REPRESENTATIONS REGARDING THE REREGISTRATION OF AMERICAN REAL PROPERTY RIGHTS IN CHINA

793.003/1-1547: Telegram

The Ambassador in China (Stuart) to the Secretary of State

NANKING, January 15, 1947—5 p. m.
[Received January 15—6:56 a. m.]

76. Chinese Govt has taken steps as contemplated in section IV of Sino-American treaty 1943 to effect replacement of titles and documents granting rights to real property held by Americans. Embassy has taken view that issuance uniform instructions by land bureau to local authorities regarding replacement of documents and registration American property essential to protect American rights and to orderly and consistent implementation of treaty and has brought its views to attention Chinese authorities. Construing treaty provision that existing titles and property rights are “indefeasible” as precluding establishment of time limit during replacement of documents and registration of property must take place, Embassy on December 12 instructed Consulates to inform interested inquirers that they should disregard such time limits pending outcome its efforts to have uniform regulations established.

However Chinese Govt now insists that American owners of property rights comply with Chinese land laws requiring registration within specified time following public notice. Registration in case of American properties involves replacement of title deeds or other documentary evidence of property rights. In some areas period for registration expires January 31 and FonOff has indicated informally that land in those areas not registered prior to that date will be considered theoretically ownerless and subject to nationalization.

In view of serious nature of situation which has arisen, Embassy urgently requests that it be informed by telegram whether Dept con-

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1 For previous correspondence on this subject, see Foreign Relations, 1946, vol. x, pp. 1309 ff.
2 Treaty Relinquishing Extraterritorial Rights, signed at Washington, January 11, 1943; Department of State Treaty Series No. 984, or 57 Stat. (pt. 2) 767.
3 Circular telegram not printed.
4 Foreign Office.

1384
curs in its interpretation treaty provision referred to above and approves stand taken by it.

STUART

793.003/1-1547: Telegram

The Secretary of State to the Ambassador in China (Stuart)

WASHINGTON, January 17, 1947—6 p.m.

75. Issuance uniform instructions to local authorities by land bureau (Embtel 76, Jan 15) re replacement documents and registration property felt by Dept highly desirable for protection American rights under treaty and suitable step for Chinese Govt to take in implementation of treaty obligation. This Govt not in good position, however, [to] insist uniformity regulations essential under treaty in view situation [in] US concerning landholding. If local regulations unreasonable they would be inconsistent with treaty and Emb should bring matter attention FonOff. Emb should make strong representation to FonOff against Jan 31 registration deadline as contrary to treaty, stressing unreasonable of date rather than argument that any time limit inconsistent with treaty provision.

Dept desires be kept informed this subject.

BYRNES

393.115/1-2447: Telegram

The Ambassador in China (Stuart) to the Secretary of State

NANKING, January 24, 1947—9 p.m.
[Received January 26—3:40 a.m.]

139. Since despatching Embassy's circular telegram December 12, Embassy has been in communication with Foreign Office reference establishment uniform regulations applicable throughout China for registration American property rights and replacement documents pertaining thereto. Foreign Office has informed Embassy with reference registration American property rights that owners unable to present documents at time of registration may make declaration [that] documents will be supplied within specified time thereafter and in case owner is absent or whereabouts unknown, Consul may so notify local land authorities and obtain extension time limit. Embassy further understands from Foreign Office that articles 57 and 58 of Land Law provide land not registered within the period set by public notice will be disregarded [regarded] as without owner and upon

5 Not printed.
expiration time limit will be so proclaimed. A further period, specified in this proclamation but not less than 2 months, will be allowed in which owners may protest inclusion their land and submit evidence ownership. If upon expiration proclamation period, no protest has been filed, land will be registered as nationally owned. No fees will be charged for registration perpetual leases or documents granting similar rights to Americans. Foreign Office further states that local land authorities have been notified of foregoing.

Foregoing falls substantially short of uniform regulations, particularly with reference to replacement of existing documents, which Embassy hoped would be adopted. Hence Embassy will continue its efforts but fears negotiations may be protracted and indecisive. Furthermore, Department has stated in response to Embassy’s inquiry that U. S. Government not in strong position to insist that uniformity of regulations essential under treaty in view situation in U. S. concerning land holdings and has suggested that should it be necessary to protest establishment of time limit for registration, such protest stress unreasonableness of time allowed rather than argument that any time [limit] is inconsistent with treaty provisions.

In view of foregoing, Embassy is of opinion that holders of real property rights within areas where notices requiring registration have been published should register within time limit insofar as possible and desires Consulate lend appropriate assistance to this end. Instances in which registration procedure applied unreasonably or American owners deprived of rights under treaty should be brought to Embassy’s attention whenever local remedies have been inadequate.

Mission’s circular telegram to Consulate, repeated to Dept. as 139.

STUART

793.003/2–847 : Telegram

The Ambassador in China (Stuart) to the Secretary of State

Nanking, February 3, 1947—5 p.m.
[Received February 3—8:01 a.m.]

191. Embassy has engaged in further discussion with Chinese authorities (Embtels 76 of January 15 and 139 of January 24) regarding promulgation of uniform regulations for registration of real property rights of Americans and replacement documents pertaining thereto.

1. Officials of FonOff and Land Bureau have informally taken view that provision in 1943 treaty re rights and titles acquired by fraud or fraudulent or other dishonest practices excludes from protection of treaty, rights and titles acquired by Americans in contravention or
evasion of Chinese law and that with exception of those acquired by missionaries all rights and titles acquired by Americans outside treaty ports were acquired in contravention or evasion of Chinese law.

