PORTUGAL

DISCONTINUATION OF DISCUSSIONS RESPECTING A TRADE AGREEMENT BETWEEN THE UNITED STATES AND PORTUGAL

611.536 Wines/11

The Portuguese Minister (Bianchi) to the Secretary of State

No. 22 P. 11/2 Washington, February 8, 1934.

Sir: During the recent discussions in connection with the importation into the United States of Portuguese Wines the general position of American-Portuguese trade was reviewed, particular attention being paid to American agricultural products and in the chapter of wheat all possibilities were scrutinized.

2. In brief, it was ascertained that the trade balance was highly in favor of the United States; that there were no trade obstructions in force in Portugal, whether in the form of quotas or exchange restrictions or others that might hinder American trade; in the case of many articles which interest American export trade, Portugal took large percentages of her needs in American goods, these percentages being particularly high in the case of agricultural products such as cotton and tobacco; that in the case of wheat whenever Portugal required supplies she had turned to the United States for them.

3. In connection with the latter, the Interdepartmental Committee pointed out that, as regards the importation of flour into Madeira Island, the prevailing acidity level was unfavorable to the American flour competing in that market and requested that it should be lowered. In spite of the fact that this meant an alteration of our laws and that such a measure would have a character of permanency as compared with the entirely temporary and limited aspect of the allocation of wine quotas, the Portuguese Government declared its readiness to accede to the request, realizing that it pertained to a matter the Administration had so much at heart at the moment. In return the Portuguese Minister received assurances that the quotas for Portuguese wines would be dealt with, not according to figures that were considered inadequate, but taking into consideration certain conditions which were difficult to translate into definite quantities at the time of the agreement.

1For relevant correspondence, see Foreign Relations, 1933, vol. ii, pp. 640 ff. and 649 ff.

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4. I have now the honor to inform Your Excellency that, in pursuance of my Government's undertaking and for the sole purpose of meeting the requirements of the American flour interests, the Portuguese Government, on the 2nd instant, under number 23542, published in the official Gazette a decree altering the flour acidity in the form requested by the competent Department of the American Government, and they feel confident that Your Excellency's Government will not fail to carry out its completion their part of the agreement, as they have done heretofore, on the general lines and in the spirit of mutual confidence and reciprocal benefits in which it was arrived at.

I have [etc.]

Bianchi

611.536 Wines/15

The Secretary of State to the Portuguese Minister (Bianchi)

WASHINGTON, February 23, 1934.

Sir: I have the honor to acknowledge the receipt of your note No. 22 P. 11/2 dated February 8, 1934, and to inform you that in view of the action of your Government reported therein of altering the flour acidity requirement affecting the importation of flour into the Madeira Islands, and in view of the oral assurances received that the Portuguese Government will give earnest consideration to other possibilities of increasing importation of agricultural products from the United States, the appropriate authorities of the Government of the United States will issue to duly qualified applicants import permits valid until March 31, 1934, for the importation of wines and spirits from Portugal to a total amount of 300,000 gallons, inclusive of permits already issued.

Accept [etc.]

For the Secretary of State:

William Phillips

653.003/146 : Telegram

The Minister in Portugal (Caldwell) to the Secretary of State

LISBON, July 1, 1934—11 a.m.
[Received July 1—10:10 a.m.]

4. Decree effective today raises the existing surtax on imports of 20% to 28% and creates a special surtax on exports of 13½% for merchandise transported in vessels of countries which have not secured abolition of flag discrimination unless these countries do so by August 1st. Portuguese vessels and those of countries whose treaties give them national treatment are exempted from the increased rates but will not continue to receive the previous reductions on existing duties.
Great Britain, France and the Netherlands now have such treaties and Germany is completing negotiations. Gasoline, mineral oils, coal and sugar are exempt from the discriminatory rates.

Caldwell

653.116/149 : Telegram

_The Minister in Portugal (Caldwell) to the Secretary of State_

_Lisbon, July 6, 1934—1 p. m._
[Received July 6—10: 10 a. m.]

5. Refer to last paragraph my despatch No. 274 of May 10.² Protesters countries have received identical notes denying that flag discrimination is covered by most-favored-nation clause in its generic form, suggesting that such an interpretation might compel Portugal to denounce her treaties and inviting individual bargaining on the question.

