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AMERICAN CONSULATE GENERAL

Berlin, Germany, June 15, 1933.

SUBJECT: With respect to the measures taken by
this Consulate General in the protection
of American interests.

THE HONORABLE

THE SECRETARY OF STATE

WASHINGTON.

Handwritten signature: Philip C. Cullen

SIR:

I have the honor to acknowledge the receipt of
the Department's confidential telegram of June 8,
1933, a paraphrase of which is as follows:

" There is doubt in the mind of the Department as to the basis for claiming that the German action in the case reported in your despatch No. 1296 of May 9, 1933, and previous despatches on the same subject involves treaty violation. While the Department naturally desires to have these instances settled to the satisfaction of the American interests concerned, it feels that the Consulate General should act with great care in order to avoid the taking of a position which the Department may not be able to support. The Department will appreciate information on what sections of the treaty the Consulate General has based its claims as to treaty violation and also information to what extent the German authorities have agreed in the position taken by the Consulate General. You are instructed to report by mail unless you feel the situation is urgent. PHILLIPS ACTING. "

This telegram reached this Consulate General
before my return to Berlin from Vienna where I had

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been attending the meetings of the International Chamber of Commerce, and I am taking my first opportunity to transmit the report desired, doing so by mail instead of telegraph as there appears to be no urgency in the report reaching the Department.

The Department is in doubt on what sections of the Treaty of Friendship, Commerce and Consular Rights between the United States and Germany, the Consulate General based its efforts to protect the threatened interests of American firms and American-owned German firms since March 5, and feels that the Consulate General should act with great care in order to avoid taking a position which the Department may not be able to support. At the outset I may say that no formal representations have been made to the German Government to the effect that the treaty has been violated, and the Department has not been committed to any attitude. The Department will note from page 10 of my despatch No. 1296 of May 9 that formal representations involving the taking of a specific attitude by our Government had not up to that time and have not since been made. The conversations with the Ministries were carried on by this Consulate General with the Ministry of Commerce and the Ministry of Propaganda and Public Enlightenment in an informal manner. On page 10 of the despatch referred to it is pointed out that the Charge d'Affaires and I were in accord that if the

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informal conversations of the Consulate General with the above mentioned Ministries were not effective and did not bring about a cessation of the discriminatory action against American firms whose vital interests were being daily threatened, it would be necessary for the American firms concerned, through the parent companies in the United States, to take up the matter with the Department in Washington in order that the necessary instructions might be sent to the Embassy and formal representations made to the German Government through the Foreign Office, that treaty violation was involved in the discriminatory action taken against American firms. As it was happily possible through the efforts of the Consulate General, acting always in consultation with the Embassy, to bring about a cessation of this discriminatory action, the necessity for formal representations by the Department and the Embassy did not arise.

The Department is aware through the numerous despatches from this Consulate General since March 5, 1933, when the National-Socialist party came into power in Germany, that action of various sorts began which seriously threatened the personal safety of at least a part of the foreigners in Germany, including Americans, and that various steps were undertaken in the business field which threatened the future of many millions of dollars invested by American firms in manufacturing establishments in this country. The action against the persons of

foreigners

foreigners was principally against Jews, or those suspected of being Jews, and the Department is aware from the reports which have been transmitted that American Jews as well as some Americans not of that faith and race suffered in the general action. As the personal safety of Americans temporarily or domiciled in Germany is undoubtedly guaranteed by the treaty and as the German Government owed these Americans all proper protection as to their personal safety and that of their property, the Consulate General and the Embassy immediately took the necessary steps in order to prevent further attacks upon Americans. The despatches which this Consulate General has transmitted to the Department have recited the effectiveness of the efforts made by the Consulate General, always in consultation with the Embassy. It is therefore not necessary to go into this aspect of the matter, except to state that it is the general impression here that the discreet^{et}, cooperative and at the same time forceful way in which these cases were taken up, effectively stopped the attacks on Americans, and did a great deal towards helping to moderate the movement against the Jews in general.

