washington, 1938.
36. Evans, A.M. Illus. Guide to Anophelinae of Trop. & S. Africa, 1937.
37. Evans, A.M. Mosquitoes of the Ethiopian Region, pt. II, Anophelini, Adults and Early Stages, 1938.
38. Ewings, H.E., A manual of External parasites. Springfield, Ill., 1929.
39. Findlay, G.M. Recent Advances in Chemotherapy, 2nd. Edit. 1938.
40. Fuller, Chemistry Analysis of Drugs and Medicines.
41. Fuller, Qualitative Analysis of Medicinal preparations.
42. Fox, C. Insects and Disease of Man, 1925.
43. Galtsoff, P.S., Lutz, F.E., Welch, P.S., and Needham, J.G. Culture methods for invertebrate animals, Ithaca, N.Y. 1937.
44. Gatenby, J.G. Biological Laboratory Technique, 1937.
45. Gater, B.A.R. Aids to the identification of Anopheline imagines in Malaya. Singapore, 1935.
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47. Gradwohl, R.B.H. Clinical Lab. Methods and Diagnosis, 2nd edit. 1936.
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51. Hardenburg, W.S. Mosquito Eradication. New York. 1922.
52. Health Bulletin Series, Gov't of India Publications, Nos. 3, 5, 8, 10, 11, 12, 13, 14, 16, 17, and 18.
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59. Innes, A.D. A general Textbook of Entomology, London. 1925.
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75. Wagner, T. Textbook of Hematology, 1938.
76. Mallory, F.B., Pathological Technique, 1936.
77. Manson-Bahr, H., Manson's Tropical Diseases, 1929.
78. Martini, K. Lehrbuch der Medizinischen Entomologie, 1923.
79. Matheson, R. Medical Entomology, 1932.
80. McClug, C.E., Microscopical Technique, 2nd edit., 1937.
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6. Archiv fur Schiffs und Tropenhygiene
7. Biological Bulletin
8. Bulletin de la Societe de Pathologie Exotique
9. Bulletin of Entomological Research
10. Entomological News
11. Illinois Biological Monographs
12. Indian Journal of Medical Research
13. Indian Medical Gazette
14. Japan Medical World
15. Journal of Experimental Medicine
16. Journal of Experimental Zoology
17. Journal of Parasitology
18. Journal of the London School of Tropical Medicine
19. Journal of the Malaria Institute of India.
20. Journal of the Royal Army Medical Corps
21. Journal of Tropical Medicine and Hygiene
22. Kitasato Archives of Experimental Medicine
23. Monographs of the Rockefeller Institute for Medical Research
24. Philippine Journal of Science, Section B.
25. Proceedings of the Society for Experimental Biology and Medicine
26. Quarterly Journal of Microscopical Science
27. Review of Applied Entomology

28. Rivista di Malarologia
29. Transactions of the Royal Society of Tropical Medicine and Hygiene
30. Tropical Diseases Bulletin
31. Tropical Veterinary Bulletin
32. University of California Publications in Zoology
33. Zentralblatt für Bakteriologie und Parasitenkunde

TREASURY DEPARTMENT
Office of the Secretary
Secret Service Division

52

MEMORANDUM

October 5, 1939

To: Mrs. Klotz

From: Mr. Wilson

There are attached copies of two schedules covering the President's trip to Hyde Park, leaving Washington this evening at eleven o'clock and arriving Highland, New York, tomorrow morning, October 6th, at eight thirty o'clock.

CONFIDENTIAL

Trip of the President
to Hyde Park, New York.

Thursday, October 5, 1939.

Lv. Washington..(Baltimore & Ohio Railroad)..11:00 p.m.

Friday, October 6, 1939.

Ar. Highland, N.Y.(West Shore N.Y.C.RR.).....8:30 a.m.

Members of the party:

T h e P r e s i d e n t .

Miss M. A. LeHand.
Mr. William D. Hassett.
Miss Grace Tully.
Mr. Henry M. Kannes.
Miss Grace E. Earle.
Mr. Dewey E. Long.
Mr. George A. Fox.
Mr. Leo A. de Waard.

Secret Service Agents.

Newspaper men:

Mr. George E. Durno,	International News Service.
Mr. Thomas F. Reynolds,	The United Press.
Mr. Douglas B. Cornell,	The Associated Press.
Mr. Walter Trohan,	The Chicago Tribune.
Mr. Felix Belair,	The New York Times.
Mr. W.C. Murphy,	The Philadelphia Inquirer.
Mr. Bruce Pinter,	The New York Herald Tribune.
Mr. Carl Warren,	The New York Daily News.

Picture men:

Mr. George Skadding,	Associated Press Photos.
Mr. Joseph Jamieson,	Times-Wide World Pictures.
Mr. Douglas DuPont,	Paramount News.

Broadcasting representatives:

Mr. Carleton Smith,	National Broadcasting Co.
Mr. A. E. Johnson,	National Broadcasting Co.

Telegraph representatives:

Mr. C. S. Linkins,	Western Union Tel. Co.
Mr. T. B. Bowen,	Postal Telegraph Co.

Mr. D. L. Moorman, G.P.A.
The Baltimore & Ohio Railroad Co.
In charge of Transportation.

OPERATING STOPS

Trip of the President
to Hyde Park, New York

Thursday, October 5, 1939

Lv. Washington (B&O) 11:00 p.m.
Pass Baltimore 11:50 p.m.

Friday, October 6, 1939

Pass Park Junction, Pa. 2:15 a.m.
Pass Bound Brook, N. J. 3:35
Ar. Claremont Junction, N. J. 4:20
Lv. Claremont Junction, N. J. 4:30

** Brief operating stop at Cornwall, N. Y.

Ar. Marlboro, N.Y. 6:43
Lv. Marlboro, N.Y. 8:10
Ar. Highland, N.Y. 8:30 a.m.

October 5, 1939
3:55 p.m.

55

Operator: Go ahead.

HMJr: Hello.

Robert
Wagner: Henry?

HMJr: Hello, Bob. How's my favorite Senator?

W: All right. (Laughs) How are you? How's my favorite Secretary of the Treasury?

HMJr: Now I didn't say New York Senator - I said "Senator".

W: I see. Thank you.

HMJr: O. K.

W: Say, Henry, I tell you, I know you're busy and I won't -- I -- you know I'm one fellow that doesn't go near our friend Franklin because I know -- I would only add to his burdens. I do want to talk to you in the near future about -- I -- I don't intend to do anything, I can tell you that right off the reel, on this money study.

HMJr: Anytime - I'm at your service.

W: You know, I don't -- you agree that just now it would be -- it's not an appropriate time for that sort of thing.

HMJr: I agree wholeheartedly.

W: Yeah. I mean, we are

HMJr: Yeah, yeah.

W: Yeah. Well anyway.....

HMJr: Why don't.....

W:I'll find sometime when you're a little -- got a little leisure.

HMJr: I've always got leisure when you're around.

- 2 -

W: Yes. Well, I'm working on a speech I've got to make Saturday night and I want to make mine on the floor on Monday I think.

HMJr: What are you doing around lunch time Tuesday?

W: Next Tuesday?

HMJr: Yes.

W: Probably nothing.

HMJr: Well, why don't you eat off.....

W: All right. Will you put me down for lunch?

HMJr: One o'clock you and I at the Treasury.

W: Yeah. That -- I liked that last time and if it's as good why I'll -- you see you bring me back. It was a very nice place to eat.

HMJr: Well, I -- I don't remember whether I gave you pig knuckles and sauerkraut or what it was, but we'll fix it up.

W: Yeah.

HMJr: O. K.

W: All right, Henry.

HMJr: Two o'clock -- at one o'clock in the Treasury.

W: One -- one o'clock on Tuesday. I hope you remember it.

HMJr: (Laughs) Son-of-a-gun.

W: Thank you. (Laughs)

HMJr: All right.

W: Goodbye.

Copy given to H.S.H. to
be given to M. Foley
at 9:00 am 10/6/39

October 5, 1939
4:32 p.m.

HMJr: Hello.

Operator: Mr. Harrison.

HMJr: Hello.

George
Harrison: Hello, Henry.

HMJr: Yes, George.

H: I just thought I ought to report to you.....

HMJr: Yes.

H:a conversation I've just had with Eccles.

HMJr: Right.

H: He's here -- been here in the bank all day.

HMJr: Oh, yes.

H: And we referred to the matter about which you talked to him.

HMJr: Yes.

H: And he said something about his lawyers having the opinion that all fiscal agency matters that have anything to do with abroad are subject to the Board's approval.

HMJr: Yeah.

H: And that he thinks, as he understands it now, that their lawyers would rule that if we had opened an account such as you discussed I'd have to submit it to them for approval. Not, he said, that he would disapprove but as a matter of form, he says, "I think it must go there."

HMJr: Yeah.

H: I told him that if it were done under the regular banking authority I agreed with him.

HMJr: Yes.

H: But that I don't think I've got authority to open this account under the banking authority, as I told you before.

HMJr: Yeah.

H: That I'm doing it under the fiscal agency authority, and my idea on that has always been, and is the one we've practiced, that I work directly with you and not with the Board.

HMJr: Yeah.

H: And I said, "I have a memorandum saying that the matter of fiscal agency operations will be worked out amicably between the Board and the Treasury."

HMJr: Yes.

H: Now I said, "Until you do that, I think that I'm on the spot."

HMJr: Yeah.

H: ".....because I deal confidentially with the Secretary. I don't even tell my own Board of Directors or go to them for authority....."

HMJr: Yeah.

H: And I said, "I'm not going to the Board - at least I -- unless there was an issue raised -- until the whole question of jurisdiction is understood and agreed to."

HMJr: Yeah.

H: We didn't settle anything except that he wants my counsel to talk with his counsel to see whether this shouldn't be submitted to the Board for approval, or even whether we might have authority to do it as a fiscal agent.

HMJr: Now will you do something for me?

H: Yeah.

HMJr: Will you have Logan also talk to Ed Foley?

H: Yes, I'll be glad to.

HMJr: And have him bring him up to date?

H: Yes.

HMJr: I'll tell Ed that he'll expect a call from Logan on this.

H: That's right. But I just wanted you to know how it has progressed.

HMJr: I understand.

H: And I think I'll have to have Logan talk to the Board's counsel.

HMJr: O. K.

H: And then I'll have him talk to Foley.

HMJr: I appreciate very much your calling me.

H: All right.

HMJr: Thank you.

H: I think it -- it's all right. I think there's no disposition on his part to disagree at all.

HMJr: No.

H: But it's a question of -- you know.....

HMJr: I understand.

H:prestige and feelings, and the idea that they would be the ones to stand the gaff if anything was wrong, and that they probably ought to be given an opportunity to approve.

HMJr: Right. Well, thank you for calling, and if you would tell Logan to -- also to speak to Ed Foley.

H: All right. I will.

HMJr: Thank you very much.

H: First rate.

HMJr: Good night.

H: Good night.

JR

PLAIN

London

Dated October 5, 1939

Rec'd 1:32 p.m.

Secretary of State,
Washington.

1941, October 5.

FOR TREASURY FROM BUTTERWORTH.

To the surprise of many in the city there was no change in the bank rate today, which remains at 3%, the money and stock markets had anticipated and largely discounted a change of at least 1/2%. It would seem that the lowering of the rate is being saved as a timely stimulus for the launching of a government loan and that its flotation may not be far distant in view of the fact that money rates have been out of touch with bank rate since a day or two after it was lowered from 4 to 3% last week immediately after the budget. In spite of a return of notes from circulation of pounds 3 million and a drop in public deposits of pounds 4.5 million shown in this week's Bank of England return, there was a decline of pounds 1 million in bankers deposits, Government securities in the banking department having been reduced by pounds 6.7 million. This appears to indicate that the authorities are not just yet preparing the market for a new loan.

The

-2- #1941, October 5, from London.

The strength of sterling which is evident in New York is also reflected in adjustments in the official rates for continental currencies; the Dutch guilder was fixed at 7.52060, the belga at 23.85 - 24.10, and the Swiss franc at 17.85-18.00 today, all these currencies having been also slightly depreciated yesterday in terms of sterling according the official rates, as compared with those reported in my No. 1890 of October 2, 4 p.m. With the New York rate at 4.05, the British authorities are taking dollars as positions in New York are being covered.

KENNEDY

CSB

RECEIVED

OCT 5 1941

THE SECRETARY OF THE TREASURY

WASHINGTON, D. C.

JI

PLAIN

London

Dated October 5, 1939

Rec'd 1:25 p.m.

Secretary of State

Washington

1940 Fifth

FOR TREASURY FROM BUTTERWORTH.

I venture to suggest that the leading article in the DER DEUTSCHE VOLKSWIRT of September 8, 1939 on German war finance is worth obtaining and reading in connection with No. 1928, October 4. Incidentally this article has been circulated in several of the British Government Departments concerned as worthy of study.

KENNEDY

CSR

RECEIVED

OCT 10 1939

THE SECRETARY OF STATE
DEPARTMENT OF THE TREASURY
WASHINGTON, D. C.

JI

4000 2 10

PLAIN

London

Dated October 5, 1939

Rec'd 1.23 p.m.

Secretary of State

Washington

1939 October 5, 6 p.m.

FOR PURCELL FROM BUTTERWORTH

Reference my 1930, October 4, 9 p.m.

In reply to questions in the House of Commons this afternoon regarding the sale of Canadian securities the Chancellor of the Exchequer stated "Under the Canadian exchange regulations purchases of securities from non-residents are prohibited except with permission. I understand that permission is not at present being granted by the Canadian authorities for purchase from any non-resident whether in the United Kingdom, the United States or elsewhere. No action has been taken here beyond informing the stock exchange and other inquirers of the position in Canada." The Canadian High Commissioner in London who cabled Ottawa for information received a reply today confirming in substance the information contained in my telegram to you of yesterday. Please inform Treasury.

KENNEDY

CSB

TREASURY DEPARTMENT

INTER OFFICE COMMUNICATION

Huse
MS
DATE October 5, 1939

TO Secretary Morgenthau
FROM Mr. Burgess

The attached will give you our views on the financing, on which we are all agreed.

Last night I discussed the matter with Marriner Eccles and he was in favor of going ahead, but with a short issue so that there would be little doubt about its success. This noon Mr. Bell and I reviewed the matter fully with the other Federal Reserve Board members, Governor Eccles being away, and a large majority of them were vigorously in favor of going ahead in accordance with the plan suggested. Mr. Ransom was the only one who had any doubts. They were all also agreeable to dispensing with a meeting of the Executive Committee and handling the matter informally.

WLB

TREASURY DEPARTMENT

66

INTER OFFICE COMMUNICATION

DATE October 5, 1939

TO Secretary Morgenthau
FROM Messrs. Baillie, Burgess, and Bell

Memorandum

Here is our notion of a financing program.

- (1) No final decision until Monday morning.
- (2) Friday - Burgess to consult with New York Reserve Bank and interview dealers as to condition of market, and, with Baillie, to telephone Secretary Morgenthau and Bell.
- (3) Saturday - Bell to mail blank circulars to Federal Reserve Banks (confidentially).
- (4) Monday A.M. - Burgess to stay in New York, conferring with Harrison and Sproul, and checking with market. Secretary Morgenthau, Baillie, and Bell in Washington for final decision, conferring, if necessary, with Reserve Board.

No formal meeting of Executive Committee or interviews with dealers in Washington (to leave complete freedom of decision).

- (5) Monday 1:00 P.M. - Final information to go to Reserve Banks.
- (6) Tuesday A.M. - Books open with an announcement they will be closed Wednesday night.

We consider it important to go through with this program unless conditions are very adverse.

WLB

October 5, 1939

Secretary Morgenthau

Mr. Burgess

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(Initialed) W.R.B.

October 5, 1939

Secretary Morgenthau

Messrs. Baillie, Burgess, and Bell

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(Initialed) W.R.B.

October 5, 1939

MEMORANDUM

To: Mr. Livesey

From: Mr. Cochran

Reference is made to Cablegram #2316, dated October 4, 1939, 10 P.M. from the American Ambassador at Paris.

Within recent weeks the United States Treasury has been requested by the Central banks of various neutral European countries to accept gold from them in Europe. The Treasury has uniformly replied that in present circumstances it is following the policy of purchasing gold only upon delivery in New York. The Treasury sincerely regrets that it is unable to deviate from this established practice.

RMO:ank

10.5.39



at 6:00 PM

Special messenger

DEPARTMENT OF STATE

ADVISER ON
INTERNATIONAL ECONOMIC AFFAIRS

By instruction of the Secretary
of State to be delivered to the
Secretary of the Treasury by
hand.

Living

Received 1.20 P.M.
Oct 5th 1939-

70 *thru*

PARAPHRASE OF TELEGRAM RECEIVED

FROM: American Embassy, Paris, France

DATE: October 4, 10 p.m. , 1939.

NO.: 2316

RUSH.

*see Cochran's
memo to
Dwight 10/5/39*

SECRET. FOR THE PRESIDENT AND THE SECRETARY OF STATE.

I received a telephone call this evening from Daladier, who said that he had a serious problem which he wished to talk over immediately with me. I went at once to see him at the War Ministry.

He said that the German Minister at Brussels four days ago presented to the Belgian Government a note which stated that his Government regarded the Belgian Government's acquiescence in British blockade measures as a participation of Belgium in the British blockade. This was intolerable for Germany, and unless Belgium should take the position that any goods which were received in Belgium could be sent through to Germany without let or hindrance, Germany would take the most violent measures against Belgium.

Similar notes couched in equally violent language were presented on the same day to the Dutch and Swedish Governments by the German Ministers accredited to them.

The terms of the notes in each case were so insulting and bellicose that the respective Ministers had wished, but had not dared, to refuse to receive them.

The

- 2 -

The Belgian, Dutch and Swedish Governments informed the British Government of these approaches by the German Government, and the conclusion was reached that Germany was looking for a pretext for invading Belgium, the Netherlands and Sweden.

The French and British Governments had sought to discover what reasons there might be for Germany to invade the three countries. There were obvious military reasons. Aside from them, it had seemed to all the Governments concerned that probably Germany intensely desired to acquire the gold now in Belgium, the Netherlands and Sweden. In addition, there were vast stocks of diamonds in Belgium and the Netherlands and an important stock of wolfram in Belgium.

Daladier went on to say that the British Government two days ago proposed to the Belgian, Dutch and Swedish Governments that they should send their gold stocks to Great Britain for safekeeping, and that Belgium and the Netherlands should place the diamond stocks in security in the same way, and that Belgium should remove to England its wolfram stock.

Each of the three Governments replied individually that it would not dare to send its stocks of gold either to Great Britain or to France, since the Germans would
hold

- 3 -

hold such an act to be proof that these neutral Governments were cooperating with the British and French Governments and that this therefore justified the German argument with regard to the blockade.

Daladier had been in contact with the British Government today and it was decided to ask me whether the Government of the United States might not find it possible in one way or another to acquire for safekeeping the gold holdings of Belgium, the Netherlands and Sweden, and at the same time Daladier wished to ask me whether some method could not be devised for shipping the Belgian and Dutch diamond stocks to the United States for safekeeping, and whether the United States could not acquire the Belgian wolfram stock.

I answered that I saw no objection of a legal character to any of the Governments purchasing dollars with the gold they now have in their possession. Obviously, since Germany has been sinking Swedish and other neutral ships, the Belgian and Dutch Governments would be reluctant to place their gold reserves on board ships since the ships might be sunk or captured. I had no idea whether or not there was any possibility of the United States Government acquiring the gold in question while it was still on the European side of the Atlantic. The questions of the
diamonds

- 4 -

diamonds and the wolfram would require special thought and special handling, being very different from the question of the gold.

Daladier asked me to report at once to you what he had said, and I promised to do so.

I appreciate that there may be political reasons for not taking any action whatsoever in this matter. It occurs to me that if there are no political objections, the Secretary of the Treasury might individually and confidentially inform the Belgian Ambassador and the Dutch and Swedish Ministers at Washington that the United States Government knew of the demarche of the German Government and that within the framework of the Tripartite Monetary Agreement the Government of the United States would be glad to purchase for dollars the gold now held by the Ambassador's or the Minister's country, and would be glad to sell it back to his country, when it should have reached the United States, after deducting transportation and insurance charges, et cetera.

If there are no political objections, it might also be possible to arrange that some large American diamond importing house should purchase the diamonds in question on an understanding that the Government in question should repurchase them on arrival in New York, after deducting

duties

- 5 -

duties and other charges.

I do not know whether the wolfram could not be acquired by the United States Government with part of the appropriation for the purchase of strategic minerals.

Daladier did not have in mind what amounts of gold, diamonds and wolfram were involved, but said that he would have Georges Pernot bring me the details tomorrow. I replied that until I had ^{some} indication from you that the United States Government would be interested in pursuing the matter further, I should prefer not to see the Minister of Blockade.

In case you take up this matter, as I hope you will, it might be wise to emphasize that we are merely ready as loyal parties to the Tripartite Monetary Agreement to try to cooperate with our associates in the Agreement, and that we are not pressing them to take any such action as has been suggested.

After all, we have no direct indication that any one of the three neutral Governments actually wishes to ship gold, diamonds or wolfram to the United States. It is to be remembered, on the other hand, that at the present moment, the small European countries are so fearful of attack by Germany and so suspicious that the German Government has all their codes in its hands - which is probably
a fact

- 6 -

a fact - that it is doubtful whether any one of them would dare to make any proposal of this kind by telegram to Washington. However, they might be exceedingly glad to receive a telegram from their representatives in Washington informing them that under such circumstances the Government of the United States would be ready to cooperate with them.

BULLITT.

COPY

76

PAP

GRAY

SS SANTA ELENA

Dated October 5, 1939

Rec'd 3:39 a.m. Oct. 6.

Secretary of State
Washington

46, October 5, 10 p.m.

FOR THE SECRETARY OF THE TREASURY.

My very grateful thanks to you for your message.

The results achieved in the economic and financial
field were made possible by the cooperation which you
and your associates afforded me and I want you to
know of my very real appreciation.

WELLES

CFW

PARAPHRASE OF TELEGRAM RECEIVED

FROM: American Embassy, Paris, France

DATE: October 5, 1939, 6 p.m.

NO.: 2340

FOR THE TREASURY.

We had lunch today with Robert Maasson, who is the General Manager of the Credit Lyonnais, and is one of the soundest and most respected members in the financial community in Paris. We asked him how he felt French exchange control was functioning now. He said that the French still had many unsolved problems and many headaches; however, in the change over from a free economy, this was inevitable, and the French had made much progress. He added that France was most fortunate in having as Governor of the Bank of France and as Minister of Finance two men who were not only intelligent and practical but whose natural sympathies toward a liberal economy resulted in a more understanding operation of exchange control and corollary measures than would otherwise be the case. He mentioned that British restrictions were "much more severe" though of course he appreciates the differences in the problems of the two countries.

END SECTION ONE.

BULLITT.

EA:LWW

PAP

GRAY

PARIS

Dated October 5, 1939

Rec'd 7:05 p.m.

Secretary of State

Washington

2340, October 5, 6 p.m. (SECTION TWO).

The French measure regarding foreign assets (our telegram No. 2028, September 18, 1 p.m. and 2253, September 29, 7 p.m.) he found particularly satisfactory. The fact that French holders of foreign securities abroad are merely required to declare them or carry them (*) French banking account and are not obligated physically to transfer them to France was decidedly advantageous. (He mentioned for instance that some of his clients have foreign securities in Switzerland. These, under Swiss regulations, have been required to be turned over to the authorities and have been buried somewhere in the mountains at a spot known only to said authorities; to obtain them and have them returned to Paris he said would be both costly and complicated). Financially he shares the optimistic views, as reported in our various telegrams, of the Government financial authorities in regard to the country's favorable situation. He does not believe

PAP -2- 2340, October 5, 6 p.m. (SECTION TWO) from Paris

believe that a Government long term loan will be either advisable or necessary for some months to come and is thus in accord with Couvredé Murville's opinion (telegram No. 2215, September 27, 8 p.m.). He also expressed the view (?) that France's war purchases abroad could be taken care of without embarrassment out of existing gold, foreign exchange and foreign security holdings without recourse to long term credits for a period well in excess of a year, thus sharing Reynaud's optimism (our telegram No. 1923, September 12, 6 p.m.)

BULLITT

JRL:CFW

(*) Apparent omission

EO

PARAPHRASE OF SECTIONS THREE AND FOUR OF TELEGRAM NO.
2340 OF OCTOBER 5, 1939, FROM THE AMERICAN EMBASSY, PARIS.

It is also Masson's belief that, slowly and painfully, the balances of normal commerce and industry are starting to turn. However, he feels that progress will be slow, because at best war plays havoc with normal commercial interchange, production, credit, employment and transport. There is a general feeling, moreover, that in marked contrast to mobilization of the military, civil evacuation problems and subsequent distribution and care of those who were evacuated have not been handled well, thus adding another burden to the inevitable confusion which exists in the "peace" areas of the country. Reference: Embassy telegrams No. 2180 of September 26 and 2254 of September 29 - Masson believes that there will be fairly general utilization of the Bank of France discount facilities for those mobilized and those who are temporarily in financial difficulties. He does not think there will be many defaults in the end, however. He cited the experiences of the World War to bear this out, saying that a Frenchman will pay his obligations where there is an element of the "optional" in contrast to his attitude when a "compulsory" measure has been imposed.

Masson anticipates early trouble from the air from Germany, just as most people in France do. He is preparing to move as much of the routine administrative personnel of his large organization as is possible; he said that if they had two or three alarms of air raids during the day
and

- 2 -

and as many at night, it becomes impossible to work both from a physical and physiological standpoint. Therefore he believed it best to send the personnel away from Paris, but he himself plans to stay in the city as long as he can.

END OF MESSAGE.

BULLITT.

EA:LWW

RECEIVED

ECN 8/20

TRINITY, TEXAS
BY AIRMAIL 1960
GIVEN BY AIR MAIL



TREASURY DEPARTMENT

WASHINGTON

October 5, 1939.

82

MEMORANDUM FOR THE SECRETARY:

Referring to Mr. Hull's letter of October 4, the S/S JEAN LA FITTE did sail from Glasgow about September 17 and is about due in New York. The S/S ANTINOUS did not sail and I understand that the charter was disapproved by the Maritime Commission and an effort was made to substitute another American ship for this vessel, I think, however, without success.

Since my memorandum to you of September 26, I think this situation has rectified itself and is now pretty much a closed matter, but at the time I did discuss this with you I considered it a very dangerous situation.

Russell W. Davis

October 5, 1939.

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EH:ds

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BN:ds

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WHD:s

THE SECRETARY OF THE TREASURY

86

October 5, 1939

MEMORANDUM FOR MR. BASIL HARRIS:

Please comment on this
for me.

H.M.Jr.

BH 562

87



THE SECRETARY OF STATE
WASHINGTON

October 4, 1939.

My dear Henry:

This refers to your note to me of September 27th, enclosing a memorandum from Commissioner Harris.

I have obtained the following information, which I am sure is reliable:

The Maritime Commission did not approve charters for the ships mentioned in the memorandum. Under the original terms of the Commission's Order No. 18, it was not necessary for a ship owner to obtain the Commission's approval of a charter of not more than one year's duration, and the one year period was subsequently cut to six months. But on September 11, 1939, the Commission cancelled its Order No. 18, and it is now no longer possible to charter an American ship to a foreign charterer without the Commission's approval. The Jean LaFitte and the Wacosta were chartered for one voyage and are back in their owners' hands. The Antinous' charter was never consummated, because the charterer sought to substitute another ship and this was disapproved.

Sincerely yours,

The Honorable
Henry Morgenthau, Jr.,
Secretary of the Treasury,
Washington, D. C.

Secretary Morgenthau

September 26, 1939.

MEMORANDUM FOR THE SECRETARY:

The Maritime Commission has given approval to the Waterman Steamship Company (an American company) to charter their American flag steamers S/S JEAN LA FITTE and the S/S ANTIPOUS to the Anchor Line of Glasgow (a British company) for a voyage between Glasgow and New York, replacing two British ships that were withdrawn for troop carriers.

This is a similar situation to the S/S WACOSTA, which is owned by the same company and likewise was chartered to the Anchor Line and which was the first American flag ship stopped by a German submarine. The ship's manifest was examined closely by the submarine Commander and the vessel was allowed to proceed, after three hours delay, with a severe warning. All three vessels were chartered to British owners before the President's Neutrality Proclamation, and load from Glasgow to New York.

Inasmuch as the loading is done by British owners, and these American ships replace British ships withdrawn for war service, I consider charters of this nature extremely dangerous, and it is my firm opinion that both of these charters should be cancelled, regardless of when the charter was entered into, or regardless of any expenses incurred.

113 2000 10-15

BE/hkb

TREASURY DEPARTMENT

INTER OFFICE COMMUNICATION

DATE October 5, 1939

TO Secretary Morgenthau
FROM Mr. White

Subject: Has National Socialism Weakened or Strengthened
the Position of Capitalism in Germany?

The Nazis have weakened German capitalism in the following ways:

1. They have eliminated the functions performed by individual initiative and free enterprise in the economic system.

The business man has no right to decide on price policy, investments, and wage rates. By law, all prices are stabilized at the level of October 17, 1936, and no changes may take place without the prior consent of the Reich Price Commissioner, nor extensions or improvements of plant be made without prior approval. The fixing of wage contracts is in the hands of the official Treuhande der Arbeit, and no competitive bidding up of wages by employers is permitted.

In especially important industries it is not in the business man's hands but in those of a number of Plenipotentiary Commissioners to allocate raw materials, standardize output, sanction expansions, and consolidate firms.

The Nazis have taken over complete control of the credit system and capital market so that they can canalize all savings into public projects, ration credits, and direct all new investment.

The Nazis have established complete control over foreign trade and capital movements which are regulated to suit the political objectives of the Nazi regime.

Secretary Morgenthau - 2

2. The Nazis have eliminated the usual forms of competition between businesses which are the mainspring of capitalism. They have fostered increasing cartelization of industry and have intensified the concentration of economic power.

3. The Nazis, while socially and politically springing from the middle class, are destroying the economic base of the middle class by directly forcing small firms out of business, handicapping small firms through the system of economic controls, by bearing down on small and independent entrepreneurs such as storekeepers, and eliminating the independent artisans. The middle class is one of the essential features and a potent reserve of a healthy capitalist system.

4. The Nazis have strengthened the feudal and anti-capitalist features of German agriculture by preventing the break-up of the large Junker estates, by establishing the entailment of 700,000 family farms, and by rigorous government control over agriculture. Private initiative and the profit motive have been almost completely driven out of agriculture.

5. They have strengthened and exploited anti-capitalist sentiment by contemptuously labelling the Western powers as demopluotocracies and identifying Jews with capitalism.

