FINLAND

TREATY OF FRIENDSHIP, COMMERCE AND CONSULAR RIGHTS BETWEEN THE UNITED STATES AND FINLAND, SIGNED FEBRUARY 13, 1934

711.6042/1a: Telegram

The Secretary of State to the Minister in Finland (Pearson)

WASHINGTON, January 29, 1927—5 p. m.


KELLOGG

711.6042/2

The Minister in Finland (Pearson) to the Secretary of State

[Extracts]

No. 376

Helsingfors, February 3, 1927.

[Received March 2.]

Sir: Pursuant to telegraphic instruction No. 2, January 29, 5 p. m., I visited the Foreign Office yesterday and talked informally with the Assistant Foreign Minister in order to learn the wishes of the Finnish Government in regard to the draft of a Treaty of Friendship, Commerce and Consular Rights, proposed by Washington in August 1923.

I thought it advisable to talk with the Assistant Foreign Minister rather than with Mr. Voionmaa himself, who has been in office as Foreign Minister only a few weeks and who would not be familiar with the past history of the case; and for the additional reason that Mr. Artti, the Assistant Foreign Minister, has much to do with directing negotiations relative to foreign treaties. I will, however, seek an early occasion to talk with the Foreign Minister also in order to secure his co-operation and good will in the matter.

\(^1\) Not printed; it transmitted a draft treaty of friendship and commerce which had been submitted to the Finnish Government through its Legation in Washington. The draft was similar to that transmitted to the Ambassador in Spain, May 18, 1923, Foreign Relations, 1923, vol. ii, p. 331.
Mr. Artti said that the question of a treaty of Friendship, Commerce and Consular Rights had been held in abeyance for two reasons; first, because a temporary trade agreement (modus vivendi) for which the notes were exchanged in Washington on May 2, 1925, and which was ratified by the Diet, December 2, 1925 had served the purpose for immediate commercial relations; secondly, because the Government has been extremely busy negotiating treaties with nations in closer geographical proximity. At the present time commercial treaties are pending with Sweden, Czechoslovakia, Lithuania and a beginning has also been made with Jugoslavia. . . .

Continuing the topic of conversation with the Assistant Foreign Minister, regarding a treaty of Friendship, Commerce and Consular Rights with America, I can report that he stated that there is a commission of foreign treaties appointed by the Diet which handles all of these matters. He will be glad to bring the question to the notice of this commission and he promised to give me information within 10 days or two weeks as to what can be done.

I have [etc.]  

Alfred J. Pearson

711.6042/4

The Chargé in Finland (Gittings) to the Secretary of State

No. 1587  

Helsingfors, December 18, 1929.  
[Received January 4, 1930.]

Sir: I have the honor to refer to the Treaty of Friendship, Commerce, and Consular Rights, which the Department proposed to negotiate with Finland, as set forth in its Instruction No. 81 of August 16, 1923; as well as to subsequent correspondence, terminating with the Legation’s Despatch No. 376 of February 3, 1927, which appears to be the last action on record. I have discussed this question with the Minister and he approves of my suggestion to ask the Department what it wishes done about this proposed treaty. Shall negotiations be renewed? A cabled answer from the Department would save time.

Also, does the Department insist that the treaty be adopted in its entirety as drafted? I ask, because it is possible that parts of it, say the Consular Rights Section or some other, might be acceptable at once, whereas the Commerce portion might move more slowly. This was the situation in Czechoslovakia. In my opinion a half a loaf

*Hjalmar J. Procopé, Finnish Minister for Foreign Affairs.
today is better than no bread at all, and the Consular portion, for one thing, would seem desirable for our interests here.

I have [etc.]  

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JOHN STERETT GITTNGS

711.6002/4

The Acting Secretary of State to the Minister in Finland (Pearson)

No. 157  

WASHINGTON, March 26, 1930.

Sir: The Department refers to the Legation's despatch No. 1537 of December 18, 1929, and desires to inform you that the Department has received, from the Finnish Legation in Washington, the comments of the Finnish Government with respect to the draft of the Treaty of Friendship, Commerce and Consular Rights proposed to the Finnish Government on August 15, 1923. The proposals of the Finnish Government are under consideration by the Department, and it is contemplated that a discussion of these proposals with the Finnish Minister in Washington will be initiated in the near future.

I am [etc.]  

For the Acting Secretary of State:  

G. HOWLAND SHAW

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711.6002/10

Memorandum by the Assistant Chief of the Division of Eastern European Affairs (Packer)

[WASHINGTON,] August 14, 1933.

Negotiations for a standard treaty of friendship, commerce and consular rights were initiated with Finland by the Department in 1923 and have been carried on intermittently since that date at Washington with the Minister of Finland. At the present time the negotiations are practically completed; there is substantial agreement between the two Governments on almost all the articles of the draft treaty. The Finnish Minister is at present in Finland where he is discussing with the Foreign Office the few points not yet agreed upon, and it is expected that the final draft of the treaty—acceptable to both the Department and to the Finnish Government—will be drawn up shortly after his return to Washington in the fall.

In view of recent developments with respect to commercial treaty provisions, the question arises whether the Department should complete the negotiations of the proposed treaty in its present form and

* Not printed.
submit it to the Senate for approval. EE is of the opinion that the negotiations should be completed and the treaty signed, if possible, in time for submission to the Senate next January. It bases its opinion on the following considerations:

The proposed treaty, which is a treaty of friendship, commerce and consular rights, is designed to establish a means for the development of American-Finnish economic and commercial relations on a permanent basis, and for the regulation of consular relations and other non-commercial relations between the two countries.

While a modus vivendi governs, apparently in a satisfactory manner, the commercial relations between Finland and the United States at the present time, it is, nevertheless, considered highly desirable that the commercial relations between the two countries be placed on a permanent treaty basis as soon as possible. A similar treaty with Poland has just gone into effect with that country (July of this year), and there is apparently nothing in this proposed treaty with Finland which is not in conformity with the present Administration’s commercial policy. Since substantial agreement has now been reached with respect to practically all of the provisions of the proposed treaty, it would be, in the opinion of EE, undesirable to allow the negotiations to lapse at this point, thus losing the results of negotiations which have extended over a ten-year period. While, in view of present world conditions, the Department is about to negotiate certain reciprocal agreements with several countries, it is believed that the principle of the most-favored-nation will still continue to be the long range of policy of this Government with respect to commercial treaties. Inasmuch as the proposed treaty is to provide the permanent basis of commercial relations between the United States and Finland, it is felt that it should be completed as soon as possible, particularly since there appears to be nothing in it which is not fully in accord with our present commercial policy. If it should be found desirable to enter into a reciprocal agreement with Finland covering certain commodities in the trade between the two countries, such an arrangement could be put into effect in the case of Finland in a subsidiary agreement in much the same manner as similar agreements are apparently to be negotiated with countries with which commercial treaty relations have already been established.

With respect to the consular and other non-commercial provisions of the treaty with Finland, it is desirable that a treaty basis be provided as soon as possible for the protection of American citizens and their interests in Finland. EE is strongly of the opinion that provisions of this nature should be concluded with all countries in the

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8 Division of Eastern European Affairs.
Eastern European area with which the United States maintains diplomatic relations. The United States now has such treaties with Estonia, Latvia, and Poland (including Danzig). If this treaty with Finland is concluded and comes into force, Lithuania will be the only country in the Eastern European area of the category indicated that has not signed such a treaty with the United States.

