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AMERICAN CONSULATE GENERAL

Berlin, Germany, July 6, 1933.

SUBJECT: With reference to the treaty rights of
American-owned German firms in Germany.

THE HONORABLE

THE SECRETAR OF STATE

WASHINGTON.



SIR: I have the honor to acknowledge the receipt of the Department's instruction of May 29, 1933, (File No. 362.1154 Houghton and Co., E.F./2) with reference to the treaty rights of German corporations which are subsidiaries of American corporations, with which instruction are transmitted letters from E.F. Houghton and Company of Philadelphia, aswell as a copy of a letter dated June 2, 1933, addressed by the Department to Senator Reed. The Department refers to despatches from this Consulate General with regard to discrimination against American firms and American-owned German firms in Germany and the steps which the Consulate General, in consultation with the Embassy, has taken to protect American interests. It requests that a further report on this subject be transmitted.

In this connection I wish also to refer to the

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Department's telegram of June 2, 5 p.m. in which it states that there is doubt in the mind of the Department as to the basis for claiming that the German action in the cases reported in my despatch No. 1296 of May 9, 1933, and previous despatches on the same subject involved treaty violation. To this telegram I replied in my despatch No. 1368 of June 15, 1933, in which I also gave further background with regard to the general question of discrimination against American-owned firms in Germany and against American trade in general. This despatch No. 1368 should be considered in connection with the further information which will be given in this report.

The case of the Deutsche Houghton Fabrik G.m.b.H. in Magdeburg-Buckau, covered in the Department's instruction under reply, is practically identical with others which have already been brought to the Department's attention and which this Consulate General has discussed at length with the appropriate German authorities. This company is the sole property of E.F. Houghton & Co. in Philadelphia and is a duly incorporated limited company under the German laws, the entire capital being owned by E.F. Houghton & Co. in Philadelphia. The German company is to all intents and purposes subject to German law and, according to all previous interpretations known to this Consulate General of the German law in Germany, has the same rights as a German-owned German company, just as it has the same responsibilities. E.F. Houghton & Co. in Philadelphia

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have been informed by their German subsidiary that it has been losing business due to the fact that certain German municipalities and public-owned utilities have recently indicated that they will not buy from any firm which is not a "purely German firm", that is a firm whose capital as well as its legal status are German. The German subsidiary of E.F. Houghton & Co. is correctly stating the situation, for, as the Department has already been informed, the National-Socialist party since March 5, 1933, has sent instructions to municipalities and public-owned utilities that purchases can only be made from so-called purely German firms and the original contention of the party was that an American-owned German firm is not a purely German firm even though it manufactures in Germany with German labor and out of German materials. This contention and attitude of the party are the carrying out of promises made to various manufacturers during the long years of struggle of the party for power. Various party leaders promised manufacturers that upon the accession of the party, foreign firms and foreign capital would be driven from the country.

The Department in its letter to Senator Reed in response to his inquiry as to whether the action of forbidding Government departments, municipalities and public-owned utilities to purchase from American-owned German firms would constitute a violation of the treaty between the United States and Germany, states that it "does not consider that by the treaty the parties have

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restricted their freedom or the freedom of their political subdivisions to make purchases of supplies from concerns of their own choice". From this I assume that the Department would not be prepared to make representations on the basis of treaty violation if, for example, the German Government or the National-Socialist party issued orders that no Government department can purchase supplies from an American-owned German firm duly incorporated under German law.

In this connection the following further discussion may be of interest to the Department. When I took up with the Ministry of Commerce and with the Ministry of Propaganda and Public Enlightenment the orders which had been issued to various departments of the central Government, of the States and municipalities as well as to public-owned utilities that they could only buy from so-called purely German firms, an investigation was undertaken by the Ministry of Commerce which assured me that no such instruction had come from the Government and that the Government did not intend to give such instructions. When I stated to the acting head of the Ministry of Commerce that such action, if taken by the Government, would apparently be a violation of our treaty, he agreed at once. We did not discuss what particular sections of the treaty it might be a violation of, but the recognition that such action would be treaty violation was spontaneous on the part of Dr. Bang, who was then the head of the Ministry of Commerce, and those who were associated with him in the conversation were in entire agreement. When I took up the question of the

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discrimination against certain American-owned German firms in the photographic business, with the Ministry of Propaganda and Public Enlightenment, the Minister promised that the discriminatory action against American firms would be stopped. In a letter written by Dr. Funk, the Staatssekretaer in the Ministry, to this Consulate General on May 23, 1933, Dr. Funk, writing for the Minister in reply to a letter in which I had set forth cases of discrimination, states as follows: A copy of the original of Dr. Funk's letter is transmitted herewith (enclosure No. 1).