They appear to have strengthened German capitalism in the following ways:

1. They have destroyed the power of the independent German trade unions and all opposition parties.

2. They have maintained such wage and price controls and such a volume of government orders as to restore dividend rates to a point equal to the highest pre-depression level. The average dividend rate in April 1939 was 6.57 percent. Many important industries paid much higher dividend rates.

3. They have eliminated unemployment and substituted a chronic shortage of labor for a chronic shortage of employment. The number of unemployed rose to a high of 6,000,000 in 1932, or almost a third of the labor force. Unemployment today is negligible, totalling only 70,000 in May out of a labor force of almost 22 millions.

Secretary Morgenthau - 3

4. They have altered the German tax system so as to impose a greater share of the total tax burden than formerly on the working class. The yield of the Reich sales tax rose from 1 billion marks in 1928-9 to 3.357 billion in 1938-9. The wage tax rose from 1.415 billion to 2.091 billion. Consumption taxes increased from 1.773 billion to 2.863 billion. Customs revenues rose from 1.105 to 1.818 billion, on a greatly diminished volume of trade.

5. They have opened up new areas for German business in Austria, Czechoslovakia, Poland and Southeastern Europe.

But these measures actually weakened German capitalism because:

1. The destruction of trade unions and the submergence of all opposition do not necessarily strengthen capitalism. On the contrary they may actually weaken it by closing up all safety valves and canalizing all opposition, however mild, into a dangerously revolutionary direction.

2. A controlled economy is much less flexible and much less capable of sustaining crises -- whether political or economic -- than a free one. If ever the Nazi regime experiences a major defeat, or if ever the economic machine begins to go into reverse, the process of disintegration will be that much more rapid and irresistible.

3. The elimination of unemployment has been attained at the cost of extensive sacrifices on the part of labor. Until this month wage rates were maintained at depression levels, and now they have been further reduced. Hours of labor have been considerably lengthened, and mobility of labor is rigorously controlled by the State. The cost of living has risen, social services have been cut, and levies on the workers' income increased. Total money wages in Germany are actually less now than in 1929, although employment is greater, and the real wages of all labor much lower. In this situation the capitalistic system can only hold together by the avoidance of any political defeat or economic reversal.

4. The increase in the income of German capitalists is to some extent illusory because all profits above 6 percent must be reinvested in government securities and because of the extremely high tax rates on individuals and corporations. Moreover with the elimination of the middle class this increased income is shared by a smaller part of the population.

Secretary Morgenthau - 4

5. The areas opened up to economic exploitation by Nazi conquests are unpromising and are a much less adequate outlet for German enterprise than free international trade would be. To a considerable degree the new areas added to the Reich are not complementary but competitive with the economy of the Old Reich, and none contains the essential raw materials in which the Reich is lacking. In any case they are a less fruitful field for commercial intercourse with the Reich than the old markets it has lost.

JIL

GRAY

PARIS

Dated October 5, 1938

Rec'd 5:25 p.m.

Secretary of State,
Washington.

2343, October 5, 7 p.m. (SECTION ONE)

FOR THE TREASURY

The securities market was active and moved up today partly on the basis of Deladier's firm declarations before the Foreign Affairs Committee of the Chamber yesterday and partly on the belief that Italy will not lend herself to Germany's "peace" maneuver. Both French and international issues advanced, Suez rising another 375 francs. Rentes registered advances ranging from 45 centimes to 1.25 on the firmness of the franc in New York yesterday.

The Journal Official today publishes the decree setting up the general food supply service and the decree concerning the wheat office (our telegram No. 2309, October 4, 6 p.m.)

BULLITT

EMB

JIL

GRAY

PARIS

Dated October 5, 1939

Rec'd 7:15 p.m.

Secretary of State,
Washington.

2343, October 5, 7 p.m. (SECTION TWO)

A further measure in the Journal Official regulates the landlord-tenant relationship in wartime. It provides among other things that mobilized persons may cancel their leases or obtain rent reductions up to 75% unless the landlord can prove that the tenant is able to pay more. Business people and individuals whose financial situation has been changed by the war may be granted similar reductions in agreement with their landlord or by virtue of a court judgment in lieu thereof. For their part landlords adversely affected by the provisions of this decree will be permitted to obtain postponement of interest payment on mortgages and those with meager resources unable to collect rent due them will be entitled to seek relief payments from the public authorities in spite of their previously ineligible status as property owners.

(END SECTION TWO)

BULLITT

NPL

CJ

GRAY

PARIS

Dated October 5, 1939

Rec'd 7:12 p.m.

Secretary of State,
Washington.

2343, October 5, 7 p.m. (SECTION THREE).

The Bank of France statement dated September 28 published today reveals that commercial advances further decreased by 843,000,000 francs. Advances against securities decreased by 16,000,000 francs and thirty day advances by 645,000,000. Advances to the state under the recently authorized 25,000,000,000 amount to 2,200,000,000. The note circulation increased by 624,000,000. Current and deposit accounts decreased by 591,000,000. The Treasury account was reduced by 210,000,000, to a total of 342,000,000. Open market operations are down 16.5 millions. The ratio of gold cover decreased from 59.03% to 58.98%.

(END OF MESSAGE).

EMB

BULLET

RECEIVED
OCT 10 1939

1939 OCT 10 10 10 AM

U.S. DEPARTMENT OF STATE

10-5-39

FROM: MR. GASTON'S OFFICE

96

TO: The Secretary

Admiral Stark sent by hand to Woesche last night a memo containing this information: Admiral Roeder of the German navy called in our naval attache last night and told him they had information an attack would be made "off the American Coast" on the Maritime Commission ship Iroquois which left Cobh Tuesday evening with refugees for U.S., that it would be "under similar circumstances" to Athenia incident and designed to create antagonism against Germany, that the ship ~~xxxxxx~~ if she arrived safely should be thoroughly searched for explosives. The President and Maritime Commission have been informed by Navy and these steps taken: The information has been radioed to the master of the Iroquois by international code. Two destroyers ~~xxxxxx~~ of the patrol have been ordered to convoy the ship and London and Berlin have been notified that American warvessels will fire on any craft seen attacking an American merchant vessel. All available cutters will patrol trans-Atlantic sealane off our Coast. Arrangements for search in New York are being made. I have informed Paris. Germans plainly imply British are doing this but there seems reason to suspect a German agent may have planted explosive on the ship--if the thing is not altogether a cock-and-bull story by the Germans.

W.G.

10-6-29

3:25 p.m.

97

FROM: MR. GASTON'S OFFICE

TO: The Secretary

The message about the submarine off Cape Florida came in to Coast Guard headquarters about 12:30. It was in code. After decoding Commander Hershfield began phoning about 1. Frank Rose and I were both out to lunch and we didn't think he should give it to one of the girls. He got Rose as soon as possible after his return.

Admiral Stark on receipt of the message immediately phoned Hyde Park and asked for the President. He got word the President was out in a summer house and didn't want to be disturbed, but that Stark should call back at 4:30. When he does this he will also tell the President about the Columbus, which news Wuesche gave him.

and Miami

Wuesche is calling Jacksonville about the delay, will also tell operators and others down the line about expediting these obviously important messages. I have told Wuesche to give such messages to anybody in my office. The two secretaries always come here to get me.



10-6-39

Secretary Nergenthan:

(1:50)

FROM: MR. GASTON'S OFFICE

98

October 6, 1939

TO: MR. GASTON

Comd'r Hirschfield phoned at 1:45
p.m. the following message from the Coast
Guard Miami Air Station:

Sent 10:00 a.m. this morning.

Unidentified submarine sighted by sea-
plane V-112, fifteen miles east of Cape
Florida. Submarine immediately submerged.

P.S. Cape Florida is seven miles south
of the entrance to Miami harbor.

TOP
Every reports no U.S. sub in
that spot today, though one
passed there yesterday. This
the first verified report
to come to my notice of a
submarine other than U.S.
of our coast. H.C.G.

10-6-39

FROM: MR. GASTON'S OFFICE

99

TO: The Secretary

3:02 p.m.

Waesche is working personally on the submarine matter and will call me back .

Our radio men just now intercepted a message sent in plain language (French) by a station in the French West Indies and apparently intended for French and British warvessels in those waters saying the German steamship Columbus had just sailed from Vera Cruz.



EDA

GRAY

BERLIN

Dated October 5, 1939

Received 8:40 p.m.

Secretary of State

Washington

1601, October 5, 7 p.m.

For several days rumors have been current that Germany would send a large trade delegation to Moscow. The first confirmation of the rumor appeared in this afternoon's report of the German official telegraph agency which carries the following despatch from Moscow:

"According to informed sources the German trade delegation is expected in Moscow on October 7 to conduct negotiations with the appropriate authorities looking toward the development of trade exchanges between Germany and the Soviet Union which was forecast in the German Soviet treaty of September 28. Minister Schnurre will be at the head of the delegation. Representatives of the larger German firms and concerns are also expected in Moscow whose task it will be to set in motion an immediate practical realization of the trade agreements".

Inform Treasury:

KIRK

RR

TREASURY DEPARTMENT

101

INTER OFFICE COMMUNICATION

DATE October 6, 1939

TO Secretary Morgenthau
FROM W. H. Hadley

10 am

Short Term Issues

A two-year CCC note would sell at $5/8$ ths of a point premium on a $1-1/8\%$ coupon and $7/8$ ths of a point premium on a $1-1/4\%$ coupon.

A three-year RFC issue would sell at about $5/8$ ths of a point premium on a $1-1/4\%$ coupon and about 1 point premium on a $1-3/8\%$ coupon.

A four-year Treasury note would sell at about $3/4$ s of a point premium on a $1-1/4\%$ coupon and about $1-1/4$ points premium on a $1-3/8\%$ coupon.

A five-year Treasury note would sell at about $3/4$ s of a point premium on a $1-1/4\%$ coupon and about $1-1/4$ points premium on a $1-3/8\%$ coupon.

TREASURY DEPARTMENT

INTER OFFICE COMMUNICATION

DATE

TO Secretary Morgenthau
FROM Mr. Foley

October 6, 1939.

Re: Your Request for Information on the
Anti-Smuggling Act.

The Anti-Smuggling Act of August 5, 1935, was sponsored by the Treasury Department as a result of the widespread post-repeal smuggling of liquor into the United States along our seaboard which, at its peak in late 1934 and early 1935, was estimated to be costing the Government \$30,000,000 annually in revenue losses. You will remember that on March 2, 1935, you appeared at hearings held by the Ways and Means Committee on this bill and made a strong statement in its support.

The Act, which widely extended the jurisdiction of the United States over the waters adjoining its coasts, is based on the legal theory that while a nation may not extend its territorial waters (which most nations, including the United States, regard as extending to a distance of three miles from shore, and within which the jurisdiction of a nation is as absolute and complete, broadly speaking, as if the land extended up to that point), a nation may, under international law, exercise limited jurisdiction for purposes of national safety and protection of the revenue to such a distance from its shores as is reasonably necessary for those purposes. That zone, which will differ with circumstances and cases, is sometimes referred to as jurisdictional waters.

The provision of the Anti-Smuggling Act which has attracted the most interest and comment is section 1, which provides for the establishment of "customs-enforcement areas". That section authorizes the creation of such areas beyond the existing 12-mile limit of customs control whenever the President finds and declares that vessels are hovering or being kept off the coast of the United States outside customs waters, and that, by virtue of their presence, the unlawful introduction into or removal from the United States of merchandise or persons may be accomplished or threatened. The establishment of such areas is made subject to two geographical limitations: (1) only such waters on the high seas should be within a customs-enforcement area as are in such proximity to vessels hovering or being kept off the coast that the smuggling of merchandise or persons may be carried on by, to, or from such vessels; (2) no customs-enforcement area shall include waters more than 100 miles in either direction up and down the coast from the immediate area where the vessels involved are present (that is, 200 miles in all) or more than 50 miles out to sea beyond the existing 12-mile customs limit.

(that is, a total of 62 miles seaward). Within those customs-enforcement areas coast guard and customs officers, or other persons authorized by the Secretary of the Treasury, are empowered to enforce those laws which apply to the high seas adjacent to American customs waters.

Sections 1 and 203 of the Act contain provisions authorizing American officers to board, search, and seize vessels in customs-enforcement areas when the circumstances warrant it.

It should be noted, however, that there are specific provisions in the Act precluding American officers from enforcing laws in customs-enforcement areas against vessels of nations with which we have treaties where such action would contravene treaties. The treaties which are contemplated in those provisions of the Act are the so-called liquor treaties which the United States has with 16 other nations, including Germany, France, Poland, and England, which treaties authorize seizure of the vessels of such nations only within an hour's sailing distance of the coast.

Five customs-enforcement areas were set up by presidential proclamation between August and December 1935. Three of those extend in a line approximately from the Canadian border to Atlantic City, New Jersey, and the other two are in the Gulf of Mexico. Although liquor smuggling activity is now virtually non-existent in those areas, the areas have never been terminated by presidential proclamation, which is required by section 1 of the Act.

The remaining provisions of the Act may be covered briefly. From the standpoint of combating smuggling, the most important is section 3, which subjects to forfeiture vessels built, fitted out, or employed for smuggling or to defraud the revenue. Other sections of the Act (1) prohibit smuggling offenses by our nationals and vessels against the revenue laws of such foreign countries as reciprocate by similarly penalizing their nationals and vessels for smuggling into the United States; (2) provide for the general increase of fines and penalties relative to smuggling and for the penalizing of acts particularly indicative of smuggling activity but not otherwise covered by law; (3) provide for effective administrative control over boats of less than 500 tons (which is the type of boat usually used for liquor smuggling), and for similar control over small contact boats which bring the contraband from hovering vessels; (4) provide for changes in rules in proof in forfeiture proceedings to enable effective handling of such cases.

It is worth noting that the phrase "hovering vessel", which is used frequently throughout the Act, is defined in the Act to mean a vessel found or kept off our coast within or without customs waters if, from all the circumstances, it is reasonable to believe that that vessel is being or may be used to facilitate "the introduction or attempted introduction of merchandise into the United States in violation of the laws respecting the revenue".

Two provisions of the Act which are perhaps worthy of separate mention are sections 205 and 206. Section 205 prescribes penalties and forfeitures for vessels from foreign ports or places which (1) unlade any merchandise within the customs waters of the United States without permit; (2) tranship liquor, or merchandise the importation of which into the United States is prohibited, to vessels of the United States within or without customs waters; or (3) tranship liquor, or merchandise the importation of which into the United States is prohibited, to any vessel within or without customs waters if the circumstances indicate a purpose to have the liquor or merchandise smuggled into the United States. Section 206 subjects to boarding and search any hovering vessel (as defined above), any vessel which fails within customs waters (12 miles) or within a customs-enforcement area to display lights required by law, or any vessel which fails to stop when required to by a customs or coast guard officer. Such vessels may be brought into an American port for examination, and for forfeiture if dutiable merchandise destined to the United States is found to be, or to have been, on board the vessel.

The Anti-Smuggling Act has been markedly successful in results. To it, as well as to the Treasury's more effectively coordinated enforcement activities, may be attributed the virtually complete elimination of post-repeal liquor smuggling which was once costing the Government \$30,000,000 a year. The effect of the Act, however, has perhaps been largely psychological since there have actually been relatively few cases made under it and there has been only one reported court opinion construing it. The Reidum (D.C., E.D.N.Y., 1936) 14 F. Supp. 771; 15 F. Supp. 112.

In this connection, I think you will be interested in the attached reprint which we have just received of an article by a Professor of International Law at Cornell University which recently appeared in French in a Belgium periodical of international law, "La revue de Droit international et de Legislation Comparée". This article quotes at some length your testimony in 1935 before the Ways and Means Committee on the Anti-Smuggling Bill (see page 3 of the reprint), as well as other statements made by you. The article concludes that the Anti-Smuggling Act represents a sound exercise of extra-territorial jurisdiction on the part of this country under international law and that the Act has been eminently successful.

(Initialed) E. H. F. Jr.

Original sent to the President 10/6/39

Attachments

[PUBLIC—No. 238—74TH CONGRESS]

[H. R. 7980]

AN ACT

To protect the revenue of the United States and provide measures for the more effective enforcement of the laws respecting the revenue, to prevent smuggling, to authorize customs-enforcement areas, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I

SECTION 1. (a) Whenever the President finds and declares that at any place or within any area on the high seas adjacent to but outside customs waters any vessel or vessels hover or are being kept off the coast of the United States and that, by virtue of the presence of any such vessel or vessels at such place or within such area, the unlawful introduction or removal into or from the United States of any merchandise or person is being or may be occasioned, promoted, or threatened, the place or area so found and declared shall constitute a customs-enforcement area for the purposes of this Act. Only such waters on the high seas shall be within a customs-enforcement area as the President finds and declares are in such proximity to such vessel or vessels that such unlawful introduction or removal of merchandise or persons may be carried on by or to or from such vessel or vessels. No customs-enforcement area shall include any waters more than one hundred nautical miles from the place or immediate area where the President declares such vessel or vessels are hovering or are being kept and, notwithstanding the foregoing provision, shall not include any waters more than fifty nautical miles outwards from the outer limit of customs waters. Whenever the President finds that, within any customs-enforcement area, the circumstances no longer exist which gave rise to the declaration of such area as a customs-enforcement area, he shall so declare, and thereafter, and until a further finding and declaration is made under this subsection with respect to waters within such area, no waters within such area shall constitute a part of such customs-enforcement area. The provisions of law applying to the high seas adjacent to customs waters of the United States shall be enforced in a customs-enforcement area upon any vessel, merchandise, or person found therein.

(b) At any place within a customs-enforcement area the several officers of the customs may go on board of any vessel and examine the vessel and any merchandise or person on board, and bring the same into port, and, subject to regulations of the Secretary of the Treasury, it shall be their duty to pursue and seize or arrest and otherwise enforce upon such vessel, merchandise, or person, the provisions of law which are made effective thereto in pursuance of subsection (a) in the same manner as such officers are or may be authorized or required to do in like case at any place in the United States

by virtue of any law respecting the revenue: *Provided*, That nothing contained in this section or in any other provision of law respecting the revenue shall be construed to authorize or to require any officer of the United States to enforce any law thereof upon the high seas upon a foreign vessel in contravention of any treaty with a foreign government enabling or permitting the authorities of the United States to board, examine, search, seize, or otherwise to enforce upon such vessel upon the high seas the laws of the United States except as such authorities are or may otherwise be enabled or permitted under special arrangement with such foreign government: *Provided further*, That none of the provisions of this Act shall be construed to relieve the Secretary of Commerce of any authority, responsibility, or jurisdiction now vested in or imposed on that officer.

SEC. 2. (a) Any person owning in whole or in part any vessel of the United States who employs, or participates in, or allows the employment of, such vessel for the purpose of smuggling, or attempting to smuggle, or assisting in smuggling, any merchandise into the territory of any foreign government in violation of the laws there in force, if under the laws of such foreign government any penalty or forfeiture is provided for violation of the laws of the United States respecting the customs revenue, and any citizen of, or person domiciled in, or any corporation incorporated in, the United States, controlling or substantially participating in the control of any such vessel, directly or indirectly, whether through ownership of corporate shares or otherwise, and allowing the employment of said vessel for any such purpose, and any person found, or discovered to have been, on board of any such vessel so employed and participating or assisting in any such purpose, shall be liable to a fine of not more than \$5,000 or to imprisonment for not more than two years, or to both such fine and imprisonment.

(b) It shall constitute an offense under this section to hire out or charter a vessel if the lessor or charterer has knowledge that, or if such vessel is leased or chartered under circumstances which would give rise to a reasonable belief that, the lessee or person chartering the vessel intends to employ such vessel for any of the purposes described in subsection (a) and if such vessel is, during the time such lease or charter is in effect, employed for any such purpose.

SEC. 3. (a) Whenever any vessel which shall have been built, purchased, fitted out in whole or in part, or held, in the United States or elsewhere, for the purpose of being employed to defraud the revenue or to smuggle any merchandise into the United States, or to smuggle any merchandise into the territory of any foreign government in violation of the laws there in force, if under the laws of such foreign government any penalty or forfeiture is provided for violation of the laws of the United States respecting the customs revenue, or whenever any vessel which shall be found, or discovered to have been, employed, or attempted to be employed, within the United States for any such purpose, or in anywise in assistance thereof, or whenever any vessel of the United States which shall be found, or discovered to have been, employed, or attempted to be employed at any place, for any such purpose, or in anywise in assistance thereof, if not subsequently forfeited to the United States or to a foreign government, is found at any place at which any such vessel may be

examined by an officer of the customs in the enforcement of any law respecting the revenue, the said vessel and its cargo shall be seized and forfeited.

(b) Every vessel which is documented, owned, or controlled in the United States, and every vessel of foreign registry which is, directly or indirectly, substantially owned or controlled by any citizen of, or corporation incorporated, owned, or controlled in, the United States, shall, for the purposes of this section, be deemed a vessel of the United States.

(c) For the purposes of this section, the fact that a vessel has become subject to pursuit as provided in section 581 of the Tariff Act of 1930, as amended, or is a hovering vessel, or that a vessel fails, at any place within the customs waters of the United States or within a customs-enforcement area, to display lights as required by law, shall be prima facie evidence that such vessel is being, or has been, or is attempted to be employed to defraud the revenue of the United States.

Sec. 4. Subject to appeal to the Secretary of Commerce and under such regulations as he may prescribe, whenever the collector of customs of the district in which any vessel is, or is sought to be, registered, enrolled, licensed, or numbered, is shown upon evidence which he deems sufficient that such vessel is being, or is intended to be, employed to smuggle, transport, or otherwise assist in the unlawful introduction or importation into the United States of any merchandise or person, or to smuggle any merchandise into the territory of any foreign government in violation of the laws there in force, if under the laws of such foreign government any penalty or forfeiture is provided for violation of the laws of the United States respecting the customs revenue, or whenever, from the design or fittings of any vessel or the nature of any repairs made thereon, it is apparent to such collector that such vessel has been built or adapted for the purpose of smuggling merchandise, the said collector shall revoke the registry, enrollment, license, or number of said vessel or refuse the same if application be made therefor, as the case may be. Such collector and all persons acting by or under his direction shall be indemnified from any penalties or actions for damages for carrying out the provisions of this section.

Sec. 5. Any vessel or vehicle forfeited to the United States, whether summarily or by a decree of any court, for violation of any law respecting the revenue, may, in the discretion of the Secretary of the Treasury, if he deems it necessary to protect the revenue of the United States, be destroyed in lieu of the sale thereof under existing law.

Sec. 6. Except into the districts adjoining to the Dominion of Canada, or into the districts adjacent to Mexico, no merchandise of foreign growth or manufacture subject to the payment of duties shall be brought into the United States from any foreign port or place, or from any hovering vessel, in any vessel of less than thirty net tons burden without special license granted by the Secretary of the Treasury under such conditions as he may prescribe, nor in any other manner than by sea, except by aircraft duly licensed in accordance with law, or landed or unladen at any other port than is directed by law, under the penalty of seizure and forfeiture of all

such unlicensed vessels or aircraft and of the merchandise imported therein, landed or unladen in any manner. Marks, labels, brands or stamps, indicative of foreign origin, upon or accompanying merchandise in containers of merchandise found upon any such vessel or aircraft, shall be prima facie evidence of the foreign origin of such merchandise.

Sec. 7. In addition to any other requirement of law, every vessel, not exceeding five hundred net tons, from a foreign port or place, or which has visited a hovering vessel, shall carry a certificate for the importation into the United States of any spirits, wines, or other alcoholic liquors on board thereof (sea stores excepted), destined to the United States, said certificate to be issued by a consular officer of the United States or other authorized person pursuant to such regulations as the Secretary of State and the Secretary of the Treasury may jointly prescribe. Any spirits, wines, or other alcoholic liquors (sea stores excepted) found, or discovered to have been, upon any such vessel at any place in the United States, or within the customs waters, without said certificate on board, which are not shown to have a bona fide destination without the United States, shall be seized and forfeited and, in the case of any such merchandise so destined to a foreign port or place, a bond shall be required to double the amount of the duties to which such merchandise would be subject if imported into the United States, conditioned upon the delivery of said merchandise at such foreign port or place as may be certified by a consular officer of the United States or otherwise as provided in said regulations: *Provided*, That if the collector shall be satisfied that the certificate required for the importation of any spirits, wines, or other alcoholic liquors was issued and was lost or mislaid without fraud, or was defaced by accident, or is incorrect by reason of clerical error or other mistake, said penalties shall not be incurred nor shall such bond be required. This section shall take effect on the sixtieth day following the enactment of this Act.

Sec. 8. (a) If the master of any vessel of the United States, not exceeding five hundred net tons, allows such vessel to be laden at any foreign port or other place without the United States with any merchandise destined to the United States and consisting of any spirits, wines, or other alcoholic liquors (sea stores excepted), which facts may be evidenced by the testimony or depositions of foreign administrative officials or certified copies of their records or by other sufficient evidence, without certificate issued for the importation of such merchandise into the United States as required by section 7, the master of such vessel shall, in addition to any other penalties provided by law, be liable to a penalty equal to the value of the said merchandise but not less than \$1,000 and such vessel and such merchandise shall be seized and forfeited.

(b) Whoever, being a citizen of the United States or a master or a member of the crew of a vessel of the United States, if such vessel does not exceed five hundred net tons, shall, with intent to defraud the revenue of the United States, procure, or aid or assist in procuring, any merchandise destined to the United States and consisting of any spirits, wines, or other alcoholic liquors, without certificate issued for the importation thereof into the United States as required by section 7, to be laden upon such vessel at any foreign

port or other place without the United States, which facts may be evidenced by the testimony or depositions of foreign administrative officials or certified copies of their records or by other sufficient evidence, shall, in addition to any other penalties provided by law, be liable to a fine of not more than \$1,000 or to imprisonment for not more than two years, or to both such fine and imprisonment.

TITLE II

SECTION 201. Section 401 of the Tariff Act of 1930 (U. S. C., Supp. VII, title 19, sec. 1401) is amended by adding at the end thereof the following new paragraphs:

"(1) **OFFICER OF THE CUSTOMS.**—The term 'officer of the customs' means any officer of the Customs Service or any commissioned, warrant, or petty officer of the Coast Guard, or agent or other person authorized by law or by the Secretary of the Treasury, or appointed in writing by a collector, to perform the duties of an officer of the Customs Service.

"(2) **CUSTOMS WATERS.**—The term 'customs waters' means, in the case of a foreign vessel subject to a treaty or other arrangement between a foreign government and the United States enabling or permitting the authorities of the United States to board, examine, search, seize, or otherwise to enforce upon such vessel upon the high seas the laws of the United States, the waters within such distance of the coast of the United States as the said authorities are or may be so enabled or permitted by such treaty or arrangement and, in the case of every other vessel, the waters within four leagues of the coast of the United States.

"(3) **HOVERING VESSEL.**—The term 'hovering vessel' means any vessel which is found or kept off the coast of the United States within or without the customs waters, if, from the history, conduct, character, or location of the vessel, it is reasonable to believe that such vessel is being used or may be used to introduce or promote or facilitate the introduction or attempted introduction of merchandise into the United States in violation of the laws respecting the revenue.

"For the purposes of sections 432, 433, 434, 448, 585, and 586 of this Act, any vessel which has visited any hovering vessel shall be deemed to arrive or have arrived, as the case may be, from a foreign port or place."

Sec. 202. Section 436 of the Tariff Act of 1930 (U. S. C., Supp. VII, title 19, sec. 1436) is amended by omitting the period at the end thereof and adding the following: "and, if the vessel have, or be discovered to have had, on board any merchandise (sea stores excepted), the importation of which into the United States is prohibited, or any spirits, wines, or other alcoholic liquors, such master shall be subject to an additional fine of not more than \$2,000 or to imprisonment for not more than one year, or to both such fine and imprisonment.

"Every master who presents a forged, altered, or false document or paper on making entry of a vessel as required by section 434 or 435 of this Act, knowing the same to be forged, altered, or false and will not revealing the fact, shall, in addition to any forfeiture to which in consequence the vessel may be subject, be liable to a fine of

not more than \$5,000 nor less than \$50 or to imprisonment for not more than two years, or to both such fine and imprisonment."

Sec. 203. (a) Section 581 of the Tariff Act of 1930 (U. S. C., Supp. VII, title 19, sec. 1581) is amended to read as follows:

"SEC. 581. BOARDING VESSELS

"(a) Any officer of the customs may at any time go on board of any vessel or vehicle at any place in the United States or within the customs waters or, as he may be authorized, within a customs enforcement area established under the Anti-Smuggling Act, or at any other authorized place, without as well as within his district, and examine the manifest and other documents and papers and examine, inspect, and search the vessel or vehicle and every part thereof and any person, trunk, package, or cargo on board, and to this end may hail and stop such vessel or vehicle, and use all necessary force to compel compliance.

"(b) Officers of the Department of Commerce and other persons authorized by such department may go on board of any vessel at any place in the United States or within the customs waters and hail, stop, and board such vessel in the enforcement of the navigation laws and arrest or, in case of escape or attempted escape, pursue and arrest any person engaged in the breach or violation of the navigation laws.

"(c) Any master of a vessel being examined as herein provided, who presents any forged, altered, or false document or paper to the examining officer, knowing the same to be forged, altered, or false and without revealing the fact shall, in addition to any forfeiture to which in consequence the vessel may be subject, be liable to a fine of not more than \$5,000 nor less than \$500.

"(d) Any vessel or vehicle which, at any authorized place, is required to come to a stop by any officer of the customs, or is required to come to a stop by signal made by any vessel employed in the service of the customs displaying the ensign and pennant prescribed for such vessel by the President, shall come to a stop, and upon failure to comply, a vessel so required to come to a stop shall become subject to pursuit and the master thereof shall be liable to a fine of not more than \$5,000 nor less than \$1,000. It shall be the duty of the several officers of the customs to pursue any vessel which may become subject to pursuit, and to board and examine the same, and to examine any person or merchandise on board, without as well as within their respective districts and at any place upon the high seas or, if permitted by the appropriate foreign authority, elsewhere where the vessel may be pursued as well as at any other authorized place.

"(e) If upon the examination of any vessel or vehicle it shall appear that a breach of the laws of the United States is being or has been committed so as to render such vessel or vehicle, or the merchandise, or any part thereof, on board of, or brought into the United States by, such vessel or vehicle, liable to forfeiture or to secure any fine or penalty, the same shall be seized and any person who has engaged in such breach shall be arrested.

"(f) It shall be the duty of the several officers of the customs to seize and secure any vessel, vehicle, or merchandise which shall

become liable to seizure, and to arrest any person who shall become liable to arrest, by virtue of any law respecting the revenue, as well without as within their respective districts, and to use all necessary force to seize or arrest the same.