The Department has announced (July 15) the desire of this Government to begin exploratory studies of the possibility of negotiating agreements with certain countries granting certain privileges and assurances with respect to the importation into the United States of various commodities on a reciprocal basis. While through the modus vivendi American-Finnish trade is on a most-favored-nation basis at the present time, EE is of the opinion that Finland should be given an opportunity to enter into a reciprocal agreement covering commodities which it exports to the United States. It is understood that Sweden desires to negotiate an agreement covering wood pulp imports into this country. While any concessions granted Sweden with respect to imports of wood pulp will automatically be extended to Finland (which is also a large exporter of wood pulp to the United States) under the most-favored-nation clause of the present modus vivendi, it is thought that this Government should notify the Finnish Government of its desire to negotiate such agreements and invite Finland to consider the opening of negotiations covering commodities in which it is particularly interested. EE's recommendations in this matter are based on the following factors:

a. Finland has always treated American commerce in an equitable manner despite the fact that, until Finland went off the gold standard, there was always an appreciable balance of trade in favor of the United States. The Finnish Government and people have been in recent years most favorably disposed towards the United States (no doubt due in part to the influence of the large number of persons of Finnish blood resident here), and the Finnish Government has given its acceptance of or support to various proposals of this Government with respect to disarmament, international peace, and international commercial measures tending to remove restrictions on trade.

b. Finland is the only country which has met promptly the full obligations due to this Government in connection with intergovernmental indebtedness. In making the payment which fell due on June 15th, the Finnish Government not only broke the apparently united front of the debtor countries, but it also risked criticism from its politi-

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* See pp. 675 ff.
cal opponents in Finland. It would, consequently, be interpreted as constituting a gesture of appreciation, if this Government were to invite the Finnish Government to enter into negotiations for an agreement covering wood pulp or other commodities exported by Finland to the United States. In this connection, it is considered that news that the United States was negotiating with Sweden for special treatment for Swedish wood pulp, even though any privileges granted to Sweden would naturally be extended to Finland under the most-favored-nation provision of the modus vivendi, might be received in Finland as indicative of a tendency on the part of the United States to treat imports of Finnish origin less favorably than those of other countries. To create such an impression would be highly undesirable in view of present good relations existing between the two countries.

In summary, EE recommends that:

a. The negotiations for the proposed treaty of friendship, commerce and consular rights with Finland be completed as soon as possible, with a view to submitting the treaty to the Senate in January.

b. The Finnish Government be invited at once to initiate proposals for a reciprocal agreement covering imports into this country of those commodities which are of special interest to Finland.

c. Any agreement entered into with Finland of the nature indicated in (b) above be made effective in the same manner as such agreements are to be made effective with those countries which already have a most-favored-nation treaty or modus vivendi with the United States.

E. L. P[acker]

711.0602/12

The Chief of the Division of Eastern European Affairs (Kelley) to the Assistant Secretary of State (Sayre)

[WASHINGTON,] January 16, 1934.

DEAR MR. SAYRE: Referring to our conversation yesterday, I am attaching a copy of the final draft of a proposed treaty of friendship, commerce, and consular rights between the United States and Finland which is ready for signature. 10

This treaty is similar to the other treaties of this type which the United States has concluded in recent years with Austria, 11 El Salvador, 12 Estonia, Germany, 13 Honduras, 14 Hungary, 15 Latvia, Norway, 16 and Poland. It contains provisions according unconditional

10 Not printed.
most-favored-nation treatment in commercial matters. National treatment is provided for shipping and other provisions deal with the right of entry, travel, and residence. The treaty also contains articles concerning the rights, duties, privileges, and immunities of consular officers.

It is to be especially noted that the treaty is concluded for a term of one year and after that period is subject to termination on a notice of six months.

I may add, for your information, that Finland has not established quotas or contingents for the importation of goods from foreign countries. Neither has it had recourse to foreign exchange restrictions. In general it may be said that American trade has been receiving fair treatment.

R[OBERT] F. K[ELLEY]

711.6042/13

Memorandum by the Under Secretary of State (Phillips) 156a


The President authorized me today to go ahead with the proposed Treaty of Friendship, Commerce, and Consular Rights with Finland. Please let me know when the Treaty will be ready for signature.

W[ILLIAM] P[HILLIPS]

711.6042/11

Memorandum by the Assistant Secretary of State (Sayre)

[WASHING]ON,] January 22, 1934.

In regard to the Finnish treaty the only thing that remains to be done is the comparing of the Finnish and English texts by the Department. Arrangements are now being made to obtain the services of a Finnish translator to do this work, which may take several days.

The Finnish Minister has already gone over the two texts and found a few errors, which have been corrected. He has left with the Department his full power, and consequently he is ready to sign the treaty as soon as we notify him that we are ready.

F[RACTIS] B. S[AYRE]

156a Addressed to the Assistant Secretary of State (Sayre) and to the Chief of the Division of Eastern European Affairs (Kelley).
Treaty Series No. 868

Treaty Between the United States of America and Finland, Signed at Washington, February 13, 1934

[For text of the treaty, see Department of State Treaty Series No. 868, or 49 Stat. 2659.]

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

641.60431/29

The Minister in Finland (Albright) to the Secretary of State

[Extracts]

No. 172

Helsingfors, April 17, 1934.

[Received May 10.]

Sir:

Without the British market, Finnish industry would be ruined. Great Britain is in an excellent position to dictate its terms and it is doing so. The Anglo-Finnish Commercial Agreement of September 29, 1933,\(^1\) with its obligation upon Finland to import not less than 75 per centum of its requirements in coal from United Kingdom collieries, its commitments with regard to imports of whiskey, textiles, salt, et cetera, and its associated understandings and "conversations" is clearly indicative of the plight in which this country finds itself. It is not anticipated that the trade between the two countries can be balanced completely, but every effort will be made to reduce the present disproportion as rapidly as possible, and it is obvious that this must be accomplished at the cost of other countries with which Finland enjoys trade relations, since it is the policy of the Government to develop domestic industry to the full and to reduce as far as possible the importation from abroad of materials which can be produced at home.

The principal hindrance to the expansion of American trade in Finland may be said to be the attitude of the Finnish Government itself. Convinced as it is that closer ties with the United Kingdom are necessary to the economic welfare of the country and to its political security, it is unquestionably exerting its influence to induce greater imports from the British Isles and the British Dominions. . . .

The attitude of the Finnish public is strongly in favor of the development of the country's natural resources and of the native industries. The Agrarian Party in the Diet is particularly active in its support of measures to increase agricultural production and to reduce imports from abroad. The Government in power is committed to this programme, and finds itself in the position also of encouraging imports from the United Kingdom under threat of reprisals if the unfavorable British trade balance is not reduced.

The depreciation of the dollar and its virtual stabilization in relation to foreign exchanges would undoubtedly greatly increase the sales of American products in Finland were normal competition unhindered by outside pressure. Outside pressure in favor of United Kingdom products does, however, as has been described in the course of this despatch, play an important role in Finland. The adroit nature of this pressure, as amply witnessed in the Anglo-Finnish Commercial Agreement and its associated understandings, in nowise conflicts with the letter of the most favored nation principle applying to our trade with Finland. Lowering of duties under certain items in the Finnish customs tariff, at the instance of the British Government and in order to favor the importation of certain United Kingdom products, offers the same facilities as well to all other countries enjoying most favored nation treatment. Finnish importers are merely being influenced to "buy British." American goods are well regarded in Finland and, were price and quality the only criteria to be considered, they would forge ahead despite the obvious disadvantage of a longer carry from the point of production.