"My dear Consul General:

In reply to your letter of the 8th inst. addressed to Reichsminister Dr. Goebbels, I have to inform you that the Ministry has ordered that the discrimination against and the interference with the free competition of American firms mentioned in your letter, must be stopped. For this purpose we got in touch with the competent official and party bureaus and have ordered that the measures and the interference described in your letter, must stop.

Very truly yours,
(sign.) Walter Funk. "

During the conversation with Reichsminister Dr. Goebbels, which resulted in this letter giving adequate assurances, it was clear that the Minister was of the opinion that American-owned firms in Germany enjoy and have under the treaty the same rights as German-owned German firms.

As I have already set forth in previous despatches, it was the intention of the "Kampfbund des gewerblichen Mittelstandes" to publish a book which was to contain only the names of so-called purely German firms and this

book

book was to be placed in the hands of all Government departments, municipalities, etc. so that they could confine their purchases to these firms. A responsible official of the Kampfbund made it clear that no American-owned German firm was to appear in this list. As the publication of this book would have stopped not only the sale of the products of American-owned factories in Germany to Governmental departments, but through the psychology of fear which prevails in the country would have practically stopped the sale of the goods of all American firms in Germany, I brought the contemplated publication of this book to the attention of Staatssekretær Dr. Bang, then head of the Ministry of Commerce. He called in to hear the conversation, the Kommissar of the National-Socialist party in the Ministry. Both were of the opinion that the publication of such a book would work damage not only to American interests, but to German interests and that it would bring about discrimination against American interests guaranteed equal rights with German interests in the treaty. Again during the conversation no particular article of the treaty was referred to although I had in a previous conversation mentioned Articles I and XIII of our treaty. The authorities in the Ministry seemed to take it as an established and indisputable fact that the treaty guarantees to American-owned German firms the same rights as to German-owned German firms. I was assured that the necessary steps would be taken to see that this book was not published by the Kampfbund or if it

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were published, only with the knowledge and approval of the Ministry of Commerce which could then see that American-owned German firms which should properly appear in it, would be listed. This assurance was given me in a letter of the head of the Ministry of Commerce, under date of May 10, copy of the original of which is transmitted herewith, and of which a translation follows:

"My dear Consul General:

In accordance with our yesterday's conversation I immediately got in touch with the Kampfbund des gewerblichen Mittelstandes. The central office of the Kampfbund has declared that it has no intention of disturbing in any way the vested rights of citizens of the United States. The central authorities of the Kampfbund have declared themselves prepared, if they publish the book containing a list of suppliers, to do so only in agreement with the Ministry of Commerce. I believe therefore that in this way there is given me the possibility of protecting the vested American interests. Should you have further reason for complaint, I naturally stand at your disposition at any time.

Very respectfully yours,
(sign.) Dr. Bang. "

In this letter it will be noted that the Ministry of Commerce speaks of vested interests which, taken in conjunction with our conversation, is I believe a statement that in the opinion of the Ministry the discrimination pointed out involved violation of treaty rights.