"(g) Any vessel, within or without the customs waters, from which any merchandise is being, or has been, unlawfully introduced into the United States by means of any boat belonging to, or owned, controlled, or managed in common with, said vessel, shall be deemed to be employed within the United States and, as such, subject to the provisions of this section.

"(h) The provisions of this section shall not be construed to authorize or require any officer of the United States to enforce any law of the United States upon the high seas upon a foreign vessel in contravention of any treaty with a foreign government enabling or permitting the authorities of the United States to board, examine, search, seize, or otherwise to enforce upon said vessel upon the high seas the laws of the United States except as such authorities are or may otherwise be enabled or permitted under special arrangement with such foreign government."

(b) Section 3072 of the Revised Statutes (U. S. C., title 19, sec. 506) is hereby repealed.

Sec. 204. (a) The last paragraph of section 584 of the Tariff Act of 1930 (U. S. C., Supp. VII, title 19, sec. 1584) is amended to read as follows:

"If any of such merchandise so found consists of heroin, morphine, or cocaine, the master of such vessel or person in charge of such vehicle or the owner of such vessel or vehicle shall be liable to a penalty of \$50 for each ounce thereof so found. If any of such merchandise so found consists of smoking opium or opium prepared for smoking, the master of such vessel or person in charge of such vehicle or the owner of such vessel or vehicle shall be liable to a penalty of \$25 for each ounce thereof so found. If any of such merchandise so found consists of crude opium, the master of such vessel or person in charge of such vehicle or the owner of such vessel or vehicle shall be liable to a penalty of \$10 for each ounce thereof so found. Such penalties shall, notwithstanding the proviso in section 594 of this Act (relating to the immunity of vessels or vehicles used as common carriers), constitute a lien upon such vessel which may be enforced by a libel in rem; except that the master or owner of a vessel used by any person as a common carrier in the transaction of business as such common carrier shall not be liable to such penalties and the vessel shall not be held subject to the lien, if it appears to the satisfaction of the court that neither the master nor any of the officers (including licensed and unlicensed officers and petty officers) nor the owner of the vessel knew, and could not, by the exercise of the highest degree of care and diligence, have known, that such narcotic drugs were on board. Clearance of any such vessel may be withheld until such penalties are paid or until a bond, satisfactory to the collector, is given for the payment thereof. The provisions of this paragraph shall not prevent the forfeiture of any such vessel or vehicle under any other provision of law."

(b) Section 584 of the Tariff Act of 1930 (U. S. C., Supp. VII, title 19, sec. 1584) is amended by adding at the end thereof the following new paragraph:

"If any of such merchandise (sea stores excepted), the importation of which into the United States is prohibited, or which consists of any spirits, wines, or other alcoholic liquors for the importation of which into the United States a certificate is required under section 7 of the Anti-Smuggling Act and the required certificate be not shown, be so found upon any vessel not exceeding five hundred net tons, the vessel shall, in addition to any other penalties herein or by law provided, be seized and forfeited, and, if any manifested merchandise (sea stores excepted) consisting of any such spirits, wines, or other alcoholic liquors be found upon any such vessel and the required certificate be not shown, the master of the vessel shall be liable to the penalty herein provided in the case of merchandise not duly manifested: *Provided*, That if the collector shall be satisfied that the certificate required for the importation of any spirits, wines, or other alcoholic liquors was issued and was lost or mislaid without intentional fraud, or was defaced by accident, or is incorrect by reason of clerical error or other mistake, said penalties shall not be incurred."

Sec. 205, Section 586 of the Tariff Act of 1930 (U. S. C., Supp. VII, title 19, sec. 1586) is amended to read as follows:

"SEC. 586. UNLAWFUL UNLADING OR TRANSSHIPMENT

"(a) The master of any vessel from a foreign port or place who allows any merchandise (including sea stores) to be unladen from such vessel at any time after its arrival within the customs waters and before such vessel has come to the proper place for the discharge of such merchandise, and before he has received a permit to unlade, shall be liable to a penalty equal to twice the value of the merchandise but not less than \$1,000, and such vessel and its cargo and the merchandise so unladen shall be seized and forfeited.

"(b) The master of any vessel from a foreign port or place who allows any merchandise (including sea stores), the importation of which into the United States is prohibited, or which consists of any spirits, wines, or other alcoholic liquors, to be unladen from his vessel at any place upon the high seas adjacent to the customs waters of the United States to be transhipped to or placed in or received on any vessel of any description, with knowledge, or under circumstances indicating the purpose to render it possible, that such merchandise, or any part thereof, may be introduced, or attempted to be introduced, into the United States in violation of law, shall be liable to a penalty equal to twice the value of the merchandise but not less than \$1,000, and the vessel from which the merchandise is so unladen, and its cargo and such merchandise, shall be seized and forfeited.

"(c) The master of any vessel from a foreign port or place who allows any merchandise (including sea stores) destined to the United States, the importation of which into the United States is prohibited, or which consists of any spirits, wines, or other alcoholic liquors, to be unladen, without permit to unlade, at any place upon the high seas adjacent to the customs waters of the United States, to be transhipped to or placed in or received on any vessel of the United States or any other vessel which is owned by any person a citizen of, or domiciled in, the United States, or any corporation incorporated in the United States, shall be liable to a penalty equal

to twice the value of the merchandise but not less than \$1,000, and the vessel from which the merchandise is so unladen, and its cargo and such merchandise, shall be seized and forfeited.

"(d) If any merchandise (including sea stores) unladen in violation of the provisions of this section is transhipped to or placed in or received on any other vessel, the master of the vessel on which such merchandise is placed, and any person aiding or assisting therein, shall be liable to a penalty equal to twice the value of the merchandise, but not less than \$1,000, and such vessel, and its cargo and such merchandise, shall be seized and forfeited.

"(e) Whoever, at any place, if a citizen of the United States, or at any place in the United States or within one league of the coast of the United States, if a foreign national, shall engage or aid or assist in any unloading or transshipment of any merchandise in consequence of which any vessel becomes subject to forfeiture under the provisions of this section shall, in addition to any other penalties provided by law, be liable to imprisonment for not more than two years.

"(f) Whenever any part of the cargo or stores of a vessel has been unladen or transhipped because of accident, stress of weather, or other necessity, the master of such vessel and the master of any vessel to which such cargo or stores has been transhipped shall, as soon as possible thereafter, notify the collector of the district within which such unloading or transshipment has occurred, or the collector within the district at which such vessel shall first arrive thereafter, and shall furnish proof that such unloading or transshipment was made necessary by accident, stress of weather, or other unavoidable cause, and if the collector is satisfied that the unloading or transshipment was in fact due to accident, stress of weather, or other necessity, the penalties described in this section shall not be incurred."

Sec. 206, Section 587 of the Tariff Act of 1930 (U. S. C., Supp. VII, title 19, sec. 1587) is amended to read as follows:

"SEC. 587. EXAMINATION OF HOVERING VESSELS

"(a) Any hovering vessel, or any vessel which fails (except for unavoidable cause), at any place within the customs waters or within a customs-enforcement area established under the Anti-Smuggling Act, to display lights as required by law, or which has become subject to pursuit as provided in section 581 of this Act, or which, being a foreign vessel to which subsection (b) of said section 581 applies, is permitted by special arrangement with a foreign government to be so examined without the customs waters of the United States, may at any time be boarded and examined by any officer of the customs, and the provisions of said section 581 shall apply thereto, as well without as within his district, and in examining the same, any such officer may also examine the master upon oath respecting the cargo and voyage of the vessel, and may also bring the vessel into the most convenient port of the United States to examine the cargo, and if the master of said vessel refuses to comply with the lawful directions of such officer or does not truly answer such questions as are put to him respecting the vessel, its cargo, or voyage, he shall be liable to a penalty of not more than \$5,000 nor less than \$500. If, upon the examination

of any such vessel or its cargo by any officer of the customs, any dutiable merchandise destined to the United States is found, or discovered to have been, on board thereof, the vessel and its cargo shall be seized and forfeited. It shall be presumed that any merchandise (sea stores excepted), the importation of which into the United States is prohibited, or which consists of any spirits, wines, or other alcoholic liquors, so found, or discovered to have been, on board thereof, is destined to the United States.

"(b) If any vessel laden with cargo be found at any place in the United States or within the customs waters or within a customs-enforcement area established under the Anti-Smuggling Act and such vessel afterwards is found light or in ballast or having discharged its cargo or any part thereof, and the master is unable to give a due account of the port or place at which the cargo, or any part thereof, consisting of any merchandise the importation of which into the United States is prohibited or any spirits, wines, or other alcoholic liquors, was lawfully discharged, the vessel shall be seized and forfeited."

"(c) Nothing contained in this section shall be construed to render any vessel liable to forfeiture which is bona fide bound from one foreign port to another foreign port, and which is pursuing her course, wind and weather permitting."

Sec. 207. Section 615 of the Tariff Act of 1930 (U. S. C., Supp. VII, title 19, sec. 1615) is amended by inserting a comma in place of the period at the end thereof and adding the following: "subject to the following rules of proof:

"(1) The testimony or deposition of the officer of the customs who has boarded or required to come to a stop or seized a vessel or vehicle, or has arrested a person, shall be prima facie evidence of the place where the act in question occurred.

"(2) Marks, labels, brands, or stamps, indicative of foreign origin, upon or accompanying merchandise or containers of merchandise, shall be prima facie evidence of the foreign origin of such merchandise.

"(3) The fact that a vessel of any description is found, or discovered to have been, in the vicinity of any hovering vessel and under any circumstances indicating contact or communication therewith, whether by proceeding to or from such vessel, or by coming to in the vicinity of such vessel, or by delivering to or receiving from such vessel any merchandise, person, or communication, or by any other means effecting contact or communication therewith, shall be prima facie evidence that the vessel in question has visited such hovering vessel."

Sec. 208. Section 3002 of the Revised Statutes (U. S. C., title 19, sec. 483) is amended to read as follows:

"Sec. 3002. (a) All vessels, with the tackle, apparel, and furniture thereof, and all vehicles, animals, aircraft, and things with the tackle, harness, and equipment thereof, used in, or employed to aid in, or to facilitate by obtaining information or otherwise, the unloading, bringing in, importation, landing, removal, concealment, harboring, or subsequent transportation of any merchandise upon the same or otherwise unlawfully introduced, or attempted to be introduced into the United States, shall be seized and forfeited.

¹ See original.

"(b) Any member of the crew of any such vessel and any person who assists, finances, directs, or is otherwise concerned in the unloading, bringing in, importation, landing, removal, concealment, harboring, or subsequent transportation of any such merchandise exceeding \$100 in value, or into whose control or possession the same shall come without lawful excuse, shall, in addition to any other penalty, be liable to a penalty equal to the value of such goods, to be recovered in any court of competent jurisdiction, or to imprisonment for not more than five years, or both."

Sec. 209. Section 4197 of the Revised Statutes, as amended (U. S. C., title 46, sec. 91), is amended by striking out the second sentence and inserting in lieu thereof the following:

"If any vessel bound to a foreign port (other than a licensed yacht not engaging in any trade nor in any way violating the revenue laws of the United States) departs from any port or place in the United States without a clearance, or if the master delivers a false manifest, or does not answer truly the questions demanded of him, or, having received a clearance adds to the cargo of such vessel without having mentioned in the report outwards the intention to do so, or if the departure of the vessel is delayed beyond the second day after obtaining clearance without reporting the delay to the collector, the master or other person having the charge or command of such vessel shall be liable to a penalty of not more than \$1,000 nor less than \$500, or if the cargo consists in any part of narcotic drugs, or any spirits, wines, or other alcoholic liquors (sea stores excepted), a penalty of not more than \$5,000 nor less than \$1,000, for each offense, and the vessel shall be detained in any port of the United States until the said penalty is paid or secured."

Sec. 210. Section 1 of the Act approved June 7, 1918 (40 Stat. 602; U. S. C., title 46, sec. 288), is amended by adding at the end thereof the following new sentence: "When a number is awarded to a vessel under the provisions of this Act, a certificate of such award shall be issued by the collector, the said certificate to be at all times kept on board of such vessel and to constitute a document in lieu of enrollment or license."

TITLE III

Section 301. Section 434 of the Tariff Act of 1930 (U. S. C., Supp. VII, title 19, sec. 1434) is amended by inserting after the words "as indicated in the register" a comma and the following: "or document in lieu thereof,"

Sec. 302. Subsection (3) of section 441 of the Tariff Act of 1930 (U. S. C., Supp. VII, title 19, sec. 1441 (3)) is amended to read as follows:

"(3) Yachts of fifteen gross tons or under not permitted by law to carry merchandise or passengers for hire and not visiting any hovering vessel, nor having at any time or, if forfeited to the United States or to a foreign government, at any time after forfeiture, become liable to seizure and forfeiture for any violation of the laws of the United States."

Sec. 303. So much of section 585 of the Tariff Act of 1930 (U. S. C., Supp. VII, title 19, sec. 1585) as comes after the words "and the person in charge of such vehicle shall be liable to a fine of \$500,"

is amended to read as follows: "and any such vessel or vehicle shall be forfeited, and any officer of the customs may cause such vessel or vehicle to be arrested and brought back to the most convenient port of the United States."

Sec. 304. (a) Section 591 of the Tariff Act of 1930 (U. S. C., Supp. VII, title 19, sec. 1591) is amended by inserting after the words "or aids or procures the making of any such false statement as to any matter material thereto without reasonable cause to believe the truth of such statement," the following: "whether or not the United States shall or may be deprived of the lawful duties, or any portion thereof, accruing upon the merchandise, or any portion thereof, embraced or referred to in such invoice, declaration, affidavit, letter, paper, or statement:"

(b) Section 592 of the Tariff Act of 1930 (U. S. C., Supp. VII, title 19, sec. 1592) is amended by inserting after the words "or aids or procures the making of any such false statement as to any matter material thereto without reasonable cause to believe the truth of such statement," the following: "whether or not the United States shall or may be deprived of the lawful duties, or any portion thereof, accruing upon the merchandise, or any portion thereof, embraced or referred to in such invoice, declaration, affidavit, letter, paper, or statement:"

Sec. 305. (a) Section 619 of the Tariff Act of 1930 (U. S. C., Supp. VII, title 19, sec. 1619) is amended by inserting after the words "customs laws" wherever they appear in that section the words "or the navigation laws".

(b) Section 619 of the Tariff Act of 1930 (U. S. C., Supp. VII, title 19, sec. 1619) is amended by adding at the end thereof the following new sentence: "If any vessel, vehicle, merchandise, or baggage is forfeited to the United States, and is thereafter, in lieu of sale, destroyed under the customs or navigation laws or delivered to any governmental agency for official use, compensation of 25 per centum of the appraised value thereof may be awarded and paid by the Secretary of the Treasury under the provisions of this section, but not to exceed \$50,000 in any case."

Sec. 306. So much of section 621 of the Tariff Act of 1930 (U. S. C., Supp. VII, title 19, sec. 1621) as precedes the proviso is amended to read as follows: "No suit or action to recover any pecuniary penalty or forfeiture of property accruing under the customs laws shall be instituted unless such suit or action is commenced within five years after the time when the alleged offense was discovered:"

Sec. 307. Section 3068 of the Revised Statutes (U. S. C., title 18, sec. 122) is amended to read as follows:

"Sec. 3068. If the master of any vessel shall obstruct or hinder, or shall intentionally cause any obstruction or hindrance to any officer in lawfully going on board such vessel, for the purpose of carrying into effect any of the revenue or navigation laws of the United States, he shall for every such offense be liable to a penalty of not more than \$2,000 nor less than \$500."

Sec. 308. Section 2764 of the Revised Statutes (U. S. C., title 14, sec. 64) is amended to read as follows:

"Sec. 2764. (a) Coast Guard vessels shall be distinguished from other vessels by an ensign and pennant, of such design as the Presi-

dent shall prescribe, the same to be flown as circumstances require. If any vessel or boat, not employed in the service of the customs, shall, within the jurisdiction of the United States, without authority, carry or hoist any pennant or ensign prescribed for, or intended to resemble any pennant or ensign prescribed for, Coast Guard vessels, the master of the vessel so offending shall be liable to a fine of not less than \$1,000 and not more than \$5,000, or to imprisonment for not less than six months and not more than two years, or to both such fine and imprisonment.

"(b) For the purposes of this section, any place in the United States or within the customs waters of the United States as defined in the Anti-Smuggling Act, shall be deemed within the jurisdiction of the United States."

Sec. 309. Whosoever without authority shall use the uniform or badge of the Coast Guard, or the Customs Service, or of any foreign revenue service, or any uniform, clothing, or badge resembling the same, while engaged, or assisting, in any violation of any revenue law of the United States, shall be fined not more than \$500 and imprisoned not more than two years.

Sec. 310. Section 4189 of the Revised Statutes (U. S. C., title 46, sec. 60) is amended by striking out the words "not entitled to the benefit thereof".

Sec. 311. Section 4218 of the Revised Statutes, as amended (U. S. C., title 46, sec. 106), is amended by inserting after the words "except those of fifteen gross tons or under" the words "exempted by law,".

Sec. 312. Section 4336 of the Revised Statutes (U. S. C., title 46, sec. 277) is amended to read as follows:

"Sec. 4336. Any officer concerned in the collection of the revenue may at all times inspect the register or enrollment or license of any vessel or any document in lieu thereof; and if the master of any such vessel shall not exhibit the same, when required by such officer, he shall be liable to a penalty of \$100, unless the failure to do so is willful in which case he shall be liable to a penalty of \$1,000 and to a fine of not more than \$1,000 or imprisonment for not more than one year, or both."

Sec. 313. Section 4377 of the Revised Statutes (U. S. C., title 46, sec. 325) is amended to read as follows:

"Sec. 4377. Whenever any licensed vessel is transferred, in whole or in part, to any person who is not at the time of such transfer a citizen of and resident within the United States, or is employed in any other trade than that for which she is licensed, or is employed in any trade whereby the revenue of the United States is defrauded, or is found with a forged or altered license, or one granted for any other vessel, or with merchandise of foreign growth or manufacture (sea stores excepted), or any taxable domestic spirits, wines, or other alcoholic liquors, on which the duties or taxes have not been paid or secured to be paid, such vessel with her tackle, apparel and furniture, and the cargo, found on board her, shall be forfeited. But vessels which may be licensed for the mackerel fishery shall not incur such forfeiture by engaging in catching cod or fish of any other description whatever. For the purposes of this section, marks, labels, brands, or stamps, indicative of foreign origin, upon or accompanying merchandise or containers of merchandise found upon any vessel,

shall be prima facie evidence of the foreign origin of such merchandise.

Sec. 314. Section 7 of the Act approved June 19, 1896 (ch. 421, 24 Stat. 81; U. S. C., title 46, secs. 317, 319), as in part repealed by the Act of February 28, 1933 (47 Stat. 1349), is amended by striking out the period at the end of the first sentence and inserting a comma in lieu thereof, and by striking out the second sentence and inserting in lieu thereof the following: "and if she have on board any merchandise of foreign growth or manufacture (sea stores excepted), or any taxable domestic spirits, wines, or other alcoholic liquors, on which the duties or taxes have not been paid or secured to be paid, she shall, together with her tackle, apparel and furniture, and the lading found on board, be forfeited. Marks, labels, brands, or stamps, indicative of foreign origin, upon or accompanying merchandise or containers of merchandise found on board such vessel, shall be prima facie evidence of the foreign origin of such merchandise. But if the license shall have expired while the vessel was at sea, and there shall have been no opportunity to renew such license, then said fine or forfeiture shall not be incurred."

TITLE IV

SECTION 401. When used in this Act:

(a) The term "United States", when used in a geographical sense, includes all Territories and possessions of the United States, except the Philippine Islands, the Virgin Islands, the Canal Zone, American Samoa, and the island of Guam.

(b) The term "officer of the customs" means any officer of the Customs Service or any commissioned, warrant, or petty officer of the Coast Guard, or agent or other person authorized by law or by the Secretary of the Treasury, or appointed in writing by a collector, to perform the duties of an officer of the Customs Service.

(c) The term "customs waters" means, in the case of a foreign vessel subject to a treaty or other arrangement between a foreign government and the United States enabling or permitting the authorities of the United States to board, examine, search, seize, or otherwise to enforce upon such vessel upon the high seas the laws of the United States, the waters within such distance of the coast of the United States as the said authorities are or may be so enabled or permitted by such treaty or arrangement and, in the case of every other vessel, the waters within four leagues of the coast of the United States.

(d) The term "hovering vessel" means any vessel which is found or kept off the coast of the United States within or without the customs waters, if, from the history, conduct, character, or location of the vessel, it is reasonable to believe that such vessel is being used or may be used to introduce or promote or facilitate the introduction or attempted introduction of merchandise into the United States in violation of the laws respecting the revenue.

SEC. 402. If any clause, sentence, paragraph, or part of this Act, or the application thereof to any person, or circumstances, is held invalid, the application thereof to other persons, or circumstances, and the remainder of the Act, shall not be affected thereby.

SEC. 403. This Act may be cited as the "Anti-Smuggling Act".

Approved, August 5, 1935.

Regraded Unclassified

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Les Etats-Unis et la loi de 1935 sur la contrebande.

**Etude de la zone contiguë et des critères
de « raisonnabilité ».**

Extrait de la *Revue de Droit international et de Législation comparée*
(n° 2, 1939).

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LES ETATS-UNIS ET LA LOI DE 1935 SUR LA CONTREBANDE.

Etude de la zone contiguë et des critères de « raisonabilité »,

par Herbert W. BRIGGS,

Professeur de droit international à la Cornell-University.

La récente législation sur la contrebande ⁽¹⁾ aux Etats-Unis soulève diverses questions intéressantes pour le légiste international. Les difficultés que suscitait pour les autorités américaines la prévention de la contrebande sous l'ancienne loi de prohibition sont bien connues; cette loi aboutissait finalement à une série de conventions sur l'alcool. Après l'abrogation de la loi de prohibition, le 5 décembre 1933, et après la législation de la fabrication, de la vente et de l'importation de boissons alcoolisées, on s'attendait à ce que cessât le trafic de contrebande. En effet, les instructions données à la Garde des côtes des Etats-Unis, « la première ligne de défense contre les rum-runners », furent réduites d'une manière drastique pour l'année 1935. En fait, le Secrétaire de la Trésorerie estimait (le 8 mars 1935) que la perte causée au fisc américain par l'importation illégale de l'alcool aux Etats-Unis après l'abrogation se chiffrait à plus de 30 millions de dollars par an ⁽²⁾. Tandis que le nombre de bateaux de contrebande, rôdant près de la côte des Etats-Unis, était seulement de deux en mars 1934, en mars 1935 trente-neuf bateaux étrangers étaient « connus par la Garde des côtes pour être régulièrement engagés dans le trafic illicite de

⁽¹⁾ Du 3 août 1935 : 49 U. S. Statutes 317, C. 438; 49 U. S. Code Annotated, secs., 1701-1711. Trois brefs articles sur cette législation ont été publiés aux Etats-Unis : J. H. ROBERTSON dans 35 *Michigan Law Review* (1937), 1146-1157; P. C. JESSUP dans 31 *American Journal of International Law* (1937), 401-406; et S. J. SUDHANS, cité plus loin. Le texte complet en anglais de la loi de 1935 contre la contrebande se trouve dans 31 *A. J. I. L.* (1937), Supplément, pp. 183-197.

⁽²⁾ *Hearings on the Anti-Smuggling Act (H. R. 5196) before the Committee on Ways and Means of the House of Representatives, 74th Congress, 1st Session, Government Printing Office, Washington, 1935, P. 1.* Dans la suite cité de la manière suivante : « *Hearings* ».

l'alcool », et rôdant précisément en dehors de la limite des douze milles des *customs waters* (*). Le système employé par la contrebande d'alcool et la technique des contrebandiers ont été décrits par un fonctionnaire du General Counsel's Office du Département de la Trésorerie : « La plupart des bateaux destinés à la contrebande de l'alcool sont d'origine étrangère, car cela leur assure une certaine immunité. Ils sont facilement reconnaissables par la construction, pourvus de moteurs Diesel, de profil bas, en moyenne au-dessous de 125 tonnes, d'un type étroit « demi-chasseur », peints d'une sale couleur de guerre, on les remarque aisément de près, mais ils sont méconnaissables à quelque distance. Remplis d'alcool jusqu'à pleins-bord (ils sont généralement chargés de 12.000 à 15.000 gallons), ils travaillent entre les ports des eaux canadiennes et des bases sans cesse changées aux Indes occidentales ou en Amérique centrale. Ils font en moyenne des tournées d'un mois. En rôdant au large de nos côtes à chaque tournée, en dehors, précisément, de nos eaux territoriales, pendant des journées entières, et parfois des semaines, ils attendent une occasion d'échapper à la surveillance permanente des gardes-côtes, et glissent leur chargement à terre à la faveur d'une nuit brumeuse et sans lune. Parfois ils conduisent eux-mêmes leurs chargements à la côte, mais d'habitude des bateaux de contact viennent à leur rencontre, après entente préalable. Pratiquement tous les bateaux de contrebande ont des postes émetteurs et récepteurs de radio à ondes courtes. La plupart d'entre eux, bien qu'ils figurent nominalelement sur des registres étrangers, appartiennent à des Américains ou sont contrôlés par eux; leurs mouvements et leurs contacts sont dirigés de la côte par des stations clandestines de T. S. F. S'ils réussissent à mettre à terre leur chargement d'alcool, ils prennent alors un autre chargement. S'ils n'y réussissent pas, ils peuvent mener leur chargement d'alcool dans quelque port étranger, ou, ce qui est plus probable, le décharger sur un autre navire de contrebande, fraîchement approvisionné, ou sur un navire de dépôt plus important, qui se trouve plus éloigné et sert de base d'approvisionnement et de chargement. Il résulte du rapport que de vastes opérations syndicales se cachent derrière ces faits. La Trésorerie surveille

(*) *Hearings*, p. 1.

ces opérations de très près. Depuis plusieurs années la Garde des côtes a établi un dossier complet sur l'histoire, les chargements et les mouvements de chaque bateau repéré comme étant engagé dans la contrebande d'alcool. Elle l'a fait grâce aux informations recueillies par des consuls et des agents du Trésor à l'étranger, par l'interception des ondes de T. S. F., et par différentes autres méthodes d'espionnage » (*).

Mais avec une côte ayant plus de 10.000 milles d'étendue, il était pratiquement impossible d'empêcher que les bateaux rôdeurs ne violent la loi (*). En raison de la nature du problème en présence duquel il se trouvait, le Département de la Trésorerie prépara, vers la fin de l'année 1934, une nouvelle législation pour prévenir la contrebande. Le projet de loi, qui fut attentivement rédigé par le Département de la Trésorerie, fut voté par le Congrès et prit force de loi le 5 août 1935.

I

Dans le but d'empêcher radicalement l'importation illicite d'alcool aux États-Unis, venant de la haute mer, les dispositions de la loi sur la contrebande comprennent différents ordres de mesures :

1) Des mesures pour l'extension souple du contrôle douanier dans la zone de contrôle connue sous le nom de « customs-enfor-

(*) Stephen J. SPISGARS : « The History and Results of the Smuggling Act », *à Federal Bar Association Journal* (1937), pp. 33-4.

(*) Voici un exemple donné par le Secrétaire de la Trésorerie, Morgenthau, au Comité de la Chambre des Représentants :

« L'an dernier, nous en avons eu un exemple avec le *Mogul* à la côte méridionale de la Californie. Ils avaient l'audace de me télégraphier : « Si vous ne nous laissez pas entrer et si vous ne laissez pas passer cette matière par les douanes, nous la ferons entrer par n'importe quel moyen. » Cela constituait, à mon avis, un tel affront pour le Gouvernement des États-Unis que nous primes la décision d'envoyer onze bateaux des Gardes-côtes, hors de la limite des 12 milles, pour entourer ce navire; nous avons employé des avions de la flotte et mis ce bateau sous une surveillance permanente et finalement nous l'avons eu par la faim, alors qu'il était contraint de quitter les eaux et de repartir pour le Mexique. Mais ce fut une très vaste opération et nous n'avons pas l'équipement nécessaire pour agir de même chaque fois que nous apprenons la présence d'un « rummy » en dehors de la limite des 12 milles. Nous ne pouvons pas envoyer toute la flotte pour entourer ce bateau et nous poster en cet endroit. Dans ce cas particulier, cela a pris des mois entiers, mais nous avons allumé le bateau. » *Hearings*, p. 16.

vement areas » le superficie soumise au contrôle de la douane ». Ces mesures constituent la plus grande innovation de cette loi et l'examen de leur validité dans le cadre du droit international constituera la partie principale de cet article.

2) Des mesures rendant illégaux certains actes contraires aux intérêts des États-Unis, commis n'importe où et par n'importe qui. Par exemple, la section 5 (a) (*) de la loi soumet à la confiscation n'importe quel bateau équipé ou possédé « aux États-Unis ou ailleurs, dans le but d'être employé pour détourner les revenus ou pour faire la contrebande de n'importe quelle marchandise aux États-Unis », si ce navire est trouvé à quelque endroit soumis à notre contrôle douanier.

Cette mesure, qui fut appliquée au cas du *Reidun* (1), fonde la juridiction sur la théorie de la protection. Le *Harvard Research* écrit au sujet de ce principe de la juridiction : « A part quelques

(*) La sect. 5 est rédigée dans les termes suivants (49 Stat. 518; 19 U. S. C. A., sect. 1702) [Traduction française] :

« Sect. 5. a) Toutes les lois où un navire construit, acheté, équipé entièrement ou en partie, est tenu aux États-Unis ou ailleurs, dans le but d'être employé pour frauder le fisc ou pour faire la contrebande d'une marchandise quelconque aux États-Unis, ou pour passer en contrebande une marchandise dans le territoire d'un gouvernement étranger en violant les lois en vigueur dans ce territoire, si, dans la législation de ce gouvernement étranger, il est prévu une amende ou une confiscation pour la violation des lois fiscales des États-Unis, ou toutes les lois qu'un navire qui a été trouvé ou découvert comme ayant été employé, ou tenté d'être employé aux États-Unis dans un tel but, pour y aider de quelque manière que ce soit, ou toutes les lois qu'un navire des États-Unis qui a été trouvé ou découvert comme ayant été employé, ou tenté d'être employé, dans quelque endroit que ce soit, dans un tel but, pour y aider de quelque manière que ce soit, s'il n'a pas été antérieurement confisqué aux revenus de l'État, ce dit navire et son chargement doivent être saisis et confisqués ».

b) Tout navire qui est enregistré, possédé ou contrôlé aux États-Unis, et tout navire enregistré à l'étranger qui est, directement ou indirectement, la propriété en tout ou sous le contrôle d'un citoyen, d'une association constituée sous la loi de son état, possédé ou contrôlé aux États-Unis, doivent, dans le sens de cet article, être considérés comme navires des États-Unis.

c) Dans le sens de cet article, un navire qui est soumis aux poursuites prévues à l'article 381 de la loi des tarifs de 1930 tel qu'il est modifié, ou un navire qui est, ou un navire qui, n'importe quel endroit dans les eaux douanières américaines ou dans une « zone d'entassement » aura, ou aura été exposé à l'importation comme la loi l'exige, doivent être présumés *prima facie*, être avoir été ou essayer d'être employés pour frauder le fisc des États-Unis.