Finland's attitude toward the United States is friendly, but rather indifferent. American applause of Finland's promptness in meeting its debt payments, has, of course, been favorably received, but the strictly commercial character of the debt is generally admitted, and Finland's progress toward recovery is, furthermore, felt to have given the Government no option but to meet its engagements as in the past. The Finns are realists, and it seems to be the consensus of opinion among them that, while cordial relations between the two countries and the stimulation of trade relations are desirable, American assistance politically is virtually out of the question in view of the remoteness of the United States from this part of Europe and our policy of non-interference in purely European questions. As the United States has a very unfavorable balance of trade with Finland—although a balance that is normally much less unfavorable than that of the United Kingdom—the possibility may have suggested itself to the Department of the eventual negotiation of a bi-lateral agreement for the stimulus and protection of American trade with this country.

Respectfully yours,

EDWARD ALBRIGHT
Memorandum by the Chief of the Division of Eastern European Affairs (Kelley)

[WASHINGTON,] July 18, 1934.

Mr. Sayre stated that he had invited Dr. von Numers to come to the Department in order to talk over with him the question of the negotiation of a reciprocal trade agreement with Finland. He said that, if the Finnish Government looked with favor upon the negotiation of such an agreement, it would be possible for both Governments to have studies made during the summer months of the desiderata in the way of concessions which each country would like to obtain from the other. After each Government had drawn up a list of such desiderata, exploratory conversations looking to the negotiation of a trade agreement could be held in September between the Finnish Minister and himself. He requested Dr. von Numers to ascertain whether his Government was desirous of entering into such conversations.

In response to a question, Dr. von Numers said that he was not aware of the attitude of his Government in the matter. He stated that he would telegraph his Government immediately and hoped to have a reply before Mr. Sayre went on leave. If not he would inform Mr. Kelley, whom Mr. Sayre requested to get in touch with Mr. Grady, with a view to having a committee appointed to carry on the preliminary studies.

Dr. von Numers inquired whether Mr. Sayre knew along what lines the discussions might develop. Mr. Sayre in reply said in confidence that great pressure was being brought to bear to restrict, under the provisions of the N. R. A., the importation of news print and paper pulp into the United States and he assumed that Finland was greatly interested in having these commodities maintained on the free list. He thought that if the Finnish Government were prepared to make sufficient concessions, the Department would give very serious consideration to the desires of the Finnish Government in respect to these commodities.

R[OBERT] F. K[EELLEY]

611.60d31/76 : Telegram

The Secretary of State to the Minister in Finland (Albright)

WASHINGTON, July 19, 1934—7 p. m.

20. We informed the Finnish Legation yesterday that, if agreeable to the Finnish Government, we are prepared to enter into exploratory

Francis B. Sayre, Assistant Secretary of State.
Henry F. Grady, Chief, Tariff Section of the Department of State.
conversations looking to the negotiation of a reciprocal trade agreement upon return of Minister Aström to Washington.

As soon as we have been informed that this is agreeable to the Finnish Government, we shall set up a Special Committee to draw up list of desiderata in the way of concessions to be sought by the United States. We expect that the Finnish Government will make similar preparations for the proposed conversations.

We are anxious to keep this proposal confidential, since, if our points of view turn out to be too far apart to warrant successful conclusion of an agreement, no actual negotiations will be undertaken.

If approached by the Foreign Office or on a suitable occasion you should express this Government's interest in the successful conclusion of the proposed conversations.

You are requested to submit as soon as possible by mail serially separate reports covering important commodities imported by Finland from the United States, including wheat and wheat flour, fresh and dried fruits, meat products, automotive products, et cetera. These reports should set forth in an analytical fashion past development and present status of the trade and outline the competitive factors both Finnish and foreign now affecting imports of the commodities discussed. Special reference in this regard is made to the operation of the Finnish-British commercial agreement.

Any suggestion you may care to make relating to concessions to be sought from Finland with a view to expanding present trade will be helpful to the Department. Information with regard to factors, such as special Finnish interests, which should be taken into consideration would be appreciated.

It is hoped that the Legation will be able to forward these reports so that the last will reach the Department not later than October 1st.

Hull

611.60d31/76 supp.: Telegram

The Secretary of State to the Minister in Finland (Albright)

WASHINGTON, August 6, 1934—3 p.m.

21. Department's No. 20, July 19, 1934, 7 p.m. The Finnish Legation at Washington has not been able to obtain a reply from the Finnish Foreign Office with respect to our proposal for exploratory conversations.

Please consult Mr. Sayre, who will arrive at Helsingfors on the steamer Sean-Penn on August 7, and, if it meets with his approval, make appropriate inquiries of the Foreign Office and indicate our

21 None printed.
interest in receiving an early acceptance from the Finnish Government so that the necessary preliminary studies may be undertaken at once.

Telegraph action taken and results.

HULL

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611.60481/78: Telegram

The Minister in Finland (Albright) to the Secretary of State

Helsingfors, August 11, 1934—10 a.m.
[Received August 11—6:34 a.m.]

Your telegram No. 21, Aug. 6, 6 [3] p. m. reached Legation following call Mr. Sayre on Acting Finnish Minister for Foreign Affairs,* and he wishes that the Department know it and that he approved of Legation requesting Foreign Office for decision. Acting Finnish Minister for Foreign Affairs states that experts will probably be sent to Washington for exploratory conversations but that official decision will not be made until the question submitted to Cabinet next week.

ALBRIGHT

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611.60481/80: Telegram

The Minister in Finland (Albright) to the Secretary of State

Helsingfors, August 21, 1934—11 a.m.
[Received August 21—9:25 a.m.]

Following Mr. Sayre’s informal conversation Finnish authorities during recent visit and my later conversation with Acting Foreign Minister I am now informed by him that Finnish Government will send expert Washington about October 1st.

ALBRIGHT

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611.60481/95

Memorandum by the Chief of the Division of Eastern European Affairs (Kelley)

[WASHINGTON,] December 15, 1934.

Conversation: The Secretary of the Finnish Legation, Dr. Sigurd von Numers;
The Honorable Francis B. Sayre;
Mr. Robert F. Kelley.

Mr. Sayre stated that this Government is now prepared to announce its intention to negotiate a reciprocal trade agreement with Finland

*Rolf Witting.
790532—61—16
and would like to make this announcement Wednesday, December 19, if it were agreeable to the Finnish Government. He said that this announcement would fix February 4 and 11 as the dates for the public hearings with regard to the agreement with Finland, and that towards the end of February the Department would be ready to enter into discussions with Finland. In this connection, he pointed out that, if the Finnish Government desired, we would be willing to arrange for an exchange of lists of commodities prior to the arrival of the Finnish expert in Washington.

Dr. von Numers said he would immediately bring the matter to the attention of the Minister, who was in New York, and then telegraph to Helsingfors. Mr. Sayre suggested that probably the best way to expedite action would be to telegraph that the American Government would announce on Wednesday its intention to negotiate an agreement with Finland unless it were advised prior to that date that this was not agreeable to the Finnish Government. Dr. von Numers said he thought that this was a good way to handle the matter.

R[OBERT] F. K[ELLEY]

Statement by the Secretary of State

Pursuant to Section 4 of an Act of Congress approved June 12, 1934, entitled “An Act to Amend the Tariff Act of 1930” and Executive Order No. 6750 of June 27, 1934, I hereby give notice of intention to negotiate a trade agreement with the Government of Finland.

The Committee for Reciprocity Information has prescribed that all information and views in writing and all applications for supplemental oral presentation of views shall be submitted to the Chairman of said Committee, care of the United States Tariff Commission, not later than twelve o’clock, noon, February 4, 1935. Oral presentation of views by persons whose applications therefor have been approved will be heard February 11, 1935.

