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So you feel

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 In.
 G.S.

Exports: German (Pot. seizure) 234/35/40

No. 414.

FOREIGN OFFICE, S. W. 1.

(W 6230/14/49)

22nd April, 1940.



Ex parte German 234/35/40

My Lord Marquess,

-/16

In my despatch No. 78 of the 23rd January I transmitted to Your Lordship copy of a further note which I had received from the United States Chargé d'Affaires in London on the subject of the Reprisals Order-in-Council of the 27th November, 1939. I now transmit to you the draft of a reply to Mr. Herschel Johnson's note, and should be glad of your comments upon it, together with any amendments which you may consider desirable. At the present moment the difficulties which have arisen with the United States Government over the statement to be issued by you in Washington on this same question appear to me to make it desirable to delay the despatch of this note until some suitable opportunity presents itself when undue public attention is unlikely to be aroused by it. If, however, unexpectedly rapid progress is made in removing the existing causes of misunderstanding with the United States Government, it is possible that His Majesty's Government may desire to communicate their note to Mr. Kennedy without awaiting your comments.

I am, with great truth and respect,

My Lord Marquess,

Your Excellency's obedient Servant,

(For the Secretary of State)

N.B. Rowan

His Excellency
The Most Honourable
The Marquess of Lothian, C.H.,
etc., etc., etc.,
Washington.

FOREIGN OFFICE, S.W.1.

March, 1940.

United States
Ambassador.

Your Excellency,

I have the honour to invite reference to the further note No. 1818 of the 17th January on the subject of the Reprisals Order in Council of the 27th November last, addressed to me by Mr. Herschel Johnson during Your Excellency's absence from this country.

2. His Majesty's Government note that the United States Government, while continuing to reserve their position with regard to the principle of the Order, are concerned in the present instance with its application. His Majesty's Government must equally maintain that their action is fully justified on grounds of reprisal for the illegalities committed by the German Government, which are intended to inflict, and but for the unceasing efforts of

His/

His Majesty's Forces would inflict, upon all
United Kingdom
neutral commerce with ~~the United Kingdom,~~ *neutrals*

damage at least as serious as that ~~contemplated~~ *which may result for*
German commerce from operation of
~~the~~ Order. Nevertheless, His Majesty's

Government cannot emphasise too strongly
that the Order is directed *only* against German
commerce and that it is their firm intention
to cause the minimum of inconvenience and
loss to neutral countries consistent with
proper retaliation against the German
Government. For this reason they will always
be willing to consider any representations
made by the United States Government, or any
other neutral government, with regard to the
application of the Order, and to do their
best to alleviate cases of hardship attributable
to it.

3. In this connexion His Majesty's
Government have observed from Mr. Herschel
Johnson's note that in the opinion of the
United States Government the "Notice to
"Traders" issued at the same time as the

Order/

Order in Council, and Lord Drogheda's letter of the 25th December, involve an unduly restrictive application of the announced policy of His Majesty's Government to have regard to the interests of neutrals. They are pleased to be able to explain that in fact the "Notice to Traders" was not in any way designed to be exhaustive of the grounds on which exemption from the provisions of the Order would be granted. It was not intended to relate to exemptions as such at all, but to the grounds upon which goods actually placed in Prize would be released by the Court or with the consent of the Proper Officer of the Crown and its main purpose was to afford some reassurance to traders with regard to the class of case which would clearly be most prominent in the early stages of the Order's application. The grounds on which exemption is at present being given are rather to be found in considerations

considerations of special hardship arising out of the dislocation of established channels of trade which are unfortunately inevitable as the result of the application of the Order.

a trader can show that he is suffering
~~Wherever it can be shown that undue loss has~~
~~been occasioned, without any contributory negligence on the part of the traders~~
serious loss which no action on his part could have avoided
~~concerned.~~ Your Excellency's Government may

be confident that the Ministry of Economic

Warfare has full discretion to make any

concessions which ~~may be possible~~ *do not unduly* weaken the retaliatory effect of the Order, in Council.

4. At the same time while it is as

indicated the desire of His Majesty's

Government to deal with applications for

exemption from the operation of the Order in

Council in a sympathetic manner, they must

make it clear that cases of exemption are

bound of their nature to be exceptional. It

will therefore be impossible without vitiating

His Majesty's Government's control to give

any/

any general indication of a binding character as to cases in which exemption will be allowed, and each application must be considered as an individual case supported by the necessary details and documents. His Majesty's Government have been at pains to render the necessary procedure as simple and expeditious as possible and they have been gratified to find that judging from applications hitherto received by the Ministry of Economic Warfare shippers do not appear to have experienced difficulty in completing the required forms.