(1) Voir plus haut pp. 220 et suiv.

rares exceptions, les codes pénaux nationaux contiennent des dispositions basées sur la conception que les États sont compétents pour légiférer pour la protection de leur sécurité et de leur crédit contre des actes délictueux, même quand de tels actes sont commis par des étrangers en territoire étranger. La base d'une telle juridiction est plutôt la nature des intérêts violés que l'endroit où le fait a été commis ou la nationalité du délinquant » (*). La justification du principe de protection se trouve dans « l'insuffisance de la plupart des législations nationales en ce qui concerne la punition des contraventions commises dans le territoire contre la sécurité, l'intégrité et l'indépendance des États étrangers... En raison du fait qu'une majorité écrasante d'États a adopté une législation de ce genre, il est difficile de soutenir qu'une telle législation soit nécessairement un excès de pouvoir tel qu'il est reconnu par le droit international contemporain » (**). En général, les États-Unis ont basé leur législation sur les théories territoriales ou personnelles (nationales) de la compétence pénale, mais, dans de nombreux cas, comme ceux de la contrefaçon ou du faux témoignage devant les fonctionnaires consulaires et diplomatiques américains à l'étranger, les États-Unis ont appliqué la juridiction aux personnes qui sont en effet aux États-Unis pour des infractions commises antérieurement, « indépendamment du lieu de l'infraction ou de la nationalité du coupable » (13).

3) Un troisième ordre de mesures, que l'on trouve dans la loi contre la contrebande, est destiné à contribuer à l'élimination de cette législation protectrice que nous venons de discuter. La section 2 (a) (14) de cette loi punit toute personne (*inter alia*) possé-

(*) *Harvard Research in International Law, Jurisdiction with respect to Crime* (1935), p. 543.

(**) *Id.*, pp. 552, 556.

(13) *Cf. id.*, p. 544.

(14) La sect. 2 (a) est rédigée en ces termes (49 Stat. 518; 19 U. S. C. A., sect. 1702) [Traduction] :

« Sect. 2. a) Toute personne possédant en tout ou en partie n'importe quel navire des États-Unis, qui emploie, ou prend part à, ou permet l'emploi de ce navire dans le but de passer en contrebande, ou de tenter de faire passer en contrebande, ou qui aide à faire entrer en contrebande n'importe quelle marchandise sur le territoire d'un gouvernement étranger en violant les lois en vigueur dans cet État, si la législation de cet État prévoit une peine d'amende

dant en tout ou en partie n'importe quel navire des Etats-Unis, qui emploie ce navire dans le but de violer les lois sur la contrebande de n'importe quel gouvernement étranger; « si la législation de ce gouvernement étranger prévoit une amende ou la confiscation pour la violation des lois fiscales des Etats-Unis ».

La même invitation donnée aux gouvernements étrangers d'adopter une législation réciproque, punissant leurs nationaux en cas de violation de nos lois fiscales, se retrouve dans la section 3 (a) de la loi (1). La section 2 (a) de la loi est faite sur le modèle de la loi norvégienne du 25 juin 1926. Il paraît qu'aucune réponse n'a été faite, sous la forme d'une législation réciproque, par un gouvernement étranger depuis l'établissement de la loi américaine contre la contrebande (2).

1) Une autre disposition de la loi mérite un commentaire spécial. La section 3 (b) (3) stipule, notamment, que « dans le sens

ou de confiscation en cas de violation des lois des Etats-Unis relatives aux revenus des douanes, et tout citoyen des Etats-Unis, toute personne y habitant, tout associé résident aux Etats-Unis, qui contrôle ou participe effectivement au contrôle de ce navire, directement ou indirectement, soit sous forme de propriété, de parts collectives, soit de toute autre manière, et permet l'emploi du navire à un des buts susdits, et toute personne trouvée à bord ou dont la présence antérieure est découverte à bord du dit navire employé à un tel usage et qui participe ou contribue à la réalisation de ce but, peut être condamné à une amende qui ne peut dépasser 5,000 dollars ou à un emprisonnement qui ne peut être supérieur à deux ans, ou à toutes les deux peines simultanément, l'amende et l'emprisonnement.

2) Il faut être considéré comme infraction aux dispositions de cette section, le fait de louer ou de louer un navire, si le bailleur ou l'affrèteur a connaissance, ou si ce navire est loué ou affrété dans des circonstances qui doivent raisonnablement donner lieu de croire que le preneur ou la personne affrétant le navire se propose d'employer ce navire pour un des usages prévus ci-dessus sous la loi et si ce navire est, en réalité, pendant la durée de ce bail ou de cet affrètement, employé à cet usage.

3) Voir plus haut, p. 220. Bien que cela ne paraisse pas avoir été voulu internationalement par le législateur, cette section 3 a) rend possible la situation où un navire est équipé en Belgique pour frauder les lois douanières de Norvège la Norvège a une législation punissant ses nationaux en cas de violation des lois douanières des Etats-Unis; si ce navire belge est, dans l'avenir, trouvé aux Etats-Unis, il pourrait être, semble-t-il, saisi et confisqué aux Etats-Unis, si on prend à la lettre la sect. 3.

4) M. Green H. Hackworth, conseiller juridique au Département d'Etat, répondant à l'auteur, le 21 juin 1938: « Au sujet de votre enquête relative à la législation réciproque étrangère, je vous prie de noter que, pour autant que je suis informé, une action de caractère réciproque n'a pas été intentée par les gouvernements étrangers depuis l'adoption de cette législation. »

(1) Voir la notice de cette section 3b) plus haut, p. 220.

de cette section « tout navire enregistré à l'étranger, dont la propriété ou le contrôle bénéficiaire est américain, doit être considéré comme américain. Cette disposition, qui a cet effet malheureux de substituer la propriété ou le contrôle à l'enregistrement comme critère de la nationalité d'un navire (4), est visiblement basée sur le cas du *I'm Alone* (5). En l'espèce le *I'm Alone* « un navire britannique enregistré au Canada », avait été employé pendant plusieurs années à la contrebande de l'alcool aux Etats-Unis. Il avait été découvert en 1929 en dehors de la limite des trois milles, mais à une distance d'une heure de navigation de la côte des Etats-Unis, et coulé après une poursuite acharnée en haute mer. Les commissaires américains et canadiens, auxquels ce cas fut soumis pour arbitrage, estimèrent que la destruction voulue et avouée du navire canadien n'était pas justifiée dans les circonstances de la cause, et ils accordèrent 25,000 dollars pour cette destruction. Mais, en ce qui concerne le dédommagement pour la perte du navire et de la cargaison, les commissaires adoptèrent la thèse américaine, selon laquelle, bien que le navire fut d'enregistrement canadien et appartint à une société canadienne dont tous les actionnaires étaient des sujets britanniques d'origine canadienne, de facto la propriété et le contrôle bénéficiaire du navire appartenait effectivement à un groupe de citoyens américains. Aucune indemnité ne fut donc accordée pour la perte du navire et de la cargaison.

Le but de la section 3 (b) de la loi de 1935 sur la contrebande paraît être d'autoriser les tribunaux des Etats-Unis à considérer l'enregistrement d'un navire saisi pour contrebande uniquement comme preuve *prima facie* de la nationalité. Les avantages d'une telle disposition, limitée « aux buts de cette section » n'apparaissent pas clairement, car la section 3 (a) de la loi soumet à la confiscation aussi bien les navires étrangers que ceux des Etats-Unis. Ce

(4) Cfr. Robert Ransow, « The Test of the Nationality of a Merchant Vessel » (Columbia University Press, 1937), pour une défense bien documentée de l'enregistrement comme critère de la nationalité d'un navire.

(5) U. S. Department of State Arbitration Series, n° 2 (1-7), 1931-1935. Pour la critique du rapport des commissaires dans le cas du *I'm Alone*, G. G. Fitzmaurice, « The case of the *I'm Alone* », 17 British Yearbook of International Law (1936), 82-111.

qui est certain, c'est que cette stipulation (la section 3 (b) de la loi nationale ne peut avoir, sur le plan international, l'effet de priver un Etat étranger de tout droit légitime sur un navire jouant de son enregistrement.

Voyons à présent la plus grande innovation de la loi sur la contrebande — le « customs-enforcement area » (la superficie soumise au contrôle des douanes).

II

Depuis 1790, les Etats-Unis ont affirmé, par une législation nationale généralement connue sous le nom de « hovering laws », le droit d'exercer la juridiction sur les navires étrangers *en destination des Etats-Unis*, dans l'espace des douze milles marins de la côte, en vue de faire exécuter les règlements douaniers. Dans la loi tarifaire de 1922, le Congrès des Etats-Unis stipulait que tout navire, *qu'il soit destiné ou non pour les Etats-Unis*, pouvait être abordé dans l'espace de 4 lieues (12 milles marins) de la côte, et que les fonctionnaires des Etats-Unis pouvaient « faire usage de toute la force nécessaire pour contraindre le navire à la soumission, et s'il devenait apparent qu'une infraction ou une violation des lois des Etats-Unis avait été commise, pour laquelle ou en connaissance de laquelle ce navire... ou les marchandises... à bord... pouvait être exposé à la confiscation, ces fonctionnaires avaient le devoir de saisir ce navire et de l'arrêter, ou, en cas de fuite ou de tentative de fuite, de poursuivre et d'arrêter toute personne coupable d'une pareille infraction ou violation »⁽¹⁾.

Bien que l'on n'ait aucun souvenir d'une protestation formulée par un gouvernement étranger contre les anciens « hovering acts »⁽²⁾ des Etats-Unis, la saisie de navires de contrebande britanniques au delà de la limite des 3 milles pour violation de la loi de prohibition, provoquait, en 1922 et en 1923, des protestations diplomatiques de la part de l'Angleterre⁽³⁾. En conséquence, les Etats-Unis négociaient, entre le 22 mai 1924 et le 25 novembre 1930,

⁽¹⁾ Sec. 381, Act of Sept. 21, 1922: 42 Stat. 979.

⁽²⁾ U. S. Foreign Relations, 1875, Pt. I, p. 649; *idem*, 1912, p. 1287.

⁽³⁾ Ces protestations n'aboutirent à aucune conclusion.

des traités avec seize Etats⁽⁴⁾ pour prévenir la contrebande de boissons fortes. Ces seize Etats avaient convenu, par ces traités, qu'ils ne feraient aucune objection à l'abordage de leurs navires privés dans l'espace comprenant la distance d'une heure de navigation de la côte des Etats-Unis, pour s'assurer si les navires et les personnes à leur bord ne cherchaient pas à importer des boissons alcooliques aux Etats-Unis, en violation de la loi en vigueur dans cet Etat, et, si de justes motifs devaient exister, à la perquisition, à la saisie et à la mise en jugement de ces navires.

Les tribunaux américains ont cependant jugé⁽⁵⁾ que, comme matière de droit constitutionnel, ces traités ne conféraient aucune autorité aux fonctionnaires américains pour saisir des navires étrangers en dehors des 12 milles de la côte des Etats-Unis. Un des buts de la loi de 1935 contre la contrebande était de combler la lacune existant dans la juridiction entre la limite des 12 milles et la limite d'une heure de navigation et d'autoriser les fonctionnaires américains à saisir des navires — dits « treaty vessels »⁽⁶⁾, — conformément aux traités, en dehors des 12 milles. Cela devenait entièrement matière de droit interne, à laquelle aucun Etat n'ayant signé un tel traité ne pourrait se soustraire.

Toutefois, le but le plus important de la loi était d'en finir avec la contrebande organisée, faite par des navires étrangers, connus

⁽⁴⁾ Grande-Bretagne, Norvège, Danemark, Allemagne, Suède, Italie, Panama, Pays-Bas, Cuba, Espagne, France, Belgique, Grèce, Japon, Pologne et Chili. Pour le texte de l'article II du traité avec la Belgique, qui est le modèle de l'article II de tous les autres traités, *cf.* plus loin, p. 229.

⁽⁵⁾ Voir, d'une manière générale, Edwin D. DICKMAN : « Are the Liquor Treaties Self-Executing? », 20 *American Journal of International Law* (1926), 444-452. Déposant devant le Comité de la Chambre des Représentants, le Dr. Hessel Yntema déclarait à propos des « traités de liqueurs » : « Le traité ne confère aucun pouvoir à personne. Il se borne à dire que le Gouvernement britannique n'entend faire aucune objection, si certaines choses arrivent à des navires britanniques à une certaine distance », *cf.* *Hearings*, p. 13.

De même, C. M. Hester déclarait que « les traités ne sont pas de nature à s'exécuter d'eux-mêmes... Ainsi nos fonctionnaires des douanes ne peuvent pas imposer le respect de nos lois en dehors de la limite des 12 milles. Aussi un des buts de ce projet de loi est-il de combler cette lacune. Si la distance d'une heure de navigation est calculée à la rapidité du navire, et si le navire file, par exemple, à 25 milles par heure, il reste une brèche de 13 milles, et un des buts de ce projet est de fermer cette brèche. » *Id.*, p. 36.

⁽⁶⁾ Sous le terme « treaty vessels », on doit comprendre les navires appartenant aux Etats avec lesquels les Etats-Unis ont conclu des traités pour la prévention de la contrebande des boissons fortes.

comme étant au delà des eaux douanières américaines. C'est à ce que la loi sur la contrebande votée en 1935 présente un aspect nouveau.

Voici le texte du titre I, section I de la loi :

« *Sec. 401. — (a)* Whenever the President finds and declares that at any place or within any area on the high seas adjacent to but outside customs waters any vessel or vessels hover or are being kept off the coast of the United States and that, by virtue of the presence of any such vessel or vessels at such place or within such area, the unlawful introduction or removal into or from the United States of any merchandise or person is being or may be occasioned, promoted, or threatened, the place or area so found and declared shall constitute a customs-enforcement area for the purposes of this Act. Only such waters on the high seas shall be within a customs-enforcement area as the President finds and declares are in such proximity to such vessel or vessels that such unlawful introduction or removal of merchandise or persons may be carried on by or to or from such vessel or vessels. No customs-enforcement area shall include any waters more than one hundred nautical miles from the place or immediate area where the President declares such vessel or vessels are hovering or are being kept and, notwithstanding the foregoing provision, shall not include any waters more than fifty nautical miles outwards from the outer limit of customs waters. Whenever the President finds that, within any customs-enforcement area, the circumstances no longer exist which gave rise to the declaration of such area as a customs-enforcement area, he shall so declare, and thereafter, and until a further finding and declaration is made under this subsection with respect to waters within such area, no waters within such area shall constitute a part of such customs-enforcement area. The provisions of law applying to the high seas adjacent to customs waters of the United States shall be enforced in a customs-enforcement area upon any vessel, merchandise, or person found therein.

« *(b)* At any place within a customs-enforcement area the several officers of the customs may go on board of any vessel and examine

the vessel and any merchandise or person on board, and bring the same into port, and, subject to regulations of the Secretary of the Treasury, it shall be their duty to pursue and seize or arrest and otherwise enforce upon such vessel, merchandise, or person, the provisions of law which are made effective thereto in pursuance of subsection (a) in the same manner as such officers are or may be authorized or required to do in like case at any place in the United States by virtue of any law respecting the revenue; *Provided*, That nothing contained in this section or in any other provision of law respecting the revenue shall be construed to authorize or to require any officer of the United States to enforce any law thereof upon the high seas upon a foreign vessel in contravention of any treaty with a foreign government enabling or permitting the authorities of the United States to board, examine, search, seize, or otherwise to enforce upon such vessel upon the high seas the laws of the United States except as such authorities are or may otherwise be enabled or permitted under special arrangement with such foreign government; *Provided further*, That none of the provisions of this Act shall be construed to relieve the Secretary of Commerce of any authority, responsibility, or jurisdiction now vested in or imposed on that officer » (1).

Le Titre IV, Sect. 401 de l'Acte stipule, notamment, ce qui suit :

« *SECTION 401. — When used in this Act : ...*

« *(c)* The term « customs waters » means, in the case of a foreign vessel subject to a treaty or other arrangement between a foreign government and the United States enabling or permitting the authorities of the United States to board, examine, search, seize, or otherwise to enforce upon such vessel upon the high seas the laws of the United States, the waters within such distance of the coast of the United States as the said authorities are or may be so enabled or permitted by such treaty or arrangement and, in the case of every other vessel, the waters within four leagues of the coast of the United States.

(1) 49 U. S. Stat., 317; 49 U. S. C. A., sec. 1701.

« The term "hovering vessel" means any vessel which is found off the coast of the United States within or without the customs waters, if, from the history, conduct, character, or location of the vessel, it is reasonable to believe that such vessel is being used or may be used to introduce or promote or facilitate the introduction or attempted introduction of merchandise into the United States in violation of the laws respecting the revenue. »

« La loi des articles employés par la section 1, il est prévu que si le Président désigne certaines parties de la haute mer comme « customs-enforcement area » (superficie soumise au contrôle des douanes), les Etats-Unis affirment leur droit de saisir tout navire étranger dans cet espace et d'imposer les lois fiscales des Etats-Unis à tout navire, à toute marchandise ou à toute personne trouvée dans cet espace, de la même manière que ces lois sont imposées, dans des cas pareils, à tout autre endroit aux Etats-Unis.

On explique cette revendication de la juridiction sur des navires étrangers ainsi qu'on considère l'extension territoriale des « customs-enforcement areas ». La disposition de la section 1 (a), selon laquelle « un customs-enforcement area » ne doit comprendre plus de superficie maritime que 100 milles marins à partir de l'endroit où la superficie immédiate que désigne le Président et où un navire ou des navires existent et sont présents... » autorise à revendiquer le droit de juridiction dans un espace de 200 milles en dehors de la côte 100 milles dans toutes les directions sauf en ce qui concerne les navires qui existent (17), mais, continue la phrase, « en dehors de la présente disposition aucune superficie soumise au contrôle des douanes ne doit renfermer » plus de surface maritime que 50 milles marins en dehors de la limite extérieure des eaux douanières. Les eaux douanières sont définies par la loi comme étant les eaux dans l'espace de 4 lieues (12 milles marins) à partir de la côte des Etats-Unis « pour les Etats sans convention. Les navires appartenant à des Etats qui n'ont pas de traités avec les Etats-Unis, en ce qui concerne la contrebande des boissons fortes, peuvent être saisis, selon les termes de la loi contre les contrebandes, dans l'espace de 62 milles en dehors de la côte des Etats-Unis.

(17) *Stat. 1919*, 41 Stat. 1190, 771, 773.

La saisie de navires appartenant à des Etats qui ont conclu des traités avec les Etats-Unis au sujet de la contrebande de boissons fortes est limitée à une distance d'une heure de navigation de la côte, pour la mise à exécution des lois des Etats-Unis contre l'importation de boissons alcooliques, en raison de la clause inscrite à la section 1 (b) de la loi contre la contrebande : « que rien de ce qui est prévu à cette section ou dans une autre disposition de la loi fiscale ne doit être interprété dans le sens de permettre ou d'enjoindre à un fonctionnaire des Etats-Unis d'imposer le respect d'une de ces lois en haute mer à un navire étranger contrevenant à un traité conclu avec un gouvernement étranger, traité autorisant ou permettant aux autorités des Etats-Unis d'abord, d'examiner, de fouiller, de saisir, ou, de toute autre manière, d'imposer à ce navire en haute mer les lois des Etats-Unis, sauf si ces autorités étaient ou pourraient être habilitées à le faire en vertu d'arrangements spéciaux conclus avec ce gouvernement étranger... »

Cependant, sauf en ce qui concerne l'exécution des lois des Etats-Unis contre l'importation de boissons fortes, des navires des Etats qui ont un traité peuvent être, éventuellement, saisis en vertu de la loi même 80 ou 90 milles au delà de la côte des Etats-Unis, puisque les eaux douanières pour les Etats ayant un traité sont, selon la définition (18), les eaux dans une distance d'une heure de navigation à partir de la côte, et la loi admet qu'une « customs-enforcement area » puisse s'étendre à une distance maritime de 50 milles au delà de la limite extérieure des eaux douanières, ce qui peut faire 30 ou 40 milles dans le cas d'un navire rapide appartenant à un Etat ayant signé un traité.

En examinant le texte de l'article II des différents traités pour la prévention de la contrebande de boissons alcooliques (19), on

(18) Sec. 401 (c), ci-dessus.

(19) L'article II de la Convention du 9 décembre 1925 entre les Etats-Unis et la Belgique pour la prévention de la contrebande de boissons alcooliques (qui peut être considéré comme typique à cet égard) est rédigé comme suit (43 Stat. 2472) :

Art. II. (1) Sa Majesté le Roi des Belges accepte que la Belgique n'élève aucune objection à ce que les navires privés, sous pavillon belge, soient abordés, en dehors des limites des eaux territoriales, par les autorités des Etats-Unis, leurs territoires ou possessions, afin que des questions puissent être posées aux personnes se trouvant à bord et qu'un examen soit fait des papiers de bord, en

peut penser que, tout en consentant à ne pas faire d'objection à l'abordage, à la visite et à la saisie de ses navires dans l'espace d'une heure de navigation de la côte des Etats-Unis pour l'exécution des lois des Etats-Unis contre l'importation de boissons alcooliques, un gouvernement ayant un traité ne consent pas à la saisie en dehors de la limite des 3 milles pour infraction à d'autres lois des Etats-Unis. Mais on peut également estimer que, puisque les traités ne concernent que l'exécution des lois sur l'alcool, il n'y aurait aucune violation d'un traité si les Etats-Unis saisissaient des navires étrangers appartenant à un Etat ayant un traité, en dehors de la distance d'une heure de navigation de la côte, en raison d'une violation d'autres lois sur la contrebande. Le traité n'étant pas violé, la validité internationale d'une telle saisie dépendrait du droit international coutumier. Or, la clause de la section 1 (b) de la loi contre la contrebande n'exclut pas la possibilité de la saisie de navires appartenant à des Etats ayant un traité, dans l'espace de 50 milles au delà de la distance d'une heure de navigation à partir de la côte pour l'exécution des lois sur la contrebande, *excepté* celle contre l'importation de boissons alcooliques⁽²⁾.

que de vérifier si le navire ou les personnes à bord, s'efforcent d'importer ou ont importé des boissons alcooliques aux Etats-Unis, leurs territoires ou possessions contrairement aux lois qui y sont en vigueur. Lorsque de telles questions et examens donneront des causes raisonnables de suspicion, une visite du navire pourra être effectuée.

(2) Si l'existe une cause raisonnable de croire que le navire a commis ou est en train de commettre ou d'essayer de commettre une infraction aux lois des Etats-Unis, leurs territoires ou possessions prohibant l'importation des boissons alcooliques, le navire pourra être saisi et conduit dans un port des Etats-Unis, leurs territoires ou possessions, pour qu'il en soit décidé conformément aux autres lois.

(3) Les droits conférés par cet article ne seront pas exercés à une distance de la côte des Etats-Unis, leurs territoires ou possessions, supérieure à celle qui peut être traversée en une heure par le navire suspecté de tenter de commettre cette infraction. Dans ce cas, toutefois, on l'intention serait que le liquide fût transporté aux Etats-Unis, leurs territoires ou possessions par un navire autre que celui qui aurait été abordé ou visité, ce serait la vitesse de cet autre navire et non celle du navire abordé qui servirait à déterminer la distance à partir de la côte jusqu'à la zone d'application de cet article pourrait être exercé.

(4) Il faut, cependant, noter que le but particulier de la loi sur la contrebande est « l'arrêt de la contrebande d'alcool aux Etats-Unis » (*Hearings*, p. 10); et M. C. M. Henry, du Département de la Trésorerie, a affirmé, à plusieurs reprises, devant le Comité de la Chambre des Représentants que « la législation proposée

Manifestement, ces dispositions de la loi contre la contrebande, de 1935, rendent possible la prétention la plus large de juridiction sur des navires étrangers en haute mer, à l'époque actuelle. Le Congrès américain n'était pas indifférent aux dispositions du droit des gens dans ces matières, mais il avait été convaincu par le Département de la Trésorerie de ce que l'exécution de la loi ne serait pas en contradiction avec le droit des gens⁽²⁹⁾. La validité de la méthode envisagée par la loi sur la contrebande, au regard du droit international, doit être, à présent, examinée à la lumière des arguments formulés par le Département de la Trésorerie, et en relation avec la pratique internationale.

La justification de la loi, donnée par le Département de la Trésorerie, avait été basée, en résumé, sur la validité, en droit international, de la « hovering legislation », à condition qu'il y ait nécessité réelle et qu'une telle législation soit raisonnablement appliquée.

La validité de la zone contiguë.

La distinction entre une zone des eaux territoriales, dans laquelle toutes les lois de l'Etat de la côte peuvent être rendues applicables, et une zone contiguë au delà, dans laquelle un Etat peut exercer un droit de juridiction spéciale sur des navires privés étrangers, a été appliquée depuis longtemps au cours de l'histoire et est, à présent, trop bien établie pour nécessiter un long exposé. Il suffira de donner ici un résumé de la théorie et de la pratique contemporaines.

L. F. Oppenheim écrit à ce propos de la « hovering » législation : « Puisque le droit interne, de l'espèce indiquée précédemment, existe depuis plus de cent ans et n'a pas soulevé d'opposition de la

n'allait pas au delà de la limite d'une heure de navigation à l'égard des pays avec lesquels nous avons ces traités. » (*Ibid.*, p. 18.) L'attitude prise par M. Hester peut être interprétée comme indiquant que le Département de la Trésorerie n'a point l'intention d'imposer la loi aux « treaty vessels » au delà de la limite des traités, mais n'exclut nullement l'interprétation que j'ai donnée plus haut.

(29) Le projet de loi a été élaboré et amplement rédigé par le Département de la Trésorerie. Le Département d'Etat, tout en n'étant pas disposé à s'opposer sérieusement à ce projet, ne fut visiblement pas très enthousiaste des termes de la loi. Cfr. *Hearings*, pp. 10, 125, 128 ff., 156 ff., 165.

par d'autres Etats, on peut dire qu'il y a une règle coutumière du droit des gens qui permet aux Etats côtiers, dans l'intérêt de leur législation fiscale et sanitaire, d'imposer certaines obligations aux navires étrangers, en destination de leurs ports, et qui s'approchent, sans y être déjà, de leur bande territoriale maritime »⁽¹⁸⁾. Ce point de vue est partagé, après un examen très attentif de la législation douanière, par W. E. Masterson⁽¹⁹⁾, qui arrive à cette conclusion que la distinction entre la juridiction générale d'un Etat sur une bande étroite d'eau le long de sa côte et une juridiction spéciale plus large destinée à protéger ses intérêts fiscaux, a été soutenue depuis tant d'années par la plupart des Etats maritimes qu'elle finit par devenir une règle coutumière du droit des gens, permettant à un Etat côtier d'exercer la juridiction sur des navires étrangers au delà de ses eaux territoriales. De même Philippe C. Jessup, après avoir cité l'essai de justification du Chief Justice John Marshall dans le cas de *Church v. Hubbard* — selon lequel si de semblables prétentions à la juridiction « sont de nature à vexer et à troubler inutilement le commerce légal de l'étranger, les Etats étrangers résisteront à son exécution. Si elles sont raisonnables et nécessaires pour la protection des lois contre toute violation, ils s'y soumettront »⁽²⁰⁾ — conclut : « Il paraît cependant y avoir des preuves suffisantes d'acquiescement aux prétentions raisonnables pour justifier l'opinion selon laquelle une règle coutumière du droit des gens est née en vertu de laquelle ces actes peuvent

⁽¹⁸⁾ *Dispositions of International Law*, 3^e éd. (LACETERA), vol. 1 (1937), paragr. 190 (1).

⁽¹⁹⁾ W. E. Masterson, *Jurisdiction in Marginal Seas — With special reference to Somaliland* (1925), pp. 25-26.

⁽²⁰⁾ *Church v. Hubbard*, 1 F. & S. Supreme Court (1804), 2 Cranch 187. Marshall mentionne : « Dans certains ports et sur diverses côtes, on tend à admettre un territoire plus ou moins étendu dans lequel s'exerce la surveillance du gouvernement. Ainsi dans la Manche, où une très grande partie du trafic destiné à un venant de tout le monde d'Europe passe à travers une mer très étroite, la saisie de navires, lorsqu'ils coupent une tentative de trafic illicite, doit nécessairement être soumise à des limites très étroites; mais, au contraire, le long de la côte de l'Amérique du Sud, rarement fréquentée par des navires, sauf pour le commerce illicite, la routine du gouvernement pourrait être un peu plus étendue. Les navires étrangers ne soumettent à de pareils règlements pour autant qu'ils soient raisonnables et pleinement nécessaires pour protéger le monopole du commerce national que réclament toutes les nations ayant des possessions adjacentes. Si ce droit des gens n'est pas étendu, son application serait contestée. »

être considérés comme légaux s'ils sont établis être raisonnables »⁽²¹⁾. L'opinion, très sérieusement documentée, de Gilbert Gidel dans son traité monumental « Le Droit international public de la mer », est que « si quelques Etats très rares refusent de reconnaître une zone contiguë douanière, l'attitude observée par la presque unanimité des Etats permet de considérer la zone contiguë en matière douanière et fiscale comme une institution du droit commun international ». Il ajoute : « Il convient de remarquer en effet que les « hovering laws » ont fait très rarement l'objet de discussion par les voies diplomatiques. La validité des « hovering laws » n'a été mise en question que vers le milieu du XIX^e siècle par la Grande-Bretagne. On ne relève que peu d'exemples de protestations même à partir de ce moment »⁽²²⁾.