Regulations of the Committee governing the form and manner of presenting views in connection with proposed foreign trade agreements were made public July 3, 1934, and are published weekly in Commerce Reports, and are contained in the Treasury Decisions of July 12 and September 6, and in various issues of the Press Releases of the Department of State, including those of July 7 and September 8.

WASHINGTON, December 19, 1934.

\footnote{23} Issued as a press release by the Department of State, December 19, 1934.
\footnote{24} 48 Stat. 943.
REPRESENTATIONS BY THE FINNISH GOVERNMENT IN SUPPORT OF CLAIMS AGAINST THE UNITED STATES ARISING FROM THE DETENTION OF FINNISH SHIPS IN AMERICAN HARBORS

411.60d Finnish Vessels/130

Memorandum by the Under Secretary of State (Phillips) of a Conversation With the Finnish Minister (Aström)

[WASHINGTON,] April 26, 1934.

The Finnish Minister brought up the question of claims arising as a result of the detention in 1918 of certain Finnish sailing vessels; the matter has apparently been before the Department for years; it is in the form of a request by the Finnish Government for permission to sue the Government of the United States in the Court of Customs Appeals [Court of Claims]. The Minister referred to the fact that, in the opinion of former Assistant Secretary Rogers, the Department should grant the request and submit to Congress the necessary legislation authorizing the Finnish Government to sue this Government; other points of view, however, have been raised, which, according to the Minister, do not rest on very substantial ground.

Finally the Minister requested that he be given an opportunity to discuss this matter with a newly appointed official who would be in a position to review the matter for the present Administration without prejudice.

WILLIAM PHILLIPS

411.60d Finnish Vessels/132

The Secretary of State to the Finnish Minister (Aström)

WASHINGTON, May 8, 1934.

Sir: I refer to your recent oral request of the Under Secretary\(^{25a}\) that I take steps to obtain the necessary legislation to authorize the reference to the Court of Claims of the United States, for adjudication, of the claims which have heretofore been presented by your Government on behalf of certain Finnish shipowners on account of the allegedly illegal detention of their vessels by this Government in 1918, and have to advise that I have had this matter carefully reexamined and have reached the conclusion that I could not properly undertake to comply with your request in this respect.

I attach hereto a memorandum indicating, in a brief manner, some of the more important considerations which impel me to this conclusion.

Accept [etc.]

For the Secretary of State:

R. WALTON MOORE

\(^{25}\) For previous correspondence on this subject, see Foreign Relations, 1932, vol. ii, pp. 186 ff.

\(^{25a}\) See memorandum of conversation, supra.
[Enclosure]

The Department of State to the Finnish Legation

[WASHINGTON, May 8, 1934.]

MEMORANDUM

The request of the Minister of Finland that the Department take steps to obtain from Congress the necessary legislation to permit of the adjudication by the Court of Claims of the claims presented by the Finnish Government on behalf of certain Finnish shipowners is not considered to be justified for several reasons, among which may be mentioned the following:

First. The claims are based upon an alleged detention of the vessels by this Government during the year 1918. As a matter of fact, there was no act of detention on the part of this Government. The vessels voluntarily entered the ports of the United States under such circumstances as to make it impossible for them to leave for other destinations without obtaining from this country certain quantities of bunkers and supplies. At that time all exportation from the United States was subject to license. There can be no question as to the right of any Government to prohibit or restrict the exportation of commodities from its own jurisdiction, especially commodities of its own production, as were those involved in this case. There can be no question of international liability for consequences resulting from the exercise by a Government of such an unquestioned right, whether by withholding entirely of permission to remove such commodities or by permitting their removal under prescribed conditions. The present claim rests upon the theory that the conditional granting of licenses for such removal did involve this Government in international responsibility and that the claimants were not under obligation to observe the conditions prescribed. That theory cannot, of course, be accepted.

Second. During the entire period in which their vessels were lying in American ports, the claimants had ample opportunity to appeal to the Courts of the United States for the rectification of any supposed injustice or injuries being inflicted by American officials. Claimants neglected to avail themselves of such remedies. Consequently, the judicial recourse which the Finnish Government now requests this Government to provide, by special legislation, would be in effect the reestablishment of a remedy which the Finnish claimants had available at the appropriate time but then neglected to use. One of the essential prerequisites of a valid international claim is, of course, the exhaustion of the remedies available to claimants under the municipal law of the country against which the claim is made.

Third. The contention that the presence on board these vessels, during their stay in the ports of this country, of United States Marine
Guards constituted their forceful detention, is entirely unfounded, because:

(a) So far as the records indicate, there was no effort on the part of the vessels to leave the United States in a legal manner and consequently no efforts were exerted by the Marine Guard to detain them; (b) The function of the Marine Guard was that of protecting the vessels from injury rather than that of depriving them of any legal rights, as is clearly evidenced by the following extracts from instructions to the Guard which were issued by the Navy Department:

"1. Purpose. The purpose of the naval guard is to protect merchant vessels, otherwise unprotected, from internal or external damage, and to prevent the coming aboard or departure of unauthorized persons or material which might do injury to the vessel or to the interests of the United States. This will be meant to include all neutral vessels and all Allied or United States vessels without naval armed guards, whose ultimate port of destination is outside United States waters."

"7. Duties of the guard on board. Besides carrying out the following detailed rules the guards on board merchant vessels must not neglect any other measures which may be necessary for carrying out the purposes of the guard, namely, the protection of the ship against all acts inimical to the interests of the United States or damage to any part of the vessel or its personnel or equipment."

[Here follow several paragraphs of detailed rules for guards on merchant vessels.]

Fourth. Although the alleged detention took place during the year 1918, it was not until June 17 [July 7?] 1922, that the Finnish Government presented a claim to this Government. That claim related to but one of the thirteen vessels now concerned, namely, the bark Rowena. After careful consideration of that claim, the Honorable Charles E. Hughes, then Secretary of State, now Chief Justice of the United States, rejected it on October 23, 1922. It was not until another five years had elapsed that the claim was revived on behalf of the owners of the Rowena and was enlarged by the addition of like claims on behalf of the owners of twelve other vessels. This enlarged claim has, on several occasions, been carefully considered by the Department and found to be without merit. The Department’s views in this respect were last formally expressed in its note of February 18, 1932, to the Minister of Finland, in which it said:

“As you have been informed on other occasions, the Department has given very careful consideration to the matter of these claims.

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26 The following omission indicated in the original.
27 Not printed.
29 Ibid., p. 187.
and its conclusion has been, consistently, that the cases present no violation of either municipal law of the United States or of the accepted principles of international law. Therefore there is no financial responsibility on the United States for damages said to have been sustained by the owners of the vessels."

No evidence has been presented since that date which justifies a reversal of that conclusion.

_Fifth._ The contention that the refusal of the War Trade Board to issue, unconditionally, licenses for ships stores to enable the vessels in question to leave the United States, because of an alleged desire of the Board to detain the vessels, is unmeritorious and has to do with a state of mind of American officials which this Government could not, under any principle of equity and justice, be expected to answer after the lapse of such a long period of time and when the state of mind of the responsible officials (even assuming that the point is material, which cannot, of course, be conceded) would be impossible of ascertainment.

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411.60d Finnish Vessels/133

_The Finnish Minister (Åström) to the Secretary of State_

WASHINGTON, June 4, 1934.