2. Embassy is gravely concerned that this interpretation of treaty will place in jeopardy substantially all American real property rights, except missionary-owned, outside of treaty ports and is of opinion that intent of treaty was to legalize rights and titles of this nature, that provision of treaty referred to above means fraudulent or dishonest practices between the parties to the transaction under which the property was acquired and that the phrase should not be interpreted as equivalent to "illegally or extra-legally acquired". Embassy believes that its interpretation is supported by the text of the treaty, by the documents inclosed with Dept's secret instruction number 7 of August 2, 1946 and by practical necessity in applying the treaty.

3. Embassy believes that Chinese authorities have not as yet arrived at a firm decision regarding interpretation of treaty and that informal views above may have been in nature of "feelers" to determine U. S. Govt attitude. It appears desirable, therefore, that Embassy formally take a firm and unequivocal stand that treaty affords full protection to real property rights in question. Before taking this step, Embassy desires to have Dept's approval of its interpretation of treaty together with any suggestions Dept may care to make and requests a reply by urgent telegram.

Repeated Shanghai 104.

Stuart

798.008/2-347: Telegram

The Secretary of State to the Ambassador in China (Stuart)

WASHINGTON, February 7, 1947—6 p. m.

154. Interpretation of Emb re intent of treaty approved by Dept, which greatly concerned that Chinese Govt view, described Embtel 191, Feb 3, would jeopardize American real property rights outside treaty ports except re missionary owned property, Dept agrees Emb that treaty provision refers to fraudulent or dishonest practices between parties to transaction. This view borne out by enclosure to secret instruction no. 7, Aug 2, 1946, which shows page 2 and following pages that U. S. rejected broad term "illegal practices" and obtained Chinese consent to narrower term "fraud or fraudulent or other

6 Not printed; it transmitted excerpts from memoranda of conversations and from documents exchanged with the Chinese during treaty negotiations. For correspondence regarding these negotiations, see Foreign Relations, 1942, China, pp. 265 ff.

7 See footnote 6, above.

356-748—72——88
dishonest practices". Furthermore Mr. Liu's reference (page 3 enclosure) to "misrepresentation" certainly refers only to relations between parties to transaction. Also reference in treaty provision to establishment proof "through due process of law" clear indication that provision was intended [to] refer to relations between parties to transaction. Emb should take firm and unequivocal stand that treaty affords full protection real property rights in question and should inform Dept all developments.

MARSHALL

811.5293/4-2347: Telegram
The Consul General at Shanghai (Davis) to the Secretary of State

SHANGHAI, April 23, 1947.
[Received April 23—5:55 a.m.]

1012. Shanghai municipal land authorities fixed time limit April 30, 1947, for registration foreign-owned land rights in city but will grant extension upon request Consuls for land owners not in Shanghai. ConGen notified land authorities many Americans not yet returned and may not know of requirements and ConGen will notify authorities in such cases as they come to its attention.

Penalty provided by land law for failure to register within time limit is confiscation of land. However land law provides period of 2 months after time limit during which owners may claim land. Suggest Department might give publicity to matter in U. S. for benefit American land owners who may not know requirements for registration. Details follow by despatch. 9

Sent Dept, repeated Nanking as 717.

DAVIS

811.5293/4-2347: Telegram
The Acting Secretary of State to the Ambassador in China (Stuart)

WASHINGTON, April 25, 1947—8 p.m.

488. Emb should make strong representation (sent Nanking as Depts 488 rptd Shanghai as Depts 677) to FonOff against Apr 30 deadline for registration land with Shanghai municipal authorities (Shanghai's tel 1012 Apr 23 rptd Nanking as 717) as contrary to treaty, stressing unreasonableness of date (Deptel 75 Jan 17 to Emb) rather than argument that any time limit inconsistent with treaty

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8 Liu Chieh, Minister-Counselor of the Chinese Embassy during the treaty negotiations in 1942.
9 Despatch No. 1120, April 24, not printed.
provision. Emb should point out that long period is necessary for all landholders receive info re regulations, assemble documents and comply with formalities re registration property and that ConGen obviously unable request extension deadline on behalf individuals who are absent and who hold land without ConGen’s knowledge. Please keep Dept informed developments.

Dept hesitates give publicity to subject Apr 30 deadline because of possible implication that Dept does not object imposition deadline. Moreover Dept does not have sufficient technical info to answer anticipated questions. If Emb feels publicity should be given, Emb should instruct ConGen Shanghai telegraph Dept text suggested press release including answers such questions as precisely which documents must be presented, whether power of attorney necessary enable another person represent absent owner in applying registration, whether special form for power attorney required etc.

Suggest Emb consult Dr. Bacon 10 if she is available.

Acheson

811.5293/3-347: Telegram

The Ambassador in China (Stuart) to the Secretary of State

NANKING, May 3, 1947—11 a.m.

[Received May 3—6:03 a.m.]

952. In response to an urgent inquiry, Foreign Office has informed Embassy in note dated April 30 that Consulate General, Shanghai, may request of land authorities there extension of April 30 deadline for property registration on behalf unknown American owners, that authorities may on basis such request extend deadline, and that foregoing has been telegraphed to Shanghai municipal government. (Department’s telegram 488, April 25, repeated Shanghai as Department’s 677.)