It is also necessary to bear in mind as background that when the National-Socialist party came into power it was the signal for the beginning of attacks against foreign interests and foreign firms in general, and this particularly affected American interests as our interests, particularly in the

manufacturing

manufacturing and investment fields in Germany, are larger than those of any other country. There was, for instance, a movement to destroy completely the department stores on the ground that they were Jewish-owned and had a great deal of foreign capital in them, principally American, and that their continued existence threatened the prosperity of the smaller businesses in the country. It was one of the doctrines also of the National-Socialist party that large manufacturing establishments were not in the best interests of the country, and that therefore the small factories must be built up, even though this might be at the expense of the larger establishments, and cause their disappearance. There was a feeling that if an establishment employed over one hundred men it fell within the category of those dangerous to the national economy. While the action was supposed to be directed against all establishments employing over one hundred workers, it affected principally foreign-owned factories and as these owned by Americans were most numerous, it was our interests which were most endangered. As has been pointed out in despatches from this office, orders were issued by the National-Socialist party that no department of the national Government, or of a state government or of a municipality or of a public utility should buy any supplies from other than a "pure German firm". A pure German firm was construed by the party authorities and by the various organizations which grew up to carry this program into effect, to be one which was entirely owned by German citizens and in which there was no Jewish participation whatever.

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While this action against American interests in Germany did not originate from the Government, but rather from the National-Socialist party and from various organizations which grew up under its protection, the discriminatory action was as effective as if it came from the Government through actual laws and decrees. The National-Socialist party controls completely the Governmental machinery in Germany in every single aspect and for the public any action by the party has the same effect as action by the Government itself.

The Nationale Radiator Gesellschaft, the case of which is fully covered in the despatches which have already reached the Department, has three factories in Germany. The capital stock of the company is entirely owned by the parent company in the United States, the American Radiator Company. The German company is incorporated under German law. The products of the company in Germany are manufactured by German workmen and out of German materials, and the management is almost entirely in the hands of Germans. It was, however, the intention of the "Kampfbund des gewerblichen Mittelstands", an organization acting under the National-Socialist party, to classify this firm as one from which no Government organization, state, national or municipal, or any public utility, could purchase supplies. Due to the general mentality which has been instilled into the German people this would have been equivalent also to intimidate any private purchaser or firm to buy from the Nationale Radiator Gesellschaft. Carrying through this program,

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therefore, would have meant the definite elimination of this firm from the German economic structure, and the destruction of millions of dollars of American capital which have been invested in it. I will not recite the other cases as some of them have already been covered in the despatches sent the Department.

A special situation therefore arose which required immediate action in the protection of our interests. There seemed to be no doubt that under Article I as well as under Article XIII of the Treaty of Friendship, Commerce and Consular Rights between the United States and Germany, American firms or American-owned German firms were guaranteed the same rights in Germany as firms which might be entirely owned by Germans. In view, however, of the chaotic situation in the country and the fact that the National-Socialist party and its leaders were overwhelmed by the many problems which they had to face and by the various movements which were being set on foot by party followers, the Charge d'Affaires, Mr. Gordon, and I were both of the opinion, as has been set forth in my despatch No. 1296, that it would be preferable not to make formal representations on behalf of these American interests either from the Department or from the Embassy at the outset, but that it would be better for the Consulate General to carry on informally conversations with the Ministry of Commerce. This was done and the Ministry of Commerce without any hesitation stated that the discriminatory

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action which was brought to its attention, involved violation of the treaty. As the Ministry of Commerce at first was powerless to stop the party acts which were causing the trouble, it suggested to me that it would be advisable also to take up the matter with the Ministry of Propaganda and Public Enlightenment which, as the Department is aware, was done, which Ministry has also indicated that the discriminatory action taken against certain American firms involved treaty violation. I do not know on what sections of the treaty the German authorities may have based their recognition that these acts constituted violation of the treaty as at no time did this Consulate General go into the juridic aspects of the question with these Ministries or with any of the German authorities. As has already been stated, a special situation arose with the coming in of the new Government, which required immediate action. As one leader of the National-Socialist party put it, "every single member of the party is trying to make his own revolution to serve his own ends under the cover of the national revolution." All the authorities which were approached, expressed appreciation of the tactful and cooperative manner in which these cases were taken up with ^{them} ~~it~~, and expressed the hope that formal representations might be avoided. I do not believe it is necessary to recite in detail any more than has been done in the despatches already transmitted to the Department, the untiring steps which this

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Consulate General took to stop at the outset the movement which so seriously threatened American firms. It was extremely important that the movement be stopped at the outset and before it gained real momentum. As it was, before it could be stopped by the Government and by the higher leaders of the National-Socialist party, the interests of some American firms had already been prejudiced. It was a question for a time as to whether the leaders of the party would be willing to take the necessary steps to stop the movement of their adherents against American and foreign firms. They had taught their adherents that certain things could be done, and when they came into power their adherents wished to hold them to their promises. In the earlier weeks of the movement it was particularly difficult for the leaders of the party to enforce certain action directly contrary to what they had promised their followers.

It is, however, to the credit of the leaders of the party that they did begin to take action to stop discrimination against American and foreign firms, and as time went on carried into effect the promises which they had made. As the Department has already been informed, this was accomplished without any direct representations either by the Department or the Embassy, to the Foreign Office.

