

148
NO. 1243

AMERICAN CONSULATE GENERAL,
Berlin, Germany, April 18, 1933.

STRICTLY
CONFIDENTIAL

SUBJECT: With further reference to the interference
with the treaty rights of American firms
in Germany.

THE HONORABLE

THE SECRETARY OF STATE,

WASHINGTON.

SIR:

I have the honor to refer to my strictly confidential despatch No. 1233 of April 11, 1933, with reference to the interference with the treaty rights of certain American firms in Germany and in which I outlined my conversation with Dr. Bang, the Staatssecretar at present at the head of the Ministry of Commerce with regard to the cases of the Associated Press G.m.b.H., the New York Times G.m.b.H., the Keystone View Company, the Nationale Radiator Gesellschaft, A.m.b.H., the Roth-Buechner Company which is a subsidiary of the Gillette Company, the Remington Typewriter Company, and the Weston Electrical Instrument Corporation, all of which were briefly outlined in the despatch under reference. In this despatch I also pointed out that the general policy of the present Government, or at least of the National

Socialist

Socialist Party which is in complete control of the Government, is towards the dissolution of the big industries in favor of small factories.

Since the writing of this despatch, further information has developed in this connection. The Burroughs Adding Machine Company which has enjoyed a good business in Germany for a number of years, has brought to my attention that it has been asked by municipal authorities and city owned public utilities to sign the same form as that referred to in the first paragraph of my despatch No. 1233, on page 6.

The National Cash Register Company which owns and operates a German company with a factory employing at present about 1,000 men in Berlin, has been asked to submit the same form by various municipalities and public utilities. This American owned German company was founded in 1896 and is the oldest firm in Germany in the cash register business. Its German competitors, Krupp and Anker, were established much later. The German plant manufactures in Germany not only for the German market but also supplies a part of the export demand of the parent company in the United States. The products it manufactures in Germany are 100% German and the only machines which the company imports from the United States are some of the larger and special machines for which there

is only a small demand and which it would not pay to manufacture in Germany.

It will be noted that the declaration which certain American firms in Germany have been asked to sign and to send in within a period of eight days, requires affirmative answers to the following: (1) That the firm is a purely German firm; (a) that the company is not entirely or mainly owned or under the responsible direction of foreigners, Jews, and that it does not have Jewish partners; and (3) that the company is not based on "Marxistic" principles. The firms mentioned in this despatch cannot give an affirmative answer to the first of these three declarations as they are not a purely German firm in the sense of the declaration which is that the firm is organized under German law and entirely owned by German citizens. These firms are organized under the German law as German companies which under the Treaty of Commerce between the United States and Germany gives them the same rights as an entirely German owned firm. They cannot answer the second query in the affirmative as the companies in question are wholly owned by parent companies in the United States. In some cases the managing director in Germany is an American or a person not a German citizen; but in most cases the managing directors are Germans. It is impossible for any of these firms which are stock companies, to declare that none of their stock is in the possession of Jews. It is of course possible for all of these

firms

firms to answer the third query affirmatively, as obviously none of them are based on "Marxistic" principles.

In order to clear up this matter further and to determine what action the Ministry of Commerce had taken after my interview with Staatssecretaer Bang, I called by appointment at the Ministry on April 13 and saw Ministerial Director Dr. Posse in the absence of Staatssecretaer Bang. Dr. Posse it may be said, is one of the ranking officials of the Ministry and has frequently represented it at economic conferences at Geneva, and he informed me during this interview that he had been named to go to Washington for the conversations which are to take place during the preliminary meeting to the World Economic Conference.

I first referred to my conversation with Dr. Bang on April 7 outlined in my despatch No. 1233, and he informed me that he was familiar with what had passed then. I asked him what the Ministry had done as a result of this conversation and Dr. Posse stated that Dr. Bang had taken up the question of these American firms and of interference with treaty rights with the office of the Chancellor, Mr. Hitler, and with the Ministry of the Interior, at the head of which is Mr. Goering. He stated that he had no information further than this and reiterated that his Ministry would do all in its power to bring about a correction of the situation.

I then outlined to him the further cases of the Deutsche Burroughs Adding Machine Company and of the National Cash Register Company, which had come to our attention, and emphasized particularly the case of the latter company which meets its German demand almost entirely out of its Berlin factory. I also emphasized the fact that the Nationale Radiator Gesellschaft since 1914 had sent to the parent company in the United States only 400,000 marks of its earnings, the rest having been invested in the three German plants in increasing their efficiency and production. I pointed out that in many respects the existence of these plants and their continued operation was of much more importance to Germany than to the United States as unfortunately for us a part of the export demand of the parent companies in the United States for Europe and South America was supplied from the German rather than from the parent factories in the United States. I stated that the American companies were being very patient and understanding because they realized that radical changes had taken place in Germany which involved disturbance of ordinary conditions and that under existing circumstances it was difficult to get rapid action. I said further that we realized that the pressure for certain interference in business was coming from the bottom and from political sources, rather than from the top and from official sources, and that he could depend upon our understanding

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the difficulties under which the Ministry was laboring but that unless some satisfactory assurances could be given to the American firms concerned as to the attitude of the German Government, they would be under the necessity of informing the parent companies of the discriminatory action being taken which would undoubtedly result in the parent companies making representations to the State Department in Washington and that this would involve taking up the matter with the Foreign Office through the Embassy. I stated that if the parent companies in America took such action, publicity would be inevitable and it would have a further unfavorable effect on public opinion abroad if it became known that foreign firms in Germany were being discriminated against.