Caldwell

653.008/148 : Telegram

_The Minister in Portugal (Caldwell) to the Secretary of State_

_Lisbon, July 14, 1934—noon._
[Received July 14—8: 50 a. m.]

7. Decree issued yesterday afternoon raises without warning all automobile duties approximately 20 percent. New rates apply at once even to large shipments in transit and already in customhouse. Weight classification unchanged.

Caldwell

653.116/154 : Telegram

_The Minister in Portugal (Caldwell) to the Secretary of State_

_Lisbon, August 10, 1934—2 p. m._
[Received August 10—9: 15 a. m.]

9. Decree of August 7th effective in 15 days increases port dues in port of Lisbon but exempts Portuguese vessels and those of countries which have secured abolition of flag discrimination from 50 percent of heavy stationing charge.

Caldwell

² Not printed.
Memorandum by Mr. John H. Morgan of the Division of Western European Affairs

[WASHINGTON,] August 15, 1934.

Flag discrimination as practised by the Portuguese government dates back to Decree No. 7822 of November 22, 1921, which initiated a policy of favoring Portuguese shipping by the imposition of discriminatory duties, rebates in respect of taxes and port dues, the levying in gold of taxes payable by foreign vessels and the imposition of graduated taxes on the cost of passage. Several decrees were issued subsequently which further increased the burden on foreign shipping.

During the thirteen years following the issuance of the initial decree the United States and the other interested governments have repeatedly protested to the Portuguese government but have not succeeded in inducing that government to take any practical action to put an end to discrimination against foreign shipping. As late as May 5 [June 9] of the present year six countries simultaneously protested to the Portuguese government but each received an identical reply to the effect that the Portuguese government does not consider that the most-favored-nation clause is applicable to this question and that abolition of discrimination can be obtained only by means of a special agreement granting adequate compensation to Portugal.

Great Britain, France and the Netherlands have yielded to the Portuguese point of view, in form at least, and have recently concluded special agreements with Portugal. Germany is understood to be negotiating such an agreement.

The Portuguese government now seems determined to force the remaining countries to follow the example of Great Britain, France, and the Netherlands, since on July [June] 29 by Decree-law No. 24,115 it repealed previous decrees giving duty reductions of 6 per cent on imports and 12 per cent on exports for merchandise transported under the Portuguese flag, increased the surtax on imports from 20 per cent to 28 per cent, and created a special surtax on exports of 13.5 per cent. The increased surtax on imports and the new surtax on exports are not to be applied to merchandise transported under the Portuguese flag or that of a country which has secured by treaty or agreement the abolition of flag discrimination. By a decree of August 7th, effective August 22nd, Portuguese vessels and those of countries which have secured abolition of flag discrimination are exempted from 50 per cent of the stationing charge.

The new surtaxes do not apply to certain articles (gasoline, mineral oils, coal and sugar), upon which the rates were specially fixed by an

*Dated June 30.*
earlier decree but they do apply to certain other important American products, notably petroleum and print paper. Tobacco, which is shipped in important quantities from Gulf ports to Portugal, was at first stated to be subject to the new surtaxes but according to a despatch of July 10, 1934, the Portuguese authorities have ruled, without, however, having issued any Customhouse Order on the subject, that tobacco is exempt from the new rates.

Mr. H. B. Arledge of the Lykes Steamship Lines has already called at the Department to protest against the new Portuguese discrimination against American shipping. In the past the American West African Line, New York, the Gulf West Mediterranean Line, Tampa, and the American Export Lines, New York, have expressed their dissatisfaction but nothing has yet been heard from them with regard to the present discrimination—possibly because of the total absence of any practical results from their previous complaints.

As thirteen years of protest on the part of this and other governments have brought no favorable result and only those countries which have recently abandoned the policy of protest and concluded special agreements with Portugal have obtained abolition of flag discrimination, it would seem time for the Department to consider whether it should not enter into a special agreement with Portugal or adopt retaliatory measures against Portugal.*

In this connection it may be of interest to note that our Minister at Lisbon in his despatch No. 88 of November 3, 1933,* reported that he had been informed on what he believed to be excellent authority that Great Britain early in 1933 gave up the policy of joint representation on the subject of flag discrimination and threatened to denounce the Anglo-Portuguese Treaty of 1914,* and that this threat rather than any new and substantial promises had the desired effect.