_Excellency:_ I have the honor to acknowledge Your Excellency’s note of May 8th, 1934, enclosing a memorandum of the State Department’s proposed objections to my Government’s request that authority be given various Finnish citizens to sue the United States of America in the Court of Claims for damages suffered by them in 1918 as a result of the detention of their respective sailing ships. My understanding is that this note and memorandum were delivered to me in order that I might be advised of the Department’s proposed objections and so that I might answer such objections before a definite conclusion is reached by the Department.

_Pursuant_ to that understanding I have given careful consideration to the various points mentioned in the memorandum, and am still convinced that the various points set out therein fail to justify a refusal of authority for these claimants to submit their claims for a judicial determination.

In the first point of the Department’s memorandum the following statement appears:

"As a matter of fact there was no act of detention on the part of this Government"

This conclusion overlooks the evidence which has been submitted to the Department and appears beyond dispute or argument directly
contrary to that evidence, which evidence the claimants are prepared to submit to a court when such right is granted. In this connection I again beg to call Your Excellency’s attention to a letter written by Mr. J. B. Smull \(^a\) of the Government Committee then controlling charters for outward cargoes, to the ships’ agent, dated April 18, 1918, saying, among other things:

“No action can be taken on this fixture (the charter of the Sailing Vessel Woodburn) until we hear from Washington that the entire question of these Russian sailing vessels is settled. Just at the moment no Russian vessel is allowed to leave American ports.”

This letter, from one of the officials of the American Government then in control of such matters, is positive proof that the vessels themselves were the objects of the detention.

I also desire to call Your Excellency’s attention again to the files of the War Trade Board, and particularly to the statement which was prepared by one of the Board Officials summarizing the Board’s actions with respect to these vessels, as follows:

“In the early part of the operations of the Bureau on Transportation all Russian vessels were licensed freely in line with our general policy as applicable to allied vessels. As the uncertainty of the military situation in Russia developed our policy in this connection of necessity had to be materially changed, and all applications for licenses covering Russian vessels were reported to this Bureau for approval. As the complete military defeat of the Russian armies became more and more apparent our policy in connection with the licensing of Russian vessels became more clearly defined until finally in actual practice no licenses were granted.”

Also, in a memorandum of a conference between one of the officials of the War Trade Board and one of the officials of the Shipping Board, dated April 12, 1918, wherein the Shipping Board was inquiring the reason for the vessels’ being held up, it appears that the War Trade Board official advised the Shipping Board official that

“the vessels had applied for bunker licenses for South Africa and were being held pending decision of the Board in relation to action on Russian vessels. Mr. Robinson \(^b\) also stated there was nothing specific against the vessels themselves and the question was one of general policy as to the advisability of allowing Russian vessels to proceed under existing conditions.”

Furthermore, in a letter from the Director of the Bureau of Transportation of the War Trade Board to Lieutenant W. N. Elkins,

\(^a\) Member of the Chartering Committee of the United States Shipping Board.

\(^b\) J. A. Robinson, Assistant Director of the Bureau of Transportation, War Trade Board.
U. S. N., dated June 21, 1918, wherein Lieutenant Elkins was directed to investigate the crews of these vessels, it is stated:

"As you know, the situation with regards Russian vessels has been a somewhat delicate one, and we have felt it was rather unsafe to allow such vessels to proceed."

In addition to this documentary proof made by the responsible officials of the United States Government at the time of the occurrence of the events upon which these claims are based, may I be permitted again to direct Your Excellency’s attention to the negotiations for a charter of these vessels by the United States and to the correspondence relating thereto, wherein it appears that the United States Government offered to carry out the charters made by the owners in order to relieve the owners of any possible claim for breach thereof. This evidence I submit not only corroborates the previously mentioned evidence of an actual detention of the ships, but is also direct and positive evidence that there was no embargo on the export of the cargo or bunkers involved. In fact, there is not a single reference to an embargo on the cargoes or ships stores at the time of the occurrence and none of the correspondence or documents now of record in the files contain the slightest suggestion of such an embargo. At all times and in all places the object of the detention is specified as the ships themselves.

It is further stated in the first point of the Department’s memorandum that

"There can be no question as to the right of any government to prohibit or restrict the exportation of commodities from its own jurisdiction, especially commodities of its own production, as were those involved in this case."

Upon this point I beg leave to refer to my note of May 3, 1932, wherein I stated:

"I have the honor to call your attention to the fact that neither the Finnish citizens who have made claim for damages which have been suffered from the detention of their vessels, nor the Government of Finland presenting their claims, have intended to question the right of the authorities acting for the United States to control the exports of resources or products of the United States within the limits prescribed by local laws."

Upon this point, therefore, there is no dispute between us, but, as I further stated in my note of May 3, 1932,

"It is the standpoint of the claimants and the Government of Finland that the refusal of the bunker licenses was only incidental to the main purpose of the American authorities, that is, the detention of the

\footnote{Foreign Relations, 1932, vol. ii, p. 188.}
ships themselves, and was one means by which this purpose was made effective."

It is still the contention of these claimants and my Government that the denial of the bunker licenses was merely incidental to the detention of the ships themselves. It was the means by which the detention was made effective. The fact that it was the ships themselves which were being detained and not the cargo is fully and completely substantiated by the quotation from Mr. Smull's letter set forth above, by the quotations from the memoranda of the files of the War Trade Board quoted above, and by the offer of the United States Government itself to charter these ships and carry these particular cargoes to their respective destinations.

It is further stated in the first point of the Department's memorandum that,

"The present claim rests upon the theory that the conditional granting of licenses for such removal (that is removal of commodities produced in this country) did involve this government in international responsibility and that the claimants were not under obligation to observe the conditions prescribed."

These claimants and my Government have always admitted and still admit that the owners of these vessels were obligated to observe the conditions prescribed by local laws for clearing and carrying out cargoes and supplies. Local laws and regulations then prescribed:

1. Approval of charters.
2. Agreements to return with prescribed cargoes.
3. Permits for exportations of cargoes.
4. Permits for necessary bunkers and ships stores.
5. Clearance.

Evidence has been submitted and has not been disputed that the particular charters were submitted for approval and actually approved by the American Government officials. Evidence has been submitted and not disputed that the owners agreed to return with specified cargoes. Evidence has been submitted and not disputed that permits were obtained for the exportation of the particular cargoes. Evidence has been submitted and not disputed that applications were submitted for licenses for bunkers and ships stores and clearance, but were refused, as shown by the evidence set out above, because, according to record of the American Government,

(1) "the question was one of general policy as to the advisability of allowing Russian vessels to proceed under existing conditions."

(2) "As the complete military defeat of the Russian armies became more and more apparent our policy in connection with licensing of Russian vessels became more clearly defined until finally in actual practice no licenses were granted."
(3) "We have felt it was unsafe to allow such vessels to proceed."
(4) "Just at the moment no Russian sailing vessel is allowed to leave American ports."

The contention of these claimants and my Government is that (1) the evidence quoted above is positive proof of the fact that the vessels themselves were the object of detention and; (2) the vessels being not Russian but Finnish vessels, their detention by the officials of the United States rendered the United States liable to damages for such acts both under the Rules of International Law and local law. No local law either directly or by implication authorized the government officials to refuse bunkers and clearance to a ship because of its Finnish registry.

The point raised in the second paragraph of the Department's memorandum was answered in the supplemental memorandum of counsel for the claimants, which was submitted by me to the Department on Nov. 3, 1931. By reason of the fact that the Department has referred to no rule or decision of American courts contrary to the rules and decisions there cited, I have been led to the belief that the Department had agreed to the conclusions reached by claimants' counsel in that memorandum.