Dr. Posse stated that he appreciated the situation fully and expressed his thanks that the Embassy and the Consulate General were handling the matter so considerately. He assured me again that Dr. Bang had taken up the whole matter with the offices of the Chancellor, Mr. Hitler, and of Minister Goering, and that the Ministry would do everything in its power to get the matter settled as quickly as possible. He added that he could assure me officially, and that I was to consider it as official, that no such action as that which had been brought to his attention by me came from official sources and that it did not represent either the will or the act of the German

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Government. He was particularly interested in the information I brought him as to the declaration which American firms had been asked to sign, and asked me to leave copies with him, which I did. It was obvious from his manner that he recognized the extraordinary character of these declarations and made it clear that they had not been authorized by official sources.

During the course of the conversation it was necessary to make a distinction between the products of the American owned German factories and those products imported by the German company from the parent company. Dr. Posse brought out the fact that certain municipalities and he believed certain states as well as Congress, had made it a condition that only American products could be used in certain public works or that public administrations could only use goods manufactured in the United States; and that it was undoubtedly the right of state and municipal authorities both in the United States and in Germany to decide to use only goods manufactured in their respective countries. I stated that I could not give any definite information on this subject as to our practice at home, but that it was my impression that certain municipalities at least had specified in contracts for public works that only American materials could be used. I stated that the matter which I was bringing specifically to his attention was the situation of those German American-owned factories which by the action of states and

municipalities

municipalities were being excluded from selling their products manufactured in the German factories, to them. Dr. Posse stated that he appreciated that this was a clear violation of treaty rights and that as he had already stated, he would do everything in his power to get the proper information about, as the central Government had nothing whatever to do with the matter.

I informed Dr. Posse that I thought it was desirable to get action as rapidly as possible and to get this movement stopped before it gained further momentum. He assured me that he recognized all the implications involved and the importance of immediate action and that he would again see that the matter was taken up in the same quarters in which Dr. Bang had already discussed it.

The conversations with Staatssecretar Bang and Ministerial Director Posse have indicated clearly that the Ministry of Commerce recognizes as a violation of a treaty right the effort of certain municipal and state administrations to exclude from purchase by their services, the products of American-owned German plants. They have given their specific assurances officially that the Ministry will do all that it can to stop this movement. They have expressed appreciation of the considerate manner in which this matter has been taken up with them by us. They have, however, indicated the powerlessness of the Ministry and recognized by

implication

implication the existence of the dual Government described in my despatch No. 1231 of April 10, 1933. This was frankly admitted to me by the statements of both Dr. Bang and Dr. Posse that they had taken up this matter with the offices of the Chancellor and of the Minister of the Interior.

The American firms which have taken up this matter with the Consulate General have been informed that they should not in the meantime sign any of the declarations which have been submitted to them or take any action with regard to them, as the Consulate General has taken up the matter officially with the Ministry of Commerce which has given the necessary assurances that the requirement of these declarations is not based on any official orders of the German Government.

It is obvious that the instructions to states, municipalities and certain public utilities not to buy any except German goods manufactured by purely German firms, have come from a central organization of the National Socialist Party. This policy is in line with the general policy of the Party which is distinctly unfavorable towards foreign capital and foreign investment in Germany and towards any firms which in the opinion of the Party are not "purely German" firms. It is interesting in this connection to note that at the same time that the Party organization is instructing municipalities, etc., not to buy imported goods or goods not manufactured in Germany by purely

German

German firms, the central offices of the Party organization in Berlin have recently purchased some expensive calculating machines from an American company in Berlin and imported from the parent factory in the United States.

A further illustration will be of interest to the Department. On April 13, Mr. Louis Lochner, the head of the Associated Press in Germany, brought to my attention that he had been informed that morning by the "Nachrichtenamt der Stadt Berlin", that the two arm bands which had formerly been assigned to the photographers of the Associated Press G.m.b.H. for their exclusive use on the Tempelhof Flying Field, had been cancelled and that hereafter only one arm band is to be conceded to all of the photographic concerns in Berlin. This coming on top of the refusal to give the photographers of these American companies permission to take photographs at the "Auswaertige Presse" reception of the Chancellor as set forth in the first part of my despatch No. 1233, it seemed advisable to take up the matter at once with the municipal authorities.