Il faut noter que plusieurs projets de conventions, qui sont le résultat de recherches entreprises en commun par des groupes de distingués légistes internationaux, recommandent de distinguer entre une juridiction générale sur les eaux territoriales et des juridictions spéciales sur une zone contiguë. L'article 20 du projet de la « Harvard Research » sur le droit des eaux territoriales (1929) prévoit⁽²³⁾ : « La navigation en haute mer est libre pour tous les Etats. Toutefois, sur la haute mer proche de la mer « marginale », un Etat peut prendre telles mesures qui lui paraîtraient nécessaires pour l'exécution dans son territoire ou dans ses eaux territoriales, de ses lois ou règlements en matière de douane, de navigation, d'hygiène ou de police, ou pour sa protection immédiate. » La « Harvard Research » ajoute ce commentaire⁽²⁴⁾ : « Un examen de la pratique des Etats révèle des exemples fréquents d'actes d'autorité, accomplis par l'Etat limitrophe en dehors de la limite des 3 milles. Il pourrait paraître impossible d'adopter la limite des 3 milles pour l'étendue de la mer « marginale » et de rejeter la possibilité d'exercer quelque autorité sur la haute mer adjacente. Pareille idée ne concorderait pas avec la coutume internationale actuelle et elle ne constituerait pas une modification désirable du

⁽²¹⁾ P. C. Jessup, *The Law of Territorial Waters and Maritime Jurisdiction* (1927), pp. 92, 95; cf. également, ch. II.

⁽²²⁾ Vol. 3, pp. 439, 446.

⁽²³⁾ P. 333.

⁽²⁴⁾ *Id.*, p. 251.

droit actuel. Il paraît, toutefois, possible d'adopter un des points de vue suivants: a) La mer « marginale » doit être définie de telle façon qu'elle couvre cette superficie maximum dans laquelle un État côtier peut exercer l'autorité de n'importe quelle façon, et cette définition peut être jointe au refus de toute espèce de pouvoir en dehors de la limite de la mer territoriale; ou b) la mer territoriale doit être définie comme étant une bande sur laquelle l'État côtier exerce la pleine autorité, mais il peut être admis que l'État côtier puisse accomplir certains actes d'autorité sur la haute mer adjacente, au dehors de cette limite... Pour les raisons qui ont été indiquées antérieurement, c'est ce dernier point de vue qu'adopte la « Harvard Research »:

De même, l'Institut de Droit international dans sa session de 1928 à Stockholm, rejeta, par 34 voix contre 8, un amendement aux termes duquel la juridiction spéciale sur une zone contiguë devait être basée sur des conventions particulières, et adopta, par 32 voix contre 8, la disposition suivante: « Art. 12. — Dans une zone supplémentaire contiguë à la mer territoriale, l'État côtier peut prendre les mesures nécessaires à sa sécurité, au respect de sa neutralité, à la police sanitaire, douanière, et de la pêche. Il est compétent pour connaître, dans cette zone supplémentaire, des infractions aux lois et règlements concernant ces matières. L'étendue de la zone supplémentaire ne peut dépasser 9 milles marins. »⁽¹⁷⁾ De la même manière, le projet de convention amendé par Schücking, de Magalhaes et Wickersham pour le Comité des experts pour la codification progressive du droit international distinguait entre une limite de souveraineté de 3 milles et une zone contiguë, en décidant dans son article 2: « Au delà de la zone de souveraineté, les États peuvent exercer leurs attributions administratives fondées sur des raisons douanières ou de nécessité vitale. Y sont inclus les droits de juridiction nécessaires à leur protection »⁽¹⁸⁾. Que l'on consulte également l'article 12 du projet 12 de l'Institut américain de droit international: « Les républiques américaines

⁽¹⁷⁾ *Annuaire de l'Institut de Droit International*, 1928, pp. 667, 669, 738. La zone contiguë de 9 milles fut donnée à la limite des 3 milles, faisant ainsi, au total, 12 milles.

⁽¹⁸⁾ *Soc. des Nat.*, C. 70, M. 30, 1927, V. 1, pp. 29-75, p. 72. Réimprimé en suppl. spécial à 20. 4. 1. 1, L. (1926), p. 141.

peuvent étendre leur juridiction au delà de la mer territoriale, parallèlement à cette mer, sur une distance supplémentaire des... milles marins, pour des raisons de sécurité et dans le but d'assurer l'observation des règlements sanitaires et douaniers »⁽¹⁹⁾.

Enfin, la « Base de discussion » n° 5, présentée par le Comité préparatoire à la Conférence pour la codification du Droit international tenue à La Haye en 1930 s'exprime en ces termes: « Sur la haute mer contiguë aux eaux territoriales, l'État riverain peut prendre les mesures de contrôle nécessaires en vue d'éviter sur son territoire ou dans ses eaux territoriales soit les contraventions à ses lois de police douanière ou sanitaire, soit les atteintes à sa sûreté de la part de navires étrangers. Ces mesures de contrôle ne pourront être prises au delà de 12 milles marins à compter de la côte »⁽²⁰⁾.

À la Conférence de La Haye de 1930, les États ne parvinrent pas à s'entendre sur l'étendue de la mer territoriale ou sur la question de la zone contiguë. Cependant, le Prof. Jesse S. Reeves, conseiller technique de la délégation américaine à La Haye, fait à ce propos les commentaires suivants: « Les États qui n'exprimaient pas le désir d'une zone contiguë pour l'un ou l'autre motif ne formaient qu'une petite minorité. Les raisons pour lesquelles il fallait reconnaître semblable zone, et la mesure de la juridiction à exercer par l'État riverain dans cette zone, soulevaient beaucoup de divergences. Exécution de la législation douanière, surveillance et même contrôle des pêcheries, et sécurité de l'État riverain, ce furent là les motifs principaux invoqués en faveur de la théorie de la zone contiguë: on insistait sur l'un ou l'autre de ces motifs d'après la politique ou le point de vue adopté par un État particulier »⁽²¹⁾.

Une étude des réponses adressées par les gouvernements au Comité préparatoire⁽²²⁾ et des procès-verbaux de la Confé-

⁽¹⁹⁾ Supplém. spécial au *American Journal of International Law*, 1926, vol. 20, p. 324.

⁽²⁰⁾ *Soc. des Nat.*, C. 74, M. 39, 1929, V. 2, p. 54.

⁽²¹⁾ REEVES, « The codification of the Law of Territorial Waters », 24 *American Journal of International Law* (1930), 486, 494.

⁽²²⁾ Société des Nations. Conférence pour la codification du droit international. Bases de discussion, t. II, Eaux territoriales, C. 74, M. 39, 1929, V. 2, pp. 104-193.

rence⁽¹⁾ révèle que les États suivants étaient disposés, soit avant soit pendant la Conférence, soit avec des réserves soit sans réserves, à accepter en principe, ou n'étaient pas opposés en principe à admettre une zone contiguë pour diverses raisons : Allemagne, États-Unis d'Amérique, Belgique, Chili, Cuba, Danemark, Egypte, Espagne, Estonie, Finlande, France, Grèce, Irlande, Italie, Japon, Lettonie, Pays-Bas, Norvège, Perse, Pologne, Portugal, Roumanie, Turquie, Uruguay, U. R. S. S., Yougoslavie.

Il faut noter que les points de vue exprimés par les gouvernements à cette Conférence en ce qui concerne la validité, la nature et l'extension d'une zone contiguë, ne correspondaient pas toujours avec l'opinion qu'ils avaient exprimée avant la Conférence, ni avec leur pratique antérieure⁽²⁾. Par exemple, la Grande-Bretagne qui avait été longtemps un champion de la « hovering legislation », dans sa réponse au Comité préparatoire et à la Conférence s'opposait à la zone contiguë, mais réitérait sa bonne volonté de négocier des conventions spéciales sur l'extension de la limite des 3 milles⁽³⁾. L'Union Sud-Africaine était d'accord avec la Grande-Bretagne, à part qu'elle déclarait, dans sa réponse au Comité préparatoire, que les États peuvent exercer, en dehors de la limite des 3 milles, « les droits spéciaux qui peuvent être convenus ou qui ont toujours été reconnus »⁽⁴⁾. L'Irlande reconnaissait « que dans certains pays et pour certains buts existent les nécessités du genre de celles exposées dans les Bases de discussion n° 5 »⁽⁵⁾. La Roumanie, l'Uruguay et la Yougoslavie « réservaient leur attitude » dans la question de la zone contiguë, ce qui indique, peut-être, qu'ils n'étaient pas opposés en principe à pareille zone. Le Japon, tout en étant, en principe, nettement opposé à l'idée d'une zone contiguë, manifestait à la Conférence

⁽¹⁾ *Id.* Minutes of the Second Committee (Territorial Waters), C. 351 (b), M. 115 (b), 1930, V. 16, particulièrement pp. 123-125.

⁽²⁾ En ce qui concerne la surveillance de la pratique des États, avec référence à la prétention à la juridiction dans une zone contiguë, voir Gidel, *op. cit.*, vol. 3, livre I, chapitre II, spécialement pp. 93-124; Jesser, *op. cit.*, chap. II; Masterson, *op. cit.*

⁽³⁾ *S. d. N.*, C. 74, M. 30, 1929, V. 2, p. 162; *S. d. N.*, C. 351 (b), M. 115 (b), 1930, V. 16, p. 126. Cfr. également note 60, plus bas.

⁽⁴⁾ *S. d. N.*, C. 74, M. 30, 1929, V. 2, p. 106. Les italiques ne figurent pas dans l'original.

⁽⁵⁾ *S. d. N.*, C. 351 (b), M. 115 (b), 1930, V. 16, p. 124.

la bonne volonté de discuter la question d'une zone contiguë pour « des pouvoirs douaniers et sanitaires, pour autant qu'ils soient reconnus par les usages existants »⁽¹⁾.

En conclusion, on peut citer Gidel : « Des indications fournies plus haut (livre premier, chapitre deuxième, II, 4^e) sur les dispositions législatives ou réglementaires des différents États, concernant l'étendue des espaces maritimes adjacents soumis à leur compétence, il résulte que seuls la Grande-Bretagne et l'Empire britannique, le Japon, les Pays-Bas, le Portugal, la Yougoslavie et la Colombie n'ont pas institué de zones spéciales douanières, les trois dernières de ces Puissances semblant d'ailleurs ne pas avoir procédé à cette institution pour des raisons de fait, sans être hostiles en principe à la reconnaissance de telles zones »⁽²⁾.

La théorie de la « Tolérance ».

Si l'on peut considérer que l'existence dans la pratique et, par conséquent, la validité comme coutume légale de la zone contiguë sont, en droit international, bien établies, on est moins d'accord en ce qui concerne l'étendue territoriale et la nature juridique exacte de cette zone. Considérons tout d'abord ce dernier point : Les publicistes qui ont défendu l'exercice de la juridiction dans une zone contiguë peuvent être classés comme suit : 1) ceux qui soutiennent que cet exercice de la juridiction est un droit selon le droit international, et 2) ceux qui le défendent en se fondant sur la théorie de la « tolérance ». En ce qui concerne la défense de la compétence dans la zone contiguë comme *droit* basé sur le droit international coutumier, que l'on consulte les opinions, citées précédemment⁽³⁾ de Oppenheim, Masterson, Jessup, Gidel, the « Harvard Research », l'Institut de Droit international, « The American Institute of International Law », et le Comité préparatoire de la Première Conférence de codification de La Haye, dans les « Bases » n° 5.

La théorie de « tolérance », défendue par Sir Travers Twiss,

⁽¹⁾ *Id.*, p. 126.

⁽²⁾ Gidel, *op. cit.*, vol. 3, p. 442.

⁽³⁾ V. ci-dessus, pp. 232 et suiv.

Lord Phillimore, W. E. Hall et Sir Charles Russell, entre autres⁽¹¹⁾, est définie par Twiss de la manière que voici :

« C'est uniquement sous le convert du *Comité des Nations* en matière commerciale et sanitaire qu'un Etat peut se permettre de renforcer un point de sa loi civile concernant les navires étrangers, qui n'ont pas encore atteint les limites de sa compétence maritime. Un Etat exerce en matière commerciale pour la protection de ses ressources maritimes, et en matière sanitaire pour la protection de la vie de sa population une compétence tolérée, dont l'extension ne paraît pas être bornée par une limite bien marquée. De plus, elle ne peut être exercée dans les eaux juridictionnelles de quelque autre Etat, mais uniquement sur ses propres navires et sur ces navires étrangers seuls qui ont un chargement pour un de ses ports. Si, donc, les lois fiscales ou les règlements de quarantaine d'un Etat sont de nature à être vexatoires ou à troubler inutilement le commerce étranger, les nations étrangères s'opposent à leur application. Mais si, par contre, ils sont raisonnables et répondent à une nécessité réelle, ils seront admis *ob reciprocam utilitatem*. Dans les cas ordinaires, lorsqu'un navire marchand a été saisi en pleine mer par un croiseur d'une puissance étrangère, alors que ce navire approchait de la côte de cette puissance avec l'intention de faire un commerce illicite, la nation dont le pavillon commercial a été violé, offensé par la saisie, renonce, en pratique, à exercer ses droits à des réparations, son navire étant considéré comme ayant agi avec *mala fides* et, par conséquent, comme ayant forfait, et perdant tout droit à la protection de sa nation »⁽¹²⁾.

Cette théorie de « tolérance » est critiquée par Oppenheim⁽¹³⁾, Piggott⁽¹⁴⁾ et C. C. Hyde. En se référant à l'argumentation développée par Sir Charles Russell dans le « *Behring Fur Seal Arbitration* » selon laquelle il est entendu que les lois « hovering » admettent « qu'en principe aucun Etat civilisé n'encouragera les infractions aux lois d'un autre Etat, lois dont la justice est recon-

⁽¹¹⁾ Cf. l'opinion du Dr. Yntema, dans *Hearings*, pp. 111 et suiv.

⁽¹²⁾ Twiss, *The Law of Nations* (1861), p. 263.

⁽¹³⁾ *Loc. cit.*, sec. 100-111.

⁽¹⁴⁾ *Nationaire* (1907), Part II, pp. 40-52.

que » et qu'il « permet très volontiers qu'un Etat étranger prenne des mesures raisonnables de prévention, dans une distance limitée en dehors des eaux territoriales... », le professeur Hyde écrit : « Il (Sir Charles) nie, cependant, que de tels actes rencontrent, toujours, dans tous les cas, l'assentiment général, notamment si on a tenté de faire exécuter des lois à une distance considérable de la terre ferme; il nie que dans un tel cas on puisse les défendre comme exercice d'un droit à l'encontre d'un Etat qui élèverait des objections. En admettant l'acquiescement des Etats à l'exercice d'une telle juridiction, même d'un champ très limité, l'éminent avocat pose le fondement le meilleur pour l'existence de ce droit dans le droit international »⁽¹⁵⁾. Dans le même sens, le professeur Hessel E. Yntema, qui prépare pour le Département de la Trésorerie des Etats-Unis, une « *Opinion on the Validity of Hovering Legislation in International Law* »⁽¹⁶⁾, écrit que la théorie de la « tolérance » « reste le droit toléré ou permis par l'acquiescement général qui, ainsi que le juge pertinemment Hyde, constitue la meilleure base pour l'existence du droit. » Il ajoute : « L'exercice du droit est conditionné par le caractère raisonnable attribué aux mesures employées, et à l'étendue soumise à la surveillance; une faute honnête dans l'exécution n'est pas une excuse; si, dans un cas particulier, la saisie est estimée injustifiée, elle peut donner lieu à une protestation de la part du gouvernement étranger; si cette protestation s'avère fondée, elle doit donner lieu à réparation. Il est difficile de résumer toutes ces observations en un simple mot. La théorie de « tolérance », en décrivant cet ensemble d'idées comme un droit toléré, si elle souligne bien ses caractéristiques qualifiées, est, cependant, défectueuse en ce qu'elle suggère que l'existence du droit dépend de l'absence de protestation. Si l'assentiment est la preuve irréfutable du droit, cela ne veut pas dire que le droit puisse disparaître devant une protestation non fondée ». A quoi on peut ajouter les mots de Gidel, qui, après avoir cité Marshall dans *Church v. Hubbard*⁽¹⁷⁾, écrit : « Cette manière de voir qui

⁽¹⁵⁾ C. C. Hyde, *International Law chiefly as interpreted and applied by the United States*, p. 420.

⁽¹⁶⁾ Imprimé dans *Hearings*, pp. 82-124, 121.

⁽¹⁷⁾ Voir plus haut, p. 236.

s'accorde particulièrement avec la conception que la zone contiguë douanière repose essentiellement sur la courtoisie internationale et sur l'assentiment effectif ou présumé des autres Etats, doit être retenue également dans la conception qui est la nôtre, que la zone contiguë douanière procède d'un véritable droit fondé sur la coutume internationale » ⁽¹⁾.

Le critère de « raisonabilité ».

En ce qui concerne l'étendue territoriale de la zone contiguë, les Etats-Unis, depuis 1790 jusqu'avant la promulgation de la loi contre la contrebande de 1935, ont estimé qu'une distance de 12 milles marins convenait parfaitement pour l'application de leur législation douanière ⁽²⁾. Bien que la Grande-Bretagne, avant 1876, ait établi des zones douanières allant de 2 lieues jusque 100 lieues (300 milles marins) ⁽³⁾, peu d'Etats entreprirent d'exercer la juri-

⁽¹⁾ Gidel, *op. cit.*, vol. III, p. 449.

⁽²⁾ Durant les négociations relatives au premier traité sur les liqueurs — celui avec la Grande-Bretagne en 1922-1923 — les Etats-Unis proposèrent la reconnaissance, dans le traité et par les deux Etats, d'une zone douanière de 12 milles. Cette proposition fut rejetée par la Grande-Bretagne pour la raison que le fait d'établir une limite en milles pourrait être de nature à affaiblir le principe de la limite des 3 milles des eaux territoriales. La Grande-Bretagne proposait, éventuellement, la formule de « la distance parcourue en une heure de navigation » (limitée exclusivement pour les liqueurs alcooliques) au lieu de la zone définitive de 12 milles. Au surplus, aucun droit réciproque ne lui fut conféré par le traité. Le *quid pro quo* britannique permettait aux navires britanniques d'avoir des liqueurs à bord, sous scellés, lorsqu'ils étaient dans les ports des Etats-Unis. Cf. Cook, v. U. S., 288 U. S. (1933), 102. Cf. également Jessup, *op. cit.*, ch. VI; MASTERS, *op. cit.*, pp. 326-352.

En se référant à ce *quid pro quo*, il est intéressant de noter que le Département de la Trésorerie des Etats-Unis établit qu'un des objectifs de la sect. 1 de la loi sur la contrebande était « de pourvoir à une base effective pour les négociations à entreprendre avec les gouvernements étrangers en ce qui concerne l'extension ou le renouvellement des traités sur les liqueurs. Les traités sur les liqueurs étaient inspirés par la loi de prohibition qui refusait aux bateaux étrangers le droit de transporter des liqueurs à bord dans la limite de nos 3 milles. Dans les traités sur les liqueurs, les bateaux des parties contractantes avaient l'autorisation de transporter des liqueurs comme provision de bateau dans une zone territoriale. Avec l'abrogation de cette loi, il se peut que les puissances étrangères contractantes ne désirent plus continuer à appliquer les traités sur les liqueurs depuis qu'à leur point de vue les raisons sur lesquelles ces traités étaient fondés n'existent plus. » *Hearings*, p. 150.

⁽³⁾ Loi de Georges III, c. CXMI (12 juillet 1805). Voir MASTERS, *op. cit.*, pp. 327 et suiv. Il faut noter qu'en dépit de l'opposition britannique à l'idée d'une

diction douanière sur les bateaux étrangers à plus de 12 milles marins de la côte. Les réponses des gouvernements au Comité préparatoire de la Conférence de La Haye (1930) pour la Codification amenèrent le Comité à adopter la limite des 12 milles dans ses « Bases » n° 5, d'après l'accord de l'opinion ⁽⁴⁾. La zone de 12 milles était également recommandée par l'Institut de Droit international en 1928 ⁽⁵⁾, et est celle préconisée par Gidel ⁽⁶⁾.

La « Harvard Research », d'autre part, commente en ces termes l'article 20 de son projet de Droit des Eaux territoriales ⁽⁷⁾ : « La distinction entre la mer marginale (de trois milles) qui est soumise à la souveraineté de l'Etat côtier, et la haute mer, est définitivement admise. Au cours des siècles passés, maints Etats ont pris

zone contiguë à la Conférence de Codification (La Haye, 1930), la législation britannique actuelle permet la saisie, sous certaines conditions, des bateaux étrangers au delà de la limite des 3 milles. Un examen des sect. 179, 180 et 200 de la « British Customs Consolidation Act » de 1876 (39 et 40 Vict. C. 36) a convaincu l'auteur de ce que le Dr. Yntema a raison lorsqu'il écrit « que la Customs Consolidation Act de 1876, qui constitue l'actuelle législation de la Grande-Bretagne, et qui a été déclarée conforme aux principes du droit international, contient au moins trois sections suggestives, qui impliquent le droit, toutefois rarement exercé au cours des dernières années en raison de l'absence de contrebande, d'étendre le contrôle douanier à une distance indéfinie en haute mer au delà de la limite des 3 milles aux bateaux et aux sujets étrangers, droit limité dans le cas de la section 179 par la précision que ces navires ou ces personnes devraient être trouvés ou découverts au cours du même voyage, si le bateau appartient en partie à des sujets britanniques ou si la moitié du personnel à bord est britannique, dans une limite de 3 lieues de la côte du Royaume-Uni, ou, en d'autres cas, à une lieue, et, dans le cas de la section 180, limité aux bateaux appartenant même en partie à des sujets britanniques ou dont la moitié du personnel à bord est britannique. Voici un précédent particulièrement frappant, confirmé par une législation deux fois séculaire, qui souligne ce principe qu'un Etat est en droit, selon ses besoins, de prendre toutes mesures de répression contre la fraude dans ses eaux territoriales, en dehors de la limite de la mer côtière. Le résultat significatif de la longue expérience des lois britanniques de contrôle est que les dispositions actuellement en vigueur s'appliquent apparemment, sans limitation de distance, aux bateaux atteints par ces dispositions qui auront été trouvés dans la distance indiquée de la côte britannique, peu importe l'endroit où le délit dont ils sont coupables a été commis ou la place de la saisie. » *Hearings*, p. 89. Cf. également Jessup, *op. cit.*, p. 79.

⁽⁴⁾ Voir plus haut, p. 235.

⁽⁵⁾ Voir plus haut, p. 234.

⁽⁶⁾ *Op. cit.*, p. 449. Gidel est désireux « d'assouplir la règle des 12 milles par la règle alternative de la distance susceptible d'être parcourue en une heure par le navire suspect (navire magasin ou navire de contact). » *Id.*, pp. 449-450.

⁽⁷⁾ *Harvard Research* (1929), p. 334. Cf. le texte de l'article 20 cité plus haut.

certaines mesures en haute mer hors des limites de la mer marginale. Cet article voudrait restreindre l'adoption de semblables mesures à cette partie de la haute mer adjacente à la mer marginale. Il semble inutile de tenter de fixer ce qui est adjacent en nombre de milles, puisque les pouvoirs définis dans cet article ne dépendent pas de la souveraineté sur les lieux et ne sont pas limités à une étendue géographique qui pourrait être déterminée. La distance à partir de laquelle ces pouvoirs peuvent être exercés est déterminée non en « mileage », mais par la nécessité de l'Etat côtier et selon la relation entre les intérêts du territoire de cet Etat et les actes posés en haute mer. Le fait de reconnaître que de telles mesures sont correctes lorsqu'on peut démontrer leur nécessité pour l'exécution des lois fiscales, des lois sur la navigation, des lois sanitaires ou de police, ou pour une raison de sécurité immédiate, ce fait modifie, en un certain point, les principes généraux de la liberté de navigation en haute mer, mais cette modification est ici extrêmement limitée, et elle paraît tout à fait raisonnable en raison du fait qu'elle représente une très longue pratique suivie par beaucoup d'Etats. »

Le raisonnement de la « Harvard Research » coïncide, dans une large mesure, avec les vues des auteurs de la loi sur la contrebande. M. C. M. Hester, du Département de la Trésorerie des Etats-Unis, qui participa largement à la rédaction de la loi, fait remarquer au Comité de la Chambre des Représentants lors de l'examen du projet : « L'écrasante majorité des nations civilisées a étendu sa compétence pour certains buts de sécurité jusqu'à une distance variable mais considérable au delà des eaux territoriales. Cette zone plus lointaine est parfois désignée comme « eaux juridictionnelles ». On a contesté ici que bien que les limites des eaux territoriales soient fixées dans la pratique internationale (et ceci est, comme on l'a précédemment indiqué, cependant douteux) il n'y ait pas de règles fixes dans les us et coutumes des nations qui prescrivent les limites des eaux juridictionnelles si ce n'est la règle de raisonnable, et qu'une nation puisse exercer son autorité en haute mer sur l'étendue et la distance qu'elle juge raisonnable et nécessaire pour se protéger, elle-même et ses nationaux, contre tout sévice. Ce principe, qui

doit inspirer la loi aujourd'hui en discussion, a été établi dans le droit américain par le Chief Justice Marshall dans « Church v. Hubbard » (2 Cranch 187 (1804))^(*).

La loi sur la contrebande et le critère de raisonnable.

Lorsqu'on part de l'hypothèse que le critère de raisonnable est le principe de base internationale, en relation avec la « hovering » législation, et lorsqu'on se rappelle l'avis de Sir Francis Piggott^(**) selon lequel « les lois hovering sont, en principe, valables et autorisées par le droit des gens aussi longtemps que les conditions essentielles sont remplies : que les dispositions de la loi et que la distance dans laquelle les opérations en haute mer sont autorisées soient raisonnables », la raisonnable particulière de la loi américaine de 1935 sur la contrebande peut se défendre par les arguments suivants :

1. La « customs-enforcement area » peut être proclamée seulement si les navires « hovering » sont en effet à un endroit qui ne soit pas situé à plus de 50 milles en dehors de la limite extrême des eaux douanières^(***). La loi entend par « hovering vessel » (titre IV, sect. 401 (d)) « tout navire qui est trouvé ou rôdant sur la côte des Etats-Unis, en deça ou au delà des eaux douanières si, d'après les antécédents, l'attitude, le caractère ou la position du navire, on peut raisonnablement estimer que ce bateau est utilisé pour introduire, favoriser ou faciliter l'introduction ou tenter d'introduire des marchandises aux Etats-Unis en contravention avec les lois relatives aux revenus. »

2. De plus, le commerce légitime est protégé par les dispositions de la loi qui autorisent l'examen des navires et, « si quelque marchandise douteuse destinée aux Etats-Unis est trouvée à bord, ou si sa présence antérieure est constatée à bord », la confiscation des bateaux *manifestement suspects*. Donc, selon les dispositions de la section 206 de la loi, les navires qui présentent des indices particulièrement suspects de contrebande sont : 1) les « hovering vessels », tels qu'ils sont définis plus haut; 2) tout navire qui omet

(*) *Hearings*, p. 62.

(**) Piggott, *Nationality*, Pt. II, p. 51 (Londres, 1907), cité dans *Hearings*, p. 115.

(***) Voir sect. 1 (a) et section 401 (c) de la loi, ci-dessus, pp. 226, 227.

d'allumer ses feux conformément à la loi, à tout endroit quelconque dans les eaux douanières ou dans une customs-enforcement area; ou 3) tout navire qui se refuse à se laisser examiner et devient sujet de poursuites; 4) ou tout navire qui est soumis par un traité à l'examen (¹).

(¹) Section 206 de la loi sur la contrebande, rédigée comme suit (Traduction):

Sect. 206. — La Section 387 de la loi tarifaire de 1930 (U. S. C., Suppl. VII, titre 19, sec. 587) est amendée comme suit [Traduction]:

— Sect. 387. — *Examen des navires hovering.*

« Tout navire hovering ou tout bateau qui omet (sauf pour des raisons inévitables) de tenir allumés ses feux comme la loi le requiert, et ce à n'importe quel endroit soit dans les eaux douanières, soit dans l'espace soumis au contrôle douanier établi par la loi contre la contrebande, ou est soumis à quelque poursuite par application de la section 581 de la loi, ou tout navire étranger auquel la sous-section (b) de la dite section 581 est applicable et qui peut, en vertu d'un arrangement spécial avec un gouvernement étranger, être examiné hors des eaux douanières des Etats-Unis, peut être, en tout temps, abordé et examiné par n'importe quel officier des douanes, et les dispositions de la dite section 581 seront appliquées, aussi bien en dehors que dans son district, et lorsque cet officier est autorisé à examiner ce bateau, il peut également interroger sous serment son capitaine à propos de sa cargaison et du voyage du bateau, et faire conduire le bateau dans le port des Etats-Unis convenant le mieux pour l'examen de la cargaison, et si le maître (capitaine) de ce bateau refuse d'accéder aux ordres réguliers donnés par cet officier ou ne répond pas, honnêtement et sincèrement, aux questions qui lui sont posées au sujet du bateau, de son chargement, ou de son voyage, le capitaine peut être condamné à une amende qui ne peut être supérieure à 5,000 dollars ni inférieure à 500 dollars. Si, dans l'examen de ce bateau ou de sa cargaison par un officier des douanes, on devrait trouver à bord une marchandise suspecte destinée aux Etats-Unis, ou si la présence antérieure d'une telle marchandise est constatée à bord, ce bateau et sa cargaison seront saisis et confisqués. Toute marchandise (à l'exception des vires pour la traversée) dont l'importation est prohibée aux Etats-Unis, ou qui consiste en présumés, vins, ou autres boissons alcooliques, qui serait trouvée ou découverte à bord, devra être présumée comme étant destinée aux Etats-Unis.

« Si un bateau chargé d'une cargaison, découvert en n'importe quel endroit des Etats-Unis soit dans les eaux douanières, soit dans la zone soumise au contrôle douanier établie selon la loi sur la contrebande, est ensuite retrouvé dans un port de décharge, tout ou partie de sa cargaison, si le capitaine est incapable de rendre compte du port ou de l'endroit où la cargaison ou une partie de celle-ci, consistant dans des marchandises dont l'importation aux Etats-Unis est prohibée, ou en spiritueux, vins ou autres boissons alcooliques, a été régulièrement débarquée, ce bateau sera saisi et confisqué.