For the sake of brevity in this note, I will not repeat here the numerous rules and decisions of American courts in support of the claimants' contention set forth in that memorandum and which was subscribed by Honorable William J. Donovan, former Assistant to the Attorney General of the United States. I refer again, however, to the rules and decisions therein quoted.

As to the point raised in the third paragraph of the Department's memorandum I limit myself in this connection to note that in sub-paragraph "a" of the third point in the Department's memorandum it is stated:

"Sofar as the records indicate there was no effort on the part of the vessels to leave the United States in a legal manner and consequently no efforts were exerted by the marine guard to detain them;"

In answer to this statement I beg to refer again to the evidence which has been submitted in this case and which will be submitted to a Court when authority is given the claimants so to do. This evidence shows a constant, persistent effort on the part of the agents of these vessels to obtain clearance for them. It shows a constant, persistent effort on the part of the agents and the masters of the vessels to (1) agree with the government officials upon a satisfactory charter of the vessels; and (2) to obtain clearance so as to leave legally.

*44 Not printed.
The point raised in the fourth and fifth paragraphs of the Department's memorandum refer to the delay which has occurred in disposing of these claims.

In the fifth paragraph it is stated, in substance, that a defense of the claims, which is based upon acts of government officials, involves a disclosure of the state of mind of those officials which is impossible to [of] ascertainment after the lapse of such a long period of time. This conclusion does not appear to be justified by the facts. A recent investigation by counsel for the claimants discloses the fact that all of the officials who took active part in the detention of these vessels, with the exception of former Secretary of State Lansing, Mr. Weldin Ring and Mr. Marc M. Michael are still available as witnesses. This investigation also disclosed the fact that former Secretary of State Lansing, Mr. Ring and Mr. Michael died long after these claims were filed. In other words, the only witnesses not now available to the Government to interpret their own acts are witnesses who died long after the time when the Department had notice of the claims, and long after the time when the Department could have, if it had felt such course necessary, obtained and perpetuated their testimony. In addition to such fact, the correspondence which took place at the time and the memoranda made by responsible officials at the time speak for themselves and disclose the state of mind of those officials who acted in the matter so that their testimony is in fact unnecessary. Such correspondence and memoranda are still available to the Government.

Under these circumstances it does appear that the state of mind of the responsible officials is possible of ascertainment.

I have thus answered the proposed objections of the Department to recommending that authority be given to these claimants to sue. In addition thereto, I may be permitted to state that

(1) the courts of Finland are always open to claimants of other countries for the prosecution of claims against the Government of Finland, and while my Government is aware that the laws of the United States are different, it does feel justified in asking that a similar privilege be extended to its citizens on these claims; (2) the Government of the United States has heretofore extended the privilege here requested to citizens of the Government of the Netherlands and to the citizens of the Government of Sweden on quite similar claims. My Government feels justified in continuing to request that similar privileges be extended to its citizens and would consider, in view of the right accorded to the Netherlands and to Sweden to have the claims of their citizens judicially decided, a denial of such right to the Finnish Government to have the claims of the Finnish shipowners so decided as a plain case of discrimination.

The claimants in these cases are numerous shareholders of the various ships scattered quite broadly through Finland. They have knowledge of the fact that citizens of other countries may litigate their claims against Finland in Finnish courts. They have been informed of the fact that the Government of the United States has extended to citizens of other countries the privilege of litigating similar claims against the United States in the courts of the United States or before arbitrators especially chosen for that purpose. Accustomed to abide by decisions of courts in judicable matters, they would not be able to understand the refusal of the Government of the United States to authorize similar privileges for them.

I have understood in my discussion of these claims with the officials of the Department that the Department would have long ago recommended authority for these claimants to submit their claims for a judicial determination were it not for the fact that they feared that such a course might result in the presentation of numerous other similar claims. It has seemed to me that such a reason cannot be justified in fact at this late date. In this connection I again take the liberty of quoting the attitude of the Government of the United States toward claims of citizens of other countries as expressed in a note from the Department of State to the Minister of the Netherlands in connection with the claim for the detention of the Steamship Zeelandia, as quoted in the opinion of the Court of Claims in that case, as follows:

"This Government (the Government of the United States) is quite agreed that in a case presenting a question as to the responsibility of the United States for the damages toward an alien corporation as does that of the Zeelandia, the claimant, if invoking any principle of international law as applicable thereto, should have its day in court before a tribunal competent to pass on the contention and having ample jurisdiction to do so." 73

In behalf of my Government, I am still confident that the Department of State will not now discard this rule of international fair dealing and will still agree to recommend that these claimants be authorized to litigate their claims in the Court of Claims by a suitable Act of Congress.

I am still confident that the evidence heretofore submitted and referred to herein, as well as the decisions and rules of law herein referred to, and more fully set forth in the memoranda heretofore submitted, fully answer the proposed objections as set forth in the Department's recent memorandum, and confidently expect that the request will be granted so that the Congress may enact the necessary legislation, giving to these claimants "Their day in court before a

73 Court of Claims 722.
tribunal competent to pass on the contention and having ample juris-
diction to do so”.

Accept [etc.]  

L. ÅSTRÖM

411.60d Finnish Vessels/141

The Department of State to the Finnish Legation

MEMORANDUM

In his note of June 4, 1934, regarding the claims presented on behalf of certain Finnish shipowners, request is again made by the Minister of Finland that the claimants be allowed to bring their cases before the Court of Claims by authorization of Congress.

In various communications that have been filed with the Department of State by the Legation, reference has been made to the records of the War Trade Board. In some instances copies of records have been submitted; in others, quotations from records have been made.

Before giving further consideration to the Minister’s request, it is desirable that the Department should have before it copies of all the evidence relied upon or which may be relied upon in support of the claims, including particularly copies of all records of the War Trade Board or other governmental agency in the possession of the Legation or of counsel for the claimants.

Upon receipt of this information, the Minister’s request will again be taken under advisement.

WASHINGTON, October 2, 1934.

411.60d Finnish Vessels/144

The Secretary of State to the Finnish Minister (Åström)

WASHINGTON, December 11, 1934.

SIR: Reference is made to Your Excellency’s note of June 4, 1934, and to your memorandum of October 22, 1934, respecting the desire of your Government that authority be given various Finnish citizens to sue the United States in the Court of Claims on account of the allegedly illegal detention of their vessels by this Government in 1918.

Since the receipt of your communication of October 22, 1934, a thorough examination of pertinent information has been made, with the result that it now appears that the claim which you urge was based on faulty factual premises.

# Handed to the Finnish Minister by the Legal Adviser, October 3.
# Memorandum not printed.
The appropriate officials charged with the responsibility of conserving the interests of the United States realized early in 1917 that drastic steps would have to be taken effectively to meet the challenge of the submarine warfare. It was then determined to convoy shipping. It is, of course, recognized that sailing vessels are not readily convoyed, and consequently American sailing vessels were not permitted to enter the war zone. The evidence at that time was overwhelming that the risk of loss of a sailing vessel in the submarine zone was so great as to approach certainty. In fact, it was the experience of this Government prior to 1917 that if an American sailing vessel arrived at a foreign port in the submarine zone the owner would apply for permission to sell to foreign purchasers on the ground that it would be almost sure death to attempt to sail home. As a matter of self-defense, it became the policy of this Government to conserve commodities and tonnage for war needs. This policy found expression in the following definite restriction on the issuance of bunker licenses to sailing vessels going through the war zone which appeared as General Rules No. 1, War Trade Board, Bureau of Transportation:

“I. No application for ‘bunkers’ by a sailing vessel for a voyage into the submarine war zone shall be approved. Sailing vessels equipped with auxiliary motive power shall, in the application of these rules, be classified as sailing vessels.” (Journal of the War Trade Board, No. 5, page 8.)