Both the Ministries of Commerce and of Propaganda have apparently looked upon this matter not merely as a question of whether public utilities, Government departments, etc. can buy from American-owned German firms, but have examined the question from a much broader point of view, this also being the point of view which this Consulate

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General brought to their attention. It is clear that if Government departments are given a list of firms from which they can buy supplies, discrimination may be involved not only as against foreign-owned firms, but also against certain German-owned firms which might not appear in the list. It was looked upon also from the point of view that any firm which did not appear in the list would be definitely prejudiced before the general public as well. I believe that there is a distinction between reserving liberty of action in making purchases, which the Department refers to in its letter of June 2 to Senator Reed, and between official action involving definite discrimination between firms, whether of national or of foreign ownership. I am quite in agreement with the Department after a careful study of the treaty, that the treaty does not restrict the freedom of the respective Governments or of their political subdivisions to make purchases of supplies from concerns of their own choice. I do believe, however, that the treaty does protect American-owned German firms in Germany in the sense that they have the same rights and privileges as German-owned German firms, just as German-owned firms in the United States are guaranteed the same rights as American-owned firms. It would be an impossible principle between two trading nations that regularly incorporated firms under the laws of the country shall have all the obligations imposed by the laws and be restricted in any sense in their privileges

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or rights. This does not mean that a Government department cannot restrict its purchases to any firms it may choose to buy from, but the choice could not be made merely on the basis of the capital ownership of the supplying company as long as the company was properly incorporated under the law.

I cannot enter into any discussion as to the interpretation of the treaty as this is a matter for the Department's decision so far as our point of view is concerned. So far as the German point of view is concerned I believe the letters quoted in this despatch and the conversations which I have had, indicate clearly that the German authorities are of the opinion that American-owned German firms in Germany have the same rights as German-owned German firms and that no direct discrimination can be made against American-owned German firms in the placing of orders by a Government department or by a municipality. From the conversations which I have had it is also clear that it is not the intention of the higher authorities either of the German Government or of the National-Socialist party, that the products of American-owned German firms in Germany shall be discriminated against. It is quite certain that whenever possible purchases will be made for Government departments only of merchandise manufactured in Germany, but in this no treaty violation is involved and in this respect I understand our own Government and various municipalities have already taken similar action.

As I have brought out in my despatch No. 1368 of June 15, no formal representations have been made to the

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German Government on the question of treaty violation as involved in the restriction of purchases by Government departments and municipalities. It has not been necessary to make formal representations for two reasons. First, the action which would have been and is discriminatory against American-owned German firms came from the National-Socialist party and not from the Government. Second, it was possible through the informal conversations and action of the Consulate General to bring about a recognition by the Government as well as by the party that the contemplated action was undesirable. The action taken by the Consulate General, however, did succeed in at least temporarily stopping the action against American-owned German firms which, if it had been carried through, would have destroyed many millions of American capital fruitfully invested in Germany. The action which was taken in the very beginning made it evident to party leaders that this enlargement on their program could not be carried through without grave dangers. Now that they have what may be deemed a liberal point of view with regard to the matter, they are confronted by the difficulty of putting over this point of view upon their followers to whom the elimination of foreign firms and capital had been promised. The small manufacturers and in some cases large manufacturers are carrying on a definite undercover propaganda against imported American goods and goods manufactured by American-owned German firms in Germany. This propaganda is in many cases of an extremely dishonest and disloyal kind and it is seriously injuring the interests of American-owned German firms

firms as well as the importation of American goods. This propaganda and action against foreign goods and against foreign-owned German firms in Germany is frowned upon by the highest leaders of the party, but has the direct sympathy of intermediary and powerful leaders. It is a question, as has already been pointed out in previous despatches, as to whether the saner counsels at the top will prevail or whether the radical ideas from the bottom will eventually control.

Up to the present time it is impossible to tell what the outcome will be. There is constant difficulty among the intermediary leaders of the party themselves. This is best illustrated by a letter which Dr. Wagener has written to the head of the political department of the National-Socialist party. A translation of this letter is transmitted herewith (enclosure No. 3). In this letter particular attention is directed to the following paragraph:

" It cannot be our aim to destroy business undertakings existing in Germany, even though they have been managed with foreign capital and partly also by foreigners, but it should be our aim to force them to act German and that they too be placed under the principle of our Leader "The Good of All goes before the Good of the Individual". I would therefore ask that you exercise your influence as head of the political department, upon the German communities in order to prevent that further such circular letters be sent out and that through such procedure a hindrance of the entire business life is brought about which we cannot, with the best will, use in these times. "