Considering note somewhat ambiguous, Embassy inquired orally of Foreign Office whether meaning was that a blanket extension might be requested for unknown American owners without submitting names and other details, and was assured that such was intended. However, Foreign Office representative added that foregoing procedure not cleared with Land Administration, Nanking, because lack of time and requested that Foreign Office be informed of any difficulty encountered in obtaining blanket extension. Embassy accordingly suggests Shanghai apply for blanket extension and report results.

Question raised in second paragraph reference telegram is receiving

10 Ruth E. Bacon, Special Assistant to the Director of the Office of Far Eastern Affairs (Vincent).
Embassy's attention, and Embassy's views thereon will be formulated following consultation with Dr. Bacon, who is expected to return Nanking on May 3.

Sent Shanghai 406, repeated Department 952.

STUART

811.5293/5-747 : Telegram

The Ambassador in China (Stuart) to the Secretary of State

Nanking, May 7, 1947—9 a. m.
[Received May 6—11:30 p. m.]

980. Embassy suggests following course re second paragraph Department's telegram 488 of April 25 (sent Shanghai 677):

That (1) Shanghai request Land Bureau grant blanket extension referred to in Embassy's telegram 406 of May 3 to Shanghai, repeated to Department 952, in favor unknown American owners to allow reasonable time for publicizing and filing of claims to ownership;

(2) If extension granted, Shanghai transmit to Department necessary information to enable publicizing requirements and Department give as wide publicity as possible to this information;

(3) Embassy address note to Foreign Office stating that steps have been taken to give wide publicity to requirements but that notwithstanding these steps, a few cases may arise where owners, through no fault of their own, do not learn of requirements in time to claim ownership within the time established and that it is assumed that in such cases, owners will not be precluded from establishing claims to ownership following expiration of extended time limit;

(4) Embassy instruct Consulates by circular telegram to inform Department at once of establishment of deadline for property registration within their respective districts and to include at same time pertinent information re requirements to enable press release by Department.

In suggesting these measures, Embassy has in mind difficulty in continuing to request extension of deadline on the basis that reasonable time not allowed to bring requirements to attention American owners, if active publicity not undertaken when reasonable extensions are obtained.

Embassy would appreciate Department's comments re foregoing and will not take steps contemplated in (3) and (4) above until Department's reply received.\(^{11}\)

Foregoing has been discussed with Dr. Bacon who concurs.

Sent Department 980; repeated Shanghai 414.

STUART

\(^{11}\) The course of action suggested was approved by the Department in telegram No. 544, May 8, 5 p. m. (811.5293/5-747).
The Consul General at Shanghai (Davis) to the Secretary of State

SHANGHAI, May 8, 1947—7 p. m.
[Received May 9—2 p. m.]

1123. Consul General received reply from Land Bureau dated April 26 stating unable grant further general extension time limit for registration of foreign-owned land but agreeing to grant extension in specific cases where owner is not in Shanghai or his proof of ownership is elsewhere, provided Consulate General notifies Bureau in each individual case and gives reasons for inability to comply with time limit. Land Commissioner 12 explained orally that owners who were themselves in Shanghai or who had agents in Shanghai should file applications for registration even though they might not possess documentary proof of ownership, and that documents might be submitted later (urtel 414 to Dept 13).

In compliance instructions Urte 406, May 3, 11 a. m., 14 officer Consulate General delivered letter to Land Commissioner on May 7 pointing out that Consulate General had no means of ascertaining identity of all American beneficial owners and could not therefore submit names of those unable to comply with time limit until owners themselves came forward to request Consulate General’s assistance, and in view these circumstances requesting general extension time limit for unknown American landowners without submitting names and other details. Consulate General’s officer discussed question at some length with Commissioner who assured us there was no intention of confiscating American-owned land but said administrative difficulties arose unless some time limit were fixed. He explained that unless all landowners applied for registration, and unclaimed land dealt with according to law, it was difficult to determine accurately boundaries and areas of properties whose owners had already registered, and issuance new deeds to those who had applied would thus be delayed. Consulate General’s officer pointed out, however, that order from central authorities requiring time limit did not specify date, thus apparently leaving it to discretion of local authorities and suggested Commissioner might reconsider and fix later deadline.

Commissioner agreed to reconsider granting blanket extension for unknown landowners as requested by Consulate General and further agreed for time being to accept Consul General’s usual certificates of ownership plus special covering letter explaining reasons for delay in registering.

12 Chu P’ing.
13 See last paragraph of telegram printed supra.
14 See last paragraph of telegram No. 852, p. 1389.
Commissioner will reply in writing to our request after reconsideration and Embassy and Dept will be informed. Commissioner's attitude was sympathetic and cooperative. Consulate General regards time limits fixed in other localities [in] its district as more dangerous to rights American Nationals (see second paragraph mytel 757, April 29, 7 p.m.\textsuperscript{15}) because there is no assurance either Consul General or American landowners will receive due notice of deadlines and American rights might go by default. It is possible deadlines will not be strictly enforced anywhere but considerable difficulty might arise in cases where American-owned land is listed as ownerless, technically reverting to Government. Embassy may wish to point this out to Foreign Office.

Sent Nanking 800; repeated Department 1123.

\textbf{Davis}

\textbf{893.32/3-2747}

\textbf{The Ambassador in China (Stuart) to the Secretary of State}

No. 756

\textbf{Nanking, May 27, 1947.}

[Received June 9.]\textsuperscript{16}

\textbf{Sir:} I have the honor to refer to the despatch 647 of April 18, 1947\textsuperscript{16} regarding the registration of American rights to real property and the replacement of documents pertaining thereto and to review for the Department's information developments which have taken place subsequent to that date.

