

1921

12

E. AFRICA

31418

REC'D  
Res'D JUN 21

FROM  
**FOREIGN**

DATE  
23RD JUNE 1921

FOR CIRCULATION :-  
Mr. *Mrs* 30. 11 21  
Mr.  
Mr. *Shackley* 30  
Mr. *Trindle*  
Sir H. *Lambert*  
Sir H. *Read* 30/11  
Mr. *U. Piddes*  
Mr. *Wood*  
Mr. *Churchill*

SUBJECT  
CUSTOMS DUTIES  
INCREASE ABOVE 10% AD VALOREM  
Explains position in regard to the ratification of the Convention of St Germain and submits proposed course of action in regard to notification of increase of 10%. If agreed to ask for M.M.S. as to necessity for increase.

Precedent Paper  
*20/24/21*

MINUTES  
*W. Shackley*

*Kenya (proposed Tariff)*  
*2 July 1921*  
*Referenced*  
*Temperance*  
*Ans. 1 Aug. 2 30719 Kenya*

After discussing with  
I suggest that we should  
send telegraph to the Govt  
of Kenya, T.T. Rescued  
to be 2' last, say that  
the Govt of Kenya must  
object to the said increase  
of Customs Duties, subject

Subsequent Paper  
*24/11/21*  
*30924*  
*My...*

*to say to us*

MINUTES.

MINUTES NOT TO BE WRITTEN  
ON THIS SIDE.

Pros may have to  
hear the  
to 5/20

ask for

about

about

showing

the 8th

with will be

after hearing

when he is

So we must hope

upon them that the

to the interest must be

completely we have to

\* Let Recd. to whom I  
make yesterday things  
arrangements ought to be  
the one to be made by the  
but he shall see what  
for my part.

In any further communication on this subject, please quote No. 4255/182/60. and address not to any person by name.

FOREIGN OFFICE.  
31418  
S.W.1.  
REC 23rd. June 1921.  
REC JUN 21

The Under-Secretary of State,  
Foreign Office,  
London, S.W.1.

11.12.

Sir,

As your letter of the 11th of the relative to the proposed raising of the East African duties on their customs duties is received and in view of the fact that the duties of the East African States are subject to the provisions of the Convention of 1890, the position of His Majesty's Government as far as regards this side of the question appears to be a strong one.

As regards the remaining Powers the position is as follows: Italy, Portugal and the United States have not acceded to the Convention, and the obligations

Yours faithfully,  
[Signature]

imposed by the Brussels Act are therefore technically still in force as far as these Powers are concerned. Further, the Italian and Portuguese Governments are likely to appeal to the fiscal provisions of their treaties with Muscat.

Japan has not ratified the revisory Convention, but, not being a party to the Brussels Act, appears technically to have no right in the matter pending such ratification.

In view of the evident necessity for an early decision, Lord Curzon does not propose that the Government should be given of the intended Convention, immediately, but that the step proposed should be taken to wait until the Convention is given to the Powers which have not yet ratified it.

Lord Curzon would also see that the Government should be given of the intended Convention, immediately, but that the step proposed should be taken to wait until the Convention is given to the Powers which have not yet ratified it.

If Mr. Winston Churchill agrees to the adoption of this course it will be required that a memorandum with regard to the necessity for the issue of orders may be forwarded to the Department of the Colonies in the Government's interest at the proper time.

Sir,  
Your most obedient,  
humble servant,

*H. Seymour*

31418 E.A.

Paraphrase telegram from the Secretary of State  
for the Colonies to the Government of Kenya.

(Sent 1 p.m. 2nd July 1922.)

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2nd July.

Secretary of State for Foreign Affairs  
sees no objection to immediate increase of customs  
duties. Subject to any observations which you may have  
to offer I suggest that they should be raised to 15  
per cent on 1st August. Telegraph your views  
immediately.

Repeat to High Commissioner for Zanzibar with  
reference to paragraph 2 of my Confidential despatch  
of 15th April.

Paraphrase telegram from the Secretary of State for the Colonies to the Governors of Kenya, Tanganyika Territory, and Nyasaland.

(Sent 1 p.m. 2nd July 1921).

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2nd July.

Secretary of State for Foreign Affairs now sees no objection to immediate increase of duties. Subject to any observations which you may have to offer I suggest that they should be raised to 15 per cent on 1st August. Telegraph your views immediately.

Repeat to High Commissioner for Zanzibar with reference to paragraph 2 of my Confidential despatch of 15th April.

ch we asked  
(to be considered  
miscellaneous should  
be considered as  
miscellaneous become  
etc)

B.  
21.  
cc.

(1) only.