The Consulate General is continuing its efforts in the protection of the interests of American firms in Germany. It is not believed that in general official representations

representations in this particular respect are as yet desirable. The real economic policy of the National-Socialist party, which is to say of the Government, has not yet been determined along any clear lines. A new Minister of Commerce, Dr. Schmitt, has been appointed. He is a man of liberal ideas who can be depended upon for reasonable action if allowed to act on his own ideas and principles. He has, however, associated with him as his immediate subordinate, Dr. Feder, who has been up till recently very radical and a believer in experiments which from our point of view are considered extremely dangerous. It was only with the greatest difficulty and after much intrigue that Dr. Schmitt was given the appointment and it may temporarily be considered as a victory for the more conservative and reasonable elements which stand for the maintenance of treaty obligations and which are against unusual experiments in industry and finance. The fact, however, that Dr. Feder is his leading subordinate, adds a disquieting element, but his influence probably may be discounted to a certain extent as I am informed that his appointment is considered as a sop to the radical elements in the party who are not yet prepared to admit the leadership of a man like Dr. Schmitt. In other words, the appointment of Dr. Schmitt is intended to reassure the industrialists and the conservative elements in Germany and outside, while the appointment of Dr. Feder is intended to satisfy the radical elements in the party which have not given up their idea of

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experimentation and which believe that Germany does not need to consider the outside world. I have mentioned these details with regard to this appointment as they are indicative of the two-way policy which the National-Socialist party and the Government are still compelled to follow. The time for making decisions is continually getting more imminent, but the party has not yet reached the point where it is able to make these decisions with safety.

As I have pointed out in previous despatches, the situation is still one where anything can happen. The same psychological factors and the same pathological personalities still play their prominent part in the situation and as long as this continues no forecast can be made as to what actually will happen.

In the meantime, the Consulate General is advising American firms with which it is in constant contact, to maintain their struggle, to keep up sales and their position, but at the same time to cut down expenses wherever possible so as to keep losses at a minimum. There is still reason to believe that those firms which will maintain their position and organization will be able to save a great deal out of the present period of confusion. The interests of American firms are suffering severely in spite of the more moderate tendencies at the top of the Government and of the party, and in spite of the efforts of the American firms themselves, and in spite of the constant attention which we are giving to these problems.

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With particular reference to E.F. Houghton & Co. and their German subsidiary I am getting in touch with the management of the Deutsche Houghton Fabrik G.m.b.H. at Magdeburg-Buckau and am asking a representative of the firm to call at this Consulate General at his convenience, when we shall be very glad to go into the entire problem with him. I am quite sure that ~~we~~ ^{we} will be able to be of assistance to them, and the Department can assure E.F. Houghton & Co. that the Consulate General here will render the German subsidiary all possible assistance in the particular problems which it may have here. It may be possible for us to assist this firm to get a statement from the party officials to the effect that it is a "purely German firm" and in this way be able to sell to Government departments and municipalities as before March 5. As I have already informed the Department, firms such as the Nationale Radiator Gesellschaft m.b.H. have already been able to secure through indirect intervention such individual statements from the party, and they have suffered little interference since then.

I should add in connection with the statement made in this despatch concerning the appointment of Dr. Schmitt as Minister of Commerce and of Dr. Feder as Staatssekretaer in that Ministry, that Dr. Posse has also been retained as a Staatssekretaer in the Ministry. This is in some respects the most reassuring feature of the recent action. There was very real intrigue between the various

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economic advisers of the National-Socialist party as to who should be the new Minister of Commerce and much depended upon the decision as it would indicate whether the Government and the party would follow the more moderate views held at the top or the radical pressure from the bottom. Dr. Posse as the Department knows has been long in the Ministry of Commerce in a responsible position and is in fact the real working member of the German delegation at the London Conference. He is a Deutsch-Nationale in politics and a man of really high ability and of moderate views. I am confidentially informed that he has been retained in the Ministry in order that he and the Minister, Dr. Schmitt, shall work together along a moderate policy, and that Dr. Feder "will be allowed to talk", but that he will have little to do or determine. Dr. Wagener who, it is said, was very anxious to become Minister of Commerce and was conducting active propaganda to force his appointment, is commonly understood to be in prison since the announcement of the new Minister's appointment has been made. His four lieutenants, who are well-known members of the party and who were working for his appointment, were arrested and placed in a concentration camp some days before the new Minister was appointed. The fact that Dr. Schmitt, the new Minister, is much more moderate than Dr. Wagener, who himself, however, was not so radical as some of the others who aspired to the position, is therefore quite significant as indicating the determination of the highest party leaders to stop the period of interference with business and industry and the radical action from the bottom.