The Embassy on February 17 addressed a note (copy transmitted to the Department as enclosure No. 11 to despatch 545, March 7, 1947\textsuperscript{17}) to the Ministry of Foreign Affairs conveying formally the views of the United States Government regarding the interpretation of Article IV of the 1943 Sino-American Treaty as it relates to property rights acquired outside of the treaty ports by American citizens under the system of beneficial ownership. This note remains unanswered. However, the Embassy has taken occasion repeatedly to bring this issue, the settlement of which it regards as fundamental to the implementation of the article of the treaty under reference, to the attention of the Ministry of Foreign Affairs.

\textsuperscript{15}Telegram No. 757 was sent to the Ambassador in China and was not repeated to the Department. It reported that time limits had been set elsewhere in the Consulate General's district, such as Hangchow and Ningpo, and expressed concern that time limit notices might not reach the Consulate General from all places in its district and "that many American land owners especially Missions own property in outlying areas where they have at present no representatives, and are not in position either to learn of time limits or take action to comply therewith." (852—Land Registration, Lot F84)

\textsuperscript{16}Not printed.

\textsuperscript{17}Despatch and enclosures not printed.
An excellent opportunity for emphasizing the importance which is attached to the settlement of this problem was afforded by the recent visit of Dr. Ruth Bacon who participated in two conferences with the Foreign Minister regarding it. In addition Dr. Bacon was present at a dinner party at the Ambassador's home to which were likewise invited Foreign Office officials dealing with this problem and the Vice-Minister of the newly formed Ministry of Land Administration. At this time she was able to discuss informally the problems which have arisen in connection with land registration.

The Embassy wishes to commend Dr. Bacon upon the skillful and tactful manner in which she participated in these discussions and is confident that the significance and the timing of her arrival in China were not lost upon the Foreign Minister and other Chinese officials.

The Minister-Counselor availed himself of the opportunity of Dr. Bacon’s visit to address a personal letter to the Foreign Minister enclosing for his attention a copy of the Embassy’s note referred to above as well as a copy of a personal letter (transmitted to the Department as enclosure 8 to despatch 545, March 7) which he addressed on February 6 to Dr. Liu Chien, the then Vice-Minister for Foreign Affairs. A copy of the letter addressed to the Foreign Minister on April 28 is enclosed.

The Embassy is encouraged to believe that its persistent efforts to obtain recognition of the rights of American beneficial owners of property located outside of the treaty ports have begun to bear fruit. For the first time since this question has been under discussion, officials of the Ministry of Foreign Affairs, during a conference on May 5, expressed oral agreement with the Embassy’s view that beneficial owners outside the treaty ports receive the same treatment as those within treaty areas and that regulations established for the registration of land in Shanghai be extended throughout the country. Likewise significant was the statement of Hu Ching-yui, Director of the Treaty Department, that it was not the intention of the Chinese Government to question the legality of American beneficial ownership outside the treaty ports. This is a complete reversal of the stand taken previously by officials of the Ministry in discussions. A copy of an aide-mémoire handed the Foreign Minister upon the conclusion of this conference is also enclosed.

While the Embassy finds this change of attitude encouraging it would point out that it has often proven a long and arduous process after obtaining oral concurrence to have regulations issued which reflect the agreement. Furthermore, the Foreign Minister may have

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18 Wang Shih-chieh.
19 W. Walton Butterworth.
20 Enclosures not printed.
been influenced to assume, for the moment at least, a more moderate attitude by his awareness that Dr. Bacon was returning directly to the Department bearing her impressions of the Chinese attitude toward this question and by overriding political considerations relating to Sino-American relations. That further obstacles may arise is suggested by a subsequent statement by Mr. Hu to an officer of the Embassy that he "hoped" it might be possible to win the Land Administration to acceptance of the present Foreign Office view.

As may be noted from the enclosed memorandum, the Director of the Treaty Department, during the conference of May 5, emphasized that the replacement of land documents under the 1943 treaty is optional with the Chinese Government and that the Chinese Government is obligated to replace such documents without fees only in the event that it makes the replacement of documents compulsory. That is, if an American who owns property in an area in which compulsory replacement of documents has not been instituted by Chinese authorities wishes to register his property and obtain a new deed of ownership in his own name, he would be required to pay fees therefor, in accordance with Chinese law. He added that the replacement of existing documents had not been required outside of treaty ports and that it was not the intention of the Chinese Government to require it at this time. The immediately preceding remark may be significant as indicating the formula, referred to in previous despatches, by which the Foreign Office hopes to avoid a showdown at this time regarding foreign-owned real property rights outside the treaty ports. The Embassy is of the opinion that a postponement of this question, such as is implied in the foregoing, would not be in American interests since political factors now obtaining make the present a propitious time to press for general acceptance of the American view. However, it would welcome the Department's comments and instructions in order that it might be prepared to take appropriate steps should the course tentatively suggested above be given more definite form by the Chinese Government.

Incidentally, some significance may be attached to the emphasis placed by the Foreign Office on the collection of fees. Officers of the British Embassy concerned with the same problem have obtained the impression that opposition of the Land Administration to acceptance of the view that the 1943 Treaty affords protection to foreign beneficial owners of property outside treaty ports arises more from its reluctance to forego the substantial fees involved than from a desire to confiscate the property.