33466  
2nd

Take shape for ideas  
which has been written  
from time to time of the  
idea to come to let us know  
if we can have copies  
as to the contents  
of the understanding  
of the  
15.4.22  
E.S.

to be written. But  
if you (if you the  
session comes) should  
be interested - let us  
know my address at  
the house of the  
at 15.4.22  
Quite to  
W. H. H.  
at 15.4.22  
W. H. H.

1844

The Secretary of State would have had  
the French note of the 15th in the  
first instance, especially as the account with regard  
to Article 2 of the Treaty of 1844, to which the  
French Ambassador has particular objection, was  
inserted in the French note of 27th May at  
Lord Curzon's instigation, but subject to any observa-  
tions Lord Curzon may have, he would suggest a reply  
on the following lines.

His Majesty's Government have  
given every consideration to the arguments advanced  
in the French Ambassador's note, but they must  
adhere to their interpretation of Article 11 of the  
Treaty of 1844. As regards the meaning of the  
phrase "en toute liberte", His Majesty's Government  
consider that they were fully justified in looking  
to Article 2 where the similar phrase "en toute  
liberte" occurs. It is clear that "liberte" is  
used in the latter Article in the sense maintained  
by His Majesty's Government, viz. subjects of the  
respective countries shall have the right of  
"marier, acheter, commercer et faire tout commerce  
avec leurs marchandises" in the territory of the  
other, but not a right accreted by the  
receipt of such an intorpation would be  
in foreign office.



was in all respects the same as in the case of the  
 Senegal in France, but merely pointed out that, under  
 Article 3 of the Treaty, Senegalese in Senegal  
 (just as the French in Senegal) had the right  
 "en toute liberté d'entrer, résider, commercer et  
 circuler en France, avec leurs marchandises". All to  
 which the terms of the Article apply precisely and may  
 be admitted of debate. But in any case His Majesty's  
 Government could not admit the argument that, on account  
 of a capitulation imposed on a semi-barbaric and  
 inferior Hebraic Potestate 85 years ago, the French  
 subjects should escape any contribution to the  
 administration of an other Government under the  
 British flag.

Paragraphs 5, 6, 7 & 8. As regards the  
 provisions as to Import duty in the Treaty, it should  
 be observed that the limitation of 5 per cent has been  
 abolished by the 1919 Convention under Article 2 of  
 which the States concerned, subject to the provisions  
 laid down in the Convention, "reserve to themselves  
 complete liberty of action as to the customs and  
 navigation regulations and tariffs to be applied in  
 their territories". [The Foreign Office are hourly  
 expecting a protest from the French against our recent  
 increase of Import duties, and think that it would be  
 wise to return no reply to the present note until we  
 know whether the protest is likely to be forthcoming  
 or not.]

Paragraphs 9 & 10. His Majesty's Government  
 must maintain their point of view that the Treaty of  
 1844 concerns commerce only. The French apparently  
 are aware that they are on weak ground here as they say  
 that the status of French subjects in Senegal does not



Further communication  
at this office  
By *AS 115/248/60*  
and address  
only and person to whom

167321  
28-121

Secretary of State  
Foreign Office  
London, S.W. 1.

THE Under Secretary of State for Foreign Affairs presents his  
compliments to the Under Secretary of State for the  
Colonies and, by direction of the Secretary of State,  
transmits herewith one of the under-mentioned paper for such  
observations as

may be required to

Colonial Office letter No. 1001/1002  
dated 11th Jan 1960

Government  
Kenya

<sup>2/3</sup>  
 In his note No. A.3569/248/60, dated the 27th of May last, the Foreign Office informed this Embassy that the measures taken by the Kenya Government, in regard to commercial taxation and income tax, and those which it proposes to take in regard to landed property, did not appear to the British Government to be contrary to the terms of the Convention of 1844.

2 In order to justify the taxes imposed by the Traders' Licensing Ordinance, the Foreign Office offers observations as though Article 2 of the Treaty provided "the French shall have entire freedom of buying and selling" in the sense that "this freedom shall not be liable to infringement by any monopoly or exclusive privilege" and that in the (true) sense that freedom of buying and selling should not be liable to infringement by any tax; and to make the matter more clear, it goes on to say: "Article 2 provides that subjects of Zanzibar shall <sup>have</sup> complete freedom of entrance into, residence, commerce and travel in France with their merchandise, but it is not imagined that the French Government would account of this provision, ~~omit~~ persons are exempt from any tax to commerce that may be general.

3 In other words the British Government alleges that, by the terms of Article 2 of the Treaty, the status of a French subject in Zanzibar should be the same as that of a French subject in France.

is not one which can be applied in practice.

10 The status of French subjects in Zanzibar does not in fact depend solely on the terms of the Treaty but on its spirit and on custom, which is of such importance in a country subject to capitulation..