That the highest leaders did not hesitate to bring about the arrest of Dr. Wagener and that four important party members who were working for his appointment, were put in a concentration camp, is an indication that energetic action can, when the provocation is sufficiently strong, be taken at the top and carried through.

As I have already pointed out, American interests as well as other foreign interests are suffering, and in many cases severely, through the confusion now existing. The Consulate General has tried to be as helpful as possible during this period by bringing to the attention of responsible persons whenever possible the effects which radical action contemplated might bring not only to the external commercial relations of Germany, but also to her internal economic structure. Those interested in maintaining and protecting American interests in Germany have therefore been under the necessity of helping in the process of education of the National-Socialist leaders, and this has been far more effective than any formal representations which might have been made by Governments, as these might have had the contrary effect to that contemplated. While this Consulate General has been exceedingly circumspect and careful in all that it has done, it has not failed to recognize that this is a revolution in the real sense of the word and that the usual methods of protecting interests cannot alone be resorted to. The good will

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which has been shown by us when our opinion has been asked has undoubtedly been helpful and effective, and it is believed that this policy must be continued as it has avoided in at least several instances the issuance of decrees which have the effect of laws and which would have had a disastrous effect upon American interests.

In the case of the law for the decrease of unemployment of June 1, 1933, which in Section II provides for tax exemption on the amounts spent for replacements for certain types of material if they are of inland manufacture, there was no notice that such a law would be passed and therefore it was not possible to stop it. The effect of Section II of the law of June 1 under reference will be particularly severe on American firms and will affect importations from the United States more than from any other country as we are the principal supplier of the lines affected. In this case therefore it has been necessary for the Embassy to bring the law to the attention of the Department as it seems quite clear that Section II involves clear violation of the treaty. In this case, therefore, formal representations cannot be avoided as we are faced by a fait accompli. The Embassy therefore has already taken up this matter with the Department which has authorized the Embassy to take up the matter informally with the Foreign Office, pending further examination of the matter in the Department.

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I am confident that on the basis of the data^a which the Embassy is sending the Department it will be found that Section II of the law of June 1 involves violation of the treaty and that formal representations will therefore have to be made. I have reason to believe that this particular section of the law was not examined carefully before it was promulgated. It is an illustration of how rapidly laws are now issued by decree, and many of these decrees are proposed by interested organizations or groups of industry. It is therefore necessary for us to be constantly on the alert in order that, if such decrees destructive of our interests are proposed, informal conversations may be held at once to assure that they will be given proper examination. In every case so far it has been possible in this way to avoid the issue of the decree or to bring about changes therein so that they did not involve treaty violation. In this particular instance, however, we had no knowledge whatever that such a decree was to be issued, and therefore formal representations to the Foreign Office will be the only recourse. I may say in this connection that I hope that the Department will take as prompt action on the Embassy's telegrams and despatches with reference to treaty violation under Section II of the law of June 1 on the decrease of unemployment, as possible, as American interests are suffering severely through the application of this law. It is desirable that formal representations

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be made as soon as possible as it is believed that this will help the German Government in either rescinding the decree or in making regulations thereunder which will remove the discrimination against American goods. Since the promulgation of this law there has been a flood of propaganda by interested competing German firms calling attention to the fact that the German-made product is free from taxation , and in spite of the preference of German firms for the American product they are no longer buying it. I have mentioned this particular aspect of the general problem in this despatch as it represents the one exception since March 5 in which formal representations have become necessary in the protection of American commercial interests, and I believe that the Embassy should be authorized as promptly as possible to make these representations.

Respectfully yours,

George S. Messersmith,
American Consul General.

Enclosures:

Copy of letter from Dr. Funk,
" " " " Dr. Bang,
" " " " Dr. Wagener.

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