Another difficulty, of immediate importance, which has arisen is the establishment of deadlines for registration of property which do not allow adequate time for publicizing the requirements and filing claims. This problem has been the subject of previous communications between the Embassy and the Foreign Office. In the Minister-Counselor's letter to the Foreign Minister dated April 28, the matter was again brought to his attention with particular reference to establishment of April 30 as the deadline for property registration in Shanghai. The reply of the Ministry of Foreign Affairs, a copy of which is enclosed, was summarized in the Embassy's telegram 952 (to Shanghai as 406) of May 3.

The Embassy is aware that under existing conditions notices regarding the establishment of time limits for the registration of property might, in the case of isolated areas, be long delayed in reaching the Consular office concerned. It therefore proposes to ask the Ministry of Foreign Affairs to make arrangements with the Nanking Land Administration whereby the Embassy will be promptly informed of deadlines for the registration of property whenever such may be established. Information received through this channel will in turn be relayed to the Department and the Consular office concerned.

Respectfully yours,

For the Ambassador:

W. W. BUTTERWORTH

Minister-Counselor of Embassy

811.5293/6-1047: Telegram

The Consul General at Shanghai (Davis) to the Secretary of State

SHANGHAI, June 10, 1947—3 p. m.
[Received June 10—3:15 a. m.]

1400. Shanghai Bureau of Land Administration has not yet replied to Consulate General's request for general extension of time limit for registration on behalf unknown American landowners (mytel 800, May 8, repeated Department as 1123, May 8, 7 p. m. and my despatch to Department No. 1205, May 13). Land Bureau apparently has adopted practice of granting extension of 1 month in cases where Consulate General has notified it of names of individuals who were unable comply with original time limit. In reply to such notifications Land Bureau sends mimeographed letter pertinent part of which reads "since the said owner has factual difficulty permission is hereby granted to reserve the time limit for application for 1 month from the

22 Latter not printed.
date of receipt of this letter.” In most cases this gives owners until mid-July to register. Consulate General will, if necessary, request further extensions for those who are unable to comply within this extended period of 1 month.

Davis

893.52/6-2547: Telegram

The Secretary of State to the Consul General at Shanghai (Davis)

WASHINGTON, July 18, 1947—3 p. m.

1187. Has Land Bureau replied to ConGen’s request for further extension time limit for reregistration real property (Shanghai’s 1546, June 25 repeated to Nanking 1135 23)?

Continued prolongation indecisive discussions with Chinese authorities seems to Dept to underscore necessity of giving publicity to Chinese requirements regarding reregistration of property. Failure to do so might subject Dept to criticism for failure to notify and protect interested American owners (Deptel 488 to Nanking repeated Shanghai as 677 24). Emb requested to give further consideration (Sent Shanghai as 1187 repeated Nanking as 885) to problem and if Emb concurs it should instruct Shanghai to prepare appropriate press release for issuance in Washington with recommendation as to timing.

Marshall

898.52/7-2147: Telegram

The Consul General at Shanghai (Davis) to the Secretary of State

SHANGHAI, July 21, 1947—5 p. m.
[Received July 21—6:40 a. m.]

1770. Land Bureau has not replied to our request further extension of time limit (ur tel 1187, July 18, 3 p. m.) but continues to accept applications covered by letter of explanation. Consulate General believes it unwise to press for reply in these circumstances since it may prove to be negative if insisted on.

Consulate General is preparing text press release for forwarding to Department and believes it should be issued without waiting for Land Bureau’s reply.

Sent Department as Shanghai serial 1770, repeated Nanking 1288.

Davis

23 Not printed.
24 Dated April 25, p. 1388.
The Ambassador in China (Stuart) to the Secretary of State

Nanking, July 22, 1947—11 a.m.
[Received July 22—3:48 a.m.]

1563. Embassy assumes Consulate General, Shanghai, has delayed preparation appropriate press release for issuance Washington regarding land registration requirements pending action of Land Bureau on request for general extension of deadline (reference Department's telegram 1187 to Shanghai July 18, repeated Nanking as 885) and is of the opinion general extension of deadline would offer better basis for such press release than present informal arrangement discussed in Shanghai's 1546, June 25 to Department.²⁵

As suggested in Shanghai reference telegram, Embassy has not raised again with Foreign Office question of general extension time limit on behalf unknown American owners but is prepared to do so. Embassy of opinion request of this nature would be strengthened, in view previous requests, were it possible to agree with Chinese to give publicity in United States to registration requirements if granted specific extension of time limit adequate for this purpose, it being understood that time limit would apply only to filing of claims of ownership with Land Bureau, owners being permitted to submit substantiating documents subsequent to expiration of time limit. However, implying acceptance of a final deadline for filing claims of ownership, such procedure might jeopardize the position of American owners who failed to assert their claims prior to final deadline. Should Department desire Embassy take action foregoing lines, Embassy would find it helpful to know what in Department's opinion would constitute minimum extensions of deadline to enable adequate publicity in United States. In any case Embassy will await Department's comments before taking further action.

Sent Department, repeated Shanghai as 636.

Stuart

The Secretary of State to the Ambassador in China (Stuart)

Washington, July 29, 1947—6 p.m.

934. You are authorized to proceed along lines suggested Urtel 1563, July 22 (repeated to Shanghai as 636). Believe 6 months from date of issuance of notification (sent Nanking as 934 repeated Shanghai as 1255) would be minimum period acceptable for a deadline.