This restriction was in force prior to and during the time the sailing vessels here in question were in the ports of the United States.

A similar statement appeared in the War Trade Board Manual for Shippers, No. 2, May, 1918. On October 10 and 25, 1917, and January 24, May 31, and June 25, 1918, substantially the same instructions were issued to the Division of Transportation of the Bureau of Export Licenses. It will thus be seen that this restriction as to bunkers was common knowledge among shippers long before and at the time the ships to which this correspondence relates entered United States waters.

As a matter of interest the Vacuum Oil Company, which, I understand, was interested in the cargoes of the ships under consideration, on January 12, 1918, inquired “if there has been any change in the recent ruling which was to the effect that no sailing vessels could proceed from the States to ports in the war zone.” They were advised in reply that there had been no change with respect to the licensing of bunkers and cargoes for such vessels. So stringent was this restriction that an urgent request by one of the Governments associated with the United States in the war to permit one of its sailing vessels in an
American port to be supplied with bunkers and cargo for voyages through the submarine zone was denied. And in another instance a cargo license was cancelled when it developed that it would be transported by sailing vessels.

When it is recalled that approximately half of the tonnage under consideration was to carry petroleum products, it is not difficult to understand why the licenses for bunkers were delayed. As late as September 16, 1918, the military authorities are on record in refusing to countenance the granting of licenses for petroleum products for even steam vessels in any trade.

The petroleum products on the sailing vessels here in question and the remainder of those cargoes which were denominated “general cargo,” as well as the ships stores for a period of some seven months for all of the vessels would have been of great value to the enemy, and therefore, the authorities of this Government were unwilling to lend themselves to the possibility of thus enhancing the enemies’ supplies.

These thirteen vessels were destined for either South Africa or Australia, the routes to both of which countries would carry them into the submarine zone.

It was only at the earnest solicitation of one of the Allied Governments, based on the military situation then existing, that bunker licenses were finally issued.

It will be apparent from the foregoing that no discrimination was practiced in delaying the granting of bunker licenses for the ships in which you are interested. Licenses were withheld in accordance with Regulations in force when the ships arrived. Exceptions to these Regulations in favor of the ships were made when licenses were granted.

The above disclosure, and the statement in your note of June 4 that “these claimants and my Government have always admitted and still admit that the owners of these vessels were obliged to observe the conditions prescribed by local laws for clearing and carrying out cargoes and supplies,” will, I hope, enable Your Excellency to agree with me that the action of the licensing authorities of the United States was legal and consistent. In the circumstances I cannot see my way to propose the legislation which it would be necessary to obtain to provide a remedy in the Court of Claims.

Since all of the arguments advanced and evidence adduced in Your Excellency’s note of June 4, 1934, are predicated on the hypothesis that these sailing vessels were illegally detained, and as this contention was fully answered in my note of May 8, 1934, reiteration of my Gov-
ernment's position in this regard would, in the light of the above discussion, appear to be unnecessary.

It is noted from the correspondence in this case that you are being advised by certain American lawyers. Therefore deem it appropriate to hand you herewith a copy of a Departmental Order, regarding the employment of American citizens as counsel by foreign governments. Especial attention is called to Title 18, Section 5, of the United States Code quoted in the Order.

Accept [etc.] [File copy not signed]

411.60d Finnish Vessels/143

Memorandum by the Secretary of State of a Conversation With the Finnish Minister (Åström)

[WASHINGTON,] December 18, 1934.

The Minister of Finland came in this morning to discuss a claim of his Government against the Government of the United States growing out of the detention of certain Finnish sailing vessels here during the World War—a claim that has heretofore had a good deal of consideration. He mentioned the note he had received from this Department 40 tentatively rejecting the request that Congressional permission be given to present the claim to the Court of Claims, that rejection being based upon the ground that the detention of the vessels was in pursuance of a general order in effect at the time and that accordingly there was no discrimination against the Finnish vessels. He said that his lawyers took issue with the Department's statement in the note as to the character and effect of the order and in a few days would place him in a position to reply to the note.

The Minister was told that in the event it might turn out that he was correct on the question of fact respecting the order, then this Department would consider whether there had been a failure to take advantage of alleged remedies that were available at the time, and whether it would be proper for it to approve the proposal of the Finnish Government that the case should be submitted to the Court of Claims.

He left, knowing that the case would be fairly considered from both points of view.

C[ordell] H[ull]

40 For text of Departmental Order No. 601, see Department of State, Press Releases, November 10, 1934, p. 290.
40 Supra.
The Finnish Minister (Aström) to the Secretary of State

WASHINGTON, December 20, 1934.

EXCELLENCY: I have the honor to acknowledge Your Excellency's note of December 11, 1934, together with the copy of a Departmental Order dated October 17, 1934.

In connection with the latter I have the honor to inform you that neither the Government of Finland nor myself as its agent employed the lawyers who have appeared in this case. They were employed by the several shipowners whose claims have been presented. These lawyers have, of course, consulted with and advised me in connection with these claims on various occasions since I was instructed by my Government to present them. This fact has been known to the Department of State since the beginning. It has always been understood by me that such consultations and advice were approved by the Authorities of the United States. I am informed that the second statute quoted in your separate memorandum has no applicability to any of the lawyers who have appeared herein. I understand that the Department of State did raise the question of the applicability of this to Colonel Donovan and Mr. Lamb when they first appeared, but also understood that by reason of the fact that the claims were not pending in the Department of Justice while they were members thereof, it was agreed that the Statute did not apply. In addition I wish to inform Your Excellency that neither of these lawyers have taken any part in the matter for over a year now. I have discussed the Departmental Order of October 17, 1934, with Mr. Poore, the lawyer who has consulted and advised me most frequently in the matter, and he has stated that he will be glad to comply with the provisions of this new order.

In the main subject of Your Excellency's note I have noted the statement that "It now appears that the claim which you urged was based on faulty factual premises", and have also noted the arguments set forth in support of that statement. It is now stated in Your Excellency's note that in order to conserve shipping the appropriate officials of the American Government refused to permit American sailing vessels to enter the war zone; that the risk of loss of sailing vessels entering the submarine zone was a practical certainty, or almost sure death; that the American Government's policy to conserve tonnage lead to a resolution by the War Trade Board prohibiting the approval of applications for bunkers for sailing vessels into the submarine war zone, and that this restriction was enforced so stringently that even
an urgent request by one of America's allies in the war to permit one of its sailing vessels then in an American port to be supplied with bunkers and cargo for a voyage through the submarine zone was denied; and that the routes of these vessels to South Africa and Australia would carry them into the submarine zone and therefore the American authorities were unwilling to lend themselves to the possibility of enhancing the enemies supplies.

To all of these statements and arguments I have given sympathetic and earnest consideration, and I am glad to note that the Department of State has seemingly concluded that it was the ships themselves which were the object of detention and not the cargoes as heretofore urged, but I most respectfully submit that the records upon which these claims are based show that this new defense to the claim, as outlined in Your Excellency's note, is also clearly based upon faulty factual premises as is here below pointed out.

I.

Sailing vessels bound for South Africa and Australia did not pass through or enter the submarine war zone. They used the same route, to a point some 300 miles below the Equator, as sailing vessels bound for Rio de Janeiro and ports further south in South America. In support of this fact, well known to persons familiar with sailing routes, I submit herewith two maps prepared by the Hydrographic Office of the United States Navy, which, together, show the sailing vessel route from New York to South Africa and Australia. It will be observed that while this route does take a vessel slightly nearer the submarine zone than New York itself, nevertheless, the route is at all times southerly and therefore away from that zone.