« Et Aucune des dispositions de cette section ne pourra être interprétée de manière à exposer à la confiscation un bateau qui se rend, de bonne foi, d'un port étranger à un autre port étranger, et qui poursuit sa course, comme le veut et le temps le lui permettent. »

La Section 204 de la loi sur la contrebande est rédigée, partiellement, de la manière suivante [Traduction]:

3. Par cette méthode de baser l'établissement d'une customs-enforcement area sur l'évidence des faits existants, en établissant cette zone uniquement aux endroits où des bateaux hovering particulièrement suspects se trouvent en ce moment, le critère de raisonabilité est établi avant que la zone soumise au contrôle douanier soit établie. Si, au lieu de suivre cette méthode prévue dans la loi, les États-Unis devaient, par leur droit interne, étendre la zone de leurs eaux douanières à une étendue uniforme

Sect. 203 (a). « La section 381 de la loi tarifaire de 1930 (U. S. C. Suppl. VII, titre 19, sec. 1581) est amendée comme suit :

« Sect. 381. — *Abordage de navires.*

« a) Tout officier des douanes peut à tout moment se rendre à bord d'un bateau ou d'un véhicule en tout endroit des États-Unis, ou dans les eaux douanières, ou, s'il y est autorisé, dans les zones soumises au contrôle douanier établies par la loi sur la contrebande, ou en tout autre endroit autorisé, au dehors de comme dans son district, aux fins d'examiner les papiers et autres documents, d'examiner, d'inspecter et de faire des recherches aussi bien sur le bateau que dans n'importe quelle partie de celui-ci, aussi bien que toute personne, toute maille, tout paquet ou toute cargaison à bord, et, pour ce faire, il peut appeler et faire stopper ce bateau ou véhicule et faire usage de tous les moyens nécessaires pour contraindre ce bateau à obéir...

« d) Tout navire ou véhicule qui, à un endroit autorisé, est requis de stopper par un officier de la douane, ou qui est requis de stopper par un signal fait par un bateau au service de la douane, portant l'insigne et le pennant prescrits pour ces bateaux par le Président, ce bateau doit s'arrêter, faute de quoi, s'il lui est requis de s'arrêter, il pourra être l'objet de poursuites et le capitaine du bâtiment sera passible d'une amende qui n'excèdera pas 5,000 dollars et ne sera pas inférieure à 1,000 dollars. Il est du devoir des différents officiers des douanes de poursuivre tout vaisseau qui serait passible de poursuites, de l'aborder et de l'examiner, et d'examiner toute personne ou toute marchandise à bord, au dehors aussi bien que dans leurs districts respectifs, et à tout endroit en haute mer, ou, si la chose est permise par les autorités étrangères intéressées, partout où le bateau peut être poursuivi aussi bien qu'à tout autre endroit autorisé.

« e) Si lors de l'examen du bateau ou du véhicule, il appert qu'une infraction à la législation des États-Unis a été commise ou est en train de se commettre rendant ainsi le bateau ou le véhicule, ainsi que la marchandise ou une partie de celle-ci, qui est à bord ou qui a été introduite aux États-Unis par ce bateau ou ce véhicule, passible de confiscation ou d'une amende, ce bateau ou ce véhicule, ou ces marchandises seront saisis et toute personne responsable d'une telle infraction sera arrêtée.

« f) Les différents officiers des douanes devront saisir et s'assurer tout bateau, véhicule ou marchandises qui seraient passibles de saisie, et arrêter les personnes qui seraient passibles d'arrestation, en vertu d'une loi quelconque sur les revenus, aussi bien hors de leur district que dans leur district respectif, et user de tous les moyens nécessaires pour les arrêter et les saisir.

« g) Tout navire, dans ou hors des eaux douanières, dont la marchandise est ou a été illégalement introduite aux États-Unis, avec le concours de quelque bateau appartenant aux États-Unis, ou qui appartiendrait, ou serait contrôlé ou géré en commun avec ce dit navire, le dit navire sera considéré comme

de 20 ou de 30 milles de la côte, les nations étrangères, déclarant M. Hester devant le Comité de la Chambre, pourraient objecter que cette façon de faire violerait le droit international, car elle ne correspondrait pas au critère de « raisonabilité ». Au lieu d'étendre notre contrôle douanier sur une largeur uniforme, continuait-il, nous l'étendons uniquement à la zone dans laquelle nous trouvons des contrebandiers, car nous pensons que cela ne soulèvera pas d'objection de la part d'un pays étranger, et que cela sera conforme au critère de raisonabilité sous l'empire du droit international » (1). De même, le professeur Hessel Yntema, dont l'opinion est de poids, écrit (2) que dans la loi contre la contrebande « il n'y a aucune prise de contrôle sur une surface bien délimitée en haute mer, mais uniquement une extension nécessaire, à un moment donné et à un endroit donné, du contrôle de la contrebande le long des côtes des Etats-Unis. » De plus, il affirme que les dispositions de la loi « assurent au commerce maritime légitime la meilleure protection possible contre les interventions du contrôle effectif de la contrebande; permettent à ces mesures d'être exécutées d'une manière correspondant exactement aux besoins variables de l'administration; précisent l'autorité des officiers des Etats-Unis en ce domaine; renforcent les obligations contractées par les Etats-Unis dans les traités; et respectent les considérations qui ont conduit à l'adoption de « la distance parcourue en une heure de navigation par le bateau » dans ce qu'on a appelé les « liquor treaties », notamment l'appréhension exprimée par certaines puissances et selon laquelle une disposition pour l'application des mesures contre la contrebande

(1) Voir l'emploi des Etats-Unis et comme tombant, de ce fait, sous les dispositions de cette section.

(2) Les dispositions de cette section ne seront pas interprétées dans le sens d'autoriser ou d'obliger à un officier des Etats-Unis d'appliquer les lois des Etats-Unis en haute mer à un bateau étranger en contravention avec les traités d'autorisation d'importation autorisant ou permettant aux autorités des Etats-Unis d'importer, d'examiner, de saisir ou d'appliquer au bateau en haute mer les lois des Etats-Unis tant « ces autorités y sont ou peuvent y être autorisées par un arrangement spécial conclu avec le gouvernement étranger... »

(3) *Hearings*, pp. 25-7. Soumis, naturellement, à une limitation, dans l'espace, de 20 milles hors des eaux douanières.

(4) *Id.* p. 26.

sur une distance bien définie en haute mer pourrait constituer un précédent indésirable ».

4. Pour ce qui concerne les réclamations portant sur un bateau saisi dans la zone soumise au contrôle douanier, la déclaration du Président aux termes de laquelle un bateau est « hovering » avec une intention illégale hors des eaux douanières des Etats-Unis est une déclaration purement *prima facie* rendant seulement possible de juger la cause du plaignant devant un tribunal. Ainsi que le déclarait M. Hester devant le Comité de la Chambre (1) : « Le plaignant se présentera devant le tribunal et contestera que le gouvernement ait le droit de saisir le bateau à l'endroit indiqué, car, en droit international, le gouvernement n'avait pas le droit d'établir ce contrôle douanier à l'endroit où le bateau a été saisi... Alors le tribunal aura à dire si, oui ou non, en saisissant le bateau, le gouvernement a étendu son contrôle douanier au delà d'une distance raisonnable. »

5. Enfin, naturellement, le caractère raisonnable de la législation hovering, le caractère raisonnable d'une saisie d'un bateau étranger ou de la procédure employée pourra faire l'objet d'une discussion diplomatique entre l'Etat du plaignant et les Etats-Unis. Il est bon, toutefois, de rappeler ces mots du professeur Yntema (2) : « l'exercice du droit est conditionné par le caractère raisonnable des mesures employées et de l'étendue de la zone soumise à la surveillance; une faute honnête dans l'exécution n'est pas une excuse; si, dans un cas particulier, la saisie est estimée injustifiée, elle peut donner lieu à une protestation de la part du gouvernement étranger; si cette protestation s'avère fondée, elle doit donner lieu à réparation... La théorie de « tolérance », en décrivant cet ensemble d'idées comme un droit toléré, si elle souligne bien ses caractéristiques qualifiées, est, cependant, défectueuse en ce qu'elle suggère que l'existence du droit dépend de l'absence de protestation. Si l'assentiment est la preuve irréfutable du droit, cela ne signifie pas que le droit puisse disparaître devant une protestation non fondée. »

Pour les raisons exposées ci-dessus, l'auteur de cet article estime

(1) *Id.*, p. 159.

(2) *Id.*, p. 121.

que l'idée de la zone soumise au contrôle douanier telle qu'elle est prévue dans la loi contre la contrebande n'est pas contraire au droit international.

Application de la loi contre la contrebande (17).

L'auteur estime, en outre, que l'application et l'administration de la loi contre la contrebande au cours d'une période de trois années ont également été conformes au critère de « raisonabilité ». Jusqu'à présent cinq zones soumises au contrôle douanier ont été proclamées conformément à la loi, dans la période comprise entre le 7 août et le 27 décembre 1935. Depuis 1935, aucune zone nouvelle n'a été annoncée. Le nombre de bateaux contrebandiers, qui était de 39, avant que l'Acte n'ait force de loi, est tombé à zéro en juillet 1936. Depuis lors, le nombre des bateaux hovering, signalés ou reconnus de la côte des Etats-Unis, a été le suivant: en août 1936, un; de septembre à décembre 1936, aucun; en décembre 1936, deux; de janvier à avril 1937, un; avril 1937, trois; mai 1937, deux; juin-août 1937, un; août 1937, deux; septembre 1937, un; octobre 1937 à avril 1938, aucun; avril 1938, deux (18). Il n'a pas été jugé nécessaire, cependant, de proclamer de nouvelles zones de contrôle douanier depuis 1935. Citons ici M. Oliphant, Conseiller général du Département de la Trésorerie (19): « C'est l'opinion du Département de la Trésorerie que la loi contre la contrebande a, au mieux, atteint le but qu'elle recherchait. Elle a été extrêmement efficace en supprimant la contrebande exercée au moyen de bateaux hovering et de bateaux de contact au large de nos côtes. S'il y a eu des infractions sporadiques de la part de bateaux hovering depuis les environs de juillet 1936, on ne découvre aucun signe d'un retour aux opérations de contrebande entreprise sur une grande échelle, et l'organisa-

(17) Pour la préparation de cette section sur l'application de la loi, l'auteur a été heureux de pouvoir compter sur le généreux concours de l'honorable Herman Oliphant, conseiller général, Département de la Trésorerie des Etats-Unis, et de l'honorable Green H. Backworth, conseiller juridique, Département d'Etat des Etats-Unis, qui lui ont permis de recueillir des informations supplémentaires qu'il n'aurait pu obtenir autrement.

(18) Informations fournies à l'auteur par le Département de la Trésorerie des Etats-Unis.

(19) Lettre de M. Oliphant à l'auteur en date du 23 mai 1938.

tion de groupements pour la fraude de liqueurs, si actifs dans leurs opérations au large des côtes avant la mise en application de la loi, paraît ne plus exister. A mon avis, la loi contre la contrebande a joué un rôle important dans la suppression quasi totale du problème de la contrebande des liqueurs. Le total des revenus annuels perdus à cause de la contrebande des liqueurs qui était estimé à 30 millions de dollars, même après l'abrogation (20), est virtuellement descendu à zéro depuis l'établissement de la loi contre la contrebande. L'exécution plus effective et plus coordonnée du travail du Département de la Trésorerie durant les trois dernières années a été, indubitablement, un grand facteur dans ce résultat; mais on ne peut contester l'effet produit par la loi elle-même contre la contrebande. L'effet le plus important a peut-être été d'ordre psychologique; la crainte produite par la loi dans les cercles organisés pour la contrebande de l'alcool.

En ce qui concerne le nombre de navires saisis, M. Oliphant écrit: « Suivant les rapports disponibles au Service, il y a eu seize navires saisis par application de la loi contre la contrebande. Douze de ceux-ci furent confisqués, trois furent relâchés, et un cas est encore pendant. » Les seize saisies eurent lieu entre le 7 septembre 1935 et le 25 avril 1936, date de la dernière saisie opérée conformément à la loi. De ces seize navires, onze étaient américains et consistaient, en grande partie, en petits bâtiments de contact, de 7 à 13 tonnes. Aucun problème de droit international ne fut soulevé au cours de la saisie de ces onze navires américains.

Quant aux cinq autres bâtiments saisis par application de la loi contre la contrebande, trois d'entre eux étaient britanniques, un norvégien et un mexicain. Parmi ceux-ci, un navire britannique, le *Popocatapelt* fut saisi à environ 10,2 milles marins de la côte. Un autre navire britannique, le *Pronto*, fut saisi à 7,5 milles de la côte, et le troisième navire anglais, le *Miserinko*, fut saisi à environ 36 milles de la côte. Le navire norvégien *Reidun* et le navire mexicain, *Molokai* furent, tous deux, saisis au port.

Dans le cas du *Reidun*, et dans ce cas seulement, la décision prise par les tribunaux a été publiée. Les renseignements fournis

(20) Abrogation de l'amendement de prohibition.

par le Département de la Trésorerie nous font connaître la procédure suivie et les décisions finales prises pour les bateaux dans les quatre autres cas :

Mexicain *M/V Molokai*. — Saisi au port de Los Angeles, Californie, le 18 mars 1936, pour le motif que ce bateau était soupçonné d'avoir pour dessein de se livrer à la contrebande de l'alcool aux États-Unis. Citation déposée au Tribunal du District des États-Unis pour le District de la Californie méridionale, Division centrale, tendant à saisir le bateau pour infraction à la section 3 de la loi contre la contrebande. La procédure de saisie fut suspendue sous l'ordre de l'Attorney Général, et le bateau rendu au plaignant.

Britannique *O S Popocatepetl*. — Saisi le 7 septembre 1935 à environ 102 milles de la côte. Citation du 24 février 1937 au tribunal de district des États-Unis pour le district de New-Jersey à Camden, N. J., pour infraction à la section 3 (a) de la loi contre la contrebande, et à différentes dispositions de la loi tarifaire de 1930. La procédure en saisie est encore pendante.

Britannique *O S Pronto*. — Saisi le 20 janvier 1936 à environ 75 milles de la côte, avec l'alcool provenant du *Reidun*. Bateau immédiatement confisqué par un agent des douanes à Charleston, S. C., pour violation des sections 3 (a) et 7 de la loi contre la contrebande et différentes sections de la loi tarifaire de 1930.

Britannique *O S Miserinko* (*). — Saisi le 14 mars 1936, à 36 milles environ de la côte. Procès-verbal du 13 avril 1936 au tribunal de district des États-Unis pour le district sud du Maine, à Portland, Maine, pour violation des sections 1 (a) et 3 de la loi contre la contrebande. Bateau confisqué le 17 avril 1936.

Le cas du *Reidun* (**) doit être examiné avec plus de détails. Le *Reidun*, un bateau norvégien, quittait Anvers en 1935, avec un chargement d'environ 120.000 litres d'alcool belge à débarquer dans des ports canadiens. En novembre, il arrivait à environ 120 milles au sud de Saint-Pierre-Miquelon, et à cet endroit, en haute mer, à un point « éloigné de plus de 500 milles et d'un peu moins de 600 milles de la côte des États-Unis et de toute customs-

(*) Pour une discussion de ce cas, voir plus loin.

(**) (1936, District Court, Eastern District N. Y.) 14 Federal Supplement, 771, 773 et 774. Cf. également *Stinson*, loc. cit., p. 52.

enforcement area ou des eaux douanières », il livrait « de grandes quantités d'alcool belge » à des « rum-runners » britanniques (dont le bateau à essence britannique *Pronto*) qui l'y attendaient suivant ce qui avait été précédemment concerté. Ces navires rapides « spread fanwise » (s'éparpillèrent en éventail), vers différents endroits de la côte des États-Unis, depuis le Maine jusqu'en Floride, d'ancuns firent progressivement entrer, en contrebande, de l'alcool aux États-Unis, d'autres se firent saisir. Le *Pronto* fut saisi et confisqué en janvier 1936 (*). Deux mois plus tard, en mars 1936, le *Reidun* arrivait à New-York, avec un chargement régulier de sucre de Cuba. Il fut saisi dans le port de New-York et poursuivi, *inter alia*, pour violation de la section 205 de la loi sur la contrebande prohibant le déchargement illégal de boissons alcooliques (**) « à n'importe quel endroit en haute mer adjacente aux eaux douanières des États-Unis ».

(*) Voir plus haut.

(**) Sect. 205. — « La sect. 386 de la loi tarifaire de 1930 (U. S. C., Suppl. VII, titre 19, sec. 1386) est amendée comme suit [Traduction] :

« Sect. 386. — Déchargement ou transbordement illicite.

« a) Le capitaine d'un navire venant d'un port ou d'une place étrangère qui autorise le déchargement de marchandises (y compris les vivres de mer) de ce bateau, à n'importe quel moment après son arrivée dans les eaux douanières et avant que ce bateau n'ait atteint l'endroit désigné pour le déchargement de ces marchandises, et avant qu'il n'ait reçu la permission de décharger, sera passible d'une amende égale à deux fois la valeur de la marchandise, et qui ne peut être inférieure à 1.000 dollars; ce bateau, sa cargaison et la marchandise ainsi débarquée seront saisis et confisqués.

« b) Le propriétaire d'un bateau venant d'un port ou d'une place étrangère qui permet qu'une marchandise (y compris les vivres de mer) dont l'importation est prohibée aux États-Unis, ou qui consiste en spiritueux, vins ou autres liqueurs alcoolisés, soit, à n'importe quel endroit en haute mer adjacente aux eaux douanières des États-Unis, transbordée, ou placée ou reçue par quelque autre bateau quel qu'il soit, alors qu'il connaît, ou alors que les circonstances lui font connaître que le but est de rendre possible l'introduction, ou la tentative d'introduction de cette marchandise ou d'une partie de cette marchandise aux États-Unis, en violation de la loi, sera passible d'une amende égale à deux fois la valeur de la marchandise, et qui ne sera pas inférieure à 1.000 dollars, et le bateau d'où la marchandise a été ainsi déchargée, sa cargaison et ces marchandises seront saisis et confisqués.

« c) Le capitaine d'un bateau venant d'un port ou d'une place étrangère qui permet qu'une marchandise (y compris les vivres de mer) destinée aux États-Unis, et dont l'importation aux États-Unis est prohibée, ou qui consiste en spiritueux, vins ou autres boissons alcoolisées, soit déchargée sans permis de déchargement, à quelque endroit en haute mer adjacente aux eaux douanières des États-Unis, transbordée, placée ou reçue à bord de quelque bateau des États-Unis ou de tout autre bateau, propriété d'une personne citoyen des

Dans un jugement provisionnel, le tribunal refusa d'admettre la validité de la saisie faite à New-York pour le motif allégué, et déclara qu'il était « irraisonnable » de croire que le mot « adjacent » dans la section 205 pouvait inclure une distance au delà des eaux douanières qui soit plus grande que la distance permise dans la *customs-enforcement area*, soit 50 milles au delà des eaux douanières. De plus, disait le tribunal, « on peut observer que le Statut contre la contrebande, pour autant que cela concerne les nations ayant un traité, n'a nullement pour intention d'étendre les droits juridictionnels des Etats-Unis au delà de ce qui a été admis par les nations ayant un traité »; l'endroit du transbordement indiqué au procès-verbal n'est pas dans la limite d'une heure de navigation stipulée au traité du 24 mai 1924 entre les Etats-Unis et la Norvège, puisqu'« il n'est pas contesté que le *Reidun* ait une vitesse de 500 milles à l'heure ».

Bien que la décision du tribunal paraisse fondée, la référence

Etats-Unis ou domiciliée aux Etats-Unis, ou d'une société constituée aux Etats-Unis, sera passible d'une amende égale à deux fois la valeur de la marchandise, mais qui ne sera pas inférieure à 1.000 dollars, et le bateau dont la marchandise a été déchargée et cette marchandise seront saisis et confisqués.

« d) Si quelque marchandise (y compris les vivres) déchargée contrairement aux dispositions de cette section, est transbordée, placée ou reçue à bord d'un autre bateau, le capitaine du bateau sur lequel la marchandise est ainsi chargée, ainsi que toute personne concourant ou participant à ce chargement seront passibles d'une amende égale au double de la valeur de la marchandise, et qui ne sera pas inférieure à 1.000 dollars, et ce bateau, sa cargaison et cette marchandise seront saisis et confisqués.

« e) Toute personne qui, aux Etats-Unis ou en deça d'une lieue de la côte des Etats-Unis, est engagée pour, ou aide ou participe au déchargement ou au transbordement d'une marchandise, en conséquence de quoi le bateau est soumis à la confiscation selon les dispositions de cette section, cette personne, en plus des autres pénalités prévues par la loi, sera passible d'une peine d'emprisonnement ne dépassant pas deux années.

« f) Lorsqu'une partie de la cargaison ou des vivres d'un bateau a été déchargée ou transbordée par suite d'un accident, d'une tempête ou pour un autre motif rendant la chose nécessaire, le capitaine de ce bateau et le capitaine du bateau sur lequel cette cargaison ou ces vivres ont été transbordés notifieront, aussitôt que possible, cet acte au Collector du district où le déchargement ou le transbordement ont eu lieu, ou au Collector du district où les bateaux arriveront et aborderont en premier lieu, en lui fournissant la preuve que ces opérations ont été rendues nécessaires par accident, tempête ou toute autre cause de force majeure, et si le Collector reconnaît que le déchargement ou le transbordement est réellement dû à un accident, à une tempête ou à une autre nécessité, les peines définies dans cette section ne seront pas appliquées. »

faite au traité avec la Norvège semble être à côté de la question. Le tribunal a oublié de distinguer entre la saisie en haute mer au delà de la limite du traité, ce qui serait illégal, et une saisie faite à New-York pour une violation antérieure à la législation des Etats-Unis qui eut de l'effet extraterritorialement. En effet, dans une seconde décision provisionnelle, en ce qui concerne l'affaire du *Reidun* ⁽¹⁾, cette distinction fut soulevée par le tribunal. Dans ce cas subséquent, le Gouvernement des Etats-Unis avait modifié ses conclusions et invoquait une nouvelle cause de confiscation. La confiscation était basée sur la violation de la section 3 de la loi contre la contrebande ⁽²⁾, et, notamment, sur le fait que le *Reidun*, à Anvers, avait été équipé, en partie, dans le but d'être employé pour frauder le fisc américain et avait été employé dans ce dessein. La saisie, à New-York, fut provisoirement admise par le tribunal, tandis que le jugement était tenu en suspens, sur la base de la section 3 de la loi contre la contrebande qui dispose que certains actes commis hors du territoire soumis à la juridiction des Etats-Unis, mais portant détriment aux Etats-Unis, sont punissables, bien qu'on ne fasse ni saisie ni essai d'exécution, sauf dans le territoire tombant sous une juridiction. Le juge Galston dit notamment : « Il n'est pas ici question d'infraction aux droits des traités. Il n'y est pas question de fouille ni de saisie en haute mer hors de la zone soumise au contrôle douanier, ni au delà de la distance d'une heure de navigation à partir de la côte. Les termes « aux Etats-Unis ou ailleurs », tels qu'ils sont employés dans la sous-section, sont, certainement, sans aucune ambiguïté. L'absence des mots « ou ailleurs » dans la législation d'autrefois connue sous le nom de « piracy-statutes » est hautement significative; et pour autant que cela concerne les bateaux étrangers, il n'y a aucune présomption d'une limitation à la distance d'une heure de navigation, ainsi que cela existe dans les autres sections de la loi. Le Congrès peut fort bien avoir eu l'intention de punir les personnes qui conspirent, hors du territoire soumis à sa compétence, pour violer les lois nationales, dans le but de les appréhender et de les punir lorsqu'elles sont trouvées sur le territoire sur lequel il

⁽¹⁾ 1936, 45 *Federal Supplement*, 112.

⁽²⁾ Voir le texte de la sect. 3 plus haut, p. 4.

est compétent. Si le *Reidun* était équipé, comme on l'a soutenu, pour passer des marchandises en contrebande et pour les introduire aux États-Unis, et ce contrairement aux lois fiscales de ce pays, il a couru le risque d'être puni en arrivant dans la zone de contrôle douanier; l'une décision au fond dans ce sens fut rendue par le tribunal.

Cependant ce jugement ne fut jamais rendu. Le Gouvernement norvégien protesta contre la saisie du *Reidun* et assura que le Gouvernement norvégien s'efforcera de prévenir les navires norvégiens à ne plus se mêler, à l'avenir, à des entreprises similaires; sous l'ordre de l'Attorney Général, la procédure fut interrompue et le *Reidun* rendu aux plaignants ⁽¹⁰⁾.

Il semble qu'à ce jour seul un navire étranger ait été saisi par application de la loi contre la contrebande, en haute mer au delà de la limite des 12 milles des eaux douanières. Ce bateau était le bateau britannique *Miserinko* (53 tonnes, avec une cargaison de 981 caisses d'alcool), et, par conséquent, un « treaty vessel » qui n'était pas soumis à la saisie à une distance supérieure à celle d'une heure de navigation à partir de la côte. Ce cas n'est pas rapporté dans les relations officielles et l'endroit de la saisie n'a pas été nettement fixé. Le Département de la Trésorerie a informé l'auteur de ce que la saisie a eu lieu « près de la côte du Maine, à un point situé à environ 36 milles E.-S.-E. du phare de Boom Island », mais la copie du dossier du tribunal, obtenue par l'auteur, établit que la saisie eut lieu « à un point en haute mer situé à 15,5 milles, de Jeffrey's Ledge Buoy » dans la zone de contrôle douanier n° 5. L'auteur n'a pu vérifier si le *Miserinko* a été saisi dans la limite d'une heure de navigation à partir de la côte. S'il n'en a pas été ainsi, il faut présumer que la saisie a été faite en violation, à la fois du traité des liqueurs avec la Grande-Bretagne et de la section 1 (b) de la loi contre la contrebande. Le Gouvernement britannique n'a pas protesté contre la saisie.

⁽¹⁰⁾ Une information obtenue du Département de la Trésorerie et du Département d'État. Voir également SMITHSON, *loc. cit.*, p. 52. Le texte de la protestation norvégienne est non recoverable, mais, puisque le *Reidun* fut saisi en rade de New-York au cours d'un voyage en course, on peut croire que la protestation se rapportait plus à l'application extra-territoriale du droit pénal des États-Unis, qu'à l'existence de l'importation dans la zone contrôlée.

Il faut ajouter que le *Miserinko*, quoique enregistré comme navire britannique à Bridgetown, Barbadoes, Indes occidentales britanniques, était la propriété, *de facto*, et sous le contrôle d'un citoyen des États-Unis, ainsi que le découvrit le tribunal et, de ce fait, le *Miserinko* devait être considéré, dit le tribunal, comme navire des États-Unis, dans le sens de la section 3 (b) de la loi contre la contrebande. La copie de la décision du tribunal établit que « le propriétaire et plaignant de ce navire et de cette cargaison a accepté la confiscation prononcée. »

Il y eut peu de protestations diplomatiques contre la loi et son application. L'auteur a été informé par M. Hackworth ⁽¹¹⁾ de ce que « des notes, en date du 17 juin 1935 et du 2 juillet 1935 ont été reçues de l'ambassade britannique et de la légation canadienne demandant des éclaircissements sur les dispositions contenues dans cette législation, alors qu'elle était en discussion au Congrès. Une note datée du 6 août 1935 fut également reçue de l'ambassadeur de Grande-Bretagne à ce sujet. On peut ajouter que le Ministre de Norvège protesta contre la saisie du steamer norvégien *Reidun*, qui fut ordonnée conformément aux dispositions de la loi. Aucune communication n'a été reçue d'un autre gouvernement étranger pour soulever quelque objection au sujet de cette loi. »

À part la seule exception éventuelle du *Miserinko*, on peut donc conclure que l'existence et l'application de la loi contre la contrebande, et ce pendant une période de trois ans, ont, avec succès, mis fin à toute la contrebande d'alcool organisée de la haute mer vers les États-Unis, et sans violer les droits des États étrangers ni le critère de « raisonabilité ».

⁽¹¹⁾ A la date du 23 juin 1938.

October 6, 1939

My dear Mr. President:

In view of yesterday's discussion at Cabinet, I thought you would be interested in the inclosed memorandum.

Sincerely yours,

The President,
Hyde Park, N. Y.

October 6, 1939

My dear Mr. President:

In view of yesterday's discussion at Cabinet, I thought you would be interested in the inclosed memorandum.

Sincerely yours,

The President,
Hyde Park, N. Y.

October 6, 1939

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My dear Mr. President:

In view of yesterday's discussion
at Cabinet, I thought you would be inter-
ested in the inclosed memorandum.

Sincerely yours,

The President,
Hyde Park, N. Y.

Secretary Morgenthau

October 8, 1939.

Mr. Foley

Re: Your Request for Information on the
Anti-Smuggling Act.

The Anti-Smuggling Act of August 5, 1935, was sponsored by the Treasury Department as a result of the widespread post-repeal smuggling of liquor into the United States along our seaboard which, at its peak in late 1934 and early 1935, was estimated to be costing the Government \$30,000,000 annually in revenue losses. You will remember that on March 8, 1935, you appeared at hearings held by the Ways and Means Committee on this bill and made a strong statement in its support.

The Act, which widely extended the jurisdiction of the United States over the waters adjoining its coasts, is based on the legal theory that while a nation may not extend its territorial waters (which most nations, including the United States, regard as extending to a distance of three miles from shore, and within which the jurisdiction of a nation is as absolute and complete, broadly speaking, as if the land extended up to that point), a nation may, under international law, exercise limited jurisdiction for purposes of national safety and protection of the revenue to such a distance from its shores as is reasonably necessary for those purposes. That zone, which will differ with circumstances and cases, is sometimes referred to as jurisdictional waters.

The provision of the Anti-Smuggling Act which has attracted the most interest and comment is section 1, which provides for the establishment of "customs-enforcement areas". That section authorizes the creation of such areas beyond the existing 12-mile limit of customs control whenever the President finds and declares that vessels are hovering or being kept off the coast of the United States outside customs waters, and that, by virtue of their presence, the unlawful introduction into or removal from the United States of merchandise or persons may be accomplished or threatened. The establishment of such areas is made subject to two geographical limitations: (1) only such waters on the high seas should be within a customs-enforcement area as are in such proximity to vessels hovering or being kept off the coast that the smuggling of merchandise or persons may be carried on by, to, or from such vessels; (2) no customs-enforcement area shall include waters more than 100 miles in either direction up and down the coast from the immediate area where the vessels involved are present (that is, 200 miles in all) or more than 50 miles out to sea beyond the existing 12-mile customs limit.

(that is, a total of 62 miles seaward). Within those customs-enforcement areas coast guard and customs officers, or other persons authorized by the Secretary of the Treasury, are empowered to enforce those laws which apply to the high seas adjacent to American customs waters.

Sections 1 and 203 of the Act contain provisions authorizing American officers to board, search, and seize vessels in customs-enforcement areas when the circumstances warrant it.

It should be noted, however, that there are specific provisions in the Act precluding American officers from enforcing laws in customs-enforcement areas against vessels of nations with which we have treaties where such action would contravene treaties. The treaties which are contemplated in those provisions of the Act are the so-called liquor treaties which the United States has with 16 other nations, including Germany, France, Poland, and England, which treaties authorize seizure of the vessels of such nations only within an hour's sailing distance of the coast.