Marshall

²⁵ Not printed.
893.52/7-2347: Telegram

The Acting Secretary of State to the Ambassador in China (Stuart)

WASHINGTON, September 2, 1947—6 p.m.

1098. Draft press release contained [in] Shanghai's despatch 1524, July 23 35 needs editing, especially those clauses relating to documentary evidence of ownership which should reflect more closely wording of Article IV of Treaty.

Has progress been made (Deptel 934, July 29, repeated Shanghai 1255) in negotiations with view to obtaining specific extension of time limit for registration? Dept suggests advisability of clearing informally with Chinese authorities revised text of draft release which would include, if possible, specific reference to time limit. (Sent Nanking as 1098 repeated Shanghai as 1469.) Such a release would be given publicity at a given date both by Consulate General and by Dept.

LOVETT

893.52/9-847: Telegram

The Ambassador in China (Stuart) to the Secretary of State

NANKING, September 8, 1947—4 p.m.
[Received September 8—8:42 a.m.]

1871. Embassy in note August 5 requested 6 months' extension time limit registration property Shanghai (ReDeptel 1098, September 2, repeated Shanghai 1255). Embassy orally informed yesterday by Foreign Office representative that matter referred to land administration which had not yet replied but that there is little doubt extension will be granted. Suggest issuance press release be delayed pending receipt formal reply from Foreign Office which Embassy will attempt to expedite.

Embassy assumes that in accordance with Department's suggestions, Consul General [at] Shanghai will in meantime edit release, and will clear informally with concerned Chinese authorities after extension officially approved.

Repeated Shanghai 768.

[STUART]

893.52/9-1247: Telegram

The Ambassador in China (Stuart) to the Secretary of State

NANKING, September 12, 1947.
[Received September 12—11:17 p.m.]

1913. In September 9 note Foreign Office has informed Embassy that competent land authorities have agreed Embassy proposal for

35 Not printed.
6 months' extension time limit registration property rights, Shanghai, with period to commence on date notification issued. (ReEmbTel 1871, September 8, repeated Shanghai 768.)

Appears ConGen in consultation with Department is in best position determine date issuance notification. Chinese have quite appropriately requested they be notified as soon as date for issuance notification has been finally decided.

Sent Department 1913, repeated Shanghai as 777.

STUART

811.5293/10-247

The Consul General at Shanghai (Davis) to the Secretary of State

No. 1732

SHANGHAI, October 2, 1947.

[Received October 7.]

SIR: I have the honor to refer to my despatch No. 1126 of April 24, 1947, concerning the fixing of a time limit for the registration of foreign owned land in Shanghai. In that despatch there were quoted the relevant Articles of the Land Law (especially Article 57) providing for a penalty of confiscation of land the registration of which has not been applied for by the owners.

There is enclosed for the Department’s information a copy in translation of an instruction (Characters “Sze Nan”, No. 27039) issued to the Chekiang Provincial Council by the Executive Yuan on July 10, 1947, concerning the disposition of land not registered within the time limit. It will be noted that under this instruction, unregistered land in Chekiang Province is to be kept in custody of the land offices for a period of two years from the date of expiration of the time limit for registration. If, after this period of two years, the land has still not been registered by the owners, it is to revert to the State, and to be registered as State-owned.

There is no indication that this instruction is of general application but it is believed likely that a similar policy will be followed elsewhere in China.

If such is the case then rights of American nationals would appear to be less jeopardized by a failure to register within the time limit than was formerly thought, and the question of time limits seems to lose much of its importance.

Respectfully yours,

MONNETT B. DAVIS

27 Not printed.
The Acting Secretary of State to the Ambassador in China (Stuart)

WASHINGTON, October 7, 1947—6 p.m.

1236. Approval by ChiGovt Nanking of press release concerning re-registration real property rights (Urtei 1913, Sept 12) is preferable, Dept feels, to approval by Land Bureau, Shanghai. Pls endeavor obtain informal approval soonest (Sent Nanking as Dept’s 1236, repeated Shanghai as 1708) and telegraph soon as obtained. Dept will then issue release and notify ConGen Shanghai (Shanghai’s tel 2243, Sept 19, 25 repeated Nanking) which should then issue release there, and Emb, which should then notify ChiGovt of date release issued by Dept.

Following is text draft release:

“American nationals (including corporations and associations) who possess rights or titles to real property in the municipality of Shanghai, China, which were acquired before May 20, 1943, are advised that it is necessary for them to apply to the appropriate authorities of that municipality for re-registration of their property rights and for new deeds of ownership if they have not already done so. Such rights as rights of mortgage, in addition to rights of ownership, must be re-registered. Although the period originally set for re-registration has expired the Chinese Government has agreed to the extension of the deadline for re-registration to April 1, 1948, in the case of American nationals, some of whom may have been unaware of the requirement of re-registration.

Applications for re-registration and new deeds may be made by an agent, who should be authorized by power of attorney from the holder of the property rights or titles and provided with documentary evidence of the holder’s American nationality and with original or certified copies of the leases in perpetuity or other documentary evidence relating to the property rights. American holders of real property rights should either apply, or instruct their agents to apply, in person to the American Consulate General at Shanghai for certificates regarding those rights. Submission of the certificates is required by the Chinese authorities.