// Finally a fresh breach of the Treaty of 1844 has been notified to the French Government. As the result of an amendment to the Non-Native Poll Tax Ordinance, 1912, which has been published in the Nairobi Official Gazette of the 29th of December, 1920, the personal tax of 15 rupees per person per year, from which the nationals of Governments having a treaty with the Sultar of Zanzibar have hitherto been exempt, has been declared applicable to such nationals with effect from January, 1921, in the continental dominions of the Sultan. The imposition of this tax appears to be clearly contrary to the Treaty..

12 Consequently M. Briand has requested M. de Montille to press the Marquess Curzon of Kedleston to be so good as to acquaint the Kenya authorities of the situation in which the French Government finds itself placed in regard to its nationals resident in this British Colony - a situation which compele it to maintain its point of view. He takes this opportunity of renewing to Lord Curzon the assurance of his very high esteem.

French Embassy in London

- Gilbert G. H. H.

Par sa note No. A 3389/248/60, en date du 27 Mai dernier, le Foreign Office a fait savoir à cette Ambassade que les mesures prises par le Gouvernement du Kenya en ce qui concerne les taxes de commerce et l'impôt sur le revenu ad valorem qu'il se propose de prendre en ce qui concerne la propriété foncière n'appartiennent pas au Gouvernement britannique comme contrairement à ce que de la Convention de 1841.

2 Pour justifier les taxes de la "Leasing Ordinance" le Foreign Office observe que l'article 2 du traité dispose que les Français ont le droit d'acheter et de vendre en ce qui concerne les marchandises ne pourra être entravée par aucun droit de douane exclusif mais non en ce sens que le droit d'acheter et de vendre ne serait entravée par aucune taxe. Plus précisément, il faut lire l'article 2 qui stipule que les sujets de Zanzibar pourront en toute liberté aller, résider, circuler et commercer en France et acheter et vendre des marchandises mais on ne s'agit pas que le Gouvernement français en vertu de ce texte, permette à de telles taxes de déroger aux lois générales relatives à l'exercice de l'autorité.

3 En d'autres termes le Gouvernement britannique allègue qu'aux termes du traité de commerce la condition d'un Français a priorité sur celle de Zanzibar que celle d'un sujet de Zanzibar en France.

4 Le Gouvernement français estime que cette manière de voir est contraire à l'esprit des capitulations, traités où les puissances chrétiennes stipulent, sans réciprocité, dans des conditions de supériorité naturelle.

D'autre/

5 D'autre part, elle est contraire aux termes précis du Traité de 1844.

6 Quand l'article 2 dispose : "Aucun article quelconque de commerce ne sera prohibé soit à l'importation, soit à l'exportation dans les Etats de Sa Majesté le Sultan", cette disposition est nettement unilatérale. De ce que les Zanzibariens doivent être soumis à des taxes de commerce en France sous la seule réserve du traitement de la Nation la plus favorisée, il ne s'en suit donc pas que les Français doivent être traités de même à Zanzibar.

Enfin, l'article 2, qui termine le Traité de Commerce de 1844 par les mots : "Le Commerce sera libre entre les deux Etats", ne s'applique qu'au Commerce de détail. La distinction faite entre les opérations civiles et les opérations commerciales, distinction sans base dans le Traité, n'est pas susceptible d'une application pratique.

10 Le régime des Français à Zanzibar ne dépend pas en effet seulement des termes du Traité, mais de son esprit et de la coutume, si importante en pareilles négociations.

Enfin/

// Enfin une nouvelle atteinte au Traité de 1844 a été signalée au Gouvernement français. En vertu d'une modification de la "Non native Poll Poll Tax 1912", qui a été publiée à la Gazette Officielle de Nairobi du 29 Décembre 1920, la "taxe de soumission" de 15 roupies par personne et par an, dont jusqu'à présent avaient été exemptés les ressortissants des Gouvernements ayant un traité avec le sultan de Zanzibar, a été déclarée applicable à ces ressortissants à partir du mois de Janvier 1921, dans la zone continentale des Etats du Sultan. L'établissement de cette taxe paraît manifestement contraire au Traité.

En conséquence, M. Briand a prié M. de Montille d'insister auprès de Sa Seigneurie le Marquis Curzon de Madras pour qu'il veuille bien faire connaître aux autorités du Kenya la situation dans laquelle se trouve placé le Gouvernement français à l'égard de ses nationaux résidant dans cette colonie britannique et qui l'oblige à maintenir son point de vue. Il saisit cette occasion pour lui renouveler les assurances de sa très haute considération.

Ambassade de Paris

4 1/2 car

Albert Godeaux, Secrétaire

12 Juillet 1921.