I believe that the foregoing is sufficient to indicate to the Department that the Consulate

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General has proceed^{ed} with all caution and has not taken any position which the Department may not be able to support. As neither the Embassy nor the Consulate General have made any formal representations, no direct action by our Government has been taken with respect to treaty violation. As has already been pointed out, however, both the Ministries of Commerce and of Propaganda and Public Enlightenment have indicated to me that the contemplated action against American firms in the cases brought to their attention would involve violation of the treaty, but, as has also been stated, the juridic aspects of the question were never discussed as this recognition came from them spontaneously when the individual cases were discussed with them.

It may be said in this connection that the Consulate General has on various occasions both by officers in the Ministries and by leaders of the National-Socialist party been told how much is appreciated the manner in which these cases have been taken up and formal representations avoided and that patience was shown by the American firms and our officials until the Government and the party could take the steps which the circumstances imposed. I believe that it is not too much to say that it is because formal representations were avoided and the cases were taken up in the way which has been recited, in this and previous despatches, which made it possible

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for the Government and the party leaders to stop the action which would have been so prejudicial to American interests. Although it is the opinion of this Consulate General that representations by the Department and the Embassy would have been justified at the outset because of the nature of the discriminatory acts, the making of such formal representations would in the first days of the change of Government have greatly embarrassed the new Government and it might not have been possible to secure the results which have so far been achieved. The course of events so far has amply justified the attitude of the Embassy and of the Consulate General agreed upon when these cases first arose, and it is quite probable that any formal representations on the basis of treaty violation in the first weeks of the new Government might have led to endless discussions of a juridical nature while in the meantime the interests of the many American firms involved would because of conditions prevailing in the country, have been definitely prejudiced. The party had so definitely promised certain things to its adherents and was required to exercise so much restraint in various forms on its adherents after the accession to power, that if it had been faced by an open or a public discussion of treaty violation in this matter, it could hardly have receded immediately from its position. The temper even of the leaders of the party during the first weeks after March 5 was such that they

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were not much concerned about treaty obligations and undoubtedly felt that inconvenient treaty obligations could be easily discarded. It was therefore necessary to take up the matter in a considerate and understanding way so as to give the leaders time to understand the importance to Germany of keeping her treaty obligations and observing international obligations in general and to recede from the original positions in various matters without losing further in authority with their adherents. Had the matter of treaty obligations been pressed in the beginning, it is not impossible that some rash declarations might have been made or a premature attitude assumed that Germany would seek a revision of these treaties and in the meantime did not feel bound by them. Once such an attitude taken it would have been even more difficult for the party and the Government to take the proper steps.

As I have indicated in this despatch and in previous despatches, the leaders of the National-Socialist party have become convinced of the necessity of carrying out all treaty and international obligations and of maintaining certain accepted international practices. With respect to foreign-owned German firms the leaders of the party have taken a very definite attitude and have to the knowledge of this Consulate General given very specific orders to party organizations and intermediary leaders. The various Kampfbuende

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or "fighting organizations" with the exception of the "Kampfbund des gewerblichen Mittelstandes" have been dissolved. At the time that this was done the leaders of the party informed me that they realized that this organization should also be dissolved, but it was quite obvious that they did not feel that they could go so far as to do this. This organization therefore is still flourishing and it is quite evident that the masses of the party and the intermediary leaders are in sympathy with its aims. There is increasing evidence that this Kampfbund is not at all satisfied with the restrictions which have been placed upon its field of action by the party and the Government, and in recent days it has shown new activity. It is not impossible that in various forms its activity, if continued, may injure the rights of American firms, in which case it may still be necessary for our Government to make representations on behalf of the firms affected. The Consulate General, however, intends to continue the same steps which it has undertaken up to this time in protecting the interests of American firms and to avoid the necessity for representations. We believe that this is still the best way of reaching the desired end, but in case the circumstances require, thenecessary information will be transmitted to the Department in order that appropriate action may be taken.

Although the party hold on the machinery of

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the Government and in the country remains secure, it is evident that the moderate policy of the primary leaders of the Government is causing a good deal of dissatisfaction among the intermediary leaders and the masses of the party. The principal question in Germany to-day is whether the new more moderate leaders of the party will be able to force these views with the appropriate action on the intermediary leaders and the masses of the party, or whether in order to hold their power and place they may not be under the necessity of taking certain radical action which will undoubtedly result in the necessity of representations, not only by our Government but by other Governments having interests in Germany which would be affected by such action.

Respectfully yours,

George S. Messersmith,
American Consul General.

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