Article IV of the treaty for the relinquishment of extraterritorial rights in China which was signed by the United States and China January 11, 1943 and entered into force May 20, 1943, provides:

[Here Emb pls insert in inner quotation marks text Article IV.]” 25

LOVETT

25 Not printed; it contained a revised version of draft press release (893.52/9-1947).

26 Brackets appear in the original.
The Ambassador in China (Stuart) to the Secretary of State

NANKING, October 24, 1947—6 p.m.
[Received 10:39 p.m.]

2135. Foreign Office and Ministry Land Administration have both indicated informal approval draft press release of October 7, 1947 (Department’s telegram 1236, repeated Shanghai as 1708) concerning re-registration real property rights Shanghai. Please inform Embassy date of release.30

Sent Department 2135, repeated Shanghai as 854.

STUART

The Ambassador in China (Stuart) to the Secretary of State

No. 1108

NANKING, November 18, 1947.
[Received December 1.]

The Ambassador has the honor to refer to despatch No. 756 of May 27, 1947 reporting developments in connection with the registration of American rights to real property and, in continuance thereof, to submit the following information regarding the status of negotiations with the Chinese authorities concerning the recognition of rights to real property outside of the so-called treaty ports owned by American citizens.

Following the presentation of an aide-mémoire on May 5, 1947 (enclosure No. 321 to the Embassy’s despatch under reference) no further written approach was made to the Ministry of Foreign Affairs regarding the basic question of recognition of American beneficial ownership of property outside the treaty ports until October 4, 1947, although special problems in connection with the registration of property rights were brought to the attention of the Ministry from time to time. During this period officers of the Ministry of Foreign Affairs dealing with this question assured representatives of the Embassy that the position of the Ministry continued to be as expressed during a conference with the Foreign Minister on May 5,

30 In telegram No. 1320, October 30, 5 p.m. (893.52/10-3047), the Department informed the Embassy that the press release had been issued on October 28, thereby extending the re-registration deadline to April 28, 1948; for press release, see Department of State Bulletin, November 9, 1947, p. 916.

21 Not printed.
1947 (enclosure No. 2 to despatch under reference) and that active efforts were being made to obtain the agreement of the Ministry of Land Administration and the Ministry of Justice.

In a letter dated September 3, 1947 the Standard Vacuum Oil Company outlined to the Embassy difficulties which it had encountered, particularly in Hupeh Province, in attempting to register property owned by it in the name of Chinese agents or nominees. It will be noted from this letter, a copy of which is enclosed, that the Bureau of Land Administration of the Hupeh Provincial Government appeared to insist upon a transfer of the property from the Chinese agent or nominee in whose name it was registered to the company in accordance with the provisions of the Chinese land law as a prerequisite to registration of the property in the name of the company. A copy of the Embassy's reply to the Company, dated September 25, 1947, is likewise enclosed. In a note dated October 4, 1947 the Embassy brought to the attention of the Ministry of Foreign Affairs the difficulties being encountered by the Standard Vacuum Oil Company in attempting to register its property and took the occasion offered thereby to emphasize the mounting apprehension on the part of American businessmen and property owners as to the intent of the Chinese Government with regard to registration of property owned by Americans in the name of Chinese agents and the desirability of reaching a satisfactory and equitable solution of the problem as soon as possible. A reply from the Ministry of Foreign Affairs, dated October 18, 1947, stated that measures for the solution of the problem had been drawn up by the Ministry in conjunction with the competent authorities and were being submitted to the Chinese Government for consideration and approval and continued that before these measures were approved action in connection with the registration of the Standard Vacuum Oil Company's right to property might be deferred. Copies of the above-mentioned communications are enclosed.

There are likewise enclosed memoranda of conversations between an officer of the Embassy and officials of the Ministry of Foreign Affairs dated October 8, 1947, October 25, and November 7, 1947. From these memoranda, it will be noted that the proposals of the Ministry of Foreign Affairs, which the Embassy understands to have substantially embodied the views expressed during the May 5 conference with the Foreign Minister, were submitted to the Executive Yuan and were opposed by the Ministry of Land Administration,

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22 Substance of the Foreign Office position was reported in despatch No. 756, May 27, from the Ambassador in China, p. 1392.
23 Not printed.
24 Enclosures to this despatch not printed.
allegedly for reasons set forth in the memorandum of October 25, 1947, with the result the Executive Yuan failed to approve the proposals.

The Ministry of Foreign Affairs has, in the face of this development, suggested a new formula, the substance of which is outlined in the memorandum of November 7, 1947. The Director of the Treaty Department, in outlining the proposed formula and inviting the informal comments of the Embassy, observed that the formula itself had not as yet been presented to either the Ministry of Land Administration or the Ministry of Justice.

It will be noted that the proposal contains a provision that a transfer of the property from the Chinese agent or nominee in whose name it is registered to the American beneficial owner be recorded with the appropriate land bureau. While this provision may in part meet the objections of the Ministry of Land Administration that failure to record such transfer would leave a hiatus in its records, from the American point of view it is extremely important, for obvious reasons, that the transfer be fixed definitely as having occurred at the time the American beneficial owner commenced to enjoy and exercise the rights and privileges of ownership rather than at the time of recording. If this point of view is accepted and if the nature of evidence of ownership to be presented by the American beneficial owner is broadened in the manner suggested in the memorandum, the Embassy believes that the formula might offer a satisfactory solution from the American viewpoint.