Five customs-enforcement areas were set up by Presidential proclamation between August and December 1935. Three of those extend in a line approximately from the Canadian border to Atlantic City, New Jersey, and the other two are in the Gulf of Mexico. Although liquor smuggling activity is now virtually nonexistent in those areas, the areas have never been terminated by Presidential proclamation, which is required by section 1 of the Act.

The remaining provisions of the Act may be covered briefly. From the standpoint of combating smuggling, the most important is section 2, which subjects to forfeiture vessels built, fitted out, or employed for smuggling or to defraud the revenue. Other sections of the Act (1) prohibit smuggling offenses by our nation's and vessels against the revenue laws of such foreign countries as reciprocate by similarly penalizing their nation's and vessels for smuggling into the United States; (2) provide for the general increase of fines and penalties relative to smuggling and for the penalizing of acts particularly indicative of smuggling activity but not otherwise covered by law; (3) provide for effective administrative control over boats of less than 500 tons (which is the type of boat usually used for liquor smuggling), and for similar control over small contact boats which bring the contraband from hovering vessels; (4) provide for changes in rules in proof in forfeiture proceedings to enable effective handling of such cases.

It is worth noting that the phrase "hovering vessel", which is used frequently throughout the Act, is defined in the Act to mean "vessel found or left off our coast within or without customs waters if, from all the circumstances, it is reasonable to believe that that vessel is being or may be used to facilitate the introduction or attempted introduction of merchandise into the United States in violation of the laws respecting the revenue".

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Two provisions of the Act which are perhaps worthy of separate mention are sections 205 and 206. Section 205 prescribes penalties and forfeitures for vessels from foreign ports or places which (1) unlade any merchandise within the customs waters of the United States without permit; (2) tranship liquor, or merchandise the importation of which into the United States is prohibited, to vessels of the United States within or without customs waters; or (3) tranship liquor, or merchandise the importation of which into the United States is prohibited, to any vessel within or without customs waters if the circumstances indicate a purpose to have the liquor or merchandise smuggled into the United States. Section 206 subjects to boarding and search any hovering vessel (as defined above), any vessel which fails within customs waters (12 miles) or within a customs-enforcement area to display lights required by law, or any vessel which fails to stop when required to by a customs or coast guard officer. Such vessels may be brought into an American port for examination, and for forfeiture if dutiable merchandise destined to the United States is found to be, or to have been, on board the vessel.

The Anti-Smuggling Act has been markedly successful in results. To it, as well as to the Treasury's more effectively coordinated enforcement activities, may be attributed the virtually complete elimination of post-repeal liquor smuggling which was once costing the Government \$80,000,000 a year. The effect of the Act, however, has perhaps been largely psychological since there have actually been relatively few cases made under it and there has been only one reported court opinion construing it. The Reidun (D.C., E.D.N.Y., 1936) 14 F. Supp. 771; 16 F. Supp. 112.

In this connection, I think you will be interested in the attached reprint which we have just received of an article by a Professor of International Law at Cornell University which recently appeared in French in a Belgium periodical of international law, "La revue de Droit international et de Legislation Comparee". This article quotes at some length your testimony in 1935 before the Ways and Means Committee on the Anti-Smuggling Bill (see page 3 of the reprint), as well as other statements made by you. The article concludes that the Anti-Smuggling Act represents a sound exercise of extra-territorial jurisdiction on the part of this country under international law and that the Act has been eminently successful.

(Initialed) E. H. F. Jr.

AJS:ina/s/fm
copied 12/6/39

One original sent to the Warrenton 10/6/39

Attachments

FEDERAL RESERVE BANK
OF NEW YORK

OFFICE CORRESPONDENCE

DATE October 6, 1939.

CONFIDENTIAL FILES

SUBJECT: TELEPHONE CONVERSATION WITH
BANK OF ENGLAND,

L. W. Knoke

I called Mr. Bolton at 9:30 this morning. 4.04 had just been paid for sterling, I told him in reply to his question, and the market continued a small one. Has there been any special reason for the recent advance of sterling, he asked, and I outlined to him briefly the observations most frequently heard in our market on that point.

I referred to his cable of September 28 dealing with the difficulties of the British Embassy's staff in cashing sterling bills. I assumed that this was not an urgent matter as long as sterling was at the present level and could he wait to receive a letter that I was now preparing for him. "I'll await your letter; it is rather a general matter anyhow," he replied.

For the next three or four months or more, Bolton then stated, they would have rather substantial dollar balances before the funds were dissipated for the payment of imports. Would it be possible to invest a portion of them in United States Government Treasury bills? I assumed, I replied, that he knew what the present yield was: .036 for last Monday's tenders; .082 for the week before; .125 and .159 for a few weeks prior to that. The present yield of .036 might improve a little but the recent .082 rate seemed quite generally to be considered a fair return in prevailing circumstances. .036, Bolton replied, would not seem the least bit interesting to them and even if the return were about .08 they would not bother at all. Were there any alternative investments available, he asked.

FEDERAL RESERVE BANK
OF NEW YORK

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OFFICE CORRESPONDENCE
CONFIDENTIAL FILES

DATE October 8, 1939.

TO

SUBJECT: TELEPHONE CONVERSATION WITH

FROM L. W. Knoke

BANK OF ENGLAND.

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I commented on the situation of the commercial bill market and the difficulties we had had for years now in filling orders from abroad. However, I would bear his problem in mind and let him know if there was any change in the situation.

Generally speaking, Bolton continued, things were going fairly well with them. The general control was settling down and by the end of this month he was hopeful it would be running along more or less normal lines. They had caught up with arrears, the machine was working fairly well and before long he thought he might be going home again at regular hours.

I asked what the reaction had been to Hitler's speech but Bolton replied he had not spoken to anyone.

RECEIVED

1939 - 10

INQUIRY DEPARTMENT
October 10, 1939
Federal Reserve Bank of New York

October 6, 1939.

MEMORANDUM

TO: Secretary Morgenthau
FROM: Mr. Gaston

Navy Intelligence reported to Coast Guard yesterday that they had a call from Federal Communications reporting that they and Hoover's F.B.I. had been asked jointly to supervise (that is, to listen in and report on) radio communications. F.C.C. had no idea how to go about it and asked for advice. Navy told F.C.C. that Coast Guard was doing most of the supervision of ship communications and other trans-Atlantic radio information of interest and the Navy was working closely with Coast Guard. They didn't know just what else was desired but they would be glad to assist in any way possible. We have not up to date had any direct communication from either F.C.C. or F.B.I. Apparently the idea is to have these organizations exercise some supervision over shore stations and land communications, but there appears to be some danger of over-lapping and confusion.

October 6, 1939.

MEMORANDUM

TO: Secretary Morgenthau

FROM: Mr. Gaston

Coast Guard headquarters at San Juan, Puerto Rico, has reported that three fishermen working out of Arecibo, which is on the north coast, reported that on the morning of October 4th (Wednesday) they saw a submarine which submerged after they had been watching it for four minutes. The position reported was fifty miles west of Arecibo. Coast Guard and Navy are looking into it. San Juan had no information that a United States submarine was in that vicinity.



TREASURY DEPARTMENT

WASHINGTON

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October 6, 1939.

MEMORANDUM FOR MRS. ELOTZ:

The following information came to me from the Coast Guard. If you think the Secretary would be interested, please pass it along to him.

"Information received by this office from the Commander, San Juan District, indicated that an unknown submarine without lights was seen by three fishermen one mile north of Arecibo Light, Puerto Rico, at 4:30 A. M., October 4th."

Daniel Harris

October 6, 1939.

MEMORANDUM

TO: Secretary Morgenthau
FROM: Mr. Gaston

The Army recently took away at higher pay a very able young man who was one of our three civilian cryptographers in Coast Guard Intelligence. We have in addition two Coast Guard officers at headquarters here who Waesche tells me are very good and whom the Army can not take. We have another, Lieutenant Jones, whom Waesche considers at least the equal of Mrs. Friedman but who is now on duty as an Intelligencer Officer at San Francisco. If an effort should be made to take any more of our civilians we might have to seek an understanding with Army and Navy.

PARAPHRASE OF TELEGRAM RECEIVED

FROM: American Embassy, Paris

NO.: 2357

DATE: October 6, 1939, 5 p.m.

FOR THE TREASURY

Last night we were told by Reynaud that gold in the amount of 1,500,000,000 francs was gained by France during September. This amount was gained principally out of repatriated capital. He added that he had expended 800,000,000 ^{francs} of this amount on contracts in the United States for the purchase of airplanes.

With the exception of rentes which made moderate gains partly on continued strength of the franc in New York, the market today was hesitant on profit taking though the undertone was firm. Coal mining issues were fairly strong. Hitler's Reichstag speech had little effect market-wise though its purport was not fully known till after the close.

A certain amount of repatriated French capital is finding its way into investment channels notably short term government issues and others of high liquidity.

The belga was weaker today, being quoted at 730 and 736 as against 734 and 740 yesterday. Other foreign exchange rates were unchanged.

BULLITT

EA:EB

K.P. Chew Oct 6. 1939

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PRIVATE & CONFIDENTIAL

Type	Number	Name
Bomber	18	Vultee 2,700 mile range, 1,100 lbs. of bombs
Bomber	4	Northrop
Pursuit	35	Hawks III
Pursuit	10	Hawks I
Pursuit	16	Hawk 75
Pursuit	15	Derwotine
Pursuit	10	Howkess
Trainer	35	North America
Trainer	75	Various kinds

GROUP MEETING

October 6, 1939.
9:30 a.m.

Present: Mr. Hanes
Mr. Cotton
Mr. Thompson
Mr. Gaston
Mr. Riefler
Mr. Viner
Mr. Harris
Mr. Duffield
Mr. Bell
Mr. White
Mr. Cochran
Mr. Foley
Mrs Klotz

H.M.Jr: Gene, I don't know whether it is proper or not, but I have taken a great interest in this malaria control thing in China. If the Public Health people would have no objection, we might say something about my interest in this matter.

You like to write things. This is typical.

"If the average yield on Treasury bills in a month has risen from five percent to fourteen percent...." But he forgets that they have gone back to .035. They run the thing up, but they forget to mention that they have gone down again. I would just write him a polite letter calling him a liar.

Johnny, I want you to hang on to this (handing document to Mr. Hanes). You insist on seeing me until we clear it, will you?

Hanes: All right.

H.M.Jr: See what I mean?

Hanes: Sure.

H.M.Jr: And this Wellington Koo thing came in. Did that come from the State Department?

Cochran: Yes, sir, we made a copy because we had only one copy.

H.M.Jr: Bullitt is trying to help us get some money.

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We have an addition to our 9:30 group, Mr. Cotton, who is Ambassador extraordinary, plenipotentiary, et cetera, on second floor left, and in that capacity I thought he had better sit here and hear what is going on. He would be more useful to the six gentlemen downstairs and to Mr. Hanes and me on this side. He ought to have his weight taken this morning and then see what he weighs a week from now.

Those flowers are from this very nice Mr. Shewmaker, who is retiring after thirty years' service and he grows those in his back yard.

Bell: Aren't they beautiful?

H.M.Jr: Aren't they marvelous?

Have you got anything, John?

Hanes: No. I had a conference with Chen yesterday. It is taking me a little longer than I thought. I will see him again today and get through with it just as soon as I can.

H.M.Jr: If I could have some of those maps to read over the week-end, I would like to have them.

Hanes: The data he left here is very interesting. It is amazing what that corporation has done. Whether that is getting ready for a big touch or not, I don't know.

H.M.Jr: If you will give it to Mrs. Klotz, I will take it home tonight.

You saw the stories in the papers this morning, didn't you?

Hanes: No, I haven't seen the papers.

H.M.Jr: About the American boat and the Germans?

Hanes: Oh yes, I saw that last night.

Gaston: Are you interested in over-night news on the Iroquois?

H.M.Jr: Very much so.

- 3 -

Gaston: Pollio called me at 11:00 last night to tell me that the Maritime Commission had called him earlier and said that the master of the Iroquois reported he was changing his course to go to the Azores and they asked the distance to the Azores and the distance to St. Johns, New Brunswick. He calculated the distance roughly as 725 miles south to the Azores and....

H.M.Jr: Do you mind, for the sake of Mr. Viner and myself - St. Johns is in Newfoundland?

Gaston: Yes. Did I say New Brunswick?

H.M.Jr: You said New Brunswick. We know.

Gaston: Right. They were about 725 miles north of the Azores and about 1,000 miles east of Newfoundland. They asked Pollio's advice and he told them that he would give the master his discretion, but nevertheless they called him back a short time later and told him that they had given the master of the Iroquois flat orders to continue on his course westward and to establish radio contact with the destroyers who were going to meet him.

H.M.Jr: Who gave him those orders?

Gaston: Maritime Commission. I hope they contact the Navy.

H.M.Jr: We didn't give them?

Gaston: We did not give those orders. Pollio's advice was to the contrary, he would let the captain use his judgment. The Ingham and the Thomas came through the canal Wednesday and the Navy asked permission to use them in a search for a belligerent craft 200 miles west of the canal and they have been ordered to go on that mission for the Navy and report when they get through with it. That is two of the big cutters. The Hamilton is at Norfolk and it is reporting to the Navy tomorrow and probably will sail for the Atlantic patrol Monday.

H.M.Jr: In your 30 million dollar budget, did you ask for any more big cutters?

Gaston: Yes.

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H.M.Jr: How many?

Gaston: Three.

H.M.Jr: Why didn't you ask for six then you might get three.

Viner: And make them bigger, please.

Gaston: Bigger cushions you want, pad them on the side?

Viner: Yes.

Gaston: All right, we will ask for nine.

H.M.Jr: How long does it take to complete a cutter?

Gaston: Oh, it will take a year and a half.

H.M.Jr: Can you do it in that time?

Gaston: Yes. They would launch it in about a year and I should think on a rush order they would get it down in a little over a year, but it would normally be two years.

H.M.Jr: When would that mean completion?

Gaston: What date in March will we get the appropriation? We will get them in September or October or November of 1941.

H.M.Jr: Are you still interested, Viner?

Viner: I am thinking of my successor.

H.M.Jr: I just wanted to have it clear.

Gaston: Of course, that depends on how much construction the Navy has and the U.S. Lines.

Harris: U. S. Lines ordered four new ships yesterday, I will have you know.

Hanes: What are they going to do with them?

Harris: I don't know.

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Viner: Not carry freight.

Hanes: Not carry anything.

Gaston: There is going to be an appropriation for not carrying freight, too.

H.M.Jr: Anything else?

Gaston: No.

H.M.Jr: Gene?

Duffield: Nothing.

H.M.Jr: You had better be here at 10:15, Gene.

Ed?

Foley: Gene asked me last night whether Mrs. Banister was subject to the Hatch Act, and I have given him an opinion.

H.M.Jr: Mrs. Banister?

Foley: Yes. She is Assistant Treasurer of the United States. She is appointed by the President and confirmed by the Senate.

H.M.Jr: Doesn't that come under Johnny Hanes?

Duffield: What I was really worried about was my coming under the Hatch Act by writing a speech for her.

Gaston: It is a very non-political speech, it is educational, isn't it?

Duffield: Very much so.

Foley: It is before a Women's Democratic organization out in Missouri. The only reason I am bringing it up, Mr. Secretary, is because it might have some bearing on the Governor Ross matter that you referred to Harold Graves, where she went directly to the Attorney General and Kemp over there said she was subject to the Hatch Act.

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H.M.Jr: Let Harold know. Danny Bell claims the Treasury. Let him know.

Foley: I will give him a copy.

H.M.Jr: Why don't I just appoint a committee of Hanes, Gaston, and Foley to pass on these questions of the Hatch Act, see? When you are stumped, come and see papa. If you are not, I won't bother about it. Hanes, Gaston, and Foley, you fellows pass on them. All right?

Hanes: Fine.

H.M.Jr: Ed can handle public relations for you - I mean Gene can.

Anything else?

Foley: You have a letter from Jerome I. Ziegler, who is counsel for Hecht bringing that action against Universal Corporation. He wants to take your deposition in regard to your conversations with the Chinese Ambassador here and your telephone call from Paris to Wellington Koo and others. I would like to talk to you about it sometime if you have a few minutes.

H.M.Jr: I have never done that since I have been in the Treasury. Why should I do that? I have never done that since I have been here.

Foley: Well, an effective deposition or interrogatory now, if you want to do it, might kill off that suit against Universal. These fellows might drop the suit after that. I think that from what you have told me before that your answers to these questions certainly wouldn't be helpful to their contention.

H.M.Jr: I have never permitted myself to be sued as an individual.

Foley: This isn't that, Mr. Secretary. This would be simply taking your deposition and what we - you are not subject to the jurisdiction of the New York court down here and it would be entirely voluntary on your part. What we could ask is that they frame the interrogatories, put them in writing, and send them to us and then I can look them over and decide whether I think you ought to answer them.

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H.M.Jr: All right, you go that far.

Foley: I have a little memorandum here on this smuggling act which you mentioned on the telephone.

H.M.Jr: Did the President get out an Executive Order?

Foley: We have had three orders under the Act providing for Customs enforcement areas on the Atlantic Coast from the Canadian border down to about as far as Atlantic City. Those orders are still in effect.

H.M.Jr: What is the French thing?

Foley: Well, that is an article by a law professor at Cornell which has been reprinted in French and he comments on the Act and also on your testimony before the Committee when the Act was under consideration.

H.M.Jr: Well, give me another copy of that.

Foley: You want another copy for your files?

H.M.Jr: For the house.

Foley: Yes, sir.

H.M.Jr: Don't you think it would be nice to send Mr. Hull a copy?

Foley: Yes.

H.M.Jr: O. K.

Foley: Yes.

Cochran: Sterling is bid at 4.03 7/8ths this morning.

H.M.Jr: How are things downstairs?

Cotton: All right, I think.

H.M.Jr: Was that mission over to Interior all right?

Viner: They told us that Standard Oil had the information.

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H.M.Jr: They didn't?

White: They had nothing. They had nothing and they didn't know very much. We talked desultory matters for about half an hour and then he finally ended up with a suggestion that he thought we could get the information we wanted from the best source and the source he would go to if he had a task of that kind were Socony and Standard Oil of New Jersey and he suggested the names of three men in both organizations who would, he felt, be right on top of the situation.

H.M.Jr: Well, did they take any offense at our doing this?

White: Oh no, and it is arranged so that we can contact Mr. Fry, who is under Mr. Holland, who appears to know a little more about it than the others, or at least they didn't recommend any others who would know very much. They claimed that they were concerned almost entirely with the domestic oil situation and not the foreign.

H.M.Jr: Well, is that particular economist over there?

White: Well, they didn't think we would gain very much by getting in touch with him.

H.M.Jr: Then we can disregard that crowd?

Viner: I think so, except that we may ask them a technical question or two on petroleum just to make them feel that we are using them.

H.M.Jr: Well, if you two gentlemen, Viner and White, will be here at 11:00, please.

Win?

Riefler: Nothing.

H.M.Jr: Jake?

Viner: I had a visit yesterday from Mr. Kintner and he seems to be breeding a story based on information from you and from other high officials of the Treasury which would be a very painful one to

- 9 -

me if it came out that way. He says you told him that you have made an assignment to us and the same assignment to White - you expected us to prepare separate studies and then afterwards to fight it out between the two of us.

White: I am glad you think it would be painful to you.

H.M.Jr: We didn't hear you up at this end. What did White say?

White: I said I am glad he thinks it would be painful to him.

Viner: What I tried to persuade Kintner is that I don't wait that long to fight Harry.

H.M.Jr: Gene, tell Bob Kintner that I was talking very much off the record and that he will please forget that.

Viner: You see, he went on to picture us as your new crew, as being lined up, and he mentioned also some names on the other side as if there were two battle lines, and so forth. I think that would just ruin us here and there is no basis for it. Certainly any of us are not in that battling spirit and....

White: Why didn't you tell that to Kintner?

Viner: I did tell him and he didn't believe me.

H.M.Jr: He was in here and we were gossiping and he told me that some other group was working on a peace-time basis, were we doing anything, and I said yes. In an off moment, they said, "Who is working on it," and I said, "We have two groups working on it."

Viner: And he took that to mean that - I don't know how he lined Harry up where he did....

White: Where did he line me up?

Viner: He said you were one of the New Dealers....

Gaston: What are you, the House of Morgan?

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Viner: I am the House of Morgan and Win is even worse.

H.M.Jr: What is worse than the House of Morgan?

Viner: And Taylor is Ogden Mills' - I mean Walter Stewart, he said, was Ogden Mills' most relied upon advisor.

White: He saw me about noon.

Viner: He had a lot of this foolish stuff and believed in it and said he had gotten it from Treasury people.

H.M.Jr: He got it from the fact that I said what I did.

Viner: No, he said he talked to others too.

White: He talked to me, but he didn't get that. I would have given him something better if I had given him anything.

H.M.Jr: Well, I am responsible for the story starting, anyway. Fortunately for me, I always have somebody present. See what you can do.

Diffield: I will try.

H.M.Jr: All right?

Viner: I meant to tell him - I told him I expected columnists to be liars so that even if I denied it, I still expected to find it in the column.

White: I don't think you will be disappointed. He was too gleeful over his story.

Gaston: They have good reason for printing what is denied.

H.M.Jr: Well, Gene and I slip once a day.

Viner: I was a little afraid that the story might be blamed on me.

H.M.Jr: No, it is my slip. I was proud of the fact that we were working on peace possibilities.

George?

Haas: I am preparing a report on that....

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H.M.Jr: Give us three minutes on it, George.

Haas: Want me to talk about it now?

H.M.Jr: Yes.

Haas: The Secretary asked me to attend the meeting of the Atlantic States Shippers Advisory Board. One of the items on their program was to discuss the railway equipment needs. I found that the group up there were divided in somewhat of three different sections. The shippers are obviously apprehensive of railway equipment shortage and orders are being inflated and the railroads have cautioned them against that. Thirteen railroads reported there and each railroad said that they were able to handle the business. Some of them said that from now on they would need a lot of cooperation from the shippers. Each one asserted rather firmly that there was nothing to fear. At the same time, they listed their orders for new equipment. They say they are not apprehensive, but at the same time they are ordering large volumes of new equipment.

The railway association has headquarters in Washington. Their reports are very similar to the individual railroads but they took an over-all picture and they claim that there was a good deal of hysteria in regard to railway equipment shortage which would result in shortage. There is one situation which actually - there is actually some shortage existing now in some areas and that is in connection with coal cars. The coal that came from Great Britain stopped immediately. It was going to Canada and the United States. Now, it is coming from coal areas in the United States and the cars that go to Canada, for example, are gone a month. They made an estimate for this area of the carloadings and their estimate is some 14 percent above a year ago.

There was one report on the financial and economic condition. You might be interested in the financial report. This financial discussion concerned itself with interest rates in the bond market, and so on. He told the people when they see the bond prices moving rapidly down that they should keep their mind on the fundamentals and that is all for easy

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money, that under certain conditions bond prices might move in any direction. He was rather bullish on bond prices and on the general business situation he cautioned them as to inventory accumulation, but he expected in the next six months that business would go up, mainly for the reason that once you get a turn in business it lasts at least that long.

H.M.Jr: Who is "he"?

Haas: He was an official of some New Jersey bank, I have forgotten where it was. He did a fairly good job in sizing the thing up.

H.M.Jr: George, on Monday at 12:00 o'clock have it ready for me and Mr. Hanes and a one-page summary.

Haas: You want one page plus a more detailed report?

H.M.Jr: Yes.

Haas: It turned out to be a much more interesting meeting than I anticipated.

H.M.Jr: If there are any other lines on any other company, I wish you would send George up there (to Mr. Hanes). Will you be back here at 10:15, George?

Haas: Yes.

Harris: The State Department asked one of their men to talk with me day before yesterday about an approach which had been made to them by the Swedes. The Swedes had come to see them and said that the British had informally demanded that they submit to them a manifest of all their cargoes to neutral countries and to Sweden before the ships sailed and wanted to know how we felt about that, because it had been quite informally approached by the British through our own State Department, so I thought that was a pretty wise subject and called the Commerce Department and the Maritime Commission and other parties that I thought would be interested and we went into a huddle with the State Department men. This is a very broad question and one which arose in the last war. It was compromised then by something

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that was known as the Skinner Plan, whereby instead of submitting your manifest to the British - and in this case I think you would have to submit your manifest not only to the British but the French and the Germans as well - you got permission from the Embassy before you could ship any cargo. You perhaps know what that is about. We just discussed this thing pro and con all over the lot and then we thought that this thing was so dovetailed with the question of cooperating with the domestic railways here to prevent a congestion at seaboard. In other words, if a great deal of cargo is going to be refused and put on a more or less blacklist, then it ought not to be allowed to move from the interior plants because otherwise you are going to get the same congestion at the seaboard, so we are now trying to locate the group that are working on that and we are going to have another meeting on Monday or Tuesday and we will continue that work.

H.M.Jr: Will you talk to George and see that anything that he learned up there about piling up at the seaboard - if there is anything in that?

Haas: There was something.

Hanes: * Kelly told us last week that he was working on a plan to stop that.

Harris: That subject, I think, has been very closely gone into by that Army and Navy Munitions Board.

Gaston: It would all be out the window, wouldn't it, so far as the manifests are concerned if the cash-and-carry act were passed?

H.M.Jr: Don't count on the Army and Navy Munitions Board. There are two Boards. The one that is going to continue to function is the Joint Munitions Board.

Harris: That is the one I referred to.

H.M.Jr: Is that the one you referred to?

Harris: That is the one I meant. Maybe I have called it by the wrong name.

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H.M.Jr: There are no civilians on this at all.

Harris: That is correct.

H.M.Jr: There are no civilians on the Board I am talking about.

Harris: That is right. It is headed up by the Assistant Secretary of War.

H.M.Jr: No.

Hanes: This is State, Treasury....

H.M.Jr: Excuse me. This is the one they don't know about. This is the one - the personnel of the Joint Munitions Board is the only Army and Navy Board that is not under the Joint Board and this is not responsible to the Assistant Secretary of War or the Assistant Secretary of Navy, but is responsible to the President. I wanted to get this thing straight, see. Do I make myself clear?

Harris: Yes.

H.M.Jr: There are two Boards and this is the only Board which is not under the Joint Board and this is the Board which I believe will do the functioning, and there are no civilians on this Board.

Harris: Well, this matter is something that is going to become very serious, especially if the present legislation goes through and American ships are tied up. Then this thing has got to function immediately. Otherwise, you are going to get the most terrible congestion at seaboard.

H.M.Jr: I am going to let you....

Harris: Would you like me to continue the way I am going on this?

H.M.Jr: I am going to let you read this memorandum and you can see what this Board is and maybe after reading it you ought to contact this Board. I think you will find this is the Board, until we get in a war, that is going to do business, see.

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Harris: Yes.

H.M.Jr: And if you haven't made a contact - after Johnny is through I will let you read this memorandum. I think this is the one that is going to do the operating. I think the other one is definitely out of the window.

Harris: Now, you sent me a memorandum....

H.M.Jr: Will you show that to Harris?

Hanes: Was that Joint Munitions Board set up by act of Congress?

H.M.Jr: Yes.

Hanes: In what year?

Bell: I think it came out of the National Defense Act.

Hanes: 1925?

Bell: Something like that.

H.M.Jr: But, in the room, I believe it is fairly obvious that the President is going to use this group. You might just as well get in touch with them.

Harris: Now, you sent me a memorandum or letter from Mr. Hull about those two ships. He is correct in his letter, there is no question about that. I have drawn you a memorandum there. But the moment it became known that the State Department was interested in the thing, then it quickly rectified itself of its own weight, so that what he says there is correct, but the fact that he made some inquiries, it automatically corrected the position, which was what I wanted to happen.

H.M.Jr: Then it is O. K.?

Harris: It is all through, yes.

H.M.Jr: After you have read that, will you give it back? Basil, I would do it through General Watson.

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Harris: Yes, sir.

H.M.Jr: O. K.?

Harris: O. K.

H.M.Jr: Harry?

White: There are two matters. They relate to the question of export controls over scrap iron and other materials, which was on the sub-committee report to the Executive Committee on Commercial Policy in that they would develop some information, which you may or may not know. There is a rise in the price of iron and steel and the increased output which is expected to reach, I think, 83 percent this week and probably 90 within two weeks. It is not due to foreign orders. They have no additional foreign orders, according to this report. It is due to the domestic situation. The recommendation here is that nothing be done to attempt to get any legislation that might provide for restriction on exports yet, and no legal power exists with which it can be done now, so they are just going to watch the situation on the exports of iron and steel scrap.

On the question of wool, the recommendation is that this Government confer with the British Government and attempt to arrive at some arrangement whereby there will be an allocation of wool for this market. Now, if anybody is interested here....

H.M.Jr: Bob Stevens came in here to see me. He is in the textile business in a big way. He said that the Navy wanted 75,000 blankets and could only get 25,000 and that was a 50 percent advance over a month ago. The idea was that the English have wool in Australia and South Africa, more than they can handle, and they need more cotton. We can make a swap.

I made the suggestion that if we got possession of this wool, we would handle it the way we did with the WPA. We could keep title to the wool, let the

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manufacturer have it and do what he wants, pay him for the manufacturing, and then assign it to the Army and Navy. I sent him to Wallace and Wallace turned him over to Commodity Credit. I don't know what happened, but unless somebody gets behind it, I don't think anything will happen.

Jones:

What happened over there was that Commodity Credit was very much interested in it and told him that he would prefer, if he could work it out with the private producers amongst the people in the textile trade, to bring back to him a program, one which they could pass, and that they would be delighted. I thought it was an excellent idea and he left with me a memorandum. I think I will give that to Harry White. It is a very interesting proposal and incidentally, this Bob Stevens is seeking to do something to help the country. He wants to step out of the picture. He just framed the idea and got it all ready and said if somebody in the Government would take it on, he would be glad to turn it over to them and help them in any way possible, but he is not in that business.

White:

The issue is rather important. It is expected that England will get in, as you know, control of some important commodities, not complete control but sufficient control so that they can influence the world price very substantially and be in an important bargaining position, and the issue is whether they shall do business directly with American businesses here or with groups of such business men or whether they shall do business with the Government, whether it shall be Government-to-Government or British Government to business men. The feeling is that if it is with business men the American business men here will be at a bargaining handicap, whereas with Government-to-Government there are so many other things that enter into the picture that possibly a more equitable arrangement can be achieved through Government-to-Government cooperation. That issue has not yet been decided or discussed much, but it is coming up today and I want to know whether you have any definite views on it.

H.M.Jr:

No, but I have turned it over to Wallace. Doesn't Wallace have a representative?