5. As regards the specific points which Mr. Johnson advanced, His Majesty's Government are of course familiar with the difficulties created by the German exchange regulations. The variety of the points raised, however, and the ramifications of the German exchange control system render

this/

this question an extremely difficult one, in which it is not possible for His Majesty's Government to give any definite undertaking as to their attitude. The system in force in Germany lends itself, as the United States Government will no doubt be aware, to the concealment of any transactions which the German Government may think it desirable in its own interests to hide. His Majesty's Government furthermore have the best reasons for knowing that exports from Germany are not in practice sanctioned against payments in blocked marks alone but involve, in practically all cases, further substantial payments in foreign currency, so that funds which have been attracted to Germany in past years and which are immobilised there as a result of German legislation are actually made the decoy for the attraction of further sums in foreign exchange, a process which may well be continued indefinitely. His Majesty's Government do

not/

not desire to give the impression that this

class of case is not one to which they are

inclined to give consideration, since ~~it is~~

^{exemption}
~~in fact from among this class that certain of~~
has in fact been granted in some of these cases

~~the clearest cases for exemption have been~~

~~taken, but they are unable to regard purchases~~

~~in blocked marks as being automatically~~

necessarily deserving of
special treatment
~~unobjectionable.~~

6. As regards the more detailed points in connexion with blocked balances put forward in Mr. Johnson's note, it is not clear whether the United States Government intend to claim exemption with reference only to goods ordered before the 27th November, 1939, or whether they desire to give this claim an indefinite extension. Even on the more restricted interpretation, Your Excellency will no doubt appreciate that it would be impossible to explain satisfactorily to British and allied public opinion the reasons why, in spite of the embargo, German exports should nevertheless continue regularly to reach overseas

countries./

countries. Moreover, if purchases in blocked marks were to receive exceptional treatment under the Order in Council, it is clear that an immediate premium would be placed upon the acquisition of blocked mark credits, and the German Government may be relied upon, in the opinion of His Majesty's Government, to exploit such a situation to the fullest possible extent by the creation of fraudulent balances and other expedients which the German financial system renders easy and unobtrusive. The door would then be opened to an indefinite continuation of German exports, from which it may be taken as certain that the German Government could contrive to draw very considerable profit. As regards the suggestion which His Majesty's Government understand to be current that, where a United States citizen has at some date in the past obtained a blocked balance in Germany and has had the intention of buying goods there over a

period/

period of years, he should be regarded as having ordered the goods when the balance arose, His Majesty's Government do not feel that this argument can bear scrutiny even by the standards of ordinary commercial practice. An available balance in Germany may be evidence of the existence of a claim but it cannot be said to create of itself a proprietary interest in specific goods. The case also inevitably suggests itself of countries which have a clearing agreement with Germany, and which have sent goods to Germany in the expectation of receiving German exports against the balance in the clearing thus created. Any general license, ~~which were~~ conceded on this ground, would equally involve an indefinite extension of facilities for German exports, such as it is not possible for His Majesty's Government to admit.

7. At the same time the question of standing contracts mentioned by Mr. Johnson is one which His Majesty's Government naturally

have/

have in mind as constituting in certain cases
a distinct element of hardship. Appropriate
consideration will always be given to such
cases. ~~Nevertheless~~ His Majesty's Government
^{however} cannot be held responsible for the fact that
value for goods sold or money lent to Germany
is receivable only in goods against blocked
marks. This situation exists because German
economy has been planned on that basis,
and that Germany, having deliberately pursued
a policy which has reacted most adversely upon
international commerce in general, should be
permitted to trade upon the position thus
created in order to maintain herself in a war
of her own choosing, is a contention which
His Majesty's Government could not admit.
Intrinsically the reason for Germany's
unwillingness to pay in gold or foreign exchange
for goods imported by her is her practice,
adhered to for many years, of devoting all her
resources/

resources of foreign exchange to financing extraordinary imports of war materials. It can hardly be suggested that the refusal of Germany to adopt normal methods of trade is a valid reason for the relaxation of His Majesty's Government's policy, nor can His Majesty's Government bear the responsibility for any damage to that country or its credit which may result from the hostilities which it has forced upon ~~Great Britain.~~ *this country.*

8. There is a further case which the United States Government may have in mind, namely where goods were ordered before the 27th November last and have already been partly paid for in blocked marks, payment to be completed subsequently. Every such case will be treated on its merits, exemption depending so far as this point is concerned on the fact whether the purchaser can be said under the contract to have become the owner of the goods on part payment/

payment only. In all cases, however, it is clear that much must depend upon the particular circumstances and the terms of the contract.