I therefore immediately called on Oberbuergermeister Dr. Salm and brought the situation to his attention, stating that it required immediate action in view of the important events which were planned at the Tempelhof Field over the week-end. I informed the Oberbuergermeister that in our opinion the action contemplated by the Press Division of the city government was a clear violation of the treaty rights of

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the three American owned photographic firms if the photographers of German firms are to be allowed to be present as usual. I gave to the Oberbuergermeister the necessary background information and suggested that probably those who had given these orders were not aware that a violation of a treaty was involved. I emphasized particularly that these branches of American press associations had been particularly patient and that they had in no way so far mentioned in the press the difficulties which they were having and that this patience was undoubtedly being severely tried. The Oberbuergermeister stated that he understood the situation thoroughly and that he would do all that he could immediately.

It must be recognized that while I could only approach the Oberbuergermeister, he is in reality for the time being not the deciding factor in municipal affairs and that there is in the Rathaus a Kommissar of the National Socialist Party who makes the decisions. The measure concerning which I made representations was undoubtedly a Party measure exercised in favor of certain German press organizations but exercised through the official press bureau of the city.

After my call on the Oberbuergermeister at noon on April 13, I transmitted a letter to him outlining briefly the circumstances and asking that immediate steps be taken so that the three American concerns can take pictures of the Tempelhof affairs as usual over the week-end. On Saturday, April 15, Mr. Lochner

of the Associated Press informed me that he had just been told by the "Nachrichtenamt" of the city that the two arm bands in their possession could be temporarily retained "until the whole question of what was to be done with regard to foreign photographic concerns had been settled". It is quite obvious that in this particular connection the attacks against the American firms taking pictures are solely in the interests of certain German competitors and it is quite clear that the action has come from Party sources rather than from the city government itself.

I have transmitted the foregoing detailed information concerning the cases which have come to the attention of the Embassy and of the Consulate General, in order that the Department may have the necessary background should any of the parent companies in the United States make representations to the Department. It will be noted that so far everything possible has been done here and that the constitutional and legal authorities have given us all necessary assurances. It is clear, however, that the extra-legal and Party Government is the source of all this interference with the activities of American firms and that before the legal and constitutional authorities can do anything they must have the consent and approval of the extra-legal Party Government. If the efforts of the Ministry of Commerce do not prove to be sufficient to properly protect the interests of these American firms, it will undoubtedly be necessary to take up the matter with the Foreign

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Office. In that case the American Radiator Company, the National Cash Register Company and other concerns interested, will undoubtedly take up the matter with the Department so that the appropriate instructions may be sent to the Embassy here. While every effort has been made to settle the matter here as this seemed to be the most desirable procedure, I am not sure that it can be done without formal representations by the Embassy to the Foreign Office, in which case I believe these should be of the strongest possible character and that the Department should take from the beginning a very vigorous attitude. ^{a very strong protest} It will be the only form of approach which will be understood by the authorities here.

It is needless to say that the officials in the Ministry of Commerce have been quite embarrassed in their discussion of this matter as it is impossible for them to conceal the fact that they are practically powerless in spite of their willingness to act, as the real orders come from the extra-legal and Party Government. As the Party has promised so much to all kinds of persons and firms, these are now insisting on their pound of flesh and it is quite obvious that these demands of individual firms for aid are causing the Party leaders embarrassments and real difficulties which they did not foresee. It is quite clear that when they made certain promises to get rid of the competition of foreign firms and foreign goods, it

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was not realized that treaty violations might be involved. A further understanding of this situation is shown by the automobile tax recently announced. The Party before the election promised the automobile industry that the tax on cars would be decreased and that it would be a discriminatory tax in favor of cars of German manufacture. For some weeks the newspapers carried articles to the effect that the new automobile tax would be distinctly in favor of cars of German manufacture and that foreign cars would have to pay a much higher tax. When it was brought to the attention of the Ministry of Finance that such a discriminating tax on foreign cars would be against our treaty and that with several other countries, the project had to be abandoned and the new tax/^{measure} does not carry any discriminatory feature. When the Under Secretary of the Treasury, however, announced the new automobile tax, he made a statement which was widely carried in the press, to the effect that while it was unfortunately impossible for the Government on account of treaty limitations to discriminate against foreign cars in favor of German cars, it was quite obvious that no good German would in these times buy a foreign car; and that the registration authorities would look with disfavor and suspicion upon any one who registered a foreign car as from April 1, 1933.

The Department will be kept informed of any new cases which may arise and of any developments with regard to those which have been brought to its attention

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148

- 15 -

in despatches 1233 and the present.

Respectfully yours,

George S. Messersmith,
American Consul General.

Enclosures:
Copy of declaration;
Translation thereof.

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the signed orig-
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