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White: He does. Leslie Wheeler. He is very competent.

H.M.Jr: Could you get this memorandum to White?

Hanes: Yes, right away.

White: Are you interested in following the development of this?

H.M.Jr: Well, I think if the statements that he made are true - and I am sure that they are - that the English have got more wool than they need and we can get some of it, I think it is too much to ask of any business group to sit down and try to swap wool for cotton. I think the Government has got to do it for them. A bunch of business men only having one piece of the picture, they can't negotiate a thing like that.

White: It is more than swapping. There are probably more commodities involved, so it is not so much a simple barter as much as adjudicating prices.

H.M.Jr: If the English are going to pursue the policy of buying large quantities of cotton and strategic war materials, then we have got to sit down and say, "You have got to give us a piece of it."

White: Not only strategic war materials, but any important commodities.

Harris: The wool association came to me on this matter the other day. They had been to the State Department, the British Ambassador - gosh, they had been kicked all over the place.

Hanes: They are in a desperate condition.

Harris: Mr. Secretary, I suppose you know England has assessed the entire Australian wool crop.

H.M.Jr: And South Africa.

Harris: Most of the wool that is brought into this country is Australian. That is the one we are primarily interested in.

H.M.Jr: This fellow had it all in a nice package and I sent the whole thing over to Wallace.

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All right, Harry?

White: All right.

H.M.Jr: I would like to be kept posted on it. If they don't get along very fast, I am going to tell the President about it.

Harold, at Cabinet the Assistant Secretary of Navy said that our purchase of 20,000 units of hemp - I don't know what the unit is - in Manila, completely cornered the market and he had had complaints about it.

Graves: The War and Navy people yesterday asked Collins to call off that prospective purchase of hemp and he is cancelling it.

H.M.Jr: They don't want it?

Graves: No.

H.M.Jr: Why?

Graves: Apparently it is in line with the suggestion that you referred to about cornering the market. But at any rate, he has had a formal request from the two departments to cancel his order for him.

H.M.Jr: Anything else?

Graves: Nothing.

H.M.Jr: Tell Collins to give me a little memorandum on that.

Graves: I have asked him to do that. It will be in this morning.

Bell: I understand the President has just about turned down the Budget summation for this year. I don't know whether we should interest ourselves in that. I think it ought to come out.

H.M.Jr: That is up to Harold Smith.

Bell: Well, Treasury is in it too.

H.M.Jr: Give me one page on it for Monday.

Bell: All right.

H.M.Jr: Have you got any feelings on it, John?

Hanes: No. I was against Danny Bell when he came around and talked to me about it. He says he wants to continue it and I think, too, that if the period has gone six months without the public being apprised of it, I am sympathetic with Danny's feeling about it.

Bell: Newspaper men are beginning to speculate on the budget and I think we ought to have something to refer to.

H.M.Jr: Give me a page, will you? You are going to stay in here.

My advisory economists, I may ask Monday or Tuesday what your opinion is on Government financing, looking forward over some time, I mean what kind of pieces of paper we ought to use. I think we talked about that, Win, some time ago. You have got some ideas, haven't you? Maybe Monday or Tuesday I will ask you. I am putting you on notice.

Riefler: I won't be here Monday. I have got a board meeting in New York. I will be here Tuesday morning.

H.M.Jr: Is that all right?

Riefler: Yes.

H.M.Jr: I don't need a written memorandum but maybe Tuesday we might talk a little bit about it, looking forward to what kind of thing we ought to do if the situation abroad gets worse.

All right.

See ltr to President dated 10/10/39 transmitting this information.

See also President's memo of 10/14

October 6, 1939

TO THE SECRETARY:

In the President's Budget Message of January, 1935, the President stated in part as follows, under the heading "Better Methods of Fiscal Control":

"In order to promote more satisfactory methods of budgetary control in the Government, I propose this year to inaugurate the policy of having a Summation of the Budget prepared for publication immediately after the Congress has acted on all financial matters. . . ."

He then went on to say that this summation would exhibit the revenue estimates as revised by the Treasury so as to reflect any changes in the economic situation during the preceding months and also any revisions in the tax laws made by the Congress, and a revision of the estimates of expenditures based upon the appropriations made by the closing Congress.

This summation has been issued each year beginning with September, 1935, and each year the newspapers look forward to the publication of this revised Budget. In view of the changes made by the last Congress in the appropriations and the recent Executive Orders of the President increasing the military branches of the Government, it is of more interest than ever to the public to have this summation issued. The newspapers are now beginning to make their own estimates and I think it would be most unfortunate to break the precedent of issuing the summation as it would be much better for all concerned if the newspapers could get their information on budgetary estimates from some official document rather than publish their own guesses.

I hope you will have an opportunity to urge the President to issue the summation at as early a date as practicable, although it should be timed so as not to come during or immediately preceding a Treasury financing operation.

DMB:ELI

October 6, 1939
10:15 a.m.

Operator: Go ahead.

HMJr: Hello.

Randolph
Burgess: Hello, Henry - this is Randolph.

HMJr: Oh.

B: And there are three of us on this wire.

HMJr: Wonderful.

B: George Harrison is on one phone and Earle Bailie is on another and I'm on the third.

Allan
Sproul: And Allan's here listening.

B: Allan is sitting on the sidelines and Bob Rouse is giving the market a last check and he'll be in again off and on.

HMJr: Well, I've got some of my people and we've got the loudspeaker on.

B: Well, this is quite a party then.

HMJr: Oh, yeah.

B: (Chuckles) Well, it's too early to tell very much about the market.

HMJr: Uh-huh.

B: We've talked with four of the dealers. It all depends on their size-up of this speech but they don't think very much will happen today.

HMJr: Yeah.

B: They think in general that the speech is -- is not much of a peace speech.

HMJr: Yes.

B: But it remains to be seen how the market interprets it.

HMJr: Yeah.

H: Now we've talked it over here and our -- our feeling is that so far there's -- nothing has happened which would necessarily prevent going ahead next week.

HMJr: Yeah.

B: So our primary feeling is, the thing to do is to watch this market during the day and to keep our minds open until Monday morning.

HMJr: Well, that's easy.

B: That doesn't strain any of us.

HMJr: No, no -- but,.....

George
Harrison: My feeling, Henry, is that you ought to do it if you can and you won't know definitely until Monday morning whether you should.

HMJr: Yeah.

H: I think that almost -- under almost any circumstances you will be able to do it certainly at a rate.

HMJr: Yeah.

H: But you don't want to do it at an unreasonable rate, I understand.

HMJr: Yeah.

H: From your standpoint. However, unless something very develops, I should think by Monday you would be free to go ahead and better fix your rate than you could fix it this morning.

HMJr: Well, has anybody there given you a rate on a five-year note?

Randolph
Burgess: Well they haven't talked five years very much because I think, frankly, their feeling is that the five-year market is a little thin and our feeling is that we ought to play absolutely safe and do something a little shorter than that. And the two -- the two

things that we think most about would be a June '42 - which is just short of three years, which would be one per cent.....

HMJr: Yeah.

B: Or a March '43 - which is three and half years, that would be one and a quarter. They'd both be worth about par and seven-eighths without giving any extra interest. We think it's better not to give the extra interest on the whole because it -- it's simpler not to and looks stronger.

HMJr: Well, our boys here have figured a four-year note with a one and three-eighths coupon, which would sell at a one and a quarter premium, and they figure the five-year note exactly the same.

George Harrison: Say that again, will you, Henry. I didn't.....

HMJr: A one and three-eighths per cent.....

H: Yeah.

Randolph Burgess: Yeah.

HMJr:four-year note or five-year note would sell in both cases at one and a quarter points premium.

B: Yeah; well, that's right. That's right. A four-year one and three-eighths is not impossible. We figured it would be playing a little safer to do a -- a three and a half.

HMJr: But they say both the -- both the four-year note and the five-year note with a one and three-eighths coupon that they both would sell at one and a quarter points premium.

B: Well, they would theoretically, Henry. Actually, the five-year note would be a good deal chancier. It would be taking a good deal more of a chance.

HMJr: Well.....

B: Because that market is better.

HMJr: Ah.....

Earle
Baillie: The impression I get, Henry, is that the market would be very enthusiastic about a three or a three and a half -- would like it, and we'd have good feelings on our issue. If we went to a five there'd be a question in my own mind -- not that we wouldn't get subscriptions, but that we wouldn't get that push that we hope to get out of the issue for the whole market.

HMJr: Yeah. Well.....

B: Now that may not be true Monday.

HMJr: Yes. Well, my own -- will you fellows just hold on a minute?

B: Yeah.

HMJr: Deal around a -- deal out one deal of cards while I'm talking, will you? Just hold on a minute.

B: You bet.

(Brief pause.)

HMJr: Hello.

B: Yes, Henry.

HMJr: At this end we feel that there should be no hints to the market of any kind that there may be something coming Monday or Tuesday.

B: Oh, that's right - yes.

HMJr: Because.....

B: We have avoided that very carefully.

HMJr: While our minds are open they are sufficiently undecided that we don't feel there should be any hints....

B: Yeah.

HMJr:that there's anything coming.

B: We agree completely on that, Henry.

HMJr: Well, then on that basis let's see what happens today and tomorrow.

B: That's right.

HMJr: And when will we talk about it again?

B: Well how about one o'clock or.....

HMJr: No.

B:two o'clock?

HMJr: No, Dan thought tomorrow.

B: Oh, tomorrow?

HMJr: Oh -- you mean today?

B: Ah -- well, I was going up to Providence this afternoon, Henry.

HMJr: What time does your train go?

B: Three o'clock.

HMJr: No, that doesn't fit in my schedule so.....

B: Well why don't you let Allan talk to you, or George here?

HMJr: That's all right.

B: We will have been talking with them, you see.

HMJr: That's all right.

B: When would be the best time?

HMJr: Well, I'd say four o'clock.

B: Four o'clock? That's fine.

HMJr: Four o'clock.

B: And I will have talked to them just before I go.

HMJr: Right.

B: Yeah.

HMJr: And then they could.....

B: They'll be in contact with Allan, you see, and they can talk.

HMJr: Yeah, but do they -- they'll know better at four o'clock where we're at.

B: That's right, yes.

HMJr: What?

B: Yeah.

Earle
Baillie: You've seen the -- you've seen the market openings, Henry; that steel stocks are up as much as five points so that what you've got here is an atmosphere in which probably Government bonds won't have a terribly good day. I mean, if the.....

HMJr: They will -- they will or will not?

B: They will probably not have a terribly good day.

HMJr: Well, if they.....

B: We all think that is going to hit down into the note market -- I mean.....

HMJr: Well.....

B:in the place we're talking.

HMJr:I'm not going to be bold enough to make any forecasts. I say, I'm not going to be bold enough but.....

B: Right.

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HMJr: -- but on the past two or three weeks the Government bond market would sell off today.

B: That's right. I think you're going to be right.

HMJr: And then we never know what George Harrison's little pal over -- down on Constitution Avenue will do.

B: (Laughs) He's not listening so he can't hoot at that.

HMJr: I see.

B: (Laughs) We'll tell him about it. (Hearty laughter) Allan's on the other telephone now.

HMJr: Oh, George -- I -- is George there?

B: Yes, George is right here.

HMJr: Was that all wasted?

B: That was all wasted.

I got it. I'll relay it to him.

But we'll all tell him.

(Hearty laughter)

HMJr: All right. All right. I don't know what they use out -- in the way of out in Utah, but we don't seem to have been able to have discovered one that holds here in Washington.

B: (Laughs.)

HMJr: All right?

B: Very good, Henry.

HMJr: And if I see that in Kintner and Alsop's column I'll know who to blame.

B: (Hearty laughter) Kintner and Alsop.....

HMJr: All right.
B: (More laughter)
HMJr: Goodbye boys.
B: Goodbye.

October 6, 1939
4:07 p.m.

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HMJr: Hello.

Operator: Mr. Harrison. Go ahead.

HMJr: Hello.

George
Harrison: Hello, Henry?

HMJr: Yeah, what have you fellows got to give me now?

H: Well, we had a pretty good day here, as a matter of fact, and I think it looks much more encouraging for next week.

HMJr: Uh-huh.

H: They dropped off ten to twelve thirty-seconds then recovered about half the loss and ended up from unchanged to five thirty-seconds lower than last night.

HMJr: Yeah.

H: And considering everything I think that's pretty satisfactory.

HMJr: Yeah.

H: But I think the thing we better do is to look at it as -- as late as you can Monday and decide what -- whether you think the rate situation warrants your going ahead, as I think it will.

HMJr: Well, after talking with Bell later on during -- after I got through this morning, he said the understanding was that we really shouldn't try to decide anything until noon Monday.

H: Until noon Monday?

HMJr: Yeah.

H: That's right. That's what we all feel.

HMJr: Well, then why not let's.....

H: Sure, what I think we ought to do is just forget about it until noon Monday and then have a hookup if you want to.

HMJr: Right. Let's say about a quarter of twelve Monday.

H: Well, we'll call you a quarter of twelve Monday and we'll have all the dope then and make any suggestions that we -- we've got at the time.

HMJr: O. K.

H: First-rate.

HMJr: Thank you.

H: Goodbye.

HMJr: Goodbye.

TREASURY DEPARTMENT

INTER OFFICE COMMUNICATION

DATE October 6, 1939.

TO Secretary Morgenthau

FROM Mr. Cochran

Reference is made to the file of cablegrams in regard to the opening of an account for the Bank of Brazil as fiscal agent of the Brazilian Government, and also to Mr. Bernstein's memorandum in regard to his conversation of last night with the Federal Reserve Bank lawyers. After Mr. Bernstein's conversation of yesterday evening, Mr. Knoke spoke with me. It was agreed between us that the Federal Reserve Bank should, as of that date, receive the \$3,000,000 from the New York banks and purchase gold there-with from the Stabilization Fund to hold under earmark, as fiscal agent of the United States Treasury, for the Bank of Brazil, as fiscal agent of the Brazilian Government. In our conversations earlier in the day, I had favored the idea of this being a straight Central Bank account, but I had yielded to Mr. Knoke, when Mr. Knoke explained that the Federal had no Central Bank account from the Bank of Brazil itself and that a delay of several days would be entailed in seeking approval from the directors of his own bank and from the Board in Washington for the opening of such an account. Mr. Knoke assured me, however, in our final conversation yesterday evening, that his bank, after opening the account yesterday in the manner above designated, would take the initiative in seeking approval for the opening of a straight bank to bank account, to which the above described gold could be transferred.

During the day I had talked with Messrs. Foley, Bernstein and Bailie about the problem, and had mentioned to the Secretary about 4 P.M. that we had up a question as to the Brazilian account. The Secretary had told me to go ahead and settle it. I informed Mr. Bailie of this, just before Mr. Bailie left for New York.

I thought the matter was thus settled until this noon, when I went to see Messrs. Foley and Bernstein in regard to the questions raised by Leroy-Beaulieu in regard to a French account with the Federal in New York, the French Attache being at that time with Secretary Morgenthau. While discussing this question, Mr. Foley let me know that Mr. Bailie had telephoned him from the Federal Reserve Bank in New York and had suggested that a message be sent Brazil asking clarification of the status of the Bank of Brazil, as fiscal agent of the Brazilian Government, and also relieving the Federal Reserve Bank of New York from taking the initiative with the Bank of Brazil in the establishment of a straight bank to bank account. Late this afternoon Messrs. Foley and Bernstein called me to their office and showed me the draft of the cablegram which they proposed be sent to our Ambassador at Rio de Janeiro in the premises. In view of the change which had developed, I did not feel free to clear such a message, and it was agreed that we should see the Secretary. He received us for a moment at 5 P.M. but asked that the matter be postponed and that we all get together,

CONFIDENTIAL

together with Mr. White, and come to an agreement before discussing the matter with him further. There are two or three questions in my mind.

(1) Is any further clarification of the status of the Bank of Brazil as fiscal agent of the Brazilian Government actually necessary? In their conversations with New York, Messrs. Foley and Bernstein seemed satisfied with the wording as actually received in the cablegram from our Ambassador at Rio de Janeiro. If the Federal Reserve Bank of New York is not willing to take the initiative with the Bank of Brazil in the opening of a bank to bank account, should the Treasury Department take such initiative? If this is done by the Treasury Department, the message should be more detailed than that comprising the second paragraph of the draft cablegram prepared today.

I called Mr. Knocks at 5:30 P.M. this evening and mentioned the Brazilian matter, since I had promised to clear with him before any message to Brazil went out. He had not seen the draft discussed by the lawyers and preferred to postpone discussion of the question.

A handwritten signature in dark ink, appearing to be 'B. M. R.' with a stylized flourish.

CONFIDENTIAL

E1

MEMORANDUM

To: Secretary Morgenthau

From: Mr. Cochran

October 6, 1939.

Mr. Knoke telephoned me at 5 P.M. on October 2. He said that Leroy-Beaulieu had just come in and wanted to know the procedure in regard to opening an account with the Federal Reserve Bank of New York as fiscal agent of the Treasury. Governor Harrison had received him in Knoke's presence. Leroy-Beaulieu wanted to know particularly about the publicity to which the account might be subject. He had been told that the Federal Reserve Bank itself would not give out anything. Knoke thought that what Leroy-Beaulieu had particularly in mind was the question as to possible attachment of the account. It had been suggested to Leroy-Beaulieu that the Treasury lawyers could help clear this matter.

Mr. Leroy-Beaulieu was received today alone by Secretary Morgenthau at 11:45. The appointment had originally been for 10:30, but Leroy-Beaulieu was delayed by a foggy airplane trip. Before he saw the Secretary he told me of the questions with respect to publicity which had not been settled in his recent conversations with Governor Harrison and other officials of the Federal Reserve Bank at New York. He told me what these questions were and I discussed them with Messrs. Foley and Bernstein while Leroy-Beaulieu was in with the Secretary. When he came out, I told him what the legal advisors had given me on the subject and Leroy-Beaulieu said their answers corresponded with those of the Secretary, namely:

1. That the Treasury is not under any obligation automatically to give publicity to any account that might be opened by the Government of France with the Federal Reserve Bank of New York as fiscal agent of the United States.
2. That Congress would be more disposed to refrain from investigating the accounts of a foreign government if they were held in such a manner that they could be inspected by the Federal officials than if they were in private or commercial banks and
3. That if Congress should make an inquiry in the premises, the Treasury would have a claim to immunity, for the fiscal agency account, on the grounds of public interest, arising from international relations, which private banks could not advance. At the same time, there was the possibility of political pressure becoming strong enough to force revelations.

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B.M.S.

MEMORANDUM

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To: Secretary Morgenthau

October 6, 1939.

From: Mr. Cochran

Mr. Knoke and I have talked together several times in the past two weeks upon the question which Mr. Pinsent, Financial Counselor of the British Embassy, in connection with receiving the rate of 4.02 for official and personal checks of British diplomatic and consular officials and employees in the United States. Last week I provided Knoke with a copy of a memorandum, with enclosures, drawn up by Mr. Havens in the Department of State, explaining the system used in the American Foreign Service for compensating losses by exchange. Mr. Knoke desired this to assist him in answering the inquiry from the Bank of England of September 28, which is attached hereto.

This morning Knoke stated that he had talked by telephone with Mr. Bolton, of the Bank of England, and it had been agreed that Mr. Knoke would reply to the above mentioned cablegram by letter. The point was made that there was no urgency in this matter, since the open market rate for sterling has already passed the official rate of 4.02.

Yesterday evening Mr. Pinsent telephoned me at six o'clock to inform me that Sir James Rae and Colonel Greenly, the two principal members of the British Purchasing Commission, are due to arrive in Washington next week from Canada, and that they would like to pay their respects to Secretary Morgenthau. The most convenient time would be on Tuesday afternoon or Wednesday morning. They were to meet Undersecretary Hanes at the British Embassy on Wednesday afternoon.

This morning I mentioned this matter to Secretary Morgenthau and he fixed the appointment for three P.M. next Tuesday. At three o'clock this afternoon I was able to reach Mr. Pinsent and informed him of the hour arranged for the meeting. At this time I told Mr. Pinsent of my latest conversation with Mr. Knoke, and he was evidently quite satisfied that Mr. Knoke was reporting by mail to Mr. Bolton in regard to possibilities of assisting in the premises.

H. M. S.

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TREASURY DEPARTMENT

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INTER OFFICE COMMUNICATION

DATE October 6, 1939.

TO Secretary Morgenthau
FROM Mr. Cochran

The foreign exchange market was quiet with trading in sterling in small amounts. Sterling opened at 4.03-7/8, and shortly thereafter rose to 4.04, the high for the day. During the late part of the morning the rate moved in an erratic manner, reaching a low of 4.02, and in the early afternoon recovered to 4.02-3/4. The closing quotation was 4.02-1/2.

The lower rate for sterling probably results from the fact that the British Control sold exchange at 4.04 yesterday, which would lead to the belief that it did not intend that the open market rate should be above the official rate.

The discount on the Canadian dollar widened during the past week. On September 29th, the Canadian dollar was quoted in the open market at 9-7/8% discount and closed today at 11-3/4% discount. The softness in the rate is due to some extent to the fact that Canadian dividend checks in small amounts are being offered in the open market rather than to the Canadian Exchange Control. While these amounts are individually small, in the aggregate they are large enough to keep the rate for the Canadian dollar under some pressure. Another reason for the softness of the rate is that Americans have a considerable amount of Canadian dollar balances which they fear may not be purchased by the Canadian Control at the official rate of 10% discount and that if such is the case these balances will eventually be sold in the open market.

Reporting banks in New York and the Federal Reserve Bank reported sales totaling \$495,000, from the following sources:

Commercial concerns.....	\$ 138,000
Foreign banks (Far East, Europe and South America).....	\$ 307,000
Fed. Res. Bk. (\$50,000 for Sweden).....	\$ 50,000
Total	\$ 495,000

Purchases of sterling amounted to \$390,000, as indicated below:

By commercial concerns.....	\$ 172,000
By foreign banks (Far East and Europe).....	\$ 218,000
Total	\$ 390,000

CONFIDENTIAL

The following banks sold to us gold from their earmarked accounts in the amounts indicated:

National Bank of Belgium.....	\$ 2,570,000
Bank of the Republic, Colombia.....	\$ 700,000
Total	\$ 3,270,000

Gold shipments valued at \$86,000 from England and \$28,000 from Canada, both consigned to the National City Bank of New York, were reported.

We made one purchase of silver today, amounting to 50,000 ounces, in the New York Market under the Silver Purchase Act.

By telephone today, Bolton of the Bank of England, inquired of Knoke of the Federal Reserve Bank of New York, as to the present yield on Treasury bills. Bolton seemed interested in investing some of their dollars in such bills, if the yield made this worth while. When informed of the current yield, Bolton showed no inclination to make any purchases.

In this connection I asked Knoke if the Governor of the Central Bank of Sweden had not withdrawn some of his dollar balances from the Federal Reserve Bank recently to invest through commercial banks in New York. Knoke thought this must be the case. He remarked that some of the commercial banks had obtained Treasury bills on tenders at rates which made it possible for them to offer some attraction to foreign central banks. He remarked that, unfortunately, the Federal Reserve Bank was not itself permitted to make its own tenders and could not thus compete for this business. He said that inquiries for such investments had recently been received by the Federal Reserve Bank from the BIS, and also from the central banks of Switzerland and Norway.

In my conversation with Knoke I referred to the case we talked about a couple of days ago of the Chase Bank granting an advance in dollars to the Russian State Bank against gold in transit from Norway to New York. I told Knoke that we assumed that this gold would be sold upon arrival in the United States, since we did not desire to see the precedent established of gold being placed under earmark with his bank against which another party, such as the Chase Bank, might have a lien. Knoke was certain that the needs of the Russians were so urgent for dollars that the shipment would be sold upon arrival, and he added that the Chase Bank was too familiar with United States gold regulations to risk any contravention thereof, through such an operation as I mentioned.



CONFIDENTIAL

Secretary Morgenthau

October 6, 1939

E. H. Foley, Jr.

I am attaching Mr. Ziegler's letter with reference to taking your deposition in the case of Rudolf Hecht v. Universal Trading Corporation, together with a copy of my reply.

This is in conformity with our conversation this morning.
(initialed) E. H. F., Jr.

Attachments

EHF:s Typed 10/6/39

C
O
F
I

JEROME I. ZIEGLER
Attorney at Law
12 East 41st Street
New York

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Lexington 2-5270

September 29, 1939

Honorable Henry W. Morgenthau, Jr.
Secretary of the Treasury
Washington, D.C.

Re: Hecht v. Universal Trading Corporation,
K.P. Chen, Hsi Te-Mou, and S. D. Ren.

Dear Mr. Morgenthau:

As you have probably been informed, the above entitled litigation has been instituted some time ago against the agency of the Chinese government and the three members of the Chinese Financial Mission who arrived in this country during September, 1938.

The basis of this suit is a breach of a written contract between my client, Rudolf Hecht, of New York City and the Chinese government through its Ambassador, Dr. C.T. Wang and his attorney, W. Carl Richards of Cumberland, Maryland.

The contention of the defendants is substantially that no preliminary work had been done on the Chinese loan, announced December 15th, 1938, prior to the day the three members of the mission arrived in Washington. The work and efforts of Dr. Wang and his associates are ignored. In preparing this matter for trial, which should come up in the near future, it becomes of major importance to obtain your testimony as to a certain conversation held prior to September 19, 1938. Concerning those conversations, I have certain definite information which requires amplification and clarification.

The defendants have testified at a preliminary hearing, that they arrived in this country as a result of a telephone call which you made to Dr. H.H. Kung, Chinese Minister of Finance. They have testified that this telephone call was made by you while you were in Paris early in the month of August, 1938. Concerning this particular call, I am seeking to obtain the following information from you: who had opened the preliminary negotiations for the loan which subsequently lead up to this telephone call; who had continued the discussion of the loan between the opening of negotiations and the call; how far the negotiations for the loan had progressed at the

time the call was made.

I know of at least one other United States official who is personally familiar with the details of your conversation with Dr. Kung. I would appreciate learning from you whether Dr. Wellington Koo, who at that time was in Paris, is also familiar with the details of the call.

My information, obtained directly from Dr. Wang, includes an outline of the conversation which you personally had with Dr. Wang in New York on September 3, 1938. You may remember, that upon your arrival in New York on that day, you attempted to communicate with Dr. Wang only to learn that he had just left New York for Washington. The Chinese Consul General's Office finally located Dr. Wang and he returned late at night to meet you. At that time Dr. Wang was informed by you as to the status of the loan. In view of the issues of the above entitled action, you can readily see that the entire conversation of September 3, 1938, together with the background and events leading up to it are extremely pertinent.

Under no circumstances would I want to do anything to interfere with the heavy duties imposed upon you. However, as you now know, your name has been mentioned repeatedly in this litigation and in the preliminary examinations. Furthermore, there is no doubt but that at the coming trial it must be mentioned again on innumerable occasions.

Since your information is first-hand and relevant, I would like to arrange for the taking of your deposition. At your convenience, that can be done either in Washington or in New York. Will you be good enough to recall these matters to your mind and inform me when I may obtain your statements upon them.

Thanking you in advance for your courtesy in this matter, I remain,

Respectfully yours,

/s/ Jerome I. Ziegler

JIZ:BM

OCT 6 1939

Dear Mr. Ziegler:

Secretary Morgenthau has asked me to reply to your letter of September 29, 1939, with reference to taking his deposition in the case of Rudolf Hecht v. Universal Trading Corporation, et al.

As you know, the Secretary's duties are extremely pressing at the present time and I feel that it would be an unnecessary imposition to ask him to answer questions under an open commission. As an alternative, I suggest that written interrogatories be settled between you and counsel for Universal Trading Corporation and submitted to me for consideration before anything is done of a formal nature. After I have had a chance to study the interrogatories, I shall be glad to tell you the Secretary's wishes in the matter.

Very truly yours,

(Signed) E. H. Foley, Jr.

General Counsel

Jerome I. Ziegler, Esq.
Attorney at Law
12 E. 41st Street
New York, N. Y.

NOT/ERF:s Retyped 10/6/39



TREASURY DEPARTMENT

WASHINGTON

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October 6, 1939.

MEMORANDUM FOR THE SECRETARY:

We are going to be faced very shortly with a demand from the British for the submission of a copy of ships' manifests on shipments by American flag steamers to neutral countries. (Incidentally, I understand the approach has come, very informally, from the British already).

During the last war this same question was raised, and ultimately the so-called Skinner plan was adopted whereby shippers first made application to the British Embassy, and if approved, a permit to load was given. We are undoubtedly going to be faced with this same question very shortly, and this brings forward the third problem. We do not want to allow goods for export to move to seaboard from interior points unless approval to ship has previously been given, otherwise our ports and railroad facilities will be clogged with cargo which cannot be exported. Therefore, it seems fundamental that when the question of presenting manifests or adopting the so-called Skinner, or some other plan, is definitely put forward, at that time some bureau should be in existence to handle our own problem of export permits. During the last war this permit was known as a "G. O. C." (General Operating Committee) permit, and was issued by the committee of the railroads after presentation to them of the British permit to load.

Barclay Harris

OCT 6 1939

My dear Mr. Attorney General:

I have received your letter of October 2nd with which you returned the memorandum dated October 1, relative to "Credits to Belligerents." I wish to express to you my appreciation for your concurrence as to the legal conclusions therein expressed.

I am enclosing for your files a ribbon copy of the memorandum on credits.

Sincerely yours,

(Signed) H. Morgenthau, Jr.

Secretary.

The Honorable

The Attorney General of the United States.

Enclosure

FMG

E. M. H.

OCT 6 1938

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Enclosure

HMcB

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Secretary.

The Honorable

The Attorney General of the United States.

Enclosure

Enc

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Sincerely yours,

(Signed) H. Morgenthau, Jr.

Secretary.

The Honorable

The Attorney General of the United States.

Enclosure

FMcS



Office of the Attorney General
Washington, D.C.

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October 2, 1939

My dear Mr. Secretary:

I have examined the attached memorandum, prepared in your department, relating to the legality of short term credit transactions under the Johnson Act and the existing Neutrality Act, and concur in the legal conclusions therein expressed.

With kind regards,

Sincerely,

Franklin D. Roosevelt

Honorable Henry Morgenthau, Jr.
The Secretary of the Treasury
Washington, D. C.

October 2, 1939

My dear Mr. Secretary:

I have examined the attached memorandum, prepared in your department, relating to the legality of short term credit transactions under the Johnson Act and the existing Neutrality Act, and concur in the legal conclusions therein expressed.

With kind regards,

Sincerely,

Honorable Henry Morgenthau, Jr.
The Secretary of the Treasury
Washington, D. C.