9. His Majesty's Government are not entirely clear as regards the nature of the cases quoted on page 6 of Mr. Johnson's note, in which United States nationals are stated to have had contracts obliging them to accept and pay for goods either at the port of shipment in Europe or at the port of destination in the United States. It appears to His Majesty's Government that in the latter case ~~payment at the port of destination would be under a c.i.f. contract and the obligation to accept and pay would be dependent on delivery at the port of destination being effected.~~ If the goods were intercepted, there would be no delivery, obligation to pay would not arise and the importer would suffer no loss. So far, therefore, as an obligation to pay on delivery

is concerned, such a case could hardly be considered as justifying exemption.

10. In general, His Majesty's Government would invite the attention of the United States Government to two considerations in this connexion. In the first place, the United States Government will of course appreciate that neutral ownership of, or interest in, goods of German origin is not of itself any ground for exemption from the provisions of the Order in Council, which are specifically aimed at goods of enemy origin, irrespective of ownership. It is only as a concession that goods which have been paid for before a certain date can be exempted. Secondly this exemption is itself based on the assumption that the goods at any moment on order from a given country do not normally exceed certain average quantities. His Majesty's Government could not

therefore/

therefore accept interpretations of this ground for exemption which would enable goods to be exported from Germany, through allied control, for an indefinite period, particularly since in their view these exports would in fact greatly strengthen Germany's position, however much it might superficially be made to appear that she was merely discharging pre-existing obligations without receiving any added consideration.

11. In conclusion, Mr. Johnson refers especially to certain classes of shipments which in the opinion of the United States Government should not be interfered with, whether purchased before or after the date of the Order in Council, including commodities not obtainable elsewhere than in Germany, which are considered essential to industrial, agricultural or scientific pursuits in the United States, and also to commodities not obtainable elsewhere than in

Germany/

Germany, which contribute to humanitarian ends. The special points, raised by this class of goods have already been discussed in His Majesty's Government's reply to the United States Government's note of December 8th, but His Majesty's Government desire to emphasise that any exemptions they may be willing to grant must in general be based upon grounds of necessity or at any rate of real hardship. Thus cases where alternative sources of supply are known to exist or where the product in question could be easily dispensed with would raise especial difficulty. His Majesty's Government have given careful consideration from this point of view to the various products listed in Mr. Johnson's note as being unobtainable elsewhere than in Germany, but they feel bound to state that according to the best of their information and belief all of them are either obtainable from other sources

or/

or can be replaced by substitutes or can be produced locally. While, however, they would therefore find it difficult to grant exemption to any one of these products as a matter of course, they naturally remain prepared to consider any request put forward as a special case and to give due weight to difficulties arising out of particular circumstances. More especially, His Majesty's Government will always be ready to give particular attention to any cases where important humanitarian considerations can be adduced.

12. As regards the third category mentioned on page 7 of Mr. Johnson's note, His Majesty's Government, while they cannot expressly admit that goods purchased on Government or municipal account are entitled per se to special treatment, will always be prepared to grant them the widest measure of consideration consistent with the

maintenance/

maintenance of their control. Books and
periodicals ~~will also~~ *are receiving* will continue to
receive generous
treatment, as will any special cases which may
be put forward under the 5th category of Mr.
Johnson's note. As regards the 6th category,
however, His Majesty's Government, though they
cannot for obvious reasons admit such a
criterion as being of general application, will
naturally pay full regard to this consideration
in whatever connexion it may arise, and it is
indeed one to which the greatest weight is
given in dealing with the applications for
exemption made to them.

13. In conclusion, I trust that Your
Excellency will represent to your Government the
seriousness of the considerations which have
led His Majesty's Government to adopt the
measures which are the subject of Mr. Johnson's
note. In imposing their embargo on German
exports, His Majesty's Government have been
actuated, as I cannot too often repeat, by the
enormity of the German illegalities practised
against ~~British and allied~~ commerce. In

the struggle in which they are engaged, His Majesty's Government are bound, while paying due regard to the rights and welfare of friendly neutral countries, to protect themselves against the assaults of an unscrupulous enemy, and it has manifestly become impossible for them to permit the scales of war to be weighted against them by the impunity of the illegal German attacks upon their vital communications. The Reprisals Order in Council was designed to redress to some extent the balance of advantage wantonly destroyed by German action and as such it rests upon the indefensible right of the sufferer to retaliate for the unlawful assaults of the aggressor. In spite, however, of the necessity in which they thus find themselves for taking action which must inevitably react upon neutral countries, His Majesty's Government have not descended and will not descend to even an approximation ^{to} German methods, and I shall be glad if Your Excellency will convey to your

Government/

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Government an assurance that they will continue to have before them as one of their principal objectives in the present struggle, the maintenance of the general system of international commerce upon which they believe not only their own prosperity but that of all other peaceful nations to be based.