For Your Excellency's further information I have had plotted on these two maps the actual course of one of these vessels when it was finally allowed to sail. The plotted course is that of the S/V Prompt, as taken from her log on the voyage in question. Your Excellency will find the Prompt's course plotted in pencil notations showing the successive daily positions of the vessel on the voyage, which notations follow quite closely the usual route as marked with a blue line by the Hydrographic Office printer.

II.

I am familiar with the fact that the War Trade Board of the United States issued and quite strictly enforced the order quoted by Your Excellency against issuing bunker licenses for sailing vessels into or through the submarine war zone. But that order had no applica-

* Not reproduced.
bility to these vessels, their cargoes or voyages. That is shown by the facts set forth in the preceding paragraph, as well as by the facts stated in the attached letter from Messrs. J. F. Whitney & Co.,\(^4\) the agents who handled these ships for the owners while under detention. This letter shows the clearance by Messrs. Whitney & Co. of nineteen other sailing vessels destined to travel the same route as the Finnish sailing vessels proposed to travel during the period between October 15, 1917 and October 8, 1918, and it will be noted, also, from Messrs. Whitney & Co.'s letter that these other vessels which were allowed to sail while the Finnish vessels were being detained carried the same kind of cargoes as the Finnish ships proposed to carry. I also attach a list of 25 sailing vessels which cleared for the same routes during the first eight months of 1918, as prepared by Messrs. Norton Lilly & Co.,\(^4\) of New York City. I beg to call Your Excellency's attention to the fact that these lists cover the clearance of only two ship brokerage firms in New York City, and suggest that if the Department of State would ask the Custom House at New York for clearances of all sailing vessels on these routes for the same period, there would be found very many more, as I am informed that the order prohibiting clearance of sailing vessels into and through the submarine zone took numerous steamers from their usual routes between American ports and the East Coast of South America, South Africa and Australia and sent practically all sailing vessels into these very routes, and that in fact a very large portion of the commerce between the United States and these ports was carried in sailing vessels during this period.

III.

In connection with the defense heretofore urged by the Department of State, that clearances were refused these vessels in order to conserve their respective cargoes for use in the United States, I have heretofore set forth various facts to show the faulty factual premises thereof. The same facts apply with equal force in refutation of the defense now urged. To complete the answer to this new defense, I repeat those facts here, however, even though it constitute a repetition of what I have called to the Department’s attention in previous notes.

(a) The proposed charters for these vessels were submitted to responsible officials of Your Excellency’s Government in charge of that phase of shipping, the Chartering Committee of the United States Shipping Board, and the charters were approved by those officials. During the entire period of detention the approval of those charters was never cancelled or withdrawn. This is positive proof that the proposed voyages of these vessels would not carry them into the sub-

\(^4\) Not printed.
marine war zone, because certainly if the voyages had been in violation of the order which Your Excellency quoted, they would not have been approved, or, if the order became applicable only following the date of the approval, then the approvals would have been withdrawn.

(b) The correspondence file between the owners' agents and the United States Shipping Board, which heretofore was submitted to the Department of State, shows that the United States Shipping Board, itself a Governmental Agency, offered to charter these vessels and to carry out these particular charters which had been made by the owners. This also is positive proof of the fact that the proposed voyages of these vessels would not carry them into the submarine war zone because certainly if the order which is quoted in the Department's recent note had any applicability to these vessels or their voyages, an American Governmental Agency would not have offered to carry out those charters and thus violate the orders of the American Government.

(c) In a letter written by Mr. J. B. Smull, of the Government Committee controlling charters for outward cargoes, to the ships' agent, dated April 18, 1918, Mr. Smull said:

"No action can be taken on this fixture (the charter of the Sailing Vessel Woodburn) until we hear from Washington that the entire question of these Russian sailing vessels is settled. Just at the moment no Russian vessel is allowed to leave American ports."

In a memorandum prepared by one of the officials of the War Trade Board summarizing the Board's action with respect to these vessels, it is said:

"In the early part of the operations of the Bureau of Transportation all Russian vessels were licensed freely in line with our general policy as applicable to allied vessels. As the uncertainty of the military situation in Russia developed our policy in this connection of necessity had to be materially changed, and all applications for licenses covering Russian vessels were reported to this Bureau for approval. As the complete military defeat of the Russian armies became more and more apparent our policy in connection with the licensing of Russian vessels became more clearly defined until finally in actual practice no licenses were granted."

In a memorandum of a conference between one of the officials of the War Trade Board and one of the officials of the Shipping Board, dated April 12, 1918, wherein it appears that the Shipping Board was inquiring the reason for these vessels being held up, it is stated that the War Trade Board official advised the Shipping Board official that

"the vessels had applied for bunker licenses for South Africa and were being held pending decision of the Board in relation to action
on Russian vessels. Mr. Robinson also stated there was nothing specific against the vessels themselves and the question was one of general policy as to the advisability of allowing Russian vessels to proceed under existing conditions.”

Furthermore, in a letter from the Director of the Bureau of Transportation of the War Trade Board to Lieutenant W. N. Elkins, U. S. N., dated June 21, 1918, wherein Lieutenant Elkins was directed to investigate the crews of these vessels, it is stated:

“As you know, the situation with regards Russian vessels has been a somewhat delicate one, and we felt it was rather unsafe to allow such vessels to proceed.”

I feel convinced that Your Excellency will note that these statements are all made by the responsible officials of the Government of the United States, who were active in the detention of the vessels; were made by them concurrently with their action and were made for the purpose of explaining and recording the reasons for the detention. I am also convinced that Your Excellency will note that the reasons then given by those officials failed to mention anywhere or at any time a claim or suggestion that the vessels were detained because they proposed to enter or pass through the submarine war zone, but will note that the sole reason given for their detention was the fact that they were “Russian (Finnish) vessels.” Again I say that these statements by the responsible officials of the American Government who enforced the detention, statements made concurrently with their action for the very purpose of recording the reasons for their detention, constitutes positive proof that the proposed voyages of the vessels did not tend to violate the order which Your Excellency quoted in your latest note.

I am compelled, therefore, to urge with all earnestness and in all fairness that the facts upon which these claims are based, and as set forth above, show beyond question that the defense now urged by the Department of State is based entirely on faulty factual premises. I also urge that the attitude of the Government of the United States toward claims of citizens of other countries, as expressed in a note from the Department of State to the Minister of the Netherlands, in connection with the claim for the detention of the steamship Zeelandia, as quoted in the opinion of the Court of Claims in that case, where the American Government was found liable, should be followed in disposing of the claims of these citizens of Finland. That statement is as follows:

“This Government (the Government of the United States) is quite agreed that in a case presenting a question as to the responsibility of the United States for the damages toward an alien corporation as
does that of the Zeelandia, the claimant, if invoking any principle of international law as applicable thereto, should have its day in court before a tribunal competent to pass on the contention and having ample jurisdiction to do so."

I am still confident that the evidence heretofore submitted, together with the evidence herewith submitted, as well as the decisions and rules of law heretofore referred to fully and completely answer every objection which the Department of State has raised in connection with these claims, and confidently expect that the request of my Government in behalf of its citizens will be granted, so that Congress may enact the necessary legislation giving to these claimants "their day in court before a tribunal competent to pass on the contention and having ample jurisdiction to do so."

Accept [etc.]

L. Åström