Although the proposed formula does not require the consent of the Chinese registered owner in recording the transfer of property and applying for a title deed, it does afford the registered owner, or other claimant, an opportunity to contest the application. It should be recognized that in the event other claimants appear with evidence of ownership, the Land Bureau concerned would probably consider itself incompetent to weigh conflicting evidence and settlement of the resulting controversy would probably require judicial action or direct negotiation between the parties. This procedure offers the possibility of a form of extortion under threat of involving the American beneficial owner in a nuisance court action, but the Embassy believes that the procedure in principle is not unjust and probably is unavoidable.

The Embassy anticipates that the formula under discussion, more or less modified to meet the objections of the other concerned departments of the Chinese Government, will be presented by the Ministry of Foreign Affairs to the Executive Yuan for approval and that after approval by the Executive Yuan it will be transmitted to the Embassy as a formal reply to the Embassy’s note of February 17, 1947.
closure No. 11 to despatch No. 545 dated March 7, 1947 34). The Embassy believes that it should not insist upon a formal acceptance of the views expressed in its note of February 17, 1947, should the Chinese evolve a formula which gives reasonable promise of achieving the same result, but that it should unmistakably reserve its position as set forth in that note while observing whether the formula in application adequately protects American beneficial owners.

893.52/12-2247

The Consul at Shanghai (Pilcher) to the Ambassador in China (Stuart) 35

No. 341

SHANGHAI, December 22, 1947.

Sir: I have the honor to enclose 36 for the Embassy’s information a copy of a letter dated November 29, 1947 from the Standard-Vacuum Oil Company, concerning difficulties it is encountering in effecting transfer of title to real property which it has purchased from an American citizen, a retired employee of the company. It will be noted that the Shanghai Bureau of Land Administration refused to accept the application for registration of the transfer on the ground that the buyer and seller must first obtain the prior express approval of the Land Bureau for the sale, in accordance with Articles 18, 19 and 20 of the Revised Land Law.

An officer of the Consulate General called on Commissioner Chu P'ing of the Bureau of Land Administration on December 3, 1947 to discuss this matter. It was pointed out to him that under the terms of Article IV of the Sino-American Treaty of 1943 there could be no doubt that the only case in which an American owner of land whose rights are protected by the Treaty must obtain prior permission for sale is in case of transfer to a person of a third (i.e., non-American and non-Chinese) nationality. The Commissioner said that he was not familiar with the case and had no knowledge of the Bureau’s refusal to accept the company’s application, but that he would look into the case.

Strangely, the Commissioner himself raised a question which apparently was not at issue between the company and the Bureau, and which, in the Consulate General’s opinion, indicates either a complete misunderstanding of the meaning of the Treaty or a desire on the part of the Chinese authorities to nullify entirely the provisions of Article IV thereof guaranteeing existing rights and titles to real property.

34 Neither printed.
35 Copy transmitted to the Department by the Embassy in China without covering despatch; received about February 27, 1948.
36 Enclosures not printed.
Commissioner Chu inquired the state of domicile of M. C. Guss, the former owner and seller of the property, intimating that in his opinion Mr. Guss’s right to obtain a new deed of ownership and consequently his right to transfer a fee simple title would depend on the terms of the law of his domicile in so far as it affects the right of a Chinese to acquire and own land, under Article 18, of the Revised Land Law.

The Consulate General’s officer expressed surprise at this suggestion, pointing out that it raised anew a question which had been considered by the United States Government as settled long ago, at the time the Treaty was signed; that in effect such a view if adopted and enforced would nullify the provisions of Article IV of the Treaty; and that if the Bureau of Land Administration intended to adopt such an interpretation it would be necessary for the Consulate General immediately to take up the matter with the Embassy and Department of State. Commissioner Chu was referred to the regulations issued by the Executive Yuan (Character Chung No. 768) early this year for confirmation of the Consulate General’s understanding of this point.

On December 4, 1947, the Consulate General addressed a letter to Commissioner Chu concerning the case of the Standard Vacuum Oil Company, stating its position in writing. A copy of this letter is enclosed for the Embassy’s information. No reply has yet been received but according to oral information from the Land Administration the question raised by the company’s application is being referred to the Ministry of Land Administration for decision.

Since the matter is being referred to Nanking, the Consulate General suggests that it might be wise for the Embassy to inform the appropriate Chinese authorities of its views in order that they may be taken into consideration before a decision is made. The question raised in this specific case is, in the Consulate General’s opinion, of far-reaching importance, affecting the rights of all American land owners who are protected by the Treaty; and the second question raised by the Commissioner himself appears to be of even more fundamental importance, involving as it does the good faith of the Chinese Government’s pledge to guarantee the validity of real property rights and titles existing at the time of the conclusion of the Treaty.

Respectfully yours,

JAMES B. PILCHER

893.52/11-1847: Telegram

The Acting Secretary of State to the Ambassador in China (Stuart)

WASHINGTON, December 31, 1947—6 p.m.

1591. Views of Emb as expressed final sentence Urdes 1108 Nov 18, concurred in by Dept.

Dept feels it undesirable this Govt ask Chinese for extension dead-
line re-registration property rights remainder of China (problem in Shanghai having been settled at least for present) until question beneficial ownership settled. Therefore Dept desires that Emb, at least until latter question settled, continue (Urtel unnumbered Dec 1\textsuperscript{a7}) transmit Dept notices re establishment compulsory re-registration in order Dept have full info that subject in case it desires instruct Emb. Info not otherwise available Dept.

\textsuperscript{a7} Not printed; it inquired as to whether information concerning notices of compulsory registration of real property rights was available to the Department from sources other than the Embassy (893.32/12-147).