If the United States decides to bargain for the abolition of flag discrimination it seems probable that the Portuguese government will ask in exchange that the regional marks of Port and Madeira wines shall be given a greater degree of protection in the United States than at present. (See the Legation’s despatches No. 70 of October 29 [26], 1933, page 4, paragraph 2, and No. 73 of October 28, 1933, last page, last paragraph). As examples of the type of concession which Portugal desires, it should be noted by the agreement of October 14, 1933,*

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*Not printed.

*The Traffic Division of the Shipping Board assures me that there are no Portuguese shipping companies operating between the United States and Portugal. [Footnote in the original.]


Great Britain adopted no new measures but guaranteed to continue until June 30, 1941, the protection provided by Article 6 for the Anglo-Portuguese Commercial Treaty of August 12, 1914, for the trade marks of "Porto" and "Madeira" wines, even if the treaty ceases to be valid. This is regarded by the Portuguese as a valuable protection against the competition of "Australian Port".

By articles 17 and 18 of the Treaty of March 18, 1934, France and Portugal agreed to suppress on their territory the abuse of the geographic terms of origin of each other's wine products. False terms of origin are prohibited even though the true origin of the products be mentioned or the false terms be accompanied by certain qualifying terms such as "kind", "style", "type", or "rival", or by a specific regional or other indication. There is likewise prohibited the use of all combinations of graphic terms and of all display likely to create misunderstanding in the mind of the purchaser.

By Article 13 of the treaty of June 28, 1934, the government of the Netherlands recognizes Porto, Madeira, Moscatel de Setubal, Carcavelos, and Extremadura as regional marks of Portuguese wines with regard to which it promises to require certificates of origin and to suppress by seizure and other appropriate penalties the exportation, transportation, or sale of wines bearing these designations which do not come from the regions used to describe them.

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

[WASHINGTON,] October 5, 1934.

The attached memorandum written by Mr. Morgan gives a pretty clear picture of the Portuguese flag discriminations against American shipping and commerce. It is an old story and one which has been becoming increasingly more aggravating in the past few months. We have not had in the past, nor do we have at present, any measures which we could adopt for the purpose of convincing Portugal of the incorrectness of her position.

Last year we initiated commercial treaty discussions with Portugal. Those discussions have been held in abeyance and I expect that upon the return of the Portuguese Minister to Washington he will inquire

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10 Journal Officiel de la République Française (Lois et Décrets), March 30, 1934, p. 3211.
12 Supra.
about the renewal of these discussions under our new program. I suggest that we take the position that since Portugal is deliberately practising such flagrant discriminations against our shipping, we see no useful purpose in undertaking treaty discussions at this time. It might be added that we consider the Portuguese action as being in violation of the existing modus vivendi\(^1\) which provides for most-favored-nation treatment.\(^2\)

P[aul] T. C[ulbertson]

611.5331/128

The Assistant Chief of the Division of Western European Affairs (Culbertson) to the Assistant Secretary of State (Sayre)

[Washington,] October 22, 1934.

Mr. Sayre: December 12 last we presented to the Portuguese Minister a list of the considerations and concessions which we would wish to obtain through reciprocal trade discussions.\(^3\) We have had no reply to that memorandum.

Since that time the Portuguese have materially increased the shipping discriminations against the United States. As a result of these discriminations, which have not applied to other countries, Portugal has been able to obtain a number of commercial agreements. These agreements in general provide for the protection of the word “port,” which is protection which the Portuguese have continuously sought.

I have discussed this question of trade name protection with Mr. Bianchi, and have indicated to him that it would be extremely difficult for the United States to give such protection. He raised the question whether it would be possible to prohibit the importation of wines marked “port” from any foreign country other than Portugal. I told him that this would involve denying national treatment to foreign goods and that I did not think it could be done.

The Portuguese Minister for Foreign Affairs has indicated to our Minister that the present trade agreement with Portugal seems quite satisfactory, and that Portugal was not particularly anxious to undertake any treaty discussions.

P[aul] T. C[ulbertson]

\(^{1}\)Commercial arrangement effected by exchange of notes, June 28, 1910, Foreign Relations, 1910, pp. 828 ff.

\(^{2}\)Notation by Henry F. Grady, Chief of the Tariff Section: “I agree to suggested procedure. H. G.”

\(^{3}\)List not printed. For memorandum of December 13, 1933, by the Assistant Secretary of State, see Foreign Relations, 1933, vol. II, p. 646.